

June 14, 2022

Rules Coordinator  
Office of the Washington Insurance Commissioner  
P.O. Box 40255  
Olympia, WA 98504-0255

**RE: Matter R 2022-01 – Transparency in insurance underwriting (First Prepublication Draft, May 31, 2022) - NAMIC and NWIC’s Written Testimony**

*Submitted via email*

Dear Commissioner Kreidler:

On behalf of our member companies, the National Association of Mutual Insurance Companies (NAMIC) and Northwest Insurance Council (NWIC) wish to provide the following comments regarding the above captioned first draft of the proposed regulation provided by the Office of the Insurance Commissioner’s (OIC) to insurers on May 31, 2022. NAMIC and NWIC specifically incorporate by reference into this written submission our comment letter dated March 1, 2022, captioned “Matter R 2022-01, Comments on OIC CR 101 – Transparency in insurance underwriting”.

P&C insurance companies appreciate the important role that accurate, transparent communication plays in providing consumers with the power and knowledge to make smart choices in the insurance marketplace. Insurers are committed to providing reliable, useful and accurate information to consumers about the policies and coverages they purchase.

The good news is, we believe that current disclosure-related practices, including those already required under previous rulemakings by the OIC, provide much of what consumers need in order to make informed decisions about their insurance coverage and their premium. While it is always possible (and responsible) to consider how existing disclosures from insurers to consumers could be made clearer, we hope the OIC understands that mandating insurers to provide consumers with excessively granular information has at the outset some important negative consequences, including:

1. Some insurers are concerned they do not generate the detailed rating information and/or may not be able to develop a way to gather and report it in a meaningful way to consumers.
2. For even the most technologically sophisticated insurers, the degree of programming necessary to attempt to provide the information sought by the OIC will be extraordinary – costs that are ultimately be paid by policyholders at a time when inflation is already driving up the cost of insurance for consumers across the nation.
3. Insurers have developed complex, multivariate rating plans (all of which have been exhaustively reviewed and approved by the OIC before entering the marketplace) in order to compete with each other and provide consumers the widest possible array of products and highly competitive

prices. As such, the rule as drafted raises key concerns about the ultimate impact on Washington's highly competitive P&C insurance market:

- a. First, sharing in the public domain the degree of specificity required under the draft proposed rule raises concerns about exposing proprietary information among direct market competitors.
- b. Second, we urge the OIC to consider that the insurance market and insurance consumers *benefit* from the development of complex rating systems by insurers, and consider how the rule as proposed could negatively impact competition, product and price differences among competing insurers, and reduce the range of choice available to consumers.

What happens today when policyholders receive an unfavorable premium change? They contact their agent or company and inquire further about the reasons for the premium changes. If they are not satisfied with what they learn, they have the ultimate power: they can shop among competing companies for coverage that better suits their needs and budget. That coverage and those price differences can vary widely, due to the time and expense insurers have invested in developing complex rating systems that help them match rate to risk.

The transparency rule as drafted may serve to *reduce* coverage and pricing options, as insurers consider ways to simplify the complexity of rating plans in order to comply with the new disclosure requirements. In the end, reducing complexity in order to comply with a disclosure rule that is based on what the OIC assumes is helpful to consumers may in fact weaken the power consumers have to access today's wide array of products and prices.

Included in this correspondence are several issue-specific comments and questions regarding the proposed regulation. Those are detailed, and we hope the OIC will take time to consider and respond to the important questions they raise about whether the granular level of detail required by the proposed regulations is (1) actually providing useful information for consumer, and (2) can actually be provided in a cost-effective manner – or whether it can be provided at all – by insurers, at any cost.

NAMIC and NWIC submit the following comments, concerns, and suggested revisions on the first draft of the proposed regulation:

**A. Conceptual Concerns:**

**1) The need for the proposed regulation as drafted is unclear –**

NAMIC, NWIC and our member companies would like more information than has been provided to date by the OIC regarding the need for the proposed rule as drafted. The draft rule imposes a degree of specificity for consumer disclosure that departs dramatically from prior disclosure requirements in Washington, and differs greatly from requirements in other states. It requires so much detail – which may be impossible for companies, and costly and challenging for others

– that premium change notifications will need to be, in essence, individualized for each policyholder.

