12-20-06

Notice of Rulemaking Hearing
Department of Commerce and Insurance
Insurance Division

There will be a hearing before the Insurance Division of the Department of Commerce and Insurance ("Division") to consider the promulgation of rules. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, T. C. A. § 4-5-204 and will take place in Conference Room A of the Davy Crockett Tower located at 500 James Robertson Parkway, Nashville, Tennessee at 9 a.m. CST on the 20th day of February, 2007.

Any individuals with disabilities who wish to participate in these proceedings should contact the Division to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date, to allow time for the Division to determine how it may reasonably provide such aid or service. Initial contact may be made with Don Coleman, the Department's ADA Coordinator, at Davy Crockett Tower, Fifth Floor, 500 James Robertson Parkway, Nashville, Tennessee 37243, and (615) 741-0481.

For a copy of this notice of rulemaking hearing, contact: Dakasha K. Winton, Department of Commerce and Insurance, Office of Legal Counsel, 500 James Robertson Parkway, Davy Crockett Tower, Twelfth Floor, Nashville, Tennessee 37243, and (615) 741-2199.

Substance of Proposed Rules

Chapter 0780-1-82
Rating Appeals Before the Commissioner

New Rules

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0780-1-82-.01 Purpose.

The purpose of this Chapter is to:

(1) Set forth requirements for insurers and rate service organizations in providing a process whereby policyholders may request a review of the application of the insurer's or rate service organization's rating system to the policyholder's coverage in this state;

(2) Establish procedures for policyholders in this state to appeal to the commissioner an insurer's or rate service organization's application of the rating system to the policyholders insurance coverage; and

(3) Provide guidelines in determining what information an insurer must provide to policyholders seeking pertinent rate information, as well as standards as to the length of time an insurer has to provide such information and what an insurer may charge for such information.

Authority: T.C.A. § 56-5-309.

0780-1-82-.02 Scope.

This Chapter applies to all policyholders of policies delivered in the State of Tennessee and for all kinds of insurance except:

(1) Life insurance;

(2) Annuities;

(3) Disability insurance;

(4) Ocean marine insurance;

(5) Reinsurance;

(6) Aircraft liability and aircraft hull insurance;

(7) Title insurance;

(8) Credit life insurance;

(9) County mutual insurance; and

(10) Credit accident and health insurance.

Authority: T.C.A. § 56-5-309.

0780-1-82-.03 Authority.

This Chapter is promulgated pursuant to the authority contained in T.C. A. § 56-5-309(d).

Authority: T.C.A. § 56-5-309(d).

0780-1-82-.04 Definitions.

(1) "Administrative Procedures Division" means the Administrative Procedures Division of the Office of the Secretary of State, 312 8th Floor, William R. Snodgrass Tower, Nashville, Tennessee 37243, Telephone (615) 741-7008.

(2) "Commissioner" means the Commissioner of the Tennessee Department of Commerce and Insurance or the commissioner's designee.

(3) "Costs of the appeal" means the charges of the Administrative Procedures Division and Court Reporters, for participating in any appeal brought under this Chapter. The charges of the Court Reporters shall also include transcription costs.

(4) "Department" means the Tennessee Department of Commerce and Insurance.

(5) "Division" means the Insurance Division of the Tennessee Department of Commerce and Insurance.

(6) "Insurer" means all corporations, associations, partnerships, or individuals engaged as principals in the business of insurance.

(a) "Insurer" includes the Tennessee Workers' Compensation Insurance Plan developed by the commissioner pursuant to T.C. A. § 56-5-314(c).

(b) "Insurer" includes the Automobile Insurance Plan developed by the commissioner pursuant to T.C.A. § 55-12-136.

(c) "Insurer" does not include a surplus lines insurance company.

(7) "Person" means an individual or business entity.

(8) "Rate Service Organization" means a rate service organization licensed by the commissioner pursuant to T.C. A. § 56-5-310.

(9) "Uniform Administrative Procedures Act" means the act compiled in T. C. A. Title 4, Chapter 5, Part 3.

Authority: T. C. A. §§ 56-5-309 and 55-12-136.

0780-1-82-.05 Request to Review.

(1) (a) Every insurer and rate service organization doing business in this state shall provide a process by which policyholders may request the review of the application of the insurer's or rate service organization's rating system to that person's insurance coverage.

(b) At a minimum, each process required in Subparagraph (a) of this Paragraph shall contain the following:

1. The insurer or rate service organization shall have thirty (30) days to consider the request to review and communicate its decision to the requesting party.

