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To: [OIC Rules Coordinator](#)
Subject: Allstate comments regarding the stakeholder emergency powers rules draft
Date: Friday, June 03, 2016 4:11:13 PM

Thank you for providing the draft for review and convening the meeting to discuss the proposal. This collaborative process is the best method to ensure that any rules that may be adopted are clear and appropriate.

As a general principle, we agree with the intent and purpose of the rules. Some of the details of the proposal are still under review but we do have a significant issue or two to raise at this time and some general comments related to drafting. I recognize that the latter may be unwelcome but I offer them in the spirit of trying to improve the clarity of the rules while accomplishing the Commissioner's goals.

RCW 48.02.060 (4) provides that "When the governor proclaims a state of emergency under RCW [43.06.010](#)(12), the commissioner may issue an order that addresses any or all of the following matters related to insurance policies issued in this state:

- (a) Reporting requirements for claims;
- (b) Grace periods for payment of insurance premiums and performance of other duties by insureds;
- (c) Temporary postponement of cancellations and nonrenewals; and
- (d) Medical coverage to ensure access to care."

The stakeholder draft specifically includes the first three items listed in the RCW above in its second section. It also includes some provisions that might reasonably be expected to flow from these items. Then there are some other provisions that may be problematic or appear to be redundant or overlapping.

Allstate has substantial concerns about the broadness of the language in subsection (6) of the second proposed section. While we understand from the stakeholder discussion that the proposal is meant to address when an insured cannot possibly comply with the statutory or contractual provisions due to the emergency, the actual language seems to allow a Commissioner to waive any and all statutory duties. The duty of an insured to comply with an investigation is the type of thing that was apparently not meant to be abrogated by an order of the Commissioner but could be under the draft language. This provision should be significantly narrowed or, if that can't be adequately achieved, it should be deleted.

Subsection (8) of section 2 is another cause for concern. This may be more related to drafting than to intent. The draft already allows for an order to address the grace periods and temporary postponement of cancellations and nonrenewals that are permitted in RCW

48.02.060(4). Subsection 8 proposes to add a separate category (not a subset) addressing cancellations. As described at the stakeholder meeting, it sounded like there may be an expectation that the prohibition in subsection (8), at least, could go forward beyond the emergency situation. This result is not supported by the statute and seems to be at opposite with the subsequent language in section 4. This may not be the intent of the Commissioner but this lack of clarity illustrates our concerns with the draft language.

In draft section 2 we would suggest that the OIC track the adopted Oregon rule language in terms of structure. The Oregon rules address the same cancellation issues but do so with the appropriate modifiers noting that these are temporary and clearly make the issue that is in the WA draft section 2(8) a subset of the general cancellation issue. This is considerably clearer and will help ensure that there isn't a drift in the understanding of any adopted rules over time. If that result is not satisfactory to the Commissioner, we do have some suggestions that for restructuring the rules for clarity and will suggest some possible methods in terms of structure

Possible restructuring - There are several pieces in the draft rules that require the reader to jump around in the proposed sections to try to fully understand what the Commissioner is intending. Some of these concerns and the confusion may be alleviated by some structural changes. Section 1 is a "conceptual" overview section. One suggestion is to modify the first draft section by making the existing language a subsection (1) which also includes the first 3 subsections of draft section 4 (those subsections concern if the order applies to authorized insurers only, the class and categories of policies, and the categories of insured and insured property). These provisions are similar to those already in the first section and dissimilar to the other items in draft section 4. Draft section 1 could be further modified by including draft sections 5 and 6 as proposed subsections. These items again relate to section 1 and do not benefit by being left as sections that are only a sentence long.

Another suggestion is to combine section 2 and section 4 (4) – (13). The subsections from section 4 can largely be reordered into components of the existing subject categories. This places all of the Commissioner's options in one locale. This will help in the area of cancellations and nonrenewals, for example, because all of the components can be read in concert. This allows the reader to quickly and easily understand the rule.

The result of all of this reorganization would be 3 sections from the existing 6 sections. The first section would be the general parameters of what may be in an order and the mechanics of the process. The second section would relate to what the Commissioner may be asking of insurers. The third section would be what the Commissioner may consider (and you may choose to include some additional broadening language though it is not necessary).

We have a few additional technical issues.

A cite to RCW 48.20.060 in draft section 2(7) does not include the subsection reference (4) that exists in section 1, 3, 4, 5 and 6. Presumably this is an oversight.

It is notable that while RCW 48.02.060(4) (c) provides that a restriction on underwriting abilities is *temporary*, no such modifier is applied in section 2(4) or section 2(8) despite the statutory language largely being repeated. If the OIC is looking for brevity, we would suggest a simple reference back to the statute (for example, the Commissioner may issue and order as provided for in RCW 48.02.060(2) – this actually could just be a modification of what is currently subsection (7)). If the OIC is looking for completeness, we would suggest the OIC include not only the Commissioner’s powers but also the limitations on those powers that were established by the Legislature. Without that, at some future point in time there may be disputes over what was intended by the adopted rules because it appears the omissions are deliberate. That could lead to an argument that those statutory limitations are inapplicable because the Commissioner’s rule is relying or effectuating other code provisions. If that is an argument that is being made currently by the OIC, the OIC should have an open conversation about that with insurers. Otherwise, adhering to the statutory language is the wisest course.

The OIC has also imported the great bulk of the statutory language in RCW 48.02.060(5) but omitted certain provisions. One such omission is the possible termination of the order and the lack of effectiveness when the emergency has been terminated by order of the Governor. Again, if brevity is the goal, we would suggest a cite back to RCW 48.02.060(5). If completeness is the goal, include the relevant language. Importing virtually all of the language implies that choices were made about what was omitted.

Thank you again for letting us discuss the proposal. Hopefully, you will find some or all of our suggestions helpful.

Jon

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