

PIP TIP:

GUIDELINE TO REVIEW OF PRE-SUIT DEMAND LETTERS

Fla. Stat. 627.736(10) states that a provider must serve an insurer with a demand letter as a “condition precedent” to filing an action for PIP benefits. A “condition precedent” is a condition that must be performed **before** a PIP suit may be filed. Failure to comply with a condition precedent may result in dismissal of the action. Under Fla.R.Civ.P. 1.120(c), a Plaintiff may generally allege that all conditions precedent have been performed; however, a denial of performance must be made specifically and with particularity. If not pled correctly, the defense of nonperformance of a condition precedent may be waived. *Paul v. Peyton*, 648 So.2d 772 (Fla. 1st DCA 1994). Please contact one of our PIP Team leaders listed below for assistance in drafting a denial or affirmative defense that states with specificity a Plaintiff’s failure to perform a condition precedent.

Some Florida courts have held that a demand letter must strictly comply with the requirements of Fla. Stat. 627.736(10) while others have held that “substantial compliance” is sufficient. If you have questions regarding the state of the law in your venue, please contact a member of our PIP team. To assist you in evaluating demand letters and determining if they comply with each of the statutory pre-requisites, please use the checklist below:

STATUTORY REQUIREMENT	YES	NO
(10)(a): <ul style="list-style-type: none">» Demand letter may not be sent until the claim is overdue» PIP TIP: Claim is overdue 30 days after the insurer is furnished written notice of a covered loss.		
(10)(b): <ul style="list-style-type: none">» Demand letter shall state that it is a “demand letter under s. 627.736(10)”		
(10)(b)(1): <ul style="list-style-type: none">» Demand letter shall state with specificity the name of the insured upon which such benefits are being sought» Demand letter should include a copy of the assignment giving rights to the claimant if the claimant is not the insured» PIP TIP: Some Florida Courts have held that failure to attach the Assignment of Benefits to the demand letter does not warrant dismissal or summary judgment of the PIP suit.		
(10)(b)(2): <ul style="list-style-type: none">» The claim number or policy number upon which such claim was originally submitted to the insurer		
(10)(b)(3): <ul style="list-style-type: none">» The name of any medical provider who rendered to an insured the treatment, services, accommodations, or supplies that form the basis of such claim; and» An itemized statement specifying each exact amount, the date of treatment, service or accommodation, and the type of benefit claimed to be due.» A completed form satisfying the requirements of paragraph (5)(d) (i.e. CMS 1500 form)... may be used as the itemized statement.» PIP TIP: Some Florida courts have held that demand letters that seek payment for amounts previously paid by an insurer and amounts not yet overdue do not strictly comply with PIP statute.		
(10)(c): <ul style="list-style-type: none">» Demand letter must be delivered to the insurer by United States certified or registered mail, return receipt requested.» Demand letter must be sent to the person and address specified by the insurer for the purposes of receiving notices under this subsection.» PIP TIP: To determine the current person and address specified by the insurer to receive demand letters go to: http://www.flair.com/companysearch/.» Historic PIP contact information is available upon request by calling the Office of Insurance of Regulation at (850)-413-4223.		

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