

DEPARTMENT OF INSURANCE

Statutory Authority: 18 Delaware Code, Sections 314 and 1111 (18 **Del.C.** §§314 and 1111)
18 **DE Admin. Code** 1305

FINAL

ORDER

1305 Rate Filing Procedures for Health Insurers and Health Service Corporations and Managed Care Organizations

Proposed changes to Regulation 1305 relating to Loss Ratio Filing Procedures for Health Insurers and Health Service Corporations were published in the *Delaware Register of Regulations* on November 1, 2009. The comment period remained open until December 7, 2009. There was no public hearing on the proposed changes to Regulation 1305. Public notice of the proposed changes to Regulation 1305 in the Register of Regulations was in conformity with Delaware law.

SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Comment was received from the Governor's Advisory Council for Exceptional Citizens and from Golden Rule Insurance Company. The Governor's Advisory Council for Exceptional Citizens ("The Council") made a number of comments. It pointed out that the word "filing" was incorrectly stricken in Section 5.1. That non-substantive correction is made in the final version. The Council suggests the use of "Circular Letters" should be inserted within Section 6.5.2.1.2 and 3. The Department does not believe this assertion is necessary as it no longer relies on the use of Circular Letters. The Council believes that language in Section 6.3 would bar the Department from disapproving certain filings. The Department respectfully disagrees with that interpretation of the section. The Council suggests the word "or" inserted between "ratio" and "end" should be the word "at". The Department supports its use of the word "or". The Council disputes the acronyms used in Section 8.1. The acronyms are not amendments to the existing Regulation and are language unchanged by the proposed amendments, and, therefore, not open for comment. Finally, the Council believes that language contained in 18 **Del.C.** §2606(c) authorizing the Commissioner to determine whether or not additional time is needed to review a filing, should be inserted in the Regulation. Language in Statute supersedes that in Regulation and the insertion is not necessary.

Golden Rule Insurance Company commends the Department for the contents of the proposed changes, but suggests the addition of the words "loss ration guarantee" to Section 7.1.1. That addition is not necessary as the subject of 7.0 is the loss ratio guarantee. Finally, Golden Rule Insurance Company suggests Section 7.1.3 be deleted as the company believes the Regulation should apply to closed blocks of business. The Department understands the recommendation but believes the exclusion of closed blocks of business is in the public's best interest.

FINDINGS OF FACT

Based on Delaware law and the record in this docket, I make the following findings of fact:

The requirements of the amended Regulation 1305 best serve the interests of the public and of insurers and they comply with Delaware law.

DECISION AND EFFECTIVE DATE

Based on the provisions of 18 **Del.C.** §§ 314, 1111 and 29 **Del.C.** §§ 10113-10118 and the record in this docket, I hereby adopt Regulation 1305 as amended and as may more fully and at large appear in the version attached hereto to be effective on January 11, 2010.

TEXT AND CITATION

The text of the proposed amendments to Regulation 1305 last appeared in the *Register of Regulations* Vol. 13, Issue 5, pages 587-593.

IT IS SO ORDERED this 14th day of December 2009.

Karen Weldin Stewart, CIR-ML
Insurance Commissioner

1305 ~~Loss Ratio~~ Rate Filing Procedures for Health Insurers and Health Service Corporations for ~~Medical and Hospital Expense-incurred Insurance Policies and Group Plans~~ and Managed Care Organizations

1.0 Authority

This regulation is promulgated and adopted pursuant to 18 **Del.C.** §~~314~~ 311, 18 **Del.C.** Ch. 25 and 29 **Del.C.** Ch. 101.

2.0 Purpose

The purpose of this regulation is to establish a ~~format~~ procedure for all rate filings made by insurers pursuant to 18 **Del.C.** §2506(e), ~~including therein the specific manner of calculating and certifying the loss ratio. Insurers Are Reminded That There Is at Present (1991) a \$25 per Filing Fee Imposed.~~

3.0 Scope

This regulation applies to insurers, ~~and health service corporations, and managed care organizations,~~ as defined under "Health Benefit Plans" in 4.0 below, that deliver or issue for delivery medical and hospital expense-incurred insurance policies and plans for which rates submitted affect ~~20 or more~~ residents of this State. The regulation applies to individual policies and plans and all group policies and plans ~~that cover 24 or fewer persons. Any insurer or health service corporation having more than one group policy or plan that affects 24 or fewer persons must make a separate filing for each group policy or plan. A single filing by an insurer or health service corporation that purports to be an aggregate representation of loss ratio information for two or more group policies or plans is precluded by this regulation.~~

4.0 Definitions

4.1 For purposes of this regulation:

"Carrier" means any entity that provides health insurance in this state. For the purposes of this chapter, carrier includes an insurance company, health service corporation, health maintenance organization, and any other entity providing a plan of health insurance or health benefits subject to state insurance regulation.

