

INSURANCE

Dave Heineman
Governor

Bruce R. Ramage
Director

A Message from the Director....

Health Care Database Advisory Committee Appointed



Bruce R. Ramage
Director of Insurance

On February 13, 2014, the Health Care Transparency Act was signed into law by Governor Heineman. The Act requires the Director of Insurance to appoint the Health Care Database Advisory Committee (Committee). The Committee is charged with making recommendations regarding the creation and implementation of a Nebraska Health Care Database (Database). A Database will provide a tool for Nebraska to provide analyses of healthcare costs and quality trends. In addition, a Database may be able to promote transparency in healthcare for consumers and make it easier to report health quality data in regards to healthcare in the state.

To help the Department of Insurance with this project, the state's three largest insurance companies—Aetna/Coventry, Blue Cross and Blue Shield of Nebraska, and UnitedHealthcare—have been appointed to the Committee; Dr. Li-Wu Chen, representing Academia; Russell R. Gronewold, representing hospitals; Dr. Russell J. Ebke, representing physicians; Jeanette M. Wojtalewicz, representing health care providers; Lori Crowther, representing small employers; Bart F. Karlson, representing large employers; Sherry Wupper, representing consumers; Deborah Bass, representing the Health Information Exchange; and Dr. Anne Lucile O'Keefe, representing local public health departments. The Committee will also have the Directors of Medicaid, Public Health and Insurance as Ex-officio members to advise the committee.

The Committee will make recommendations to the Director of Insurance regarding a Database that will include but not limited to strategies to measure and collect health care data in regards to quality, safety, utilization, outcomes and cost.

The first meeting of the Committee will be held in Lincoln on May 6, 2014, at 1:00pm in the Nebraska State Office Building, Room F, Lower Level, 301 Centennial Mall South. The meeting is open to the public.

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FRAUD DIVISION

Fraudulent Nebraska Titles Received by DMV

The fraud unit of the Nebraska Department of Motor Vehicles (DMV) has received copies of fraudulent Nebraska titles that were presented to potential buyers. Each separate case was an Internet scam where the seller advertised a vehicle or piece of machinery for sale. The potential buyers, who were provided a copy of a fraudulent Nebraska title, checked with the Nebraska DMV to verify its authenticity. Neither the vehicles nor the machinery has documented links to Nebraska. The fraudulent titles are actually a template of a Maine title. The vehicle and owner data is in the correct format as a Maine title, but it is an incorrect font. The title owners and addresses do not always exist and if they do, the person and address have no links to each other. The symbol in the center and bottom of the title is the State of Maine seal, without “Maine” in the lower banner. In the lower right hand corner, the control number is the same on the fraudulent titles, “L9440841”.

The complainants found the advertisements on Craigslist, but it does not appear to be limited to only this website. Although the suspect email addresses are different, the email replies to victims are almost identical. The “seller” is usually divorced and recently moved to Omaha, Nebraska for a new job. The “seller” gives excuses as to why the potential buyer cannot see the vehicle in person or pick it up themselves. The “seller” only communicates by email and wants the transaction handled through Google Wallet. If you have questions or additional information please contact Investigator Marlan Hohnstein (402) 471-3793, or Lisa Banks, Crime Analyst (402) 471-3832.

Save the Date—Annual Insurance Fraud Conference

The IFPD is excited about the agenda being lined up for the 14th Annual Insurance Fraud Conference, which will be held on Thursday, August 21, 2014, at Eugene T. Mahoney State Park located at Interstate I-80, Exit 426, near Ashland, Nebraska.

Any questions regarding the upcoming conference may be directed to Connie Drake at connie.drake@nebraska.gov.

Each separate case was an Internet scam where the seller advertised a vehicle or piece of machinery for sale.

The potential buyers, who were provided a copy of a fraudulent Nebraska title, checked with the Nebraska DMV to verify its authenticity but neither the vehicles nor the machinery has documented links to Nebraska.

The “seller” only communicates by email and wants the transaction handled through Google Wallet.

The 14th Annual Insurance Fraud Conference will be held on Thursday, August 21, 2014, at Eugene T. Mahoney State Park.

