



WEST VIRGINIA INSURANCE BULLETIN

No. 20 – 07

Insurance Bulletins are issued when the Commissioner renders formal opinions, guidance or expectations on matters or issues, explains how new statutes or rules will be implemented or applied, or advises of interpretation or application of existing statutes or rules.

To: All Insurers, Insurance Trade Associations, Consumers, and Other Interested Persons

From: James A. Dodrill, Insurance Commissioner

Re: Coronavirus (COVID-19) Regulatory Guidance

Date: March 26, 2020

The West Virginia Offices of the Insurance Commissioner (OIC) is providing this guidance to insurers, other regulated entities and consumers regarding compliance with regulatory requirements during the COVID-19 public health emergency. This Bulletin is being provided in addition to, but not in place of, any prior guidance previously issued via *Emergency Order* or *Bulletin*. All *Bulletins* and *Emergency Orders* are available on our website at www.wvinsurance.gov/COVID-19.

Cancellation and Nonrenewal of Insurance Policies and Policyholder Flexibility

Emergency Order 20-02, issued by the Insurance Commissioner on March 18, 2020, states that insurers must not issue a cancellation notice or nonrenewal notice pertaining to any insurance policy, plan or contract if the reason for cancellation or nonrenewal is a result of adverse circumstances resulting from the COVID-19 pandemic and the corresponding State of Emergency issued by the Governor of West Virginia on March 16, 2020, or any subsequent governmental orders. *Emergency Order 20-02* is not meant to prohibit the cancellation or nonrenewal of all insurance policies and does not apply to insureds or policyholders who were already delinquent or who were or are cancelled/nonrenewed for other valid underwriting reasons.

Further, *Emergency Order 20-02* does not excuse insureds or policyholders from the obligation to pay premiums for insurance coverage provided or contractual benefits received. Insurers should be willing to, and are encouraged to, be flexible with insureds or policyholders by voluntarily instituting moratoriums on cancellations or premium collections and allow for alternative payment arrangements, deferred premium payments, premium holidays and acceleration or waiver of underwriting requirements so that policyholders do not become delinquent during and as a result of the crisis.

Regarding health insurers, the Center for Consumer Information & Insurance Oversight (CCIIO) within the federal Centers for Medicare and Medicaid Services (CMS) issued guidance on March 24, 2020, in connection with the COVID-19 emergency. The guidance provided that if a Federally-Facilitated Exchange (FFE) or a

State-Based Exchange Using the Federal Platform (SBE-FP) issuer extends premium payment deadlines and delays cancellations or terminations of coverage for non-payment of premiums with the permission of the applicable state regulatory authority, CMS will exercise enforcement discretion with regard to regulatory premium payment requirements pertaining to the deadline for payments to effectuate coverage under 45 CFR 155.400(e), as well as the deadline under 45 CFR 156.270(g) for termination of coverage after the exhaustion of grace periods, including for individuals receiving the benefit of advance payments of the premium tax credit (APTC). This enforcement policy allows issuers to extend payment deadlines in accordance with state regulatory guidance and delay the beginning of any applicable grace period.

The OIC will not view any accommodations made to insureds incurring economic hardship during the COVID-19 pandemic and the State of Emergency, including any *Executive Orders* issued by the Governor which close businesses or order residents to stay at home unless performing an essential activity, as violating insurance laws such as unfair inducement prohibitions. However, accommodations to insureds or policyholders should not be made in an unfairly discriminatory manner. Further, the OIC instructs that insurers can, and should, require validation that the adverse circumstances of the insured or policyholder are directly related to the COVID-19 pandemic and the State of Emergency, or any subsequent *Executive Orders* issued by the Governor which closed businesses or ordered residents to remain at home unless performing an essential activity, by obtaining evidence in writing, or otherwise, from an employer, policyholder, insured or other appropriate source before foregoing a cancellation or nonrenewal.

The Commissioner will continue to review and assess circumstances as they arise or change with a regard to insurer solvency, and will amend, revise or rescind this guidance, in full or in part, as necessary or appropriate.

