

ASSOCIATED INDUSTRIES OF FLORIDA
**LEGISLATIVE
WEEKLY UPDATE**



P.O. Box 784 • Tallahassee, FL 32302 • Phone: (850) 224-7173 • Fax: (850) 224-6532 • Internet: <http://aif.com> • fbnet.com

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Interim Weekly Report

HEALTH CARE

Governor Bush announced his Medicaid reform plan at a press conference on Tuesday, January 11th. The Governor's plan mainly focuses on the acute care and outpatient coverage aspects of Medicaid. His reforms would allow people to opt out of Medicaid in favor of private insurance. The plan would also allow Floridians to use a package of health savings accounts which have built in catastrophic plans and wellness benefits. The reforms would also increase managed care infiltration.

State funding for Medicaid must increase by 13% in order to keep coverage at current levels. This increase in funding is simply not sustainable for the state of Florida. In response to this crisis the Governor's reform plan has three principles:

- Medicaid participants should have greater role in health care decisions;
- they should choose their health plan and benefits;
- and Medicaid must be run like a private insurance plan.

Under the Governor's plan there would be a fixed global budget for Medicaid in which the state would pay a fixed monthly premium and the beneficiary would choose the type of plan. Consumers can purchase private insurance with different benefits or utilize health savings accounts.

Also in the Governor's reforms, there are three new benefit categories: basic care, catastrophic care, and enhanced benefits. Each category will have a separate premium. Beneficiaries will select coverage from private vendors.

The newly released plan does not substantively impact Long Term Care (LTC) services. The Governor's outline states that LTC reform will be rolled-out in the Agency for Health Care Administration's plan which will be released on December 31, 2004. The Governor's plans to reform LTC at a later time and he will work with the Legislature on the issue of nursing home reimbursement.

The Governor is working with the U.S. Department of Health and Human Services to obtain the necessary waivers and will offer a bill during the 2005 legislative session.

CONSTITUTIONAL AMENDMENT REFORM

The House Judiciary Committee met on Tuesday, January 11th to discuss, among other topics, Citizen Initiative Reform. Representative Joe Pickens (R-Palatka), Chairman of last year's Select Committee on Constitutional Amendments briefed the members of the Judiciary Committee indicating that this Session the House will be attempting to advance significant initiative process reform once again. Last year, the Select Committee made four significant recommendations to the House only one of which was ultimately approved and sent to the voters. Amendment 2, which was ratified this past November, increased the time between filing deadline for amendments and the elections from 90 days to 240 days. This shift in the deadline is designed to slow the process down thus allowing for a more deliberative process.

Representative Pickens asked the Judiciary Committee members to read and consider last year's recommendations and he indicated that they should consider advancing another reform package this year. It is likely that three specific joint resolutions will be advanced addressing the initiative process itself and substantial legislation should be expected that would address the qualifications and elections process that surrounds the initiative system. AIF's Chief Political Officer Doug Bailey testified before the committee and indicated that AIF supported significant initiative process reform.

It is most likely that the House will advance reform concepts aimed at increasing the ratification threshold for these citizen initiatives and all other constitutional initiatives from 50+1 percent to 60 percent. The "No Hidden Taxes" concept will also be considered – this plan would require initiative sponsors to identify funding streams for amendments that carried with it a significant cost. And finally some sort of subject matter limitation or "judicial filter" will be considered thus protecting the constitution from amendments that could otherwise be dealt with through legislative means.

There has been no indication thus far that the Senate is considering initiative reform a priority. Last year the Senate advanced four resolutions similar to the concepts outlined above and the House failed to approve them.

On Wednesday, January 12th the Senate Judiciary Committee spent the last half of their meeting discussing the possibility of revising the state constitution. Mr. Sandy D'Alemberte provided an overview of the history of constitutional revisions that have occurred in this state.

Senator Geller asked Chairman Webster if the Chairman really wanted the committee to re-write the state constitution. Webster responded he would like to see the Constitution "purified" and that only governmental functions and citizens' rights should remain. He also reminded them that such a revision must pass the Florida Legislature by 3/5ths vote and then be approved by a general vote of the citizens. When asked by Senator Campbell when Senator Webster expected this to occur, Webster responded that it could not be until next session, referring to 2006.

