BEFORE THE NEW MEXICO SUPERINTENDENT OF INSURANCE

IN THE MATTER OF AN EMERGENCY ORDER TO PROTECT ACCESS TO INSURANCE AND THE STABILITY OF INSURANCE MARKETS IN FIRE EMERGENCIES	)	**Docket No. 2022-0041**

EMERGENCY ORDER ADDING SIERRA COUNTY

THIS MATTER having come before the New Mexico Superintendent of Insurance ("the Superintendent") upon executive orders issued by the Honorable Michelle Lujan Grisham, Governor of the State of New Mexico, addressing fire emergencies in various parts of the State of New Mexico under the Constitution and laws of New Mexico, including the All Hazard Emergency Management Act, NMSA 1978, Sections 12-1-1 through 12-10-10 (1959, as amended through 2007);

THE SUPERINTENDENT FINDS AND CONCLUDES:

1. The Superintendent has jurisdiction over this matter pursuant to the New Mexico Insurance Code, NMSA 1978, Sections 59A-1-1 et seq. and specifically NMSA 1978, Section 59A-2- 8(A)(11) and (B) (2021);

2. The Governor of the State of New Mexico, the Honorable Michelle Lujan Grisham, has declared in Executive Order 2022-087, issued June 10, 2022, an emergency in Sierra County, New Mexico due to the Black Fire and as of the date of this Emergency Order has not renewed, modified, or rescinded Executive Order 2022-087;

3. Upon an order by the Governor based upon the invocation of a state of emergency under the All Hazard Emergency Management Act, the Superintendent, pursuant to NMSA 1978, Section 59A-2-8(A)(11), may "take those actions necessary to ensure access to insurance and the stability of insurance markets during the emergency[,]" including issuing emergency orders such as this order.

4. On May 11, 2022, the Superintendent issued an Emergency Order in this docket to protect access to insurance and the stability of insurance markets during the emergencies declared in the Governor's executive orders for Colfax, Lincoln, Mora, San Miguel, Sandoval, and Valencia Counties.

5. This Order prospectively adds Sierra County to the list of counties in which the requirements of the Superintendent's May 11, 2022 Emergency Order shall apply.

6. Paragraphs 8 through 12 and A through D of the Superintendent's May 11, 2022 Emergency Order are incorporated herein by reference. Nothing in this Order shall affect that original Emergency Order, which shall remain in effect for the periods of time set forth in the original Emergency Order.

7. The Superintendent finds that it is necessary to issue this Order to protect access to insurance and the stability of insurance markets during the emergencies declared in the Governor's executive orders.

IT IS THEREFORE ORDERED that:

A. With respect to policy holders whose residence is in Sierra County, insurers who write health insurance policies in New Mexico shall meet all requirements set forth in the Superintendent's May 11, 2022 Emergency Order at Paragraphs A and B thereof;

B. With respect to policy holders whose residence or business is in the fire impacted counties identified in this order, insurers who write property or homeowners policies in New Mexico shall meet all requirements set forth in the Superintendent's May 11, 2022 Emergency Order at Paragraph C thereof;

C. With respect to policy holders whose residence or business is in the fire impacted counties identified in this order, that insurers who write automobile policies in New Mexico shall meet all requirements set forth in the Superintendent's May 11, 2022 Emergency Order at Paragraph D thereof;

D. Insurers impacted by this order are directed to make every reasonable effort to assist policy holders by informing them of the provisions of this order. Insurers are expected to document their outreach efforts to those who suffered property damage, injuries, and other losses as a result of the catastrophic fires;

E. This Emergency Order shall take effect for Sierra County, New Mexico immediately and shall remain in effect until Executive Order 2022-087 is rescinded by the Governor or until October 31, 2022, whichever occurs first;

F. A list of Frequently Asked Questions is provided herewith for reference, as Appendix A;

G. Copies of this Order shall be sent to all persons listed as service recipients on OSI's eDocket;

H. This Order shall be uploaded on the OSI Newsletter and sent out as a large volume correspondence to all Insurers licensed in New Mexico on the State Based System; and

I. This docket shall remain open until further written order of the Superintendent.

ISSUED under the seal of the New Mexico Office of Superintendent of Insurance at Santa Fe, New Mexico, this 13th day of June, 2022.

