

BULLETIN 364

Insurance Coverage for Family Child Care Providers

The Maine Legislature has enacted legislation to promote the availability of homeowners insurance to Maine residents who provide child care services in their homes. An Act to Ensure Adequate Insurance Coverage for Family Child Care Providers,¹ effective September 12, 2009, limits the ability of insurers to use the presence of a family child care business as an underwriting factor for homeowners coverage. It also limits insurers' obligation to defend or indemnify a homeowners claim related to the insured's family child care activities.

The law adds Section 3060 to the Property Insurance Cancellation Control Act, Title 24-A, Chapter 41, Subchapter 5 (PICCA). Section 3060 applies only when four conditions are present. First, the homeowners policy at issue must be subject to the PICCA. That is, it must cover an owner-occupied residence of four or fewer units. Second, the policy must cover a family child care provider's primary residence. Third, the Maine Department of Health & Human Services must have certified the provider under 22 M.R.S.A. § 8301-A(3). Fourth, the provider must have demonstrated satisfactory evidence of liability coverage for the family day care business operations. The business policy must include medical payments coverage equivalent to that in the homeowners policy.

When these requirements are met, Section 3060 prohibits an insurer from refusing to issue, refusing to renew, or cancelling a homeowners policy unless the insurer bases that action solely on factors other than the presence of the family child care business. The law limits an insurer's discretion to decline to issue coverage and to cancel coverage at will within the first 90 days of a policy. The law also prohibits an insurer from treating the presence of a family child care business as a factor related to the property's insurability once the policy has been in place for 90 days and the policyholder is protected by PICCA. If an insurer takes adverse underwriting action against a family child care provider, the Superintendent expects the insurer to have objective evidence in its file that identifies the reasons for its underwriting decision and demonstrates that they comply with Section 3060.

The law addresses a problem with access to coverage that arose from insurers' concerns that homeowners policies might have to respond to claims arising from family child care operations, even if the insured had a separate liability policy for the child care business. In 2004, the Maine Law Court held that the presence of a child care business was rationally related to the insurability of the property, and thus could be a valid ground for nonrenewal of a homeowners policy, because an insurer must defend any claim against its insured that might trigger policy coverage, even if it is later determined that the policy does not cover the claim. *York Ins. Co. v. Superintendent*, 2004 ME 45. Section 3060 establishes that a homeowners insurer does not have such duties when the following four factors are present. The alleged loss must have arisen from the family child care business activity. The homeowners policy must expressly exclude such loss. The provider must demonstrate evidence of adequate business coverage. Last, the insurer must have disclosed the following to the provider: His or her failure to maintain separate

insurance coverage for that business activity might result in cancellation or nonrenewal, and the policy excludes coverage for that business activity.

The act recognizes that a policy covering the family child care business might be nonrenewed or cancelled during the term of the homeowners policy. The insurer is then free to cancel or nonrenew the homeowners policy. If a child care claim arises before the termination of homeowners coverage takes effect, and the provider had met the business coverage evidence test when the homeowners coverage was issued or renewed, the homeowners insurer has no duty to defend against such a claim.

Insurers offering coverage to licensed family child care providers should update their underwriting procedures. For example, the act does not define what constitutes satisfactory evidence of business liability coverage. In most cases, a certificate of insurance on the ACORD form should be satisfactory. The Superintendent also expects that, before it nonrenews or cancels a policy, an insurer would give the applicant or insured an opportunity to present this evidence. The Superintendent will monitor complaints and requests for hearing under the Property Insurance Cancellation Control Act to verify that insurers are affording consumers this important protection.

¹ P.L. 2009, Chapter 185 (L.D. 896), enacting 24-A M.R.S.A. § 3060.

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