SQUIRE PATTON BOGGS

COVID-19 Insurance Regulatory Updates

US – May 6, 2020

For the first time since early March, the volume of guidance and directives from insurance regulators has slowed. Many bulletins, orders and emergency rules are in effect only for a specified period of time as provided for in the directive, while others last for the duration of the state's emergency order. One state – Georgia – has issued guidance for winding down restrictions on insurers. Other states may soon issue similar guidance or simply allow directives to expire. In other states, however, stay-at-home orders may continue or be extended, along with industry directives. As states reopen, the industry will confront issues about exactly when and where operations can return to normal.

Winding Down

Many of the coronavirus disease 2019 (COVID-19) directives from insurance regulators were issued for 60 days or until the end of the state's public health emergency order. With states opening up for business, Georgia is the first state to issue guidance for insurers to follow in phasing out restrictions imposed previously on normal operations. Specifically, the moratorium on canceling commercial policies that include business interruption coverage for nonpayment now expires May 19, 2020. A similar moratorium for health insurance policies expires May 31, 2020. Georgia Directive 20-EX-7 concerning various health insurance practices will expire May 25, 2020, and those restrictions do not apply to elective procedures. Finally, producers who had a deadline for completing continuing education (CE) requirements that was before May 31 will have until May 31, 2020, to complete those requirements. Any requirement for in-person CE is waived until May 31.[1]

Premium Relief

Regulators continue to issue guidance encouraging premium relief and explaining filing expectations. New Hampshire extended previous guidance about premium relief for auto insurance to all property and casualty lines.[2] Some states, including Arizona, Connecticut and Wyoming, are urging consumers to contact their insurance company to find out what kind of relief may be available.[3]

New Mexico issued an order that the presumption that rates are not excessive in competitive markets no longer applies to automobile insurance. Therefore, insurers have 21 days to determine whether premiums for auto policies in effect on or after March 23, 2020, are excessive, based on actuarial principles given the COVID-19-related reductions in use of automobiles. The directive does not apply to products for which premiums are charged on a pay-as-you-go or pay-by-mile basis, limited duration products or products subject to usage rate adjustments. Excess premiums may be returned or may be used as a credit against future premiums, except not against premiums due on a renewal policy. The order is in effect until the public health emergency proclamation expires.[4]

Maine makes the filing process relatively painless and wants a form or rate filing just to tell the superintendent what the company is doing, but the filing does not have to be made before implementation.[5] Idaho will waive certain laws and rules to, and will permit carriers to deviate from, filed rates or forms, so long as deviations are applied uniformly to similarly affected insureds, and the insurer notifies the director of its proposal and justifications.[6] Montana requires only a rate filing, and does not require form filings.[7]

Other states have higher expectations. In Oregon, proposed rate reductions due to COVID-19 emergency orders should be filed as a rule filing in SERFF, and the product name should be "COVID-19." Insurers should explain the amount and duration of rate reduction, the classes to which the reduction applies, how it applies to in-force business and whether it applies to new business. A filing is also required to pay policyholders a specific amount, similar to a policyholder dividend. A similar filing is also required for temporary changes in coverage.[8] Michigan joins select states that require more detail in filings for premium refunds or waivers, including actuarial support relied upon in determining the amount of any refund or waiver, a policy form and copies of any notices that will be provided to policyholders. Insurers may request earlier effective dates than are normally permitted.[9]

Hawaii will permit insurers to deviate from filed rates or contract language as long as the newly proposed rates are lower than the latest filed rates, they are applied uniformly without prejudice and the insurer notifies the commissioner of its proposal.[10] Pennsylvania requires the filing of (1) an endorsement, (2) a rate filing to provide a payback or (3) a rate filing for a premium credit. The department promises to review such filings "immediately" upon receipt.[11]

Alabama wants informational rate filings in order to reduce automobile insurance premiums due to reduced exposures. The filing should include the timeframe and impact on individual premiums, as well as explain whether the action applies to new business and renewal business. The department will waive the SERFF filing fee, and reasonably and consistently applied reductions or refunds will not be considered a rebate.[12]

North Carolina will permit insurers to provide premium relief by (1) offering a policyholder dividend, savings or unabsorbed premium deposit; (2) filing an Optional Enhancement Form; or (3) filing a rate deviation. In an unusual twist, however, insurers may not use language that refers to such a benefit as "payback," "giveback," "refund," "return of premium" or anything else that hints of a rebate.[13] In contrast, most states, including New Hampshire, refer to premium relief as refunds, discounts or credits, and have said such premium relief would not constitute a rebate or unfair trade practice so long as relief is provided in a manner that is not unfairly discriminatory.[14]

