

*Technical Notes
for
Automobile Insurance
Underwriting Rules*

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A. Introduction

All insurers that are licensed to write automobile insurance in Ontario are required to make a filing in respect of their underwriting rules with the Ontario Insurance Commission (OIC).

The *Section 238 Underwriting Rules Filing Guidelines* set out the information that is required to be filed and the format for the filing. These *Technical Notes* identify the relevant legislation and regulations, and other specific items to take into consideration in developing your underwriting rules.

Underwriting rules are those rules that a company uses to decline all coverages to a risk, or to deny certain coverages to a risk, or to limit coverage in some way such as offering only higher deductible levels or lower liability limits. Underwriting rules deal with the coverage that will or will not be provided.

B. Legislation and Regulations

The requirements to file underwriting rules are outlined in section 238 of the *Insurance Act* (the *Act*), R.S.O. 1990, chap. I.8, as amended.

Under subsection 238(1), an insurer cannot decline to issue, terminate or refuse to renew a contract or refuse to provide or continue a coverage or endorsement except on a ground (underwriting rule) filed with the Commissioner.

Subsection 238(2) requires every insurer to file underwriting rules with the Commissioner.

Subsection 238(3) requires that underwriting rules be filed in a form approved by the Commissioner (i.e. the *Section 238 Underwriting Rules Filing Guidelines*) together with other information as may be specified.

An insurer will be prohibited from using an underwriting rule if the Commissioner is of the opinion that the rule, or the manner in which it is applied:

is subjective;

is arbitrary;

has little or no relationship to the risk to be borne by the insurer in respect of an insured; or

is contrary to public policy.

Certain rules are prohibited from use under O. Reg. 664 section 5 (Refusal to Issue Contracts). The regulation is repeated in Exhibit 1 for reference (note that the regulation may be amended from time to time).

In addition, termination of a policy after 60 days is governed by section 12 of the *Compulsory Automobile Insurance Act*, and the Statutory Conditions of OAP 1. An underwriting rule may only be used if:

it has been filed appropriately, that is, in accordance with the guidelines;

fifteen days have elapsed since it was appropriately filed; and

the insurer has not been notified by the Commissioner that the rule is prohibited.

(Note that for the initial filing of rules that are effective January 1, 1998, the rules are to be provided by August 11, 1997).

C. Technical Notes

Outlined below are specific items to take into consideration when preparing your underwriting rules filing. When you decline an automobile insurance risk you will be required to provide, in writing, to the consumer, the reason for the declination based on the underwriting rules your company has filed with the OIC. The exact rule is to be quoted.

You should also consider when preparing your underwriting rules filing that the four-point system established under the Facility Association Plan of Operation will be eliminated as of January 1, 1998. You will need to delete any reference to this system in your filed underwriting rules and in your rate manual. You should also take into consideration that when the four-point system is eliminated, one key objective will be to ensure that only high-risk drivers are forced to seek coverage in the residual market. The OIC will be reviewing your underwriting rules to ensure that this objective is being met.

1. Filing of Underwriting Rules

The *Section 238 Underwriting Rules Filing Guidelines* set out the format for the filing of rules. Please ensure you adhere to these guidelines to avoid delays in authorizing your rules. The OIC must have on file at all times a **consolidated** list of underwriting rules. It is this official filing that will be referenced in the event that any market conduct or Ombudsman complaints arise. If an insurer uses underwriting rules that have not been appropriately filed and authorized by the Commissioner, it may be prosecuted under the *Act*. Therefore, it is important that your filed rules accurately and comprehensively catalogue the rules you will be using beginning January 1, 1998.

2. Disclosure of underwriting rules

An applicant or an insured must be given, in writing, the specific reason(s) he or she has been turned down for insurance, non-renewed or cancelled. In the case of non-renewal, 30 days notice must be provided to the insured based on section 236 of the *Act*. The written notice to the consumer must quote exactly the applicable filed underwriting rule(s) from the insurer's official filing.

