

COMMONWEALTH OF VIRGINIA

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March 30, 2015

Administrative Letter 2015-07

TO: All Insurers Licensed to Write Insurance Primarily for Personal, Family, or Household Purposes, Life Insurance, Annuities, and Accident and Sickness Insurance in Virginia, and All Interested Parties

RE: Requirements for Adverse Underwriting Decisions and Notices; Withdrawal of Administrative Letters 1978-04; 1978-09; 1978-11; 1981-04; 1981-15, 1981-16, and 2003-06

NOTE: EACH INSURER RECEIVING THIS ADMINISTRATIVE LETTER IS INSTRUCTED TO MAKE EACH OF ITS CURRENTLY APPOINTED AGENTS AND EACH NEWLY APPOINTED AGENT AWARE OF THIS ADMINISTRATIVE LETTER.

Since 1978, Chapter 6 of Title 38.2 of the Code of Virginia (Chapter) has been amended and several Administrative Letters have been issued by the Bureau of Insurance (Bureau) that addressed specific issues or changes made to those statutes regarding adverse underwriting decisions and providing the required notice. This administrative letter compiles all of the information on adverse underwriting decisions (AUD) included in previous letters and provides guidance on insurers' responsibility to provide the required notice to insureds.¹ Consequently, the following Administrative Letters are hereby withdrawn: 1978-04; 1978-09; 1978-11; 1981-04; 1981-15, 1981-16, 1992-25, and 2003-06.

The Bureau provides the following guidance which is to be used in conjunction with the provisions of Chapter 6 of Title 38.2 of the Code of Virginia.

Definitions and Scope

Sections 38.2-601 and 38.2-602 of the Code of Virginia set forth respectively the scope and definitions applicable to the Chapter, which are crucial to a proper understanding of the Chapter and must be read very carefully. Chapter 6 establishes standards for the collection, use, and disclosure of personal information gathered in connections with insurance transactions by insurance agents, insurance institutions, or insurance-support organizations. This chapter limits the disclosure of such information and provides a means for applicants and policyholders to obtain the reasons for any adverse underwriting decision (AUD).

¹ Additional information may be found in the *Common Problems Found During Examinations Identified by the Property and Casualty Market Conduct and Consumer Services Sections* and the *Common Problems Identified During Life And Health Market Conduct Examinations*, which are located at <http://scc.virginia.gov/boi/laws.aspx>.

Chapter 6 only applies to the underwriting and servicing of insurance purchased primarily for personal, family, or household needs rather than business or professional needs.

In addition to the definition of *adverse underwriting decision* (below), the following definitions in § 38.2-602 of the Code of Virginia are very important when considering AUDs: *individual, insurance transaction, personal information, and privileged information*.

Adverse Underwriting Decisions

Adverse underwriting decision means:

Any of the following actions with respect to insurance transactions involving insurance coverage that is individually underwritten:

- a. A declination of insurance coverage;
- b. A termination of insurance coverage;
- c. Failure of an agent to apply for insurance coverage with a specific insurance institution that an agent represents and that is requested by an applicant;
- d. In the case of a property or casualty insurance coverage:
 - (1) Placement by an insurance institution or agent of a risk with a residual market mechanism or an unlicensed insurer; or
 - (2) The charging of a higher rate on the basis of information that differs from that which the applicant or policyholder furnished; or
- e. In the case of a life or accident and sickness insurance coverage, an offer to insure at higher than standard rates, or with limitations, exceptions, or benefits other than those applied for.

With respect to AUDs, Chapter 6 provides the following rights:

- Grants individuals and certain other persons the general right to access recorded personal information (§ 38.2-608 of the Code of Virginia);
- Grants individuals and certain other persons the right to correct, amend, or delete any recorded information in a file and, if the information is not changed, the right to put in the file information the individual believes is correct, relevant, or fair as well as a concise statement why the individual disagrees with the information in the file (§ 38.2-609 of the Code of Virginia);
- Requires that individuals and certain other persons are provided the reason(s) for any AUD, the information on which the decision was based, and the opportunity to see and copy the information subject to certain limitations (§ 38.2-610 of the Code of Virginia);
- Prohibits an individual from being asked whether he or she was the subject of a previous AUD or previously obtained insurance through a residual market mechanism without also being asked the reason (§ 38.2-611 of the Code of Virginia);
- Prohibits an AUD from being based, in whole or in part, on the fact of a previous AUD, on the fact that an individual previously obtained insurance through a residual market mechanism, on information from certain types of insurance-support organizations, or on the fact that the individual previously obtained insurance through a particular insurance institution or agent. (§ 38.2-612 A of the Code of Virginia)

- Prohibits insurance institutions and agents from basing an AUD solely on the loss history of the previous owner of the property to be insured (§ 38.2-612 B of the Code of Virginia); and
- Provides an individual with the power to seek legal action against an insurance institution, agent, or insurance support organization for violations of certain sections of the Chapter. (§ 38.2-617 of the Code of Virginia).

