



Consumer Federation of America

April 4, 2018

Dear Commissioner,

Over the past several years, the Consumer Federation of America has reached out to you or your office on several occasions to highlight the consumer problems and unfair discrimination associated with insurance companies' use of price optimization in rating and underwriting. As you may know, the National Association of Insurance Commissioners, in 2016, adopted the Casualty Actuarial and Statistical (C) Task Force *Price Optimization White Paper*, emphasizing that states should require that, under all insurer rating plans, "two insurance customers having the same risk profile should be charged the same premium for the same coverage." While this is hardly a controversial standard, it cut to the core concern that has arisen over the past several years as insurance consultants and companies have developed and installed price optimization strategies.

Between 2014 and 2017, twenty Commissioners issued bulletins (or other forms of guidance) that, like the White Paper, make it clear price optimization or its component techniques violate the states' unfair discrimination rules. On the other hand, as far as we know, your Department is one of the states that has not issued a clarifying bulletin or taken other public measures to warn against price optimizing.

If you have issued a bulletin or other clarifying statement to insurers, please apprise us. If, not, please provide an explanation as to why you have not and what your department is doing to ensure that companies are not violating the tenets laid out in the recommendations of the NAIC White Paper, which we have attached. The White Paper, which was adopted by the NAIC EX Committee at the Spring 2016 meeting, recommends:

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:"

- 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.

We agree with the conclusion of the White Paper and NAIC that rating customers using any of those four factors, or variations on them, is in conflict with state prohibitions on unfair discrimination. We also believe that insurers have an obligation to comply with this standard whether or not there is a bulletin affirming it. However, an official act reminding insurers as to their obligations and, particularly, identifying the types of rating practices that are irrefutably invalid serves an important purpose, and we urge you to make such a public pronouncement.

Price optimization punishes customers based on their shopping habits, meaning that low risk consumers may pay more than they should and end up subsidizing higher or equivalent risk customers based on personal choices and opportunities or algorithmic estimates that have nothing to do with the likelihood of incurring a loss. Consumers in your states are counting on you and your staff to prevent this abusive and unfair pricing technique. Please let us know how you are doing so.

We look forward to hearing from you.

Very Truly Yours,

A handwritten signature in cursive script that reads "J. Robert Hunter".

J. Robert Hunter
Director of Insurance
Consumer Federation of America