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2

NAIC Corner

Kansas Attorney
General Issues
Opinion

3

Public Adjuster
Licensing Update

4

Health Reform

5

Spotlight: Missouri
and Kansas

2010 Kansas Legislative Summary

By William W. Sneed

The focus of the 2010 Kansas Legislative session was the funding of a budget to meet ending-balance demands as required by the Kansas Constitution. With the state facing a \$500 million shortfall, legislators worked together to develop both a budget and a revenue package that would garner enough votes. When the session ended, the Legislature sent the Governor a \$13.6 billion budget and approved a \$314 million tax increase. The tax increase is a one cent sales tax increase effective July 1, raising the current 5.3 percent sales tax to 5.7 percent, with the remaining portion earmarked for the state’s transportation program. The following is

a summary of some of the legislation that passed affecting the insurance industry.

HB 2492 amends a provision in the Kansas Automobile Injury Reparations Act to require insurance companies to

add the make and year of an insured vehicle to the list of information required to be included on insurance identification cards.

House Sub. for SB 200 removes the phase-in for the assessment of privilege fees for new health maintenance

organizations (HMOs) operating in Kansas.

SB 389 prohibits health insurers from setting fees for services provided by dentists that are not covered by a

(continued on page 4)

“With the state facing a \$500 million shortfall, legislators worked together to develop both a budget and a revenue package that would garner enough votes.”



Bill Sneed

2010 Missouri Legislative Summary

By Richard S. Brownlee and Keith A. Wenzel

The Missouri Legislature wrapped up the 2010 regular session on May 14, 2010. Out of 1,756 bills only 105 received final passage. Some of the prominent bills that passed included: ethics reform, autism insurance coverage, strict regulations on sexually oriented businesses, revamping the DWI laws and certain college scholarships, and banning a synthetic form of marijuana that currently is legally sold in Missouri.

The following insurance related bills were passed during the 2010 Legislative Session:

House Bill 1311 mandates insurance coverage for autism spectrum disorders for group health

benefit plans.

The bill provides applied behavior analysis coverage (ABA) of \$40,000 per year for individuals through 18 years of age with an adjustment for inflation every three years. Visits to autism spectrum disorder service providers are not limited but are subject to the ABA dollar cap. This is a mandated offer for

(continued on page 5)



Keith Wenzel



Richard Brownlee

HEALTH CARE REFORM EFFORTS

It is well known that the NAIC is playing a vital role in the implementation of The Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act of 2010 (collectively "Health Care Reform"). Since the March 2010 adoption of Health Care Reform, various NAIC committees have expended a great deal of effort toward responding to the request from the U.S. Department of Health and Human Services for information to assist in the implementation of the new federal medical loss ratio and rebate requirements. The NAIC is also working on initiatives related to some of the other Health Care Reform provisions that will be implemented in the early stages of the reform effort, including the federal rate review provisions and the development of uniform explanation of coverage documents and standardized definitions. The NAIC's website includes a special section dedicated to following the Health Care Reform activities of the NAIC at www.naic.org/index_health_reform_section.htm.

STATE IMPLEMENTATION GUIDELINES FOR THE VIOLENT CRIME CONTROL AND LAW ENFORCEMENT ACT

The Antifraud (D) Task Force is considering revisions to the Guidelines for State Insurance Regulators to the Violent Crime Control and Law Enforcement Act of 1994 (19 U.S.C. §§ 1033 and 1034). Section 1033 prohibits any person from engaging in the business of insurance if the person has been convicted of a felony involving dishonesty or breach of trust. The same federal

statute also permits a prohibited individual to apply for "written consent" to work in the business of insurance from "any insurance regulatory official authorized to regulate the insurer."

One goal of the proposed revisions is to better ensure that a "written consent" application is presented to the state insurance regulatory official with the greatest interest in the applicant's proposed activities in the business of insurance. The revisions suggest that if an official determines – using the list of considerations set forth in the Guidelines – that there is a more appropriate state insurance regulatory official, the "written consent" application should be forwarded to the more appropriate official. It is also recommended that insurance regulatory officials give sufficient advance notice of a "written consent" application to similar officials in all other states to enable the officials in the other states to object to the first official's exercise of jurisdiction.

