

COMMITTEE REPORTS

What happened in the Florida Legislature of interest to us?

by Ellen S. Morris,
Legislative Chair

Thanks to our legislative consultant, Tom Batchelor, we are able to provide you with a summary of bills of interest to elder law attorneys that are expected to be or have been signed by the governor. Below are the highlights. The full details of these laws and others of interest as well as Tom's summary of the appropriations implementing bill will be posted on the Web.

SB 366/HB 233 - Elderly Persons & Disabled Adults/Abuse & Neglect

This bill reclassifies the offense of aggravated abuse of an elderly or disabled person from a second degree felony to a first degree felony. This will have the effect of increasing the maximum sentence for the offense from 15 years in prison to 30 years in prison. The bill also requires certified law enforcement personnel to receive training in the identification and investigation of elder abuse and neglect. Subject to the governor's veto powers, the effective date of this bill is July 1, 2008.

SM 2662/HM 1045 - Alzheimer's Disease Research/Federal Funding

Senate Memorial 2662 urges the United States Congress to increase federal funding for Alzheimer's disease research by \$360 million during fiscal year 2008-2009. This legislation directs that copies of this memorial are to be sent to the president of the United States, the president of the United States Senate, the speaker of the United States House of Representatives and to each member of the Florida delegation to the United States Congress.

SB 1092/HB 7047 - Alzheimer's Disease/Medicaid Waiver Program

This bill extends the repeal date

for the Medicaid Home and Community-Based Waiver Program for Persons with Alzheimer's disease. The bill directs the Office of Program Policy Analysis and Government Accountability to conduct an evaluation of comparable Medicaid waivers to determine their comparative cost effectiveness and ability to delay or prevent institutionalization of Medicaid recipients, with findings and recommendations due to the Legislature prior to the 2010 regular session. Subject to the governor's veto powers, the effective date of this bill is upon becoming a law.

CS/HB 739/SB 688 - Guardian Advocates for Persons With Developmental Disabilities

CS/HB 739 amends the process for the appointment of guardian advocates for persons with developmental disabilities. The bill provides that guardian advocates are not required to be represented by counsel unless required by the court or if they are delegated rights to oversee property other than being the representative payee for government benefits. The petition to the court for appointment of a guardian advocate must detail the relationship of the proposed guardian advocate to service providers of healthcare, residential or other services to the person with a developmental disability. In addition, the notice of hearing on the petition to the person with a developmental disability must be delivered to the next of kin, any surrogate resulting from an advance directive or agent under a durable power of attorney.

The court must appoint an attorney for the person with a developmental disability within three days of receiving the petition for a guardian advocate. The court shall initially appoint a private attorney selected from the attorney registry in accordance with s. 27.40, F.S. Attorneys may not represent both the individual with a developmental disability and the guardian advocate or the person who files the petition. Court-appointed attorneys must complete eight hours of education in guardianship unless

waived by the court.

The court must determine if a valid advance directive or a durable power of attorney exists for the person who is the subject of a petition to appoint a guardian advocate. The court must also determine the sufficiency of these instruments for the person with a developmental disability. If a guardian advocate is appointed, the court must include in the letter of appointment how the advance directive or the durable power of attorney is affected by the guardian advocacy.

A person may file a petition with the court for suggestion of restoration of rights for the person with a developmental disability. The bill provides the process for considering a suggestion for restoration of rights. The bill clarifies that the right of an individual with a developmental disability to consent to or refuse treatment is subject to the powers given to the guardian advocate or guardian. Subject to the governor's veto powers, the effective date of this bill is July 1, 2008.

CS/CS/SB 2012/HB 1431 - Insurance Policies

This bill requires insurers to notify long-term care insurance policyholders annually, rather than every two years as under current law, of the right to designate a secondary addressee to receive notice of possible lapse in coverage or termination due to nonpayment of premium. It permits reinstatement of long-term care policies that have been canceled for nonpayment of premium when the failure to pay the premium was due to the policyholder's continuous confinement in a hospital, skilled nursing facility or assisted living facility for more than 60 days. The bill also requires that notice of possible lapse in coverage of a long-term care policy for nonpayment of premium be sent to the policyholder and secondary addressee. It extends the statute of limitations for claims on Holocaust-era insurance policies until July 1, 2018. It permits the Office of Insurance Regulation to waive the requirement that a multiple employer welfare arrangement maintain its principal

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place of business in Florida under specified conditions. It clarifies that physician reimbursement for purposes of motor vehicle personal injury protection (PIP) insurance for specified medical services is based on 200 percent of the “participating physicians” schedule of Medicare Part B.

