

INSURANCE

Pete Ricketts

Governor

Bruce R. Ramage

Director

A Message from the Director....



Bruce R. Ramage
Director of Insurance

Extension of Transitional Policies

On February 23, 2017, the Center for Consumer Information and Insurance Oversight (CCIO) issued guidance that allows the states the option to extend transitional policies for individual and small group health insurance plans to policy years beginning on or before October 1, 2018 provided that all policies end by December 31, 2018.

Pursuant to that option provided to the states by CCIO, the State of Nebraska will allow transitional policies, for both the individual and small group health insurance markets, to continue until December 31, 2018.

The Department would advise insurers to continue to monitor CCIO's website for any subsequent guidance that may be issued on this subject and to follow it accordingly.

As before, all other plans issued after January 1, 2014 must be ACA compliant.

A full copy of the Department's February 24, 2017 notice to companies writing individual and small group health insurance in Nebraska can be found on the Department's website at **doi.nebraska.gov/sites/doi.nebraska.gov/files/doc/ExtensionTransitionalPolicies.pdf**.

Questions concerning this extension may be directed to Martin Swanson, Administrator for Health Policy, at **martin.swanson@nebraska.gov** or 402-471-2201.

Inside:

LIFE & HEALTH

2

- Filing Guidance on Website
- Mental Health Parity

PRODUCER LICENSING

3

- Appointment Renewal Process
- Flood Insurance Tool

LEGAL DIVISION

4

- Case Summaries
- Liquidation of Penn Treaty and American Network
- Regulations Updates
- Producer/Agency Actions

CONSUMER AFFAIRS

7

- Payment of Overhead & Profit

PROPERTY & CASUALTY

8

- Form & Rate Filing Guidance

FRAUD DIVISION

8

- Annual Insurance Fraud Conference
- Investigating Officers Recognize Fraud
- Workers' Compensation Fraud—An Unsuspected Consequence

EXAMINATION DIVISION

10

- Staff Updates
- Pre-Need Exams Completed
- Financial Exams Completed

Department Calendar

Back

LIFE & HEALTH DIVISION

Rates and Forms Filing Guidance on Website

The division is developing and publishing form and rate filing guidelines that will assist industry filers.

The division is developing and publishing form and rate filing guidelines that will assist industry filers. These guidance documents will be published on the Department of Insurance (NDOI) website four times a year, and be organized by product type.

The initial document, "Individual Cancer Only Form and Rate Filing Requirements," can be found on the NDOI website under "Latest News" and also under "Insurers/Health/Filing Guidance". The goal of the division is to make the filing process in Nebraska as easy and transparent as possible.

The initial document, "Individual Cancer Only Form and Rate Filing Requirements," can be found on the Department's website.

In addition, the Interstate Insurance Product Regulation Commission (IIPRC) provides a central point of electronic filing for certain insurance products such as annuities, life, long-term care and disability insurance.

Please direct any questions to Deb Maher at 402-471-4551 or deb.maher@nebraska.gov.

Mental Health Parity

The division is reviewing insured large group plans, insured small group, individual market plans and student health plan forms for compliance with the regulations of the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008.

The Department's review will include filed policies, certificates, and schedules.

Insured large group plans, insured small group, individual market plans and student health plan forms are being reviewed for compliance with the regulations of the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008.

Objections will be made to any plan design that imposes a financial requirement or quantitative treatment limitation applicable to mental health or substance use disorder benefits in any classification that is more restrictive than the predominant financial requirement or quantitative treatment limitation of that type applied to substantially all medical/surgical benefits in the same classification.

Any questions regarding the compliance of these regulations may be directed to Karl Hug at karl.hug@nebraska.gov.

PRODUCER LICENSING DIVISION

2017 Appointment Renewal Process

All company appointment renewals in Nebraska must be filed electronically through the National Insurance Producer Registry (NIPR) at **www.nipr.com/renWelcome.htm**.

