

INSURANCE

Dave Heineman
Governor

Ann M. Frohman
Director

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A Farewell Message from Director Frohman



Ann M. Frohman

The changing landscape and scope of insurance regulation has provided the Nebraska Department of Insurance staff with an opportunity to collaborate with other state, federal and international governmental officials in recent years. From the financial crisis to healthcare reform, Nebraska has navigated through many challenges and has done so with great success. As budgets tighten, it is clear that those regulatory institutions with the ability to adjust to the economic times and challenges of the financial system will be best positioned to protect the public.

The Nebraska Department is well positioned to do so. I believe the Department will successfully address the myriad of issues facing insurance regulation in the coming years whether in the form of global convergence of accounting principles or insurance group supervision. Why? The financial examination staff, as well as the legal staff, is among the best in the country. They have been working hard to attain professional expertise with 24 of the staff now holding a Certified Financial Examiner designation through the Society of Financial Examiners. The financial examiner teams are quick on reviews and are applying their new skill sets demanded in a risk-focused environment. The Department also has remained committed to address the interrelated challenges of healthcare reform and market stability in a manner that best serves Nebraskans. Our consumer affairs staff understands the issues and is effective when problems arise, as is evidenced by the recovery of more than \$6 million for Nebraska policyholders during 2009. We have and will continue to provide a regulatory environment that is fair to all parties of an insurance transaction.

Thank you to the staff of the Nebraska Department of Insurance for the support these past three years as Director and to the late L. Tim Wagner for his counsel. I also want to especially thank former Deputy Superintendent Hooker for the tireless efforts put forth in the many meetings over the years and to all of you in supporting those meetings.

LIFE AND HEALTH DIVISION

Staff Updates

Rebecca Dennis has joined the Department as a life and health analyst and will be reviewing all lines of life and health filings for compliance.

The Life and Health Division would like to welcome Rebecca Dennis aboard. Rebecca joined the Nebraska Department of Insurance on July 26 as a Life and Health Analyst. Rebecca brings a strong compliance background with her to her new position. She will be reviewing all lines of life and health filings for compliance.

Advertising Requirements

The division reviews all Medicare supplement advertising as outlined by Chapter 36 of the Department's rules and regulations.

There have been some questions about advertisements that are required to be filed with the Life and Health Division. The division reviews all Medicare Supplement advertising as outlined by Title 210 NAC Chapter 36 §021 which states, "An issuer shall provide a copy of any Medicare supplement advertisement intended for use in this State whether through written, radio or television medium to the Director for review or approval by the Director to the extent it may be required under State law."

The division reviews all long-term care advertising as outlined in Chapter 46 of the Department's rules and regulations.

All long-term care advertising is also reviewed as outlined in Title 210 NAC Chapter 46 §019.01 which states, "Every insurer, health care service plan or other entity providing long-term care insurance or benefits in this state shall provide a copy of any long-term care insurance advertisement intended for use in this state whether through written, radio or television medium to the Director of this state for review or approval by the Director to the extent it may be required under state law. In addition, all advertisements shall be retained by the insurer, health care service plan or other entity for at least three (3) years from the date the advertisement was first used."

If you have questions regarding the review of an advertisement for these product lines, please feel free to call the Life and Health Administrator at 402-471-4742.

Any prompt payment act compliance statement submitted after December 1 will not be accepted.

Prompt Payment Compliance Statements

As we approach the end of the year, please make sure all prompt payment compliance statements are filed before December 1. As stated in Neb.Rev.Stat. §44-8006, “An insurer shall be exempt from the requirements of §44-8005 during a calendar year when the insurer has a prompt payment act compliance statement on file with the director. Any insurer desiring to obtain the exemption shall file a prompt payment act compliance statement with the director not later than December 1 of the year prior to the exemption year. A list of insurers with prompt payment act compliance statements on file shall be publicly available from the director.”

Please note that any compliance statement submitted after December 1 will not be accepted.

Health policies sold after September 23, 2010 must contain the relevant PPACA provisions.

Patient Protection and Affordable Care Act

September 23, 2010 marked the six-month inception of the Patient Protection and Affordable Care Act (PPACA). This day is significant because health policies sold after September 23, 2010 must contain the relevant PPACA provisions.

Please note that the Department is considering “plan year” to be anything new or renewed on or after September 23, 2010.

The Department is considering “plan year” to be anything new or renewed on or after September 23, 2010.

