

MARTIN O'MALLEY
Governor

ANTHONY G. BROWN
Lt. Governor



THERESE M. GOLDSMITH
Commissioner

KAREN STAKEM HORNIG
Deputy Commissioner

SANDRA CASTAGNA
Associate Commissioner
Property and Casualty

200 St. Paul Place, Suite 2700, Baltimore, Maryland 21202
Phone: 410-468-2341 Fax: 410-468-2307
1-800-492-6116 TTY: 1-800-735-2258
www.mdinsurance.state.md.us

BULLETIN 13-09

Date: March 7, 2013

To: All P&C Insurance Companies Writing Policies of Personal, Commercial Property and Commercial Liability Insurance

Re: Draft Proposed Regulations COMAR 31.08.15 – Underwriting Period – Discovery of a Material Risk Factor

The purpose of this Bulletin is to notify all property and casualty insurers writing personal, commercial property and commercial liability insurance in Maryland of the above-referenced draft proposed regulations and to solicit comments from interested parties prior to finalizing and submitting the proposed regulations to the Joint Committee on Administrative, Executive, and Legislative Review (AELR) for review and to the Division of State Documents for publication in the *Maryland Register*. The authority for the regulations can be found in Sections 2-109, 12-106 and 27-614 of the Insurance Article. The regulations are being proposed as a result of changes to Section 12-106 of the Insurance Article which, effective October 1, 2013, allow insurers to recalculate premium during the underwriting period based on the discovery of a material risk factor.

A copy of the draft proposed regulations is attached to this Bulletin. The regulations would define a material risk factor; explain what information must be included in the notice sent to the insured; establish time frames and procedures for the delivery of the notice; and detail the written information that must accompany the insurer's application, policy or binder regarding its ability to cancel the policy or recalculate the premium.

Prior to the issuance of these draft proposed regulations, insurers asked the Maryland Insurance Administration ("the Administration") to consider the following:

- Will there be an exception to the notice requirement for a small increase in premium such as \$2 or \$5?
- Will there be an exception to the notice requirement for certain commercial insureds?
- If the recalculation of the premium results in an increase of \$25 or less, may the insurer waive collection of the additional premium?
- May the notice be included in a revised declarations page that will be sent to the policyholder? If not, may the notice be enclosed with the declarations page?

The answer to the first three questions is no, because the statute does not provide for any exceptions to the requirements that (1) if a material risk factor is discovered, the insurer **shall** recalculate the premium; and (2) an insurer that recalculates the premium **shall** provide a written notice to the insured. *See* Ins. Art. §§ 12-106(d)(2)-(3) (emphasis added). Therefore, an insurer must recalculate the premium, send notice, and charge and collect the additional premium. Please note that any filed rating rules with respect to additional premium waivers are inapplicable to premiums that are recalculated during the underwriting period and should be amended to that effect. The answer to the fourth question is addressed in the draft proposed regulations.

Written comments will be accepted for 30 days from the date of the Bulletin's issuance. All comments should be addressed to Geoffrey Cabin, Director of P & C Rates and Forms at Geoffrey.cabin@maryland.gov. If there are any questions, Mr. Cabin can be reached at 410-468-2310.

Therese M. Goldsmith
Insurance Commissioner

By:  *Signature on original*
Sandra Castagna
Associate Commissioner
Property and Casualty

Title 31 Maryland Insurance Administration

Subtitle 08 Property and Casualty Insurance

Notice of Proposed Action

The Insurance Commissioner proposes to:

- (1) Amend Regulation .06 under **COMAR 31.08.03 Notices of Cancellation, Nonrenewal, Premium Increase, and Reduction in Coverage**; and
- (2) Adopt new Regulations .01 - .03 under new Chapter **COMAR 31.08.15 Underwriting Period – Discovery of Material Risk Factor**.

Statement of Purpose

The purpose of this action is to implement Chapter 253, Acts of 2012 by establishing procedures and requirements for an insurer that is required to provide a notice of recalculated premium following the discovery of a material risk factor during the 45-day underwriting period for a policy or binder of certain types of insurance.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

The proposed action has no economic impact.

Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Katrina Lawhorn, Regulations Coordinator, Maryland Insurance Administration, 200 St. Paul Place, Suite 2700, Baltimore, Maryland 21202, or call 410-468-2450, or email to klawhorn@mdinsurance.state.md.us, or fax to 410-468-2020. Comments will be accepted through....