In addition, the bill permits hospitals to form alliances to obtain self-insurance coverage for its members and provides that contracts of reinsurance issued to such alliances are to receive the same tax treatment as reinsurance contracts issued to insurance companies.

It makes underwriting files of Citizens Property Insurance Corporation available to the policyholder and his or her attorney to the same extent that the files would be available from a private insurer in litigation under the Florida Rules of Civil Procedure. It permits Citizens to release confidential and exempt underwriting file records to government agencies upon written request and demonstration of need.

The bill has several other provisions: It specifies criteria that public housing authorities must meet to form self-insurance funds. The bill amends various provisions relating to public adjusters, including prohibition of certain solicitation practices, limiting fees that can be charged, providing licensure qualifications and establishing a public adjuster apprenticeship program and license. It authorizes title insurers to petition the Office of Insurance Regulation for a rate deviation for personal property title insurance, a Uniform Commercial Code insurance product. It extends for an additional year the offer of availability of excess coverage under the Florida Hurricane Catastrophe Fund to certain limited apportionment companies, insurers approved to participate in the Insurance Capital Build-Up Program and insurers that purchased such coverage from the fund in 2007. It provides an exemption from the customer representative licensing examination for applicants with an associate’s or bachelor’s degree who have completed at least nine academic hours in property and

casualty insurance. It prohibits insurers, including Citizens Property Insurance Corporation, from requiring insurance agents as a condition of appointment or continuation of appointment to take a course or educational program that offers continuing education credits. It authorizes independent study programs offering continuing education credits through correspondence to allow students to take a final closed book examination without being monitored under specified conditions. It requires Citizens Property Insurance Corporation to electronically report certain claims data and histories to a consumer reporting agency upon request. Subject to the governor’s veto powers, the effective date of this bill is July 1, 2008, except as otherwise provided.

CS/CS/SB 2082/HB 1003 – Insurance

The John and Patricia Seibel Act creates enhanced consumer protections related to annuity and insurance transactions. For senior consumers, 65 and older, the bill requires that the insurer or insurance agent have an objectively reasonable basis for believing that a recommendation to a senior consumer is suitable, and it requires insurance agents, prior to recommending an annuity to a senior consumer, to obtain specified personal and financial information from the consumer relevant to the suitability of the recommendation, on a form adopted by the Department of Financial Services. It provides that a consumer who refuses to provide information requested by an agent or insurer before execution of the sale to sign a verification of the refusal from the senior consumer on a form adopted by Department of Financial Services. It requires the insurer or agent to provide the consumer with specified information on a form adopted by the Department of Financial Services concerning differences between the annuity product being recommended for purchase and an existing annuity that would be exchanged. It requires an agent to disclose to the applicant that purchase

or exchange of an annuity contract may have tax consequences and that the applicant should contact a tax advisor for additional advice. It increases the “free look” period for a consumer to obtain a refund from 10 days to 14 days after purchase of a life insurance or annuity. It authorizes the Office of Insurance Regulation to order an insurer to rescind an annuity and provide a full refund of the premiums paid or the accumulation value, whichever is greater, when a consumer is harmed by a violation of the suitability statute. It provides criminal and civil liability protection to insurers for the acts of independent individuals not affiliated with the insurer for selling its products, when it involves an unauthorized sale. It expands the scope of record keeping requirements to entities responsible for the maintenance of records.

Provisions related to criminal penalties:

- The bill imposes increased fines and penalties for the unfair and deceptive insurance practices known as “twisting” and “churning.” Twisting is defined as knowingly making any misleading representations or incomplete or fraudulent comparisons or fraudulent material omissions of or with respect to any insurance policies or insurers for the purpose of inducing, or tending to induce, any person to lapse, forfeit, surrender, terminate, retain, pledge, assign, borrow on or convert any insurance policy or to take out a policy of insurance in another insurer. Churning in general means the practice whereby policy values in an existing life insurance policy or annuity contract, including but not limited to cash, loan values or dividend values, and in any riders to that policy or contract, are used to purchase another insurance policy or annuity contract with that same insurer for the purpose of earning additional premiums, fees, commissions or other compensation.