Weather-Related Events Provide Scam Opportunities

The spring storm season is just around the corner and Nebraska will no doubt be ravaged by catastrophic weather-related events, including hailstorms and tornadoes. While most contractors are honest and provide quality work, there are unscrupulous vendors who will be waiting to take advantage of distraught homeowners.

The Consumer Protection Division of the Nebraska Attorney General's office recommends the following to avoid becoming the victim of a scam:

- Hire only well-established contractors
- Request and follow up with a contractor's references
- Contact the Better Business Bureau

Consumers should also be cautious of making any cash payments to a contractor or signing a contract without full knowledge of what they may be obligated to pay. Make sure the contractor is insured and licensed to perform the work necessary to repair a residence. Request a copy of the contractor's commercial general liability insurance certificate. Too often the Insurance Fraud Prevention Division (IFPD) sees cases where contractors refer work to dishonest sub-contractors resulting in incomplete or shoddy repairs.

In the past, insurance companies have seen claims where fraudulent invoices are submitted showing the project has been completed in order for the homeowner or contractor to receive a "replacement value claim payment" in addition to the initial "actual cash value claim payment." Homeowners should ensure all work has been completed by the contractor prior to submitting any invoices for repairs alleged to have been made to their home.

Last year, the IFPD received a referral where an insured submitted an invoice reflecting repairs were completed. The insurance company inspected the residence and discovered the repairs were not completed and, in fact, the damages may have been pre-existing. In another case, an insured invoiced his insurance company using a subsidiary company, which the insured owned, as the contractor who allegedly performed the repairs. The insurance company found all work had not been completed and that some of the materials used during repairs were less expensive and of inferior quality than what was listed on the invoice.

To report suspected fraud, contact the IFPD by:

- ⇒ Facsimile: 402-471-8335
- ⇒ Email: DOI.fraudprevention@nebraska.gov
- ⇒ Website: www.ReportInsuranceFraud.ne.gov



Did you know....

Fact: Insurance fraud is the second largest economic crime in America, exceeded only by tax evasion.

LIFE & HEALTH DIVISION

Reminders to Issuers

Before submitting your binder(s), please ensure that you have validated the templates using the "Data Integrity Tool" (DIT).

For issuers that have expressed an intent to participate "on exchange" or receive certification "off exchange", the following two reminders are offered:

- **Data Integrity Tool:** Before submitting your binder(s), please ensure that you have validated the templates using the "Data Integrity Tool" (DIT). The DIT runs automated data integrity checks—reviews template validation rules and template consistency in key fields—and produces error reports that describe the error. Thus, you will have immediate feedback and, as a result, will likely reduce resubmissions and expedite the overall review process. The DIT imports data from both QHP & SADP templates. Please contact CMS for downloading instructions.
- **Nebraska Form Review Checklist:** Please use the Nebraska Form Review Checklist and include the Checklist with your submission. The Checklist may be found on SERFF or on the Department's website found at www.doi.nebraska.gov/aca/companies/ffm/index.html, click on QHP Application Support.

Remember to use the Nebraska Form Review Checklist and include the Checklist with your submission.

Forms Not Eligible For External Review Process

Nebraska's External Review Act applies to any major medical (PPO, HMO, managed care plan) claim submitted on or after January 1, 2014. It is not applicable to any limited benefit plan or supplemental coverage such as hospital indemnity, accident only, specified disease, Medicare supplement, long-term care, dental, vision or disability income. See Neb. Rev. Stat. §§ 44-1301 through 44-1318. Also see Title 210 NAC Chapter 87.

Hospital indemnity forms that include the External Review process are being filed, however, this type of form is not eligible for an External Review and must be deleted from the appeal provision in the form.

The Life and Health Forms Division has recently seen hospital indemnity forms being filed that include the External Review process. This causes an objection. This type of form is not eligible for an External Review and it must be deleted from the appeal provision in the form.

Appendix A of Chapter 87 contains a footnote that some states may allow more or less time than 30 days for internal appeals.

Nebraska actually requires that the written internal appeal decision be provided within 15 working days after receipt of the appeal.

The appointment renewal date begins May 1, 2014 and ends July 31, 2014.

All appointment renewals must be paid online through the through the National Insurance Producer Registry (NIPR) by July 31, 2014.

A description of the External Review process along with appeal procedures must be in or attached to the policy, certificate, booklet or evidence of coverage.

