

# DEPARTMENT OF REGULATORY AGENCIES

## Division of Insurance

### 3 CCR 702-5

#### PROPERTY AND CASUALTY

##### Amended Regulation 5-2-12

##### CONCERNING AUTOMOBILE INSURANCE CONSUMER PROTECTIONS

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##### **Section 1 Authority**

This Regulation is promulgated by the Commissioner of Insurance under the authority of §§ 10-1-109, 10-4-601.5, 10-4-625 and 10-4-628(4), C.R.S.

##### **Section 2 Scope And Purpose**

The purpose of this regulation is to interpret and implement the provisions of Part 6 of Article 4 of Title 10 of the Colorado Revised Statutes. In addition, this regulation provides rules governing the rejection of coverage, cancellation, nonrenewal, increase in premium, and reduction in coverage on "complying policies" of automobile insurance.

This Regulation 5-2-12 is being amended to correct statutory references and add additional language to comply with §10-4-119 and 10-4-628(3), C.R.S..

##### **Section 3 Applicability**

This regulation shall apply to all insurers that issue or renew automobile coverage on or after July 1, 2003, pursuant to Part 6 of Article 4 of Title 10 of the Colorado Revised Statutes.

##### **Section 4 Definitions**

- A. "Complying policy" shall have the same meaning as the definition found in § 10-4-601(2), C.R.S.
- B. "Incident" means an event or occurrence that results in an accident or motor vehicle conviction. An accident resulting in a motor vehicle conviction shall be treated as a single incident or event.
- C. "Motor vehicle conviction" means an adjudication of guilt to a traffic offense, whether based upon a trial resulting in conviction or a plea of guilty or 'no contest' to the original charge or to a reduced charge.
- D. "Week" means any seven (7) consecutive calendar days.

- E. "Quarterly premium payment" means one fourth (1/4) of the gross annual premium plus additional service charges, if any, for policies written for a term of one year or longer, or one half (1/2) of the gross six months premium, plus additional service charges, if any, for policies written for a six-month term.

## **Section 5      Rules**

### **A.      Installment Premium Payments**

1. Each insurer continuing private passenger motor vehicle insurance coverage shall offer, for persons who are required to purchase insurance under Part 6 of Title 10, Article 4, C.R.S., a quarterly premium payment plan. An insurer, providing a plan for payments of premium on a basis that is more frequent than quarterly, need not also provide a quarterly payment plan.
2. Each insurer shall file rules, methods or procedures to provide an installment premium payment plan and payment by automatic electronic transfer in compliance with § 10-4-119, C.R.S.
3. An insurer's premium payment plan that is more frequent than quarterly may provide for payments of an advance deposit premium not greater than one month's premium.
4. Services and/or installment charges shall be based on actual expenses incurred by the insurer for billing process. Rate filings may be submitted, including a factor of increase supportive of short term billing procedures. (For example, annual premium x 26.5% = quarterly billing; or, annual premium x 9% = monthly billing.) Such charges may all be made on the first billing or distributed over each premium due date.
5. Any other payment mode, which is at least as beneficial as the quarterly payment plan referred to above, will be considered. Finance organizations, such as subsidiaries of the insurer, bank financing, or credit card services, are considered qualifying when written agreements between the insurer and the finance organization provide for installment plans to always be available to offer to the policyholders.
6. The installment premium due notice, except for monthly payments, shall be mailed to the named insured and others known to the insurer as having moneys held in trust for the payment of automobile insurance premiums, at least twenty (20) days prior to the actual due date. If the quarterly premium payment option is selected by an insured, each succeeding payment, after the initial premium due date, shall be at regular three-month intervals.