The Division is here to answer your implementation questions. For additional guidance, please refer to Department bulletin, CB-122, “Health Insurance Filings Pursuant to the Patient Protection and Affordable Care Act,” which can be obtained from the Department’s website at www.doi.ne.gov/bulletin/cb122.pdf.

We are requiring all rate filings to be submitted separately from form filings based on reporting requirements for states built into the PPACA.

Rate Filings and Form Filings Submitted Separately

Based on reporting requirements for states built into the Patient Protection and Affordable Care Act (PPACA), the Life and Health Division is requiring all rate filings to be submitted separately from form filings. This allows an expedited review for these rates and helps to segregate the rates for reporting purposes. If you have any questions, please feel free to contact the Life and Health Administrator at 402-471-4742. We thank the companies in advance for your assistance in this transition.

PRODUCER LICENSING DIVISION

Frequently Asked Questions Available on Website

Frequently asked questions with regard to obtaining and updating producer/agency licenses and associated fees can be found on the Department's website.

Please visit the Frequently Asked Questions section on our website at www.doi.ne.gov/license/faq.pdf for information on requirements and procedures for individual and entity licensing. This document will walk you through the process of obtaining and updating a producer and agency license. The document also lists the fees associated with producer and agency licensing.

National Insurance Producer Registry

The Department utilizes the National Insurance Producer Registry (NIPR) for online processing.

The Department utilizes the National Insurance Producer Registry (NIPR) for online processing. The web address is www.nipr.com. Nonresident producers may apply for and renew an existing license through the NIPR. Resident and nonresident producers may also update their addresses and report actions through the NIPR website.

PROPERTY AND CASUALTY DIVISION

Filing Reminders

Filings that are accepted on a "file and use" basis must have been received by the Department before they can be used.

Over the past several years, the Property & Casualty Division has made changes to the Rate and Form Act to make filings in Nebraska much easier.

Filings that are prior approval must have the Department's approval stamp before they can be used.

Nebraska's filings are "file and use" for most lines of insurance. The types of filings that must be made on a "prior approval" basis are listed in [Neb.Rev.Stat. §§44-7506](#) (rates) and [44-7508.01](#) (forms). As a reminder, filings that are accepted on a file and use basis must have been received by the Department before they can be used. Filings that are prior approval must have the Department's approval stamp before they can be used.

It is important to note that a rate filing is not considered “complete” until all of the supporting information is submitted.

It is important to note that a rate filing is not considered “complete” until all of the supporting information is submitted. If the filing is a change to an existing program, we will need to see your experience—premium, loss/loss expense—associated with that program. If this is a new program, we will need to know how you arrived at the rates you are using.

If a comparison with other carriers writing similar programs was done, please send us the comparison showing how the rates compare with others.

Available Rate Options

Not all risks fit exactly into the “mold” that is used to establish rates for a given type of risk. Because of this, various options have been made available to you to allow your rate to better reflect the risk you are covering:

Nebraska statutes allow for most classes of commercial lines business the ability to adjust one’s rates upward/downward 40%.

Rate Flexibility - Neb.Rev.Stat. §44-7509 allows for most classes of commercial lines business the ability to adjust one’s rates upward/downward 40%. There are a few exceptions and those are listed in the statute. Because of the +/- 40% rating flexibility, we do not require that it be filed with us. In fact, if you file a program, it appears that you want rating flexibility over and above the 40% allowed by statute.

Consent to rate only applies if you are charging a rate that is higher than what is on file with the Department.

Consent to Rate - This only applies if you are charging a rate that is higher than what is on file with the Department. Neb.Rev.Stat. §44-7508(6) requires that you have the prior written consent of the insured. That consent must be signed by the insured and filed with our office no later than 30 days after the effective date of the insurance. The signed consent should include the percentage amount of increase and the reason for that increase.

Review the statute and regulation to see if any of your risks might qualify as an exempt commercial policyholder.

Exempt Commercial Policyholders - Neb.Rev.Stat. §44-7515, along with Title 210, NAC Chapter 73 of the Department’s Rules and Regulations, give the requirements for those risks that qualify as an Exempt Commercial Policyholder. We encourage you to review the statute and regulation to see if any of your risks might qualify.

LEGAL DIVISION

Regulation Updates

Company Bulletins

CB-122 - HEALTH INSURANCE FILINGS PURSUANT TO THE PATIENT PROTECTION AND AFFORDABLE CARE ACT

CB-122 was issued on September 15, 2010, for the purpose of informing all health insurers that they are required to file policy amendments to conform to the requirements of the Patient Protection and Affordable Care Act (PPACA) and subsequently released regulations on immediate market reforms. A copy of CB-122 can be found at www.doi.ne.gov/bulletin/cb122.pdf.

