

INSURANCE

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A Message from the Director....

Information Security Programs To Be Reviewed



Bruce R. Ramage

On July 28, 2015, the Department issued company bulletin CB-134, “Information Security Programs.” The bulletin, found on the Department’s website at www.doi.nebraska.gov/bulletin/CB134.pdf, was issued for the purpose of reminding companies of the requirements of Title 210, Chapter 77, of the Nebraska Administrative Code.

Chapter 77, “Standards for Safeguarding Consumer Information,” applies to all licensed insurers, fraternal benefit societies, producers, and other licensees of the Department with limited exceptions. The rule requires implementation of a comprehensive written information security program that includes administrative, technical and physical safeguards for the protection of consumer information.

Chapter 77, which can be found on the Department’s website at www.doi.nebraska.gov/legal/rule_reg/n77draft.pdf, contains four minimum actions and procedures for the implementation of an information security program. The Department views the following four steps as important to a proper information security program; however, licensees should not limit efforts to the four examples.

- 1) Assess Risk
- 2) Manage and Control Risk
- 3) Oversee Service Provider Arrangements
- 4) Adjust the Program

Information security programs will be reviewed during the financial examination of domestic insurers and at any other time as directed. Violations of Chapter 77 will be enforced through the Unfair Trade Practices Act.

LIFE & HEALTH DIVISION

College Student Health Plans

The division has issued guidelines concerning blanket college student health plans for issuers that will be filing forms or rates in Nebraska.

The division has issued guidelines concerning blanket college student health plans for issuers that will be filing forms or rates in Nebraska.

The guidelines address specific filing requirements that must be followed for both rate and form filings. We are aware that the negotiation processes used to arrive at rates and plan designs can be lengthy, so we encourage industry rate filers of student health plans to file rates with the division as early as possible to allow time for adequate review. Rates may not be used unless the division has approved them first.

Industry rate filers of student health plans are encouraged to file rates with the division as early as possible to allow time for adequate review.

You may find the new guidance in SERFF General Instructions. Any questions may be directed to Karl Hug at karl.hug@nebraska.gov.

SERFF Filing Access User Manual

There is a user manual available online to help users understand how to search in SERFF Filing Access.

The availability of SERFF Filing Access (SFA) was announced in the Spring 2015 Nebraska Department of Insurance newsletter. In brief, SFA is an electronic public access web portal that allows the users to view rates and forms and health plan binders that have been filed with the Department. We believe this website is a valuable resource for all Nebraskans; however, we have received some questions from callers about how to best search for filings in SFA.

There is a user manual available online to help users understand how to search in SFA. To find the manual, navigate to the SFA landing page on the Department's website located at <https://filingaccess.serff.com/sfa/home/NE> and look for the "Help" button located in the top right corner. Click on the Help button to download a copy of the SFA User Manual. The manual explains how to search using text fields, date ranges and check boxes to get results.



Affordable Care Act Educational Sessions Offered Across Nebraska

Open public meetings have been scheduled across Nebraska to answer questions and reassure Nebraskans about open enrollment on the Marketplace.

The Department's health policy division has scheduled educational sessions across Nebraska to answer questions and reassure Nebraskans about open enrollment on the Marketplace. During the educational sessions, the staff provides updates on changes that are occurring with the law and answers any questions individuals may still have.

The educational sessions have been arranged in an attempt to separate the Affordable Care Act facts from the rumors and myths that have occurred over the years. The staff hopes to provide Nebraskans with the best information possible on how and why they need to purchase insurance for their business or family and to provide the tools necessary for a successful open enrollment period.

The sessions include information about Nebraska's changing health insurance landscape, discussions about the increases in premiums for plans, demographic information about Nebraska's uninsured rate, as well as updates to the Affordable Care Act.

During the sessions, the staff provides updates on information about Nebraska's changing health insurance landscape and also discusses the increases in premiums for plans. In addition, demographic information about Nebraska's uninsured rate is provided, as well as updates to the Affordable Care Act.

