

From: [Kenton Brine](#)
To: [OIC Rules Coordinator](#)
Cc: [Christian Rataj](#)
Subject: NAMIC-NWIC comments re 4th prepublication draft of Premium Transparency Rule attached
Date: Monday, February 6, 2023 4:20:14 PM
Attachments: [NAMIC-NWIC comments - 4th Draft of Transparency Regulation \(1\).pdf](#)

External Email

Please find attached comments submitted on behalf of NAMIC and NWIC regarding the fourth draft of the OIC's Premium Transparency Rule (Matter R 2022-01). Please contact me if you have any questions.

Thank you for allowing an extension to provide these written comments. Much appreciated.

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February 6, 2023

TO: Rules Coordinator, Office of the Insurance Commissioner

RE: Written comments responding to the Fourth Interested Parties Draft of Premium Change Transparency Rule (OIC Matter R 2022-01)

Sent via email

Dear Commissioner Kreidler,

From the outset of this rulemaking effort by the Office of the Insurance Commissioner, the National Association of Mutual Insurance Companies (NAMIC) and the NW Insurance Council (NWIC) have been consistent in sharing our members' great concern over the complexity and cost of the proposed Premium Change Transparency rule. We are aware of and stand in agreement with similar concerns raised by our colleagues at the American Property Casualty Insurance Association (APCIA).

We continue to believe the rule is misguided in that it proposes to burden consumers with a granularity and volume of rate-related detail that will serve to confuse and frustrate policyholders rather than inform and prepare them. We also believe the rule as presently drafted continues to include the potential for insurers' proprietary rating information to be exposed to their competitors.

We must also again point out that the financial cost of compliance – to the extent that companies are even able to fully comply (as some have stated, not all companies gather or store the detail of information required for the transparency notices) - will be significant for many insurers. Those costs, as you know, are ultimately paid by consumers.

What the trades (NAMIC, NWIC, APCIA) and our member companies have seen since the first prepublication draft was distributed in May is that your office has begun to acknowledge the industry's concerns and has been making an effort to be responsive, by making some changes, pushing out implementation dates, and by implementing initial and secondary implementation.

For the trades, the ongoing discussion and evolving draft language suggests the best course for a better outcome would be for the OIC to withdraw the rule and more fully engage with insurers and the trades to develop a rule that is cost-effective and achieves the right result: insurance consumers who have a better understanding of their insurance premium and actions they might take to limit premium increases.

Improvements in 4th Draft

We acknowledge and appreciate the following improvements to the 4th draft of the Rule:

WAC 284-30A-020 Scope of Applicability

- Dwelling property coverage is no longer in scope.

- The rule no longer applies to personal insurance policies for coverage of boats, motorcycles, off-road vehicles, recreational vehicles, antique or collector vehicles, classic vehicles, and specialty vehicles.

WAC 284-30A-040 Premium Change Notice Requirements

- Requires the request from the policyholder to be in writing.
- Eliminates the need to include the Insurer Premium Change Notice Disclaimer on web pages and consumer-facing software applications.
- The dates for providing the notices have been moved back 6 months to 6/1/24 and 6/1/27.
- “Primary factors” are only required in Premium Change Notices for policies renewed or at the request of a policyholder on or after June 1, 2027.
- “Primary factors” listed in the Premium Change Notice are limited to those listed factors that “caused the premium increase.”
- Not requiring the “reasons” (on the form) to add up to the total premium change, represents a significant improvement. “Primary factors” listed in the Premium Change Notice no longer need to be listed in descending order of impact, from most to least impactful.

WAC 284-30A-050 Premium Change Notice Contents

- The bulleted descriptions clarify that the notice is a result of a premium “increase” instead of a premium “change.”
- Insurers have the choice of providing one of the three columns (percentage change, dollar change and/or explanations) in the Notice.

New/Continuing areas of concern

With respect to the “first stage” of disclosure requirements (effective in 2024), the trades believe the OIC’s intent is to limit the scope, breadth and detail in the initial rule implementation. However, the draft’s reference to “reasonable” and “sufficient” information could be interpreted as subjective, and/or may still require companies to engage in significant and costly system changes to ensure compliance. While we appreciate the OIC’s attempt to simplify “stage one” requirements, some additional discussion or guidance will be needed to ensure fair and consistent application of the rule’s disclosure requirements, and insurers need to have specific examples of what will constitute “reasonable explanation” and “sufficient information”.