CB-123 - EXTERNAL APPEALS FOR INSURED PLANS IN NEBRASKA

CB-123 was issued on September 15, 2010, for the purpose of informing all health insurers and insureds that on September 1, 2010, the federal government provided additional guidance to states that do not have external review laws for adverse benefit decisions for health insurance plans. Nebraska does not have external review statutes. A copy of CB-123 can be found at www.doi.ne.gov/bulletin/cb123.pdf.

CB-124 - USE OF ON-BOARD SENSORS FOR AUTOMOBILE RATING

CB-124 was issued on October 1, 2010, for the purpose of addressing issues related to the use of on-board sensors in the determination of insurance rates. A copy of CB-124 can be found at www.doi.ne.gov/bulletin/cb124.pdf.

Case Summaries

D & S Realty, Inc v. Markel Insurance Company, 280 Neb. 567 (September 10, 2010)

D & S Realty owned a building in Omaha, Nebraska that was insured by Markel Insurance Company ("Markel"). In January, 2003, the building sat mostly empty, awaiting renovation. That month, a pipe burst causing water damage. Markel denied D & S Realty's claim for water damage because of a vacancy clause in the policy. The clause provides that Markel would not pay for water damage, among other things, if the building had been vacant for more than 60 consecutive days before the damage occurred.

D & S Realty sued for breach of contract. They contended that a state statute barred Markel's vacancy clause defense because the alleged policy breach had not contributed to the loss. In part, [Neb.Rev.Stat. §44-358](#) precludes an insurer from denying liability for an insured's breach of a condition unless the breach contributed to the loss. The application of §44-358 boiled down to

whether the vacancy clause in the policy was a *condition* or an *exclusion*. The Court held that the statute did apply because the clause was a condition. Specifically, the clause was ruled to be a *condition subsequent*, or a condition that must be met after the risk has commenced in order for the policy to remain in effect. The Court defined an exclusion in an insurance policy as a limitation of liability or types of loss that the policy never covered. D & S Realty's policy clearly covered water damage at certain times, so the clause could not be an exclusion. This decision overruled several Nebraska Supreme Court decisions that discussed exclusions in insurance policies.

D & S Realty also alleged that Markel had waived the vacancy clause by continuing to accept premiums after learning about the vacancy. The Court held that D & S Realty's waiver arguments did not apply because the policy was still effective against losses other than water damage. Had D & S Realty's breach of the condition made the entire policy void and Markel continued to accept premium payments, there would be a valid waiver claim and Markel would have been estopped from denying coverage.

Matschiner v. Hartford Life and Acc. Ins. Co., United States Court of Appeals, Eighth Circuit (October 7, 2010)

In 1991, RoJane Lewis obtained life insurance under a group policy issued to her employer by Hartford Life and Accident Insurance Company (Hartford). RoJane submitted a beneficiary form that granted sixty percent of the death benefit to her then-husband, Alan Lewis, and twenty percent to the plaintiffs, her daughters, Katherine and Kristina Matschiner. RoJane died in April, 2005. In June, 2007, Hartford located RoJane's beneficiaries. Alan Lewis stated he wanted to collect his share of the death benefit and submitted claim forms. At that time, Katherine Matschiner advised Hartford that her sister Kristina had a more recent beneficiary designation form and that Alan Lewis intended to disclaim his share. Hartford requested a copy of the new designation form. The daughters submitted their claim forms and a copy of a November, 2000 divorce decree. The divorce decree awarded Alan and RoJane, individually, the cash values of any life insurance policies. However, neither daughter ever submitted a more recent beneficiary form changing the designation. Hartford then paid the policy benefits as stated in the original 1991 policy.

At the United States Court of Appeals for the Eighth Circuit, Hartford looked to the new Supreme Court decision *Kennedy v. Plan Administrator for DuPont Savings & Investment Plan*, 129 S. Ct. 865 (2009). *Kennedy* held that *The Employee Retirement Income Security Act of 1974* (ERISA) mandates that a policy plan must "specify the basis on which payments are made..." 29 U.S.C. §1102(a)(1) and that the policy administrator must act within the plan. This is referred to as the "plan documents rule."

In *Kennedy*, the plan in question was an "employee pension benefit plan" under ERISA, while in Hartford's case, the group insurance policy was a "welfare benefit plan." The Eighth Circuit determined that distinction did not affect the plan documents rule and that the court must examine the plan documents.