### **B.      Rules Limiting Insurers' Action To Refuse To Write, Cancel, Nonrenew, Increase Premium, Surcharge Or Reduce Coverages**

1. Basis for refusal to write a policy of automobile insurance.
  - a. Colorado law prohibits discrimination solely based on age, color, sex, national origin, residence, marital status, or lawful occupation, including military service. Prohibited underwriting or rating practices may not be used in combination with any other practice when use of the prohibited practice results in a rejection, cancellation nonrenewal, reclassification or reduction in coverage which would not have occurred but for the prohibited practice. It is also prohibited to refuse to write a policy of insurance affording the coverages required by § 10-4-620, C.R.S., solely because another insurer has canceled a policy or refused to write or renew such policy. In addition, it is prohibited to make, or permit to be made,

any classification solely on the basis of blindness or specific physical disability, unless such classification is based upon expected risk of loss different from that of other individuals. Further, no insurer shall refuse to insure a vehicle solely because the vehicle is owned by a blind person.

- b. Unless actuarial justification in support of the insurer's action has been filed with the Division of Insurance, insurers shall not refuse to write a policy for new applicants, surcharge premiums of new applicants or place new applicants in higher priced programs or plans solely based on:
  - (1) The fact that the applicant had no prior insurance;
  - (2) The identity of the applicant's prior insurer; or
  - (3) The applicant's prior type of coverage, including assigned risk or residual market coverage or any plan other than a preferred plan.
- c. In no event shall an insurer refuse to write, surcharge, or place an applicant in a higher priced program or plan if the applicant was not required to have insurance under § 10-4-619, C.R.S.
- d. Pursuant to § 10-4-621(3), C.R.S., no insurer shall refuse to write, cancel or nonrenew, surcharge, or place an applicant in a higher priced program or plan solely on the basis that the applicant's prior limit of liability was the minimum limit of liability required by § 10-4-619, C.R.S.
- e. No insurer shall refuse to write, cancel, fail to renew, reclassify an insured under, reduce coverage under (except as part of a general reduction in coverage filed with the Commissioner), or increase the premium for any complying policy as defined in § 10-4-601(1), C.R.S., based on claims paid under comprehensive coverage, unless the carrier can demonstrate that the loss was a result of an insured's actions.
- f. Under §10-4-628(3), C.R.S., an insured is entitled to protest an insurer's action pursuant to §10-4-629, C.R.S. if the insured believes that the provisions of §10-4-628(1)(a) or (b), C.R.S. have been violated. Insurers taking any actions subject to the provisions of §10-4-628(1)(a) or (b), C.R.S. shall:
  - (1) Send a notice as required by §10-4-629,C.R.S.;
  - (2) Include all necessary information in the notice as required by §10-4-629,C.R.S. and this regulation; and
  - (3) Offer the right to protest the proposed action and request a hearing thereon before the Commissioner regardless of the length of time the policy has been in effect.

## 2. Notice of proposed actions.

- a. A proposal to cancel, nonrenew, increase the premium or reduce coverage under a private passenger motor vehicle insurance policy shall state the actual reason for proposing such action in the notice required by § 10-4-629(2)(c), C.R.S. Only one notice is required to be sent to the insured whose incident resulted in the proposed action. The statement of reasons shall be clear and specific so that a reasonable person can understand it. The insurer shall clearly describe its

underwriting rule, policy or guideline which is the basis for the proposed action. A simple recitation of dates and incidents, without further detail, is not acceptable and may cause the insurer's proposed action to be disallowed.

- b. Insurers proposing to cancel, nonrenew, increase premium or reduce coverage shall prominently display on the notice form, within or adjoining the paragraph entitled "Your Right to Protest" , the following premium payment instructions:

In order to continue your coverage during the period the proposed action is protested, you must continue to make payments according to your current premium payment plan until a decision is made by the hearing officer. You may contact your producer (agent) or the company at (phone number) for further information. Please note that the company may bill you later for any premium difference occurring if the company's action is upheld. This is the only notification you will receive to pay the premium due to continue coverage. If the premium is not paid prior to the effective date of the action listed on the notice, the coverage will lapse.

