



STATE OF WEST VIRGINIA

Offices of the Insurance Commissioner

EARL RAY TOMBLIN
Governor

MICHAEL D. RILEY
Acting Insurance Commissioner

JULY 2011

WEST VIRGINIA INFORMATIONAL LETTER

NO. 179

TO: All Insurance Companies Doing Business in the State of West Virginia, Insurance Trade Associations, Insurance Media Publications and Other Interested Persons

RE: Summary of 2011 Legislation

This Informational Letter summarizes significant insurance and workers' compensation legislation enacted during the 2011 Regular Session of the West Virginia Legislature. It does not necessarily include all legislation that may affect the insurance industry or insurance consumers and is only intended to highlight the major points in the more important bills. The explanations contained herein should in no way be construed as being indicative of the Insurance Commissioner's views on or interpretation of the legislation.

The bills are available on the Legislature's website at www.legis.state.wv.us. The rules can be found on the Insurance Commissioner's website at www.wvinsurance.gov or the Secretary of State's website at www.wvsos.com.

BILLS

Senate Bill 253 - Amending insurance code with respect to holding companies. (Effective July 1, 2012) (OIC bill)

This bill amends the "West Virginia Insurance Holding Company Systems Act," W. Va. Code §33-27-1 *et seq.* As part of comprehensive reforms being undertaken in reaction to concerns about systemic risk to financial markets, the National Association of Insurance Commissioners ("NAIC") recently amended its model law (#440) to strengthen regulatory control over holding companies seeking to acquire or divest themselves of affiliates. The bill adopts these changes, including the concept of "enterprise risk" as "any activity, circumstance, event or series of events involving one or more affiliates of an insurer that, if not remedied promptly, is likely to have a material adverse effect upon the financial condition or liquidity of the insurer or its insurance holding company system as a whole." The bill also provides for enhanced coordination of regulatory efforts by state and international insurance regulators' participation in "supervisory colleges" in which they will be able to share information about and conduct joint examinations of holding company systems involving insurance entities.



The bill is effective July 1, 2012, in order to allow other states to enact similar legislation over the next year. Corresponding rules based on an NAIC model are expected to go into effect at the same time.

Senate Bill 356 - Making captive insurance company organized as risk retention group subject to certain insurance code provisions. (Effective July 1, 2011) (OIC bill)

This bill amends several provisions of the insurance code regulating captive risk retention groups with respect to financial examinations, reinsurance requirements and the filing of annual audited financial reports. The changes are necessary to meet new requirements of the NAIC accreditation program for state insurance regulators.

Senate Bill 408 - Creating WV Health Benefit Exchange Act. (Effective June 10, 2011) (OIC bill)

This bill establishes a West Virginia Health Benefit Exchange. Under the federal Patient Protection and Affordable Care Act (“ACA”), each state is given the option of establishing its own exchange for the sale and purchase of qualified health insurance plans in the individual market that will be eligible for federal premium subsidies and to provide for the establishment of a Small Business Health Options Program (“SHOP” Exchange) to assist qualified small employers in facilitating the enrollment of their employees in qualified health plans. The exchange must be approved by the federal Department of Health and Human Services by 2013 in order to be able to begin operations by January 1, 2014.

The bill creates a ten-member governing Board composed of four state agency heads (OIC, Health Care Authority, Medicaid and CHIP); four gubernatorial appointees (subject to advice and consent of the Senate) to represent individual consumers, small employers, labor and producers; and two selected by advisory committees to represent providers and payers. The six non-agency members will serve 4-year terms and may only be removed by the Governor for cause. The Board must “promulgate rules necessary to obtain federal recognition of the exchange as a certified exchange under the ACA.”

The bill also provides that if the ACA or any portion of it is invalidated by Congress or the courts, the Board will issue a bulletin on the effect of such invalidation on the state’s Exchange law and will make recommendations to the Legislature.

Senate Bill 435 - Amending insurance code with respect to surplus lines insurance. (Effective July 1, 2011) (OIC bill)

This bill amends “The Nonadmitted Insurance Act” (W. Va. Code §33-12C-1 *et seq.*) to implement provisions of the federal Nonadmitted and Reinsurance Reform Act of 2010 (“NRRRA”, added as an amendment to the Dodd-Frank Wall Street Reform & Consumer Protection Act). NRRRA streamlines the regulation of surplus lines insurance covering risks in multiple states; limits regulation and taxation of nonadmitted insurance to the insured’s “home state”; implements nationwide eligibility requirements in conformance with the NAIC model act pertaining to surplus lines insurance; and preempts inconsistent state laws.