The educational sessions are open and individuals are invited and encouraged to attend the public meetings. Subject to approval, insurance producers may also receive one hour of continuing education from the Department to attend these sessions.

Last month, sessions were held in McCook, Gering, O'Neill, Ogallala, North Platte, Broken Bow, Kearney, Holdrege, and Grand Island. Upcoming sessions are being scheduled for the first week in November in Columbus, Norfolk, Wayne, South Sioux City, and Fremont.

Subject to approval, insurance producers may also receive one hour of continuing education to attend these sessions.

The Department has also posted to its website a copy of its 2015 Affordable Care Act Presentation, which can be viewed at **www.doi.nebraska.gov/aca/ACAPresentation2015.pdf**.

Any questions regarding the educational sessions or the ACA presentation may be directed to J.P. Sabby at **JP.Sabby@nebraska.gov**.

2016 Affordable Care Act Insurance Rates and Forms Review

Open enrollment begins November 1, 2015 and ends January 31, 2016.

The division has completed its review of individual major medical rates and forms for both on and off the marketplace for Plan Year 2016. Open enrollment begins November 1, 2015 and ends January 31, 2016.

Typically, the only opportunity an individual has to purchase a major medical policy will be during this open enrollment period, unless the individual qualifies for a special enrollment period.

Typically, the only opportunity an individual has to purchase a major medical policy will be during this open enrollment period, unless the individual qualifies for a special enrollment period.

Companies that will offer individual major medical plans in Nebraska through the Federally Facilitated Marketplace (FFM) in 2016 include: Blue Cross Blue Shield of Nebraska, Coventry Health Care of Nebraska, UnitedHealthcare of the Midlands and Medica. The plans offered by these companies on the FFM will also be offered for sale off FFM, however, if a person purchases these policies off the FFM, they cannot receive a subsidy.

Companies that will offer individual major medical plans off the FFM in Nebraska in 2016 include: UnitedHealthcare Life, Freedom Life, Celtic and Enterprise Life. These plans are ACA compliant but an individual cannot receive a subsidy for purchase of any plan not bought on the FFM.

LEGAL DIVISION

Proposed Rate Adjustment for Nebraska Comprehensive Health Insurance Pool

Pursuant to Neb. Rev. Stat. § 44-4227, the Department will hold a public hearing on a proposed rate adjustment of the Nebraska Comprehensive Health Insurance Pool premium rates. The purpose of the hearing is to provide an opportunity for public comment on the proposed rate adjustment.

The public hearing has been scheduled for Tuesday, October 27, 2015, at 10:00 a.m., at the Department of Insurance, Fifth Floor Conference Room, Terminal Building, 941 O Street, Lincoln, Nebraska.

The notice can be viewed at www.doi.nebraska.gov/notices/notc2015/notice06.pdf.

Regulation Updates

Company Bulletins

CB-134—INFORMATION SECURITY PROGRAMS

CB-134 was issued on July 28, 2015 for the purpose of reminding companies of the requirements of Chapter 77, “Standards for Safeguarding Consumer Information.” The bulletin also establishes the expectations the Department has regarding compliance with Chapter 77. CB-134 can be found at www.doi.nebraska.gov/bulletin/CB134.pdf.

CB-135—COMPOSITE RATING FOR SMALL GROUP MARKETS

CB-135 was issued on July 29, 2015 for the purpose of notifying all health insurers in the major medical non-grandfathered (NGF) small group market of an alternative rating method that will be allowed for all policy years and rates implemented beginning on or after January 1, 2016. The method only pertains to the ACA compliant off-exchange NGF small group market, and does not include on-exchange plans or transitional NGF plans. The methodology is optional for issuers in the Nebraska small group market. CB-135 can be found on the Department’s website at www.doi.nebraska.gov/bulletin/CB135.pdf.

