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BETH SAMMIS
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Deputy Commissioners

JOY HATCHETTE
Associate Commissioner
Consumer Education and Advocacy

200 St. Paul Place, Suite 2700 Baltimore, Maryland 21202
Direct Dial: 410-468-2029 Fax: 410-468-2430
Email: jhatchette@mdinsurance.state.md.us
1-800-492-6116 TTY: 1-800-735-2258

BULLETIN 09-28

Date: December 3, 2009

To: All Property and Casualty Insurance Companies and Interested Parties

Re: COMAR 31.01.02.07 – Emergency Power Regulations

The Maryland Insurance Administration has received some questions from insurers regarding what they should do if the Commissioner suspends their authority to cancel or non-renew property and casualty insurance policies following a Governor declared State of Emergency or a Presidential declaration of a major disaster or emergency declaration under the Federal Stafford Act. For each such situation, the Commissioner will determine if the situation warrants providing consumers with additional time to meet the financial obligations required to keep various insurance coverages in force.

While it is impossible to anticipate each factual scenario that will arise, the following answers to the questions that have been posed to us may help carriers prepare for these events.

1. Question – COMAR 31.01.02.07A.(1) – Will a suspension apply only to the act of executing cancellations and nonrenewals or will it also apply to the sending of cancellation and nonrenewal notices?

Answer – Yes, it will apply to the sending of the cancellation and nonrenewal notices, as well as the act of canceling and nonrenewing policies.

2. Question – COMAR 31.01.02.07B.(1) & (2) – After a suspension is lifted, what does “proper notice” mean for both nonpayment of premium cancellations and policies that are being cancelled or nonrenewed for other reasons? (e.g. if proper notice was already supplied before the emergency was declared, what happens when it is lifted?)

Answer – When an emergency is lifted, a company must send a new notice that is in compliance with Maryland laws and regulations. If the notice went out prior to the emergency or the issuance of the Commissioner’s Bulletin, a second notice will still be

required to be sent after the emergency is lifted in order to enable the consumer to have notice and an opportunity to protest same.

3. Question – If a notice of cancellation or nonrenewal had been sent prior to the emergency or issuance of the Commissioner’s Bulletin with an effective date that falls during the emergency, and the insured replaced the coverage effective during the emergency, what is the impact of the suspension during the emergency on the cancelling insurer? Would there be some type of coordination between the old and new insurer in the event of a loss? Would the insured be required to pay both premiums?

Answer – Cancellations and nonrenewals should not take place while a suspension is in effect. If notices were sent prior to the suspension with an effective date during the suspension, the insurer will be required to notify the insured that the cancellation or nonrenewal will not take place as a result of the emergency. The notice should further explain that a new notice will be sent after the emergency. If a policyholder replaces coverage and the insurer has in fact properly sent notice, then the new policy will be in effect.

4. Question – Is there any requirement that an insurer inform the insured that the proposed action has been suspended?

Answer – Insurers should place information on their websites and use other media to advise insureds that cancellations and nonrenewals are suspended. The insurers should also refer their insureds to the Maryland Insurance Administration in the event of any questions or concerns.

5. Question

Illustrations

A. Mid-Term Nonpayment of Premium

- Cancellation for mid-term nonpayment of premium sent on 9/5/09 effective 9/27/09.
- Commissioner declares suspension of cancellation and non-renewals on 9/20/09.
- Declaration expires on 9/30/09.

Action:

- Must a new notice of cancellation for nonpayment of premium be sent? Will the 60 day provision under the regulation apply?

Answer – Yes, a new Notice of Cancellation for Nonpayment must be sent. Yes, the 60 day provision will apply.

6. Question

B. Mid-Term Nonpayment of Premium

- Commissioner declares suspension on 9/15/09.
- A cancellation for nonpayment of premium should be sent on 9/17/09 effective 9/29/09
- Declaration expires on 9/20/09.

Action:

- Can the notice of cancellation for nonpayment of premium be sent on 9/17/09?

- If the 9/17/09 notice for nonpayment cannot be sent, can a notice be sent once the emergency has been lifted? As the nonpayment commenced prior to the emergency, will the 60 day provision under the regulation apply?