Another point of emphasis is the independent operation of Section 1033 from similar state laws that restrict persons with certain criminal histories from engaging in the business of insurance. The proposed revisions suggest that a person could possibly be barred by Section 1033 but not by a similar state law, or vice versa.

For additional information regarding these issues, you may contact Justin Liby at (913) 234-7427 or jliby@polsinelli.com.



Justin Liby

Kansas Attorney General Issues Opinion On Open Records and Rate Filings

On July 1, 2010, Kansas Attorney General Steve Six issued Opinion No. 2010-17, which concerns the Kansas Open Records Act and its application to rate filings. The opinion was requested by the Kansas Insurance Department (KID), which sought to clarify whether it could restrict the inspection, copying or distribution of a property and casualty rate filing under the Copyright Act or the Kansas Uniform Trade Secrets Act.

The statute governing such rate filings, KSA 40-955, currently states that filings and any supporting information shall be open to public inspection upon filing. The Kansas Open Records Act maintains that public records shall remain open for inspection unless specifically exempted. The KID currently stores all rate filings in an electronic format, which the public can access at a dedicated computer terminal in its office for downloading and copying.

In rendering its opinion, Attorney General Six noted that whether the KID violates the Copyright Act by placing copyrighted rate filing materials on the computer terminal is dependent upon the facts of

each case; therefore, he could not offer a blanket determination for every rate filing.

Attorney General Six did note, however, that since there is no specific exception for open records containing trade secrets, the KID cannot refuse to provide copies of rate filings on such basis.

In light of the opinion, the KID issued Bulletin 2010-1 on July 9, 2010. In the Bulletin, the KID states that it will allow insurers to withdraw their property and casualty rate filings which have not yet been approved. Furthermore, for those filings made prior to July 1, 2010, the KID will notify companies 10 days in advance of any release of trade secrets so that they may challenge the release of such materials either administratively or through judicial action. The release of materials in rate filings made on or after July 1, 2010 will be administered in accordance with KSA 40-955 and the Opinion.

We have been closely monitoring how the KID is going to handle future filings. If you have any questions please contact Bill Sneed at (785) 233-1446, or wsneed@polsinelli.com. ♦

Public Adjuster Licensing Update

By Jeffery S. Bottenberg

State legislatures continue to make changes to their public adjuster laws in order to be consistent with the NAIC Public Adjuster Licensing Model Act (Model Act). This article discusses the historic barrier to public adjuster licensing and recent state legislative activity concerning public adjusters.

In general, a public adjuster works on behalf of the insured and, historically, many jurisdictions considered public adjusting to be the unauthorized practice of law. For instance, it continues to be the position of the Alaska Division of Insurance that public adjusting “may constitute the practice of law and, therefore, may require a license to practice law depending on the nature and scope of the activities performed in Alaska.”

“Under the Model Act, a non-resident may become licensed through an abbreviated process if the nonresident’s home state allows non-residents to apply for licenses on the same basis. The Model Act also establishes minimum standards of conduct and limits public adjusting to first-party claims.”

Model Act

The NAIC formally adopted the Model Act (MDL-228) in 2005, which imposes a licensing requirement and additional requirements including a mandatory licensure examination, minimum continuing education hours, and mandatory provisions for public adjuster contracts. Under the Model Act, a non-resident may become licensed through an abbreviated process if the nonresident’s home state allows non-residents to apply for licenses on the same basis. The Model Act also establishes minimum standards of conduct and limits public adjusting to first-party claims. Furthermore, the Model Act restricts commissions for public adjusters if the insurer pays or pledges to pay the insured the policy limits within 72 hours of receiving a claim.

Recent Legislative Activity

As this newsletter went to press, 44 states and the District of Columbia license public adjusters, while five other states authorize their practice. One state, Arkansas, continues to prohibit public adjusting. Since the Model Act’s adoption, Louisiana (2006), Mississippi (2007), Idaho (2008), Iowa (2008), and Kansas (2009) have enacted public adjuster statutes. Although most of these laws were enacted due to the adoption of the Model Act, it is clear that other factors were involved, such as concerns over unlicensed adjuster activities. The Iowa Insurance Division stated that Iowa enacted its legislation “after observing unethical practices by some public adjusters after the Gulf Coast hurricanes.”