AUD Notice

In the event of an AUD, the insurer or agent must give certain information to the applicant, policyholder, or individual proposed for coverage. The insurer or agent must provide such person with (1) the **specific** reason or reasons for the AUD, or advise the person that, upon request, he may receive the reason or reasons in writing, and (2) a summary of the person's rights under §§ 38.2-608 and 38.2-609, as well as § 38.2-610 B of the Code of Virginia.

The applicant, policyholder, or individual has 90 **business** days from the date of receipt of the AUD notice to request the reason or reasons for such decision. Within 21 business days from the receipt of such request, the insurer or agent must furnish the specific reason or reasons for the AUD and the specific items of personal and certain privileged information that support the AUD. The insurer or agent must also provide the names and addresses of the institutional sources that supplied the specific items of personal or privileged information. *No charge may be made for the copying of the material provided in response to the request from the applicant, policyholder, or individual.*

Attached to this letter is a prototype AUD notice setting forth the kinds of information that should be contained in an AUD notice. AUD notices containing wording that is substantially similar to that in the prototype are deemed acceptable for use in Virginia. This does not prevent insurers and agents from including more information in AUD notices about rights provided under Virginia law or the procedures used by the insurer, agent, or insurance-support organization to comply with the law.

Examples of Actions Triggering AUD Notices

- When increasing insureds' premiums or charging points under Safe Driver Insurance Plans, insurers writing private passenger automobile insurance must also be aware that AUD notices are required.
- When an application is closed/denied because the applicant, his physician, or some other person fails to furnish required information, such closure or denial is a declination of coverage and triggers an AUD notice.
- When coverage is
 - A. Terminated (cancelled or nonrenewed);
 - B. Not placed with the specific insurance institution requested by the applicant;
 - C. In the case of **accident and sickness or life insurance**,
 - (i) offered at a rate higher than that requested,
 - (ii) offered at a lower benefit level than that requested, or
 - (iii) offered with exclusions or exceptions other than those requested,

- D. In the case of **property and casualty** insurance,
- (i) offered through a residual market mechanism or unlicensed insurer, or
 - (ii) offered at a higher premium based on information that differs from that provided by the applicant.

Notice Required but Not an AUD Notice

While an AUD notice is not required in the following circumstances the insurance institution or agent responsible for their occurrence must give notice to the applicant or policyholder of the *specific* reason or reasons for their actions (see § 38.2-602, definition of Adverse Underwriting Decision, subsection 2):

- The termination of an individual policy form on a statewide basis;
- A declination of insurance coverage solely because such coverage is not available on a class or statewide basis; or
- The rescission of a policy.

An example of a declination due to coverage not available on a class basis is a declination of coverage based on eligibility requirements clearly addressed in an accident and sickness insurance policy that has been filed and approved by the Bureau. Another example of a declination of coverage triggering a notice arises when an applicant requests an optional coverage from an automobile insurer that no longer offers such coverage.

Questions about this administrative letter should be directed to:

For the Property and Casualty Division

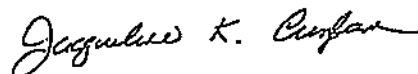
George A. Lyle, CPCU, CIC, AIE
Principal Insurance Market Examiner, P&C Consumer Services
(804) 371-9185; George.Lyle@scc.virginia.gov

or

For the Life & Health Division

Ann Colley
Principal Insurance Analyst, L&H Research
(804) 371-9813; Ann.Colley@scc.virginia.gov

Sincerely,



Jacqueline K. Cunningham
Commissioner of Insurance

Prototype AUD Notice

In connection with your application for or policy of ____ insurance, we have found it necessary to take the following action:

The reasons for this action are as follows:

(The reason for the action may be given here or in lieu of this sentence the following sentence may be substituted: "You have a right to obtain the specific reason(s) for this decision by submitting a written request to the company.")

You have the right to know the specific items of information that support the reasons given for this decision and the identity of the source of that information. You also have the right to see and obtain copies of documents relating to this decision.

If you ask us to correct, amend, or delete any information about you in our files and if we refuse to do so, you have the right to give us a concise statement of what you believe is the correct information. We will put your statement in our file so that anyone reviewing your file will see it.

If you would like additional information concerning this action, state law requires that you submit a written request within *ninety* (90) *business* days from the date this notice was mailed to you. Please send your request to:

(Show the name and address of the person or department to contact for additional information.)