

INSURANCE

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A Message from the Director....

Health Insurance Reform—What is Required of the Department?



Ann M. Frohman

The Nebraska Insurance Department has its “to do” list for health insurance reform. In fact, we are working on many levels to implement several key requirements. In the rate and forms division, we will review policy forms to assure they place limits on rescissions, remove cost-sharing for preventative services, remove lifetime limits, remove pre-existing conditions for minors, permit dependent coverage to age 26, to name a few. Standardization of forms will occur in many areas with uniform definitions coming in 2011. In addition, rating methodologies will streamline as we prepare to interface with HHS on rate justifications. We are also looking to assist consumers if we can access grant funds to do so through an ombudsman program that promotes advocates for consumers.

With respect to longer term reforms, HHS must determine minimum standards for state-based exchanges for purchasers of individual health insurance and for small employers. If we choose not to establish a state or regional exchange, HHS will create one for Nebraskans, so stay tuned for that decision in the next 18 months. Finally, state laws that do not meet minimum federal requirements will be preempted on January 1, 2014.

The National Association of Insurance Commissioners (NAIC) is providing much assistance as well. The NAIC is working to establish uniform methodologies for rebates required when minimum loss ratios are not met. Moreover, the NAIC is looking to modify Medigap plans C and F, in consultation with consumer and industry groups and is assisting HHS on an interim reinsurance program which will also consider recommendations from the actuarial standard setting body. A risk adjustment program requiring health plan cross-subsidies from low actuarial risk plans to higher actuarial risk plans will also involve the NAIC and the state insurance department. The NAIC must also look at interstate compacts and fraud reporting.

The list is long. I recommend periodically visiting our website at www.doi.ne.gov and the NAIC website at www.naic.org for updates regarding efforts underway to implement the required measures of insurance reform.

LIFE AND HEALTH DIVISION

Use of Department Name for Rate Increases

The practice of sending correspondence to policyholders indicating that a rate increase is being implemented secondary to approval by the Department is to be ceased.

Raising premiums is a decision solely determined by a company and is not at the discretion of the Department.

Companies sending letters that can be misconstrued or that misrepresent the Department's participation in a rate increase will be required to submit an amended letter for approval by the Department prior to being sent to the policyholders who received the initial letter.

The Department has asked that companies remove ambiguous language from applications.

Any company sending correspondence to policyholders that can be misconstrued or misrepresents the Department's participation in any rate increase is advised to cease the practice.

The Department's Spring 2009 Newsletter addressed concerns over using reference to the Nebraska Department of Insurance in letters advising customers of a premium increase. However, the Department recently received another letter that indicated to policyholders that a rate increase was being implemented secondary to approval by the Nebraska Department of Insurance. The Department is once again advising companies that it is not appropriate to insinuate rate increases are based on recommendations by the Department or any individual employee of the Department.

The decision to raise premiums is a decision solely determined by a company. It is not at the discretion of the Nebraska Department of Insurance and should not be presented as such. The job of the Department's Life and Health Division is to ensure consumer protection by verifying all requested rate increases provide a justified actuarial basis, and to ensure company solvency.

If the Department receives a copy of correspondence sent to policyholders that can be misconstrued or misrepresents the Department's participation in any rate increase, the company will be required to submit an amended letter for our approval. The approved, amended letter will be required to be sent to all policyholders who received the previous letter. Additional administrative actions may also be taken.

Ambiguous Language

Several years ago the Life and Health Division began asking companies to remove ambiguous language, such as "signs" or "symptoms of", from applications. An example of this language would be, "Have you or your spouse had any signs or symptoms of any of these diagnoses in the last five years?"

If an application is presented with ambiguous language, an objection will be created and a delay in review will occur.

The Life and Health Division is available to assist with any questions on whether specific language may be viewed as ambiguous.

After June 1, 2010, based on recommendations by the NAIC, Medicare Supplement plans offered by companies will change to A, B, C, D, F, G, K, L, M and N.

Plans E, H, I, and J will no longer be sold and Plans M and N will be added.