RUSSELL TOAL
SUPERINTENDENT OF INSURANCE

APPENDIX A

Notice Regarding Implementation of Wildfire Emergency Orders of May 11 and June 13, 2022

The questions and responses in this document are intended to provide implementation guidance related to the May 11, 2022, *Emergency Order* and the June 13, 2022 *Emergency Order Adding Sierra County* ("the Orders") issued by the Superintendent of Insurance.

Question 1: Are insurers only required to waive the deductible for those who are impacted by the fire, or is waiver of deductible required for anyone in the areas identified, regardless of whether they are impacted by the fires?

Answer:
As identified under sections 1-7, 10, 11 and 12 of the Superintendent's findings and conclusions, and section E of the Order, the scope of the Order for property & casualty insurers is intended to be limited to affected residents who:

a) reside in the counties identified under an Executive Order issued by the Governor (2022-017, 2022-018, 2022-019, 2022-020, 2022-021, 2022-025); and
b) had a policy in effect at the time of the loss and have filed a claim for destroyed or damaged property or Additional Living Expenses (ALE) resulting from the fires described in the Emergency Order.

For residents who meet these conditions and have notified their insurer that they have been directly impacted by the identified fires, resulting in a temporary inability to pay the deductible, insurers should provide policyholders the option to delay application of their deductible until they are able to pay, or the 120-day extension has expired, whichever occurs first.

Question 2: ***Does OSI expect insurers to waive the deductible for all claims or only for fire loss claims?***

Answer:
The temporary deductible forbearance is intended to only apply to fire-related property losses which have been caused by the fires that are the subject of the Governor's executive orders. The deductible waiver and cost sharing moratorium also applies to health insurers who have policy holders negatively impacted by the fires.

As noted above, the order calls for a moratorium or waiver of deductibles and cost sharing for a limited period. Once the time period runs, or the impacted individual has been able to resume their ability to pay cost sharing obligations they are responsible for the payment.

Question 3: How should the 120-day waiver be applied by property and casualty insurers?

Answer:
The Order directs "insurers who write property or homeowners policies" and "insurers who write automobile policies" to waive deductibles for a period of 120 days. The Order should be interpreted to also include dwelling coverage. The intent of the Order is to ensure that a policyholder's temporary

inability to pay a deductible not delay the processing of a claim or impede the insured's ability to make repairs, including removal of debris. In such instances, the insured would still be responsible for the deductible amount after the 120-day emergency forbearance period expires or once their individual circumstances have improved, whichever occurs first.

The 120-day period under Sections C-2 and D-2 of the Order shall begin on the date of loss for claim payments issued on or after the May 11, 2022, effective date of the Order. Upon expiration of the 120-day grace period, application of the deductible may resume, which may include applying the deductible to other sums owed to the policyholder for covered losses under the policy. If an insurer is issuing a claim payment for repair or replacement of damaged property within the 120-day period, and further payments under the claim after the 120-day period are not likely to exceed the deductible, the insurer may apply the deductible to that payment. The terms and conditions of the policy contract, including the deductible and policy limits available, shall remain in full effect.

If a policyholder has a policy coverage subject to a deductible, the Order requires the insurer to pay these claims without application of the deductible if there is an expressed hardship need on the part of the insured such that the insured cannot yet afford to pay the deductible owed.

The OSI urges insurers to give those negatively impacted by the fires full consideration of their circumstances. Our office will frown on insurers who on day 121, submit the insured an obligation for the full amount of the waived cost sharing if the policy holder is actively attempting to get on their feet or establish an alternative living arrangement. In short, we ask that insurers exercise the due diligence they exhibited during the early stages of the COVID crisis.

Question 4: How should Property and Casualty insurers treat Section C-4 of the Order related to additional living expenses within the confines of the policy terms, conditions, and limits?

Answer:
The Order is intended to provide policyholders the option to temporarily waive application of any deductible that may apply for payments issued under Additional Living Expense (ALE) coverage portion of their policy and to provide policyholders a period of up to 12 months, if needed, to make a claim for ALE benefits that may be available under their policy. ALE payments as permitted under this section of the Order shall be subject to the terms, conditions, and limits of the policy contract. [Please also refer to the Waiver of Deductibles section above for further guidance.]

Question 5: Do the protections apply to delinquencies/situations unrelated to the fires?