The Supreme Court held that Hartford's Group Insurance Policy expressly provided a plan within the scope of the plan documents rule in ERISA. The policy administrator followed that plan exactly. The Matschiners failed to follow the steps necessary to change a beneficiary as provided in the plan, and the court ruled against them.

Kremer v. Rural Community Insurance Company, 280 Neb. 591 (September 17, 2010)

Robert Kremer and Gary Moody insured their crops with multiple peril crop insurance policies issued by Rural Community Insurance Company (“RCIC”). The policies were issued under the Federal Crop Insurance Act (“Act”) and were reinsured by the Federal Crop Insurance Corporation (“FCIC”). All multiple peril crop insurance policies contain an arbitration provision.

The appellants brought action to enforce settlement agreements made to them by a RCIC adjuster. At the district court, RCIC successfully moved to compel arbitration and stay the proceedings. Kremer and Moody appealed the decision. RCIC contended that the arbitration order could not be appealed because it was not a final order, meaning it did not determine the action or prevent a judgment.

The Nebraska Supreme Court acknowledged a split among state courts on whether a party may appeal from an order compelling arbitration. It determined that an arbitration-related order under Neb.Rev.Stat. §25-1902 is final and is in line with the Federal Arbitration Act (FAA). The Court reasoned that when an order is indistinguishable from a dismissal or has the effect of a permanent denial of the requested relief, it should be appealable like a final order.

The Court then turned to the policy’s arbitration clause and held that it was enforceable. The Court determined the Act and the resulting rules of the FCIC have supremacy over state statutes regarding arbitration. The FCIC’s regulations require insurers to use prescribed policy forms which contain arbitration provisions. The FCIC also provides that local and state governments cannot pass laws that affect or govern its agreements. As a result of the regulations, Neb.Rev.Stat. §25-2602.1(f)(4) is preempted.

Ultimately, the Court held that an arbitration order is a final order that can be appealed and that the arbitration provision in each crop insurance policy is valid and requires the parties to arbitrate disputes over adjustment actions.

Actions Taken Against Companies

| CAUSE NO. | ALLEGATION | DISPOSITION |
|--|---|---|
| C-1851 United Security Life and Health Insurance Company Illinois | Company deemed in hazardous financial condition due to decrease in surplus. | Order Certificate of Authority suspended 7/21/2010 |
| C-1851 United Security Life and Health Insurance Company Illinois | Company’s financial condition no longer deemed to be hazardous. | Order Vacating Suspension of Certificate of Authority 8/12/2010 |

Actions Taken Against Producers

| CAUSE NO. | ALLEGATION | DISPOSITION |
|--|--|---|
| A-1882 Daniel Mark Gaudreau Frisco, TX | Violated <u>Neb.Rev.Stat.</u> §§44-1525(11), 44-4054(8), and 44-4059(1)(a) & (b). Failed to respond within 15 business days; failed to notify the Department of an address change within 30 days; provided incorrect or misleading information on a licensing application; violated any insurance law. | Consent Order \$3,000 admin. fine 10/1/2010 |
| A-1883 Gary L. Karns Akron, OH | Violated <u>Neb.Rev.Stat.</u> §§44-1525(11) and 44-4059(1)(b). Failed to respond within 15 business days; violated any insurance law. | Consent Order Producer license revoked 9/8/2010 |
| A-1884 Anthony Jackson Omaha, NE | Hearing requested for reconsideration of denial of application for resident producer license. | Order Producer license granted 9/13/2010 |
| A-1885 Eric Downing Lincoln, NE | Hearing requested for reconsideration of denial of application for resident producer license. | Order Producer license granted 8/17/2010 |
| A-1886 Todd J. Spangler Waterloo, NE | Violated <u>Neb.Rev.Stat.</u> §§44-4059(1)(b) and 44-4065(3). Violated any insurance law; failed to report criminal prosecution within 30 days of date of arraignment or waiver of arraignment. | Consent Order Producer license revoked 9/3/2010 |
| A-1888 Douglas E. Inlay Sioux City, IA | Violated <u>Neb.Rev.Stat.</u> §§44-4059(1)(a) and (b). Incorrect or misleading information provided on a licensing application; violated any insurance law. | Consent Order Producer license suspended for 90 days 10/6/2010 |
| A-1889 Deborah Claudene Larson Hastings, NE | Violated <u>Neb.Rev.Stat.</u> §§44-1525(10) and 44-4059(1)(b) & (h). Made false statement on insurance application(s); violated any insurance law; used fraudulent, coercive, or dishonest practices. | Consent Order \$2,000 admin. fine 2/12/2010 |
| A-1890 Dedric Hillery Gill, Jr. Omaha, NE | Violated <u>Neb.Rev.Stat.</u> §§44-44-4059(1)(b) and 44-4065(1). Violated any insurance law; failed to report administrative action taken in another jurisdiction. | Consent Order Producer license revoked 10/6/2010 |

