



South Carolina Department of Insurance

NIKKI R. HALEY
Governor

RAYMOND G. FARMER
Director

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE MATTER OF:)
)
Promulgation of Emergency)
Insurance Regulation 69-78)

BEFORE THE SOUTH CAROLINA
DEPARTMENT OF INSURANCE

EMERGENCY ORDER NO. 2016-EO-001

This matter comes before the Director of Insurance as a result of the state of emergency created by Hurricane Matthew. Being fully informed of the premises, I hereby find and conclude as follows:

1. The South Carolina Department of Insurance has the duty pursuant to the provisions of Title 38 of the South Carolina Code Annotated to enforce the provisions of the South Carolina Insurance Law. The Department has the authority expressly conferred upon it by, or reasonably implied from, the provisions of S.C. Code Ann. §§ 38-3-10 *et seq.* to implement and enforce the insurance laws of this state. Section 38-3-410(A) of the South Carolina Insurance Law provides:

If the Governor declares a state of emergency pursuant to Section 1-3-420, the director may issue one or more emergency regulations pursuant to Section 1-23-130(A) applicable to all insurance companies, entities, and persons, as defined in Section 38-1-20, that are subject to Title 38.

Governor Nikki Haley declared a state of emergency effective October 4, 2016 by Executive Order 2016-26 for portions of State of South Carolina. *See Exhibit 1.* The emergency conditions which necessitated the issuance of that emergency declaration continue with areas of the state experiencing wind gusts of up to 88 miles per hour, inundation from the storm surge, heavy rain, flooding and other damage.

2. Neither this Order nor Emergency Regulation 69-78 are intended to confer any additional property or other rights upon insureds in the counties impacted by this event. It is intended to provide additional time for insureds impacted by this catastrophic event to act or respond to insurance requirements. The issuance of this Emergency Order and Emergency Regulation 69-78 are fair under the circumstances due to the catastrophic events and harm described above.

ACCORDINGLY IT IS ORDERED THAT:

1. All persons licensed by the South Carolina Department of Insurance or otherwise authorized to transact the business of insurance shall take the action necessary to effectuate and comply with the requirements of Emergency Regulation 69-78. *See Exhibit 2.*
2. The provisions of this emergency order and regulation shall be liberally construed to effectuate the purposes and intent expressed therein and to afford maximum protection to consumers affected by this disaster.
3. The emergency regulation shall apply to the lines of insurance and geographic areas specified in the regulation and shall continue in effect from the date of filing for 120 days unless otherwise extended.

Entered this 8th day of October, 2016.


Raymond G. Farmer

Columbia, South Carolina

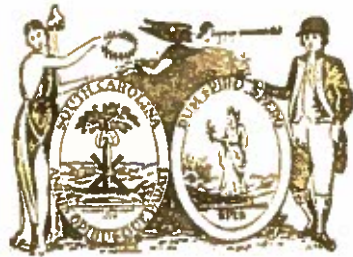
SCDOI EMERGENCY ORDER NO. 2016-EO-001

Exhibit 1: Executive Order No. 2016-26

(SEE THE FOLLOWING TWO PAGES)

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State of South Carolina
Executive Department



FILED

OCT 04 2016

Mark Hammond
SECRETARY OF STATE

Office of the Governor

EXECUTIVE ORDER NO. 2016-26

WHEREAS, the National Hurricane Center has determined that the State of South Carolina may be vulnerable to the effects of Hurricane Matthew, currently a category 4 moving northwest towards South Carolina; and

WHEREAS, I have been advised that Hurricane Matthew, the heavy rain, and flash flooding may represent a threat to the safety, security, welfare and property of citizens and transients living in South Carolina, the preparation and response for which require assistance and support from the State.

NOW THEREFORE, by virtue of the power and authority vested in me as Governor, pursuant to the Constitution and Statutes of the State of South Carolina, effective at 7:30 AM, October 4, 2016, I hereby declare that a State of Emergency exists in South Carolina. I direct that the South Carolina Emergency Operations Plan be placed into effect. I direct that all prudent preparations be taken at the individual, local, and state levels to protect against the possible effects of Hurricane Matthew.

