

Insurance Community Anxious Over Proposed Insurer Report Cards

08/07/2009

The Florida Insurance Council and other insurance trades raised many serious issues this week about Insurance Consumer Advocate Sean Shaw's proposed rule to implement residential insurer report cards. Mr. Shaw said he is open to further discussions and, possibly, changes to the current draft rule, although no specific commitments were made.

Shaw, two other officials from the Office of Insurance Consumer Advocate and Bob Prentiss, Office of Insurance Regulation assistant general counsel, presided over a 90-minute workshop Thursday afternoon. At FIC's request, Shaw and Prentiss agreed to keep the record open for written comments for 10 days — presumably until the end of business, Monday, August 17, because the 10 days are up on a Sunday, although we will check.

The draft rule is available from this link: <http://www.flains.org/content/view/3587/29/>

Comments should be sent to Sean Shaw at: sean.shaw@myfloridacfo.com.

The Florida Insurance Council submitted lengthy testimony Thursday and will follow up with a written statement next week, which will be posted on the FIC Internet site.

Shaw and OIR will examine the oral and written testimony, perhaps revise the draft rule and then publish it for adoption and a hearing in the Florida Administrative Weekly this fall. FIC will request the hearing and insurers will have another chance to weigh in on the proposed report cards.

Thursday, Gerald Wester, American Insurance Association, said the insurance community should try to repeal the insurer report requirement during the 2010 legislative session and the ICA should not move to implement it now.

FIC Executive Vice President Sam Miller presented a series of suggestions, concerns and even a couple of compliments based on input on the proposed rule from the FIC Property Committee. Shaw's office was encouraged to eliminate the bell curve, initial grading system from the rule; add language outlining an audit system to ensure the accuracy of data collected by the Insurance Public Advocate as a basis for the insurer grades; and allow insurers to appeal their proposed grade and contest the accuracy of the supporting data.

The draft rule consists of "our ideas, but we certainly are open to suggestions—your candid critique," Shaw said.

Bell Curve Concerns

FIC raised concerns about the bell curve being used for the initial report card, with objective standards for grades to be developed later. "The curve doesn't have to be set in the rule; Thresholds could be set going forward based on reasonable judgment," FIC testified. "The Insurance Consumer Advocate and his office are competent and capable of setting that initial curve and subsequent scale based on what makes sense and what the data

shows, not some arbitrary curve set before-hand.

“The use of a bell curve makes it mandatory that some insurers will always be given a failing score even though there may be little difference between an A and an E. If, on the one hand all companies are performing at an optimum level, because the system outlined in the rule simply takes a percentage and assigns grades, some companies performing at that optimum level would get bad grades. If, on the other hand, all companies were performing below acceptable levels this system of grading would give some of them passing or excellent grades.”

Consumer Advocate Shaw said the agency is not in a position yet to develop the standards for each grade suggested by the Council and other insurance groups, although the standards clearly will be developed in the future. Steve Alexander, the ICA actuary who has been a major author of the proposed rule, said use of the bell curve as proposed is appropriate for the initial report cards. The office’s research found a clear distinction between standards supporting an A grade and B grade, with less clear distinctions between B and C or C and D. These distinctions or lack of distinctions are reflected in the proposed curve.

Allowing Insurers an Appeal of Poor Grades

Lisa Miller, representing several Florida-based insurers, asked whether Consumer Advocate Shaw would attempt to mitigate negative impacts on some insurers when the first grades come out, and Shaw said, yes. He was open to further discussion of Ms. Miller’s specific suggestion that if out of 75 insurers graded, 15 had a poor grade, these 15 companies would be given an opportunity to prepare an action plan to get better before public announcement of their grades. When the bad grade came out, the consumer advocate could also announce that the company had already begun to address the issues that produced its poor grade.

Shaw was receptive to concerns raised by FIC that insurers be allowed somehow to appeal their poor grade before it becomes public or review the data compiled by the advocate behind their poor score. Neither Shaw nor FIC have a specific plan yet, but this will be an area of future discussion.

Delaying Implementation of the Rule

Travis Miller, Radey Thomas Yon and Clark, asked whether the Office had considered not issuing a grade for the first year to ensure that all of the problems with the rule have been eliminated. “No,” replied ICA senior attorney Terry Butler. The law establishing the report cards was part of HB 1A from the January 2007 special session. “Everybody knew it was coming some day,” Butler said and the time to implement it has come.

Gerald Wester, AIA, had a similar argument. No one is demanding that the rule be implemented now and the Legislature could be persuaded to repeal it during the 2010 session. There is no reason to go forward, especially with a number of significant issues and problems still unresolved, Wester said.

