

October 13, 2025

Attn: Kathryn Callahan
Director of Regulatory Policy
Maryland Insurance Administration
200 St. Paul Place, Suite 2700
Baltimore, MD 21202

Via email: Kathryn.callahan1@maryland.gov

RE: Draft Bulletin: "Applicability of §27-501(n)(2) to Commercial Insurance Policies"

Dear Ms. Hatchette:

APCIA appreciates the opportunity to provide comments to the Maryland Insurance Administration (MIA) on draft Bulletin 25-XX, "Applicability of §27-501(n)(2) to Commercial Insurance Policies" (the "Bulletin"). The American Property Casualty Insurance Association (APCIA) is a national trade organization whose members write approximately 76% of the commercial lines market in Maryland. We support a modern, effective system of insurance regulation, one that fosters a vibrant, competitive insurance market that protects insurers and guards against unnecessary system costs. It is in this spirit that we offer the following comments and concerns.

The Bulletin states that the Administration is aware of its "unofficial position" interpreting §27-501(n)(2) to apply only to private passenger automobile and homeowners insurance, and that this is an incorrect interpretation of the law.

The Bulletin further states that as a general matter, §27-501 applies to property & casualty insurers of all types and lines, including commercial insurers. The Bulletin notes that some paragraphs of §27-501 are limited to certain lines of insurance. However, the statutory provision at issue does not limit its application to insurers of any particular types or lines.

As an initial matter, APCIA respectfully disagrees with the assertion that the MIA's longstanding position regarding the interpretation of §27-501(n)(2) is "unofficial," and that this Bulletin is merely a clarification of the MIA's plain-language interpretation of the statute. Indeed, on June 10, 2002, the MIA issued a letter concluding that the General Assembly did not intend to require insurers to provide a "use of claims history" disclosure notice in commercial lines policies. Associate Commissioner Robert Becker signed this letter, with copies to Commissioner Larsen, yourself, and other senior MIA staff. This proposed reversal of the MIA's longstanding position hardly seems like a clarification, as we do not believe that there has been any confusion among insurers over the applicability of this statute for the past 23 years.

Regarding the substance of the Bulletin, APCIA believes that "use of claims history" notices are not needed for commercial insurers. Commercial insureds know that insurers can and do use the policyholder's claims history for the purposes of canceling or refusing to renew coverage. In fact, we would be quite surprised if there are any insurers that do not use claims history when evaluating

cancellations or renewals. This requirement will therefore result in redundant notices that commercial policyholders will not read.

The Bulletin, however, seems to suggest that a disclosure notice would not satisfy the MIA. The Bulletin states that any insurer that considers claims history for the purposes of canceling or refusing to renew coverage is required to “ensure that its **forms provide disclosure** of this practice at the inception of the policy and at each renewal. Insurers with **forms that do not provide this disclosure** are directed to **update their forms** accordingly (emphasis added).” As you know, a notice is different than a form. A notice is not part of the policy contract; in contrast, policy forms comprise the contract and must be filed. We believe that the MIA does not intend to require insurers to amend and refile their policy forms for approval.

However, even if the MIA agrees that insurers could provide this information via a separate policyholder notice, this requirement will result in unnecessary work for the MIA. Today, insurers may satisfy the “use of claims history” notice requirement by using the form developed pursuant to COMAR 31.08.18.02. The MIA clearly promulgated this form for homeowners insurance, in collaboration with the insurance industry. If the MIA continues to take the position that §27-501(n)(2) applies to commercial lines, this form will need to be revised.

Regardless of whether policy forms must be amended and filed, or whether insurers must issue a new commercial policyholder notice, insurers will bear significant costs to comply with this requirement. Ultimately, these costs will be passed along to commercial policyholders.

Finally, existing law (MD Code, Insurance, §27-605) requires the carrier to provide the commercial policyholder with the reason for the cancellation/nonrenewal, in clear and specific language. If the reason for either action is the policyholder’s claims history, the insured will be notified at the time of the cancellation/nonrenewal.

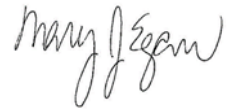
For these reasons, we respectfully oppose the MIA’s position that §27-501(n)(2) applies to commercial lines.

If, however, the MIA insists on proceeding with its new statutory interpretation, we respectfully request that the MIA exclude workers’ compensation insurance from the scope of the “use of claims history” notice requirement. Including workers’ compensation in this requirement would be especially illogical. The experience modification system is a foundational element underpinning the underwriting of workers’ compensation. Experience modifiers look at a company’s individual loss history compared to the industry average for that type of employment, and employers are keenly aware of this system. Therefore, a “use of claims history” notice to workers’ compensation policyholders would be redundant and unnecessary.

Finally, if the MIA ultimately elects to pursue its new interpretation of §27-501(n)(2), we respectfully request that the MIA provide ample time so that insurers can implement these changes, and to allow the MIA enough time to create a commercial lines notice of claims history form, akin to the homeowners insurance form developed pursuant to COMAR 31.08.18.02. We therefore recommend that such a change become effective to policies issued or renewed at least 12 months after the effective date of the Bulletin.

Thank you for considering our comments and suggestions. We look forward to continuing discussions with you on this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Nancy J. Egan".

Nancy J. Egan,
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