The appointment renewal date begins May 1, 2017 and ends July 31, 2017. All appointment renewals must be paid online through the NIPR by the end of day on July 31, 2017.

An announcement has been posted by NIPR that provides details and directives on key information, payments, transaction fees, and fees charged by other states for retaliatory purposes. Visit the NIPR website at www.nipr.com/renewalsNE.htm to view a copy of the announcement.

Questions regarding the renewal process may be directed to NIPR Customer Service at **customerservice@nipr.com** or by calling 1-855-674-6477. Questions can also be addressed by contacting the Department's Producer Licensing Division at 402-471-4913 or at **doi.licensing@nebraska.gov**.

Flood Insurance Tool

The Federal Emergency Management Agency (FEMA) has developed an excellent tool for agents and consumers regarding the National Flood Insurance Program (NFIP).

The tool, which contains information on flood history, flood risk, the NFIP, and an insurance agent locator can be found at **www.fema.gov/data-visualization-floods-data-visualization**.

Agents wishing to take advantage of the site's referral program and agent locator must first register.

Information on becoming a FloodSmart agent and registering can be found at **<https://agents.floodsmart.gov/Agents>**.

The appointment renewal date begins May 1, 2017 and ends July 31, 2017.

All appointment renewals must be paid online through the NIPR by the end of the day on July 31, 2017.

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LEGAL DIVISION

Case Summaries

***Henn v. American Family Mut. Ins. Co.*, 295 Neb. 859, ___ N.W.2d ___ (February 17, 2017)**

The United States District Court for the District of Nebraska asked the Nebraska Supreme Court to answer the following certified question: “May an insurer, in determining the ‘actual cash value’ of a covered loss, depreciate the cost of labor when the term ‘actual cash value’ and ‘depreciation’ are not defined in the policy and the policy does not explicitly state that labor costs will be depreciated?” The Court answered the question in the affirmative.

Rosemary Henn submitted a homeowner’s claim under her replacement cost policy with American Family. The claim was related to a variety of hail damage to her home, which American Family determined was covered by the policy. Under the policy, Henn was entitled to receive the actual cash value at the time of loss or receive the full replacement cost value upon completion of the repairs, and under either option the Henn would first receive an actual cash value payment. The policy did not define actual cash value. American Family sent Henn an actual cash value payment which subtracted depreciation costs, including depreciation for both material costs and labor cost.

Though Henn had one year to complete repairs and receive any difference between actual cash value payment and repair costs, she did not make such a claim. Henn filed an action against American Family in Douglas County district court and the case was removed to U.S. District Court by American Family. In filing for summary judgment, American Family argued the policy was unambiguous. However, Henn argued that the term actual cash value is ambiguous and it should not include depreciation of labor. The U.S. District Court found no controlling precedent for this state law question and certified the question to the Nebraska Supreme Court.

To determine the answer to the question, the Supreme Court analyzed whether or not actual cash value unambiguously allows for depreciation of labor in the insurance policy. In its analysis, the Court provides three different approaches to determining actual cash value: market value; when no market value available, then replacement costs; and if neither of the other two can be used, any evidence tending to formulate value may be used, the so called broad evidence rule. All three approaches utilize depreciation. The Court then distinguishes a previous case, *Olson v. Le Mars Mut. Ins. Co.*, where the Court determined from unique facts where allowance for depreciation would have led to underindemnification, but limited this holding to actual cash value policies when the actual cash value of the property, as repaired, does not exceed its actual cash value at time of loss.

The analysis of the approaches and case law led to the Court to determining it is a well accepted, unambiguous concept that actual cash value is the value of the property in its depreciated condition. It then moved to an analysis of whether or not depreciation includes labor.

First, the Court analyzed case law from other jurisdictions, which are split. Relying heavily on Oklahoma, who also follows the broad evidence rule, the Court determined that both materials and labor are relevant facts to consider when establishing the value of property before a loss. It states that the property is a product of both material and labor. The Court distinguishes this from other states where the definition of actual cash value is ambiguous.

