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**NOTICE NUMBER:** 08-2019

**TITLE:** Private Passenger Vehicle Usage Based Insurance Implementation Process (Revised Effective October 4, 2019)

**DATE:** October 4, 2019

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**PURPOSE**

This notice is effective immediately, and replaces [Notice 01-2016](#) issued January 7, 2016 respecting usage based insurance (UBI) programs. Pursuant to section 604 of the *Insurance Act* (Act), the purpose of this notice is to establish the process that the Superintendent of Insurance (Superintendent) requires insurers to follow in implementing UBI discount programs for private passenger vehicles.

**(1) Factors Authorized For Use In Establishing UBI Discount Scores**

UBI programs use a number of individual factors in combination to establish a score upon which a UBI discount is based.

The factors presently authorized for use in establishing UBI discount scores have been reviewed for continued relevance and additional factors are being authorized for use in establishing UBI discount scores.

Pursuant to section 2(2) of the Automobile Insurance Premiums Regulation, the Superintendent prohibits all factors excluding the following for use in establishing a UBI discount score:

- Acceleration
- Turning
- Speed, including speed compared to posted speed limit
- Braking
- Day and time of day
- Distance driven (mileage)
- Frequency of use
- Territory
- Type of road
- Driver detection
- Distracted driving

Global positioning system (GPS) data may only be used to obtain information necessary to determine the factors listed above.

UBI discount programs may implement features that detect who is driving the vehicle, and monitor whether the phone is being used by the driver while a described vehicle is in motion. Insurers must provide the insured with means to disable the collection of UBI

information and/or a means to delete the UBI information collected outside of the approved UBI discount program.

The Superintendent will continue to monitor UBI discount factors approved for use and examine the suitability of new UBI discount factors.

## (2) Privacy Requirements

The Superintendent has considered the privacy implications associated with UBI and has concluded that information collected for the purpose of a UBI discount program should be treated as personal and identifiable. As a result, insurers, and any third party service providers that insurers contract with, are required to comply with Alberta's *Personal Information Protection Act* (PIPA).

To ensure that both insurers and third party service providers comply with PIPA when providing UBI discount programs, insurers must, prior to implementing or amending any UBI discount program, complete the following steps:

- (a) File a Privacy Impact Assessment (PIA) with the Office of the Information and Privacy Commissioner (OIPC);
- (b) Incorporate the Informed Consent requirements found in Appendix A of this notice into the Consent section of the PIA; and
- (c) Receive OIPC comments about the PIA and incorporate modifications as required. Refiling with the OIPC for any revisions to the PIA as a result of OIPC's comments is not required.

Acceptance of a PIA by the OIPC is no longer required. It is incumbent on the organization submitting the PIA to modify their PIA as required and to comply with the requirements of PIPA. A PIA cannot be used to obtain a waiver of, or relaxation from, any requirement of PIPA or to prevent a review by the Commissioner if an individual files a complaint.

To assist insurers in completing a PIA, the OIPC has prepared a guide which is available on its website at [www.oipcc.ab.ca](http://www.oipcc.ab.ca).

In addition to working with the OIPC, insurers must comply with the federal Office of the Superintendent of Financial Institutions (OSFI) Guideline B-10 Outsourcing of Business Activities, Functions and Processes in their dealings with third party service providers. A link to this guideline is provided on the [Superintendent's website](#).

Pursuant to section 509 of the Act, an insurer that implements a UBI discount program without adhering to the process identified above, may be found to be engaging in an unfair act or practice.

## STEPS REQUIRED TO UTILIZE A UBI DISCOUNT PROGRAM IN ALBERTA

1. File a PIA with the OIPC and receive OIPC comments about the PIA and incorporate modifications to the PIA as required.
2. File with the Automobile Insurance Rate Board (AIRB) pursuant to any filing guidelines established by the AIRB. The AIRB filing must include evidence of OIPC comments on the PIA and the insurer's privacy officer's written confirmation that the OIPC's comments were received, that required modifications were incorporated into the PIA, and that the insurer's UBI discount program is compliant with privacy legislation. OIPC PIA acceptance is not a requirement. Filing guidelines are on the AIRB website at [www.airb.alberta.ca](http://www.airb.alberta.ca).
3. Obtain AIRB authorization of the UBI discount program.

