



Division of Insurance

445 E. Capitol Ave. | Pierre, SD 57501
Phone: 605.773.3563 | Fax: 605.773.5369
insurance@state.sd.us
Merle Scheiber, Director

dlr south dakota department of
**labor and
regulation**

Spring 2011

In this Issue

Page 1

Division of Insurance Part of Executive Reorganization

Page 2

2011 Legislative Overview

Open Enrollment for Children under 19 begins July 1

Page 3

2011 Legislative Overview, continued

Recent Administrative Rule Updates

Page 4

Letter to Our Readers

Calendar of Events

Division of Insurance Part of Executive Reorganization

Gov. Dennis Daugaard's executive reorganization order became statutorily effective April 12, resulting in the former Department of Labor becoming the Department of Labor and Regulation (DLR).

The Division of Insurance (DOI) is now officially part of DLR. The specific programs included in the transfer include:

- Division of Insurance
- Division of Banking
- Division of Securities
- Banking Commission
- Real Estate Commission
- Abstracters Board of Examiners
- Appraiser Certification Program

The mission of DLR is to promote economic opportunity and financial security for individuals and businesses through quality, responsive, and expert services; fair and equitable employment solutions; and safe and sound business practices.

As DOI transitions into DLR, you may see correspondence with the integrated logo as well as the old Revenue and Regulation logo.

Individuals may access the Division website at <http://dlr.sd.gov/reg/insurance/>. However; you will no longer be able to access the site from the Department of Revenue site. DLR will have links to the DOI webpage from the Department home page at <http://dlr.sd.gov/>. Over the next six months the DOI website will integrate into DLR website. At such time DOI will notify all users of the updates.

Also as part of the re-organization, the Insurance Fraud Unit has transferred to the Attorney General's Office.

Note from Director Scheiber:

The integration of the Division of Insurance into DLR has been an efficient process with much already accomplished. We are pleased to be an integral part of DLR under the leadership of Secretary Pam Roberts.

HB 1030**An Act to revise the provisions relating to placement of surplus lines insurance and tax allocation of surplus lines insurance.**

This legislation was due to the NonAdmitted and Reinsurance Reform Act in 2010. It streamlines surplus lines when insurance transactions are multi-state. The bill clarifies which state is the home state in multi-state transactions and specifies that the home state is the only state where the tax is collected unless there is a uniform reporting eligibility and tax allocation procedure entered into among the states. It also exempts large commercial risks from having the broker meet certain standards before surplus lines insurance is written.

HB 1034**An Act to repeal the requirement for motor vehicle liability insurance safety rating discounts for certain older motor vehicle drivers.**

This bill repeals statutes requiring the Division of Insurance (provided for by the 2003 reorganization) to approve safety courses. The discount for senior drivers is no longer required with this repeal.

HB 1035**An Act to revise the process for the collection of the annual insurance company examination assessment fee.**

Clarifies that an initial assessment can be higher than the current standard in statute but does not change the overall amount that insurance companies could be charged or the ability of the exam fund to maintain an adequate funding balance.

HB 1036**An Act to revise the time when financial reports of the guaranty association are submitted to the director of insurance.**

It moves the guaranty fund association report due date to May 30 each year.

HB 1058**An Act to clarify the definition of motor vehicle for the purpose supplemental automobile liability insurance.**

The bill defines motor vehicle for purposes of medical payments coverage.

HB 1157**An Act to revise the rate of the insurance company premium and annuity taxes applied to court appearance bonds and to establish an annual fee for certificate of authority for domestic insurers issuing court appearance bonds.**

The bill reduces the premium taxes for court appearance bonds from 2.5 percent to 1 percent.

continued next page

Open Enrollment for Children Under 19 Begins July 1

Children under the age of 19 will now be able to purchase individual policies during open enrollment without being turned down due to medical underwriting. The open enrollment period lasts from July 1 until August 14. Anyone under 19 can go to any individual carrier and purchase this coverage. However, carriers are allowed to rate up those enrolling during open enrollment. Those with creditable coverage are generally not eligible which would include existing group coverage and those with individual coverage without riders. A person can have coverage under the Risk Pool, Medicaid, CHIP or have an individual policy with riders and still qualify for open enrollment.

Open enrollment is available for both child only policies and children seeking coverage under their parent's coverage. If a carrier was never in the child only market that carrier would not be required to offer child only policies. A carrier may also discontinue offering children's policies if the carrier received a disproportionate share of high risk children and made application to the Division.

Anyone with questions about this open enrollment opportunity is encouraged to contact the Division.

Legislative Overview for 2011, continued

HB 1146

An Act to limit copayment or coinsurance amounts for chiropractic services.