31.08.03 Notices of Cancellation, Nonrenewal, Premium Increase, and Reduction in Coverage

Authority: Insurance Article, §§2-109 and 27-614, Annotated Code of Maryland

.06 Procedures and Requirements Regarding an Increase in Premium.

A. Scope.

(1) (text unchanged)

(2) This regulation does not apply to an increase in premium due to:

(a) – (k) (text unchanged)

(l) The change or modification of a rating symbol; [or]

(m) The recalculation of a premium by an insurer during the 45-day underwriting period in accordance with Insurance Article, §12-106(d)(2) and (3), Annotated Code of Maryland; or

[(m)] (n) Any other cause for an increase in premium for which the Commissioner waives the notice requirement.

31.08.15 Underwriting Period – Discovery of Material Risk Factor

Authority: Insurance Article, §§2-109 and 12-106, Annotated Code of Maryland

.01 Scope.

This chapter applies only to a binder or policy, other than a renewal policy, of personal insurance, commercial property insurance, or commercial liability insurance.

.02 Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) "Delivery by electronic means" includes:

(a) Delivery to an electronic mail address at which a party has consented to receive notice; and

(b) Posting on an electronic network, together with separate notice to a party directed to the electronic mail address at which the party has consented to receive notice of the posting.

(2) Material Risk Factor.

(a) "Material risk factor" means a risk factor that:

(i) Was incorrectly recorded or not disclosed by the insured in an application for insurance;

(ii) Was in existence on the date of the application; and

(iii) Modifies the premium charged on the policy or binder in accordance with the rates and supplementary rating information filed by the insurer under Insurance Article, Title 11, Subtitle 3, Annotated Code of Maryland.

(b) "Material risk factor" does not include:

(i) Information that constitutes a material misrepresentation; or

(ii) A change initiated by an insured, including any request by the insured that results in a change in coverage, change in deductible, or other change to a policy.

(3) "Personal insurance" means property insurance or casualty insurance issued to an individual, trust, estate, or similar entity that is intended to insure against loss arising principally from the personal, noncommercial activities of the insured.

.03 Discovery of Material Risk Factor During Underwriting Period.

A. A binder or policy is subject to a 45-day underwriting period beginning on the effective date of coverage.

B. If an insurer discovers a material risk factor during the underwriting period, the insurer shall recalculate the premium for the policy or binder based on the material risk factor as long as the risk continues to meet the underwriting standards of the insurer in accordance with the rates and supplementary rating information filed under Insurance Article, Title 11, Subtitle 3, Annotated Code of Maryland.

C. Notice of Recalculated Premium.

(1) An insurer that recalculates a premium under §B of this section shall provide a written notice to the insured on a form approved by the Commissioner that states:

(a) The amount of the recalculated premium;

(b) The reason for the increase or reduction in the premium in accordance with §D of this regulation; and

(c) That the insured has the right to terminate the policy and receive a pro rata refund of any premium paid by notifying the insurer of the termination.

(2) An insurer shall provide the written notice of recalculated premium on a form that is separate from the policy and any other notice.

D. Reason for Increase or Reduction in Premium.

(1) In stating the reason for the increase or reduction in the premium, the insurer shall:

(a) Identify the material risk factor that was discovered during the 45-day underwriting period; and

(b) Explain with specificity why the material risk factor required the premium to be recalculated.

(2) The use of generalized phrases such as “change in prior insurance status,” “change in vehicle symbol,” or “change in protection code” does not meet the requirements of subsection (1) of this section.

E. Delivery of Notice.

(1) An insurer that is required to provide a written notice under §C of this regulation shall send the notice to the policyholder not later than the end of the 45-day underwriting period by:

(a) Certificate of mailing; or

(b) Delivery by electronic means in accordance with Insurance Article, §27-601.2, Annotated Code of Maryland.

(2) An insurer may send the notice required under §C of this regulation to the policyholder with the policy, declarations page, or any other document that the insurer sends to the policyholder.

F. If an insured terminates a policy following receipt of a notice of recalculated premium, the insurer shall refund to the insured any premium paid by the insured on a pro rata basis.

G. At the time of application or when a binder or policy is issued, an insurer shall provide written notice of its ability to cancel a binder or policy or recalculate the premium from the effective date of the policy.

DRAFT