



## WEST VIRGINIA INSURANCE BULLETIN

### No. 21 - 04

*Insurance Bulletins are issued when the Commissioner renders formal opinions, guidance or expectations on matters or issues, explains how new statutes or rules will be implemented or applied, or advises of interpretation or application of existing statutes or rules.*

### ► Summary of 2021 Legislation ◀

This Insurance Bulletin summarizes significant insurance and workers' compensation legislation enacted during the 2021 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 regulatory 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.wvlegislature.gov](http://www.wvlegislature.gov).

#### ***Senate Bill 160 – Relating to the adoption of rules (Effective March 23, 2021)***

This bill authorizes the following legislative rules of the Insurance Commissioner:

#### **114 CSR 2A – Fingerprinting Requirements for Applicants for Insurance Producer License and Insurance Adjuster License**

During the 2020 Legislative Session, House Bill 4502 was passed which revised Article 12B, Chapter 33 of the West Virginia Code regarding the licensing requirements of insurance adjusters. One of the revisions made to Article 12B was to require fingerprint background checks on insurance adjusters in the same manner as are currently required of insurance producers. The revisions to 114 CSR 2A conform the existing rule to the updated statutory requirements, specifically to include insurance adjusters in the rule's provisions, and provide guidance and instruction for insurance adjusters to undergo the same background checks and fingerprinting requirements as licensed producers. The revisions to the rule are effective July 1, 2021.

#### **114 CSR 25 – Insurance Adjusters**

House Bill 4502 (2020), as referenced above, also made several other significant changes regarding the regulation of insurance adjusters. The revisions included the creation of a new license for independent insurance adjusters and provided for the creation of lines of authority under new and existing licenses. The legislation also updated licensing exemptions, revised insurance adjuster testing requirements and licensing terms, provided for background checks and established continuing education requirements. The revisions to 114 CSR 25 conform the

existing rule regarding the licensing of insurance adjusters to the updated statutory licensing requirements and provide guidance for insurance adjusters regarding licensing, testing and lines of authority. The rule amendments are effective July 1, 2021.

#### **114 CSR 40 – Credit for Reinsurance**

During the 2020 Legislative Session, House Bill 4146 was enacted to revise W. Va. Code §33-4-15a, the Credit for Reinsurance statute, in accordance with 2019 National Association of Insurance Commissioners Model Law updates. The revisions to 114 CSR 40 conform the existing rule to the updated statutory provisions. More specifically, the amendments to the rule make it consistent with the provisions of covered agreements between the United States and the European Union/United Kingdom with respect to reinsurance collateral requirements, which were entered into by the U.S. Treasury Department in 2017 under the federal Dodd Frank Act authority, and must be implemented by the states to avoid federal preemption by the Federal Insurance Office. The revisions to the rule are effective July 1, 2021.

#### **114 CSR 42 – Continuing Education for Individual Insurance Producers and Individual Insurance Adjusters**

This was another rule promulgated as a result of House Bill 4502 (2020). The amendments to 114 CSR 42 conform the existing rule to the updated statutory requirements, specifically to include insurance adjusters in the rule's provisions regarding continuing education and to provide guidance for insurance adjusters regarding continuing education requirements. The revisions to the rule are effective July 1, 2021.

#### **114 CSR 64 – Mental Health Parity**

During the 2020 Legislative Session, Senate Bill 291 was passed requiring every insurance policy, contract, plan or agreement that is issued or renewed after January 1, 2021, to provide parity regarding coverage for behavioral health, mental health and substance use disorders, and medical and surgical benefits. Further, the legislation requires that a written report be submitted by the Insurance Commissioner on June 1, 2021, and annually thereafter, to the Joint Committee on Government and Finance regarding insurer compliance with mental health parity laws. Finally, the legislation mandated the Insurance Commissioner to propose a legislative rule for consideration during the 2021 Legislative Session which specifies the information that insurers should provide to the Commissioner for completion of the annual report. The revisions to 114 CSR 64 conform the existing rule to the updated statutory requirements and became effective May 1, 2021.

