COVID-19 Insurance Regulatory Updates

April 13, 2020

The deluge of regulatory guidance has slowed only slightly in the past week and has taken some unusual turns. On Monday, April 13, 2020, California ordered premium refunds or credits to individuals and businesses impacted by COVID-19.[1] As property casualty insurers looked to make premium refunds for idle drivers, many states began issuing regulatory guidance encouraging premium relief and agreeing to expedite review of filings to facilitate these refunds. Other states worked to catch up on issuing initial COVID-19 healthcare guidance or issued formal statements to clarify past guidance.

Property and Casualty

Premium Refunds – Requirements and Product Filings

On Monday, April 13, **California** issued Bulletin 2020-3 ordering all lines of insurance where risk has diminished due to COVID-19 to issue refunds, including personal and commercial auto, workers compensation, commercial multi-peril, commercial liability and medical malpractice. California expects a report from insurers in 60 days to report on their actions. Last week, **Colorado**, **Connecticut** and **Maryland** issued formal requests to property and casualty insurers to make filings to offer discounts or premium relief during the COVID-19 pandemic (filings are file and use).[2]

Many states issued guidance regarding filings to facilitate premium refunds. **Maryland** will permit rate relief to be made via endorsement or rate/rule, and will accept a brief statement as actuarial support.[3] **Missouri** strongly encourages premium relief and will expedite review of such filings, and provide suggestions for the content of premium relief filings. **Missouri** also indicated such filings shall be file and use.[4] **Pennsylvania** sent notices via SERFF committing to expediting review premium relief filings. **Montana** also agreed to expedite review of rate and form filings identified as COVID19 related.[5] **Ohio** encourages such filings on a file-and-use basis and will expedite the department's review.[6] Since there is little historical data to actuarially support premium relief measures, insurers should articulate assumptions.

Some of the states want to know whether relief will be afforded to all policyholders, the methodology for determining premium relief, the mechanism for providing such relief (e.g., premium credit, direct payment), how consumers will be informed, how such premium relief will be accounted for in future rate-making and the number of consumers that will receive such relief.

As **Ohio**'s guidance noted, the premium refund filings could be done on a file-and-use basis, but the company should factor in that the department will be reviewing all the requests (i.e., do not pay too soon because the department will be reviewing the proposal). The bottom line: automobile and property casualty insurers must look for filing instructions on SERFF or the state website before implementing any refund plan.

As **California**'s Bulletin demonstrates, as this crisis increases in severity, property and casualty insurers should document their risk evaluations of their issued products to ensure decisions about premium relief can be justified to regulators in the near future. Many risks will shift, but could increase on a net basis due to the crisis. Some regulators will likely be under political pressure to find ways to get funds released to consumers and businesses. While some refunds may be justified, these actions should not be taken without consideration for maintaining company solvency.

Premium Deferrals/Moratorium on Cancellations and Non-Renewals

While initial COVID-19-related directives and moratoriums tended to be focused on property and casualty lines, recent guidance extends those moratoriums to health insurance or clarifies prior directives. In addition, states that did not suggest or order moratoriums early on are now starting to do so. **Illinois**, for example, just issued a comprehensive bulletin requesting a moratorium on cancellations and non-renewals for non-payment of premium for all personal and commercial lines through at least April 30, 2020, and asked insurers to provide additional time for other matters such as claims.[7]

New York issued another emergency regulation, this time to require insurers, HMOs and student health plans to extend the time for payment of premiums until June 1, 2020, for any individual, small group or student blanket comprehensive insurance policy when the policyholder or contract holder demonstrates financial hardship as a result of the COVID-19 pandemic. Similar to the earlier emergency rule for other lines, insurers, HMOs, student health plans and producers must provide notice to insureds and policyholders, and policies may not be terminated for non-payment.[8]

The **Washington** Insurance Commissioner extended his previous order requiring 60-day grace periods for qualified dental plans and all individual and group health plans (except qualified health plans for which individuals receive an advance premium credit on the Health Benefit Exchange). Insurers must pay covered claims incurred during the first 30 days of the grace period, and any communication with an enrollee or plan sponsor must clearly state the enrollee or plan sponsor's obligation to pay back premiums.[9]

The **New Jersey** Compensation Rating & Inspection Bureau asks workers' compensation insurers to follow the guidance issued by the Insurance Commissioner and proactively work with insureds on matters such as premium due dates, grace periods and cancellations.[10]

Mississippi clarified an earlier bulletin and indicated that notices of cancellation or non-renewal may be issued during the 60-day moratorium, but the cancellation or non-renewal cannot be effective until after the moratorium expires. This starts the running of the statutory notice period.[11]

FEMA has extended the 30-day grace period for flood insurance policy renewals. Customers with policies that are set to expire between February 13 and June 15, 2020, will have 120 days to renew.[12]