With respect to taxes on policies covering risks in multiple states, the bill authorizes the Insurance Commissioner to enter into tax-allocation agreements with other states, including the use of a clearinghouse established as part of the Nonadmitted Insurance Multi-state Agreement ("NIMA") developed by the NAIC.

Senate Bill 472 - Relating to portable electronics insurance. (Effective June 10, 2011)

This bill exempts vendors of "portable electronics" products – computers, cameras, TVs, etc. – and their employees from producer licensing requirements with regard to the sale and solicitation of "portable electronics insurance," which is defined as "insurance providing coverage for the repair or replacement of portable electronics which may cover portable electronics against any one or more of the following causes of loss: loss, theft, mechanical failure, malfunction, damage or other applicable perils." The definition expressly excludes service contracts, extended warranties, manufacturer warranties or coverage under a homeowner's, renter's, auto, commercial multi-peril or similar policy. This exemption is dependent on the vendor's compliance with certain new requirements such as the maintaining a list of all locations in the state at which it offers portable electronics coverage; making written disclosures about the insurance available to prospective customers; appointing a licensed insurer or insurance producer to oversee the administration of the insurance program and a training program for employees; not compensating employees based primarily on the number of customers enrolled for the insurance; and abiding by the statutory policy termination requirements. The Insurance Commissioner may impose fines on vendors for violations (\$500 per violation, \$5000 aggregate) and suspend the vendor's privilege of transacting such insurance at specific business locations where violations have occurred. An insurer or producer appointed by the vendor to oversee the program is subject to administrative sanctions in W. Va. Code §33-12-24.

House Bill 2517 - Workers' Compensation - Allowing corrections industries to directly purchase workers' compensation coverage for inmates. (Effective June 9, 2011) (WV Division of Corrections bill).

This bill implements the federal Prison Industry Enhancement Certification Program by providing that individuals confined in a state correctional facility or juvenile services facility are eligible to receive workers' compensation benefits for injuries incurred while working in a program authorized by W. Va. Code §25-7-14 or §25-7-16. It also authorizes the purchase of workers' compensation insurance -- by the Commissioner of the Division of Corrections for prison inmates and the Director of Juvenile Services for persons under his or her supervision -- who are participating in the certification program, provided that reimbursement is made by a private person or entity to the agency for all costs of the workers' compensation insurance or equivalent coverage as a condition of an agreement entered to establish a program for inmates or residents to manufacture articles and products.

House Bill 2693 - Requiring insurance coverage for autism spectrum disorders. (Effective July 1, 2011)

This bill mandates coverage after January 1, 2012 – under group insurance policies (more than 25 employees), HMOs, PEIA, CHIP and Medicaid – for the diagnosis and treatment of "autism spectrum disorders" for children. To be eligible, a child must be diagnosed with autism spectrum disorder before age 8; treatments must be medically necessary and prescribed by a physician or

licensed psychologist in accordance with a treatment plan, subject to review by the agency or health plan every 6 months; and progress in the child's condition must be shown for coverage to continue. The annual maximum benefit is capped at \$30,000 a year for the first three years of treatment and thereafter at \$2,000 a month until the child turns 18. To the extent that the coverage causes an increase of at least 1% of actual total costs of coverage for the plan year, the agency or health insurance plan may apply additional cost containment measures. After 2013, mandated benefits that exceed the yet-to-be specified essential health benefits under the ACA will no longer be required. The state agencies are required to file annual reports with the Joint Committee on Government and Finance.

House Bill 2745 - Providing that certain information provided by insurance companies to the Insurance Commissioner is confidential and creating all-payer claims database. (Effective June 10, 2011) (OIC bill)

The bill amends §33-4-14 to deem actuarial reports, work papers and actuarial opinion summaries submitted by insurers in connection with their annual financial statements as confidential and privileged information. Such information would be exempt from any type of disclosure requirement (FOIA request, subpoena, discovery) by the Insurance Commissioner. The documents, however, may be obtained directly from the insurer by a litigant as permitted by the West Virginia Rules of Civil Procedure. The bill further precludes the Insurance Commissioner or her representatives from being subpoenaed to testify about such information. The exemption is an NAIC accreditation requirement for OIC financial examinations to be accepted by other states.

