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No. A-16/10

Property & Casualty
– Auto

Changes to Ontario Regulation 7/00: Unfair or Deceptive Acts or Practices

To the attention of all insurance companies licensed to transact automobile insurance in Ontario

With this Bulletin, the Financial Services Commission of Ontario (FSCO) is highlighting recent changes to Ontario Regulation 7/00: Unfair or Deceptive Acts or Practices (UDAP Regulation), to ensure compliance by all insurers and intermediaries. The amended UDAP Regulation takes effect September 1, 2010.

Background

Public policy goals underlying the current automobile insurance regulatory regime include the ready availability of automobile insurance to consumers using transparent and fair criteria to assess risk and price. The desired marketplace outcomes include fair treatment of consumers and disclosure of information to enable consumers to make informed decisions.

Quoting and underwriting practices that result in consumers encountering difficulties in obtaining quotes or delays in obtaining insurance are contrary to both public policy goals and standards as developed by the industry trade association.

To this end, the UDAP Regulation has been amended by Ontario Regulation 37/10 to prohibit automobile insurers and their agents/brokers from using credit information for specified automobile insurance purposes. The amendments include:

- A definition of "credit information."
- Prohibiting insurers and their agents/brokers from requiring that a consumer consent to the collection and use of his/her credit information before providing an insurance quote or offering to renew a policy.
- Prohibiting insurers and their agents/brokers from using credit information when they respond to requests for quotes, or process applications for automobile insurance or renewals of policies.
- Requiring affiliated insurers and their agents/brokers to provide a consumer with the lowest rate that is available having regard to all of the circumstances, including the means of distribution.

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Insurance Contracts Covered by Affiliated Insurer Provision

Under the new UDAP Regulation, an insurer is considered to be affiliated with another insurer if one of them is the subsidiary of the other, both are subsidiaries of the same body corporate, or each of them is controlled by the same person.

The affiliated insurer rule applies only to automobile business for which an affiliated insurer is required to file rates or risk classification systems with the Superintendent for approval. This includes personal vehicles, public vehicles and any commercial automobile insurance business, with the exclusion of fleets and garage policies.

The requirement to provide the lowest rate available applies at the policy level (i.e., to a contract of automobile insurance), which may include more than one vehicle or exposure. For example, a single policy may cover automobiles, snowmobiles, ATVs and commercial vehicles.

Where a consumer qualifies for coverage with more than one affiliated insurer by virtue of an overlap in their approved declination rules, the requirement arises to provide the consumer with the lowest rate available, having regard to all circumstances including means of distribution.

Quoting by Affiliated Insurers on Renewal

Some insurer groups have two or more affiliated insurers that have been used to segment business, commonly into a "standard" market and a "preferred" market. The distinction between these insurers is not always clear in the insurers' filed declination rules or risk classification systems.

The new UDAP Regulation will require all affiliated insurers and agents/brokers to whom it applies to provide a rate on renewal for all of the affiliates the consumer qualifies for in accordance with the insurers' declination rules and approved risk classification systems.

Only approved declination rules may be relied upon to determine which affiliated insurers and agents/brokers are required to provide a rate to a consumer.

Contracts that Have Similar but Not Identical Features

In some cases, individual insurers within an affiliated group may offer contracts that are not identical to those of its affiliates in terms of coverage or features provided.

Such differences will not relieve affiliated insurers or their agents/brokers of their obligation under the new UDAP Regulation to provide the lowest rate available. The UDAP Regulation will not require that comparisons between contracts be provided.

Affiliated insurers and their agents/brokers concerned about providing the "lowest rate available" in respect of such contracts could comply with the UDAP Regulation by providing the consumer with a quote (or renewal offer) for each of the affiliated insurers with whom the consumer qualifies for coverage through the applicable means of distribution, and allow the consumer to decide which to accept under the circumstances.

Varied Means of Distribution

"Means of distribution" refers to a legitimately distinct and unique agent or broker channel. For example, direct selling of automobile insurance by an insurer through agents licensed to act for the insurer, and without the use of brokers, is a means of distribution. Another example is insurance sold through brokers with whom the insurer has a contract.

The new UDAP Regulation does not distinguish between group and non-group business. Group business and non-group business are not by themselves considered to be separate

means of distribution.

FSCO will not tolerate artificially created or subdivided distribution channels designed to circumvent the new UDAP Regulation.

