



STATE OF WEST VIRGINIA

Offices of the Insurance Commissioner

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WEST VIRGINIA INFORMATIONAL LETTER

NO. 181A

TO: ALL INSURANCE COMPANIES DOING BUSINESS IN WEST VIRGINIA, INSURANCE TRADE ASSOCIATIONS, INSURANCE MEDIA PUBLICATIONS AND OTHER INTERESTED PERSONS

RE: AMENDED SUMMARY OF 2012 LEGISLATION

This Informational Letter summarizes significant insurance and workers' compensation legislation enacted during the 2012 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 and the Secretary of State's website at www.wvsos.com.

BILLS

HOUSE BILL 4256 - CAPTIVE INSURANCE (EFFECTIVE JUNE 7, 2012)

Every state has enacted legislation based on the Model Risk Retention Act developed by the National Association of Insurance Commissioners (NAIC); in West Virginia, this model is codified as the Risk Retention Act of West Virginia (W. Va. Code §33-32-1 *et seq.*). Risk retention groups (RRGs) formed pursuant to this article are also generally subject to the state's captive insurer laws. *See* W. Va. Code §33-31-1 *et seq.* Beginning in 2011, NAIC financial accreditation standards were made applicable to captive RRGs (NAIC accreditation allows other accredited states to accept the results of our financial examinations). In order to maintain accreditation, the Insurance Commissioner needs *express* statutory authority to limit the amount of any "single subject of insurance" insured by an RRG, and the bill meets this standard by authorizing the Commissioner to limit any "single subject of insurance" to no more than 10% of the statutorily required surplus. This bill also adds a common regulatory requirement that RRGs update any OIC filing with new information.



HOUSE BILL 4260 - INSURANCE COVERAGE FOR AUTISM SPECTRUM DISORDERS (EFFECTIVE JUNE 8, 2012)

This bill amends a statute enacted last year that mandated coverage of autism spectrum disorders in most health insurance policies. The 2011 bill imposed benefit caps (\$30,000/year for the first 3 years of treatment and \$2,000/month thereafter until the beneficiary's 18th birthday) on all covered benefits; this is changed in the 2012 bill to make the caps applicable to applied behavior analysis services only.

HOUSE BILL 4438 - PROVIDER SPONSORED NETWORK ACT (EFFECTIVE JUNE 8, 2012)

This bill creates "provider sponsored networks" (PSNs) as a new form of licensed health insurer. PSNs must be "controlled by" federally qualified health centers in order to be recognized under federal law as a managed care organization (MCO) eligible to serve a state's Medicaid population pursuant to contract with the West Virginia Bureau of Medical Services (BMS). While PSNs are generally subject to the insurance laws governing HMOs, the bill includes certain PSN-specific requirements:

- PSNs are limited to serving Medicaid beneficiaries only.
- The Insurance Commissioner may permit lower solvency standards than those required of HMOs if such lower standards are actuarially justified.

The bill grants emergency rulemaking authority to the OIC and DHHR.

HOUSE BILL 4486 - DISCLOSURE OF INSURANCE INFORMATION (EFFECTIVE JUNE 8, 2012)

This bill requires that an insurer providing "personal lines" auto liability insurance coverage in West Virginia must provide certain disclosures within 30 days of receipt of a written request from a third-party claimant's attorney. The request must include certain information about the claim: date of the event; insured's name; copy of any accident report; and estimate of damages, including medical costs and lost wages. The insurer's response must include the name of each insured under the policies and the limits of any coverage, including umbrella and excess coverages. Any disclosure made pursuant to this statute does not constitute an admission and is not admissible at trial. The sole remedy for a violation by an insurer is a \$500 fine plus attorney's fees.

The citation to W. Va. Code §33-6-11(12) in §33-6F-2(e) added by the bill is an obvious drafting error and was probably intended to cite to W. Va. Code §33-11-4(12), which deems any violation of the Insurance Commissioner's privacy rule (W. Va. CSR §114-57) to be a violation of the Unfair Trade Practices Act, W. Va. Code §33-11-1 *et seq.* The privacy rule generally prohibits disclosure of "nonpublic financial information," including the type of coverage information subject to disclosure under the bill. The privacy rule, however, contains several exceptions, one of which permits the release of such information "if required by state law." *See* W. Va. CSR §114-57-1.1. Inasmuch as H.B. 4486 constitutes such a "state law," the required disclosures fall within this exception and thus would not be deemed UTPA violations. The incorrect citation, then, is of no consequence.