The bill also adds a new article, W. Va. Code 33-4A-1 *et seq.*, that authorizes the Insurance Commissioner (OIC), Secretary of the Department of Health and Human Resources ("DHHR") and the Chair of the Health Care Authority ("HCA") to enter into a Memorandum of Understanding ("MOU") to develop a health insurance paid-claims database ("all-payer claims database" or "APCD"). The bill sets forth the minimum provisions of the MOU and requires a plan for financial stability of the APCD. OIC would be responsible for collecting the data from insurers, DHHR for maintaining it, and HCA for disseminating it to other agencies, researchers, etc. for study of health care utilization, expenditures and performance. The data collected is subject to confidentiality provisions and applicable state and federal privacy laws. The agencies must report annually to the Governor and Joint Commission on Government and Finance.

House Bill 2876 - Expanding eligibility for subsidies to enrollees in the model health plan. (Effective June 7, 2011) (AccessWV bill)

The bill expands eligibility for subsidies to enrollees of the West Virginia Health Insurance Plan ("AccessWV"), the state's insurance plan for individuals who are unable to obtain affordable insurance due to a pre-existing condition. The bill raises the threshold income level from an annual household income of at or below 200% of the federal poverty level to 400% and authorizes AccessWV's board of directors to adopt emergency rules setting forth eligibility criteria.

House Bill 3163 - Relating to workers' compensation programs of state government entities. (Effective March 12, 2011) (OIC bill)

This bill, which adds a new section to the Insurance Code (W. Va. Code §33-2-21a), mandates that the Insurance Commissioner manage the worker's compensation programs of state

agencies, including the coverage of agencies. "Executive agencies" (those under a super-secretary, except Parkways Authority and State Police) would be required to participate in the program. Other state entities (designated "discretionary participants") such as the members of the Board of Public Works, State Supreme Court, Legislature, Parkways Authority, State Police and any other spending unit required to provide a detailed expenditure schedule to the Secretary of Revenue, would be permitted, but not required, to participate; no county or municipality or their instrumentalities may participate in the program. The bill provides an exemption for OIC from the state purchasing rules as long as contracts are competitively bid, and the Commissioner may promulgate emergency rules. The Commissioner is required to submit monthly reports concerning the status and progress of the program to the Joint Committee on Government and Finance.

House Bill 3271 - Relating to distribution of state funds to volunteer fire companies and departments. (Effective June 10, 2011)

This bill provides that volunteer fire departments ("VFDs") that experience increases in workers' compensation premiums after July 1, 2011 can receive money to cover the increases under a program to be administered by the State Auditor with funds appropriated by the Legislature. OIC is responsible for determining the total amount of premium due for the total base-year premium and annually for fiscal years after July 1, 2011. The Auditor may promulgate emergency rules and must submit a report to the Joint Committee on Government and Finance by February 1, 2015.

LEGISLATIVE RULES

Senate Bill 177 - Authorizing the Insurance Commissioner to promulgate legislative rules.

114 CSR 6 - Credit Life Insurance, Credit Accident and Sickness Insurance, and Credit Unemployment Insurance (amended rule, effective July 1, 2011)

The amendments to this rule, which are based on NAIC's "Consumer Credit Insurance Model Regulation" (Model #370), add requirements that an insurer must follow when transacting credit unemployment insurance (e.g. minimum benefit period of six months) and lists the permissible grounds for excluding coverage (e.g. illegal walk out). The amendments also provide for loss ratio standards to be reviewed by the Insurance Commissioner every three years. The filings required by the amendments to subsections 6.6 & 6.7 (loss ratios) and §7 (credit unemployment insurance rates, forms and rules) must be made by August 31, 2011; insurers are advised to contact OIC's Rates & Forms Division for additional guidance (304-558-2094).

114 CSR 11B - Suitability in Annuity Transactions (amended rule, effective July 1, 2011)

These amendments bring this rule into compliance with NAIC Model #275, which was recently updated to strengthen the provisions regarding inappropriate and abusive marketing practices and to better ensure that consumers are adequately advised with respect to the suitability of a proposed sale in light of his or her particular circumstances. The amendments include clarification that the insurer is responsible for compliance with model requirements even if the insurer contracts with a third party; a requirement of company review of all annuity transactions; establishment of general and product-specific training requirements for producers; and company recordkeeping requirements.

114 CSR 25 - Insurance Adjusters (amended rule, effective July 1, 2011)

In response to increased federal oversight of the federally-underwritten crop insurance program, the state adjuster statutes (W. Va. Code §33-12B-1 *et seq.*) were amended in 2010 to create a separate crop adjuster license. This amendment to the corresponding rule includes a requirement of proficiency testing and certification by a federally-approved vendor. The amendment also revises or adds sections dealing with emergency adjusters, recordkeeping, standards of conduct, contracts between public adjusters and insureds, fees charged by public adjusters, escrow or trust accounts held by public adjusters, renewal of lapsed licenses, and the Commissioner's authority to nonrenew, suspend or revoke a license.

