From: Sektnan, Mark
To: OIC Rules Coordinator
Cc: Brown, Lisa M; Passmore, Robert; Shiel, Colleen; Snyder, David
Subject: APCIA letter on transparency regulations
Date: Monday, February 6, 2023 10:40:02 AM
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External Email

Michael,

Happy Monday. Thanks for the extra time and the opportunity to work with the OIC on the proposed regulations.

Here is our letter. Please let me know if you have any questions.

Mark Sektnan, Vice President
State Government Relations (CA, HI, NV, WA)
American Property Casualty Insurance Association
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Please note: Effective 1/16/23 my legacy email (mark.sektnan@pciaa.org or mark.sektnan@acicnet.org) will no longer work. Please update your contact list with my current email below.

American Property Casualty Insurance Association℠
INSURING AMERICA apci.org

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.

February 6, 2023

Re: APCIA COMMENTS ON STATE OF WASHINGTON R 2022-01
Insurance Underwriting Transparency, Fourth Draft Dated
January 19, 2023

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 has previously urged you, in letters submitted on March 1, 2022, June 14, 2022, August 2, 2022, and November 14, 2022, 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.[1] We remain willing to work cooperatively with you on a cost-effective approach that would deliver useful information to consumers while protecting proprietary information, supporting competition, and encouraging innovation. 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 continuing concerns with the Fourth draft of proposed Rule R 2022-01 *Premium Change*

[1] The fourth draft of the proposed rule ignores the invitation to work cooperatively and neither acknowledges nor addresses the suggestion that a focus group composed of consumers, and possibly other stakeholders such as insurance agents, could 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.

Transparency (proposed Rule). While we appreciate the provision of some additional flexibility in this fourth draft, significant and fundamental legal issues remain.

I. The Proposed Rule Continues to Raise Significant and Fundamental Legal Issues

The proposed Rule, even as amended, fails to set forth a sufficient justification for the rulemaking. The commissioner's general authority, found at RCW 48.02.060, provides that the commissioner has authority to *"(b) [c]onduct investigations to determine whether any person has violated any provision of this code."* This proposed rulemaking does not derive from an investigation conducted pursuant to RCW 48.02.060.

RCW 48.02.060 does not authorize the commissioner to skip the step of "*investigat[ing] to determine whether 'any person' has violated*" a provision of the insurance code. The statute allows the commissioner to investigate individual companies if concerned about potential unfair practices but does not contemplate nor authorize sweeping pronouncements of purported industry-wide failings which the commissioner summarily deems to be unfair or deceptive.

The broad, unsubstantiated representation that the commissioner has been provided with "consumer complaints and industry responses" that "demonstrate[] policyholders have not received sufficient...transparency from insurers" lacks necessary specifics and exceeds the commissioner's authority. The proposed Rule also fails to show that 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.

While 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.

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 Notice" as an unfair or deceptive practice.

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

The commissioner is responsible for ensuring 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 deconstruct sophisticated multi-variate rating models to provide a policyholder with an itemized explanation at renewal of any premium increase of ten percent or more, *or upon customer request,* would impose significant programming and implementation challenges for insurers, large and small.

At first glance, the "ten percent or more" threshold for triggering of the Notice requirement seems like a limitation intended to lessen the programming and implementation challenges for insurers. However, any perceived lessening of the burden is erased by the language requiring that a Notice be issued "upon policyholder request." As written, the proposed Rule would require that insurers' systems be able to issue a Notice at renewal specifying the dollar (or estimate) or percentage impact of each factor, from among potentially dozens or hundreds of factors, that individually or in combination with other factors, contributed to an increased premium of ten percent or more. But the "at policyholder request" language would also require that insurers be able to issue such a Notice, at renewal at the request of a policyholder, and not just for premium increases of ten percent or more but for any premium increase. This not only ignores how rating models and multivariate rating processes work, but also ignores that premium changes may be driven by policyholder coverage changes, alone or in combination with insurer-driven changes. The proposed Rule, and the Notice which ostensibly seeks to increase transparency so that individual policyholders can make individual evaluations of rating practices is not *consistent* with Washington law. Determining whether rating practices are fair is the job of the insurance commissioner. In exchange for the legislature granting the commissioner extraordinary power to make such determinations, the legislature permits the commissioner access to extensive information, some of which 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 (or upon request) may ultimately lead to increased consumer confusion and

misunderstanding. This may occur even though the insurer's rating/underwriting practices have regulatory approval and are 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 Notices as 'just more paperwork' and not as a tool to improve clarity. In addition, requiring insurers to provide the Insurers Premium Change Notice Disclaimer on the first page or view of renewal notices, declaration pages, **and** [emphasis added] billing statements could lead to further consumer confusion.