CB-83 (REINSTATED & AMENDED)—CREDIT LIFE INSURANCE AND CREDIT ACCIDENT AND HEALTH INSURANCE

CB-83 was reinstated and amended on October 7, 2015 for the purpose of providing companies information regarding credit life insurance and credit accident and health insurance rate filings, producer compensation, and parameters applicable to joint credit accident and health insurance. The reinstatement of CB-83 incorporates the language from CB-84 and CB-92, both of which have been withdrawn. CB-83 (Reinstated & Amended) can be found on the Department’s website at www.doi.nebraska.gov/bulletin/cb083.pdf.

CB-84—COMPENSATION TO AGENTS

CB-84 was withdrawn effective October 7, 2015 as a result of the language of the bulletin being incorporated into CB-83 (Reinstated & Amended).

CB-92—JOINT CREDIT DISABILITY INSURANCE

CB-92 was withdrawn effective October 7, 2015 as a result of the language of the bulletin being incorporated into CB-83 (Reinstated & Amended).

Case Summaries

Rent-A-Roofer v. Farm Bureau Prop. & Cas. Ins. Co., 291 Neb. 786, ___ N.W.2d ___ (September 11, 2015)

When NRC sued Rent-A-Roofer for failure to construct and renovate property in a workmanlike manner, Rent-A-Roofer did not give its CGL insurer, Farm Bureau, notice of the claim until after Rent-A-Roofer settled with NRC. A few weeks after the settlement, Rent-A-Roofer notified Farm Bureau of its involvement in litigation and made a demand for both indemnity and defense costs under the CGL policy. Farm Bureau denied coverage on the grounds that Rent-A-Roofer breached the policy's notice provision and voluntary payments provision. Rent-A-Roofer then filed suit against Farm Bureau, alleging breach of contract and bad faith stemming from Farm Bureau's denial of coverage.

Breach of the CGL policy's notice provision and voluntary payments provision could serve as the basis for Farm Bureau's denial of Rent-A-Roofer's claim, but only if Farm Bureau was prejudiced as a result of the failure to notify and voluntary settlement. Notice provisions and consent-to-settlement provisions have a similar purpose, to ensure that an insurer has an opportunity to protect its interests. Rent-A-Roofer's failure to give notice and voluntary settlement of NRC's claim were a complete denial of Farm Bureau's opportunity to engage in the defense, take part in settlement discussions, or consent to the settlement, and were prejudicial as a matter of law to Farm Bureau. The Nebraska Supreme Court upheld the trial court's finding that Farm Bureau was not liable to Rent-A-Roofer for its settlement payment or defense costs.

Rent-A-Roofer also argued that Farm Bureau had denied a similar claim in the past, so Rent-A-Roofer's failure to give Farm Bureau timely notice of the NRC claim and settlement should be excused. Rent-A-Roofer had filed a claim with Farm Bureau in 2007 when the State of Nebraska sued Rent-A-Roofer for failure to install a roof in a good and workmanlike manner. Farm Bureau denied that claim because the policy excluded faulty workmanship claims under the "your work" exclusion. Three years later, NRC filed its lawsuit against Rent-A-Roofer for failure to construct and renovate NRC's property in a workmanlike manner. Rent-A-Roofer believed the NRC lawsuit would also be excluded from coverage under the "your work" exclusion, so Rent-A-Roofer did not give Farm Bureau notice until after the NRC case was settled. The Court did not accept this excuse for failure to notify and voluntary settlement because the State of Nebraska and NRC claims involved different parties, different complaints, and different occurrences. The insurer does not waive notice by denying coverage over a prior, and wholly different, claim.

Cleaver-Brooks, Inc. v. Twin City Fire Ins. Co., 291 Neb. 278 (2015)

This coverage dispute involved an employer that changed ownership and legal name several times, and was referred to by employees as "Nebraska Boiler." James Risor worked for Nebraska Boiler from 1973 to 2004. In 2004, Risor filed a workers' compensation claim for permanent hearing loss in both ears. Risor's complaint against Nebraska Boiler alleged that he suffered injuries as early as 2001, but the Workers' Compensation Court determined the date of injury to be October 19, 1993. Nebraska Boiler's counsel mistakenly believed American Ins. Co. had covered Nebraska Boiler from 1992 to 2002.

