

From: Prather, Denise
Sent: Friday, January 23, 2009 10:06 AM
To: Kish, Keri
Cc: Vicki Cutcliffe; Simon Blank
Subject: FW: Proposed Antifraud Plan Guidelines
Importance: High
Sensitivity: Confidential

January 23, 2009

Ms. Keri A. Kish
Anti-fraud Counsel
National Association of Insurance Commissioners
2301 McGee St., Ste 800
Kansas City, MO 64108

RE: NAIC Proposed Anti-fraud Plan Guidelines

Dear Ms. Kish:

On behalf of Chief Financial Officer Alex Sink, agency head of the Florida Department of Financial Services (DFS) and Colonel Vicki Cutcliffe, Director of the Division of Insurance Fraud, I am responding to your email of December 19, 2008, which provided the first draft of the NAIC anti-fraud plan guidelines. We appreciate the opportunity to review this proposed language and offer comments on the draft.

The Division of Insurance Fraud is one of two law enforcement units of the Florida Department of Financial Services. Our division investigates all types of criminal insurance fraud acts. Our division detectives are sworn law enforcement/police officers and have the power to arrest individuals that commit criminal insurance fraud. We present our cases for prosecution to one of 20 Florida state attorneys for single county jurisdiction or the Florida Office of the Statewide Prosecutor for multiple county jurisdictions.

The following are comments relating to proposed anti-fraud plan guidelines:

Section 2. Definitions:

Attached are several Florida statutes that give our division its powers.

The first is s.626.989, Florida Statutes. This law grants our division its authority to investigate; defines suspected fraudulent acts; provides insurer compliance requirements; provides immunity provisions for reporting suspected fraud; provides insurer reporting requirements for referring suspected fraud to the division and provides its arrest powers.

S. 626.9541, F.S. references the "Unfair Methods of Competition and Unfair or Deceptive Acts or Practices Define" statute. This law contains many of the areas of unfair or deceptive acts covered in the Anti-fraud plan guidelines. In Florida, this statute can be enforced by both the Division of Insurance Fraud for certain criminal violations and the Bureau of Investigations, Division of Agency Services (FLDFS) for regulatory or administrative violations. Our division sometimes

works in conjunction with the Bureau of Investigations to investigate licensees that commit unfair trade practices. We investigate the criminal activity and they investigate and file the administrative action against the person's license.

S. 817.234, F.S. outlines the criminal fraudulent practices that our division enforces. Most of the definitions referenced in Section 2 are covered in one of these three statute cites.

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Section 3. Annual Reporting Requirement:

S. 626.9891(6 a-f), F.S. provides an annual reporting requirement for Workers Compensation insurers that write Florida business. The requirements are similar to those proposed in section 3. The law was effective August 1, 2004 and W.C. carriers must submit the report data to the division every year between July 1 and September 30. We have developed an on-line electronic report format, but it is not mandatory to submit the report electronically.

Section 4. Fraud Plan Model

S. 626.9891(1) (2) (3), F.S. and Florida Administrative Rule 69D-2 (promulgated 10-6-2006); outline Florida's requirements for submitting insurer anti-fraud investigative unit plans and SIU descriptions to the division. Our anti-fraud plan and SIU descriptions do not have an annual or any period updating reporting provision. Insurers, including Health Maintenance Organizations, were required to submit updated SIU descriptions and anti-fraud plan filings to the division by October 6, 2006. We developed an electronic filing database and required mandatory electronic filings of the plans/descriptions at this website. Our requirements include many of the same stipulations shown in section 4.

Section 5. Fraud Warning Required

S. 817.234 (3a) (b), FS contains our division's fraud warning requirement of insurers and licensees applications and claim forms. This statutory cite is regulated by the Office of Insurance Regulation of the Financial Services Commission.

The Office of Insurance Regulation, Market Investigations unit investigates unauthorized entities from a regulatory perspective. This unit frequently refers unauthorized entity cases to the division for criminal investigation. Part VIII (s.626.901 - 626.939, F.S.) of the Florida statutes addresses Unauthorized Insurers and Surplus Lines. The Legislative and the Department have increased the criminal penalties for

transacting unauthorized insurance in the last few years. You can go to www.myflorida.com - select Government, Legislative branch for a complete listing of Florida Statutes.

Section 6. Mandatory Reporting of Fraudulent Insurance Acts:

Florida has this requirement in s. 626.989 (6), F.S. for licensees and their employees.

Section 7. SIU Requirement

Florida requires that those insurers writing more than \$ 10 million of Florida direct written premium must have a special investigative unit and file a description of the SIU to DIF. Insurers writing less than \$10 million in direct written premium must file an anti-fraud plan to DIF.

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In summary, most of the language of the proposed NAIC anti-fraud plan guidelines is currently contained in either a Florida statute or administrative rule. Our division enforces insurer compliance requirements for submitting SIU descriptions and anti-fraud plan filings. We also require that licensees report suspected insurance fraud acts to the division. We also require that Workers Compensation insurers writing Florida business submit an annual statistical report to the division. Our division works closely with other FL DFS investigative (regulatory) divisions to ensure that licensees are held accountable for any violations of the Florida Insurance Code. Our statutes and administrative rules are governed by the Florida Legislature and the Florida Joint Administrative Procedures Committee and as such are not easily amended or modified. However, the Florida Department of Financial Services and the Division of Insurance Fraud support the efforts of the NAIC anti-fraud committee to initiate anti-fraud plan guidelines to assist and support state fraud bureaus.

On behalf of CFO Alex Sink and Colonel Vicki Cutcliffe, thank you for the opportunity to comment on the proposed anti-fraud plan guidelines. Please advise if you have any questions.

Sincerely,

Denise E. Prather

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Denise E. Prather
Sr. Management Analyst I
Division of Insurance Fraud
Florida Department of Financial Services
200 E. Gaines Street
Tallahassee, Florida 32399-0324
Telephone: (850) 413-4036
Facsimile: (850) 414-5687
VOIP: 1 4036
email: denise.prather@myfloridacfo.com