

**STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
300 Capitol Mall, 17th Floor
Sacramento, CA 95814**

SECOND WORKSHOP DRAFT TEXT OF REGULATION

**GROUP INSURANCE PLANS UNDER INSURANCE CODE SECTION 1861.12
(PRIVATE PASSENGER AUTO)**

February 18, 2021

REG-2019-00015

Title 10. Investment
Chapter 5. Insurance Commissioner
Subchapter 4.7. Private Passenger Automobile Rating Factors
Article 3. Rating Factors

Amend: Section 2632.5. Rating Factors.

- (d) In addition to the rating factors set forth in subdivision (c), an insurer's class plan, and all rates and premiums determined in accordance therewith, may utilize the following optional rating factors (the "Optional Factors"):

- (14) Relative claims frequency. This factor shall contain a maximum of twenty categories and shall reflect where the insured vehicle is garaged. These categories shall be based on grouping the ZIP codes in the state into bands. Alternately, the bands could be based on grouping the census tracts in the state. Each band shall contain areas with a similar average claims frequency. In the event that the data for a ZIP code or census tract is not fully credible, the adjustment process described in Section 2632.9(d) shall be followed;
- (15) Relative claims severity. This factor shall contain a maximum of twenty categories and shall reflect where the insured vehicle is garaged. These categories shall be based on grouping the ZIP codes in the state into bands. Alternately, the bands could be based on grouping the census tracts in the state. Each band shall contain areas with a similar average claims severity. In the event that the data for a ZIP code or census tract is not fully credible, the adjustment process described in Section 2632.9(d) shall be followed.
- (16) Group membership. For any group plan sold pursuant to Insurance Code section 1861.12, the insurer shall use a group membership rating factor and no other method, including separate base rates, to capture any rating differential for the group. Group plans shall conform with the provisions of Section 2644.27.5.

NOTE: Authority cited: Section 1861.02, Insurance Code; and *CalFarm Insurance Company v. Deukmejian* (1989) 48 Cal. 3d 805. Reference: Sections 1861.02, 1861.025, 1861.05, 11628 and 11628.3, Insurance Code.

Amend: Section 2632.7. Analysis of Rating Factors.

- (a) The determination of the initial relativities to associate with a rating factor shall be established by performing a sequential analysis. The sequential analysis shall remove the variation in loss costs already explained by prior factors.
- (b) The sequential analysis shall analyze the rating factors one at a time, in the following order:
 - (1) The first mandatory factor;
 - (2) The second mandatory factor;
 - (3) The third mandatory factor;
 - (4) Any and all optional factors used by the insurer in accordance with ~~subdivision~~section (d) of Section 2632.5(d). The order of analysis of the optional factors shall be determined by the insurer, ~~with the exception that frequency band and severity band shall be analyzed last.~~ with the following two exceptions:
 - (A) All of the optional factors except group membership shall be analyzed before frequency band and severity band; and
 - (B) The group membership factor shall be analyzed last.
- (c) ~~The initial relativities, as developed, shall be balanced to a weighted average of 1.0 for multiplicative factors or balanced to a weighted average of 0.0 for additive factors. The weighting factor for the weighted average shall be the number of exposures from the data chosen for use in section 2632.8(b).~~ The group membership rating factor shall be analyzed using the experience data of the following coverages on a combined basis:
 - (1) bodily injury liability;
 - (2) property damage liability;
 - (3) medical payments;
 - (4) uninsured motorist;
 - (5) collision; and
 - (6) comprehensive coverages.

- (d) The results of the sequential analysis shall be submitted to the Department in a computer-file in a format specified by the Commissioner. Individual policy holder's name and street address need not be submitted provided the insurer includes a unique identifying number which permits tracking of the information should questions concerning data quality arise. The initial relativities, as developed, shall be balanced to a weighted average of 1.0 for multiplicative factors or balanced to a weighted average of 0.0 for additive factors. The weighting factor for the weighted average shall be the number of exposures from the data chosen for use in Section 2632.8(b).
- (e) The group membership rating factor shall be multiplicative.