Note: Effective with the release of this notice, UBI discount programs no longer have to be submitted for approval to the Superintendent. An insurer can make a filing directly to the AIRB to include a UBI discount.

The Superintendent and the AIRB will continue to work together in respect to UBI discount programs and their development.

## CHANGES TO A UBI DISCOUNT PROGRAM ALREADY IN PLACE

Any changes to a previously-approved UBI discount program (including, but not limited to, using different UBI discount factors, changing third party service providers, or amending informed consent documentation or scripts) may require one or more of the steps above to be repeated. Insurers should contact the OIPC to clarify when addendums to PIAs are expected. Steps above that apply to changes to a previously-approved UBI program must be completed before any changes are implemented.

## CONDITIONS APPLICABLE TO UBI DISCOUNT PROGRAMS

- (a) Surcharging and UBI as a rating program

UBI may only be offered as a discount program on approved rating programs and may include discounts both for enrolment and for driving behaviour measured by approved UBI discount factors. Any use of UBI for the purpose of surcharging is prohibited. UBI may not be offered as a stand-alone rating program.

- (b) Excluding an insured

An insurer offering a UBI discount program may not exclude from participation in the program any operator that generates a premium for a described vehicle listed on a policy as long as a UBI discount program participant is able to support the UBI technology utilized by the insurer. An insurer may identify target markets for its UBI discount program, but subscription must be available to any operator that generates

a premium that wishes to opt in, subject to the ability of the operator to support the insurer's UBI technology.

(c) Limits on use of UBI data

Data collected for UBI discount program purposes cannot be used by an insurer:

- For claims purposes without the separate written consent of a UBI discount program participant, who is under no obligation to provide consent and whose participation in a UBI program cannot be denied based on a refusal to provide such consent. Consent may be obtained either upon a UBI discount program participant subscription to a UBI discount program or after a claim is made, but the UBI discount program participant's written consent only applies to the UBI discount program participant and not to any other individual who may be operating the vehicle at the time a claim arises. Consent must be obtained from each UBI discount program participant whose UBI data is relevant to the adjustment of an accident that has occurred;
- For underwriting purposes (including, but not limited to, declining risks, cancelling risks, offering basic or additional coverages or refusing to renew risks); or
- To confirm, verify or validate rating variables/factors currently used in the insurer's approved rating program (for example, UBI-based mileage cannot be used to verify self-reported distance driven that is provided by the policyholder to the insurer during the underwriting process).

(d) Fees and charges

If there are any fees or charges associated with UBI discount program participation that could be considered part of the premium, the insurer must include those fees or charges in its filing to the AIB.

(e) Voluntary participation

Participation in an UBI discount program must be voluntary and an operator that generates a premium must not feel obligated to participate in an UBI discount program.

(f) Insureds may request a new data collection period

If an insurer's UBI discount program includes a time limited data collection period, an insured must be provided with the option to participate in a subsequent data collection period no less often than once each subsequent policy term.

(g) Adverse contractual action

If any insured under a policy violates the terms and conditions of a UBI program, the insurer cannot take adverse contractual action. Adverse contractual action may only

be taken for reasons set out in section 555 of the Act and the Adverse Contractual Action Regulation.

(h) Termination of a UBI discount program by an insurer

An insurer may terminate a UBI discount program if any insured violates the terms and conditions of a UBI program (for example, unplugging a telematics device or deleting an application that collects and transmits data). If the insurer wishes to terminate a UBI discount, it must provide written notice to the policyholder 15 days in advance of the termination. An insurer is not required to re-offer a UBI discount to a policyholder if any insured under the policy has violated the terms and conditions in the past.

(i) Termination of a UBI discount program by a policyholder

A policyholder may terminate participation in a UBI discount program at any time and for any reason in the policyholder's discretion, without cost or penalty to the policyholder. If the policyholder wishes to terminate participation in a UBI discount program, the policyholder must give notice to the insurer in the form and manner prescribed by the insurer.

