

# INSURANCE

Pete Ricketts  
Governor

Bruce R. Ramage  
Director

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*A Message from the Director....*

**Financial Reaccreditation Received by Department of Insurance**



Bruce R. Ramage  
Director of Insurance

During the National Association of Insurance Commissioners (NAIC) Spring National Meeting last month, the NAIC Financial Regulation Standards and Accreditation Committee voted to award continued accreditation to the Nebraska Department of Insurance.

Accredited insurance departments undergo a comprehensive, independent review to ensure they continue to meet financial solvency oversight standards. Accreditation standards require state insurance departments to have adequate statutory and administrative authority to regulate an insurer’s corporate and financial affairs, as well as the necessary resources to carry out that authority.

The Department’s initial accreditation award was received in December, 1992. To remain accredited, a review must be performed at least once every five years with interim annual reviews. The Department’s reaccreditation demonstrates its success in meeting the rigorous standards of the NAIC’s program.

I’m proud of the Department’s outstanding efforts and hard work that it takes to have continuously met the accreditation standards since the inception of the program. The Department’s efforts in continuously meeting these standards help to ensure that insurance consumers are well protected through proper financial solvency monitoring of insurance companies.

## LIFE & HEALTH DIVISION

### **Staff Updates**

*Laura Arp has been named the administrator for the Life and Health Division.*

**Laura Arp** has been named the administrator for the Life and Health Division. She will supervise the review of policy rates and forms, aid in the review of companies seeking admission in Nebraska, assist the Director and the Administrator for Health Policy with Department philosophy and policy decisions and aid in the review of legislation and regulations. Laura will also work on various NAIC committees and will serve as in-house counsel for the Medical Malpractice Excess Liability Fund. She can be reached at [laura.arp@nebraska.gov](mailto:laura.arp@nebraska.gov).

Laura was previously health policy counsel in the legal division of the Department. She is also an adjunct professor of law with the University of Nebraska College of Law and, prior to her employment with the Department, was an associate attorney at Cline Williams in Lincoln.

### **Notice Issued to Medical Malpractice Insurers**

*A notice was issued to all medical malpractice insurers by Director Ramge on March 7, 2018 regarding Out-of-State Health Care Providers Using Telemedicine to Treat Patients in Nebraska, Excess Liability Fund Coverage Option.*

A notice, "**Out-of-State Health Care Providers Using Telemedicine to Treat Patients in Nebraska, Excess Liability Fund Coverage Option**," was issued to all medical malpractice insurers by Director Ramge on March 7, 2018. With the growing usage of telemedicine as a way to increase access to medical care in Nebraska, medical malpractice carriers and physicians have requested that the Department of Insurance develop a method for out-of-state providers to qualify for the Excess Liability Fund. The notice can be viewed at <https://doi.nebraska.gov/sites/doi.nebraska.gov/files/doc/MedMalOutOfStateProviders.pdf>.

### **Extension of Transitional Policies**

*Pursuant to the option provided to the states by CCIIO, the State of Nebraska will allow transitional policies, for both the individual and small group health insurance markets, to continue until December 31, 2019.*

On April 9, 2018, the Center for Consumer Information and Insurance Oversight (CCIIO) issued guidance that allows the states the option to extend transitional policies for individual and small group health insurance plans to policy years beginning on or before October 1, 2019 provided all policies end by December 31, 2019.

Pursuant to the option provided to the states by CCIIO, the State of Nebraska will allow transitional policies, for both the individual and small group health insurance markets, to continue until December 31, 2019. The Department would advise insurers to continue to monitor CCIIO's website for any subsequent guidance that may be issued on this subject and to follow it accordingly.

*Director Ramge issued a notice on April 13, 2018, to all companies writing individual and small group health insurance in Nebraska, regarding the extension of transitional policies.*

As before, all other plans issued after January 1, 2014 must be ACA compliant. Questions concerning this notice may be directed to Martin Swanson, Administrator for Health Policy, at [martin.swanson@nebraska.gov](mailto:martin.swanson@nebraska.gov), or at (402) 471-2201.

