February 17, 2017

Department of Business and Industry
Division of Insurance
1818 East College Pkwy., Suite 103
Carson City, Nevada 89706

RE: Bulletin 17-001, Supplementary Rate Information - NAMIC's, AIA's, and PCI's written comments

Dear Commissioner Barbara Richardson:

Thank you for affording the National Association of Mutual Insurance Companies (NAMIC), the American Insurance Association (AIA) and the Property Casualty Insurers Association of America (PCI), whose member write the vast majority of automobile, homeowners', commercial and workers' compensation insurance in the State of Nevada, an opportunity to submit written comments on the above captioned bulletin.

The trades respectfully request that the Division of Insurance (DOI) withdraw this bulletin and schedule a stakeholder workshop to discuss this regulatory issue. In support of this reasonable request, the trades submit the following comments and concerns:

1) The Administrative Procedures Act (APA) requires that the adoption of or a change to an existing regulation requires a formal rulemaking, as opposed to the issuance of a bulletin. The trades believe that the subject bulletin fundamentally alters insurance regulations, insurer rights to confidentiality of proprietary information and trade secrets, and redefines well-established underwriting practices/tools as purported rating practices and tools, without affording insurers administrative due process of law.

To start with, the bulletin refers to Nevada as having a "prior approval of rates" regulatory regime, but that changed in 2013, when a "file and use" regulatory system was enacted by the Nevada State Legislature. The trades are concerned that the bulletin misstates this important fact, something even acknowledged in the current Insurance Information Institute (III) nationwide data on rate regulations. (Please see NRS 686B.070, and NRS 686B.110).

The bulletin also makes conclusory statements of law and regulatory determinations without any supporting citations to statutory authority or case law precedents. Further, the bulletin sets forth regulatory prohibitions that are inconsistent with industry standards, actuarial principles, and established regulatory practices adopted in states throughout the country. In fact, the bulletin would make Nevada a regulatory outlier in the nation.

The bulletin states, that "[s]upplementary rate information," as defined in NRS 686B.020(4) includes any "rating rule" or "rule of underwriting *relating to rates*." [Emphasis added]. The DOI then goes on to makes a conclusory legal interpretation that any underwriting rule or model used in underwriting that "*affects the premium*" that any insured would pay is a "rule of underwriting relating to rates." The DOI further exercises unauthorized judicial interpretation of state law by concluding that certain underwriting models are to be legally considered rating models subject to the regulatory rating requirements.

The trades are concerned that the DOI's expansive and unfounded definition of "supplementary rate information" could arguably lead to the DOI defining *all* underwriting models and rules as being rating rules. The trades believe that the DOI is in want of legislative authority to fundamentally alter the language of the statute from "relating to rates" to "affecting the premium". Such a determination should be left to the bastion of the Nevada State Legislature, since they drafted and enacted the statutory language, and any legal interpretation of what is meant by "relating to rates" should be left to the courts for legal interpretation of the statute.

2) The trades believe that the DOI has attempted to change the law on rating and underwriting in a way and to a degree that exceeds it regulatory authority. The bulletin does not cite any broad regulatory authority of the DOI to radically change or prohibit long-standing underwriting practices. The changes to state law articulated in the bulletin require legislative enactment.

Specifically, the trades have found no specific legislative authority that allows the DOI to specifically require insurers to file Nevada only data to justify the credibility of their internal indications or actuarial soundness of their rate filings. Nevada law also does not limit eligibility criteria to Nevada only data. State specific mathematical data is typically a limited data set and as such lacks the comprehensiveness of countrywide data. Since Nevada statutes are silent on this point, insurers should be able to exercise business judgment and use countrywide data for eligibility and not include such underwriting guidelines in rate filings with the DOI.

Additionally, the bulletin sets forth new regulatory requirements for insurers, who have affiliate companies. The bulletin asserts the conclusory finding that "[b]ecause company placement directly determines the insured's premium, such underwriting models are also necessarily considered to be rating models." However, there is the evidence to support this bold overgeneralization. Insurers place policyholders in affiliate companies for a number of different business and underwriting reasons.