Plan G currently covers 80% of Part B excess charges but that benefit will be increased to 100% and the plan will no longer include "at home recovery."

Asking an applicant to determine to what medical diagnosis a sign or symptom may be related is ambiguous, and would call for self-diagnosis from the applicant. All questions must be specific to being diagnosed from an appropriate licensed medical care provider. If an application is presented with ambiguous language, an objection will be created and a delay in review will occur.

We appreciate the efforts of the companies to help us effectuate speed to market by removing any ambiguous language. If you question whether specific language may be viewed as ambiguous, please feel free to contact the Life and Health Division at **DOI.LifeAndHealth@nebraska.gov**.

Medicare Supplement Changes

On June 1, 2010, the Medicare Supplement plans as we know them will be changing. Carriers can currently offer up to twelve supplement plans: A, B, C, D, E, F, G, H, I, J, K and L. Basic benefits are included in each of these plans, with additional benefits being added to each plan. After June 1, 2010, based on recommendations by the National Association of Insurance Commissioners (NAIC), the plans offered will be A, B, C, D, F, G, K, L, M and N.

Beginning June 1, 2010, the "Part A Hospice Co-Insurance" will be added as a basic benefit to all Medicare Supplement plans while the "at home recovery benefit" will be stripped from all plans. Also beginning in June, plans E, H, I and J will no longer be sold. Plans M and N will be added. Beneficiaries who currently have a plan E, H, I or J will not lose their coverage. Those plans will continue with the same benefits, however, those plans will become a "closed block of business" and after May 31, 2010, no new policies will be sold in the closed block.

Along with the aforementioned changes, there will also be changes to Plan G. Currently, Plan G only covers 80% of the Part B excess charges. After June 1, 2010, this benefit will be increased to 100% of Part B excess charges. Plan G will also no longer include "at home recovery."

Many companies have asked if they can update their current Medicare Supplement plans to the June 1 plans by endorsement. The actuarial bases for the June 1 Medicare Supplement plans vary significantly from the old plans. This

All policies must be revised to be compliant with the June 1 Medicare Supplement plans, and the plans must be filed and approved before they can be sold.

The Department is no longer accepting paper filings from insurers who have certificates of authority to do the business of insurance in states in addition to Nebraska.

All fees related to such filings must be paid by electronic funds transfer (EFT).

Filers are encouraged to take formal training so they can fully use the SERFF system.

requires that companies must revise all of their policies to be compliant with the June 1 Medicare Supplement plans. All plans must be filed and approved by the Life and Health Division before the plans can be sold. Please be reminded that waiting to file the June 1 plans could cause a delay in review, and consequently a delay in the ability to sell these plans.

If you have any questions or need clarification on the June 1 Medicare Supplement plans, please contact the Life and Health Division.

Mandated SERFF

In an effort to truly recognize Speed to Market initiatives, the Department of Insurance is mandating that all filings be submitted through the System for Electronic Rate and Form Filings (SERFF) which was developed by the National Association of Insurance Commissioners.

As of May 1, 2010, the Department is no longer accepting paper filings from insurers who have certificates of authority to do the business of insurance in states in addition to Nebraska. This requirement applies to all lines of insurance and for all rate, rule and form filings including but not limited to those submitted by licensed insurers, vehicle service contract providers, viatical settlement providers and brokers, pre-need funeral plans, health maintenance organizations, motor clubs, and pre-paid dental plans. All fees related to such filings must be paid by electronic funds transfer (EFT).

Assessment Associations and Assessment Life Associations may, at their discretion, continue to submit paper filings.

Filers not yet using SERFF may enroll by contacting SERFF at 1-816-783-8787 or by e-mail at serffmktg@naic.org. Companies needing information about SERFF and EFT may visit www.serff.com. Filers are encouraged to take formal training so they can fully use the SERFF system. Contact information regarding training can be found at the SERFF website at www.serff.com/training.htm. There are a variety of formats available, including on-line training.

