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REGULATORY BULLETIN 2018-02¹

To: Insurance Producers, Surplus Lines Brokers, Insurance Industry Representatives, Insurance Trade Associations, Life & Disability Insurers, Property & Casualty Insurers, and Other Interested Parties.

From: Keith A. Schraad 
Interim Director of Insurance

Date: July 12, 2018

Re: 2018 Arizona Insurance Laws

This Regulatory Bulletin summarizes the major, newly enacted legislation affecting the Department, its licensees and insurance consumers. This summary is not meant as an exhaustive list or a detailed analysis of all insurance-related bills. It generally describes the substantive content but does not capture all details or necessarily cover all bills that may be of interest to a particular reader. The Department may follow this bulletin with more detailed bulletins related to the implementation of specific legislation. All interested persons are encouraged to obtain copies of the enacted bills by contacting the Arizona Secretary of State's office at (602) 542-4086, or from the Arizona legislative web site at <http://www.azleg.gov>. Please, direct any questions regarding this bulletin to Stephen Briggs, Legislative Liaison at (602) 364-3761.

Arizona's Fifty-third Legislature, Second Regular Session and First Special Session, adjourned *sine die* on May 4, 2018. Except as otherwise noted, all insurance-related legislation has a general effective date of **August 3, 2018**.

¹ This Substantive Policy Statement is advisory only. A Substantive Policy Statement does not include internal procedural documents that only affect the internal procedures of the Agency, and does not impose additional requirements or penalties on regulated parties or include confidential information or rules made in accordance with the Arizona Administrative Procedure Act. If you believe that this Substantive Policy Statement does impose additional requirements or penalties on regulated parties you may petition the agency under Arizona Revised Statutes Section 41-1033 for a review of the Statement.

INSURANCE-RELATED BILLS ENACTED IN 2018

Laws 2018, First Special Session, Chapter 1 (HB 2001): Controlled Substances; Regulation; Appropriation

Amends numerous statutes in ARS Titles 9, 11, 13, 15, 20, 32 and 36 to:

Title 20 (ARS §§ 20-3401 et seq.):

- Clarify when a health care services plan or utilization review agent may impose a prior authorization requirement;
- Require instructions and systems for submitting prior authorization requests;
- Require health care service plans and utilization review agents to accept and respond to prior authorization requests electronically starting January 1, 2020;
- Establish timeframes within which prior authorization requests decisions must be made and communicated;
- Specify minimum effective term for prior approval authorization involving prescription drugs other than Schedule I or II controlled substances for treating a chronic pain condition, and allows substitution of a therapeutically equivalent FDA-approved comparable drug.

Other ARS Titles: Restrict the medical professionals who may dispense opioids and the conditions under which they may be dispensed; limit the supply of opioids that medical professionals may prescribe; beginning January 1, 2019, require opioid prescriptions to be issued electronically in most circumstances; and beginning January 1, 2019, change licensure requirements for pain management clinics.

Laws 2018, Chapter 5 (HB 2025): Workers' Compensation; Rate Deviations

Amends ARS § 20-359 to allow a workers' compensation insurer to apply both deviations and schedule ratings except as to a single risk group within an employer.

Laws 2018, Chapter 174 (HB2042): Insurance Coverage; Telemedicine; Urology

Amends ARS §§ 20-841.09, 20-1057.13, 20-1376.05, and 20-1406.05. Requires insurance policies that cover in-person services for substance abuse to cover telemedicine for substance abuse starting January 1, 2019; requires insurance policies that cover in-person services for pain management to cover telemedicine for pain management starting January 1, 2019; and, requires insurance policies that cover in-person services for urology to cover telemedicine for urology beginning January 1, 2020.

Laws 2018, Chapter 175 (HB2047): Workers' Compensation; Employee Definition
EFFECTIVE FOR POLICIES ISSUED OR RENEWED ON OR AFTER JULY 1, 2019

Amends ARS § 23-901, adding certain working members of limited liability companies and certain working shareholders of a corporation to the definition of "employee" for the purpose of defining individuals who may be optionally covered under a business workers' compensation insurance policy.

Laws 2018, Chapter 195 (HB 2181): Insurance Adjusters; Application of Laws

Amends ARS § 20-321.02, to require an insurance adjuster to keep and make accessible to the Department usual and customary transaction records for at least three years.

Laws 2018, Chapter 31 (HB 2082): Insurance Producers; Convictions; Reporting

Amends ARS § 20-301, to require an insurance producer to report to the Department a criminal conviction within 30 days after it has been filed, and specifies documents that must be included with the report

Laws 2018, Chapter 196 (HB 2083): Insurance Contracts

Amends ARS § 20-1119, to allow an insurer that offers a policy in Arizona translated into a language other than English to include, with effect, the following disclaimer if in contrasting color and bold-faced type: "THE ENGLISH LANGUAGE VERSION OF THIS POLICY CONTROLS IN THE EVENT OF A CONFLICT OR VARYING INTERPRETATION OF THE COVERAGE PROVIDED UNDER THIS POLICY."