Chapter 87 contains Appendix A, "Notice of Appeal Rights." A health carrier is required to provide covered persons with a notice substantially similar to Appendix A. It is noted that Appendix A refers to a written decision within 30 days for internal appeals. However, there is a footnote that some states may allow more or less time for the decision. Chapter 87 can be found on the Department's website at **www.doi.ne.gov**.

Please note Nebraska actually requires that the written internal appeal decision be provided within 15 working days after receipt of the appeal. See Rev. Stat. Stat. §§ 44-7308 and 44-7310.

PRODUCER LICENSING DIVISION

Appointment Renewal Process in 2014

A notice has been sent to insurance companies as a reminder that company appointment renewals in Nebraska must be filed electronically through the National Insurance Producer Registry (NIPR).

The appointment renewal date begins May 1, 2014 and ends July 31, 2014. All appointment renewals must be paid online through the NIPR by July 31, 2014.

The NIPR has posted an announcement with details and directives on key information, payments, transaction fees, and fees charged by other states for retaliatory purposes. A copy can be obtained from the NIPR website located at **pdb.nipr.com/html/renewalsNE.htm**.

Questions regarding the renewal process may be directed to NIPR Customer Service at 1-855-674-6477 or **customerservice@nipr.com** or to the Nebraska Department of Insurance at 402-471-4913 or **doi.licensing@nebraska.gov**.

PROPERTY & CASUALTY DIVISION

Reduction or Elimination of Coverage

The Department has recently been made aware of situations where notice was not given to the policyholder when coverage had been restricted, reduced or eliminated. Please review your notification process to make sure all of the compliance requirements have been met.

As a reminder, Neb. Rev. Stat. § 44-531 requires notice to the policyholder when coverage is restricted or reduced. The notice must be sent prior to the renewal and must clearly state what coverage has been reduced, restricted or eliminated. The statute states, in part, “...(1) If an insurer reduces or eliminates any coverage in or introduces a more restrictive condition as part of a policy in force delivered or issued for delivery in this state and subject to §§ 44-514 to 44-521 or §§ 44-522 or 44-523 prior to renewal of the policy and other than at the request of the named insured or as required by law, the insurer shall send to the named insured a notice explaining clearly what coverage has been reduced or eliminated or what condition has been restricted. ...” To view the full statute, please visit the Department’s website at uniweb.legislature.ne.gov/laws/statutes.php?statute=44-531.

Availability of Filings for Review

Filings are not available to the public until final action has been taken. The majority of the SERFF filings on which final action has been taken are available for review on the public access computers located in the property/casualty division. The computers are available between 8:00am-5:00pm, Monday through Friday. It is suggested that you call in advance to make an appointment to ensure that a computer will be available. If it is your intent to download any of the filings, it will be necessary for you to bring a flash drive with you. Listed below is a summary of the filings processed in 2013. The Department’s website includes a listing of the filings that were processed on a monthly basis.

1)	2013 Filings Submitted	4,291
2)	Final Action Taken	4,198
	a) File and Use	3,348
	b) Approved	473
	c) Filed (service contracts)	320
	d) Other Final Action	57

As noted above, the majority of the filings are reviewed on a File and Use basis. This means that a company can begin using as soon as the filing has been received in the Department. Please note that for those lines that are File and Use, it is not necessary to wait to begin using until you hear from the Department.

A few filings remain Prior Approval, including Med Mal, Workers’ Compensation forms and any filing received by an Advisory Organization (ISO, AAIS, and NCCI). There are a few others, but these three groups make up the majority of the filings that are reviewed on a prior-approval basis.

Contact Information for Analysts

A few changes have recently been made on the lines that each property/casualty analyst handles. Below is a revised schedule showing the contact information and the lines handled by each analyst.



