

This week has seen only modest committee activity with respect to bills of interest. House Insurance did meet once this week, and reconsidered a bill that would repeal a special provision promoted by former Speaker Jim Black related to co-payments for chiropractic services (**H.B. 502**). The House will continue to pursue a repeal of this provision, but they will provide a "sunset" so that the chiropractic provision is not repealed immediately.

There was, however, a great deal of activity with respect to the filing of a wide variety of new bills. To give you a proper perspective on the frenetic pace of this week's filings, I will provide you with an overview that is more inclusive than usual. I have grouped bills by headings with the thought that you can pick and choose by topic. With that said, here goes.

AUTOMOBILE AND HOMEOWNER'S

S.B. 928 – LRC to Study Financial Responsibility for MVs. This bill, sponsored by Sen. Linda Garrou (D-Winston-Salem), would permit the Legislative Research Commission to study requiring proof of continuous financial responsibility to maintain a North Carolina driver's license.

S.B. 1185 – Insurance Premiums/Credit Ratings. Sen. Larry Shaw (D-Fayetteville) introduced this legislation, which would prohibit the use of credit scoring as the sole or partial basis of terminating non-commercial private passenger motor vehicle and residential property insurance or subjecting these policies to consent to rate. We have anticipated that credit scoring legislation would be introduced, and now we have it before us.

S.B. 1207 – State Health Plan Changes. Sen. Tony Rand introduced this legislation, which would make a variety of changes to the State Health Plan. Note that this plan generally has the right of subrogation upon all of the plan's members' rights to recover from a liable third party for payment made under the plan. Sen. Rand would add a provision that a liable third party shall not include the plan members' UIM policy.

S.B. 1251 – Castle Doctrine for NC. Sen. Andrew Brock (R-Mocksville) introduced this bill which would clarify when a person may use force to defend himself or herself or another person or to prevent the imminent commission of a forcible felony. This legislation would permit the use of force "in defense of person," and would grant immunity from criminal prosecution and civil action for use of justifiable force. I report this legislation to you, and would appreciate any questions or observations you might have regarding its applicability to or relation with homeowners' policies.

HEALTH INSURANCE ISSUES.

S.B. 1021 – State Review of Group Insurance Claims. This legislation, filed by Sen. Fletcher Hartsell (R-Concord), would require the DOI to review the appeals and grievance processes for all group insurance claims, including accident and group health claims. The DOI would collaborate with Health and Human Services to develop a State review process of group insurance claims that are denied or refused by either insurers or employers by which the DOI shall have *regulatory authority to make benefit determinations in relation to group insurance policies*. The DOI would report its proposal, with any necessary legislative recommendations, to the General Assembly on

or before March 1, 2008. Note that if this legislation does, in fact, grant authority to the DOI to make benefit determinations, this bill would have far reaching implications.

S.B. 1032 (=H.B. 967) – Health Insurance/Prompt Pay Timelines. Sen. Dan Clodfelter (D-Charlotte) introduced this bill, which would impose a 180-day time limitation on overpayment recoveries under our prompt pay claims statute [N.C.G.S. 58-3-225(h)].

S.B. 1317 – Child Health Insurance Tax Credit. Sen. Minority Leader Phil Berger (R-Eden), introduced this legislation. He has the support of 14 Republican co-sponsors. Under this legislation, an individual would be allowed, as a credit against his income tax, an amount equal to the premium costs the individual paid during the taxable year on qualified health coverage for a dependent whom the individual was allowed to deduct as a personal exemption.

S.B. 1318 – Health Insurance Tax Deduction. Sen. Berger and the same co-sponsors under S.B. 1317 introduced this bill, and it would provide that to the extent included in taxable income, a taxpayer may deduct any amount paid for qualified health coverage for the taxpayer or a dependent for whom the taxpayer was allowed to deduct a personal exemption.

S.B. 1434 (= H.B. 973) Mental Health Parity. This legislation was introduced by Sen. Bob Atwater (R-Chapel Hill) and was co-sponsored by Senators Janet Cowell, Steve Goss and Malcolm Graham.