Business Interruption

Insurers from all lines should be concerned about the growing debate regarding business interruption coverage. Nationally, lawsuits continue to be filed, and organized efforts by the hospitality industry,[13] among others, is pressing for payment of business interruption claims.[14] As part of this organized effort, local emergency orders are being adopted or amended to reference that COVID-19 causes physical damage.[15]

Additionally, states continue to introduce legislation to force payment of business interruption claims to small businesses, even though many polices do not cover such losses. To date, legislation has been introduced in **Louisiana (SB477/HB858), Massachusetts (SD.2888), New Jersey (A3844), New York (A10226), Ohio (H.B. 589)** and **Pennsylvania (HB 2372)**. Most bills call for the creation of a special fund, **funded by the entire insurance industry writing in the state**, to reimburse insurers that would be required to pay business interruption claims under these bills.

Anticipating this increase in pressure to find coverage where none exists, on March 25, 2020 the National Association of Insurance Commissioners (NAIC) issued a strong statement opposing efforts to demand payment of business interruption claims. The NAIC thanked Congress and the Administration for their support of small businesses. In a strong and thoughtful statement to state policymakers and regulators seeking to force payment of claims where coverage does not exist, the NAIC included the following:

> "Business interruption policies were generally not designed or priced to provide coverage against communicable diseases, such as COVID-19 and therefore include exclusions for that risk. Insurance works well and remains affordable when a relatively small number of claims are spread across a broader group, and therefore it is not typically well suited for a global pandemic where virtually every policyholder suffers significant losses at the same time for an extended period. While the U.S. insurance sector remains strong, if insurance companies are required to cover such claims, such an action would create substantial solvency risks for the sector, significantly undermine the ability of insurers to pay other types of claims, and potentially exacerbate the negative financial and economic impacts the country is currently experiencing.
>
> Moving forward, if Congress believes that the business interruption insurance sector can play a vital role in addressing the policy challenges of future pandemics, we stand ready to work with Congress on such solutions. However, swift action by Congress to directly address the needs of citizens and our economy is the most effective and expedient means to addressing the devastating impact of COVID-19."

This type of statement from the NAIC is a welcome focus on solvency in this time of crisis when stability and safety of insurance markets is being challenged by these demands for payment of losses that are excluded by policy terms.

Property and Casualty

Automobile Insurance

California joined several other states in requesting insurers to not deny claims under personal auto policies because the driver was providing delivery services for an essential business, so long as the driver was operating within the course and scope of the driver's duties for such business. Insurers are also asked to not enforce any exclusions for commercial delivery under personal auto policies (including for drivers who use a personal motor scooter or bicycle) and to permit essential businesses to retroactively add additional drivers not previously named. Insurers should notify insured essential businesses of the availability of commercial auto coverage.[16]

Residual Markets

The **Delaware** Compensation Rating Bureau is relaxing the requirements of the Assigned Carrier Performance Standards for cancellations, audits and loss prevention in order to provide Assigned Risk Carriers with flexibility to address the needs of policyholders who demonstrate that they have been materially impacted by the COVID-19 pandemic. Carriers may also forego the physical audit requirement.[17]

Policy Changes and Termination

The **Maine** Superintendent has prohibited admitted and surplus lines insurers from using COVID-19 as a reason to narrow or terminate existing coverage, and warns that the emerging threat of COVID-19 may not be treated as a "substantial change in the risk" in order to justify policy termination or modification.[18]

Claims

The **Maryland** Insurance Administration issued fairly detailed guidance for the handling of property and casualty claims. Insurers are asked to be lenient with respect to deadlines for submitting claims or supporting information, to require Sworn Statements in Proof of Loss only when necessary, and to relax deadlines for such statements. Examinations under Oath should be done remotely or postponed until social distancing protocols are relaxed. Insurers are reminded that a "reasonable" time in which to repair property or resume operations may be longer than normal due to COVID-19. Insurers are also asked to relax deadlines for submitting claims for the difference between an actual cash value payment and replacement cost.[19]

Workers' Compensation

States are beginning to address the question of whether workers' compensation benefits are available for employees who contract COVID-19, since communicable diseases are not generally not covered. **Florida** issued guidance that healthcare workers, first responders and "others that contract COVID-19 due to work-related exposure" would be eligible for workers compensation benefits.[20] While proving the exposure was work-related may be difficult to in in normal times, **Florida**'s action suggest insurers should be liberal in providing coverage for healthcare workers and first responders and, perhaps, for employees of other essential businesses such as groceries. **Oklahoma** notified insurers of updates to the Injury Description Tables that now include a new cause of injury for "Pandemic" and a new nature of injury code for "COVID-19."[21]

