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Commonwealth Automobile Reinsurers'
Proposed Amendments to Rules of Operation 23, 26, 28 and 30 of the
Massachusetts Automobile Insurance Plan
Docket No. C2007-03

Order on Proposed Amendments

Introduction

On September 19, 2007, the Governing Committee of Commonwealth Automobile Reinsurers ("CAR") voted to amend Rules 23, 26, 28 and 30 (the "proposed Amendments") of the Massachusetts Automobile Insurance Plan ("MAIP") Rules of Operation that the Commissioner of Insurance ("Commissioner") approved in a Decision dated July 16, 2007 (the "*July 16 Decision*"). Pursuant to Article X of the CAR Plan of Operation, CAR submitted the proposed Amendments to the Commissioner for her approval. By letter dated October 19, 2007, the Commissioner informed CAR that she disapproved the proposed Amendments. Contemporaneously, she issued a hearing notice scheduling a public hearing on the proposed Amendments for December 4, 2007.

Ten individuals representing CAR, insurance companies, producer associations and consumer advocacy organizations made oral comments at the December 4 hearing. In addition, the Division of Insurance ("Division") received seven written statements commenting on the proposed Amendments, as well as provisions in the MAIP rules to

which CAR had not proposed amendment.¹ The hearing record was kept open until 5:00 p.m. on December 4. One insurer submitted a written post-hearing statement.

The proposed Amendments address four specific aspects of the MAIP: 1) the obligation of a CAR member to provide to consumers who have been denied voluntary insurance a written notice of the reasons for the rejection; 2) provisions for calculating return premiums when a policyholder cancels a MAIP policy; 3) installment payment plans applicable to policies written through the MAIP; and 4) continuation of the producer/consumer relationship when a MAIP insured is provided insurance in the voluntary market.

Discussion, Analysis and Conclusions

A. Rule 23

CAR proposes to eliminate Rule 23.A.2, which requires a member company that declines to write a risk voluntarily to provide the reason for the declination to the applicant in writing before referring the risk to the MAIP. The amendment, CAR asserts, is intended to make Rule 23 consistent with Rule 26.A.1.a, which provides that, by submitting a completed, signed application to the MAIP, the applicant certifies that he or she has attempted, without success, to obtain insurance in the voluntary market within 15 days prior to the date of the MAIP application. Oral comment at the hearing indicated that CAR is concerned that the purported inconsistency between these two rules could result in confusion. Specifically, CAR indicated that an applicant could misconstrue Rule 23.A.2 to require the *applicant* to obtain the company's written notice of declination prior to his or her submission to the MAIP and that such written notice of declination would be required to be submitted with the MAIP application. Furthermore, there was comment as to confusion regarding whether a member company would be required to provide a written notice of reasons for declination in all instances under Rule 23.A.2, or only when asked to do so by a consumer.

Oral comment from consumer advocates and a written statement from the Attorney General urged the Commissioner to require insurers to provide a written statement of reasons each time an applicant is declined, rather than require it only if the applicant requests such information. They asserted that written notices would alert

¹ Several statements commented on provisions in MAIP Rule 28 that relate to Limited Assignment Distribution Companies (LADCs).

consumers to any inaccurate or incomplete information, and also would be useful for monitoring industry practices regarding policy declination.

Additional comments at the hearing from the chair of CAR's MAIP Steering Committee clarified that, in making its proposed amendment to Rule 23.A.2, CAR did not intend to relieve its members of their obligation to inform consumers of the reasons for declining to write insurance if asked by consumers, but, rather, was concerned about the current language of the rule requiring those reasons to be disclosed to the applicant in writing *prior* to referring the risk to the MAIP. CAR counsel similarly stated that it was the temporal provision of Rule 23.A.2, which would require written disclosure to the consumer "prior to referring the risk to the MAIP," that was the crux of CAR's concern with Rule 23.A.2 as currently written.

Hanover Insurance Group ("Hanover"), in a supplemental statement submitted after the hearing, commented that any requirement mandating that a company provide the reason for declination of a risk to the consumer would be burdensome. It stated that the producer is in a better position to issue such disclosures than the company because it is the producer who actually makes the decision to decline the applicant. Hanover further asserted that consumers would be better served by learning the reasons for declination from producers, rather than by receiving a written document setting forth those reasons from an insurer.

Analysis and Conclusion

We do not find the provisions of MAIP Rules 23 and 26 to be inconsistent. These rules involve different parties and different obligations. Rule 26, approved by the Commissioner in her *July 16 Decision*, incorporated a self-certification procedure to streamline the MAIP application process for consumers who have been unable to obtain voluntary insurance.² This self-certification obligation lies solely with the consumer. Conversely, Rule 23 identifies a company's obligation to disclose to the consumer the reason or reasons why the company chose to decline the consumer's business. These are mutually distinct provisions and each is important in its own right.

