

Cancellation and Nonrenewal Moratoriums / Premium Payment Arrangements

Over the last week, several states have imposed moratoriums on policy cancellations and nonrenewals or have called on insurers to provide temporary accommodations or leniency for those who might be challenged to make premium payments. The chart attached to this email highlights the state actions we are aware of, and we ask state associations to review this to ensure its accuracy and to share other bulletins of this nature with us. We will be updating this regularly and posting it on the IIABA website. And, on a related note, please let us know if there are other types of state actions that we should be monitoring in this way.

Application of Business Interruption Insurance and Similar Coverages

All of you are no doubt aware of the discussion about the nature of business interruption insurance and lack of coverage under such policies for losses related to COVID-19. Standard commercial policies do not provide coverage for such a pandemic, but there are some who question this fact or wish there was a way to require insurers to compensate businesses for events that were excluded. We know some officials in a small number of states are looking into this question and gathering information, but most are coming to realize that it would be inappropriate and troubling to compel insurers to compensate businesses in this manner. Forcing insurance companies to pay for losses that it did not agree to cover and did not charge for is inherently unfair and likely unconstitutional, and making insurers absorb these enormous unanticipated costs would have lasting adverse consequences for the national economy and threaten the viability of individual insurers. Here are some quick updates on this issue:

- No state has mandated that insurers compensate businesses for financial losses resulting from the COVID-19 crisis as part of a policyholder's business interruption insurance coverage, and we are unaware of any state action along these lines that is imminent.
- The most notable state action that has occurred is in New Jersey, where a [bill](#) (AB 3844) was introduced that would effectively revise existing policies and require that *"every policy of insurance insuring against loss or damage to property, which includes the loss of use and occupancy and business interruption ... be construed to include among the covered perils under that policy, coverage for business interruption due to global virus transmission or pandemic."* The proposal would apply to businesses with less than 100 full-time employees (i.e. those that work 25 or more hours in a normal week) and require insurers to indemnify policyholders up to the limits that exist under the policy. It would also establish a mechanism to apportion the costs of such payments among insurers writing business in the state. This proposal has released considerable press attention and been the subject of inaccurate reporting at time, but the proposal has not passed either chamber and is on hold (at least for now). Questions have been raised about the merits, constitutionality, and other aspects of the measure, and its fate is uncertain at this point.
- The Maryland Insurance Administration issued a thoughtful [bulletin](#) last week noting that business interruption insurance is unlikely to apply to COVID-19 losses and explaining the reasons why this is the case. The Connecticut Insurance Department has issued a similar [notice](#). If your state is considering the possibility of a similar statement, these may be models to consider.
- The [South Carolina](#) Department of Insurance has also addressed these issues on its [website](#), and their insurance director is the current President of the NAIC. Most notably, the site includes the following text: *"With the outbreak of the Coronavirus, some business owners may be wondering whether their insurance policies cover losses resulting from a business shut down or other losses related to the Coronavirus. Under the business income policy, there likely is no coverage as losses occurring as a result of a virus or bacteria are typically excluded ... Business owners with questions about their coverage should contact their agent/broker or insurer directly and consider whether it is in their own best interest to file a claim. Please note that the South Carolina Department of Insurance does not have the authority to require insurers to extend*

coverage under the policy where specifically excluded or to sell this type of coverage to consumers.”

- Many people have written about the legality and impact of trying to require insurers to pay for such losses, and two such pieces prepared by law firms can be found [here](#) and [here](#).

Mandatory Closures of Certain Businesses

A growing number of local and state governments have required the closure or limited operation of nonessential businesses. These closures are typically focused on dining, entertainment, and retail establishments and are not intended to hinder the ability of agents to serve clients, and, in every instance we are aware of, state officials have made clear or confirmed informally that insurance services are considered essential and that agencies are considered essential businesses. This is no surprise. The work that our members perform (e.g. providing and renewing insurance, claims processing, services necessary that ensure that clients meet their government obligations, other functions needed to perform these key tasks, etc.) is inherently essential. The economy relies on people having insurance (and essential businesses will need to shut down if they don't have it), and our members are the professionals that ensure coverage is in place and are on the front lines when it comes to claims. The economy is already struggling, and shuttering insurance agencies will only make things worse.

Many of these orders do not mention insurance agencies specifically and often refer to insurance generically or to “financial institutions” as essential. State officials have typically been willing to clarify and remove any doubt that agencies are essential under such a framework, and it is helpful that Treasury Secretary Mnuchin issued a memorandum (see attached) noting that workers who provide “insurance services” are critical and essential. Anyone making the case that insurance agency operations are essential might point out that (1) the work of agencies (as noted above) is essential to the functioning of our economy, (2) agencies provide insurance services and are considered to be financial institutions, (3) the Treasury Department and other states have come to this conclusion, and (4) declaring a business or service as essential does not mean every employee will be working from the workplace.

