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## **Via E-Mail**

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***Re: Emergency Rule 69BER24-4 - Public Comment***

Dear Director Thomas:

I am writing to provide comments regarding Emergency Rule 69BER24-4. While I support the Department's efforts to ensure transparency in claims handling, several aspects of the rule require modification to achieve its stated purpose of protecting Florida consumers.

### **Estimate Documentation and Transparency**

The requirement for maintaining all versions of estimates promotes transparency and accountability. However, the rule should be expanded to address how these estimates are made available to policyholders. Policyholders should have immediate access to all versions of their estimates, including supporting documentation.

### **Scope Changes and Non-Price Modifications**

A significant omission in the current rule is its failure to address scope changes and non-price modifications to estimates. As recently highlighted in the CBS 60 Minutes investigation, unauthorized scope and non-price modifications lead to largest underpayments of claims rather than pricing differences in estimates. The rule should explicitly address:

1. Documentation requirements for scope changes
2. Authorization procedures and reasons for modifications to non-price items

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3. Verification processes and a requirement to state the reasons for removed items of repair or replacement

### **Pricing Constraints and Market Realities**

The rule's restrictions on price modifications directly conflict with Xactimate's license agreement and industry best practices. The requirement that "modification to the prices applied by an electronic estimating program... is strictly prohibited" unless extensively documented creates an artificial barrier to accurate estimating, particularly following catastrophic events when historical pricing becomes unreliable.

For example, Xactimate has the following disclaimer:

"We do not warrant the accuracy of pricing information in the Price Data. Price Data is intended to represent historical information and should be used as a baseline or place to begin creation of an estimate. We provide Price Data for informational purposes only. You must ensure that estimates include pricing consistent with actual materials, equipment, labor pricing, etc."

The current language of the rule promotes adjusters not to make changes at the risk of ethical violation while the software actively promotes and states that adjusters who are attempting to make accurate estimates make changes to pricing from the software as a regular course of adjustment. If the rule stands, it will promote underpayment because there is no penalty for not making required changes.

### **Licensed Contractor Estimates**

The rule effectively prevents adjusters from utilizing licensed contractors' estimates as a basis for loss evaluation. This contradicts long-standing industry practice and Florida's contractor licensing requirements, which establish specific training in construction estimating. Licensed contractor estimates have historically served as the "gold standard" for construction pricing and should be explicitly recognized as acceptable documentation for price modifications. The rule wrongly makes these unethical.

For example, Walker's Building Estimator's Reference Book remains the mandated reference for the Florida General License Examination and 15 other state contractor licensing programs. This comprehensive manual has served as the cornerstone for accurate construction cost estimation. For Florida contractors, Walker's provides essential tools for developing precise cost estimates, including material quantities and labor productivity metrics based on specific job conditions. This level of detail is crucial when dealing with insurance claims and construction disputes, as the manual is widely accepted in courts as industry-normative data.

It seems ironic that how Florida licensed contractors are taught to determine pricing and estimates is now illegal under this rule because the rule only allows insurance industry software to be used.

## Scope of Application

The rule's broad application to all property types fails to account for specialized items where electronic estimating software may be inadequate or unavailable. The rule should recognize alternative methods for specialized property valuations such as personal property, automobiles and boats. If the intent of the rule is to apply to the adjustment of real property damage only, it should say so.

## Summary of Recommendations

1. Modify the rule to explicitly address non-price modifications or alterations of any version of an estimate;
2. Align pricing modification requirements with industry standards and software license agreements;
3. Recognize licensed contractor estimates as acceptable documentation;
4. Create exceptions for specialized property types or make the rule applicable only to real property adjustment; and
5. Require all adjusters and insurers to make all versions of an estimate available to policyholders.

These modifications would better serve the rule's stated purpose of protecting Florida consumers while maintaining the integrity of the claims adjustment process.

Respectfully submitted,

**MERLIN LAW GROUP**

*/s/ William F. Merlin, Jr.*  
William F. Merlin, Jr., Esquire

WFM/grb