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

Sent via email to: rulescoordinator@oic.wa.gov.

Re: APCIA COMMENTS ON STATE OF WASHINGTON PRE-PROPOSAL CR-101; Insurance Commissioner Matter No. 2022-01, purporting to implement RCW 34.05.310

Dear Commissioner Kreidler:

The American Property Casualty Insurance Association (APCIA) is the primary national trade association for home, auto, and business insurers. APCIA promotes and protects the viability of private competition for the benefit of consumers and insurers, with a legacy dating back 150 years. APCIA members represent all sizes, structures, and regions – protecting families, communities, and businesses in the U.S. and across the globe. APCIA members write 45.9 percent of the property casualty insurance issued in the State of Washington.

Insurers Provide Significant Amounts of Public Information to Consumers and the Proposal Will Not Actually Best Serve Consumers

The Preproposal Statement of Inquiry for possible rulemaking regarding "Insurance Underwriting Transparency" (CR-101) states that, "[I]nsurance consumers are not provided with full disclosure and complete transparency from insurers …" On the contrary, APCIA maintains that insurers, in fact, provide significant amounts of information to their policyholders and the public. In addition to written disclosures already required by law, even a cursory review of insurance company websites will show vast amounts of information available to consumers about the companies, their market practices, and helpful advice to consumers on how to reduce their risk of loss.

As will be discussed in more detail below, the CR-101 as drafted lacks clarity. What is the definition of "complete transparency"? What kind of "weights" is the proposal requiring that

the industry disclose to the consumers? In Washington, rates and rules are filed publicly. Consumers can access the rates, which derive their insurance premium.

The CR-101 does not advance the stated objective of the State -- to provide complete transparency in insurance underwriting. The CR-101 purports to meet this objective by having insurers supply specific, and very detailed, information to policyholders. This information, without any context for an understanding of complex actuarial science, in no way serves the average consumer and may ultimately lead to increased consumer confusion and misunderstanding. This may be the case despite the rating/underwriting practices of the insurer being the result of regulatory approval, and entirely compliant with Washington law. Complex rating and underwriting practices of insurers are based on actuarial science that account for demonstrated predictors of risk and are necessary for companies to operate, and to offer the wide array of products and services available to Washington consumers, while ensuring competitiveness and allaying solvency concerns.

Will Washington consumers appreciate the additional costs they pay for companies to comply with the proposed new regulation?

The proposal set forth in CR-101 is unnecessary because companies already offer a page within the Declarations that shows considerations that would impact rate and eligibility. Additionally, when a company makes updates to provisional language in the contract, companies supply the customer with an Important message which defines the changes. When the customer amends her policy, she is provided with a coverage changes form, as well, with details on what has been updated both in terms of coverage and cost.

The CR-101 states that "[c]onsumers need access to complete information about their rates to determine if they are unfairly discriminatory or excessive." This is not the role of the consumers but the role of the commissioner to ensure rates are adequate, not excessive, and unfairly discriminatory as required by RCW 48.19.20. So, this is not a justification for a new rule in the name of "transparency."

This proposal is also unnecessary and unwarranted because the commissioner has the ability to obtain all the information he needs to assure compliance with legislated legal standards. Also, the proposal fails to account for the commissioner's prior approval authority.

In addition to the voluminous information which insurers already disclose to their policyholders, we note the education materials which the OIC itself offers to consumers: https://www.insurance.wa.gov/why-does-auto-insurance-cost-so-much, https://www.insurance.wa.gov/what-consider-buying-auto-insurance, https://www.insurance.wa.gov/how-reduce-your-auto-insurance-premiums

While there may arguably be room for the industry to improve transparency in communications with consumers, the solution proposed in CR-101 would not be helpful to consumers and would impose significant implementation challenges and expend resources better spent to reduce

premiums. Examples include references to the "itemized notice" and "factors/weights" (neither of which is well-defined).

To achieve the level of "transparency" which the proposed regulation suggests, insurers would likely be required to produce entire rating plans. In addition to the significant problem created by thus disclosing some proprietary information to other carriers, this requirement would not address the perceived problem, which the regulation purports to address: providing *useful* information to the consumer on what goes into their rates and why rates may change from period to period.

The Notice Does Not Cite Any Real Consumer Need Based on Data Such as Complaints to the Department

The CR-101 makes a general reference to receipt of "consumer complaints" that indicate "insurers have used unfair and deceptive practices" but is devoid of specifics. As discussed further below, these unsubstantiated assertions do not provide the necessary justification for the proposed rulemaking. In addition to lacking specifics about the content of alleged complaints, the commissioner offers no evidence to suggest that the level of complaints versus the volume of insurance transactions merits the CR-101's proposed approach based on accepted standards governing the commencement of regulatory proceedings of a general nature.