Are consumers demanding this level of specificity? Will they benefit from the level of specificity required by the draft rule? Will the OIC share the research and/or correspondence (redacted, of course) that shows how many consumers are dissatisfied with what insurers are currently providing when a premium change is made, and the nature of their dissatisfaction with existing disclosure notices?

Has the OIC considered that “information overload” may have an effect contrary to the OIC’s stated intent for the rule; that it can lead people to ignore the information provided, because they cannot readily discern the important information from the trivial information, and requires them to sift through the mass of information provided?

## **2) The proposed regulation is overly proscriptive and unnecessarily detailed –**

As we noted previously, NAMIC and NWIC believe that the proposed regulation is unduly proscriptive in nature and requires far too much information in the disclosure. Mandating a one-size fits all, unnecessarily complex consumer disclosure is not an efficient or effective approach to answering a particular consumer’s questions about their premium change. In fact, the notice proposed by the OIC in the draft rule establishes an adversarial tone that is likely to frustrate policyholders, while the degree of specificity required in the draft rule is likely to raise more questions than answers. We again hold that current disclosure notices provide sufficient information that serves to invite consumers to contact their agent or company to find out more.

Insurance consumers are not insurance regulatory actuaries – they rely on the Insurance Commissioner and the OIC staff to review complex insurance rating plans to ensure rate fairness and adequacy. Company and agent interaction with customers suggests that policyholders are not seeking complex answers, mathematical calculations, and detailed explanations on every issue, especially when the consumer may not have asked the question in the first place and may not know how to apply the information they receive.

## **3) The proposed regulation could adversely impact the insurance marketplace and the affordability and availability of insurance for consumers –**

Insurance companies, especially national and regional carriers, strive to be cost-effective and process-efficient business entities, which means that they try to maintain standardized and uniform practices from one state to the next. NO other state in the nation requires a premium change consumer notice as detailed as the one currently being proposed by the OIC. Consequently, insurers will have to spend substantial financial capital and allocate significant staffing resources to redesign their current operational rating and underwriting practices in order to comply with the disclosure requirement of a single state marketplace.

Our member companies have shared the concern that it will take extensive effort to produce a notice as proposed by the OIC – meaning multiple insurer teams working over months or possibly even a year to develop, test, and implement the changes required by the proposed regulation. And even after all this work and expense, there is little promise that policyholders will better understand the actuarial basis for changes in their insurance premium.

This state-specific and exclusive cost will have to be applied by insurers to consumer rates in the State of Washington. Additionally, this expensive and impractical consumer disclosure requirement could discourage new insurers from entering the marketplace, and force certain small market-share insurers to re-evaluate whether Washington's extremely challenging regulatory environment is worth business continuation.

Add to that our previously stated concern that some companies may choose to respond to the excessive requirements proposed in the draft rule by "simplifying" their rate structures, to make it easier to explain a rate change to a policyholder. On its face, that may appear to be a positive result. But in fact, complex rating systems *improve* competition and *increase* the availability of a broader range of products and pricing, to the *benefit* of consumers. "Simplifying," in this context, could lead to fewer product and price options for consumers.

**4) Timing concerns: the proposed regulation could further strain regulatory resources –**

NAMIC and NWIC are concerned that the proposed regulation will adversely impact the OIC's ability to review and approve rate filings in a timely manner. The OIC is already faces a backlog of rate filing reviews and approvals and has developed a reputation for extensive delays. How will this new consumer notice requirement - which will require additional regulatory review - not lead to greater delays in approval of rates and forms necessary for insurers to offer insurance products to consumers? In light of OIC's recent staffing limitations and human resources challenges, NAMIC and NWIC respectfully suggest the OIC first focus upon dealing with its regulatory review backlog before creating new regulatory project that will further strain limited OIC resources.