Policies Subject to Audit

Guidance urging mid-term audits and premium adjustment for policies with premiums based on risk exposures such as sales revenues or payroll continues to emerge. Maine is encouraging policyholders to self-audit and report changes in exposures or risk profiles, and wants insurers to adjust premiums accordingly.[15] New Mexico encourages insurers to conduct mid-term audits without an on-site visit, allow policyholders to self-audit and adjust premiums accordingly.[16]

Oklahoma, on the other hand, issued new guidance giving policyholders a "right" to demand a one-time, mid-term audit at any time, and requiring admitted insurers to conduct such audits and adjust premiums within 10 days of the audit.[17]

Moratorium on Cancellation/Nonrenewal

States are beginning to extend previously issued moratoriums on cancellations and nonrenewals for nonpayment and to require companies to offer extended grace periods. North Carolina extended its order requiring insurers to provide additional time for premium payments and submission of claims until May 27, 2020.[18]

Following New York's lead and pursuant to the Governor's Executive Order No. 123, New Jersey issued recent guidance directing property and casualty insurers to provide a 90-day emergency grace period, waive late fees, not report policyholders to credit rating agencies, and allow a 12-month period for the payment of 12 equal installments, as well as prohibiting insurers from considering such late payments in rating, pricing, tiering, etc. In addition to posting information on websites, insurers must provide each policyholder with an "easily readable" description of the extended grace period and must file such notices via SERFF as an informational filing.[19] In addition, agents and insurers are to offer payment methods that do not involve in-person contact. New Jersey also directed life insurers to provide a minimum 90-day grace period for the payment of life insurance and annuity premiums, waive late payment fees and interest, and not report late payments to credit rating agencies during the 90-day period. This applies to policies that were in good standing on March 1, 2020, but does not apply to initial premiums to secure coverage. Insurers are to provide a 12-month period in which to pay premiums that are not paid in the 90-day grace period, and provide a 90-day period in which to exercise other rights under such policies and contracts. Finally, insurers and agents are to offer payment methods other than in-person. Note that insurers are required to post information on websites and to provide each policyholder with an "easily readable written description of the terms" of the grace period.[20]

Arizona and Idaho join the growing number of states asking property and casualty insurers to give policyholders more time to pay premiums, waive late fees and penalties, and allow additional time before cancellations or nonrenewals become effective.[21] North Carolina reminded all insurers of their obligations under N.C. Stat. 58-2-46 to provide extensions, deferrals, extra time for claim submissions and other accommodations required of insurers in the event of a disaster.[22] Michigan issued guidance strongly encouraging insurers to provide a minimum 60-day grace period in order to avoid cancellations and nonrenewals for nonpayment, and to allow payment plans after the grace period.[23] Arizona would like insurers to refrain from canceling or nonrenewing any policies for nonpayment during "this time of hardship" and to continue to work with insureds after the public health emergency ends.[24]

Many state directives were general as to applicability during the emergency period and did not include specific expiration dates. A number of directives include expiration dates: New York (May 7), Louisiana (May 12), Indiana (May 18), Mississippi (May 26), North Carolina (May 26), Oregon (May 26), Washington (May 26), Arkansas (June 1), Connecticut (June 1), Maine (June 1) and New Jersey (July 1). Other states tie the expiration of the moratorium to the expiration of the state's emergency order. Those states include Delaware, Idaho and Ohio. Three states set their directives to expire in a set period of days after their state's emergency order expires: New Mexico (30 days), Hawaii (60 days) and Michigan (90 days). We anticipate that some states will continue to issue extensions, so we will continue to watch these efforts.

Premium Finance

Several states included premium finance companies in moratoriums, but Pennsylvania issued detailed guidance. The regulator encourages premium finance companies to extend the time for payment for loan payments, especially for cancellations for default, and to waive delinquency charges. In addition, insurers are asked to work with premium finance companies and to work directly with policyholders and provide accommodations in the event a policy would normally cancel because of a premium finance default.[25]

Rating

A new type of guidance was recently issued in Arizona. The regulator urges insurers to suspend the use of credit for rating purposes, at least during the health emergency.[26]