Questions regarding life & health filings should be directed to the division at DOI.LifeAndHealth@Nebraska.gov or by phone at 402-471-2201.

PRODUCER LICENSING DIVISION

Effective July 1, 2010, the producer-trip insurance license type will be changed.

Individuals who currently hold both producer and producer-trip insurance license types will no longer be charged a separate fee of \$60 for each.

The producer license will now list the travel line of authority, and the producer-trip insurance license will become inactive.

Appointments and appointment terminations may be processed online through NIPR or by submitting the NAIC Uniform Appointment/Termination form found on our website.

Travel Line of Authority Changes on July 1, 2010

A recent review of our producer licensing lines of authority has resulted in a change to the producer-trip insurance license type.

Effective July 1, 2010, the producer-trip insurance license type will be changed to a producer license type with the travel line of authority listed. There will be no additional charges or actions to producers for this change.

Individuals who currently hold both producer and producer-trip insurance license types will no longer be charged a separate fee of \$60 for each. The producer license will list the travel line of authority, and the producer-trip insurance license will become inactive. Individuals who only hold a producer-trip insurance license type will be issued a new producer license with the travel line of authority listed.

A copy of the notice can be found on the Department's website at www.doi.ne.gov/notices/notc2010/notice06.pdf. Any questions regarding this change may be directed to the Producer Licensing Administrator at 402-471-4707 or by email to jason.mccartney@nebraska.gov.

Producers' Annual Appointment Renewals

The annual renewal billing statements reflecting the producers' appointments renewed on behalf of companies for the 2010-2011-license year have been sent out. As a reminder, names may not be added or deleted to/from the billing statements.

Appointments and appointment terminations may be processed online through the National Insurance Producer Registry (NIPR) at www.nipr.com, or by submitting the NAIC Uniform Appointment/Termination form found on our website at www.doi.ne.gov/license/p_appoin.pdf.

Cancellation of producers' appointment forms received in the Department after April 15, 2010 were automatically renewed and have been processed with a cancellation effective date of May 1, 2010.

Appointment renewals are not available for processing online.

Cancellation of Producers' Appointments

Cancellation of producers' appointment forms received in the Department **after April 15, 2010** were automatically renewed and have been processed with a cancellation effective date of May 1, 2010. Both the renewal statement and the cancellation fees listed on the May or June monthly invoice must be paid.

The total amount due is to be remitted by the date indicated with inclusion of a copy of the first page of the invoice with the payment. Appointment renewals are not available for processing online. It is important to note that any other money that may be due the Department should be remitted by a separate check.

Questions concerning the annual renewal statement may be directed to the Department's Producer Licensing Division at 402-471-4913.

PROPERTY AND CASUALTY DIVISION

ACORD Changes to Forms

Over the past few months, ACORD has made changes to most of the forms in their series of "Certificates of Insurance." Unlike many of the advisory organizations who allow a form to remain in the marketplace once a newer version is created, ACORD takes the position that once a newer form is created, all older versions are no longer valid and are no longer available for use. We suggest that you check to make sure all of the Certificates you issue and/or receive are now done using the most current forms available.

We want to remind everyone that a Certificate of Insurance is merely evidence of coverage at a given point in time. It is not to be used to change the provisions of the contract, change who is an insured or an additional named insured or add or delete coverage. Changes such as this can only be done by direct notification to the appropriate insurance carrier.

The Department issued bulletin CB-118 on June 20, 2008, which addresses the use of Certificates of Insurance. Anyone issuing or reviewing certificates are encouraged to review the bulletin to make sure that all certificates are being issued correctly. A copy of CB-118 can be found on the Department's website at www.doi.ne.gov/bulletin/cb118.pdf.

Nebraska Workers' Compensation Assigned Risk Plan Agreement

Bulletin CB-121, dated April 7, 2010, was issued by Director Frohman for the purpose of informing Nebraska workers' compensation insurers that the Nebraska Workers' Compensation Assigned Risk Plan (NWCP) agreement includes a provision requiring insurers to share in excess losses incurred in the NWCP.

