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BULLETIN 2011-09

To: Insurance Producers and Insurance Companies Soliciting, Negotiating, Selling or Servicing Private Passenger Automobile or Homeowners Insurance Policies in Massachusetts

From: Joseph G. Murphy, Commissioner of Insurance

Date: May 19, 2011

Re: Filing Requirements and Procedures for Private Passenger Motor Vehicle and Homeowners Insurance Group Marketing Plans Pursuant to M.G.L. c. 175, § 193R

This Bulletin informs insurers and insurance company groups ("insurance companies") as well as insurance producers who sell or service private passenger motor vehicle or homeowners insurance policies about the filing requirements and procedures related to group marketing plans. This Bulletin replaces Bulletin 2007-13, which has been withdrawn. It provides guidance to prevent abuses in connection with the sale of private passenger motor vehicle and homeowners insurance policies through the use of group marketing plans, while preserving for consumers the potential benefits of this form of marketing.

Underwriting is the decision process used by insurance companies to determine whether or not to issue voluntarily an insurance policy. In contrast, group marketing plans are methods or techniques that insurance companies may use to market and deliver their products to individual consumers. Group marketing plans allow insurers who use them to offer more competitively priced products through reduced administrative and policy acquisition costs.

Definition of a Group. For the purpose of offering private passenger motor vehicle or homeowners insurance policies through group marketing plans, a group may include employees of a particular employer, members of a particular trade or labor union, or members of an association or organization ("group members" or "members of a group"). A group shall have a constitution and by-laws and shall have been formed in good faith for a purpose other than that of purchasing insurance. Whether a group's ostensible membership base qualifies for group

marketing plan status under M.G.L. c. 175, § 193R is a matter to be determined by the Commissioner of Insurance ("Commissioner").

Definition of a Group Marketing Plan. A group marketing plan is any method or technique that may be employed by an insurance company to solicit private passenger motor vehicle or homeowners insurance purchases by members of a group, provided that the management or administrator of the group has agreed to or otherwise affiliated itself with the sale of such insurance to its employees or members through a payroll deduction plan or otherwise.

Insurance Companies Eligible to Offer Insurance Through Group Marketing Plans. In order to qualify to offer private passenger motor vehicle or homeowners insurance through a group marketing plan, an insurance company also must be engaged actively in the business of writing the same types of coverage for persons or insureds not solicited or acquired through the use of group marketing plans. An insurance company may not be organized solely or principally for the purpose of furnishing private passenger motor vehicle or homeowners insurance to group members. Insurance companies that elect to offer private passenger motor vehicle or homeowners insurance through group marketing plans shall keep and maintain separate statistical data on the losses and expenses of the members of each group that sponsors such plan.

Group Membership. For purposes of purchasing private passenger motor vehicle or homeowners insurance through a group marketing plan, an employee of a particular employer is any individual so designated by the employer, and a member of a trade union, labor union, association or organization is anyone so designated in its constitution, by-laws or other governing instruments. Group marketing plans shall offer private passenger motor vehicle or homeowners insurance to group members subject to the following conditions and limitations:

1. Every individual employee or group member having a proper insurable interest shall be entitled to participate in the group marketing plan. An insurance company shall not use underwriting standards for members of a group which are not used by that insurance company when underwriting non-group members. Underwriting standards for employees or group members shall not include risk attributes prohibited by Massachusetts law.

2. Insurance companies shall not use rating differentials, rate classification techniques, or policy forms that are designed to make it less desirable for a member of the group to purchase insurance through the group marketing plan as an individual than it would be to purchase such insurance through the regular individual market.

3. Insurance companies shall issue an individual policy contract of the same form to all insured members of the group varying only as to the amounts of insurance and limits of liability requested by the member.

4. Groups obtaining insurance through a group marketing plan shall not compel a group member to purchase insurance from the insurance company offering its products pursuant to a group marketing plan.

5. Insurance companies shall offer every member of a group participating in the group plan an option to continue coverage by a standard policy of the same type offered by the company to persons not eligible for a group plan for at least one additional year upon termination of employment or membership in the trade union, association or organization.

6. Insurance companies may not cancel private passenger motor vehicle or homeowners insurance policies that were issued through a group marketing plan except for non-payment of premium, fraud, or unless the entire group marketing plan is canceled. Insurance companies providing private passenger motor vehicle insurance through a group marketing plan may, however, cancel the insurance of an individual group member for loss of vehicle registration or operator's license by the individual group member where such loss is for a period of one year or more.

