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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

October 28, 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 4 - 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 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 injured workers. Although the 4th revised draft of the regulation appropriately addresses a number of important insurance industry and employer concerns, NAMIC is still concerned that the proposed regulation will create unnecessary administrative burdens for insurers and employer-policyholders, and fails to appropriately take into consideration the practical realities of the workers' compensation insurance marketplace in the state of California, particularly the sophisticated market wherein ancillary agreements are utilized. Unnecessary and overly-burdensome regulation, such as that created here by an unnecessarily broad definition of what constitutes an "ancillary agreement," provides no meaningful benefit to insurance consumers or injured workers. On the contrary, it hurts employers and their employees by unnecessarily restricting the variety and affordability of workers' compensation insurance products available in the market to policyholders and the options available to pay for them.

NAMIC previously tendered to the CDI a number of comments and concerns pertaining to the definition of "ancillary agreements" and provided specific suggested revisions to the list of agreements, forms, and documents expressly excluded from the definition of "ancillary agreements". To date, NAMIC has not received a detailed response from the CDI as to why NAMIC's proposed recommendation to broaden the regulatory exclusion to apply to the *entire* TPA agreement and/or service agreement is unacceptable to the CDI. TPA agreements and/or service agreements are merely a statement of the contractual relationship between the TPA and the WC insurer, and they do not alter or modify the contractual relationship between the WC insurer and the employer-policyholder nor impact the statutory rights of injured workers. NAMIC respectfully requests an explanation as to why its suggested revisions are being rejected by the CDI. NAMIC also requests some clarification as to what harm or harms the CDI

is attempting to address through adoption of this rule under such a sweeping definition of the term "ancillary agreement."

Unnecessary disclosure of detailed administrative and procedural aspects of the complex relationship between the TPA and the WC insurer is far more likely to confuse than educate the employer-policyholder and injured worker. So what is the public policy rationale for requiring disclosure of the entire TPA agreement?

NAMIC also previously recommended the following revisions to the definition of an "ancillary agreement" so as to clarify the scope of the proposed definition of "ancillary agreements" and so as to remove ambiguity that could create unnecessary legal disputes, administrative costs and burdens for WC insurers, and claims processing delays for employer-policyholders and their injured workers: (tracked edits have been removed for easier review of NAMIC's proposed definition of "ancillary agreements")

"Ancillary agreement" means an agreement that is a supplementary writing, excluding standard insurer communications and correspondences, or contract relating to a policy or endorsement form that adds to, subtracts from, or revises the obligations of either the insured or the insurer regarding any terms of an insurance policy, including, but not limited to policy premium amounts or rates, the amount of expense or tax that is due, deductible amounts, policy duration, cancellation provisions or the amount or type of claims payable under the policy. "Ancillary agreements" do not include agreements that only set forth (1) the method for making payments (2) the method for funding deductible amounts or other policy-related charges due under a policy, (3) the type, calculation, collection, use, amounts and related provisions concerning collateral or security within the deductible, (4) the payment due dates, (5) the payment transmittal information, (6) third-party administrator (TPA) agreements and/or claims services agreements, (7) the insurer's method of selecting a claims administrator for claims under the Policies or the name of the insurer's selected claims administrator.

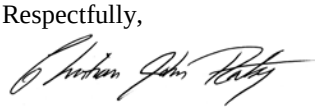
Please provide a response as to why *standard insurer communications and correspondences* should not be excluded from the definition of "ancillary agreements" and how it benefits employer-policyholders and injured workers for WC insurers to be burdened with all of the additional administrative costs that will result from the CDI treating standard insurer communications and correspondences as "ancillary agreements."

Further, NAMIC continues to be concerned that the proposed regulation arguably requires disclosure of information that has no practical value to the employer-policyholder or injured worker, such as: 1) *the insurer's method of selecting a claims administrator for claims under the Policies* (proposed language only applies the "insurer's method of selection" exclusion to the deductible) *or the name of the insurer's selected claims administrator;* and 2) *the type, calculation, collection, use, amounts* (only the "collateral or security amount" is expressly excluded in the proposed regulation) *and related provisions concerning collateral or security within the deductible.*

Since the real and practical purpose of the regulation pertaining to "ancillary agreements" is to make sure that the employer-policyholder is not blind-sided by modifications or alterations made by the WC insurer to the material terms and conditions of the WC insuring agreement and the contractual rights and responsibilities of the parties, why shouldn't the regulation expressly exclude "writings and contracts" that merely pertain to the claims process and do not materially alter the WC insuring agreement and the contractual rights of the parties?

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