Shelter-In-Place Orders Spur Regulator Calls for Policyholder Refunds

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As COVID-19 shelter-in-place orders keep businesses closed and drivers off the road, the risk of loss normally associated with driving or operating a business has decreased. As a result, personal lines auto insurers have begun to voluntarily return premium to policyholders by automatically discounting/refunding premiums, or distributing dividends.

On Wednesday, April 15th, Texas Insurance Commissioner Kent Sullivan issued a broad-sweeping bulletin to all property and casualty insurers (including those writing workers' compensation) their agents and representatives, and premium finance companies. Texas Department of Insurance (TDI) is asking insurers with commercial policyholders whose policy premiums may be calculated using auditable exposure such as payroll or sales, to work with them to more precisely assess the reduced exposure in an effort to reduce premiums.

TDI Bulletin No. B-0020-20 encourages insurers to look for appropriate adjustments that may reduce premiums; including conducting midterm premium audits and allowing policyholders to self-audit and report changes in exposure to determine any reduced risk. Even though an interim audit may be conducted to respond to 's bulletin, insurers should remember that such an audit does not satisfy a policy requirement to conduct a final audit.

Last Monday, in an effort to address instances where measures of policy risks have been substantially overstated because of the pandemic, California Insurance Commissioner Ricardo Lara mandated insurers to refund March and April premiums within 120 days after the bulletin. CDI Bulletin 2020-3 includes all insurers that write private passenger and commercial automobile, workers' compensation, commercial multiple peril, commercial liability, and medical malpractice insurance, among others.

Under the bulletin, refunds may include premium credits, reduction, return of premium, or other appropriate premium adjustment. California Department of Insurance (CDI) will not require prior approval for reclassifications of exposures or reductions of the exposure base to reflect current or anticipated exposure. The CDI bulletin also requires insurers to notify policyholders of their refund within 120 days after the bulletin and to report all actions taken to CDI within 60 days after the bulletin.

We believe Texas and California represent the beginning of regulatory actions addressing the changes in the marketplace resulting from the COVID-19 actions and quarantine. Insurers should be looking out for additional state regulator bulletins that encourage or mandate relief for policyholders. As insurers respond to the various bulletins, they should pay particular attention to what relief is possible under the policies and to providing premium relief and refunds consistently to all policyholders. Regulators may be more flexible in encouraging relief to policyholders, however as a general rule, if the policy doesn't provide for policyholder payments, credits, or refunds, or relief is made in a disparate manner, it may be considered unlawful discrimination or inducement.

For additional information on state regulator actions, read our Survey of State Insurance Department COVID-19 Regulatory Actions which is updated on Tuesdays and Fridays. Follow our blog to stay up to date on COVID-19 Regulatory Actions or contact us by phone or email.