

MASSPIRG

44 Winter St.
Boston MA 02111
617-292-4800

CENTER FOR INSURANCE RESEARCH

1130 Massachusetts Ave.
Cambridge, MA 02138
617-441-2900

BY HAND

Division of Insurance
Attn: Joseph G. Murphy
First Deputy Commissioner
One South Station
Boston MA 02110-2208

August 1, 2007

RE: Proposals and Comments On Rate Competition

Dear First Deputy Commissioner Murphy:

In response to Commissioner Burnes's letter of July 23 regarding the implementation of "managed competition," here are the recommendations of MASSPIRG and the Center for Insurance Research:

Consumer-friendly proposals for competitive rating

1. Limit rating factors to those currently being used in Massachusetts.

Perhaps the best aspect of our fix-and-establish rate-setting system is its emphasis on driving record as the single most important rating factor. Massachusetts has historically given more weight to driving record than any other state. (California recently adopted a similar approach.) Limits on the number of rating factors increase the weight given to driving record.

2. Fix relativities for all rating factors uniformly throughout the industry. Allow variation on relativities only for the Safe Driver Insurance Program ("SDIP"), but protect against rates for the worst drivers being so high that significant numbers of these drivers become uninsured.

By fixing relativities for all rating factors and permitting variation on relativities only for the SDIP, the Commissioner can ensure that rate competition will be based purely on driving record and will therefore benefit the best drivers in Massachusetts. This would also increase the incentive for motorists to drive carefully and for all interested parties to focus on measures that will reduce accidents. Limits on rate increases for the worst

drivers would make sense and would help us to maintain our low uninsured driver rate. A low uninsured driving rate keeps premiums lower for all drivers.

3. Preserve the current level of rate flattening for urban communities and for driver classifications.

Preserving the current level of rate flattening would eliminate rate shock under “managed competition.” It would maintain the existing delicate balance of rates among territories and driver classifications. Moreover, since rate flattening lessens the importance of territory and driver classification, it increases the importance of driving record in the rating calculus.

4. Maintain a standard Safe Driver Insurance Program.

Competition works well only when consumers can easily compare products and prices. A standard SDIP facilitates the comparison shopping that is vital to the success of any competitive system.

5. Consider subclasses only for the SDIP – not for other rating factors – and only with prior approval.

A subclass changes the relativities applicable to drivers within the subclass, as well as to those within the broader classification. In order to ensure that rate competition be based purely on driving record (see Item #2 above), the Commissioner should not allow subclasses for any rating factor other than the SDIP. Moreover, even subclasses for the SDIP should be scrutinized with great care. The public should receive advance notice of proposals for SDIP subclasses. These proposals should be subject to prior approval, and, whenever controversial issues are involved, to a public hearing. Proposals, for example, could include accident forgiveness features, as well as discounts for additional years of clean driving.

6. Continue to require all companies within a company group to offer the same rates.

It would be especially important under “managed competition” to maintain the existing requirement that all insurers within a company group offer the same rates. In other states, company groups circumvent rating restrictions by creating multiple companies, each with a different set of rates. This practice undercuts any serious attempt to regulate rating factors and should not be allowed in Massachusetts.

7. Identify in advance all of the rating and underwriting factors insurers may use.

Under “managed competition,” it would be in the best interest of consumers for the Division of Insurance to identify specifically and expressly which factors insurers could use for rating and for underwriting, as opposed to identifying which factors could not be so used. Otherwise, insurance companies will merely use other non-prohibited factors that correlate with, or act as a “proxy” for, the factors that are prohibited. Moreover, from an enforcement standpoint, if the Division does not limit underwriting factors in

advance, it is extremely difficult to determine whether an insurer is using a prohibited factor. If, however, all permissible underwriting factors are identified in advance, enforcement becomes much simpler: Whenever two drivers with identical approved underwriting criteria are treated differently, a violation of law has occurred.

