

# Division of Insurance

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Merle Scheiber, Director

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## Message from Director Scheiber on Health Care Reform

Health Care Reform has now passed Congress and been signed into law by the President. Unfortunately throughout the process, misinformation was all too prevalent. This is in part, the result of a series of statements by the National Association of Insurance Commissioners (NAIC) indicating qualified support for the legislation. I am compelled to set the record straight as to how I and the South Dakota Division of Insurance viewed this legislation.

While we continue to strive for ways to decrease the uninsured population, South Dakota has a very healthy and competitive market with a relatively low rate of uninsured. In short there are many things that are working well that should be built upon rather than imposing a one size fits all federal solution. One of the important components of our healthy market was the existence of a high risk pool to allow the individual market the flexibility to efficiently underwrite.

However, the legislation significantly departed from the model in place in South Dakota. For these reasons and others I did not support the federal legislation as passed. The NAIC's pronouncements that its members, among other things, supported guaranteed issue and modified community rating that were contained in the federal legislation were inaccurate as South Dakota and other members did not endorse these concepts.

Now that the legislation has passed there will be considerable work to do for both the Division and the health insurance industry in implementing the new laws, while at the same time keeping the welfare of SD consumers in the forefront of our minds. I intend to work closely with industry in implementing, where possible, common sense solutions within the federal parameters.

## Rebating: A Law That Insurance Agents and Customers Must Follow

The prohibition against rebating has been in law for at least 40 years. While the rebating law is generally known by insurance agents, many of the specifics of the law are not necessarily as well known. For example, if an agent provided a rebate to a customer in exchange for the purchase of a policy, then both the agent and the customer have violated the rebate law. Under the law, a violation is a Class 2 misdemeanor.

Most agents are keenly aware that accepting cash for the purchase of insurance is illegal. However, other forms of rebate are likewise illegal. A bank may not entice customers to purchase insurance that the bank sells in exchange for making someone eligible for a bank loan or making a bank loan at a more favorable rate of interest.

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## ProducerEDGE for Resident Producers

The South Dakota Division of Insurance, in conjunction with Sircon, has arranged for South Dakota resident producers to take advantage of a personal compliance web-based tool, called ProducerEDGE™. This service is brought at no additional charge. Currently 996 South Dakota Resident Agents have taken advantage of this Service. By activating the no cost membership resident producers have gained access to capabilities such as license and renewal tracking, renewal reminders, and instant access to licensing services in all 50 states.

ProducerEDGE is available via the [Division of Insurance website](http://www.divisionofinsurance.com) or at [www.produceredge.com/southdakota](http://www.produceredge.com/southdakota)

Agents are required to notify the Division of a change of address within 30 days pursuant to 58-30-157. This can be accomplished by visiting [www.sircon.com/southdakota](http://www.sircon.com/southdakota). In addition the Division sends all notifications via email, please take a moment to verify your email address is current.

### Long Term Care Agent Training

In accordance with ARSD 20:06:21:74, in addition to the initial 8 hours of training Long Term Care agents must have their additional 4 hours of training completed by July 1, 2010.

Both the Division of Insurance and the Department of Social Services are actively promoting the Long Term Care Partnership Program. Staff members are ready and willing to attend group functions to give a presentation on the partnership program, subject to availability. If you are interested you can contact:

[Melissa.klemann@state.sd.us](mailto:Melissa.klemann@state.sd.us)

605.773.3563 or

[Kathleen.skoglund@state.sd.us](mailto:Kathleen.skoglund@state.sd.us)

605.367.5444

### Resident Producers and Surplus Lines Brokers Renewal

**Renewals must be completed online by April 30, 2010 or your license will be cancelled.**

*Please note that you will be able print your new license at no charge, for thirty days after your renewal is approved by the Division at [www.sircon.com/southdakota](http://www.sircon.com/southdakota).*

### Recent Administrative Rule Changes and Bulletins

**20:06:33**

Centers of Excellence - Access Plans

**20:06:39 and 20:06:40**

Individual and Employer Plans -  
Michelle's Law

**20:06:29**

Cancellation by Insurer or Policyholder

**20:06:18**

Continuing Education

**20:06:39, 20:06:40, 20:06:48**

Creditable Coverage

**Bulletin 10-01**

Certificates of Insurance/Evidence of Ins

**Bulletin 10-02**

Medicare Supplement Policies

**Bulletin 10-03**

Medical Payments in Auto Policies

## Auto Medical Payments Clarifications

Bulletin 10-03 dealt with the pedestrian portion of the auto medical payments coverage. This bulletin required that claims be paid in accordance with the bulletin and advised insurers that they would not be required to go beyond 5 years to re-adjudicate any claims. However, Bulletin 10-03 stopped short of explicitly requiring insurers to undertake a claim review for that 5 year time frame. In light of the difficulties many insurers would encounter in identifying such claims, the Division is not requiring insurers to review past claims for compliance with this bulletin.

In Bulletin 09-03, the requirement that medical payments coverage is primary was outlined. The bulletin did not address the situation where there were two medical payments coverage applicable to a

claim with one being medical payments for a covered automobile and the other being for non-owned automobiles. In this situation there is an exception to the general rule and the non-owned medical payments coverage can be excess to the other medical payments coverage for the covered automobile. This exception for being excess coverage provision only applies with non-owned automobiles medical payments coverage and only when coordinating coverage with another medical payments coverage.

