

Long term care lapse notice

Concise Explanatory Statement
January 13, 2017

Mike Kreidler, *Insurance Commissioner*
www.insurance.wa.gov

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Introduction

The Revised Code of Washington (RCW) 34.05.325(6) requires the Office of Insurance Commissioner (OIC) to prepare a “concise explanatory statement” (CES) prior to filing a rule for permanent adoption.

The CES:

1. Identifies the Commissioner’s reasons for adopting the rule;
2. Describes the differences between the proposed rule and the final rule (other than editing changes) and the reasons for the difference;
3. Summarizes and responds to all comments that the OIC received regarding the proposed rule during the official public comment period, indicating whether or not the comment resulted in a change to the final rule, or the OIC’s reasons for not incorporating the change requested by the comment;
4. Must be distributed to all persons who commented on the rule during the official public comment period and to any person who requests it.

Reasons for adopting the rule

The rule is necessary to reduce the likelihood of an unintentional lapse in a long term care insurance policy. Consumers can be susceptible to a lapse in coverage because of dementia or a disability. Insurers must be able to prove that they have made a significant effort to contact consumers, their designees and the producer if a policy lapses.

Background

The need for this rule arose from a 2009 case where a lapse designee was not made aware of a lapse after the consumer stopped paying premiums on a long term care insurance policy due to dementia. The insurer claimed to have mailed a notice to the designee (the daughter of the consumer) but the designee said she never received it. A few months later, the designee contacted the insurer regarding a claim but the insurer did not indicate that the policy had lapsed. The next month, the designee found out that the policy had lapsed when she checked her mother's mail. At this point, the insurer refused to reinstate the policy saying that the five month grace period had expired. Because of this case (as well as another similar case), the Commissioner felt that additional rules were necessary to ensure that carrier's show that they have made a significant effort to contact designees if a long term care insurance policy lapses.

Rule development process

On December 30, 2013, the OIC filed a Pre-proposal Statement of Inquiry (CR-101) proposing to write a rule related to lapses in long term care insurance coverage. The comment period on the CR-101 was open until February 14, 2014.

On June 5, 2014 the OIC held a stakeholder meeting to discuss the need for the rule and receive information from long term care insurance carriers regarding their current lapse processes.

A second stakeholder meeting was held on December 10, 2015 to discuss a stakeholder draft.

On September 15, 2016, another stakeholder draft was released and comments were accepted until October 6, 2016.

On November 2, 2016, the OIC filed a CR-102. The agency held a hearing on December 6, 2016. The OIC filed a CR-103P to adopt the rule on January 13, 2017 and the rule went into effect July 1, 2017.

Resources consulted

None.

Differences between proposed and final rule

No differences.

Responsiveness summary of comments

The OIC received numerous comments and suggestions regarding this rulemaking. The following information contains a description of the comments, the OIC's assessment of the comments, and information about whether the OIC included or rejected the comments.

The OIC received comments from:

- American Council of Life Insurers (ACLI) and America's Health Insurance Plans (AHIP)
- Long Term Care Associates, Inc.

Comments received:

Comment: The proposed new mailing requirements place an undue administrative burden on carriers, plus they still don't guarantee that recipients will act on the info in a timely manner

Response: In response to this comment, the OIC has added language to the draft that allows insurers to continue using their existing in-house mailing processes. Under the new language, if there's a problem, the insurer will need to provide an attestation either from the person who sent the notice or from the person who supervised sending the notice.

Comment: Carriers shouldn't have to (A) send the notice (regarding right to designate someone else to receive notice of lapse) annually, or (B) send separately from the billing statement.

Response: Response to (A): The OIC respectfully disagrees. As a result, the OIC has left the language that requires mailing annually. Response to (B): In response to this comment, the OIC has added language to the draft that says that insurers can add this language to the billing statement as long as they include the language on the front side of the first page of the billing statement in a font size of at least 12 point.

Comment: Agents are an important resource, but lapse notice should go to the insured or insured's appointed designee ("to protect privacy of the insured").

Response: The OIC believes that sending the lapse notice to the producer of record can be useful. For this reason, the rule team kept this language in the draft.