A full copy of bulletin CB-121 can be obtained from the Department's website at www.doi.ne.gov/bulletin/cb121.pdf. Questions about the bulletin may be directed to the Department's Property/Casualty Division at DOI.PropertyAndCasualty@nebraska.gov.

Property & Casualty Paper Filings No Longer Accepted

Effective May 1, 2010, the Department is no longer accepting paper filings from insurers who have certificates of authority to do the business of insurance in states in addition to Nebraska. Insurers and other entities must submit all insurance rate, rule, and form filings through the System for Electronic Rate and Form Filings (SERFF). All fees related to such filings must be paid by electronic funds transfer.

The only exception will be for assessment associations which may, at their discretion, continue to submit paper filings. Filings by such insurers will be submitted to SERFF on their behalf by Department staff if it is impractical for the company to use SERFF. A full copy of the notice explaining the Department's change to accepting SERFF-only filings is located on the Department's website at www.doi.ne.gov/notices/notc2010/notice04.pdf.

Questions regarding property and casualty filings should be directed to the Property and Casualty Division Administrator at 402-471-2201 or DOI.PropertyAndCasualty@nebraska.gov.

Cooperative Education

One of the missions of the Department of Insurance is to help educate. We are pleased to be taking part in a Cooperative Education Program through Southeast Community College. As a program participant, the Department is hosting an "intern", who will be doing special projects in several different areas and taking part in day-to-day activities, for a period of 10 weeks.

The intent of the program is to provide hands on experience in an area that has been chosen by the student. "Insurance" has been chosen as our student's area of interest, and our goal is to encourage and show him the many different opportunities that are offered in the insurance field.

LEGAL DIVISION

Insurance Legislation Passed

The 2010 session of the Nebraska Unicameral ended in early April. There are a few bills passed that will affect insurers and insurance producers.

In the area of property and casualty insurance:

- **LB 216** eliminates the remaining civil liability provisions relating to motor vehicle and aircraft guest statutes. Before 1981, a passenger in a motor vehicle injured through the negligence of the driver could not recover damages for his or her injuries unless the driver was found to be guilty of gross negligence. In 1981, the Legislature made this statute applicable only to those related to the driver within the second degree of consanguinity or affinity. LB 216 repealed this last vestige of the guest statute.
- In addition, **LB 650** allows mini-trucks to be operated on all Nebraska roads except interstate highways, controlled-access highways, and expressways.

In the area of workers' compensation insurance:

- **LB 780** extends workers' compensation coverage to first responders who suffer mental injuries without a corresponding physical injury. To recover for those injuries, the first responder must show by a preponderance of the evidence that the mental injury was a result of extraordinary and unusual conditions as compared to the normal conditions of the employment. The first responder must additionally establish that the conditions caused the resulting mental injury.
- Under **LB 579**, the State of Nebraska will now begin to register professional employer organizations. These organizations have operated in Nebraska for several years, however, the new law includes standards designed to respond to the specific characteristics of these entities. Under LB 579, PEOs will be required to register with the Department of Labor and maintain a certain level of net worth or post a bond for security. Professional employer agreements would have to include terms which would specify certain obligations and rights of the employer and the PEO. The bill requires that the agreement specify which party would have the obligation to purchase workers' compensation insurance and would extend the exclusive remedy protection to both. It will also address the types of insurance coverages available for use by PEOs.

The full text of the legislation is available at www.unicam.state.ne.us.