Laws 2018, Chapter 10 (HB 2098): Insurance; Inducements

Amends ARS § 20-452, to increase the value of prizes, goods, or tangible property that an insurer may offer in connection with an insurance transaction from \$25 to \$100.

Laws 2018, Chapter 133 (HB 2107): Pharmacy Benefit Managers; Pricing

Creates ARS §§ 44-1751 and 44-1752, to prohibit a pharmacy or a contracted pharmacy benefits manager from:

- Preventing a pharmacy or pharmacist from, or penalizing a pharmacy or pharmacist for, providing an insured individual information about the insured's cost share or about the clinical efficacy of an available alternative drug.
- Requiring a pharmacy or pharmacist to sell a more affordable alternative if one is available.
- Requiring a pharmacy or pharmacist to charge or collect from an insured a copayment that is greater than the total charges submitted by the network pharmacy.

Laws 2018, Chapter 32 (HB 2123): Insurance Department; Director; Residency

Amends ARS § 20-141, eliminating the requirement for the director of insurance to have been an Arizona resident for three years prior to appointment.

Laws 2018, Chapter 64 (HB 2124): Life & Disability Insurance; Insolvencies
EFFECTIVE FROM AND AFTER DECEMBER 31, 2018

Amends ARS §§ 20-629, 20-681, 20-682, 20-684, 20-685, 20-686, 20-688, 20-689, 20-690, 20-692, 20-1053, 20-1066, 20-1068, and 20-1074, and repeals ARS §§ 20-1056 and 20-1069.

- Changes the priority of claim distributions for health providers contracted with health care services organizations.
- Includes health care service organizations (HCSO's, a.k.a. HMO's) as member insurers of the Arizona Life and Disability Insurance Guaranty Fund (ALDIGF); extends coverage to beneficiaries, assignees, or payees under HCSO policies or contracts; authorizes the ALDIGF to exercise the powers of an HCSO to perform its contractual obligations; makes HCSO's subject to ALDIGF assessments and eligible for corresponding premium tax offsets.
- Excludes coverage of a person who acquired rights to receive payments through a structured settlement factoring transaction as defined in 26 USC 5891(c)(3)(A).
- Extends ALDIGF coverage to the portion of long-term care or health insurance benefits tied to certain indexed-based interest rates or crediting rates.
- Specifies that benefits provided by a long-term care rider are considered the same type of benefits as the base life insurance policy or annuity contract to which it relates.
- Increases the ALDIGF board membership from 9 to 11 members.
- Allows the ALDIGF to reissue an impaired insurer's policies or contracts, and to file policy rate or premium increases.
- Changes the calculation of "Class B assessments" related to long-term care insurance to require half of the assessment be allocated to the accident and disability member insurers and half be allocated to life and annuity member insurers. The ALDIGF levies a "Class B assessment" to providing funds that allow fulfillment of impaired insurer contractual obligations to the extent the law allows.
- Eliminates the requirement of an HCSO to file a plan for the risk of insolvency.
- Eliminates the need for an HCSO to maintain a special reserve in addition to maintaining the deposit required by ARS § 20-1055.

Laws 2018, Chapter 238 (HB 2322): Health Insurers; Provider Credentialing

Amends ARS §§ 20-456, 20-827, 20-829; adds 20-3401 through 20-3409.

- Changes the requirements for the types of professionals that must be represented in the directors for each service corporation.
- Requires health insurers to establish an electronic process for the submission of a credentialing application and for insurers to adopt a standard application by January 1, 2020.
- Specifies timeframes and content of notifications insurers must issue to acknowledge receipt of credentialing applications, to identify application deficiencies, and to report application approval or denial;

- Specifies timeframe within which insurers must load information about credentialed providers in their billing systems, and to correct errors in the provider or network plan directory.
- Requires that an insurer must send the provider a proposed ready-to-execute contract upon receiving a complete credentialing application.
- Specifies an insurer may delegate credentialing to a licensed health care facility or credentialing alliance that meet the credentialing requirements applicable to the insurer.
- Prohibits a health insurer from denying a claim for covered services by a participating provider if the services are provided after the date of approval of the credentialing application.
- Requires health insurers provide specified credentialing application information on their websites.
- Allows a health insurer or its designee to re-credential a participating provider at least once every 36 months or more frequently under specified conditions.
- Requires a participating provider remains credentialed and loaded unless the health insurer discovers information that would result in the provider ceasing to meet the health insurer's guidelines for participation; and, requires a health insurer notify a provider in writing of reasons underlying a change to the provider's status.
- Requires the director conduct an examination of a health insurer concerning which the director receives multiple complaints of credentialing violations.