Answer:
No. As identified under sections 1-7, 10, 11 and 12 of the Superintendent's findings and conclusions, and section E of the Order, the scope of accommodations expected from property & casualty insurers under sections C and D of the Order is intended to be limited to affected residents who:

a) reside in the counties identified under an Executive Order issued by the Governor (2022-017, 2022-018, 2022-019, 2022-020, 2022-021, 2022-025); and

b) had a policy in effect at the time of the loss and have notified their insurer of being directly impacted by the fires described in the Order, resulting in a financial hardship, or filed a claim for destroyed or damaged property or ALE resulting from the described fires.

The 90-day grace period under Section E-1 shall begin on the date the Order was issued, May 11, 2022.

Question 6: What is the state's expectation regarding the communications ordered under Section E?

Answer:
Reasonable efforts under Section E may include, but are not limited to the following:

- verbally notifying policyholders of the Order and its provisions;
- providing a written or electronic copy of the Order to policyholders; or
- providing a notice to agents to communicate the Order and its provisions to policyholders.

Insurers also are requested to post information on the provisions of the Order, and guidance on how to notify the insurer of an individual's fire-impacted situation.

As identified under sections 1-7, 10, 11 and 12 of the Superintendent's findings and conclusions, and section E of the Order, the scope of communications expected from property & casualty insurers under section E of the Order is intended to be limited to affected residents:

a) who reside in the counties identified under an Executive Order issued by the Governor (2022-017, 2022-018, 2022-019, 2022-020, 2022-021, 2022-025); and
b) had a policy in effect at the time of the loss and have notified their insurer of being directly impacted by the fires described in the Order, resulting in a financial hardship, or filed a claim for destroyed or damaged property resulting from the described fires.

Question 7: Does the Order apply to non-admitted (e.g., surplus lines) insurers?

Answer:
No. The Order does not apply to surplus lines insurers.

Question 8: Are non-real property carriers included (e.g., inland marine carriers)?

Answer:
"Marine and transportation" and "wet marine" as defined under NM ST §59A-7-5 are not included within the scope of the Emergency Order issued on May 11, 2022, and Emergency Orders referenced within. As identified under sections 9 and 11 of the Superintendent's findings and conclusions, the intention of the Order is that it should be applied in response to the destruction of home and property, the health and safety of citizens, with the scope of the requirements being directed to assist residents who have left their homes and temporarily relocated to other areas.

Additional Resources:

https://www.governor.state.nm.us/about-the-governor/executive-orders/

https://www.nmdhsem.org/2022-wildfires/

https://www.osi.state.nm.us/

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 13th day of June 2022, I filed the *Emergency Order Adding Sierra County* through the OSI's e-filing system, which caused the parties to be served by electronic means, as more fully reflected on the eService recipients list for this case.

Freya Tschantz
Office of Legal Counsel
Office of Superintendent of Insurance

BEFORE THE NEW MEXICO SUPERINTENDENT OF INSURANCE

IN THE MATTER OF AN	)	
EMERGENCY ORDER TO PROTECT	)	**Docket No. 2022-0041**
ACCESS TO INSURANCE AND THE	)	
STABILITY OF INSURANCE	)	
MARKETS IN FIRE EMERGENCIES	)	
	)	

EMERGENCY ORDER

THIS MATTER having come before the New Mexico Superintendent of Insurance ("the Superintendent") upon executive orders issued by the Honorable Michelle Lujan Grisham, Governor of the State of New Mexico, addressing fire emergencies in various parts of the State of New Mexico under the Constitution and laws of New Mexico, including the All Hazard Emergency Management Act, NMSA 1978, Sections 12-1-1 through 12-10-10 (1959, as amended through 2007);

THE SUPERINTENDENT FINDS AND CONCLUDES:

1. The Superintendent has jurisdiction over this matter pursuant to the New Mexico Insurance Code, NMSA 1978, Sections 59A-1-1 et seq. and specifically NMSA 1978, Section 59A-2-8(A)(11) and (B) (2021);

2. The Governor of the State of New Mexico, the Honorable Michelle Lujan Grisham, has declared in Executive Order 2022-017, issued April 22, 2022, an emergency in San Miguel County, New Mexico due to the Hermit's Peak Fire and as of the date of this Emergency Order has not renewed, modified, or rescinded Executive Order 2022-017;

