Illinois Department of Insurance

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TO: ALL COMPANIES WRITING MEDICAL PROFESSIONAL LIABILITY INSURANCE IN ILLINOIS

FROM: MICHAEL T. MCRAITH MTM

DATE: MAY 11, 2011

RE: COMPANY BULLETIN 2011-05
ILLINOIS MEDICAL PROFESSIONAL LIABILITY INSURANCE SCHEDULE RATING PLAN GUIDELINES

The purpose of this Bulletin is to advise insurers of the Department's procedures and guidelines for implementing and administering the use of schedule rating plans for medical professional liability coverage in Illinois.

Executive Summary

Insurers providing medical professional liability insurance are allowed to use schedule rating plans when rating policies. Some insurers have increased the frequency and magnitude of the scheduled debits/credits being offered. Many times insurers submit rating plans to the Illinois Department of Insurance (Department) that lack justification for the proposed schedule rating plans and contain subjective and unverifiable criteria to assigned scheduled debits/credits. Pursuant to Section 155.18 of the Illinois Insurance Code (215 ILCS 5/155.18(b)(4)), rating plans "establish standards for measuring variations in hazards or expense provisions, or both."

In order to comply with 215 ILCS 5/155.18 insurers must adhere to certain procedures when applying debits/credits, and to limit the amount of debits/credits offered by insurers. Starting in March 2012, the maximum permissible size of the total premium adjustments will be 25%. Rate filings submitted prior to March 2012 that fail to meet the guidelines of this bulletin will be subjected to enhanced scrutiny. This Bulletin does not restrict or limit an insurer's ability to file additional rating factors in its manual rating plan to reflect the impact of characteristics formerly contemplated in the schedule rating plan. In fact, the Department strongly encourages the consideration of reflecting quantifiable, predictive rating factors and characteristics in an insurer's manual rating plans and/or experience rating plans.

Background

A schedule rating plan is any rating plan whereby an insurer's manual rating plan is adjusted or modified based upon a schedule of debits/credits. This schedule reflects observable rating characteristics, which are unique to a risk and not reflected in the manual rating plan or other rate adjustment mechanisms, such as an experience rating plan. Schedule rating plans are intended to reflect only factors that are not defined by manual rating or experience rating plans. While insurers have other methods by which to adjust the premium charged to an insured based on an insured's previous loss history, scheduled debits/credits are applied by an underwriter at the time the premium for the policy is quoted, independent and subsequent to manual rating and any adjustments for prior loss experience.

The following issues require the Department to release this Bulletin.

- **Avoiding Statutory Rate Filing Requirements**: Once an insurer provides the insured with a scheduled debit/credit, generally, there is no regulatory constraint imposed to prevent an insurer from materially changing that debit/credit as the policy is renewed thereby avoiding the statutory rate filing requirement. This can cause a material rate change for the individual insured without regulatory review and without a material change in loss exposure. In some cases, the implied rate increase can be over 50%.

- **Avoiding Unfair Discrimination**: Section 5/155.18 of the competitive rating statute provides that rates in a competitive market shall not be excessive, inadequate or unfairly discriminatory. Under this provision, pricing differentials are allowed to the degree they reflect differences in expected losses or expenses with reasonable accuracy. The degree of accuracy needed for approval of scheduled debits/credits can be achieved through well-articulated, written, observable standards in schedule rating plans which are logically related to differences in loss exposures and differences in expenses, and to the extent these standards are applied to individual risks with a high degree of consistency. Individual risk rating plans, consent to rate rating plans and other judgmental rating mechanisms or rules shall not be used to avoid compliance with this Bulletin.

- **Stabilizing the Market**: Limiting schedule rating will help stabilize fluctuations in the market which result from the "insurance cycle." Carriers are exhibiting a tendency to use scheduled debits/credits primarily as a marketing (*i.e.* "pricing") tool for agents, rather than as a tool for underwriters to accurately rate an individual risk. By limiting the maximum size of any debits/credits and by requiring documentation to prove that the insured is entitled to the debits/credits based on objective evidence and well-articulated underwriting criteria, insurers will comply with the statute in a manner that will promote a stabilized market.

- **Manual Rate Integrity**: A book of business that has a significant overall scheduled debit/credit plan calls into question the appropriateness of the manual rate levels and class rating plan. The frequency of large schedule rating modifications suggest that manual rates are not set at appropriate levels or that a key rating element, modifying the premium for a large category of risks, is missing from the rating plan.

- **Encouraging Loss Control**: Setting guidelines for schedule rating will help encourage health care provider efforts in the area of loss control. Health care providers who implement loss control programs to reduce loss exposure will benefit from these programs through lower premium charges. Further, by assigning credits using manual rating factors rather than scheduled debits/credits, insurers will provide strong incentives for insureds to control future loss exposures.

Reporting Guidelines

For the reasons listed above, the Department is issuing the following guidelines for the use of schedule rating plans.

