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Office of the Insurance Commissioner
5000 Capitol Blvd., SE
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Delivered via electronic submission: rulescoordinator@oic.wa.gov.

RE: Adverse Notifications (R 2018-09) – NAMIC's Written Testimony

The National Association of Mutual Insurance Companies (NAMIC) is the largest property and casualty insurance trade association in the country, with more than 1,400 member companies. NAMIC supports regional and local mutual insurance companies on main streets across America and many of the country's largest national insurers. NAMIC members represent 40 percent of the total property/casualty insurance market, serve more than 170 million policyholders, and write nearly $225 billion in annual premiums. NAMIC has 138 members who write property/casualty policies in the State of Washington, which represents 48% of the insurance marketplace.

Thank you for providing NAMIC with an opportunity to submit written comments on the above captioned proposed regulation. NAMIC appreciates all of the time and effort the Office of the Insurance Commissioner (OIC) has invested into stakeholder discussions on this regulatory project. NAMIC commends the OIC for making several changes to the draft regulation requested by the insurance industry. Specifically, we appreciate the OIC's decision to redraft Section (2)(b) of the proposed regulation to revise the provision relating to "initial" claims so that it only applies to "final" claims payments, its clarification that Section (2)(c) of the proposed regulation applies to only health insurance; and the OIC's addition of the qualifier in Section (2)(d) that the notice requirement does not apply to cancellations due to nonpayment of premium. However, NAMIC is still quite concerned about the legal, regulatory and public policy implications of a number of key provisions in the proposed regulation. In the spirit of cooperation, NAMIC respectfully tenders the following comments.

1. THE PROPOSED REGULATION IS LIKELY TO DELAY THE TIMELY SETTLEMENT OF CLAIMS

NAMIC is concerned that the proposed regulation will result in the OIC unnecessarily intervening into the claims adjusting and settlement process during the pendency of a claim, which could delay claims resolutions. Additionally, we are concerned that the proposed consumer notice about contacting the OIC will lead consumers to start sending claims information and documentation that should be submitted directly to the insurer to the OIC instead, thereby creating communications problems between the insurer and the consumer. Current law already provides consumers with the ability to secure the timely assistance of the OIC with a claim dispute. Insurers have 15 working days to respond to inquiries from the commissioner concerning a complaint under WAC 284-30-360. Steering consumers to the OIC's complaint process when there is no actual controversy will only slow down the claims process by adding an unnecessary and time-consuming bureaucratic protocol to the claims process.

We are also concerned that the proposed consumer notice could adversely impact the OIC's ability to be responsive to meritorious consumer complaints. Interjecting the OIC into "run of the mill" claims adjusting and settlement activities will require the OIC to expend its limited resources responding to baseless consumer complaints related to claims that are being handled appropriately and consistently with the insuring agreement and insurance code by insurers merely because the consumer has raised a statement of general dissatisfaction with the outcome of their claim. OIC staff resources are best used to investigate and resolve legitimate consumer complaints.

2. THE PROPOSED REGULATION EXCEEDS THE SCOPE AND INTENT OF CURRENT ADVERSE ACTION NOTICE STATUTES THAT APPLY ONLY TO UNDERWRITING

Current law requires insurers to provide "adverse action" notices in *only* two instances:

(1) RCW 48.30.320 - Upon cancelling, denying, or refusing to renew a policy, an insurer shall "upon written request" directly notify the applicant or insured of the reasons for the action by the insurer.

(2) RCW 48.18.545(2) - If the insurer takes "adverse action" based in whole or in part on credit history. This notice only requires the insurer to list the significant factors of the credit history or insurance score and state that the insurer may obtain a copy of the credit report.

The current law applies the "adverse action notice" requirement to adverse ***underwriting*** decisions, which is the way "adverse action notice" laws are written throughout the country. The proposed regulation would significantly and improperly expand the scope of the law to apply it to ***claims*** practices on:

(1) ***Claim*** denials;
(2) Final ***claims*** payment for less than the original amount of the claim submitted

NAMIC is concerned that the OIC is proposing to improperly expand, via regulation not state legislation, the definition of an "adverse action" to include ***claims*** activities. First, this is unnecessary, because there is already a detailed law in place that addresses claims settlement practices. WAC 284-30-330. Second, the "adverse action" legal concept was never intended nor designed to address ***claims determinations.*** The "adverse action notice" was originally created to address consumer inquiries pertaining to insurer use of Credit-Based Insurance Scores. Third, the proposed regulation creates a presumption that the amount of the original settlement demand is the metric for determining whether there was an adverse action by the insurer. For example, if an insurance consumer has a claim with nominal damages, but asserts a clearly unreasonably high settlement demand, the insurer would be required to treat their settlement decision to pay less than the unreasonable settlement demand as an adverse action by the insurer. NAMIC is concerned about the public policy implications and legal ramification of a final settlement that is less than the original settlement demand, which is typically inflated by plaintiff attorneys as part of standard claims negotiations, being labeled "an adverse action" by this regulation.