8. Limit underwriting factors to driving record as reflected in the standard Safe Driver Insurance Plan.

Other than two very limited exceptions set forth in Section 113H of G.L. c. 175, Massachusetts currently does not allow insurers to use any underwriting factors in deciding whether to issue or renew a private passenger auto insurance policy. While insurers may cede policies to Commonwealth Automobile Reinsurers, the option to cede involves no underwriting from the consumer's perspective.

As we move to a more competitive rating system with an assigned risk plan, we should limit underwriting factors to driving record as reflected in the standard SDIP. This is consistent with the principle of moving to rate competition based purely on driving record. At a minimum, allowing insurers to use any other underwriting factors would dilute the importance of driving record, and in many instances would result in discrimination against drivers based on race or income. (See the attached letter from ten consumer groups to the Commissioner, in which we set forth our policy and legal concerns about allowing the insurers to use socioeconomic and other non-driving-related factors for underwriting. See also the attached March 14, 2006 letter to the National Association of Insurance Commissioners regarding GEICO's use of discriminatory practices.)

9. Standardize coverage options as much as possible.

For competition to work well, consumers need to be able to buy the same insurance product from multiple insurers and compare prices. Otherwise, it is virtually impossible for consumers to determine whether an insurance product is priced fairly. While product competition sounds appealing in theory, in practice it provides insurers with opportunities to overcharge consumers. This is especially true for new products that are offered by only one insurer. To protect consumers adequately, the Division should standardize coverage options as much as possible and should scrutinize the rates for all new products and for products offered by a small number of insurers. In addition, the Division should require insurers to describe all products in clear and complete language, using standard terms and conditions, so that consumers can make informed choices.

10. Create a competitive rating website tool.

The Division's website should be expanded to make it easy for consumers to shop for the best deal. For competition to work, consumers must have access to the rating information that will allow them to exercise their clout in the new marketplace. The Division should create a website tool that would enable drivers to type in their relevant rating information and immediately see the rates each company would charge them.

The website should also enable drivers to check their SDIP status, which will be needed to check and compare rates. The Division should post in clear, layperson language a detailed description of how the SDIP works. This should include information as to the expected cost to consumers for various infractions, which should result in improved driving behavior.

11. Review all rate and product filings thoroughly.

“Managed competition” will fail if insurer rate and product filings are not reviewed thoroughly. For example, ratemaking data indicate that a double-digit rate decrease is in order for 2008. If the insurers file for smaller decreases, the Division can and should disapprove their rate filings. Moreover, under no circumstances should the Division accept the following argument: Any rates filed by insurers are, by definition, not excessive because they are filed in a competitive market. Besides being circular, this argument would make much of Chapter 175E irrelevant.

The Division’s website should provide notice to the public whenever an insurer makes a rate filing or a product filing. In addition, no later than one week after each filing is made, the filing and any supporting information should be made available on the website.

12. Require insurers to demonstrate adequate cost containment as part of their rate filings.

Competition in insurance markets generally focuses on risk selection and not on cost containment. (See “Limitations of a Competitive Auto Insurance Market: How to Reduce Rates and Increase Insurer Profitability Simultaneously,” which is attached to this letter.) As a result, there are significant inefficiencies that exist in competitive insurance markets. By requiring insurers to participate in cost containment measures (e.g., accident prevention and anti-fraud efforts), rates for consumers can be lowered and insurers can be rewarded with a portion of overall savings, thereby increasing industry profitability. As part of the rate filing process, insurers should describe their cost containment programs so that the Division can determine whether those programs are adequate. Rate incentives and penalties would be used to influence appropriate insurer behavior. Insurers could also be given the option to meet their cost-containment responsibilities by investing in a statewide program to control costs. The Division could coordinate this program, which would utilize the collective expertise of insurers, agents, public safety officials, consumer advocates, and other interested parties.

We are available to discuss these proposals with the Division.

Sincerely,

Deirdre Cummings
MASSPIRG

Stephen D’Amato
Center for Insurance Research