Consumers are concerned about what their insurance cost and the coverage they have, not how their insurance company is graded, Wester said. The report card grades “will be primarily used by competitors and probably inappropriately so.”

Valid Versus Invalid Complaints

The rule delineates between valid and invalid complaints, but then allows invalid complaints to be included in calculations toward an insurer's grade. There was uniform opposition from the insurance community, including FIC, to including invalid complaints in the calculations.

Alexander said the ICA's review of all complaints for all companies in a recent calendar year showed about half to be valid and half to be invalid. Valid complaints and invalid complaints are each given only a 10 percent weight and since there is a 50-50 split between valid and invalid, the overall impact is only a 10 percent weight. In addition, all companies will be treated the same. The ICA's position is that invalid complaints should be considered, but with a limited weight.

Timely Payment of Claims

There was extensive discussion and concerns from insurers about provisions in the rule establishing standards for timely payment of claims and giving significant weight - more than any other single factor - to this performance in calculation of the final grade.

Alexander acknowledged that the standards for what is timely payment are assumptions, but contended there is a basis for the assumptions. He also contended that since all insurers are being covered by the same assumptions, the application should be fair.

There was discussion about whether a focus on timely payments is appropriate in light of legislation requiring insurers to pay the undisputed amount of a claim within 90 days to avoid huge interest penalties.

FIC will elaborate on those discussions in its letter to OIR and Mr. Shaw. The Council will propose that no complaints be accepted for the data on any claim until after 90 days has passed or the claim has been finalized by the carrier, whichever is sooner. The law gives insurers 90 days to close a property claim and yet carriers sometimes see complaints after only a couple of weeks, even though the file is still open.

Rule Penalizes Certain Insurers Unfairly

Travis Miller expressed concerns that certain companies might get lower grades inappropriately because of their business plans. He cited Citizens Property Insurance Corporation takeout companies, who face a lot of questions during a takeout that could wind up in a data base as complaints. He also questioned whether companies not writing new business might not get better grades — with no real basis for it — than companies actively writing because expanding companies will have more consumer inquiries. A third category might be independent agency companies where agents have three or four or even 10 companies to represent, different insurer underwriting guidelines to keep straight and other issues.

Christine Turner Ashburn, representing Citizens Property, expressed concern that the draft rule would penalize Citizens

following a major hurricane in southeast Florida or another area with huge market concentration. The rule's combination of emphasis on market share and the number of complaints will penalize Citizens and other carriers with areas of large concentration. Don't just look at market share and claims share, she urged the Insurance Consumer Advocate.

She has a valid concern, Alexander told Ms. Ashburn, but the agency has to go with the data currently available to it. "Perhaps in the future, we can gather the appropriate data," he said.

Alternative Grades and FIC Concerns About Complaints

Wester and the AIA suggested an alternative to grades of A, B, C, D and E. His suggestions included CE, "Clearly Exceeds" satisfactory performance standards; MA, "Meets the Average"; or NI, "Needs Improvement."

Wester also protested use in the rule of premium complaints. "Why have premium complaints, period?" he asked. Consumers will complain if their rates go up, but if an insurer is charging OIR-approved rates, there is no violation or basis for anything that could produce a bad report card grade. Alexander disagreed and said a complaint over premium could be an indication of a quality of service issue.

FIC raised these two concerns:

"While the Office has modified its definition of a complaint in a positive manner, our members submit that additional modifications are appropriate. Only written complaints should be considered valid formal complaints. If an oral complaint is to be counted, a process must be established to ensure that when this is converted into a written complaint, it is not counted twice.

"One particular concern we have at present is the increased number of mediation requests that the DFS is converting to Service Requests (i.e. complaints). It is our view these should not be considered as complaints when they involve no specific allegations or complaints against an insurance company, but are merely a statutory request to mediate a disputed claim over the amount of loss and damage. If these Service Requests are considered 'valid' complaints against carriers for the purpose of this rule, it will surely have a negative impact on the overall grades that are assigned."

Tami Torres, director of the Department of Financial Services' Division of Consumer Services, said oral complaints converted into a written complaint are not counted as two complaints. On the second issue, sometimes a consumer complaint is filed with Consumer Services and eventually works its way into a request for mediation. It is treated as a single complaint throughout. When a request for mediation is submitted without any previous history in the division, it is treated as a complaint, she acknowledged.

Ms. Miller, lobbyist for the Florida insurers, expressed the concern that coding of calls into Consumer Services Call Center be accurate to ensure the accuracy of data collected by the Insurance Consumer Advocate as a basis for the insurer grades." She was reassured by Consumer Services Director Torres that staff are trained and checked to ensure property coding.