

## LONG TERM CARE INSURANCE ORDER

On March 25, 2020, the Director of the Department of Consumer and Business Services for the State of Oregon (“Director”), acting under the authority in ORS 731.870, issued an order directing all insurers transacting insurance in Oregon to extend deadlines for reporting claims, institute grace periods for premium payment, suspend all cancellations and non-renewals, and provide other specified relief to Oregon insureds. On April 23, 2020, the Director extended the duration of the March 25 order to be in effect through May 23, 2020.<sup>1</sup>

The Director has determined that the COVID-19 outbreak in Oregon, which resulted in a state of emergency,<sup>2</sup> continues to substantially interfere with the public’s ability to carry on its normal course of business. The Director therefore issues this Long Term Care Insurance Order (“Order”) to all insurers<sup>3</sup> transacting long term care insurance<sup>4</sup> in Oregon (“long term care insurers”), extending and modifying the relief long term care insurers are to provide to Oregon insureds.

This Order is directed to all insurers that provide any type of long term care insurance coverage in Oregon. The Order applies to all long term care insurance policies issued or delivered in Oregon.

This Order takes effect on May 24, 2020, and will be in force through June 22, 2020. This Order terminates the March 25, 2020 order for long term care insurers. For all other insurance companies and all other applicable lines of insurance, the March 25 order continues in force.

The Director hereby notifies long term care insurers that if the circumstances warrant an extension, the Department will extend the duration of this Order for subsequent additional periods of 30 days.

The Director FINDS that:

1. On March 8, 2020, Oregon Governor Kate Brown signed Executive Order 20-03, which declares a state of emergency due to the COVID-19 outbreak in Oregon under ORS 401.165.
2. On March 23, 2020, Oregon Governor Kate Brown signed Executive Order 20-12, ordering Oregonians to stay at home, closing specified retail businesses, requiring physical distancing measures for other public and private facilities, and imposing requirements for outdoor areas and licensed childcare facilities.<sup>5</sup>

<sup>1</sup> References to the March 25 order in the present Order include the extension issued on April 23.

<sup>2</sup> See Oregon Governor Kate Brown’s Executive Order declaring a state of emergency (EO No. 20-03), issued March 8, 2020. EO 20-03 can be found at: [https://www.oregon.gov/gov/Documents/executive\\_orders/eo\\_20-03.pdf](https://www.oregon.gov/gov/Documents/executive_orders/eo_20-03.pdf).

<sup>3</sup> The term “insurer” is defined in ORS 731.106. For purposes of this order, the term includes all insurance companies, multiple employer welfare arrangements, and all similar entities engaged in the business of insurance in Oregon.

<sup>4</sup> The term “long term care insurance” is defined in ORS 743.652.

<sup>5</sup> EO 20-12 can be found at: [https://www.oregon.gov/gov/Documents/executive\\_orders/eo\\_20-12.pdf](https://www.oregon.gov/gov/Documents/executive_orders/eo_20-12.pdf).

3. The COVID-19 outbreak in Oregon has resulted in widespread disruption to the normal course of business in the state. These changes have disrupted the personal affairs of nearly all Oregonians and the activities of nearly all Oregon businesses.
4. The resulting widespread business closures, job losses, and physical distancing measures severely affect the ability of individuals and businesses in Oregon to conduct normal activities, including timely premium payment and timely communications regarding claims submission and processing. Individuals experiencing lengthy hospitalizations or quarantines, or complying with guidance to stay at home may be unable to pay premiums or communicate claims information for an extended period. Businesses ordered to close or constrain their operations for an extended period, or that experience major cash flow disruptions because of the outbreak, may experience similar difficulties.
5. Providing, as a temporary measure, extended grace periods for premium payments, postponement of cancellations and non-renewals, relief from reporting and other required communications related to claims submission and processing for insureds, and relief from other duties of insureds that may be burdensome, will help mitigate the negative impact of the COVID-19 outbreak on Oregonians and Oregon's economy.
6. The disruption to the normal course of business caused by the outbreak will continue for at least the period of time that the Order will be in force, and can be expected to affect all geographic regions of the state.

The Director CONCLUDES that:

7. Pursuant to ORS 731.870, when the Governor declares a state of emergency under ORS 401.165, the Director has the authority to issue an order addressing the following issues:
  - a. Reporting requirements for claims;
  - b. Grace periods for payment of insurance premiums and performance of other duties by insureds; and
  - c. Temporary postponement of cancellations and non-renewals.
8. An order issued under ORS 731.870 may not be effective for more than 30 days, but may be extended at the Director's discretion if circumstances warrant it for an additional period of not more than 30 days or for subsequent additional periods of not more than 30 days.
9. Pursuant to Oregon Administrative Rules 836-050-0300 and 836-050-0305, authorized by ORS 731.870, the circumstances of the declared state of emergency, as described in paragraphs 1 to 6 in this Order, prevent: insureds from using normal methods of reporting claims; payment of insurance premiums and performance of other duties; and communication of notices of cancellation or nonrenewal from insureds to their insurers and communication from insurers to their insureds.