Actions Taken Against Companies

CAUSE NO.	ALLEGATION	DISPOSITION
C-1804 Pennsylvania Life Insurance Company Pennsylvania	Violated <u>Neb.Rev.Stat.</u> §44-1525(12). Accepted applications from a non-appointed individual.	Consent Order \$350 admin. fine 1/26/2010
C-1805 Pyramid Life Insurance Company Kansas	Violated <u>Neb.Rev.Stat.</u> §44-1525(12). Accepted applications from a non-appointed individual.	Consent Order \$3,000 admin. fine 1/28/2010
C-1806 Marquette National Life Insurance Company Texas	Violated <u>Neb.Rev.Stat.</u> §44-1525(12). Accepted applications from a non-appointed individual.	Consent Order \$3,000 admin. fine 1/28/2010
C-1808 Standard Life and Accident Insurance Company Texas	Violated <u>Neb.Rev.Stat.</u> §44-354. Charged an additional fee not specified in the policy.	Consent Order \$4,750 admin. fine 3/8/2010
C-1809 American Community Mutual Insurance Company Michigan	Violated <u>Neb.Rev.Stat.</u> §§44-1539, 44-1540(3), (8), & (13), and Title 210 NAC Ch. 61 §008.02. Violated Unfair Claims Settlement Act and Unfair Life, Sickness and Accident Claims Settlement Practices Rule.	Consent Order \$1,500 admin. fine 2/26/2010
C-1813 Marquette National Life Insurance Company Texas	Violated <u>Neb.Rev.Stat.</u> §§44-1524, 44-1525(11) & (12). Violated Unfair Trade Practices Act; failed to respond within 15 business days; accepted applications from a non-appointed individual.	Consent Order \$6,000 admin. fine 2/23/2010
C-1814 Constitution Life Insurance Company Texas	Violated <u>Neb.Rev.Stat.</u> §§44-1524 and 44-1525(12). Violated Unfair Trade Practices Act; accepted applications from a non-appointed individual.	Consent Order \$1,000 admin. fine 2/23/2010
C-1815 Pennsylvania Life Insurance Company Pennsylvania	Violated <u>Neb.Rev.Stat.</u> §§44-1524 and 44-1525(12). Violated Unfair Trade Practices Act; accepted applications from a non-appointed individual.	Consent Order \$4,000 admin. fine 2/23/2010

Actions Taken Against Companies (cont.)

CAUSE NO.	ALLEGATION	DISPOSITION
C-1816 Pyramid Life Insurance Company Kansas	Violated <u>Neb.Rev.Stat.</u> §§44-1524 and 44-1525(12). Violated Unfair Trade Practices Act; accepted applications from a non-appointed individual.	Consent Order \$4,000 admin. fine 2/23/2010
C-1821 National States Insurance Company Missouri	Hazardous decline in surplus.	Certificate of Authority suspended 3/22/2010
C-1825 Dakota Homestead Title Insurance Company South Dakota	Failed to maintain the minimum requirements for capital and surplus as of December 31, 2009.	Certificate of Authority suspended 3/19/2010

Actions Taken Against Producers

CAUSE NO.	ALLEGATION	DISPOSITION
A-1825 Anita Greenwood Grand Island, NE	Violated <u>Neb.Rev.Stat.</u> §§44-4053(2)(a) & (b) and 44-4059(1)(b) & (h). Failed to comply with business entity license requirements; violated any insurance law; used fraudulent, coercive, or dishonest practices.	Consent Order \$350 admin. fine 1/26/2010
A-1840 Allison L. Klanecky Grand Island, NE	Violated <u>Neb.Rev.Stat.</u> §§44-4059(1)(b) & (f) and 44-4065(2). Violated any insurance law; convicted of a felony or Class I, II, or III misdemeanor; failed to report criminal prosecution within 30 days of arraignment or waiver of arraignment.	Consent Order Producer license revoked 2/12/2010
A-1856 Troy D. Veach Omaha, NE	Violated <u>Neb.Rev.Stat.</u> §§44-1525(10), and 44-4059(1)(e), (g), & (h). Made false or fraudulent statement(s) on an application; misrepresented an insurance contract; committed unfair trade practice; used fraudulent, coercive, or dishonest practices.	Consent Order \$750 admin. fine 2/12/2010

Actions Taken Against Producers (cont.)

