

INSURANCE

Pete Ricketts

Governor

Bruce R. Ramage

Director

Inside:

PRODUCER LICENSING 2

- Appointment Renewal Process

LIFE & HEALTH 2

- Staff Update
- Discount Medical Plan Organization
- Extension of Transitional Policies
- Allowable Electronic Materials for Individual and Group Major Medical

LEGAL DIVISION 5

- 2016 Legislative Summary
- Producer/Agency Actions
- Company Actions
- Regulation Updates

FRAUD DIVISION 10

- Annual Insurance Fraud Conference
- Fraud Fact

EXAMINATION DIVISION 11

- Staff Update
- Pre-Need Exams Completed
- Financial Exams Completed

Department Calendar Back

A Message from the Director....

Workers' Compensation for Independent Contractors



Bruce R. Ramage
Director of Insurance

A number of insurance carriers have taken the position that an employer who hires an uninsured independent contractor, must provide workers' compensation for the independent contractor. The reason given is that some contractors are not truly independent if the workers' compensation court guidelines for independence are not fully met. If the employer is not made aware of the insurer's position, he or she may face a rude surprise when a payroll audit is completed and additional premium is found to be owed. The Department's Consumer Affairs Division has received complaints from several unhappy business owners who found themselves in this situation.

Insurers who require employers to provide workers' compensation for independent contractors are urged to train their agents to fully disclose this information as well as what steps can be taken to avoid such additional premium, upfront, at the time of application. The informed business owner will then be mindful of the information when hiring subcontractors, and can take steps to reduce exposure. The Department discourages insurers from charging such premiums upon audit, if documentation provided by the employer definitively shows that the contractor was fully independent, as outlined by the Nebraska Workers' Compensation Court.

When charging unplanned premium for contractors upon time of audit, the Department encourages insurers to inquire about any potential unclaimed workers' compensation claims for such contractors.

PRODUCER LICENSING DIVISION

2016 Appointment Renewal Process

All company appointment renewals in Nebraska must be filed electronically through the National Insurance Producer Registry (NIPR) at www.nipr.com/renWelcome.htm.

The appointment renewal date begins May 1, 2016 and ends August 1, 2016.

The appointment renewal date begins May 1, 2016 and ends August 1, 2016. All appointment renewals must be paid online through NIPR by August 1, 2016.

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 of the announcement can be found on the NIPR website at www.nipr.com/renewalsNE.htm.

All appointment renewals must be paid online through the NIPR by August 1, 2016.

Questions regarding the renewal process may be directed to NIPR Customer Service at customerservice@nipr.com or by calling 1-855-674-6477. Questions can also be sent to our Department at doi.licensing@nebraska.gov or by calling our Producer Licensing Division at 402-471-4913.

LIFE & HEALTH DIVISION

Staff Update

Maryana Grodnova-Ware, who has been a life & health analyst with the division since January 2009, has accepted the position of **actuarial assistant** effective April 12, and has assumed the duties previously performed by John Rink.

Maryana Grodnova-Ware has accepted the position of actuarial assistant effective April 12, and has assumed the duties previously performed by John Rink.

Maryana's primary responsibilities will include reviewing and filing rate adjustment requests for life insurance, health insurance, and Medicare supplement insurance. Maryana can be reached at maryana.grodnova-ware@nebraska.gov.

The division has reviewed Discount Medical Plan Organization (DMPO) renewal forms for the renewal period of May 1, 2016 to April 30, 2017.

On May 1, 2016, all DMPO certificates of registration issued previously will expire.

DPMOs with expired registrations will have to reapply to do business in Nebraska.

Discount Medical Plan Organization

The Life and Health Division has reviewed Discount Medical Plan Organization (DMPO) renewal forms for the renewal period of May 1, 2016 to April 30, 2017.

A Discount Medical Plan Organization is an entity that, in exchange for a fee, provides access for its members to providers of medical or ancillary services and the right to get discounts on these services provided under the plans from its providers. It is not insurance.

DMPO renewal submissions to the Nebraska Department of Insurance were due March 1, 2016.

On May 1, 2016, all DMPO certificates of registration issued previously will expire.

Unless the renewal process has been completed and approved by the NDOI, the DMPO's registration will expire after April 30, 2016. DPMOs with expired registrations will have to reapply to do business in Nebraska.

