February 25, 2020

Dear State Insurance Commissioner,

Today, Consumer Reports and The Markup released a new investigative report, "Why You May Be Paying Too Much For Your Car Insurance," (available online at CR.org/carinsurance0420) that raises concerns about the anti-consumer practice of price optimization, through which companies may charge higher rates to customers who are unlikely to shop around for a better deal.

Based upon the concerns raised in the report, I am writing to request that the Department of Insurance come out publicly against the practice of price optimization by auto insurers in your state, and issue a bulletin to advise the insurance industry of your state's position on this issue. We also encourage you to investigate whether consumers in your state are being unfairly overcharged through price optimization, based on auto insurer's use of "big data" about their shopping habits.

In virtually every state across this country, drivers are required to carry auto insurance. Insurance should be priced fairly, based on the risk posed by the driver, not on how much they are willing to pay or personal factors that have nothing to do with their driving record..

As you know, price optimization is a practice through which insurance companies adjust premiums—typically upward—based on an assessment of the consumer's propensity to pay and/or to switch insurance companies. The use of price optimization can result in two customers with the same risk profile being charged sharply different premiums for the same coverage, based on lifestyle, demographic and/or marketing data the auto insurer has collected regarding the consumer's likelihood of switching to another company.

For example, an auto insurer might purchase marketing data regarding consumer switching habits for internet providers, and use that information in algorithms to adjust ratings factors to increase the consumer's insurance premium. The company could potentially raise the premium based on data showing the consumer is unlikely to switch to another internet provider; or to lower the premium for consumers that the carrier knows are more price-sensitive.

In practice, auto insurers may acquire and use many different "big data" variables about consumer shopping or service usage habits from both internal and external data sources, and incorporate them in complex algorithms that are generally not publicly disclosed, or explained to customers. Such data may also include a customer's propensity to contact customer service and/or submit complaints about the company's prices or operating practices, even if it is a consumer's legal right to make such inquiries and to file complaints, to defend their economic interests and contractual rights.

The investigation by CR and The Markup released today focuses on a statistical analysis of a Maryland rate filing submitted seven years ago by Allstate. In the rate filing, Allstate proposed using a risk model that incorporated data on dozens of variables relating to consumer propensity to pay, and/or cancel their policies in response to sharp price increases. Although this customer "retention model" was ultimately rejected by Maryland regulators as discriminatory, it offers a rare public window revealing details of Allstate's pricing plan that have otherwise been kept secret.

Under the proposed Maryland rate filing, customers who were due a big rate hike would or would not have received it, based on whether Allstate thought they were likely to shop around:

- It appears that Allstate assumed drivers with a cheap policy would shop around for a better deal, while those with an expensive policy would not.
- Customers who were already paying the highest premiums, of about $1,900 every six months, and were due an increase would have been among those that bore price hikes of up to 20 percent. Customers in this group were more likely to be middle-aged.
- Drivers with cheaper policies who were designated to receive price jumps that were just as big, would only be charged a maximum increase of five percent.
- Seniors were overrepresented among those who were owed discounts but would not have gotten the full discount they were due. Some customers were owed thousands of dollars, but discounts were capped at half a percent no matter how much they should have received.

At the time Maryland turned down Allstate's rate plan as discriminatory, Geoffrey Cabin, an insurance regulator with the state noted, "Allstate is failing to limit rate increases in a manner that treats all insureds with like insuring or risk characteristics equally." In addition to Maryland, regulators in Georgia, Utah, and Colorado rejected Allstate's customer retention plan, and it was withdrawn in Louisiana after regulators did not let them use it. However, Allstate rate plans featuring "customer retention" models were submitted and adopted in 10 other states, raising concerns that consumers in other states may being charged unfairly.

Several years ago, the National Association of Insurance Commissioners (NAIC) adopted a "Price Optimization White Paper". The paper, developed by the NAIC Casualty Actuarial and Statistical (C) Task Force, recommended that :

> "…under the requirement 'rates shall not be … unfairly discriminatory,' insurance rating practices that adjust the current or actuarially indicated rates or the premiums, whether included or not included in the insurer's rating plan, should not be allowed when the practice cannot be shown to be cost-based or comply with the state's rating law. With due consideration as to whether practices are cost-based or in compliance with state rating law, the Task Force believes the following practices , at a minimum, are inconsistent with statutory requirements that 'rates shall not be … unfairly discriminatory:'
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> a. Price Elasticity of Demand
> b. Propensity to Shop for Insurance
> c. Retention Adjustment at an Individual Level
> d. A Policyholder's Propensity to Ask Questions or File Complaints"[1]

As a result of the NAIC's work in this area, and concerns expressed by consumer organizations, between 2014 and the present, approximately 18 states plus Washington DC took action against the use of price optimization, by issuing bulletins to insurance companies to clarify that the use of price optimization and related pricing approaches would constitute unfair pricing under the laws of the state. [2]

As an organization that represents insurance consumers throughout the U.S., we feel that it is imperative to clarify the rules of the road regarding price optimization, so that consumers are protected against unfair practices and do not have to worry that companies are taking financial advantage of them. We expect that many consumers will find the The Markup-CR report highly concerning and troubling, because they have no

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[1] National Association of Insurance Commissioners, *Price Optimization White Paper,* Casualty Actuarial and Statistical (C) Task Force, 11/19/15, available at:
https://www.naic.org/documents/committees_c_catf_related_price_optimization_white_paper.pdf
[2] Op cit note 2.

way to know how the pricing practices of auto insurers operate behind the scenes, and whether the prices they are paying may have been affected by price optimization.

Given the resource and logistical challenges, it is not possible for outside organizations to review detailed rate filings in multiple states, where they are sometimes not even available through state public records laws, or are designated as confidential trade secrets.   We appreciate your efforts to make sure that insurance is priced fairly and in a non-discriminatory way for all [STATE] consumers.

Thank you very much for your consideration of this matter. We would appreciate a response from your state by March 15, 2020 as to what you intend to do about price optimization in your state.

If you have any questions, or would like more information, please contact me.

Sincerely,

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