



## INFORMATIONAL MEMORANDUM

99-109M

September 3, 1999

Florida Department of Insurance

Bill Nelson

Treasurer, Insurance Commissioner and Fire Marshal

### ALL HEALTH MAINTENANCE ORGANIZATIONS AUTHORIZED TO DO BUSINESS IN FLORIDA FRAUD LEGISLATION

The purpose of this memorandum is to inform Health Maintenance Organizations ("HMOs") doing business in Florida, of the applicability of newly created section 641.3915 Florida Statutes; the amendment of section 626.989 Florida Statutes pertaining to insurer anti-fraud requirements; and the amendment of section 817.234 Florida Statutes pertaining to false and fraudulent insurance claims as they pertain to HMOs.

#### I. NEW PROVISIONS REGARDING HEALTH MAINTENANCE ORGANIZATIONS AND THE REPORTING OF INSURANCE FRAUD

Effective October 1, 1999, all HMOs and their employees are required to submit to the Department of Insurance, Division of Insurance Fraud, a report or information of their knowledge or belief that a fraudulent insurance act or any act or practice which, upon conviction, constitutes a felony or a misdemeanor under the Insurance Code, or under section 817.234, F.S. (Insurance Fraud) is being or has been committed.

#### II. SPECIAL INVESTIGATIVE UNITS (SIUs) AND ANTI-FRAUD PLANS NOW APPLY TO HEALTH MAINTENANCE ORGANIZATIONS (MANDATORY COMPLIANCE BY JULY 1, 2000)

##### SIU Requirements

Section 626.9891, Florida Statutes, applies the 1995 law to HMOs, requiring the establishment of special investigative units and the filing of anti-fraud plans. By July 1, 2000, HMOs writing **\$10 million** or more in direct written premiums in Florida during the previous calendar year shall either establish and maintain a special investigative unit (SIU) to investigate possible fraudulent claims or contract with others to investigate possible fraudulent claims.

HMOs must submit detailed written descriptions of the SIU or copies of the investigative service contract and related documents to the Department of Insurance, Division of Insurance Fraud by July 1, 2000. HMOs that receive certificates of authority after July 1, 1999, have 18 months to comply with these requirements.

HMOs, regardless of size, which create and maintain an SIU or provide proof of an investigative service contract ARE NOT required to submit a separate anti-fraud plan.

### Anti-Fraud Plan Requirements

By July 1, 2000, HMOs writing **less than \$10 million** in direct premiums in Florida for the previous calendar year and which did not otherwise establish an SIU or contract for investigative services, shall file an Anti-Fraud Plan with the Department of Insurance, Division of Insurance Fraud.

HMOs, which obtain certificates of authority after July 1, 1999, and otherwise qualify for this option, have 18 months to meet these requirements.

The Anti-Fraud Plan shall include the following, at a minimum:

- (1) A description of the HMOs' procedures for detecting and investigating possible fraudulent insurance acts;
- (2) A description of the HMOs' procedures for the mandatory reporting of possible fraudulent insurance acts to the Division of Insurance Fraud;
- (3) A description of the HMOs' plan for anti-fraud education and training of claims adjusters and other personnel; and
- (4) A written description or chart outlining the organizational arrangement of the HMOs' anti-fraud personnel for the investigation and reporting of possible fraudulent insurance acts.

The Division of Insurance Fraud will review all Anti-Fraud plans for sufficiency. The Division will notify the HMO of any deficiencies. Additionally, HMOs which previously had voluntarily submitted plans pursuant to this section, but have not addressed each of the four elements required, will be notified of any deficiencies by the Division of Insurance Fraud and given an opportunity to amend the plan.

### III. IMMUNITY PROVISIONS

Immunity from civil liability for insurers provided for in section 626.989(4)(d), Florida Statutes now apply to HMOs.

Section 626.989(4)(d), F.S., reads:

"(d) In addition to the immunity granted in paragraph (c) persons identified as designated employees whose responsibilities include the investigation and disposition of claims relating to persons suspected of committing fraudulent insurance acts with other designated employees employed by the same or other insurers whose responsibilities include the investigation and disposition of claims relating to fraudulent insurance acts, provided the department has been given written notice of the names and job titles of such designated employees prior to such designated employees sharing information. Unless the designated employees of the insurer act in bad faith or in reckless disregard for the rights of any insured, neither the insurer nor its designated employees are civilly liable for libel, slander, or any other relevant tort, and a civil action does not arise against the insurer or its designated employees:

1. For any information related to suspected fraudulent insurance acts provided to an insurer; or

2. For any information relating to suspected fraudulent insurance acts provided to the National Insurance Crime Bureau or the National Association of Insurance Commissioners.

Provided, however, that the qualified immunity against civil liability conferred on any insurer or its designated employees shall be forfeited with respect to the exchange or publication of any defamatory information with third persons not expressly authorized by this paragraph to share in such information.”

If an insurer does not provide the Division of Insurance Fraud with a list of designated employees, it simply will not enjoy the immunity provided under this provision.

Insurers must update with the Division their list of designated SIU employees, when new employees are so designated or when employees leave or change job titles. Because the master list of “designated employees” maintained by the Division is subject to constant change, it will be nearly impossible to publish an accurate list at any given time. Thus, in order to protect an insurer’s designated employees pursuant to this provision, it is suggested that written communications between insurers read substantially as follows:

**I am a designated employee pursuant to s. 626.989(4)(d), F.S., for the \_\_\_\_\_ Insurance Company and request the following information ..... Please ensure that the person who responds to this request is also a designated employee pursuant to s. 626.989(4)(d), F. S.**

#### **IV. FILING INFORMATION**

Required Anti-fraud plans or SIU information must be submitted to the Division by July 1, 2000 at the following address:

Florida Department of Insurance  
Division of Insurance Fraud  
200 E. Gaines Street, Larson Building  
Tallahassee, Florida 32399-0324

Questions or requests for copies of the law may be directed to Assistant Director Mike Ross at the above address or telephone (850) 922-3115.