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November 29, 2010

Lisbeth Landsman-Smith
Staff Counsel
California Department of Insurance
300 Capitol Mall, Suite 1700
Sacramento, CA 95814

Sent via email to: landsmanl@insurance.ca.gov.

RE: REG-2010-00011, Proposed Amended Principally At-Fault Regulation Text—*Written Comments from the Personal Insurance Federation of California (PIFC)*

Dear Ms. Landsman-Smith:

The Personal Insurance Federation of California ("PIFC") appreciates the opportunity to submit comments to the California Department of Insurance ("the Department") in response to the Modifications to the Proposed Text of the Principally At-Fault Regulation ("proposed regulation").

PIFC member companies provide home, auto, flood and earthquake insurance for millions of Californians. Our member companies, State Farm, Farmers, Liberty Mutual Group, Progressive, Allstate and Mercury, write more than 60 percent of the home and auto insurance sold in this state. In addition, the National Association of Mutual Insurance Companies (NAMIC) is an associate member.

We appreciate the Department's willingness to consider comments previously submitted regarding the Principally At-Fault regulation and during the workshops and subsequent discussions.

We also offer the following comments in response to the proposed regulation:

Request for delayed implementation timeline

The proposed regulation will necessitate a number of programming changes in multiple systems of our companies. Some of the items that need to be coordinated and implemented include claims department coding changes, revisions to the information carriers pass to and from the subscribing loss

underwriting exchange carrier reports and system changes that account for the revised logic such as changes to the threshold. Companies have estimated a lead time of approximately nine months would be required to comply and, therefore, request a delayed implementation of the proposed regulation. This would ensure that companies would have enough time to properly assess what changes need to be made, work with different information technology (IT) and claims groups to secure resources and enact system changes and test that all changes have been properly implemented.

Section 2632.13(a)

The proposed regulation uses the term "driver" to refer to *".....an insured driver or a driver listed on an insurance application (hereinafter referred to as "driver").* We read that to mean that where the term "driver" is used, the term could mean either the actual driver or an applicant/insured. For example, in Section 2632.13(f)(3) and Section 2632.13(f)(5)(i), the term "driver" would refer more broadly to the "applicant/insured," likely the individual present during the application process. This interpretation makes sense given that in most cases not all eligible-to-be-rated drivers are present during the application for insurance across all channels. Would the Department please clarify?

Section 2632.13(f)(2)

This section sets out the information that must be contained in a subscribing loss underwriting exchange carrier report if it is to be relied upon by a subsequent insurer. As discussed over the past several months, some of this information, in the specified format, is not currently available in such reports. The primary providers of these reports have indicated a willingness and ability to modify the reporting forms completed by insurers at the time of claim, and correspondingly, the reports issued by the provider to insurance companies. Initial indications from the Department are that the proposed changes in formatting and additional information to be included in the reports would meet the requirements of the proposed regulation. The modifications will require systems changes for both those providers and insurance companies. We look forward to further discussions and confirmation from the Department of the adequacy of the revised reports prior to the resources being devoted to making the systems changes.

The Department staff has been generous with their time and thoughts as to how to improve the system and we appreciate their willingness to discuss potential modifications with the providers and carriers to ensure an understanding on all sides.

Section 2632.13(g)

We would like clarification, and/or, possible amended language to address a situation that seems consistent with the overall policy of the proposed regulation, but is not clearly articulated as allowable evidence of a principally at-fault accident.

In a situation where the Motor Vehicle Report (MVR) shows a moving violation conviction on the same day as the accident occurred, can an insurer rely on that information to determine the driver was principally at-fault? In the rare occurrence that a driver had the violation conviction and a not at-fault accident in the same occurrence, the police report would be available to the driver to overcome the determination. The ability to rely on the MVR in this scenario is important because a third party loss underwriting report may not be a valid source of incident discovery for every applicant/insured purchasing or renewing a policy. The information from the MVR then becomes even more important and under the example above, presumptive of fault, but

rebuttable with the police report available to the driver as evidence to provide to the insurer. We suggest the following amendment, replacing the (g)(a) and (g)(2) with the following:

> **(1) the MVR contains facts of a moving violation conviction and an accident on the same day; and**
> **(2) the insurer makes a reasonable dispute process available to the applicant.**

Section 2632.13(h)

We appreciate that representatives from the Department's Market Conduct Division have participated in the discussions and hearing on the proposed regulation. It is critical to insurers that the allowable use of subscribing loss underwriting exchange carrier data is consistently understood within the Department. For clarity, we suggest the following amendment:

> Section 2632.13(h) Any subsequent insurer may use data available from a subscribing loss underwriting exchange carrier to support a determination that a driver is principally at-fault for an accident. However, except as otherwise permitted in subsection (f)(2), an insurer may not rely solely on subscribing loss underwriting exchange data to support a principally at-fault determination. **Any subsequent insurer that makes a principally at-fault determination based on subscribing loss underwriting exchange carrier data as allowed in subsection (f)(2) can use the subscribing loss underwriting exchange carrier data as permissible justification of at-fault determination for California Insurance Code Section 1857.** Whenever an insurer relies on any data obtained from a subscribing loss underwriting exchange carrier to determine that a driver is principally at-fault for an accident, it shall inform the driver or applicant of the source of the information upon which it relies and provide contact information for the source.

Section 2632.13(f) and 2632.13(j)

We would like clarification under these two provisions and what appears to be an inconsistent departure from the existing regulation.

Section 2632.13(f)(5)(ii) of the proposed regulation allows a subsequent insurer, upon discovery that a declaration contains a fraudulent or material misrepresentation, to cancel the policy *"…and take any other action authorized by law.*

Section 2632.13(j) of the proposed regulation provides that if a driver fails to respond to an insurer's reasonable request for information material to a principally at-fault determination, the insurer may cancel the policy.

The existing regulation specifically allows that upon a failure or refusal by the driver to provide information reasonably requested by the insurer for information concerning an accident *"…the insurer may count a violation point for the accident or may consider the driver to be principally at-fault."* (Existing 2632.13(g)(3)).

In addition, the existing regulation also specifically provides that an insurer, upon discovery that a declaration contains a fraudulent or material misrepresentation, may use the information to *"rate*

the policy, may cancel the policy pursuant to California Insurance Code Sections 661 and 1861.03(c)(1) and take any other action authorized by law." (Existing 2632.13(i)).

It is not entirely clear whether the Department is proposing to limit the option of an insurer to continue to insure the driver, as is allowable currently, and instead require cancellation under the circumstances described in (j) and perhaps also in (f)(5)(ii).

Public policy should favor a driver being rated with the accident and, while perhaps charged a higher premium, remaining insured, rather than being cancelled because the driver was non-responsive and risk that the driver is then driving uninsured - perhaps unknowingly? We would propose that the public as well as the driver is advantaged by remaining insured. The driver will still have both the option to challenge the charge or to cancel the policy – but at least the driver would act knowingly.

Thank you for your time and consideration. Please feel free to contact PIFC's General Counsel, Kimberley Dellinger Dunn via email at kdellingerdunn@pifc.org or by phone at 916-442-6646, if you have any questions about PIFC's written comments.

Sincerely,

Kimberley Dellinger Dunn
PIFC's General Counsel