Beware of COVID-19 Related Fraud and Scams

According to the United States Department of Justice, the Federal Trade Commission, and the Federal Communications Commissioner, there are several ways scammers can use COVID-19 to target people, including vaccine and treatment scams, medical scams, charity scams, investment scams, and phishing and malware scams. For example, scammers may pose as national and global health authorities, medical providers or insurance companies. Beware of fake insurance agents selling low-priced insurance coverage to cover the costs of coronavirus treatment, or scammers selling vaccines, drugs, testing kits or other treatments for the virus. Also, beware of bogus calls warning that your health insurance was cancelled or offering to sell you travel insurance. Many of these scams are, unfortunately, directed to senior citizens.

The *West Virginia Insurance Fraud Prevention Act* mandates the reporting of insurance fraud or criminal offenses otherwise related to the business of insurance. The *Act* is located at Chapter 33, Article 41 of the *West Virginia Code*, as amended, and provides that “[any] person engaged in the business of insurance having knowledge or a reasonable belief that fraud or another crime related to the business of insurance is being, will be or has been committed shall provide to the commissioner the information required by...the commissioner.” See, *W.Va. Code* § 33-41-5(a). There are no exceptions nor reasons for those engaged in the business of insurance to refrain from reporting if fraud or criminal activity is known or suspected. Consumers and others not engaged in the business of insurance are also strongly encouraged to report insurance fraud or suspected scams to the Offices of the Insurance Commissioner and other state or federal regulatory authorities as appropriate.

Requests for Extraordinary Dividends Should be Re-Reviewed by Insurers

Any insurer intending to file a request for payment of an extraordinary dividend pursuant to *W.Va. Code* § 33-27-5 should conduct a detailed review that includes an actuarial analysis of that extraordinary dividend request and the insurer's capital requirements to determine if that request is appropriate in light of the expected economic impact of the COVID-19 pandemic. Extraordinary dividends that were calculated and/or approved by the company's board of directors prior to the COVID-19 pandemic may be rejected by the OIC and returned to the company for further analysis.

Electronic Filings and Electronic Signatures

Insurers are once again encouraged to file required forms electronically and utilize electronic signatures where permitted. The OIC will accept electronic signatures that comply with the *West Virginia Uniform Electronic Transactions Act*, codified at *W.Va. Code* § 39-1-1, *et seq.* The OIC also encourages insurers and other regulated entities to utilize electronic signatures in their business operations if appropriate. For further information, please review *Informational Letter 135B* which can be found on our website at <https://www.wvinsurance.gov/Resources/Informational-Letters>.

Communication with the OIC

Insurers and other regulated entities are encouraged to communicate with the OIC via email whenever possible. Most OIC employees are currently working from home. Accordingly, correspondence received via the U.S. Postal Service or facsimile may be delayed for review. However, all divisions of the OIC are operational and will be checking emails, answering forwarded telephones and checking voicemails daily. The quickest way to ensure a response is to contact the OIC via email or telephone. If you do not know the email address for the party you are trying to contact, please use one of the general email addresses below, as appropriate:

OICAgentLicensing@wv.gov

OICBulletins@wv.gov

OICConsumerServices@wv.gov

OICConsumerAdvocate@wv.gov

OICEmployerCoverage@wv.gov

OICFinancialConditions@wv.gov

OICFraud@wv.gov

OICHealthPolicy@wv.gov

OICLegal@wv.gov

OICRatesForms@wv.gov

OICWVTax@wv.gov

On-Site Examinations

Insurers have inquired as to whether the OIC will continue to conduct on-site examinations during the insurance emergency and the State of Emergency caused by the COVID-19 pandemic. The OIC will fully comply with governmental directives regarding public gatherings, as well as the State of Emergency declared by the Governor on March 16, 2020 and subsequent *Executive Orders* issued by the Governor which closed businesses or ordered residents to stay at home unless performing an essential activity. In that regard, OIC will not conduct any on-site examination work that is non-essential or is contrary to directives to limit gatherings or practice social distancing or isolation. To facilitate this, insurers should be aware that the OIC may need to request more information in electronic form and may require more time to review submitted information. Additionally, the OIC acknowledges that insurer response times may be slower than usual as more insurance company employees are also working from home.

