



INFORMATIONAL MEMORANDUM

OIR-03-013M

ISSUED

July 31, 2003

Florida Office of Insurance Regulation

Kevin McCarty

Director

**All Insurers Authorized to Write Automobile Insurance in the State of Florida
Florida Motor Vehicle No-Fault Legislation
Senate Bill 32A "Florida Motor Vehicle Insurance Affordability Reform Act"**

The purpose of this memorandum is to inform all admitted insurers writing automobile insurance in Florida of changes made by the Legislature that affect Personal Injury Protection (PIP), claims, litigation, and policy contents. The Legislature has found that fraud and abuse have permeated the PIP insurance market and compromised the goals of the no-fault law. The specific provisions of this act are intended to restore the health of the PIP insurance market in Florida by preventing PIP insurance fraud and abuse; curbing escalating medical, legal, and other related costs; preserving the no-fault system; and realizing cost savings for consumers. You are responsible for reading the law and complying therewith. Companies should be guided accordingly in their projections in rate filings for automobile insurance and any filings for changes in forms or related endorsements.

I. STRENGTHENED REGULATION OF HEALTH CARE CLINICS

Sections 400.901 – 400.921, F.S. (the Health Care Clinic Act) are created to provide for licensure, establishment, and enforcement of basic standards for health care clinics with administrative oversight by the Agency for Health Care Administration. All charges or reimbursement claims made on behalf of a clinic that is required to be licensed but is not, or is operating in violation of the "Health Care Clinic Act", are unlawful charges and therefore are noncompensable and unenforceable. Information regarding the implementation of this program will be available at the Agency for Health Care Administration web site at www.fdhc.state.fl.us or by contacting Bill McCort at (850) 922-0791.

II. CHANGES CONCERNING PERSONAL INJURY PROTECTION BENEFITS - WHEN THEY ARE DUE AND CHARGES FOR TREATMENT OF INJURED PERSONS

- Provisions for binding arbitration of claims disputes involving medical providers that agree to accept assignment of personal injury protection benefits, need no longer be included in policies. All policy forms and endorsements must be filed with and approved by the Office of Insurance Regulation in accordance with Section 627.410, F.S.

- The Financial Services Commission is directed to adopt, by rule, a standard disclosure and acknowledgement form by October 1, 2003. Effective 90 days thereafter, medical service providers must require insured persons to execute that form at initial treatment. The medical service provider shall furnish the form to the insurer. The licensed medical professional providing the initial treatment must also sign the form. The form will document that: the services were actually rendered; the insured knows of his duty to confirm that fact; no solicitation has taken place; the physician explained the services to the insured; and the persons notifying insurers of improper billing may be eligible for a portion of the savings.
- If a person notifies an insurer in writing of a claim of improper billing by a medical provider, the insurer must determine the propriety of that billing. If improper billing is found, the insurer must reduce the amount of payment to the provider by that amount and pay the person who notified the insurer 20 percent (or 40 percent if the provider is arrested) of the amount of the reduction up to \$500.
- Systematic downcoding by an insurer with the intent to deny reimbursement otherwise due is a material misrepresentation and thus an unfair claim settlement practice. Unfair claim settlement practices are prohibited by Section 626.9541, F.S.
- **These changes apply to treatment or services occurring on or after October 1, 2003.**

III. REPORTS OF MEDICAL EXAMINATION OF INJURED PERSONS

No insurer or person acting on behalf of an insurer may materially change an opinion in a medical report or direct the physician preparing such medical report to do so. However, an insurer may call a physician's attention to an error of fact in the medical report based on information in the claim file. **This applies to medical examinations conducted on or after October 1, 2003.**

IV. DEMAND LETTER REQUIRED TO FILE ACTION– ATTORNEYS FEES NOT PAYABLE IF CLAIM PAID WITHIN 15 CALENDAR DAYS

- Filing any action for benefits required under personal injury protection requires that a written notice of intent to initiate litigation be provided to the insurer. Previously, such notice was only required for actions for overdue claims. The notice may not be filed until the claim is overdue and must state that it is a demand letter under Section 627.736(11), F.S. Licensed insurers must file with OIR the name and address of the person to whom such notices shall be sent and OIR must make that information available on its website. Insurers should submit Demand Letter contact information to **Peggy Moffitt, Bureau of Property and Casualty Solvency, Office of Insurance Regulation** at 200 E. Gaines Street, Tallahassee, Florida, 32399-0329. Such submission should be labeled as **PIP – DEMAND LETTER INSURER CONTACT INFORMATION.**
- No action may be brought against the insurer if it pays, within 15 days of receipt of the notice, the claim specified together with applicable interest and a penalty of 10% of the amount, subject to a maximum of \$250. In this instance, no attorneys fees are payable.

- **These changes apply to actions filed on and after August 1, 2003.**

V. OPTIONAL PERSONAL INJURY PROTECTION DEDUCTIBLES

- Persons subject to deductibles are no longer precluded from recovering the amount of the deductible from a tortfeasor otherwise exempt from liability under Section 627.737, F.S.
- Deductibles must be applied to the entire amount of any expenses and losses described under required personal injury protection benefits. After the deductible is met, each insured is eligible to receive up to \$10,000 in benefits. Thus, for instance, an insured with a \$1,000 deductible would have to incur \$13,500 in medical expenses (assuming no disability or death benefits) in order to receive the entire \$10,000 in benefits $[(\$13,500 - \$1,000) \times 80\%]$. **All policy forms and company procedures must comply with the new law by October 1, 2003. Any changes in policy forms must be approved by OIR prior to use.**
- Insurers may no longer offer applicants and renewal policyholders a \$2,000 deductible. **For policies issued on or after October 1, 2003**, insurers are advised to provide all renewal policyholders, whose expiring policies have a \$2,000 deductible, with a notice that their current deductible is no longer permitted by law. Those who wish to continue to purchase deductible options permitted by the new law must complete a new deductible election form for the deductible of their choice. If the insured does not positively indicate this election, the required benefits (with no deductible) must be provided on the renewal policy. Deductibles of \$250, \$500, and \$1,000 must be offered but may not be required. Insurers are encouraged to inform insureds of the specific premium savings resulting from the election of a deductible. It is suggested that insurers indicate that a premium reduction will result from such election.

VI. REPEAL OF FLORIDA MOTOR VEHICLE NO-FAULT LAW

- This law is repealed effective October 1, 2007, unless reenacted by the Legislature during the 2006 Regular Session taking effect for policies issued or renewed on or after October 1, 2006.
- All policies issued or renewed after October 1, 2006, may provide that the policies “may terminate on or after October 1, 2007” with respect to coverage required by the Florida Motor Vehicle No-Fault Law. All policy forms and endorsements must be filed with and approved by the Office of Insurance Regulation in accordance with section 627.410, F.S.

EFFECTIVE DATE

Except as otherwise expressly provided, this act takes effect October 1, 2003.

Questions relating to information in this memorandum or requests for copies of the law may be directed to Assistant General Counsel Stephen Fredrickson at (850) 413-4144 or fredricksons@dfs.state.fl.us or to Actuary Howard Eagelfeld at (850) 413-5319 or eagelfeldh@dfs.state.fl.us.