3. Rules cannot be subjective or arbitrary

One of the standards in the *Act* is that underwriting rules cannot be subjective or arbitrary. That is, rules must not be written in vague or complicated terms that can be open to various interpretations. For example, a rule stating that an applicant would be declined because of "poor" payment history would obviously mean something different to everyone who reads it and does not allow the applicant or the OIC to know precisely the basis for being declined.

A clear description of the characteristic considered and how it is applied must be contained in the underwriting rule filed. The rule should be based on specific and verifiable measurements. For example, the following rule would **not** be considered subjective or arbitrary:

“ We will decline to issue, or refuse to renew a policy, where there have been four cancellations of a policy for non-payment of auto insurance premiums within the three years immediately preceding the date of application or renewal.”

If specific terminology is used, it should be defined. For example, an insurer may, for purposes of its underwriting rules reference the definition of at-fault accident that the insurer uses in its approved risk classification system for classifying and rating purposes.

Insurers are also obligated, once a rule is filed, to apply that rule uniformly and without exception.

4. Rules must bear relationship to the risk

One of the standards in the *Act* is that underwriting rules must bear some relationship to the risk. While the *Section 238 Underwriting Rules Filing Guidelines* do not require that statistics be provided when filing rules, if a rule is challenged, you may be asked to provide such support.

5. Rules must not be contrary to public policy

One of the standards in the *Act* is that rules must not be contrary to "public policy". While it is not possible to have an unqualified definition of "public policy", any rule filed should take into consideration the *Human Rights Code* and the *Canadian Charter of Rights and Freedoms*. For example, underwriting rules based on religion, race, nationality or ethnic group of the applicant or individuals to be insured under the policy would be contrary to this legislation.

Examples of other factors contrary to “public policy” include declining insurance based on:

age, sex or marital status of the individuals to be insured under the policy;

newly licensed drivers, where this is the sole factor for the declination;

drivers “new” to Canada;

lapse in coverage;

the principal location of the insured automobile unless such a decision is for a business purpose and is not a pretext for unfair discrimination;

the person to be insured under the policy has been convicted of an event unrelated to driving an automobile or automobile insurance;

vehicles with U.S. exposure;

withdrawal from a segment of the marketplace that could result in market disruption (e.g. declining “non-group” business.)

6. Rules that can be used based on agreement with the Facility Association

Included as Exhibit 2 are examples of rules that are acceptable based on discussions with the Facility Association and included in the “Proposal for Non-Voluntary Auto Insurance Market Reform”. The review of the filing can be expedited where these rules are included.

7. Filing of rules for deductibles and limits of liability

The *Act* requires that underwriting rules be filed in circumstances where coverage is being limited. Rules must be filed if you will require minimum deductible levels on certain physical damage coverages or will not offer higher liability limits.

Deductibles are now available on direct compensation - property damage (DC-PD) so that consumers can benefit from lower premiums. We will not accept any underwriting rule that imposes a minimum deductible level on direct compensation - property damage. The deductible level for DC-PD should be the consumer’s decision based on the deductible levels for which the insurer has filed rates.

8. Deletion of coverage because of failure to have vehicle inspected

Under the new regulation, inspections must be carried out on private passenger automobiles unless the automobile qualifies for an exemption. Many insurers are requesting an inspection under other circumstances as well. Due to the variety of practices within the industry, all insurers must file the conditions under which

they would delete coverage or terminate a policy because of failure to have the vehicle inspected.

9. Rules used to cede to the Risk Sharing Pool

You do not need to file any rules you use to cede risks to the Risk Sharing Pool. As you will still be providing coverage to such risks, the decision to cede, and the criteria you use, do not fall within the underwriting rule filing requirements.

10. Underwriting rules for endorsements

Standard forms have been developed specifically for filing information on endorsements. This is a separate filing process. Refer to the *Endorsement Filing Guidelines* that were released in November 1996.

