

AICP New England Chapter – 14th Annual Education Day
Credit Scoring – Trends, Industry and Regulator Perspective
Concurrent Session 10

A Regulator's Perspective
David Withers, P&C Actuary, New Hampshire Insurance Department

OUTLINE OF PRESENTATION

- Revisions to NH Regulation, Ins 3300, Effective July 1, 2010
- 2010 Legislative Activity in NH
- Consumer Complaints
- Rate and Rule Filings

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Revisions to Ins 3300, to be effective July 1, 2010

- Background
 - Extensive rewrite of the rule, subject to two public hearings with significant public comment and input during 2009
 - Three primary goals of the rewrite
 - Rearrange the sections so that they were ordered in a logical flow
 - Provide minimum standards and expectations for insurers in how they support and communicate with consumers
 - Provide as much NHID authority as allowed under NH rulemaking process in order to minimize the possibility of legislative action which could be adverse to insurers and our competitive PP Auto and HO markets
- Copies of the current and modified Ins 3300 may be found at:
 - Current: www.gencourt.state.nh.us/rules/state_agencies/ins.html
Click on: CHAPTER Ins 3300
 - July 1, 2010: www.nh.gov/insurance/legal/index.htm
Click on: 3300 in chart
- Comparison – Current to Revised
 - PART Ins 3301 USE OF INSURANCE SCORES
 - Same part number
 - Purpose section expanded to more clearly state that the purpose of the rule includes the identification of obligations of insurers with respect to providing information and assistance to consumers
 - Scope section is expanded for clarity but there are no material changes
 - Definition section has few changes of note
 - “adverse action” is modified to reflect Supreme Court decisions related to (1) charging an initial rate higher than the rate a consumer would have received without considering credit info and (2) an increase in premium
 - (c) “applicant”, (h) “credit information”, (i) “credit report”, and (k) “private passenger auto insurance” added for clarity
 - PART Ins 3302 WRITTEN STANDARDS ON OBTAINING AN INSURANCE SCORE OR A CONSUMER REPORT
 - Same part number, mostly reworked for clarity
 - The list of prohibited attributes (e.g. race, color, creed, religion) divided into two categories – those that fall under NH RSA 417:4 VIII (e), Unfair Trade Practices, and others (income, sexual orientation, gender, religion, blindness, any other physical handicap)
 - Removed nebulous language and descriptors (arbitrary, capricious)

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- PART Ins 3303 USE OF INSURANCE SCORES AND CONSUMER REPORT INFORMATION IN UNDERWRITING
 - Currently numbered as PART Ins 3306
 - Only substantive change is a new layout as described above for PART Ins 3302
- PART Ins 3304 USE OF INSURANCE SCORES AND CONSUMER REPORT INFORMATION IN RATEMAKING
 - Currently numbered as PART Ins 3307
 - Sections (a) and (b) are unchanged; section (c) has been added and specifies under what circumstances an insured can request their policy be ratered to reflect current credit information:
 - The insured has corrected info on their credit report; or
 - The insurer uses credit to establish renewal premiums, the request is made prior to the renewal offer, and only once every 12 months
- PART Ins 3305 PROHIBITED USE OF CERTAIN CREDIT FACTORS IN RATING OR UNDERWRITING
 - This section is new and includes two parts
 - Ins 3305.01 lists seven items which cannot be used as negative factors in underwriting or rating; most are found in the NCOIL model and are used by other states; the list should be reviewed by insurers to ensure their models are compliant
 - Ins 3305.02 replicates the NCOIL language for “Extraordinary Life Circumstances”
- PART Ins 3306 FILING OF UNDERWRITING MODELS
 - Currently numbered as PART Ins 3304
 - Minimal changes
- PART Ins 3307 FILING OF RATES
 - Currently numbered as PART Ins 3305
 - Minimal changes
- PART Ins 3308 FILINGS REQUIRED FOR INSURANCE SCORING MODELS AND USE OF CONSUMER REPORT INFORMATION
 - Currently numbered as PART Ins 3310
 - Ins 3308.01 “Submission of Basis for Insurance Score or Use of Consumer Report Information” has been expanded to be more descriptive and clear as to what information and support we expect and have always expected filings to contain

