

June 12, 2015

- Hot Topic: State insurance commissioners take on price optimization
- ICYMI: Noteworthy links from the past two weeks

## State insurance commissioners take on price optimization

To date, four states—California, Florida, Maryland and Ohio—have issued formal bulletins and memoranda prohibiting the practice of “price optimization” by property and casualty insurers, with a special focus on insurers in the auto industry. Although the National Association of Insurance Commissioners (NAIC) has yet to finalize its recommendations on the practice, insurers can expect to face increasing scrutiny from state regulators.

### Background

Although there is no single definition for price optimization, it refers generally to the use of data analytics to measure and respond to consumer sensitivity to price increases. In a general sense, the practice is hardly new. In the competitive business of insurance, insurers have long needed to address the need for higher premiums without losing policyholders in the process. For example, insurers frequently consider how many competitors are in a given market and competitor’s rates when setting their own rates.

In recent years, however, the availability of big data—data-mining of personal consumer information for use in advanced statistical modeling—has allowed insurers to address risk and market considerations at a granular level and set rates for many different risk classifications.

Such use of big data has led to accusations that insurers are unfairly profit-gauging loyal customers. Consumer advocates claim that the practice results in insureds with the same risk profile being charged different rates based on whether or not the consumer is likely to shop around for a different price. A recent study from California has indicated that lower-income individuals are more likely to be adversely affected by price optimization as they may have fewer choices for insurance coverage and, thus, may be less likely to shop for lower rates.

### Insurance commissioner responses

The following states have issued formal notices prohibiting the practice of “price optimization” in rate-making by property and casualty insurers authorized to do business in those states:

- **California:** On February 18, 2015, the California Department of Insurance ordered any insurer that has incorporated price optimization factors in their rating plans to remove those factors and re-file by August 18, 2015.

- **Florida:** On May 14, 2015, the Florida Office of Insurance Regulation declared that it considers the use of price optimization to be an unfairly discriminatory practice in violation of FLA. STAT. § 627.062(2)(b) and (2)(e)(6).
- **Maryland:** On October 31, 2014, the Maryland Insurance Administration (MIA) determined that the use of price optimization results in rates that are unfairly discriminatory in violation of MD. INS. ART. § 27-212(e)(1). MIA required every insurer that had utilized “price optimization” to file a corrective action plan no later than January 1, 2015.
- **Ohio:** On January 29, 2015, Ohio declared that “price optimization” is an unfairly discriminatory practice in violation of OHIO REV. CODE §§ 3901.21(M), 3937.02(C) and (D), and 3935.03(B). Any insurer currently utilizing price optimization in rate-making must submit a SERFF filing that eliminates the factors based on price optimization no later than March 31, 2015, with proposed effective dates no later than May 31, 2015 for new business and June 30, 2015 for renewal business.

Price optimization is also receiving increasing scrutiny from other state regulators:

- **Connecticut:** Connecticut is considering proposed legislation that would prohibit automobile insurance companies from using price optimization to set private passenger non-fleet automobile insurance rates or increasing rates without cause. That proposed legislation would also require any company that is determined to have used price optimization to set an insured’s rate to provide a rebate to such insured.
- **New York:** Earlier this year, the New York Department of Financial Services sent a letter to hundreds of car and property insurers. The letter requested details on price optimization practices in order to determine each insurer’s compliance with state laws that prohibit unfairly discriminatory rates.
- **Washington:** The Washington Department of Insurance has announced that it is investigating price optimization but has, so far, stopped short of prohibiting its use because of difficulties in determining exactly how insurers utilize the practice.

The NAIC is currently in the process of drafting a white paper on the topic. The latest draft dated May 19, 2015 acknowledges the complexity inherent in price optimization and its prevalence in less-regulated industries such as retail and travel, but has yet to draw any conclusions. The NAIC is expected to publish its final recommendations in the fall of 2015. The white paper draft is exposed for comment through July 3, 2015.

Contact the authors of this article, Catharine Luo

## ICYMI...

### Noteworthy links from the past two weeks

#### General

- Illinois Governor Bruce Rauner named seasoned insurance pro and former Connecticut Acting Commissioner Anne Melissa Dowling as the new Illinois Insurance Commissioner [*Hartford Courant*]
- Speculation continued about who will replace NYDFS Superintendent Ben Lawskey [*New Republic*]
- Various commenters assessed Lawskey's tenure [*American Banker, Law360*]
- Lawskey also assessed his own tenure [*City & State, NPR*]

- The battle between certain congressional committees and FSOC heated up [*Bloomberg*]
- The NAIC decided to step up broker and agent background checks in order to catch those barred from the securities industry [*The Wall Street Journal*]
- Idaho's governor named a new insurance commissioner [*Idaho Statesman*]

## Property & Casualty

- California began approving new policy forms targeted at transportation network company drivers [*KQED*]

## Life & Health

- The NAIC's financial regulation committee adopted new measures related to captive reinsurance transactions and other special purpose vehicles [NAIC]
- The NAIC Life Insurance "A" Committee approved new standards for Indexed Universal Life illustrations [*A.M. Best* (subscription required)]

## International

- The EU declared the regulatory systems of the US and 6 other nations "equivalent" to its own [*Reuters*]

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