In addition, the OIC may be aware that legislators and insurers are working together through the National Conference of Insurance Legislators (NCOIL) to develop model language regarding consumer rate change disclosure – and the NAIC is working on the transparency issue as well. As previously noted, insurers seek the greatest degree of uniformity possible in insurance regulation for the sake of efficiency as well as consistency in consumer protection. Our trades appreciate the OIC's interest in the issue of transparent communications from insurers to policyholders, and suggest that the OIC effort may benefit from allowing that draft to be completed and considered in lieu of the adoption of a "single-state approach."

**B. Specific concerns with text of the first draft of the proposed regulation:**

**1) Proposed disclosure template requires insurers to provide information they don't have or cannot generate using their established IT systems and rating programs –**

As the OIC knows, rating is a multivariate analysis where many rating variables and characteristics interact with and temper other rating variables and characteristics, so insurers are doubtful that they can separate out pricing impact for dedicated rating variables to disclose to the consumer. In effect, the OIC wants insurers to provide a consumer disclosure that is based upon "theoretical rating," not actual multivariant rating.

Additionally, the proposed regulation would require insurers to provide current *and* proposed change pricing for each rating variable and characteristic. Insurers' systems do not recognize or track pricing changes pre- and post-premium change, or create causal connection pricing conclusions that would allow an insurer to state "w" risk variable or characteristic was attributable to "x" percentage of premium before and "y" rating change" to particular risk variable or characteristic is attributable to "z" portion of the premium change. The required rating-pricing calculation is operationally unworkable, and the consumer disclosure is functionally impractical. NAMIC and NWIC are concerned that insurers simply will not be able to generate a simplified statement of a complicated process, then disclose it in a manner that would allow the "policyholder to take steps to limit the impact on their premium change" as required by the proposed draft rule.

Further, we are concerned that the proposed regulation fails to consider that auto and homeowners insurance rating algorithms are multiplicative, not additive. As a result, if more than 1 factor causes a policy premium to change at renewal, the total of each individual change is not going to add up to the exact total of the policy increase or decrease.

For example, consider an HO policy renewal where the home age increases by 1 year and the Inflation Guard is applied.

- In isolation, the Home Age increases the premium by \$9.59. The Coverage A/B/C/D (Inflation Guard) changes increase the premium by +\$40.27. Those total to \$49.86.
- However, when those two changes are not made in isolation (i.e. they are made together in a multiplicative algorithm) the total change is not \$49.86, it's \$50.40.
- In this example, the isolated premium changes that the OIC requires on their sample form would not add up to the actual total change.

**2) The trades are also concerned with the following statement in the proposed regulation, "[u]se of underwriting tier change, driver class modification, risk score alteration, and household composition alone are not acceptable as sufficient explanations... If multiple rating characteristics define the underwriting tier, then the premium increase caused by each of those rating characteristics must be considered and explained separately."**

Even modern rating systems will have a near impossible time trying to separate out individual risk characteristics that were structurally grouped together for a risk tier. The OIC reviews and approves rate plan filings, so if the OIC believes that this level of quantification may be accomplished by insurers, the OIC should provide the industry with a specific prescribed procedure to calculate these values (influence on premium) from a set of filed rates pages (including underwriting tier). If the OIC cannot arrive at such a procedure from the rates pages themselves, the trades are not sure how the OIC can expect insurers to develop their own procedure for this near-impossible undertaking. The trades respectfully request that the OIC convene a working group of department staff and insurance actuaries to discuss this exercise so that the OIC may be able to understand the key computational obstacles associated with trying to comply with the proposed regulation and the technological difficulties in translating that level of complex quantification into an individual customer communication for each policyholder renewal.

**3) NAMIC and NWIC believe that the OIC has exceeded its regulatory authority in attempting to change statute regarding unfair trades practices -**

We are concerned that the OIC is attempting to usurp the Legislature's prerogative to amend state law. The proposed regulation would add a new specific violation to the unfair trade practices act that the Legislature did not discuss, evaluate or enumerate in the legislation. While the OIC has general authority under Section 48.30.010 to identify additional unfair and deceptive practices, there are limitations on such rulemaking. The OIC's purpose statement in the proposed rule fails to identify and establish as a deceptive action an insurer's failure to comply with such a detailed premium change disclosure, as proposed in this regulation, as being either unfair or deceptive.

