

Insurers Must Inform Washington Insureds of the Availability of Insurance Commissioner Assistance

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- Insurance Coverage

As of August 1, 2020, Washington will join the growing number of jurisdictions requiring insurers to inform insureds that they may seek guidance from state insurance regulators — in this case, the Washington Insurance Commissioner (the commissioner) — if the insurer takes certain adverse actions. The newly promulgated WAC 284-30-770's purpose is "to increase consumer awareness of the availability of agency assistance to help consumers with their insurance questions" by requiring "all insurers" to append the following notice to "adverse notifications":

If you have questions or concerns about the actions of your insurance company or agent, or would like information on your rights to file an appeal, 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 insurance commissioner protects and educates insurance consumers, advances the public interest, and provides fair and efficient regulation of the insurance industry.

According to the administrative record, the rule is intended to apply to all "adverse notifications" sent into Washington regardless of the type of insurance, where the policy was issued, or the location of the covered risk. The advisory must be printed in the same font and no smaller size than the majority of the rest of the notification, and be placed on the front page, end, or in the same location as such advisories are currently printed.

The commissioner initiated the rulemaking process on August 21, 2018, and two drafts of the rule were circulated to industry stakeholders before it was finalized. One focal point of industry commentary was the scope of the adverse notifications to which the advisory must be attached. In the final rule, the advisory must appear on all "notice[s], statement[s], or document[s]" describing claim denials, final benefits payments for less than the insured requested, certain health care benefit determinations, and rescission, cancellation, termination, or nonrenewal notices **initiated by the insurer**. Earlier versions of the proposed rule required that the advisory be provided when the insurer **initially determined** that a claim was worth less than the insured requested and when the policy was rescinded, cancelled, terminated, or non-renewed even when at the **insured's request**.

The commissioner also appeared unconcerned about the rule's impact on insurers' bad faith exposure. Stakeholders expressed concern that Insurance Fair Conduct Act (IFCA) or Consumer Protection Act (CPA) liability could be imposed for non-compliance with the new rule; and requested that it state, as do other WAC provisions, that the new regulation shall not be a basis for liability under such statutes. See, e.g., WAC 284-30-670 (requiring insurers to transact business in their legal name and stating that violation of the rule does not impose IFCA liability). The commissioner responded by expressing his "wish" that he "could prevent people from pursuing unmeritorious actions," but declined to alter the rule.

While insurers can hope that the newly minted WAC proves only a minor administrative burden, insurers should start revising their procedures, updating form letters, and training staff regarding the types of communications that must bear the advisory well-in advance of August 1, 2020. In doing so, insurers should adopt a broad view of the sorts of communications requiring the advisory until there is further clarity on what constitutes an adverse action. For instance, insurers may want to include the advisory on all reservation of rights letters given that such letters may describe potential claims denials.