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.

June 14, 2022

Re: APCIA COMMENTS ON STATE OF WASHINGTON R 2022-01 Insurance Underwriting Transparency, First Draft dated May 31, 2022

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.

As you know, APCIA previously urged you, in a letter submitted on March 1, 2022 responding to the Preproposal CR -101, to withdraw R 2022-01 and to work cooperatively with the industry to identify opportunities to improve transparency for consumers in the spirit of the legislature's directive set forth in RCW 34.05.310. We remain willing to work cooperatively with you on a cost-effective approach that would deliver more information that is useful to most consumers while protecting proprietary information, supporting competition, and encouraging innovation.[1] We again, urge you to withdraw R 2022-01 as it remains fatally flawed on legal, technical, efficiency, and other grounds and has the potential to create, rather than combat, consumer confusion.
APCIA appreciates the opportunity to submit these comments and will below outline several concerns with the first draft of the proposed Rule R 2022-01 *Insurance Underwriting Transparency* (proposed Rule.)

[1] Perhaps convening a focus group composed of consumers, and possibly other stakeholders such as insurance agents, would help explore whether there is a need for additional transparency and help identify what type of information consumers believe would be most helpful, and in what form.

The Proposed Rule Raises Significant and Fundamental Legal Issues

The proposed rule fails to set forth a sufficient justification for the rulemaking. The broad, unsubstantiated representation that the commissioner has been provided with "[i]nsurance information" in the form of "consumer complaints and industry responses" that "demonstrate[] policyholders have not received sufficient ... transparency from insurers" lacks necessary specifics and goes well beyond the commissioner's authority. The commissioner's general authority is found in RCW 48.02.060 which provides that the commissioner has authority to "(b) [c]onduct investigations to determine whether any person has violated any provision of this code."

RCW 48.02.060 does not authorize the commissioner to skip the step of "investigat[ing] to determine whether "any person" has committed a violation. The statute allows the commissioner to investigate individual companies if concerned about potential unfair practices but does not contemplate nor authorize broad pronouncements of purported industry-wide failings which the commissioner summarily deems to be unfair or deceptive. The commissioner has some authority to define certain acts or practices as unfair under RCW 48.30.010:

> (2) In addition to such unfair methods and unfair or deceptive 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 proposed Rule lacks any detailed description of alleged consumer complaints and fails to set forth any factual foundation that supports defining the failure to provide a "Premium Change Disclosure Notice" to be an unfair or deceptive practice. The proposed Rule also fails to detail the number or frequency of alleged complaints in the context of overall insurance transaction volume merits rulemaking based on accepted standards governing the commencement of regulatory proceedings and fails to explain how imposing onerous new requirements on insurers will benefit policyholders.

The Commissioner has Authority and Responsibility to Assess Compliance with Washington Law

The commissioner is responsible to ensure that rates are adequate, not excessive, and not unfairly discriminatory as required by RCS 49-19-20. If the goal of the proposed rule is to ensure that insurers rating practices are sufficiently transparent for a determination of whether they meet that standard,

the question should be whether the rating practices are sufficiently transparent for the commissioner to make that determination, not each individual policyholder. The proposed rule completely ignores that the commissioner has prior approval authority and has access, even to confidential proprietary information, for legitimate regulatory purposes if confidential information is protected from disclosure to third parties. And, the commissioner already has a broad menu of consumer protection tools, including the ability to hear and act on consumer complaints. Requiring insurers to provide detailed, sophisticated information to policyholders at renewal (subject only to certain limited exemptions) to enable individual policyholder evaluations of rating practices is not consistent with Washington law. In exchange for the legislature granting the commissioner extraordinary power, some of the information provided to the commissioner is protected from public disclosure.

Further, forcing new disclosures on policyholders, many of whom will lack any context for an understanding of complex actuarial science, would not serve the public interest. Insurance consumers rely upon the commissioner to ensure that rates are fair and compliant with Washington law. Requiring insurers to inundate consumers with even more information at renewal may ultimately lead to increased consumer confusion and misunderstanding. This may be the case even where the rating/underwriting practices of the insurer are 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. Policyholders may understandably interpret the new disclosures as 'just more paperwork' rather than seeing the disclosures as a tool to improve clarity.

In addition to the foregoing, APCIA disagrees with the commissioner's foundational conclusion that insurers are not sufficiently transparent to policyholders. In fact, insurers provide significant amounts of information to their policyholders and the public. Insurance rates and rules are publicly filed in Washington and available for scrutiny by any interested policyholder. 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.

In addition to the voluminous information that insurers already disclose to policyholders, we note the educational 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

The Proposed Rule Implicates Confidentiality Concerns Despite Added Exemptions

Washington general law and insurance law protects certain proprietary information. Despite the

exemptions outlined in the proposed Rule,[2] the required disclosures would erode some of these protections. It is likely that some information subject to disclosure under the proposed Rule is proprietary to the insurer and/or to third party vendors but would necessarily be discernible from the level of detail required to be included in the Premium Change Disclosure Notice. This could have a detrimental impact on competition. Confidentiality of proprietary information, even beyond the information that falls under the Trade Secrets Act, is necessary to support legislative goals favoring competition and innovation and protecting investment in intellectual property. Regrettably, these legislative objectives would be undermined by the proposed Rule or by any future regulation implementing the proposal set forth in the CR-101 which began this rulemaking process.