Questions regarding DMPO renewal forms may be directed to Karl Hug at karl.hug@nebraska.gov.

Extension of Transitional Policies

The Center for Consumer Information and Insurance Oversight (CCIIO) issued guidance on February 29, 2016, that allows the states the option to extend transitional policies for individual and small group health insurance plans to policy years beginning on or before October 1, 2017, provided that all policies end by December 31, 2017.

Pursuant to that option provided to the states by CCIIO, the State of Nebraska will allow transitional policies, for both the individual and small group health insurance markets, to continue until December 31, 2017.

The Department would advise insurers to continue to monitor CCIIO's website for any subsequent guidance that may be issued on this subject and to follow it accordingly. As before, all other plans issued after January 1, 2014 must be ACA compliant.

Questions concerning this notice may be directed to Martin Swanson, Administrator for Health Policy, via email at martin.swanson@nebraska.gov, or by calling (402) 471-2201.

Allowable Electronic Materials for Individual and Group Major Medical

State and federal laws require that group health plans and health insurance issuers provide insureds and beneficiaries with certain documents when an event occurs or upon individual request.¹ For some material, federal law expressly allows electronic delivery.

To the extent there is no state or federal law or rule that addresses electronic delivery of documents, the Department will allow insurers to provide material to insureds and beneficiaries electronically, including policies, certificates of coverage, evidence of coverage, renewal information, explanations of benefits, billing invoices, summaries of benefits and coverage, coordination of benefits forms, and claim or appeal related materials, only if the following conditions are met:

- Individual and group insurance policies, including certificates of coverage, can be provided online, so long as every welcome letter provides instructions, with website address, to view the policy online and offers a paper copy of the policy free of charge. For all other documents, the insurer's default must be to provide materials in paper format, with an option for individuals to opt into electronic delivery;
- The insurer's offer and explanation of the electronic delivery option must: (1) list the types of documents that will be provided electronically, (2) notify the individual that any of these documents are available free of charge in paper form upon request, and (3) provide the procedure for withdrawing consent and updating contact information;
- The insured or beneficiary must designate an email address for receipt of insurance materials or links to materials, and the insurer must use a notice of undelivered email feature to confirm receipt. For any emails returned undeliverable, the insurer must take reasonable additional steps to ensure the intended recipient actually receives the documents;
- The materials must be provided in a readily accessible format (html, MS Word, or PDF) that can be retained and printed; and
- The insurer must use reasonable privacy safeguards appropriate for the detail of personal or health information disclosed in the materials.

Questions concerning allowable electronic materials may be sent to Martin Swanson, Administrator for Health Policy at Martin.Swanson@nebraska.gov, or at (402) 471-2201.

¹ See 29 CFR 2520.104b-1, 26 CFR 54.9815-2715, 29 CFR 2590.715-2715, and 45 CFR 147.200. Additional federal FAQs, rules and regulations implementing the Affordable Care Act apply.

LEGAL DIVISION

2016 Legislative Summary

On April 20, 2016, the 104th Legislature, Second Session, adjourned for the year. During the session, the Legislature introduced 446 substantive law bills and 60 appropriation bills. There were 213 legislative bills passed and approved by Governor Ricketts. The Governor vetoed three bills, one of which was passed with an override of the gubernatorial veto.

The Department of Insurance tracks many legislative bills, including bills that impact the insurance industry. In terms of passed and approved legislative bills, it was a lighter year for legislation in some areas of insurance. As an example, while a number of bills were introduced specifically related to property and casualty insurance and workers' compensation, none passed. However, legislative bills related to other areas of insurance or general insurance applicability were passed or approved and are described below.

The Nebraska Legislature's website, www.nebraskalegislature.gov, has information on all legislative bills and other useful information including the legislative calendar, interim hearing schedules, information on the state budget, and news items from the *Unicameral Update*, a publication of the Nebraska Legislature. To view the enacted language of any legislative bill, visit the website and utilize the 'Search Current Bills' tool to find the bill and then click on the 'Slip Law Copy.'

Unless otherwise noted, all legislation is effective three months after adjournment.

LB 758 (Scheer) Prohibit limited liability companies from operating as insurers. Introduced on behalf of the Department of Insurance, the legislation amended the Uniform Limited Liability Company Act to prevent insurers from forming as limited liability companies. The legislation also amended [Neb.Rev.Stat. § 44-8216](#) to eliminate the ability of special purpose financial captive insurers to form as a limited liability company or as a partnership.