The OIC has called or scheduled upcoming, on-site examinations that are set to begin on or after June 2020. At this time, the OIC has decided to not delay those examinations or make additional

accommodations. However, should circumstances change and the current emergency continues through May, 2020, the OIC will revisit its plans for scheduled examinations and advise insurers accordingly.

Administrative Hearings

Insurers, regulated persons and entities, and consumers have inquired as to whether the OIC will continue to conduct administrative hearings during the insurance emergency and the State of Emergency caused by the COVID-19 pandemic. At this time, the OIC will fully comply with governmental directives regarding public gatherings, as well as the State of Emergency issued by the Governor on March 16, 2020 and subsequent *Executive Orders* issued by the Governor which closed businesses or ordered residents to stay at home unless performing an essential activity. Accordingly, the OIC will not hold any administrative hearings that are non-essential or contrary to directives to limit gatherings or practice social distancing or isolation. At this time, it is not possible for the OIC to conduct telephonic hearings due to the need to have a court reporter present to record the hearings. However, the OIC will continue to review and explore options to determine if a feasible remote hearing solution is achievable. Also, insurers, regulated entities and consumers should be aware that the OIC may need to request more information in electronic form and may require more time to review submitted information while employees are working from home.

Insurance Premium Tax Payment Deadlines Not Extended

The quarterly filing deadline for insurance premium tax payments is April 15, 2020. At this time, that deadline has not been extended by the OIC or by directive of the Governor's Office. On March 25, 2020, Governor Justice announced that he was directing the West Virginia Tax Commissioner to extend the West Virginia income tax filing and payment deadline until July 15, 2020, to correspond with the federal government's tax filing extension to the same date. However, insurance premium taxes are not tied to federal tax filings and are not included in that directive. Insurance premium taxes are based upon the gross amount of direct premiums collected and received by an insurer during the previous calendar year. Accordingly, insurance premium taxes should already have been collected by an insurer and should be remitted to the OIC pursuant to the gross amount of direct premiums collected and received by it during the previous calendar year's regular schedule for payments.

Regulatory Filing Deadlines, Response Deadlines and Requests for Extension

Currently, the OIC's Licensing and Examination Division is processing applications daily and does not believe that an extension will be necessary for producers, surplus lines licensees, adjusters or business entities. Likewise, the OIC's Financial Conditions Division does not believe that it will be necessary to extend the March 31, 2020 deadline for health insurers to file their Annual Grievance Reports or the April 1, 2020 deadline for insurers to file supplemental filings to their Annual Statements.

Additionally, the OIC reiterates that it is not granting a blanket extension for insurers or other regulated entities to respond to inquiries from the Commissioner or from the OIC's Consumer Services Division. During this insurance emergency and State of Emergency, it is critical that the OIC be able to discuss matters of urgent importance with insurers and other regulated entities punctually and thoroughly, as well as to communicate with consumers effectively. Please communicate with the OIC via email and/or telephone, when necessary, while we are working from home.

If your company believes that it will not be able to meet a filing or response deadline required by current law, *Bulletin* or OIC *Emergency Order*, please contact the OIC as soon as possible to discuss alternative arrangements. If the issue involves the Market Conduct Division, please contact Tom Whitener at Tom.J.Whitener@wv.gov. If the issue involves the Financial Conditions Division, please contact Justin Parr at Justin.E.Parr@wv.gov. If the issue involves the Rates & Forms Division, please contact Joylynn

Fix at Joylynn.Fix@wv.gov. If the issue involves agent or producer licensing, please contact Rob Grishaber at Robert.E.Grishaber@wv.gov.

Any questions concerning this Bulletin, or any other Bulletin, may be directed to OICBulletins@wv.gov.