#### **114 CSR 100 – Health Benefit Plan Network Access and Adequacy**

During the 2020 Legislative Session, House Bill 4061 was passed enacting the Health Benefit Plan Network Access and Adequacy Act. The legislation requires a health insurer that maintains a network of health care providers for its insureds to ensure that the network is sufficient in numbers and has appropriate types of providers in order for all covered services to be accessible without unreasonable travel or delay. The bill requires a health care insurer to file an Access Plan so that the Insurance Commissioner may evaluate the insurer's network.

Accordingly, 114 CSR 100 sets forth the terms upon which the insurer's network shall be evaluated for sufficiency and establishes the requirements for the content and filing of the insurer's access plan. The rule became effective April 1, 2021.

***Senate Bill 272 – Relating to Independent Contractor Classification (Effective June 9, 2021)***

This bill created the West Virginia Employment Law Worker Classification Act. The legislation provides that to be classified as an independent contractor, a person must sign a written contract with the principal that states the principal's intent to engage the services of the person as an independent contractor and contains acknowledgements that the person understands that he or she is: (1) providing services for the principal as an independent contractor; (2) not going to be treated as an employee of the principal; (3) not going to be provided by the principal with either workers' compensation or unemployment compensation benefits; (4) obligated to pay all applicable federal and state income taxes, if any, on any moneys earned pursuant to the contractual relationship; and (5) responsible for the majority of supplies and other variable expenses that he or she incurs in connection with performing the contracted services unless the expenses are for travel that is not local, the expenses are reimbursed under an express provision of the contract, or the supplies or expenses reimbursed are commonly reimbursed under industry practice. The person must also either file, or be contractually required to file, an income tax return with the appropriate federal, state, and local agencies for a business or for earnings from self-employment or provide his or her services through a business entity. Furthermore, the person must actually and directly control the manner and means by which the work is to be accomplished even though he or she may not have control over the final result of the work. Finally, the person must meet additional enumerated conditions such as he or she: (1) is free to exercise independent initiative in soliciting others to purchase his or her services; (2) is free to hire employees or to contract with assistants or substitutes to perform all or some of the work; and (3) cannot be required to perform additional services without a new or modified contract.

Notwithstanding the above criteria, a person may also be deemed to be an independent contractor if he or she satisfies the definition of a direct seller under Section 3508(b)(2) of the Internal Revenue Code of 1986. For an individual who neither meets the Section 3508(b)(2) definition nor satisfies the aforementioned criteria, the classification of the individual may be determined by the test set forth in Internal Revenue Service Revised Ruling 87-41.

***Senate Bill 275 – Relating to West Virginia Appellate Reorganization Act (Effective June 30, 2021)***

The bill's primary purpose was to create an Intermediate Court of Appeals, which will have appellate jurisdiction over the following matters: (1) final judgments or orders of a circuit court in civil cases entered after June 30, 2022; (2) final judgments or orders of a family court entered after June 30, 2022; (3) final judgments or orders of a circuit court concerning guardianship or conservatorship matters entered after June 30, 2022; (4) final judgments, orders or decisions of an agency or an administrative law judge entered after June 30, 2022; (5) final orders or decisions of the Health Care Authority issued after June 30, 2022, in a certificate of need review; (6) final orders or decisions issued by the Workers' Compensation Office of Administrative Law Judges, referred to as the Office of Judges, after June 30, 2022, and prior to its termination; and (7) final orders or decisions of the Workers' Compensation Board of Review entered after June 30, 2022.

With respect to the legislative changes applicable to the Offices of the Insurance Commissioner, the bill transfers all powers and duties of the Office of Judges to the Workers' Compensation Board of Review

(“BOR” or “Board”) regarding any objection, protest or any other decision relating to workers’ compensation claims that is issued after June 30, 2022, by the Insurance Commissioner, private insurance carrier or self-insured employer, whichever is applicable. The Office of Judges is to terminate on October 1, 2022. On or before September 30, 2022, the Office of Judges must issue a final decision in, or otherwise dispose of, every objection or other matter pending before it. If the Office of Judges fails to issue a final decision or otherwise dispose of an objection or other matter pending before it on or before September 30, 2022, the objection or other matter is to be transferred to the BOR. For any objections transferred from the Office of Judges to the BOR, the Board must adopt any existing records of proceedings in the Office of Judges, conduct further proceedings, collect evidence as it determines to be necessary and issue a final decision or otherwise dispose of the case according to the procedural rules promulgated pursuant to W. Va. Code §23-5-11a(m).