Second, the Court mentions that its findings are consistent with a Nebraska Department of Insurance brochure applying depreciation to both materials and labor. This brochure, “Do I Have Hail Damage on My Roof?,” states that depreciation is taken from the whole when calculating actual cash value. The Court quotes the brochure to say “[i]f your roof was worth 75% of the value of a new roof, you will be entitled to 75% of the estimated cost to the repair or replace the damaged are.”

Concluding, the Court holds that the “term ‘actual cash value’ is unambiguous and that depreciation of labor does not lead to underindemnification,” and that the answer to the certified question is in the affirmative.

Liquidation of Penn Treaty and American Network Insurance Companies

On March 1, 2017, Pennsylvania Insurance Commissioner Teresa Miller announced the court approval of the liquidation of Penn Treaty and American Network Insurance Companies. Policyholders should be assured that claims will be paid by state guaranty funds pursuant to state law.

Important information regarding the liquidation can be found on the Department’s website at **doi.nebraska.gov/news/liquidation-penn-treaty-and-american-network-insurance-companies**.

Regulation Updates

Company Bulletin

CB-130 (AMENDED) - FILING GUIDANCE FOR INDIVIDUAL, SMALL EMPLOYER, AND STAND-ALONE DENTAL PLANS IN NEBRASKA

CB-130 (Amended) was issued to provide updated guidance for filers of individual, small group, and stand-alone dental plans, offered on and off the Federal Facilitated Marketplace, that wish to issue or renew plans in Plan Year 2018. The dates and corresponding actions outlined in the amended bulletin are subject to change if federal statute or regulation require alteration of the Department’s printed timelines.

A full copy of CB-130 (Amended) can be found on the Department’s website at **doi.nebraska.gov/sites/doi.nebraska.gov/files/doc/CB130Amended2017.pdf**.

Actions Taken Against Producers & Agencies

CAUSE NO.	ALLEGATION	DISPOSITION
A-2051 Samuel G. Schluckebier Seward, NE NPN - 8423178	Violated <u>Neb. Rev. Stat. §§ 44-1525(11)</u> . Failed to respond to Department.	Consent Order \$200 Fine 1/19/2017
A-2052 Mark S. Diamond Scottsdale, AZ NPN – 996343	Violated <u>Neb. Rev. Stat. §§ 44-4059(1)(g), 44-4059(1)(h) and 44-4065(1)</u> . Admitted or found to have committed fraud; used fraudulent, coercive, or dishonest practices; and failed to report administrative action taken in another jurisdiction.	Order \$2,500 Fine 2/23/2017
A-2053 Matthew B. Baske Buford, GA	Hearing requested for reconsideration of denial of application for resident producer license.	Order Denial upheld 1/9/2017
A-2054 Elidhet Soto Omaha, NE NPN - 18098323	Violated <u>Neb. Rev. Stat. §§ 44-4059(1)(a), 44-4059(1)(b), 44-4059(1)(g), 44-4059(1)(h), and 44-1525(11)</u> . Provided incurred or misleading information on license application; violated any insurance law; admitted or found to have committed an unfair trade practice; used fraudulent, coercive, or dishonest practices; failed to respond to the Department.	Consent Order \$200 Fine 2/28/2017
A-2055 Patrick Jason Mallory Omaha, NE NPN - 16170029	Violated <u>Neb. Rev. Stat. §§ 44-4059(1)(b), 44-4059(1)(h), 44-4059(1)(i) and 44-4065(1)</u> . Violated any insurance law; used fraudulent, coercive, or dishonest practices; had insurance producer license revoked in another state; failed to respond to the Department.	Order Producer license revoked 3/29/2017

Actions Taken Against Producers & Agencies (cont.)