FURTHER, I hereby place specified units and/or personnel of the South Carolina National Guard on State Active Duty pursuant to my authority under Section 25-1-1840 of the South Carolina Code of Laws, and I will do so by directing the Adjutant General to issue supplemental orders. I further order the activation of the South Carolina National Guard personnel and utilization of appropriate equipment at the discretion of the Adjutant General and in coordination with the Director of the South Carolina Emergency Management Division, to take necessary and prudent actions to assist the citizens of this state.

I also order Dual Status Command to allow the Adjutant General or his designee to serve as commander over both federal (Title 10) and state forces (National Guard in Title 32 and/or State Active Duty status) as necessary.

I further order that all licensing and registration requirements regarding private security personnel or companies who are contracted with South Carolina security companies in protecting property and restoring essential services in South Carolina be

suspended, and State Law Enforcement Division (SLED) shall initiate an emergency registration process for those personnel or companies for a period specified, and in a manner deemed appropriate, by the Chief of SLED.

I also note that the prohibitions against price gouging stated in Section 39-5-145 of the South Carolina Code of Laws are in effect due to the State of Emergency.

Further proclamations and regulations deemed necessary to insure the fullest protection of life and property during this state of emergency shall be issued orally by me and thereafter reduced to writing within the succeeding 24-hour period.



GIVEN UNDER MY HAND AND THE
GREAT SEAL OF THE STATE OF
SOUTH CAROLINA, THIS 4th DAY OF
OCTOBER, 2016.



NIKKI R. HALEY
Governor

ATTEST



MARK HAMMOND
Secretary of State

SCDOI EMERGENCY ORDER NO. 2016-EO-001

Exhibit 2: Regulation 69-78

(SEE THE FOLLOWING SIX PAGES)

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Document No.
DEPARTMENT OF INSURANCE
CHAPTER 69

Statutory Authority: 1976 Code Sections 1-23-10 et seq., 38-3-10 et seq., 38-3-110, 38-3-410 et seq., and
Executive Order 2016-26

69-78. Moratorium on Cancellation due to Nonpayment of Premiums and Certain Nonrenewals and Extension of Insurance-Related Provisions Affecting Insureds in South Carolina Impacted by Hurricane Matthew.

Emergency Situation:

On October 4, 2016, by Executive Order 2016-26, Governor Nikki Haley declared a state of emergency due to Hurricane Matthew, a catastrophic storm event. Areas of South Carolina have been directly impacted by Hurricane Matthew's tropical and hurricane force winds, heavy rainfall, and storm surge creating flooding and other emergency conditions. The threat of hurricane, tropical force winds and storm surge necessitated the closing of many businesses, roads and interstates throughout South Carolina. Coastal counties in South Carolina were evacuated to protect the health, safety, and welfare of South Carolina residents and visitors.

Hurricane Matthew arrived off the coast of South Carolina on Saturday, October 8, 2016. As a result of the impact of Hurricane Matthew, some areas of the state experienced storm surges causing inundation. Wind gusts of up to 88 miles per hour (mph) have been reported. Over 400,000 South Carolina residents were without power by Saturday morning, with more power outages expected and some expected to continue for extended periods of time. Significant property damage due to hurricane force winds, felled trees and power outages and loss of hundreds of lives have already been associated with this severe weather event in the Caribbean and Florida. Hurricane Matthew has impacted the public health, safety, and welfare of South Carolina consumers necessitating the immediate promulgation of an emergency regulation.

To help provide safeguards for consumers and to ensure that South Carolina insureds affected by this disaster do not suffer any additional unnecessary hardship, all individuals, entities, and persons licensed or authorized to transact insurance business in this State are hereby required to implement the safeguards listed below for all lines of business. These safeguards address problems consumers may face due to circumstances that make it difficult for them to take normal action required by policy language or otherwise required by insurer policies or procedures. These measures are intended to provide some peace of mind during the recovery process and help ensure that disaster victims do not lose important insurance coverage during the time they need it most.