LB 770 (Groene) Change the termination date for the Nebraska Exchange Transparency Act. The Nebraska Exchange Transparency Act created the Nebraska Exchange Stakeholder Commission, a Commission administratively housed in the Department of Insurance which provided recommendations and transparency regarding the implementation and operation of a health insurance exchange under the federal Affordable Care Act. The Act and the Commission was scheduled to terminate on July 1, 2017, however the Commission believed it had already completed its work and recommended its own termination a year early. LB 770 is effective immediately and terminates the Act and the Commission on July 1, 2016.

LB 772 (Schumacher) Adopt the Corporate Governance Annual Disclosure Act and change provisions relating to insurance holding companies and risk retention groups. LB 772 contains the original provisions of LB 772 and LB 819, both introduced on behalf of the Department of Insurance and both part of the continuing effort by the Department and the Legislature to keep the Nebraska insurance code in line with the accreditation standards of the National Association of Insurance Commissioners (NAIC).

First, the original provisions of **LB 772** amended the Insurance Holding Company System Act to reflect the latest NAIC updates to the Insurance Holding Company System Regulatory Model Act. The changes add specific statutory language to allow the Director to serve as and participate in the selection of the group-wide supervisor of an international insurance group. A group-wide supervisor is the chief insurance regulatory official who is authorized to conduct and coordinate group-wide supervision activities of an international insurance group. An international insurance group is an insurance holding company system that meets certain criteria set forth in the legislation or an insurance holding company system determined by the Director to have significant international insurance business operations.

The legislation allows for the Director to serve as a group-wide supervisor, for the Director to determine another chief insurance regulatory official from a different jurisdiction to serve as a group-wide supervisor, and provides the criteria the director is to consider in the selection process. Additionally, the legislation provides the duties of a group-wide supervisor, a process for changing a group-wide supervisor, the confidentiality of information shared with the director during the group-wide supervisor process, and other provisions necessary for the selection of group-wide supervisors and group-wide supervision of international insurance groups.

The Insurance Holding Company System Act changes are effective immediately.

Second, the provisions of **LB 819**, introduced by Senator Lindstorm, were amended into LB 772 by the Banking, Commerce and Insurance Committee and provide for the adoption of the Corporate Governance Annual Disclosure Act and amends governance standards into the Risk Retention Act.

The Corporate Governance Annual Disclosure Act is an NAIC model act requiring all insurers and insurance groups domiciled in this state to provide a confidential disclosure regarding its corporate governance practices by June 1 annually. The act allows for the insurer or insurance group to decide which level to provide information of corporate governance activities, either the ultimate controlling parent level, an intermediate holding company level, or an individual legal entity level, based upon its own determination of the level at which decisions are made. Insurers are provided flexibility in the act to format the information and are provided discretion on the type of information shared, however the information must contain the material information necessary to permit the Director of Insurance to gain an understanding of the insurer's or insurance group's corporate governance structure, policies, and practices. Because the information contained in the disclosure is considered proprietary and would contain trade secrets, the act contains a provision requiring the information submitted to be confidential, privileged, and not subject to disclosure by the Director.

LB 794 (Harr) Change provisions relating to the Nebraska Model Business Corporation Act and corporate occupation taxes. The new Nebraska Model Business Corporation Act was initially approved in 2014 to replace the existing Business Corporation Act. The new act was to become operative on January 1, 2016, but this date was pushed back in 2015 to January 1, 2017, to allow the Legislature time to clean up any issues in 2016. LB 794 is the final clean up to the Nebraska Model Business Corporation Act before it becomes operative on January 1, 2017.

LB 817 (Riepe) Adopt the Direct Primary Care Agreement Act. The legislation creates an explicit exemption from the insurance code for a direct primary care agreement, which is an agreement between certain medical providers and patients where the provider charges the patient a direct service charge for being available to provide primary care services. The provider must disclose that the agreement does not constitute insurance and is not a medical plan that provides health insurance coverage for the purposes of any federal mandate and it is recommended that insurance be obtained for services beyond primary care.

The legislation also includes restrictions on the types of providers that may enter direct primary care agreements, requirements for the agreements, requirements for written disclaimers, and other restrictions, requirements, and permitted actions of both the direct primary care providers and the direct primary care agreements.

