

# INSURANCE

**Dave Heineman**  
Governor

**Bruce R. Ramage**  
Director

*A Message from the Director....*



Bruce R. Ramage

## **Insurance Company Reporting Requirements Change From Monthly to Bi-Monthly**

Insurance company reporting requirements to the Motor Vehicle Insurance Database have changed from a monthly process to a bi-monthly process. The change in reporting requirements becomes effective January 1, 2012.

The change in reporting requirements is a result of recent updates to the Nebraska Department of Motor Vehicles (DMV) rules and regulations governing the Motor Vehicle Insurance Database. Effective January 1, revisions made to Title 247, Chapter 15, of the DMV rules and regulations will require the bi-monthly reporting of insurance data to be reported between the first (1st) and third (3rd) working days and between the eleventh (11th) and thirteenth (13th) working days.

The DMV is in the process of notifying insurance companies of the reporting change via several different mediums of communication, such as group emails, written memoranda, DMV website, etc. In addition, the *Nebraska Insurance Reporting Guide* has been updated to reflect the January 1, 2012 change in reporting requirements. A copy of the guide is available online at [www.dmv.ne.gov/dvr/ins\\_index.html](http://www.dmv.ne.gov/dvr/ins_index.html).

Title 247, Chapter 15 can be found online at [www.sos.ne.gov/rules-and-regs/regtrack/proposals/000000000000984.doc](http://www.sos.ne.gov/rules-and-regs/regtrack/proposals/000000000000984.doc).

Questions concerning the change in reporting requirements may be directed to the DMV at 402-471-2281.

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## PRODUCER LICENSING DIVISION

### ***Licensing of Agency Branches No Longer Required***

Effective May 1, 2012, the Nebraska Department of Insurance will no longer require insurance agency branches to be licensed.

The Department is currently transitioning to a new information management system and has determined it will no longer require the licensing of branch offices for licensed insurance agencies. Branch offices may be registered with the Department by the licensed agency and the branch location and phone number will be recorded. The agency will be required to maintain a list of branches and licensed producers within the branch location, however, a separate license will not be required.

The current active branch office licenses for agencies will expire on April 30, 2012. Renewal notices will not be sent out for branch offices as they will not be renewed thereafter. As a reminder, nonresident agency licenses may be renewed online at [www.nipr.com](http://www.nipr.com).

For further information or questions regarding the licensing of insurance agencies, please contact the Department's Producer Licensing Division at 402-471-4913.

## LIFE & HEALTH DIVISION

### ***NECHIP Rate Hearing Held***

On October 5, 2011, the Nebraska Department of Insurance conducted a public hearing, per the requirements of [Neb.Rev.Stat. §44-4227](#), to allow for public comments on the proposed rate adjustment for the Nebraska Comprehensive Health Insurance Pool (NECHIP).

Director Ramge adopted the proposed rate adjustment, as recommended in the actuarial report, of an average increase of 11% for NECHIP enrollees. Implementation of the new rates will be January 1, 2012.

*The proposed rate adjustment of an average increase of 11% for NECHIP enrollees has been adopted by Director Ramge.*

*Implementation of the new rates will be January 1, 2012.*

## ***Major Medical Health Rate Filing Information Added to Website***

The Nebraska Department of Insurance has recently implemented several rate review enhancements for major medical health insurance. To improve transparency and permit applicable comments, the Department of Insurance website now includes public access to rate increase information.

In an effort to provide greater public information and input into the health insurance rate review process, the Department is providing Nebraskans the opportunity to view rate adjustment requests for individual and small group health insurance plans. The website also has contact information for health insurance carriers in Nebraska along with links to the company websites. Questions to common answers are included, along with other useful links.

The website has the ability to notify applicable health plan enrollees by email when their insurance company files a rate adjustment request. Additionally, impacted plan enrollees will be able to offer comments which will be compiled in a report and submitted to appropriate carriers for their consideration.

The health rate filings and public comments website can be accessed by following <https://doi-ratechanges.ne.gov/DOIRateChange/faces/welcome.xhtml>.

Questions concerning the rate review enhancements for major medical health insurance may be directed to the administrator of the Department's Life & Health Division at 402-471-2201.

## **FRAUD DIVISION**

### ***Misuse of Pharmaceutical Drugs***

P. Ritch Wagner, Law Enforcement Liaison and Education Director for Purdue Pharma, addressed the division's recent 2011 Insurance Industry and Law Enforcement Conferences concerning the social effects of the misuse of pharmaceutical drugs. Mr. Wagner emphasized the fuels driving the use of illegally obtained pharmaceutical drugs are dependence and addiction.

