PHYSICIANS INSURANCE

August 7, 2025

Patty Kuderer, Commissioner
Washington State Office of the Insurance Commissioner
P.O. Box 40255
Olympia, WA 98504-0255
Email: rulescoordinator@oic.wa.gov

Re: Comment Opposing Proposed Rule R 2025-05

Dear Commissioner Kuderer:

On behalf of Physicians Insurance A Mutual Company, a Washington mutual insurance company specializing in medical professional liability (MPL) coverage that has been protecting, defending, and supporting Washington physicians for more than 40 years, we respectfully submit this comment in opposition to proposed rule R 2025-05. We appreciate the longstanding commitment of the Office of the Insurance Commissioner ("OIC") to promoting fair and timely claim resolution. However, the proposed rule's rigid timelines and standardized documentation requirements are not well suited to the complexity and investigatory demands of MPL claims.

1. **Inherent Complexity of MPL Claims Demands Flexibility in Investigation Timelines**

As an initial matter, the explanatory language accompanying the proposed rule expressly references auto and homeowners claims. These lines of insurance differ significantly from MPL in complexity, investigation timelines, and resolution processes.

MPL matters are among the most factually complex, intensive, and clinically nuanced claims handled by insurers. They often involve multiple providers and healthcare systems, span lengthy treatment histories, and require a thorough analysis of standard of care, causation, and damages. These elements cannot be meaningfully assessed without the assistance of qualified medical experts, whose availability and review timelines are outside of the insurer's control. Moreover, MPL claims often require a long-tail investigative approach, as the events at issue may have occurred months or even years prior, necessitating careful reconstruction of clinical decisions, review of archived records, and coordination with providers whose care is under scrutiny.

WAC 284-30-370 and WAC 284-30-380, as amended, would impose a 30-day written update requirement for ongoing claim investigations and unresolved claims, regardless of whether any substantive change has occurred. In the MPL context, this timeline is frequently misaligned with the actual pace of record gathering, expert consultation, and provider engagement. This is particularly the case when the production of critical documentation by third-party facilities takes additional time due to factors beyond the insurer's control.

2. **Broad Regulatory Scope and Definition of "Claim" Creates Disproportionate Burden (WAC 284-30-310 and 284-30-320)**

The revised rule applies uniformly to all lines of insurance and broadly defines a "claim" to include any communication indicating potential harm or loss. In MPL matters, this includes preliminary or informal grievances that still require extensive investigatory work such as securing medical records, preparing chronologies, and retaining expert reviewers, even when the allegations ultimately prove unsupported.

The combination of a low bar for what constitutes a "claim" under WAC 284-30-320 and the broad scope under WAC 284-30-310 means MPL carriers are obligated to initiate a full claim workflow based solely on allegations, regardless of evidentiary support. These obligations are further amplified by the revised definition of "notification of claim" in WAC 284-30-320(15), which now expressly includes notifications by third-party claimants to the insurer, its agent, or even to a legally liable party. This expansion is especially concerning in the context of MPL, where the legal duties owed to third-party claimants are limited at the pre-litigation stage. Extending full investigatory and communication obligations to all third-party notifications is inappropriate and inconsistent with how MPL claims are typically initiated and resolved.

The complexity of an MPL claim often precludes resolution within 30 days, as such claims require expert review and factual development that simply cannot be completed within the timeframes contemplated by the proposed rule. Expanding the obligation to notify claimants of acceptance or denial to include third-party claimants adds further administrative burden and legal risk without improving claim outcomes.

It is also important to recognize that existing regulations already protect unrepresented third-party claimants. Under WAC 284-30-380(5), insurers may not continue settlement negotiations with an unrepresented third-party claimant once the claimant's rights may be affected by a statute of limitations or contract time limit, unless the insurer first provides written notice. The rule requires sixty days' notice for third-party claimants, ensuring they are not prejudiced by time-based defenses while negotiations are ongoing. This existing safeguard reflects a balanced regulatory approach, one that promotes fairness without imposing inflexible or duplicative administrative burdens in complex, multi-party claim environments like MPL.

