



## INFORMATIONAL MEMORANDUM

OIR-03-016M

ISSUED

September 15, 2003

Office of Insurance Regulation

**Kevin M. McCarty**

Director

### NOTICE OF NEW LEGISLATION (Medical Malpractice Insurance)

*The purpose of this memorandum is to inform authorized insurers, surplus lines insurers, medical malpractice self-insurance funds, commercial self-insurance funds and risk retention groups of certain changes to the Florida Insurance Code resulting from the 2003 Special Session D of the Florida Legislature. Except as otherwise specified, CS/Senate Bill 2-D is effective September 15, 2003 and contains various amendments to Florida's medical malpractice rating laws and reporting requirements. You are responsible for reading the entire law and complying therewith. You are encouraged to review this bill, found by legislative bill number, at <http://www.leg.state.fl.us>*

CS/Senate Bill 2-D contains the following provisions relating to medical malpractice insurance:

- Requires medical malpractice insurance rates approved by the Office of Insurance Regulation ("Office") on or before July 1, 2003 to remain in effect until the effective date of the new rate filing required by the revised law.
- Requires the Office to calculate and publish a "presumed factor" no later than November 14, 2003 that reflects the impact on insurance rates of the changes contained in the new law.
- Requires that each insurer with medical malpractice direct written premium in Florida in 2002, to submit a rate filing, with an effective date no later than January 1, 2004, that reflects an overall rate reduction at least as great as the "presumed factor" published by the Office. Such rate reduction must be applied retroactively to policies issued or renewed on or after September 15, 2003. Insurers will be ordered to refund by check or credit at next renewal the premium collected in excess of that resulting from the retroactive application of the "presumed factor".
- If a rate is proposed in the "presumed factor" filing which has a rate level impact other than that which results solely from the application of the "presumed factor" then the rate resulting from the application of the "presumed factor" will remain in effect until another rate is approved by the Office.
- Any rating organization or insurer that contends that the rate provided for after application of the "presumed factor" is excessive, inadequate or unfairly discriminatory must separately indicate in its "presumed factor" filing the rate it contends to be appropriate. Such filing must specify the factors or data to be considered by the Office in evaluating the rate proposed as appropriate by the insurer. Such filing is subject to prior approval of the Office.
- Any insurer that makes a filing which proposes a rate other than that which results from the published "presumed factor" must specifically include in its filing the expected impact of the new law on the insurer's losses, expenses and rates.
- Requires medical malpractice insurers to notify insureds at least 60 days prior to the effective date of any rate increase and at least 90 days prior to cancellation or non-renewal. The revised law requires medical malpractice insurance contracts to be modified to reflect such notice requirements.

- Provides that medical malpractice rate filings disapproved by the Office are not subject to review by an arbitration panel but continue to be subject to administrative review pursuant to ch. 120, Florida Statutes.
- Requires medical malpractice insurers to notify policyholders upon making a rate filing that would have a statewide average increase of 25 percent or greater.
- Requires that medical malpractice insurers make a rate filing at least once each calendar year, sworn to by at least two executive officers.
- Prohibits the inclusion of payments for bad faith or punitive damages in losses used to support or develop an insurer's base rates.
- Revises the closed claim reporting requirements of s. 627.912, Florida Statutes, to include the following:
  - reporting by all types of insurance and self-insurance entities, including specified health care practitioners and facilities relative to claims not otherwise reported by an insurer;
  - reporting of claims even when no indemnity payments are made;
  - reporting of professional license numbers;
  - discretionary penalties are made mandatory penalty amounts are increased;
  - provides that violations by health care providers of reporting requirements constitute a violation of the chapter or act under which the practitioner of facility is licensed.
- Requires the Office to prepare an annual report analyzing the closed claim reports, financial reports submitted by insurers, approved rate filings, and loss trends.
- Authorizes the Financial Services Commission to adopt rules to require the reporting of data on open claims and reserves.
- Authorizes a group of 10 or more health care providers to establish a commercial self-insurance fund for purposes of providing medical malpractice coverage.
- Eliminates an existing prohibition against the creation of new medical malpractice self-insurance funds and expands the authority of the Financial Services Commission to adopt rules relating to the solvency of such funds.

The bill also provides funding to restructure and expand the Professional Liability (Medical Malpractice) Closed Claim Database. The Office intends to provide for internet-based reporting of claim information required by Section 627.912, F.S., to include reporting of data relating to payments for economic and non-economic damages. Insurers are advised that this information will be required upon completion of the database's restructuring and expansion. Appropriate measures to facilitate collection of this information should be initiated at this time. The Office estimates that the new system will be introduced by the second quarter of 2004.

A workshop related to rules necessary to implement the new law is planned for mid-October 2003.

In addition to modifying the Florida Insurance Code, CS/SB 2-D modifies or establishes regulations pertaining to health care facilities and health care professionals. The law also contains changes which affect medical malpractice liability and litigation such as the presuit process, standard language in settlement forms, itemization of verdicts, caps on non-economic damages, and bad faith allegations.

Questions regarding changes affecting chapters 624, 627 or 641 may be directed to Steve Roddenberry, Deputy Director, at 850-413-5104 or Shirley Kerns, Chief, Bureau of Property and Casualty Forms and Rates, at 850-413-5310.