CAUSE NO.	ALLEGATION	DISPOSITION
A-2057 Kevin Sant Sunrise, FL	Violated <u>Neb. Rev. Stat. §§ 44-4059(1)(b), 44-4059(1)(h), 44-1524 and 44-1525 (11)</u> . Violated any insurance law; used fraudulent, coercive, or dishonest practices; failed to respond to Department inquiry; committed an unfair insurance practice.	Order \$200 Fine 4/6/2017
NPN - 13932173		
A-2060 Jason M. Smith Chubbuck, ID	Hearing requested for reconsideration of denial of application for resident producer license.	Order Denial upheld 4/6/2017

CONSUMER AFFAIRS DIVISION

Payment of Overhead & Profit

The Nebraska Department of Insurance has not adopted a position on the payment of overhead and profit.

A number of insurance companies have contacted the Consumer Affairs Division recently to question the Department's position with regard to payment of Overhead & Profit (O & P).

The questions were prompted by the circulation of document, by a roofing contractor, which is purported to be a copy of a January 5, 2013 email from this division. This document, which cannot be authenticated, states that insurance companies pay O & P if more than one or two trades are involved in repair or replacement.

The decision as to whether payment of O & P is appropriate is one to be made by the insurance carrier based on the requirements of the insurance contract and the circumstances of the claim.

The Nebraska Department of Insurance has not adopted a position on the payment of overhead and profit. No rule has been promulgated, nor has a Bulletin been issued to address the issue.

The decision as to whether payment of O & P is appropriate is one to be made by the insurance carrier based on the requirements of the insurance contract and the circumstances of the claim.

PROPERTY & CASUALTY DIVISION

Rates & Forms Filing Guidance

The goal of the division is to make the filing process in Nebraska as easy and transparent as possible.

In an attempt to assist industry filers, form and rate filing guidelines are being developed by product type and will be posted on the Department's website four times a year.

The initial document, "Commercial Multi-Peril Form and Rate Filing Requirements" can be found at under "Latest News" or at **doi.nebraska.gov/news/commercial-multi-peril-form-and-rate-filing-requirements**.

The goal of the division is to make the filing process in Nebraska as easy and transparent as possible.

A guideline to assist filers for commercial multi-peril form and rate filings has been developed and posted to the Department's website.

FRAUD DIVISION

Annual Insurance Fraud Conference

The Insurance Fraud Prevention Division (IFPD) will hold its 2017 Annual Insurance Fraud Conference on August 2, 2017, at the Strategic Air and Space Museum. A program is being developed that will hopefully prove beneficial to participants in their fraud fighting efforts. We are looking forward to having Joseph Wehrle, Jr., President and CEO of the National Insurance Crime Bureau, as a conference attendee.

The conference registration brochure is tentatively scheduled to be emailed in late May. If you would like to receive a brochure, email your request to **DOI.FraudPrevention@nebraska.gov** and use the subject "Conference Brochure Request." Previous conference attendees will automatically receive the registration brochure via email.

The IFPD will also sponsor its Annual Conference for Law Enforcement on August 3 at the same location. This continuing education program has greatly assisted the IFPD with educating law enforcement personnel about the problems associated with insurance fraud. Uniformed law enforcement officers are often on the "front line" in preventing insurance fraud.

Insurance Fraud Recognized by Investigating Officers

Recently, two Omaha police officers responded to a parking complaint involving a damaged vehicle. During that time, a witness came forward advising the officers of what he had observed at the time of the accident involving damage to the vehicle. The accident was investigated by the Omaha Police Department.

The two responding officers reviewed the accident report and noted the information in the report did not match the witness description. Both officers realized this may be a violation of Nebraska's Insurance Fraud Act and contacted the Insurance Fraud Prevention Division (IFPD) with the information they had gathered.

