PHYSICIANS INSURANCE

October 6, 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: Second Comment Opposing Proposed Rule R 2025-05

Dear Commissioner Kuderer:

Thank you for the opportunity to provide additional comments on the September 25 second prepublication draft of proposed rule R 2025-05. On behalf of Physicians Insurance A Mutual Company, I want to express our appreciation for the Office of the Insurance Commissioner's ("OIC") work and willingness to engage with stakeholder input. The revised draft reflects consideration of industry feedback and an effort to balance consumer protection with the operational realities insurers face. We view this process as a collaborative one, and we share the OIC's goal of establishing a regulatory framework that is clear, enforceable, and workable in practice. As Washington's leading medical professional liability ("MPL") insurer, we write from more than four decades of experience managing the most complex and long-tail claims in the liability landscape, a perspective that underscores why certain provisions require tailored treatment.

Positive Developments in the Revised Draft

We are encouraged by several important improvements reflected in the second draft. The decision to restore the current and workable 10-business-day acknowledgment window for individual policies (and 15 days for group policies) under WAC 284-30-360 strikes a more reasonable balance between prompt responsiveness and operational feasibility. We also welcome the decision to retain the current definition of "notification of claim" under WAC 284-30-320(15), without expanding it to encompass third-party claimants, as well as the restoration of the limitation under WAC 284-30-380 to first-party claims, which properly confines recurring settlement-notification requirements to the types of claims for which such obligations are most relevant and practicable. Most significantly, the recognition of the complexity of MPL claims through the introduction of a longer update interval reflects a more nuanced appreciation of how MPL claims unfold over time. Collectively, these changes represent meaningful progress toward a balanced and workable regulatory framework.

Restoration of the "General Business Practice" Standard

While these improvements are welcome, several aspects of the rule still require refinement to achieve the desired balance between consumer protection and practical implementation. Chief among them is the removal of the long-standing "general business practice" qualifier. Its removal risks transforming a standard designed to address patterns of misconduct into one that imposes liability for isolated, inadvertent errors, dramatically expanding regulatory exposure and increasing litigation risk. We strongly urge the OIC to restore this language: *"The purpose of this regulation is to define minimum standards for the investigation and disposition of claims and to prohibit*

unfair claims settlement practices when such acts or omissions are committed with such frequency as to indicate a general business practice." This standard is embedded in both RCW 48.30.010 and the NAIC Model Unfair Trade Practices Act, and its removal risks creating enforcement uncertainty by allowing isolated errors to trigger liability in ways the Legislature never intended.

If the OIC is not inclined to restore this language, we recommend adding clarifying text to WAC 284-30-300 to preserve proportionality and enforcement intent: *"A single act, omission, or error, standing alone, does not constitute an unfair claims settlement practice unless such conduct reflects a pattern, practice, or systemic failure."*

Refining the Definition of "Claim" and Clarifying Per-Se Language

We also recommend refining the definition of "claim" under WAC 284-30-320(2) to avoid triggering regulatory obligations based on informal communications that never mature into actual claims. This refinement is particularly critical in MPL, where insurers frequently receive preliminary inquiries, potential claim notices, or medical record requests that never mature into claims but could nonetheless trigger regulatory obligations under an overly expansive definition. *"'Claim' means a written or recorded demand for compensation, damages, or other relief that provides sufficient facts to identify the alleged incident, the parties involved, and the nature of the claimed loss. General inquiries, complaints, or requests for information that do not meet these criteria are not claims."*

Additionally, several operative sections of the proposed rule, including WAC 284-30-340, 350, 360, 370, 380, and 391 through 395, now state that "a violation of the following is hereby defined as an unfair claims settlement practice." Without the historical qualifier limiting such violations to conduct committed "with such frequency as to indicate a general business practice," this formulation risks transforming technical, isolated errors into per se violations. That outcome would be inconsistent with both RCW 48.30.010 and longstanding regulatory practice. To preserve proportionality and enforcement intent, we recommend clarifying the rule as follows: *"A violation of this section constitutes an unfair claims settlement practice only when such conduct is committed with such frequency as to indicate a general business practice."*

Recurring Notification Requirements: The Case for a Complete Exemption

Despite improvements in the second draft, the recurring-notification requirements continue to present significant operational, compliance, and policy challenges in the context of MPL claims. These challenges are particularly acute because claims often remain open for many years, proceed through lengthy litigation or appellate processes, and frequently include extended periods of inactivity. Cases typically evolve through multiple procedural phases, including pre-suit investigations, complex expert discovery, multi-defendant coordination, dispositive motions, trial preparation, and appeals, most of which involve long stretches during which little or nothing material occurs. A claim may remain technically "open" for years while awaiting appellate rulings, scheduling orders, or the resolution of related litigation, even though no substantive activity is taking place. Requiring recurring written notices under these circumstances does not meaningfully improve transparency or assist claimants. Instead, it imposes significant administrative costs, increases compliance risk, and risks confusing claimants and insured providers by generating repetitive communications that convey no new information, all while providing minimal incremental consumer-protection benefit.

Because the recurring-notice framework envisioned by WAC 284-30-370 and WAC 284-30-380 is fundamentally misaligned with the realities of MPL claim handling, it introduces unnecessary operational complexity, heightens compliance risk, and offers minimal consumer benefit while diverting resources that could otherwise be dedicated

to resolving claims fairly and efficiently. *The most effective and appropriate solution is therefore a categorical exemption for MPL claims*. This approach would preserve the rule's consumer-protection objectives while tailoring its requirements to the unique realities of MPL litigation and claims handling. A categorical exemption would also be consistent with the WAC's existing structure, which already tailors obligations to specific lines, such as motor vehicle claims, where claims-handling dynamics materially differ. We respectfully propose that the rule be amended to include the following language under both WAC 284-30-370 and 284-30-380: *"Medical professional liability claims are exempt from the recurring written notice requirements of this section."* This simple, targeted revision would maintain the OIC's overarching policy goals while ensuring that the rule remains practical, enforceable, and aligned with real-world claims-handling practices.

Conclusion and Willingness to Collaborate

In summary, the recurring-notification provisions in WAC 284-30-370 and WAC 284-30-380, as currently drafted, impose obligations that are fundamentally misaligned with the realities of MPL claim handling. We strongly urge the OIC to adopt a categorical exemption for MPL claims from all recurring written-notice requirements. This approach would align regulatory expectations with real-world litigation dynamics while preserving the OIC's consumer-protection objectives and promoting efficient, meaningful communication with claimants.

Physicians Insurance A Mutual Company has served Washington's healthcare community for more than forty years, and we remain committed to partnering with the OIC to ensure that this rule fulfills its important purpose while remaining both practical and enforceable. We appreciate the progress already reflected in the current draft and look forward to continued collaboration as the rule approaches finalization. We share the OIC's commitment to ensuring that claimants receive fair, timely, and meaningful communication, and we believe that the targeted refinements outlined above will best achieve that goal while preserving the rule's integrity, effectiveness, and long-term viability.

Sincerely,

William Cotter
President and CEO