



Insurance

Case Law & Insurance Regulation Update

Editors:

Kelly Cruz-Brown

kcruz-brown@carltonfields.com

850.513.3610

Daniel C. Brown

dbrown@carltonfields.com

850.513.3617

For more information about Carlton Fields' Insurance and Insurance Regulation Practices, please visit us at: [Insurance](#) and [Insurance Regulation](#)

Week Ending December 14, 2012

CONTENTS

- I. State Appellate Decisions
 - A. Florida
 - B. Georgia
- II. Federal Appellate Decisions
- III. Administrative Law/Agency Decisions
- IV. Notices of Administrative Rulemaking Proceedings
 - A. Florida
 - B. Georgia
- V. Meeting Notices of Interest/Miscellaneous

I. STATE APPELLATE DECISIONS

A. FLORIDA

- ***Kings Bay Condominium Association, Inc. v. Citizens Property Insurance Corporation (Fla. 4th DCA)***. Trial court's final summary judgment in favor of insurer reversed and case remanded for further proceedings consistent with opinion. Trial court erred in finding that insured's untimely notice of claim, served 29 months after the alleged loss, barred its claim as a matter of law. The Fourth District Court of Appeal found that trial court's reliance on *Kroener v. Florida Insurance Guaranty Ass'n*, 63 So. 3d 914 (Fla. 4th DCA 2011) as basis for final summary judgment misplaced because at the time trial court rendered judgment, trial court did not have the benefit of later opinions, *Kramer v. State Farm Florida Insurance Co.*, 95 So. 3d 303 (Fla. 4th DCA 2012), and *Soronson v. State Farm Florida Insurance Co.*, 96 So. 3d 949 (Fla. 4th DCA 2012). Trial court failed to engage in prejudice analysis described in *Bankers Ins. Co. v. Macias*, 475 So. 2d 1216 (Fla. 1985), where if the insured breaches the notice provision, prejudice to the insurer will be presumed, but may be rebutted by a showing that the insurer has not been prejudiced by the lack of notice.

B. GEORGIA

- No Georgia state appellate decisions reported.

II. FEDERAL APPELLATE DECISIONS

- No federal appellate decisions reported.

III. ADMINISTRATIVE LAW/AGENCY DECISIONS

- No agency decisions reported.

IV. NOTICES OF ADMINISTRATIVE RULEMAKING PROCEEDINGS

A. FLORIDA

- ***Emergency Rule 69OER12-01, F.A.C. Florida Office of Insurance Regulation - Emergency Adoption of Revised Notification of Personal Injury Protection (PIP) Benefits Form (Form OIR-ER1-1149)***. The Florida Office of Insurance Regulation ("FOIR") received approval from the Financial Services Commission to publish Emergency Rule 69OER12-01 (the "Emergency Rule"), which authorizes the FOIR to adopt Form OIR-ER1-1149 effective **January 1, 2013** on an interim basis until revisions to existing form **OIR-B1-1149 (Rev. 8/30/06)** concerning PIP benefits are adopted through the usual rulemaking process. Carriers whose policies provide the new PIP benefits effective January 1, 2013, must use Form OIR-ER1-1149 incorporated by reference in the Emergency Rule. Carriers whose policies that do not provide the new PIP benefits must continue to use the current form, **OIR-B1-1149 (Rev. 8/30/06)**.
- ***Rule 59G-4.002, F.A.C. - Agency for Health Care Administration – Medicaid***. A hearing is scheduled to discuss the Florida Medicaid provider reimbursement fee schedules. The Agency proposes to modify the title of the rule and clarify access to each separate fee schedule. Hearing: **December 19, 2012**, 3:00 p.m. to 4:00 p.m., Agency for Health Care Administration, 2727 Mahan Drive, Building 3, Conference Room C, Tallahassee, FL.

B. GEORGIA

- ***Regulation Chapter 120-2-101, entitled "Child Only Individual Health Coverage" adopted by the Georgia Office of the Insurance Commissioner***. The effective date of **Regulation Chapter 120-2-101, as adopted**, is **December 27, 2012**.