Both Risor and Nebraska Boiler appealed the order for hearing by a Workers' Compensation Court review panel. While the case was on appeal to the review panel, an adjuster at American discovered that American did not cover Nebraska Boiler in 1993. The mistake about coverage arose from the

purchase of various assets of National Dynamics, including the Lincoln plant referred to as Nebraska Boiler. Aqua-Chem, which later became Cleaver-Brooks, purchased Nebraska Boiler in 1998. As part of the sale, National Dynamics purchased workers' compensation coverage from Twin City Fire Ins. Co. to cover Nebraska Boiler's liability for any workers' compensation claims that occurred from 1992 to 1998. While Aqua-Chem had a workers' compensation policy with American from 1992 to 2002, that policy did not provide workers' compensation coverage for Nebraska Boiler until 1998, when Aqua-Chem acquired Nebraska Boiler.

Twin City was given notice of the claim against Nebraska Boiler on August 1, 2006, and on October 25, 2006, Twin City filed a motion to intervene as a party in the appeal to the review panel. The review panel denied Twin City's motion, Twin City appealed, and the denial of the motion to intervene was affirmed on appeal.

In 2012, Cleaver-Brooks filed a declaratory judgment action to determine who was ultimately liable for Risor's award. The district court found Twin City was solely liable to Risor. Twin City appealed, and on July 2, 2015, the Nebraska Supreme Court affirmed the district court ruling.

The Nebraska Supreme Court rejected three assignments of error argued by Twin City. First, Twin City argued that the district court incorrectly held Twin City solely liable when Risor's original complaint was against Cleaver-Brooks for injuries occurring no earlier than 2001, a time that Twin City did not provide coverage. While the court acknowledged the original complaint was technically incorrect, no doubt existed that Twin City solely provided coverage to the plant at the time of injury in 1993 and that Twin City cannot elude liability based on technical inaccuracy.

Second, Twin City presented two equitable defenses, the doctrine of judicial estoppel and the doctrine of laches. The court determined that to invoke judicial estoppel, which prevents a party from taking a position inconsistent with one successfully and unequivocally asserted by the same party in a prior proceeding, that bad faith or an actual intent to mislead must be present. Because no evidence of bad faith or intent to mislead by Cleaver-Brooks or American existed in this case, the court determined the doctrine did not apply. Further, the court found the doctrine of laches, a fact intensive doctrine related to inexcusable neglect that led to prejudice, did not apply because Twin City was notified after it was first determined that it may be liable, and that any delay did not actually harm Twin City.

Finally, the court determined that the district court did not err when it dismissed Twin City's claim of negligence against Cleaver-Brooks and American for failing to notify Twin City of Mr. Risor's pending claim. The court found that while an insurer generally has a duty to the insured to exercise reasonable care in defending a suit, there is no precedent to support an argument that one insurance company owes a duty to notify another insurance company of potential claims, especially when the original complaint made no mention of injuries sustained during the period of Twin City's coverage of the plant. The Court also found that even if a duty had existed, there was no breach because the evidence suggested Cleaver-Brooks and American acted reasonably in defending any interests Twin City had in the claim.

Excess Liability Fund Surcharge Hearing Set for November 12

Pursuant to the Nebraska Hospital-Medical Liability Act, the Director of Insurance is to adjust the amount of the surcharge provided for under Neb.Rev.Stat. § 44-2829 on January 1 of each succeeding year to maintain the Excess Liability Fund at a level sufficient to pay all anticipated claims for the next year and to maintain an adequate reserve for future claims.

On Thursday, November 12, at 2:00 p.m., the Director will conduct a public hearing concerning the surcharge contribution rates of qualified health care providers to the Nebraska Excess Liability Fund for the year 2016. The hearing will be held at the Department of Insurance, Fifth Floor Conference Room, Terminal Building, 941 O Street, Lincoln, Nebraska.

The notice can be viewed at www.doi.nebraska.gov/notices/notc2015/notice07.pdf.

MARKET CONDUCT DIVISION

Staff Updates

On August 20, 2015, **Conna Wiese** joined the division as an insurance examiner.

