February 3, 2026

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

Re: Third Comment Opposing Proposed Rule R 2025-05

Dear Commissioner Kuderer:

Thank you for the opportunity to provide additional comments on the January 8, 2026 third prepublication draft of proposed rule R 2025-05. Physicians Insurance A Mutual Company previously submitted detailed comments on the second prepublication draft, and we appreciate the Office of the Insurance Commissioner's continued engagement with stakeholder input. We submit these comments in response to the third draft and to identify issues previously raised that remain unresolved.

Our prior comments focused in particular on the misalignment between the proposed recurring notice framework and the realities of medical professional liability claims. While the third prepublication draft reflects further refinement of the rule in several respects, particularly in provisions addressing motor vehicle and property claims, the core structural concerns we raised for medical professional liability claims remain largely unchanged.

Deletion of the Defined Term "Claim"

We note that the third prepublication draft deletes the definition of "claim" that appeared in the prior draft. This change removes one source of overbreadth we previously identified, namely the risk that informal communications or preliminary inquiries could trigger regulatory duties. We appreciate this revision.

However, the deletion of the defined term does not resolve the underlying ambiguity for medical professional liability claims. The operative provisions of the rule continue to rely on concepts such as "notification of claim" and on the defined term "claimant," without clarifying what specific event is intended to trigger recurring notice obligations in long-tail liability matters. In the context of medical professional liability, where claims may involve extended pre-suit investigation, years of litigation, and lengthy periods of procedural inactivity, the absence of a clear trigger standard continues to create uncertainty and compliance risk. This ambiguity is especially problematic for medical professional liability claims, which often involve multiple pre-suit communications that are not intended to trigger formal regulatory obligations.

Retention of a Longer Update Interval for Medical Professional Liability Claims

We also acknowledge that the third draft retains the longer ninety-day update interval for medical professional liability claims under WAC 284-30-370. This reflects an important recognition that medical professional liability claims differ from short-tail auto and property claims and often require substantially more time to investigate and resolve.

At the same time, the length of the interval is not the principal issue for medical professional liability claims. The concern remains that these claims are subject to the recurring notice framework itself. Even with a longer cadence, the framework presumes that meaningful developments occur at regular intervals. That presumption does not reflect how medical malpractice claims actually progress.

Medical professional liability claims are litigation-driven and often remain open for many years. They typically proceed through discrete procedural stages, including pre-suit investigation, pleadings, discovery, expert disclosure, dispositive motions, trial preparation, trial, and appeal. Between those stages, extended periods of inactivity are not only common but appropriate. A claim may remain technically open for years while awaiting court rulings, trial dates, or appellate decisions, even though no substantive developments are occurring.

Requiring recurring written notices during those periods does not meaningfully improve transparency or assist claimants. Instead, it produces repetitive communications that convey no new information, increases the risk of technical noncompliance, and risks confusing claimants and insured health care providers by suggesting that meaningful activity should be occurring when none is procedurally possible.

Removal of the “General Business Practice” Standard

In our prior comment, we urged restoration of the longstanding qualifier that ties violations of the unfair claims settlement practices regulation to conduct committed with such frequency as to indicate a general business practice. The third prepublication draft continues to remove that qualifier from the operative structure of the rule.

This formulation risks converting technical or isolated errors into per se violations. That result is inconsistent with the structure of RCW 48.30.010 and with longstanding regulatory practice, which has historically focused enforcement on patterns of conduct rather than single inadvertent mistakes. Medical professional liability claims, by their nature, involve complex litigation activity, multi-party coordination, and long time horizons. In that context, a framework that treats individual procedural missteps as per se violations significantly increases regulatory exposure without advancing consumer protection objectives. We therefore continue to urge the Office to restore the general business practice standard or, at a minimum, to add clarifying language confirming that isolated or non-systemic errors do not constitute unfair claims settlement practices.

Overbroad Scope of “Claimant”

The third prepublication draft continues to define “claimant” to include both first-party and third-party claimants. Nothing in the third draft limits the recurring notice obligations to insureds or to situations in which coverage is disputed.

As a result, the rule continues to apply on its face to injured third-party plaintiffs in medical professional liability litigation. This forecloses any interpretation that the recurring notice obligations apply only to claims made by

insureds or only when coverage is at issue. In the context of medical professional liability, this means that insurers would be required to issue recurring written updates to represented tort claimants during active litigation, even where there are no substantive developments to report.

That outcome does not meaningfully advance transparency or consumer protection. It risks interfering with the orderly conduct of litigation, creating parallel regulatory communication obligations alongside formal discovery and court-supervised procedures, and generating confusion for claimants and insured providers alike.

Recurring Notice Framework Remains Fundamentally Misaligned with Medical Professional Liability Claims

The recurring notice framework envisioned by WAC 284-30-370 and WAC 284-30-380 is fundamentally misaligned with the realities of medical professional liability claim handling. These provisions appear well suited to short-tail auto and property claims in which investigations are completed quickly, liability is resolved promptly, and claims typically close within weeks or months. They are poorly suited to claims that routinely remain open for years and progress according to court schedules rather than insurer timelines.

Because medical malpractice claims frequently include extended periods during which no material activity occurs, recurring notice obligations generate communications that add little or no informational value. They impose significant administrative burdens, heighten compliance risk, and divert resources from substantive claim resolution. These burdens are most acute in precisely the types of claims where the consumer-protection benefit is least apparent.

Structural Support for Line Specific Tailoring

The third prepublication draft further expands and refines provisions that are specific to motor vehicle and property claims, including detailed requirements addressing repair estimates, labor and materials databases, salvage, rental vehicles, and communications with repair facilities. These revisions confirm that the rule already contemplates line-specific tailoring where claim handling dynamics differ. The same logic that justifies distinct treatment for motor vehicle and property claims supports a tailored approach for long-tail professional liability claims.

Medical professional liability claims are at least as distinct from auto and property claims as those lines are from one another. The structure of the rule therefore supports, rather than undermines, a targeted approach for medical professional liability claims.

Requested Revisions

For the reasons stated in our prior comment and reiterated here, we respectfully request that the Office adopt an express exemption for medical professional liability claims from the recurring written notice requirements under WAC 284-30-370 and WAC 284-30-380.

If the Office is not inclined to adopt a categorical exemption, we respectfully request alternative clarifications to ensure proportional and workable enforcement, including restoration or clarification of the general business practice standard to avoid per se violations based on isolated errors, confirmation that recurring notice obligations are not intended to apply to third-party tort claimants in active litigation, and clarification of the trigger events for notice obligations in the absence of a defined term "claim," particularly as applied to long-tail liability lines.

Conclusion

Physicians Insurance A Mutual Company supports the Office's goal of ensuring fair, timely, and meaningful communication with claimants. We believe that goal is best served by rules that are clear, proportionate, and aligned with real-world claims handling practices. Despite the revisions reflected in the third prepublication draft, the structural issues affecting medical professional liability claims remain unresolved. We respectfully urge the Office to address these concerns before finalizing the rule.

We appreciate the opportunity to provide further input and remain willing to work collaboratively with the Office to achieve a balanced and workable regulatory framework.

Sincerely,

Melissa Cunningham
Senior Vice President and General Counsel