Health

Audits

Health insurers in **Arkansas** are directed to suspend payment audits of hospitals and healthcare providers and to toll the time limit on overpayment recoveries for 60 days. The Insurance Commissioner believes such requirements are an impediment to rendering services to consumers during the state of emergency. The directive applies to all plans, including short-term limited duration plans.[22]

Telemedicine

Florida, like many other states, encourages insurers to broaden access to telemedicine services, extend pharmacy audit deadlines and transition to electronic pharmacy audits.[23] **New Hampshire** issued guidance clarifying telemedicine requirements of the Governor's Emergency Order #8 and the Commissioner's earlier order, stating that first dollar coverage is required for services provided by telehealth when there is a COVID-19 diagnosis in any diagnosis field on a claim.[24] **Rhode Island** explained that the Governor's order that insurance companies should pay for telemedicine services applies to **all** insurers regardless of the type of insurance and not just to insurers regulated by the Office of the Health Commissioner.[25]

Individual and Group Insurance

Instead of issuing directives, **Idaho** has asked insurers to submit proposals to help consumers keep their health insurance coverage (individual and group), including proposals for extending grace periods, waiving certain work requirements, allowing employees with reduced hours to remain insured, waiving probationary periods and instituting "premium holidays" or refunds for services that could not be provided due to COVID-19. It is the regulator's intention not to enforce otherwise applicable laws and to allow deviations from policy language so long as the carrier justifies such measures and applies them uniformly after notice to the regulator. [26]

Idaho also joined several other states in relaxing prescription refill restrictions by authorizing insurers to waive policy limitations, including prohibitions against 90-day refills in a retail setting, requirements for in-person pharmacy signature logs and signature audits, and in encouraging the broad use and coverage for services provided by telemedicine.[27]

Rather than ordering insurers to waive cost sharing for testing and treatment of COVID-19, **Idaho** has authorized insurers to "allow healthcare providers to waive or pay all or part" a claimant's cost-sharing obligations.[28]

Producers

Since insurance departments are closed, and major testing centers are closed until at least mid-April, **Colorado**, like other states, has recognized the challenges for producers who need to renew licenses and complete continuing education (CE) requirements. The **Colorado** Commissioner granted a temporary continuation of license renewal deadlines and associated procedures, including continuing education requirements, for resident and non-resident producers until further notice, while **Mississippi** instructed producers, adjusters and bail bond agents to request extensions for CE compliance.[29] **Massachusetts** offers other accommodations such as allowing classroom CE courses to be provided via webinar, as well as deemed all producer licenses in effect on the date of the state's Emergency Declaration to remain in good standing for the duration of the state of emergency.[30]

North Carolina informed producers that the department is unable to issue temporary licenses or add new lines of authority but **Idaho** will issue provisional resident licenses that will be valid for six months without the need for fingerprinting and that will be subject to an alternative examination.[31] Continuing education requirements due in North Carolina in March, April or May are now due June 30, 2020, and classroom courses may be provided via webinar.[32]

Company Filings and Licensing

Kentucky joined other states in recognizing the challenges insurers face in submitting complete and timely filings and, upon request, will grant either a 30- or a 60-day extension for various filings such as annual statements, and Forms B and C. The **Kentucky** Department of Insurance is waving hard copy and original signature requirements, but insurers will need to submit hard copies and original signatures within 60 days after the state allows a return to work. [33] **Massachusetts** will accept quarterly financial statements that are not notarized and that are submitted electronically, but insurers must notify the **Massachusetts** Division's Financial Surveillance Unit and provide a date by which the company will be able to fully satisfy the normal requirements.[34] **Massachusetts** also extended filing deadlines for Forms B and F, corporate governance annual disclosures, and certain audit/internal control reports. Other states, including **California** and **Nebraska**, issued similar guidance and extensions, and insurers should check with their regulators for details, including requirements to notify the regulator and to submit hard copies and original signatures when the emergency passes.[35]

Connecticut licenses issued to insurance companies, healthcare centers and fraternal benefit societies that expire May 1, 2020, are now valid until July 1, 2020. Companies may pay fees at that time. No further notice will be provided other than the bulletin.[36]

CARES Act Funding Guidance

Last week, the Board of Governors of the Federal Reserve (the Federal Reserve) issued guidance on loans available to business enterprises of up to 10,000 employees or US$2.5 billion in revenue (in 2019). Insurance companies and their non-insurance operating subsidiaries are not excluded from participation in these programs. The guidance is silent regarding any additional oversight that the Federal Reserve might impose on an applying insurance company or non-insurance operating subsidiary in the manner that was imposed for use of TARP funds. A detailed summary is available here.