Text:

Section 1. Purpose

This Emergency Regulation is issued to expedite and facilitate the state's recovery from Hurricane Matthew to protect the interests of South Carolina insureds in light of this catastrophic event.

S.C. Code Ann. Section 38-3-410 *et. seq.* gives the Director the authority to adopt procedures that facilitate recovery from the emergency. South Carolina law requires that the emergency regulation address claims reporting requirements; grace periods for payment of premiums and performance of other duties by

insureds; temporary postponement of cancellations and nonrenewals; and *any* other rule the Director considers necessary to aid the state's recovery from this catastrophic event.

Hurricane Matthew has disrupted the lives of many South Carolinians. Some consumers have been evacuated and may experience the destruction or damage of their homes and property. Thus, many victims are displaced and currently unable to timely act or respond to insurance notices or to timely pay insurance premiums and may need additional time within which to act or respond. Additionally, insureds who wish to make timely payment may be otherwise prevented from making such payments because of the effects of Hurricane Matthew and the aforementioned circumstances. This Emergency Regulation provides emergency relief to the insureds of South Carolina affected by this disaster event. It is the expectation of this Department that insurers will be guided by a "reasonableness" standard and, when uncertain, will "err" on the side of the consumer.

Section 2. Definitions

As used in this regulation, the terms below have the following meaning:

(1) "Insured" includes, but is not limited to, a person, policyholder, member, subscriber, enrollee, covered individual, or certificate holder for which coverage or benefits are provided under an insurance contract that is subject to regulation under the South Carolina Insurance Law.

(2) "Insurer" means any person or entity that is licensed, authorized, registered, or otherwise subject to regulation under the South Carolina Insurance Law that provides insurance coverage for one or more of the line(s) of insurance as defined in subitem (3).

(3) "Line of insurance" or "lines of insurance" includes any insurance contract that is subject to regulation under the South Carolina Insurance Law and includes, but is not limited to, flood insurance (not issued pursuant to the National Flood Insurance Program), property insurance, automobile insurance, liability insurance, casualty insurance, fidelity and surety insurance, title insurance, fire and extended coverage insurance, life insurance, accident and health insurance, credit life insurance, credit property insurance, annuities, health maintenance organizations (HMOs), excess and surplus lines insurance, reciprocal insurance, and stop loss insurance. It does not include workers' compensation insurance.

(4) "Person" means, as defined in S.C. Code Section 38-1-20(44) (2015).

(5) "Impacted area" includes Beaufort, Berkeley, Charleston, Colleton, Dorchester, Georgetown, Horry and Jasper Counties.

(6) "Insurance contract" means a plan, policy, contract, certificate, or agreement that is subject to regulation under the South Carolina Insurance Law. It includes premium service company agreements relating to people, property, or risks located in the impacted area.

Section 3. Scope and Applicability

This regulation shall apply to all insurers with respect to any insurance contract that is (1) for any line of insurance and (2) relates to either an insured residing in an impacted area or an insured's risk located in an impacted area.

Section 4. 60-Day Moratorium on Cancellations Due to Nonpayment of Premium and on Nonrenewals

There is a 60-day moratorium on the cancellation of any insurance contract attributed to a failure to pay premium(s) by insureds. This is not a waiver; it is only an extension or grace period in which to pay premiums.

In the case of an insurance contract for which a nonrenewal takes effect during the moratorium period, coverage shall be continued at the request of the insured for the duration of the moratorium period. An

insured requesting a temporary extension of coverage under this provision is responsible for any additional premium owed during the time period for which coverage is extended.

After the moratorium, insurers shall work with insureds directly impacted by the disaster event that may request or require additional time to pay premiums that would have been due during the moratorium (e.g., payment plan or further extension of the date by which the amount due must be paid in full).

The 60-day moratorium period begins Saturday, October 8, 2016 and ends December 7, 2016. For insureds displaced as a result of or directly impacted by the disaster event, the Department expects insurers to apply this moratorium retroactively to October 4, 2016 (the day before evacuations began).

