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INDEPENDENT REGULATORY REVIEW COMMISSION
333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

February 18, 1999

Honorable M. Diane Koken, Commissioner
Insurance Department
1326 Strawberry Square
Harrisburg, PA 17120

Re: IRRC Regulation #11-171 (#1992)
Insurance Department
Pennsylvania Assigned Risk Consumer Protection

Dear Commissioner Koken:

Enclosed are our Comments on your proposed regulation #11-171. They are also available on our Web site at <http://www.irrc.state.pa.us>.

The Comments list our objections and suggestions for your consideration when you prepare the final version of this regulation. We have also specified the regulatory criteria which have not been met. These Comments are not a formal approval or disapproval of the proposed version of this regulation.

If you want to meet with us to discuss these Comments, please contact Chuck Tyrrell at 772-3455.

Sincerely,

A handwritten signature in black ink that reads "Robert E. Nyce".

Robert E. Nyce
Executive Director

REN:cae
Enclosure
cc: Pete Salvatore
Office of General Counsel
Office of Attorney General
Pete Tartline

COMMENTS OF THE INDEPENDENT REGULATORY REVIEW COMMISSION

ON

INSURANCE DEPARTMENT REGULATION NO. 11-171

PENNSYLVANIA ASSIGNED RISK CONSUMER PROTECTION

FEBRUARY 18, 1999

We have reviewed this proposed regulation from the Insurance Department (Department) and submit for your consideration the following objections and recommendations. Subsections 5.1(h) and 5.1(i) of the Regulatory Review Act (71 P.S. § 745.5a(h) and (i)) specify the criteria the Commission must employ to determine whether a regulation is in the public interest. In applying these criteria, our Comments address issues that relate to legislative intent, need, reasonableness and clarity. We recommend that these Comments be carefully considered as you prepare the final-form regulation.

1. Section 67a.1 Definitions – Legislative Intent and Clarity

Assigned Risk Plan

The definition of “assigned risk plan” in the regulation differs from the statutory definition. The Department must use or cite the definition contained in Motor Vehicle Financial Responsibility Law.

Producer & Producer of Record

The definition of producer provides that an agent or broker must be authorized by the Department to conduct business and certified by the Assigned Risk Plan. The definition of “producer of record” contains the same requirement. It is not clear what is meant by “authorized by the Department.” Therefore, the Department should clarify what specific authorization an agent or broker needs.

Voluntary Market

The definition of voluntary market is not consistent with the statutory definition because it fails to use the term “ordinary” market. The definition needs to be amended to be consistent with the statutory definition.

2. Section 67a.2 Consumer Protection – Need, Reasonableness and Clarity

Subsection (b) requires the producer to engage in a reasonable search for obtaining coverage in the voluntary market prior to submitting the consumer’s application into the assigned risk plan. The Department should justify the mandate for the producer to seek insurance in the voluntary market. If the Department demonstrates a need for this provision, it should specify in the regulation what constitutes a “reasonable search.”

The last sentence in Subsection (f) provides that "Coverage shall be effective as of the date and time specified in the application in accordance with the Assigned Risk Plan Rules." Duane, Morris, & Heckscher, counsel to the Pennsylvania Assigned Risk Plan, recommended this sentence be amended to parallel the Motor Vehicle Financial Responsibility Law by referencing 75 Pa.C.S.A. Section 1741. We agree.

Several subsections in this Section reference the Assign Risk Plan Rules. To improve clarity and understanding, the Department should include a definition of the Assigned Risk Plan Rules and explain where they may be obtained.