3. THE PROPOSED REGULATION IS UNNECESSARY, AND LIKELY TO CREATE CONSUMER CONFUSION

To date, the OIC has not provided any evidence to support the contention that the proposed regulation is necessary for the OIC to assist consumers in their professional relationship with their insurer. Requiring insurers to post the proposed consumer notice on a vast array of different insurer-consumer communications is likely to confuse consumers into believing that they need to involve the OIC in routine aspects of the insurance relationship. There is no evidence to support the belief that consumers involved in a dispute with their insurer are unaware of the regulatory assistance available to them from the OIC. This regulatory proposal is likely to confuse consumers about where they should direct their basic coverage and claims inquires, which could result in claims adjusting delays and needlessly interfere with insurers' ability to provide timely services to their consumers.

4. THE PROPOSED REGULATION WILL CREATE NEEDLESS ADMINISTRATIVE BURDENS AND REGULATORY CHALLENGES FOR THE OIC AND INSURERS

The proposed regulation requires insurers to state in a number of standard claims adjusting communications that, "[I]f you have questions about your coverage or would like to file a complaint regarding your insurance company or agent, contact the Washington state Office of the Insurance Commissioner's consumer protection hotline at 1-800-562-6900 or visit www.insurance.wa.gov..."

The likely practical implication of this notice is that any consumer who doesn't get the exact amount of their initial settlement demand, even if the settlement demand is entirely unreasonable, inconsistent with the facts of the situation, and contrary to law on point, are being encouraged to file an illegitimate complaint against the insurer with the OIC. Not only will this lead to an inefficient use of the OIC's limited resources, but it will also lead to confusion over what is a justified or legitimate consumer complaint and what is an unfounded or illegitimate consumer complaint. This churning of consumer complaints could lead to unnecessary and unproductive conflict between the regulator and insurers; and it could be easily manipulated by plaintiff attorneys to coerce insurers into accepting unreasonably inflated settlement demands that adversely impact affordability of insurance for consumers.

5. THE PROPOSED REGULATION WOULD EFFECTUATE A SIGNIFICANT CHANGE TO THE UNFAIR CLAIMS SETTLEMENT REGULATION

NAMIC is concerned that the OIC's regulatory proposal would in effect alter the unfair claims settlement regulation under RCW 48.30.015(f). Specifically, the addition of *underwriting actions* within the proposed regulation on *claims settlements* governed by WAC 284-30-770(2)(d) seems conceptually and organizationally inappropriate.

Additionally, the proposed regulation is not supported by any evidence that there is a specific regulatory problem that requires including the stated acts and practices as being unfair or deceptive as provided in RCW 48.30.010(3). NAMIC is concerned that the proposed regulation is based upon a logical construct that is unfounded. Specifically, a claim denial or payment for less than the amount of the asserted claim is not an inherently unfair or deceptive business practice. Insurers are required to comply with the terms of the insuring agreement and the insurance code, so if the insurer's denial of a claim or payment of less than the amount asserted by the claimant is in compliance with the contract and insurance code the insurer's actions are neither unfair nor deceptive. Further, a rescission, cancellation, termination or non-renewal of an insurance policy, in and of itself, is not an inherently unfair business practice unless the action is undertaken in violation of the terms of the insuring agreement or some provision of the insurance code. Additionally, the language of the proposed regulation could arguably be interpreted to also apply to "partial" denials of a claim, which would mean that whenever an insurer makes *any* adjustment to the specifics of the claim submitted by the policyholder an insurer would be required to treat it as an adverse action. The proposed regulation would require insurers to treat these reasonable, appropriate and lawful activities as pejorative "adverse actions" when they are merely standard contract-based, or otherwise legal, actions essential to the insurance relationship.

6. THE PROPOSED NOTICE IS TOO BROAD AND SUGGESTIVE

The OIC's complaint "solicitation" language - "If you have questions about your coverage or would like to file a complaint regarding your insurance company or agent", is too broad and too suggestive. The language appears to solicit and/or encourage the filing of complaints.

NAMIC is also concerned that the proposed information required on the "adverse notification" is overly prescriptive and could be perceived as public relations outreach by the OIC. From a commercial free speech standpoint, insurers should not be required to state in their private communications with their policyholders that "[t]he insurance commissioner

protects insurance consumers, the public interest, and provides the fair and efficient regulation of the insurance industry." A private business should not be required to advertise the professional services of a state agency. The OIC has a long history of prolific and effective public relations activities and consumer educational outreach. Thus, insurers should only be required to state the OIC's basic contact information.

For these reasons, NAMIC respectfully requests that the OIC withdraw this proposed regulation and discuss with insurers less contentious and more cost-effective ways to educate consumers about the wealth of services available to them through the OIC.

Thank you for your time and consideration. Please feel free to contact me at 303.907.0587 or at crataj@namic.org, if you would like to discuss NAMIC's written testimony.

Respectfully,

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