

The rush of regulatory orders, bulletins and guidance has continued in the face of the pandemic, and compliance is an evolving challenge. In some cases, state governors have issued orders directly affecting insurance companies. Many of the orders and bulletins continue until the expiration of the state of emergency, while other orders and bulletins have termination dates that are likely to be extended. Here, we provide a synopsis of the common directives issued in the past week.

Cancellations/Non-Renewals

At least 16 states¹ issued bulletins or orders in the past week urging or mandating that insurers avoid cancelling or nonrenewing policies for nonpayment of premiums. Unlike with earlier bulletins, most of these states applied their directives to all lines of insurance. The following states expressed their directive as a mandate or an expectation: Mississippi, North Carolina, Ohio, Oregon, South Carolina and Washington.²

The New York Department of Financial Services (NYDFS) issued emergency regulations, based upon the Governor's Executive Order 202.13, that require 90-day grace periods for individual and group life insurance and annuity contracts when the policyholder or contract holder demonstrates financial hardship as a result of the COVID-19 pandemic.³ The emergency regulations also require insurers to enter into 12-month payment plans with policy and contract owners. The regulations impose similar prohibitions on premium finance companies and on creditors under consumer credit policies. The Governor's Order imposes a moratorium on cancellations and non-renewals of workers' compensation policies for nonpayment.

The following states requested that insurers be flexible with policyholders by providing additional grace periods for payment and taking all possible steps to avoid lapsing coverage during the emergency period: Colorado, Florida, Hawaii, Montana, Rhode Island and West Virginia.⁴ The directives from Hawaii, Mississippi and Ohio all limit their directives to a 60-day period. Generally, insurers are not expected to waive or excuse the payment of premiums.

Business Interruption

In the past week, California and Washington have issued guidance and data calls regarding business interruption insurance. Both states issued data calls to property and casualty companies that have issued commercial liability coverage with business interruption and related coverage. Both of these data calls put property and casualty insurance companies in the position of describing their coverage defenses before claims have been fully defined, or before claims have been adjusted and reviewed by a court.

- California's data call, due April 9, 2020, requests information regarding the volume of policies providing the following commercial coverages: business interruption, civil authority, contingent business interruption and supply chain, with the information to be broken down by the number of employees working for each insured.
- The Washington data call, issued to property and casualty companies on March 25, 2020, with a due date of April 1, 2020, required the following data: (1) the terms of business interruption, civil authority, contingent business interruption, covered perils and supply chain coverage exposures, (2) whether physical damage was a trigger for coverage, (3) a written explanation of when coverage was triggered, and (4) whether the policy term provides coverage for a COVID-19 loss.

West Virginia issued instructions regarding reporting business interruption inquiries and claims.⁵ West Virginia issued a bulletin describing business interruption insurance, noting that such coverage "normally" requires physical damage before a claim can be made. West Virginia also directs that "no insurance company should report negative claims activity or a claim denial [in claims metrics reported to the respective Department of Insurance] when an insured or policyholder contacts the company or its agent or broker to inquire about business interruption coverage for COVID-19 under its policy."

Company Filings

In the past week, additional states made an effort to work with insurers to temporarily permit electronic filings and signatures in lieu of hard copies and wet signatures, as most of the departments enter into unprecedented "work from home" environments. Some regulators expect companies to submit the usual hard copies with wet signatures and notarizations when business returns to normal or when the state's emergency order expires.

Connecticut, New Hampshire, North Carolina, North Dakota, Tennessee and Texas all extended various deadlines and provided instructions for making electronic filings.⁶ Connecticut addressed quarterly financial statements and Forms B, C and D. New Hampshire provided guidance about financial statements and expressly noted that the insurance laws for property and casualty do not require wet signatures.

Claims

In the past week, Oregon, Rhode Island and South Carolina urged insurers to relax timeframes for claimants to submit proofs of loss and supporting information.⁷ Rhode Island added that insurers should seek ways to ease the claims process such as delivering claim payments electronically and adjusting claims remotely. We expect additional states to issue similar directives in the coming weeks.

