Wisconsin Office of the COMMISSIONER OF INSURANCE

Tony Evers, Governor of Wisconsin
Mark Afable, Commissioner of Insurance

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To: Insurers, Agents, and Interested Parties
From: Mark V. Afable, Commissioner of Insurance
Subject: Coverage for Delivery Drivers for Restaurants during the COVID-19 Public Health Emergency

Bulletin20200323COVID-19-CoverageforDeliveryDriversforRestaurants

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The Office of the Commissioner of Insurance (OCI) is providing guidance to insurers and bars and restaurants regarding insurance coverage for delivery drivers during the COVID-19 public health emergency.

Update

The requirements outlined in this bulletin expired when the public health emergency was lifted on May 13, 2020. To minimize the effect to insureds, OCI is asking insurers to give written notice of at least 10 days to consumers if their hired and non-owned auto coverage will expire.

OCI is also requesting that insurers notify consumers if their personal auto delivery coverage will expire using the same method the insurer used to notify consumers the coverage was available, if they notified consumers when coverage was extended. OCI is also asking insurers to work with their insureds to make sure they have the coverage they need. If possible, OCI requests that insurers transition insureds to permanent coverage for deliveries, for an additional cost if normally required, if the insureds still require coverage for restaurant deliveries.

Original Bulletin

Background

On March 17, 2020, the Department of Health Services issued Emergency Order #5 which ordered the closures of all bars and restaurants to prevent the further spread of the COVID-19 virus. Under the order, restaurants may remain open for delivery service. As such, restaurants that do not normally offer delivery may begin delivery service. Employees who typically do not deliver food may be called on to temporarily provide food delivery services using their own insured personal vehicles. OCI has worked with the insurance industry to remove any insurance barriers that may prevent a restaurant from beginning delivery service with their employees.

Coverage for Delivery Drivers under Personal Auto Policies

Personal lines automobile policies do not typically provide coverage for vehicles used for commercial purposes, like food delivery. As a result, in the absence of any other action, many of the anticipated temporary food delivery drivers would be uninsured.

OCI further believes that it would be impractical and untimely for these drivers to temporarily obtain coverage for this limited purpose. Therefore, OCI orders that Insurers shall not deny a claim under a personal auto policy solely because the insured was engaged in delivering food on behalf of a restaurant impacted by the restaurant closure.

This order shall apply to all personal auto policies in effect on or after March 17, 2020. Insurers shall provide this coverage for all claims that arise from an occurrence beginning on the date this bulletin was issued. Insurers may, at their own discretion, provide retroactive coverage beginning on March 17, 2020. This order shall remain in effect until the public health emergency order is lifted, in whole or in part, to permit restaurants to resume normal operations.

This coverage is not required to be afforded to drivers who otherwise have coverage for deliveries through their personal policy or another policy. This coverage also does not apply to drivers working for a transportation network company or similar delivery company. This coverage is only afforded to delivery drivers who do not have such coverage and this coverage does not stack with any coverage that is currently afforded.

Hired and Non-owned Auto Coverage

It is common for restaurants who employ delivery drivers who use their own car to obtain hired and non-owned auto coverage for liability incurred by those drivers. This is often offered as a rider to a commercial general liability policy. Since many of the restaurants who may begin delivery services did not anticipate the need for this coverage, it is likely that their commercial general liability policy will not include a hired and non-owned auto coverage rider. OCI further believes that it would be impractical and untimely for these restaurants to shop for coverage that includes coverage for non-owned autos.

For these reasons, OCI orders all insurers who provide commercial general liability coverage to a restaurant to notify their restaurant insureds that hired and non-owned auto coverage is available if requested. If the insured restaurant requests hired and non-owned auto coverage, the insurer shall, either through a rider or stand-alone policy, provide this coverage to any insured restaurant.

This order shall apply to all commercial general liability policies in effect on or after March 17, 2020. The coverage afforded shall be effective upon the date it is requested. Insurers who offer retroactive coverage may request that the insured certify that they have not incurred any potential claims in the period of retroactive coverage. This order shall remain in effect until the public health emergency order is lifted, in whole or in part, to permit restaurants to resume normal operations.

Any questions concerning this bulletin may be directed to Olivia Hwang, Director of Public Affairs, at Olivia.Hwang@wisconsin.gov.