The House version of this bill, H.B. 973, is co-sponsored by Representatives Alexander, Holliman, Wainwright and Insko. Co-sponsors are 30 in number and include Representatives Adams, Blue, Carney, Church, Coleman, Crawford, Cunningham, Earle, Farmer-Butterfield, Fisher, Gibson, Glazier, Goforth, Goodwin, Hall, Harrison, Jeffus, Jones, Lucas, Luebke, McLawhorn, Mobley, Parmon, Ross, Tarleton, Tolson, E. Warren, Weiss, Wilkins and Womble.

The concept as phrased in these companion bills is that every insurer would have to provide in each group health benefit plan benefits for the care and treatment of chemical dependency and mental illness that are no less favorable than benefits for physical illness generally. Insurers would be able to use case management programs to evaluate and determine medical necessity and the appropriateness of care and treatment for each patient.

H.B. 967 (= S.B. 1033) Health Benefit Plans/Standard Insurance Card. This legislation would require health benefit plans to issue insurance identification cards to policyholders. A total of 12 different items of information would need to be included on the card, and insurers would provide each policyholder with a new insurance ID card whenever any information required to be on the card has changed, not later than 30 days prior to the date the change becomes effective. This provision would go into effect on January 1, 2008.

TORT ISSUES

S.B. 969 – Statute of Repose/Products Liability Action. Senator Janet Cowell (D-Raleigh) introduced this bill, which would change the six-year statute of repose for products liability actions to 15 years. The bill would provide as follows: no action for the recovery of damages for personal

injury, death or damage to real property based upon or arising out of any alleged defect or any failure in relation to a product shall be brought more than 15 years after the initial purchase for use or consumption. We will follow up with Sen. Cowell to make certain the bill as drafted does not revive causes of action that would be barred under current law.

S.B. 1089 – Limited Liability/Emergency Medical Care. Sen. Bill Purcell (D-Laurinburg), a practicing physician, introduced this bill, which would adopt a burden of proof based on “clear and convincing evidence” that the provider of emergency care deviated from the reasonably expected degree of care in actions brought against providers of emergency care.

WORKERS' COMPENSATION ISSUES

S.B. 990 – Workers' Compensation/Firefighter Occupational Disease. Sen. Doug Berger (D-Franklin), a plaintiff's attorney and former member of the NC Industrial Commission, has introduced several workers' compensation bills. S.B. 990 would create a presumption that certain infectious diseases, respiratory diseases, hypertension or heart disease and certain cancers are occupational diseases for firefighters employed by local governments that are covered by the Workers' Compensation Act.

S.B. 995 – Workers' Compensation/Add to Schedule of Injuries. This legislation would amend the schedule of injuries for awards of workers' compensation for injuries affecting specific parts of the body to add a maximum award for serious injuries to the brain, heart or reproductive organs. This maximum award would be \$100,000.

S.B. 996 – Workers' Compensation/Annual COLA. This legislation would provide for annual cost-of-living adjustments in workers' compensation for employees who are permanently and totally disabled. As of December 31 of each year, the ratio of the consumer price index (CPI) to such index one year earlier would be determined. If this ratio indicates an increase that equals or exceeds 3%, each employee receiving compensation for a total and permanent disability as of December 31 of the previous year would be entitled to have his or her compensation increased by 3% effective July 1 of the following year.

S.B. 997 – Workers' Compensation/Increase Cap for Loss of Workers' Organs. Sen. Berger's bill would increase the maximum award under the Workers' Compensation Act for the loss of or injury to an important organ or part of the body not otherwise addressed in the schedule of injuries. The maximum award would be \$50,000.

S.B. 1004 – Industrial Commission - Confirmation/Conduct. This bill was introduced by Sen. Tony Rand, rather than by Sen. Doug Berger, and would make the Governor's appointments to the NC Industrial Commission subject to approval by the NC General Assembly. Additionally, members of the Industrial Commission would be made subject to the standards of the Judicial Standards Commission.

S.B. 1338 – Amend Workers' Compensation Act. Sen. Doug Berger also introduced this bill, which would have the potential to broaden access to the prosecution of claims before the Industrial Commission. If an employee were not found to be competent to represent himself or herself before

the Commission, the Commission could appoint a guardian ad litem and counsel to represent the employee. If a party is indigent and financially unable to secure legal representation, the Commission could order the payment of this claimant's attorney's fees from the Indigent Persons' Attorney Fee Fund.

