



OFFICE OF
INSURANCE COMMISSIONER

July 2, 2019

Paul M. Veillon
Galileo Law PLLC
1218 3rd Ave, suite 1000
Seattle WA, 98101

RE: Request to amend WAC 284-30-390(4)

Dear Mr. Veillon,

The purpose of my correspondence is to respond to your petition dated May 5, 2019 regarding the amendment of WAC 284-30-390(4).

Your petition has outlined numerous statutory authorities the Commissioner has available to amend WAC 284-30-390(4); however, a relevant reference has been omitted within this framework; this is described in the "Background" section below.

Background

Within the authority of RCW 48.30.010, the Commissioner originally adopted the unfair claims settlement rules in 1978. Included within this regulation were provisions governing certain practices regarding auto repair claims under automobile insurance policies. The Commissioner's authority to adopt rules under RCW 48.30.010 were subsequently challenged in *Horan v Marquardt* and again in *Federated American Ins. V Marquardt*, when the original PIP regulation was adopted in the late 1980s. In both cases, the courts upheld the authority of the Commissioner to adopt rules under RCW 48.30.010. However, as part of the regulatory reform bill in 1997¹, the legislature amended RCW 48.30.010 to include:

- (3)(a) In defining other methods of competition and other acts and practices in the conduct of such business to be unfair or deceptive, and after reviewing all comments and documents received during the notice and comment rule-making period, the commissioner shall identify his or her reasons for defining the method of competition or other act or practice in the conduct of insurance to be unfair or deceptive and shall include a statement outlining these reasons as part of the adopted rule.
- (b) The commissioner shall include a detailed description of facts upon which he or she relied and of facts upon which he or she failed to rely, in defining the method of competition or other act or practice in the conduct of insurance to be unfair or deceptive, in the concise explanatory statement prepared under RCW 34.05.325(6).
- (c) Upon appeal the superior court shall review the findings of fact upon which the regulation is based de novo on the record.

¹ 1997 c 409 s 107

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While the authority remains for the Commissioner to adopt rules under RCW 48.30.010 to define unfair or deceptive trade practices, there is an additional requirement. The Commissioner must make a specific and detailed finding of the facts upon which he relied, or failed to rely on when defining the unfair trade practices. At this time, the Commissioner does not have sufficient facts to rely on to amend WAC 284-30-390(4) and remove subsections (a), (b), and (c) as it being the reason for consumers not being provided adequate insurance funds to repair their vehicles to a pre loss condition.

Conclusion

Based on the facts outlined above, the petition to amend WAC 284-30-390(4) is denied.

Despite the OIC not having adequate data to amend the above referenced WAC, the agency is certainly interested in matters adversely impacting Washingtonians. When the appropriate authority exists and relevant data is available to support the creation and modification of rules, the OIC is certainly willing to research issues falling within its purview of authority, and attempt to identify positive associated outcomes.

I truly thank you for your interest and action taken to protect the public. Please do not hesitate to contact me if I can be of further assistance.

Sincerest regards,



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