Claims

The Washington commissioner issued an emergency order directing all insurers and producers, including surplus lines brokers, to provide policyholders with additional time in which to report completed repairs in order to claim depreciation that was withheld. Deadlines between April 27, 2020, and June 26, 2020, shall be extended to at least 60 days after June 26, 2020, or the expiration of the state's stay-at-home order (including any extensions), whichever is first. Deadlines that occurred between February 29, 2020, and April 27, 2020, shall also be extended for 60 days after June 26, 2020, or the expiration of the state's stay-at-home order, whichever is earlier.[27] Similarly, Arizona also wants insurers to extend timeframes for the repair or replacement of property for depreciation purposes.[28]

Michigan wants insurers to adjust claim deadlines, consider waiving other requirements, such as examinations under oath, and extend coverage for living expenses and loss of use when losses are exacerbated by COVID-19.[29]

Personal Auto

While several states have asked insurers to ignore exclusions in personal auto policies for delivery services and business use, Idaho went further and asked insurers to provide coverage when personal vehicles are used in the delivery of food, medicine or other essential services, as well as for charitable purposes.[30]

Workers' Compensation

As the COVID-19 crisis continues, there is growing interest in whether workers' compensation benefits will be available for those who continue to work. In April, the Illinois Workers' Compensation Commission issued a rule creating a rebuttable presumption that any worker employed by an essential business who contracts COVID-19 is presumed to have been infected at the workplace. The rule was challenged in court and was recently withdrawn. At least 21 other states have taken measures to create a similar rebuttable presumption. Three states enacted legislation, including Minnesota, Utah and Wisconsin, and at least seven states have introduced legislation. Other states have taken action by emergency rule, administrative guidance or executive order. The measures differ in terms of the employees that are covered and by the triggers for the presumption. For example, some measures include only first responders and others include employees of certain essential businesses. Most, however, include first responders, medical personnel and corrections officers. While some measures would provide benefits if an employer sends an employee home on quarantine, others would require a positive COVID-19 diagnosis to trigger workers' compensation benefits.

The National Council on Compensation Insurance (NCCI) filed reporting codes for the tracking of COVID-19 injuries and losses, and filed changes to the Statistical Plan and the Basic Manual to temporarily permit employers to exclude from payroll amounts paid to employees who are not working because of COVID-19. A few states, including Maryland, have already approved the changes. Maryland stated that such approval does not mean claims for COVID-19-related injury are compensable.[31]

Medical Professional Liability

Immunity for medical providers from civil liability for COVID-19-related services continues to be an issue to watch. The governor of Kansas issued an executive order suspending many rules pertaining to the licensing and supervision of healthcare professionals, and extending immunity from suit to healthcare professionals and entities that make clinical and triage decisions, and render assistance, testing or advice in the care of patients during the COVID-19 pandemic. There is no immunity for adverse events or injuries that are caused by willful misconduct, gross negligence, recklessness or bad faith.[32]

Life Insurance

While the public health emergency is in effect, life insurers in Connecticut shall not ask applicants any questions about COVID-19, including, without limitation, questions about being quarantined.[33]

Health

Mississippi extended its guidance on telehealth through June 30, 2020. Insurers are to encourage the use of telemedicine and suspend certain limitations.[34]

Washington extended the commissioner's emergency order pertaining to cost-sharing, prescription refills, networks and pre-authorizations until June 3, 2020.[35]

The District of Columbia extended market reforms impacting the health insurance industry through the duration of the declared public health emergency, to include a prohibition on cancellation of coverage for nonpayment of premium, waiving late fees, extending billing due dates, ensuring late payments are not considered in connection with future cancellations, and providing for expedited form and rate filings to implement reasonable policyholder accommodations.[36]

North Carolina reminded all insurers of their obligations under N.C. Gen. Stat. 58-50, Part 4 [External Reviews] to allow consumers additional time to submit information about claims.[37]

The New Mexico Office of Superintendent of Insurance also announced new requirements that major health insurance carriers cover expenses for out-of-network care received as a result of COVID-19. In recognition of capacity restraints on providers, the new guidance also orders insurance carriers to cover out-of-network bills when a consumer cannot receive in-network care for other (non-COVID-19) conditions due to the COVID-19 crisis. Effective immediately, carriers must reimburse out-of-network providers, including facilities, using the surprise billing rate. [38]

North Dakota extended requirements applicable to health insurers until the date the state's declared emergency ends, to include directives to cover telemedicine, cover testing for COVID-19, expand access to prescription drugs and avoid out-of-network surprise billing.[39]

Cybersecurity

The New York Department of Financial Services (DFS) identified areas of heightened risk and reminded regulated entities of their responsibility to report cybersecurity events within 72 hours at the latest. DFS listed the following heightened risks for which regulated entities should take measures to assure security for remote working during the COVID-19 crisis: remote access (use multifactor authentication and secure VPN connections that encrypt data); locking down company devices and using security software; controls for BYOD programs; reliance on video and audioconferencing applications (configure to limit unauthorized access and provide training); and prohibiting the use of personal accounts for sending nonpublic information.[40]

