



# MEMORANDUM

November 15, 2019

To: Interstate Insurance Product Regulation Commission

From: Tashia Sizemore, Life and Health Program Manager, Division of Financial Regulation  
Department of Consumer and Business Services

Subject: Oregon Comments on the Draft Strategic Plan

The Oregon Division of Financial Regulation (the Division) has had an opportunity to review the draft strategic plan proposed by the Interstate Insurance Product Regulation Commission (Commission) and thanks the Commission staff for the opportunity to provide comment. The comments below reflect the Division's ongoing efforts to bring transparency to the Commission process while emphasizing the central role of state regulators in making key policy decisions about products impacting the consumers of each state.

## **General Comments**

When Oregon joined the Commission in 2011 the structure and work of the Commission functioned differently, with an emphasis on the role of regulators to drive policy decisions forward. Over time, changes at the Commission and within individual state insurance departments have eroded some of Oregon's intent for joining the Commission. Oregon's decision to participate in the Commission was based on the Commission's use of the "highest state standards" – however, over time there has been a move toward reducing insurer requirements for products filed with the Commission. The Division feels the current process lacks an appropriate level of transparency and discourages insurer accountability to state regulators.

The Division is aware that some insurers decide to work directly with Commission staff on sensitive regulatory subjects that may have been previously rejected by states. The existence of a separate "compliance track" through the Commission diminishes the role of state regulation and limits the ability for state legislators to pass comprehensive regulation. Oregon is concerned that the draft strategic plan doesn't adequately address concerns about transparency and may result in more insurers using the Commission to circumvent state regulators and legislatively enacted consumer protections.

The Division encourages the Commission to review practices in place for early work completed by compacting states – which encouraged collaboration and discussion between insurers and regulators while emphasizing the need for continued state regulation. The recent decision to allow all member states to participate in committee calls is a step in a positive direction – the Division looks forward to seeing continued improvements as a result of this change.

Finally, the Division is concerned with the use of subjective modifiers throughout the strategic plan, which may prevent adequate monitoring of success. Examples of the use of subjective language that may be hard to qualify include words such as “excellent” and phrases such as “items of interest”. If these terms remain in the strategic plan they should be more clearly defined.

### **Priority I**

#### *Objective 2*

Some recent product standards advanced by the Commission reflect products that have been previously disapproved by state regulators, or that haven’t been tested against state insurance law. During the development, or revision, of Commission product standards the Division feels that regulator concerns about product design are not adequately addressed. The Division is pleased to see the inclusion of Objective 2 but remains concerned that insurers will continue to use the Commission as an avenue for circumventing state regulatory concerns. Our concern is heightened by a focus on “swift market and regulatory developments” rather than “comprehensive market and regulatory developments”. The Division encourages the Commission to develop processes that return control of product standard development to state regulators.

#### *Action Item 4*

The Division does not support Action Item 4, which seeks to expand group types approved by the Commission. The Division experiences ongoing issues with some non-employer groups and feels strongly that these groups, and the products they offer, should be monitored and controlled at the state regulator level.

#### *Action Item 6*

The Division does not support Action Item 6, which seeks to move approval of emerging products to the Commission. Originally the Commission indicated any emerging or innovative products would be directed back to state regulators for consideration. This is a substantial change in Commission function, and likely not anticipated by state legislative bodies. The Division has recently developed an Innovation Hub to explore new and emerging products in Oregon’s insurance market. State regulators have a responsibility to monitor emerging products and work with state

legislators to enhance consumer protection when necessary. We feel Action Item 6 may prevent state regulators from regulating new and emerging risks.

**Priority II**

*Objective 1*

The Division believes that “prompt review and turnaround times” fails to acknowledge that comprehensive product review may require additional review time and Commission staff/state collaboration. Division audits have uncovered inappropriate product approval or instances where the Commission process has failed to identify noncompliance. The Division believes that Objective 1 should be reworded as “Complete and accurate review” to more appropriately align with Priority II.

*Objective 3*

The Division agrees that additional regulatory collaboration is necessary and encourages the Commission to realign regulatory priorities with state insurance regulators to ensure that product approval does not diminish state regulatory function. Limited regulator discussion on Commission calls demonstrates that many regulators may not be engaged in the process. A committee structure that encourages member state involvement in product standard development (possibly similar to the committee structure employed by the NAIC) paired with a transparent process for states to raise and address product concerns would be positive actions supporting Objective 3.

*Action Item 5*

The Division supports Commission efforts to create resource groups to serve as a resource for the Commission office and staff. However, the Division has been discouraged from providing feedback that contradicts the Commission’s preferred result. Regulator staff are key to providing historical feedback on why certain products have been disallowed by states. The Division believes Action Item 5 should include clarification that dissenting opinions provided by regulator staff will be given equal attention, including development of approved product monitoring for potential compliance concerns noted during product standard development.

*Action Item 8*

As currently proposed, the Division does not support Action Item 8. It is the Division’s understanding that the Commission was not designed to address emerging or innovative products, as such these products should be handled by individual state regulators. State regulators are best positioned to evaluate additional impacted programs or applicable regulations.

**Priority III**

*Action Item 1*

The Division supports regular and ongoing communication with member states; however, the Division believes that Action Item 1 needs to be amended to require “redline” documents so regulators can easily track changes to proposed standards. Current communication to member states lack sufficient clarity for regulators to identify changes or areas of potential concerns. Additionally, member states should be provided additional time to collect internal feedback on new product standards, including the option to delay the advancement of product standards while additional information can be collected on market behavior.

*Action Item 4*

The Division supports the development of product line groups to discuss current activities and items of interest on a regular basis. However, the Division does not believe these meetings should be facilitated by Commission staff resources. When developed, product specific committees should be comprised of state regulators with varying opinions of the product line in question to ensure that Insurance Commissioners and regulatory staff are apprised of market changes and insurer proposals. A committee structure similar to the structure employed by the NAIC would encourage regulatory collaboration by member states to develop product line policy initiatives. Insurers wishing to approach the Commission with suggested changes should be required to contact state regulators on the committee to ensure that state Insurance Commissioners have an opportunity to address specific regulatory concerns and staff issues at the state level.

*Action Item 6*

The Division is concerned that the development of a reference book on this unique system may understate the regulatory challenges of state versus Commission product approval. Regulatory challenges include (but are not limited to) years of opaque product standard committee calls that restricted regulator participation; insufficient protections against “forum shopping” from insurers seeking approval of previously disallowed products; insufficient compliance safeguards to monitor insurer conduct; and unclear product standard development processes that did not sufficiently track changes or member state input. The Division encourages the Commission to address these issues prior to moving forward with any type of compliance guide.

*Action Item 8*

The Division supports more transparent communication between Commission staff and NAIC committees. The division would like to see Commission staff focus reports on areas where Commission

product standards deviate from NAIC Model laws and the reason for doing so; filings that may present unique regulatory challenges for states regulators; areas that insurers have identified as more appropriate to file through the Commission; and shifts in the types of products filed through the Commission that may be indicative of market changes.