3. The Governor of the State of New Mexico, the Honorable Michelle Lujan Grisham, has declared in Executive Order 2022-018, issued April 22, 2022, an emergency in Valencia County, New Mexico due to the Big Hole Fire and as of the date of this Emergency Order has not renewed, modified, or rescinded Executive Order 2022-018;

4. The Governor of the State of New Mexico, the Honorable Michelle Lujan Grisham, has declared in Executive Order 2022-019, issued April 22, 2022, an emergency in Colfax County, New Mexico due to the Cooks Peak Fire and as of the date of this Emergency Order has not renewed, modified, or rescinded Executive Order 2022-019;

5. The Governor of the State of New Mexico, the Honorable Michelle Lujan Grisham, has declared in Executive Order 2022-020, issued April 22, 2022, an emergency in Lincoln County, New Mexico due to the Lincoln County Fire Event and as of the date of this Emergency Order has not renewed, modified, or rescinded Executive Order 2022-020;

6. The Governor of the State of New Mexico, the Honorable Michelle Lujan Grisham, has declared in Executive Order 2022-021, issued April 23, 2022, an emergency in Mora County, New Mexico due to the Cooks and Calf Fires and as of the date of this Emergency Order has not renewed, modified, or rescinded Executive Order 2022-021;

7. The Governor of the State of New Mexico, the Honorable Michelle Lujan Grisham, has declared in Executive Order 2022-025, issued May 3, 2022, an emergency in Sandoval County, New Mexico due to the Cerro Pelado Fire Event and as of the date of this Emergency Order has not renewed, modified, or rescinded Executive Order 2022-025;

8. Upon an order by the Governor based upon the invocation of a state of emergency under the All Hazard Emergency Management Act, the Superintendent, pursuant to NMSA 1978, Section 59A-2-8(A)(11), may "take those actions necessary to ensure access to insurance and the stability of insurance markets during the emergency[,]" including issuing emergency orders to address any or all of the following:

(a) grace periods for payment of insurance premiums and performance of other duties by insureds;
(b) refund of premiums;
(c) waiver of cost sharing or deductibles;

(d) temporary postponement of cancellations and nonrenewals;
(e) reporting requirements for claims; and
(f) suspension of compliance with a statute, rule or contract, if strict compliance would prevent, hinder or delay necessary action in response to the emergency;

9. Each of the Governor's executive orders details the damage to the counties involved in the wildfires, the destruction of homes and other structures, the impact to local infrastructure, the undue human and animal suffering, the threats to the health, safety, and welfare of citizens, the threats to the economic function of those counties, and in several counties, the evacuation of residents from their homes;

10. The Superintendent finds that the social and economic dislocation of residents, along with widespread and catastrophic property damage, caused by the fires that are the subject of the Governor's executive orders, threaten access to insurance and the stability of insurance markets during the emergency;

11. The Superintendent further finds that residents who have left their homes and temporarily relocated to other areas may have lost access to health care providers, their prescription medications, and other necessary health services;

12. The Superintendent additionally finds that residents who have left their homes and temporarily relocated to other areas may have lost access to records and documents that would assist them in filing claims for destroyed or damaged property; and

13. The Superintendent finds that it is necessary to issue this Emergency Order to protect access to insurance and the stability of insurance markets during the emergencies declared in the Governor's executive orders.

IT IS THEREFORE ORDERED that:

A. With respect to policy holders whose residence is in the fire impacted counties identified in this order, insurers who write health insurance policies in New Mexico shall:

1. Provide a grace period of 90 days for payment of insurance premiums and offer policy holders a payment plan of no less than six (6) months if unable to pay the delinquency after the 90-day grace period;

2. Waive cost sharing and deductibles for 120 days;

3. Postpone cancellations and non-renewals for no less than 120 days;

4. Waive early-refill time limits on active prescriptions for 60 days;

5. Permit one eyeglass or contact lens replacement and one hearing aid replacement during the pendency of this Order, waiving frequency limitations;

6. Permit one replacement for dentures or other prosthodontic devices during the pendency of this Order, waiving frequency limits;

7. Permit replacement of covered disposable medical supplies and durable medical equipment (DME) during the pendency of this Order, waiving frequency limits; and

8. Waive additional fees, charges, referrals and prior authorization requirements for use of out-of-network providers for medically necessary services, whether emergent or not.