On April 13, 2018, Director Ramge issued a notice to all companies writing individual and small group health insurance in Nebraska, regarding the extension of transitional policies. A full copy of the **notice** can be found on our website at [doi.nebraska.gov](http://doi.nebraska.gov).

### **Federal Guidelines Announce New Exemption from Affordable Care Act Tax Penalty**

*On April 9, 2018 the federal government issued guidance regarding hardship exemptions.*

On April 9, 2018 the federal government issued guidance regarding hardship exemptions. It indicated the federal government may grant a hardship exemption to individuals living in a county where there was only one health insurer offering individual health insurance coverage on the federally facilitated health insurance exchange (FFE). A hardship exemption is an approved reason for waiving a penalty fee for not having minimum essential coverage under the Affordable Care Act.

*To qualify, the applicant must show that the resulting lack of choice precluded them from obtaining coverage for a qualified health plan.*

To qualify, the applicant must show that the resulting lack of choice precluded them from obtaining coverage for a qualified health plan. The FFE will relax the documentary support requirement where documentary evidence is not readily available. In lieu of documentation, you can provide a written explanation that details how having only one insurer and a lack of choice on the FFE prevented you from getting coverage from a plan offered on the FFE.

*To apply for this exemption, a hardship exemption application must be completed.*

To apply for this exemption, a hardship exemption application must be completed, specifically "2017 Hardship Exemptions, #14: You experienced another hardship...." In section 2 of that particular form, an applicant will need to provide a brief explanation of how having only one major medical insurer on the FFE prevented him or her from obtaining coverage. You will also be required to provide documentation, when available, to show that the hardship occurred within the current calendar year or up to two years earlier. A copy of the application form can be found under option 14 at <https://www.healthcare.gov/health-coverage-exemptions/hardship-exemptions/>

If you have any questions regarding this exemption, you may wish to talk to your tax preparer or financial advisor. Questions about the application form and what constitutes sufficient documentation and/or written explanation of why an exemption may be granted should be directed to [healthcare.gov](http://healthcare.gov) at <https://www.healthcare.gov/contact-us/> or 1-800-318-2596.

## PRODUCER LICENSING DIVISION

### **2018 Appointment Renewal Process**

As a reminder, all company appointment renewals in Nebraska must be filed electronically through the National Insurance Producer Registry (NIPR) at [www.nipr.com/renWelcome.htm](http://www.nipr.com/renWelcome.htm).

The appointment renewal date begins May 1, 2018 and ends July 31, 2018. All appointment renewals must be paid online through NIPR by the end of day on July 31, 2018.

An announcement with details and directives on key information, payments, transaction fees, and fees charged by other states for retaliatory purposes has been posted by NIPR. The announcement can be found at [www.nipr.com/renewalsNE.htm](http://www.nipr.com/renewalsNE.htm).

Questions regarding the renewal process may be directed to NIPR Customer Service at [customerservice@nipr.com](mailto:customerservice@nipr.com) or by calling 855-674-6477. Questions can also be sent to the Nebraska Department of Insurance at [doi.licensing@nebraska.gov](mailto:doi.licensing@nebraska.gov) or by calling the Licensing Division at 402-471-4913.

### **Updated Licensing Forms**

The Licensing Division has updated many of its forms. Please make sure that you are using the most recent versions. All licensing applications and forms are available on our website at [doi.nebraska.gov/producers/license](http://doi.nebraska.gov/producers/license).

### **Licensing Division Notifications and Updates**

Visit the Department's website at [doi.nebraska.gov](http://doi.nebraska.gov) to sign up to receive updates to all producer licensing matters. From our website's home page, scroll down to the lower right-hand corner of the website, and click on "Get Update Notices." There are four options: Licensing, Notices/Bulletins/Regs/Press Releases; Newsletters; and Consumer Alerts & Publications. Choose one or all four of the options to be notified via the email address provided when information is posted to our website.