Most of the recent legislative activity has pertained to states adopting provisions of the Model Act. For instance, in 2009, North Carolina replaced its existing public adjuster laws with the Model Act. As a result, public adjusters must file evidence of financial responsibility with the North Carolina Department of Insurance by July 1, 2010, to continue their authority to act as public adjusters. 2009 legislation in Maryland makes it a fraudulent insurance act to practice without a public adjuster license. Minnesota added the written examination, continuing education, and standards of conduct provisions from the Model Act to its existing public adjuster laws in 2009. In addition, the Minnesota public adjuster law now prohibits public adjusting in the life, health, or annuity lines of insurance. Also during 2009, Oklahoma increased the required continuing education hours from 12 to 24 hours, which is consistent with the Model Act.

In recent years, Florida has experienced a substantial amount of public adjuster legislation due to concerns with public adjuster conduct following the hurricanes of the mid-2000s and because the state allows public adjusters to handle health insurance claims. In 2009, legislation was passed to restrict public adjusters from accepting referrals in exchange for compensation from anyone other than another licensed adjuster. Furthermore, the legislation requires applicants to pass a written examination and to obtain the Accredited Claims Adjuster designation. It also prohibits public adjuster firms from employing more than 12 apprentices and a public adjuster from simultaneously supervising more than three apprentices.

For additional information regarding recent developments regarding the public adjuster laws, please contact Jeff Bottenberg at (785) 233-1446 or jbottenberg@polsinelli.com.



Jeff Bottenberg

Health Reform

What Does It Mean For Your Business?

Struggling to understand the landmark health care legislation and what it means for your business? Polsinelli Shughart attorneys are working on several fronts to assist clients in protecting and furthering their interests following the passage of the Patient Protection and Affordable Care Act (PPACA).

With well-established practice groups in Insurance Business, Health Care and Public Policy, Polsinelli Shughart is already assisting clients with strategic planning and policy analysis of the legislation's provisions.

"Health reform is a bit of a misnomer because it affects so much more than just health care organizations," said Steve Imber, chair of Polsinelli Shughart's Insurance Business and Regulatory Law group, and a member of a firm-wide Health Reform Committee identifying key issues impacting clients. "The legislation has the potential to significantly impact employers in general as well as nearly every facet of the nation's economy," he said.

In addition to insurance company issues and the proposed new health insurance exchanges, Polsinelli Shughart's Health Reform Committee is delving into areas such as fraud and abuse, health care provider issues, labor and employment, employee benefits, physician and physician group issues and advocacy and government relations.

The attorneys have been sharing the firm's knowledge with clients and prospects in a variety of ways, including e-alerts, webinars and in-person presentations.

A special Health Reform Web page has been created on the Polsinelli Shughart website. The page contains analysis of the legislation, key Polsinelli Shughart attorney contacts, useful Web resources, copies of key documents and a calendar of upcoming Health Reform-related events involving firm attorneys. Go to www.polsinelli.com/HCR or click on the Health Reform icon on the Polsinelli Shughart home page. ♦

2010 Kansas Legislative Summary

(continued from page 1)

contract, issued or renewed after July 1, 2010, between the insurer and the dentist (a participating provider in the insurer's health benefit plan).

Senate Sub. for HB 2160 enacts a new law that requires the State Employees Health Care Commission, which administers the state employee health care benefits program, to cover services related to the diagnosis and treatment of autism spectrum disorder. The bill also mandates coverage for orally administered anticancer medications, on a basis no less favorable than intravenously or injected cancer medications that are covered as medical benefits. This mandate applies to all individual and group health policies.

Sub. for HB 2345 would allow long-term care insurance provisions to be included in annuity policies, subject to the approval of the Commissioner. The law also requires that property insurers transmit claims payments directly to the primary policyholder without requiring dual endorsement from a mortgage or lien holder for the full amounts payable for personal property, additional living expenses, and other covered items that are not subject to a recorded security interest. The law also amends the Kansas Consumer Protection Act by requiring mortgage holders to release insurance settlement funds to the mortgagor within 30 days after receiving written proof that the damaged property is replaced or otherwise repaired to the satisfaction of the mortgagor and mortgage holder.

