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WEST VIRGINIA INFORMATIONAL LETTER

NO. 200

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 2018 Legislation

This Informational Letter summarizes significant insurance and workers' compensation legislation enacted during the 2018 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.wvlegislature.gov.

Senate Bill 46 – Relating to Pharmacy Benefit Managers (Effective June 8, 2018)

This legislation provides that a pharmacy, pharmacist and pharmacy technician have the right to consult with an individual covered under a health plan or contract regarding information related to lower drug cost alternatives. The bill further states that a pharmacy benefit manager may only charge or hold a pharmacy, a pharmacist or a pharmacy technician responsible for a fee related to the adjudication of a claim if: (1) the total amount of the fee is identified, reported, and specifically explained for each line item on the remittance advice of the adjudicated claim; or (2) the total amount of the fee is apparent at the point of sale and not adjusted between the point of sale and the issuance of the remittance advice.

Senate Bill 82 – Relating to Workers' Compensation Benefits for Professional Firefighters (Effective June 7, 2018)

This bill permits certain medical conditions (*i.e.*, leukemia, lymphoma, and multiple myeloma) that arose out of and in the course of employment as a professional firefighter to be included as a rebuttable presumption with respect to workers' compensation benefits. For the presumption to become effective, the person must have been actively employed by a fire department as a professional firefighter for a minimum of five years in the state of West Virginia prior to the development of the condition, have not used tobacco products for at least ten years, and be under the age of sixty-six. The amendments creating the rebuttable presumption for the subject conditions expire on July 1, 2023, unless extended by the Legislature.



Senate Bill 242 – Relating to Coverage for Lyme Disease Treatment (Effective June 6, 2018)

This legislation requires health insurance carriers to provide coverage for long-term antibiotic therapy for a patient with Lyme disease when determined to be medically necessary and ordered by a licensed physician after making a thorough evaluation of the patient's symptoms, diagnostic test results or response to treatment.

Senate Bill 299 – Relating to Coverage for Certain Medical Foods (Effective June 6, 2018)

This bill requires health insurance carriers to provide coverage, up to the age of 20, for certain medical foods for amino acid-based formulas if one of the following conditions is diagnosed by a medical provider: immunoglobulin E and nonimmunoglobulin e-medicated allergies to multiple food proteins; severe food protein-induced enterocolitis syndrome; eosinophilic disorders as evidenced by the results of a biopsy; or impaired absorption of nutrients caused by disorders affecting the absorptive surface, function, length and motility of the gastrointestinal tract (short bowel).

Senate Bill 401 – Relating to Coverage for Substance Use Disorder Treatment (Effective June 8, 2018)

This legislation requires health insurance carriers to provide coverage for the treatment of substance use disorders by January 1, 2019. The bill mandates that a health care facility treating a covered person must notify the insurer of both the admission and the initial treatment plan within forty-eight hours of admission or initiation of the treatment. If there is no in-network facility immediately available for a covered person, the health policy or plan must provide necessary exceptions to its network to ensure admission in a treatment facility within seventy-two hours. However, should an in-network facility become available during the course of the treatment plan, the insurer may transfer the covered person to the in-network facility. The bill requires that benefits for outpatient prescription drugs to treat substance use disorder must be provided when determined medically necessary by the covered person's physician or psychiatrist without the imposition of any prior authorization or other prospective utilization management requirements.

The bill further provides that if an insurer determines continued inpatient care in a facility is no longer medically necessary, the insurer must, within seventy-two hours, provide written notice to the covered person and the covered person's physician of its decision and the right to file for an expedited review of an adverse decision. Any internal appeal of such a decision must be decided by the insurer within seventy-two hours, and if the initial decision is upheld, the covered person has the right to file an expedited external review with an independent review organization that must make a determination within seventy-two hours. The bill mandates that substance use disorder benefits for the first five days of intensive outpatient or partial hospitalization services must be provided without any retrospective review of medical necessity, and medical necessity is to be determined by the covered person's physician. Benefits beginning on day six, and every six days thereafter, are subject to a concurrent review of the medical necessity of the services. The legislation requires that any medical necessity review use an evidence-based and peer-reviewed clinical review tool as developed by the Insurance Commissioner pursuant to authorized legislative rules.

