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BULLETIN 14-19

Date: June 24, 2014

To: All Property & Casualty Insurance Companies

Re: COMAR 31.08.13 – Application of a Percentage Deductible in the Case of a Hurricane or Other Storm

The purpose of this Bulletin is to provide guidance and answer questions that have been posed to the Maryland Insurance Administration (the Administration) by property and casualty insurers related to Section 19-209 of the Insurance Article and COMAR 31.08.13 – Application of a Percentage Deductible in the Case of a Hurricane or Other Storm.

A complete copy of COMAR 31.08.13 is attached to this Bulletin.

COMAR 31.08.13.02B provides that chapter 31.08.13 applies only to a policy of homeowner's insurance issued under an underwriting standard that requires the policy to include a percentage deductible. An underwriting standard "requires" a policy to include a percentage deductible when the insurer imposes the percentage deductible as a condition of issuing the policy. An underwriting standard does not "require" a percentage deductible when an insurer provides an applicant or insured with a choice of a flat dollar amount deductible or a percentage deductible and the applicant or insured selects the percentage deductible.

For questions 1 through 3 below, the following facts apply:

- The insured residential property is a single family, owner-occupied home located in County A.
- The residential property is insured under a homeowner's policy of insurance.
- The loss occurs during the time frame set forth in COMAR 31.08.13.04A.
- The annual statement was provided in compliance with COMAR 31.08.13.06.

Question 1: If the insurer required a 3% hurricane percentage deductible, the insured chose an optional 1% all perils percentage deductible, County A was not subject to a hurricane warning, and the insured residential property sustained a loss from a wind storm attributable to the hurricane, may the insurer apply the 1% optional all perils percentage deductible to the loss?

Response 1: Yes. Under this scenario, the company would be able to apply the optional 1% all perils percentage deductible because it was not required by the insurer. The company may not apply the 3% hurricane percentage deductible because it was required by the insurer and there was no hurricane warning in effect for County A where the insured residential property is located.

Question 2: If the insurer required a 1% all perils percentage deductible and a 3% hurricane percentage deductible, County A was not subject to the hurricane warning, and the insured residential property sustained a loss from the wind storm attributable to the hurricane, may the insurer apply the 1% required all perils percentage deductible to the loss?

Response 2: No. Under this scenario, the insurer cannot apply either the 1% all perils percentage deductible or the 3% hurricane percentage deductible to the loss because both the all perils and hurricane percentage deductibles were required, and there was no hurricane warning in effect for County A where the insured residential property is located. Section 19-209(b) of the Insurance Article and COMAR 31.08.13 apply to all required percentage deductibles in a homeowner's policy for a hurricane or other storm.

Question 3: If the insurer required a 1% all perils percentage deductible and a 5% hurricane percentage deductible, County A *was* subject to a hurricane warning, and the insured residential property sustained a loss from the wind storm attributable to the hurricane, may the insurer apply both deductibles? If only one, which one and why?

Response 3: No, the insurer may not apply both deductibles. The insurer may apply one or the other of the required percentage deductibles because there was a hurricane warning in effect for County A where the insured residential property is located. The terms of the policy should be written sufficiently clearly and explicitly to determine which of the two deductibles applies. If an insurer were permitted to apply both deductibles, the company effectively would be requiring a 6% percentage deductible for damages sustained from a single peril, which would conflict with the terms of the approved policy form and may conflict with the filed underwriting standard or rates/rules.

Question 4: Is the annual statement required under COMAR 31.08.13.06 applicable only to hurricane percentage deductibles required by the insurer, or does it also apply to required all perils percentage deductibles, optional hurricane percentage deductibles, and optional all perils percentage deductibles?

Response 4: If an insurer requires a percentage deductible in the case of a hurricane or other storm, the annual statement is required, regardless of what label the insurer attaches to the required percentage deductible.

Question 5: If the insurer requires two different percentage deductibles, one for all perils and one for hurricanes, does the insurer need to provide one or two annual statements as required under COMAR 31.08.13.06?

