# DEPARTMENT OF INSURANCE

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

## PROPOSED

### PUBLIC NOTICE

### 1305 Loss Ratio Filing Procedures for Health Insurers and Health Service Corporations for Medical and Hospital Expense-incurred Insurance Policies and Group Plans

**INSURANCE COMMISSIONER KAREN WELDIN STEWART, CIR-ML** hereby gives notice of intent to adopt proposed Department of Insurance Regulation 1305 relating to health insurers, health service corporations and managed care organizations. The docket number for this proposed amendment is 1277.

The purpose of the proposed amendment to Regulation 1305 is to create procedures and time lines for all rate filings made by insurers. The text of the proposed amendment is reproduced in the November 2009 edition of the Delaware Register of Regulations. The text can also be viewed at the Delaware Insurance Commissioner's website at: http://www.delawareinsurance.gov/departments/documents/ProposedRegs/ProposedRegs.shtml.

The Department of Insurance does not plan to hold a public hearing on the proposed changes. Any person can file written comments, suggestions, briefs, compilations of data or other materials concerning the proposed amendments. Any written submission in response to this notice and relevant to the proposed changes must be received by the Department of Insurance no later than 4:30 p.m., Monday December 7, 2009, and should be addressed to Mitchell G. Crane, Esquire, Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, DE 19904, or sent by fax to 302.739.2021 or email to mitch.crane@state.de.us.

### 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~~(c), 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 organizaiotns, 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.~~5~~4 Amount of rate increase/decrease requested;

5.1.1.~~6~~5 Date filing was made;

5.1.1.~~7~~6 Other state(s) that have approved or disapproved the filing; and

5.1.1.~~8~~7 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 that 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.

## ~~6~~8.0 New Policy or Plan and Rate Revision Filings

~~6~~8.1 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 | 6~~0~~5% | ~~55~~60% | ~~55~~60% | 50% |
| Loss of Income and Other | 60% | ~~55~~605% | 5~~0~~5% | 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 ration 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.

**~~7~~11.0 Effective Date of Regulation**

This regulation shall become effective on ~~May 30, 1991~~ January 11, 2010.

**13 DE Reg. 587 (11/01/09) (Prop.)**