



lawful foreign travel or past lawful travel of the applicant, unless the insurer can demonstrate that insureds who have traveled or intend to travel are a separate actuarially supportable class whose risk of loss is different from those insureds who have not traveled and do not intend to travel.

(3) No insurer nor person authorized to engage in the business of insurance in the State of Florida shall refuse to issue any policy, contract or certificate of life insurance to or refuse to continue any policy, contract or certificate of life insurance of any individual or limit the amount, extent or kind of life insurance coverage offered to an individual based solely on the individual's past lawful foreign travel.

(4) No insurer nor person authorized to engage in the business of insurance in the State of Florida shall refuse to issue any policy, contract or certificate of life insurance to or refuse to continue any policy, contract or certificate of life insurance of an individual, or limit the amount, extent or kind of life insurance coverage offered an individual based solely on the individual's future lawful foreign travel plans unless the insurer can demonstrate that individuals who travel are a separate actuarially supportable class whose mortality risk is different from that of individuals who do not travel, and that such risk classification is based on sound actuarial principles and actual or reasonably anticipated experience that correlates to the risk of travel to a specific destination.

(5) An insurer shall file for approval information demonstrating that individuals who travel to a specific destination constitute a separate actuarially supportable class. The insurer shall not utilize such information within any underwriting decision resulting in a refusal to issue, refusal to continue, limitation on amount, extent or kind of life insurance coverage available to an individual until the Office has first approved the filing and determined that the insurer has demonstrated that the underwriting proposed meets compliance with the standards of Section 626.9541(1)(dd), F.S. Nothing in this rule prevents an insurer from asking questions about foreign travel on an application in order to compile information provided such information is not used in any underwriting decision unless the insurer has received prior approval from the Office.

(6) In determining individuals who travel are a separate actuarially supportable class whose risk of loss is different from those individuals who do not travel based on sound actuarial principles and actual or reasonably anticipated experience that correlates to the risk of travel to a specific destination, insurers shall:

(a) Have performed a detailed actuarial analysis detailing the specific impact of the proposed risk;

(b) Demonstrate that all similar risks with similar risk exposure are similarly treated and that the risk is outside of the underwriting parameters that the insurer is accepting for its maximum rated risks;

(c) Use statistically credible data that is specific and relevant to the analysis and risk being evaluated, that is, using a country population death rate is not relevant to the analysis of the risk of short-term travel. In the absence of actual experience, an actuary may submit for the Office's consideration clear actuarial evidence, including clinical experience or expert opinion relied upon by the

travel experiences.

2. An insurer may not refuse life insurance to; refuse to continue the life insurance of; or limit the amount, extent, or kind of life insurance coverage available to an individual based solely on the individual's future lawful travel plans unless the insurer can demonstrate and the Office of Insurance Regulation determines that:

- a. Individuals who travel are a separate actuarially supportable class whose risk of loss is different from those individuals who do not travel; and
- b. Such risk classification is based upon sound actuarial principles and actual or reasonably anticipated experience that correlates to the risk of travel to a specific destination.

4. Section 626.9611, Florida Statutes, provides that the Commission may, by rule, adopt reasonable rules to identify specific methods of competition or acts or practices which are prohibited by Section 626.9541, Florida Statutes.

5. Rule 69O-125.003, F.A.C., implements both these statutes by prohibiting unreasonable discrimination based upon travel plans, and sets forth an actuarial process by which an insurer which wishes to make underwriting decisions based upon travel plans may do so. The rule also provides, in subsection (7), a process by which an insurer may file a petition for a variance or waiver with the Office for a limited exception from the rule.

6. Rule 69O-125.003 reads as relevant:

69O-125.003 Unfair Discrimination Because of Travel Plans.

(1) No insurer nor person authorized to engage in the business of insurance in the State of Florida shall refuse to issue or refuse to continue any policy, contract or certificate of insurance of any individual, or limit the amount, extent or kind of insurance coverage offered to an individual, an accident, disability or health insurance policy or certificate, because of the intent of the applicant to engage in future lawful foreign travel or based upon past lawful foreign travel, unless the insurer can demonstrate that insureds who have traveled or intend to travel are a separate actuarially supportable class whose risk of loss is different from those insureds who have not traveled and do not intend to travel.