Response 5: If the insurer requires both a hurricane percentage deductible and an all perils percentage deductible, only one annual statement that addresses both percentage deductibles would be required.

Question 6: Do §19-209 of the Insurance Article and COMAR 31.08.13 apply to all required percentage deductibles, or just hurricane percentage deductibles?

Response 6: Section 19-209 of the Insurance Article and COMAR 31.08.13 apply to all required percentage deductibles that, under the terms of the policy, could apply in the case of a hurricane or other storm, including any all perils deductibles that could apply in the case of a hurricane or other storm.

Question 7: If the insurer has filed and received approval for an underwriting standard that requires the application of a percentage deductible for perils other than a hurricane, such as tornadoes or winter storms, under what circumstances can the insurer apply those percentage deductibles?

Response 7: Tornadoes and winter storms are “other storms”; therefore, the required percentage deductibles only can be applied when there is a hurricane warning in effect for any part of the State where the insured’s residential property is located.

Question 8: If a required hurricane percentage deductible cannot be applied, would another deductible apply?

Response 8: If the policy were issued with an all perils flat dollar amount deductible, or an optional all perils percentage deductible, either of those deductibles may be applied.

Question 9: Do the regulations require the storm that is the subject of a hurricane warning issued by the National Hurricane Center of the National Weather Service to have sustained hurricane-force winds measured somewhere in Maryland before a required percentage deductible can be applied?

Response 9: No. COMAR 31.08.13 requires that a hurricane warning be issued for the part of the State where the insured’s residential property is located before a required percentage deductible can be applied in the case of a hurricane or other storm.

Question 10: When will insurers be required to send the annual statements required by COMAR 31.08.13.06?

Response 10: Insurers have been required to send annual statements in accordance with Section 19-209(c) of the Insurance Article and to file them with the Commissioner for review prior to sending them since 2009. COMAR 31.08.13.06 formally establishes the information the Administration expects to be in those statements. The companies should review the forms that have already been filed and approved to determine if any changes are required. If so, the forms should be filed as soon as possible to comply with the regulations.

These questions and answers are not exhaustive. Any complaints regarding the issuance of an annual statement or the application of a percentage deductible after a loss occurs will be considered on a case by case basis after a review of all facts specific to the complaint.

Any questions or comments regarding annual statement filing requirements under Insurance Article § 19-209(c) and COMAR 31.08.13.06 should be addressed to Geoffrey Cabin, Director of Property & Casualty Rates and Forms, at Geoffrey.cabin@maryland.gov or 410-468-2310.

**Therese M. Goldsmith
Insurance Commissioner**

Signature on original

By:

**Sandra Castagna
Associate Commissioner
Property and Casualty**

Title 31
MARYLAND INSURANCE ADMINISTRATION
Subtitle 08 PROPERTY AND CASUALTY INSURANCE
Chapter 13 Application of a Percentage Deductible in the Case of a Hurricane or Other Storm

Authority: Insurance Article, §§2-109 and 19-209, Annotated Code of Maryland

.01 Purpose.

The purpose of this chapter is to implement Insurance Article, §19-209, Annotated Code of Maryland.

.02 Applicability.

A. This chapter applies to all property and casualty insurers authorized to write homeowner's insurance policies in Maryland.

B. This chapter applies only to a policy of homeowner's insurance issued under an underwriting standard that requires the policy to include a percentage deductible.

.03 Definitions.

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

B. Terms Defined.

(1) County.

(a) "County" means a county of the State.

(b) "County" includes Baltimore City.

(2) "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.

(3) Homeowner's Insurance.

(a) "Homeowner's insurance" means insurance for residential property that provides one or more of the following coverages:

(i) Fire;

(ii) Extended coverage;

(iii) Vandalism and malicious mischief;

(iv) Burglary;

(v) Theft; or

(vi) Personal liability.