## PENALTIES FOR NON-COMPLIANCE

Insurers and intermediaries are obligated to comply with the requirements of the Alberta regulatory approach, including the requirements of the Act and its associated regulations.

Pursuant to section 789 of the Act, where the Superintendent is of the opinion that an insurer has contravened a prescribed provision of the Act or its associated regulations or a written procedure established by the Superintendent under section 604, the Superintendent may require that insurer to pay an administrative penalty of up to \$25,000 for each contravention.

In the alternative to an administrative penalty, and pursuant to section 780 of the Act, an insurer who contravenes any of sections 509 or 555(3) of the Act, or section 2 of the Automobile Insurance Premiums Regulation is guilty of an offence and may be prosecuted. If convicted, under section 786 of the Act an insurer is subject to a fine of up to \$200,000 (and if of a continuing nature, each day or part of a day constitutes a separate offence).

If you have any questions regarding this notice please contact my office at [tbl@insurance@gov.ab.ca](mailto:tbl@insurance@gov.ab.ca) or by calling 780-643-2237 (toll-free in Alberta by first dialing 310-0000).

[ORIGINAL SIGNED]

Darren Hedley  
Superintendent of Insurance

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**Superintendent of Insurance**

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## Appendix A:

### Informed Consent Requirements for UBI Programs

The following items must be addressed in obtaining informed consent from consumers:

- Participation in a UBI discount program must be voluntary and an insured must not feel obliged to give consent to participate.
- Consent must be in writing, in either hardcopy or in electronic form. Electronic consent must be in accordance with section 547 of the Act.
- Insurers must advise UBI discount program participants how information is being collected, what information is being collected, and by whom. In particular, insurers must explicitly advise UBI discount program participants of the nature, scope and use of GPS data.
- Insurers must advise UBI discount program participants of where information is being stored and security measures in place to protect information. If information is being collected or stored outside of Canada, the insurer must notify the UBI discount program participants in accordance with section 13.1 of PIPA. Where information is being collected or used by a company to which the United States *Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act* (PATRIOT Act) of 2001 applies, then insurers must make UBI discount program participants aware of PATRIOT Act implications.
- Insurers must advise UBI discount program participants of all parties that may have access to UBI information.
- Insurers must advise UBI discount program participants that UBI information could be disclosed without consent to third parties for the insurer to comply with a subpoena or court order. This could apply to law enforcement activities, court proceedings involving claims, or both.
- UBI discount program participants must be told how information will be used (including any proposed uses for marketing or for offering additional services such as vehicle locator, anti-theft, fraud detection, vehicle diagnostics or roadside assistance programs) and assured that personal information will not be used for any other purposes.
- UBI discount program participants must be informed specifically of which behaviours are measured and how data is measured.
- Insurers must provide to UBI discount program participants the name, position name or title of a person who is able to answer on behalf of the insurer UBI discount program participants' questions about the collection, use or disclosure of information.

- Insurers must identify all potential third parties that may have access to personal information, that may use personal information, or to whom personal information may be disclosed.
- UBI discount program participants and any insured to whom UBI data pertains have rights of access to, correction of, and care of their information in accordance with Part 3 of PIPA.
- UBI discount program participants may vary or withdraw consent at any time. If a UBI discount program participant varies or withdraws consent, the insurer must comply with the requirements of section 9 of PIPA.
- If additional information will be collected beyond what is necessary for the purpose of the insurer's UBI discount program, or if secondary uses will be made of information that is collected, insurers need to obtain written consent, in either hard copy or electronic form, of UBI discount program participants and of any insured to whom the UBI data pertains. Electronic consent must be in accordance with section 547 of the Act.
- If an insurer obtains or attempts to obtain consent by
  - providing false or misleading information respecting the collection use or disclosure of the information,
  - or using deceptive or misleading practices

the consent provided or obtained under those circumstances is not valid and the insurer may be found to be engaging in an unfair act or practice and may be subject to an administrative penalty.