2. The insurer or rate service organization shall provide its decision in writing to the requesting party and shall specify the reason for its decision.

(2) Every insurer shall provide to its policyholders a copy of its process at the time of the initial purchase of the insurance policy. In the event an insurer or rate service organization changes its process, it shall notify its policyholders no later than at the time of the next renewal.

Authority: T.C.A. 56-5-309(b).

0780-1-82-.06 Filing of Appeals.

(1) Any person aggrieved by a decision rendered pursuant to Rule 0780-1-82-.05, or any person that does not receive a written decision on a request for review submitted pursuant to Rule 0780-1-82-.05 within thirty (30) days, shall have the right to appeal the decision of the insurer or rate service organization to the commissioner, subject to the conditions set forth in this Chapter.

(2) In order to be considered, any appeal filed pursuant to this Chapter must meet the following requirements:

(a) The appeal must be filed with the commissioner within thirty (30) days of receipt of the decision or evidence that a written decision was not received;

(b) The appeal must contain a short and plain statement as to what portion of the decision is being appealed and the basis for such appeal;

(c) The appeal must be accompanied by the written decision rendered by the insurer or rate service organization or evidence that a written decision was not received;

(d) The appeal should specify the date in which the appellant would like to have the hearing consistent with the dates provided in Rule 0780-1-82-.07(1); and

(e) The appeal must be accompanied by a certification from the appellant or the appellant's attorney that a copy of any materials filed with the commissioner have also been sent to:

1. The Administrative Procedures Division of the Office of the Secretary of State; and

2. All parties to the dispute. In sending the appeal, the appellant may use any method allowed by law for legal service of process.

Authority: T.C.A. § 56-5-309(b), (c) and (d).

0780-1-82-.07 Scheduling of Appeals.

(1) The Division shall establish hearing dates in consultation with the Administrative Procedures Division. The Division shall place on its web-site the dates in which appeals may be heard. Appellants shall use only such dates in meeting the requirements of Rule 0780-1-82-.06(2)(d). Where practical, the appellant shall attempt to contact all parties to the dispute in order to schedule the hearing on a date agreeable to all the parties.

(2) Upon receipt of a petition for appeal, the Division shall issue a Notice of Hearing to all parties to the appeal specifying the date, place and time in which the matter will be heard.

(3) Any request for continuance or postponement of a hearing shall be filed with and heard by the administrative law judge appointed by the Administrative Procedures Division.

Authority: T. C. A. § 56-5-309(b), (c) and (d).

0780-1-82-.08 Procedure for Appeals.

(1) Where not in conflict with this Chapter, all hearings conducted pursuant to this Chapter shall be held in conformity with the Uniform Administrative Procedures Act and the Rules of Procedure for Contested Cases of the Rules of the Secretary of State as compiled at Chapter 1360-4-1.

(2) All appeals heard under this Chapter shall be heard by the commissioner in the presence of an administrative judge appointed by the Administrative Procedures Division. However, the commissioner, at the commissioner's sole discretion, may request the administrative judge to hear the matter sitting alone.

(3) The Division may intervene in any appeal brought under this Chapter:

(a) If in the Division's opinion, the appeal involves issues or the outcome of the appeal could directly or indirectly affect the regulatory responsibilities of the Division;

(b) The Division believes that the commissioner should consider imposing the sanctions authorized under T.C. A. § 56-5-309(c); or

(c) For other good cause.

(4) At the end of the hearing, the commissioner may:

(a) Make a ruling and may order one or more of the parties to submit a draft order for consideration. Any such ruling shall either assess one of the parties the costs of the appeal, or request argument from the parties as to the issue as to which party should be assessed such costs; or

(b) Order one or more party to submit proposed Findings of Fact and Conclusions of Law for consideration by the commissioner. All such proposed Findings of Fact and Conclusions of Law shall address the issue of which party should be assessed the costs of the appeal.

Authority: T. C. A. § 56-5-309(b), (c) and (d).

0780-1-82-.09 Settlement of Appeals.

(1) In lieu of having an appeal heard by the commissioner, the parties may agree at any time to the informal settlement of the matter being appealed.

(2) All settlement agreements shall provide for the payment of all costs of the appeal. In the event the settlement agreement does not contain any such provision, the commissioner may assess all costs against the insurer or rate service organization that was a party to the appeal.

Authority: T. C. A. § 56-5-309(b) and (d).

0780-1-82-.10 Final Order.