Company Filings

States continue to extend deadlines for certain filings and to relax other requirements. As an example, Pennsylvania will provide a 30-day extension or a 60-day extension, depending on the type of filing.[41] In Pennsylvania, as in most states, insurers must request an extension. As with other states that have issued similar guidance, Arkansas and Pennsylvania will temporarily waive requirements for hard copies, original signatures, notarization and other in-person-related filing requirements.[42] However, insurers need to remember that these requirements are suspended only temporarily, and that complete filings – with hard copies, wet signatures and notarizations – must be submitted within a certain period, often 60 days after the state permits a return to work. Kentucky, Maine, New Hampshire, Ohio, South Carolina and Vermont issued similar guidance.[43] Connecticut will grant extensions to both foreign and domestic insurers for hard copy filings.[44]

Mississippi automatically extended filing deadlines by 30 days for certain filings, including surplus lines filing fees, property and casualty insurer license renewals, title insurer renewals and accredited reinsurer filing fees. Extensions may be requested for other filings. Hard copy, original signature, notary and mailing requirements are temporarily suspended, but hard copies should be submitted within 60 days after a return to work.[45]

Not surprisingly, several states, including Arkansas, Maine, Mississippi, New Hampshire, Ohio and South Carolina, among others, have indicated that on-site exams are suspended.[46]

Corporate Governance Annual Disclosures in Illinois are now due August 1, 2020, and late filing penalties will not be charged, although insurers are encouraged to meet the June 1, 2020, deadline. A late filing should indicate the delay was due to the COVID-19 emergency.[47] On the other hand, Wisconsin, which recently passed a regulation requiring such disclosures, will not grant extensions of the June 1, 2020, deadline on the grounds that the department is fully functional and insurers are expected to be operational as well and to meet their regulatory responsibilities.[48]

Remote notarization will be permitted in Arizona from April 10 to July 1, 2020.[49]

Producers

Things are starting to improve for individuals who are waiting to sit for a licensing examination. Wisconsin was one of the first states to allow agent licensing exams to be taken online. Prometric, one of the major testing companies, developed an online platform, something the Wisconsin commissioner was apparently pursuing prior to the COVID-19 crisis in order to expand access for those with transportation or scheduling issues.[50] North Dakota and Virginia have also announced the availability of online examinations.[51] The West Virginia Department of Insurance indicated that some testing centers and fingerprinting locations may open May 1.[52]

More and more states have agreed to issue temporary producer licenses to individuals who are fully qualified and approved for licensure but who have not been able to sit for the licensing examination. Temporary licenses are now available in Iowa until June 1, 2020, so long as the person is sponsored by a licensed resident producer. The temporary licensee will not need company appointments.[53] Other states include South Dakota and Utah.[54] Connecticut, Michigan, Ohio, Pennsylvania and Rhode Island will issue temporary licenses to individuals who meet all licensing requirements other than the exam as long as the individual is sponsored by an insurance company.[55] In other states, such as Maine and Missouri, a licensed resident agent can be the sponsor.[56]

Washington issued emergency rules concerning the extension of pre-licensing education requirements and renewals, respectively. Producers whose license expired between March 1, 2020, and June 30, 2020, and who experienced a COVID-19 hardship may request an extension to July 31, 2020.[57] The validity of certain pre-licensing certificates and licensing exam results was extended until July 31, 2020.[58]

Contacts

Douglas Anderson
Principal, Columbus
T +1 614 365 2717
E doug.anderson@squirepb.com

