

**STATE OF CALIFORNIA
OFFICE OF ADMINISTRATIVE LAW**

AGENCY: DEPARTMENT OF INSURANCE)	DECISION OF DISAPPROVAL OF REGULATORY ACTION
)	(Government Code Section 11349.3)
ACTION: Amendment of subdivision (s) of section 2695.2 of title 10 of the California Code of Regulations)	OAL File No. 03-0313-02 S
_____)	Insurance No. RH 399

BACKGROUND

The Department of Insurance (“Department”) proposed a thorough revision of its Unfair Claims Settlement Practices regulations, including an amendment to the definition of the term “proof of claim.” This rulemaking action was submitted for OAL review on March 13, 2003, and, with the exception of the above-noted definition, was approved on April 24, 2003. The proposed amendment to the definition of “proof of claim” was disapproved by OAL at the same time. The following decision explains the reason for OAL’s action disapproving the proposed change in this definition.

DECISION

OAL disapproved the proposed amendment to the definition of “proof of claim” because the text of the definition submitted for review contains a substantial change from the version originally made available for public comment, that has not been made available for additional public comment.

DISCUSSION

An opportunity to comment on proposed substantial changes to regulations is central to the purposes of the Administrative Procedure Act (“APA”). Government Code Section 11346.8, subdivision (c), limits the scope of changes that may be made to an originally proposed regulation to those changes that are “sufficiently related,” and further provides:

“If a sufficiently related change is made, the full text of the resulting adoption, amendment, or repeal, with the change clearly indicated, shall be made available to the public for at least 15 days before the agency adopts, amends, or repeals the resulting regulation. Any written comments received regarding the change must be responded to in the final statement of reasons required by Section 11346.9.”

In accordance with the APA’s notice requirements, the Department provided a comment period of more than 45 days for its original proposal to amend these regulations, and an additional comment period of more than 15 days for a group of substantial changes to the original proposal, made largely in response to public comments. After these comment

periods were concluded, and in response to comments received, the Department made an additional change in the definition of the term “proof of claim” set forth in section 2695.2, subdivision (s). The current definition provides:

“ ‘Proof of claim’ means any documentation in the claimant's possession submitted to the insurer which provides any evidence of the claim and that supports the magnitude or the amount of the claimed loss.”

The proposed amendment described in the originally noticed text provides:

“ ‘Proof of claim’ means any evidence or documentation in the claimant's possession or any evidence submitted to or received by the insurer ~~which provides any evidence of the claim and that~~ reasonably supports the claim magnitude or the amount of the claimed loss.”

A change to the originally proposed amendment, described in the text made available for comment on November 7, 2002, provides:

“ ‘Proof of claim’ means any evidence or documentation in the claimant's possession or any evidence submitted to or received by the insurer or other evidence that the insurer discovers in the course of its investigation ~~which provides any evidence of the claim and that~~ reasonably supports the claim magnitude or the amount of the claimed loss.”

The final definition submitted for OAL review provides:

“ ‘Proof of claim’ means any evidence or documentation ~~in the claimant's possession or any evidence~~ submitted to or received by the insurer or other evidence that the insurer discovers in the course of its investigation ~~which provides any evidence of the claim and that~~ reasonably supports the claim magnitude or the amount of the claimed loss.”

The double strikeout in the first and second lines of the definition immediately above illustrates that the final version is different from the current one, and different from the two versions of the definition offered for public comment. The final change eliminates the provision that limits the evidence or documentation that will be recognized as “proof of [a] claim” to that which is in the claimant’s possession. The final change is a substantial one that makes an additional comment period of at least 15 days necessary before the Department can amend this regulation as described in the final version above.

Decision of Disapproval, 5/1/03
OAL File No. 03-0313-02 S

For this reason, OAL disapproved the Department's proposed amendment to the definition of "proof of claim."

Date: May 1, 2003

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