3. **Administrative Risk and Compliance Exposure from Strict Documentation Cycles**

The proposed 30-day rolling update requirement under WAC 284-30-370 requires case-specific written updates every month, including a summary of all outstanding items, decisions, and adjuster transitions. In MPL cases, this administrative requirement does not improve claim outcomes or timelines, but instead creates a heightened risk of regulatory violation due to calendaring errors or delays in cooperation with external partners. Because MPL matters often follow a long-tail investigative trajectory, claims typically arise well after the care in question occurred, requiring retrieval of historical records, clinical reconstruction, and expert review, all of which unfold over extended timelines and are largely outside the insurer's control.

Similarly, the shortened timeframes for claim acknowledgment under WAC 284-30-360—reduced to 5 business days for individual policies—do not account for legitimate operational or investigative delays that may arise at claim intake. Especially in MPL, where coverage questions may depend on the provider's role, timing, or relationship to the insured entity, such an abbreviated acknowledgment window increases the potential for technical noncompliance without yielding material benefit to claimants. The requirement to respond within 5 business days to any claimant communication that might reasonably suggest a response is expected imposes an

inflexible obligation that may be difficult to meet, when key claim facts remain under investigation or must be coordinated with counsel or the insured provider.

4. **WAC 284-30-300 and 284-30-330: Reasonableness and Communication Standards Must Reflect MPL Claim Complexity and Insured Relations**

WAC 284-30-330 defines as unfair practices the failure to implement "reasonable standards" for claim investigation and communication. At the same time, the proposed revision to WAC 284-30-300 eliminates the longstanding qualifier that such practices must occur "with such frequency as to indicate a general business practice" to constitute a violation. This change lowers the threshold for regulatory action and increases the risk that isolated administrative missteps particularly in complex claims could be treated as violations, and particularly in complex claims. In the MPL context, what is "reasonable" must necessarily reflect the time-intensive and multi-layered nature of claim investigations, which often require consultation with legal counsel, review by independent medical experts, and coordination with insured providers.

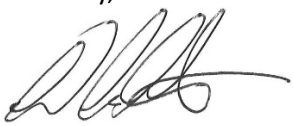
This complexity is further compounded by the fact that many MPL policies contain consent-to-settle provisions, meaning the insured provider must agree to any resolution. Even prelitigation settlements can have significant consequences for providers, including mandatory reporting to licensing boards, credentialing entities, or data banks, as well as reputational and professional implications. Enforcing rigid timelines or requiring early or recurring communications directly to claimants before the insured provider has had an opportunity to respond, may compromise the provider's rights and undermine the potential for cooperative resolution. In this context, fairness requires not only responsiveness to claimants, but also deference to the clinical, legal, and regulatory realities faced by insured professionals.

**Conclusion**

WAC 284-30-300 appears to be a well-intentioned and appropriate effort to promote fair treatment of claimants. In the context of MPL, however, fairness also requires thoughtful accommodation of claim complexity, provider consent provisions, and the practical constraints of long-tail, evidence-based investigations. The prescriptive timelines and uniform communication standards in the proposed rule do not reflect these realities and would impose undue burdens on MPL carriers without improving claim outcomes.

We respectfully request the OIC to reconsider the wholesale application of these requirements across all lines of insurance. At a minimum, we recommend a tailored approach for MPL claims that allows greater flexibility in the timing and content of status updates and recognizes the inherently collaborative, multi-party nature of clinical investigations. If the OIC proceeds with the proposed changes, we strongly encourage the adoption of an explicit exemption or carve-out for MPL insurers to account for the unique procedural, legal, and professional considerations these claims involve. We would welcome the opportunity to further engage with the OIC in developing regulatory language that promotes fair, efficient, and practicable claim handling standards for all stakeholders.

Sincerely,



William Cotter
President and CEO