Council of Insurance Agents & Brokers Policy Position on State Regulatory and Legislative Responses to the Impacts of the COVID-19 Pandemic
April 3, 2020

As the COVID-19 pandemic deepens across the country, and the personal and economic toll continues to expand, insurance brokers continue to serve our clients in an uncertain world, providing essential guidance as we navigate through the unprecedented challenges facing us.

Insurance brokers play a unique role in assisting individuals and business to plan for uncertainty and risk, and providing critical services when losses occur. Although the current crisis poses unique challenges, the broker community continues to work to protect our clients and uphold our responsibility to facilitate and provide critical services to support them and the nation's economy.

Our ability to serve our clients and fulfill our obligations is affected significantly by the legal and regulatory framework in which we operate. Insurance is regulated predominantly by the States, and, since the onset of the crisis, State insurance regulators have issued hundreds of bulletins and other guidance instructing brokers and other industry players with respect to their operations in connection with the pandemic. The issues addressed include cost-sharing for COVID-19 expenses under health insurance policies; mandating telehealth coverage; addressing out-of-network and balance billing disparities; providing flexibility in regulatory compliance; mandating premium forbearance; and imposing other regulatory requirements.

Much of the State guidance is helpful. We welcome the regulators' desire to protect insureds, and their attempt to provide clarity in a time of uncertainty. Having said that, there are a number of areas where we believe action by State regulators and/or the insurance industry is required to (i) clarify the intent of current notices; (ii) anticipate potential compliance and coverage issues that will likely arise as the crisis continues; and (iii) provide additional regulatory flexibility:

1. Premium Payment Forbearance: To date, nearly forty (40) states have issued notices recommending or mandating that insurers refrain from cancelling policies due to non-payment of premium for a period of time, usually 60 days (the "grace period"). Although Council members support the flexibility this provides policyholders, we have serious concerns about the impact of non-payment of premium in connection with policies subject to agency bill arrangements and premium finance arrangements. In light of those concerns, and in an effort to clarify that the intent of the premium forbearance notices is not to impose credit risk on brokers, we will work with the State insurance regulators to urge that they clarify their premium payment forbearance notices as follows:

    Where states have mandated premium payment grace periods or insurers have voluntarily implemented such grace periods, insurers should assume the credit *risk during such grace period, whether they are collecting the premium directly or indirectly through premium finance arrangements or agency bill arrangements. We will seek regulator and carrier commitments not to hold agents and brokers and premium finance companies responsible for clients that ask for relief during the grace period if such clients do not ultimately satisfy their payment commitments after the forbearance period ends.*

2. Vacancy Clauses: Council members place upwards of 90% of the commercial property coverage in the United States. Most property insurance policies contain provisions to exclude or limit coverage once a building becomes vacant or unoccupied. Given the impact of the current crisis on businesses large and small – the alternative work arrangements that are already in place in most of the country, and the potential for increasing numbers of businesses to cease operations altogether – there is a strong likelihood that many properties could be deemed "vacant or unoccupied" in the near future, thus triggering exclusion or limiting language. In order to avoid the confusion that could arise from a last-minute patchwork approach by carriers and State insurance regulators to address the potential loss of coverage, The Council will work with the carrier community and the State insurance regulators in an effort to find a clear, uniform path forward that protects interests of policyholders as much as possible during this uncertain time.

3. Business Interruption Coverage: Legislation is pending in a number of states that would require carriers to cover business interruption losses, even where such losses are not covered under an insured's business interruption policy. The National Association of Insurance Commissioners (NAIC) has issued a statement noting that requiring payment of claims for un-covered risks "would create substantial solvency risks for the sector, significantly undermine the ability of insurers to pay other types of claims, and potentially exacerbate the negative financial and economic impacts the country is currently experiencing." The National Conference of Insurance Legislators (NCOIL), as well as a number of State insurance regulators, have issued similar statements. The Council shares the concerns of State regulators and policymakers, and opposes efforts to require insurers to pay for coverage that was never sold.

4. Other State Regulatory Issues: The social distancing policies and curtailed business operations put in place by all responsible businesses, including Council members, our clients and our business partners, affects all aspects of our business, including regulatory compliance matters. Because of these challenges, relaxing certain regulatory requirements will be beneficial to all parties. To that end, we will ask that State insurance regulators extend certain accommodations in the following areas:

    - Delivery of Policies, Notices and Tax or Stamping Payment — During the COVID-19 pandemic, insurers, agents, brokers and other industry participants should be permitted to utilize electronic delivery of notices and documentation to insureds whenever possible and utilize electronic payment methods for any taxes, stamping fees or other state payments.

- Wet Signature Requirements — Electronic signatures should be acceptable for all business during a grace period.

- Notarization Requirements — To the extent reasonable, notarization requirements should be suspended.

- Maintain the Integrity of the Contract — Regulators should acknowledge that accommodations for insureds is not intended to change the terms of the issued policy or be considered a forgiveness of any premium.

- Licensing Flexibility – Regulators should allow flexibility for producer license renewals in terms of both timing of renewals and any state-specific requirements for in-person appearances and fingerprinting.

- Supervision of Staff by Licensed Producer – Regulators should allow flexibility with respect to in-person supervision of unlicensed staff who are conducting certain administrative functions that require licensed producer oversight. We encourage the states to permit telephonic or other technology-enabled oversight given the need for social distancing and, in some jurisdictions, the legal impossibility for people to work in the same physical space.

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