

November 17, 2016

CIRCULAR LETTER TO ALL MEMBER COMPANIES

Re: Standard Practice Manual Revisions

At a meeting held October 13, 2016 the Board of Governors approved the following revisions to the North Carolina Reinsurance Facility Standard Practice Manual (material to be inserted is underlined and material to be deleted is struck through):

Section 1, Article 37 has been updated to reflect changes to N.C.G.S. 58-37-1 enacted in House Bill 287 during the 2016 Legislative Session – effective December 1, 2016 (Attachment 1).

Section 2, Plan of Operation, Article XV HEARINGS, REVIEW has been amended to provide additional detail regarding formal hearing requests – effective immediately (Attachment 2).

Section 3, General Rules, paragraphs G and P have been amended to incorporate rate evasion and fraud language also included in House Bill 287 – effective December 1, 2016 (Attachments 3-4).

Questions regarding this should be directed to Linda Davis at (919) 582-1020 or email lad@ncrb.org.

Sincerely,

Edith Davis

Chief Operating Officer

North Carolina Reinsurance Facility

ETD:lad

Attachments

RF-16-17

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Section 1. Article 37, Chapter 58, General Statutes of North Carolina

Matter Underlined is New.

Matter deleted is ~~Struck through~~.

G.S. 58-37-1 reads as rewritten:

"§ 58-37-1. Definitions.

As used in this Article:

...

- (4) "Eligible risk," for the purpose of motor vehicle insurance other than nonfleet private passenger motor vehicle insurance, means:
- a. A person who is a resident of this State who owns a motor vehicle registered or principally garaged in this State;
 - b. A person who has a valid driver's license in this State;
 - c. A person who is required to file proof of financial responsibility under Article 9A or 13A of Chapter 20 of the General Statutes in order to register his or her motor vehicle or to obtain a driver's license in this State;
 - d. A nonresident of this State who owns a motor vehicle registered ~~or~~ and principally garaged in this State; or
 - e. The State and its agencies and cities, counties, towns and municipal corporations in this State and their agencies.

However, no person shall be deemed an eligible risk if timely payment of premium is not tendered or if there is a valid unsatisfied judgment of record against such person for recovery of amounts due for motor vehicle insurance premiums and such person has not been discharged from paying said judgment, or if such person does not furnish the information necessary to effect insurance.

- (4a) "Eligible risk," for the purpose of nonfleet private passenger motor vehicle insurance, means:
- a. A resident of this State who owns a motor vehicle registered or principally garaged in this State;
 - b. A resident of this State and who has a valid driver's license issued by this State;
 - c. A person who is required to file proof of financial responsibility under Article 9A or 13 of Chapter 20 of the General Statutes in order to register his or her vehicle or to obtain a driver's license in this State;
 - d. A nonresident of this State who owns a motor vehicle registered and principally garaged in this State;
 - e. A nonresident of the State who is one of the following:
 1. A member of the Armed Forces of the United States stationed in this State, or deployed outside this State from a home base in this State, who intends to return to his or her home state;
 2. The spouse of a nonresident member of the Armed Forces of the United States stationed in this State, or deployed outside this State from a home base in this State, who intends to return to his or her home state;
 3. An out-of-state student who intends to return to his or her home state upon completion of his or her time as a student enrolled in school in this State; or

f. The State and its agencies and cities, counties, towns, and municipal corporations in this State and their agencies. However, no person shall be deemed an eligible risk if timely payment or premium is not tendered or if there is a valid unsatisfied judgment of record against the person which the person has not been discharged from paying, for recovery of amounts ~~due for motor for:~~

1. Motor vehicle insurance premiums and the person has not been discharged from paying the judgment or premiums; or
2. Payments recoverable under a policy provision authorized by G.S. 58-2-164(g1).

Further, no person shall be deemed an eligible risk if the person does not furnish the information necessary to effect insurance.

...."

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Section 2. Plan of Operation

Matter Underlined is New.

Matter deleted is ~~Struck through~~.

