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May 4, 2016

Washington State Office of Insurance Commissioner  
Commissioner Mike Kreidler  
PO Box 40255  
Olympia, WA 98504-0255

*sent via email to:*  
*rulescoordinator@oic.wa.gov*

**RE: Draft Regulatory Proposal on CBIS (R2015-15) - NAMIC's written comments**

Dear Commissioner Kreidler:

The National Association of Mutual Insurance Companies (NAMIC) respectfully requests that the Office of the Insurance Commissioner reconsider its regulatory proposal in regard to *WAC 284-24-140, Clarifying data use for setting P&C premiums (R2015-15)*, because the proposed language will needlessly increase administrative costs for insurers, result in insurance renewal delays for policyholders, and likely have a detrimental impact upon insurance costs for consumers.

NAMIC is the largest property/casualty insurance trade association in the country, with more than 1,400 member companies. NAMIC supports regional and local mutual insurance companies on main streets across America and many of the country's largest national insurers. NAMIC members represent 40 percent of the total property/casualty insurance market, serve more than 170 million policyholders, and write nearly \$225 billion in annual premiums. NAMIC has 138 members who write property/casualty in the State of Washington, which represents 48% of the insurance marketplace.

NAMIC appreciates and shares the OIC's desire to ensure that insurance rates are commensurate with an insurance consumer's risk of loss exposure. However, from a public policy and pro-consumer regulatory standpoint, the proposed amendments are unnecessary and likely to do more harm than good for insurance consumers.

Since NAMIC has not been able to secure feedback from all of its significant market share members in time for the May 4<sup>th</sup> stakeholder meeting, we respectfully submit the following preliminary comments and concerns for discussion purposes only and respectfully reserve the right to modify and/or supplement this written submission.

**1) NAMIC is concerned that the OIC's proposed amendments are a "solution in search of a problem" –** Specifically, does the OIC have any data to support the contention that the proposed amendments are necessary to address an actual systemic renewal of rates problem in the marketplace and/or that the proposed mandate would be beneficial to the majority of policyholders? As the often cited adage goes, "if it isn't broken don't try to fix it."

**2) NAMIC has the following concerns with Paragraphs #2 -**

The proposed provision states (Emphasis added):

- (2) If an insurer uses insurance scores to calculate renewal premiums, the insurer must:
  - (a) Update each policyholder's insurance score no less often than once every three years; and
  - (b) Calculate premiums for each policy using the insurer's most recently determined insurance score for the policy.

NAMIC is concerned that this provision imposes a regulatory rating mandate that is neither necessary nor beneficial for all insurance consumers. First of all, Washington State has a robust and competitive insurance marketplace, where consumers have a wealth of insurance options, products, and price-point to choose from to address their insurance needs. If the policyholder is satisfied with the insurance renewal rate offered by their current insurer, where is the problem that needs to be fixed? If the OIC has a legitimate reason to believe that a specific company is using “excessive, inadequate, or unfairly discriminatory” rates, the OIC already has regulatory authority and regulatory mechanisms in place to investigate, evaluate, and remedy any such insurer violation of the insurance code. Why use a regulatory sledge hammer, when you already have a regulatory scalpel that has been effectively used to promote consumer-friendly rates?

Additionally, if a policyholder is not satisfied with their insurer’s renewal rate offer, the consumer is free to shop for another insurer to provide coverage. There are a wealth of insurance competitors for the consumer to choose from, and the insurance price and coverage comparison process is reasonably quick and easy to accomplish in today’s world of extensive internet services. There really is no need for the OIC to impose a new administrative rating cost and burden on insurers, which could adversely impact insurance rates and insurer services provided to consumers.

NAMIC is also concerned that the proposed amendment applies to “insurance scores” not “credit information”. The National Conference of Insurance Legislators’ (NCOIL) “Model Act Regarding Use of Credit Information in Personal Insurance” uses the following definitions:

*Credit Information—Any credit-related information derived from a credit report, found on a credit report itself, or provided on an application for personal insurance. Information that is not credit-related shall not be considered "credit information," regardless of whether it is contained in a credit report or in an application, or is used to calculate an insurance score.*

*Insurance Score—A number or rating that is derived from an algorithm, computer application, model, or other process that is based in whole or in part on credit information for the purposes of predicting the future insurance loss exposure of an individual applicant or insured.*

NAMIC is concerned that the OIC’s proposed amendment, which references the “insurance score” would require insurers to have to update their “algorithms, computer applications, models or rating processes” for each policyholder renewal and would require insurers to have to update a lot of other information that goes far beyond “credit information”. Requiring “insurance scoring” to be updated will impose significant and unnecessary administrative costs and burdens for insurers. Moreover, the very purpose and scope of the credit information/credit history law is about the use of “credit information” in the rating process, so it makes sense to focus the proposed amendments upon using updated “credit information” not updated “insurance scores”.

