Insurance issues arising from disasters bring little regulatory change to Colorado

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The Colorado Division of Insurance, the regulatory agency charged with protecting consumers, has emerged from years of wildfires and floods with few tools to help it track market health in the state, and remains relatively powerless.

Colorado residents are more or less where they were three years ago, before a spate of wildfires around the state – on their own, with few laws preventing insurance companies from canceling or not renewing insurance policies due to wildfire risk.
Meanwhile, other disaster-wracked states adopted laws that allow regulators to track the state of homeowner insurance policies.
Colorado's division relies on license fees and insurance premium taxes to fill its budget, making it dependent on the companies it regulates.
"Some) of the division's funding comes from insurance premium tax," said former Rep. Claire Levy, who worked extensively with the division following major fires along the Front Range. "They are dependent on the companies that they regulate for their funding. It doesn't exactly make them captive, but it does present a problem with independence."
Critics also say the the division should do more to keep insurance companies from bailing on states after disasters. Without new laws and data, the impact that Colorado's disasters have had on the insurance industry and their clients is poorly understood.
"Insurance companies are sophisticated financial gamblers, and when they get spooked they have to be calmed down, and that's a regulator's job," said Amy Bach, the executive director of United Policyholders, a non-profit that advocates for consumers. "But the regulator needs to know that they are spooked."
While the insurance division can keep tabs on the financial health of companies, its hands are tied when it comes to gathering data that many disaster-prone states consider essential to ensuring that residents

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can get insurance.
In Colorado, insurance premiums are rising, and some homeowners are losing policies because of non-renewals or cancellations – but regulators have no idea of the scope of those issues. The state is reliant on complaints to give it an indication of insurance trends around the state. The prognosis for passing laws that open access to data is grim, particularly in a state with an anti-regulation culture, regulators say.
Division of Insurance officials say they can ensure that Colorado has a healthy insurance market by using financial checks and updates from insurance companies regarding their business in the state.
“We live in a state that is so conservative about raising fees and prices and adding more laws, that’s why I’m reluctant to push for more regulation,” said Marguerite Salazar, the state’s insurance commissioner. “You know, I think they would) provide a better climate, especially for consumers – and we are all about consumer protection. But I realize that the reality of trying to create more laws would not be welcomed in this state.”

It’s a bleak reality for homeowners like Phil Rice, a Black Forest resident who complained to the division after his homeowners policy with Allied, part of Nationwide Insurance, was not renewed after the catastrophic Black Forest fire in 2013. Months later Allied declared the non-renewal a mistake and decided to reinstate him.
Had Rice lived in California, where not renewing within a year after a nearby wildfire is illegal, the story would have been different. But in Colorado, where the state has no power to prevent non-renewals, people like Rice are at the mercy of their insurance company’s whims. Without a legislative fix, Colorado’s insurance regulations are likely to stay the same, even as the state adds to its ever-growing list of natural disasters.
Complaint-based system
Rice got a settlement on his destroyed home, and he wasn’t totally surprised by a letter a few months later declaring that his policy with Allied would not be renewed. Black Forest residents had been warned that this would happen, he said.
Waves of non-renewals and cancellations in the wake of disasters are common. Division of Insurance records of complaints show that about 250 homeowners have complained about lost insurance since 2012, but the number could be higher. That’s because filing a complaint is the the only way for consumers to get on the Division of Insurance’s radar.
Rice knows that he is not alone in his struggle with an insurance company. He has heard rumors of

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homeowners whose policies were canceled the day the Black Forest fire started, and has heard countless stories about companies that refuse to pay for smoke damage. There is a rumor about a family whose company refused to settle on a destroyed home because the family decided to not rebuild. But without an official complaint to the state, the insurance division is unaware of whether they are true or not.

“People need to let us know when these problems are coming up, because we wouldn’t know otherwise unless they give us a call,” said Salazar. “They may think that’s just the way it is. But we can often take a look at that contract and help them discern whether or not they do have a complaint.”

The division can get involved in a complaint, but it has little power over an insurance company. In Rice’s case, its intercession was merely a courtesy that likely put pressure on Allied, but the company could legally choose to not renew Rice’s policy.