We continue to believe the disclosure provisions should not apply to policy changes initiated by the policyholder, as those premium impacts are explained at the time the policyholder requests changes to the policy.

We also continue to suggest that condominium and renters` policies should be exempt from the rule’s provisions. A 10 percent change in premium can mean an increase to the policyholder of \$10. It is not cost-effective or of sufficient value to the consumer to require detailed disclosure for a premium increase of this size, and it is likely to frustrate consumers.

What percentage of consumer complaints versus total policyholder base in PPA and HO policies is the OIC “consumer complaint” statement based upon? (Is it greater than a fraction of 1% of all policyholders?)

Will the OIC support protection against litigation challenges (which present undesirable risk to even the best efforts at compliance, and produce expensive and uneven results through targeted actions) by providing "safe harbor" effects to its approval process, when PCNs are submitted by the insurer for review? See WAC 284-30A--030(6)(b)(i)

The provision that states that noncompliance is an unfair and deceptive practice needlessly exposes insurers to litigation risk for unfair practices claims under the Washington Consumer Protection Act. See also WAC 284-30A-060(1). We believe this should be expressly removed from rule.

Other comments and questions include:

- The 4th draft is still extremely broad, poses significant compliance challenges burdening all insurers and producers. While there have been some noted improvements, the 4th draft fails to limit the scope to a limited number of "commonly applied" primary factors that have the greatest impact on premium increases and which can be improved by changes in policyholder behavior.
- The proposed 4th draft is inconsistent with the approach taken by other states across the nation. This inconsistency poses unique challenges to national carriers, forcing them to establish, unique-to-Washington consumer notices. The cost of creating these forms, as well as the cost of developing/changing systems to provide the data required for consumer disclosure in 2027, will run into the tens of millions of dollars, or more.
- This draft also does not consider the ongoing and extensive work of NCOIL and the NAIC on transparency. There is good reason to have some national standards or to develop model language that several or all states can adopt, which could reduce costs and provide consistent information for consumers across the country.
- As set forth previously, the rule is complex and, in parts, ambiguous. This could result in companies inadvertently making errors as they seek to comply and provide timely, accurate information to policyholders. The penalties section for non-compliance of the rule does not provide a safe harbor and unfairly exposes insurers to litigation and/or administrative penalties under the unfair and deceptive practices chapters 284-30 WAC and RCW 48.30.
 - **Recommendation:** Eliminate WAC 284-30A-060 (1). If the OIC is unwilling to strike Section 1, the following language is recommended:
(1) Insurers who fail to adhere to this chapter in good faith, including the provisions....
- The 4th draft continues to expose production of the contents of credit-based insurance scoring models, company placement criteria or eligibility rules, and strictly confidential insurance company trade secrets otherwise protected by law. To comply with the rule, insurers may need to provide this information "specific to the policyholder."
 - ⊖ **Recommendation:** Eliminate the last sentence of WAC 284-30A-020(4)(c):
Nothing in this chapter requires insurers to disclose the contents 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). ~~However, 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.”~~