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

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

Endnotes

1 Georgia Bulletin 20-EX-7 (April 28, 2020)

2 New Hampshire Bulletin 20-030-AB (April 20, 2020)

3 Arizona Bulletin 2020-04 (April 16, 2020); Connecticut Notice (April 6, 2020); Wyoming Notice (April 22, 2020)

4 New Mexico Notice and Order No. 20-00025-COMP-PC (April 21, 2020)

5 Maine Bulletin 444 (April 15, 2020)

6 Idaho Bulletin 20-05 (April 15, 2020)

7 Montana Informational Bulletin (April 13, 2020)

8 Oregon Bulletin DFR 2020-11 (April 22, 2020)

9 Michigan Bulletin 2020-18-INS (April 13, 2020)

10 Hawaii Memorandum 2020-4A (April 27, 2020)

11 Pennsylvania Expedited Filing Review Guidance (April 9, 2020)

12 Alabama Bulletin 2020-06 (April 8, 2020)

13 North Carolina Guidelines for submitting COVID-19 filings for benefits to North Carolina consumers (undated)

14 New Hampshire Bulletin 20-030-AB; See, Montana Informational Bulletin (April 13, 2020)

15 Maine Bulletin 444 (April 15, 2020)

16 New Mexico Bulletin 2020-011 (April 29, 2020)

17 Oklahoma Bulletin (April 27, 2020)

18 North Carolina Bulletin 20-B-07 (April 21, 2020)

19 New Jersey Bulletin 20-15 (April 10, 2020)

20 New Jersey Bulletin 20-16 (April 10, 2020)

21 Arizona Bulletin 2020-04 (April 16, 2020); Idaho Bulletin 20-05 (April 15, 2020)

22 North Carolina bulletin 20-B-07 (April 21, 2020)

23 Michigan Bulletin 2020-16-INS (April 13, 2020)

24 Arizona Bulletin 2020-04 (April 16, 2020)

25 Pennsylvania COVID-19 Guidance Regarding Premium Finance Agreements

26 Arizona Bulletin 2020-04 (April 16, 2020)

27 Washington Emergency Order 20-05 (April 27, 2020)

28 Arizona Bulletin 2020-04 (April 16, 2020)

29 Michigan Bulletin 2020-16-INS (April 13, 2020)

30 Idaho Bulletin 20-05 (April 15, 2020)

31 Maryland Bulletin 20-21 (April 24, 2020)

32 Kansas Executive Order 20-26 (April 22, 2020)

33 Connecticut Notice (April 20, 2020)

34 Mississippi Bulletin 2020-9 (April 24, 2020)

35 Washington Notice (May 1, 2020)

36 District of Columbia DISB, Commissioner's Order -3-2020 (April 27, 2020)

37 North Carolina bulletin 20-B-07 (April 21, 2020)

38 New Mexico Bulletin (April 21, 2020)

39 North Dakota Insurance Department Bulletin 2020.1.1 (April 29, 2020)

40 New York Guidance to Department of Financial Services (DFS) Regulated Entities Regarding Cybersecurity Awareness During COVID-19 Pandemic (April 13, 2020)

41 Pennsylvania Notice 2020-10 (April 13, 2022)

42 Arkansas Bulletin 18-2020 (April 14, 2020)

43 Kentucky Bulletin 2020-02 (April 7, 2020); Maine Bulletin 447 (April 29, 2020); New Hampshire Bulletin 20-26-AB (April 16); Ohio Bulletin 2020-09 (April 15, 2020); South Carolina Bulletin 2020-05 (April 24, 2020); Virginia Administrative Letter 2020-02 (April 14, 2020)

44 Connecticut Bulletin FS-38 (April 29, 2020); Connecticut Bulletin FS-39 (April 29, 2020)

45 Mississippi Bulletin 2020-7 (April 14, 2020)

46 Arkansas Bulletin 18-2020 (April 14, 2020); Maine Bulletin 447 (April 29, 2020); Mississippi Bulletin 2020-7 (April 14, 2020); New Hampshire Bulletin 20-26-AB (April 16); Ohio Bulletin 2020-09 (April 15, 2020); South Carolina Bulletin 2020-05 (April 24, 2020)

47 Illinois Company Bulletin 2020-10 (April 16, 2020)

48 Wisconsin Notice (April 2, 2020)

49 Arizona Executive Order 2020-26 (April 10, 2020)

50 Wisconsin Bulletin (April 22, 2020); Press Release (April 22, 2020)

51 North Dakota Press Release (April 20, 2020); Virginia Press Release (April 24, 2020)

52 https://www.wvinsurance.gov/Divisions/Licensing

53 Iowa Bulletin 20-07 (April 9, 2020)

54 South Dakota Bulletin 20-03 (April 17, 2020); Utah Order 2020-1 (April 21, 2020)

55 Connecticut Notice (April 21, 2020); Michigan Bulletin 2020-20 INS (April 22, 2020); Ohio Bulletin 2020-08 (April 15, 2020); Pennsylvania Notice (April 22, 2020); Rhode Island Bulletin 2020-6 (April 17, 2020)

56 Maine Bulletin 445 (April 15, 2020); Missouri Bulletin 20-09 (April 13, 2020)

57 Washington Emergency Rule 2020-03 (April 27, 2020)

58 Washington Emergency Rule 2020-02 (April 20, 2020)