Until the non-renewal notice landed in his mailbox in January 2014, Rice had no complaints about the company, which had covered his Black Forest home since 2005.

“As far as I was concerned, they were just golden,” Rice said. “I mean, we couldn’t have asked for better agents to work with. We couldn’t have asked for better payout in terms of rebuilding.”

But as Rice’s rebuilding efforts got underway, Allied’s stance changed. When he looked into the non-renewal notice, Rice was told that he “should never have been insured in the first place.” The company decided that Rice’s neighborhood – which was destroyed – was too fire prone and that his security gate, among other things, would make his home hard to reach during a wildfire.

Rice filed his complaint to double-check whether Allied could take the action.

“I simply said, I know you cannot get involved in the resolution of disputes, but I want to know if Allied is being fair in using the risk factors that they claim are the basis of the non-renewal.”

Insurance companies can cancel or not renew policies, but they must give homeowners 30 days notice. Also, policies cannot be canceled while a disaster is ongoing, said Bobbi Baca, a supervisor for consumer affairs. In Rice’s case, as with other complaints, the division asked Allied for an explanation of the non-renewal, to which the company had to respond within 20 days or face a $500 fine.

“They have to comply with their own underwriting guidelines,” Baca said.

“But on the individual case-by-case basis, we can’t tell a company that they can’t non-renew because of a weather-related claim.”

First, Allied granted Rice a year-long extension; in August, after a tour of Rice’s rebuilt home, the company agreed to renew the policy indefinitely.

“I still remember when we were standing out here on the deck and I was alone with the gentleman from Allied), and he said, ‘I just simply want to apologize to you because this should never have happened,'”

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Rice recalled.
Rice attributes the renewal to possible pressure from the insurance division and some of his own arguments.
In his letter to Allied, Rice pointed out that “you would be discriminating against me if you cancel me on those grounds and you don’t cancel other people,” he said.
Rice’s is one of 28 official records of insurance non-renewal complaints that were resolved since 2012, or roughly 11 percent of all the complaints received, insurance division records show.
“That percentage doesn’t seem really good, but for those ones that we are able to help, that means a lot to that person,” Baca said.
Rice would like the division to have a greater role in the process and possibly adopt a law similar to California, which prohibits non-renewals for a year after a wildfire.
“I think that would be a very good thing to have in place,” he said. “Because you’ve just been hit by the catastrophic loss and they say, ‘We are not going to renew.’ And say, you can’t find insurance elsewhere, what are you going to do? That really seems to be patently unfair.”
Regulatory balance
Colorado’s lack of laws might frustrate regulators with the insurance division, but the system helps keep pressure off insurance companies and keeps premiums down. At the end of the day, Salazar would rather have lower premiums than a heavily regulated system that “micromanages” insurance companies trying to stay competitive, she said.
“One of the things that we try to do is reduce regulatory burden. So if we impose upon companies that they have to report more…they are only going to raise premiums on the people that they are selling to,” said Salazar. “We don’t try and tell them how to run a business. We just tell them they have to comply with all the laws.”
But consumer advocates argue that it’s the division’s job to put in place regulations that carefully monitor the insurance business; some have said that the Colorado division’s lack of regulation makes it more of an advocate for companies than consumers. While repeated disasters have prompted changes statewide, little of that change has trickled into the Division of Insurance, an office of 100 people, part of the state’s executive branch.
The division doesn’t have the funds, the technology, nor the people to take on a greater role as a data analyst, Baca said. The legislature must allocate money if it expects it to face the challenges that come with a post-disaster insurance market.
Also, laws suggested in the past to change regulation of non-renewals have not made it into the

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executive branch's final list for the legislature, Baca said. The division once proposed a law that would impact when insurance companies could issue non-renewals, but the law never made it to the legislature, Baca said. Some efforts, such as the Homeowners Insurance Reform Act of 2013, are often diluted, or fail altogether.

