



INFORMATIONAL MEMORANDUM

OIR-14-01M

ISSUED

April 8, 2014

Florida Office of Insurance Regulation

Kevin M. McCarty, Commissioner

TO ALL INSURERS AUTHORIZED TO WRITE PROPERTY & CASUALTY OR HEALTH INSURANCE IN FLORIDA

The purpose of this memorandum is to remind insurers authorized to write property & casualty or health insurance in Florida of the requirements of Section 624.128, Florida Statutes (2013), the crime victims exemption, and the Florida Crimes Compensation Act.

The Florida Office of Insurance Regulation is reminding insurers of the Florida Crimes Compensation Act (Act) and the requirement that insurers waive policy deductibles or copayments for persons determined by the Office of the Attorney General to be eligible for relief under the Act. A copy of a letter from the Office of the Attorney General is attached.

Section 624.128 of the Insurance Code provides:

Crime victims exemption.—Any other provision of the Florida Statutes to the contrary notwithstanding, the deductible or copayment provision of any insurance policy shall not be applicable to a person determined eligible pursuant to the Florida Crimes Compensation Act, excluding s. 960.28.

History.—s. 17, ch. 94-342.

Eligibility is determined solely by the Office of the Attorney General and may not be revisited by insurance companies. Eligible insureds will receive a notice of waiver issued by the Office of the Attorney General that should be filed with their claim. Upon receipt of the notice of waiver, a company must pay for a covered loss even if the loss does not exceed the deductible or copayment provided in the policy.

The Act and the requirement in the Insurance Code for a deductible or copayment waiver may apply in certain situations where only property damage is suffered. The Act affords relief to several classes of eligible individuals, including, but not limited to, victims who suffer personal physical injury or death, as well as “elderly persons or disabled adults who suffer property loss that causes substantial diminution in their quality of life.”

Once the Office of the Attorney General has determined that an individual is eligible under the Act, that individual is exempt from the deductible or copayment provision of any insurance policy for a claim resulting from the related crime. Each insurer must have internal claims practices and procedures in place to properly adjust losses of individuals eligible under the Act.

If you have any questions regarding the contents of this memorandum, please contact Patrick Flemming, Assistant General Counsel, Florida Office of Insurance Regulation, at Patrick.Flemming@flor.com or (850) 413-4276.



PAM BONDI
ATTORNEY GENERAL
STATE OF FLORIDA

OFFICE OF THE ATTORNEY GENERAL
Law Enforcement Relations,
Victim Services and
Criminal Justice Programs

Emery A. Gainey, Director
PL-01 The Capitol
Tallahassee, FL 32399-1050
Phone (850) 245-0140 Fax (850) 487-2564
<http://www.myfloridalegal.com>

April 7, 2014

Kevin M. McCarty, Insurance Commissioner
Florida Office of Insurance Regulation
200 East Gaines St.
Tallahassee, FL 32399

Re: Section 624.128, Florida Statutes
Any other provision of the Florida Statutes to the contrary notwithstanding, the deductible or copayment provision of any insurance policy shall not be applicable to a person determined eligible pursuant to the Florida Crimes Compensation Act, excluding s. 960.28.Fla. Stat. Ann. § 624.128 (West)

Dear Mr. McCarty,

The Florida Crimes Compensation Act was established by the Florida Legislature because it recognized "that many innocent persons suffer personal injury or death as a direct result of adult and juvenile criminal acts . . ." as stated in section 960.02, Florida Statutes. In addition to the more direct monetary benefits for crime victims, the Legislature over the years has included in the statutes indirect benefits to further assist in making crime victims financially whole.

One such benefit found in section 624.128, Florida Statutes, referred to herein as the insurance waiver provision, was enacted by the Florida Legislature in 1994. This provision requires the waiver or refund of any deductibles or copayments of all Florida insurance policies after the Office of the Attorney General Bureau of Victim Compensation (BVC) determines the victim eligible for benefits under the Florida Crimes Compensation Act.

The property loss provision located at section 960.195, Florida Statutes, is part of the "Florida Crimes Compensation Act" and states in pertinent part that "the department may award a maximum of \$500 to elderly persons or disabled adults who suffer a property loss that causes a substantial diminution in their quality of life..." After reviewing required statutory criteria for each applicant, the BVC makes a determination of whether or not claims are eligible for compensation. Once such determination is made, the BVC provides the victim with a Special Notice of Insurance Waiver Provision. The victim is then directed to provide same to their insurance company to place said company on notice that the insurance waiver provision applies. The company should then either waive or refund any deductible owed by the victim.

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Despite being clearly mandated to do so by statute, the BVC has received several responses from various insurance companies stating that they would not honor section 624.128, Florida Statutes. In deciding to disregard the mandates of section 624.128, Florida Statutes, the insurers have acted outside the scope of their authority as the statute does not allow individual insurers to make an independent determination of whether or not a particular insured is covered under the Florida Crimes Compensation Act or whether or not section 624.128, Florida Statutes, applies. These insurers have determined that these victims are ineligible under the act, which is contrary to the clear language and intent of the statute as such determination is entirely within the purview of the BVC.

Pursuant to section 960.045(1)(b), Florida Statutes, the BVC is authorized to adopt administrative rules implementing the provisions of Chapter 960, Florida Statutes. The BVC is charged with determining eligibility under the Florida Crimes Compensation Act, and its administration and enforcement. The BVC is solely responsible for determining eligibility under the act. Upon determination of same, the insurance waiver provision applies. The administrative construction of the agency charged with the enforcement and interpretation of a statute carries great weight and is controlling in the absence of clear and cogent reasons to the contrary. *Miller v. Brewer Company of Florida, Inc.*, 122 So. 2d 565 (Fla. 1960); *Daniel v. Florida State Turnpike Authority*, 213 So. 2d 585 (Fla. 1968); *Hefler Construction Company and Subsidiaries v. Department of Revenue*, 334 So. 2d 129 (Fla. 3rd DCA 1976).

Based upon the foregoing, the Office of the Attorney General, Bureau of Victim Compensation requests that the Office of Insurance Regulation inform all insurers doing business within the State of Florida that determination of eligibility under the Florida Crimes Compensation Act shall be wholly made at the sole discretion of the BVC operating within the confines of the Florida Statutes and applicable rules. Upon determination by the BVC, section 624.128, Florida Statutes, applies in all cases, including those found eligible under the property loss provision at section 960.195, Florida Statutes, and the victim's deductible or co-payment should be either waived or refunded. Exclusions include out of state insurance carriers who are not licensed to do business in the State of Florida, health maintenance organizations (HMO), and self insurance plans.

Thank you in advance for your assistance in this matter. Please do not hesitate to contact me with any questions or concerns.

Sincerely,

A handwritten signature in blue ink, appearing to read "E. Gainey", with a long horizontal flourish extending to the right.

Emery Gainey
Director