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CALIFORNIA INSURANCE COMMISSIONER

BULLETIN 2024-14

TO: **All Admitted Property and Casualty Insurers subject to the provisions of Proposition 103 and the California FAIR Plan, where applicable**

FROM: **Insurance Commissioner Ricardo Lara**

DATE: **November 25, 2024**

RE: **Compliance with various provisions of Proposition 103**

Property and casualty insurers subject to the provisions of Proposition 103 in California are required to submit complete rate applications to the California Insurance Commissioner for review and approval before implementing any change to existing rates.[1] A complete rate application consists of data prescribed by statutes and regulations[2] as well as "such other information as the commissioner may require."[3] A comprehensive description of "such other information" required by the Commissioner in a complete rate application for purposes of Proposition 103, including the rate filing instructions as well as required exhibits, templates, checklists, and questionnaires, is publicly maintained and periodically updated on the Department's website.[4]

This Bulletin addresses several issues that have recently arisen with respect to insurer compliance with various provisions of Proposition 103. These issues include the obligation of insurers seeking rate changes to provide *all information* required by the Commissioner to conduct a thorough and complete review of an insurer's proposed rate change.[5]

I. Requirement to Offer the Lowest Premium for which an Applicant or Insured Qualifies

This section of the Bulletin addresses insurer compliance with the requirement under Proposition 103 that insurers must offer all applicants and insureds the lowest premium for which they qualify.[6]

Proposition 103 requires that an admitted property/casualty insurer in California maintain separate eligibility guidelines for every line of insurance offered for sale to the public.[7] "Eligibility guidelines" mean specific, objective criteria defined by the insurer and which have a substantial relationship to an insured's loss exposure.[8] An insured or applicant who meets the insurer's eligibility guidelines shall qualify to

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[1] Cal. Ins. Code, §§ 1861.02, subd. (c), 1861.05, subd. (b).
[2] Cal. Ins. Code, §1861.05, subd. (b); see also, Cal. Ins. Code, §§ 1857.7, 1857.9, & 1864; Cal. Code Regs., tit. 10, §§ 2641.1-2643.8, 2644.1-2644.28.
[3] Cal. Ins. Code, §1861.05, subd. (b).
[4] See https://www.insurance.ca.gov/0250-insurers/0800-rate-filings/0200-prior-approval-factors/.
[5] *All information,* as used herein, includes that information which is required by the Commissioner pursuant to Cal. Ins. Code § 1861.05(b), 10 Cal. Code Regs. §§ 2644.1 et seq., rate filing instructions, questionnaires, and bulletins.
[6] Cal. Code Regs., tit. 10, §§ 2360.3, 2360.4.
[7] Cal. Ins. Code, § 1861.05; Cal. Code Regs., tit. 10, §§ 2360.0(b), 2360.2, 2360.3, and 2360.4.
[8] Cal. Code Regs., tit. 10, § 2360.0, subd. (b).

purchase the insurance.[9] An insurer is required to charge each insured, on application or renewal, the lowest premium for which the insured qualifies.[10]

If an insurer delegates this responsibility to an agent, the insurer – not the agent or the insured – remains responsible for ensuring the applicant is offered the lowest premium for which the applicant qualifies.[11] This provision applies where the same insurer underwrites multiple programs offered for sale through different managing general agents.[12] In order to charge all applicants and renewing policyholders the lowest premium for which they qualify, the insurer must ensure that its agents offer all of the insurer's current products, coverages, and pricing options to all eligible applicants, for both new and renewal business, regardless of which managing general agent or other marketing distribution system the applicant or policyholder approaches.[13]

An insurer that fails to inform all applicants and renewing policyholders of all of their eligible coverage and pricing options, does not comply with the requirement that it offer customers the lowest premiums for which they qualify, and thus, may be subject to administrative enforcement actions under Proposition 103.

II. Public notice of requested rate changes in successive or amended prior approval rate filings

This section of the Bulletin addresses the potential implications of an insurer submitting a subsequent prior approval rate application while a previously filed rate application for the same line, program, or product remains under review by the Department, or when a recently approved rate change for such line, program or product is not yet in effect.

Proposition 103 requires the Department to notify the public of any application for a rate change by an insurer. If a proposed rate change exceeds 7% of "the then applicable rate" for personal lines or 15% for commercial lines, the Commissioner may be required to hold a rate hearing upon timely request by a consumer or their representative. The amount of the rate change request is determined as of the date the insurer submits the complete rate application to the Department, not the date the rate change may ultimately be approved and/or be implemented.[14]

When an insurer submits, and the Department receives, a subsequent prior approval rate application for the same line, program or product before a previously requested rate change for such line, program or product has been approved or taken effect, the Department is required to provide public notice of the aggregate rate change request for the pending and subsequent rate change application calculated as of the date the subsequent rate application is received by the Department. If an insurer submits a subsequent rate application that does not indicate the aggregate amount of rate change requested because it does not include the increase requested in a previously submitted rate application that remains under review by the Department or a previously approved rate change that is not yet in effect, the Department will provide public notice of the aggregate proposed rate change in relation to the then applicable rate in effect for that line, program, or product, as of the date the subsequent rate application is received by the Department.