The Proposed Rule Would Impose Significant Cost and Implementation Challenges

Washington's prior approval law requires insurers to produce to the commissioner and policyholders more detailed information than required under the laws of many other states. The legislature has authorized the commissioner to hold insurers to high standards and to penalize insurers for engaging in conduct defined to be unfair or deceptive. The legislature has not, however, authorized the commissioner to rely on "insurance information" gleaned from some "consumer complaints" to impose broad new disclosure requirements on insurers and to then define failure to comply with those requirements as an unfair or deceptive practice.

The proposed Rule would require insurers to isolate information and perform calculations to determine factor by factor premium impacts that are not necessary to comply with existing Washington law. Insurance companies employ sophisticated actuarial and statistical models that help to accurately price for risk. The ability to accurately price for risk positively impacts insurance availability and affordability. Requiring insurers to expend financial and personnel resources to deconstruct the rates to isolate each factor to be able to fill in the blanks on a newly required "Premium Change Disclosure Notice" does not serve the public interest. The proposed Rule would require insurers to create and seek approval for a proprietary "Premium Change Disclosure Notice" or to use the form included in the proposed Rule. Either option will require system changes that will be costly and could take as long as 12 months to program. It is not in the best interest of policyholders to impose new, costly requirements on insurers that will put upward pressure on insurance rates.

The proposed Rule provides that the Premium Change Disclosure Notice "must include an itemized list of all factors used to determine the premium change, and contain the cost of each factor and its impact on the overall premium, so that one hundred percent of the premium change is explained." This provision directly conflicts with the exemptions required by Washington law (listed in footnote 2

[2] We acknowledge that the proposed Rule properly exempts, in proposed WAC 284-30A-020, disclosure of credit-based insurance scoring models, company placement criteria or eligibility rules, and strictly confidential insurance company trade secrets, as defined by chapter 19.108 RCW (Uniform Trade Secrets Act) and recognizes, in proposed WAC 284-30A-020(4)(c), that information in a filing on "usage-based insurance" and about the usage-based component of the rate must remain confidential pursuant to RCW 48.19.040. We also note the commissioner's acknowledgement in WAC 284-30A-020(4)(d) that the proposed regulation must not contradict nor conflict with the Fair Credit Reporting Act (15 USC Sec. 1681.) However, these exemptions do not go far enough.

herein) and makes the proposed Rule internally inconsistent.

The proposed Rule is unnecessary because companies already offer information within the policy's Declarations that shows considerations that would impact rate and eligibility. 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 Notice Raises Substantive Compliance Issues and Is Uniquely Impractical

The proposed rule is internally inconsistent and it remains unclear how even the most sophisticated company could comply with its extremely broad outlines. The proposed Rule 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 proposed Rule. 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 proposed Rule 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 the Proposed Rule, even with the limited exemptions included, does not strike a balance.

- As noted above, insurance rates are generated by sophisticated actuarial and statistical models, which are not intuitive to non-actuaries or statisticians. Requiring insurers to deconstruct rates to provide policyholders with the detailed information required by the proposed Rule, even where possible, will not advance the public interest and expecting consumers to evaluate mathematical and statistical methodology is likely, instead, to create confusion. Insurance rates and rating models are already subject to review and approval by the insurance commissioner; consumers are entitled to rely on the commissioner to ensure that rates are adequate, not excessive, and not unfairly discriminatory.
- Premium increases may result from exposure changes and/or rate changes that may move premium towards opposite directions. It is difficult, if not impossible, to isolate exposure changes from rate changes. In addition, there may be multiple interacting variables, some of which are exempt from disclosure, and there may also be applicable offsets that flatten the impacts of a factor change.
- Developing a system procedure to itemize premium impact in ways not required under existing law would be costly, especially for companies which have several systems maintaining multiple programs. As noted above, imposing these additional costs on insurers will eventually put upward pressure on rates and not serve the public interest.

The Commissioner Should Work with the Industry to Explore a Better Alternative

As noted above, and in our prior letter, APCIA remains willing to work with the OIC to explore potential alternatives to address the commissioner's goal of achieving greater underwriting

transparency his stated goals. This offer to work together furthers the legislature's directives set forth in RCW 34.05.310, which the commissioner purports to implement via this rulemaking. The statute states in relevant part:

> **Prenotice inquiry—Negotiated and pilot rules.**
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> (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 previously suggested, for the purpose of discussion, 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.

The proposed Rule does not address this suggestion. APCIA also suggested that it might be constructive for the commissioner to work with the industry to attempt to draft a sample notice, to ensure consistent understanding of the intent. The proposed Rule does not address this suggestion and instead includes an OIC-drafted Premium Change Disclosure Notice.

APCIA appreciates the opportunity to submit these comments. For the reasons set forth herein and in our prior comment letter, we urge you to immediately withdraw R 2022-01.

Submitted by:

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