BEFORE THE NEW MEXICO OFFICE OF SUPERINTENDENT OF INSURANCE

IN THE MATTER OF AUTO INSURANCE PREMIUM ADJUSTMENT REQUIREMENTS RELATING TO THE COVID-19 PUBLIC HEALTH EMERGENCY	)))))	**Docket No. 20-00025-COMP-PC**

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NM OFFICE OF SUPERINTENDENT OF INSURANCE

NOTICE AND ORDER

NOTICE IS HEREBY GIVEN to every insurer who issued or delivered a private passenger or commercial auto insurance policy to a New Mexico person or entity, with coverage in effect on or after March 23, 2020. The New Mexico Superintendent of Insurance ("Superintendent"), pursuant to the New Mexico Insurance Code, NMSA 1978, §§ 59A-1-1 et seq., and on his own motion, **HEREBY FINDS, CONCLUDES AND ORDERS:**

1. On March 11, 2020, the Governor proclaimed a public health emergency relating to the occurrence and spread of COVID-19 in New Mexico (the "Proclamation").

2. Pursuant to orders implementing the Proclamation, including the March 23, 2020 Public Health Emergency Order issued by the New Mexico Department of Health, non-essential businesses have closed, and essential businesses have significantly reduced staffing and implemented widespread telework practices. Pursuant to the orders, these actions will continue at least through April 30, 2020.

3. The business closures and staffing adjustments responsive to the COVID-19 public health emergency have resulted in a significant reduction in the use of private and commercial automobiles on New Mexico roads.

4. The risk of automobile accidents in New Mexico declined with the reduction of automobile traffic.

5. A significant rating factor for auto insurance risk is projected usage or mileage.

6. Auto insurance rates in use prior to March 23, 2020 were based on usage data and projections that did not consider the automobile use reductions resulting from the COVID-19 public health emergency.

7. Numerous insurance companies recognize that rates and premiums for auto insurance policies in effect on or after March 23, 2020 are excessive considering the reduced use of automobiles associated with the COVID-19 public health emergency. Several of these companies have announced plans to voluntarily return excess premiums to New Mexico insureds.

8. To partially mitigate financial hardships resulting from the COVID-19 public health emergency, it is in the public interest for all New Mexicans whose auto insurance was effective on or after March 23, 2020 to pay premiums commensurate with the reduced risk presented by reduced usage. It is also in the public interest for auto insurers to follow uniform practices to adjust premiums in response to the reduced usage.

9. The "Insurance Rate Regulation Law", or "IRRL", is a core component of the New Mexico Insurance Code. NMSA 1978, § 59A-17-1 et seq. A purpose of the IRRL is "to promote the public welfare by regulating insurance rates to the end that they shall not be excessive * * * and to protect policyholders and the public against the adverse effects of excessive * * * rates." NMSA 1978, § 59A-17-3(A)(1). The IRRL "shall be liberally interpreted to effectuate the above purpose[]." NMSA 1978, § 59A-17-3(B). Auto insurance rates are subject to the IRRL. NMSA 1978, § 59A-17-2(A). The Superintendent administers the IRRL. NMSA 1978, § 59A-17-5.

10. In a competitive market, which includes the auto insurance market, "rates are presumed not to be excessive." NMSA 1978, § 59A-17-6(B). A statutory presumption may be rebutted. *San Pedro South Group v. Bernalillo County Valuation Protest Bd.*, 1976-NMCA-116, ¶ 9.

Because of unanticipated automobile usage reductions on and after March 23, 2020, the Superintendent finds that the presumption codified in NMSA 1978, § 59A-17-6(B) does not apply to auto insurance rates based on usage assumptions that pre-dated March 23, 2020. Such rates may be excessive.

11. NMSA 1978, § 59A-16-17(A) generally prohibits an insurer from offering or conferring any "rebate, discount, abatement, credit or reduction of the premium named in a policy * * * except to the extent provided for in an applicable filing with the superintendent * * *."