Rates for Policies Issued Through Group Marketing Plans. Rates for private passenger motor vehicle or homeowners insurance policies issued through group marketing plans shall be established in accordance with the provisions of M.G.L. c. 175A and M.G.L. c. 174A.

For the first three years that an insurance company offers private passenger motor vehicle or homeowners insurance through a specific group marketing plan to a specific group, the rates charged to group members shall be the same as the rates offered for the same standard policy when issued to persons not solicited or acquired through group marketing plans. However, rates for group members may be reduced from the rate the insurance company otherwise would charge its non-group policyholders to the extent, but only to the extent, that the insurance company can demonstrate direct reductions to the non-group acquisition and administrative expenses resulting from the group marketing technique. Expense reductions associated with group marketing techniques may include, but are not necessarily limited to, producer negotiated commissions, method of premium payment (payroll deduction or electronic funds transfer) or reduced insurer marketing or advertising costs.

Insurance companies that have maintained group marketing plans with a specific group for more than three consecutive years may file adjustments to any applicable downward rate deviation for group members based on reduced acquisition and administrative expenses that additionally reflect the most recent three years of loss experience for the group.

Prohibition Against Unfair Discrimination in Access to Group Marketing Plans. Any systematic exclusion of a class or segment of an insurance company's producer force from offering private passenger motor vehicle or homeowners insurance to members of a group for which the company has a group marketing plan that has the effect of making it less desirable for a class or segment of potential group members as individuals to obtain private passenger motor vehicle insurance through the group marketing plan is prohibited.

Every insurance company offering private passenger motor vehicle or homeowners insurance through a group marketing plan shall, prior to policy sale, make full and fair disclosure to prospective policyholders of all features of the insurance coverage available through the plan. This includes, but is not limited to, disclosure of premium rates, policy terms and conditions, duration of coverage, policyholder services, and identity of producers participating in the group marketing plan.

Private passenger motor vehicle insurance policies assigned by the Massachusetts Automobile Insurance Plan (MAIP) to an insurance company where the assigned policyholder is eligible to obtain private passenger motor vehicle insurance through a group marketing plan offered by the assigned insurance company shall be charged a premium that is the lesser of the premium calculated using the rates in effect for the residual market and the premium calculated based on the insurance company's filed rates, including any downward deviation filed for policies issued to group members pursuant to that group marketing plan. The adjustment of the insurance company's quota share for assigned risk policies shall be in accordance with the attribution rules established under the provisions of M.G.L. c. 175, § 113H.

Review and Approval of Group Marketing Plan Filings. Every group marketing plan shall be submitted for review and approval by the Commissioner at least 15 business days prior to the proposed effective date of the plan, unless otherwise ordered by the Commissioner. All applications for group marketing plans must be submitted on the application form required by the Commissioner. Failure to submit a legible and properly completed application form will prevent review and approval of the plan until such application form is submitted properly.

Review and Approval of Rate Deviation Filings for Use in Conjunction with Approved Group Marketing Plans. Any filing for a downward rate deviation for private passenger motor vehicle or homeowners insurance policies issued pursuant to an approved group marketing plan shall be submitted for review and approval by the Commissioner at least 15 business days prior to the proposed effective date of the rate deviation, unless otherwise ordered by the Commissioner. All rate deviation filings for policies issued pursuant to approved group marketing plans must be submitted in the format required by the Commissioner. Failure to provide the actuarial expense and loss support as required by the Commissioner will prevent review and approval of such rate deviation until proper actuarial support is submitted.

Marketing Plans Involving So-Called "Affinity Groups." Every marketing plan for so-called "affinity groups" shall be submitted for review and approval by the Commissioner at least 15 business days prior to the proposed effective date of the plan, and will be evaluated under the provisions of M.G.L. c. 175, § 193R. Marketing plans for so-called "affinity groups" should not be submitted to the Commissioner as part of an insurance company's rate filing under M.G.L. c. 175E.

Filing forms for group marketing plans and rate deviations for use in conjunction with approved group marketing plans are available on the Division's website at www.mass.gov/doi. If you have any questions regarding this Bulletin, please contact Gerald Condon at (617) 521-7377 or at gerald.condon@state.ma.us.