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- Ins 3308.02 “ Confidentiality of Submission” has been modified to clarify that the insurer must request or identify if the filing contains commercial or financial information or is otherwise exempt for public disclosure under NH “right to know” law and therefore wishes to receive confidentiality protections. There is no difference in what protections have always been afforded, simply that the insurer must proactively request such.
- PART Ins 3309 NOTICE TO INSURED, USE OF INFORMATION FROM CONSUMER REPORTS; ADVERSE ACTION
 - A combination of current parts Ins 3303 “Notice to Insured” and Ins 3308 “Adverse Action”
 - Ins 3309.01 contains rules pertaining to the **initial notification** about the use of credit information, including:
 - Disclosure is to be made that the insurer may obtain credit info in connection with the application
 - Such disclosure shall be in writing or in the same medium as the application
 - Does not apply to renewals if a disclosure statement is previously provided
 - Disclosure statements are to be retained in accordance with RSA 400-B:4, policy record file retention
 - Sample disclosure wording is provided, which unfortunately contains an error in the first line: “information” should be “insurance”
 - The consumer is to be notified of the insurer’s general time frame in which credit is ordered in relation to the date of application or renewal offer
 - Provide an explanation as to how credit info is used in rating or underwriting; sample wording is provided
 - Provide an explanation of:
 - How the insurer makes adjustment in rating or underwriting if scores change; and
 - The process by which the consumer can request the policy be re-rated or re-underwritten to reflect current or corrected info
 - Ins 3309.02 contains rules pertaining to **adverse action notifications**
 - Most of the requirements are unchanged, just reorganized and rephrased for clarity
 - Two new items to be included on the notice:
 - A statement that the adverse action has been taken in accordance with the requirements of the Fair Credit Reporting Act, 15 U.S.C 1681 m(a);

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- A telephone contact number the consumer may call to discuss aspects of the adverse action notice with a representative of the insurer who can:
 - Review the notice, and
 - Answer questions related to the insurers use of credit and the adverse action notice and the factors reflected therein
- PART Ins 3310 ADDITIONAL CONSUMER PROTECTIONS
 - Currently numbered as PART Ins 3309
 - The rule is basically unchanged, except that the rule now specifies that the insurer has 30 days to rerate or re-underwrite a policy if any inaccuracies in credit info are confirmed. The current rule has no time requirement imposed on the insurer to handle the rerating or re-underwriting.
- PART Ins 3311 PENALTY PROVISION
 - Newly added section to remind insurers that violations of the chapter are subject to penalties as set forth in RSA 412:40

2010 Legislative Activity in New Hampshire

- HB 1236 has passed both the House and the Senate and is awaiting the Governor's signature. It would prohibit insurers from refusing to insure or canceling a policy solely because of credit information. This bill was at the request of the Insurance Department
- SB 340 was defeated in the Senate. It would have removed the word "solely" from the prohibition on charging a higher premium based on credit information, making the use of credit, for all practical purposes, inoperative.
- While there have not been any other significant issues with the legislature this year involving the use of credit information in rating or underwriting, the subject and perspectives of many in the legislature are unchanged and we expect new legislation in upcoming sessions

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Consumer Complaints

The Department continues to receive a steady stream of complaints and inquiries about the use of credit. Reasons for contacting the Department generally fall into one or more of the following:

- Lack of understanding about how and why credit is used
- Poor communication from insurers and vendors
- Insurers are unable or unwilling to disclose how the premiums have been impacted by the consumer's particular credit information, and how changes in that credit info will impact their premium
- Confusing language associated with the adverse action notification and the list of up to four factors that caused the adverse action and their descriptions
- The consumer is advised that they have not received the best rate the insurer can offer

Rate and Rule Filings

- Provide support for insurer scoring models and how the models are used in rating or underwriting, regardless of whether or not the scoring model is supplied by the vendor or is developed by the insurer
- If the insurer desires that we consider a filing to be confidential, make sure that such filings are identified in that manner using the SERFF filing type: *Confidential*. NOTE: NH does not allow confidential and public filings to be combined into one filing; if they are they will be rejected
- If notices referenced in Ins 3300 have been filed in the past they should be updated to reflect the 7/1/10 rule changes and refiled for information only; NH does not require that such notices be filed for approval prior to their use