LEGISLATIVE RULES

64 CSR 89B - CREDENTIALING VERIFICATION ORGANIZATIONS ("CVO") (NEW RULE - EFFECTIVE JULY 1, 2012)

In 2010, the Legislature directed the OIC and DHHR to "select and contract with a [CVO] that will ... be the sole source for primary source verification for all credentialing entities." This new rule, proposed in conjunction with DHHR, establishes criteria for the selection of the statewide CVO. The selection process, which will proceed in accordance with state purchasing rules, calls for a 3-person committee to write and submit a Request for Proposal (RFP) to the Purchasing Division by January 1, 2013; the RFP must contain certain minimum requirements set forth in the rule, e.g. preference for in-state vendor. The rule also contains provisions for the maintenance of confidential information by the CVO.

91 CSR 13 - COMPULSORY MOTOR VEHICLE LIABILITY INSURANCE (AMENDED RULE - EFFECTIVE JULY 1, 2012)

This Department of Motor Vehicles (DMV) rule primarily deals with how vehicle owners demonstrate compliance with the state's compulsory insurance requirements. The amendments add provisions regarding the electronic verification of coverage under a new program being developed by the DMV. The amendments also modify certain insurance forms, permits insurance company use of electronic notifications of cancellations to the DMV, and update the administrative appeal provisions to reflect the establishment of the Office of Administrative Hearings.

114A CSR 1 - ALL-PAYER CLAIMS DATABASE - DATA SUBMISSION REQUIREMENTS (NEW RULE - EFFECTIVE JULY 1, 2012)

This is a joint rule proposed pursuant to 2011 legislation requiring the Insurance Commissioner, DHHR Secretary and the Chair of the Health Care Authority to develop an all-payer claims database. *See* W. Va. Code §33-4A-2. Under the statutory scheme, the Insurance Commissioner is primarily responsible for the collection of the data from insurers, and this new rule addresses only the data-collection aspects of the program (future rules will address other areas such as the maintenance of data by DHHR and their release by HCA). The rule provides that the technical aspects of data reporting will be addressed in detail in a "Submission Manual" to be developed by the OIC and then converted to a procedural rule. The rule addresses the membership of an advisory board as well as the designation of which insurers will be responsible for submitting data and how these submission duties may be enforced.

114A CSR 2 - ALL-PAYER CLAIMS DATABASE - PRIVACY AND SECURITY REQUIREMENTS (NEW RULE - EFFECTIVE JULY 1, 2012)

This is a joint rule proposed pursuant to 2011 legislation requiring the Insurance Commissioner, DHHR Secretary and the Chair of the Health Care Authority to develop an all-payer claims database program. *See* W. Va. Code §33-4A-2. Under the statutory scheme, the HCA Chair is primarily responsible for "dissemination of the data," and this new rule addresses the privacy and security aspects of the program.

114 CSR 2 - LICENSING AND CONDUCT OF INSURANCE PRODUCERS AND AGENCIES (AMENDED RULE - EFFECTIVE APRIL 20, 2012)

Variable annuities and variable life insurance are regulated both as insurance by the OIC and as securities by the SEC. A producer licensed by the OIC to sell such products requires a federal securities license as well, and the required federal licenses are dependent on passing (depending on the product) one of two tests, FINRA series 6 or 7, that test knowledge of federally-regulated securities. Instead of developing an additional test for producers, the OIC has made issuance of a state producer license to sell such variable products dependent on proof of passing such tests, but this requirement has never been formally recognized in rule; this amendment to the producer licensing rule simply memorializes this requirement.

