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NATIONAL ASSOCIATION OF MUTUAL INSURANCE COMPANIES

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3601 Vincennes Road, Indianapolis, Indiana 46268
Phone: 317.875.5250 | Fax: 317.879.8408

www.namic.org

122 C Street N.W., Suite 540, Washington, D.C. 20001
Phone: 202.628.1558 | Fax: 202.628.1601

July 31, 2015

Patricia Hein, Attorney IV
California Department of Insurance
45 Fremont Street, 21st Floor
San Francisco, CA 94105

sent via email to:
patricia.hein@insurance.ca.gov

RE: Workers' Compensation Policy Forms, Reg. File 2014-00014 - NAMIC's written testimony on proposed regulation

Dear Ms. Hein:

The National Association of Mutual Insurance Companies (NAMIC) appreciates the opportunity to comment on the revisions made by the California Department of Insurance's (CDI) to the previous draft of the above referenced proposed regulation. NAMIC is the largest property/casualty insurance trade association in the country, serving regional and local mutual insurance companies on main streets across America as well as many of the country's largest national insurers.

The 1,300 NAMIC member companies serve more than 135 million auto, home and business policyholders and write more than $208 billion in annual premiums, accounting for 48 percent of the automobile/homeowners market and 33 percent of the business insurance market. NAMIC's members write a significant amount of the workers' compensation insurance in the State of California.

Through our advocacy programs we promote public policy solutions that benefit NAMIC companies and the consumers we serve. Our educational programs enable us to become better leaders in our companies and the insurance industry for the benefit of our policyholders

In the spirt of continued cooperation, NAMIC respectfully requests that the CDI revise the definition of "ancillary agreements" so as to eliminate any legal ambiguity created by the current definition as it relates to third-party administrator agreements (TPA agreements), and other documents and agreements that do not alter or modify the terms of the insuring agreement between the WC insurer and the insured.

NAMIC appreciates the CDI's desire to ensure that "ancillary agreements" do not alter or modify the terms of the insuring agreement between the workers compensation insurer and the insured, or adversely impact coverage under the policy. NAMIC is concerned, however, that the proposed definition of an "ancillary agreement" is also broad enough to encompass those agreements that have no bearing whatsoever on coverage, such as those related to the funding of collateral supporting large deductible workers compensation policies. NAMIC believes that such an interpretation would result in unnecessary administrative costs and delays in providing coverage to California employers, particularly those who are part of a large national employer providing workers compensation coverage under a large deductible multi-state program. NAMIC therefore suggests the following definition of "ancillary agreement": (red font denotes suggested additions to current language and blue font denotes deleted language)

"Ancillary agreement" means an agreement that is a supplementary separate writing or contract relating to but not attached to an insurance policy that adds to, subtracts from, or revises the obligations of either the insured or the insurer solely with respect to the terms of an insurance policy, including but not limited to coverage dispute resolution agreements, policy premium amounts or rates, expense or tax reimbursement or allocation, deductible amounts, policy duration or cancellation, or claims administration. Ancillary agreements do not include agreements that only set forth (1) the mechanics for making payment of monetary premiums, surcharges or assessments, (2)

options for funding deductible reimbursements amounts due from the insured under a policy, (3) terms and conditions of the insurer's collateral security requirements for the insured's payment obligations under a policy, including collateral amount and usage dispute resolution provisions, (4) payment due dates or (5) payment transmittal information.

NAMIC respectfully submits the following additional comments and suggested revisions for CDI consideration:

1) In Section 2250 (f), the definition of "ancillary agreement", there is a reference to "claims administration". This may be problematic, because it is undefined and could be interpreted to require pre-approval of TPA agreements.

The purported purpose of this proposed regulation is to ensure that there are no any ancillary agreements that could alter or revise the obligations of the insurer to the insured or revise the policy rights of the insured. A TPA agreement, which is typically used in high deductible policies, merely addresses administrative procedures in the claims handling by the TPA on behalf of the insurer and specifies what the TPA must contractually do for the insurer, including TPA reporting requirements to the insurer. The agreement doesn't alter or modify the rights of the insured or the duties owed by the insurer to the insured. Therefore, requiring preapproval of the TPA agreement, which could be a very detailed agreement covering the mechanics of claims handling processes and contractual duties of the TPA to the insurer isn't really relevant to the insurer-insured insuring agreement and is arguably beyond the regulatory scope of the proposed regulation. NAMIC is concerned that a TPA agreement pre-approval requirement could add unnecessary administrative costs and delays for insurers, without any corresponding practical benefit to insureds.

NAMIC suggests the following revision: Add the following exception to the 4 enumerated exceptions: 5) third party administrator agreements between TPAs and the insurer. Alternatively, NAMIC would recommend that the provision be defined so that "claims administration", which would include TPA agreement claims administration be removed from the language of the definition.

2) Section 2268 provides that an insurer may not use any ancillary agreement unless it is (a) attached to the policy and (b) filed and approved by the CDI.

NAMIC requests that the "attached to the policy" requirement be removed from this section of the proposed regulation. "Ancillary agreements" are frequently voluminous and quite technical in nature and they provide collateral information about administrative protocols and claims practices that are not meaningful to the insured; requiring attachment of such agreements to the policy is likely to create, rather than eliminate ambiguity and add administrative expense and delay to the insurance transaction, all to the detriment of the insured.

3) The definition of 'ancillary agreements" also needs to be revised to clarify, that collateral security obligations and other administrative processes that do not impact the terms of the insuring agreement are not part of the definition.

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,

Christian John Rataj, Esq.
NAMIC Senior Director – State Affairs, Western Region