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November 30, 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, Version 5 - NAMIC's written testimony

Dear Ms. Hein:

Please accept these comments on behalf of the members of the National Association of Mutual Insurance Companies (NAMIC) regarding 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.

NAMIC appreciates the CDI's deliberate and thoughtful approach to this rulemaking process and commends the CDI for addressing a number of important WC insurer concerns relating to the prior four drafts of the proposed regulation.

Although NAMIC's members understands the CDI's desire to ensure that "ancillary agreements" do not improperly alter or modify the terms of the insuring agreement between the WC insurer and the employer-policyholder, or adversely impact the statutory rights of the injured worker, we continue to have concerns with the general scope of the proposed regulation.

Conceptually, a regulation on "ancillary agreements" between the WC insurer and the employer-policyholder should only pertain to agreements between the insurer and the employer-policyholder, not agreements between the insurer and its professional vendors (TPAs). The CDI's definition of an "ancillary agreement" exceeds its regulatory authority and improperly interjects the CDI into third-party business relationships the insurer has with individuals and entities that are neither the policyholder nor an injured workers. So long as the WC insurer is complying with insurance law, the workers' compensation statute, and its contractual obligations to the employer-policyholder, the WC insurer should not be required to disclose proprietary information about its professional relationship with its contractual service providers.

NAMIC is also concerned that the CDI continues to require filing of agreements that have no impact on the underlying rate or policy coverage. For example, if the ancillary agreement gives the carrier the right to retain a TPA to administer claims outside of the deductible, then the agreement must be filed pursuant to the proposed regulation. How does this impact the rate or coverage provided to the policyholder? The business decision about how best to administer claims once the deductible is satisfied should be purely the insurer's decision. The proposed regulation interferes with standard business operations of WC insurers. Further, the CDI has failed to offer any evidence to

support that such regulatory oversight is necessary to resolve an alleged systemic problem in the WC insurance marketplace. Indeed NAMIC believes that agreements that have no bearing on the rate charged for coverage or the scope of the coverage are neither policy forms nor endorsements, and are therefore outside the scope of California Insurance Code § 11658. NAMIC respectfully requests that the CDI provide a legal analysis as to how California Insurance Code § 11658 authorizes the CDI to regulate insurer business relationships with its professional services providers that do not alter or modify insurance rates charged to the employer-policyholder or coverages set forth in the WC insuring agreement.

In addition to NAMIC's concerns about the unnecessarily broad scope of the proposed regulation, NAMIC also has the following specific concerns with provisions in Version 5 of the proposed regulation:

a) On Page 2, the definition of "ancillary agreement" (that must be filed) specifically includes dispute resolution agreements, as well as anything that relates to policy premium amounts or rates and claims administration. Is the CDI contemplating that WC insurers must file the notice of election, since it is incorporated by reference through the NOPA? What is the regulatory necessity and purpose for requiring such a filing?

b) On Page 2: exclusions from "ancillary agreements", NAMIC continues to be concerned by the CDI's refusal to exclude from the definition of "ancillary agreements" administrative practices that do not alter or modify the material terms and conditions of the underlying WC insuring agreement. For example:

1) The method of selecting a claims administrator for claims in excess of the deductible is a discretionary business decision of each WC insurer and should be exclusively within the realm of the insurer decision-making as part of the insurer's internal administrative practices. It is not part of a filed workers' compensation policy in any state, so why should it be considered an "ancillary agreement" that needs to be filed with the CDI?

2) The proposed regulation would arguably require a pledge & security agreement or trust agreement to be filed, because they do more than just strictly set out the amount of collateral.

In addition, to the previously stated recommendations in NAMIC's written comments to Versions 3 and 4 of the proposed regulation, we suggest the following revisions to the list of exclusions to the definition of an "ancillary agreement":

A. A trust agreement, security agreement or collateral agreement that addresses the amount of collateral or security required for amounts within the deductible, the treatment, form and use of such collateral and/or security, resolution of disputes therefore, and other aspects relating to the collateral or security.

B. A notice of election entered into pursuant to a rating plan filed with the CDI.

c) On Page 6, the proposed regulation states that the rating organization may submit an "ancillary agreement" to the Insurance Commissioner for approval for use by all members of the rating organization. NAMIC is concerned that this provision would infringe upon the intellectual property of the WC insurer and adversely impact market competition. An insurer's "ancillary agreement" should be confidential and proprietary as a trade secret, since an insurer invests a significant amount of business resources into the analysis and creation of these internal operational business practices and contractual relationships with professional vendors.

d) On Page 13, the provision relating to "limiting endorsements" is confusing and needs to be clarified.

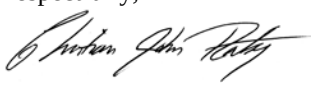
e) NAMIC's members respectfully request clarification as to what the following exclusions from the definition of "ancillary agreements" specifically means. The provision states, "(F) the method of selecting a claims administrator, provided that such claims administrator may only administer claims that do not exceed the deductible." Does this mean that a TPA can't be hired to administer claims above the deductible? If so, what is the regulatory rationale for such a limitation? If the language is really intended to target claims handling by self-insureds, it erroneously conflates the concepts of deductibles and self-insured retention layers (SIRs).

f) NAMIC also has concerns as to the different types of limiting endorsements that are described in the proposed regulation. There is nothing that clearly describes the "designated workplace" exclusion. This lack of clarity is likely to lead to confusion for insurers, employer-policyholders and injured workers.

Since the proposed regulation will create new administrative costs and burdens for WC insurers, NAMIC recommends that the proposed regulation should not be applied to WC insurers who are eligible for a filed and approved large risk rating plan or an insured that meets certain premium or payroll thresholds. For the sake of national uniformity, NAMIC suggests using the threshold exemption level for commercial risk set forth in Dodd-Frank.

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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