(2) No insurer nor person authorized to engage in the business of insurance in the State of Florida, shall, in determining the rates charged an applicant for coverage under any policy, contract or certificate of life insurance, annuity contract, accident, disability or health insurance, issued or to be issued to be delivered to any resident of this state, consider the intent of the applicant to engage in future

actuary that demonstrates to the Office that differences in risk are related to the travel;

(d) Disclose the range of underwriting and rating options and how each is supported by the analysis;

(e) Maintain a report prepared by the actuary providing the information used and relied upon by the actuary in preparing his conclusions, including but not limited to: summarizing the source, basis and relevancy of data used, the impact of the risk on expected loss, the range of expected loss within the underwriting class and how the proposed travel risk falls inside or outside of such underwriting range, the analysis performed and the basis of any conclusions reached. Such report shall disclose how compliance with all appropriate actuarial standards of practice is met and specifically detail any standards that are not.

(7) In accordance with Section 626.9541(1)(dd)3., F.S., an insurer may file a petition for a variance or waiver with the Office for a limited exception from the statute and this rule. The petition shall contain supporting information demonstrating that the requested limited exception(s) are based upon national or international emergency conditions that affect the public health, safety, and welfare and are consistent with public policy.

\* \* \*

(9)(a) Violation of this rule constitutes unfair discrimination prohibited by Sections 626.9541(1)(g) and (dd), F.S.

7. Generally stated, then, under the rule, if an insurer wishes to factor into its underwriting future travel plans to a particular country, it must present to the Office evidence demonstrating that individuals who travel to that destination constitute a separate actuarially supportable class.

8. One sub-paragraph of one of the implementing statutes, specifically sub-paragraph 626.9541(1)(dd)3., provides that the rule may provide for limited exceptions. The rule provides a process for such limited exceptions, in (7), in that the insurer can petition for a waiver of the rule as it applies to a specific country.

9. As it relates to this rule, the purpose of Section 626.9611, Florida Statutes, is to protect the public from unfair discrimination in their insurance dealings. The purpose of Section 626.9541(1)(dd), Florida Statutes, is to protect the public from unfair discrimination specifically based upon their travel plans.

10. In late 2007, Monumental filed a petition for waiver from Rule 69O-125.003 (the “original petition”), specifically for travel to Iraq and Afghanistan. In the original petition Monumental requested the ability to factor in its underwriting of insurance applicants any plans of future travel to these two countries, and asserted that it met the statutory requirements for the granting of such a waiver, as set out in Section 120.542, Florida Statutes.

11. On February 15, 2008, the Office issued an order finding that Monumental had met the conditions for the issuance of a waiver, and granted the waiver as the rule applied to travel to Iraq and Afghanistan, but limited the term of the variance for two years, unless it was otherwise extended pursuant to a petition to extend it.

12. In the new petition, Monumental is requesting the Office extend the variance, asserting that the conditions that existed at the time the variance was ordered are still in effect.

13. Monumental’s assertion in this regard is correct. There has been no relevant changes in the conditions in those two countries as it relates to safety of travelers to them.

14. Because of the extreme conditions in these two countries, and the corresponding danger to travelers who visit them, allowing insurers to factor in their underwriting of insurance for applicants’ future travel plans to Iraq and Afghanistan would not result in unfair discrimination. Consequently, the underlying purpose of sections 626.9611 and 626.9541(1)(dd), Florida Statutes, will be met by a waiver granted in this matter. Consequently, the first prong of the test for the granting of a variance or waiver as set out in section 120.542 has been met.

15. The second prong for the granting of a variance as set out in section 120.542 is that application of the rule would either create a substantial hardship, whether economic, technological, legal or other type, or violate principles of fairness.

16. According to section 120.542(2), "principles of fairness" are violated "when the literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule." Monumental does not contend the rule impacts it in a manner different from how it impacts other similarly situated insurers. Therefore, the question for this second prong is whether application of the rule, as it applies to Iraq and Afghanistan, creates a substantial hardship, in general, for insurers.

