

WEST VIRGINIA INFORMATIONAL LETTER

NO. 128

May 2001

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

The purpose of this Informational Letter is to briefly summarize significant insurance legislation enacted during the 2001 regular session of the West Virginia Legislature. This letter is not to be construed as inclusive in all legislation which may affect the insurance industry or insurance consumer, nor should it be construed as a comprehensive explanation of the bills addressed. Rather, it is intended to highlight the more important bills.

Persons seeking a copy of particular legislation should contact the West Virginia Legislature, Senate Clerk's Office at (304) 357-7800, or House Clerk's Office at (304) 340-3200, Main Unit, State Capitol, Charleston, West Virginia 25305.

S.B. 492 - Fraternal Benefit Societies

This bill corrects a legislative oversight by making the variable contract provisions set forth in W. Va. Code §§ 33-13A-1 et seq. applicable to fraternal benefit societies, thus permitting fraternal benefit societies to write variable annuities.

This bill becomes effective **July 13, 2001**.

S.B. 493 - Examination of Domestic Insurers

This bill changes the time period for examination of domestic insurers to every five years, rather than every three years, with the discretion to perform examinations more frequently if necessary, and changes the time period for examination of hospital, medical, dental and health service corporations to every five years rather than every four years, with the discretion to perform examinations more frequently if necessary. This bill amends West Virginia Code Sections 33-2-9 and 33-24-4.

This bill becomes effective **July 13, 2001**.

S.B. 494 - Bona Fide Association Groups

This bill removes a "loop hole" in current law which allows health insurers providing coverage to association groups to avoid West Virginia's rates and forms requirements on the health insurance products offered. This bill subjects all health insurance products to the same rates and forms requirements. This bill creates a new section in article one and will be located in West Virginia Code Section 33-1-22.

This bill becomes effective **July 12, 2001**.

S.B. 503 - Codification of Accounting Principles

This bill codifies statutory accounting principles to be used in the annual audited financial reports of insurers. The bill implements changes adopted by the NAIC model regulation requiring audited financial reports. It is anticipated that the changes implemented will be required for NAIC accreditation. The amendments contained within this bill will appear in West Virginia Code Sections 33-33-1, -2, -4, -5, -7 and -11.

This bill becomes effective July 13, 2001.

S.B. 504 - Unauthorized Insurers Act

This bill combines existing unauthorized insurer provisions contained in Chapter 33 to one new article for easy access and notice. Additionally, because unauthorized insurers typically maintain assets outside the states in which they are actively collecting premiums, the bill provides several methods by which West Virginia residents can obtain relief from the harm inflicted by unauthorized insurers:

- The bill requires the unauthorized insurer to post a bond in an amount sufficient to satisfy a judgment or in an amount necessary to obtain a license from the state before it can defend any action taken against it.
- The bill specifically defines civil damages available to West Virginia consumers.

- The bill allows victims to assert actions against not only the unauthorized insurer, but against the individuals and entities which aid and facilitate the sale of unauthorized insurance in the State.
- The bill creates criminal penalties which can be used by prosecutors to fine and imprison unauthorized insurers.

This bill becomes effective **July 13, 2001**.

S.B. 507 - Privacy Provisions

This bill permits the Insurance Commissioner to propose rules for legislative approval necessary to carry out the privacy provisions of Title V of the Gramm-Leach-Bliley Act, Pub. L. 106-102 (1999). This new law will be located at West Virginia Code Section 33-6f-1. In accordance with this bill, the Insurance Commissioner will be promulgating emergency rules on or before July 1, 2001 for compliance with the privacy requirements. These rules will establish notice requirements for insurers who possess and share nonpublic personal financial and health information.

This bill became effective from passage on **April 14, 2001**.

S.B. 508 - Holding Company Systems Act

This bill corrects an earlier omission in the enactment of the Model Insurance Holding Company Act providing for confidential treatment of materials filed under that Act as to transactions between affiliated companies. This bill amends West Virginia Code Section 33-27-7.

This bill becomes effective **July 13, 2001**.

S.B. 513 - Surplus Notes

This bill permits health maintenance organizations and hospital, medical and dental service corporations to borrow money for surplus funds and other operating expenses on parity with other insurers. This bill amends West Virginia Code Sections 33-24-4 and 33-24-25a.

This bill becomes effective **July 13, 2001**.

H.B. 3081- Premium Tax Credits

This bill clarifies amendments made during the 2000 legislative session to W. Va. Code Section 33-3-14b relating to credits against premium taxes for investment in West Virginia securities by insurers. The bill passed this session defines relevant terms used in the statute. This bill amends West Virginia Code Section 33-3-14b.

This bill becomes effective **July 13, 2001**.

H.B. 3009 - Tax Procedures

This bill provides uniform procedures for the administration of taxes that are paid or remitted to the Insurance Commissioner. The bill also provides for excess lines brokers and risk retention groups to collect and remit the fire and casualty insurance policy surcharge imposed by W. Va. Code § 33-3-3. Additionally, the tax on risk retention groups is increased to match the tax imposed on other insurers.

This bill amends West Virginia Code Sections 29-3-22; 33-2-15; 33-3-14, -14a, -14c, -14d; 33-32-5 and creates a new article.

This bill becomes effective **July 11, 2001**.

H.B. 3080 - Investment Funds

This bill amends the types of investments in which insurers are permitted to invest funds. With certain specified limitations, insurers may invest in securities issued or guaranteed by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association and in nonassessable shares of capital stock of any solvent corporation created under the laws of the United States or any state. These amendments are located in West Virginia Code Sections 33-8-5, -7, -14 and -15.

