

**191—4.21(17A) Waivers.**

**4.21(1) Scope.** Division II of this chapter outlines generally applicable standards and a uniform process for the granting of individual waivers from rules adopted by the division in situations when no other more specifically applicable law provides for waivers. To the extent another more specific provision of law governs the issuance of a waiver from a particular rule, the more specific provision shall supersede the rules in this division with respect to any waiver from that rule. Division II of this chapter shall not preclude the division from granting waivers in other contexts or on the basis of other standards if a statute or agency rule authorizes the division to do so and the division deems it appropriate to do so.

**4.21(2) Authority to grant waivers.** The division may grant a waiver from a rule only if the division has jurisdiction over the rule and the requested waiver is consistent with applicable statutes, constitutional provisions, or other provisions of law. The division may not waive the following categories of rules:

- a. Rules setting requirements that are created or duties that are imposed by statute.
- b. Rules that provide definitions or interpretations, set fees, clarify enforcement authority, deal with fraud or are the subject of prosecutorial discretion.
- c. Rules that merely define the meaning of a statute or other provision of law or precedent if the commissioner does not possess delegated authority to bind the courts to any extent with the commissioner's definition.

**4.21(3) Criteria for order for waiver.** In response to a petition completed pursuant to rule 191—4.22(17A), except for a petition seeking a waiver order issued pursuant to subrule 4.21(4), the division may in its sole discretion issue an order waiving in whole or in part the requirements of a rule if the division finds, based on clear and convincing evidence, all of the following:

- a. Application of the rule would impose an undue hardship on the person for whom the waiver is requested;
- b. Waiver from the requirements of the rule in the specific case would not prejudice the substantial legal rights of any person;
- c. Provisions of the rule subject to the petition for a waiver are not specifically mandated by statute or another provision of law;
- d. Substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver is requested; and
- e. If the rule implements Iowa Code chapter 502 or is being applied in conjunction with implementation of Iowa Code chapter 502, the waiver is necessary or appropriate in the public interest or for the protection of investors and is consistent with the purposes fairly intended by the policy and provisions of Iowa Code chapter 502.

**4.21(4) Criteria for waiver related to approval of a manner of electronic delivery of notices of cancellation, nonrenewal or termination.** This subrule is intended to implement Iowa Code sections 17A.9A and 505B.1.

a. For purposes of Iowa Code chapter 505B and this subrule, in addition to the definitions in rule 191—4.2(17A), the following definitions shall apply:

“*Intended recipient*” means the person to whom notice is required to be delivered, including but not limited to notices listed in the definition of “notice of cancellation, nonrenewal or termination” in this paragraph and in 191—paragraphs 20.80(1)“b,” 30.9(1)“b,” 35.9(1)“b,” 39.33(1)“b,” and 40.26(1)“b.”

“*Notice of cancellation, nonrenewal or termination*” means:

1. Notice of an insurance company's termination of an insurance policy at the end of a term or before the termination date;
2. Notice of an insurance company's decision or intention not to renew a policy; and
3. For purposes of notices required by Iowa Code chapters 505B, 508, 509B, 513B, 514, 514B, 514D, 514G, 515, 515D, 518, 518A and 519, includes but is not limited to the following:
  - An insurance company's notice of cancellation, nonrenewal, suspension, exclusion, intention not to renew, failure to renew, termination, replacement, rescission, forfeiture or lapse in an annuity policy, a life insurance policy, a long-term care insurance policy, or an insurance policy other than life;

- An insurance company's rescission or discontinuance of an accident and health insurance policy;
- An insurance company's notice of cancellation of personal lines policies or contracts;
- A health maintenance organization's notice to an enrollee of cancellation or rescission of membership;
- An employer's or group policyholder's notice to an employee or member of the termination or substantial modification of the continuation of an employer group accident or health policy; or
- A carrier's advance notice to affected small employers, participants, and beneficiaries of its decision to discontinue offering a particular type of health insurance coverage.

*b.* This subrule shall apply to all insurance companies holding a certificate of authority to transact the business of insurance in Iowa, health maintenance organizations, employers, group policyholders, or carriers and to all requirements by statute or rule related to notices of cancellation, nonrenewal or termination. This subrule shall apply when an insurance company, health maintenance organization, employer, group policyholder, or carrier seeks the commissioner's approval of a manner for delivering by electronic means required notices of cancellation, nonrenewal or termination, as described in Iowa Code section 505B.1.

*c.* The commissioner, by order pursuant to this chapter, may approve a request for approval of a manner for delivering notices of cancellation, nonrenewal or termination by an electronic means if the commissioner has jurisdiction to enforce the statute or rule requiring the notice and if the requested approval is consistent with Iowa Code section 505B.1 and with this chapter.

*d.* In response to a petition submitted pursuant to rule 191—4.22(17A) and related statutes and rules, the commissioner may issue an order approving an insurer's proposed manner for delivering notices of cancellation, nonrenewal or termination by an electronic means rather than mail, if the commissioner finds, based on clear and convincing evidence, all of the following:

- (1) The proposed manner allows the commissioner, the insurer and the intended recipient to verify receipt by the intended recipient;
- (2) The proposed manner provides for consent, by the intended recipient, to have notices or documents delivered by electronic means, in compliance with Iowa Code chapter 505B; and
- (3) The proposed manner provides that the insurance company shall maintain adequate records of notices, receipts and consents. The records shall be available for review upon request by the commissioner and the intended recipient and be shall maintained for a period of five years from the date of cancellation, nonrenewal or termination.

*e.* Such an order would constitute approval by the commissioner to satisfy Iowa Code chapter 505B.

*f.* Although any proposed manner that complies with the above requirements may be approved, the following system is provided as an example, for purposes of guidance, of an insurer's system of verifiable receipt that will be approved by the commissioner if the system includes all of the following aspects:

- (1) The system provides that the intended recipients shall give written consent to the insurer of delivery of required notices of cancellation, nonrenewal and termination by electronic means, in compliance with Iowa Code section 505B.1.

- (2) The system provides that when an insurer is required to provide notices of cancellation, nonrenewal and termination, the insurer shall provide to the intended recipients a link to the required notice by electronic mail.

- (3) The system provides that the insurer provide intended recipients with user names and passwords to log in to the insurer's notice system website.

- (4) The system provides that the link required by subparagraph 4.21(4) "f"(2) shall be to a secure website that requires the intended recipients' user names and passwords for the intended recipients to access the insurer's notice system website and the contents of the notices.

- (5) The system provides that when the intended recipients log in to the insurer's notice system website, either the insurer's notice to the intended recipients or the intended recipients' online inboxes will be the first thing automatically displayed.

(6) The system provides a procedure whereby, if the intended recipients do not log in to the intended recipients' accounts within seven days after the insurer sent the link to the intended recipients by email, the insurer shall mail paper copies of the notices to the intended recipients' last-known physical addresses.

(7) The system provides for adequate maintenance of records by the insurer as required by subparagraph 4.21(4) "d"(3).

g. The commissioner may, upon proper request by an insurance company pursuant to rule 191—2.6(17A,22) or another applicable rule, maintain the confidentiality of information in any document or materials submitted in support of a request for approval under this rule:

(1) If release of the specific information would disclose trade secrets protected by law pursuant to Iowa Code section 22.7(3) and 191—subrule 2.12(12); or

(2) If the specific information otherwise must be withheld from public inspection pursuant to Iowa Code chapter 22 or rule 191—2.12(17A,22).

[ARC 4780C, IAB 11/20/19, effective 12/25/19]