

Bulletin No. 2020-17

April 3, 2020

RE: CLARIFICATIONS ON CANCELLATION/NON-RENEWAL MORATORIUM, PREMIUM PAYMENT GRACE PERIOD AND NOTICES

ELANY has received a number of inquiries regarding Governor Andrew Cuomo’s [Executive Order](#) and the Department of Financial Services’ (“DFS”) subsequent [Emergency Regulation](#) regarding a moratorium on cancellations, non-renewals and late fees in certain situations. This is to clarify and add detail to [ELANY Bulletin 2020-16](#).

From an excess line perspective, the overarching purpose of the Governor’s Order is the Moratorium on cancellations, non-renewals and conditional non-renewals for certain insureds claiming COVID-19 financial hardships (“moratorium”). In other words, the purpose is to mandate the uninterrupted continuation of coverage during the time frame set by the Governor for specified insureds. In addition, the Emergency Regulation focuses on premium payment deferrals and notice to policyholders.

THE DFS HAS CONFIRMED TO ELANY THAT THE MORATORIUM DOES NOT APPLY TO EXCESS LINE COMMERCIAL POLICIES AND POLICYHOLDERS. The moratorium does apply to excess line personal lines policies and policyholders.

DO THE EXECUTIVE ORDER AND EMERGENCY REGULATION APPLY TO E&S INSURERS AND BROKERS?

Yes. The definition of insurer includes “an insurer that writes a property/casualty insurance policy, including an unauthorized insurer that sells insurance through a licensed excess lines broker and is subject to Insurance Law article 34.” The notice requirement applies to “licensed insurance producers.”

WHICH INSUREDS DO THE EXECUTIVE ORDER AND EMERGENCY REGULATION APPLY TO?

Individuals and small businesses, which are defined as New York resident owner-operated businesses with 100 employees or less, that claim financial hardship arising from the COVID-19 pandemic and are policyholders with specified coverage (see **WHAT LINES OF INSURANCE DO THE MORATORIUM, PREMIUM PAYMENT DEFERRALS AND NOTICE REQUIREMENTS APPLY TO?**). **HOWEVER, THE DFS HAS CONFIRMED TO ELANY THAT THE MORATORIUM DOES NOT APPLY TO EXCESS LINE COMMERCIAL POLICIES OR POLICYHOLDERS, REGARDLESS OF THE POLICYHOLDER’S SIZE.** Insureds are permitted to self-certify financial hardship. The moratorium, premium payment deferral

provisions, and notice requirements **do not apply to any commercial insureds that fall outside this criteria.** Also, insureds retain the absolute right to cancel policies of their own volition.

WHEN DOES THE MORATORIUM EXPIRE?

The moratorium is in effect through June 28, 2020 but can be extended.

WHEN MUST BROKERS SEND THE REQUIRED NOTICE TO POLICYHOLDERS?

The Regulation requires an insurance producer who procured an insurance policy for an individual or small business providing specified coverage (see **WHAT LINES OF INSURANCE DO THE MORATORIUM, PREMIUM PAYMENT DEFERRALS AND NOTICE REQUIREMENTS APPLY TO?**) to mail or deliver notice to the policyholder, including a certificate holder under a group insurance policy, of the property, life insurance and premium finance provisions of the regulation by **April 13th** (Note: Bulletin 2020-16 inadvertently stated the date as April 9th but was subsequently corrected). This requirement also applies to life insurance producers. While notice is required to excess line personal lines policyholders, **ELANY has asked the DFS if the notice requirement applies to commercial policyholders with excess line policies. The DFS' response is pending.**

TO WHICH POLICYHOLDERS MUST THE BROKER NOTICE BE SENT?

Brokers must send notices to any individual or small business policyholder, including a certificate holder under a group insurance policy, with a policy covering specified coverage (see **WHAT LINES OF INSURANCE DO THE MORATORIUM, PREMIUM PAYMENT DEFERRALS AND NOTICE REQUIREMENTS APPLY TO?**). While notice to excess line personal lines policyholders is required, **ELANY has asked the DFS if the notice requirement applies to commercial policyholders with excess line policies. The DFS' response is pending.**

WHAT MUST THE NOTICE CONSIST OF?

The Emergency Regulation does not specify, nor has a template been provided by the DFS. The Regulation states that the broker “shall mail or deliver notice to the policyholder of the provisions of this Part and section 405.6 of Part 405 of Title 3 within ten business days following the promulgation of this Part.”