V. MEETING NOTICES OF INTEREST/MISCELLANEOUS

- ***Florida Health Insurance Advisory Board Conference Call Meeting***. On **December 14, 2012**, 1:00 PM, Dial-in number is 1-866-200-9760, Passcode is 4288083#. Matters to be considered at the meeting: review and approve the 2012 Market Report and approve the Audit Committee's recommendation regarding the Executive Director appointment.
- ***Florida Department of Financial Services - Division of Worker's Compensation Three-Member Panel Meeting***. On **January 9, 2013**, 1:00 p.m., Room 116, Larson Bldg., 200 E. Gaines St., Tallahassee, FL. Pursuant to section 440.13(12)(a), Fla. Stat., the Three-Member Panel is required to annually adopt schedules of maximum reimbursement allowances for physicians, hospital inpatient care, hospital outpatient care, ambulatory surgical centers, work-hardening programs, and pain programs. The Three-Member Panel will consider: 1) adoption of a methodology for reimbursing hospitals 60% and 75% of usual and customary charges for outpatient services; 2) re-adoption of the schedule of per-diem rates for hospital inpatient care or a revision to the current schedule of rates; 3) re-adoption of the ambulatory surgical center schedule of rates; 4) re-adoption of the 2012 Health Care Provider Reimbursement Manual, which is still pending ratification by the Legislature; and, 5) review and issue the 2013 Biennial Report to the President of the Senate and the Speaker of the House of Representatives pursuant to section 440.13(12)(e)4., Fla. Stat.
- ***Agency for Health Care Administration – Low Income Pool (LIP) Council Meeting***. The previously noticed meeting call-in numbers for the three (3) scheduled meetings have changed. **January 16, 2013**, 10:00 a.m. - 4:00 p.m., (866) 318-8613, Passcode 16205322; **January 22, 2013**, 10:00 a.m. - 4:00 p.m., (877) 415-3181, Passcode 92939168; **January 28, 2013**, 10:00 a.m. - 4:00 p.m., (866) 515-2912, Passcode 78506956. Physical location of these meetings: Agency for Health Care Administration, 2727 Mahan Drive, Building 3, Tallahassee, FL. Matters to be discussed: LIP program including legislative updates, funding methodology, policies and

procedures in accordance with the approved Medicaid Reform Section 1115 Demonstration. All meeting discussion material, including an agenda, will be posted to the LIP website at [here](#). If you need additional information, please contact Nicole Maldonado at (850) 412-4287 or Nicole.Maldonado@ahca.myflorida.com.

- **[Agency for Health Care Administration – Health Facility and Agency Licensing Meeting.](#)** On **January 23, 2013**, 12:00 p.m. – 3:00 p.m. (EST), Agency for Health Care Administration 2727 Mahan Drive Bldg. 3, Conference Room B Tallahassee, FL. Purpose of the meeting is to have dialogue between the Medicaid managed care plans, behavioral health providers, Advocates, and Stakeholders. The purpose of the discussion will be to identify ways to enhance the provision of behavioral health services to Medicaid recipients in managed care. This meeting is not affiliated with the Statewide Medicaid Managed Care implementation.
- **[Agency for Health Care Administration – Medicaid.](#)** The Agency for Health Care Administration is requesting an amendment to the Medicaid State Plan to clarify the post-eligibility treatment of institutionalized individuals' incomes for the purpose of: 1) deducting expenses of medically necessary services or items incurred no earlier than the 3 months preceding the month of application; and, 2) limiting the deduction for expenses incurred as the result of imposition of a transfer of assets penalty period to zero. Interested parties may contact Kathy Austin, Medicaid Services at: (850) 412-4193 or by e-mail at: kathy.austin@ahca.myflorida.com for further information.
- **[Citizens Property Insurance Corporation Selects Vice President of Human Capital.](#)** Charles D. Johnson has been selected as Vice President of Human Capital Management by the Citizens Property Insurance Corporation (Citizens) Board of Governors. Previously, Johnson led Human Resources support for American Express, Inc. Johnson begins his new position at Citizens on December 17, and will report to Barry Gilway, Citizens' President/CEO and Executive Director.
- **[Citizens Property Insurance Corporation to Pursue Consumer Policy Shopping Clearinghouse.](#)** Citizens Property Insurance Corporation intends to pursue development of a consumer policy shopping clearing house to provide a real-time solution for risk submission that validates whether there is capacity in the private market. The system would check the risk against a set of underwriting and exposure criteria provided by participating private carriers.
- **[Florida Department of Financial Services, Receiver of AvaHealth, Inc. d/b/a Key Insurance Plan.](#)** Notice to all Policyholders, Creditors, and Claimants regarding liquidation of assets and proof of claim date.
- **[Florida State Board of Administration Announces Maximum Statutory Adjusted Capacity for Mandatory Florida Hurricane Catastrophe Fund \(“FHCF”\) Coverage, Maximum Statutory Coverage for Optional Coverages, and Aggregate Retention for the 2013 Contract Year.](#)** The maximum statutory adjusted capacity for the mandatory coverage, the maximum statutory coverage for any optional coverage, and the aggregate fund retention are used to calculate individual insurers' retention multiples. As provided in section 215.555(4)(c)1., Fla. Stat., the maximum statutory adjusted capacity for the mandatory coverage is \$17 billion. As provided in section 215.555(17)(d)9.f., Fla. Stat., the maximum statutory coverage for the optional TICL coverage is \$2 billion. The aggregate fund retention used to calculate individual insurers' retention multiples is \$7.213 billion.



you do not wish to receive such communications from Carlton Fields in the future, either reply to the e-mail address from which you received it, or e-mail marketing@carltonfields.com, and we will not send them to you.

www.carltonfields.com

Atlanta • Miami • New York • Orlando • St. Petersburg • Tallahassee • Tampa • West Palm Beach