"Certificate form" means the form on which the certificate is delivered or issued for delivery by the issuer.

"Collected Premium" means the amount of premium that is unadjusted to reflect any changes in the rate level (e.g. reported or actual premium).

"Commissioner" means the Insurance Commissioner of this State.

"Earned Premium" means the amount portion of the total premium for each year in the experience period on a collected basis that corresponds to the coverage provided during a given time period.

"Experience Period" means the number of years over which the adequacy of the rates presently in effect are tested.

"Health Benefit Plan" is an individual plan or group health plan that provides, or pays the cost of, medical care, including but not limited to group health plans, health insurance issuers, health maintenance organizations, managed care organizations and health service contractors, as well as any combination of them.

"Incurred Losses" means losses that are (1) paid losses, and (2) losses that are incurred but not yet reported to the insurance claimants.

"On-Level Factors" means factors that are used to correct collected premiums for each year in the experience period to the current level.

"Policy Form" means the form on which the policy is delivered or issued for delivery by the insurer.

"Protected and Reserve Incurred Losses" means losses on claims that are still open.

"Rate Level History" means the accumulation of changes in the rate level showing the overall adjustment required to bring premiums to the current level.

"Supplemental Rate Information" shall mean any manual or plan of rates, statistical plan, classification system, minimum premium, policy fee, rating rule, rate-related underwriting rule and any other information needed to determine the applicable premium for an individual insured and not otherwise inconsistent with the purposes of this chapter, as prescribed by rule of the Commissioner.

5.0 Contents of ~~Rate Revision Complete Filings~~

5.1 Each rate ~~revision filing which includes the following shall include~~ be presumed a complete filing, subject to requests for time for review as the Commissioner may make:

5.1.1 General Information

5.1.1.1 Name of insurer and domiciliary state;

5.1.1.2 Policy form name and number;

5.1.1.3 ~~Name~~ Number of insured individuals or insured groups and number in group;

5.1.1.4 ~~Name of insurer's officer who is in charge of the filing;~~

5.1.1.54 Amount of rate increase/decrease requested;

5.1.1.65 Date filing was made;

5.1.1.76 Other state(s) that have approved or disapproved the filing; and

5.1.1.87 A written, notarized certification of insurer's officer that the filing is made pursuant to applicable laws, regulations and subject to all penalties and that the statements made in the filing are true and correct.

5.1.2 ~~Experienced Loss Ratio In addition to the information listed above, the Commissioner shall identify by bulletin or circular letter additional information required to be included in a complete filing.~~

5.1.2.1 ~~Earned premium reported on an actual basis;~~

5.1.2.2 ~~Rate level history over the applicable period of time;~~

5.1.2.3 ~~On-level factors;~~

5.1.2.4 ~~Incurred losses on an actual basis;~~

5.1.2.5 ~~Projected and reserved incurred losses (1) projection data underlying incurred losses, and (2) reserve data underlying incurred losses; and~~

5.1.2.6 ~~Projected experience loss ratio.~~

5.1.3 ~~Expected Loss Ratio Underlying Proposed Rates~~

5.1.3.1 ~~Underwriting expenses (1) incurred commissions as a percentage of written premium, (2) general administrative expense incurred as a percentage of earned at present level premium (3) claims administration expense incurred as a percentage of actual incurred losses, (4) Delaware premium taxes, licenses and fees as a percentage of written premium, (5) underwriting profit provision expressed as a percentage of earned premium; and~~

5.1.3.2 ~~Expected loss ratio.~~

5.1.4 ~~Investment Income~~

5.1.4.1 ~~Estimated investment earnings on unearned premium reserves and on loss reserves calculated as follows:~~