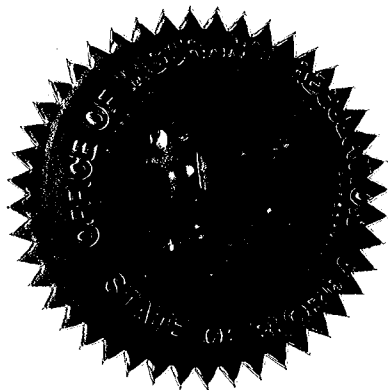
17. The facts show that application of the rule as written does create such a hardship. Given the facts presented, any person traveling to either of these countries has an increased risk of death. This increased risk is a factor which needs to be taken into account when an insurer underwrites a life policy. This is the exactly the type of risk that Rule 690-125.003(7) contemplates. The second prong therefore has been met.


18. Both prongs of the test for granting of a waiver having been met, pursuant to Section 120.542(2), the extension of the waiver shall be granted.

19. Pursuant to section 120.542(1) an agency may limit the duration of a waiver. A two year limit on the extension of this waiver is appropriate, subject to a petition to extend it, yet again, if necessary.

ACCORDINGLY, the Office of Insurance Regulation extends the waiver from this rule, pursuant to subsection (7) of the rule, as it relates to travel to Iraq and Afghanistan. Insurers in their underwriting of all forms of insurance designated in the rule may factor into their underwriting travel plans of applicant to these two countries. The term of the variance is extended two years, from the date the earlier order will expire, February 15, 2010, until February 15, 2012. The variance will expire on February 15, 2012, unless otherwise extended by order.

DONE AND ORDERED this 17<sup>th</sup> day of December, 2009.



  
\_\_\_\_\_  
Kevin M. McCarty  
Commissioner  
Office of Insurance Regulation

## NOTICE OF RIGHTS

Pursuant to Sections 120.569 and 120.57, Florida Statutes and Rule Chapter 28-106, Florida Administrative Code (F.A.C.), you may have a right to request a proceeding to contest this action by the Office of Insurance Regulation (hereinafter the "Office"). You may request a proceeding by filing a Petition. Your Petition for a proceeding must be in writing and must be filed with the General Counsel acting as the Agency Clerk, Office of Insurance Regulation. If served by U.S. Mail the Petition should be addressed to the Florida Office of Insurance Regulation at 612 Larson Building, Tallahassee, Florida 32399-4206. If Express Mail or hand-delivery is utilized, the Petition should be delivered to 612 Larson Building, 200 East Gaines Street, Tallahassee, Florida 32399-0300. The written Petition must be received by, and filed in the Office no later than 5:00 p.m. on the twenty-first (21) day after your receipt of this notice. Unless your Petition challenging this action is received by the Office within twenty-one (21) days from the date of the receipt of this notice, the right to a proceeding shall be deemed waived. Mailing the response on the twenty-first day will not preserve your right to a hearing.

If a proceeding is requested and there is no dispute of material fact the provisions of Section 120.57(2), Florida Statutes may apply. In this regard you may submit oral or written evidence in opposition to the action taken by this agency or a written statement challenging the grounds upon which the agency has relied. While a hearing is normally not required in the absence of a dispute of fact, if you feel that a hearing is necessary one may be conducted in Tallahassee, Florida or by telephonic conference call upon your request.

If you dispute material facts which are the basis for this agency's action you may request a formal adversarial proceeding pursuant to Sections 120.569 and 120.57(1), Florida Statutes. If you request this type of proceeding, the request must comply with all of the requirements of Rule Chapter 28-106.201, F.A.C., must demonstrate that your substantial interests have been affected by this agency's action, and contain:

- a) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;
- b) A concise statement of the ultimate facts alleged, including the specific facts the petitioner contends warrant reversal or modification of the agency's proposed action;
- c) A statement of the specific rules or statutes the petitioner contends require reversal or modification of the agency's proposed action; and
- d) A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the agency to take with respect to the agency's proposed action.



These proceedings are held before a State Administrative Law Judge of the Division of Administrative Hearings. Unless the majority of witnesses are located elsewhere, the Office will request that the hearing be conducted in Tallahassee.

In some instances, you may have additional statutory rights than the ones described herein.

Failure to follow the procedure outlined with regard to your response to this notice may result in the request being denied. Any request for administrative proceeding received prior to the date of this notice shall be deemed abandoned unless timely renewed in compliance with the guidelines as set out above.

COPIES FURNISHED TO:

Arielle Harry-Bess  
Counsel  
Monumental Life Insurance Company  
2 East Chase Street  
Baltimore, MD 21202