WEST VIRGINIA CODE CHAPTER 33 ARTICLE 6C

WV Legislature

§33-6C-1. Loss ratio guarantees; definitions.

As used in this article:

(a) "Commissioner" means the Insurance Commissioner of West Virginia;

(b) "Experience period" means, for any given rate filing for which a loss ratio guarantee is made, the period beginning on the first day of the calendar year during which the guaranteed rates first take effect and ending on the last day of the calendar year during which the insurer earns $1 million in premiums on the form in West Virginia or, if the annual premium earned on the form in West Virginia is less than $1 million, earns nationally;

(c) "Form" means individual sickness and accident policy forms of any insurer offering such benefits, other than a form for a limited benefits policy or certificate as defined in section two, article sixteen-e of this chapter;

(d) "Loss ratio" means the ratio of incurred claims to earned premium; and

(e) "Successive experience period" means the experience period beginning on the first day following the end of the preceding experience period.

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§33-6C-2. Insurance commissioner to establish guaranteed loss ratios; minimum rates; participation by insurer; calculation of ratios; minimum rate; application.

(a) The Insurance Commissioner shall establish a guaranteed loss ratio which may be implemented by any insurer offering individual sickness and accident insurance policies other than limited benefits accident and sickness insurance policies or certificates, which are subject to loss ratio requirements set forth in sections three and four, article sixteen-e of this chapter. The loss ratios shall be calculated by the commissioner and each individual insurer and shall be based upon studies and relevant information collected from various sources, including, but not limited to, the health care cost review authority and the national association of Insurance Commissioners' rate filing guidelines: Provided, That the guaranteed loss ratio shall not be less than sixty percent. The guaranteed loss ratio for each insurer shall be published by the Insurance Commissioner in the register maintained by the Secretary of State.

(b) The guaranteed loss ratio shall be based upon experience periods during which the insurer earns $1 million in premium in West Virginia: Provided, That if the annual earned premium volume in West Virginia is less than $1 million, the loss ratio guarantee shall be based on such other actuarially sound methods as the commissioner may determine are appropriate, including, but not limited to, the actual nationwide loss ratios: Provided, however, That if the aggregate earned premium for all states is less than $1 million , the experience period will be extended until the end of the calendar year in which $1 million of earned premium is attained.

(c) Any insurer may apply to the commissioner to operate on a guaranteed loss ratio basis. The Insurance Commissioner may review each application and, in his or her discretion, approve or reject the same. Any insurer approved by the commissioner shall be exempt from filing rate increase applications as required by the commissioner and other provisions of this chapter.

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§33-6C-3. Duties of Insurance Commissioner; promulgation of rules.

(a) The Insurance Commissioner shall promulgate rules and regulations pursuant to chapter twenty-nine-a of this code establishing procedures for implementing the provisions of this article.

(b) The commissioner shall have the authority to examine the records and files of any insurer to determine compliance with the provisions of this article, the costs of which such examination shall be borne by the insurer.

(c) The Insurance Commissioner shall develop all forms, contracts or other documents to be used for the purposes outlined in this article.

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§33-6C-4. Form of guarantee; requirements.

(a) Individual sickness and accident policy benefits under a policy form other than a limited benefits policy form or certificate shall be deemed reasonable in relation to the premium charged, as required by subdivision (e), section nine, article six of this chapter, if the premium rates are filed pursuant to a loss ratio guarantee which meets the requirements of this article. The Insurance Commissioner shall not withdraw approval of a form on the grounds that benefits are unreasonable in relation to premiums charged so long as the insurer complies with the terms of the loss ratio guarantee.

(b) Each insurer of individual sickness and accident policy benefits other than benefits under limited benefits policy forms or certificates shall execute and deliver to the Insurance Commissioner a loss ratio guarantee, to be provided by the commissioner, which guarantee shall be signed by an officer of the insurer.