WHERE A WHOLESALE BROKER IS INVOLVED, IS IT THE RESPONSIBILITY OF THE RETAILER OR THE WHOLESALE TO SEND THE POLICYHOLDER NOTICE?

The DFS has confirmed to ELANY that notices are the responsibility of the retail broker.

WHAT IF A POLICYHOLDER HAS NOT CONSENTED TO ELECTRONIC DELIVERY OF DOCUMENTS? MAY A BROKER SEND THE REQUIRED NOTICE ELECTRONICALLY GIVEN THE CIRCUMSTANCES?

The DFS has confirmed to ELANY that electronic notices may be sent to policyholders for purposes of this regulation. Please see the [DFS' recent guidance](#) on electronic signatures, transactions and filings.

DO EXCESS LINE INSURERS NEED TO NOTIFY POLICYHOLDERS ABOUT ANYTHING?

Yes. The regulation requires insurers, including excess line insurers, to notify policyholders about the regulation with each premium bill, and provide a toll-free number which policyholders may call to discuss billing and alternative arrangements. While notice is required to excess line personal lines policyholders, **ELANY has asked the DFS if the notice requirement applies to commercial policyholders with excess line policies. The DFS' response is pending.**

WHAT IS THE MORATORIUM ON CANCELLATIONS, NON-RENEWALS AND CONDITIONAL NON-RENEWALS?

The Governor's Executive Order places a moratorium on insurers cancelling, non-renewing, or conditionally renewing any insurance policy issued to an individual or small business with a policy covering specified coverage (see **WHAT LINES OF INSURANCE DO THE MORATORIUM, PREMIUM PAYMENT DEFERRALS AND NOTICE REQUIREMENTS APPLY TO?**) for 60 days from the policy cancellation or renewal date for any policyholder claiming financial hardship as a result of the COVID-19 pandemic. This requirement applies to policies with cancellations and non-renewal dates through June 28, 2020. **THE DFS HAS CONFIRMED TO ELANY THAT THE MORATORIUM DOES NOT APPLY TO EXCESS LINE COMMERCIAL POLICIES OR POLICYHOLDERS, REGARDLESS OF THE POLICYHOLDER'S SIZE.**

WHAT LINES OF INSURANCE DO THE MORATORIUM, PREMIUM PAYMENT DEFERRALS AND NOTICE REQUIREMENTS APPLY TO?

Commercial property and liability policies, homeowners, renters, private passenger auto, commercial auto, professional liability, medical malpractice, credit life and health, credit unemployment, life, annuities, workers compensation, fidelity & surety, credit, marine and inland marine, marine protection indemnity, gap, and involuntary unemployment. The Executive Order and Regulation also apply to prepaid legal services plans and legal service insurance, the Motor Vehicle Insurance Association Assigned Risk Plan, New York Property Insurance Underwriting Association, and Medical Malpractice Insurance Association. **THE DFS HAS CONFIRMED TO ELANY THAT THE MORATORIUM DOES NOT APPLY TO EXCESS LINE COMMERCIAL POLICIES OR POLICYHOLDERS, REGARDLESS OF THE POLICYHOLDER'S SIZE.** The moratorium does apply to excess line personal line policies and policyholders.

WHEN MUST AN INSURER DEFER PREMIUM PAYMENTS?

Where a policyholder can demonstrate financial hardship as a result of the COVID-19 pandemic, an insurer may not impose any premium payment late fees and may not report the policyholder to a credit reporting agency or debt collection agency based on later payment. While the premium payment deferral requirement applies to excess line personal policies, **ELANY has asked the DFS if this requirement applies to commercial policyholders with excess line policies. A response is pending.**

WHEN MUST POLICHHOLDERS PAY DEFERRED PREMIUMS BY?

Policyholders experiencing financial hardship due to COVID-19 may pay impacted premiums over a 12-month period. This includes any policyholder to whom the insurer issued a nonpayment cancellation notice prior to

March 30th if financial hardship is demonstrated. While the premium payment deferment requirement applies to excess line personal policies, **ELANY has asked the DFS if this requirement applies to commercial policyholders with excess line policies. A response is pending.**

HOW DOES THE REGULATION AFFECT PREMIUM FINANCE COMPANIES?

Premium finance companies may not cancel a property-casualty insurance policy for at least 60 days if financial hardship is demonstrated. Please see the Regulation for more on premium finance companies and agreements.