Quite often these substances may be accessed through practitioners, medical facilities, pharmacies, or even family members. Health insurance companies often bear the financial burden when pharmaceutical drugs are illegally obtained through these means. Wagner pointed out that proactively stopping such abuse often starts with educating individuals on the classes of pharmaceutical drugs most often abused. Attention also needs to be directed toward the means of access to the pharmaceutical drugs as well as the reason for their misuse.

To obtain information regarding insurance fraud, please visit the Department's website at [www.doi.ne.gov](http://www.doi.ne.gov) or email the fraud division at [DOI.FraudPrevention@Nebraska.gov](mailto:DOI.FraudPrevention@Nebraska.gov).

## PROPERTY & CASUALTY DIVISION

### ***Responses From Producer Survey***

The Director, as required under Neb.Rev.Stat. §44-7507(1), "...shall monitor competition and the availability of insurance in commercial insurance markets." While the Department welcomes the insurance industry's insight and input, it also tries to survey the producers in our state to get an idea of what they see and what problems they may be encountering.

A survey was recently sent to approximately 40 producers in Nebraska in an attempt to get a cross-section of the agency force throughout the state. Of the 40 surveys sent, responses were received from 27. Some of the results are as follows:

#### **Do you currently have admitted markets for the following types of business?**

- 89% of the responders had two or more markets for commercial property, commercial general liability, auto and inland marine.
- 85% had two or more markets for workers' compensation
- 81% had two or more markets for fidelity and surety

#### **Do you currently have admitted markets for the following classes of business?**

- 89% had two or more markets for contractors and construction
- 85% had two or more markets for retail and garages
- 81% had two or more markets for restaurants, bars and taverns
- 78% had two or more markets for property and liability for agri-business risks

The survey asked about "green" products and found that most don't have a market or have not encountered this type of risk. One comment received was that they had the market, but had not yet placed any green policies.

The survey also asked about personal lines and found that approximately 70% had no indication, or only a slight indication, of a problem.

The Department appreciates those who took the time to complete and send in the survey, and are pleased to see that in most cases there are markets available for lines and classes of insurance about which we inquired. Because this can and will change, the Department plans to continue to survey producers on a semi-annual basis.

If you have questions regarding the survey or would like to participate in the survey, please contact the Department's property/casualty division administrator at 402-471-2201.

## CONSUMER AFFAIRS DIVISION

### **Car Rental and Storage Fees**

*There is often confusion as to how many days the company will pay for a rental while the vehicle is being repaired.*

*Individuals who are aware of a storage fee may incorrectly assume the company is going to pay until the claim is settled.*

*People appreciate having information up front so informed decisions can be made with regard to incapacitated or totaled vehicles.*

*It is better for consumers to be fully informed than to find out after the fact that they are responsible for the charges.*

Consumers often voice concern about car rental and storage fees when submitting complaints involving incapacitated or totaled vehicles.

Typically, complainants say they had no idea the insurance company discontinued payment of rental car fees until the rental car company informed them days later. They believed that for as long as they were still negotiating on the loss amount, the company would continue to pay for the rental vehicle. Also, there is often confusion as to how many days the company will pay for a rental while the vehicle is being repaired. As a result, the claimants may be liable for rental fees they didn't expect and don't feel they should owe.

A similar situation arises with respect to storage fees. There seems to be a lot of misunderstanding in this area. If the vehicle is not drivable, the claimant may have it towed to a body shop. Generally, the shop is going to charge a storage fee for each day the car is held there. Sometimes the claimants are aware of the charge, but often they are not.

Individuals who are aware of the fee may incorrectly assume the company is going to pay until the claim is settled. This may not be the case if an offer for repair has been extended but the claimant refuses to accept it. If a vehicle has been totaled, additional storage fees may be incurred if the claimant declines to release the vehicle to a salvage lot before a check is in hand.

In cases involving a third party "innocent bystander" claimant, rental car and storage fees may not even be discussed until the companies involved reach an agreement as to how they are handling liability. Neither company will advise the claimant to rent a car nor indicate how long it will pay for storage fees for fear such a discussion could be viewed as an acceptance of liability. Thus, the innocent third party will not have the information needed to decide about renting a vehicle or removing the vehicle from storage.