CAUSE NO.	ALLEGATION	DISPOSITION
A-1857 Empire Title of Nebraska, Inc. & Deanna J. Chandler Omaha, NE	Violated <u>Neb.Rev.Stat.</u> §44-1525(11), 44-4059(1)(b), & 44-4054(8). Failed to respond within 15 business days; violated any insurance law; failed to notify the director of address change within 30 days.	Consent Order \$1,000 admin. fine 1/26/2010
A-1858 Stacey Jo Sullivan Norfolk, NE	Violated <u>Neb.Rev.Stat.</u> §§44-1525(10), 44-4059(1)(b) & (h), 44-4054(8), and 44-5906(2). Made false or fraudulent statements on an application; violated any insurance law; used fraudulent, coercive, or dishonest practices; failed to notify the director of address change within 30 days; failed to comply with market conduct exam.	Consent Order Producer license revoked 1/27/2010
A-1860 Richard D. Martin Omaha, NE	Violated <u>Neb.Rev.Stat.</u> §44-4065(1). Failed to report administrative action(s) taken in another jurisdiction within 30 days.	Consent Order \$2,000 admin. fine 3/4/2010
A-1861 Stephan Pickman Melville, NY	Hearing requested for reconsideration of denial of application for nonresident producer license.	Order Producer license denied 2/12/2010
A-1862 Danny Duy Pham Omaha, NE	Violated <u>Neb.Rev.Stat.</u> §§44-44-1524, 44-1525(11), and 44-4059(1)(b), & (h). Violated the Unfair Trade Practices Act; failed to respond within 15 business days; violated any insurance law; used fraudulent, coercive, or dishonest practices.	Consent Order \$500 admin. fine 4/2/2010
A-1864 George A. Gehringer Omaha, NE	Violated <u>Neb.Rev.Stat.</u> §§44-1524, 44-1525(12), 44-4059(1)(b), (g), (h), & (l). Violated the Unfair Trade Practices Act; accepted any application from an unlicensed individual; violated any insurance law; committed unfair trade practice, used fraudulent, coercive, or dishonest practices.	Consent Order \$1,000 admin. fine 2/26/2010

Actions Taken Against Producers (cont.)

CAUSE NO.	ALLEGATION	DISPOSITION
A-1865 Dean E. Olberding Urbandale, IA	Violated <u>Neb.Rev.Stat.</u> §44-1525(11), 44-4059(1)(b), (g) & (h), and Title 210 NAC Ch. 36 §027. Failed to respond within 15 business days; violated any insurance law; committed unfair trade practice; used fraudulent, coercive, or dishonest practices; failed to comply with Medicare supplement policy delivery requirements.	Consent Order \$1,000 admin. fine 3/11/2010
A-1867 Scott A. Williams Lincoln, NE	Violated <u>Neb.Rev.Stat.</u> §§44-4050, 4053(2), 44-4059(1)(h), and 44-4065. Failed to meet licensing requirements for a business entity; demonstrated a lack of fitness or trustworthiness; failed to report administrative action in another jurisdiction within 30 days.	Consent Order \$500 admin. fine 4/12/2010
A-1870 Daniel B. Owens Lincoln, NE	Violated <u>Neb.Rev.Stat.</u> §§44-1524, 44-1525 (10), and 44-4059(1)(b), (g), & (h). Violated the Unfair Trade Practice Act; made false statements on an application; violated any insurance law; committed an unfair trade practice; and used fraudulent, coercive, or dishonest practices.	Order \$1,000 admin. fine 3/29/2010

Patient Protection and Affordable Care Act

On March 23, 2010, President Barack Obama signed The Patient Protection and Affordable Care Act (PPACA) into law. One week later, he signed the Health Care and Education Reconciliation Act of 2010, which made numerous changes to PPACA. The health care reforms in these laws will require a large number of changes to health insurance products and the regulations that govern them.

The Department has added a link to its website for current information regarding health care reform. The link connects to the National Association of Insurance Commissioners and contains frequently asked questions, a glossary of terms, a responsibility timeline for insurance departments, and several charts for states to follow for implementation of the required measures of insurance reform.

The special section can be found at www.naic.org/index_health_reform_section.htm.

