

AICP 06-06-18
Maine Bureau of Insurance
Hot Topics

1. Compliance Generally
 - a. All BOI staff contact information is on our web site: www.maine.gov/pfr/insurance
 - b. Property & Casualty Division rate/form comments
 - i. Review staff: Mike Mayette, Shari Gregory – forms; Sandra Darby – actuary
 - ii. Turn-around time:
 1. 2017 – 11 days (5 more than 2016) and on track in 2018 for 15 days
 - a. 3,587 filings received in 2017; 29 disapproved; 1,219 for 2018 with 4 disapproved
 - b. 18,795 (down from 21,559 in 2016) forms received; 9,007 in 2018
 - iii. Links to our p/c product checklists are on Maine’s page at the NAIC’s product requirement web site
2. Bulletin 415 (11/22/16)
 - a. Requires insurers to file underwriting guidelines because they have a determinative effect on rates, even when used simply to rule out taking on a type of risk
 - i. Applies to personal and commercial lines
 - b. Vast majority of the market already files guidelines in their rules
 - c. Trade secret information
 - i. See the procedure outlined on Maine’s SERFF introduction page for how to seek confidentiality
 - ii. Make sure you understand the statutory elements of trade secret; it must be information that
 1. Derives independent economic value from not being generally known to and readily ascertainable by proper means by others who may obtain economic value from its use or disclosure
 2. Is the subject of reasonable efforts to maintain its secrecy
 - iii. There is also Maine-related case law that’s worth looking at
 1. *Spottiswoode v. Levine*, 1999 ME 79, fn 6 deals with economic value factors, fn 7 with secrecy efforts factors
 2. *Maine Educ. Ass’n. v. Cioppa*, 695 F.3d 145 (1st Cir. 2012), discusses insurer’s investment-backed expectation of confidentiality in highly-regulated insurance field
 - iv. Make sure you’ve kept it secret; we have seen instances where other states have made public information that filers have sought to keep confidential here
3. Frequent Filing Issues
 - a. Generally
 - i. When relying on a prior filing or another carrier’s filing, include a copy of the prior filing or its SERFF file tracking number
 - ii. When relying on a filing from another jurisdiction for support, attach a PDF copy of the filing and explain how it correlates to Maine

- iii. For insurers who rarely make filings, keep in mind that we only retain records for ten years. So, if the prior filing(s) or other carriers filing(s) are older, include a complete PDF copy of the earlier filing. The exception to this is filings that were made in SERFF. Currently, SERFF retains all the electronic filings that have been made
 - iv. Do use old Maine file tracking numbers because they are pre-SERFF – roughly 2004 and therefore outside our 10-year record keeping plan.
 - v. Service contracts rates and forms don't need to be filed; if forms are filed, we will review for compliance with Service Contract Act and mark "filed for information only"
- b. Rates and Rules
- i. Lack of rate support; file the rate, instead of saying "refer to company" (aka "a" rated)
 - ii. Age rating
 - 1. *Progressive Insurance* decision on BOI web site
 - 2. 24-A M.R.S. § 2916 amended in 2017
 - iii. Price Optimization
 - 1. Bulletin 405 issued 08-15
 - 2. Classify risk according to actuarially supported considerations grounded in insurance loss and expense and disclose those considerations fully in rate filings
 - a. Remember basic rating requirements
 - b. Give due consideration to loss experience, fire/cat hazards, reasonable margins for UW profit/contingencies, dividends, expense
 - c. File every rate, etc. and every rating rule that you propose to use
 - d. Do not allow unfair discrimination between insureds having like insuring/risk characteristics
 - e. OK to use capping/transitional pricing applied on a group basis
 - iv. Rate capping
 - 1. Book acquisition transition
 - 2. Current book 3-year transition for large rate increases
 - v. Corporate tax rate reduction
 - vi. Cat loss surcharges (not allowed)
 - 1. See ISO Maine exception pages for homeowners
 - vii. Predictive models for acceptance and pricing must be filed
 - viii. Confidentiality of GLMs and other non-credit related algorithms
 - ix. When relying on a competitive market study for determining rates, include the study. Assuming you do remember to include the study, identify the companies and include the SERFF file tracking numbers
 - x. Rating Tiers – 24-A M.R.S. § 2304-A and Bulletin 277
 - 1. § 2304-A – requires filing of "every manual rate, minimum premium, class rate, rating schedule or rating plan and every other rating rule," and every proposed modification of any of these filings. "Rating rules" include any established criteria or guidelines that affect premiums charged to insureds

2. Bulletin 277 (03-04-98) – Guidelines used to assign insureds to specific rating classifications, or by insurance groups marketing on a coordinated basis to assign insureds to specific companies within the group, affect premium and must be filed
- xi. When adopting a rating organization filing, incorporate the organization’s SERFF file tracking number(s)

c. Forms

- i. Lack of appropriate COA authority
- ii. Post-Judgment Interest and Bulletin 353 (02-11-09) – POJI may not be covered within limits because of Maine statutory and case law:
 1. 14 M.R.S. § 1602-C – POJI is allowed in all civil and small claims actions, accrues when judgment is entered and through any appeal
 2. *Moholland v. Empire Fire and Marine Ins. Co.*, 2000 ME 26 held that POJI doesn’t compensate underlying loss, but the delay in paying a judgment
 - a. POJI comes after the steps that establish the loss (litigation and judgment)
 - b. POJI ensures that the defendant will pay the judgment and not erode its value
- iii. Voidance/rescission – often see forms that basically allow unilateral rescission or voidance
 1. 24-A M.R.S. § 2411 allows cancellation or denial based on fraudulent or material misrepresentation, but insurer must go to court for this. See, e.g., *Liberty Ins. Underwriters, Inc. v. Estate of Faulkner*, 2008 ME 149, 957 A.2d 94 (Me. 2008)
- iv. Non-compliant cancellation conditions – relevant statutes for personal lines are the Cancellation Control Acts (24-A M.R.S. § 2911 – 24 (AICCA) and 24-A M.R.S. § 3048 – 3061 (PICCA)) and for other lines are 24-A M.R.S. § 2908 and 3007
 1. Motorcycles go under section 2908, not AICCA
 2. Personal Umbrellas go under 2908, not PICCA (note: if endorsed onto a PAP or HO then the appropriate control act applies)
 3. Commercial lines must include the reasons listed in 24-A M.R.S. § 2908 and 24-A M.R.S. § 3007
 4. May not use cancellation to remove an individual employee from E&O policy or a specific site from a BOP. ME Superior Court has affirmed BOI decision in 2908 case denying insurer’s effort to “cancel” a BOP as to two of four or five rental properties. See *Providence Mut. Fire Ins. Co. v. BOI*, Docket No. CUMSC-AP-15-034 (03-22-16)

4. Credit Scoring

- a. 24-A M.R.S. § 2169-B
- b. Bulletin 406 issued 08-25-15 discusses when adverse action notices are required and how to handle complaints related to standardized credit explanations
- c. Bulletin 412 issued 05-05-16, with Bureau of Consumer Credit Protection interprets Maine Fair Credit Reporting Act to allow insurers to bypass consumer report freezes at renewal