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REGULATORY BULLETIN 2005-4[1]

To: Insurance Producers, Surplus Lines Brokers, Insurance Industry Representatives, Insurance Trade Associations, Life & Disability Insurers, Property & Casualty Insurers, and other interested parties.

From: Christina Urias
Director of Insurance

Date: June 6, 2005

Re: **2005 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 other, more detailed bulletins related to implementation of the 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.state.az.us. Please direct any questions regarding this bulletin to Karlene Wenz, Executive Assistant for Policy Affairs, 602/912-8456.

The 2005 Arizona Forty-seventh Legislature, First Regular Session, adjourned *sine die* on May 13, 2005. Except as otherwise noted below, all insurance related legislation has a general effective date of August 12, 2005.

[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 2005:

HB 2138, timely payment of insurance claims (Ch. 68)
The bill amends the existing timely payment of claims statute.

Amends A.R.S. § 20-3101:

- Defines "adjudicate" as "an insurer's decision to deny or pay a claim, in whole or in part, including the decision as to how much to pay."
- Clarifies that a claim is not a "clean claim" if a health care insurer cannot process it without obtaining coordination of benefits information.
- Defines "enrollee," as "an individual who is enrolled under a health care insurer's policy, contract or evidence of coverage."
- Defines "grievance" as "any written complaint that is subject to resolution through the insurer's system that is prescribed in section 20-3102, subsection F and submitted by a health care provider and received by a health care insurer."
- States that a grievance does not include a complaint "by a noncontracted provider regarding an insurer's decision to deny the noncontracted provider admission to the insurer's network," nor is a grievance a complaint that is the subject of a health care appeal.

Amends A.R.S. § 20-3102:

- Clarifies that the timely payment of claims statute applies to payment of both contracted and noncontracted providers.
- Adds enrollees to those from whom a health care insurer has 30 days from receiving an unclean claim to request additional information.
- Requires a health care insurer to record the date it receives additional information it requested about an unclean claim.
- Clarifies that a health care insurer that requests additional information about an unclean claim must adjudicate and pay any approved portion of the claim within 30 days of receiving all the additional information, unless the health care insurer and provider have specified a different time period by contract.
- Clarifies that an insurer or provider shall not adjust or request adjustment of a payment or denial of a claim more than one year after the insurer has paid or denied the claim.
- Requires that if a health care insurer and health care provider agree through contract on a length of time to adjust or request the adjustment of the payment or denial of a claim, the length of time must be the same for the health care insurer and the health care provider.
- Provides that neither an insurer nor a provider owes interest on an overpayment or underpayment as long as the payment is made or recouped within 30 days of the date of the adjustment.
- Requires that for ninety days following a change of an insurer's location to which providers must submit claims or grievances, the insurer must consider a claim or grievance delivered to the original location to be properly received and must provide prompt written notification to the provider of the change of address.
- Provides that the amendments are effective from and after December 31, 2005. The Department interprets this to mean that:
  - The timely pay provisions of A.R.S. §§ 20-3102(A) – (E) apply to claims for dates of service beginning January 1, 2006;

- The grievance provisions of A.R.S. §§ 20-3102(F) and (G) apply to grievances that insurers receive beginning January 1, 2006;
- The payment adjustment provisions of A.R.S. §§ 20-3102(I) apply to payments made or denials issued beginning January 1, 2006; and
- The change of address provisions of A.R.S. §§ 20-3102(K) apply to claims or grievances that that insurers receive beginning January 1, 2006.

HB 2189, insurance producer license exam (Ch. 126)

The legislation modifies the insurance producer license application and examination requirements.

Amends A.R.S. § 20-284:

- Requires a resident individual applying for an insurance producer license to pass the exam within the 120 days prior to the date the DOI Director received the individual's license application.
- Extends the above 120-day period for individuals called into active military service after passing the exam, by the total number of days the individual was in active military service, not to exceed a total of one year. Requires submission of documentation from the armed forces showing the period of time the individual was in active military service.
- Prohibits the Director from allowing an individual to take the exam for any line of license authority more than four times in a 12-month period. Provides that anyone who fails an exam for a specific line of authority four times may not take that exam again for one year. Stipulates that an individual who fails an exam covering more than one line of authority is considered to have failed the exam for each individual line of authority.

Amends A.R.S. § 20-289.01:

- Adds applicants for insurance producer licenses to those who may be placed on inactive status during active military service.

HB 2190, surplus lines brokers license (Ch. 270)

This legislation further clarifies existing law regarding licensure requirements for surplus lines brokers and the procurement of surplus lines coverage, and also reduces the fee for a surplus lines broker's license.

Amends A.R.S. § 20-167:

- Decreases the maximum surplus lines broker's quadrennial license fee from $1,800 to $1,000.

