Conn. Insurers Should Note Stricter Market Exit Oversight

By **Elizabeth Retersdorf** (October 17, 2023)

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On Sept. 19, the Connecticut Insurance Department issued a new bulletin, PC 34-23, reflecting a unique, and more strict, approach to insurer activity that affects the market.

The Connecticut Insurance Department now requires notification not only for intentional market withdrawals and reductions in property and casualty business, but also for acts that will result in such withdrawals and reductions — whatever the purpose.

Bulletin PC 34-23 concerns notification to the commissioner under Connecticut General Statutes Section 38a-44 that requires notice of intent to discontinue or substantially reduce a line or subline of business.

Section 38a-44 states that:

> Any insurer licensed to do business in this state, or authorized to do business on a nonadmitted basis, which intends to discontinue offering or substantially reduce its writings in a line or subline of insurance in this state shall send, by registered or certified mail, or deliver to the Insurance Commissioner written notice of its intent to take such action at least sixty days before the initial notice of cancellation or nonrenewal is delivered or mailed to the insureds. This section shall not apply to life insurance policies or annuity contracts.

The statute is facially similar to the National Association of Insurance Commissioners' Improper Termination Practices Model Act.[1] The act provides:

> An insurer shall not terminate all or substantially all of a line of the insurer's business for the purpose of withdrawing from a market in this state without notifying the commissioner of the action, as well as the reasons for the action, at least one year before the termination of any policy due to the withdrawal is effective, unless the insurer has filed a plan of action for the orderly cessation of the insurer's business within a shorter time period and received approval from the commissioner.

At first glance, it may appear that any differences between Section 38a-44 and the model act are simply a difference in wording: Insurers who want to withdraw from the market or substantially reduce a line of business need to inform regulators.

The Connecticut Insurance Department's prior bulletin on the statute did not suggest otherwise. Now-rescinded bulletin PC-34, last revised in 2000, largely parroted the statute, requiring only that an insurer that "intends to discontinue offering or substantially reduce its writings" provide the statutory notice.

It also indicated a level of flexibility where such reduction or discontinuation "may not actually disrupt the market" or "may create a potential solvency problem."

But PC 34-23 now requires more. The Connecticut Insurance Department has made clear that it will not assess compliance with Section 38a-44 based on an insurer's intent, but on the effect of the insurer's action.

Under the NAIC's model act, the notice requirement is triggered when an insurer acts with "the purpose of withdrawing from a market."

In Connecticut, an insurer must provide notice pursuant to Section 38a-44 when it plans on taking actions that would result in the discontinuation or substantial reduction in a line or subline of business. The insurer's purpose is inconsequential.

Specifically, the Connecticut Insurance Department has clarified that the "notice requirement applies to the use of agency-facing applications and other technology, processes (e.g., referrals to underwriters) or communications to producers, which effectively results in the discontinuation or substantial reduction in a line or subline of business."

This requirement applies regardless of other policy considerations, such as whether the reduction will disrupt the market and whether the action may be necessary to prevent a solvency problem. PC 34-23 also reminds insurers that they must continue to comply with renewal obligations under Connecticut General Statutes Section 38a-709.

Accordingly, when an insurer discontinues or substantially reduces a line or subline of business and terminates producer appointments in connection therewith, Section 38a-709 requires that the insurer renew all contracts of insurance produced by terminated producers for period of 18 months from the date that such termination takes effect.

Section 38a-44, as interpreted in PC 34-23, significantly deviates from parallel statutes in many other states. Some states, like the NAIC's model act, look to insurer intent.

Illinois statutes, for instance, define "termination of a line of insurance" as "cancellation or non-renewal of a substantial portion of any type of business for the purpose of withdrawing from the market."[2]

Other states base notification requirements on set market impact thresholds. New York Insurance Law Section 3426(e)(8), for instance, includes a market impact threshold of 1% of the market before notice is required for blanket nonrenewals.

California Insurance Code Section 674.6 defines "intent to substantially withdraw" as "an insurer's intent to nonrenew in excess of 50 percent of its current policyholders in the line of coverage upon their next renewal."

Texas Insurance Code Section 827.003, which requires commissioner approval of a plan of orderly withdrawal, predicates its notice requirement on reductions in set percentages of premium volume.

In PC 34-23, Connecticut, in contrast, specifically declines to define "substantially reduce" with specificity, stating:

> Whether there has been a substantial reduction in writings is dependent upon factors such as the number of risks written by the insurer, impact on the market, etc. Please consult with the Department if there is a question as to whether proposed action by an insurer will result in a substantial reduction.

Historically, Connecticut has shown itself as a state that likes to be involved — insurers are generally wise to bring any significant question regarding application of a regulation to the

Connecticut Insurance Department to obtain its input.

PC 34-23 confirms that this wisdom extends to market-impacting activity, as the department has further advised that if an insurer is uncertain as to whether an action is subject to Section 38a-44, "it is best to assume it [is] and discuss the particular facts with the Property/Casualty Division."

Moreover, PC 34-23 telegraphs the Connecticut Insurance Department's intent to conduct an examination and take action if it suspects insurer practices are resulting in a pattern of rejections — and effectively a reduction in business — that may constitute unfair trade practices or other statutory violations.

In other words, it appears the Connecticut Insurance Department intends to give market-impacting activities more scrutiny, and expects insurers to cooperate in its efforts.

To comply with PC 34-23, property and casualty insurers need to assess how any planned changes to their practices and procedures might affect their Connecticut writings, regardless of the intent behind such changes.

Insurers should also consider documenting that assessment in the event of later department scrutiny and building into any significant operational changes time to work with the Connecticut Insurance Department and wait out any notice period.

Insurers should also keep an eye out for any inadvertent errors or changes in underwriting that have an unexpected impact, so they can proactively address issues before the department seeks involvement.

Given that market-impacting actions can come from a variety of business units, insurers would be wise to put all employees on notice of this change, and the steps needed to comply.

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[1] Available here: https://content.naic.org/sites/default/files/inline-files/MDL-915.pdf.

[2] 25 ILCS 5/143.11a.