Appendix A to the *July 16 Decision* affirms the importance of informing consumers of the reasons why they have been declined voluntary coverage. Requiring

² An earlier version of Rule 26.A required an applicant for MAIP coverage first to obtain a declination letter from an insurer.

insurers to provide this information when the decision is made to decline voluntary coverage is consistent with the statutory requirement that insurers, if they choose to non-renew a policy, must advise the insured of the reasons for the non-renewal in writing. Companies are required under the current MAIP Rule 23 to issue reasons for declination in all instances and not only when requested to do so by a consumer. Educating consumers as to why they may not be good risks may help to improve their driving behavior. Deletion of the temporal provision of Rule 23 will clarify that the reasons for declination need not be provided to the consumer *prior* to the consumer's application to the MAIP. The insurer may issue such written notice to the consumer within a reasonable period of time after such application is submitted.

As for the limited comments that some insurers believe that the reasons for declination should emanate from the producer rather than from a CAR member, we disagree. The responsibility for providing this information lies with the insurer, not the producer, although the insurer may delegate responsibility for sending these notices to its producers. Regardless of how it is provided, the companies bear full responsibility for ensuring that all consumers who are denied motor vehicle coverage in the voluntary market are provided the reasons for such declination in writing within a reasonable time after their application is submitted to the MAIP. A redrafted amendment to Rule 23 is included in the Appendix to this decision.

B. Rule 26

CAR proposed to amend Rule 26.A.2 to reference the MAIP Private Passenger Automobile Manual rather than the AIB Manual. It also eliminated language in Rule 26.E that states that nothing in the MAIP Rules changes the statutory obligations of companies to their producers or policyholders with regard to policy non-renewal or cancellation. Finally, CAR replaced the cancellation procedures in Rule 26.E, which were adopted from the AIPSO Uniform Plan, with the cancellation procedures from Rule 18 of the Private Passenger Automobile Manual.³

³ As approved in the *July 16 Decision*, Rule 26.E provided for calculation of a return of premium to a policyholder who requested cancellation of his or her policy at 0.90 of the pro rata earned premium, or \$25 per motor vehicle, whichever was larger. The Rule also established provisions relating to cancellation by an insurer that were not consistent with practices in the voluntary market.

Analysis and Conclusions

No one opposed the proposed amendments to Rule 26. Oral comment at the hearing and the written statements uniformly agreed that the changes to Rule 26.E result in the consistent treatment of consumers written through the MAIP and those insured voluntarily when an insured cancels a policy or a financial institution dishonors an insured's premium check. The proposed amendment also ensures that the same rules for calculation of a return premium will apply to all insureds; in addition, any return premium to a MAIP insured who obtains voluntary coverage will be calculated on a pro rata basis.

We approve CAR's proposed amendment to Rule 26.A that changes the reference from the AIB Manual to the MAIP Private Passenger Automobile Insurance Manual. We disapprove the proposed deletion of the provision in Rule 26.E that nothing in the MAIP Rules changes the statutory obligations of companies to their producers or policyholders with regard to policy non-renewals or cancellations. No comment or statement was submitted to explain the basis for this deletion and we find no benefit in doing so. The remaining proposed amendments to Rule 26.E are approved. A redrafted amendment to Rule 26 is included in the Appendix to this decision.

C. Rule 28

CAR proposes to replace the standard uniform installment payment plan in Rule 28 with a provision that sets minimum requirements for installment payment plans that its members may offer to MAIP policyholders. As amended, Rule 28 would mirror the provisions in CAR Rule 13.A.4 (4), and allow insurers to offer the same installment payment plans to both their MAIP and voluntary policyholders on policies written with effective dates between April 1, 2008 and March 31, 2009.⁴ The current Rule 28, as approved in the *July 16 Decision*, mandates a totally separate installment payment plan for the MAIP, which would require substantial changes in insurers' computer systems and result in two different installment payment plans for voluntary and MAIP business.⁵ Oral comment at the December 4 hearing and the written statements submitted agreed

⁴ Returned check fees or other charges also would be the same in the voluntary and residual markets.

⁵ Producers, despite their stated preference for a uniform residual market installment billing plan, have recognized that it may not be practical to implement such a plan by April 1, 2008. See statements by Frank Mancini, of the Massachusetts Association of Insurance Agents ("MAIA") at the January 5, 2007 meeting of CAR's MAIP Steering Committee.

that the proposed amendment was intended to make the installment payment plans in both the voluntary and residual markets uniform during the initial transition to the MAIP. CAR indicated that it is committed to continuing its consideration of this issue and to developing a MAIP installment payment plan to be used in connection with policies issued with an effective date of April 1, 2009 and thereafter.