*The appointment renewal date begins May 1, 2018 and ends July 31, 2018.*

*All appointment renewals must be paid online through NIPR by the end of day on July 31, 2018.*

*Many of the licensing forms have been updated; to ensure the most current version is being used, please visit our website.*

*Stay abreast of all information posted to our website by signing up to receive an email notification of new postings.*



## LEGAL DIVISION

### **Case Summaries**

#### **Hansmeier v. Hansmeier, 25 Neb. App. 742 (April 10, 2018)**

Scott and Karie Hansmeier (Scott) sued their insurance agent (and Scott's aunt) Merva Hansmeier and Western-Insurers-Platte Valley Agency (Merva) for negligence, alleging that Merva improperly advised Scott about the need to purchase workers' compensation insurance for Scott's farm and ranch operation. The Court of Appeals affirmed the decision of the district court of Keith County granting Merva summary judgment.

At the heart of this dispute is Scott's farm and ranch operation which he co-owned and operated with his father. Scott had an employee who had been injured twice before February 2, 2012, when said employee injured his thumb in an auger incident. Previously, Scott had paid for medical expenses for one injury but not the other. In 2014, the employee sued Scott for a workers' compensation claim that was eventually settled out of court for medical payment and a disability payment. Though Scott did not have to provide his employees with workers' compensation coverage, he did not provide the proper written notice to his employees and receive a signature as required by Neb. Rev. Stat. § 48-106.

Scott sued Merva attempting to apply three different types of negligence to Merva's action as an insurance producer. Though Scott and Merva have different recollections as to whether or not Merva recommended Scott purchase workers' compensation for his employees, all negligent arguments failed as a matter of law. In upholding the district court's decisions, the Court of Appeals discussed each argument in turn.

First, Scott argued that Merva was professionally negligent. However, the Court points out that the Nebraska Supreme Court has never determined that an insurance agent is a 'professional' for professional negligence actions and that any such claim would be barred by the two year statute of limitations for professional negligence. Accordingly, this argument fails.

Next, Scott argues a claim of general negligence. At issue under general negligence related to this claim is whether or not Merva had an affirmative duty to inform Scott about the requirement that he provide written notice and obtain signatures related to Scott not providing workers' compensation. From the record, Scott knew workers' compensation coverage was not required for an 'agricultural person.' The Court stated that while it may be a good business decision for an insurance agent to provide such a suggestion, it is unreasonable to require an insurance agent to anticipate what steps an insured must take to not have coverage he has already told the agent he does not want. The general negligence claim failed.

Finally, Scott argued a negligent misrepresentation claim against Merva. Insurance agents are subject to a negligent misrepresentation claim as an agent must use reasonable care to provide accurate information. From the record, there is no indication that Merva received compensation to provide advice, nor is there evidence Scott solicited such advice. Additionally, to be liable for negligent misrepresentation, Scott had to show Merva provided false information. The record indicated no false information was provided. In fact it is quite clear that Scott knew he did not have to purchase workers' compensation insurance by law and made the decision not to purchase on his own. The factual dispute of whether or not Merva recommended workers' compensation insurance was irrelevant. The negligent misrepresentation claim failed as well.

## **Citizens of Humanity v. Applied Underwriters, 299 Neb. 545 (April 6, 2018)**

Citizens of Humanity (Citizens) LLC, a jean manufacturer, appealed a ruling from the District Court of Douglas County that stayed Citizens' action against Applied Underwriters Captive Risk Assurance Company, Inc. (Applied Underwriters), pending arbitration. The Nebraska Supreme Court reversed the district court, ruling that the district court should determine the questions of arbitrability.

Citizens had purchased a workers' compensation package from Applied Underwriters involving an insurance policy and a 'reinsurance participation agreement' (RPA). The insurance policy was a guaranteed cost policy and the RPA took into account Citizens loss experience. Citizens paid into a segregated cell account for its losses to a set amount with excess losses paid by insurance. The RPA contained the arbitration clause at the heart of the case. The RPA also contained a choice of law provision providing for Nebraska law to govern the agreement.