(c) Each loss ratio guarantee shall contain, at a minimum, the following:

(1) A recitation of the anticipated lifetime and durational target loss ratios contained in the original actuarial memorandum filed with the policy form when it was originally approved;

(2) A guarantee that the actual West Virginia loss ratios for the experience period in which the new rates take effect, and for each experience period thereafter until new rates are filed, will meet or exceed the anticipated lifetime and durational target loss ratios contained in the original actuarial memorandum noted above;

(3) A guarantee that the actual West Virginia or, if applicable, national, loss ratio results for the experience period at issue will be independently audited at the insurer's expense; that such audit will be completed in the second quarter of the year following the end of the experience period; and that the results of such audit will be reported to the Insurance Commissioner not later than June 30 following the end of the experience period;

(4) A guarantee that if the actual loss ratio during an experience period is less than the anticipated loss ratio for that period, then West Virginia policyholders will receive a proportional refund based on premium earned, which refunds shall be calculated and paid pursuant to section thirty-nine of this article; and

(5) A guarantee that the insurer does not engage in any discriminatory practices prohibited by section four, article eleven of this chapter or any such practice which discriminates against any individual on the basis of his or her legal occupation, race, religion or residence.

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§33-6C-5. Premium refunds; calculation of the same; payments.

(a) Refunds to West Virginia policyholders made pursuant to section four of this article and based upon annual earned premium volume in West Virginia shall be calculated by multiplying the anticipated loss ratio by the applicable earned premium during the experience period and subtracting from that result the actual incurred claims during the experience period.

(b) Refunds to West Virginia policyholders made pursuant to section four of this article and based upon national annual earned premium volume shall be calculated by:

(1) Multiplying the anticipated loss ratio by the applicable earned premium during the experience period and subtracting from that result the actual incurred claims during the experience period; and

(2) Multiplying the results of subsection (1) by the total earned premium during the experience period from all West Virginia policyholders eligible for refunds; and

(3) Dividing the results of subsection (2) by the total earned premium during that period in all states on the policy form.

(c) Refunds must be made to all West Virginia policyholders who are insured under the applicable policy form as of the last day of the experience period. Such refund shall include interest, at the current accident and health reserve interest rate established by the national association of Insurance Commissioners, from the end of the experience period until the date of payment. Payment shall be made during the third quarter of the year following the experience period for which a refund is determined to be due.

(d) Refunds of less than $10 shall be aggregated and held by the insurer in a policyholder's liability fund and shall be used to offset any future rate increases.

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§33-6C-6. Disclosure of rating practices; renewability provisions.

Each insurer providing individual sickness and accident policy benefits shall make reasonable disclosure in solicitation and sales materials provided to individuals of the following:

(a) The extent to which premium rates for individuals are established or adjusted according to the claim experience, health status or duration of coverage of the individual or his or her dependents;

(b) Provisions concerning the insurer's right to change premium rates and factors, including case characteristics, which affect changes in premium rates;

(c) A description of the class of insureds to which the individual is or will be included; and

(d) Provisions relating to renewability of coverage.

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§33-6C-7. Rejection of guarantees; notice; hearing.

(a) The Insurance Commissioner may reject any loss ratio guarantee filed by an insurer within sixty days from the date on which it was filed for any of the following reasons:

(1) The insurer has demonstrated an inability to adequately monitor its loss ratios;

(2) The insurer has failed to take timely rate increases in accordance with sound actuarial principles during the three-year period prior to filing the loss ratio guarantee;

(3) The insurer has not complied with the terms of a previously filed loss ratio guarantee;

(4) The insurer has submitted false, misleading or fraudulent material or information to the commissioner;

(5) The insurer is impaired, insolvent or such other similar financial condition as defined in article ten or any other article of this chapter; or

(6) Such other criteria as the commissioner, by legislative rule or regulation, may determine is appropriate.

(b) The Insurance Commissioner may reject or cancel any loss ratio guarantee filed by an insurer which had been previously approved if, upon review and investigation, the commissioner determines that the insurer has not complied with the provisions of the guarantee or this article.

(c) In the event a newly submitted loss ratio guarantee is rejected, the commissioner shall, within sixty days after the date the loss ratio guarantee was filed, mail notice of the rejection to the insurer. In the event an existing or previously approved loss ratio guarantee is cancelled, the commissioner shall mail notice of the rejection or cancellation to the insurer within fifteen days of the decision to cancel. In either situation, the insurer may, within ten days of being notified of its rejection or cancellation, request a hearing before the commissioner, which hearing shall be held within forty-five days from the date the request is made.

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