Section 5. Exceptions to Contract Requirements or Underwriting Decisions for Insureds Directly Impacted by the Disaster Event

Insurers shall consider exceptions to insurance contract or underwriting requirements for insureds displaced or directly impacted by the disaster event. This includes, but is not limited to:

- a. an extension of proof of loss deadlines;
- b. waivers of limitations relating to the use of out-of-network providers; and
- c. insureds that may temporarily be unable to receive or timely act in response to notices regarding underwriting decisions.

Any such exception will not be considered unfairly discriminatory if it is focused on providing additional consumer protections for insureds that are particularly devastated by this disaster event.

With respect to insureds that contact their insurer, or a representative of their insurer, for the express purpose of obtaining a letter documenting that coverage does not exist for damages resulting from the disaster event in order to complete an application for governmental assistance (e.g., Federal Emergency Management Agency Individual Assistance), an insurer must not consider this contact as a claim or a claim inquiry for purposes of rating, underwriting, or reporting to a third-party claims history database.

Section 6. Cancellation and Nonrenewal

No insurance contract shall be cancelled or nonrenewed solely because of a claim resulting from this disaster event. This section is not limited to impacted counties.

Section 7. Policy Cancellation Permissible Upon Request

Nothing in this regulation shall prevent an insurer from cancelling an insurance contract upon the documented request or concurrence of the insured.

Section 8. Copy of Insurance Contract to be Provided at No Cost to Impacted Insureds

If an insured displaced as a result of or directly impacted by the disaster event requests a copy of his insurance contract, the insurer shall provide a copy of the requested contract at no cost to the insured within fifteen calendar days of the written request.

Section 9. Adjustment and Settlement of Claims

Insurers should always promptly and in good faith adjust and pay all valid insurance claims. This is extremely important following a declared disaster emergency with respect to claims related to the disaster. S. C. Code Ann. Section 38-59-20(4) (2015) requires that claim payments be made in a prompt, fair, and

equitable manner. The Director expects insurers take the following action upon receiving notice of a claim, keeping in mind that the magnitude of and circumstances surrounding the disaster may impact the adjustment and settlement of individual claims:

- a. Promptly establish contact with the claimant;
- b. Promptly survey and assess the claimant's damage;
- c. Accurately and completely respond to Department inquiries, including inquiries made relating to consumer complaints filed with the Department, by the deadline prescribed by the Department;
- d. Promptly inform claimants of any documents that must be submitted to evaluate or process a claim;
- e. Provide prompt and accurate responses to claimants;
- f. Provide prompt payment for additional living expenses and temporary repairs after the assessment of the insured's or claimant's damage;
- g. Promptly set appointments with the claimant for examination and resolution of claim matters.

If necessary, the Director may establish a mediation program to facilitate the resolution of disputed open claims for damage to real and personal property resulting from the disaster. The requirements for any such program will be established by order or subsequent amendment to this regulation.

Section 10. Method of Payment for Claims

In order to facilitate the resolution of claims in an expeditious manner, claims payment may be made by insurers by issuance of a prepaid debit card or any other form of electronic transfer *provided* (1) the insured is informed that payment in this manner is a voluntary option for payment and agrees to the method of payment; (2) the method of payment is not subject to any fees that would result in the insured receiving less than the full amount due; (3) the insured is permitted, at any time, to convert any balance into cash; and (4) the insured is notified of applicable terms and conditions.

Section 11. Premium Offset

In the course of settlement of a claim from an insured, any claim payment made to the insured or beneficiary under the insurance policy may not include an offset for any premium due unless the insured or beneficiary agrees in writing to an offset.

This section is not applicable to accident and health insurance coverage or any coverage provided by HMOs.

Section 12. Prescription Refills

An insurance policy or contract, including an HMO, that provides coverage for prescription drugs must allow one early refill of a prescription if there are authorized refills remaining or allow one replacement prescription for a prescription that was recently filled for insureds who reside in the impacted area. This section is valid for requests made on or before October 31, 2016.

Section 13. Cancellation for Fraud or Material Representation

This regulation shall not be construed so as to prevent an insurer from canceling or terminating coverage for fraud or material misrepresentation in accordance with applicable law.