Amends A.R.S. § 20-407:

- Clarifies that resident and nonresident insurance producers and managing general agents licensed in Arizona for property or casualty insurance, may obtain surplus lines insurance through a surplus lines broker, if the producer or managing general agent uses an Arizona-licensed surplus lines broker for the transaction of the insurance with the surplus lines insurer.
- Clarifies that the above insurance producer or managing general agent may pay a fee or share a commission with the surplus lines broker who procures the surplus lines coverage.

- Prohibits surplus lines brokers licensed in Arizona from receiving a fee, commission or any other compensation from anyone not licensed in Arizona as an insurance producer, a managing general agent, or a surplus lines broker.

Amends A.R.S. § 20-411:

- Requires at least one person in each Arizona location where surplus lines insurance is transacted, to be licensed in Arizona as either an insurance producer authorized for property or casualty insurance, or as a managing general agent for property and casualty insurance, and to be licensed as a surplus lines broker (instead of the current requirement that the agent or producer have passed the surplus lines exam).
- Alters the license fee for surplus lines authority by stipulating that licensees adding surplus lines authority to an existing insurance license will be charged one-half of the surplus lines fee if less than two years remain in the term of the existing insurance license.
- Via session law, changes the quadrennial license fee from $1,200 to $1,000, and provides an effective date of July 1, 2005 for the license fee changes.

HB 2192, fire insurance, exclusion of terrorism coverage (Ch. 218)

This bill amends the Arizona standard fire policy.

Amends A.R.S. § 20-1503:

- Permits insurers to exclude coverage for loss by fire or other perils if terrorism is the direct or indirect cause of the loss.

For additional information on exclusions related to acts of terrorism, including the NAIC definition of "terrorism" accepted by the Department, please see Regulatory Bulletin 2004-3.

HB 2194, public agency pools, (Ch. 219)

The legislation aligns the examination schedule of public agency pools with the schedule for other entities examined by the Department.

Amends A.R.S. § 11-952.01:

- Requires DOI to examine each public agency pool once every five years (previously every three years).
- Permits DOI's examination of a public agency pool more frequently than every five years, if the Director has reason to believe the pool is insolvent.

HB 2600, captive insurers (Ch. 163)

This bill makes a number of changes to the code governing captive insurers in Arizona.

Amends A.R.S. § 20-1098:

- Eliminates the requirement that individuals or business entities comprising an industry group each have at least 25 full time equivalent employees.

Amends A.R.S. § 20-1098.01:

- Brings consistency and greater clarity to the language governing the types of insurance that captives may write directly or only as a reinsurer.
- Removes the requirement that captives establish business relationships with professionals that do business at a location in Arizona, and instead requires that captives establish business relationships with professionals that are acceptable to the Department of Insurance.

Amends A.R.S. § 20-1098.02:

- Deletes the requirement that captives have or use a name that contains the word “captive.”

Amends A.R.S. § 20-1098.03:

- Permits captives, with the approval of the Department, to pledge any additionally required capital or surplus over and above the minimum statutory amount to a party other than the Department.

Amends A.R.S. § 20-1098.04:

- Permits group captive insurers organized as reciprocal insurers to be formed by three or more persons, provided the captive reciprocal insurer subscribers’ advisory committee includes one person that is a resident of Arizona.

Amends A.R.S. § 20-1098.06:

- Eliminates the requirement that a sponsor of a protected cell captive insurer be a foreign or domestic insurer, a reinsurer authorized or approved under the laws of any state, or a captive insurer formed or licensed under Article 14.

Amends A.R.S. § 20-1098.07:

- Clarifies that the annually required (unless exempted by the Director) actuarial opinion as to the adequacy of reserves is a separate requirement from that of the audited financial statement.
- Requires certification of the actuarial opinion by a member in good standing of either the Casualty Actuarial Society, the American Academy of Actuaries, or an individual who has demonstrated competence in loss reserve evaluations to the Director.
- Requires the audit of the financial statement to include a reconciliation of the differences, if any, between the audited financial report and the statement or form filed with the Department.

Amends A.R.S. § 20-1098.11:

- Permits the Director to allow a captive to cede or take credit for reserves when using a reinsurer that is not in compliance with sections 20-261 and 20-261.01 through 20-261.04.
- Permits a pure captive insurer to cede and assume risks from a pooling arrangement with the approval of the Director.

Amends A.R.S. § 20-1098.17:

- Clarifies that the certificate of authority fees paid by captive insurers are payment in full and in lieu of all other taxes and fees (notably premium and income taxes) except for the tax on real and tangible personal property in Arizona, the state transaction privilege tax and use tax, and the transaction privilege and use tax imposed by a county, city or town.