An investigation conducted by the IFPD found that insurance had been purchased for the vehicle after the accident occurred resulting in a \$9,944.08 loss to the insurance company. The IFPD forwarded their investigative report to the Douglas County Attorney's Office. On February 27, 2017, a criminal charge of insurance fraud was filed and an arrest warrant was issued. On April 4, 2017 this case was bound over to Douglas County District Court.

The cost of insurance fraud is astronomical and is passed directly to consumers through increased premiums. The training and investigative skills displayed by the officers has a positive impact in the fight against insurance fraud.

Workers' Compensation Fraud - An Unsuspected Consequence

An Omaha physician received a surprise in early 2016 when he began receiving 1099 forms from insurance companies that write workers' compensation policies in Nebraska. A complaint filed by the physician led to a joint investigation being conducted by the Insurance Fraud Prevention Division and the Omaha Police Department.

The physician discovered a discrepancy with the income he received from insurance companies versus what was reflected on 1099 forms. The physician contacted several insurance companies and discovered he had been compensated for providing impairment ratings for patients he had not reviewed their medical histories. The physician reviewed insurance company checks, issued payable to him that he had not received, and found his signature had been forged. He also discovered fraudulent impairment ratings were submitted to insurance companies containing his forged signature.

The Omaha Police Department conducted an investigation pursuant to the forged checks. An employee working for the physician was soon identified as the suspect and arrested. The employee found an opportunity to provide fraudulent impairment ratings to insurance companies that resulted in payments being issued to the physician. Several thousand dollars of insurance company payments were diverted by the physician's employee and deposited into their personal account.

This fraudulent activity resulted in bogus impairment ratings submitted pursuant to workers' compensation claimants. As one would expect, there were both overpayments and underpayments in the handling of the workers' compensation claims. There were also expenses related to investigating the individual cases affected by the employee's submittal of the fraudulent impairment ratings. The Insurance Fraud Prevention Division's investigation is ongoing. At present, the IFPD has sent five cases to the county attorney, representing thousands of dollars in losses, for consideration in filing insurance fraud charges.

EXAMINATION DIVISION

Staff Updates

Andrea Johnson has accepted the position of **Assistant Chief Examiner**. Andrea started her employment with the Department in the Financial Examination Division after graduating from Doane College in September, 2008, where she majored in math with a minor in accounting. Prior to being promoted to Assistant Chief Examiner, Andrea served for one year as an Analyst Supervisor and as a Financial Examiner for seven years. Andrea's primary role will be supervising the financial field examiners and the conduct of financial examinations. You may contact Andrea at 402-471-4641 or at andrea.johnson@nebraska.gov.

Elizabeth Hofker has accepted the position of **International Insurance Analyst**. Elizabeth began working with the Department in the Financial Examination Division after graduating from the University of Nebraska–Lincoln in June, 2011, with a major in accounting. Prior to accepting the International Insurance Analyst position, Elizabeth was employed on the Investment Accounting team for Allianz Life Insurance Company of North America in Minneapolis, MN, and most recently served as an Insurance Analyst with the Department. Elizabeth's primary role will be the coordination of the Supervisory Colleges, coordination of the ORSA report review, and monitoring the international insurance regulatory environment. You may contact Liz at 402-471-3176 or at elizabeth.hofker@nebraska.gov.

Pre-Need Examinations Completed During First Quarter, 2017

Roeder Mortuary
Sandoz' Chapel of the Pines

Financial Examinations Completed During First Quarter, 2017

Acceptance Insurance Company
Globe Life Insurance Company
Liberty National Insurance Company
United American Insurance Company

Financial examination reports become public documents once they have been placed on official file by the Department. The most current report of financial examination can now be found on the Department's website at www.doi.nebraska.gov. Copies can be obtained from the Department at a cost of \$.50 per page.



Department Calendar

- April 28: Department Closed - Arbor Day
- May 29: Department Closed - Memorial Day
- July 4: Department Closed - Independence Day
- August 2: Annual Fraud Conference (registration required)
Strategic Air and Space Museum