11. Rate manuals

You are not required to show the underwriting rules you use in your rate manual. If you do, you should ensure that you have followed the proper filing and authorization process for changing your underwriting rules before updating your manual pages.

O. Reg. 664, section 5

5(1) No insurer shall decline to issue, refuse to renew or terminate any contract of automobile insurance or refuse to provide or continue any coverage or endorsement solely because,

- (a) the applicant or another person who would be an insured person under the contract is or was insured by the Facility Association; or
- (b) another insurer declined to issue or renew another contract of automobile insurance for the applicant or another person who would be an insured person under the contract.

(2) In deciding whether to issue, renew or terminate any contract of automobile insurance or to provide or continue any coverage or endorsement, the insurer shall not consider,

- (a) the existence of a physical or mental disability affecting a person who would be an insured person under the contract;
- (b) the number of persons who would become insured persons under the contract or their state of health or life expectancy;
- (c) the occupation, profession or employment circumstances of any person who would be an insured person under the contract;
- (d) the level of income of any person who would be an insured person under the contract;
- (e) the existence or non-existence of a medical, surgical, dental or hospitalization plan or any other arrangement or plan providing coverage to a person who would be an insured person under the contract for services and treatment that the insurer would otherwise be required to pay for under the *Statutory Accident Benefits Schedule*;
- (f) the existence or non-existence of an income continuation benefit plan, a sick leave plan or any other arrangement or plan providing coverage to a person who would be an insured person under the contract for benefits that the insurer would otherwise be required to pay for under the *Statutory Accident Benefits Schedule*;
- (g) a request by the applicant to purchase any optional benefit established under paragraph 10 of subsection 121(1) of the Act;
- (h) any past claim under Schedule C of the Act or under the *Statutory Accident Benefits Schedule* arising out of an incident for which a person who would be an insured person under the contract was not at fault; or
- (i) any past claim under section 263 of the Act for loss or damage, arising directly or indirectly from the use or operation of an automobile, for which a person who would be an insured person under the contract was not at fault.

(3) In deciding whether to issue, renew or terminate a contract providing only third party liability coverage in any amount and the benefits and coverages described in subsection 265(1) (uninsured automobile coverage) and section 268 (statutory accident benefits) of the Act, the insurer shall not consider whether a person who would be an insured person under the contract has made any past claim for loss or damage to an automobile, including its equipment, caused by any peril other than collision or upset.

Examples of Acceptable Underwriting Rules

The following are examples of acceptable underwriting rules, as outlined in the Facility Association's "Proposal for Non-voluntary Auto Insurance Market Reform". A risk could be declined where there are:

1. 2 or more at-fault accidents in the preceding 3 years
2. 1 or more Criminal Code convictions in the preceding 3 years
3. 1 or more major convictions in the preceding 3 years including operating a vehicle without insurance, or making a false statement in the certificate of insurance required for the issuance, validation or transfer of a vehicle permit.
4. 4 or more minor convictions in the preceding 3 years
5. 1 or more cancellations for material misrepresentation in the preceding 3 years
6. 1 or more convictions for auto insurance fraud in the preceding 10 years
7. 3 minor convictions in the preceding 3 years
8. 2 at-fault accidents in the preceding 5 years
9. 3 or more cancellations for non-payment of premium in the preceding 3 years
10. 1 at-fault accident in the preceding 5 years and 2 minor convictions within the preceding 3 years
11. 1 at-fault accident in the preceding 5 years and 2 minor convictions within the preceding 3 years and 2 cancellations for non-payment of premium within the preceding 3 years
12. 1 at-fault accident in the preceding 5 years and 1 minor conviction within the preceding 3 years and 2 cancellations for non-payment of premium within the preceding 3 years
13. 2 minor convictions within the preceding 3 years and 2 cancellations for non-payment of premium within the preceding 3 years

NOTE: The above rules do not include all definitions and explanations that would need to be provided with the underwriting rules.