Brenda Lenhoff returned to the division on October 5, 2015, resuming her previous duties as an insurance examiner.

Claim Payments Must Comply with Chapter 60

The division has recently identified homeowner and farmowner policies that include language contrary to Nebraska regulations.

Title 210, Nebraska Administrative Code, Chapter 60 (008.04) requires an insurer to offer claimants amounts within policy limits, which are fair and reasonable, within fifteen days of receipt of settlement information where there is no dispute as to coverage and where liability has been reasonably clear. The insurer must tender payment within fifteen working days of claimant's acceptance.

Please be reminded that claim payments must comply with Nebraska Administrative Code.

PRODUCER LICENSING DIVISION

Staff Updates

The division is pleased to announce that **Katelyn Fries** has recently joined its staff filling the position vacated by Lori Bruss. Lori has transferred to the Financial Examination Division.

Producers should complete their continuing education requirements prior to their renewal month to allow time to upload the education to the producer's transcript.

Producers will not be allowed to renew their licenses until the transcripts are uploaded to their records.

Education providers are reminded that courses do not expire and should regularly check their information on our website for accuracy.

The provider may notify the licensing division to remove any inactive courses, and must also notify the Department to completely remove a contact.

Continuing Education Requirements

Producers are reminded to complete their continuing education requirements prior to their renewal month in order to give the education provider a reasonable amount of time to upload the education to the producer's transcript. Education providers have 10 days to upload continuing education transcripts.

A producer will not be allowed to renew his/her license until the transcripts are uploaded to the producer's record. If continuing education is completed in the last month of the renewal period, there may not be enough time for the continuing education to show on the producer's transcript and the producer will not be able to renew online.

Reminder to Education Providers Regarding Inactive Courses and Contacts

Education providers are reminded that courses do not expire. As a result, some courses that are no longer offered by the provider may show up on the list of courses available. The provider should regularly check their information on our website for accuracy.

The provider may notify the licensing division to remove any inactive courses by emailing **doi.conted@nebraska.gov**. Providers may also update their contacts by typing over the current information via the provider summary page on **www.statebasedsystems.com**. However, to completely remove a contact, the provider must notify the Department of Insurance producer licensing division.

EXAMINATION DIVISION

Pre-Need Examinations Completed During 3rd Quarter, 2015

All Faiths Funeral Home
 Brockhaus Funeral Home
 Chamberlain Chapel, Inc.
 Chermok Funeral Home, Inc.
 Gehrig-Stitt Chapel & Cremation Services, LLC
 Holechek Funeral Homes, Inc.
 Ramaekers & Sharman, Inc. DBA Miller Funeral Home
 Rasmussen Funeral Home
 Rhoad Funeral Home
 Stokely Funeral Home
 Wenburg Funeral Home

Financial Examinations Completed During 3rd Quarter, 2015

American Family Life Assurance Co. of Columbus (target exam)
 Central States Indemnity Company of Omaha
 CSI Life Insurance Company
 HayMarket Insurance Company (qualifying exam)
 NASB-All Lines Interlocal Cooperative Aggregate Pool
 Nebraska Community College Insurance Trust
 Nebraska Intergovernmental Risk Management Association
 Nebraska Intergovernmental Risk Management Association II
 Olive Branch Assessment Insurance Society, Inc.
 Polk & Butler Mutual Insurance Company
 Western United Mutual Insurance Association

Financial examination reports become public documents once they have been placed on official file by the Department. The most current report of financial examination can now be found on the Department's website at www.doi.nebraska.gov. Copies can be obtained from the Department at a cost of \$.50 per page.

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Department Calendar

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|------------------------|---|
| <u>November 11:</u> | NDOI Closed—Veterans' Day |
| <u>November 26-27:</u> | NDOI Closed—Thanksgiving |
| <u>December 25:</u> | NDOI Closed—Christmas Day |
| <u>January 1:</u> | NDOI Closed—New Year's Day |
| <u>January 18:</u> | NDOI Closed—Martin Luther King Day Observed |