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California Insurance Commissioner Issues Direction to Insurers Handling Business Income Claims

By Andrew B. Downs

In what was as much an act of theater as it was substantive, California Insurance Commissioner Ricardo Lara issued a Notice on April 14 requiring insurers with Business Income claims to abide by the longstanding Fair Claims Settlement Practices Regulations.

According to the Commissioner, the Notice was prompted by reports insurers and insurance brokers were attempting to dissuade policyholders from filing COVID-19 related Business Income Claims, or were refusing to open or investigate those claims upon receipt of a notice of claim.

The Insurance Commissioner lacks the legal authority to issue a new "regulation" without following the statutory procedures for issuing regulations, which takes considerable time, so the Commissioner did not issue any new regulation. Instead, he reminded insurers and brokers of the existing requirements under the Fair Claims Settlement Practices Regulations to accept communications that indicates the policyholder desires to make a claim, to acknowledge the claim, to investigate the claim, and to accept or deny the claim within 40 days unless that isn't feasible.

Unspoken in the notice, but apparent from context, is the Commissioner is concerned that insurance agents and brokers are counseling policyholders not to make business income claims the agents and brokers believe are not covered. Indeed, the Commissioner went out of his way to remind insurers and brokers that the failure of an appointed agent or a claims agent to transmit promptly a notice of claim to the insurer will be imputed to the insurer under the regulations.

None of these are new requirements, and in the vast majority of claims, insurers are continuing to be in full compliance with the existing regulations. The Notice is, however, an indication that the Department of Insurance will be watching closely to ensure that insurers are continuing to comply with the Fair Claims Settlement Practices Regulations.