Pursuant to Section 48.30.010, The OIC must:

(3) (a) In defining other methods of competition and other acts and practices in the conduct of such business to be unfair or deceptive, and after reviewing all comments and documents received during the notice and comment rule-making period, the commissioner shall identify his or her reasons for defining the method of competition or other act or practice in the conduct of insurance to be unfair or deceptive and shall include a statement outlining these reasons as part of the adopted rule. [Emphasis added]

(b) The commissioner shall include a detailed description of 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, in the concise explanatory statement prepared under RCW 34.05.325(6).

**4) A number of key terms and provisions in the proposed regulation need to be clarified.**

**Questions pertaining to the required Reason/Premium percentage/price change:**

- a. What level of detail is required?
- b. Does every factor change need to have a specific reason?
- c. Would the insurer need to address each coverage on each item within a schedule? For example, a simple base rate only change may have 14 "reasons" on a two-car auto policy (7 coverage base rates X 2 vehicles).
- d. What does "sufficiently explained" mean and entail?
- e. Who decides whether a "reason" is "sufficiently explained" and how would an insurer contest a determination by the OIC that the "reason" is not "sufficiently explained"? Will this determination be made during the insurer filing or while it be evaluated on a case-by-case basis if a consumer files a complaint with the OIC?
- f. Can "reasons" be aggregated?

- g. Are the “reasons” to be organized by “schedule” or policy”? Are “reasons” to be addressed by item, policy provision or account?
- h. How are “changes” in both risk and factor at renewal to be listed and explained?
- i. The draft rule states that underwriting tier change, driver class modification, risk score alteration, and household composition alone are not acceptable as sufficient explanations. How specific should the insurer be in listing each rating factor? Would it mean that each accident or violation in a motor vehicle record would need to be listed as a separate line item with its own “reason” title and “explanation”? Also, since the rule applies to both premium increases and decreases, would it mean that once the information in the MVR report improves (e.g., a prior violation ages-off of the MVR), that would need to be disclosed as a “reason” and explained?
- j. Is it correct that premium *decreases* are included in the proposed regulation?
- k. The draft proposed regulation is unclear about what an insurer is to do if the premium change is due to an updated and different credit-based insurance score, or usage-based insurance score.
- l. Do insurers have to address general insurance company price changes? For example, if the only reason for a consumer’s premium change is their company’s rate change (filed by carrier and approved by the OIC), would the consumer disclosure form include the reason as something like “insurance company price change”?
- m. Do insurers have to provide the disclosure notice if the premium change is due to a statewide rate change? The trades believe that no such disclosure should be required, because there is nothing the individual insured would be able to do to alter the resulting premium increase.

**Questions pertaining to consumer disclosure notice:**

- a. What is meant by “insurer modification” in this sentence: “(3) These rules apply to the renewal or **insurer modification** of an insurance policy and will not apply to the purchase of new policies or new insurance applications.”? Is the intent for this only to apply to changes that occur at renewal, or is their intent to apply this to anything that changes the premium that the member didn’t specifically initiate?
  - o For example, an agent requests that PIP be rejected and the change to do that is processed. Subsequently, a signed PIP rejection form that was promised by the insured is not submitted to the insurer, so PIP coverage is added retroactively to the date coverage was rejected. Is this increase in premium subject to this transparency notification (and 20-day rule)?

- Also, it is not clear if a mid-term changes in premium (usually driven by exposure change) would be within scope of the notice requirement?
- b. In regard to the 20-day notice requirement, this requirement may be impractical in many situations and suggest that this provision be clarified to apply to only renewal notices.
  - c. The rule states that it applies to the renewal or insurer modification of an insurance policy. Is the intent to exempt insured initiated modifications (e.g., vehicle or household member changes, deductible change, etc.) from the notice requirements? If so, this provision should be made clearer in the rule.
  - d. Why is premium “capping” included in this disclosure notice? How is this considered a premium change?
  - e. The rule is also unclear on whether the %, the \$, or both, are to be displayed on the notification. The OIC’s sample notice form has a place for both, but the language of the proposed regulation implies that either % or \$ can be displayed.
  - f. Why is the proposed consumer notice required for all property and casualty lines of insurance? The trades believe that the proposed regulation should be limited to only auto and homeowners insurance.

