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Department of Consumer and Business Services
Division of Financial Regulation
350 Winter Street NE
P.O. Box 14480
Salem, OR 97309-0405

Sent via email to:
ins.rules@oregon.gov

RE: Proposed bulletin 2016-01: Transgender Issues in the Transaction and Regulation of Insurance in Oregon - NAMIC's written comments

Dear Commissioner Laura N. Cali:

The National Association of Mutual Insurance Companies (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 153 members who write property/casualty in the State of Oregon, which represents 46% of the insurance marketplace.

NAMIC appreciates the Department of Consumer and Business Services, Division of Financial Regulation's desire to provide clarity as to transgender issues in the regulation of insurance. Consequently, NAMIC submits the following comments for OID consideration:

1) NAMIC respectfully requests clarification as to whether the proposed bulletin applies to all lines of insurance.

The address of the bulletin reads "TO: All Entities Transacting Insurance in Oregon", which reasonably suggests that the bulletin would apply to P & C insurers. However, then the "Purpose Statement" seems inconclusive and is somewhat confusing. Specifically, it states, "The Department of Consumer and Business Services is committed to ensuring that Oregonians do not face unfair discrimination in accessing *any kind of insurance*. DCBS is committed to ensuring that all Oregonians have access to *medically necessary health care benefits*, including those based on transsexualism, gender identity disorder, and gender dysphoria". [Emphasis added]. The general reference to "any kind of insurance" followed by the specific reference to "medically necessary health care benefits" creates ambiguity as to the scope of the draft bulletin.

Further, the detailed regulatory content and context of the draft bulletin seems focused upon health insurance, but nowhere in the bulletin does it say that it only applies to health insurance. NAMIC respectfully requests that the DCBS clarify this point.

2) NAMIC respectfully recommends that the DCBS revise its statement of unfair discrimination, so that P & C insurers may be able to provide insurance consumers with actuarially sound rates that appropriately reflect the transgender needs of the policyholder or applicant.

The draft bulletin states, "DCBS *would necessarily conclude* that unfair discrimination exists if an insurer does any of the following:

(2) Demands or requires a payment or premium that is based in whole or in part on an insured's or prospective insured's actual or perceived gender identity; [Emphasis added].

The potential problem with this draft language is that it could expose an insurer to a claim of unfair discrimination for reasonably attempting to comply with the transgender needs and requests of the policyholder or applicant. Specifically, if an applicant or policyholder requests that the insurer consider them for rating purposes as being a member of a particular gender, and this consumer request results in the insurer having to charge the person with a non-discriminatory, actuarially sound higher insurance rate, one could argue that the insurer is in violation of the draft bulletin provision that prohibits “require[ing] payment of premium that is based in whole or in part on an insured’s or prospective insured’s actual or perceived identity.”

NAMIC believes that this scenario needs to be addressed in the bulletin so that an insurer is not exposed to an adverse regulatory enforcement action in the event that their lawfully filed rating program results in a higher premium for the same policy as a result of the insurer accommodating the requests of the consumer to be placed into a higher premium rating tier that is based upon actuarial loss experience and that has been filed with and approved by the Department.

3) NAMIC believes that the draft bulletin section titled “[d]irectors’ expectations for insurers and other regulated entities” needs some clarification.

Specifically, insurers need clarity as to how the DCBS plans to interpret the draft bulletin statement. “DCBS expects insurers’ *forms to comply* with the *policy regarding* coverage of transgender individuals and gender affirming treatment as it is set forth in this bulletin.” [Emphasis added].

NAMIC assumes that the DCBS is not requiring P & C insurers to specifically revise all of their forms to expressly reference or address the provisions in this draft bulletin. Such a requirement would create unnecessary administrative costs and burdens for insurers, without providing any meaningful benefits to insurance consumers.

The draft bulletin states, “DCBS expects *all forms* to comply and in some instances, may require endorsement or revision of an existing form”, and the draft bulletin then provides a health insurance related example of prohibited content in a policy form. If the DCBS plans to apply this provision to P & C insurers, NAMIC requests that the division provide clarification on this point and an example that is germane to the P & C insurance product line.

Additionally, the bulletin states, “[i]nsurers should provide internal training for staff, including written memoranda clarifying the coverage of gender affirming treatment and coverage of gender dysphoria generally.” Although most of this provision appears to apply to only health insurance, NAMIC respectfully requests that the DCBS clarify what it meant by “insurers should provide internal training for staff”. Further, NAMIC believes that it should be made clear that this suggested internal training provision is not being turned into a de-facto market conduct examination requirement.

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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