LEGAL AND JUDICIAL

The Senate Judiciary Committee met on Wednesday, January 12th. Their first order of business was to discuss the "street light" issue which was the result of an interim committee project. A staff attorney presented the project which sprang from a recent ruling by the Florida Supreme Court in Clay Electric Cooperative, Inc., v. Johnson, 873 So. 2d 1182 (Fla. 2003). In that case the Supreme Court held that a utility may be responsible for damages for injuries occurring in areas where a streetlight was not operating properly and injury resulted – even if such injuries resulted from the intentional or criminal acts of a third party.

In 2004, the Florida House passed House Bill 1573 which would have provided the utility companies with immunity in these situations. However, the bill did not pass the Senate.

In addition to the direct implication of this case on the utility companies, the Supreme Court also applied the foreseeable zone of risk as the standard by which to measure the utility's scope of responsibility. Many business leaders feel that this standard may be judicially expanded in the future to the detriment of any industry.

The conclusion of the senate staff report provided several recommendations the Legislature could consider in addressing this issue. The first staff recommendation is for the Legislature to do nothing. They also have developed several measures specific to the utility industry for inspections and maintenance to be performed on street lights on regular time schedules. The Legislature could also create a rebuttable presumption of immunity if certain maintenance standards were followed or it could provide complete immunity to the utility companies in these situations.

No member of the utility industry spoke at the committee meeting. Committee Chairman Dan Webster (R-Winter Garden) informed the other members that the staff would be drafting a committee bill to address this issue. Senators Alex Villalobos (R-Miami), Skip Campbell (D-Tamarac) and Steven Geller (D- Hallandale Beach) both questioned the content and intent of a proposed committee bill. Senator Villalobos stated that utility companies should have a duty to maintain street lights and there should be no additional debate on the matter. Senator Geller reminded the committee that in 2004 a compromise agreement was reached to provide the utilities with a rebuttable presumption of immunity if all lights repaired within a certain time frame.

Chairman Webster responded that the committee staff would draft a proposed bill which the committee would then vote to determine if it will be introduced.

WORKERS' COMPENSATION

The Senate Banking & Insurance Committee met on Wednesday, January 12th and spent most of its time on a presentation on the Joint Underwriting Association's (JUA) audit by Mr. Ted Sauerbeck from the Auditor General's office. He stated that the scope of the audit was defined by the Auditor General as well as by the Office of Insurance Regulation (OIR) and Lisa Johnson of the Senate Banking & Insurance Committee. At the conclusion of his presentation, Mr. Tom Maida spoke briefly on behalf of the JUA and introduced the committee to its executive director, Laura Torrance. The Committee was basically out of time at that point and Chairman Rudy Garcia (R-Hialeah) promised that he would schedule them to come to testify before the committee again to provide a more detailed response to the Auditor General's report.

I. RATES AND RESERVES

FINDINGS:

1. JUA used undocumented and un-quantified approach to its estimation of necessary reserves. In doing so, they assumed judgments without discussing basis for judgments and maintaining the same in their work papers.
2. The range of the upper bound reserve estimate is too high. The JUA reported a reserve deficit of \$8.4 million higher than the Auditor General's actuary (Tony Grippa, Sr.) could justify. His best estimate was that the reserves should be significantly lower than JUA reports, somewhere between \$400,000 and \$10.3 million
3. The rate for Tier 3 should be lower. Their actuary finds that it should be 127% above the voluntary rate rather than 170% which they are currently charging policyholders in Tier 3.
4. Rates for Tiers 1 and 2 rates are too low even though they are in compliance with the

law passed during the 2004 session. Actuarially they are still not sound. They are 25% and 50% above the market rate, respectively but to be actuarially sound, they need to be 61% and 70% above voluntary market rate, respectively.