MARKET CONDUCT DIVISION

Producer Licensing Reviews

Market conduct examinations include reviews of producer licensing. During an exam, the company's licensing records are compared with the records maintained by the Producer Licensing Division of the Department. When discrepancies are found, they are questioned by the examiner and a comment with a recommendation is made on the company's Market Conduct Examination Report.

An insurer can reduce and/or eliminate the number of discrepancies in its producer records by checking the National Association of Insurance Commissioner's (NAIC) Producer Database to ensure producers have been appointed and/or terminated in a timely manner. The insurer can also check the Nebraska Department of Insurance website which lists all producers who are actively appointed with an insurer.

The Nebraska Department of Insurance charges a fee for the appointment and insurer termination of a producer. The Producer Licensing Division provides statements to the insurer to inform it of the fees incurred for the producers who have been appointed or terminated. In addition, an appointment renewal statement is sent to the insurer each May which includes the names of all actively appointed producers and the appointment renewal fee charged.

To avoid having a comment with a recommendation in the Market Conduct Report, the insurer should consider performing a periodic review of the NAIC Producer Database and the Department's website, reconciling the insurer's producer records against the statements provided by the Department's Producer Licensing Division as part of its policies and procedures.

Reminder Regarding Chapter 19 Requirements

This is a reminder to all insurers who write life and annuity business in the State of Nebraska. Title 210, NAC, Chapter 19 (Amended), "Replacement of Life Insurance and Annuities," requires with or as a part of each application for life insurance or an annuity, a signed statement by both the applicant and the producer as to whether the applicant has existing policies or contracts. If the application(s) used by the insurer prior to October 1, 2008 did not include a statement regarding existing policies or contracts, the insurer should revise its application(s) and submit the revised application(s) to the Department of Insurance for approval as required by [Neb.Rev.Stat §44-511](#).

It is also important to make note of the, "Important Notice: Replacement of Life Insurance or Annuities in Appendix A" in Chapter 19 (Amended). If an insurer will be using a substantially similar form to Appendix A, the form must be approved by the director of the Department of Insurance or the director's designee.

Appendices B and C are referenced in Section 011, “Duties of Insurers with Respect to Direct Response Solicitations,” and require that If an insurer is using a form similar to Appendix B or C, the insurer will need approval by the director.

Chapter 19 (Amended) also requires having the producer submit to the insurer a statement identifying any preprinted or electronically presented company-approved sales materials used, and copies of any individual sales material, including any illustrations related to the specific policy or contract purchased, or having the producer submit a statement verifying that the producer used only company-approved sales material and stating that copies of all sales material were left with the applicant.

If the insurer has the producer submit a statement verifying that the producer used only company-approved sales material and stating that copies of all sales material were left with the applicant, the company must then notify the applicant, within 10 days of the issuance of the policy or contract, by sending a letter or by verbal communication with the applicant by a person whose duties are separate from the marketing area of the insurer, that the producer has represented that copies of all sales material have been left with the applicant, provide the applicant with a toll-free number to contact company personnel involved in the compliance function if such is not the case; and stress the importance of retaining copies of the sales material for future reference. A generic form letter which is attached to the policy would not be considered as meeting the requirements of Chapter 19 (Amended).

Any questions concerning market conduct examinations may be directed to Reva Vandevoorde at reva.vandevoorde@nebraska.gov. A copy of Chapter 19 (Amended) can be found at www.sos.ne.gov/rules-and-regs/regsearch/Rules/Insurance_Dept_of/Title-210/Chapter-19.pdf.

EXAMINATION DIVISION

Financial Examinations Completed During Third Quarter, 2010

OMNI Dental Associates, Inc.

Financial examination reports become public documents once they have been placed on official file by the Department. Copies may be obtained from the Department at the cost of \$.50 per page.

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Department Calendar

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| November 11: | DOI Closed - Veteran's Day |
| November 25-26: | DOI Closed - Thanksgiving Holiday |
| December 24: | DOI Closed - Christmas Day Observed |
| December 31: | DOI Closed - New Year's Day Observed |
| January 17: | DOI Closed - Martin Luther King Day Observed |
| February 21: | DOI Closed - President's Day |