



INFORMATIONAL MEMORANDUM

OIR-16-03M

ISSUED

May 24, 2016

Florida Office of Insurance Regulation

David Altmaier, Commissioner

TO ALL WORKERS' COMPENSATION INSURERS AUTHORIZED TO TRANSACT INSURANCE IN FLORIDA

The purpose of this memorandum is to address the use of unfiled side agreements in conjunction with workers' compensation and employer's liability insurance policies applicable to risks and exposures in Florida.

The Office of Insurance Regulation ("Office") has become aware that some insurance companies are entering into side agreements related to workers' compensation and employer's liability insurance policies. These side agreements sometimes alter the rules, rates, rating plans, forms, or endorsements that were approved by the Office for use.

The Office would like to remind insurers of pertinent Florida Statutes and Florida Administrative Code Rules governing workers' compensation and employer's liability insurances. Specifically, Section 627.091(1), Florida Statutes, provides in part: "As to workers' compensation and employer's liability insurances, every insurer shall file with the office every manual of classifications, rules, and rates, every rating plan, and every modification of any of the foregoing which it proposes to use." Section 627.410(1), Florida Statutes, provides:

A basic insurance policy or annuity contract form, or application form where written application is required and is to be made a part of the policy or contract, group certificates issued under a master contract delivered in this state, or printed rider or endorsement form or form of renewal certificate, may not be delivered or issued for delivery in this state unless the form has been filed with the office by or on behalf of the insurer that proposes to use such form and has been approved by the office or filed pursuant to s. 627.4102.

Rule 69O-189.016, Florida Administrative Code, implements Sections 627.091 and 627.410, Florida Statutes, and requires in part that each insurer "file with the Office every manual of classifications, rules, rates, rating plans, deviations and every modification of any of the foregoing, which it proposes to use." Rule 69O-189.016(3), Florida Administrative Code, further requires each insurer to "file with the Office all policy forms and endorsements as defined in Section 627.402, F.S., which it proposes to use." The term "policy" is defined in Section 627.402(3), Florida Statutes, to mean "a written contract of insurance or written agreement for or effecting insurance, or the certificate thereof, by whatever name called, and includes all clauses, riders, endorsements, and papers that are a part thereof."

Section 627.191, Florida Statutes, prohibits insurers from making or issuing “a contract or policy of workers’ compensation or employer’s liability insurance except in accordance with the filings which are in effect for such insurer, as provided in the applicable provisions of this part, or in accordance with s. 627.171.” Section 626.9541(1)(h)1.a., Florida Statutes, further prohibits insurers from knowingly “[p]ermitting, or offering to make, or making, any contract or agreement as to such contract other than as plainly expressed in the insurance contract issued thereon.”

If you have any questions regarding the contents of this memorandum, please contact Theresa Randall, Workers’ Compensation Administrator for the Office of Insurance Regulation, at 850-413-3821.