LB 837 (Scheer) Change provisions relating to premium taxes and quarterly statements under the Surplus Lines Insurance Act. LB 837 amends the premium tax provisions of the Surplus Lines Insurance Act. Under Nebraska's current premium tax scheme for surplus lines insurance, all premium tax is paid to Nebraska for insureds whose home state is Nebraska. The rate for Nebraska-based risk is three percent and for out-of-state risk the rate is the rate of the state where the risk is located. LB 837 simplifies this calculation by establishing the rate at three percent for all surplus insurance premiums written for Nebraska businesses covering risks in the United States. The legislation also changes the quarterly filing dates for surplus lines licensees to conform Nebraska filing dates with the filing dates in other states. LB 837 becomes operative on January 1, 2017.

LB 840 (Fox) Change provisions relating to the time allowed for certain internal grievances under the Health Carrier External Review Act. Introduced on behalf of the Department of Insurance, LB 840 amended the Health Carrier External Review Act to harmonize the amount of time a health carrier has to respond to an internal grievance with the time period in the internal grievance law, which is fifteen working days. Fifteen working days is the current practice of the health insurance industry.

Any questions regarding legislation may be directed to the Department's Legislative Liaison, Robert Bell, by phone at (402) 471-4650 or email robert.bell@nebraska.gov.

Actions Taken Against Producers & Agencies

CAUSE NO.	ALLEGATION	DISPOSITION
<p>A-2027 Michael P. Holcomb Omaha, NE NPN - 2280950</p>	<p>Violated <u>Neb. Rev. Stat. §§ 44-4059(1)(b), 44-4059(1)(h), 44-4059(1)(j)</u> and 44-4065(3). Violated any insurance law; used fraudulent, coercive, or dishonest practices; forged another's name to an application for insurance or any document related to insurance transactions; failed to report any criminal prosecution.</p>	<p>Order Producer license revoked 2/3/2016</p>
<p>A-2028 Scott P. Schmer Sutton, NE NPN - 8306749</p>	<p>Violated <u>Neb. Rev. Stat. §§ 44-4059(1)(b), 44-4059(1)(h)</u> and 44-4054(8). Violated any insurance law; used fraudulent, coercive, or dishonest practices; failed to report change of address within thirty days.</p>	<p>Order Producer license supended \$500 fine 2/25/2016</p>
<p>A-2029 Duncan Preston Kansas City, MO NPN - 17269811</p>	<p>Violated <u>Neb. Rev. Stat. §§ 44-4059(1)(b), 44-4059(1)(h), and 44-4059(j)</u>. Violated any insurance law; used fraudulent, coercive, or dishonest practices; forged another's name to an application for insurance or any document related to insurance transactions.</p>	<p>Consent Order Producer license revoked 2/22/2016</p>
<p>A-2031 Kristian Baso Pompano Beach, FL NPN - 16309292</p>	<p>Violated <u>Neb. Rev. Stat. §§ 44-4059(1)(a), 44-4059(1)(b), 44-4059(1)(h), and 44-4059(i)</u>. Provided incorrect information on license application; violated any insurance law; used fraudulent, coercive, or dishonest practices; had an insurance license denied, suspended, or revoked in any other state.</p>	<p>Consent Order \$250 fine 3/1/16</p>
<p>A-2032 Gerald C. Bryce Raymond, NE NPN - 2754424</p>	<p>Violated <u>Neb. Rev. Stat. §§ 44-4059(1)(b), 44-4059(1)(d), 44-4059(1)(f), 44-4059(1)(g), and 44-4059(1)(h)</u>. Violated any insurance law; improperly withheld money or property received in course of doing insurance; convicted of a felony or Class I, II, or III misdemeanor; committed an unfair trade practice; used fraudulent, coercive, or dishonest practices.</p>	<p>Order Producer license revoked 4/1/2016</p>

Actions Taken Against Producers & Agencies (cont.)

