8/8/2025

Dear Commissioner Kuderer:

Thank you for the opportunity to submit comments on the Office of the Insurance Commissioner's proposed rulemaking regarding "Clarifying and updating the minimum standards for claims handling" (2025-05). The Washington State Association for Justice (WSAJ) is the oldest and largest civil justice advocacy organization in the Pacific Northwest. Our members include attorneys representing Washington insurance policyholders in lawsuits arising from bad faith by insurers. The fair-claims-handling standards established by WAC Ch. 284-30 provide important protections to these policyholders. WSAJ supports OIC's strengthening of these protections for the reasons described below.

WSAJ views these WAC regulations in context of Washington's legal framework recognizing insurance as a product providing consumers peace of mind in times of need but also fostering a strong degree of dependence on the insurer to do the right thing when a loss materializes. *See Nat'l Sur. Corp. v. Immunex Corp.*, 176 Wn.2d 872, 878, 297 P.3d 688, 690 (2013) (quoting *Love v. Fire Ins. Exch.*, 221 Cal. App. 3d 1136, 1148, 271 Cal. Rptr. 246 (1990) (describing insurer-insured relationship); *Barriga Figueroa v. Prieto Mariscal*, 193 Wn.2d 404, 411, 441 P.3d 818, 822 (2019) (citing *Tank v. State Farm Fire & Cas. Co.*, 105 Wn.2d 381, 385, 715 P.2d 1133, 1135 (1986) (same).

Through this lens, we see OIC's regulations as leveling the playing field between unsophisticated consumers who, at the time an insurance claim is made, are struggling with losses involving injuries or property damage, and insurers, who possess disproportionate monetary resources, knowledge and expertise. We therefore support proposal 2025-05, which buttresses these protections in meaningful ways. While WSAJ supports the entire proposal, we emphasize that the following provisions are particularly critical for protecting consumers.

First, OIC's proposed amendment to WAC 284-30-320(2) to define an insurance "claim" provides consumers with much-needed protection against insurers who fail to open claims when their insureds report a loss. As OIC likely knows, delays in the insurer's opening claims are detrimental to the insured. Losses can exacerbate, evidence can be mislaid, and unscrupulous insurers can even leverage the delay against the insured, for instance, by asserting a failure to cooperate. WSAJ is aware of instances where the insured's phone call to their insurance agent reporting a loss is later deemed not to constitute a valid "claim" by the carrier. WSAJ is also aware of at least one court ruling that the insured's report of the

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loss to the insurer did not constitute a "claim" because the insured never explicitly demanded payment of the insurance benefits. *Cozart v. USAA Cas. Ins. Co.*, No. 3:22-cv-05510-RJB, 2023 U.S. Dist. LEXIS 207844 at *9-10 (W.D. Wash. Nov. 20, 2023). We note that the judge in that case commented on the absence of clear guidance from OIC in the current version of WAC 284-30-320, emphasizing the value in promulgating a specific regulatory definition. WSAJ embraces the proposed WAC revision to clarify that unsophisticated insureds need recite no "magic words" to make an insurance claim. This regulation properly places the onus to recognize and investigate claims on the party with superior resources: the insurer.

Second, we similarly applaud OIC's proposed amendments to WAC 284-40-330 and WAC 284-30-380(8) providing transparency when insurers use databases to estimate losses. We recognize the value that computerized databases and estimating software can have in calculating the cost to repair property following a loss—when properly used as one tool that is a part of a comprehensive and fact-based investigation. But, too often, these databases are used as the end of the carrier's investigation, not a starting point, resulting in a claims payment divorced from the facts, lacking the benefit of a complete investigation or the judgment of appropriate experts. Time and again, WSAJ attorneys are approached by policyholders whose insurer insisted on paying only the amount generated by an arbitrary and opaque database even though no local contractor can complete the work for that price. This practice shifts the burden of investigating to the insured, who must now work with their contractor and appropriate experts to itemize the reasons why the work cannot be performed for the price in the insurer's database. It delays making the insured whole after a loss. It pressures insureds to accept less than the policy entitles them to.