114 CSR 20 - SURPLUS LINES INSURANCE (AMENDED RULE - EFFECTIVE APRIL 20, 2012)

This rule, which replaces an emergency rule promulgated last year, reflects changes made by S.B. 435 (2011) that implemented provisions of the federal Nonadmitted and Reinsurance Reform Act of 2010 ("NRRRA," added as an amendment to the federal Dodd-Frank Wall Street Reform & Consumer Protection Act). NRRRA streamlines regulation of surplus lines insurance covering risks in multiple states; limits regulation and taxation of non-admitted insurance to the insured's "home state"; implements nationwide eligibility requirements in conformance with the NAIC's model act; and preempts inconsistent state laws. In addition to making provision for West Virginia's possible participation in a national clearinghouse system, the rule establishes 4.55% as the single tax rate on all surplus lines premium when West Virginia is the insured's home state.

114 CSR 35 - INSURANCE HOLDING COMPANY SYSTEMS (AMENDED RULE - EFFECTIVE JULY 1, 2012)

These amendments to the 1994 version of this rule reflect the changes made in 2011 to the West Virginia Holding Company Systems Act, W. Va. Code §33-27-1 *et seq.*; both the bill and this rule are based on corresponding NAIC models. The changes, which are part of the larger comprehensive financial services regulatory reform effort, are the result of state and federal regulators' recent focus on the systemic risk presented by acquisitions and divestitures involving insurance companies. The amendments broaden the Commissioner's authority to investigate proposed acquisitions/divestitures, permit participation in "supervisory colleges" with other state, federal and international regulators and, beginning in July 2013, require the filing of an "enterprise risk report" with respect to an entire holding company system when any acquisitions or divestitures are being made.

114 CSR 42 - CONTINUING EDUCATION FOR INDIVIDUAL INSURANCE PRODUCERS (AMENDED RULE - EFFECTIVE APRIL 20, 2012)

This rule, which sets forth the continuing education requirements for producers, previously established the 2-year reporting period as beginning on July 1 of every even-numbered year. This rule amendment allows the Commissioner to establish different 2-year reporting periods, which in turn permits the period to be set to coincide with licensing periods that are tied to each producer's birth month. This change brings West Virginia into compliance with uniformity and reciprocity standards adopted by the NAIC that provide that "the biennial CE compliance period shall coincide with the producer's license continuation date."

114 CSR 93 - MINI-COBRA (NEW RULE - EFFECTIVE JULY 1, 2012)

Federal COBRA laws provide that large employers (more than 20 employees) must offer to continue certain former employees and their dependents on an employee group health plan for 18 months as long as the beneficiaries pay 102% of the premium. Because the federal law does not cover plans sponsored by employers with fewer than 21 employees, states such as West Virginia enacted "mini-COBRA" laws to cover this gap. *See* W. Va. Code §33-16-3(e). This new rule, which applies only to plans not covered by the federal COBRA law, describes how such coverage must be offered by the insurer, who is entitled to elect coverage, and how such elections must be made. It also provides that, unlike its federal counterpart, premiums for such continuation coverage are to be made by the beneficiary directly to the insurer rather than to the former employer.

114 CSR 94 - WORKERS' COMPENSATION INSURANCE FOR STATE AGENCIES (NEW RULE - EFFECTIVE APRIL 20, 2012)

BrickStreet, as the successor to the state-run workers' compensation system, was required to provide coverage to government agencies since 2006, but it was authorized to refuse to renew the policy of any such agency beginning in July 2011. *See* W. Va. Code §23-2C-15(b). In 2011, the Legislature made the Insurance Commissioner responsible for "managing the workers' compensation risks" of all "executive agencies" (*i.e.* those under a cabinet secretary) and certain other state agencies. *See* W. Va. Code §33-2-21a(b). This new rule (initially promulgated as an emergency rule) includes conditions for participation by and removal of "discretionary participants" (non-executive state agencies), provides for an annual "open enrollment" period during which non-executive agencies may enroll, and permits the Commissioner to require the execution of a participation agreement.

113 CSR 1 - PREMIUM SUBSIDY (AMENDED RULE - EFFECTIVE APRIL 20, 2012)

This rule changes the maximum income level for eligibility for the subsidies for the state high risk plan (the WV Health Insurance Plan or "AccessWV"). The previous rule set the maximum at 200% of the federal poverty level, and this amendment raises it to 400% to reflect the 2011 statutory change. The amendment also defines "average annual household income," a term used in the statute, to be the income reported on the applicant's last year's federal tax return plus any unreported income such as child support, etc. of any household member.

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


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