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TEMPORARY ADMINISTRATIVE ORDER
INCLUDING STATEMENT OF NEED & JUSTIFICATION

ID 5-2020
CHAPTER 836
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
INSURANCE REGULATION

FILED
07/27/2020 1:53 PM
ARCHIVES DIVISION
SECRETARY OF STATE
& LEGISLATIVE COUNSEL

FILING CAPTION: Wind down of emergency order prohibiting nonrenewals of insurance policies

EFFECTIVE DATE: 07/27/2020 THROUGH 01/22/2021

AGENCY APPROVED DATE: 07/21/2020

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Filed By:
Karen Winkel
Rules Coordinator

NEED FOR THE RULE(S):

The Department of Consumer and Business Services (DCBS) issued an emergency order on March 25, 2020, suspending all cancellations and nonrenewals of insurance policies. While the order is in place, insurers are required to renew policies even if the insured failed to pay premium or if there were other permissible grounds for nonrenewal.

Under normal circumstances, insurers are more restricted in the allowable reasons for cancelling a policy midterm than a nonrenewal decision. After the emergency order expires, insurers will have policies in force that they had legitimate reasons to nonrenew but are not allowed to cancel midterm. This rule would put insurers back in the place they were had the emergency order not been issued, and allow a cancellation for the same reasons the insurer was permitted to nonrenew.

JUSTIFICATION OF TEMPORARY FILING:

On March 8, 2020, Oregon Governor Kate Brown signed Executive Order 20-03, which declared a state of emergency due to the COVID-19 outbreak in Oregon under ORS 401.165. On March 23, 2020, Oregon Governor Kate Brown signed Executive Order 20-12, ordering Oregonians to stay at home, closing specified retail businesses, requiring social distancing measures for other public and private facilities, and imposing requirements for outdoor areas and licensed childcare facilities. On March 25, 2020, DCBS issued an emergency order under ORS 731.870 suspending all cancellations and nonrenewals of insurance policies.

While the emergency order may be renewed, it is set to expire 30 days after issuance. Insurers will need to begin the process of normalizing their operations after the emergency order expires. Rules needed to wind down the emergency order may be required as early as April 25, 2020. This would not allow for adequate time for DCBS to conduct statutorily mandated public notice and comment procedures.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

Draft rules are available from Karen Winkel located at 350 Winter St. NE, Salem, OR 97301 and are available on the division's website at:

<https://dfr.oregon.gov/laws-rules/Pages/proposed-rules.aspx>.

Executive Order 20-03 is available at: https://www.oregon.gov/gov/Documents/executive_orders/eo_20-03.pdf

Executive Order 20-12 is available at: https://www.oregon.gov/gov/Documents/executive_orders/eo_20-12.pdf

The Department of Consumer and Business Services March 25, 2020 emergency order is available at:

<https://dfr.oregon.gov/insure/health/understand/Documents/20200325Order.pdf>

RULES:

836-054-0400, 836-054-0410

ADOPT: 836-054-0400

RULE TITLE: Purpose and Scope

RULE SUMMARY: Adopted to explain when expiration of an emergency order is a valid reason to cancel a commercial liability policy under ORS 742.702.

RULE TEXT:

The purpose of OAR 836-054-0400 to 836-054-0410 is to wind down an emergency order by the director of the Department of Consumer and Business Services. Under ORS 731.870, the director may order the temporary postponement of insurance policy nonrenewals. This rule provides that expiration of an emergency order is a valid reason to cancel a commercial liability policy under ORS 742.702 if the emergency order was the sole reason the policy was renewed.

STATUTORY/OTHER AUTHORITY: ORS 731.244, ORS 742.702

STATUTES/OTHER IMPLEMENTED: ORS 742.702, ORS 731.870

ADOPT: 836-054-0410

RULE TITLE: Cancellations

RULE SUMMARY: Adopted to explain when an insurer may cancel a commercial liability policy.

RULE TEXT:

An insurer may cancel a commercial liability policy if:

- (1) The insurer was required to renew the policy by an emergency order issued by the director;
- (2) The cancellation is not due to claims resulting solely from the circumstances on which the emergency order was based, except in cases of fraud or material misrepresentation;
- (3) The insurer has provided 45 days written notice to the insured and insurance producer, if any; and
- (4) The cancellation does not violate any other law or order by the director.

STATUTORY/OTHER AUTHORITY: ORS 731.244, ORS 742.702

STATUTES/OTHER IMPLEMENTED: ORS 742.702, ORS 731.870