Even so, Salazar views her office as a consumer advocate that does everything within its power to help policyholders. It tracks the financial health of companies, issues annual reports and tracks premium rates; it frequently advocates on the behalf of consumers, particularly in recent years following fires and floods. But when it comes to consumers, the division's greatest role is as an educator, said Baca.

Despite the division's limitations, Colorado's insurance industry has not escaped scrutiny. In 2012, Gov. John Hickenlooper commissioned a task force to examine insurance issues, and homeowners grappling with insurance claims lobbied to get the Homeowners Insurance Reform Act of 2013 passed. The governor's task force recommended that the state not interfere with insurance companies, and instead focus on homeowner education. Eventually, the insurance act, which requires extension of some deadlines for filing claims, left some of the most difficult and controversial aspects of the industry untouched.

Levy, who sponsored the 2013 insurance reform act, said the division is a "vastly under-resourced" organization.

However, no budget increase requests have been initiated by the division or submitted by Department of Regulatory Agencies over the last four years, a DORA spokesman said in an email.

Baca and Salazar have an electronic filing system and more data on their wish lists, but neither are possible because "we are just not there" in terms of funding, Baca said. Collecting wildfire data would add to the overwhelming task of collecting health insurance data for the Affordable Care Act – a process that is not in the division's job description, Salazar said.

"It would be great to have a department that does that within the DOI," she added. "There's just no time left and people to do that kind of work."

Data collection

States that have decades of disaster history have taken steps to collect data and pass laws. California, Florida and New York all have laws that limit when companies can issue non-renewals. California's law prevents insurance companies from issuing non-renewals in wildfire zones in the first year after a major fire. In Florida, legislators passed laws that require insurance companies to report the number of cancellations, non-renewals and policies signed on a quarterly basis. The numbers are posted on the

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Florida Office of Insurance Regulation's website, available to the public. Following disasters in Oklahoma, insurance companies are subject to reporting requirements.

But unlike Colorado, states such as California and Florida started to lose a healthy insurance market following years of weather-related disasters. Colorado's market remains healthy and competitive – if people like Rice get dropped by an insurance company, they can find a new insurance policy, even if it comes at a higher price, Baca said. But monitoring the health of Colorado's insurance market in a disaster-prone world is dependent on insurance companies reporting to the division when they stop insuring a region, along with the number of complaints the division receives and the results of market conduct exams done by the insurance division.

These measures aren't fool-proof. Insurance companies are not required to report when they stop insuring and the complaint system is "inadequate," Baca said. The division has not done a market conduct exam of any homeowners insurance company since February 2012, at least a month before the first of a series of severe fires ignited. Getting more data from insurance companies intrigues Salazar, but she had no idea what the data could be used for, nor had she considered the option, she said.

"Collecting data just to have it, I don't see any value in that," Salazar said. "If there could be, maybe it's a consumer bureau of some sort, that could look into those kinds of things. I am sure there is a lot of data out there that somebody could probably look at."

Residents like Phil Rice think's the division would benefit from more information about insurance companies in Colorado.

"To me that should be automatic," Rice said. "I would think that the state should revise their laws and absolutely require insurance companies to put on record any complaint that has been filed or any non-renewal, rather."

It's an ideal time for Colorado to address holes in insurance regulation, as well as scrutinize the limited data collected by the Division of Insurance, said Sen. Ellen Roberts, R-Durango, who sits on the legislature's wildfire matters committee. Until now, the legislative focus has been on public safety, but the time has come to look more closely at insurance issues in the state, Roberts said. Levy agreed that legislators must take up the issue of missing data, which was not addressed in the 2013 reform act.

"That area is ripe for action now, because we really didn't touch that," she said. "We didn't give homeowners the tools to research the strength and weaknesses of other companies."

Salazar remains skeptical that more data will help the division do its job better.

"I am not convinced that more data is going to make a better consumer experience, but you know I could be wrong," she said. "I hadn't really thought that much about it, because I would like to know more about

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that because maybe we are missing something. We think we know our market really well, but maybe we don’t. We don’t have that many carriers, so it feels like we have a good handle on who they are and what they are doing, and where they are selling. But we could be missing something.”

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