IT IS THEREFORE ORDERED:

A. Every subject insurer shall, within 21 days of the date of this order, determine, through the application of sound actuarial principals, whether the rates and premiums for New Mexico auto insurance policies in effect on or after March 23, 2020 are excessive considering the COVID-19 related automobile usage reductions experienced in New Mexico. This directive does not apply (1) to auto insurance products for which premiums are charged on a pay-as-you-go or pay-by-mile basis, (2) to limited duration auto insurance (of 30 days or less), or (3) policies subject to contractual usage rate adjustments.

B. Every subject insurer who, pursuant to the foregoing directive, determines that the premium charged for any of its New Mexico auto insurance policies are excessive, shall submit a filing to OSI, through the SERFF portal, that conforms to these requirements:

(1) The phrase "COVID-19 Premium Adjustment" shall be used in the Product Name Field.
(2) The Filing Description field shall contain this information:
    a. Amount of the premium adjustment
    b. Policyholder eligibility criteria
    c. How the policyholders will be notified of their right to receive the payment
    d. If the adjustment is other than a flat percentage of premium applicable to all policyholders, the filing shall explain how the

company will ensure that the adjustments are not unfairly discriminatory against certain policyholders.

(3) The filing shall include either a Manual Rule and be submitted as Rule filing, or a policy endorsement and submitted as a Form filing.

The filing shall be deemed approved and usable upon submission, but subject to subsequent disapproval upon a substantive review by OSI. The substantive review may include a directive to submit supplemental information, including, but not limited to, the actuarial analysis underlying the filing. Any insurer who believes its actuarial analysis contains confidential information, shall so inform OSI staff and request express confidential treatment of the filing before submission. Any submission made without an express determination of confidentiality by OSI shall be deemed a public record.

C. Any auto insurer who voluntarily adjusted a premium and paid the policyholder or provided a credit in the amount of the premium differential prior to the effective date of this Order shall submit the filing to OSI referenced in paragraph B, above, to receive retroactive approval of the premium adjustment.

D. Any premium adjustment due shall be calculated through the earlier of April 30, 2020, or the policy termination date, and shall be paid by issuing the policyholder a check or ACH deposit for the amount of the adjustment, or by issuing a credit to the policyholder against premium due for the amount of the adjustment. If the credit exceeds the premium amount that would otherwise be due from the policyholder through April 30, 2020, the balance of the adjustment shall be paid by check or ACH deposit.

E. Insurers are prohibited from making the premium adjustment in the form of a credit that will apply to a renewal policy, or contingent upon renewal of a policy.

F. This Order will be automatically extended from April 30, 2020 through the extension date of any COVID-19 public health emergency proclamation by the Governor or the Department of

Health. If this Order is so extended, insurers shall make additional premium adjustments through the extension date and submit the required filing in SERFF.

G. Failure to comply with this Order may result in a fine or other penalty including suspension or revocation of the insurer's Certificate of Authority pursuant to NMSA 1978, § 59A-5-26(A)(1).

H. This Order is effective immediately.

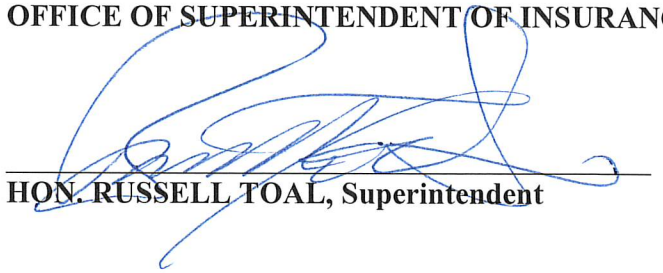
I. Copies of this Order shall be served by OSI Staff, through the SBS LVC platform, upon every insurer currently authorized to sell auto insurance in New Mexico.

J. This Order shall remain in effect until further written order of the Superintendent.

K. This docket shall remain open until further written order of the Superintendent.

DONE AND ORDERED at Santa Fe, New Mexico, this 21nd day of April, 2020.

OFFICE OF SUPERINTENDENT OF INSURANCE



HON. RUSSELL TOAL, Superintendent

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I caused delivery of a true and correct copy of the foregoing *Notice and Order* to the following parties and individuals, as indicated below, this 21nd day of April, 2020.

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