HB 2601, life care facilities; assets (Ch. 22)

HB 2601 alters the ratio of assets to liabilities required of life care facilities in Arizona. Per A.R.S. § 20-1801(5), life care facilities are "places in which a provider undertakes to provide a resident with nursing services, medical services, or health-related services, in addition to board and lodging, for a term in excess of one year or for life pursuant to a life care contract."

Amends A.R.S. § 20-1808(A):

- Eliminates the requirement that life care facilities meet specific ratios of assets to liabilities in accordance with the number of years the facility has been in operation.
- Instead requires life care facilities to at all times possess assets sufficient to fulfill the facilities' obligations pursuant to life care contracts, including any reserve fund escrow required by the Director of the Department of Insurance.

HB 2633, bankruptcy; life insurance (Ch. 165)

The bill re-codifies and clarifies the provisions relating to the use of life insurance policies and annuities for the payment of debt or liability.

Amends A.R.S. § 20-1131:

- Eliminates the $25,000 cap on the cash surrendered value of a life insurance policy that is exempt from creditors in bankruptcy cases.
- Applies the Uniform Fraudulent Transfer Act to the cash surrender value of life insurance policies.

Repeals A.R.S. § 20-1131.01:

- Eliminates the statute exempting life insurance and annuities from garnishment, attachment, execution, seizure or any legal process to pay a debt or liability.

Amends A.R.S. § 33-1126:

- Requires a debtor to own an annuity contract and have named a specific beneficiary for at least two years in order for the annuity to be exempt from court-ordered execution, attachment or sale.
- Defines the specific beneficiary for the annuity contract as the debtor, the debtor's surviving spouse, child, parent, brother or sister, or any other family member who is dependent on the debtor for not less than half support.
- Applies the Uniform Fraudulent Transfer Act to the premium, payment or deposits of annuity contracts.

The bill became effective immediately upon signature by the Governor.

SB 1036, medical malpractice procedural reforms (Ch. 183)

SB 1036 prescribes additional qualifications for expert witnesses in medical malpractice cases and makes an expression of sympathy or apology by a physician to a patient or the patient's survivors inadmissible in any resultant medical malpractice case.

Amends A.R.S. § 12, chapter 17, article 1 by adding 12-2604:

- Prohibits a person from providing expert testimony on the appropriate standard of practice in a case of alleged malpractice unless the person is licensed as a health professional in Arizona or another state and meets the following criteria:
  1. If the accused health care provider is a specialist, the expert witness must have the same specialty; if the accused is a board certified specialist, the witness must also be board certified in the same specialty.
  2. During the year immediately preceding the occurrence giving rise to the lawsuit, the witness must have devoted a majority of their professional time to the same practice/specialty as the defendant, and or the instruction of students in an accredited school or program in the same health profession/specialty as the defendant.
  3. If the defendant is a general practitioner, the expert witness must have devoted a majority of professional time in the year preceding the occurrence giving rise to the lawsuit to active clinical practice as a general practitioner, and or, the instruction of students in an accredited school/program in the same health profession as the defendant.
  4. If the defendant is a health care institution that employs the health care professional against whom, or for whom the testimony is offered, the above provisions apply as if the health care professional were the defendant.
- Specifies that the criteria above does not limit the power of the trial court to disqualify an expert witness on grounds other than those stated above.
- Prohibits contingency fee payment for expert witnesses services.

Enacts A.R.S. § 12-2605:

- Stipulates that expressions or gestures of sympathy, apology, condolences made by a health care provider or an employee of the provider, to the patient or the patient's survivors, relating to the patient's discomfort, pain, suffering or death as the result of the unanticipated outcome of medical care, is inadmissible as evidence of an admission of liability, or as evidence of an admission against interest, in malpractice cases or any arbitration proceedings relating to a civil action.

SB 1084, non-renewal of motor vehicle insurance (Ch. 169)

The legislation adds to the circumstances under which an insurer may non-renew or transfer an auto insurance policy.

Amends A.R.S. § 20-1631:

- Permits insurers to non-renew the auto policies of an insured and the insured's family members if the sole basis of eligibility for the insurance arises from the insured's employment with the insurer, that employment is terminated, and the insurer non-renews the policy within the twelve months following the insured's termination of employment.

- Alters the circumstances under which an insurer may transfer more than one per cent of its policies to an affiliated insurer by allowing the transfer if the rates charged by the other insurer are the same as the current insurer (rather than allowing the transfer only if the rates are lower under the new insurer).

SB 1251, elder care liability reform (Ch. 101)

The bill modifies Arizona's Adult Protective Services Act.

