

Application of Business Interruption Insurance and Similar Coverages

I am sure all of you are aware of the discussion about the nature of business interruption insurance and lack of coverage under such policies for losses related to COVID-19. Standard commercial policies clearly do not provide coverage for such a pandemic, but some policymakers are nevertheless questioning this fact and/or contemplating ways to require insurers to compensate businesses for events that were excluded. Other officials have been more helpful and have issued statements indicating that coverage does not exist in these scenarios. Below is a summary of recent actions:

- The most notable state action that has occurred is in New Jersey, where a [bill](#) (AB 3844) was introduced that would effectively revise existing policies and require that *“every policy of insurance insuring against loss or damage to property, which includes the loss of use and occupancy and business interruption ... be construed to include among the covered perils under that policy, coverage for business interruption due to global virus transmission or pandemic.”* The proposal would apply to businesses with less than 100 full-time employees (i.e. those that work 25 or more hours in a normal week) and require insurers to indemnify policyholders up to the limits that exist under the policy. It would also establish a mechanism to apportion the costs of such payments among insurers writing business in the state. Some reports have suggested this bill was enacted by the legislature or is certain to become law, but the reality is that this proposal is now on hold and that the situation is very fluid. Questions have been raised about the merits, constitutionality, and others aspects of the measure, and its fate is uncertain at this point.
- Last week, the New York Department of Financial Service issued a [letter](#) requiring all insurers to provide policyholders with a “clear and concise explanation of [the] benefits” available under business interruption and related coverages. It also required companies to report their volume of business interruption coverage in terms of direct premium, policy types, and numbers of policies. Responses to the department letter were due by yesterday (March 18).
- The Maryland Insurance Administration recently issued a thoughtful [bulletin](#) noting that business interruption insurance is unlikely to apply to COVID-19 losses and explaining the reasons why this is the case. If your state is considering the possibility of a similar statement, this may be a model to consider.
- The South Carolina Department of Insurance has also addressed these issues on its [website](#), and their insurance director is the current President of the NAIC. Most notably, the site includes the following text: *“With the outbreak of the Coronavirus, some business owners may be wondering whether their insurance policies cover losses resulting from a business shut down or other losses related to the Coronavirus. Under the business income policy, there likely is no coverage as losses occurring as a result of a virus or bacteria are typically excluded ... Business owners with questions about their coverage should contact their agent/broker or insurer directly and consider whether it is in their own best interest to file a claim. Please note that the South Carolina Department of Insurance does not have the authority to require insurers to extend coverage under the policy where specifically excluded or to sell this type of coverage to consumers.”*

- Some members of Congress are also weighing in. On March 18, Rep. Nydia Velazquez (D-NY) and 17 other members of the U.S. House of Representatives sent a [letter](#) to the CEOs of the Big “I,” APCA, CIAB, and NAMIC calling on the industry to compensate businesses for losses not covered by business interruption policies. A written [response](#) from the four organizations was immediately drafted, and that letter noted that business interruption policies do not, and were not, designed to provide coverage against communicable diseases such as COVID-19.

Mandatory Closures of Certain Businesses

As local and state governments begin to require or encourage the closure or limited operation of certain businesses, questions will inevitably arise about how this impacts insurance agencies and whether the business of insurance is “essential” or “nonessential.” Such determinations will be made by the officials that are implementing these shutdowns, and it is important to note that these closures are typically focused on dining, entertainment, and retail establishments and are not intended to hinder the ability of agents to serve clients.

- Pennsylvania was one of the first jurisdictions to order the shutdown of nonessential business activity. The governor’s order of March 16 listed insurance as an essential service, and the insurance department later supplemented that with the following common-sense guidance: *“The Administration has strongly urged non-essential businesses to close during mitigation periods to protect employees, customers, and suppliers. While the business of insurance is essential, many roles and functions of insurance offices may be administered remotely or are otherwise non-essential. We encourage carriers and agencies to use their discretion in determining essential functions for essential employees. For example, an agency may determine it is appropriate to close to walk-in visitors, while remaining open for business, and available to consumers, through calls and e-mail.”*

Only a few days later, on the afternoon of March 19, the governor altered course and prohibited the operation of any place of business that “is not a life sustaining business, regardless of whether the business is open to members of the public.” The order was accompanied by a extensive chart that identified whether certain categories of businesses could remain open or must close, and insurance companies and agencies are included among the types of businesses that must discontinue their physical operations. Agencies and other businesses that are not life sustaining in nature may continue to function, but the guidance suggests that they may do so on a virtual or telework basis only and must practice social distancing and other mitigation measures.

- Several local jurisdictions in the San Francisco Bay Area have issued similar orders. Those directives indicate that “banks and related financial institutions” are viewed as essential businesses, and they describe certain services that are commonly provided by agents as essential. The California Department of Insurance also issued related guidance on March 18. That [notice](#) recognizes the existence of shelter-in-place directives while noting the continued importance of the industry maintaining the ability to process and pay claims and providing required consumer services in a reasonable and timely way.
- New York officials announced on March 19 that nonessential businesses that rely on in-office personnel must decrease that in-office workforce by 75% by March 20. This news

came one day after the governor announced that nonessential businesses must reduce the number of in-office employees by 50%. The order exempts businesses and entities providing that are considered to be essential, and this list includes “banks and related financial institutions.” Big I New York has asked the state to declare the work of insurance agents to be considered “related financial institutions” and thus essential for purposes of this order, and they have made compelling arguments that can be found [here](#).