(1) The commissioner shall issue an order within ninety (90) days of the date of the adjournment of the hearing or the receipt of any proposed Findings of Fact and Conclusions of Law, whichever is later.

(2) Orders issued under Paragraph (1) of this Rule:

(a) Shall contain Findings of Fact based on the evidence presented at the hearing;

(b) Shall contain Conclusions of Law as to whether there was a proper application of the insurer's or rate service organization's rating system to the appellant's insurance coverage;

(c) Shall order the payment of any unpaid premiums owed by the policyholder to the insurer as a result of the proper application of the insurer's or rate service organization's rating system to the appellant's insurance coverage;

(d) Shall order the return of premiums paid by a policyholder that were not lawfully owed due to the improper application of the insurer's or rate service organization's rating system to the appellant's insurance coverage;

(e) Shall order that an insurer is not entitled to premiums invoiced or billed to the policyholder due to the incorrect application of the insurer's or rate service organization's rating system to the appellant's insurance coverage;

(f) Shall assign the costs of the appeal, in the commissioner's discretion, to the non-prevailing party; and

(g) May impose civil penalties of up to ten thousand dollars ($10,000) per occurrence upon a finding that a workers' compensation insurer, without any lawful basis, has assessed an employer premium

1. For individuals who are not employees; or

2. On the basis of improper classification of employees.

(3) Any order issued under this Rule shall be considered a Final Order of the Department.

(4) All orders issued under this Rule shall be sent by the commissioner to all of the parties to the appeal. The commissioner shall also cause to be published on the Division's web-site all orders issued under this Rule for at least ten (10) years from the date of entry.

Authority: T.C.A. § 56-5-309(b), (c) and (d).

0780-1-82-.11 Judicial Review.

A person who is aggrieved by a Final Order entered pursuant to this Chapter is entitled to judicial review pursuant to T. C. A. § 4-5-322.

Authority: T. C. A. § 56-5-309(b), (c) and (d).

0780-1-82-.12 Information Provided to Insureds.

(1) Every insurer or rate service organization shall, within a reasonable time after receipt of a written request and upon payment of a reasonable charge, furnish to any insured affected by a rate published by it, all pertinent information as to such rate.

(2) For purposes of this Rule:

(a) A "reasonable time" means the later of thirty (30) days from the date of the request or fourteen (14) days from the date of payment of the reasonable fee;

(b) A "reasonable charge" means a fee not to exceed twenty-five dollars ($25); and

(c) "Pertinent information" means the following:

1. The insurer's rating worksheet individualized for the particular policyholder;

2. The factors for each category along with the factors that apply to the policyholder;

3. The insurers loss runs for the current and three (3) prior years;

4. An explanation of each category and what it measures as far as predicting future loss activity, and why the policyholder is assigned a particular factor; and

5. An explanation of the how the rating algorithm works through each step for the particular individual.

(d) "Pertinent information" for a workers' compensation insurance policy means the following:

1. The guaranteed cost rating worksheet applicable to the policyholder;

2. The schedule rating worksheet applicable to the policyholder;

3. The policyholder's experience modification worksheet and an explanation as to how the policyholder can obtain the National Council on Compensation Insurance's publication, "The ABC's of Experience Rating";

4. Applicable premium discount and small deductible tables; and

5. With respect to loss sensitive plans,

(i) The insurer's worksheets, including their loss rating model and the development of the insurance charges;

(ii) A statement as to how much the company has built in for claims and loss control expenses, profit, as well as general expenses and taxes; and

(iii) A detailed statement as to how the insurer arrived at the premium.

Authority: T. C. A. § 56-5-309(a) and (d).

Legal contact and/or party who will approve final copy for publication:

Dakasha K. Winton
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Twelfth Floor, Davy Crockett Tower
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Signature of the agency or officers directly responsible for proposing and/or drafting these rules:

Dakasha K. Winton
Staff Attorney

I certify that this is an accurate and complete representation of the intent and scope of rulemaking proposed by the Commissioner of Commerce and Insurance.

Dakasha K. Winton
Staff Attorney
Tennessee Department of Commerce and Insurance

Subscribed and sworn to before me this the 15th day of December, 2006.

Andrea Wenk Hardy
Notary Public

My commission expires on the 14th day of November, 2009.

The notice of rulemaking set out herein was properly filed in the Department of State on the 15 day of Dec, 2006.

Riley C. Darnell

ANDREA WENK HARDY
STATE OF TENNESSEE NOTARY PUBLIC
COUNTY, TENN.

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