Note: Authority cited: Section 1861.02, Insurance Code; and *CalFarm Insurance Company v. Deukmejian* (1989) 48 Cal.3d 805. Reference: Sections 1861.02, 1861.05, and 1861.12, Insurance Code.

Amend: Section 2632.9. Use of Data.

(g) Credibility of data.

- (1) If an insurer elects to use the group membership optional rating factor pursuant to subdivision (d)(16) of Section 2632.5, and the data used to perform the Analysis of Rating Factors required by Section 2632.7 is not fully credible, the data shall be credibility-adjusted using:
- (A) The balanced relativity described in subdivision (d) of Section 2632.7, or
- (B) The indicated relativity from the sequential analysis pursuant to subdivision (b) of Section 2632.7 from an approved class plan of another insurer with a similar group and a similar book of business. However, in order for the insurer to use another insurer's approved class plan pursuant to this subdivision (g) of Section 2632.9, the other insurer's class plan must satisfy all applicable legal requirements stated in Subchapter 4.7 of Chapter 5 of Title 10 of the California Code of Regulations, commencing with Section 2632.1, that are in effect at the time of the instant filing.
- (2) In the event that there is no credible experience data available for a proposed Group as defined in Section 2644.27.5(b)1., an insurer may offer a selected balanced relativity of .95 until such time as sufficient data has developed to assess the relativity, at which time the selected balanced relativity shall reflect that data. This subdivision (g)(2) shall apply only to proposed Groups that are reasonably expected to satisfy the ZIP code distribution requirement set forth in subdivision (g)(1) of Section 2644.27.5.
- (3) An insurer may combine the experience of multiple groups whose membership and risk characteristics are homogenous to develop a single group membership rating

factor relativity for those groups. In this case the insurer shall provide support demonstrating the existence of such homogeneity.

NOTE: Authority cited: Section 1861.02, Insurance Code, and *CalFarm Ins. Co. v. Deukmejian* (1989) 48 Cal. 3d 805. Reference: Sections 1857, 1861.02, 1861.03, and 1861.05 and 1861.12, Insurance Code; and *20th Century Ins. Co. v. Garamendi* (1994) 8 Cal.4th 216.

Title 10. Investment
Chapter 5. Insurance Commissioner
Subchapter 4.9. Review of Rates
Article 4. Determination of Reasonable Rates

Adopt: Section 2644.27.5. Group Insurance Plans.

(a) Overview.

Pursuant to Insurance Code Section 1861.12, insurers may issue any insurance coverage on a group plan, without restriction as to the purpose of the group, occupation, or type of group. Group insurance rates shall not be considered unfairly discriminatory if they are averaged broadly among persons insured under the group plan. Insurance Code section 1861.12 notwithstanding, use of any rating criteria, including but not limited to education, occupation, and group membership, without the Commissioner's approval constitutes unfair discrimination pursuant to subdivision (a)(4) of Insurance Code section 1861.02. Private passenger automobile insurance group plans remain subject to Insurance Code Section 1861.02: Insurers may use only private passenger automobile rating factors adopted by the Commissioner. Pursuant to Insurance Code section 1861.05, subdivision (a), an insurer's group plans must not be unfairly discriminatory or otherwise violate Chapter 9 of Part 2 of Division 1 of the Insurance Code. Pursuant to Insurance Code Section 1861.03, subdivision (a), the Unruh Civil Rights Act applies to any group insurance plans issued pursuant to Insurance Code Section 1861.12.

(b) Definitions.