OIC's proposal provides needed relief. Specifying that a reasonable investigation does not consist *solely* of blind reliance on database pricing returns these databases to their appropriate role: one tool as part of a comprehensive investigation, rather than a shortcut for the insurer. Further, requiring the insurer to disclose the underlying database pricing data empowers consumers to challenge insurer's misuse of pricing databases when such databases improperly become the sum total of the insurer's entire investigation of repair costs. Given a substantial proportion of insurance claims that lead to litigation involve disputes over the insurer's use of database pricing, this regulatory guidance provides valuable certainty that can help policyholders resolve these disputes without the necessity of litigation.

Third, the proposed rules for timely insurer approval of emergency mitigation in WAC 284-30-330(20)-(21) provide additional needed protection for consumers. Property insurance policies typically mandate insureds perform emergency mitigation and can permit the insurer to terminate coverage for losses exacerbated by the insured's failure to perform this duty. When insurers drag their feet in approving emergency mitigation, the policyholder risks a loss of coverage, further damage to their property, and paying out of pocket for work that their carrier may later refuse to cover. This improperly turns the insurance relationship on its head, placing the vulnerable and unsophisticated insured in the position of making important decisions without the benefit of the insurer's superior expertise and resources.

Fourth, proposed WAC 284-30-340(2)'s requirement for prompt disclosure of claim files to the insured promotes a meaningful dialogue between the policyholder and their insurer. Informed consumers are empowered consumers. WSAJ attorneys routinely see insurer claim files kept secret from the insured only to be revealed during discovery in litigation. But transparency during the claim permits the insured to address issues before claims reach the point of a lawsuit. A consumer in full possession of the facts can point out problems while there is still time to fix them, provide missing information the carrier overlooked, and otherwise protect their interests. No valid reason exists to keep consumers in the dark about the investigation their insured performs ostensibly on their behalf. And, as the existing WAC already provides that the claim files are subject to inspection by the commissioner, there is no concern that disclosing the file to the insured intrudes on confidential or proprietary information.

Fifth, WSAJ likewise supports amending WAC 284-30-370 to make the presumptive 30-day time limit for insurer investigations more meaningful. The existing regulation establishes the deadline but leaves insurers a virtually unlimited exception, making the deadline almost meaningless to consumers as a practical matter. Requiring insurers to disclose the reasons they cannot complete their investigation of the claim within the 30-day deadline makes the requirement meaningful. An insured who is on notice of the reasons for delay can act to address those reasons. WSAJ members often see claims investigations that stretch into months or years, with the policyholder in the dark about what their insurer—the party with whom they have contracted to provide support and peace of mind after a loss—is doing to protect their interests.

Sixth, a familiar pattern in delayed claims and claims which lead to litigation is insurers transferring claims to new adjusters. Frequently, during the transfer process, the claim

slows as the new adjuster takes significant time to come up to speed on the file, causing critical decisions to be delayed time and time again. The proposed changes to rules clarifying an insurers responsibility when transferring to new adjuster and the insurers continued duty to timely adjust the claims will help improve claims resolution times and increase consumer satisfaction. WSAJ supports this change.

Seventh, we applaud the broadening of language defining violations of these WAC provisions as unfair or deceptive acts or practices. As OIC knows, such language permits WAC violations to serve as predicates for a private right of action under Washington Consumer Protection Act, Ch. 19.86 RCW, (CPA). This gives OIC's consumer protections real-world impact for insureds.

OIC may be told by industry insiders that this change risks opening the floodgates to "gotchya" lawsuits over hyper-technical violations harming no one. Not so. Existing law imposes two safeguards against CPA lawsuits over WAC violations arising from harmless, good-faith mistakes. One is that CPA claims based on WAC violations are governed by an overriding requirement that the plaintiff prove the insurer acted "unreasonably," preventing CPA claims from arising from well-intentioned technical violations. *Am. Mfrs. Mut. Ins. v. Osborn*, 104 Wn. App. 686, 699, 17 P.3d 1229, 1235 (2001) (citing RCW 19.86.920). The second is that WAC violations cannot become actionable CPA violations without proof of actual injury to business or property, preventing CPA lawsuits over harmless errors. *Williams v. Foremost Ins. Co. Grand Rapids Mich.*, No. 2:17-CV-1113-RSM, 2018 U.S. Dist. LEXIS 67991, at *14 (W.D. Wash. Apr. 23, 2018) (citing *Indus. Indem. Co. v. Kallevig*, 114 Wn.2d 907, 920-21, 792 P.2d 520, 528 (1990)).

Thank you, again, for the opportunity to comment on these important consumer protections. Please do not hesitate to reach out if we can provide anything further.

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