NAMIC®
NATIONAL ASSOCIATION OF MUTUAL INSURANCE COMPANIES

Where the future of insurance has its voice™

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November 18, 2016

Ms. Lynette Roberson
Louisiana Department of Insurance

via email

RE: NAMIC comments on Regulation 105

Ms. Roberson:

The National Association Of Mutual Insurance Companies (NAMIC) appreciates the opportunity to provide written comments to the proposed Regulation 105.

NAMIC is the largest property/casualty insurance trade association in the country, with more than 1,400 member companies. NAMIC supports regional and local mutual insurance companies on main streets across America and many of the country's largest national insurers. NAMIC members represent 40 percent of the total property/casualty insurance market, serve more than 170 million policyholders, and write nearly $225 billion in annual premiums. In Louisiana, 128 member companies do business here, comprising a market share of 40%.

NAMIC supports underwriting freedom. Limiting an insurer's ability to raise rates within a given 12 month period unnecessarily restricts insurers from rapidly responding to a dynamic insurance marketplace.

We urge the Department from refrain from implementing such a rule. Here are some of our concerns:

The Department lacks the statutory authority to limit insurers to one rate increase filing per year. As we read RS 22:1464, an insurer "shall file" a plethora of rating materials which it proposes to use.[1] Nothing in this provision limits an insurer's ability to make more than one rate filing a year.

Further, we note in Subsections (A)(2) and (A)(3) that the Commissioner is authorized to take certain enumerated actions regarding rate filings. The authority to restrict the frequency of rate increases is not one of those actions specifically listed in subsections (A)(2) or (A)(3). As the Legislature specifically limited the authority a Commissioner can take regarding rate filings in those subsections, we can infer that the Legislature did not make a broad grant of

[1] RS 22:1464(A)(1).

authority to give the Department the discretion to set limitations on the frequency of rate filings.

This position is further bolstered by the language in RS 22:1465. Subsection (A)(1) states in its entirety:

> The commissioner shall disapprove a rate in a competitive market only if he determines that the rate is inadequate or unfairly discriminatory. The commissioner shall disapprove a rate for use in a noncompetitive market only if he determines that the rate is excessive, inadequate, or unfairly discriminatory.[2]

Nothing in that grant of authority expressly or impliedly permits a Commissioner to disapprove a rate filing because it was made less than one year after the previous rate filing. **In short, as long as a rate is not inadequate, excessive nor unfairly discriminatory, the clear language of the statute requires the Commissioner to allow the rate filing.** Therefore, any regulation that limits the insurer's ability to file rates beyond what has been specified by the Legislature exceeds statutory authority.

Insurers receive updated information which may necessitate rate filings more frequently than once a year. Rate filings include both actual data as well as estimates for the most recent months. As time progresses and real data become available for those recent months, insurers may learn that the actual data for those months is not congruent with the estimates. An insurer would likely want to ask for a rate increase if the actual data for those last few months before the rate filing indicate that an increase is warranted. Requiring an insurer to wait several months to do so is arbitrary and doesn't reflect the realities of a dynamic marketplace.

In short, while rates are based on historical data, they are prospective in application. Should the historical data not be predictive of future trends, companies must have the ability to seek additional rates. Failure to do so may jeopardize the solvency of a company and could certainly put them in violation of the statute since their rate was inadequate.

Legislative changes may warrant a change in rate. For example, if legislation for transportation network companies (TNCs) like Uber and Lyft did not require "app on to app off coverage" by the TNC's insurer, the private passenger auto insurance market would have been facing more exposure than it previously contracted to insure. This would possibly result in auto insurers wanting to file for more rate, given a change in the statutes.

Court decisions may also require an immediate adjustment in rates. Should a court with statewide authority strike down a selection/rejection form or hold that a particular coverage must provide benefits despite a well-established policy exclusion, insurers would likely want

[2] RS 22:1465.

to adjust rates to adequately compensate them for the additional risk they have taken on via judicial fiat.

Insurers are attracted to states where they may easily deploy capital and price products with limited government approval. As with any business or industry, capital is not unlimited. Insurers make decisions on where to invest additional capital and bring new products to market based on a number of decisions, including the ability to adequately price the product in a dynamic marketplace. Limiting insurers to one rate increase every 12 months might be a disincentive to commit further capital to the state.

We are aware that the proposed regulation has a provision that gives the Commissioner discretion to grant a rate increase within 12 months of a prior increase if the insurer "presents compelling evidence along with an affidavit setting forth the reasons why the application should be accepted." NAMIC believes the markets are served best when products can be priced without having to argue what constitutes "compelling evidence" why a business wishes to change the prices it charges for its product or service. Consumers and businesses, not the government, should choose what is the appropriate market rate for a product.

As always, we are happy to visit with you to discuss our concerns in more detail. Thanks for taking time to hear our concerns.

Sincerely,

Paul Martin
Director – State Affairs
Southwest Region

CC: Chairman John Smith, Senate Insurance Committee
Chairman Kirk Talbot, House Insurance Committee