- c. Upon receipt by the insurer of a notice of protest, the insurer shall provide, for the insured, evidence of insurance continuing through entry of a final agency order.
- d. The insurer's response and presentation of documentation in support of the insurer's proposed action shall be faxed; submitted electronically or postmarked no later than 14 calendar days from the date the Colorado Division of Insurance request to respond to the insured's protest notice.
- e. The fact that an insured has requested a hearing, and the insurer has been upheld, shall not negate the insurer's obligation under §§ 10-4-629(2) and 10-4-627, C.R.S., to offer the insured the right to exclude a household member. In the event the insured has requested a formal hearing, the insurer shall accept a duly signed exclusion offer which is received by the insurer either 1) prior to the effective date of the action as set forth on the notice of premium increase, cancellation or nonrenewal, or 2) prior to the effective date of the ruling of the Division of Insurance, whichever is later.
- f. In the event the proposed action is protested, a complete copy of the underwriting rules or guidelines, including exceptions to the rules or guidelines, shall be furnished to the Division of Insurance in response to a request for such rules or guidelines or in response to a notice of formal hearing. Partial submission of rules or guidelines without the exceptions is not acceptable. Other than the information stated on the protest notice, underwriting rules, guidelines and exceptions required under this section shall be confidential.
- g. In lieu of providing a copy of the underwriting rules or guidelines for each protest, an insurer may maintain a complete copy of its underwriting rules or guidelines, including exceptions to the rules or guidelines, with the hearing officer. The company shall be responsible for providing the hearing officer with current updates of any changes to the underwriting rules or guidelines. Rules on file with the hearing officer, at the time of the hearing, will be the basis for the hearing officer's decision.

3. Application of time limitations.

In reviewing protests under § 10-4-629, C.R.S., the Division of Insurance will apply the following time limitations:

- a. If the insurer bases its action upon the fact that an insured has been involved in an accident which resulted in payment under the policy and/or has been convicted of a motor vehicle violation, the insurer may base its action on convictions or accidents which occurred during the thirty-six (36) month period immediately preceding the date of the proposed action for that individual insured under the policy. However, in case of nonrenewals, increase in premiums, or reduction in coverage, in order to take action upon incidents occurring during this thirty-six (36) month period, at least one (1) incident must have occurred during the fifteen (15) month period immediately preceding the next renewal date for each individual upon whom the proposed action is being attempted. Cancellations are subject to the restrictions set forth in § 10-4-602, C.R.S.
  - b. An insurer may exceed the fifteen (15) month period if such renewal is the first opportunity to underwrite an additional insured, i.e., new driver in household. Surcharge or merit rating changes may only be made on the policy renewal date.
4. Basis for cancellation of an automobile insurance policy.
- a. Except in the case of a renewal policy, an insurer may cancel a policy that has been in effect less than sixty (60) days at the time notice of cancellation is mailed or delivered by the insurer. Any such notice of cancellation may not be based on any of the prohibited reasons listed in § 10-4-626, 10-4-627, 10-4-628 and 10-4-629, C.R.S. Notice requirements for such cancellations are governed by policy termination provisions. At least a ten (10) day advance notice before the cancellation effective date is required.
  - b. In the case of policies which have been in effect for more than sixty (60) days, an insurer may cancel a policy affording the coverages required by § 10-4-620, C.R.S., only if the cancellation is based upon one of the following reasons:
    - (1) Nonpayment of premium ( § 10-4-602, C.R.S.); or
    - (2) The driver's license or motor vehicle registration of either the named insured or any operator either residing in the insured's household, or who customarily operates an automobile insured under the policy, has been under suspension or revocation during the policy period, or if the policy is a renewal, during its policy period or the 180 days immediately preceding its effective date ( § 10-4-602, C.R.S.); or
    - (3) The applicant knowingly made a false statement on the application for insurance ( § 10-4-602(1)(c), C.R.S.); or
    - (4) The insured knowingly and willfully made a false material statement on a claim submitted under the policy ( § 10-4-602(1)(d), C.R.S.).
  - c. An insurer may not rescind (i.e., cancel retroactively) a policy of insurance affording the coverages required by §§ 10-4-609, 10-4-620, and 10-4-621, C.R.S., or void such coverage except in case of fraud, as defined in § 10-1-128, C.R.S.
  - d. Whenever the insurer chooses to cancel a policy, the earned premium shall be determined on a pro-rata basis, including cancellation for nonpayment of premium.

