OIC Rules Coordinator

From: Brian Fisher <brian@wellstrumbull.com>
Sent: Thursday, August 7, 2025 9:36 AM
To: OIC Rules Coordinator
Subject: Comments on R 2025-05 Clarifying and updating minimum standards for claims handling

External Email

Hello,

My name is Brian Fisher, I am both a consumer of insurance products in Washington state and an attorney representing policy holders to ensure their benefits are properly paid out. I write to comment on several of the proposed changes to Ch. 284-30 WAC.

WAC 284-30-320(2)'s definition of "claim"

With respect to the WAC 284-30-320(2), which adds the definition of "claim," I support the OIC making clear that a claim does not require magic language beyond asking for benefits or communicating that a loss or harm occurred. This is a necessary change. In a recent case I had before the Court of Appeals, *Welch v. PEMCO,* PEMCO argued that my client asking about the cost to repair a house after a loss was not a "claim" because the letter did not specifically state it was a claim. PEMCO specifically argued to the Court of Appeals that its denial of coverage was not a denial of a "claim." *See* PEMCO's brief to the Court of Appeals at pages 8 and 54, available at https://www.courts.wa.gov/content/Briefs/A01/854666%20Amended%20Respondent%20's.PDF. While the Court of Appeals ultimately rejected PEMCO's argument that no claim was made, it is important to clarify that no magic language is needed for a claim.

However, the final sentence of the proposed WAC 284-30-320(2) reads "An inquiry from an insured to their insurance company relating to either the claim process, or coverage available under the policy, or both does not constitute a claim being made." This sentence may allow insurers to assert no claim is made when an insured asks about the claim process or coverage available under the policy when requesting benefits or communicating that a loss or harm occurred. I suggest adding language to the final sentence to make it state, in full, "An inquiry from an insured to their insurance company relating to either the claim process, or coverage available under the policy, or both does not constitute a claim being made **so long as the insured does not request a payment of benefits or communicate a loss or harm occurred for which payment may be owed.**" (Suggested language bolded.) The added language also harmonizes the proposed definition of "claim" with the new definition of "Notification of claim" under WAC 284-30-320(15)(b).

WAC 284-30-330(4)

WAC 284-30-330(4) indicates that a reasonable investigation includes conducting an individualized assessment of the loss or damage without relying solely on the use of a database. As a purchaser of insurance, I have fallen victim to an insurance company telling me that the cost to fix a covered loss quoted to me by Seattle contractors is too high compared to their database of "appropriate" costs.

Seattle is an expensive city with a higher cost of living, so obviously the prices of services in Seattle are going to be higher than national databases. This change will force insurers to do their jobs and actually investigate the individual circumstances of claims, which will result in more fair adjustments of claims overall.

WAC 284-30-340(2) Claim File

This is an excellent proposal. As an attorney representing policy holders, it can be incredibly difficult to get a straight answer out of an insurance company for why a claim was fully or partially denied. Having to file a lawsuit and obtain the claims file in discovery (frequently over the objection of the insurer, who will claim that its notes on an individual claim are "trade secrets") is extremely time consuming. There have been times when once we get the claims file we realize that although the adjuster did not communicate well, the insurance company did have a reasonable basis for denying a claim. It is a waste of time and resources for us to have to file a lawsuit to learn what's in the claims file.

The only addition I would make is regarding the exception that a record does not have to be produced if "legally privileged." There needs to be some way for an insured to evaluate the insurance company's claim of legal privilege. I suggest requiring the insurance company to produce some sort of privilege log that would give the insured enough information to evaluate the insurance company's claim of privilege. Without this, insurance companies could abuse this exception to cover more than actually privileged documents and force their insureds to file lawsuits to actually obtain the relevant records in the claims file about the claim.

Preamble in various regulations explaining that a violation of the regulation violates the first three Consumer Protection Act (CPA) elements:

This is also a great clarification. Insurance companies in litigation will frequently argue that only violations of WAC 284-30-330 establish the first three elements of a CPA claim, and this will put an end to that argument. All of these regulations establish fairness and honesty and affect the business of insurance. I have had an insurer pay benefits without notifying the insured in writing that there could be a reimbursement requirement, and then later demand reimbursement after the insured spent the benefit money. This clear violation of WAC 284-30-350(7), the insurer argued, was not a violation of the CPA because the regulation did not fall under -330. Clarifying that all of the regulations are enforceable under the CPA will help insureds and will ensure insurers meet their duties under the regulations.

Thanks to the OIC for its continued work on protecting Washington policy holders. I'm glad to know that the IFCA notices we send in are being read by someone at the OIC!

Thank you,

Brian Fisher