### **3) NAMIC is also concerned about Paragraph #3, which is overly-broad in scope -**

The proposed provision states (Emphasis added):

- (3) When an insurer updates an insurance score, it must update all information necessary to determine the insurance score, rather than partially update the score.

As previously discussed, NAMIC believes that the letter and spirit of the CBIS law and insurance code is properly addressed by substituting “insurance score” with “credit information or credit history”. Additionally, NAMIC is concerned that the phrase “all information necessary” is rife with potential for expensive regulatory and legal conflict. The intent of the provision could readily be addressed in a way that is practical, effective, and less prone to disagreement.

### **4) NAMIC is concerned that the proposed amendment in Paragraph #5 is unnecessarily inflammatory and inconsistent with the reasonable meaning of the phrase “unfairly discriminatory” -**

The proposed provision states (Emphasis added):

- (5) In the rate filing review process, rates and rating rules that do not satisfy the requirements of this section will be considered to be unfairly discriminatory and in violation of RCW 48.19.020.

NAMIC is concerned about the *conclusory presumption* that the mere failure of an insurer to update a policyholder's "insurance score" makes the renewal rate unfairly discriminatory and subjects the insurer to the regulatory implications of violating RCW 438.19.020. First, NAMIC believes that such a conclusory presumption is entirely unfounded. An insurer may fail to update a policyholder's insurance score at the policy renewal period and the insurance rate provided to the policyholder may still be completely accurate, consistent with the policyholder's risk of loss exposure, and in compliance with the insurance code. Therefore, the term "will" should be changed to "may" so that the OIC retains the opportunity to review the situation on a case by case basis, and the insurer retains its due process right to reasonably contest that their mere failure to update a policyholder's insurance score (or as we believe it should be – "credit information") has not created an "unfairly discriminatory" rate.

**5) NAMIC is concerned that the proposed amendments, in their entirety, could actually be harmful to some insurance consumers -**

Insurers, like all businesses, vigorously compete to increase their market share. As part of this basic and essential business endeavor, insurers, like all other businesses, are committed to maintaining their current client base, which they worked hard to attract in the first place. Consequently, insurers engage in lawful business practices designed to address their policyholder's needs and provide them with appropriate rates and services that maintain the consumer's satisfaction. The proposed amendments will make it more difficult for insurers to accomplish this consumer-friendly objective to the detriment of some policyholders. Specifically, the proposed amendments would require the insurer to periodically update the insurance score. What if this update causes the policyholder's insurance rate to increase as a result of a recent adverse change in the policyholder's credit information or all the other information that goes into the insurance score? How is this beneficial to that consumer? The current insurance code leaves this issue up to the discretion of the insurer and its policyholder for them to address in a manner that complies with the insurance code, standard actuarial principles, and the needs of the policyholder.

Once the insurer is forced to update the insurance score and has evidence in hand to support increasing the insurance rate for the policyholder at renewal, the insurer has a duty to all of its policyholders to engage in sound actuarial standards and adjust the policyholder's rate so that it is commensurate with the new risk of loss exposure.

Since policyholders, who are well-informed about the recent positive and negative changes to their credit information (state and federal law requires credit rating bureaus to provide one new credit report annually to consumers), already have the right to ask their insurer at renewal time to consider the new positive changes in their credit information in the rating process (something an insurer is encouraged to do if they want to retain the policyholder's future business), there is no actual need for the proposed amendments.

In effect, the proposed amendments will harm not improve the current consumer-friendly rating on renewals process, by imposing new administrative costs and burdens on insurers, creating process delays in policy renewals, and by limiting the reasonable and lawful discretion insurers have in the current renewal rating process that they use to help address the insurance needs of their policyholders. Furthermore, Washington's adverse action notice requirements do nothing to assist the consumer in making insurance decisions, but cause undue angst and confusion for consumers in cases where a consumer has received an excellent rate but not the "best" rate. The proposed regulation would likely lead to insurers having to send out more of these controversial and potentially harmful adverse action notices.

**6) NAMIC respectfully requests that the effective date of the proposed regulation be extended to January 1, 2018 -**

Since the OIC is proposing a significant change to the current regulation on the use of credit histories and credit information, NAMIC believes that it is reasonable and appropriate to provide insurers with necessary time to properly adopt internal processes required to comply with the proposed regulation.

For the aforementioned reasons, NAMIC respectfully requests that the OIC refrain from moving forward with the proposed regulatory proposal and instead work with insurers to draft a bulletin that promotes cost-effective, pro-consumer renewal rating activities.

Thank you for your time and consideration. Please feel free to contact me at 303.907.0587 or at [crataj@namic.org](mailto:crataj@namic.org), if you would like to discuss NAMIC's written testimony.

Respectfully,

A handwritten signature in black ink, appearing to read "Christian John Rataj". The signature is fluid and cursive, with a large initial "C" and "R".

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