- Other jurisdictions have taken similar action and have indicated that “banks and other financial institutions” are viewed as essential businesses. Insurance agency activities would arguably be treated as essential under such a framework. If an order of this nature has been issued or is expected in your state, you might consider reaching out to your insurance department and/or administration contacts for clarity.

Cancellation and Nonrenewal Moratoriums / Premium Payment Arrangements

Another issue that has been widely discussed is whether states should impose moratoriums on policy cancellations and nonrenewals and/or provide temporary accommodations or leniency for those who might be challenged to make premium payments. A variety of states are starting to take actions and issue guidance:

- Alaska has issued a [bulletin](#) prohibiting carriers from terminating insurance contracts due to nonpayment until June 1, 2020, and it makes clear that it does not eliminate the obligation to pay. The bulletin also encourages insurers to waive late fees.
- On March 18, the California Department of Insurance requested that all insurers provided insureds with at least a “60-day grace period” to pay insurance premiums. The [request](#) applies to all forms of insurance and insureds and asks agents and companies to eliminate in-person payment methods.
- West Virginia issued an [order](#) on March 18 that, among other provisions, states the following: *“Insurers and other regulated entities must not issue a cancellation notice or nonrenewal notice pertaining to any insurance policy, plan or contract if the reason for cancellation or nonrenewal is a result of circumstances stemming from the COVID-19 pandemic and the corresponding State of Emergency, Executive Order 2-20, any subsequent executive orders or other governmental actions. Insurers and other regulated entities should be flexible with respect to allowing alternative payment arrangements for the satisfaction of premiums that are due or that which may become delinquent as a result of the emergency. However, nothing herein shall be construed to exempt or excuse an insured from the obligation to pay the premiums otherwise due for insurance coverage or benefit actually provided or received.*
- On March 19, Indiana Governor Eric Holcomb issued an executive [order](#) that noted in part that the Department of Insurance will be requesting that insurers “institute a 60-day moratorium on policy cancellations for non-payment of premiums” and noting that any such deferral would not suspend a policyholder’s obligations to make payments.
- On March 19, the Pennsylvania Insurance Department issued a [letter](#) to insurance companies urging them to assist those facing financial hardship and potentially unable to make insurance premium payments. The department specifically urged insurers, in a

manner consistent with prudent insurance practices, to consider relaxing due dates for premiums payments, extending grace periods, waiving late fees and penalties, and allowing payment plans for premiums payments to otherwise avoid a lapse in coverage.” The letter also noted that “[i]nsurers should consider cancellation or non-renewal of policies only after exhausting other efforts to work with policyholders to continue coverage.”

- On March 19, the New York Department of Financial Services released a [circular letter](#) (Insurance Circular Letter No. 7) that urges all regulated entities to do their part “to alleviate the adverse impact caused by COVID-19 on those consumers and small businesses that can demonstrate financial hardship caused by COVID-19.” The letter goes on to urge regulated entities to take “reasonable and prudent actions to support affected New Yorkers” in the following ways:
 - *“Offering payment accommodations, such as allowing consumers to defer payments at no cost, extending payment due dates, or waiving late or reinstatement fees, where consumers are unable to make timely payments of premium or fees due to COVID-19-related disruptions;*
 - *Working with consumers to avoid cancellation of insurance policies for (a) failure to pay premiums on time, (b) discovery of acts or omissions that may have increased the hazard insured against, or (c) physical changes in the property insured subsequent to issuance or last renewal that result in the property no longer meeting the insurer’s underwriting standards;*
 - *Working with consumers to avoid non-renewal of insurance policies where a consumer fails to timely respond to a non-renewal notice;*
 - *Increasing resources as necessary to accommodate increased claim submissions and increased inquiries from consumers about policy coverage benefits, including reviewing staffing plans to ensure that sufficient personnel are available to field claim submissions or inquiries and are informed on the most up-to-date developments relating to COVID-19;*
 - *Preparing clear and concise descriptions of coverage benefits that may be triggered as the COVID-19 situation continues to evolve, which should be posted prominently on insurance company and producer websites and sent in response to policyholder inquiries;*
 - *Alerting consumers to the heightened risk of scams and price gouging during “financial disruptions, and reminding consumers to contact their insurance providers before purchasing unsolicited insurance policies or changing the terms of current insurance policies;*
 - *Ensuring that consumers do not experience a disruption of service if regulated entities close their offices, including making available other avenues for consumers to continue to manage their products and to submit inquiries and claims;*
 - *Providing flexibility regarding proof of death, disability, or other condition that triggers benefits under life insurance policies or annuity contracts;*
 - *Providing consumers with information and timely access to all medically necessary covered health care services, including testing and treatment for COVID-19, in accordance with all applicable DFS guidance, including [DFS Guidance on Preparedness for Coronavirus \(COVID-19\)](#) and [DFS Guidance on Coronavirus and Telehealth Services](#); and*
 - *Proactively reaching out to customers via app announcements, text, email, or otherwise to explain the above-listed assistance being offered to consumers.*