The BOR is permitted to employ hearing examiners and other personnel necessary for the proper conduct of a system of administrative review of objections to decisions. All hearing examiners hired by the BOR shall be persons who have been admitted to the practice of law in this state and have had at least 4 years of experience as an attorney. Effective July 1, 2022, membership in the BOR will be expanded from three to five members and the Board may hire a clerk, whose duties include attending in person, or by deputy, all sessions of the Board, obeying the Board’s orders and directions, maintaining and preserving all records and papers of the Board and performing other duties as prescribed by law or required of him or her by the Board. The bill eliminates the Workers’ Compensation Board of Review Nominating Committee regarding appointments of Board members and provides that the Governor is to appoint Board members with the advice and consent of the Senate. A Board member must be a resident of West Virginia, be a member in good standing of the West Virginia State Bar, have a minimum of 10 years’ experience as an attorney admitted to practice law in this state prior to appointment and have a minimum of 5 years’ experience in preparing and presenting cases or hearing actions and making decisions on the basis of the record of those hearings before administrative agencies, regulatory bodies or courts of record at the federal, state or local level. The BOR is authorized to promulgate rules and hire staff prior to July 1, 2022, to the extent necessary to comply with the requirements of the bill.

***Senate Bill 277 – Relating to COVID-19 Jobs Protection Act (Effective March 11, 2021)***

This bill created the COVID-19 Jobs Protection Act. The purpose of the legislation was to prohibit certain claims against persons or entities arising from COVID-19, COVID-19 care or impacted care. “Impacted care” is defined as “care offered, delayed, postponed, or otherwise adversely affected at a health care facility or from a health care provider that impacted the health care facility or health care provider’s response to, or as a result of, COVID-19 or the COVID-19 emergency.” The bill further terminated liability for death or personal injury related to the design, manufacture or labeling of supplies or personal protective equipment either sold or donated. However, there is an exception to the extinguishment of such claims for persons having actual knowledge of a product defect and acts with conscious, reckless and outrageous indifference to a substantial and unnecessary risk or acts with actual malice. The bill further provides that a claim for workers’ compensation benefits shall be the sole and exclusive remedy for an injury, disease or death when a claim for workers’ compensation benefits is awarded to an employee pursuant to W. Va. Code §23-1-1 *et seq.* for a work-related injury, disease or death caused by or arising from COVID-19 in the course of and resulting from covered employment. Unless otherwise noted, the limitations on liability expressed in the legislation do not apply to any person, employee or agent who engages in intentional conduct with actual malice. The bill is effective retroactively from January 1, 2020, and applies to any cause of action accruing on or after that date.

***Senate Bill 390 – Relating to All-Payer Claims Database (Effective March 26, 2021)***

This legislation amended current law to reflect that the Secretary of the Department of Health and Human Resources has primary responsibility for the collection, retention and dissemination of the data in an All-Payer Claims Database (APCD). The APCD is the program whereby state government collects, retains, uses and discloses information concerning the claims and administrative expenses of health care payers. The Insurance Commissioner is responsible for enforcement of the data collection. The legislation authorizes the Secretary and Commissioner to utilize the data as a resource to (1) conduct public health analyses; (2) conduct program analyses; (3) review health care utilization, expenditures and performance in West Virginia; (4) conduct academic research; and (5) enhance the ability of consumers to make informed and cost-effective health care decisions.

***Senate Bill 463 – Relating to the Insurance Fraud Prevention Act (Effective July 1, 2021)***

This bill replaces all references to the Director of the Insurance Fraud Unit (Special Investigations Division) with references to the Inspector General as provided in the West Virginia Insurance Fraud Prevention Act, W. Va. Code §33-41-1 *et seq.* The legislation effectively consolidates these positions within the Special Investigations Division of the Offices of the Insurance Commissioner.