(Note: Since this premium change consumer notice requirement is unprecedented and insurers have never had to generate such a notice before, NAMIC & NWIC suggest that the OIC provide an actual sample notice with mock information filled in so that insurers can review a real-world example of the level of specificity that the OIC is looking for in the consumer notice.)

**Questions pertaining to the “exemptions” section of the proposed regulation:**

- a. The rule states that CBIS models, trade secrets, etc. are exempt from this rule. Does this mean that changes in premium caused by CBIS are totally exempt from the notice requirements, or does it just mean that insurers need not be so specific to the point that they are required to reveal information that would constitute part of the proprietary scoring model?
- b. How do the “exemptions” impact the scope of the “reasons” and “explanations” statement in the Premium Change Disclosure Notice?
  - Specifically, are carriers exempt from including those exempted items from the Premium Change Disclosure Notice or are insurers just exempt from providing any specific detail surrounding what goes into the factor or what determines the credit score, telematics/UBI score, etc.?



- How does an insurer comply with the requirement to disclose 100% of the premium change if certain items are properly exempted? Does the insurer just list the “exempted” item and allocate a percentage premium change associated with that rating factor?
- c. Are insurer vehicle symbols filed with the OIC confidential? If not, how deep does an insurer need to explain vehicle characteristic changes in the consumer notice?

In closing, we invite the OIC to reconsider this unnecessary and unworkable rule proposal and instead explore with insurers and the trades ways insurers may be able to provide consumers, upon written request, information that may assist consumers in understanding the contemplated premium increase and any actions the consumer may take to reduce their risk exposure that directly impacts the insurer’s risk-based pricing. As previously noted, both the NAIC and NCOIL are currently discussing the issue of underwriting transparency. We suggest the OIC withdraw this proposed regulation and wait until this issue has been fully vetted at the national level. If the OIC feels compelled to adopt a regulation on point, one potential model to address concerns about transparency would be to adopt language in the spirit of what NAMIC has offered at NCOIL:

#### **Section 5. Transparency Requirements**

- (a) Upon a written request from a policyholder, Applicant, agent or producer, whether delivered electronically or hard copy an insurer shall disclose that it uses external consumer data to underwrite and rate risks. Such disclosure may include the form language below, but in any event must be sufficiently clear to inform the policyholder, Applicant, agent or producer that an insurer uses external consumer data to underwrite and rate risks:*

*[NAME of Insurer] uses external data sources, potentially including public information not owned by [NAME of Insurer]. Such external data may include publicly available government information (such as motor vehicle records, licensure related information, and court filings), information made available by consumers to the public, publicly available competitor information, mortgage or other financial information from lenders or third-party entities, and other external factors relating to a consumer’s risk of loss.(b) If an insurer applies a Significant Premium Increase on the renewal of a personal lines policy based on external consumer data, the insurer shall, upon a written request by a consumer, provide written notice to the consumer explaining reasons for the Significant Premium Increase. The notice:*

*(1) May be delivered either electronically or as hard copy;*

*(2) Shall be sent to the insured within 15 days of receipt of the request;*

*(3) Shall include sufficiently clear and specific language so the consumer is able to identify up to five (5) factors that influenced the change in premium.*

*(b) With the expressed written consent of a policyholder, an insurer shall provide the disclosure required under Section 5(b) to a designated agent or producer*

Thank you for your time and effort on this project. Please feel free to contact us if you would like to discuss our written testimony and our suggested revisions to the regulation or our suggested alternative approaches to providing consumers with meaningful and helpful information about changes in their insurance premiums.

