



OFFICE OF
INSURANCE COMMISSIONER

April 11, 2019

Insurance carriers doing business in Washington State

Re: performance standards in insurance contracts

The Office of Insurance Commissioner (OIC) recently became aware that the inclusion of “performance standards” in insurance contracts has become a common practice across multiple lines of insurance. Performance standards are contractual terms that require specific outcomes be achieved to avoid monetary penalties. Specific to insurance contracts, failure to satisfy performance standards results in a portion of premium being remitted to the policyholder or credited to the next policy term. Examples of performance standards include: call abandonment rates at customer service call centers; claims turnaround times; and claims quality measures. To date, OIC has identified performance standard language exclusively in form filings, and not in rate filings.

We have preliminarily determined that performance standards, as described above, are in conflict with the anti-rebating and rate filing statutes found in the insurance code. Performance standards appear to violate rebating laws by offsetting or discounting the amount of premium owed, which is not provided for in the applicable rate filing. Performance standards may also violate rate filing statutes because the monetary penalty invoked due to non-performance causes the actual premium paid to vary from the premium filed.

We also understand that performance-based contracting is an important tool to compel full performance of contracts, and that for state contracts the legislature has directed state agencies to engage in this type of contracting whenever possible. RCW 39.26.180

As a result of this conflict, Commissioner Kreidler has directed staff to consider how “performance standards” might legally be permitted in commercial contracts. His goal is to stakeholder agency-request legislation during the 2019 interim that will be introduced in the 2020 legislative session.

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To avoid unnecessary disruption to consumers and policy-holders, to maintain a level-playing field for the insurance market, and except where prohibited by federal law, OIC will not be objecting to performance standard language in filings and will not be enforcing against companies for rebating or rate filing violations due solely to the execution of performance standards for all filings received by July 1, 2020.

Sincerely,



Molly Nollette,
Deputy Insurance Commissioner, Rates and Forms Division

