FLORIDA OFFICE OF INSURANCE REGULATION

TO: All insurers authorized to write life & health insurance products in Florida

RE: Informational guidance on Florida's form and rate filing process for Patient Protection and Affordable Care Act (PPACA) compliant products in the small group and individual markets

This overview is intended to assist the industry in understanding the filing process and deadlines, as well as, to provide insight into how the Office of Insurance Regulation (Office) will allocate resources to meet federal timeframes.

PPACA Filing Deadlines

According to the final United States Department of Health & Human Services (HHS) Notice of Benefit and Payment Parameters for 2016 and guidance within the 2016 Letter to Issuers, the submission deadline for filing with the Centers for Medicare & Medicaid Services (CMS) and the states for the individual and small group markets is **5/15/2015**. This federal deadline is applicable for products sold both on and off the exchange.

PPACA Review Timeframe

The Office is required by Section 627.410(2), F.S., to take action on a filing within 30 days of receipt of the form and/or rate filing, with an option to extend this statutory review deadline by another 15 days. The anticipated filing volume and short review window will likely result in the Office requiring companies to respond very quickly to requests for information or explanations regarding a filing. Providing complete and clear information in a filing and responding quickly to Office requests will facilitate the timely review of all filings. Filings will be processed in the order they are received, and there will be no "expedited" status granted to any filings.

Additionally, federal requirements dictate that the Office must complete its review of filings with a Qualified Health Plan (QHP) in the risk pool by **8/25/2015**. If the filing does not contain a QHP, the Office's review must be completed by 10/9/2015.

PPACA Rate Review Required

For plan years 2014 and 2015, Florida law provided that rates for PPACA compliant products were to be reviewed by the Office on an informational only basis. This provision, Section 627.410(9)(d), F.S., expired on March 1, 2015. Therefore, the Office will perform full rate review and will affirmatively approve or disapprove rates for all PPACA compliant products. A disapproval of a rate filing will require a new filing and could impact the possibility of meeting the HHS required date for approved rates.

Information to be Filed

Per Rule 69O-149.002, Florida Administrative Code, if changes are being made to forms, the filing shall include a rate filing or an actuarial certification that the form change does not require a change in rates. If no changes are being proposed for forms, then a rate only filing may be submitted. All federal templates filed with HHS, including the drug formularies and the Summary of Benefits and Coverage, must be submitted with the filing to the Office via I-File.

PPACA Drug Formulary Attestation

The final Notice of Benefit and Payment Parameters for 2016 charges the Office with the preliminary enforcement authority to monitor a plan's drug formulary and to ensure the plan's benefit design is not unfairly discriminatory. Additionally, it indicates that an issuer may be asked to submit justification with supporting documentation to the Office explaining how the plan design is not unfairly discriminatory. In order to expedite the Office's review of a plan's drug formulary an officer or director of the issuer may submit an attestation with its filing confirming the policy form's compliance with 45 C.F.R. § 156.122, regulating Prescription Drug Benefits, and 45 C.F.R. § 156.125, Prohibiting Discrimination, as well as an explanation of how the insurer has determined that its coverage of HIV/AIDS medications (see next section below) is substantially similar to the benchmark plan or is otherwise compliant with Florida and federal law.

The Office may recommend the removal and decertification of any plan on the Federal Health Insurance Marketplace that employs a drug formulary discriminatory in benefit design, benefit implementation or medical management techniques.

The attestation referenced above is available on the Office's website by clicking here: Drug Formulary Attestation

HIV/AIDS Safe Harbor

Sections 627.429 and 641.3007, F.S., specifically prohibit limiting coverage for individuals with HIV or a specific medical condition resulting from HIV such as AIDS. Designing benefits or tiered formularies that limit access to drug regimens for HIV or AIDS violates these statutes.

Under federal standards governing drug formularies, a health plan does not provide Essential Health Benefits (EHBs) unless it covers the greater of:

1. One drug in every United State Pharmacopeia (USP) category and class; and,
2. The same number of prescription drugs in each category and class as the EHB benchmark plan.

A health plan is required to be substantially similar in its scope of benefits to the state's benchmark plan and may not unfairly discriminate in benefit design, or in the implementation of its benefit design.

The Office will consider a health plan's formulary compliant with these provisions of Florida and federal law if the tiered formulary of HIV/AIDS medications is at least as favorable as the state's benchmark plan.

A link to the HIV/AIDS drug formulary of the benchmark plan is provided here:
Drug Formulary Benchmark for HIV and AIDS

PPACA Habilitative Services

The final Notice of Benefit and Payment Parameters for 2016 also established a uniform definition of habilitative services, which is an EHB. This definition establishes a minimum requirement for health plans in Florida since the current benchmark plan does not cover habilitative services.

45 C.F.R. § 156.115(5) now requires that habilitative services and devices cover "health care services and devices that help a person keep, learn, or improve skills and functioning for daily living (habilitative services). Examples include therapy for a child who is not walking or talking at the expected age. These services may include physical and occupational therapy, speech-language pathology and other services for people with disabilities in a variety of inpatient and/or outpatient settings." Health plans must "not impose limits on coverage of habilitative services and devices that are less favorable than any such limits imposed on coverage of rehabilitative services and devices."

PPACA Rate Filing System Modifications

Some companies have asserted trade secret protection for PPACA rate filings. Without expressing an opinion on whether these filings meet the statutory definition of a "trade secret," the Office has modified I-File to accommodate the trade secret provisions of Section 624.4213, F.S. This includes the capability to protect information provided via the Universal Standardized Data Letter (USDL). The Office will accept only complete and accurate filings, including the USDL. Instructions for using the revised trade secret functionality can be found by clicking here: Trade Secret Enhancements

Rate Collection System

Last year, the Office updated and expanded the small group rate collection system. No changes are anticipated for this year and the Office continues to request that companies complete this data collection template for individual and small group products. **The data collection template is generated during the I-File filing process and must be completed before submitting the filing for review. Sufficient time before the deadline should be allocated for this step**.

Non-PPACA Filings

Although the Office will continue to process other life and health filings unrelated to PPACA (e.g., long-term care, Medicare supplement, annuity products) during the May to October

timeframe, companies should delay making any non-essential filings of these types during this period to allow analysts adequate time to focus on the PPACA filings.

For questions regarding the above information, please contact the following:

- **Rate Filing Questions**
  Eric Johnson – Chief Actuary & Director, Life & Health Product Review
  850-413-5059
  Eric.Johnson@floir.com

- **Form Filing Questions:**
  Betty Jo Pate – Deputy Director for Health Forms, Life & Health Product Review
  850-413-5158
  Betty.Pate@floir.com