*Please review your procedures for conveying information about rental car fees and storage fees, and revise them if necessary to ensure good communication between the company and claimant.*

People appreciate having information up front so they can make informed decisions with regard to their incapacitated or totaled vehicles. Even if the coverage available for rental cars or storage fees is less than anticipated, it is better for consumers to be fully informed than to find out after the fact that they are responsible for the charges. Please review your procedures for conveying information about rental car fees and storage fees, and revise them if necessary to ensure good communication between company and claimant.

Questions regarding car rental and storage fees may be directed to the Consumer Affairs Division at 402-471-2201.

## LEGAL DIVISION

### ***Surplus Lines Insurance Act Revised***

The Nebraska Surplus Lines Insurance Act has been recently revised. Please note that these statutory changes have implications to the reporting requirements of all surplus lines policies. At a minimum, you should be aware of changes in filing dates, rates, forms to be utilized, dates of payment, and which policies are reportable to the State of Nebraska Department of Insurance (“Department”).

For further information, please refer to the Department’s Bulletin CB-126, “Implementation of Federal Nonadmitted and Reinsurance Reform Act in Nebraska,” which can be found at [www.doi.ne.gov/bulletin/cb126.pdf](http://www.doi.ne.gov/bulletin/cb126.pdf). In addition to Bulletin CB-126, the Department has issued an official notice providing further explanation and detail regarding the proper reporting and payment procedures for licensed surplus lines agents. The notice can be found on the Department’s website at [www.doi.ne.gov/surplus\\_lines/sl\\_index.htm](http://www.doi.ne.gov/surplus_lines/sl_index.htm). The website will also be updated with new forms, and contain additional information to assist in answering common questions arising from the new reporting requirements. Changes to tax filing and payment procedures are outlined below:

**Quarterly tax due dates** for business written are now as follows:

- February 15 for the calendar quarter ending the preceding December 31
- May 15 for the calendar quarter ending the preceding March 31
- August 15 for the calendar quarter ending the preceding June 30
- November 15 for the calendar quarter ending the preceding September 30

**Annual tax due date** for business written prior to July 21, 2011 is as follows:

- An annual report is required to be filed with the Department and tax payment received by February 15, 2012, for all activities written and reported during the 1st and 2nd quarters of 2011 as well as the first twenty (20) days of the 3<sup>rd</sup> quarter.
- All business placed between January 1, 2011 through and including July 20, 2011, must be included on the year-end annual report.
- The 2011 annual report will be the last annual report to be submitted.
- All business placed on or after July 21, 2011 will be reported and paid on a quarterly basis as set forth in the previous paragraph.

Questions concerning the revisions to the Surplus Lines Insurance Act may be directed to the Department's legal division at 402-471-2201.

## **Case Summaries**

### ***Murray v. UNMC Physicians, 282 Neb. 260***

Mary Murray ("Mary") died from complications caused by pulmonary arterial hypertension. Robert Murray ("Robert") alleged that UNMC caused the death of Mary by failing to administer Flolan therapy to treat her condition. Shortly before Mary's death, UNMC was preparing Mary for said therapy, but was waiting on approval by her insurance company. UNMC argued that waiting for insurance approval was standard practice because most patients are not able to pay for the drug without insurance and it could be more dangerous if treatment was started and then stopped. A jury found in favor of UNMC, but the district court concluded that expert testimony by UNMC physicians was inconsistent with the proper standard of care and opined, as a matter of law, a medical standard of care cannot be tied to or controlled by an insurance company or the need for payment. The court then granted Robert a new trial. UNMC appealed the court's decision.

The Nebraska Supreme Court overruled the district court's decision to grant Robert a new trial. Contrary to the trial court's decision that UNMC made its decision to delay Flolan therapy based on economic reasons, the Court held UNMC's decision was out of concern for the patient's well-being. The Court reasoned that UNMC's physicians were weighing the risk to Mary's health of delaying treatment against the risk to Mary's health of potentially interrupted treatment.

Notably, the Supreme Court did not decide whether the standard of care for physicians should incorporate considerations such as cost control or allocation of limited resources.

### ***RSUI Indemnity Co. and Liberty Mutual Insurance Group v. Bacon, 282 Neb. 436***

Ronald Bacon ("Bacon") was injured while working at a construction site. Kiewit Construction Company ("Kiewit") was the general contractor on the site, and Bacon was employed by subcontractor Davis Erection. Ridgetop Holdings, Inc. ("Ridgetop"), is the parent company of

Davis Erection. Liberty Mutual insured Kiewit under a commercial liability policy and Davis Erection under a workers' compensation policy. RSUI insured Kiewit under a separate liability policy. Bacon filed a lawsuit against Kiewit, Liberty Mutual, Davis Erection, and Ridgetop.