Comment: A study from Clau, Inc and Long Term Care Group will soon be released "to determine the efficacy of Third Party Lapse Notifications and Unintended Lapse provisions... and intend to ask about methods which make or could make such provisions more effective."

Response: The OIC appreciates this information and will consider the study when it is received. However, the rule will continue as intended.

Comment: Use the term insurers rather than "issuers."

Response: The OIC declines.

Comment: Please make the reference to "once every year" in WAC 284-83-025 (1)(a)(vi) consistent with the "12 months" reference in WAC 284-54-235 (1)(c).

Response: The OIC appreciates this comment and made the change.

Comment: WAC 284-83-025 (1)(a)(vi)(B), WAC 284-83-025 (1)(c)(iii), WAC 284-54-253 (1)(a)(iii) & (1)(c)(ii) should say "insured" rather than "consumer."

Response: The OIC appreciates this comment and made the change.

Comment: In the event that a company utilizes their own mail units to process the mail, would a company be required to provide receipts and confirmations from such office equipment used for the mailings? In WAC 284-83-025 (1)(c)(ii)(B)(III).

Response: No, the OIC is requiring external verification.

Comment: In WAC 284-83-025 (2), clarify that "proof" is defined in (2)(b): "...proof, as per the standards stated in (2)(b) below, that the..."

Response: Yes.

Comment: Please clarify WAC 284-83-025 (2)(a) to read "...payment of overdue premiums may be required..." and "...interest may be charged at a rate not exceeding 6%" to ensure consistency with the NAIC model and IIPRC standards.

Response: The terms of reinstatement are within the policy or certificate and thus should be the determining standard.

Comment: In WAC 284-54-253 (1)(a)(ii) and WAC 284-83-025 (1)(c)(ii), it states "upon request" – by whom?

Response: The request in question would come from the OIC.

Comment: Change "contract" to "policy" in WAC 284-54-253 (1)(a)

Response: The Commissioner declines to make this change as "contract" is the term that has been used previously.

Comment: The requirements place an undue burden on the company. The delivery of a lapse or cancellation notice does not guarantee that those who receive it will act in a timely manner. We support current law (the NAIC model).

Response: The OIC believes these changes are necessary to ensure consumers are aware of their rights related to lapses.

Implementation plan

Implementation and enforcement of the rule

The OIC intends to implement and enforce the rule through the Market Conduct Oversight Unit, which is part of the Company Supervision Division. Using existing resources, OIC staff will continue to work with carriers and interested parties in complying with the requirements of these rules.

How the agency will inform and educate affected persons about the rule

After the agency files the permanent rule and adopts it with the Office of the Code Reviser:

- Policy staff will distribute copies of the final rule and the Concise Explanatory Statement (CES) to all interested parties through US mail, post to its standard rule making listserv and email to stakeholder participants.
- The Rules Coordinator will post the CR-103 documents on the Office of Insurance Commissioner's website
- OIC staff will address questions as follows:

Type of Inquiry	Division
Consumer assistance	Consumer Protection Division
Rule content	Policy and Legislative Affairs
Authority for rules	Policy and Legislative Affairs
Enforcement of rule	Legal Division
Market Compliance	Company Supervision

How the agency intends to promote and assist voluntary compliance for this rule

The steps listed under implementation will inform and educate affected persons on the changes and help promote voluntary compliance.

How the agency intends to evaluate whether the rule achieves the purpose for which it was adopted

The OIC will work closely with carriers, providers, and other interested parties to evaluate the effectiveness of the rule as well as monitor consumer complaints and to monitor plans for non-compliance.

Appendix A – Hearing Summary

Summarizing Memorandum

To: Mike Kreidler, Insurance Commissioner
From: Bianca Stoner, presiding official for rule hearing
Matter: Rule 2013-29
Topic: Long term care lapse notice rule

This memorandum summarizes the hearing on the above-named rulemaking, which was held on December 6, 2016 at 11:00 a.m. in Tumwater. I presided over this hearing in your place.

The hearing began at 11:00 a.m.

No stakeholders were present.

The hearing was adjourned.

SIGNED this 6th day of December, 2016

Bianca Stoner, Presiding Official