Now therefore, the Director ORDERS:

10. All long term care insurers must take the following actions regarding reporting of claims and other communications with insureds regarding claims, until the date this Order is no longer in effect:
  - a. Extend all deadlines for insureds to report claims or submit other communications related to claims. Deadlines that must be extended include, but are not limited to, deadlines to submit initial claims or to respond to communications related to claims payment and processing or grievances and appeals requirements.
  - b. Insurers must take all practicable steps to provide opportunities for insureds to report claims or provide required communications related to claims via methods compatible with physical distancing recommendations, including telephonic and online communications and postal mail.
  
11. Long term care insurers issuing long term care insurance policies in Oregon must give policyholders a single grace period of 60 days to pay any premiums that are subject to this Order.
  - a. For purposes of this Order, premiums that are subject to this Order are the following:
    - i. Any premiums that, under the terms of a long term care insurance policy, will be due from the policyholder while this Order is in effect but that are not paid by the due date;
    - ii. Any premiums that, under the terms of a long term care insurance policy, became due from the policyholder while the March 25 order was in effect but that were not paid by the due date; and
    - iii. Any premiums that, under the terms of a long term care insurance policy, were due from the policyholder prior to the March 25 order, were not paid as of March 25, 2020 and for which the insurer did not issue a notice of termination prior to March 17, 2020.
  - b. The required grace period begins on the day the premium would have been due under the terms of the policy and runs for 60 consecutive calendar days.
  - c. Nothing in this Order prevents a long term care insurer from providing a policyholder with a grace period longer than 60 days. Insurers that choose to offer longer grace periods must do so in a nondiscriminatory manner and may not consider age, health status, or claims experience of the policyholder.
  
12. Long term care insurers must take the following actions regarding cancellations and non-renewals:
  - a. Suspend all involuntary cancellations and non-renewals for all long term care insurance policies, with the exception of policies that have completed the applicable grace period required under paragraph 11 of this Order.
  - b. The suspension of involuntary cancellations and non-renewals under this Order does not apply to policies for which a notice of cancellation or non-renewal was sent prior to March 17, 2020.

- c. Pay claims incurred during first 30 days of a grace period, according to the terms of the policy. During this period, insurers may not pend claims solely due to non-payment of premium, and may not recoup or claw back payment for claims incurred during this period.
  - i. If, after review of the claim, the insurer determines that the insured became benefit eligible during the period for which premium had already been paid, the insurer shall follow its standard claim procedures for that claim.
  - ii. If, after review of the claim, the insurer determines that all claim eligibility provisions of the policy have been met, with the exception of premium payments during the grace period specified in paragraph 11 of this Order, and the date the insured became benefit eligible is after the date when unpaid premium became due, then the insurer will determine when the insured became benefit eligible. If the insured became benefit eligible during the first 30 days of a grace period specified in paragraph 11, or during any period of at least 30 days provided for protection against unintentional lapse under the terms of the policy, the long term care insurer shall provide the benefits payable pursuant to the terms and conditions of the policy.
  - iii. If the insured became benefit eligible after the expiration of the first 30 days of a grace period specified in paragraph 11 and any other applicable grace period under the terms of the policy, the insurer may determine that benefits are not payable, if otherwise allowed under the Oregon Insurance Code and the terms of the policy.
- d. Following the end of a grace period, a long term care insurance policy may be cancelled or non-renewed, subject to the following requirements:
  - i. A long term care insurer may not retroactively terminate a policy to a date any earlier than the 30th day of the grace period.
  - ii. A long term care insurer must provide notice of termination in accordance with the terms of the policy and the Oregon insurance code.<sup>6</sup>
- e. For long term care insurance policies extended beyond the normal date of cancellation or non-renewal as a result of this Order or the March 25 order, the premium for extended coverage may be determined by a long term care insurer in accordance with the terms of the policy, if applicable.
- f. For duration of the Order and following the Order, an insurer may not cancel or non-renew a policy solely because of a claim directly resulting from the circumstances of the COVID-19 outbreak, except in cases of fraud or intentional misrepresentation of a material fact as prohibited by the terms of the plan.

13. Nothing in this Order shall be construed to relieve insureds of the obligation to pay premiums that are due under the terms of the insurance policy.

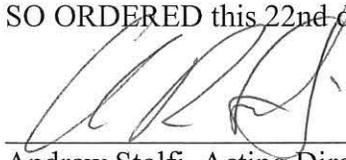
- a. Insurers shall be entitled to collect premium, subject to any applicable waiver of premium provision in the policy.
- b. For policies issued to individuals, to the extent permitted under the terms of the policy and applicable law, insurers may offset claims payment required under this

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<sup>6</sup> See, e.g., ORS 743.658

Order with any premium owed on the policy. For policies issued to group policyholders, insurers may not offset claims payment with premium owed by the group, and shall pay the full amount of the claim owed to the beneficiary.

SO ORDERED this 22nd day of May, 2020



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Andrew Stolfi, Acting Director and Insurance Commissioner  
Department of Consumer and Business Services