- Even though only “primary factors” need to be included in Premium Change Notices for policies renewed on or after 6/1/27, this limitation will not reduce the implementation or programming challenges for insurers. If we understand the information that must be included in “stage one” disclosure notices correctly, the IT development and design work will be required to create a notice for requests made on policies renewed on or after 6/1/24.
- As noted above, insurers and the trades are not clear what needs to be provided in the 6/1/24 Notice; in particular what will constitute “reasonable explanation and sufficient information” in a disclosure notice. Insurers will need to create and receive approval of the contents of the 6/1/24 Notice no later than **January 1, 2024** - less than a year from now - or they will need to manually process the individual requests from policyholders also resulting in significant costs.
 - **Recommendation:** Given the challenges insurers will face to provide required information to consumers, the OIC should consider a single implementation date no sooner than **January 1, 2027**.
 - **Recommendation:** In the alternative, a standardized statement to be used by all insurers could be considered for the “stage one” notices.
- As currently drafted, requests made on policies renewed on or after 6/1/24 can be for “**any premium increase at renewal**” significantly increasing the potential number of requests by removing the “ten percent or more” threshold for triggering of a Notice request. Given the IT concerns outlined above, if requests are received by even a small percentage of an insurer’s policyholders, it could result in the manual processing of thousands of Notices. If the OIC is unwilling to establish a single, realistic implementation date then the Notices that need to be sent out by 6/1/24 should be more limited in scope to instances when renewal will result in a 10% premium increase or more.
 - **Recommendation:** Amend WAC 284-30A-040(1)(a) as follows:
For policies, as described in WAC 284-30A-020, renewed on or after January 1, 2024, at the consumer’s request upon a 10% premium increase occurring at renewal; and such notice is not required if the increase is the result of a change in the policy initiated by the insured, such as adding coverage to or reducing the deductible on a policy;
- Can inflation/CCAF be removed from the 10% threshold? This threshold could trigger nearly all renewals for some carriers. This is a “premium vs. rate” issue. Simply put, is Coverage A increases, premium goes up without any rating factor change.
- For the 10% threshold, it will add to the programming and testing effort (to set and test the 10% threshold). In addition, considering the current high inflation environment, the 10% may not be a meaningful threshold for Property lines because the annual increase in Coverage A Dwelling could easily push the renewal premium to be more than 10% higher than the expiring premium, even with no rate change at all.
- Additional time than currently provided in WAC 284-30A-040(5) is needed to send out the notices when requested by policyholders, particularly if insurers need to produce the notices manually. The draft notice requires sending the Premium Change Notice upon policyholder

request “no later than 20 calendar days from the date of the request”. The final draft should clarify if that is 20 days from the date the insurer receives the request or 20 days from the date the insured sends the request. In addition, the rule should specify business days, not calendar days.

- **Recommendation:** Amend WAC 284-30A-040(5)(b)(i) and (ii) as follows:
 - (b) Insurers must send the Premium Change Notice to the policyholder, and their producer (if any), according to the following:
 - (i) If upon written request, upon a premium increase of 10% or more and not due to changes to the policy initiated by the insured, then no later than 20 business days from the date of receipt of the written request; and
 - (ii) If upon renewal, due to a 10% premium increase or more and not due to changes to the policy initiated by the insured, then no less than 20 business days prior to the effective date of the renewed policy.
- Also, more than 20 calendar days is needed to respond to policyholder’s subsequent requests for additional information. These one-off requests will require manual processing and will likely require time for investigation. The trigger for these requests should also be the date the request is received in writing from the policyholder.
 - **Recommendation:** Amend WAC 284-30A-040(5)(e) as follows:
 - (e) Insurers shall respond to and provide additional information for policyholder’s subsequent written requests related to the Premium Change Notice, no later than 20 business days from date of receipt of any subsequent request.
- The OIC’s recommended Premium Change Notice form as set forth in WAC 284-30A-050 is inconsistent with the Rule’s requirement that policyholders can request an explanation by contacting their insurer in writing by inviting the policyholder to contact their insurance company “via telephone.” Also, it may cause confusion since the 4th draft eliminated the notice requirement on web pages and consumer-facing software applications. Arguably the bold sentence at the bottom of the Notice is also duplicative and can be entirely eliminated.
- - **Recommendation:** Amend the Premium Change Notice in WAC 284-30A-050: “If you have any questions, please contact your insurance company via ~~telephone (),~~ email () or postal mail (), ~~or visit our website ().~~
- Remove disclaimer requirement from Declarations and Billing statements. The declaration page is burdensome because it has to be filed. We would prefer the renewal notice, which makes the most sense since we already provide premium summaries, discount summaries, and disclosure notices in the renewal packet. For the billing statement requirement, is this for every bill they get, or just the bill at renewal? Many insureds have payment plans where they pay on a month-to-month basis, of which later bills in the policy term could capture mid-term changes irrelevant to the renewal premium change disclaimer.
- Would the insurer be under the same timeframe guidelines if a member requests a premium breakdown on a premium decrease?
- The definition of “primary factors” was narrowed to include specific rate and rating factors that “caused the premium increase” in WAC 284-30A-040(6)(b)(iii) However, the definition of “sufficient information” was not similarly narrowed in WAC 284-30A-040(6)(b)(ii).