State of Nebraska Property/Casualty Analysts

CRAIG PALIK**craig.palik@nebraska.gov**

402-471-4657

Farm

Personal Property

Personal Auto

Personal Liability

Personal Umbrella

Inland Marine

Motor Club

Status Request

Public Access

CONNIE VAN SLYKE**connie.vanslyke@nebraska.gov**

402-471-4647

Professional Liability

Lawyers Professional

Directors and Officers

Commercial Package

Medical Malpractice

Boiler and Machinery

Fidelity & Surety

Crime

Burglary/Theft

Workers Compensation

Crop

Med Mal (Rates and Forms)

Commercial Auto

MED MAL EXCESS LIABILITY FUND**Stephanie Hobelman****stephanie.hobelman@nebraska.gov**

402-471-4651

BEV ANDERSON**bev.anderson@nebraska.gov**

402-471-4654

Advisory Organizations

Med Mal (Rates & Forms)

Title

Service Contracts

CHRIS WILLIAMSON**chris.williamson@nebraska.gov**

402-471-4653

General Liability

Aircraft

Commercial Package

Mortgage Guaranty

Credit/Credit Property

Commercial Umbrella/Excess

Title

Pre- Paid Legal

STEPHANIE HOBELMAN**stephanie.hobelman@nebraska.gov**

402-471-4651

Homeowners

Home With Business

Other Dwelling Package

Combination -HO/Auto

Interline

Mobile Homeowners

Commercial Property



LEGAL DIVISION

Regulation Updates

Company Bulletins

CB-130 (Amended) - FILING GUIDANCE FOR INDIVIDUAL AND SMALL EMPLOYER HEALTH AND DENTAL PLANS IN NEBRASKA

CB-130 was amended on March 19, 2014 for the purpose of issuing guidance for individual and small employer health and dental plans in Nebraska for use on and off the Federally Facilitated Marketplace for the plan year 2015. The amended bulletin outlines the timelines for filing non-grandfathered Individual Health, Small Employer Plans and Stand Alone Dental Plans in order to be recommended for certification or approved for plan year 2015. CB-130 (Amended) can be found on the Department's website at www.doi.nebraska.gov/bulletin/cb130.pdf.

Actions Taken Against Producers & Agencies

CAUSE NO.	ALLEGATION	DISPOSITION
A-1996 Vivian Louise Martin Carlsbad, CA	Violated Neb. Rev. Stat. § 44-1525(1), 44-4059(1)(b) and (g). Violated any insurance law; failed to respond to the Department.	Order No violation 2/13/2014
NPN - 16602241		

Actions Taken Against Companies

CAUSE NO.	ALLEGATION	DISPOSITION
C-2071 Genworth Life Insurance Company, Genworth Life and Annuity Insurance Company and Genworth Life Insurance Company of New York	Nebraska participated in the Multi-State Market Conduct Examination led by Illinois.	Multi-State Settlement 2/21/2014

Case Summaries

American Family Mutual Insurance Company v. Wheeler, 287 Neb. 250 (2014)

American Family Mutual Insurance Company (“American Family”) brought action seeking declaratory judgment that it had no duty to defend the insured, Rick Wheeler (“Rick”) on claims for negligence and negligent supervision. The Nebraska Supreme Court had to decide whether a severability clause in the policy changed the effect of (or rendered ambiguous) exclusions which would otherwise bar coverage for Rick. A severability clause requires that the insurance be applied separately to each insured named in the policy. Rick owns two liability insurance policies with American Family for which he and his son Ryan Wheeler (“Ryan”) are insureds: a homeowners’ policy that includes personal liability coverage and a separate personal liability umbrella policy. Both policies contain exclusions for abuse and intentional injury.

This case stems from a lower court case in which Joshua and Maren McCrary (“the McCrary’s”) sued Rick and Ryan for Ryan’s alleged sexual assault of the McCrary’s minor child. Specifically, they sued Ryan for intentional assault and Rick for negligence in failing to warn them of Ryan’s dangerous nature and for negligently supervising Ryan. Rick then submitted a claim for coverage to American Family. American Family assumed Rick’s defense and then filed a separate complaint in district court for declaratory judgment. In their complaint, American Family sought a judgment that its policies did not provide liability coverage to Rick based on the abuse and intentional injury exclusions in his policies. The district court granted summary judgment in favor of American Family. The Wheeler’s and McCrary’s appealed the judgment to the Nebraska Supreme Court.