5. Unacceptable reasons for refusal to renew a policy of automobile insurance include, but are not limited to the following:
- a. Colorado law prohibits discrimination solely based on age, color, sex, national origin, residence, marital status, or lawful occupation, including military service. Prohibited underwriting or rating practices may not be used in combination with any other practice when use of the prohibited practice results in a rejection, cancellation, nonrenewal, reclassification, or reduction in coverage, which would not have occurred but for the prohibited practice. It is also prohibited to refuse to write a policy of insurance affording the coverages required by § 10-4-620, C.R.S., solely because another insurer has canceled a policy, or refused to write or renew such policy. In addition, it is prohibited to make or permit to be made any classification solely on the basis of blindness, or specific physical disability, unless such classification is based upon expected risk of loss different from that of other individuals. Further, no insurer shall refuse to insure a vehicle solely because a blind person owns the vehicle.
  - b. The previous producer no longer represents the company.
  - c. Existence of a physical impairment unless the impairment is of a continuing nature, which has an adverse effect on the insured's ability to drive safely, and cannot be corrected by the use of medication or special equipment. In the event of a protest by the insured, the insured shall have the burden of proving that the impairment does not have an adverse effect on the insured's ability to drive safely.
  - d. Motor vehicle citations without convictions.
  - e. Motor vehicle convictions, which result in less than seven (7) points being assessed under the point system schedule set forth in § 42-2-127(5), C.R.S., received while in the course of employment while driving a motor vehicle used primarily as a public or livery conveyance or licensed as a commercial vehicle as described in § 10-4-627, C.R.S.
  - f. Liability payments made by insurers without a good faith reasonable investigation to determine "fault" , unless the insured has admitted the reported accident was his fault and the evidence of admission of fault is provided. A reasonable fault investigation to support the insurer's proposed action shall include, at a minimum, when available:
    - (1) Statements (oral, telephonic recordings or written) from all parties involved in the accident and all known eyewitnesses. A statement shall be deemed "unavailable" when the insured, other party in the accident, or eyewitness refuses to give or sign the statement.
    - (2) Copies of all loss, accident, and police reports.
  - g. The use of comprehensive, towing and labor, or uninsured motorist coverage claims.
  - h. The use of one (1) motor vehicle conviction resulting in less than eight (8) points assessed under the Colorado Motor Vehicle Point Assessment system or points assessed by another state.

- i. The use of one (1) motor vehicle accident, whether or not payment is made, unless a motor vehicle conviction of eight (8) points or more, assessed under the Colorado motor vehicle point assessment system, or points assessed by another state, resulted from the accident.
- j. The use of payments made under med pay coverage, if any, of an insurance policy.

As used in h, i, and j, a conviction, accident, or payment made for the same occurrence shall be considered as one incident.

- 6. Unacceptable reasons for an increase in premium (other than a general increase filed with the Commissioner of Insurance) due to a reclassification of the insured under a complying policy include, but are not necessarily limited to the following:
  - a. The use of reasons under 1 and 5, except 5 h and i above.
  - b. The use of a single accident resulting in payment of less than \$1,000, unless the insurer has elected to file with the Division of Insurance a rating plan such as a Safe Driver Plan, an Accident Surcharge Plan, etc., which includes statistical data justifying the use of a lesser threshold.
  - c. The use of an individual's driving and/or loss record, while a resident of the household, if a driver exclusion offer has been made and the driver is excluded from coverage in compliance with § 10-4-630, C.R.S.
- 7. Unacceptable reasons for a reduction in coverage (other than a general reduction in coverage approved by the Commissioner of Insurance) under a complying policy include, but are not necessarily limited to the following:
  - a. The use of reasons under 1 and 5 above.
  - b. The use of any comprehensive claims.

## **Section 6 Enforcement**

Noncompliance with this regulation may result, after notice and hearing, in the imposition of any lawful sanction including the imposition of fines and suspension or revocation of license.

## **Section 7 Severability**

If any provision of this regulation or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the regulation and the application of such provision shall not be affected thereby.

## **Section 8 Effective Date**

This regulation is effective August 1, 2007.

## **Section 9 History**

Originally issued effective February 1, 2004.  
Amended regulation effective December 1, 2004.  
Amended regulation effective January 1, 2007.  
Amended regulation effective August 1, 2007.