Further, the bulletin states, that "[a]ny model that utilizes a mathematical algorithm to calculate a score or index for eligibility purposes is also considered a rating model since the decision to reject a risk based on a score or index *is considered to be a more extreme variant of a decision to surcharge that risk* based on the score or index." [Emphasis added]. Once again, what is the actuarial justification for such a profoundly restrictive regulatory position? We are also unsure what is even meant by the phrase "*is considered to be a more extreme variant of a decision to surcharge that risk"?* An insurer's business decision as to whether or not to even engage in the risk of loss transfer/sharing with the applicant is clearly an underwriting activity not a rating

activity, and “eligibility” guidelines are logically underwriting in nature, not rating related. This entire provision and the enumerated DOI examples perfectly illustrate the trades’ reasonable concern that the underlying ideological supposition of the DOI’s bulletin will lead to *every* underwriting rule or practice being interpreted by the DOI as a rating rule or activity. In effect, the DOI is regulating that there is no such thing as an insurer underwriting rule. No state in the country has adopted such an extreme interpretation of underwriting rules. The trades believe that the DOI should demonstrate why their definition and interpretation of underwriting rules is methodologically correct and why every other regulator in the nation is off-base.

The trades are also concerned by the DOI’s attempt to prohibit the use of a wildfire risk of loss underwriting tool that has nothing to do with rating. The DOI specifically stated that, “rejecting risks solely based on certain location based indices, such as the FireLine model developed by the Insurance Services Office (“ISO”), would constitute a prohibited form of redlining and would thus be unfairly discriminatory.”

According to ISO, “FireLine is a predictive model that measures the propensity for wildfire risk at a specific location based on quantitative information that has been actuarially justified.”

In regard to the DOI’s position on the use of location based risk of loss indices, including the use of Fireline, there is no legitimate basis for concluding that the use of this underwriting tool is a form of prohibited “redlining” and an unfairly discriminatory practice. Once again, the DOI is crossing over into the legislative arena (there is no Nevada state law defining “redlining”) and the judicial realm of interpretation of the law.

Federal law on ‘redlining” has nothing to do with location-based risk of loss indices. 42 U.S.C. § 3604 specifies, in part, that it is unlawful “to refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person *because of race, color, religion, sex, familial status, or national origin.*” [Emphasis added].

The trades are concerned that the DOI is attempting to expand the definition of “redlining” to prohibit reasonable and appropriate insurance risk of loss variables that have *nothing to do with* invidious discrimination based upon an individual’s personal characteristics.

3) The subject bulletin also contains other legal uncertainties and ambiguities, inconsistent use of terms, and misstatements of law.

The bulletin specifically refers to “mathematical models”, which is not defined in the bulletin, the insurance code or in state insurance case law. Moreover, the bulletin refers to “mathematical models” in some places, then switches terminology to "models", "predictive models", "complex predictive models", "underwriting models", "rating models", and "any model that utilizes a mathematical algorithm to calculate a score or index”. This ambiguity and inconsistency in use of key terminology is not only problematic, but it further supports the trades’ concern that the DOI is using a bulletin as a regulatory vehicle to change current state law.

The trades are also concerned that the DOI has decided to create a definition of “tiering” not currently found in the insurance code or state law.

4) Bulletin 17-001requires insurers to have to disclose to the public their entire underwriting manuals, which contain proprietary information and trades secrets. The trades believe that this disclosure is unnecessary, unwarranted, and detrimental to the best interest of insurance consumers, who benefit from insurers being able to compete with each other as to price, underwriting practices, and claims adjusting processes.

The DOI has provided no rational as to why they need a complete copy of an insurer's entire rating manual to evaluate whether an insurer's rates are excessive, inadequate or unfairly discriminatory? Moreover, the DOI has failed to address how an insurer's reasonable expectation that their valuable underwriting trade secrets and proprietary information will be safeguarded as confidential information. Insurers invest significant staffing and financial resources into developing internal underwriting practices they use to compete in the marketplace, and develop/offer new insurance products to consumers. The subject bulletin is anti-market competition and detrimental to the best interest of insurance consumers.

For the aforementioned reasons, the trades request that the bulletin be formally withdrawn.

Thank you for your time and consideration. Please feel free to contact us, if you have any questions pertaining to our written comments.

Respectfully,

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