ARTICLE XV

HEARINGS, REVIEW

For the purpose of ensuring that any person aggrieved by any decision of the Facility who is entitled to a hearing before the Facility Board of Governors (“Board”) receive a full and complete opportunity to present all information the person aggrieved deems necessary for consideration of the Board, the following procedures shall be observed in regard to any hearing provided for before the Board:

(1) Formal Hearing Request

Any person aggrieved with respect to the operation of the Facility may request a formal hearing and ruling by the Board on any alleged failure to comply with the Plan or any alleged improper act or ruling in the administration of the Facility. The request for hearing must be made within 15 days after the date of the alleged violation or improper act or ruling. The hearing shall be held within 15 days after the receipt of the request, provided that, upon agreement of the parties, the hearing may be held at a later date and may be held at a regularly scheduled Board meeting. ~~Except as may be otherwise provided by the Board,~~ The hearing shall be held by any panel of the Board appointed by the Chairman consisting of not less than three Board members entitled to vote. A written statement setting forth those facts and arguments that the person aggrieved

desires the Board to consider shall be provided at least three (3) business days in advance of the hearing. The Facility staff may present to the Board a written statement setting forth any information it deems relevant to the Board's consideration of the matter not later than the commencement of the hearing. When the hearing is to be held at a regularly scheduled Board meeting, the presentation by the person aggrieved shall be limited to thirty (30) minutes, provided that the person aggrieved may at the time of requesting a hearing advise the Facility that thirty (30) minutes is insufficient for the person aggrieved to make a proper presentation to the Board, in which event the Facility Board shall set the hearing at a time and in a manner to allow the person aggrieved such time as that person deems necessary for a full and complete hearing. The Board may, in its sole discretion, decide the matter based upon the information presented, refer the matter to a Facility committee for a recommendation to be made to the Board, continue the hearing to a later date, and/or request or allow additional information to be presented at a later date. The ruling of a majority of the panel shall be deemed to be the formal ruling of the Board unless the full Board on its own motion shall modify or rescind the panel's action, and the ruling of the Board shall be issued in writing.

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Class Code - It is recognized as normal for an addition, deletion, or change of vehicle to involve a change from one class code to another. The appropriate premium entry as defined in Section 4 will convey that information, and no correction to the cession record is required. However, if the original class code filed on the cession was in error, a correction would need to be made to the cession record.

Example: A cession is submitted with a class code 3 (All Other) and it should have been coded as a class code 2 (Subject to Higher Limits). This class code change would need to be made to the cession record in order for it to be accurately reflected in the Facility's records which are tracked by classification.

- (2) Transaction Code-A correction to the Notice of Cession should be submitted only when the error is material. For example, if the original Notice of Cession were received by the Facility before the policy effective date, cession is effective on the effective date of policy whether new business or renewal, and there is no need to change. Likewise, Notice of Cession received by the Facility more than 30 days after the effective date of policy will have the same mid-term cession date whether new or renewal, and no change is needed. But if an item coded "new business" was in fact "renewal", and was received between the effective date and the thirtieth day, there is an error condition which must be corrected.
- (3) Coverages and limits - Changes are subject to the limitations in Paragraph D., but need not be reported. Premium changes, however, must be reported as provided in Section 4.

G. Termination of Cession

1. Expiration

Cession of a risk automatically terminates on the expiration date of the policy period covered by the Notice of Cession, unless the policy has been terminated at an earlier date.

Please note that the Plan of Operation requires the risk to have underwriting review and the Facility to be again notified of cession prior to the renewal effective date if cession of the risk is to be continued. This requirement applies to each subsequent renewal.)

2. Flat Cancellation

When a company cedes a risk for a renewal term and the policyholder does not pay any renewal premium, the company must notify the Facility of termination of cession (See Paragraph E.). This shall be done in one of two ways depending on the accounting practices of the company.

- a. If the company has submitted a cession record only for the ceded policy then the company must notify the Facility of termination of cession by canceling the cession via online data entry in EDGE, or through a transaction Code 4 cession sent in an FTP cession file. Such notice must be submitted to the Facility by not more than 90 days after the renewal effective date.

Flat cancellations made after 90 days from the effective date of cession will be suspended pending review by NCRF and will be processed separately.

- b. If the company does record the renewal quotation as written premium and cancels such amount when the renewal is not taken, the termination of cession will be accomplished either through the Monthly Accounting Detail Premium Report or through cancellation premium created directly online in EDGE and the Notice of Cession record should not be cancelled on online in EDGE on such not-taken renewals.

3. Termination of Insurance

Section 58-37-50 of Article 37 covers reasons for termination of insurance. This subsection reads as follows:

No member may terminate insurance to the extent that cession of a particular type of coverage and limits is available under the provisions of this Article except for the following reasons:

- a. Non-payment of premium when due to the Insurer or Producing Agent.

