

There was a deluge of bills of potential interest filed last week at the NC General Assembly. I have sorted these bills by category for your ease of reference. Hold on; there's a lot to cover.

HEALTH INSURANCE

HB 2 – Prohibit Smoking in Public and Workplaces, which has been introduced by Rep. Hugh Holliman, emerged from both the House Health and J-I Committees last week. It is on the House calendar for floor debate on April 1, 2009.

HB 212 – Health Insurance Pool – Pilot Program is the association health plan legislation being pushed by legislators from the Asheville area. Last week it received a favorable report from House Commerce in the face of spirited opposition from Blue Cross, and the previous week it received favorable treatment by House Health. Note that it passed second and third readings in the House by a vote of 101-15. This legislation will now be sent to the Senate.

Senator Dan Clodfelter introduced **SB 877 – Health Benefit Plan Provider Contracts**. This legislation would require that contracts between health benefit plans and health care providers have certain specified terms and conditions. Length of contract, the termination and amendment process, contact persons, network information, case management and utilization review, vendors, conflict resolution mechanism, payment provisions and fee schedules, credentialing of new physicians added to the contract, contract language being clear and reasonably understandable to health care professionals, standards for accessibility to health care and explanation of benefits requirements - all are addressed by this legislation. It would become effective on January 1, 2010.

SB 1025 – Small Business Health Insurance Expansion was introduced by Sen. Josh Stein. Sen. Stein is a freshman Democrat from Raleigh. This legislation has been considered in prior sessions, and would create the small employer stop loss fund to provide for State reimbursement of certain claims falling within a "claims corridor" running from \$15,000 to \$90,000. Coverage would be at 90%. Eligibility for this plan would be limited to small employers with not more than 25 employees, at least 30% of whom earn not more than \$12 per hour and did not have health insurance coverage within the last year. These employers would have to be located in North Carolina, and the employer would have to pay at least 50% of the premium. A similar plan would be provided for self-employed individuals with incomes not exceeding 250% of the federal poverty guidelines. Note that this program would be an expensive one, and while an appropriation would be required to fund it, the amount of the appropriation has been left blank.

Also note that this legislation would address the Small Business Tax Credit for employer sponsored health benefit plans by increasing it from \$250 to \$400, and would create a new and extended sunset of January 1, 2012, rather than the current sunset of January 1, 2010.

Representatives Holliman and Insko have introduced **HB 741 – Continue Institute of Medicine/Health Care Access**. This legislation would appropriate money to authorize the North Carolina Institute of Medicine to use public funds to continue its health access study group.

SB 725 – Out-of-State Insurance Policies/Allow Purchase was introduced by Sen. Phil Berger, and has been referred to Senate Commerce. It would authorize insurers licensed to sell health insurance policies in other states to offer them in North Carolina.

Tonight, Sen. Stan Bingham will introduce **SB 1029 – PEO Amendments**, which would permit client companies to sponsor and maintain health benefit plans for assigned employees under North Carolina’s PEO Act.

SB 1060 – Study Retirement and Health Benefits would establish a special commission to study retirement and health benefits for teachers and State employees. It was introduced by Sen. Tony Foriest.

SB 1061 – Study Medical Treatments/Prescription Drugs. This bill would provide for a study of the comparative effectiveness of medical treatments and prescription drugs to improve health and contain costs. Its sponsor is Sen. Josh Stein (D-Raleigh).

LIFE INSURANCE

STOLI. Within the past few days both the Department of Insurance and the American Council of Life Insurers have made the decision NOT to pursue legislation addressing stranger originated life insurance (“STOLI”). The DOI faces a host of challenging issues relating to property coverage at the beach and coast, and did not feel it had the resources to address STOLI during this session. The ACLI faces at least two critical life insurance and annuity challenges in Florida, and did not feel that it could tackle STOLI in North Carolina at this time. The loss of two valuable allies is significant, and suggests that meaningful STOLI reform, at least from our perspective, will have to wait for another session.

TORT REFORM

Representatives Glazier, Blust, Ross and Stiller last week introduced **HB 813 – Uniform Apportionment of Tort Responsibility**. This bill is the companion to **SB 679**. It has been referred to the House J-1 Committee and would implement a system of comparative fault to replace North Carolina’s existing contributory negligence standard. If a claimant were 51% or more at fault, that claimant would not be able to recover damages.

HB 882 – Statute of Repose/Products Liability was introduced by Sen. Fletcher Hartsell (R-Concord). It addresses the statute of repose that governs products liability

actions. Buyers as well as lessees could bring products liability claims, with lessees being new to this statute. The statute of repose would not apply to diseases. The act would apply both to sellers and manufacturers of products, and provides that claimants would have at least six years to bring suit after the product was first sold or leased for use or consumption.

Senate Bills 901, 902, 903, and 904 were introduced by Rep. David Rouzer (R-Johnston and Wayne Counties) last week. These bills are identical to earlier House legislation which would address **medical malpractice actions** by bifurcating medical malpractice trials, requiring medical malpractice settlement reports, providing for periodic payments of medical malpractice awards and addressing appeal bonds in medical malpractice actions.

SB 942 – Civil Litigation Cost Reform Act of 2009 was introduced last week. It would establish the general rule in civil actions that prevailing defendants be awarded their attorney's fees, and was introduced by Sen. David Rouzer (R-Johnston and Wayne Counties).

