

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

WORKSHOP DRAFT TEXT OF REGULATION

GROUP INSURANCE PLANS UNDER INSURANCE CODE SECTION 1861.12

December 23, 2019

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) Group membership, pursuant to Insurance Code Section 1861.12 and subject to the requirements of section 2644.27.5.

~~(14)~~ 15 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)~~ 16 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.

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 2632.9. Use of Data.

(g) If an insurer elects to use the optional rating factor Group Membership pursuant to section 2632.5(d)(14) 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 the balanced relativity described in section 2632.7(c) or the indicated relativity from an approved class plan of another insurer with a similar group and a similar book of business.

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. Private passenger automobile insurance group plans remain subject to Insurance Code Section 1861.02 in accordance with this section 2644.27.5; insurers may use only rating factors adopted by the Commissioner. 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. The Unruh Civil Rights Act entitles all persons to full and equal advantages, privileges, and services in the business of insurance, no matter what their sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, sexual orientation, citizenship, primary language, or immigration status. The Unruh Civil Rights Act prohibits pricing differentials in the business of insurance if they are unreasonable, arbitrary, or invidious.

(b) Definitions.

(1) For purposes of Insurance Code Section 1861.12 and 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, and
3. Satisfy subdivisions (b)(1)(A)1. and (b)(1)(A)2. of this section 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 or granted a certificate of authority 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 Insurance Code Section 1861.12 and this section shall mean a method of selling property-casualty insurance wherein:

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

(B) Such group has a written agreement with the insurer detailing the terms of the group plan relationship. However, 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 relationship in order to be offered insurance under a group plan as that term is defined in this subdivision (b)(2).

(3) “Averaged broadly among members of the group” for purposes of Insurance Code Section 1861.12 and this section means that:

(A) The group rate relativities for the private passenger automobile rating factor “group membership” permitted by subdivision (d)(14) of section 2632.5, and the group base rate for all other lines of insurance, are derived from the loss experience of the group that is issued a group plan, and

(B) All members of the group are offered the group rate relativity or group base rate referenced in subdivision (b)(3)(A) of this section.

(c) Persons insured under the group plan.

For purposes of Insurance Code Section 1861.12, persons eligible to purchase insurance under a group plan shall include all members of the group, as defined by the group. 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. All group and non-group applicants and insureds shall be subject to the same new and renewal eligibility guidelines for the rating plan.

(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 must 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 the Commissioner the written agreement described in subdivision (b)(2)(B) of this section, which agreement shall be available for public inspection. The agreement must be signed by the insurer and a representative of the group. Groups whose membership is based exclusively on military status are exempt from this requirement.
- (2) Group insurance plans offered pursuant to Insurance Code Section 1861.12 are subject to the Commissioner's prior approval under Insurance Code Section 1861.05. For private passenger automobile insurance, the group rate discount or surcharge shall be implemented as the optional rating factor "group membership" permitted by subdivision (d)(14) of section 2632.5, supported in a rate filing by a class plan application subject to the requirements of sections 2632.1 through 2632.19. For all other lines of business, a separate base rate shall be calculated for each group based on the experience of the group.
- (3) The insurer shall demonstrate in each rate filing that:
 - (A) The insurer's group rates, or the group rate relativities for the private passenger automobile rating factor "group membership" permitted by subdivision (d)(14) of section 2632.5, for each group are averaged broadly among members of the group, as that phrase is defined in subdivision (b)(3) of this section,
 - (B) The insurer's group rates, or the group rate relativities for the private passenger automobile rating factor "group membership" permitted by subdivision (d)(14) of section 2632.5, do not create pricing differentials between or among groups that are unreasonable, arbitrary, or invidious, and
 - (C) The insurer offers group plans only to groups that afford all persons full and equal advantages, privileges, and services, no matter what their sex, race, color, religion, ancestry, national origin, disability, medical condition,

genetic information, marital status, sexual orientation, citizenship, primary language, immigration status.

(f) Group plans as a whole.

- (1) An insurer's group plans, taken as a whole, shall afford all persons full and equal advantages, privileges, and services, no matter their 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) The insurer shall demonstrate in every rate filing, and in every class plan filing for private passenger automobile insurance, and at any time upon request of the Commissioner, that its group plans comply with subdivision (f)(1) of this section.
- (3) To determine whether the insurer's group plans comply with subdivision (f)(1) of this section, the Commissioner may require the insurer to provide the following types of information:
 - (A) The number of exposures, by ZIP Code groupings determined by the Commissioner and publicly communicated to the insurance industry, for each of the insurer's group plans. The Commissioner shall consult U.S. Census Bureau data, among other sources, in determining the appropriate groupings of ZIP Codes,
 - (B) Group plans the insurer has considered, including both groups the insurer has approached with the intent to offer a group plan, and groups that have approached the insurer with a proposal for a group plan,
 - (C) The sales and marketing practices employed by the insurer related to the insurer's group plans, and
 - (D) Any other data that tends to show the insurer's group plans do or do not comply with subdivision (f)(1) of this section.

(g) Verification and renewal of group membership.

- (1) An insurer that offers coverage on a group plan shall verify with the group at each renewal that the insured continues to be a member of the group.
- (2) An insured who is no longer a member of a group shall not be renewed at the group's rate.
- (3) No insured who was previously a member of a group and received the group rate or group rate relativity shall be denied renewal at the group rate or with the group rate relativity on the basis that the insured is no longer a member of the group unless the insurer has received written verification from the group that the insured is no longer a member.

(4) Notwithstanding any other provision of this subdivision (g) to the contrary, however, insurers may verify continued membership in the military directly with the insured.

(h) Reporting.

(1) The Commissioner may, from time to time, require a report from any insurer that offers a 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) For private passenger automobile insurance, not later than September 1, 2026 all insurers who 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 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 (h)(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 who 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 (h)(2)(A) through (h)(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 (h)(2) through (h)(4) of this section not later than September 1, 2027, and on each successive three-year anniversary date of September 1, 2027 thereafter.

(i) Compliance dates.

(1) The provisions of this article shall become effective immediately upon filing with the Secretary of State for new filings under subdivision (d) of this section.

(2) Any insurer using a group rating plan on the effective date of this article shall file a new group coverage and rating plan under sections 2632.1 through 2632.19, and subdivision (d) of this section, no later than January 1, 2021. After January 1, 2022, no insurer may offer, sell, renew, or collect a premium for insurance coverage on a group plan that is not part of an approved rating plan that complies with this article.

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.