A dispute between Citizens and Applied Underwriters arose where Applied Underwriters claimed Citizens owed it \$842,802.78. After initial litigation in California courts where Citizens successfully avoided arbitration due to Neb. Rev. Stat. § 25-2602.01(f)(4), the parties ended up in Douglas County District Court where Citizens asked the court to enjoin arbitration. The district court, utilizing the Federal Arbitration Act (FAA), stayed the action and delegated the issue of arbitrability to the arbitrator.

The Nebraska Supreme Court overturned the ruling, relying instead on § 25-2602.01(f)(4), which provides for the enforcement of arbitration clauses generally, except when for "any agreement concerning or relating to an insurance policy other than a contract between insurance companies including a reinsurance contract." The Court found that the McCarran-Ferguson Act, the federal law which provides that state law regulating insurance reverse preempts federal laws which do not specifically relate to insurance, preserves § 25-2602.01(f)(4) from federal preemption by the FAA.

The Court applied a three part test to determine if state law controls over federal law under McCarran-Ferguson: (1) the FAA is a federal law which does not specifically relate to the business of insurance; (2) § 25-2602.01(f)(4) regulates insurance; and (3) the FAA would operate to invalidate state insurance law. Additionally, the Court found that McCarran-Ferguson and the FAA do not conflict and can be read harmoniously. Thus, § 25-2602.01(f)(4) applies.

Before disposing of the case, the Court also addressed two other issues. First, it found that Citizens specifically challenged the validity of the agreement to arbitrate the issue of arbitrability under § 25-2602.01(f)(4), distinguishing the case from a United States Supreme Court case where the challenge was to the arbitration agreement as a whole. The Nebraska Supreme Court found that a court, not the arbitrator, decides the issue of arbitrability under § 25-2602.01(f)(4). Second, the Court found that the exception in § 25-2602.01(f)(4) for reinsurance agreements between insurance companies did not apply in the RPA between Citizens and Applied Underwriters because the RPA is an integral part of the workers' compensation insurance provided to Citizens.

In conclusion, the Court held that the FAA does not preempt § 25-2602.01(f)(4) because it is a state law regulating the business of insurance and subject to the reverse preemption of McCarran-Ferguson. The provisions in the RPA to have an arbitrator determine the arbitrability are invalid under Nebraska law.



## ***Regulation Updates***

### **Company Bulletins**

#### **CB-130 (AMENDED) - FILING GUIDANCE FOR INDIVIDUAL, SMALL EMPLOYER, AND STAND-ALONE DENTAL PLANS IN NEBRASKA**

CB-130 (Amended) was issued to provide updated guidance for filers of individual, small group, and stand-alone dental plans, offered on and off the Federal Facilitated Marketplace (FFM), that wish to issue or renew plans in Plan Year 2019. The dates and corresponding actions that relate to plan year 2019 are set out in the amended bulletin.

A full copy of **CB-130 (Amended)**, dated April 23, 2018, can be found on the Department's website at [doi.nebraska.gov](http://doi.nebraska.gov).

#### **CB-138 - STANDARD VALUATION ACT VALUATION MANUAL UPDATE**

CB-138 was issued for the purpose of adopting the updates made to the valuation manual established with an operative date of January 1, 2017. The updates made to the valuation manual were for purposes of the 2017 reporting year, adopted by the National Association of Insurance Commissioners (NAIC) on August 29, 2016, and for the 2018 reporting year adopted by the NAIC on August 9, 2017. Questions about the bulletin may be directed to Rhonda Ahrens at [rhonda.ahrens@nebraska.gov](mailto:rhonda.ahrens@nebraska.gov).

A full copy of **CB-138**, dated February 14, 2018, can be found on the Department's website at [doi.nebraska.gov](http://doi.nebraska.gov).

### **Amended Regulation**

#### **TITLE 210 NEB. ADMIN. R. & REGS. CHAPTER 56 - ANNUAL AUDITED FINANCIAL REPORTS**

The amendments to Chapter 56 have been approved by the Governor and filed with the Secretary of State for adoption on March 8, 2018, with an effective date of March 13, 2018. Chapter 56 was amended for the purpose of adding an internal audit function requirement on insurers with annual direct written premium and unaffiliated assumed premium of \$500,000,000 or more, and to insurers within a group of insurers when the group has annual direct written premium and unaffiliated assumed premium of \$1,000,000,000 or more. A public hearing on the proposed amendments to Chapter 56 was held on June 13, 2017.