CAUSE NO.	ALLEGATION	DISPOSITION
A-2033 Brad Carlson Ashland, NE NPN - 17337168	Violated <u>Neb. Rev. Stat.</u> §§ 44-4059(1)(a), 44-4059(1)(b), and 44-4059(1)(h). Provided incorrect information on license application; violated any insurance law; used fraudulent, coercive, or dishonest practices.	Consent Order \$300 fine 3/21/2016
A-2034 Bruce Lee Southwell Omaha, NE NPN - 64109	Violated <u>Neb. Rev. Stat.</u> §§ 44-101, 44-4059(1)(b), and 44-4059(1)(h). Failed to maintain proper practices in insurance business; violated any insurance law; used fraudulent, coercive, or dishonest practices.	Consent Order \$4,000 fine 4/7/2016
A-2035 David Kusek Doniphan, NE NPN - 10176342	Violated <u>Neb. Rev. Stat.</u> §§ 44-4054(8), 44-4059(1)(e), and 44-4059(1)(h). Failed to report change of address; intentionally misrepresented the terms of an insurance contract or application; and used fraudulent, coercive, or dishonest practices.	Consent Order \$500 fine, update address, written documentation of procedure, and additional ethics CE. 3/31/2016

Actions Taken Against Companies

CAUSE NO.	ALLEGATION	DISPOSITION
C-2199 American Family Mutual Insurance Company (Wisconsin)	Violated <u>Neb. Rev. Stat.</u> § 44-1539, 44-1540(4), 44-1504(6), 44-1504(8) Title 210 Neb. Admin. Code §§ 60-008.01, 60-008.02, and 60-008.08. Committed an unfair claims settlement practice.	Consent Order \$15,000 fine 4/15/2016

Regulation Updates

Amended Regulation

TITLE 210 NEB. ADMIN. R. & REGS. 65 - CREDIT FOR REINSURANCE

Amended Chapter 65 implements the recent statutory changes to sections pertaining to credit for reinsurance that were enacted in the 2015 Legislative Session and to reflect the changes made by the National Association of Insurance Commissioners to the Credit for Reinsurance Model Act. The rule was filed with the Secretary of State on February 10, 2016 with implementation date of February 15, 2016.

A full copy of amended Chapter 65 can be found on the Department of Insurance website at www.doi.nebraska.gov/legal/rule_reg/chapter-65.pdf.

Questions regarding amended Chapter 65 can be directed to Krystle Ledvina Garcia via email at Krystle.Ledvina.Garcia@nebraska.gov.

FRAUD DIVISION

Annual Insurance Fraud Conference

The Insurance Fraud Prevention Division (IFPD) will hold its 2016 Annual Insurance Fraud Conference on August 3, 2016, at the Strategic Air and Space Museum. A program is being developed that will hopefully prove beneficial to participants in their fraud fighting efforts.

The registration brochure is tentatively scheduled to be emailed in late May.

If you would like to receive a brochure, email your request to DOI.FraudPrevention@nebraska.gov - use the subject "Conference Brochure Request."

Previous conference attendees will automatically receive the registration brochure via email.

Did You Know?....

Actual or **potential** monetary losses, exceeding **\$17.5 million**, were reported during 2015.

EXAMINATION DIVISION

Staff Update

Kristy Hadden has accepted the position of **Company Administrator** for the Department's examination division effective April 11. Kristy previously spent over 23 years working for State Farm Insurance during which time she worked both in the regional accounting department and marketplace compliance area. As Company Administrator, Kristy's primary responsibilities will include new company admissions, amendments to certificates of authority, third-party administrators, and risk retention groups. She will also oversee premium taxes, surplus lines, and pre-need burial sales. Kristy can be reached via email at kristy.hadden@nebraska.gov.

Pre-Need Examinations Completed During First Quarter, 2016

Campbell-Aman Funeral Home
Iverson Memorial Chapel
Peterson Mortuary (affidavit in lieu of exam 12/31/14)
WB Funeral Home (affidavit in lieu of exam 12/31/14)
Wyuka Cemetery & Funeral Home

Financial Examinations Completed During First Quarter, 2016

Sapphire Edge, Inc. (Qualifying Exam)

Financial examination reports become public documents once they have been placed on official file by the Department. The most current report of financial examination can now be found on the Department's website at www.doi.nebraska.gov. Copies can be obtained from the Department at a cost of \$.50 per page.

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Department Calendar

- April 29: Department Closed - Arbor Day
- May 30: Department Closed - Memorial Day
- July 4: Department Closed - Independence Day
- August 3: Annual Fraud Conference (registration required)
Strategic Air and Space Museum