Amends A.R.S. § 12-570:

- Requires professional liability insurers to provide the Arizona Department of Health Services with all the requisite national practitioner data bank information upon settlement of an action brought under A.R.S. § 46-455 against a nursing care institution, or when a court enters a monetary judgment against such an institution.
- Requires the plaintiff's attorney to provide a copy of the complaint, a copy of the agreed terms or the judgment, and various details on the parties involved to the Arizona Department of Health Services, upon settlement of an action brought under A.R.S. § 46-455 against a nursing care institution, or when a court enters a monetary judgment against such an institution.

Enacts A.R.S. § 36-433:

- Provides that upon receipt of the information described above, the Department of Health Services may begin an investigation to determine if the nursing care institution is in violation of the Arizona Revised Statutes or the rules governing the licensure of nursing care institutions.

Amends A.R.S. § 46-455:

- Provides that, in considering an award of punitive damages in cases of alleged adult neglect, the court or jury must apply the common law principles generally applicable to the award of punitive damages in other civil actions.
- Limits the award of attorney fees to twice the total amount of compensatory damages awarded, except that the court may award additional attorney fees to the plaintiff after review and approval of such a request.

SB 1377, insurers; certificate of exemption (Ch. 210)

SB 1377 adds certain non-profit organizations to the definition of the organizations granted certificates of exemption from the authorized insurer requirement.

Amends A.R.S. § 20-401.05:

- Adds non profit employee benefit trusts and voluntary employee beneficiary associations aiding agricultural institutions to the organizations to be granted certificates of exemption, if: 1) the organization is regulated in its state of domicile as an insurer, a multiple employer welfare arrangement or an employee benefit trust, and 2) the organization assists agricultural institutions by issuing insurance, annuity and employee benefit contracts to the institutions, their members or individuals engaged in the service of those institutions.
- Requires above grantees to be legally organized and actively doing business in state of domicile for at least 20 years prior to applying for a certificate of exemption.

- Defines “agricultural institutions” as agricultural growers, shippers, packers, brokers, distributors, wholesalers receivers and jobbers, or affiliated, associated and related suppliers, industries or firms.
- Defines “voluntary employees’ beneficiary association” according to federal statute.

SB 1386, group life insurance premiums (Ch. 211)

The legislation allows employee, credit union, labor union and trustee group life insurance policy premiums to be paid entirely by the insured persons.

Amends A.R.S. § 20-1251.01, 20-1252, 20-1254, 20-1255:

- Permits employee, credit union, labor union and trustee group life insurance policy premiums to be paid entirely by the insured persons, as opposed to the current requirement that either the employer/policyholder only, or the employer/policyholder and the insured persons jointly pay the premium.

SB 1416, insurance copayments, deductibles; options (Ch. 111)

The bill permits health insurers to offer plans with a choice of deductibles, coinsurance, co-payments, out-of-pocket and any other cost sharing levels.

Enacts A.R.S. § 20-826.02, 20-1057.09, 20-1342.04, 20-1412 and 20-2331:

- Permits health insurers (corporations, health care service organizations, disability insurers, group or blanket disability insurers and accountable health plans) to offer one or more plans with a choice of deductibles, coinsurance, co-payments, out-of-pocket and any other cost sharing levels, subject to the guaranteed issuance and guaranteed availability requirements of the federal Health Insurance Portability and Accountability Act (HIPAA) of 1996.
- Requires such plans to clearly disclose the insured’s financial responsibilities in marketing materials, certificates of coverage and contracts.
- Requires the plans to continue to provide any mandated health coverage required by Arizona or federal law.
- Specifies that the above does not prohibit high deductible plans as defined in federal law from requiring the application of deductibles, co-payments or coinsurance to benefits provided under the plans.

SB 1420, uninsured motorists (Ch. 113)

Amends the penalties for driving without a driver’s license and for driving without insurance.

Amends A.R.S. § 28-3511:

- Permits the authorities to immediately impound a vehicle if state records indicate that the state has never issued a driver’s license or permit to the driver, and the driver does not produce a license issued by another jurisdiction.
- Requires vehicle impoundment if all of the following apply:
  1. The person’s license is canceled, suspended or revoked, or the state’s records indicate that the person has never received a license or permit, and the person does not produce a license issued by another jurisdiction.
  2. The person does not have auto insurance.

3. The person is driving a vehicle involved in an accident resulting in either property damage or injury to or death of another person.

Amends A.R.S. § 28-4135:

- Increases the minimum civil penalty for the first offense of driving without insurance to $500 from $250; to $750 from $500 for the second offense; and to $1,000 from $750 for the third and subsequent offenses. Requires (rather than permits) these fines and also requires increased vehicle impoundment periods for each additional offense.

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 other, more detailed bulletins related to implementation of the legislation. Any person may view this bulletin on the Department's web site at www.id.state.az.us. For questions about this bulletin, please contact Karlene Wenz, Executive Assistant for Policy Affairs, at 602/912-8456, or kwenz@id.state.az.us.