Case Summaries

Dutton-Lainson Co. v. Continental Ins. Co., 279 Neb. 365, 778 N.W.2d 433 (February 5, 2010)

In the 1940's, Dutton-Lainson Company began a manufacturing business in Hastings, Nebraska and used various solvents in its operations to clean machines and parts. Beginning in 1985, the EPA required Dutton to remediate environmental contamination in several different sub-sites of its operation. After a denial of coverage, Dutton sued Continental Insurance Company and Northern Insurance Company of New York seeking indemnification for expenses related to the EPA cleanup. The Douglas County District Court found that Dutton had sustained total damages of \$3,801,521.70.

The court applied a pro rata, time-on-the-risk allocation of damages and entered judgment for Dutton against Continental and Northern. In doing so, it divided the Dutton's total damages over the 39 year period of contamination and found that the Continental policy was in effect for 60 months of this time and covered all sub-sites. Therefore, Continental's share of the damages was \$475,190.21. Northern's liability was limited to only two of the sub-sites. The court denied coverage for sub-sites "Well No. 3" and "Operable Unit 19" because of the late notice provided by Dutton. It found that Northern provided coverage for 14 months and that its share of the relevant damages was 2.91666 percent, awarding \$74,937.89 in damages against Northern.

On Appeal, Dutton argued, among other things, that Northern should be held liable for occurrences at Well No. 3 and Operable Unit 19, that Continental and Northern should be held jointly and severally liable, and that the court erred in not awarding Dutton attorney's fees.

The Supreme Court upheld the trial decision on all counts. It agreed that Northern should not be liable for the occurrences at Well No. 3 and Operable Unit 19 because Dutton failed to adequately notify Northern of that liability. The Northern policy set forth the insured's duty as "(a) In the event of an occurrence, written notice containing particulars sufficient to identify the insured and also reasonably obtainable information with respect to the time, place and circumstances thereof, and the names and addresses of the injured and of available witnesses, shall be given by or for the insured to the Company or any of its authorized agents as soon as practicable." On April 16, 1986, Northern responded to the initial designation of Dutton as a PRP by saying no suit had been filed, but would appreciate being kept apprised of the EPA's investigation. The subsequent designations of Well No. 3 and Operable Unit 19 by the EPA as liabilities were not reported to Northern until the time of the lawsuit. Therefore, the Supreme Court found this failed the notice requirement in the Northern policy.

Further, the Supreme Court held that Dutton cannot assert joint and several liability without proving the amount of damages that resulted during the periods of coverage provided by each insurer. There were numerous insurers, and each policy represented a different time during the events from 1948 to 1987. If a time-on-the-risk allocation is not applied, then damages for each period of policy coverage must be established by Dutton, which was not done.

With regard to attorney's fees, the court pointed to Neb. Rev. Stat. Sec. 44-359 (Reissue 2004) which states, "in an action upon any type of insurance policy ... against any company ... the court, upon rendering judgment against such company... shall allow the plaintiff a reasonable sum as an attorney's fee." However, "if the plaintiff fails to obtain judgment for more than may have been offered by such company ... in accordance with section 25-901, then the plaintiff shall not recover the attorney's fee provided by this section." Continental made an offer to confess judgment for \$748,828.88 before trial. Dutton refused the offer, and judgment was entered against Continental for \$475,190.21. Northern

made an offer to confess judgment before trial in the amount of \$445,000. Dutton refused, and judgment was entered against Northern for \$74,937.89. The pretrial offers were for more than the amount of the final judgment awarded by the court. The Supreme Court affirmed the trial judgment on all counts.