In this circumstance, the public notice by the Department for the subsequent rate application will reflect the aggregate rate change requested (or approved but not yet implemented) in the initial rate application and the subsequent rate application in relation to the rate then in effect for that line, program, or product. If the aggregate total rate change requested is greater than 7% for personal lines or 15% for commercial

[9] Cal. Code Regs., tit. 10, § 2360.2.
[10] Cal. Code Regs., tit. 10, §§ 2360.3, 2360.4.
[11] Cal. Code Regs., tit. 10, § 2360.4.
[12] Cal. Ins. Code, § 769.85, subd. (c).
[13] Cal. Code Regs., tit. 10, §§ 2360.0(b), 2360.2, 2360.3, and 2360.4.
[14] Cal. Ins. Code section 1861.05, subd. (c).

lines, the aggregate requested rate increase may require the Commissioner to hold a rate hearing upon timely request by a consumer or their representative. Alternatively, because the Commissioner requires insurers to accurately identify the overall rate change requested as part of a complete rate application, the Department may reject the subsequent rate application at intake as incomplete.[15]

Relatedly, when an insurer supplements or amends its data in a pending rate filing and increases its overall requested rate change, the Department may be required to provide new public notice of the adjusted rate request, calculated in relation to the rate then in effect as of the date the filing was originally received by the Department.

III. Requirement to Obtain Prior Approval of Intervenor Award Recoupment

This section of the Bulletin addresses insurers' recoupment of Proposition 103 intervenor fees awarded by the Commissioner.

10 CCR Section 2662.6(d) provides:

> Any award paid by an applicant pursuant to this article shall be allowed by the Insurance Commissioner as an expense for the purpose of establishing rates of the applicant as a dollar-for-dollar adjustment to rates approved by the Insurance Commissioner immediately on a determination of the amount of the award so that the amount of the award shall be fully recovered within two years from the date of the award.

This provision permits intervenor awards to be recouped as an expense of the applicant expressly "for the purpose of "establishing rates" and "as a dollar-for-dollar adjustment to rates." Insurance Code section 1861.05 prohibits any rates from being changed without prior approval. Therefore, an applicant must obtain prior approval through an additional rate application prior to charging its customers a temporary supplemental fee or assessing any fee to recoup intervenor awards.

Accordingly, all insurers are directed to obtain the Commissioner's prior approval for any charge, fee, or rate change instituted to recoup an intervenor award. Insurers must also report recouped intervenor fees as expenses in the insurers' financial statement.

IV. Requirement to Disclose Credit Card Fees

This section of the bulletin addresses whether property and casualty insurers are required to disclose all fees, premiums, and other amounts paid by policyholders in connection with receiving insurance coverage, including credit card convenience fees, and documentation regarding same, as part of a complete rate application.[16] A "credit card convenience fee" or "credit card fee" is a fee charged to a new or renewing policyholder who chooses to pay premiums by credit card.

Any insurance company charging or intending to charge credit card convenience fees is required to disclose all such fees as part of a complete rate application and obtain the prior approval of the Department before charging such fees.[17] The Commissioner requires insurers to file all fees charged to applicants and renewing policyholders in connection with paying premiums and receiving insurance coverage, along with any and all relevant documentation in support of such fees, in order for the Department to review all such fees to determine whether there is any rate impact.[18]

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[15] Cal. Code Regs., tit. 10, § 2648.2.
[16] Bulletin No. 79-6, dated August 6, 1979, concerning the use of credit cards to pay premiums, is expressly superseded by this Bulletin.
[17] Cal. Ins. Code, §1861.05, subd. (b); see also, Cal. Ins. Code, §§ 1857.7, 1857.9, & 1864; Cal. Code Regs., tit. 10, §§ 2641.1-2643.8, 2644.1-2644.28, 2648.4.
[18] See https://www.insurance.ca.gov/0250-insurers/0800-rate-filings/0200-prior-approval-factors/.

This disclosure obligation is the same regardless of whether the insurer believes the fee(s) may have any actual rate impact.[19] If an insurer has entered into an agreement with a third-party vendor to collect and process any credit card convenience fees, the Commissioner requires that the insurer publicly file an unredacted version of the agreement as part of a complete rate application, so the Department may review to determine whether there is any rate impact as a result of the credit card convenience fee.[20]

V. 10 CCR 2644.12 Defines Distribution Systems for Purposes of the Efficiency Standard and the Department's Annual Insurance Marketing System Survey

For purposes of an insurer's efficiency standard as it pertains to rate applications, 10 CCR section 2644.12 controls.

10 CCR section 2644.12(b) states, in relevant part:

> (b) The efficiency standard shall be set separately for each insurance line, and separately for insurers distributing through independent agents and brokers, through exclusive agents, and through employees of the insurer selling insurance on a direct basis.