The Nebraska Supreme Court used typical principles for interpreting insurance policies. In this case, the court interpreted what effect the severability clause in the policy has on the exclusions referencing “an insured” or “any insured”. Typically, when an insurance contract’s terms are clear, the court will give them the same meaning as a reasonable person in the insured’s position would understand them. However, if terms are ambiguous, the court will construe the policy in favor of the insured. Although the court here mentioned there is a split in authority in how courts across the country have decided this issue, it relied on *American Family Mutual Ins. Co. v. Corrigan*, (697 N.W.2d 108 (Iowa 2005)) in concluding that the severability clause’s command to apply the insurance separately to each insured does not change the exclusion’s plain language or create any ambiguity. The court stated that it had previously concluded that “the ‘an insured’ language, and implicitly the ‘any insured’ language, is clear and unambiguous... [and] the severability clause does not operate to override this clear and unambiguous language.”

In conclusion, in this case the exclusions bar coverage for injuries intentionally caused by “any insured” (i.e. Rick OR Ryan) and the severability clause does not change that language, its meaning, or its application even though the clause states the insurance “applied separately to each insured”. The Nebraska Supreme Court affirmed the district court’s decision and Rick is barred from coverage for injuries resulting from the alleged intentional sexual abuse of the McCrary’s minor child committed by Ryan (an “insured” under the policies).

CONSUMER AFFAIRS DIVISION

Insurance Carriers Commended

The Department would like to commend those insurance carriers that have agreed to pay roofing claims after the deadline for filing the claims has passed.

As we near the one-year anniversary of last year's devastating hail storm in the Omaha area, the Department would like to commend those insurance carriers that have agreed to pay roofing claims after the deadline for filing the claims has passed. Given the number of homes impacted by the storm and the nature of hail damage incurred, this approach appears to be a fair and reasonable one.

Particularly in situations where there is a dispute as to the extent of the damage, where the contractor of choice may not have been available within the specified time frame, or where an arbitration claim has been submitted, a decision to extend the time limit for filing a claim is greatly appreciated.

Valuable Tools Available for Insureds

The National Association of Insurance Commissioners (NAIC) has developed some valuable tools for insureds. One such tool is the WreckCheck App for smartphones. During a recent survey, it was found that insureds were unsure about auto accident best practices and that nearly 20 percent believed the only reason to call police after an accident was to report an injury. However, filing a police report can help facilitate the insurance claims process. The NAIC developed WreckCheck™ to help take some of the guesswork out of a tense situation. This free mobile app for iPhone® and Android® smartphones outlines what to do immediately following an accident and walks users through a step-by-step process to create an accident report. The app directs the user to capture photos and helps document and share only what is necessary to file an insurance claim. Users can even email their completed reports to themselves and their insurance agents.

Another useful tool for insureds is the personal Home Inventory App. With the spring storm season just ahead of us, the importance of keeping a home inventory cannot be stressed enough. A home inventory can be invaluable when deciding how much insurance coverage fits a life situation and makes sure there is adequate protection should a claim need to be filed. The NAIC's free myHOME Scr.APP.book downloadable app lets insureds quickly photograph and capture descriptions of possessions room by room, then store electronically for safekeeping. The app is available for iPhone® and Android® devices.

Visit www.insureuonline.org/ to download these free apps and to obtain other valuable information.

EXAMINATION DIVISION

Financial Examinations Completed During First Quarter, 2014

German Mutual Insurance Association of Nebraska
 Heartland Plains Health
 Lancaster Re Captive Insurance Company
 Omni Dental Associates Inc.

Pre-Need Examination Completed During First Quarter, 2014

Arnold & Mullen Funeral Homes
 Bates-Gould, Inc. dba Bates-Gould Funeral Home
 Chamberlain-Pier Funeral Home
 Directed Services, Inc.
 Lauber Funeral Service, Inc.
 Liewer Funeral Homes, Inc.
 McKown Funeral Home, Inc.
 Nelson-Bauer Funeral Homes, Inc.
 Norfolk Funeral Services, Inc.
 Peters Funeral Home, Inc.
 Seger Funeral Home, Inc.
 St. John's Cemetery Association of Omaha
 Sunset Memorial Gardens Association
 Westlawn-Hillcrest Funeral Home & Memorial Park
 Williams Funeral Homes, Inc.
 Zabka Funeral Home, Inc.

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.ne.gov. Copies can be obtained from the Department at a cost of \$.50 per page

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Department Calendar

- April 25: Department Closed - Arbor Day
- May 26: Department Closed - Memorial Day
- July 4: Department Closed - Independence Day
- August 21: Annual Fraud Conference
Mahoney State Park (registration required)