***House Bill 2005 – Relating to Enforcement of the No Surprises Act (Effective July 7, 2021)***

This bill requires the Insurance Commissioner to enforce the applicable provisions of the federal No Surprises Act (the “Act”) against health insurers, medical providers and health care facilities. Should a violation of the Act be found by the Insurance Commissioner, the legislation permits the Commissioner to access a fine, not to exceed \$10,000 per violation, after notice and hearing pursuant to W. Va. Code §33-2-13. The Insurance Commissioner may also file a complaint in the appropriate court of this state seeking to enjoin and restrain the insurer, medical provider or health care facility from engaging in or continuing the violation. The bill further permits the Insurance Commissioner to seek assistance from any other state government agency regarding regulatory enforcement of the newly created section against medical providers or health care facilities and allows the Commissioner to call upon the Attorney General for legal assistance and representation as provided by law. The provisions of the bill become effective January 1, 2022, which is also the effective date of the Act.

***House Bill 2024 – Relating to Telemedicine (Effective March 30, 2021)***

This legislation relates to the use of telehealth services, which is defined as “the use of synchronous or asynchronous telecommunications technology or audio only telephone calls by a health care practitioner to provide health care services, including, but not limited to, assessment, diagnosis, consultation, treatment, and monitoring of a patient; transfer of medical data; patient and professional health-related education; public health services; and health administration.” The bill provides requirements for the use of telehealth services by health care practitioners in connection with Medicaid plans, insurance provided by the Public Employees Insurance Agency and private health insurance carriers. The legislation permits health care practitioners licensed in other states to practice in West Virginia using telehealth services, sets forth the requirements for registration of out-of-state practitioners and establishes that such a registrant is subject to the jurisdiction of this state. The bill provides for when and how the physician-patient relationship is established and removes restrictions on prescriptive authority. The legislation also adds certain criteria to the standard of care related to telehealth services. With respect to health care insurers regulated by the Insurance Commissioner, the bill

states that such entities must provide reimbursement for a telehealth service at a rate negotiated between the provider and the health care insurer for the virtual telehealth encounter and provide reimbursement for a telehealth service for an established patient, or care rendered on a consulting basis to a patient located in an acute care facility, whether inpatient or outpatient, on the same basis and at the same rate under a contract, plan, agreement or policy as if the service is provided through an in-person encounter rather than provided via telehealth. An “established patient” is defined as “a patient who has received professional services, face-to-face, from the physician, qualified health care professional, or another physician or qualified health care professional of the exact same specialty and subspecialty who belongs to the same group practice, within the past three years.”

***House Bill 2221 – Relating to Insurance Innovation Process (Effective July 9, 2021)***

This bill establishes a process, known as the “regulatory sandbox,” in which a person or entity may apply to the Insurance Commissioner for the introduction and utilization of an insurance innovation in this state that would otherwise be in conflict with West Virginia law. To be eligible to apply for admission to the regulatory sandbox, a person or entity must provide: (1) a filing fee of \$750; (2) a detailed description of the innovation, which, among other requirements, explain how the innovation will add value to customers and detail the statutory and regulatory issues that prevent the innovation from being utilized, issued, sold, solicited, distributed or advertised in the market currently; (3) the name, contact information and bar number of the applicant’s insurance regulatory counsel, which shall be a person with experience providing insurance regulatory compliance advice; (4) a detailed description of the specific conduct that the applicant proposes should be permitted; (5) propose terms and conditions to govern the innovation; (6) propose metrics by which the Insurance Commissioner may reasonably test the innovation’s utility; (7) disclose the directors and executive officers of the applicant; (8) provide a statement that the applicant has funds of at least \$25,000 available to guarantee its financial stability; and (9) a statement confirming that the applicant is not seeking authorization for, nor shall it engage in, any conduct that would render the applicant unauthorized to make an application.

