



August 4, 2021

Michael Walker  
Washington Office of the Insurance Commissioner  
302 Sid Snyder Ave. SW  
Olympia, WA 98504

RE: R 2021-09, Administrative Hearings CR-101 and Stakeholder Draft Regulations

Dear Mr. Walker:

We are writing today on behalf of AHIP and AWHP to express our concerns with the OIC's CR-101 and stakeholder draft regulations for R 2021-09, Administrative Hearings. Our members are extremely concerned with the limitations on basic discovery that the OIC has proposed in the stakeholder draft. We believe that existing state law allows the OIC to address the problems that it has identified and therefore encourage you to not proceed with this rulemaking.

First, we are concerned that the OIC has proposed harsh limitations on basic discovery in all administrative hearings in front of the OIC's internal hearing officer. These hearings involve licensees administratively litigating decisions of the Commissioner, including those vital to a licensee's operations such as terminating a certificate of authority, fines, and refusals of certain business practices.

Discovery leads to more information and more information leads to better decisions. By limiting discovery, the OIC is potentially limiting important and relevant information, therefore limiting the ability of the hearing officer to make a fully informed decision. The basic access to all relevant information through discovery has long been recognized by the state as a fundamental right of a party in a regulatory dispute, closely tracking what a litigant would normally enjoy in any state superior court under the Civil Rules. Washington's Administrative Procedures Act (APA) also affords all parties in adjudicative proceedings the right to address and respond fully to all allegations and pleadings.<sup>1</sup> This right would likely be severely restricted by the draft rule prohibiting depositions of key OIC staff and limiting discovery to ten requests.

By effectively restricting discovery of licensees in all matters, in addition to likely violating the APA, this draft rule would also impact constitutionally protected rights, including property rights in a certificate of authority, and potentially for other property rights of an insurer, such as a rate or form.

---

<sup>1</sup> RCW 34.05.437(1)

Second, current state law already affords the OIC's hearing officer the ability to address discovery abuse by managing certain discovery requests on a case-by-case basis.<sup>2</sup> Beyond a general statement in the CR-101 that the OIC has received "overly broad discovery requests," we do not believe that the OIC has identified problems that cannot be addressed through these existing, more precise tools.

If there are broader problems with the discovery process that the OIC is trying to fix for future proceedings, we ask that the OIC provide more specificity about the issues they have experienced. With this information, stakeholders can better provide feedback or suggest language that more precisely targets the problem. Without more details, we do not believe that the expansive limitations on the discovery process as whole proposed in the stakeholder draft are warranted.

For these reasons, we believe that this rule is unnecessary and could likely to lead to overbroad impacts on an insurer in an administrative hearing. Under the APA, the state agencies must provide actual fairness and the appearance of fairness in their administrative processes. This draft rule puts both of these standards in jeopardy. There are already protections available to the OIC to handle perceived discovery abuses on a case-by-case basis, so there is no need for the OIC to adopt comprehensive restrictions on the discovery rights of all regulated entities.

If the OIC remains concerned that the existing safeguards are not sufficient for addressing the issues that you are experiencing, then we ask that a stakeholder meeting be scheduled to better communicate the specific problems that this rulemaking is trying to solve.

Sincerely,



Stephanie Berry  
Regional Director, AHIP



Chris Bandoli  
Executive Director, AWHP

---

<sup>2</sup> RCW 34.05.446, WAC 284-02-070(e)(iii)