(b) "Homeowner's insurance" does not include:

(i) An umbrella policy; or

(ii) Property insurance or casualty insurance issued to an individual, a sole proprietor, partnership, corporation, limited liability company, or similar entity and intended to insure against loss arising from the business pursuits of the insured entity.

(4) "Hurricane warning" means a warning by the National Hurricane Center of the National Weather Service that hurricane conditions are expected in any part of the State.

(5) "National Hurricane Center of the National Weather Service" includes:

(a) The National Hurricane Center in Miami, Florida; and

(b) A regional National Weather Service Forecast Office covering any part of the State.

(6) "Other storm" includes:

(a) A hail storm;

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- (b) A snow storm;
- (c) A thunderstorm;
- (d) A tornado; and
- (e) A wind storm.

(7) “Part of the State” means the county in which the residential property is located.

(8) “Percentage deductible” means a deductible equal to a percentage of the Coverage A — Dwelling Limit of a homeowner’s insurance policy in the case of a hurricane or other storm.

(9) Residential Property.

(a) “Residential property” means property that is used primarily as a residence.

(b) “Residential property” includes:

- (i) A residence written on a personal farmowner’s policy form;
- (ii) A condominium unit;
- (iii) A mobile home; and

(iv) A multiunit building if one of the units is occupied by the owner of the building and not more than three units are occupied by tenants.

(c) “Residential property” does not include a boat.

(10) “Underwriting standards” means:

(a) Underwriting manuals, including any amendments or supplements to underwriting manuals; and

(b) The generally accepted practices of an insurer contained in written underwriting instructions, guidelines, and rules that the insurer provides for use by its underwriters and insurance producers as standards for acceptance of risk.

.04 Application of a Percentage Deductible.

A. An insurer may apply a percentage deductible to a claim for a covered loss under a homeowner’s insurance policy if the covered loss was sustained while a hurricane warning was in effect, or within 24 hours following termination of the last hurricane warning issued, for any part of the State in which the residential property is located.

B. An insurer may apply a percentage deductible that exceeds 5 percent to a claim for a covered loss under a homeowner’s insurance policy if, in addition to satisfying the requirement of §A of this regulation, the Commissioner has approved the insurer’s underwriting standard that requires the percentage deductible that exceeds 5 percent.

.05 Underwriting Standard.

A. An insurer may not adopt or amend an underwriting standard that requires a percentage deductible that exceeds 5 percent unless the insurer has:

- (1) Filed the underwriting standard or the amendment to the underwriting standard with the Commissioner; and
- (2) Obtained from the Commissioner approval for the adoption or amendment of the underwriting standard.

B. If an insurer withdraws an underwriting standard that requires a percentage deductible that exceeds 5 percent, the insurer shall notify the Commissioner in writing within 10 days of the withdrawal.

C. An insurer that makes a filing under §A of this regulation shall include the following information in the filing:

- (1) The insurer’s NAIC number;
- (2) A copy of the underwriting standard the insurer proposes to adopt, the amendment to an underwriting standard currently in use, or notice of withdrawal of an underwriting standard currently in use;
- (3) The date on which the insurer intends to adopt, amend, or withdraw the underwriting standard;
- (4) All of the data on which the insurer relied in developing the proposed underwriting standard, amendment to the underwriting standard, or withdrawal of the underwriting standard;

(5) A copy of each page in the insurer's rating manual that relates to the underwriting standard;

(6) A copy of any underwriting standard with a percentage deductible currently in use by the insurer for homeowner's insurance, including any SERFF tracking number associated with the underwriting standard, or a statement that the insurer does not currently have an underwriting standard with a percentage deductible for homeowner's insurance; and

(7) Any other information the Commissioner considers necessary.

D. The Commissioner may disapprove a filing submitted under §A of this regulation without further review if the filing does not contain the information required by §B of this regulation.

E. If an insurer receives a request for additional information from the Commissioner, under §B(7) of this regulation, the insurer shall provide the requested information:

(1) Within the time specified by the Commissioner, unless an extension has been granted by the Commissioner; and

(2) In the manner specified by the Commissioner.

