

WES MOORE
Governor

ARUNA MILLER
Lt. Governor



MARIE GRANT
Acting Commissioner

MARY M. KWEI
Associate Commissioner
Market Regulation
& Professional Licensing

200 St. Paul Place, Suite 2700, Baltimore, Maryland 21202
Direct Dial: 410-468-2113 Fax: 410-468-2020
Email: mary.kwei@maryland.gov
1-800-492-6116 TTY: 1-800-735-2258
www.insurance.maryland.gov

BULLETIN 24-24

DATE: October 24, 2024

TO: Property and Casualty Insurers

RE: Permissible Application of Underwriting Standards When Deciding Whether to Cancel, or Refuse to Underwrite or Renew a Risk

The Maryland Insurance Administration (“Administration”) is issuing this Bulletin to reiterate and clarify the Administration’s view as to the permissible application of underwriting standards by property and casualty insurers in deciding whether to cancel, non-renew, or refuse to underwrite a risk. The Administration’s position on this question was previously explained in Bulletin 03-16. This Bulletin is supplemental to Bulletin 03-16; it does not replace or rescind Bulletin 03-16.

As noted in Bulletin 03-16, § 27-501 of the Insurance Article circumscribes an insurer’s ability to decline certain risks or categories of risk, and specifically limits an insurer’s ability to cancel, non-renew, or refuse to issue a policy in certain circumstances. As Bulletin 03-16 stated, “a critical inquiry under § 27-501 is whether the underwriting standard relied upon by an insurer in deciding whether to cancel, refuse to underwrite or renew a risk is reasonably related to the insurer’s economic and business purpose. That is a determination that must be made with reference to the insurer’s filed rating plan.” This statement remains true.

The Administration’s longstanding position is that an insurer may not refuse to underwrite a risk for which it has a filed rate. If an insurer’s rating rule provides a rate for a specific type of risk factor, then the insurer may not reject a risk based on that risk factor. In such a case, the insurer may not apply underwriting guidelines, whether directly or through its agents, that would result in declination or nonrenewal of the risk. If a rating rule does not include a rate for that risk factor, then underwriting guidelines may be the basis for declination or nonrenewal.

The basis for this position is the decision in *Lumbermen’s Mutual Casualty Company v. Ins. Comm’r*, 302 Md. 248 (1985). As stated in *Lumbermen’s*, and referred to in Bulletin 03-16:

[t]he justification for cancellation or nonrenewal set forth in [§ 27-501(a)(2)] . . . does not encompass the situation where the gist of the insurer's complaint is that its filed and approved rating plan, covering the specific situation involved, is inadequate. We do not believe that the Legislature intended that a proceeding under [§ 27-501] could be converted into a rate case.

If the two insurers in these cases desired greater surcharges for insured drivers having more than one traffic violation or accident in a three year period, they could have applied for such modification of their rating plans under ... Or, if the insurers decided that they did not wish to insure such risks, they could similarly have sought to modify their rating plans by deleting this classification of risks.

The Administration has learned that there is some confusion about when a rating rule covers a risk, and when the risk must therefore be underwritten as provided for in the rating rule. If the rating rule lists categories for a rating factor, and the risk falls within one of the categories, then the risk is covered by the rating rule. Risks that are not covered by the rating rules do not have to be accepted, if there is a characteristic for which there is not a rate, and which would result in a denial of coverage or a nonrenewal of a policy under the insurer's underwriting guidelines.

The following examples illustrate this position:

- A homeowners insurer writes policies in Maryland, and has rating factors based on home size, type of construction, ZIP code, and distance to the nearest fire hydrant. The factor for distance to the fire hydrant has categories less than 300 feet, 300 to 900 feet, and over 900 feet. The insurer may not use an underwriting guideline to deny a homeowners policy to an applicant whose house is 1,000 feet from a fire hydrant. The house falls within a category in the filed rating plan: the category for houses over 900 feet from the nearest fire hydrant. The insurer would need to amend the rating rule to cap the distance in order to use that underwriting guideline to refuse to cover the risk.
- A homeowners insurer writes policies in Maryland, and has rating factors based on home size, type of construction, and ZIP code. There is no rating rule based on distance to a fire hydrant. The insurer may apply underwriting guidelines to deny a homeowners policy to an applicant whose house is 1,000 feet from a fire hydrant, and there is no need to revise the filed rating plan.
- A homeowners insurer writes policies in Maryland, and has rating factors based on home size, type of construction, ZIP code, and distance to the nearest fire hydrant. The factor for distance to the fire hydrant has categories less than 300 feet, 300 to 900 feet, and over 900 feet; however, the underwriting guidelines deny coverage for frame houses that are greater than 900 feet from a fire hydrant. A denial based upon this underwriting guideline would violate Maryland law, as the categories of "frame house" and "over 900 feet" are both contemplated in the filing, and there is a calculable rate for this risk. The insurer should make a supplementary filing to clarify its rating rule.

- A private passenger automobile insurer writes policies in Maryland, and has rating factors based on rating symbols and cost of the vehicle. The insurer may apply underwriting guidelines to deny a policy to an applicant whose vehicle does not have a rating symbol. This denial is legitimate, because there is no rate listed for “no rating symbol” in the insurer’s filed rates.

Insurers are required to file actuarially sound, adequate rates. If a risk falls within a category included in a filed rating plan, then the rate should be adequate to cover the risk. If a rate is not adequate to cover a risk, then the risk should not be included in the rating rules. Supplementary rate information should be filed pursuant to § 11-307 as necessary. The Administration does not require a list of risks that are excluded, although there may be situations in which that is the clearest way to delineate the risks included in the rate. The Administration further notes that, pursuant to § 27-501(g), an insurer will bear the burden of persuasion to show that a cancellation, non-renewal, or refusal to underwrite a policy is justified at any hearing to determine whether § 27-501 has been violated.

Rates and underwriting rules must comply with other requirements of the Insurance Article as well as complying with the requirements described in this Bulletin. This includes compliance with section § 27-613 (c) (3) (vii) of the Insurance Article that if a timely protest is filed by the insured, the insurer must maintain the current insurance in effect until a final determination is made by the Commissioner.

MARIE GRANT
Acting Commissioner

signature on original

By: _____

Mary M. Kwei
Associate Commissioner
Market Regulation & Professional Licensing