SB 979 – Health Care Liability Claims. This legislation was introduced by Senators Bingham, Phil Berger, Forrester, Goodall, Hartsell, Jacumin and Purcell. It would place a cap of \$250,000 on non-economic damage awards against physicians and \$500,000 for health care institutions. The limit on all damages brought against doctors, including punitive damages, would be \$500,000. Where hospitals have provided free care, money damages would not exceed \$500,000. This legislation would become effective on October 1, 2009.

WORKERS' COMPENSATION INSURANCE

HB 805 – Calculation of Income – This bill was introduced by Rep. Rick Glazier. Under this bill, an employer's contributions to an employee's retirement accounts would be included in the calculation of "average weekly wage" under the Workers' Compensation Act. This bill is designed to reverse and overturn a recent decision of the North Carolina Supreme Court.

SB 893 – Self-Insurance Security Association was introduced by Sen. Fletcher Hartsell. Under current law, only large employers which self-insure their workers' compensation obligations are subject to the Self-Insurance Security Association. This bill would add groups that self-insure to this Security Association. Groups and employers could be excluded from the Association if they fail to submit adequate financial information. Additionally, if no assessment mechanism were in place, employers self-insuring their workers' compensation obligations would have to deposit 50% of their total undiscounted claims liability. This amount is now 100% of their liability.

SB 930 – Firefighter Occupational Disease. This legislation would create a presumption that certain infectious diseases, respiratory disease, hypertension, heart

disease and certain cancers are occupational diseases for firefighters employed by units of local government that are covered by the Workers' Compensation Act. It has been referred to the J-II Committee, and was introduced by Sen. Doug Berger.

SB 975 – Duration of Total Disability. This legislation, filed by Sen. Tom Apodoca, would ensure that benefits for total disability would continue until the injured employee reaches the age of retirement (65 years of age), or for 300 weeks, whichever is longer. This is an “employer friendly” bill that would provide employers with a definite end to the payment of benefits, which is not currently the case.

SB 781 – Choice of Physician. Sen. Doug Berger also introduced this legislation, which would amend NCGS 97-25 to require the honoring of a patient’s choice of a physician when the patient is an employee entitled to workers' compensation benefits. This bill would reverse the current practice of employers directing care for compensable claims.

HB 843 – Medical Diagnostic Testing. This legislation, introduced by Wake County Representative and attorney Darren Jackson, would require the attending physician of an employee to select the health care provider and diagnostic services center to administer and analyze any diagnostic tests authorized by a physician under the Workers' Compensation Act (unless otherwise ordered by the Industrial Commission for good cause). This bill has the potential to be a cost driver by divesting the employer of the ability to direct care and control claims costs.

PROPERTY & CASUALTY INSURANCE

SB 911 – NC Building Code/Council Changes was introduced by Sen. Dan Clodfelter. It would adopt International Building Code as the State building code for non-residences. The Building Code Council would be decreased in size from 17 members to 9. This legislation would also create a Residential Building Code Council. The Governor would appoint the 7 members to this Council, which they would include an electrical contractor, two residential contractors, one coastal contractor, one structural engineer, a city or county building inspector and one plumbing, heating or fire sprinkler contractor.

SB 928 – The Castle Doctrine was introduced by Sen. Doug Berger. It would allow the use of defensive force to protect against unlawful and forceable entry into a person’s dwelling by another. It would make it a crime to remove one from one’s home against their will, and there would be no duty to retreat when either home or person were threatened. There would also be a grant of immunity from criminal or civil prosecution for use of force, even deadly force, to resist home invasions and similar actions.

HB 742 – Prohibit Beach Plan Surplus Distribution (= SB 696) was introduced by Rep. Tim Spear. Rep. Spear was a member of the Coastal Insurance Study. This bill is identical to the Senate version, and would require that the Beach Plan retain its surplus. Indications are that these bills will be the bills by which the coastal study recommendations are ultimately introduced.

AUTO INSURANCE

SB 749 – Revise UM/UIM Liability Coverage was introduced last week by Sen. Dan Clodfelter. It would seek to clarify issues relating to last session’s treatment of uninsured and underinsured coverages.

INSURANCE GUARANTY ASSOCIATION

SB 780 – Structured Settlement Annuities/Insurance Guaranty Association, introduced by Sen. Doug Berger, would expand coverage under the I.G.A. with respect to structured settlement annuities for matters involving personal injury and illness.

MEDICAL RECORDS COPYING FEES

Sen. Tony Rand has introduced **SB 701 – Increase Fee/Medical Records Copying**. This bill would raise the fee for the first 25 pages of medical records that are copied to 90 cents per page, up from 75 cents. Pages 26-100 would cost 75 cents rather than 50 cents, and the fee for each page in excess of 100 pages would be 25 cents. Third-party copying services could charge a minimum of \$16.00, up from \$10.00. HIPAA rates would apply to patients seeking copies of their own records. Actual postage could be charged. After January 1, 2012, copying fees could be adjusted according to changes in the CPI as posted on the HHS web site.

THIS WEEK

The calendars of the House and Senate published to date indicate that Senate Commerce will hear **SB 375 – Insurance/Cover Hearing Aids**, while House Health will hear **HB 535 – Health Insurance Coverage/Lymphodema**.

HB 426 – Stay on Homeowners Insurance Actions has been heard for two meetings in House Insurance. Indications are that the bill’s sponsor does not have the votes to get this bill out of committee, and it may be sent to a study committee.

Senate J-II is scheduled to hear **SB 22** and **SB 96**, both of which relate to banning “texting” while driving.

That is it for now. Thanks for listening. I shall stay in touch.

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