

# COMMONWEALTH OF VIRGINIA

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## Administrative Letter 2003 - 6

June 9, 2003

**TO: ALL INSURERS LICENSED IN VIRGINIA TO WRITE LIFE INSURANCE, CREDIT LIFE INSURANCE, ACCIDENT AND SICKNESS INSURANCE, CREDIT ACCIDENT AND SICKNESS INSURANCE, ANNUITIES, VARIABLE ANNUITIES, VARIABLE LIFE INSURANCE, MODIFIED GUARANTEED ANNUITIES, AND ALL CARRIERS LICENSED IN VIRGINIA AS HEALTH MAINTENANCE ORGANIZATIONS, HEALTH SERVICES PLANS, LEGAL SERVICE PLANS OR DENTAL OR OPTOMETRIC SERVICES PLANS**

**RE: ADVERSE UNDERWRITING DECISION NOTICES  
§ 38.2-610 of the Code of Virginia**

The purpose of this letter is to provide clarification to carriers of the expectations of the Bureau of Insurance (the Bureau) concerning Adverse Underwriting Decisions and Adverse Underwriting Decision (AUD) Notices. It recently came to the Bureau's attention that there are life and health carriers operating in Virginia who are neglecting to furnish AUD notices in certain circumstances where this important source of information and consumer protection is warranted. It is the Bureau's position that, in addition to the clear-cut situations for which all carriers appear to understand the requirements relating to adverse underwriting decisions and notices, AUD notices are necessary in at least the following additional situations, which were identified either through recent investigations of consumer complaints or through market conduct examinations. While this list is certainly not all-inclusive, it highlights some of the more common areas of confusion or misunderstanding of Virginia's requirements concerning AUD notices.

- ◆ When an application file is closed because the applicant, his or her physician, or any other individual or entity furnishing information relating to the applicant's insurance application, fails to furnish requested information, such closure is considered a *declination of coverage*. The definition of Adverse Underwriting Decision, in § 38.2-602 1 a of the Code of Virginia, includes a *declination of insurance coverage*. Therefore, because the closure of an application file resulting from lack of information, failure to respond to requests for information, or any other related situation is considered an Adverse Underwriting Decision, the AUD notice must be furnished. Similarly, because file closures for lack of information are declinations, the Bureau requires these closed files to be included in any sample populations of declined cases when requested for market conduct examination purposes.
  
- ◆ Any offer of coverage (1) at a premium rate higher than that applied for; (2) at a reduced benefit level from that applied for; or (3) with exceptions, exclusions or benefits other than as applied, involves an Adverse Underwriting Decision. Therefore, in any of these three situations, an AUD notice must be furnished. The Bureau acknowledges that § 38.2-602 1 e of the Code of Virginia refers to "higher than *standard*" rates. The Bureau maintains, however, that this phrase, when taken in combination with the remainder of the subsection, qualifies the offer of any premium rate in excess of that originally applied for as an Adverse Underwriting Decision, regardless of the initial classification of the rate. Apart from the statutory justification for the requirement that an AUD notice be furnished, we believe it is clearly in the consumer's best interest to be informed of the basis for an underwriting decision affecting his or her premiums or benefits. The average consumer may not know of the premium classification in his or her original application, but he or she generally does know when an increased rate is offered upon finalization of the underwriting process.
  
- ◆ When declinations are based upon eligibility requirements clearly addressed in policy forms filed with and approved by the Bureau, such declinations are specifically excepted from the definition of an Adverse Underwriting Decision. While the statutory AUD notice is therefore not required in these cases, the insurance institution is obligated by law to provide the applicant with the reasons for the action taken, pursuant to § 38.2-602 2 of the Code of Virginia. It should be emphasized, however, that this exception to the AUD notice requirement is applicable **ONLY** when the declination is based upon a lawful provision included within the approved policy form.

The Bureau's Administrative Letter 1981-15 included a prototype AUD notice for life and health carriers. We strongly encourage carriers to review this letter and the prototype notice to ensure that notices used in Virginia include *all* the necessary information. Many carriers have omitted important facts relating to the applicant's rights concerning the adverse underwriting decision, the correction, amendment or deletion of information in his or her file, and/or the time-frames for requesting information relating to the adverse underwriting decision. The Bureau will continue to pursue disciplinary actions against carriers that use incomplete AUD notices as well as those that do not provide notices when required.

Questions regarding this letter may be addressed **IN WRITING** to:

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Yours truly,

A handwritten signature in cursive script, appearing to read "Alfred W. Gross".

Alfred W. Gross  
Commissioner of Insurance