F. The Commissioner has 60 days from the date on which a filing that is required by §A of this regulation is received to review the filing and to approve or disapprove the filing.

G. Notwithstanding §E of this regulation, a request for additional information made by the Commissioner under §B(7) of this regulation tolls the 60-day waiting period until the Commissioner receives the additional information.

H. During the 60-day waiting period the Commissioner may extend the waiting period up to an additional 60 days, by written notice to the insurer.

I. An insurer may not adopt, amend, or withdraw an underwriting standard that requires the Commissioner's approval under this regulation until:

(1) The Commissioner approves the adoption, amendment, or withdrawal of the underwriting standard in writing; or

(2) If the Commissioner has not approved or disapproved the adoption, amendment, or withdrawal of the underwriting standard, the expiration of the waiting period and any extension of the waiting period.

J. A filing is deemed approved unless disapproved by the Commissioner in writing during the waiting period.

.06 Annual Statement.

A. An insurer that has adopted an underwriting standard that seeks to apply a percentage deductible shall provide an annual statement to each policyholder explaining the manner in which the percentage deductible is applied.

B. An insurer shall file a copy of the form of its annual statement with the Commissioner at least 60 days before its use.

C. If an insurer makes any amendments to its annual statement, it shall file an amended version of the annual statement with the Commissioner at least 60 days before its use.

D. Approval by the Commissioner of the annual statement constitutes a waiver of any unexpired part of the 60-day waiting period.

E. The Commissioner may extend the initial 60-day waiting period up to an additional 60 days if the Commissioner gives notice of the extension before the initial waiting period ends.

F. The annual statement is deemed approved unless the Commissioner affirmatively approves or disapproves it before the end of the initial 60-day waiting period or any extended waiting period.

G. At any time, the Commissioner may withdraw approval of an annual statement, if the Commissioner:

(1) Gives prior notice of the withdrawal; and

(2) States the effective date of the withdrawal in the notice.

H. The annual statement shall:

(1) Be provided to a policyholder on a separate form;

(2) Be provided to a policyholder by:

(a) First-class mail; or

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

(3) Be clear and specific;

(4) State that the percentage deductible will be applied to a covered loss if:

(a) The residential property is located in any part of the State for which a hurricane warning has been issued by the National Hurricane Center of the National Weather Service; and

(b) The covered loss was sustained while a hurricane warning was in effect, or within 24 hours following termination of the last hurricane warning issued, for any part of the State in which the residential property is located; and

(5) Include the following statement or a substantially similar statement:

Your homeowner's insurance policy contains a percentage deductible, which means that your deductible for a covered loss will be determined by multiplying the dollar amount of your Coverage A — Dwelling Limit of Liability by this percentage under the following circumstances: [insert explanation of circumstances under which a percentage deductible would be applied].

The examples below are for illustrative purposes only.

If, at the time of a covered loss, a homeowner's insurance policy's Coverage A — Dwelling Limit of Liability is \$300,000 and the policy includes a 2% deductible, the policyholder will be responsible for paying a deductible of \$6,000 on a claim for a covered loss (\$300,000 x 2%). This means that, for example:

If the covered loss to the dwelling is \$25,000 and the covered loss to personal property is \$10,000 for a total covered loss amount of \$35,000, the policyholder is responsible for paying a \$6,000 deductible and the insurer is responsible for the balance of the covered loss, or \$29,000.

If the covered loss to the dwelling is \$5,000, the policyholder is responsible for paying the entire covered loss because the total amount of the covered loss is less than the percentage deductible, which is \$6,000.

Please review your homeowner's insurance policy to determine your percentage deductible, your Coverage A — Dwelling Limit of Liability, and under what circumstances this percentage deductible will be applied.

I. An insurer may mail the annual statement that is required by this regulation with the annual summary statement that is required by Insurance Article, §19-205, Annotated Code of Maryland.

Administrative History

Effective date: June 23, 2014 (41:12 Md. R. 669)