A person is unauthorized to make an application if the person is seeking to: (1) sell or license an insurance innovation directly to any federal, state, or local government entity, agency, or instrumentality as the insured person or end user of the innovation; (2) sell, license, or use an insurance innovation product whereby the person is not accordingly licensed; (3) make an application that would result in the person having more than five active beta tests ongoing within the state at any one time; or (4) be exempt from any administrative regulation or statute concerning: (a) assets, deposits, investments, capital, surplus, or other solvency requirements applicable to insurers; (b) required participation in any assigned risk plan, residual market, or guaranty fund; (c) any licensing or certificate of authority requirements; or (d) the application of any taxes or fees. A “beta test” is defined as “the phase of testing of an insurance innovation in the regulatory sandbox through the use, sale, license, or availability of the insurance innovation by or to clients or consumers under the supervision of the [Insurance Commissioner].”

The Insurance Commissioner must issue a notice of acceptance or rejection within 60 days from the date an application is received. However, the 60-day period may be extended for 30 days if the Insurance Commissioner notifies the applicant before expiration of the initial 60-day period. An application that has not been accepted or rejected by a notice of acceptance or rejection issued by the Insurance Commissioner prior to expiration of the initial 60-day period, or the extended period if applicable, is deemed to be accepted. In reviewing the application, the Insurance Commissioner will assess the potential risks to consumers, if any, posed by the innovation, the manner in which the innovation would be offered or provided and whether the

innovation satisfies the statutory requirements regarding the regulatory sandbox. If the application is approved by the Insurance Commissioner and is accepted by the applicant in writing, the Commissioner must issue a limited no-action letter within 10 days of acceptance. The limited no-action letter should set forth the terms and conditions for the participant that are the same as those set forth in the notice of acceptance and state that so long as the participant and any clients of the participant abide by the terms and conditions set forth in the letter, no administrative or regulatory action concerning the compliance of the insurance innovation with West Virginia law will be taken by the Insurance Commissioner against the participant or any clients during the term of the beta test. Within 60 days of completion of the beta test, unless the time period is extended up to 30 days upon notice from the Insurance Commissioner, the Commissioner shall issue an extended no-action letter or a notice declining to issue an extended no-action letter. The safe harbor set forth in the limited letter shall persist until the earlier of: (1) the early termination of the beta test under W. Va. Code §33-60-5; (2) the issuance of an extended no-action letter; or (3) the issuance of a notice declining to issue an extended no-action letter.

The time period for a beta test shall be 3 years, which may be extended by the Insurance Commissioner that is not longer than 1 year if a request is made in accordance with W. Va. Code §33-60-2(a)(5)(B). For any violation of the terms or conditions set forth in the limited no-action letter, the Insurance Commissioner may issue an order terminating the beta test and the safe harbor of the limited letter before the time period set forth in the limited letter has expired and impose a fine of not more than \$2,000 per violation. Moreover, the Insurance Commissioner may order the termination of the beta test and safe harbor if, following receipt of information or complaints, the Commissioner determines the beta test is causing consumer harm. A participant may request a hearing pursuant to W. Va. Code §33-2-13 regarding any such order issued.

The Insurance Commissioner is further permitted to enter into agreements with state, federal or foreign regulatory agencies to allow persons who make an insurance innovation available in West Virginia through the regulatory sandbox to make their insurance innovation available in other jurisdictions and to allow persons operating in similar regulatory sandboxes in other jurisdictions to make insurance innovations available in West Virginia under the standards of the bill. On or before September 1 of each year during which there was activity pursuant to the bill's provisions during the prior fiscal year, the Insurance Commissioner must submit a written report to the Joint Committee on Government and Finance that meets certain requirements.