As used in this section, the following terms have the following meanings:

(1) For purposes of private passenger automobile group insurance plans sold pursuant to Insurance Code Section 1861.12, group shall mean only, and in this section, "Group" shall mean only:

(A) A set of individuals who:

1. Choose to act and/or associate in concert for any lawful purpose,
2. In the ordinary course, renew their membership in, or pay dues to, the group at regular intervals, unless all group members receive lifetime membership, and
3. Satisfy subdivisions (b)(1)(A)1. and (b)(1)(A)2. of this Section 2644.27.5 before any insurer, insurance producer, insurer trade association, or any other entity or person required to be licensed or granted a certificate of authority by the Insurance Commissioner interacts with the group. This subdivision (b)(1)(A)3. does not apply to groups consisting entirely of insurance producers, or consisting entirely of any other entities or persons required to be

licensed by the Commissioner, which groups fall within the definition of “group” set forth in this subdivision (b)(1) provided that they satisfy the requirements stated in subdivisions (b)(1)(A)1. and (b)(1)(A)2. of this section; or

(B) The employees of a particular employer.

(2) A “Group Plan” for purposes of private passenger automobile insurance sold pursuant to Insurance Code Section 1861.12 shall mean a method of selling private passenger automobile insurance wherein:

(A) Such insurance is offered to members of a particular group as defined in subdivision (b)(1) of this section, and

(B) 1. Such group has either:

a. a written agreement with the insurer detailing the terms of the group plan arrangement, or

b. a written attestation, signed by an authorized representative of the group, to the existence of an unwritten agreement.

2. Subdivision (b)(2)(B)1. notwithstanding, groups whose membership is based exclusively on military status need not have a written agreement with the insurer detailing the terms of the group plan arrangement or a written attestation signed by an authorized representative of the group in order to be offered insurance under a group plan as that term is defined in this subdivision (b)(2).

(c) Persons insured under the Group Plan.

For purposes of private passenger automobile insurance sold pursuant to Insurance Code Section 1861.12, persons eligible to purchase insurance under a particular Group Plan shall include all members of the particular Group, as defined by the Group, who without regard to group membership meet the insurer’s publicly filed eligibility guidelines, and all members of a Group shall be offered the rate relativity of the Group. All group and non-group applicants and insureds shall be subject to the same new and renewal eligibility guidelines for the rating plan publicly filed with the Department. Nothing in this section shall prohibit a Group from including retirees, including former members of the military, within the Group’s definition of the Group.

(d) Group selection; records retention.

(1) Any insurer that offers coverage on a group plan shall maintain written guidelines prescribing the standards used to accept or reject applications for group plans. Such guidelines shall be clear, objective, and afford all groups full and equal advantages, privileges, and services, no matter their members’ sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital

status, sexual orientation, citizenship, primary language, immigration status, education, occupation or income level.

- (2) Insurers shall retain for five years records regarding every group that has sought a group plan, and every group for which the insurer has accepted or rejected a request for a group plan; the records shall include all materials provided to the insurer by any group in connection with the group's request for the group plan in question. For each such group seeking a group plan or for which the insurer has accepted or rejected a request for a group plan, the insurer shall produce a written statement of the reason or reasons why the group was accepted or rejected, making specific reference to the applicable provisions of the insurer's guidelines maintained pursuant to subdivision (d)(1) of this section. The statement required by the immediately preceding sentence shall be included among the records required to be retained pursuant to this subdivision (d)(2).

(e) Filing requirements.

- (1) The insurer shall file with each class plan application an attestation with the Commissioner that the written agreement described in subdivision (b)(2)(B)1.a. of this section exists. If a written agreement does not exist, the insurer shall instead file the attestation specified by subdivision (b)(2)(B)1.b. of this section. Any Group whose membership is based exclusively on military status shall be exempt from the requirements of this subdivision (e)(1).
- (2) For private passenger automobile insurance, any group rate shall be implemented as the optional rating factor "group membership" permitted by subdivision (d)(16) of section 2632.5, based on the experience of the group, supported by a class plan application subject to the requirements of sections 2632.1 through 2632.19.
- (3) The insurer shall demonstrate in each class plan application filing that the insurer offers Group Plans only to groups that afford all persons full and equal advantages, privileges, and services in conformance with civil rights laws as described in subdivision (a) of Insurance Code section 1861.03.

(f) Lowest rate offer.

If the non-group rate is lower than the indicated group rate(s) for which the driver qualifies, the driver shall be rated at the non-group rate.