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- b. The named insured has become a non-resident of this State and would not otherwise be entitled to insurance on submission of new application under this Article.
- c. A member company has terminated an agency contract for reasons other than the quality of the agents' insureds or the agent has terminated the contract and such agent represented the company in taking the original application for insurance.
- d. When the insurance contract has been canceled pursuant to a Power of Attorney given a company licensed pursuant to the provisions of G.S. 58-35-5.
- e. The named insured, at the time of renewal, fails to meet the requirements contained in the corporate charter, articles of incorporation, and/or bylaws of the insurer, when the insurer is a company organized for the sole purpose of providing members of an organization with insurance policies in North Carolina.
- f. The named insured is no longer an eligible risk under G.S. 58-37-1.

and material misrepresentation of facts relating to the insured's status as an eligible risk. For purposes of this subsection, a payment made shall include any sums paid for satisfaction, in whole or in part, of any judgment against the insured or for a reasonable settlement of a claim against the insured for bodily injury or property damage. A payment made shall further include any costs or attorneys' fees incurred by the insurer in the adjustment, investigation, or defense of a claim.

*In accordance with the instructions in the initial part of this rule, it should be apparent that when insurance terminates the cession is likewise terminated. If the termination of insurance results in an accounting transaction for the purpose of canceling written premium, the Facility will be notified of the termination of cession through the Monthly Detail Premium Records. If the termination occurs at the end of the policy period, cession automatically terminates.

GS 58-2-164 provides:

If an applicant provides false or misleading information material to the applicant's or any named insured's status as an eligible risk and that fraudulent information makes the applicant or any named insured appear to be an eligible risk when that person is in fact not an eligible risk, the insurer may do any or all of the following:

- (1) Refuse to issue, amend, or endorse a policy.
- (2) Cancel or refuse to renew a policy that has been issued.
- (3) Deny coverage for any claim by the applicant for auto liability, comprehensive, or collision coverage. This subdivision does not apply to bodily injury or property damage claims of innocent third parties to the extent of any minimum financial responsibility requirement of State or federal law.

Any motor vehicle liability policy may provide that the insured shall reimburse the insurer for any payment made under a policy of insurance if the issuance of the policy was induced by a knowing

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- e. that he may seek insurance through other insurers who may elect not to cede his policy.

If such policyholder obtains motor vehicle liability insurance through another insurer which elects not to cede his policy to the Facility and the policyholder cancels his ceded policy within 45 days of the effective date of such ceded policy, the earned premium for such ceded policy shall be calculated on the pro rata basis, except that the pro rata calculation shall not apply to a cancellation by any insurance premium finance company as provided in Section 58-35-85, General Statutes of North Carolina.

4. Upon the written request of any eligible risk who has been notified pursuant to Subparagraph 3. above that his motor vehicle insurance policy has been ceded to the Facility, the insurer ceding the insurance policy must provide in writing to that eligible risk the specific reason or reasons for the decision to cede that policy to the Facility. Proof of mailing of the written reason or reasons is sufficient proof of compliance with this obligation.

Note: G.S. 58-37-25 provides: "With regard to any notice of cession or any written or oral communications specifying the reason or reasons for cession, there will be no liability on the part of, and no cause of action of any nature will arise against: (1) any insurer or its authorized representatives, agents, or employees, or (2) any licensed agent, broker, or persons who furnish to the insurer information as to the reason or reasons for the cession, for any communications or statements made by them, unless the communications or statements are shown to have been made in bad faith with malice in fact."

P. Minimum Underwriting Requirements

1. **Standards**—Each member company is responsible to meet the following minimum underwriting standards for all business ceded to the Facility. Each member ceding risks is responsible to determine that all business ceded to the Facility is correctly classified and rated to develop the correct and proper premium. Classification and rating practices and procedures of each member company shall correspond with those followed for

non-Facility business, subject to the following:

- a. As to private passenger cars ceded to the Facility, member companies shall:
- (1) Obtain the identification, date of birth, driver license number and state of issue (including date of original licensing for persons licensed less than two years) of the applicant, of all operators resident in the applicant's household and of any non-residents shown as regular operators.
 - (2) Determine the use and place of principal garaging of each vehicle to be insured.
 - (3) ★Obtain within 60 days of the cession effective date, for each initial cession, and at least annually thereafter, a current record of convictions for moving traffic violations for the applicant and each operator whose driving record would affect the sub-class for every vehicle subject to rating under the North Carolina Safe Driver Insurance Plan.❖
 - (4) Correctly classify and rate each vehicle in accordance with the approved North Carolina Personal Auto Manual.
 - (5) Correctly determine and charge any applicable recoupment surcharges.
- b. As to other than private passenger cars ceded to the Facility, member companies shall develop sufficient identification, territory, use and other information correctly to classify and price, in accordance with the approved North Carolina Reinsurance Facility Commercial Automobile Manual, the insurance afforded.
- c. As to every ceded risk appearing to be eligible for experience rating under the mandatory Automobile Liability Experience Rating Plan in the NCRF Commercial Automobile Manual, including (a) risks involving five or more private passenger or commercial automobiles or three or more public automobiles, (b) risks involving an estimated annual manual premium of at least \$6,500 for three or more automobiles of any type, and (c) garage

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risks with an estimated basic limits annual manual premium of at least \$6,500, member companies shall. ❖

(1) If complete experience rating data are available at the time of policy issuance, calculate the correct experience modification and apply it in establishing the policy premium.