### ***House Bill 2263 – Relating to Pharmacy Benefit Managers (Effective June 28, 2021)***

This legislation updates the provisions concerning the regulation of pharmacy benefit managers. Specific to the Offices of the Insurance Commissioner, the legislation amends the scope provision to more accurately describe the applicability of W. Va. Code §33-51-1 *et seq.*, redefines “affiliate” and provides definitions for “defined cost sharing,” “maximum allowable cost,” “national average drug acquisition cost,” “point-of-sale fee,” “rebate” and “retroactive fee.” The bill requires a pharmacy benefit manager’s network to be reasonably adequate and provide for convenient patient access to pharmacies within a reasonable distance from a patient’s residence. The legislation further provides that a pharmacy benefit manager may not reimburse a pharmacy or pharmacist for a prescription drug or pharmacy service in an amount less than the national average drug acquisition cost for the prescription drug or pharmacy service at the time the drug is administered or dispensed, plus a professional dispensing fee of \$10.49, or in an amount less than the amount the pharmacy benefit manager reimburses itself or an affiliate for the same prescription drug or pharmacy service. The bill also prohibits additional actions by a pharmacy benefit manager or health plan, as applicable, and authorizes the Insurance Commissioner to order reimbursement to an insured, pharmacy or dispenser who has incurred a monetary loss as a result of a violation of Article 51, Chapter 33 or legislative rules implemented pursuant to

said article. The legislation further provides that a covered individual's defined cost sharing for each prescription drug must be calculated at the point of sale based on a price that is reduced by an amount equal to at least 100% of all rebates received, or to be received, in connection with the dispensing or administration of the prescription drug. Moreover, if a health benefit plan providing reimbursement to West Virginia residents for prescription drugs restricts pharmacy participation, the entity providing the health benefit plan must notify, in writing, all pharmacies within the geographical coverage area of the health benefit plan, and offer to the pharmacies the opportunity to participate in the health benefit plan at least 60 days prior to the effective date of the plan. The bill permits a cause of action in favor of a covered individual or pharmacy to enjoin the continuance of any violation of W. Va. Code §33-51-11. The legislation additionally requires a pharmacy benefits manager to annually report, in a confidential manner, certain data to the Insurance Commissioner and produce a quarterly report to the Insurance Commissioner of all drugs appearing on the national average drug acquisition cost list reimbursed at 10% and below the national average drug acquisition cost, as well as all drugs reimbursed at 10% and above the national average drug acquisition cost. The reporting required by the bill must be filed electronically on a form and manner as prescribed by the Insurance Commissioner pursuant to a legislative rule promulgated by the Commissioner.

***House Bill 2682 – Relating to Continuing Education Requirements for Insurance Producers and Insurance Adjusters (Effective July 1, 2021)***

The bill removes the certified mail, return receipt requirement that is statutorily imposed upon the Insurance Commissioner with regard to the issuance of license suspension orders to insurance producers and insurance adjusters who have failed to meet continuing education requirements. Upon the effective date of the bill, the certified mail requirement will be replaced with a requirement that the Insurance Commissioner provide suspension notices via electronic mail, or regular U.S. mail if requested. The bill further requires a producer or adjuster to notify the Insurance Commissioner of their respective email address and update the email address if changed.

***House Bill 2758 – Relating to Bail Bondsmen (Effective July 6, 2021)***

This legislation requires the Insurance Commissioner to regulate individuals or companies in the bonding business. "Bonding business" is defined as "the business of becoming surety for compensation upon bonds in criminal cases in the State of West Virginia." A "bondsmen" is defined as "(A) any person engaged in the bonding business that has satisfied the requirements for, and is duly licensed as, an insurance producer with a property and casualty line of authority as set forth by the Insurance Commissioner and §33-12-1, *et seq.* of this code; or (B) any person who is approved and licensed under the provisions of this article who pledges cash or approved securities with the commissioner as security for bail bonds written in connection with a judicial proceeding and receives or is promised money or other things of value for the pledge."

The bill mandates that a person who is acting as a principal, agent, clerk or representative of an agent may not engage in the bonding business unless licensed by the Insurance Commissioner on or after July 2, 2022. An applicant for licensure must provide the Insurance Commissioner with (1) a qualifying power-of-attorney from a licensed insurer or surety company; (2) pledge cash; or (3) pledge approved securities with the Commissioner as security for bail bonds. Furthermore, the applicant must pay a fee of \$200, comply with the provisions of W. Va. Code §33-12-37 regarding criminal history record checks, submit a list showing the name, age and residence of each person employed by the bondsman as such in the bonding business, and file an affidavit from each of the persons noted stating that the person will abide by the applicable law governing

bail bondsmen. The licensee must renew his or her license every 2 years and file an affidavit stating that he or she has abided by all applicable laws since his or her previous license was issued.