(g) Group Plans as a whole.

- (1) For purposes of the optional factor group membership, an insurer may offer a balanced relativity of less than 1.0 for a group only if at least 25% of the insured vehicles under all of the insurer's Group Plans, as defined in subdivision (b)(2) of this Section 2644.27.5, combined, are rated in ZIP codes listed on the Designated ZIP Code List described in subdivision (g)(1)(A) of this section.

- (A) The Commissioner will publish a list of designated ZIP codes in the Designated ZIP Code List. The Commissioner will include in the Designated ZIP Code List all and only those ZIP codes that meet both of the following criteria:
1. The per capita income of the ZIP code, is below the fiftieth percentile for California; and
 2. The population of the ZIP code consists of one-third or less persons who self-designate on the US Census as White, not of Hispanic origin.
- (B) Proposed Groups as described in subdivision (g)(2) of Section 2632.9 that lack credible experience data but are reasonably expected to satisfy the ZIP Code distribution requirement stated in subdivision (g)(1) of this Section 2644.27.5 shall be included in the assessment of whether an insurer's book satisfies the ZIP Code distribution requirement stated in subdivision (g)(1) of this section.
- (2) In the event that 15% or more of an insurer's insured vehicles are in Group Plans, the insurer may be eligible to receive an increase in its efficiency standard, described in Section 2644.12, as specified below; the efficiency standard increases set forth in subdivisions (g)(2)(A) through (g)(2)(F) shall not be cumulative:
- (A) If at least 35% of vehicles insured under the insurer's Group Plans are rated in ZIP Codes listed on the Designated ZIP Code List, the insurer shall be eligible to receive an increase of 0.5 in its efficiency standard;
 - (B) If at least 36% of vehicles insured under the insurer's Group Plans are rated in ZIP Codes listed on the Designated ZIP Code List, the insurer shall be eligible to receive an increase of 0.6 in its efficiency standard;
 - (C) If at least 37% of vehicles insured under the insurer's Group Plans are rated in ZIP Codes listed on the Designated ZIP Code List, the insurer shall be eligible to receive an increase of 0.7 in its efficiency standard;
 - (D) If at least 38% of vehicles insured under the insurer's Group Plans are rated in ZIP Codes listed on the Designated ZIP Code List, the insurer shall be eligible to receive an increase of 0.8 in its efficiency standard;
 - (E) If at least 39% of vehicles insured under the insurer's Group Plans are rated in ZIP Codes listed on the Designated ZIP Code List, the insurer shall be eligible to receive an increase of 0.9 in its efficiency standard; or

- (F) If at least 40% of vehicles insured under the insurer's Group Plans are rated in ZIP Codes listed on the Designated ZIP Code List, the insurer shall be eligible to receive an increase of 1.0 in its efficiency standard.
- (3) An insurer shall demonstrate in every rate filing, in every class plan filing, and at any other time upon request of the Commissioner, that its Group Plans comply with this subdivision (g). To make this demonstration, insurers shall submit to the Commissioner:
- (A) The number of existing Group Plan rated vehicles in the ZIP codes listed on the Designated ZIP Code List; and
- (B) The number of existing Group Plan rated vehicles outside of the ZIP codes listed on the Designated ZIP Code List; and
- (C) The estimated number of rated vehicles in the ZIP codes listed on the Designated ZIP Code List for the proposed Group(s); and
- (D) The estimated number of rated vehicles outside of the ZIP codes listed on the Designated ZIP Code List for the proposed Group(s).
- (4) An insurer that receives an increase to its efficiency standard pursuant to subdivision (g)(2) of this section shall not also be eligible for a variance pursuant to subdivision (f)(2)(B) of Section 2644.27.
- (5) The Department shall, not less frequently than every ten years, update the Designated ZIP Code List required by subdivision (1)(A) using the most recent decennial census data published by the U.S. Census Bureau necessary to update Designated ZIP Code List. The commissioner shall adopt the updated Designated ZIP Code List by bulletin.
- (6) No later than 180 days after the date of the bulletin specified in subdivision (g)(5) of this section, the insurer shall submit to the Department's Rate Regulation Branch the number of vehicles insured under the insurer's Group Plans in each of the ZIP Codes listed on the updated Designated ZIP Code List, as well as the number of vehicles insured under the insurer's Group Plans in each ZIP Code throughout the State. In the event that the insurer's proportion of Group business in designated ZIP Codes falls below 25%, the insurer must refile its rate support in a class plan filing no later than 360 days after submitting the information called for in the immediately preceding sentence.
- (h) Verification and renewal of group membership.
- (1) Verification with Group. An insurer that offers coverage on a Group Plan shall verify with the Group no less frequently than every two years that each driver