An order issued by the Oregon Commissioner prohibits insurers from cancelling or nonrenewing any insurance policy because of claims resulting directly from the circumstances of the COVID-19 outbreak, except in cases of fraud or intentional misrepresentation of a material fact. This directive applies to all lines of business.

Personal Automobile Coverage

Nine states – Colorado, Connecticut, Florida, Kentucky, Maryland, Montana, North Dakota, Rhode Island and Washington – recognize that food delivery is urgent, and in many states, an essential service for people who are sheltering in place or who are quarantined.⁸ Colorado instructed automobile insurers to honor accident claims incurred while using a personal vehicle to deliver food, even if such use is excluded from coverage. Kentucky issued a strong directive that insurers may not deny claims associated with food delivery on behalf of a business impacted by the state of emergency. North Dakota, Rhode Island and Washington want insurers to pay claims under personal auto policies that arise from any delivery services. Connecticut, Florida and Montana encourage automobile insurers to honor claims incurred while the insured is using a personal vehicle to make deliveries or for any commercial purpose. Maryland urges insurers to file endorsements to eliminate delivery and commercial use exclusions, and committed to expedited filing reviews. We expect other states to issue similar guidance, acknowledging they cannot force insurers to rewrite contracts and hoping that the volume of such claims does cause financial difficulties for insurers.

Medical Malpractice

Wisconsin asked medical professional liability insurers to provide coverage for providers that provide telemedicine services, and for providers from out of state, without imposing the usual restrictions or conditions.⁹

Healthcare

Many states encourage the relaxation of requirements for telemedicine, out-of-network coverage, provider credentialing, prescription refills, cost-sharing, concurrent and retrospective reviews, and pre-authorizations. To comply with regulators' expectations, insurers should review coverage conditions and claim processes that may present barriers or impediments to coverage during these times and eliminate as many as possible.

Because of hospital capacity issues with COVID-19 patients, a developing issue involves the transfer of patients from acute hospitals to some type of step-down facility. Alaska and Louisiana have addressed this issue directly. Using his emergency powers, the Louisiana Commissioner ordered insurers to provide coverage for services in such facilities the same as if services were provided in a hospital, and has suspended capacity, staffing ratios and other potential impediments.

Regulators in Colorado and Wisconsin are asking health insurers to permit employers to continue to provide coverage for employees whose hours have been reduced below the minimum number necessary to qualify for coverage.¹⁰ Wisconsin encourages insurers to work with employers to continue to provide dental, vision and prescription coverage.

Insurance regulators are uniform in their push to have health insurers cover services provided by telemedicine the same as services provided in-person. The following states recently joined many other states in issuing guidance urging relaxation of procedural obstacles to coverage: Arizona, California, Illinois, Maine, Missouri, Nebraska and South Carolina. Missouri wants coverage for telemedicine services provided by providers not licensed in the state. Nebraska does not want insurers to insist on obtaining a patient's signature in order to receive telemedicine services. Several states, including California and Maine, now permit the use of telephone and other less secure electronic means of providing telehealth services.

Insurers in Alaska and Georgia are asked to suspend concurrent and retrospective reviews.¹¹

Insurers are also being asked to waive location-based credentialing requirements and limitations on the use of out-of-network providers.¹²

Conscription of Nurses

Insurers in New York were directed by the Governor to provide the Superintendent with a list of all physicians, physician assistants, registered nurses and licensed practical nurses who are licensed or who have been licensed during the past five years. The New York Department of Financial Services wrote to companies individually to identify a bench of medical professionals who could back up frontline providers in the COVID-19 fight.¹³

Producers

States continued to recognize that the time to renew licenses that expire in March or April should be extended, and that producers may need accommodations to meet their continuing education (CE) requirements. Nebraska, New Hampshire and New York are among the states that have extended deadlines for license renewal.¹⁴ Several states, including Kansas, Maine and Nebraska, will temporarily eliminate proctors or permit virtual proctors for self-study CE courses, and/or will allow courses approved for classroom instruction to be delivered via webinar.¹⁵ Kansas indicated that license expiration dates will remain in place, but automatic suspensions are suspended during the emergency period.

