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STATE CORPORATION COMMISSION
BUREAU OF INSURANCE


October 5, 1978

Letter
Withdrawn
By Administrative
Letter 2015-07

1978-11

MEMORANDUM

TO: All Companies Licensed to Transact Life Insurance
and Accident and Sickness Insurance in Virginia

FROM: John G. Day
Commissioner 

SUBJECT: Supplementary Guideline Number One Regarding
Implementation of Section 38.1-52(11) of the
Unfair Trade Practices Act Relating to Adverse
Underwriting Decisions.

IMPORTANT

Each insurer is required to respond in writing
within twenty (20) days from the date of this
communication (1) confirming that in every
adverse underwriting decision, as defined
herein, made since July 1, 1978 notice consis-
tent with the applicable statute has been sent;
and (2) submitting filing pursuant to
IV. Compliance of this Supplementary Guideline.

The initial guidelines dated May 31, 1978 concerning
the above-captioned matter indicated that the Bureau would
be issuing periodic supplements that deal with various
problems or issues concerning implementation of the law
which were not covered by the initial guidelines or which
arose subsequent to the issuance of the initial guidelines.
This is the first supplement.

Notice Forms for Adverse Underwriting Decisions.

In order to assist in the preparation of notice forms, the following clarifying information is provided:

I. Specific Adverse Underwriting Decisions:

Each notice form must indicate the specific adverse underwriting decision that has been made. Reference only to the fact that an adverse underwriting decision has been made without a description of the type of decision is not adequate notice.

A. In the case of life insurance, an adverse underwriting decision includes:

- (1) rejection of an application for insurance in its entirety;
- (2) postponement of an application for insurance with suggestion of resubmission at a later date;
- (3) issuance or offer to issue insurance in a lesser amount than that applied for or without additional benefits applied for;
- (4) issuance or offer to issue insurance with rates in excess of those applicable to a totally unimpaired risk;
- (5) rejection of an application for reinstatement of a lapsed policy.

B. In the case of accident and sickness insurance, an adverse underwriting decision includes:

- (1) all the actions set out in A. above; plus
- (2) issuance or offer to issue insurance with exclusions, limitations or reductions not applicable to a totally unimpaired risk;
- (3) imposition of a premium increase or a restriction in coverage as a condition of renewal or reinstatement;
- (4) cancellation of a policy during a period for which premiums have been paid, or refusal to renew a policy.

II. Contents of the Notice: In order to be approved by the Bureau of Insurance, each notice form must contain the following:

- A. Addressee - A space designated for the identification of the person who is the subject of the adverse underwriting decision;
- B. Specific Detail - The type of adverse underwriting decision that has been made;
- C. Notice of - (1) the right to obtain in writing the specific reason(s) for the decision upon written request made within sixty (60) days from the date of the notice, (the actual reason(s) for the decision may be substituted for notice of the right to obtain the reasons); (2) the right to obtain the specific items of information supporting the reasons and the sources of that information, and (3) the right to review the documents relating to the action taken and, upon payment of a reasonable reproduction charge, to obtain copies of these documents. (NOTE: A flat fee in each and every instance will not be permitted. The charge must be related in some manner to the reproduction expense. If fees are charged, they may be collected in advance.)

A proto-type notice is attached to these guidelines. Any company filing a notice that is identical or substantially similar to the prototype will be assured of receiving approval of its notice form.

III. Medical Record Information: In response to the many inquiries concerning the release of medical information that a physician has indicated may be injurious to the individual's health or well-being, attached is a copy of Section 8.01-413 of the Code of Virginia. This Section provides statutory guidance for insurers in responding to requests for such medical information.

IV. Compliance: Each insurer is requested to review any filing of notice forms previously submitted to the Bureau in light of the instructions contained in this guideline. If a determination is made that a previous filing is not in compliance with these guidelines, the Bureau requests that the previous filing be withdrawn voluntarily by the insurer and a proper filing made.

JGD:dj
Attachment

PROTO-TYPE

Notice of Adverse Underwriting Decision

(NOTE: Wording may be modified at the insurer's option so long as notice specifies action taken; reason or offer to disclose reason therefor; access to related information in insurer's file; and availability of copies thereof at a reasonable charge.)

VIRGINIA LAW REQUIRES THAT YOU BE GIVEN THIS NOTICE
READ IT CAREFULLY AND KNOW YOUR RIGHTS

Date:
File No.:

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Dear

In connection with your application for _____
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 a right to see and obtain copies of documents relating to this decision. The company has the right to make a reasonable charge for the reproduction of supporting documents.

If you would like additional information concerning this action, please submit a written request within sixty (60) days of the date of this notice to:

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

(Signature)

(Form No.)
(Edition Date)

ARTICLE 7.

Medical Evidence.

§ 8.01-413. Certain copies of hospital or physician's records or papers of patient admissible; right of patient or his attorney to copies of such records or papers; subpoena. — A. In any case where the original hospital or physician's records or papers of any patient in a hospital or institution for the treatment of physical or mental sickness or illness, are admissible or would be admissible as evidence, any typewritten copy, photograph, photostatic copy, or microphotograph thereof shall be admissible as evidence in any court of this Commonwealth in like manner as the original, provided said typewritten copy, photograph, photostatic copy or microphotograph is properly authenticated by such hospital employees as would have authority to release or produce in court the original records.

B. Copies of hospital or physician's records or papers shall be furnished at a reasonable charge and within fifteen days of such request to the patient or his attorney upon such patient's or attorney's written request; provided, however, that copies of a patient's records shall not be furnished to such patient where the patient's treating physician has made a part of the patient's records a written statement that in his opinion the furnishing to or review by the patient of such records would be injurious to the patient's health or well-being, but in any such case such records shall be furnished to the patient's attorney within fifteen days of the date of such request. A reasonable charge may be made for such copies.

C. Upon the failure of any hospital or physician to comply with any written request made in accordance with subsection B within the period of time specified in that subsection, the patient or his attorney may by affidavit filed with the clerk of the circuit court wherein any eventual suit, if any, would be required to be filed, upon payment of the fees required by § 14.1-112 (23), and fees for service, request that the clerk subpoena such records or papers. The clerk shall thereupon issue a subpoena, returnable within twenty days of proper service, directing the hospital or physician to produce and furnish copies of the reports and papers to him, whereupon, the clerk shall make the same available to the patient or his attorney. (Code 1950, § 8-277.1; 1954, c. 329; 1976, c. 50; 1977, cc. 208, 617.)

REVISERS' NOTE

Former § 8-277.1 has been amended to require that copies of physicians' as well as hospital records be furnished to the patient, with some limitations; that such copies be furnished in 15 days; that a reasonable charge may be made for

the same; and that sanctions may be imposed for failure to comply.

Former § 8-329.1 was transferred to § 20-61.2.

Code Commission note. — Former § 8-277.1, corresponding to this section, was amended by Acts 1977, c. 208. This section as enacted by Acts 1977, c. 617, incorporated in substance most of the changes made in the original former

§ 8-277.1 by c. 208. There were certain minor discrepancies, and, pursuant to § 1-13.39 and Acts 1977, c. 617, cl. 4, the Code Commission has, in such instances, used the language of c. 208 in the section as set out above.