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Insurance Scoring – Adverse Action Notices

The Superintendent of Insurance directs this Bulletin to insurers that use credit information in underwriting or rating personal insurance policies. This Bulletin explains when insurers must send adverse action notices and the Superintendent's expectations as to how insurers will handle consumer inquiries concerning adverse action notices.

The Maine Insurance Code[1] requires that an insurer send its applicant or customer a notice when the company takes "adverse action based on credit information."[2] Adverse action is "a denial or cancellation of, an increase in any charge for or a reduction or other adverse or unfavorable change in the terms of coverage or amount of any insurance, existing or applied for."[3] The Superintendent interprets this language the same way the United States Supreme Court has interpreted similar language in the Federal Fair Credit Reporting Act:[4]

- For a new policy application, an adverse action notice is required if the credit factor results in a higher rate than the insurer would have offered the applicant if the insurer did not use credit information in its rating plan, or if the insurer declines coverage but would have offered coverage if it did not use credit information in its underwriting guidelines.
- For a policy renewal, an adverse action notice is required if a change in the customer's credit information results in a higher premium than the insurer would have offered the customer had that information not changed.[5] This is the case even if the new rate is a credit under the insurer's rating system. As the Supreme Court has expressed it, after the parties' initial dealing, "the base-line for 'increase' is the previous rate or charge, not the 'neutral' baseline that applies at the start."[6]

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[1] 24-A M.R.S. § 2169-B

[2] 24-A M.R.S. § 2169-B(4)

[3] 24-A M.R.S. § 2169-B(1)(A)

[4] *Safeco Ins. Co. of America v. Burr*, 551 U.S. 47, 127 S.Ct. 2201, 167 L.Ed.2d 1045 (2007)

[5] Insurers must also comply with 24-A M.R.S. § 2169-B(2)(B), which prohibits taking adverse action solely on the basis of credit information without consideration of any other applicable underwriting factor. As explained in Bulletin 329, if an insured's credit information or insurance score is the only rating element that changes at renewal, the insured's rate cannot be changed unless the insurer has given consideration to other rating factors in calculating the renewal rate. Insurers should also keep in mind that credit information must be current. Subsection 2169-B(2)(F) prohibits basing adverse action on a credit report or insurance score calculated more than 90 days before issuing a new or renewal policy.

[6] *Safeco Ins. Co. of America v. Burr*, 551 U.S. at 67

The content of some insurers' adverse action notices has been a source of significant consumer confusion. Subsection 2169-B(4)(B) requires that the notice must be "in sufficiently clear and specific language" that the consumer can identify why the insurer acted as it did.[7] The notice must also "include a description of up to 4 factors that were the primary influences of the adverse action."[8] However, this subsection also says that "standardized credit explanations" from credit reporting agencies and other sources of credit information are deemed to comply with this requirement. This language creates a safe harbor for such reasons as "0909 Insufficient Information on Department Store Accounts" and "0140 % of Open Bank Revolving Accounts to Open Total Accounts." The Superintendent understands that insurers often rely on credit reporting agencies and scoring model vendors to send them the factors and that this process is automated. This process results in some insurers including four factors regardless of their influence on that decision – negative, neutral, or positive. Insurers that do so violate Section 2169-B in two possible ways.

First, by its nature, a positive or neutral factor is generally not a principal reason for an adverse action. If such a factor is mentioned at all in an adverse action notice, the insurer must provide a clear and understandable reason for including that factor – for example, because the factor has deteriorated from the previous year. Second, the statute does not require that every notice include four factors. If only two factors negatively affect the insurer's decision, then only those two factors should appear in the notice. Insurers should monitor the credit information that they receive from reporting agencies or other third-party sources and should take steps to ensure that adverse action notices only include adverse reasons.

Last, an applicant or insured might have questions – whether addressed directly to the insurer or in a complaint filed with the Bureau of Insurance – about why reported reasons negatively affected the insurer's view of the prospective or covered risk. These questions typically involve increases in premium and denials, terminations, or limitations of coverage. The safe harbor for "standardized credit explanations" applies only to the adverse action notice. The safe harbor does not mean that the insurer may answer specific questions by saying that it simply passed along what it received from the reporting agency or other vendor. Rather, the Superintendent expects the insurer to explain to its customer what happened in "sufficiently clear and specific" terms that the customer can understand. For example, if the insurer cannot provide this explanation itself, it should get that information from the reporting agency or other vendor. The insurer should also be prepared to explain the calculations that underlie its premium.

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NOTE: This Bulletin is intended solely for informational purposes. It is not intended to set forth legal rights, duties, or privileges, nor is it intended to provide legal advice. Readers should consult applicable statutes and rules and contact the Bureau of Insurance if additional information is needed.

[7] 24-A M.R.S. § 2169-B(4)(B)

[8] *Id.*