FRAUD DIVISION

10th Annual Insurance Fraud Conference

The Fraud Prevention Division of the Department of Insurance will host the 10th Annual Insurance Fraud Conference on June 8, 2010 at the Eugene T. Mahoney State Park located at Interstate I-80, Exit 426, near Ashland, Nebraska. The target audience for this seminar is insurance company special investigation units, and claims and underwriting personnel. Limited seating is still available. Registration forms can be obtained from connie.drake@nebraska.gov. The agenda is as follows:

Tuesday, June 8

7:45 - 8:15 a.m.	Registration - Continental Breakfast
8:15 - 8:30 a.m.	Welcome - Director of Insurance Ann Frohman and Fraud Division Chief Chuck Starr
8:30 - 9:00 a.m.	Opening Remarks - Senator Scott Lautenbaugh
	Introduction of Speakers - Fraud Division Chief Chuck Starr
9:00 - 10:00 a.m.	Implementing a Fraud Training Program in Your Organization: Tom Welsh, Vice President of Training for the National Insurance Crime Bureau
10:15-11:45 a.m.	Fraudulent Health Care Trends: Cathy Bailey, Manager of Case Development and Training for CIGNA Corporation
11:45-1:15p.m.	(Split Session) Lunch and Facial Recognition Technology: Steve Eppens, Chief of Motor Vehicles Fraud Unit for State of Nebraska.
1:15-2:30 p.m.	Fraud Prevention in the Workplace: Robert Kardell, Special Agent FBI
2:45-4:00 p.m.	Nebraska Medicaid Fraud Control Unit: Vicki Adams, Nebraska Attorney General's Office

Educational Opportunities Provided to Law Enforcement Agencies

On June 9, 2010, the Insurance Fraud Prevention Division will sponsor a conference directed toward law enforcement personnel throughout Nebraska. The conference follows the 10th Annual Insurance Fraud Conference for insurance company special investigation units and claims and underwriting personnel. The annual conference for law enforcement provides an excellent opportunity for law enforcement agencies to network and discuss current issues affecting the law enforcement community. Registration forms can be obtained from Connie Drake at connie.drake@nebraska.gov. The agenda is as follows:

Wednesday, June 9

8:00-8:30 a.m.	Registration - Continental Breakfast
8:30 a.m.	Welcome - Fraud Division Chief Chuck Starr, Nebraska Department of Insurance
8:30-9:00 a.m.	Opening Remarks - Senator Scott Lautenbaugh
	Introduction of Speakers - Fraud Division Chief Chuck Starr
9:00-11:30 a.m.	Fusion Center and Threat Assessment: Jerry McNinch, U.S. Department of Homeland Security and Captain Kevin Knorr with the Nebraska State Patrol.
11:30-12:15 p.m.	Lunch
12:15-1:30 p.m.	Motor Vehicle Fraud Unit-Facial Recognition: Steve Eppens, Chief of Nebraska DMV Fraud Unit
1:30-3:00 p.m.	Chop Shops: Detectives Bill Fell and Constance Garro with the Omaha Police Dept.

The conference is free, however, pre-registration is required, and is limited to the first 50 registered individuals. A limited number of seats are still available.

Insurance Fraud Awareness Week

Insurance fraud is a serious crime that affects citizens of the State of Nebraska and has a negative financial and emotional impact on all honest, hardworking Americans. The costs associated with insurance fraud are tremendous and are costing consumers at least \$80 billion annually.

Several factors contribute to the costs associated with insurance fraud. Insurance fraud is often a crime of opportunity however greed and organized crime contribute as well. Only a combined effort by the insurance industry, law enforcement, state regulatory divisions, and the insurance-buying public will have an impact on this problem.

In recognizing the problems associated with insurance fraud, Governor Dave Heineman signed a proclamation declaring June 6-12, 2010 as Insurance Fraud Awareness Week.

To impact the fight against insurance fraud, report incidents of fraud to the insurance company, the Department of Insurance Fraud Prevention Division at 402-471-2201 or the National Insurance Crime Bureau at 1-800-835-6422.

EXAMINATION DIVISION

Financial Examinations Completed During First Quarter, 2010

Ameritas Life Insurance Corp.
Assurity Life Insurance Company
Delta Dental of Nebraska
Omaha Reinsurance Company (Qualifying Examination)

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

- May 31: Department Closed - Memorial Day
- June 8: Annual Fraud Seminar (registration required)
Eugene T. Mahoney State Park
- July 5: Department Closed - Independence Day Observed



State of Nebraska
Department of Insurance
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