A copy of amended **Chapter 56** can be found on the Department's website at [doi.nebraska.gov](http://doi.nebraska.gov).

### **Proposed Amended Regulation**

#### **TITLE 210 NEB. ADMIN. R. & REGS. CHAPTER 80 - SYNTHETIC GUARANTEED INVESTMENT CONTRACTS**

The proposed amendments to Chapter 80 adopt the changes to the National Association of Insurance Commissioners (NAIC) Model Regulation on which Chapter 80 is based, and applies updated market and financial requirements for insurers offering these products. The proposed amendment will affect all insurers offering or desiring to offer synthetic guaranteed investment contracts in Nebraska. A public hearing on the proposed amendments to Chapter 80 was held on March 29, 2018.

A draft copy of the proposed **amended Chapter 80** can be found on the Department's website at [doi.nebraska.gov](http://doi.nebraska.gov).

**Actions Taken Against Producers & Agencies**

CAUSE NO.	ALLEGATION	DISPOSITION
A-2098 <b>Ronald Nitzel</b> Grand Island, NE  NPN – 30346	Hearing requested for reconsideration of denial of application for resident producer license.	Order Denial Upheld 4/18/2018
A-2095 <b>Kristofer Turnbow</b> Des Moines, IA  NPN - 17321646	Violated <u>Neb. Rev. Stat. §§ 44-4059(1)(b), 44-4059(1)(h), 44-4059(1)(o), and 44-4065(3)</u> . Violated any insurance law; used fraudulent, coercive, or dishonest practices; failed to maintain resident producer license; failed to update address with the Department.	Order License Revoked 4/18/2018

**CONSUMER AFFAIRS DIVISION**

**Scammers Using Issuance of New Medicare Cards as Opportunity For Fraud**

Starting in April, new Medicare cards will be mailed to beneficiaries. State and federal regulators are aware of potential scams occurring in connection with the issuance of the new cards. There are reports of con artists calling beneficiaries pretending to be from Medicare and asking for payment for the card or asking for personal information in order to obtain the card.

Please remember:

- **The card will be mailed to you.**
- **Medicare will not call you** to ask for payment for the new Medicare card, or to request personal information.

Be aware that insurance agents are not permitted to use the issuance of a new card as a reason to schedule a visit to sell insurance. Remember, agents are prohibited from coming to your home uninvited to sell or endorse any Medicare-related product. They cannot ask for your personal information, like your Medicare number, social security number, bank account or credit card numbers, over the phone. If you believe you have been a target of a Medicare scam, please contact the Nebraska Department of Insurance at 1-877-564-7323.

The Nebraska Senior Health Insurance Information Program (SHIIP) encourages you to contact your local Social Security office to make sure your mailing address is up-to-date.



## **Before and After the Storm**

In preparation of the upcoming severe weather season, the Department has revised and posted two consumer brochures, “Before the Storm—Don’t Wait Until It’s Too Late” and “After the Storm—The Disaster Claims Process.”

Copies of the brochures can be obtained from the Department’s website at [doi.nebraska.gov](http://doi.nebraska.gov) under Public Information/Publications/Brochures.

*Julie Oglesby has returned to the division following the retirement of Chris Williamson.*

*A current listing of contact information for the analysts is posted to our website.*

*The commercial umbrella form and rate filings checklist has been posted to our website.*

*“Property & Casualty Rating System Filing Requirements Applied to Complex Models” has been added to our SERFF instructions.*

## **PROPERTY & CASUALTY DIVISION**

### **Staff Updates**

**Julie Oglesby** has returned to the Department as an Analyst in the division, following the retirement of Chris Williamson. Julie will be reviewing various filings for commercial lines.