IIABA has been working with individual state associations on these issues, and we urge you to contact us if we can be of assistance. We are also happy to draft any letters or emails that might be used to make the case to state officials that our members should be considered essential businesses.

Licensing and Related Issues

Questions have also arisen about the application of licensing and continuing education requirements, and the good news is that the renewal and maintaining of licenses is largely an administrative function that can be completed online. Most current licensees should be able to renew their licenses online without any complication, and we have not yet received any reports of agents being unable to do so. State regulators are strongly urging agents with renewal dates in March and April (and even May) to renew their licenses online without delay.

While most states are hoping there is no need to provide special accommodations, a growing number of jurisdictions are providing extra time for agents to satisfy their licensing and continuing education obligations. Those that are doing so are pushing back renewal dates by a certain amount of time (e.g. 30 or 60 days), to a particular date certain, or until further notice, and some of these only apply to agents facing extenuating circumstances or require a licensee to request such treatment. In some cases, these grace periods may not be necessary and are only being offered because statewide orders from governors have provided accommodations of this nature for professional licensees in all industries.

Here are some other things to consider:

- Most license renewal transactions (and especially those for nonresident licenses) should be processed very quickly, and NIPR's help desk and call center are fully operational and available

to those that need assistance. If you have any members that encounter problems or require special assistance, please feel free to have them contact me.

- Most states (40+) allow a producer to renew a license at least 90 days in advance of its scheduled expiration, and this means most agents with licenses scheduled to expire in March, April, and even May are able to extend them now. States with shorter windows – such as the District of Columbia, Hawaii, Massachusetts, Minnesota, Pennsylvania, Tennessee, and Wisconsin – still allow agents to renew licenses 45 or 60 days prior to expiration. Again, regulators are encouraging agents to renew now.
- In order to renew a home state license, agents normally need to have satisfied their continuing education requirement. Nearly every state already allows continuing education classes to be completed online, and we are seeing states that do not or that impose other limitations begin to waive those restrictions. Some jurisdictions are also temporarily waiving CE requirements and allowing licensees to “make up” their missed hours at a later time.
- There will be greater disruption for those who are new to the insurance business and are seeking their initial licenses, and COVID-19 will make it challenging (and perhaps impossible) for first-time applicants to take their exams and satisfy any pre-licensing education and fingerprinting requirements that exist. Regulators remain focused at the moment on ensuring that existing agents can maintain their licenses, but some states are waiving testing and fingerprinting requirements and allowing new applicants to obtain temporary licenses.

Food Delivery Drivers

Many restaurants that have closed to the public are attempting to stay afloat by offering drive-up and delivery service, and some employees that typically do not deliver food will temporarily be doing so while using their personal vehicles. Some have expressed concern, however, that personal automobile policies might not provide coverage for vehicles used for food delivery, and states are beginning to respond with solutions that do not require drivers to obtain special insurance coverage. Wisconsin addressed this issue with a [bulletin](#) on March 23 ordering insurers to “not deny a claim under a personal auto policy solely because the insured was engaged in delivering food on behalf of a restaurant impacted by the restaurant closure.” The order also requires “all insurers who provide commercial general liability coverage to a restaurant to notify their restaurant insureds that hired and non-owned auto coverage is available if requested,” and “[i]f the insured restaurant requests hired and non-owned auto coverage, the insurer shall, either through a rider or stand-alone policy, provide this coverage to any insured restaurant.” Colorado is developing an emergency regulation that is similar in nature, and a draft of that proposal can be found [here](#).

Premium Relief and Premium Audits

For many businesses, the outbreak will produce downturns in payroll, sales revenue, and other measures used to determine premium, and these changes in exposure will be significant and occur quickly in many cases. Some states have started to issue bulletins that address these issues and call on insurers to adjust premiums and make accommodations. West Virginia issued a [bulletin](#) last week that addressed this issue in the WC context. In relevant part, it states: *Workers’ compensation insurers shall consider the impact on rates of any idling of workers by employer insureds, and insurers shall, if requested by the employer insured, conduct an audit in order to determine whether the insured is entitled to any adjustment in premium due to the idling, furloughing, laying off or other dismissal of workers.* Alaska issued a [bulletin](#) that addressed this issue more broadly, and Vermont also addressed the calculation of commercial lines premiums in a [notice](#) last week.