Kiewit and Bacon reached a settlement in which Kiewit agreed to pay Bacon a specified sum in full and final settlement of his claims in exchange for a release from the lawsuit. The settlement provided that Bacon and his attorneys would pay "Kiewit and/or its insurers" a sum of money as calculated in the agreement from any settlement reached with Ridgetop. In the settlement, Liberty Mutual had stated that it did not believe it would assert an interest in any of the settlement proceeds from Ridgetop. Liberty Mutual never supplied written verification of that statement. When Bacon and Ridgetop began settlement negotiations, Liberty Mutual did in fact assert an interest in the proceeds, specifically insisting that it was entitled to a statutory credit against future workers' compensation benefits paid to Bacon. Bacon and Ridgetop ultimately settled. When Bacon refused to pay RSUI and Liberty Mutual under the terms of the Kiewit settlement, RSUI and Liberty Mutual sued for breach of contract. The district court granted summary judgment in favor of RSUI and Liberty Mutual, finding Bacon and his attorneys liable in the amount of \$437,500 plus prejudgment interest. Bacon and his attorneys appealed.

The Nebraska Supreme Court reversed in part and affirmed in part. The Court held that Bacon's attorneys were not personally liable on the settlement agreement because one attorney had not signed the settlement as was required by the language in the contract itself. The other attorney, who did sign the settlement, was held not personally liable because the signature only demonstrated that he was Bacon's attorney and that the settlement was in proper form and embodied the deal made between the parties.

The Court next held that Bacon breached the settlement agreement as a matter of law. First, the clear, plain, and ordinary meaning of the contractual language indicated that once Bacon settled with Ridgetop, he was required to pay RSUI and Liberty. Second, Liberty Mutual had not breached the covenant of good faith and fair dealing when it asserted its interest in the settlement because it had not expressly agreed not to do so, and all parties were aware of this fact at the time the settlement was reached. Thus, Bacon was not freed from his obligation to pay Liberty Mutual. Third, because Liberty Mutual was seeking only enforcement of its contractual rights and not a subrogation claim against Bacon, Bacon's argument that Liberty Mutual could not recover against him because Liberty Mutual has no right of subrogation against its owned insured had no merit. Fourth, because Bacon did eventually receive his settlement, Liberty Mutual's action neither hindered nor delayed his ability to enter into a settlement with Ridgetop.

Finally, the Court held valid the district court's award of prejudgment interest because there was no reasonable controversy as to RSUI and Liberty Mutual's right to recover the amount owed to them once the settlement was reached, and there was no dispute over the amount due.

## Company Bulletins

### CB-126 - IMPLEMENTATION OF FEDERAL NONADMITTED AND REINSURANCE REFORM ACT IN NEBRASKA

CB-126 was issued on June 17, 2011 for the purpose of outlining nationwide regulatory changes that will affect the placement of nonadmitted insurance when Nebraska is the home state of the insured. The Nonadmitted and Reinsurance Reform Act of 2010 provides that only an insured's Home State may require the payment of premium tax for nonadmitted insurance. The Act became effective July 21, 2011. CB-126 also outlines information that may benefit insurers, licensees, and insureds for nonadmitted insurance business placed on or after July 21, 2011. The entire text of CB-126 may be found on the Department's website at [www.doi.ne.gov/bulletin/cb126.pdf](http://www.doi.ne.gov/bulletin/cb126.pdf).

### Actions Taken Against Companies

CAUSE NO.	ALLEGATION	DISPOSITION
C-1911 <b>Unicare Life and Health Insurance Company</b> Indiana	Violated <u>Neb.Rev.Stat.</u> §44-1525(11). Failed to respond in 15 business days.	Consent Order \$1,000 admin. fine 9/14/2011
C-1912 <b>Aetna Life Insurance Company</b> Connecticut	Violated <u>Neb.Rev.Stat.</u> §§44-1524, 1525(2) & (11), 44-1539, 44-1540(1), (2), & (3), and NAC Chapter 61 §§007.01, 008.01 & 008.02. Violations of the Unfair Insurance Trade Practices Act, Unfair Insurance Claims Settlement Practices Act, and Unfair Life, Sickness and Accident Claims Settlement Practices Rule.	Consent Order \$15,000 admin. fine 10/4/2011
C-1913 <b>Aetna Life Insurance Company</b> Connecticut	Violated <u>Neb.Rev.Stat.</u> §§44-1524, 1525(2) & (11), 44-1539, 44-1540(1), (2), & (3), (4), 44-7308, NAC Chapter 61 §§004.02, 005.01, 007.01, 008.01 & 008.02. Violations of the Unfair Insurance Trade Practices Act, Unfair Insurance Claims Settlement Practices Act, Health Carrier Grievance Procedure Act, and Unfair Life, Sickness and Accident Claims Settlement Practices Rule.	Consent Order \$25,000 admin. fine 10/4/2011
C-1914 <b>Kansas City Life Insurance Company</b> Missouri	Violated <u>Neb.Rev.Stat.</u> §§44-1524, 44-1525(1)(a), (2), & (10). Violations of the Unfair Insurance Trade Practices Act.	Consent Order \$1,000 admin. fine 9/14/2011
C-1921 <b>Western Insurance Company (In Liquidation)</b> Utah	Company deemed in hazardous financial condition due to severe decrease in surplus and placed in liquidation in its domiciled state.	Order Certificate of authority revoked 10/4/2011