This bill applies to the individual and group market. This bill requires that copayments or coinsurance for chiropractors can not be greater than primary care providers.

SB 9

An Act to revise certain provisions regarding eligibility requirements for the state risk pool.

Prevents individuals from coming off Federal High Risk Pools to gain access to coverage into South Dakota Risk Pool.

SB 38

An Act to establish network adequacy standards, quality assessment and improvement requirements, utilization review and benefit determination requirements, and grievance procedures for managed health care plans, and to repeal certain standards for managed health care plans.

This bill Re-organizes our managed care laws (58-17C) into a more coherent and consistent framework. It makes the minimum necessary changes regarding internal appeals to bring our statutes into compliance with PPACA. Deletes a provision for a second level of internal claims appeal for a more streamlined appeals process for both carriers and consumers.

SB 43

An Act to revise certain health insurance standards for patient protection.

Implements 9-23-10 PPACA Reforms and gives

the Division the authority to review small group rates. This would include removal of pre-existing condition waiting periods for insureds under age 19, delete deductible and copays for mammography screenings, and allow parents to keep children up to age 26 regardless of student or marital status.

SB 44

An Act to revise certain provisions regarding representations and warranties in insurance and annuity applications.

The bill prohibits applications that require the applicant to verify their insurability and clarifies insurers can continue to ask appropriate underwriting questions.

SB 45

An Act to repeal the requirement to prepare a report on extending health insurance to medically uninsurable individuals who are not part of a small employer group.

Repeals statute dealing with an outdated health report which was required to be and was completed by January 1, 2006.

SB 114

An Act to provide that parties to a divorce or separate maintenance action be restrained from making changes to insurance coverage.

The bill restrains both parties from making changes without the written consent of the other or an order of the court. Actions that increase coverage or are required by an insurer are exempt.

Recent Administrative Rule Updates

20:06:13 - Medicare Supplement
 20:06:18 - Continuing Education
 20:06:21 - Long Term Care
 20:06:39 - Disclosure Requirements
 20:06:40 - Mental Health Parity
 20:06:55 - Patient Protection and Affordable Care Act

To see details on updates, go to our Web page:

<http://dlr.sd.gov/reg/insurance/Legal/rules.htm>

To Our Readers

Dear Readers,

Recently State Representative Lora L. Hubbel released written opinions about Senate Bill 38 and Senate Bill 43 encouraging South Dakotans to take a stand against these new laws. Representative Hubble fears these new laws will harm South Dakotans. Just the opposite is true.

Published in the Our Voice editorial column of the Argus Leader on May 17, 2011.

SB 38 and SB 43 were passed by the South Dakota Legislature and will go into effect on July 1, 2011. These two bills preserve the ability of the state to continue to regulate health insurance so that the federal government does not take over the direct control of regulating health insurance in South Dakota.

The Patient Protection and Affordable Care Act (PPACA) is a reality that South Dakota continues to oppose through the formal process of a federal lawsuit. However, since September 23, 2010, certain provisions have been the law of the land and will remain as such with or without SB 38 and SB 43.

Representative Hubbel contends the state laws must be stricter than the federal provisions, and concludes that SB 38 and SB 43 place greater burdens on the citizens of our state. This is not true. SB 43, and to a much lesser extent SB 38, simply change existing South Dakota law to **minimally** comply with those provisions that are already in federal law.

Federal law **allows** states to have stricter standards without being preempted by federal law, but it does not **require** states to set stricter standards. The two insurance bills passed during the legislative session provide minimal compliance without committing the state to anything extra. This course of action is specifically allowed by federal law and keeps the regulation in our hands.

SB 43 involves changing our statutes to meet the minimum federal standards, and SB 38 involves moving existing state law from one chapter of our laws into four separate chapters, making it much clearer and better organized. SB 38 also contains some important consumer protections. For example, if someone needs urgent care, instead of having 72 hours to respond to a request for authorization, SB 38 requires insurance companies to respond within 24 hours.

The passage of these two new laws allows South Dakota to minimally comply with the federal regulations, which assures the regulation of insurance stays in the hands of South Dakotans and not disconnected, out-of-state federal regulators.

Merle Scheiber
Director
Division of Insurance

<http://dlr.sd.gov/reg/insurance>

Calendar of Events

May 1

Non-resident
June Birth Month
Renewals Open

May 30

Office Closed

June 1

Non-resident
July Birth Month
Renewals Open

Audited Financial
Reports and
Accountants Letter
of Qualifications

June 7

[Rules Review
Committee](#)

July 1

Non-resident
August Birth month
Renewals Open

Form B Insurance
Holding Company
Registration
Statement

July 4

Office Closed

July 12

[Rules Review
Committee](#)