Senate Bill 493 – Relating to the West Virginia Life and Health Insurance Guaranty Association (Effective June 4, 2018)

This bill amends several sections in Article 26A, Chapter 33 of the West Virginia Code and repeals Article 26B, Chapter 33 of the West Virginia Code. The article being repealed concerns the creation of the West Virginia Health Maintenance Organization Guaranty Association. With the amendments to Article 26A, the contractual obligations and assets of an insolvent health maintenance organization will be administered by the West Virginia Life and Health Insurance Guaranty Association. The bill also seeks to ensure that member insurers are assessed in a fair and reasonable manner, as well as providing that the Guaranty Association has sufficient assessment capacity regarding the insolvency of a member insurer. The legislation further updates Article 26A to maintain consistency with the National Association of Insurance Commissioners' Life and Health Insurance Guaranty Association Model Act.

Senate Bill 495 – Relating to Rate Filings for Commercial Insurance (Effective June 8, 2018)

This legislation exempts certain commercial insurance lines from rate filing requirements. The bill, however, permits the Insurance Commissioner to impose a one-year period rate filing requirement for any of the exempted lines should the Commissioner find that a reasonable degree of competition does not exist for that specific type of commercial insurance coverage. It is noted that rates must still be filed for commercial title insurance pursuant to W. Va. Code § 33-20-3(e).

House Bill 4175 – Relating to Advanced Practice Registered Nurses (Effective May 31, 2018)

This bill prevents health insurance carriers from requiring an advanced practice registered nurse to participate in a collaborative relationship in order to obtain payment for his or her services.

House Bill 4186 – Relating to Guaranteed Asset Protection Waivers (Effective June 8, 2018)

This legislation provides that guaranteed asset protection waivers are not insurance and are exempt from the insurance laws of this state. A guaranteed asset protection waiver is defined as “a contractual agreement that is part of or a separate addendum to the finance agreement in which a creditor agrees, upon payment of a separate charge, to cancel or waive all or part of amounts due to it on a borrower’s finance agreement if there is a total physical damage loss or unrecovered theft of a motor vehicle.” The bill sets forth the requirements for offering guaranteed asset protection waivers and mandates contractual liability insurance or other insurance coverage in connection with guaranteed asset protection waivers in certain circumstances. The legislation further requires certain disclosures and exempts certain requirements in commercial transactions pertaining to guaranteed asset protection waivers.

House Bill 4230 – Relating to Credit for Reinsurance (Effective January 1, 2019)

This bill is intended to ensure adequate regulation of insurers and reinsurers, and to provide sufficient protection for those to whom insurers and reinsurers owe obligations. The legislation amends current requirements concerning credit for reinsurance. The bill includes a mandate that upon the insolvency of a non-U.S. insurer or reinsurer that provides security to fund its U.S.

obligations in accordance with the law, the assets representing the security must be maintained in the United States. The legislation also provides that claims are to be filed with and valued by the state insurance commissioner in accordance with the insurance laws of the state in which a reinsurance trust is domiciled. The bill is based upon the Credit for Reinsurance Model Law as adopted by the National Association of Insurance Commissioners.

House Bill 4400 – Relating to the West Virginia Physicians Mutual Insurance Company (Effective June 5, 2018)

This legislation amends several sections within Article 20F, Chapter 33 of the West Virginia Code, and repeals a section within said article. The bill removes language that is no longer relevant to the operation of the West Virginia Physicians Mutual Insurance Company as a private mutual insurance company and amends current law where necessary to accommodate policies written to physicians outside the state.

House Bill 4628 – Relating to Surcharges and Assessments on Self-Insured Employers (Effective June 7, 2018)

This bill authorizes the redirection of amounts collected from certain surcharges and assessments on private insurers and self-insured employers pertaining to workers' compensation benefits for periods prior to January 1, 2019 for debt reduction of the "Old Fund." All West Virginia workers' compensation policies will be assessed the 9% deficit surcharge through December 31, 2018. On January 1, 2019, the deficit surcharge will no longer be in effect and policyholders will not be subject to the 9% deficit surcharge until further notice. The West Virginia regulatory premium surcharge will remain in effect on all workers' compensation policies at 5%. The regulatory surcharge applicability remains unchanged.

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


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