Section 14. Insured's Obligation to Provide Information and Cooperation

This regulation shall not relieve an insured who has a claim caused by this disaster event from compliance with the insured's obligation to provide information and cooperate in the adjustment or investigative process related to the claim.

Section 15. Waiver of Certain Interest, Penalties, Fees and Other Charges

The Director expects insurers to suspend the imposition of fees, penalties, or interest that would be charged due to an insured's temporary inability to submit premium payments or otherwise respond as a result of this disaster event. Examples include, but are not limited to, fees, penalties, or interest resulting from insufficient funds, late payments, or reinstatements.

Fees that are not the result of an insured's failure to timely or completely respond are not impacted by this provision.

Section 16. Intent and Construction

The benefits, entitlements, and protections of this regulation shall be liberally construed to effectuate the intent and purposes expressed herein and to afford maximum consumer protection for the insureds of South Carolina.

Insurers, as defined in this regulation, should take into consideration the difficulties related to this weather event that citizens of this state have suffered and continue to suffer and should take such consideration into account when dealing with matters relating to collection of premium, cancellation, nonrenewal, documentation and other requirements or policy provisions, including, but not limited to: notifications of hospital admissions; due dates relating to claims; premium payments; optional service fees; prior authorization requirements; and limitations on prescription refills.

The Department will review allegations or disputes, and if warranted, direct the insurer to work with the insured by providing the relief required in this regulation or to take other corrective action. If the insurer fails to comply, the matter will be referred for further investigation.

Section 17. Sanctions for Violations

The Director retains the authority to enforce violations of this regulation. Accordingly, any insurer, person, or entity subject to regulation under the South Carolina Insurance Law who violates any provision of this regulation shall be subject to institution of administrative or civil action by the Director under any applicable provisions of the South Carolina Insurance Law, including the provisions of SC Code Ann. Section 38-2-10. These provisions include penalties of up to \$15,000 for each violation or \$30,000 for each violation if the violation is willful. In addition to the fines listed, the insurer, person or entity may also be subject to suspension or revocation of its authority to transact business subject to the Insurance Law in South Carolina.

Section 18. Emergency Motor Vehicle Physical Damage Appraisers

Due to the inundation and catastrophic flooding caused by Hurricane Matthew, the Director has determined that the licensure of emergency motor vehicle physical damage appraisers is necessary. The resolution of claims related to such covered losses may not occur expeditiously without the authorization of emergency motor vehicle physical damage appraisers. This action is being taken to ensure that motor vehicle physical damage appraisers are available to assist with the evaluation of claims for South Carolina consumers.

Insurers interested in appointing nonresident, temporary motor vehicle damage appraisers may obtain the procedures and forms for licensure from the Department's website at doi.sc.gov/emergencyappraiser. Insurers are responsible for the actions of any temporary motor vehicle physical damage appraiser or temporary adjuster it appoints to represent it during this catastrophic event and are subject to the penalties set forth in SC Code Ann. Section 38-2-10 for violations of the South Carolina Insurance Laws.

Section 19. Rate, Rule, and Form Filing Deemer Dates

The Director may extend the timeframes set forth in filing statutes, if necessary, to enable the Department to devote the resources necessary to the state's recovery from this catastrophic event.

Section 20. Authority

The Director reserves the right to extend, amend, modify, alter or rescind all or any portions of this emergency regulation via subsequent regulation or by order of the Director.

Section 21. Severability Clause

If any section or provision of this emergency regulation is held invalid, such invalidity or determination shall not affect other sections or provisions, or the application of this regulation, to any persons or circumstances that can be given effect without the invalid sections or provisions and the application to any person or circumstance shall be severable.

Section 22. Effective Date

In accordance with S.C. Code Section 38-3-410, this regulation shall be effective immediately upon filing and shall continue for 120 days unless otherwise extended or terminated by the Director.

Statement of Need and Reasonableness:

The emergency regulation is needed to protect the interests of South Carolina insurance consumers and to expedite and facilitate the state's recovery from Hurricane Matthew.

Fiscal Impact Statement:

There will be no increased costs to the state or its political subdivisions.