



INFORMATIONAL MEMORANDUM

OIR – 03-020M

ISSUED

November 10, 2003

Office of Insurance Regulation

Kevin M. McCarty

Director

**Notice of “Presumed Factor”
Amendment to s. 627.062, Florida Statutes CS/Senate Bill 2-D – Section 40
Effective Date of Bill - September 15, 2003**

The purpose of this informational memorandum is to inform all insurers authorized to write medical malpractice insurance in Florida of the “*presumed factor*” calculated by the Office of Insurance Regulation (“Office”), as required by Section 627.062(8), Florida Statutes.

The “*presumed factor*”, as referenced in Section 40 of CS/Senate Bill 2-D, is negative 7.8%

All insurers authorized to write medical malpractice insurance in Florida must make a rate filing, no later than **sixty days from the date of this informational memorandum** (January 9, 2004) adjusting their rates to reflect application of the “*presumed factor*”. If the insurer simply adopts the “*presumed factor*”, such resulting rate must be applied retroactively to policies issued or renewed on or after September 15, 2003.

Insurers that contend that application of the “*presumed factor*” to their book of business will result in excessive, inadequate or unfairly discriminatory rates may supplement their “*presumed factor*” filing, pursuant to Section 627.062(8)b, Florida Statutes, with specific information or data they believe the Office should consider in its determination of an appropriate rate for that insurer. If, based on additional information or data submitted by the insurer, the Office ultimately approves a rate that results in a net increase to the base rates for a particular insurer, such increase is applicable prospectively only. If, based on additional information or data submitted by the insurer, the Office ultimately approves a rate that results in a net decrease to base rates, such decrease must be retroactively applied to policies issued or renewed on or after September 15, 2003. Any such filing including specific information or data is subject to the Office’s prior approval.

All rate changes resulting from any “*presumed factor*” filing, except those made pursuant to Section 627.062(8)b, Florida Statutes, must be effective no later than **January 1, 2004**, subject to the retroactive application described above.

As authorized by CS/Senate Bill 2-D, the Office contracted with an independent consultant to assist in the calculation of the “*presumed factor*”. Such services were provided by Deloitte and Touche, a nationally recognized consulting firm. The final report is available at http://www.floir.com/siteDocuments/OIR_Report_Final_11062003.pdf.

In addition to the provisions set forth above, an insurer’s “*presumed factor*” filing, as well as all future medical malpractice rate filings, must be sworn to by two company officers and must certify compliance with provisions of s. 627.062(7), Florida Statutes. Such attestation shall affirm the absence of statutory or common-law bad faith payments, punitive damage payments, and taxable costs or attorney’s fees related thereto, in losses intended to support a requested rate change. In addition, a rate filing may not propose a rate structure that provides for the replenishment of an insurer’s reserves or surpluses when such replenishment is attributable to investment losses.

Insurers are reminded of the requirement to submit all filings using the Office’s internet filing system, *I-file*, at <https://portal.fldfs.com/ifile/default.asp>.

Questions regarding this memorandum may be directed to Shirley Kerns, Chief, Bureau of Property and Casualty Forms and Rates at 850-413-5310