5.1.4.1.1 ~~Unearned premium reserve~~

5.1.4.1.1.1 ~~Direct earned premium for calendar year ended _____~~

5.1.4.1.1.2 ~~Mean unearned premium reserve _____~~

5.1.4.1.1.3 ~~Deduction for prepaid expenses~~

5.1.4.1.1.3.1 ~~Commission and brokerage expense _____~~

5.1.4.1.1.3.2 ~~Licenses and fees _____~~

5.1.4.1.1.3.3 ~~50% of other acquisition expense _____~~

5.1.4.1.1.3.4 ~~50% of company operating expense _____~~

5.1.4.1.1.3.5 ~~Total _____~~

5.1.4.1.1.4 ~~(2) x (3) = _____~~

5.1.4.1.1.5 ~~Net subject to investment (2) - (4) _____~~

5.1.4.1.2 ~~Delayed remission of premium (agents' balances)~~

5.1.4.1.2.1 ~~Direct earned premium (A - 1) _____~~

5.1.4.1.2.2 ~~Average agents' balance _____~~

5.1.4.1.2.3 ~~Delayed remission (1) x (2) _____~~

5.1.4.1.3 ~~Loss Reserve~~

5.1.4.1.3.1 ~~Direct earned premium _____~~

5.1.4.1.3.2 ~~Expected incurred losses excluding underwriting profit provision _____~~

5.1.4.1.3.3 ~~Expected loss reserves _____~~

5.1.4.1.4 ~~Net subject to investment~~

~~(A - 5) - (B - 3) + (C - 3) = _____~~

5.1.4.1.5 ~~Average rate of return _____~~

5.1.4.1.6 ~~Investment earnings on net subject to investment (D) x (E) = _____~~

5.1.4.1.7 ~~Average rate of return as a percent of direct earned premium (F) divided by (A - 1) _____~~

5.1.4.1.8 ~~Average rate of return as a percent of direct earned premium after federal income taxes _____~~

5.1.5 ~~Indicated rate level change reflecting investment income as a credit against underwriting profit provision.~~

6.0 Review Procedures

6.1 Subject to the provisions of this section, no policy form rates subject to this regulation shall be delivered or issued for delivery in this state, unless they have been filed with the Commissioner.

6.2 The Commissioner shall review and approve, provide notice of deficiencies or disapprove the initial filing within thirty (30) days of receipt. Any notice of deficiencies or disapproval shall be in writing and based only on the specific provisions of the applicable statutes, regulations or bulletins published by the Commissioner having the force and effect of law in this state and contained in the document created by the Commissioner pursuant to 5.0 of this section. The notice of deficiencies or disapproval shall contain sufficient detail for the filer to bring the policy form rate filing into compliance, and shall cite the specific statutes, regulations or bulletins upon which the notice of deficiencies or disapproval is based.

6.3 No completed filing described in this section shall be effective unless filed with the Commissioner not less than thirty (30) days prior to the proposed effective date. Such a filing shall be deemed to meet the statutory requirements unless disapproved by the Commissioner within thirty (30) days of receipt of the filing. No such filings shall be disapproved, except on the basis that the rates are inadequate, excessive or unfairly discriminatory.

- 6.4 A filer may resubmit a rate filing that corrects any deficiencies or resubmit a disapproved rate filing, and a revised certification, within thirty (30) days of its receipt of the Commissioner's notice of deficiencies or disapproval. Any filing not resubmitted within thirty (30) days of the notice of deficiencies shall be deemed withdrawn. Any disapproved rate filing form not resubmitted within thirty (30) days is disapproved.
- 6.5 At the end of the review period, the rate is deemed approved if the Commissioner has taken no action.
 - 6.5.1 The Commissioner shall review the resubmitted filing and certification, and shall approve or disapprove it within thirty (30) days. Notice of deficiencies or disapproval shall be in writing and shall provide a detailed description of the reasons for the disapproval in sufficient detail for the filer to bring the rate filing into compliance and shall cite the specific statutes, regulation, or bulletins upon which the disapproval is based. No further extensions of time may be taken unless the filer has introduced new provisions in the resubmission, in which case the Commissioner may extend the time for review by an additional thirty (30) days. At the end of the review period, the rate filing is deemed approved if the Commissioner has taken no action.
 - 6.5.2 The Commissioner may not disapprove a resubmitted policy form rate filing for reasons other than those initially set forth in the original notice of deficiencies or disapproval sent pursuant to section 6.0.
 - 6.5.2.1 The Commissioner may disapprove a resubmitted rate filing for reasons other than those initially set forth in the original notice of deficiencies or disapproval sent pursuant to section 6.0 if:
 - 6.5.2.1.1 The filer has introduced new provisions in the resubmission.
 - 6.5.2.1.2 There has been a change in statutes, regulations or bulletins published in this state having the force and effect of law, or
 - 6.5.2.1.3 There has been reviewer error and the written disapproval fails to state a specific provision of applicable statute, regulation or bulletin published by the Commissioner having the effect of law in this state that is necessary to have the rate filing form conform to the requirements of law.