- ⊖ **Recommendation:** Amend WAC 284-30A-040(6)(b)(ii): “Sufficient information means providing enough information to enable the policyholder to understand the basic nature of *specific rate and rating factors that caused the* any premium increases. ~~or to calculate any premiums resulting from a change in rates.~~”
- In addition to limiting the number of “primary” factors as set forth above, “insurance score” or “credit-based insurance score” should be referenced as a primary factor instead of “credit history” in WAC 284-30A-040(6)(b)(iii)(A).
 - **Recommendation:** Amend WAC 284-30A-040(6)(b)(iii)(A): (A) Auto-related factors (car garaging location, driving record, ~~how much you drive,~~ *miles driven*, and number of drivers and vehicles) claims history, discounts, fees and surcharges, demographic factors (age, ~~credit history,~~ *insurance scores*, education ...
- The list of “primary factors” currently includes a number of factors which are unprecedented, not required in any other state, and are not under the policyholders’ control.
Recommendation: Amend WAC 284-30A-040(6)(b)(iii) as follows:
“Primary factors include the **top 5** specific rate and rating factors that caused the premium increase. The primary factors **could** 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).
- From O20 (4) (c) this section is ambiguous and even seems contradictory. Does this require that a CBIS score be treated as a “primary factor”, or must companies identify individual (confidential trade secret) elements that are used to determine the CBIS score on the form?
- Item (j) on page 4 says that “insurers **may** show separate impacts by the different perils or risks...”. Can an insurer interpret it as that they can show the premium impact on a roll-up basis instead of on a by-peril basis?
- Previous versions of the prepublication draft required that the impact by reason must add to 100% or the total amount of premium increase. The fourth draft requires insurers to explain the primary factors of premium increase. What is the impact if the primary factors don’t add up to 100% or the total \$ increase? We ask this because even with a base rate change, some customers will see premium decrease, some will see premium increase depending on policy characteristics. Explaining 100% of the premium change is nearly impossible.
- Also, (6)(a) and (b) appear to only require the notice to include the “primary factors” for those policies renewed on or after 2027. However, the second bullet of the OIC’s form still requires insurers to list out the primary factors. The trades’ members are a bit confused as to how they would provide a “reasonable explanation” or “sufficient information” without actually listing out the factors that gave rise to the increase. We appreciate the OIC’s apparent attempt to relax

some of the standards for the 2024 implementation but this needs to be reconciled with the OIC's requirement for "reasonable explanation" or "sufficient information" in the notice.

- Similarly, the fourth draft allows the insurer to exclude "composite rating variables" like tier (section h). While insurers would likely not include non-primary factors in the notice if not required, the form data will not add up to 100% in many cases. For Factor refreshes, the "composite variables" can contribute the **majority** of the premium change. Are these cases still considered "sufficient" information?
- While it's good that the OIC isn't requiring "composite" variables with this draft, the inclusion of many primary variables still opens the possibility of insurers having to offer a tailored explanation for each individual member using a dynamic form. Would the OIC agree to a statement that includes all of the primary variables listed each time and only the % and dollars change?
- At 040 (5) (h) is very vague and ambiguous, and we do not really know what it means. If it means insurers must identify and explain the individual elements of each composite rating variable (for example CRI or driver rating factor), then (1) it would be extremely difficult and costly and (2) I do not understand the purpose of this section, or why it is included. OIC has not adequately defined "composite rating variable".
- We also do not understand how OIC intends for the structure of this section and the entire Rule to address rate stability rules, transition rules, or premium-capping rules, as referenced in WAC 284-24-130. In some situations, the premium could increase from the prior term, because of a rate stability rule, even if none of the primary factors or optional factors change. In that case, the OIC should allow companies the choice to either (1) exclude the effect of rate stability rules and not provide a form, or (2) list the rate change as the "reason".
- From 040 (6) (b) why is the term "credit history" used in the list of "primary factors", instead of "credit-based insurance score" which is in 020 (4) of this fourth Rule draft, or "insurance score" which I believe is defined in the credit statute (see **48.18.545**). We believe this list of "primary factors" should include "credit-based insurance score" or "insurance score," instead of "credit history".
- New sections 040 and 050 appear vague and ambiguous. Section 050 (the form) refers to "reasons" which are not discussed prior to section 050, and are not defined. For example, are each of the "primary factors" which change and result in an increase in premium to be listed as a "reason", or is something else required?
- 284-30A-040(5)(n) – This would require insurers to contract with a third-party translation service and is not required of any other policy documents. We assume that any customer for whom English is not a first language has access to translation assistance in order to understand their rights and obligations under the policy contract, which is solely distributed in English. Suggest removing this requirement.