(2) If complete experience rating data are not available at the time of policy issuance:

(a) Apply a tentative experience modification of 1.50.

Exception: In cases where the experience modification applicable to the preceding term of the policy is higher than 1.50, such higher experience modification must be applied as the tentative experience modification for the current term.

(b) Endorse the policy (i) noting application of the tentative experience modification and (ii) to provide for subsequent application of any experience modification determined in accordance with the NCRF Automobile Liability Experience Rating Plan;

(c) Determine the names of companies which insured the risk during the immediately preceding four years and the numbers and effective dates of their policies;

(d) If all of the required previous experience rating data are not available, notify the Reinsurance Facility that a risk eligible for experience rating has not provided the necessary information to rate;

(e) Provide the Reinsurance Facility with the information received and request the Facility office to call for and supply the required experience rating data and/or the experience modification; and

(f) Apply the experience modification and adjust the policy premium accordingly.

(3) Provide complete experience rating data related to a ceded risk upon written request by the Facility. This data must be submitted directly to the Facility by the due date specified in the request, which will not be less than 30 days from the date of request. If the data is not received complete and in good order by the due date specified in the written request, a penalty of \$100.00 per day will be assessed to the company for each day the data is late until the data is received complete and in good order. The Facility initially shall bill the company for the penalty upon receiving the requested data complete and in good order, or within 30 days from the due date of the report, and periodically thereafter as appropriate. Each penalty billing will appear on the member company's Monthly Account Activity Statement and is due and payable in accordance with that statement's due date and is subject to Late Payment Fees in accordance with Section 4, Chapter 8, Paragraph E of this Manual.

d. Member companies shall make all underwriting records of business ceded to the Facility available for audit by the Audit Committee or its designate. Member companies shall not:

(1) Cede any risk to the Facility except as provided by the rules outlined in Articles IX and X in the Plan of Operation.

(2) Refuse to insure any eligible risk for cedable coverages unless an exemption has been approved for that company by the Board of Governors.

2. **Application Requirements**—Each member company shall provide agents with motor vehicle insurance application forms to obtain from applicants sufficient information properly to classify and rate each exposure. This shall include at least the following:

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- a. The name, address, date of birth, operator's license number, and state of issue for the applicant, each operator residing in the applicant's household, and any non-residents who are regular operators, as well as the original date of licensing for any operator licensed for less than two years.
- b. Identification of each of the specified vehicles to be insured to include the year, the make and model, the body type and the vehicle identification number.
- c. The use of each vehicle to be insured, as required by the approved classification plan, and the place of principal garaging.
- d. A record of all accidents and convictions by the applicant and all operators as needed to establish the correct sub-class according to the North Carolina Safe Driver Insurance Plan.
- e. The correct gross weight and information regarding the use, including the radius of operation, of any commercial automobile.
- f. With respect to risks eligible for experience rating:
 - (1) The names of the prior carriers for the past four years;
 - (2) The earned premiums for the past four years; and
 - (3) Current valued loss runs for the past four years.
- g. Any other information necessary to develop the correct rating and premium for any type of risk eligible to be ceded.
- h. A Statement of Eligibility for Cession of Higher Limits Form NCRF-30 (see Exhibit H) when coverage limits above 100/300/50 are to be ceded to the Facility pursuant to Subparagraph D.2 of this Section and the coverage limits are required by rule, law or regulation other than the Vehicle Financial Responsibility Act of 1957 (Article 13 Chapter 20, General Statutes of North Carolina). The insured must complete and sign a Form NCRF-30, and the signed form, or a copy thereof, must be retained in the ceding company's file. Absent a finding by the Facility of a lack of good faith by the ceding company, the ceding company shall be entitled to rely upon the insured's satisfactorily completed

statement of eligibility for the cession of limits above 100/300/50. If, upon audit, the ceding company does not have a satisfactorily completed Form NCRF-30 in its file, the ceding company, in order to maintain cession of limits above 100/300/50 to the Facility or, in the event of a loss, in order to recover reimbursement from the Facility for losses in excess of 100/300/50, must prove, to the satisfaction of the Facility, that the higher limits were eligible to be ceded to the Facility as of the effective date of the initial cession of the insured's policy by the ceding company or as of the date notice of such cession was received by the Facility. A Form NCRF-30 is satisfactorily completed if the form is fully completed and the date the form was signed by the insured is prior to the later of (1) the date 45 days after the initial notice of cession of the insured's policy by the ceding company was received by the Facility or (2) the date of a loss.