7.0 Minimum Loss Ratio Guarantee

- 7.1 In order to use the Minimum Loss Ratio Guarantee (MLRG) the company must satisfy the credibility definition:
 - 7.1.1 The annual earned premium volume in Delaware under the particular policy form must be greater than two million five hundred thousand (\$2,500,000) dollars.
 - 7.1.2 This amount will be increased each year by the greater of 6.0% and the average health care premium increase from the Annual Health Care Costs Study for Major Metropolitan Areas.
 - 7.1.3 The MLRG shall not apply to closed blocks of business.

68.0 New Policy or Plan and Rate Revision Filings

- 68.1 With respect to a new ~~form~~ rate filings and rate revision filings, benefits shall be deemed reasonable in relation to premiums provided the anticipated loss ratio or the end of the third year is at least as great as shown in the following table:

Renewal Clause*

Type of Coverage	OR	CR	GR	NC
Medical Expense	605%	5560%	5560%	50%
Loss of Income and Other	60%	5560%	505%	45%

For individual Medicare supplement policies, the anticipated lifetime loss ratio must equal at least 65%. For group Medicare supplement policies, the anticipated loss ratio must equal at least 75%.

9.0 **Minimum Loss Ratio Guarantee Option**

- 9.1 Notwithstanding the other provisions of this Regulation, premium rates may be used upon filing with the Commissioner of a minimum loss ratio guarantee. An insurer may not elect to use the filing procedure in this section for a rate filing that does not contain the minimum loss ratio guarantee. If an insurer elects to use the filing procedure in this subsection for a rate filing, the insurer shall not use a filing of premium rates that does not provide a minimum loss ratio guarantee for that policy form or forms.
- 9.2 The minimum loss ratio shall be in writing and shall contain at least the following:
- 9.2.1 An actuarial memorandum specifying the expected loss ratio that complies with the standards as set forth in this subsection;
- 9.2.2 Detailed experience information concerning the rate filing;
- 9.2.3 A step-by-step description of the process used to develop the experience loss ratio, including demonstration with supporting data from the original policy rate filing;
- 9.2.4 A guarantee of a specific lifetime minimum loss ratio, that shall be greater than or equal to the loss ratio in 8.0;
- 9.2.5 A guarantee that the actual Delaware loss ratio for the calendar year in which the new rates take effect, and for each year thereafter until new rates are filed, will meet or exceed the minimum loss ratio standards referred to in 9.2.4 of this paragraph, adjusted for duration; and
- 9.2.6 A guarantee that the actual Delaware lifetime loss ratio shall meet or exceed the minimum loss ratio standards referred to in 9.2.4 of this paragraph.
- 9.3 The insurer shall refund or credit premiums in the amount necessary to bring the actual loss ratio up to the guaranteed minimum loss ratio.
- 9.4 A Delaware policyholder affected by the guaranteed minimum loss ratio shall receive a portion of the premium refund or credit relative to the premium paid by the policyholder. The refund or credit shall be made to all Delaware policyholders insured under the applicable policy form during the year at issue if the refund or credit would equal ten dollars (\$10) or more per policy. The refund or credit shall include statutory interest until the date of payment. Payment shall be made not later than one hundred eighty (180) days after the end of the year at issue.
- 9.5 Premium refunds of less than ten dollars (\$10) per insured shall be aggregated by the insurer and deposited into the State Treasury.
- 9.6 A guarantee that the actual Delaware loss ratio results for the year at issue will be independently audited at the request of the Commissioner.
- 9.7 Notwithstanding the provisions of this subsection, an insurer may amend the rate filing forms used before the effective date of this regulation to provide for a minimum loss ratio guarantee allowed under this subsection for policies issued, delivered, or renewed on or after the effective date of this regulation.

10.0 **Rates for Large Groups**

- 10.1 Rates for groups of more than 50 persons (hereinafter "large groups") shall be made in accordance with 18 Del.C. Ch 25.
- 10.2 Each carrier issuing a policy to a large group shall establish and maintain a complete record of the rates employed, rate manuals, classification plans and all related materials needed for the carrier to determine the rate developed for the policy.
- 10.3 The carrier's records shall be maintained in a manner that readily allows examination as the Insurance Commissioner may require.

711.0 Effective Date of Regulation

This regulation shall become effective on ~~May 30, 1994~~ January 11, 2010.

13 DE Reg. 939 (01/01/10) (Final)