Licensing and Related Issues

IIABA has received many inquiries concerning the impact of COVID-19 on the state licensing process, and agents and state associations have asked if disruptions and special accommodations are expected and whether members will be able to satisfy their licensing obligations. There will undoubtedly be complications as a result of insurance department staffs working remotely, the cancellation of in-person education classes, and other factors, but regulators are hoping that problems will be kept to a minimum. The good news is that the renewal and maintaining of licenses is largely an administrative function that can be completed online, and regulators are working to address any barriers and unique complications that may be arising. Here are some items to consider:

- Agents that need to renew licenses in the near future are able to do so online, and regulators are encouraging producers with looming renewal dates to do so now. Most license renewal transactions (and especially those for nonresident licenses) should be processed very quickly, and NIPR's help desk and call center are fully operational and available to those that need assistance.
- Most states (40+) allow a producer to renew a license at least 90 days in advance of its scheduled expiration, and this means most agents with licenses scheduled to expire in March, April, and even May are able to extend them now. States with shorter windows – such as the District of Columbia, Hawaii, Massachusetts, Minnesota, Pennsylvania, Tennessee, and Wisconsin – still allow agents to renew licenses 45 or 60 days prior to expiration. Again, regulators are encouraging agents to renew without delay.
- Over 80% of agents with licenses that expire in March have already renewed them, and a high percentage of those with April expiration dates have done so as well.
- While most states are hoping that there is no need to provide special accommodations, a quickly expanding number of jurisdictions are providing extra time for agents to satisfy their licensing obligations. Those that are doing so – including Maryland, North Carolina, Rhode Island, South Carolina, and Wisconsin – are pushing back renewal dates by a certain amount of time (e.g. 30 or 60 days) or to a particular date certain.
- In order to renew a home state license, agents normally need to have satisfied their continuing education requirement. Nearly every state already allows continuing education classes to be completed online, and we are seeing states that do not or that impose other limitations begin to waive those restrictions. Some states that require proctoring in connection with online CE classes, for example, are waiving those requirements. Some jurisdictions are also temporarily waiving CE requirements and allowing licensees to “make up” their missed hours at a later time.
- There will be greater disruption for those who are new to the insurance business and are seeking their initial licenses, and COVID-19 will make it challenging (and perhaps impossible) for first-time applicants to take their exams and satisfy any pre-licensing education and fingerprinting requirements that exist. Regulators are focused at the moment on ensuring that existing agents can maintain their licenses, but these other issues will receive greater attention with time. Some states are already waiving testing and fingerprinting requirements and allowing new applicants to obtain temporary licenses.

- IIABA is working closely with the NAIC and NIPR on these and other issues. We encourage state associations to contact us if they encounter problems or see issues that require special attention and consideration. The regulators are looking to us to provide guidance and feedback, and the input we receive from members and state associations is incredibly helpful in identifying problems and solutions.

Other Items

- The NAIC will hold a public meeting tomorrow (March 20) on COVID-19 via Webex. The session is scheduled to run from 11:00 AM ET to 1:40 PM ET and will include presentations from representatives in government and the private sector on a range of topics. The public meeting will be followed by a closed discussion among regulators. The agenda for the open session can be found [here](#), and registration information is available [here](#).
- Many restaurants that have closed to the public are attempting to stay afloat by offering drive-up and delivery service, and some employees that typically do not deliver food will temporarily be doing so while using their personal vehicles. Some have expressed concern that personal automobile policies might not provide coverage for vehicles used for food delivery, and at least one state (Colorado) is considering the issuance of a bulletin that would temporarily make coverage available for these delivery persons. The draft bulletin would apply only apply to those delivering food for businesses impacted by the mandated restaurant shutdown and would prohibit the denial of a claim under a personal auto policy solely because a person was engaged in such a delivery.
- The West Virginia [bulletin](#) noted above also addressed workers' compensation issues. Specifically, it notes the following: "*Workers' compensation insurers shall consider the impact on rates of any idling of workers by employer insureds, and insurers shall, if requested by the employer insured, conduct an audit in order to determine whether the insured is entitled to any adjustment in premium due to the idling, furloughing, laying off or other dismissal of workers.*" No other state that we are aware of has issued a bulletin of this nature so far, but more are likely and we are working closely and coordinating information with NCCI and others.
- The National Governors Association has created a special [webpage](#) that is monitoring and providing updates on state actions taken in response to COVID-19 (including links to executive orders, declarations, guidance, and related information). The site also has information on actions taken by the federal government and a wide range of other material and helpful links. It is a great resource.
- Many insurance departments are in the process of transitioning staff so that they are able to work from home. In addition, legislatures across the country are ending, suspending, or postponing their sessions, and information concerning the status of each state's legislature can be found [here](#).