Analysis and Conclusions

Rule 28, as approved in the *July 16 Decision*, retained the separate MAIP installment payment plan first approved in the Commissioner's *December 31, 2006 Decision on the MAIP Rules*. CAR first recommended amending Rule 28 in January 2007.⁶ CAR's currently proposed amendment is a compromise between insurers, who prefer to utilize the same installment payment plans for all insureds, and producers, who have stated a preference for a single installment payment plan for the residual market notwithstanding the fact that it differs from the installment payment plan in the voluntary market.⁷ Because this issue is being addressed concurrently with the implementation of managed competition beginning April 1, 2008, and based on the insurers' expressed concern that they do not have sufficient time to change their computer programming prior to that date, we approve CAR's proposed amendment to Rule 28 *in part* and only for the transition year. For MAIP policies with effective dates of April 1, 2008 through March 30, 2009, MAIP insureds will benefit from application of the same rules relating to dishonored checks, late and cancellation fees, minimum number of installment payments, and payment to producers that apply to voluntary insureds. They will be eligible for all the payment options that the company to which they are assigned offers its voluntary insureds, subject to the following constraints. First, the proposed amendment requires revision to comply with the Commissioner's Bulletin 2007-16, which limits carriers to charging on a MAIP policy no more than a twenty-five percent deposit premium based on the MAIP rate for that policy. Second, some company installment payment plans provide for two separate types of finance charges: flat fees per installment and fees based on an

⁶ Because of the Acting Commissioner's January 19, 2007 decision to suspend operation of the MAIP Rules, this proposed amendment was not considered at that time.

⁷ The MAIP Steering Committee, at its September 11, 2007 meeting, continued to address producer concerns, noting that the volume of MAIP business is expected to be no more than 60,000 risks spread over the first twelve months of operation. A producer suggested that posting information about CAR member billing plans on the CAR website would provide producers with immediate access to the terms of those plans.

annual percentage rate (“APR”) applied to the unpaid premium balance. The conditions under which insurers impose on consumers the APR-based finance charges in their installment payment plans may disparately affect the residual market. To avoid that result, for MAIP policies issued with effective dates of April 1, 2008 through March 31, 2009, insurers only may offer to MAIP insureds the same flat fee per installment finance charge plans that they apply to the voluntary market. A revised amendment to Rule 28 to be effective for MAIP policies issued effective April 1, 2008 through March 30, 2009 is included in the Appendix to this decision.

CAR is instructed to submit to the Commissioner by December 1, 2008 proposed amendments to Rule 28 consistent with the provisions of that rule as set forth in the *July 16 Decision*. These proposed amendments, if approved, shall be effective for policies issued effective on and after April 1, 2009.

D. Rule 30

The proposed rule amendment requires an insurer that writes a risk previously insured through the MAIP to recognize the policyholder’s producer of record, until the policyholder terminates his or her relationship with the producer, the producer is decertified or suspended, or the producer is precluded from dealing with other carriers as a result of an exclusive agency contract. The proposed amendment further provides that the producer will be paid a commission by the insurer writing the voluntary policy at the rate applicable to the MAIP policy. This modification is modeled on a rule in the New York Assigned Risk Plan.

The proposed amendment changes the rule approved in the *July 16 Decision*, which removes any obligation of an insurer to a residual market policyholder’s producer of record if the policyholder accepted an offer from that insurer to write the coverage in the voluntary market and the producer of record was not “licensed” by that insurer.

Discussion and Analysis

No speaker or writer objected to the continuation of the producer/consumer relationship when an insurer elects to write a MAIP insured voluntarily. Minutes from the January 12, 2007 MAIP Steering Committee meeting suggest that the members did not reach consensus on the issue of commission payments. MAIA wanted producers to receive the MAIP commission, while the Arbella Mutual Insurance Company preferred the voluntary commission rate. MAIP Rule 37 requires parity in commission payments

for business written through the MAIP with business written voluntarily, but does not regulate commissions on a policy after it is written voluntarily.

The relationships among insureds, insurers and producers developed in a marketplace in which rates have been fixed and established and most producers have access only to one company offering private passenger automobile insurance. Under competitive rating and an assigned risk plan, these relationships will become more fluid. We approve CAR's proposed amendment to Rule 30 in part, insofar as it continues the producer/consumer relationship after an insurer elects to write a residual market insured voluntarily, but limit its application to the MAIP transition period. When the MAIP becomes fully operational, as of April 1, 2011, Rule 30 as approved in the July 16 Decision will take effect.

We disapprove those portions of the proposed amendment that relate to commissions. Commissions are to be calculated based on the premium that the consumer actually pays. During the MAIP transition period, an insurer who voluntarily writes a risk that it previously insured through the MAIP must pay a commission to the insured's licensed producer of record in accordance with the insurer's commission structure for policies written in the voluntary market as applied to the voluntary market premium, regardless of whether a contract exists between the licensed producer of record and the voluntary insurer. A revised amendment to Rule 30 is included in the Appendix.

Effective Date:

The revised amendments, as they appear in the Appendix, shall be effective immediately.

January 2, 2008

Stephen M. Sumner, Esq.
Presiding Officer

Jean F. Farrington, Esq.
Presiding Officer

Affirmed: January 2, 2008

Nonnie S. Burnes
Commissioner of Insurance