

August 4, 2023

**SENT VIA E-MAIL AND HAND DELIVERY**

Timothy Schott, Acting Superintendent  
Maine Bureau of Insurance  
#34 State House Station, Augusta ME 04333  
Karma.Y.Lombard@maine.gov

**RE: American Pet Insurance Company (SERFF Tracking #APII-133646841)  
Request for Hearing on Disapproval of Pet Insurance Policy  
Submission**

Superintendent Schott,

American Pet Insurance Company (“APIC”) hereby appeals and requests a hearing of your order disapproving its above-referenced form filing. This appeal and request for a hearing is made pursuant to 24-A M.R.S. §§ 2412(5) & 229.

**I. Background.**

APIC is an insurance company domiciled in New York that is wholly owned by Trupanion, Inc. Trupanion is a company that provides pet insurance throughout the U.S. and Canada, including in Maine. It is the leading member of the North American Pet Health Insurance Association and was intimately involved in the drafting of the Pet Insurance Model Act, including the provision at issue in this appeal. Trupanion products are underwritten by APIC and sold and administered by Trupanion Managers USA, Inc., an affiliated general agent.

On April 26, 2023 APIC submitted a new pet insurance policy form to you for approval as required by 24-A M.R.S. § 2412 (SERFF Tracking #APII-133646841). The final version<sup>1</sup> of the form submitted for approval is attached as Exhibit A (with the policy as A-1, the Insurer Disclosure of Important Policy Provisions as A-2, and the Declarations Page as A-3). You disapproved APIC’s submission on July 7, 2023 for two reasons:

- (a) The form filing violates the prohibition under 24-A M.R.S. § 3156(2) by requiring 12 days to transpire before coverage in the policy begins for illnesses or orthopedic conditions resulting from

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<sup>1</sup> The form policy contained slightly different terms when initially submitted for approval but was amended and resubmitted by Trupanion in response to comments received from the Bureau in June.

an accident. Disapproval is warranted under 24-A M.R.S. § 2413(1)(A).

- (b) The form filing (e.g. the Declarations Page) uses three terms – Inception Date, Enrollment Date, and effective Date – which are blank on the Declarations Page until completed by the insurer on the date of enrollment. Use of these terms in the policy is inconsistent, ambiguous, or misleading to consumers. Disapproval is warranted under 24-A M.R.S. § 2413(1)(B).

See Disapproval (attached as Exhibit B.) APIC appeals this disapproval and, as explained further below, challenges both of the reasons given for the disapproval.

This appeal and request for a hearing is made under 24-A M.R.S. § 2412(5), which provides that “[a]ppeals from orders of the superintendent disapproving any such form . . . may be taken as provided in sections 229 to 236.” Section 229 provides that “[t]he superintendent shall hold a hearing . . . [u]pon written application for a hearing by a person aggrieved by any act or impending act, or by any report or order of the superintendent . . . .” *Id.* § 229(2). The application “must be filed with the superintendent within 30 days after such person knew or reasonably should have known of such act, impending act, failure, report or order,” and “shall briefly state the respects in which the applicant is so aggrieved, together with the ground to be relied upon for the relief to be demanded at the hearing.” *Id.* § 229(3).

“If the superintendent finds that the application is timely and made in good faith, that the applicant would be so aggrieved if the applicant’s grounds are established and that such grounds otherwise justify the hearing, the superintendent shall hold the hearing within 30 days after filing of the application . . . .” *Id.* § 229(4). Because APIC’s application meets this standard, a hearing must be held.

## **II. Grounds for appeal.**

The superintendent can only disapprove a form filed under Section 2412 for one of the reasons enumerated by the Legislature in Section 2413. *See* 24-A, § 2413(1) (allowing disapproval “*only* on one or more of the following grounds”) (emphasis added). Trupanion’s submission was disapproved under 24-A M.R.S. § 2413(1)(A) and (B), but neither provides a valid basis for disapproval.

First, you disapproved the submission under Section 2413(1)(A) (allowing disapproval “[i]f it is in any respect in violation of or does not comply with this Title”) based on the erroneous conclusion that “[t]he form filing violates the prohibition under 24-A M.R.S. § 3156(2) by requiring 12 days to transpire before coverage in the policy begins for illnesses or orthopedic conditions resulting from an accident.” Trupanion’s proposed form does not violate Section 3156(2) or contain an illegal waiting period.

The cited provision, Section 3156(2), provides:

An insurer may issue a pet insurance policy that imposes a waiting period upon effectuation of the policy as long as that waiting period does not exceed 30 days for illnesses or orthopedic conditions not resulting from an accident. A waiting period for illnesses or orthopedic conditions resulting from an accident is prohibited.

24-A M.R.S. § 3156(2). “Waiting period” means “the period of time specified in a pet insurance policy that is required to transpire before some or all of the coverage in the policy begins.” 24-A M.R.S. § 3153(10).

APIC’s proposed insurance product does not contain a “waiting period” and does not violate Section 3156 or any other law. The product is designed such that APIC does not “issue” (24-A M.R.S. § 3156(2)), and the consumer does not pay for, the policy until 12 days after the consumer fills out the forms to enroll in the plan. The policy explains:

When you request Trupanion Membership for your Pet, the first date upon which Your monthly payment is collected for Your Pet and the date on which your coverage becomes active is referred to as the Effective Date. Your Effective Date is 12 days following your Enrollment Date, and will be noted in Your Declaration Page for Your Pet.

Exhibit A-1 at 22. The Disclosure of Important Policy Provisions likewise states that “[t]his policy does not have any waiting periods. The policy becomes effective 12 days after you enroll, and your monthly payment will be collected on your effective date.” Exhibit A-2 at 1. *Cf.* 24-A M.R.S. § 3156(2) (waiting period for accident-related claims is not allowed “upon effectuation of the policy”).