Programs that might be of interest to insurers would include the Main Street Lending Program and the Term Asset-Backed Securities Lending Program. In brief, the loan sizes range from US$1 million to US$150 million, depending on many circumstances and technical limitations. Loans include one year of deferral of principal and interest payments. Funds are subject to several requirements and restrictions: (1) borrower must make reasonable efforts to maintain its payroll and retain its employees during term of loan; (2) stock buybacks dividends on common stock and executive compensation payments are prohibited. The loans will be originated by US banks, who will retain a 5% interest in such loans and sell a 95% participation interest to a special purpose vehicle formed by the Federal Reserve with partial backing from US Treasury. Please see the linked alert for additional information.

For additional information, our Coronavirus Resource Hub provides guidance on key legal issues for businesses to consider, together with some practical steps for businesses to take.

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Endnotes

1 California Bulletin 2020-3 (April 13, 2020).

2 Colorado Bulletin B-5.39 (April 6, 2020); Connecticut Notice (April 6, 2020).

3 Maryland Advisory (April 9, 2020).

4 Missouri Bulletin 20-08 (April 10, 2020).

5 Montana Informational Bulletin (April 9, 2020).

6 Ohio Product Filing Guidance for Property & Casualty Insurers Introducing Premium Relief Initiatives During COVID-19 Emergency.

7 Illinois Company Bulletin 2020-09 (April 3, 2020).

8 New York Fifty-Ninth Amendment to 11 NYCRR 52 (April 7, 2020).

9 Washington Emergency Order 20-04 (April 3, 2020).

10 New Jersey Compensation Rating & Inspection Bureau Advisory Bulletin No. 74 (April 3, 2020).

11 Mississippi Bulletin 2020-4 (April 1, 2020).

12 FEMA Release No. HQ-20-040 (March 29, 2020), https://www.fema.gov/news-release/2020/03/29/fema-extends-grace-period-flood-insurance-renewal-premiums.

13 The Independent Restaurant Coalition, which represents 500,000 restaurants, sent a letter to Congress asking that insurers cover business interruption losses caused by COVID-19. The letter has received 24,096 signatures. https://biztimes.com/restaurants-seek-changes-to-cares-act/

14 *See e.g., Prime Time Sports Grill, Inc. v. Certain Underwriters at Lloyd's, London*, No. 8:20-cv-00771 (M.D. Fl. filed Apr. 2, 2020); *Barbara Lane Snowden DBA Hair Goals Club v. Twin City Ins. Co.*, No. 2020-19538 (Texas Dist. Ct., Harris Cty filed Apr. 2, 2020); *Big Onion Tavern Group, LLC et al. v. Society Ins., Inc.*, No. 1:20-cv-02005 (N.D. Ill. filed Mar. 27, 2020); *French Laundry Partners, LP v. Hartford Fire* (Super. Ct CA, Cty of Napa Mar. 25, 2020); *Choctaw v. Lexington*, No. CV-20-42 (Dist. Ct, Bryan Cty, OK Mar. 24, 2020)
Chickasaw v. Lexington No. CV-20-35 (Dist. Ct, Pontotoc Cy, OK Mar. 24, 2020); *Cajun Conti LLC v. Certain Underwriters*, No. 2020-02558 (Civ. Dist. Ct, Parish Orleans, LA filed Mar. 16, 2020).

15 The San Francisco Supervisors passed a resolution that declares the coronavirus an extreme danger to the public, which was done in an effort to get insurance companies to cover business interruption claims caused by the virus. https://patch.com/california/across-ca/some-good-news-study-coronavirus-impact-bay-area-workers

16 California Notice (April 9, 2020).

17 Delaware Compensation Rating Bureau Circular No. 975 (April 3, 2020).

18 Maine Bulletin 443 (April 7, 2020).

19 Maryland Bulletin 20-17 (April 3, 2020).

20 Florida OIR Informational Memorandum OIR-20-05M (April 6, 2020).

21 Oklahoma Workers Compensation Commission Notice (March 25, 2020).

22 Arkansas Bulletin 15-2020 (April 9, 2020).

23 Florida Informational Memorandum OIR-20-06M (April 6, 2020).

24 New Hampshire Bulletin Docket No. 20-24-AB (April 8, 2020).

25 Rhode Island Insurance Bulletin 2020-5 (April 6, 2020).

26 Idaho Bulletin 20-10 (April 6, 2020).

27 Idaho Bulletin 20-02 (April 6, 2020).

28 Idaho Bulletin 20-03 (April 6, 2020).

29 Colorado Emergency Regulation 20-E-04 (April 2, 202); Mississippi Bulletin 2020-5 (April 1, 2020).

30 Massachusetts Bulletin 2020-12 (April 3, 2020).

31 Idaho Bulletin 20-04 (April 6, 2020).

32 North Carolina Notice (April 3, 2020).

33 Kentucky Bulletin 2020-02 (April 7, 2020).

34 Massachusetts Bulletin 2020-11 (April 3, 2020).

35 California Notice (April 6, 2020); Nebraska Notice (April 8, 2020).

36 Connecticut Bulletin FS-37 (April 9, 2020).

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