114 CSR 32 - Long-Term Care Insurance (amended rule, effective July 1, 2011)

These amendments bring the rule into compliance with 2009 amendments to NAIC Model #641. The amendments add an external review process for any long-term care insurance claim denial based on a company determination that the "benefit trigger" has not been met. It also adds "prompt pay" provisions that define a "clean claim," provides an interest penalty on unpaid claims and clarifies that flagrant violations are subject to the Unfair Trade Practices Act, W. Va. Code §33-11-1 *et seq.*

114 CSR 41 - Actuarial Opinion and Memorandum Rule (amended rule, effective July 1, 2011)

The amendments to this rule bring it into compliance with NAIC Model #822, as amended in 2009, by allowing an appointed actuary to comment on the impact of an insufficiency of assets on a company during one or more interim periods. This change is required under NAIC's financial accreditation program.

114 CSR 41A - Property and Casualty Actuarial Opinion (new rule, effective June 10, 2011)

This new rule, which sets forth standards for Property and Casualty insurers' and reinsurers' actuarial opinions and actuarial opinion summaries filed with OIC, is based on NAIC Model 745, "Property and Casualty Actuarial Opinion Model Law." The actuarial opinion and actuarial opinion summary required by this rule are filing requirements under the NAIC's annual statement instructions.

114 CSR 61 - Credit Personal Property (amended rule, effective July 1, 2011)

This rule amends the current rule, first adopted in 2003, to bring it into compliance with recent updates to NAIC Model #365. The amendment makes approved rates effective for three years.

114 CSR 65 - Self-Insurance Risk Pools for Political Subdivisions (amended rule, effective April 19, 2011)

This rule amendment sets forth the criteria for establishing and maintaining self-insurance programs and pools for "political subdivisions" (e.g. counties and municipalities) to self-insure their workers' compensation risks. The amendments mandate that members of the pool be jointly and severally responsible for liabilities of the pool under the Workers' Compensation Code; sets

requirements regarding the withdrawal or termination of members from a pool; and provides for various filing requirements with OIC. The rule expressly excludes such pools from participation in the self-insured guaranty risk pool or self-insured security risk pool. Such pools are not required to obtain approval of the Industrial Council.

114 CSR 68 - Valuation of Life Insurance Policies (amended rule, effective July 1, 2011)

This rule amendment brings the rule into compliance with NAIC model #830, amended in 2009. The model provides tables of select mortality factors and rules for use; rules concerning minimum standards for the valuations of plans with non-level premiums or benefits; and rules concerning minimum standards for the valuations of plans with secondary guarantees. The amendments change the general calculation requirements for premium deficiency reserves.

114 CSR 69A – Recognition of Preferred Mortality Tables for Use in Determining Minimum Reserve Liabilities (amended rule, effective July 1, 2011)

This rule amendment brings the rule into compliance with NAIC model #815, amended in 2009. The amendments change the conditions under which the 2001 CSO Preferred Class Structure Table is permitted in a statutory financial statement.

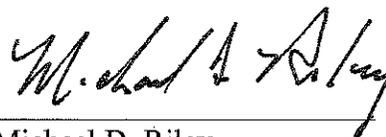
114 CSR 85 - Professional Employer Organizations (amended rule, effective May 10, 2011)

A 2010 amendment to the PEO statute provided that OIC could enforce compliance by *unlicensed* PEO through the use of the same enforcement tools available against persons violating the Unauthorized Insurers Act (W. Va. Code §33-44-1 *et seq.*). These amendments of the PEO rule incorporate these enforcement provisions, e.g. administrative penalties.

114 CSR 91 - Health Maintenance Organization Point of Service Option (new rule, effective July 1, 2011)

The new rule, authorized by legislation enacted in 2010, sets forth requirements to be followed by an HMO that offers a point of service (“POS”) option to its enrollees. A POS option gives an enrollee the choice of going outside the HMO’s panel of health care providers, but the extent of such out-of-network coverage is usually significantly less than that of in-network coverage and may require a deductible and co-payment. The rule sets parameters for the option and provides the Insurance Commissioner with substantial oversight in how such options are carried out in practice.

Please e-mail any questions concerning this Informational Letter to Informational.Letters@wvinsurance.gov or call (304) 558-0401.



Michael D. Riley
Insurance Commissioner