By not issuing the policy for 12 days after the consumer signs up and then, upon issuance, making the policy immediately effective for all types of claims, this product is designed to deter claims related to pets with pre-existing known injuries, claims that ultimately cause the cost of insurance to unduly increase for everyone. Without a delay in the policy becoming effective, the only actuarially sound way to avoid a disproportionate share of claims with pre-existing conditions is to require a check-up by a veterinarian immediately prior to enrollment. And while this requirement is effective at preventing anti-selection, it is also a significant deterrent to pet owners obtaining insurance at all. By waiting a short period of time to collect payment, issue the policy, and make it effective, the APIC form filing will also significantly increase the number of insured pet owners in Maine. Finally, because this policy is designed to cover accidents and illnesses on the same timeline—immediately after the policy is issued and becomes effective—it eliminates the often-difficult task of determining whether a claim is accident- or illness-related. This results in lower insurance costs and more efficient administration of claims for pet owners in Maine.

Despite the many benefits of this 12-day delay in the policy becoming effective and even though this delay is not prohibited by the plain language of statute, the Bureau nevertheless found it contrary to the prohibition on certain waiting periods in Section 3156. The Bureau's interpretation of Section 3156 is overly expansive. *See Rich v. Dep't of Marine Res.*, 2010 ME 41, ¶ 7, 994 A.2d 815 (a statute should not be construed "beyond its express language and in contravention of the plain meaning of statutory terms"). The plain language of Section 3156 prohibits a waiting period for an accident-related illness or condition only *after* the insurer issues that policy and the policy becomes effective. *See* 24-A M.R.S. § 3156(2) (discussing waiting periods "upon effectuation of the policy" and once an insurer "issue[s] a pet insurance policy"). If the policy is not yet issued, or has not become effective, then Section 3156 has no relevance. It does not, for example, require an insurer to issue a policy or make a policy effective as soon as a consumer signs up, nor does it require an insured to immediately collect payment from a consumer. It simply says that once the policy is issued *and* becomes effective (both presumably occurring after the insured pays the first monthly premium), a waiting period for accident-related claims is not allowed.

As you know, Section 3156 was originally drafted by the National Association of Insurance Commissioners as part of the Pet Insurance Model Act. The provision dealing with waiting periods was discussed at great length over the multi-year process of drafting the model act. Trupanion, along with other pet insurers, was an active participant in these discussions. It was a reasoned decision by the NAIC when drafting the language in Section 3156 to prohibit accident-related waiting periods only after the policy is issued and becomes effective. NAIC understood that, for all the reasons outlined above, it will sometimes be better for consumers and insurers to have a short delay between the time the consumer signs up and the time the policy is issued and becomes effective. The Maine Legislature shared this understanding when it adopted Section 3156, which is why the statute only prohibits accident-related waiting periods after a policy is issued and becomes effective. Because the APIC form filing does not violate Section 3156, the first reason given for the disapproval should be reversed.

It was also reversible error to find that the APIC form filing violates Section 2413(1)(B), the provision in the Insurance Code allowing disapproval if a form "contains or incorporates by reference, where such incorporation is otherwise permissible, any inconsistent, ambiguous or misleading clauses, or exceptions and conditions which deceptively affect the risk purported to be assumed in the general coverage of the contract." *Id.* This finding was based on your conclusion that the Declarations Page of the form filing "uses three terms – Inception Date, Enrollment Date, and Effective Date – which are blank on the Declarations Page until completed by the insurer on the date of enrollment," and "[u]se of these terms in the policy is inconsistent, ambiguous, or misleading to customers." This makes little sense, as the terms are either self-explanatory or specifically defined in the form filing.

Enrollment Date is self-explanatory. So much so, in fact, that the Bureau itself referred to the "date of enrollment" in its disapproval without bothering to further

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define the phrase. *See* Ex. B (“The form filing . . . uses three terms . . . which are blank on the Declarations Page until completed by the insurer on the *date of enrollment*”). Moreover, the form filing specifically defines Effective Date as being “12 days following your Enrollment Date.” (Ex. A-1 at 22.) Because the consumer will know that the Enrollment Date is the date on which they enrolled, there is nothing ambiguous or misleading about setting the Effective Date 12 days later. This is especially true because the Declaration Page will identify the specific month, day and year that is the Effective Date for each policy, saving the consumer the trouble of doing even the simple addition of counting 12 days past the enrollment date. (*See* Ex. A-3.) Finally, the term “Inception Date” appearing on the declaration page is followed for each consumer with the precise date on which their coverage begins.<sup>2</sup> *Id. See also* Inception, Merriam Webster (2022) (“an act, process, or instance of beginning”). Far from being misleading, the terms “Enrollment Date”, “Effective Date” and “Inception Date” in the APIC form filing will give clarity to consumers, allowing them to understand precisely when premiums are due and coverage begins.

### III. Conclusion.

This request for a hearing is timely and made in good faith. As outlined above, APIC is aggrieved by the July 7, 2023 disapproval and requests a hearing on issues related to the pet insurance policy it submitted. APIC also requests the opportunity to brief the legal issues inherent in this appeal in further detail in advance of the hearing.

Sincerely,



Matt Warner

cc: Thomas C. Sturtevant, Jr., AAG  
Lara Wilson, AAG

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<sup>2</sup> The “Plan Inception Date” on the Declaration Page is synonymous with the “Effective Date.” While this is not misleading, especially considering that the specific date will be listed next to each term on the form, Trupanion would nevertheless be willing to amend the form to use one or the other instead of both if this would cure the Bureau’s concerns.