**Actions Taken Against Producers**

<b>CAUSE NO.</b>	<b>ALLEGATION</b>	<b>DISPOSITION</b>
A-1916 <b>Ginny Friesen</b> Grand Island, NE  NPN - 9431341	Violated <u>Neb.Rev.Stat.</u> §§44-1525(11), 44-4054(8), and 44-4059(1)(b) & (h). Failed to respond within 15 business days; failed to change legal name within 30 days; violated insurance law; and used fraudulent, coercive, or dishonest practices.	Order Producer license revoked 8/15/2011
A-1918 <b>Jeffery M. Carley</b> Omaha, NE  NPN - 29314	Violated <u>Neb.Rev.Stat.</u> §§44-1525(11) and 44-4059(1)(b). Failed to respond in 15 business days; and violated any insurance law.	Order Producer license suspended 8/19/2011
A-1919 <b>Gerald R. Rising, Jr.</b> Centennial, CO  NPN - 807977	Violated <u>Neb.Rev.Stat.</u> §§44-1525(11), 44-4059(1)(b) & (g), and 44-4065(1) & (3). Failed to respond in 15 business days; violated any insurance law; committed unfair trade practice; failed to report criminal indictment within 30 days; failed to report criminal charges within 30 days of arraignment or waiver of arraignment.	Consent Order Producer license revoked 8/12/2011
A-1920 <b>Charles D. Davis</b> Valentine, NE  NPN - 7017495	Hearing requested for reconsideration of denial of application for nonresident producer license.	Order Producer license denied 9/30/2011
A-1924 <b>Timothy Reganis</b> Sidney, NE  NPN - 3185879	Violated <u>Neb.Rev.Stat.</u> §§44-4059(1)(b) & (f) and 44-4065(3). Violated any insurance law; convicted of a felony or Class I, II, or III misdemeanor; failed to report criminal charges within 30 days of arraignment or waiver of arraignment.	Consent Order Producer license revoked 10/4/2011

**Excess Liability Fund Surcharge Set for 2012**

The Director of Insurance, as Administrator of the Excess Liability Fund, conducted a public hearing on November 8, 2011, as required by Neb.Rev.Stat. §44-2830, to consider adjusting the amount of the surcharge for the year 2012. Pursuant to §44-2830, the Director is to adjust the amount of the surcharge provided for under §44-2829 on January 1 of each succeeding year

to maintain the Excess Liability Fund at a level which is sufficient to pay all anticipated claims for the next year and to maintain an adequate reserve for future claims.

On the basis of the public hearing giving due regard to the size of the existing Fund, the number and size of potential claims against the Fund, the number of participating providers, change in the cost of living, and sound actuarial principles, Director Ramage set the surcharge for the year 2012, effective January 1, 2012, at twenty percent (20%) for all health care providers.

## EXAMINATION DIVISION

### ***Financial Examinations Completed During Third Quarter, 2011***

Acceptance Insurance Company  
Capitol Casualty Company  
Central National Insurance Company of Omaha  
Central States Indemnity Co. of Omaha  
CSI Life Insurance Company  
NASB All Lines Interlocal Cooperative Aggregate Pool

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 web site at [www.doi.ne.gov](http://www.doi.ne.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>    | NDOl Closed—Veterans' Day                   |
| <u>November 24-25:</u> | NDOl Closed—Thanksgiving                    |
| <u>December 26:</u>    | NDOl Closed—Christmas Day Observed          |
| <u>January 2:</u>      | NDOl Closed—New Year's Day Observed         |
| <u>January 16:</u>     | NDOl Closed—Martin Luther King Day Observed |
| <u>February 20:</u>    | NDOl Closed—President's Day                 |