continues to be a member of the Group, unless a driver's group membership does not expire, in which case the insurer need only verify that driver's membership once.

- (2) Verification with driver. An insurer that offers coverage on a Group Plan shall verify with the driver at policy inception, and during the renewal process at least once per year, that each driver is, or continues to be, a member of the Group, unless a driver's membership does not expire, in which case the insurer need only verify that driver's membership once.
- (3) Verification as used in this subdivision (h) means obtaining documentation of the insured's valid group membership.
- (4) Notwithstanding any other provision of this subdivision (h), insurers may verify continued membership in the military directly with the driver.
- (i) Group Plans shall constitute discounts for the purposes of the disclosure required by Insurance Code section 11580.15.
- (j) Reporting.

 - (1) The Commissioner may, from time to time, require a report from any insurer that offers a private passenger auto Group Plan pursuant to Insurance Code section 1861.12, so that the Commissioner may determine whether the insurer's groups comply with this article and/or evaluate the impact of Group Plans on the California insurance market.
 - (2) Not later than September 1, 2026 all insurers that will have offered private passenger auto Group Plans at any time during the preceding three calendar years (January 1 through December 31) shall provide to the Commissioner the following information for each of accident years 2023 through 2025:

 - (A) Earned exposure for each ZIP Code, by coverage for each Group Plan and for the insurer's non-group book of business,
 - (B) Earned premium for each ZIP Code, by coverage for each Group Plan and for the insurer's non-group book of business,
 - (C) Paid losses for each ZIP Code, by coverage for each Group Plan and for the insurer's non-group book of business,
 - (D) Incurred losses for each ZIP Code, by coverage for each Group Plan and for the insurer's non-group book of business,
 - (E) Claims closed for each ZIP Code, by coverage for each Group Plan and for the insurer's non-group book of business,

(F) Claims reported for each ZIP Code, by coverage for each Group Plan and for the insurer's non-group book of business, and

(G) Such other information as the Commissioner may require.

(3) Coverages as referenced in subdivision (j)(2) of this section shall include bodily injury, property damage liability, medical payments, uninsured motorist bodily injury, and uninsured motorist property damage liability, comprehensive, and collision.

(4) For private passenger automobile insurance, not later than September 1, 2029, and not later than each three-year anniversary date of September 1, 2029 thereafter, all insurers that will have offered Group Plans at any time during the preceding three calendar years (January 1 through December 31) shall provide to the Commissioner the information specified in subdivisions (j)(2)(A) through (j)(2)(G) of this section for the three preceding accident years, so that not later than September 1, 2029 such insurers shall provide the specified information for each of accident years 2026 through 2028, not later than September 1, 2032 such insurers shall provide the specified information for each of accident years 2029 through 2031, and so forth.

(5) The Commissioner shall prepare and publish an aggregate report based on data collected pursuant to subdivisions (j)(2) through (j)(4) of this section not later than September 1, 2027, and on each successive three-year anniversary date of September 1, 2027 thereafter.

(k) Compliance.

(1) General.

(A) 180-day class plan filing requirement for all insurers that offer group plans.