Areas in Need of Further Clarity

- Most carriers will define antique/classic vehicles slightly differently, so it would be helpful if the rule were to include some language to recognize this. Including some type of “or other vehicle types otherwise approved by the commissioner” language in the Exemptions section would provide flexibility for insurers consistent with the spirit and intent of the statute.
- The draft rule also appears to exclude Personal Umbrella policies from the scope but doesn’t specifically carve it out. Clarification on this point is necessary.
- Could the OIC provide examples of "specific rate and rating factors" for purposes of applying the examples to these draft requirements:
 - * Insurers may include composite rating variables in the Premium Change Notice to inform policyholders of premium increases. However, if insurers include composite rating variables in the Premium Change Notice, then insurers shall explain the premium increase attributed to the composite rating variables.
 - * Insurers may include the use of estimated dollars in the Premium Change Notice, if a reasonable explanation and sufficient information are provided by the insurer to the policyholder on the degree of accuracy estimated dollars achieve, as specifically applied to that policy and premium increase.
 - * Insurers may show separate impacts by the different perils or risks being covered and the type of coverage for each.
 - * Insurers may add or remove formatting and contents in the Premium Change Notice as necessary to improve transparency with the policyholder.
- With regard to the record retention provision – Could the OIC please specify the retention period for PCN-related records, or point to the authority that specifically applies?
- Will the OIC support the additional provision that a PCN reviewed and approved by the OIC constitutes a safe harbor that the content of the PCN is compliant with this chapter?

Additional questions in need of OIC feedback:

- Confirm the chapter applies to renewals *effective* 6/1, not processed on. There is still ambiguity between 284-30A-040 (1)(a) & (b) and 284-30A-040 (6)©
- How should composite factors that are derived from primary factors be handled?
- What is the intent of changing “must” to “shall” – did the OIC intentionally reference “must” vs. “shall” in various instances?
- What is meant by “articulate and quantify by paragraph form” on the PCN? Does it mean to simply call out the total change?
- 040 (5)(h) "shall explain the premium increase attributed to the composite rating variables". Please clarify: In total or explaining each part of the CRV?
- 040 (5)(k) insurers may add or remove formatting and content to improve transparency. Do those changes need to be filed?
- 040 (6)(b)(ii) what does "basic nature of any premium increase..." mean? Since "primary factors" are not included in 2024, what level of detail is sought?

- 050 (1) outlines the explanation and minimum amount of info to include in the PCN
- What about program changes? How are those required to be reflected?
- When the policy converts to a new rating structure, how to compare the factors/rating steps between old and new structure?
 - Where new structure does not have same factors or steps as old structure
 - Where new structure has new factors or steps not present in old structure
 - Level of computation changes between the structure, e.g. old structure had average driver factor, new structure has computation at vehicle driver coverage level
 - Calculation of tier and components have changed between new and old structure, e.g.
 - CBIS was part of the tier in the old structure and is not part of the tier in the new structure
 - Tier computation has changed from score model to factor model, where each tier component has a factor instead of a score
 - New structure has tier factor by coverage, old structure the tier factor was at policy level
 - If the sequence of application of rating steps have changed between old and new structure, how do we account for it, e.g. application of discount
- What are the expectations regarding explanation language within the notice – does that need to be filed as well? Given the specificity, it would be challenging to file every explanation.
- Expectations regarding changes in attributes, risk characteristics if they occur at renewal? E.g. when vehicles or drivers have been added.
- What are PCN expectations for flat amendments (those that are back-dated to the beginning of the policy term)?

As in our previous communications on this complicated issue, we wish to express our appreciation for the OIC's efforts to consider and acknowledge the concerns and questions raised by the trades and our members. We look forward to continuing the "interested party process" and invite you to contact us if we can answer any questions regarding these or previous comments.

Respectfully,

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