"Specialty" Markets or Programs

Some insurers have established specialty markets, programs or "niches" that target a particular market. Examples of such markets include motorcycles, antiques or classic cars, or motor homes.

Insurers with specialty markets need to have filed with FSCO, and received approval of, declination rules that assist in determining the parameters of these types of programs, and that clearly illustrate the population they are intended to serve. For example, antique or collector car programs could have a rule declining any automobiles that are less than 25 years old and that have no valid appraisal.

Affiliated insurers that specialize in standard and non-standard markets, and wish to keep those markets separate, may file to amend their declination rules to eliminate any overlap that would otherwise make a given risk eligible for both markets.

Responsibility for Providing the Lowest Rate

Section 2 of the new UDAP Regulation imposes the responsibility for compliance on insurers, officers, employees and agents of insurers, and on brokers.

The responsibility for the provision of the lowest rate therefore rests jointly with insurers and their agents and brokers. It is in the mutual interest of insurers and their agents and brokers to work together to determine the discharge of their joint obligations under the new UDAP Regulation in any given circumstances.

Insurer Acquisitions

If an insurer purchases another insurer or the business of another insurer, FSCO will allow the companies a short period of time (but no longer than deemed absolutely necessary in the circumstances by FSCO) to bring their pricing and business practices into compliance with the new UDAP Regulation. Activities by companies during this period may include amending declination rules and rates and risk classification systems of the newly-affiliated insurers and updating systems to ensure that the lowest rates available are provided.

Insurers should be mindful of this process when considering new acquisitions.

Servicing Carriers of Facility Association

An insurer that acts as a Servicing Carrier on behalf of the Facility Association (FA) and also as a voluntary market insurer remains one legal entity and neither the definition of "affiliated insurer" nor paragraph 8 of section 2 of the new UDAP Regulation come into play.

The FA is not considered an "insurer" for the purposes of the UDAP Regulation.

Effective Date

FSCO expects that insurers have been working since March 2010 when the amendment to the UDAP Regulation was filed and made public to implement changes as soon as possible, and without delay, so that consumers can benefit effective September 1, 2010 from the new rules on both new business and renewals. Insurers must ensure that their underwriting and other staff that may be affected by the amendments are informed of the changes.

Attestation of Compliance

Insurers must send an original Attestation of Compliance in the form attached, signed by the President, CEO or most senior officer responsible for the insurer's operations in Ontario, to FSCO by October 15, 2010, certifying that the insurer is in compliance with the new UDAP Regulation as of September 1, 2010. This requirement is imposed under section 31 of the Insurance Act.

Please send signed attestations to the attention of:

Bruce Green
Manager, Automobile Insurance Compliance
Automobile Insurance Services Branch
Financial Services Commission of Ontario
5160 Yonge Street, Box 85
Toronto ON M2N 6L9

Questions about this Bulletin and the attestation may be directed to Bruce Green at 416-590-7279 or 1-800-668-0128, extension 7279.

Enforcement

Actions that are contrary to the UDAP Regulation will be subject to appropriate enforcement or regulatory action.

Copies of Regulations

The Insurance Act and Ontario Regulations 7/00 and 37/10 can be downloaded from the e-laws website at www.e-laws.gov.on.ca.

Philip Howell
Chief Executive Officer and
Superintendent of Financial Services

June 23, 2010

Attachment:

- [Attestation of Compliance](#) (PDF)



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I, _____, _____
 (Name of Officer) (Office held)
 of _____ (“the Insurer”)
 (Official name of company or group of companies)

1. I have informed myself in all material respects of the business practices and procedures followed by the Insurer, including those concerning rates and risk classification systems, underwriting rules, quoting and renewal practices and application-processing practices, and regulatory compliance systems as at the date this certificate is signed.
2. Except for any circumstances reported to the Financial Services Commission of Ontario no later than August 13, 2010, I am satisfied that the Insurer's business practices, including without limitation the rates and risk classification systems implemented on its computer systems, the underwriting rules, quoting and renewal practices and application-processing practices applied and communicated to staff and intermediaries are, and have been since September 1, 2010, those that have been approved or authorized by the Superintendent of Financial Services as applicable, and fully compliant with Ontario Regulation 7/00: Unfair or Deceptive Acts or Practices, as amended.

Date, Location