Any insurer offering group plans pursuant to Insurance Code section 1861.12 shall make a class plan filing that comports with the requirements set forth in the 2021 amendments to Sections 2632.5, 2632.7, and 2632.9, and in Section 2644.27.5, ("these regulations" hereinafter) no later than 180 days after the date this section is filed with the Secretary of State. The class plan filing shall not be accompanied by a rate filing and shall be revenue-neutral by coverage and overall.

(B) Premium dislocation limitation.

1. No individual premium increase caused by the implementation of these regulations alone shall exceed 5% per year.

2. Subdivision (k)(1)(B)1. of this section shall become inoperative with respect to, and shall no longer apply to, the insurer on the three-year-

anniversary date of the date it filed the class plan required by subdivision (k)(1)(A).

(C) Insurers that do not use groups.

Insurers that do not offer any group plans pursuant to Insurance Code section 1861.12 as of the date these regulations are filed with the Secretary of State are exempt from the filing requirements stated in subdivisions (k)(1)(A), (k)(2) and (k)(3). Such exempt insurers shall notify the Department of Insurance that they qualify for this exemption within 180 days of the filing of these regulations with the Secretary of State.

(2) Phase-out of group plans that do not meet regulatory definition of Group Plan.

(A) In the event an insurer's rating plan includes a group plan that does not meet the definition of "Group Plan" in subdivision (b)(1) of this section, such insurer shall make a class plan filing annually, starting with the class plan filing required by subdivision (k)(1)(A), until any such group reaches the same selected relativity for the group membership rating factor as for insured vehicles that do not satisfy the requirements for any of the insurer's Groups

(B) The number of annual filings necessary shall be determined as follows. In the event that these regulations alone cause an individual premium increase of more than 5%, the increase shall be applied in increments of 5% per year until either of the following filings is made, at which time the entirety of the remaining increase shall be applied:

1. an annual class plan filing required pursuant to subdivision (k)(2)(A), above, that indicates a premium increase of less than 5%, or
2. the third annual class plan filing required pursuant to subdivision (k)(2)(A).

(3) Phase-in of rating requirements applicable to Groups.

(A) Phase-in of indicated relativity for Groups.

1. In the event an insurer's rating plan includes a group that meets the definition of "Group" in subdivision (b)(1) of this section, such insurer shall make a class plan filing annually, starting with the class plan filing required by subdivision (k)(1)(A) of this section, until any such group reaches the indicated relativity or three years have passed, whichever happens first.

2. The number of annual filings necessary shall be determined as follows. In the event that these regulations alone cause an individual premium increase of more than 5%, the increase shall be applied in increments of 5% per year until either of the following filings is made, at which time the entirety of the remaining increase shall be applied:

a. an annual class plan filing required pursuant to subdivision (k)(3)(A)1., above, that indicates a premium increase of less than 5%, or

b. the third annual class plan filing required pursuant to subdivision (k)(3)(A)1.

(B) Phase-in of designated ZIP code distribution requirement.

The class plan filing required by subdivision (k)(1)(A) of this section shall demonstrate that the insurer's book of group business that meets the definition of "Group" in subdivision (b)(1) of this section is comprised of at least 13% insured vehicles rated in ZIP codes included on the Designated ZIP Code List described in subdivision (g)(1)(A) of this section. Every insurer offering group plans pursuant to Insurance Code section 1861.12 shall make a class plan filing that demonstrates the book's full compliance with subdivision (g) of this section within two years of the submission date of its class plan filing required by subdivision (k)(1)(A).

(I) Effective Date.

These regulations shall become effective immediately upon filing with the Secretary of State.

NOTE: Authority cited: Sections 1857, 1861.02, 1861.03, 1861.05 and 1861.12, Insurance Code, and *CalFarm Ins. Co. v. Deukmejian* (1989) 48 Cal. 3d 805. Reference: *20th Century Ins. Co. v. Garamendi* (1994) 8 Cal.4th 216; *Chabner v. United of Omaha Life Ins. Co.* (9th Cir. 2000) 225 F.3d 1042; *Koire v. Metro Car Wash*, 40 Cal.3d 24 (1985); *In re Cox* (1970) 3 Cal.3d 205.