The Notice Raises Significant and Fundamental Legal Issues

While the laws grant the Insurance Commissioner significant authority, that authority is not limitless. APCIA believes that any regulation consistent with the notice would be outside the commissioner's legal authority and hence void. RCW 48.02.60 governs the commissioner's general authority and extends to the commissioner the authority to "(b) [c]onduct investigations to determine whether any person has violated any provision of this code." RCW 48.02.60 does not, however, authorize the commissioner to skip this step and instead issue the broad pronouncement in the CR-101 stating that "[i]nsurance consumers are not provided with full disclosure and complete transparency from insurers for adverse actions, rate changes, or the factors that insurers consider in determining premiums."

The commissioner purports by this CR-101 to implement RCW 48.01.030, which provides the commissioner with authority to define certain acts or practices as unfair:

> (2) In addition to such unfair methods and unfair or deceptive acts or practices as are expressly defined and prohibited by this code, the commissioner may from time to time by regulation promulgated pursuant to chapter 34.05 RCW, define other methods of competition and other acts and practices in the conduct of such business reasonably found by the commissioner to be unfair or deceptive after a review of all comments received during the notice and comment rule-making period.

However, that authority is specifically limited, including by paragraph 3(b) which requires that the commissioner provide a "detailed description of the facts upon which he or she relied and of facts upon which he or she failed to rely, in defining the method of competition or other act or practice in the conduct of insurance to be unfair or deceptive…" The commissioner has entirely failed to comply with the requirements set forth in RCW 48.01.030 (3)(b).

In addition, there are limits imposed on the commissioner's authority by Washington general and insurance law that protect proprietary information of the very kind that the commissioner would apparently mandate companies publicly disclose. It is likely that some of the information that is required to be disclosed is proprietary to the insurer or to third party vendors. The reasons for this protection include the desirability of supporting competition and innovation and protecting investment in intellectual property. Regrettably, these legislative objectives will be undermined by any future regulation implementing the proposal set forth in the CR-101 as now drafted.

The federal Fair Credit Reporting Act prescribes the notices and sets out the regulatory framework for information and data within its scope. The Washington State proposal will exceed and contradict that federal statute and would therefore be pre-empted under the FCRA, for example, 15 USC Section 1681t(b)(1)(C).

The Notice Raises Substantive Compliance Issues and Is Uniquely Impractical

The proposed rule in the CR-101 is so broad as to raise significant issues as to how even the most sophisticated company could comply with its extremely broad outlines. Not only does the proposal point to regulation that is violative of the law but it likely will pose significant compliance challenges and burdens for all companies, even the largest companies.

Multi-variant rating is not susceptible to the kind of specific public disclosures envisaged by the notice. For example, a final rate may be the result of hundreds of factors and calculations not practically disclosable in a manner that would be useful to consumers.

The CR-101 drives in a direction inconsistent with the approach of even the most progressive states and the on-going work of NCOIL and NAIC. Disclosure mandates in other states balance the needs of consumers for information and insurers for protection of intellectual property, but this proposal does not.

- Insurance rates are generated by statistical models, which insurance professionals spend years in training to put forth. By providing the information asked, agents would need to explain the factor differences which requires significant knowledge of the details of models that are subject to review and approval by the commissioner anyway. Is this helping the consumers understand, or confusing the customers, with mathematical and statistical methodology?
- Normally, consumers complain when seeing a premium increase and/or a cancellation/non-renewal letter. Often times, a premium increase results from exposure

changes and rate changes which can move premium towards opposite directions. It is nearly impossible to isolate exposure changes from rate changes. For cancellation/ non-renewal, the industry already provides reasons in the notice.

- Developing a system procedure to itemize premium impact is costly, especially for companies which have several systems maintaining multiple programs. The additional cost of building such a procedure will eventually be passed down to the consumers, with little if any real value to them.

Factors/weights for each itemized attribute would require the company to run a before and after scenario of a rate change for each attribute to isolate the change in premium, again, an additional costly exercise.

With complexities of the rating plan, it is not a simple singular factor change calculation. There may be multiple interacted variables, or expense premiums, and base rate offsets that flatten impacts of a factor change.

The Proposed New Rule Lacks Clarity

The proposal lacks clarity on several important points.