The Insurance Commissioner must promulgate a legislative rule to carry out the intent, administration and enforcement of the bill's provisions. The rule should specify the qualifications that a person must have when applying to be a bondsman and provide the terms and conditions upon which the bonding business may be conducted. The bill requires the Insurance Commissioner to consider both the financial responsibility and the moral qualities of the person applying. A person who has been convicted of any offense involving moral turpitude or who is not known to be a person of good moral character is not qualified to be licensed pursuant to the legislation.

***House Bill 2776 – Relating to the Air Ambulance Patient Protection Act (Effective July 9, 2021)***

This bill creates the Air Ambulance Patient Protection Act. The legislation pertains to air ambulance service providers or affiliated entities who solicit air ambulance membership subscriptions, accept membership applications or charge membership fees. Such membership subscriptions are deemed to be insurance pursuant to the bill if the air ambulance provider contracts, promises, guarantees or in any other way portends to pay, reimburse or indemnify the copayments, deductibles or other cost-sharing amounts of a patient relating to the air ambulance transport as determined or set by the patient's health insurance provider, health care provider or other third party, and includes any post-service payment of costs to a third party relating to the transport. An air ambulance membership agreement or subscription for air ambulance services may be considered secondary insurance coverage or a supplement to any insurance coverage and is subject to regulation by the Insurance Commissioner pursuant to the provisions of Chapter 33 of the West Virginia Code, which includes the licensure of any entity that solicits or sells air ambulance membership subscriptions as provided by the bill's provisions.

***House Bill 3045 – Relating to Firefighter Disability Claims (Effective July 4, 2021)***

This legislation removes the July 1, 2023, sunset provision that would have otherwise terminated the rebuttable presumption currently existing in state code regarding a workers' compensation benefits claim made by a professional firefighter who develops leukemia, lymphoma or multiple myeloma. Legislation passed in 2018 created the rebuttable presumption for professional firefighters. For the rebuttable presumption to apply, it must be shown that the person has been actively employed by a fire department as a professional firefighter for a minimum of 5 years in the state prior to the development of leukemia, lymphoma or multiple myeloma, has not used tobacco products for at least 10 years and is not over the age of 65 years.

***House Bill 3107 – Relating to First Responders Diagnosed with Post-Traumatic Stress Disorder (Effective April 10, 2021)***

This bill declares that Post-Traumatic Stress Disorder (PTSD) suffered by a first responder may be recognized as a compensable occupational disease when the first responder's employer has elected to provide optional coverage for PTSD and the PTSD has been diagnosed by a licensed psychiatrist. PTSD is defined as "a disorder that meets the diagnostic criteria for post-traumatic stress disorder specified by the American Psychiatric Association in the Diagnostic and Statistical Manual of Mental Disorders, fifth edition, or a later edition as adopted by rule of the Insurance Commissioner." A "first responder" is defined as "a law enforcement officer, firefighter, emergency medical technician, paramedic and emergency dispatcher." A diagnosis must be made by a licensed psychiatrist that the first responder suffers from the disorder which

occurred as the result of an event or events in the course and within the scope of the first responder's employment duties. While a PTSD diagnosis must be made by a licensed psychiatrist, mental health treatment consistent with such a diagnosis may be offered by a licensed mental health provider other than the diagnosing psychiatrist.

The receipt of workers' compensation benefits is contingent upon a claim being made within 3 years of the date that a licensed psychiatrist made the claimant aware of a PTSD diagnosis. Any employer that elects to offer coverage to first responders for PTSD must report PTSD claims data to the Insurance Commissioner directly or via the employer's private workers' compensation insurance carrier. The Insurance Commissioner must report annually on the claims data to the Joint Committee on Volunteer Fire Department and Emergency Medical Services beginning January 1, 2022.

The bill's provisions apply only to a PTSD diagnosis made on or after July 1, 2021, or the first day of the employer's next workers' compensation insurance policy or self-insurance program term, whichever is later. The provisions of the bill expire on July 1, 2026, unless extended by the Legislature.

Please e-mail any questions concerning this Insurance Bulletin to [OICBulletins@wv.gov](mailto:OICBulletins@wv.gov) or call (304) 558-0401.

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