### Proposed Administrative Rules

The South Dakota Division of Insurance currently has proposed rules in chapters 20:06:12, 20:06:19, 20:06:25, 20:06:36, 20:06:21, 20:06:39 and 20:06:48.

The rules can be viewed in their entirety at <http://www.state.sd.us/drr2/reg/insurance/Legal/hearing.htm>

## Long-Term Care Partnership Education Sessions

The South Dakota Department of Social Services is hosting several educational sessions in the coming months on long-term care and the Long-Term Care Partnership Program. The educational sessions are free and open to the public. Each session is scheduled for one hour.

### **SISSETON:** April 22

**Location:** NESDCAP Community Room, 104 Ash Street East **Time:** 10:30 a.m. CST

### **RAPID CITY:** April 27

**Location:** Rapid City Public Library, 610 Quincy St. **Time:** 3 p.m. and 5:30 p.m. MST

### **HOT SPRINGS:** April 28

**Location:** Hot Springs Public Library, 2005 Library Drive **Time:** 2 p.m. MST

### **SPEARFISH:** April 29

**Location:** Hudson Hall, 222 W Hudson **Time:** 10 a.m. and Noon MST

### **MITCHELL:** May 7

**Location:** Mitchell Public Library, 221 N Duff St. **Time:** 2 p.m. CST

### **PIERRE:** May 11

**Location:** Becker-Hansen Board Room, 700 E Broadway **Time:** 3 p.m. and 5:30 p.m. CST

### **BROOKINGS:** May 12

**Location:** Brookings Public Library - Cooper Room, 515 3rd St. **Time:** 2 p.m. CST

### **WATERTOWN:** May 13

**Location:** Watertown Regional Library, 160 6th St NE **Time:** 2 p.m. CST

### **RAPID CITY:** May 18

**Location:** Rapid City Public Library, 610 Quincy St **Time:** 2:30 p.m. MST

### **STURGIS:** May 19

**Location:** Sturgis Community Center, Meade Room, 1401 Lazelle Street **Time:** Noon MST

### **DEADWOOD:** May 19

**Location:** Deadwood Public Library, 435 Williams Street **Time:** 4 p.m. MST

### **BELLE FOURCHE:** May 20

**Location:** Belle Fourche Area Community Center, 111 National Street **Time:** Noon MST

## Calendar of Events

**April 30**  
*Resident Producer Licensing Closes*

**May 1**  
*TPA, DMPO, URO, MCC Renewals Open*

**May 15**  
*1st Quarter Statements Due*

**June 8**  
*Rules Review Committee*

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# 2010 Legislative Review

## **SB 32**

### **Revise the process for the reporting of surplus lines insurance.**

- Authorizes the Director to accept a NAIC uniform reporting form which will streamline the process and ease the paperwork requirements.

## **SB 35**

### **Require the policyholder's signed acceptance for endorsements that reduce or eliminate coverage upon certain health insurance policy issuance**

- Clarifies the language of the statute so that policyholders must agree to changes to the policy regardless of when the exclusionary endorsement or rider is issued

## **HB 1037**

### **An act to revise certain provisions regarding insurance producer licensing.**

- Biennial renewal based on the producers birth month for resident, non-resident and surplus lines agents.
- Revised limited lines definitions consistent with Uniform Licensing Model Act

## **HB 1089**

### **Clarify permissible insurance policy provisions.**

- Allows current practice of approving reasonable exclusions

## **HB 1038**

### **An Act to clarify certain provisions relating to orders issued for examinations of certain insurers.**

- Amends an incorrect cross reference relative to insurance examinations

## **HB 1040**

### **Revise certain provisions relating to life insurance refunds.**

- Deleting group life insurance from the required unearned premium refund provisions.

## **HB 1043**

### **Revise the risk pool rate methodology, to revise the number of risk pool benefit plans offered, and to revise open enrollment for uninsurable children.**

- Revise methodology in determining largest carriers for purposes of risk pool rates, Allow risk pool to offer more than 3 plan designs, Change qualifications of entrance into children's uninsurable risk pool.

## **HB 1189**

### **Prohibit discrimination based on domestic violence in life and health insurance policies.**

- Prohibits insurers from asking questions on an application or other document relating to domestic violence with respect to underwriting or rating a life or health policy

## **HB 1206**

### **Provide that incontestability provisions in certain life insurance policies do not apply in cases of fraud.**

- Amends the incontestability statutes in individual and group life insurance to allow rescissions for fraud after 2 years

## **HB 1257**

### **Remove certain provisions relating to countersignatures for insurance producers.**

- Repeal countersignature cross references

## **HB 1254**

### **Revise the requirements for the assignment of certain funeral benefits.**

- Amends the current statutes dealing with life insurance and funeral home services, and in particular revises the process for the assignment and payment

## **SB 108**

### **Prohibit dental insurers from setting fees for noncovered services.**

- Prevent contracts entered into between dentists and health insurers from imposing network discounts for uncovered services.

## **SB 168**

### **Increase the amount of coverage provided by the South Dakota Life and Health Insurance Guaranty Association for long-term care insurance.**

- Increases the guaranty association coverage limit on long term care insurance to \$300,000

## **SB 97**

### **Provide that salvage titles be issued for stolen vehicles and to provide that thefts be noted on the title of recovered motor vehicles.**

If a SD salvage (due to theft) titled vehicle is later recovered, the title may be eligible for updating to a recovered theft title. For more information, please contact the SD DMV at 605/773-3541 or e-mail [motorv@state.sd.us](mailto:motorv@state.sd.us).