### **Contact Information for Analysts**

Please visit the Department’s website to view the division’s updated **Contact List** to see what lines of insurance each analyst is reviewing and to obtain contact information. From our home page at [doi.nebraska.gov](http://doi.nebraska.gov), the contact list can be found under Insurers/Property and Casualty Information.

### **Commercial Umbrella Form & Rate Filings**

In March, the Commercial Umbrella Form and Rate filing checklist was updated and posted to our website. The **checklist** can be found on the Department’s website at [doi.nebraska.gov](http://doi.nebraska.gov) under Latest News (March 22) and also under Insurers/Property and Casualty Information/Filing Guidance.

### **Complex Models Added to SERFF Instructions**

We have added information to our SERFF instructions to include “Property & Casualty Rating System Filing Requirements Applied to Complex Models.”

Filers who make rate filings in Nebraska that include complex models can use these instructions to assist them in providing appropriate supporting information with the initial filing and help to reduce the amount of correspondence or objections.

## FRAUD DIVISION

### ***Annual Insurance Fraud Conference***

Plans are underway for the 18th Annual Insurance Fraud Conference which has been scheduled for Wednesday, **August 1, 2018**, at the Strategic Air & Space Museum. The Insurance Fraud Prevention Division (IFPD) is working diligently to develop a program that will prove beneficial to participants in their fraud fighting efforts. The conference brochure and registration is tentatively scheduled to be emailed in late May.

If you would like to receive a brochure, email your request to **DOI.FraudPrevention@nebraska.gov** and use the subject "Conference Brochure Request." If you attended the 2017 conference, you will automatically receive an email and will not need to request the brochure.

### ***Active Shooter—What is Your Plan?***

Unfortunately, over the past few years, we have seen too many incidents involving shootings in the workplace. Active shooters have been identified from both within the workplace and outside the workplace. It is commonly held that employers have a general duty to protect their employees against "recognized hazards likely to cause serious illness or death."

Most cases involving active shooters can be very unpredictable in nature and these situations can evolve rather quickly. Employers should consider a facility security assessment. In addition, employees should be made aware of potential indicators that may lead to workplace violence and should be encouraged to report such matters to their supervisor or human resources representative.

Regardless of safeguards that might be put into place, the possibility of an active shooter is still present. In anticipation of such an event, employees need to be aware of a plan to action. There are three basic courses of action to take in the event of an active shooter, in order: run, hide and fight. What is your plan?

*"Insurers that embrace the right mix of tools, staffing, training and technologies will continue to experience reduced claim costs, more-accurate pricing, competitive edge and lower premiums for policyholders."  
Excerpt from "State of Insurance Fraud Technology" by the Coalition Against Insurance Fraud.*

## EXAMINATION DIVISION

### ***Pre-Need Examinations Completed During First Quarter, 2018***

Arnold & Mullen Funeral Homes (Affidavit in lieu of exam)  
Brockhaus-Scott Funeral Home  
Directed Services, Inc.  
Dubas Funeral Home (Affidavit In Lieu of Exam)  
Duesman Funeral Chapel  
Harman-Wright Mortuary  
Heafey-Heafey, Hoffmann, Dworak, Cutler, Inc.  
Layton Funeral Homes  
Sunset Memorial Gardens Association (Affidavit in lieu of exam)  
Wintz Funeral Home

### ***Financial Examinations Completed During First Quarter, 2018***

AmeriHealth Nebraska Inc.  
Great West Casualty Company

*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](http://www.doi.nebraska.gov). Copies can be obtained from the Department at a cost of \$.50 per page.*



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Department Calendar

- April 27: Department Closed - Arbor Day
- May 28: Department Closed - Memorial Day
- July 4: Department Closed - Independence Day
- August 1: Annual Fraud Conference (registration required)  
Strategic Air and Space Museum

1135 M Street, Suite 300 ♦ PO Box 82089 ♦ Lincoln, NE 68501-2089

Website: <http://www.doi.nebraska.gov> ♦ Phone: 402-471-2201 ♦ Fax: 402-471-4610 ♦ Hours: 8:00-5:00