- Does it require a full list of variables/weights for the notice regardless of adverse impact, or just the list of variables/weights contributing to an adverse impact when an adverse action happens?
- Does it demand disclosure of a company's rating steps and associated factors? Is it looking for a before and after comparison of all/some of those factors?
- What is meant by coverage? By item? This will become a long notice, which goes against the plain language framework that the proposal intends.
- How are a change in risk and factor to be handled?
- How is understanding weight or factor helpful for the insured, especially if they cannot change many attributes, or may even misinterpret what it represents?
- How is complete transparency defined? Where is the line drawn?
- Would "Vehicle Characteristics" be an acceptable level of transparency, or does the proposal require insurers to share all components (make, model, engine size, weight, etc.), for example? Does the proposal required disclosure of the "Credit-based Insurance Score" or does it require all components that might feed into that?

The Proposal Ignores the Regulatory Authority of the Commissioner to Achieve Necessary Consumer Protection Without the Fundamental Flaws of This Proposal

The CR-101 fails to take into account the ability of the commissioner to receive even proprietary information for legitimate regulatory purposes if confidentiality protection is provided against disclosure to third parties. The commissioner also has a full panoply of consumer protection tools, including the ability to hear and act on consumer complaints. In

exchange for the legislature granting the Insurance Commissioner extraordinary power, some of the information provided to the commissioner is not disclosed to the public.

Additionally, insurance professionals spend years in training and have to be licensed or be an actuary to put forth the rating plans presented. By providing the information asked, we would be allowing customers to try to understand complicated GLM's and interpolations that are not as black and white as a one-way cut would be.

The commissioner is responsible to ensure that rates are fair and adequate. It appears that this proposal would pass that job off to the consumer. If that is the intent, then why have the commissioner and his office? In that case, it would be more cost effective to provide whatever rate a company wanted to and let the customer decide if they want to pay for it based on the added disclosure.

Finally, and probably most importantly, insurers' rates are filed publicly, but some components are protected as confidential. With the added requirement, that protection would be eroded. If competitors were to gather a handful of declarations pages from different customers for a particular insurer, they could conceivably infer their entire rate plan. Thus, factors and strategic implementation of rates would no longer be available, and competition would suffer.

There is the added cost and development to ensure companies are in compliance. And there would need to be standardization, which may not work due to the different ways in which companies calculate a rate. This is precisely the kind of information that the proposal would make public, thereby depriving companies of their intellectual property with the ultimate effect of discouraging innovation.

There Is a Better Way

We offer our willingness to explore how we could assist the commissioner in his stated goals, before he moves forward with proposing a regulation that will, in all likelihood, be fatally flawed on legal, technical, and other grounds. This offer to work together is entirely consistent with the legislature's directives set forth in RCW 34.05.310, which the commissioner purports to implement via this CR-101. The statute states in relevant part:

> **Prenotice inquiry—Negotiated and pilot rules.**
>
> (1)(a) To meet the intent of providing greater public access to administrative rule making and to promote consensus among interested parties, agencies must solicit comments from the public on a subject of possible rule making before filing with the code reviser a notice of proposed rulemaking under RCW **34.05.320**.
>
> …
>
> (2) Agencies are encouraged to develop and use new procedures for reaching agreement among interested parties before publication of notice and the adoption hearing on a proposed rule. Examples of new procedures include, but are not limited to:

(a) Negotiated rule making by which representatives of an agency and of the interests that are affected by a subject of rulemaking, including, where appropriate, county and city representatives, seek to reach consensus on the terms of the proposed rule and on the process by which it is negotiated; and

(b) Pilot rule making, which includes testing the feasibility of complying with or administering draft new rules or draft amendments to existing rules through the use of volunteer pilot groups in various areas and circumstances, as provided in RCW **34.05.313** or as otherwise provided by the agency.

We offer to work cooperatively on a cost-effective approach that would deliver more information that is useful to most consumers, in the context of protecting proprietary information, supporting competition, and encouraging innovation.

For example, offered for the purpose of discussion, we note that it might be a more efficient approach for the commissioner to consider for the itemized rate/premium providing more generalized categories that impact changes in premiums. For example:

i. Change in risk/coverage - change in coverage, change in incident activity, change in vehicle or vehicle count, change in operator or operator characteristics, change in credit-based insurance score, etc.

ii. Change in rate – factors/weights have been adjusted for: base rates, incident activity, vehicle characteristics, operator characteristics, etc.

Another constructive step might be for the commissioner to work with the industry to attempt to draft a sample notice, to ensure consistent understanding of the intent. This exercise would also likely help demonstrate why the current proposal is impractical and help identify necessary changes that would work better for consumers and insurers.

APCIA appreciates the opportunity to submit these comments. For the reasons set forth above, we urge you to immediately withdraw R 2022-01.

Submitted by:

_____

Mark Sektnan, Vice President, State Government Relations
American Property Casualty Insurance Association (APCIA)
916.449.1370
mark.sektnan@apci.org