Respectfully,

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**RE: Matter R 2022-01 – Transparency in insurance underwriting (First Prepublication Draft, May 31, 2022) – Additional, post-meeting comments from NW Insurance Council**

*Submitted via email*

Dear Commissioner Kreidler,

NW Insurance Council is among the many insurance industry representatives that participated in today's Interested Parties meeting hosted by the OIC to discuss the proposed Transparency Rule draft in the matter referenced above. While NWIC has previously provided detailed comment in a joint letter co-submitted with our colleagues at NAMIC today, I wanted to share and/or reiterate some additional thoughts.

First, I wish to reiterate a suggestion made during today's meeting. While insurers and insurer trades greatly appreciate the prepublication engagement process the OIC has taken steps to provide, having an open dialogue about the proposed rules among competing insurance companies may serve to limit how direct companies can comfortably be when providing feedback.

In order for the OIC to have a more thorough understanding of the challenges the proposed rules pose to insurers; it may be helpful for the OIC to schedule some meetings with insurers on an individual basis. Not every company has the same rate development structure, and each may be affected differently by the proposed rules. Hearing directly from them could inform how the OIC might consider making changes that protect the proposed rule's intent while making compliance more achievable for more companies. It makes sense to engage with insurers individually during the prepublication process, which is still an "information-gathering" stage outside the formal rulemaking.

Along those lines, we note with interest the draft language proposed in WAC 284-30A-040, which appears to allow insurers to use an alternate disclosure form other than the one prescribed in the next section. And, during the meeting, hearing coordinator Michael Walker stated there are some insurers using filed disclosure documents that already meet or exceed the OIC's new proposed requirements.

Is it possible that the OIC can share these or other examples of alternative disclosures acceptable to the OIC for compliance with the draft proposed rules?

Finally, I wish to share one particular comment sent to NWIC by a member company – it highlights one of the issues that has been raised by many of the insurers we've heard from, and has been referenced by the trades in written comment as well as comments provided during today's meeting.

**Here is the comment the NWIC member provided:**

**The draft rule requirements appear not to be mathematically feasible.** Many insurance products use a multiplicative Rate Order of Calculation which multiplies together various factors to generate one rate.

This makes it nearly impossible to isolate and attribute a \$ amount to individual components. When factors change, the math is as follows:  $(\text{Factor 1} * [\text{Factor 2} * (1 + \text{Change } \%)]) * [\text{Factor 3} * (1 + \text{Change } \%) ] * \text{Base Rate}$ .

In other words, the impact of the change is actually being applied across all factors, and changes to one component directly impacts changes to other components. As a result, attributing one specific \$ amount to individual components may lead to confusing outcomes for policyholders.

Here’s an example of what we mean:

**Grocery Receipt-- can explain total because each component can be added together**

	Current	New	% Change	\$ change
item 1	\$ 10.00	\$ 6.00	67%	\$ 4
+ item 2	\$ 10.00	\$ 15.00	-33%	\$ (5)
+ item 3	\$ 10.00	\$ 10.00	0%	\$ -
<b>Total</b>	<b>\$ 30.00</b>	<b>\$ 31.00</b>	<b>3%</b>	<b>\$ (1.00)</b>

**Multiplicative Insurance Rate-- cannot fully explain total change because change in one component will impact other components in multiplication**

	Current	New	% Change	Est. \$ Prem change: base rate * % change	Est. \$ Prem change: one way analysis to try to isolate change by keeping everything else the same	Actual premium change (357-337.5)
base rate	100	100	0%			
x item 1	1.5	1.4	-7%	\$ (10)	\$ (26)	
x item 2	1.5	1.7	13%	\$ 20	\$ 42	
x item 3	1.5	1.5	0%			
<b>Total</b>	<b>337.5</b>	<b>357</b>		<b>\$ 10</b>	<b>\$ 17</b>	<b>\$ 20</b>

Thank you for your consideration of these additional comments. Please contact me if you would like to discuss these concepts further, or if you have any questions.

Respectfully,

Kenton Brine  
**President, NW Insurance Council**

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