OFFICE of the INSURANCE COMMISSIONER WASHINGTON STATE

Big I newsletter article
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OIC legislative priorities for 2022
By Mike Kreidler, Washington state Insurance Commissioner

The Legislative season is upon us again and, like last year, the session will be at least temporarily online due to COVID.

One of our first priorities this session is to **align state and federal laws regarding surprise medical bills**. In December 2020, Congress enacted the No Surprises Act (NSA), which applies to health plans issued or renewed on or after Jan. 1, 2022. It overlaps with Washington's Balance Billing Protection Act (BBPA).

To address those overlaps, we are requesting updates to HB 1688 and SB 5618. The updates will allow Washington state law to align with federal law while preserving critical consumer protections.

Without this bill, the overlap between the BBPA and NSA would result in two laws applying to a single episode of care. For example, the BBPA would apply to a consumer's emergency care until they are stabilized, and then the NSA would apply to services the consumer receives once they are stabilized. Or the BBPA would apply to a set of "surgical and ancillary services" provided during a planned surgery, but the NSA would apply to additional services received by the consumer during the same procedure. This could result in unnecessary confusion for consumers, providers and insurers, as well as increased administrative costs for providers and insurers.

The prime sponsors of this legislation are Sen. Annette Cleveland and Rep. Eileen Cody.

Another priority is **protecting long-term care insurance consumers** whose insurer fails or becomes insolvent.

Our proposal, SB 5508, expands the Washington State Life and Disability Guaranty Association membership and provides equitable distributions of assessments. Long-term care insurance companies have impending insolvencies that threaten benefits due to policyholders in Washington. The OIC's proposal is a fair way to ensure that seniors and people living with disabilities who have purchased insurance and paid their premiums in good faith can rely on their benefits if their insurer fails or becomes insolvent.

The prime sponsor of this legislation is Sen. Marko Liias.

Our final proposal aims to protect consumers' data that's held by insurance companies. The proposal has been carefully crafted with the assistance of the National Association of Insurance

Commissioners (NAIC) and is recommended by the U.S. Treasury Department for adoption by states prior to October 2022. Similar legislation has been adopted in 18 other states that aligns with the NAIC Model Law. If the states are unable to implement uniform data security regulations by that date, the U.S. Treasury Department will urge Congress to take action on behalf of the states.

Our legislative proposal ensures consumers' insurance data is protected from future cybersecurity events or data breaches through information security programs, based on proper risk assessments, and with annual certification requirements, while allowing adequate time for compliance.

The prime sponsor of this legislation is Sen. Derek Stanford.

Last but certainly not least is our work to **ban insurers' use of credit scores** to set insurance premiums.

In 2021, we requested Senate Bill 5010 to ban the insurance industry's use of credit scoring in setting premiums for auto, homeowner, renter and boat insurance. The reason for this change in state law was simple: the use of credit-based insurance scores has historically and disproportionately penalized communities of color and low-income communities through inequities embedded in our credit system. The bill failed to move out of the Legislature.

After session, we issued an emergency rule banning credit scoring for three years. A Thurston County Superior Court judge ruled there was not sufficient evidence of an emergency to adopt the rule under emergency rulemaking. They did not question his general rulemaking authority. Currently, we are in the midst of the nonemergency rulemaking process to adopt a temporary ban on insurers' use of credit scoring.

In response to the public testimony he heard during the rule hearing, Commissioner Kreidler requested specific data from the insurers on how removing credit scoring impacted their policyholders. This includes a visual histogram of the number of people who received rate increases and those who saw their rates go down.

He wants this information to ensure the rule is having its intended result and that rate changes are evenly distributed across the market. He also requested the communications that insurers used to convey the changes with their policyholders. The original responses were due Dec. 20, 2021. Unfortunately, fewer than 6% of the insurers responded to his request. He extended the deadline to Jan. 31, 2022 and urged the insurers to, again, be transparent about the proposed rule's impact on all policyholders.

- Read more about our work to ban the use of credit scores in setting insurance premiums.
- Read more about our legislative proposals and subscribe to updates.