B. Insurers who write health insurance policies in New Mexico shall extend medical providers' reporting requirements for claims submissions and for additional information relating to claims for at least 120 days;

C. With respect to policy holders whose residence or business is in the fire impacted counties identified in this order, insurers who write property or homeowners policies in New Mexico shall:

1. Provide a grace period of 90 days for payment of insurance premiums and offer policy holders a payment plan of no less than six (6) months if unable to pay the delinquency after the 90-day grace period;

2. Waive deductibles for 120 days;

3. Postpone cancellations and non-renewals for no less than 120 days;

4. Waive deductibles for Additional Living Expenses (ALE) for any homeowners displaced and requiring ALE, and provide ALE for up to 12 months or until such time as the displace homeowner establishes a new residence, whichever occurs first;

5. Extend reporting requirements for claims submissions or requests for additional information relating to claims for at least 120 days;

6. Allow insureds to request a duplicate copy of their policy at no additional costs; and

7. Suspend late payment, reinstatement or insufficient funds fees along with any other fee, penalty, or interest charge resulting from the insured's temporary inability to submit premium payments;

D. With respect to policy holders whose residence or business is in the fire impacted counties identified in this order, that insurers who write automobile policies in New Mexico shall:

1. Provide a grace period of 90 days for payment of insurance premiums, and that policy holders be offered a payment plan of no less than six (6) months if unable to pay the delinquency after the 90-day grace period;

2. Waive deductibles for 120 days;

3. Postpone cancellations and non-renewals for no less than 120 days;

4. Extend reporting requirements for claims submissions or requests for additional information relating to claims for at least 120 days;

5. Extend reporting requirements for claims submissions or requests for additional information relating to claims for at least 120 days;

6. Allow insureds to request a duplicate copy of their policy at no additional costs; and

7. Suspend late payment, reinstatement or insufficient funds fees along with any other fee, penalty, or interest charge resulting from the insured's temporary inability to submit premium payments;

E. Insurers impacted by this order are directed to make every reasonable effort to assist policy holders by informing them of the provisions of this order. Insurers are expected to document their outreach efforts to those who suffered property damage, injuries, and other losses as a result of the catastrophic fires;

F. This Emergency Order shall take effect for San Miguel County, New Mexico immediately and shall remain in effect until Executive Order 2022-017 is rescinded by the Governor or until September 30, 2022, whichever occurs first;

G. This Emergency Order shall take effect for Valencia County, New Mexico immediately and shall remain in effect until Executive Order 2022-018 is rescinded by the Governor or until September 30, 2022, whichever occurs first;

H. This Emergency Order shall take effect for Colfax County, New Mexico immediately and shall remain in effect until Executive Order 2022-019 is rescinded by the Governor or until September 30, 2022, whichever occurs first;

I. This Emergency Order shall take effect for Lincoln County, New Mexico immediately and shall remain in effect until Executive Order 2022-020 is rescinded by the Governor or until September 30, 2022, whichever occurs first;

J. This Emergency Order shall take effect for Mora County, New Mexico immediately and shall remain in effect until Executive Order 2022-021 is rescinded by the Governor or until September 30, 2022, whichever occurs first;

K. This Emergency Order shall take effect for Sandoval County, New Mexico immediately and shall remain in effect until Executive Order 2022-025 is rescinded by the Governor or until September 30, 2022, whichever occurs first;

L. Copies of this Order shall be sent to all persons listed as service recipients on OSI's eDocket;

M. This Order shall be uploaded on the OSI Newsletter and sent out as a large volume correspondence to all Insurers licensed in New Mexico on the State Based System; and

N. This docket shall remain open until further written order of the Superintendent.

ISSUED under the seal of the New Mexico Office of Superintendent of Insurance at Santa Fe, New Mexico, this 11th day of May, 2022.

HON. RUSSELL TOAL
Superintendent of Insurance

Additional Resources:

https://www.governor.state.nm.us/about-the-governor/executive-orders/

https://www.nmdhsem.org/2022-wildfires/

https://www.osi.state.nm.us/

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 11th day of May 2022, I filed the *Emergency Order* through the OSI's e-filing system, which caused the parties to be served by electronic means, as more fully reflected on the eService recipients list for this case.

Melissa Y. Gutierrez

MELISSA Y. GUTIERREZ, Law Clerk
Office of Legal Counsel
Office of Superintendent of Insurance