In addition to the foregoing, APCIA continues to disagree with the commissioner's foundational assumption 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

III. The Proposed Rule Implicates Confidentiality Concerns Despite Exemptions

Washington general law and insurance law protects certain proprietary information. Although the third draft of the proposed Rule continues to outline certain exemptions[2], the draft dilutes the effectiveness of those exemptions, undermines the protection of insurer trade secrets and intellectual property, and injects new threats to the confidentiality of proprietary information by stating, at the end of WAC 284-30A-020 (4)(c), that "…*insurers may need to provide information specific to the policyholder that has been produced through or resulting from these sources to comply with this chapter*." This exception defeats the purpose of the overall exemptions and adds to the unworkability of the proposed Rule. This

[2] APCIA acknowledges that the proposed Rule properly exempts, in proposed WAC 284-30A-020 (4)(b), disclosure of the contents of credit-based insurance scoring models, company placement criteria or eligibility rules, and strictly confidential insurance company trade secrets, as defined by RCW 19.108 (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 proposed WAC 284-30A-020(5) that the proposed Rule must not contradict or conflict with the Fair Credit Reporting Act (15 USC 1681.) However, the exemptions do not go far enough to protect insurance company trade secrets, intellectual property and other proprietary information from disclosure, especially with the new language added at the end of proposed WAC 284-30A-020 (4)(b) which provides that "…*insurers may need to provide information specific to the policyholder that has been produced through or resulting from these sources to comply with this chapter*."

exception language would potentially require disclosure of information that is proprietary to the insurer and/or to third party vendors and/or make such information discernible from the level of detail required to be included in the Premium Change 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.

IV. 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 dissect complex rating models, isolate information, and perform intricate and complex 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 Notice" does not serve the public interest.

The proposed Rule would require insurers to create and seek approval for a proprietary "Premium Change Notice" or to use the form included in the proposed Rule. Either option will require system changes that will be costly and could take 12 months or longer to program. In addition, the requirement to obtain and maintain *Proof of Mailing* for Notices sent by mail imposes an excessive and unnecessary burden on insurers who are currently subject to *Proof of Mailing* requirements only for cancellations and nonrenewals. The requirement that Notices be sent 20 days prior to renewal fails to account for exposure changes that might be reported by policyholders within the last few days before a renewal. Given that the proposed Rule does not differentiate between exposure changes and changes resulting from rating factor changes, companies could be forced out of compliance with the proposed Rule for matters outside of the insurers control. 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 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 even as modified in this version, and the Premium Change Notice that it requires, would likely pose significant compliance challenges and burdens for all companies, even the largest companies.

A final rate may be the result of hundreds of factors and calculations not practically isolated from one another and/or disclosable in a manner that would be useful to consumers. The final rate may result from exposure changes and rate variables, some of which may impact the rate in different directions. 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. Imposing upon consumers the task of evaluating 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.

V. Fundamental Concerns Are Still Raised Despite Some Modifications

A. A summary list of some of the many issues presented by the revised proposal:

1. Need to limit scope to just auto insurance. Current scope impacts Homeowners and vehicles like ATV's and snowmobiles which may have premiums as low as <$200/year— and would trigger notices for customers seeing $10 or $20 changes based on current scope.

2. Need to remove the broad penalty section. OIC already has venues to enforce and pursue penalties including fines and market conduct exam.
3. The proposal needs to clarify expectations whether premium changes reflect consumer driven changes or company driven changes.
4. Need to remove the requirement to customize each notice by sorting variables based on impact. This adds significant operational complexity to personalize every single notice with little improvement to transparency. If the OIC is concerned about too much information displayed, the suggestion would be to reduce number of variables.
5. Need to increase the threshold for notice requirements to 20% or higher. NAIC estimates the average cost of homeowners insurance is about $939 in Washington and a 10% increase would trigger this notice for many customers who see less than $100 of change each year. Using 20% would better target notice to customers who may be most interested in additional information.
6. The current draft remains unrealistic given the complexity of rating algorithms.
7. The notice may be 10 or 20 pages long or as much as 50 pages. Especially for policies with full coverage and multiple cars/drivers. No customer would be able to understand it, in any event.
8. The proposal needs more clarity on when the notices must first be prepared and provided.
9. The proposal should be clarified that it does not apply to mid-term endorsements.
10.

B. Most importantly the proposal ignores the realities of current and approved rating:

- For multivariate class plans, it would be extremely difficult, if not impossible, for insurers to dissect an insured's rating factors at the level of detail suggested by the rulemaking.
- Complex rating models have so many interactions that insurers cannot readily separate out those factors or simply explain an almost infinite number of combinations in manner that helps consumers.
- Impacts will be calculated inconsistently across carriers due to different rate orders of calculation.
- With a multivariate class plan a rating factor's impact is dependent upon the other rating factors. ***Therefore, the order in which you calculate the impact influences the dollar amount that will be shown to the customer***. <u>This is shown below.</u>

<u>Examples of Why Listing the Dollar/Percentage Impact of Each Primary Factor on the Premium Change Notice Is Not Representative of the True Impact of that Primary Factor</u>