The initial statement of eligibility by the insured shall remain in effect and may be relied upon by the ceding carrier for subsequent successive renewals of the policy until such time as the insured advises the ceding company that the insured is no longer required by the rules, laws and regulations referenced in G.S. 58-37-35(b)(1)e. to maintain coverage limits in excess of 100/300/50 or until the ceding company becomes aware that the insured is no longer required by such rules, laws or regulations to maintain coverage limits in excess of 100/300/50.

- i. A Certification of Higher Coverage Limits Form NCRF-31 (See Exhibit I) when liability coverage limits above 100/300/50 or medical payments limits above \$2,000 are to be ceded to the Facility pursuant to Subparagraph D.3 of this Section. The insured must complete and sign a copy of Form NCRF-31 and the signed form, or a copy thereof, must be retained in the ceding company's file. Absent a finding by the Facility of a lack of good faith by the ceding company, the ceding company shall be entitled to rely upon the insured's satisfactorily completed

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certification for the cession of liability coverage limits above 100/300/50 and/or medical payments limits above \$2,000. If, upon audit, the ceding company does not have a satisfactorily completed Form NCRF-31 in its file, the ceding company, in order to maintain cession of such limits to the Facility or, in the event of a loss, in order to recover reimbursement from the Facility for losses in excess of 100/300/50 for the liability coverages and/or in excess of \$2,000 for medical payments, must prove, to the satisfaction of the Facility, that the higher limits were eligible to be ceded to the Facility as of the effective date of the initial cession of the insured's policy by the ceding company or as of the date notice of such cession was received by the Facility. A Form NCRF-31 is satisfactorily completed if the form is fully completed and the date the form was signed by the insured is prior to the later of (1) the date 45 days after the initial notice of cession of the insured's policy by the ceding company was received by the Facility or (2) the date of loss.

The initial certification by the insured shall remain in effect and may be relied upon by the ceding carrier for subsequent successive renewals of the policy until such time as the insured advises the ceding company that the higher limits are no longer needed in order to obtain or continue coverage under personal excess liability or personal "umbrella" insurance policies or until the ceding company becomes aware that the higher limits are no longer needed in order to obtain or continue coverage under personal excess liability or personal "umbrella" insurance policies.

Rate Evasion, Fraud (GS 58-2-164)

To the extent relevant to a particular criterion for eligible risk status and for the purpose of obtaining other than nonfleet private passenger motor vehicle insurance, reliable proof of North Carolina residency or eligible risk status includes two or more of the following:

(1) A utility bill in the name of the applicant showing a North Carolina address for the principal place of business of the applicant.

(2) A receipt for real property taxes paid

by the applicant to a North Carolina locality within the preceding 12-month period and showing the applicant's current North Carolina address.

(3) A valid North Carolina vehicle registration issued to the applicant and showing the applicant's current North Carolina address.

(4) A federal income tax return filed by the applicant for the most recent prior filing period showing the applicant's name and current North Carolina address.

The following definitions apply to the above:

"Applicant" means one or more persons applying for the issuance or renewal of an auto insurance policy on which the person or persons will be a named insured.

"Principal place of business" means the single physical location from which the majority of the essential operations of the applicant's business are directed and controlled. The location of a consultant, service agent, or attorney of the applicant shall not be sufficient to establish an applicant's principal place of business.

3. **Ceding at Renewal**—The Plan of Operation requires each risk to have an underwriting review and the Facility to be notified of cession prior to the effective date of each renewal if cession is to be effective on that date. This requirement applies to every renewal to be ceded whether or not the expiring policy was ceded.

★THIS WILL INCLUDE, AS A MINIMUM, OBTAINING CURRENT RECORDS OF CONVICTIONS FOR MOVING TRAFFIC VIOLATIONS EVERY YEAR FOR ALL OPERATORS OF THE VEHICLES INSURED UNDER EACH CEDED POLICY SUBJECT TO RATING UNDER THE SAFE DRIVER INSURANCE PLAN.❖

4. **Agents' Responsibility**—It shall be the responsibility of each agent to obtain from the applicant answers to all relevant questions on the application for insurance and to obtain from the applicant any other information needed for correct premium determination.