Laws 2018, Chapter 272 (HB 1064): Health Insurers; Claim Dispute Resolution

Amends ARS §§ 20-3111 through 20-3115, and adds 20-3119, to clarify and modify aspects of the surprise out-of-network billing dispute resolution process, including:

- The scope of health care services that are subject to dispute resolution;
- Content of disclosure notices that a provider must furnish enrollees;
- The types of benefit plans excluded from dispute resolution;
- Conditions under which enrollees are not entitled to dispute resolution;
- Requirements and timeframes that apply to the Department, enrollees, providers, insurers and arbitrators in the dispute resolution process;
- A requirement that information furnished in connection with an arbitration is confidential; and,
- Specification that an enrollee who disagrees with an arbitration decision may file a civil action in superior court.

Laws 2018, Chapter 273 (SB 1101): Captive Insurers; Licensing

Amends ARS §§ 20-1098.01 and 20-1098.17 to

- *Allow the director to approve an agency captive insurer to directly insure employer group term life risks, employer group disability income risks, or employer health plan deductible reimbursement risks under specified conditions; and, allow the director to impose additional requirements on captive insurers covering those risks;*
- *Require policies and certificates of insurance contain specified conspicuously presented language that discloses the fact that insureds and claimants are not eligible for Guaranty Fund protection if the captive insurer becomes insolvent.*
- *Require insurance producers and managing general agents who own an agency captive insuring life or disability income insurance to be licensed in good standing in all jurisdictions where licensed;*
- *Require an agency captive insurer to disclose to policyholders limitations, rights and obligations of the captive insurer arising from its affiliation with an insurance producer or managing general agent, and to file policy forms under certain conditions.*
- *Require an agency captive insurer that insures life or disability insurance risks to pay premium tax to the extent the calculated tax exceed the captive insurer license fee or captive insurer renewal fee, whichever was paid during the year.*

Laws 2018, Chapter 158 (SB 1112): Insurance; Surplus Lines; Exemption

Amends ARS § 20-420 to clarify that federally recognized Indian tribes and tribal members are exempt from state surplus lines insurance laws if the subjects of insurance are located in, reside in or are to be performed wholly within the boundaries of a federally recognized Indian reservation.

Laws 2018, Chapter 164 (SB 1217): Small Employers; Continuation Coverage

EFFECTIVE JANUARY 1, 2019

Replaces ARS § 20-2330 with a new version.

- *Repeal of the previous statute eliminates the ability of an accountable health plan to contract with the Arizona Health Care Cost Containment System (AHCCCS) administration to provide certain health care services.*

The new version:

- *Requires a small group health benefit plan issued or renewed after December 31, 2018, to allow an enrollee and any qualified dependents to continue coverage under the plan for up to 18 months -- more under certain conditions, less under certain conditions -- by paying the full cost of the coverage, including the enrollee's contribution, the employer's contribution and an administrative fee for the employer of up to 5% of the premium.*
- *Requires a small employer notify the enrollee, or in some cases, a dependent, when the enrollee's or dependent's coverage under the small employer group insurance policy ends under specified "qualifying event" conditions. The notification must include information*

about the enrollee's or dependent's rights to continue coverage, including details about the full cost of coverage the enrollee or dependent would need to pay, and steps the enrollee or dependent would need to complete with associated timeframes.

- Requires the Department to post a sample coverage continuation notice form on its website, which a small employer can use to satisfy the employee/dependent notification requirement.
- Requires the employer notify enrollees or dependents at least 30 days in advance of changes to the cost of coverage arising from policy renewal.
- Specifies conditions under which the continuation of coverage requirements do not apply (enrollee or dependent is eligible for coverage under the COBRA or under Medicare).

Laws 2018, Chapter 150 (SB 1381): Service Contracts

Amends ARS § 20-1095 through 20-1095.04 and 20-1095.07; replaces 20-1095.06 with a new version that:

- Eliminates the need for a service contract administrator or insurer to file and receive the director's approval for a motor vehicle service contract program.
- Changes definitions for mechanical reimbursement insurance, service company (or obligor), service contract, and service contract administrator;
- Specifies that service companies do not need a separate Department-issued license to market, sell or offer service contracts;
- Requires a service company before selling a service contract to provide the consumer a sample contract showing the contract terms and conditions;
- Requires a service company to provide a receipt and a copy of the executed contract to a contract purchaser;
- Specifies a service contract is not insurance and not subject to insurance laws except as specified in the service company article (ARS Title 20, Ch. 4, Art. 11).
- Allows a service company to maintain a contractual liability insurance policy, and ceases to allow the service company to file with the director cash or cash equivalents, to provide security in favor of service contract holders.
- Requires a service company to file a contract form with the director at least 30 days before the intended implementation date; requires the service company to wait for director's approval or for the form to have been filed for at least 30 days before using the form; establishes standards and specifies certain required and prohibited content for contracts, and prohibits the director from approving a service contract under listed conditions.