Example 1: A total premium increase of $200 - Multivariate Plan

Total Previous Premium Amount	$1000	New Premium Amount	$1200
	Percentage Change to Premium	Dollar Change to Premium	
Primary Factor Reason	Impact Percentage	Impact Dollars	Explanation
Age (calculated first)	7%	$70	Age of Driver(s) Increased by One Year

Annual Mileage	3%	$32.10	Increase in Miles Driven Per Year

*The remainder of the total premium amount change resulted from non- primary factors

Example 2: A total premium increase of $200 - Multivariate Plan

Previous Premium Amount	$1000	New Premium Amount	$1200
	Percentage Change to Premium	Dollar Change to Premium	
Primary Factor Reason	Impact Percentage	Impact Dollars	Explanation
Annual Mileage (calculated first)	6%	$60	Increase in Miles Driven Per Year
Age	4%	$42.40	Age of Driver(s) Increased by One Year

*The remainder of the total premium amount change resulted from non- primary factors

C. Certain insurers have identified several additional sections (highlighted below) that seem particularly problematic:

Insurer Communication Standards.

(iii) Primary factors include the specific rate and rating factors that were used to calculate the premium change. The primary factors include the following:

(A) Auto-related factors (car garaging location, driving record, how much you drive, and number of drivers and vehicles), claims history, discounts, fees and surcharges, demographic factors (age, credit history, education, gender, marital status, and occupation), property related factors (age, location, and value), and rate changes (including those subject to rate stability rules, transition rules, or premium-capping rules, as referenced in WAC 284-24-130).

Comment: With this statement, each insurer will be required to assign an insured controllability indicator. Then for each factor that a customer has some control (how much control could be up for debate), insurers would need to provide a definition that allows them to make a change that reduces their premium. In Washington there are not many controllable variables. However, one such scenario could be where factors are changed on household composition, for instance, number of people in the house. The customer might then be inclined to report fewer household members.

Comment: The most recent draft reads that the primary factors referenced above are required only for Premium Change Notices beginning June 1, 2027. Is this the intention? If so, the Premium Change Notice template provided in the proposal would not be workable for policyholder requests prior to June 1, 2027. Is it the expectation of the commissioner that every insurer would need to file an alternative notice?

Premium Change Notice Instructions.
(f) Insurers may send the Premium Change Notice individually or with renewal notices.

(g) Insurers shall send the Premium Change Notice in writing, and may send the Premium Change Notice via postal mail, if proof of mailing in maintained …

Comment: As proof of mailing is not required for the renewal notice (and the Premium Change Notice may be sent with it), it should not be required for Premium Change Notices sent separately.

(j) Insurers may show separate impacts by the different risks being covered and the type of coverage for each.

Comment: "May" show separate impacts seems fine so long as it is not later interpreted as "must".

(n) Insurers must provide policyholders with access to a language translation service specific to the Premium Change Notice. This can include either written or telephonic translation services.

Comment: The notice does not provide authority for a current requirement in Washington for insurers to provide language translation services. Is the proposed rule suggesting that insurers must subscribe to a service if it does not have those technical services in-house? This would impose an additional cost to insurers to perform translation that is not required of any other policy documents in Washington. There remains a lack of clarity here about what is required and how it must be confirmed or documented.

Premium Change Notice Instructions to Insurers: (a) Insurer Premium Change Notice Disclaimer: Insurers must include a prominent disclaimer on the first page or view renewal notices, billing statements, and declaration pages indicating in increased sized, at least twelve-point type bold font, substantially similar language as the following: "Policyholders receiving an increase to their premiums at renewal can request an explanation and Premium Change Notice by contacting their insurer. Please see this authority for additional information on your consumer protections - Chapter 284-30A WAC."

Comment: Technology may not align with the twelve-point bold font mandate.

Comment: Notice disclosure language is generally required either on the declaration page or via a policyholder notice. States will typically provide carriers with the option of placing a disclaimer notice on the billing statement in lieu of on the declaration page, but do not require it in both locations.

Scope of Applicability.
(4) Exemptions:
(a) This chapter does not apply to personal insurance policies for coverage of boats, motorcycles, off-road vehicles, recreational vehicles, antique or collector vehicles, classic vehicles, and specialty vehicles.

Comment: Insurers may define antique/classic vehicles slightly differently. It would be helpful to include language that recognizes this, for example, "or other vehicle types otherwise approved by the commissioner."

Timing. In several sections in the most recent draft, there is reference to sending Premium Changes Notices upon policyholder request "no later than 20 calendar days from the date of the request.

Comment: The language should clarify that it is 20 days from the date the insurer receives the request. As currently drafted, it is unclear when the 20-day timeline begins.

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

As noted above, and in our prior letters, 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 goal. 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.**
>
> (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 fourth draft of the proposed Rule neither acknowledges nor addresses 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 Notice.

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

Submitted by:

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