- **Use of Schedule Rating Plans Is Discretionary:** An Illinois medical professional liability insurer may modify the premiums for individual risks by utilizing a schedule rating plan if the plan conforms to the guidelines of this Bulletin. However, the use of such plans is at the insurer's option and is not mandatory.

- **The Schedule Rating Plan Should Be Sufficiently Detailed and Loss-Related:** In the past, debits/credits have been applied based on extremely vague characteristics. While such an approach clearly gives insurers a great degree of flexibility, it can also be abused as a marketing tool and can be discriminatory. These drawbacks can be greatly reduced by having a written plan which provides sufficient detail as to which loss-related behaviors will warrant a debit/credit and the magnitude of the debit/credit provided. For example, the Department considers a characteristic defined merely as "Management Cooperation" would likely be too vague under these guidelines. But the Department recognizes as sufficiently detailed a characteristic labeled "Management Cooperation with the Insurer" which allows separate debits/credits with observable articulated criteria for prompt claims reporting; cooperation with claim investigations and compliance with loss-control recommendations. The Department will monitor each plan filed after the issuance of the Bulletin for compliance.

- **The Decision to Apply a Debit or Credit Should Be Based Upon Objective Criteria:** In addition to having vaguely defined categories for premium adjustments, many times a plan is deficient because the decision regarding whether to award a credit or apply a debit is not linked to specific facts which can be objectively verified; this has the potential of becoming discriminatory. Therefore, the description of the category should be related to factors which can be objectively determined.

  In order to help assure that debits/credits are based on objective information, schedule rating plans should require detailed individual worksheets to be completed by underwriters or field personnel on each risk eligible for schedule rating. Schedule rating plans must be sufficiently detailed describing how the risk modification criteria are to be evaluated and an objective analysis of the risk shall be based on factual information that supports the rating and shall be included in the underwriting file. This documentation of the schedule of debits/credits applied shall be sufficient for market conduct examinations to verify that the schedule rating plan has been applied objectively and consistently.

- **The Schedule Rating Plan Shall Be Applied Uniformly:** A rating plan is discriminatory if it does not apply equally to all similarly-situated insureds. The simplest way for an insurer to assure uniformity is to file one plan and have it apply uniformly to all Illinois insureds. Any lesser degree of applicability must be thoroughly explained in writing to the Department when the rate plan is filed.

- **The Schedule Rating Plan Must Be Filed with the Department:** In accordance with the provision of Section 5/155.18, medical professional liability insurers must file their schedule rating plans with the Department not later than thirty days after the first day of being used. Insurers having questions regarding compliance are invited to contact the Department. A company's filings shall include, at a minimum, the written terms of the schedule rating plan, sample notification materials, and any worksheets to be used in the plan's implementation.

  The above requirements shall also apply to any subsequent modifications of those plans previously filed. Insurers are encouraged to file initially the maximum debit/credit levels, in order to avoid the need to re-file a plan each time a new effective date arrives.

- **The Insureds Shall Be Given Certain Notification by the Insurer:** Nothing in this bulletin shall relieve an insurer of any notification requirements concerning changes in premium of the State of Illinois.

- **The Schedule Rating Process Should Be Documented:** An insurer shall retain a copy of any written schedule rating notices mailed to an insured, and a copy of any worksheets used to apply the scheduled debits/credits and to calculate any schedule rating adjustment. For all new business and when a policy is renewed, the application of a scheduled debit/credit must be supported by evidence documented in the underwriting file. These documents shall remain in the insurer's files related to that insured for not less than the period of two calendar years after the policy is cancelled/non-renewed by either the insurer or the insured. The Department's Market Conduct staff will review these documents as part of the normal examinations. This documentation of the scheduled debits/credits applied should be sufficient for market conduct examinations to verify that the schedule rating plan has been applied objectively and consistently.

- **Effective Date of Scheduled Debits and Credits:** No scheduled debit or credit shall take effect until the evidence supporting the adjustment is in the appropriate policy file or other files of the insurer.

- **Maximum Debits and Credits:** Schedule rating plans must allow for both scheduled debits/credits, and must be limited to a maximum level of 25% for all medical professional liability insurance risks. For insurers who currently have greater debits/credits than are allowed by this Bulletin, the Department will require insurers to reduce current maximum adjustment levels to a maximum level of 25% for all medical professional liability insurance risks according to the following schedule:

Policy Year Beginning	Maximum Credit/Debit
March 1, 2012 (and thereafter)	+/-25%

This schedule allows an adjustment period for insurers with current scheduled debits/credits greater than allowed by this Bulletin. **Insurers should not raise the magnitude of their current scheduled debits/credits during this adjustment period**.

- **Method of Calculating Debits or Credits:** Insurers shall calculate the amount of any scheduled debit/credit in a multiplicative manner.

Any changes to the Schedule Rating Plan that causes an increase in premium shall be in compliance with the Insurance Code including 215 ILCS 5/143.17a.

Questions or Comments: Insurance companies should send any questions or comments regarding this Bulletin, including modifications to-existing schedule rating plans to:

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Submission of filings shall be directed to the Property and Casualty Compliance Unit.