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Director of Insurance

BULLETIN NUMBER 2006-08

TO: All Insurers and Producers Transacting Insurance Business Within the State of South Carolina

FROM: Eleanor Kitzman, Director

SUBJECT: Service and Administrative Fees

DATE: August 4, 2006

Section 38-3-110 provides that the director shall regulate the rates and service of every insurer and fix just and reasonable standards, classifications, regulations, practices and measurements of services to be observed and followed by every insurer doing business in this state. S.C. Code Ann. § 38-3-110 (2002). The purpose of this Bulletin is to clarify the Department's position regarding, and to set standards for, the charging of service or other administrative fees in connection with insurance policies issued, and risks located, in this state.

Policy-level Fees

Generally, charging additional fees for services that are an integral or necessary part of the insurance contract or insurance transaction or prerequisite to insurance coverage are limited by South Carolina law. Section 38-55-50 provides, in pertinent part, that "an insurer, its agent, or an insurance broker may not make a contract of insurance or agreement as to a contract other than as plainly expressed in the policy issued."[1] Service and/or administrative fees that apply to all insureds, or classes of insureds, constitute an agreement as to the contract of insurance and are not permissible unless plainly expressed in the policy issued, which includes the declarations page and any endorsements. Examples of these fees include application/policy/origination fees, inspection fees, risk management fees, and the like. These types of fees may only be charged by insurers and only if set forth in the policy, declarations page or endorsements and reflected in the premium rate charged for the policy.[2] Producers may not charge such fees and brokers may do so only as narrowly permitted by § 38-45-160.

Policy-level fees must be included in the rate filing as a part of the overall rate change request. These types of fees are considered premium for premium tax purposes and must be reported as such. Policy-level fees may not be fully earned and must be refunded on a pro-rata basis if the policy cancels prior to expiration.

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[1] In *Maryland Casualty Company v. Conner*, 200 F. Supp. 647 (E.D.S.C. 1961), the court determined that a premium finance agreement was an agreement as to the insurance contract that was not referenced in the policy and was, therefore, void. Since then, the premium service company statute has been amended to allow premium service companies to charge certain fees. S.C. Code Ann., Sec. 38-39-80 (2002). There is also a specific statutory exception for surplus lines broker policy fees. S.C. Code Ann., Sec. 38-45-160 (2002). Finally, advancing of premiums is not subject to the outside agreement prohibitions of Section 38-55-50. S.C. Code Ann., Sec. 38-43-470 (2002).

[2] Personal lines rates and forms must be approved by the Department.

Optional Service Fees

Fees for optional services do not constitute an agreement as to the contract of insurance. "Optional services" are defined as those that are not incurred on behalf of all insureds or classes of insureds generally, are not a prerequisite to issuance of the policy and/or arise independently from the issuance and general servicing of the policy. Optional services also include those necessitated by the conduct or inaction of the insured *after* issuance of the policy. Examples of permissible optional service fees include installment payment fees, late payment fees and policy reinstatement fees. Fees for these services may be charged by insurers, producers or brokers as set forth below. An insured may only be charged a fee once per transaction for an optional service. The insurer and producer shall not both charge the applicant or insured a fee for the same service. Optional service fees may be fully earned at the time the optional service is rendered.

Notice and Disclosure

All fees charged must be reasonable in relation to the service(s) provided and each fee and the service to which it relates must be clearly defined and disclosed to and accepted by the insured in advance of the insured's purchase of the policy, as well as any consequence for failure to pay such fees. Written notice of the fee schedule must be provided to the insured at or before delivery of the policy. To preclude discrimination, the amounts and conditions of these service fees must be applied equally and consistently to all insureds of the same class that are subject to such fees. Moreover, an insurer may not offer a discount, deductible, lower-rated tier or other benefit to an insured for selecting an optional service and then charge for that service. For example, an insurer cannot represent to the insured that he or she is receiving a discount for selecting the installment payment option and then impose a fee for such selection. Likewise, a producer may not charge an insured a fee for one of the optional services specified and waive the same fee for another insured.

Fee Schedule for Optional Services

The fees listed in the Maximum Service Fee Schedule below relate to fees for optional services being charged in the property and casualty insurance industry that have been deemed reasonable by the Department. Fees in excess of those amounts must be submitted to the Department for approval and must contain proof that actual costs exceed those amounts. The fee schedule and the notice provided to insureds must be filed with the Department for approval not less than thirty days prior to the effective date of any policy to which such fees apply. Fees for services other than those shown must also be submitted for approval not less than thirty days prior to the effective date of any policy to which such fees apply. Any insurer, agent or broker currently charging fees for optional services must file a schedule of those fees with the Department within 60 days of the date of this Bulletin. This filing will not constitute a rate filing for purposes of § 38-73-220.

Maximum Optional Fee Schedule

Fee Type	**Maximum Fee**
Late charge	$10
Reinstatement Charge	$10
Convenience Fee	$3
Installment Payment Fee	$10

Nothing in this Bulletin precludes an insurer or producer from charging a fee for services not related to the insurance contract. Questions regarding this Bulletin may be addressed to the attention of Carla LaChance, Manager, Rates and Forms at (803) 737-6230 or via e-mail to clachance@doi.sc.gov.

Maximum Optional Fee
Schedule Filing

Date of Filing: _____
Insurer/Agent Name: _____
Address, Telephone Number and E-mail Address:
_____
_____

FEE TYPE	**MAXIMUM FEE**	**PROPOSED FEE**	**APPROVED FEE**
LATE CHARGE	$10	$_____	$_____
REINSTATEMENT CHARGE	$10	$_____	$_____
CONVENIENCE FEE	$3	$_____	$_____
INSTALLMENT PAYMENT FEE	$10	$_____	$_____
OTHER (DESCRIBE)	N/A	$_____	$_____

A separate fee schedule must be submitted for each coverage type for which fees will be charged.

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