Answer – The notice cannot be sent until the suspension is lifted; that is the Notice of Cancellation for Nonpayment may not be sent until on or after 9/20/09. Yes, the 60 day provision will apply.

7. Question

C. Nonrenewal

- Notice of nonrenewal sent on 8/1/09 to be effective 9/17/09 (to coincide with expiration date of policy).
- Suspension declared 9/15/09
- Declaration expires 9/30/09

Action:

- Must an insurer send notice that coverage is reinstated after 9/17/09?
- What date should be used as the effective date of the nonrenewal?
- What if the insured obtained other coverage, which the insurer is not aware of? Is the insured required to pay premiums for both policies? Would the insured be entitled to a double recovery? Which insurer would be treated as primary?

Answer – Yes, a notice needs to be sent to the insured advising that the policy will not cancel on 9/17/09 and that it will remain in effect. The nonrenewal or cancellation will not be effective until a new notice is sent out after the expiration of the emergency and that notice must comply with all of the statutory and regulatory requirements, including the time for taking such action. If the insured replaces coverage elsewhere, the new policy is effective at the date of its inception and becomes primary.

8. Question

D. Nonrenewal (this could also be a midterm cancellation)

- Suspension declared 8/1/09.
- To meet requirements of notice, insurer processes the nonrenewal notice on 8/14/09 to be effective 9/30/09 (which is the policy expiration date).
- Declaration expires on 9/15/09.

Action:

- May an insurer execute the nonrenewal effective 9/30/09?
- If the insurer may not send the nonrenewal notice during the emergency, when may the notice be sent? How should the insurer reconcile the required timeframe for the notice with the expiration date of the policy?

Answer – Notices may not be sent out during the emergency suspension. The notice may not be sent out until the suspension is lifted and must be in compliance with all the statutory and regulatory requirements, including the time for taking such actions.

9. Question

E. Nonrenewal (this could also be a midterm cancellation)

- Suspension declared 8/1/09.

- To meet requirements of notice, we process non-renewal notice on 7/31/09 to be effective 9/15/09 (which is the policy expiration date).
- Declaration expires 10/15/09.

Action:

- Must an insurer send notice that the coverage has been reinstated after 9/30/09 due to the emergency? Once the emergency has been lifted, when may the nonrenewal take effect?

Answer – When a suspension prohibits cancellations and nonrenewals, a notice sent prior to the suspension with an effective date during the suspension requires the insurer to notify its insured that the cancellation or nonrenewal will not take place as a result of the emergency and that coverage will remain in effect. The notice should further explain that a new notice will be sent after the emergency. The Maryland Insurance Administration will verify that such notices were sent. If a policyholder replaces coverage and the insurer has in fact properly sent notice, then the new policy will be in effect and be considered primary.

10. Question

F. Nonpayment of premium and 2 Policy Periods

- Notice of cancellation for nonpayment of premium sent on 8/1/09 effective 8/13/09.
- Suspension declared 8/10/09.
- Policy expires 9/30/09.
- Suspension expires 10/15/09.

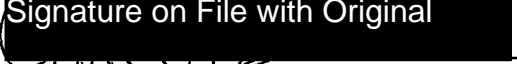
Action:

- Because the policy expired during the emergency, must the insurer continue the coverage into a new policy term?
- Can the cancellation for nonpayment of premium occur once the emergency declaration is lifted or will the 60 day provision in the regulation apply?

Answer – Notice must be sent to the insured that the policy will not cancel on 8/13/09 and that the coverage will continue during the emergency. After the suspension is lifted on 10/15/09, a new notice may be sent out. The notice must comply with all statutory and regulatory requests including timeframes for providing notice.

If you have any questions about this Bulletin, please contact Joy Hatchette, Associate Commissioner, Consumer Education & Advocacy, by telephone at (410) 468-2029 or by e-mail at jhatchette@mdinsurance.state.md.us.

Ralph S. Tyler, Insurance Commissioner
Signature on File with Original

By: 
Joy Hatchette, Associate Commissioner
Consumer Education & Advocacy