For purposes of the Department's annual Marketing System Survey, the Department has interpreted the provisions of 10 CCR section 2644.12(b) as follows:

> An "Insurance Marketing System" is a method of producing or selling insurance. For this survey, Marketing Systems are defined as follows:
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> (1) Captive Agents – defined as policies sold through a company's, or an affiliated company's, exclusive agents on a commission basis. Factors that the Department considers when determining whether a company's marketing system is captive include whether: the agents pay their own business expenses; the agents represent only one company or group of affiliated companies; the company pays commissions to these agents in the range of approximately 5 to 15% of these sales; and the agent has any equity interest in the policies they sell.
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> (2) Direct Writers – defined as policies sold directly to the public by mail, telephone, internet, mobile application, or by the insurance company's employees and/or employees of an affiliated insurance company. Factors that the Department considers when determining whether a company's marketing system is direct include whether: the company sells policies directly through a website on the internet or mobile application; and the company pays minimal commissions (approximately 1 to 3% or less) on these sales.
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> (3) Independent Agents/Brokers – defined as policies sold through independent agents/brokers; Factors that the Department considers when determining whether a company's marketing system is independent include whether: the agents/brokers pay their own business expenses; the agent/brokers own their renewal business; the agents/ brokers represent several insurance companies; and/or the company pays more than minimal commissions (approximately 18% or higher) to these agents/brokers on these sales.[21]

Note, for purposes of an insurer's efficiency standard as it pertains to rate applications and the Department's annual Marketing System Survey, an insurer may not rely upon 10 CCR section

[19] See Bulletin 2023-7.
[20] Cal. Ins. Code, §§ 1861.05, subd. (b), 1861.07.
[21] See California Marketing System Cover Letter (January 2024): https://www.insurance.ca.gov/0250-insurers/0300-insurers/0100-applications/rsb-forms/2023/upload/CAMktSysSvy2023CoverLetter.pdf.

2360.0(e).[22] On its face, 10 CCR section 2360(e) is limited to Article 7.2. *Objective Guidelines for Rating; Lowest Rates; Rates Charged by Insurers Which Are Members of a Group; Documentation; Upgrades* (10 CCR sections 2360.0 to 2361) and therefore has no application to Article 4 *Determination of Reasonable Rates* (inclusive of 10 CCR section 2644.12).

VI. Classification of Group Insurance Plans; Portable Electronics Insurance Must Have a Defined Term and Vendors Cannot Charge Commissions to Consumers.

A group insurance plan is an insurance plan issued to a company or organization that covers its employees or members as individual certificate holders under the company or organization's master policy. Examples of group insurance plans include portable electronics insurance, legal service plans, or pet insurance plans, but this is not an exhaustive list. Because commercial lines and personal lines involve different rating factors, it is important to classify the insurance product in an appropriate manner. For example, it might be appropriate to classify a group insurance plan as a commercial line where it covers issues that may arise out of or relate to the master policyholder's business or organizational pursuits. It might be appropriate to classify a group insurance plan as a personal line where it covers issues that may arise out of or relate to the individual certificate holder's personal pursuits.

Portable electronics insurance plans must specify defined policy periods for initial and renewal terms.[23] An open-ended, undefined policy term or "continuous coverage" is not appropriate. Automatic renewal for a defined policy term is permissible. Portable electronics insurance vendors or licensees may not charge a commission to the consumer.[24] The insurer and vendor or licensee may make separate arrangements that do not impact the premium charged to the consumer.

VII. Mitigation Disclosures Must Identify the Premium Reduction Associated with Each Mandatory Mitigation Measure Completed by the Insured

10 CCR section 2644.9(k)(3)(B) states, in relevant part:

> Whenever a wildfire risk score, or other wildfire risk classification used by the insurer to segment, create a risk differential or surcharge the premium for a particular policyholder or applicant, is identified or provided to the policyholder or applicant pursuant to subdivision (h) of this section, the insurer shall also provide in writing:
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> (3) A detailed written explanation of why the policyholder or applicant received the assigned score or classification; the explanation shall make specific reference to the features of the property in question that influenced the assignment of the score or classification.
> The insurer shall provide, in addition, the following information:
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> (B) The amount of premium reduction the policyholder or applicant would realize as a result of performing each such measure under the insurer's rating plan that is in effect at the time.

Based on the foregoing, 10 CCR 2644.9(k)(3)(B) requires that the insurer: (1) state the dollar impact of the wildfire model on each policyholder's premiums, and (2) provide the amount of premium reduction the policyholder would realize as a result of performing mitigation measures the policyholder can take to

[22] (e) An "Insurance Marketing System" is a method of producing or selling insurance. **For purposes of this Article** there are only three types of Insurance Marketing Systems: (1) marketing through exclusive or captive agents; (2) marketing through independent agents and brokers; and (3) direct marketing by an insurer or non-agent employee of an insurer. (Emphasis added).
[23] Cal. Ins. Code §§ 381(e); 676.5.
[24] Cal Ins. Code § 1758.661.

lower their wildfire risk score or classification. Accordingly, a disclosure that does not specifically and separately identify the premium reduction associated with completion of each mitigation measure does not comply with the regulation. Any insurer that is currently out-of-compliance with the guidance provided in this bulletin must revise its disclosures accordingly within six months of the date of this bulletin.

Inquiries regarding this bulletin may be directed to: REBPublicInquiries@insurance.ca.gov