This bill became effective from passage on **April 12, 2001**.

H.B. 3242 - Uniform Credentialing

This bill creates a new article which authorizes the development by the Department of Health and Human Resources and the Insurance Commissioner of uniform credentialing application forms to be used by hospitals, insurance companies, prepaid health plans, third party administrators and other health care entities. The bill further establishes an advisory committee to assist in the development and implementation of the uniform credentialing process. This law will appear in West Virginia Code Sections 16-1a-1 et. seq.

This bill becomes effective **July 13, 2001**.

H.B. 2486 - Fair Business Standards for Claim Settlement Practices

This bill creates a new article which establishes standards for the payment of "clean" claims to providers, and provides for the payment of interest in those instances in which "clean" claims are not timely paid. The bill also provides that an insurer's breach of the provider contract provisions established under the bill entitles the provider to initiate a civil action to recover actual damages.

This bill becomes effective **July 1, 2001**.

H.B. 2970 - Uninsured and Underinsured Motorists Coverage

This bill provides for the offer of optional uninsured and underinsured motor vehicle coverage on excess liability policies which contain automobile liability coverage. The Insurance Commissioner is to develop a form for the offer of the uninsured and underinsured coverage. The amendments contained within this bill will be located at West Virginia Code Section 33-6-31f.

This bill becomes effective **July 13, 2001**.

H.B. 3156 - Transfer of Insurance Tax Fund to Regional Jail and Correctional Facility Debt Fund

This bill provides for the transfer from the insurance tax fund to the regional jail and correctional facility debt fund an amount equal to one tenth of the projected annual principal, interest and coverage requirement on all revenue bonds and refunding bonds issued after May 2, 2001 to finance capital expenditures for jails and correctional facilities. The amount transferred is not to exceed

sixteen million dollars in any fiscal year. The amendments contained within this bill can be located in West Virginia Code Sections 12-6-21; 31-15-6b; and 33-3-14.

This bill became effective from passage on **April 14, 2001**.

H.B. 2216 - Patients' Bill of Rights

This bill amends the current "Patients' Bill of Rights," and establishes an external review procedure for the determination of whether a health care service is medically necessary or experimental. Any managed care plan that does not comply with the decision rendered in an external review may be held civilly liable for all damages proximately caused to an enrollee for its failure to comply. The amendments contained within this bill can be located at West Virginia Code Sections 33-25C-1 et. seq.

This bill becomes effective **July 13, 2001**.

H.B. 3253 - HMO Copayments

This bill amends the definition of "copayment" contained in the HMO Act to include a percentage payment required to be paid by a subscriber for health care services. The prior definition included only a specific dollar amount. The amendments contained within this bill can be located at West Virginia Code Section 33-25A-2.

This bill became effective from passage on **April 13, 2001**.

H.B. 2389 - Nurse Practitioners

This bill amends the definition of "copayment" contained in the HMO Act to include a percentage payment required to be paid by a subscriber for health care services. The bill also provides that an advanced nurse practitioner may act as a primary care provider under the HMO Act if that nurse practitioner develops a mutually agreed upon association in writing with a PCP on the panel of and credentialed by the HMO. The amendments contained within this bill can be located at West Virginia Code Section 33-25A-2.

This bill becomes effective **July 13, 2001**.

H.B. 2823 - Emergency Suspension of Time Frames

This bill permits the Insurance Commissioner in emergency situations to temporarily suspend the ordinary time frames in which insurers are required to evaluate and settle claims. The amendments contained within this bill can be located at West Virginia Code Section 33-2-10a.

This bill becomes effective **July 13, 2001**.

S.B. 204 - Uniform Electronic Transaction Act

This bill creates the Uniform Electronic Transaction Act (UETA) which provides for legal recognition of electronic records, electronic signatures and electronic contracts.

This bill becomes effective **July 13, 2001**.

S.B. 127 - Prescription Drugs

This bill permits the Public Employees Insurance Agency ("PEIA") to explore innovative strategies for managing prescription drug costs, and provides authorization for execution of pharmacy benefit manager contracts and prescription drug purchasing agreements necessary to achieve effective management of prescription drug costs. This new law will be located in the West Virginia Code Sections 5-16C-1 et. seq.

This bill becomes effective **July 13, 2001**.

S.B. 177 - Elimination of Tax on Services by Health Care Practitioners

This bill provides for the phase out and elimination of tax on services provided by individual health care practitioners. This new law will be located in the West Virginia Code Section 11-27-36 .

This bill becomes effective **July 1, 2001**.

H.B. 2717 - Promulgation of Rules

This bill authorizes the promulgation of the following rules:

- Title 114, Series 15 - Examiners' Compensation, Qualifications and Classification
- Title 114, Series 16 - Standards for Uniform Health Care Administration
- Title 114, Series 24 - Medicare Supplement Insurance
- Title 114, Series 27 - AIDS Regulations
- Title 114, Series 42 - Continuing Education for Insurance Agents

This bill became effective from passage on **April 12, 2001**.

House Concurrent Resolution No. 83

This resolution directs the Joint Committee on Government and Finance to conduct a study of Rates and Forms approval by the West Virginia Insurance Commission.

Senate Concurrent Resolution No. 14

This resolution directs the Joint Committee on Government and Finance to conduct a study of West Virginia's medical malpractice insurance rates.

Jane L. Cline
Insurance Commissioner