HB 2500 amends a provision in the Kansas Municipal Group-Funded Pool Act to allow municipal insurance pool applicants to submit a confirmation that reinsurance approved by the Insurance Commissioner is in effect or will be effective at the time the pool assumes risk. Additionally, the pool will be required to notify the Insurance Commissioner within 30 days of any change in the reinsurance it carries.

HB 2501 allows the Insurance Commissioner to waive minimum policy capital and surplus requirements for mortgage insurers for up to two years.

The bill also amends the Kansas Uninsurable Health Insurance Plan Act (the Act governing administration of the State High Risk Pool) to add coverage of an individual under the State Children's Health Insurance Program (SCHIP), authorized by Title XXI of the Social Security Act, to the list of recognized creditable health insurance coverages.

The bill further establishes additional restrictions (to those established in existing law) on insurance companies that require larger premiums for coverage based on obtaining a genetic test or the results of a genetic test, or that adjust premiums based on obtaining a genetic test or the results of a genetic test.

Finally, the bill amends the Kansas Insurance Score Act and enacts new laws supplemental to the Act. Specifically, the bill enacts a new law to create an exception to the Kansas Insurance Score Act for extraordinary life circumstances. An insurance company that uses credit information will be required, upon written request from an applicant for insurance coverage or its insured, to provide "reasonable exceptions" to the insurer's rates, rating classifications, company or tier placement, or underwriting rules or guidelines for a consumer who has experienced and whose credit information has been directly influenced by an extraordinary life circumstance.

SB 369 amends the Kansas Open Records Act (KORA) by extending the insurance company self-audit exception through 2015.

For more information regarding this legislation, contact Bill Sneed at (785) 233-1446, or wsneed@polsinelli.com. ♦

Spotlight: Missouri and Kansas

MISSOURI ACTIVITY

The Missouri Department of Insurance, Financial Institutions and Professional Registration (DIFP) proposed amending 20 C.S.R. 500-10.200, which concerns mortgage guaranty insurers. The amendment would allow a mortgage guaranty insurer to ask the Director to suspend the requirement that it maintain a total liability under its aggregate insurance policies that does not exceed 25 times its policyholders' surplus. The current regulation requires that an insurer cease transacting new business until its liability no longer exceeds such surplus requirements; therefore, this amendment would allow the insurer to continue to transact business even with the increased surplus. A public hearing was held on June 17, 2010.

The DIFP announced in a memorandum dated Feb. 22, 2010, that a Rate Capping Working Group will be meeting over the next 12 months to discuss the long-term role of rate-capping in personal lines auto and homeowners policies. In the interim, the DIFP will allow personal lines insurers to include a rate limitation provision in their renewal business rating/underwriting plan if: (1) The proposed rate limitation plan is unambiguous and is uniformly and fairly applied to all renewal business; and (2) the plan must be temporary and not extend for more than four years. Insurers with questions regarding these guidelines are encouraged to contact the Property and Casualty Section at (573) 751-3365.

KANSAS ACTIVITY

The Kansas Insurance Department (KID) proposed amending K.A.R. 40-3-43, which would require title insurance agents to maintain records of escrow operations and trust accounts for three years. Title insurance agents are presently required to maintain these records without a time limitation; therefore, the regulation might have some positive financial impact. A public hearing will be held on Aug. 17, 2010, at the KID.

The Kansas Insurance Department has also been proactive in attempting to implement several of the provisions of the Patient Protection and Affordable Care Act of 2010 (PPACA). Commissioner Sandy Praeger has been holding monthly meetings on the topic with interested stakeholders, and has also been participating in stakeholder roundtable discussions led by Lieutenant Governor Troy Findley. Some of the steps taken by the KID include assisting the Kansas high risk pool in its efforts to manage the federal high risk pool as authorized under PPACA; requiring insurers that offer comprehensive health plans to submit endorsement or amendment forms via SERRF that comply with PPACA; requesting a \$1 million federal grant for the enhancement of rate approvals; and working with the National Association of Insurance Commissioners regarding appropriate medical loss ratio standards.