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In the Florida Legislature *from preceding page*

- The bill's penalties for "twisting" or "churning" are a first degree misdemeanor and an administrative fine not greater than \$5,000 for each nonwillful violation or an administrative fine not greater than \$30,000 for each willful violation. However, to impose the criminal penalties, the practice must involve fraudulent conduct.
- The bill also establishes penalties for willfully submitting to an insurer on behalf of a consumer documents bearing a false signature. A person commits a third degree felony for this act with an administrative fine not greater than \$5,000 for each nonwillful violation or an administrative fine not greater than \$30,000 for each willful violation.
- Administrative fines may not exceed an aggregate amount of \$50,000 for all nonwillful violations arising out of the same ac-

tion or an aggregate amount of \$250,000 for all willful violations.

- The bill prohibits an agent from using designations or titles that falsely imply that he or she has special financial knowledge or training.

Additional measures in the legislation:

- Requires all licensees to complete three hours of Department of Financial Services-approved continuing education on the subject of suitability in annuity and life insurance transactions, with certain exceptions.
- Clarifies the regulatory jurisdiction of the agencies under the Department of Financial Services regarding the sale of annuities and grants rulemaking authority.

Section 9 related to annuity investments by seniors shall take effect 60 days after the date on which the final rule is adopted or Jan. 1, 2009, whichever is later. Subject to the governor's veto powers, the effective date of this

bill is Jan. 1, 2009.

HB 5085/SB 1854 – Healthcare

This is a conforming bill to the General Appropriations Act and contains various statutory revisions to conform to budget adjustments in the area of healthcare. The bill amends s. 400.179, F.S., to authorize the transfer of leasehold licensee fees from the Health Care Trust Fund to the Grants and Donations Trust Fund; amends s. 409.017, F.S., authorizing the procurement of a vendor to maximize federal revenues through administrative claims for federal matching funds for state provided educational services; amends s. 409.904, F.S., repealing obsolete language related to the Meds AD program; repeals the Meds AD program effective June 30, 2009; repeals the Medically Needy program, except for coverage for pregnant women and children, effective June 30, 2009; and creates s. 409.906(26), F.S., allowing Medicaid payment for services provided to a Medicaid recipient by an anesthesiologist assistant.

The bill amends s. 409.908, F.S., to eliminate the requirement that Medicaid will not pay coinsurance and deductibles for services not provided by Medicaid; limits Medicaid payments for hospital Medicare Part A coinsurance to the Medicaid per diem rate less amounts paid by Medicare, but only up to the Medicare coinsurance amount; requires Medicaid payment for deductibles and coinsurance for portable X-ray Medicare Part B services provided in nursing homes; reduces the average wholesale price (AWP) component in the pharmacy reimbursement methodology from AWP minus 15.4 percent to AWP minus 16.4 percent; and reduces the wholesale acquisition cost (WAC) pricing component from WAC plus 5.75 percent to WAC plus 4.75 percent; requires the Medicaid rates for hospitals, nursing homes, community intermediate care facilities for the developmentally disabled, county health departments and prepaid health plans to be set in a manner that results in no automatic cost-

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based expenditure increase for two fiscal years beginning July 1, 2009; and requires establishment of a workgroup to evaluate alternate payment methods and provide a report to the Legislature by Nov. 1, 2009.

The bill amends ss. 409.911, 409.9112, 409.9113 and 409.9117, F.S., to revise the method for calculating disproportionate share payments to hospitals; amends s. 409.912 (4) (b), F.S., to allow Medicaid-eligible children in Hillsborough County receiving child welfare services to receive behavioral healthcare services through the community-based lead agency specialty prepaid plan; and amends s. 409.912 (39) (a), F.S., to modify the pharmacy reimbursement methodology as described above.

The bill creates s. 409.912(53), F.S., to require legislative notification before implementing programs authorized under the federal Deficit Reduction Act of 2005; creates s. 409.91206, F.S., to allow the governor, the president of the Senate and the speaker of the House of Representatives to convene workgroups to propose alternatives for cost-effective health and long-term care reforms, including reforms for Medicaid; and amends s. 409.9122, F.S., to require recipients in the MediPass program, in counties with two or more managed care plans, to be assigned to a managed care plan if they fail to make a choice during the annual choice period.

The bill amends s. 409.9124, F.S., eliminating the provision that managed care per-member per-month rate averages do not exceed the amount in the General Appropriations Act for the fiscal year in which the rates are in effect and amends s. 409.913, F.S., to exclude independent laboratory services and school-based services from the Medicaid explanation of benefits.

The bill repeals s. 409.9061, F.S., to eliminate the authorization of a statewide laboratory services contract for Medicaid recipients and repeals s. 430.83, F.S., to eliminate the Sunshine for Seniors program. Subject to the governor's veto powers, the effective date of this bill is July 1, 2008.