BLUE CROSS OF NORTH CAROLINA

H.B. 927 – Certain Entities Subject to Insurance Regulations. Rep. Bill Faison (D-Durham) introduced this bill, which would authorize the Commissioner of Insurance to consider the reserves of an insurer when reviewing the rates filed by an insurer. Rep. Faison proposes rewriting N.C.G.S. 58-51-95(a) to provide that “No policy of insurance against loss or expense from the sickness or from the bodily injury or death by accident of the insured shall be issued or delivered to any person in this state, nor shall any application, rider or endorsement be used in connection therewith until a copy of the form thereof and of the premium rates, classification of risks, and reserves, or, in the case of cooperatives or assessment companies the estimated cost pertaining thereto, have been filed with the Commissioner.” The reference to the word “reserves” would be new to this statute. Additionally, Rep. Faison would propose reviewing G.S. 58-51-95(c) to provide that the Commissioner may disapprove such forms if, after considering other factors, the level of the insurer's reserves exceeds the amount necessary to maintain the health of the company. I do not know for certain, but I believe that Rep. Faison's proposal is directed at Blue Cross/Blue Shield of North Carolina. He introduced a bill last year to develop a formula which would return a portion of Blue Cross's reserves to its policyholders if the reserves exceeded a certain amount.

H.B. 928 – Insurance/Commissioner Rate – Rating Making Factors. This bill, also introduced by Rep. Faison, would authorize the Commissioner of Insurance to clarify ratemaking factors to be considered when addressing rates submitted by hospital service companies under Article 65 of Chapter 58 (i.e., Blue Cross) in determining whether or not such rates are excessive, inadequate or unfairly discriminatory. The Commissioner would have to consider current and projected surplus levels, underwriting margins, expenses, investment income and such other supporting data as the Commissioner deemed appropriate.

MISCELLANEOUS BILLS.

S.B. 949 – Streamline Building Code Adoption (= H.B. 728). This bill was introduced by Sen. Dan Clodfelter (D-Charlotte), and would streamline building code adoption for general and residential construction and would expedite decisions of the Building Code Council. Please note that Sen. David Hoyle (D-Gastonia) is a co-sponsor of this legislation.

S.B. 971 – Limit Use/State Property Fire Insurance Fund was also introduced by Sen. Cowell. This legislation would deny state property fire insurance fund coverage for losses incurred by state agencies that have not submitted building construction plans to the Commissioner of Insurance for approval.

S.B. 1002 – Auto-Dialing and Record Message Players. Sen. Tony Rand (D-Fayetteville) and Sen. Majority Leader, introduced this bill, and it would ban automated political messages from

being sent by phone to those individuals who have placed their phone numbers on the "do not call" registry.

S.B. 1006 – Confidentiality/Competitive Health Care Information. Sen. Rand introduced this legislation as well, and it relates to competitive health care information under N.C.G.S. 131E-97.3. It would expand the definition of such information to include contracts entered into by and on behalf of a public hospital to purchase a medical practice.

S.B. 1010 – Structured Settlement Payments Discount Rate. This bill, filed by Sen. Tom Apodaca (R-Hendersonville), would change the cap for the discount rate used to determine the net amount payable for transfers of structured settlement payment rights.

S.B. 1040 – Revise 529 Plan Deduction. Sen. Tony Rand introduced this bill, which would increase individual deductions from \$750 to \$2,500 and up to \$5,000 for a married couple filing a joint return. See also a similar bill filed by Sen. David Hoyle (D-Gastonia), **S.B. 1141**, which would increase the available tax deduction from \$2,000 to \$4,000.

S.B. 1141 – Section 529 Plan – Tax Deduction. Sen. David Hoyle introduced this legislation, which would increase the available tax deduction from \$2,000 to \$4,000.

BILL OF THE WEEK AWARD

Please note that Rep. Timothy Spear (D-Creswell) has introduced **H.B. 958 – Adopt Bull Frog as North Carolina's State Amphibian**. I shall keep you advised as to the heated discourse that will likely arise should there be other amphibians worthy of this honor.

You can see that members of the General Assembly have been busy with their bill filing activity. I will keep you advised as to all matters of interest and would, as always, welcome your thoughts and comments at any time.

Robert C. Paschal
Young Moore & Henderson, P.A.
3101 Glenwood Avenue
Raleigh, North Carolina 27612
919-861-5107 (direct)
919-782-6860 (main)
919-782-6753 (fax)
rcp@ymh.com

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