2010 Missouri Legislative Summary

(continued from page 1)

coverage under individual health plans. Supplemental policies are exempted. Small employer group health plans are granted a waiver if premiums increase at least by two and one-half percent in a calendar year due to these provisions.

House Bill 1498 modifies various provisions of the prompt pay statutes as they relate to the calculation of interest and penalties, the payment of attorney fees, and other issues.

House Bills 1868, 2226, 1824, 1832, 1990 and Senate Bills 583, 842, 799, 809 and 1007, in part, change provisions relating to MO HealthNet and collection from third-party payers. While the revisions allow MO HealthNet three years to file a claim against a third party from the date services are rendered, if MO HealthNet has not received that payment within six years, it is barred from recovery.

Senate Bill 583 contains provisions regarding: refunds of long-term care and Medicare supplemental policy premium refunds under certain conditions; MO HealthNet third-party payers; provision of an enrollee's health benefit plan information online with an option for paper copies if requested; revisions to the Missouri Life

and Health Guaranty Association Act; and healthcare coverage of adopted children.

House Bill 1764 states that no law or rule shall compel, directly or indirectly, any person, employer or health care provider to participate in any health care system. A person or employer may pay directly for lawful health care services and shall not be required to pay penalties or fines for paying directly. These provisions shall become effective upon the approval of a referendum by the voters at the August 2010 (primary) election.

Senate Bill 793 prohibits health insurance exchanges from offering coverage for elective abortions.

It is anticipated that there will be some interim activity prior to the 2011 legislative session to study and develop legislation concerning topics discussed during the 2010 legislative session including earthquake coverage, sinkhole coverage, recovery of emergency responder charges, and maintaining an insured motorist database.

For more information regarding this legislation, contact Richard Brownlee at (573) 636-8135, rbrownlee@polsinelli.com, or Keith Wenzel at (573) 636-8135, kwenzel@polsinelli.com. ♦

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Insurance Business and Regulatory Law

With decades of experience assisting the insurance industry with corporate transactions and various compliance and regulatory issues across the country, the Insurance Business and Regulatory Group at Polsinelli Shughart PC has the expertise to provide outstanding services to this industry. With four former state insurance department attorneys, including two who served as General Counsel, and five attorneys who were former in-house counsel to various insurance organizations, our attorneys understand the unique needs of our insurance clients on matters involving state insurance departments, state Attorneys General, and other state and federal regulatory agencies.

We routinely handle business and regulatory issues, such as:

- Serving as national outside counsel for various property and casualty insurers, workers' compensation insurers, life and health insurers, third-party administrators and discount medical plan organizations.
- Conducting corporate mergers and acquisitions.
- Making holding company transaction and other related regulatory filings.
- Completing complex national and multi-state regulatory and compliance research.
- Filing Uniform Certificate of Authority Applications, including Primary, Expansion and Corporate Amendment Applications.
- Conducting national and multi-state licensing and compliance projects for Third Party

Administrators, Agencies, Adjusters and Discount Medical Plan Organizations.

- Assisting with Market Conduct Examinations and Financial Examinations, including a Multi-State Market Conduct Examination involving 50 states.
- Assisting with insurance company corporate governance requirements, including the Model Audit Rule, and development of appropriate committee charters, conflict of interest statements, code of conduct and ethics statements, record retention and destruction policies; whistle blower policies, and others.
- Serving as the Deputy Receiver or General Counsel to the Deputy Receiver with respect to insurance company receiverships.
- Forming captive insurers and risk retention groups and assisting with their ongoing compliance and business issues.

Clients include insurance companies, insurance brokers and agencies, third-party administrators, discount medical plan organizations and associations – virtually any individual or entity subject to regulation by state insurance departments, state Attorneys General or other state agencies. The Insurance Business and Regulatory Group has the expertise and depth to provide quality and responsive legal services to regulated entities in the insurance industry with respect to all of their business and regulatory needs. ♦

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Polsinelli Shughart is very proud of the results we obtain for our clients, but you should know that past results do not guarantee future results; that every case is different and must be judged on its own merits; and that the choice of a lawyer is an important decision and should not be based solely upon advertisements.