RECOMMENDATIONS:

1. Re-evaluate reported reserves.
2. Revise contract with the claims service provider (Travelers) to change the way certain expenses are reported so that they are not reported as a liability.
3. OIR should give them more guidance for conservatism in estimating loss and reserves.
4. Consider legislation to have Tiers 1 and 2 charge actuarially sound rates earlier than 2007 as current law requires.

II. CONTINGENCY RESERVE OF \$15 MILLION

FINDINGS:

1. In allowing the JUA to dip into the \$15 million reserve within the Workers' Compensation Administrative Trust Fund (WCATF) for its deficits, the legislature has required it to estimate its cash needs for the subsequent 3 month period but did not specify when the 3 months begins and ends.
2. The JUA and OIR have agreed to a \$2.5 million reserve buffer to be used in determining cash needs and it is not clear whether this agreement is authorized by statute.
3. There is surplus in the previously existing Subplans A, B, and C. This surplus is not being used to fund deficits existing from Subplan D.

RECOMMENDATIONS:

1. Consider legislative clarification and/or legal opinion from the Attorney General as to whether any of the above findings are a problem under current statute. OIR has informed the Auditor General that it believes there are no problems with current operating status on any of these items.

III. OUTSOURCING

FINDING:

1. Other than the claims administration there is very little outsourcing of services or functions performed within the JUA.

RECOMMENDATIONS:

1. The JUA needs to conduct cost/benefit analysis of outsourcing.
2. JUA needs to evaluate whether the funds they pay for claims-handling to Travelers is reasonable.
3. Consider legislation to make the JUA tax exempt.

IV. EXECUTIVE COMPENSATION

FINDINGS:

1. There are 4 executive level positions within the JUA.
2. All executives are paid a base salary plus special project bonuses and at risk compensation.

RECOMMENDATIONS:

1. Develop written performance criteria to be applied in determining if at risk compensation will be paid to these executives and withhold such compensation if criteria not met.
2. Develop written plans for work duties or tasks that executives complete that qualify for special project bonus compensation and adhere to such guidelines in distributing same.

V. CONTRACTUAL SERVICES

FINDINGS:

1. The JUA has not issued any requests for competitive bids for any work or projects since 1995.
2. The JUA has no written agreement with general counsel detailing the services expected to be provided and compensation to be paid. Invoices received by the JUA from its general counsel are extremely vague and insufficient to describe work performed by general counsel.

RECOMMENDATIONS:

1. Establish a competitive bid process for all work performed by any entities not directly employed by the JUA.
2. Require specific contracts and invoicing from all vendors, including general counsel.

NOTE: JUA is currently going through a competitive bid process for the handling of its claims administration services.

VI. MONITORING

FINDING:

1. JUA does not monitor Travelers performance as a claims handling entity.

RECOMMENDATION:

1. Establish monitoring process concerning timely payments, effective claims handling, etc.

VII. PRODUCER COMMISSIONS

FINDING:

1. The JUA does nothing to verify the producer commissions it pays. The JUA depends on Travelers to pay all of its producer commissions but completes no verification of whether such payments are accurate based on performance.

RECOMMENDATION:

1. Establish monitoring system to verify producer commissions reported and paid and the accuracy of same.

VIII. PAYROLL AUDITS OF INSURED

FINDINGS:

1. JUA is not performing any payroll audits of its insured.
2. JUA assumed Travelers was completing such audits; however, Travelers did not timely complete 36% of its preliminary payroll audits as required and did not complete over 10% of the JUA's final payroll audits.
3. By failure to conduct payroll audits, the JUA excuses employer non-cooperation.

RECOMMENDATIONS:

1. The JUA should implement procedures and train personnel, if necessary, to conduct its own payroll audits of its insured instead of depending on Travelers to complete same.
2. If Travelers continues to be responsible for payroll audit completion, the JUA must require regular reporting to ensure that such are completed timely.

- For more information on all of the important legislative information concerning the business community, go to our “members only” Florida Business Network web site at <http://fbnnet.com>
- Send us your E-mail address and we will begin to send this report to you automatically via E-mail.