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.

Contacts

Mary Jo Hudson

Partner, Columbus
T +1 614 365 2732
E mj.hudson@squirepb.com

Sue Stead

Of Counsel, Columbus
T +1 614 365 2708
E sue.stead@squirepb.com

Endnotes

- 1 Colorado, District of Columbia, Florida, Hawaii, Mississippi, Montana, North Carolina, North Dakota, Ohio, Oregon, Rhode Island, South Carolina, Utah, Washington and West Virginia.
- 2 Mississippi Bulletin 2020-3 as amended (March 25, 2020); North Carolina Bulletin No. 20-B-06 (March 27, 2020); Order March 27, 2020; Ohio Bulletin 2020-07 (March 30, 2020); Oregon Commissioner Order (March 25, 2020); South Carolina Bulletin 2020-02 (March 25, 2020); Washington Emergency Order No. 20-03 (March 25, 2020).
- 3 New York Governor's Executive Order No. 202.13 (March 29, 2020); Consolidated Rulemaking Amending 3 NYCRR 405, 11 NYCRR 185 (Insurance Regulation 27-A) and 11 NYCRR 187 (Insurance Regulation 27-C) and Adding New 11 NYCRR 229 (Insurance Regulation 216).
- 4 Colorado Bulletin No. B-5.38 (March 27, 2020); Colorado Bulletin No. B-4.105 (March 27, 2020); Florida Informational Memorandum OIR-20-04M (March 25, 2020); Hawaii Memorandum 2020-31 (March 27, 2020); Letter from Montana Commissioner (March 26, 2020); Rhode Island Bulletin 202-4 (March 25, 2020); West Virginia Insurance Bulletin 20-07 (March 26, 2020).
- 5 Texas Bulletin 20-08 (March 26, 2020); West Virginia Bulletin 20-08 (March 26, 2020).
- 6 Connecticut Bulletin No. FS-36 (March 24, 2020), New Hampshire Bulletin INS 20-022-AB (March 26, 2020); North Carolina Commissioner Order (March 31, 2020); North Dakota Bulletin 2020-5 (March 25, 2020); Tennessee Guidance (March 20, 2020)
- 7 Oregon Commissioner Order (March 25, 2020); Rhode Island Bulletin 202-4 (March 25, 2020); South Carolina Bulletin 2020-02 (March 25, 2020)
- 8 Colorado Emergency Regulation 20-E-03 (3 CCR 702-5); Connecticut Bulletin No. IC-41 (March 26, 2020); Florida Informational Memorandum OIR-20-04M (March 25, 2020); Kentucky Guidance (March 25, 2020, and as updated March 30, 2020); Maryland Bulletin No. 20-15 (March 30, 2020); Letter from Montana Commissioner (March 26, 2020); North Dakota Bulletin 2020-4 (March 25, 2020); Rhode Island Bulletin 202-4 (March 25, 2020); Washington Office of the Insurance Commissioner Press Release (March 27, 2020)
- 9 Wisconsin Commissioner Letter (March 31, 2020)
- 10 Colorado Bulletin B-4.105 (March 27, 2020); Wisconsin Commissioner Letter/Bulletin (March 26, 2020)
- 11 Alaska Bulletin 20-12 (March 29, 2020); Georgia Directive 20-EX-7 (March 26, 2020)
- 12 Alaska Bulletin 20-12 (March 29, 2020); Georgia Directive 20-EX-7 (March 26, 2020); North Dakota Bulletin 2020-8 (March 30, 2020); South Carolina Bulletin 2020-02 (March 25, 2020)
- 13 Governor's Executive Order 202.10 (March 23, 2020)
- 14 Nebraska Notice (March 23, 2020) (2); New Hampshire Bulletin 20-023-AB (March 30, 2020); New York Circular Letter 2020-9 (March 25, 2020)
- 15 Kansas Ins. Dept. COVID-19 FAQ, <https://insurance.ks.gov/documents/department/COVID19-FAQ.pdf>; Maine Guidance from Producer/Adjuster Licensing Division (March 25, 2020); Nebraska Notice (March 23, 2020) (2)