



# Legislative & Regulatory Report

NATIONAL ALLIANCE OF LIFE COMPANIES *An Association of Life and Health Insurance Companies*

February 28, 2010

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*The news in this publication, including links to background and supplemental information on state websites, is available on the NALC members website at <http://members.nalc.net>.*

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## Alaska

### *Bulletin B 10-02*

#### ***Notice of Protection Provided by the Alaska Life and Health Insurance Guaranty Association***

AS 21.79.160(b) and (c) require the Alaska Life and Health Insurance Guaranty Association to prepare a summary document and disclaimer for approval by the director that describes coverage, limitations, and exclusions under the Alaska Life and Health Insurance Guaranty Association Act. The director has approved the notice for this purpose. The *Notice of Protection Provided by the Alaska Life and Health Insurance Guaranty Association* replaces the summary document attached Bulletins B 01-04 and B 06-14. It conforms to the *Life & Health Insurance Guaranty Association Model Act* (#520) adopted by the National Association of Insurance Commissioners.

Effective April 15, 2010, an insurer may not deliver a policy or contract to a policy or contract owner unless the *Notice of Protection Provided by the Alaska Life and Health Insurance Guaranty Association* is delivered to the policy or contract owner at the time of delivery of the policy or contract. This document must also be made available upon the request of a policy owner.

If you have any questions relating to the notice, please contact Maxine L. Froemling, Financial Examiner, at maxine.froemling@alaska.gov or (907) 269-7907. Bulletin B 10-02 supersedes Bulletins B 01-04 and B 06-14.

The complete bulletin and required notice, along with all archived bulletins cited in this document, are available at <http://www.commerce.state.ak.us/insurance/bulletins/bulletins.htm>.

## Arizona

In 2009, Governor Brewer suspended all rulemaking activity until November 24, 2009. From and after November 24, 2009, legislative session law extended the rulemaking moratorium through FY 2010 (June 30, 2010).

Additional information is available at <http://www.id.state.az.us/legact.html>.

## Arkansas

### *Bulletin 1-2010*

#### ***Replacement of Life Insurance Policies or Annuity Contracts; Compliance with Department Rule 97***

On July 23, 2009, the Arkansas Insurance Department (“Department”) issued Bulletin 8-2009 informing the industry and other interested parties of the adoption of Department Rule 97, “Life Insurance and Annuities Replacement.”

It has come to the Department’s attention that some companies have interpreted §§4(A) and (B) of Rule 97 to require a Life Insurance and Annuities Replacement Memorandum (“Replacement Memorandum”) not only when coverage is being replaced, but also in all cases in which the potential insured has any existing coverage. This was not the Department’s intent and is contrary to our interpretation. Although §§4(A) and (B) may appear to include existing policies regardless of whether a replacement is contemplated, §§1(A)(1) and (2) clearly state that the purpose of Rule 97 is to regulate the activities of insurers and producers with respect to the replacement of existing life insurance and annuities, and to protect the interests of life insurance and annuity purchasers by establishing minimum standards of conduct to be observed in replacement or financed purchase transactions. Therefore, Rule 97 does not apply in situations where a consumer with an existing policy purchases a new

policy while maintaining the existing policy in force. In such cases, the Department will not require a Replacement Memorandum.

Questions concerning this Bulletin should be directed to the Arkansas Insurance Department's Legal Division at (501) 371-2820 or via e-mail to [insurance.legal@arkansas.gov](mailto:insurance.legal@arkansas.gov). This and other bulletins cited are available at <http://www.insurance.arkansas.gov/Legal%20Dataseservices/PCBulletinYR.htm>.

## Colorado

### *Notice of Rule-Making*

Notice is hereby given that a public rule making hearing will be held before the Colorado Commissioner of Insurance on April 1, 2010, at 11:00 a.m. The hearing will take place at the Colorado Division of Insurance, 1560 Broadway, Suite 850, RM B, Denver, Colorado, 80202. The following proposals will be discussed:

4-1-8 Concerning The Disclosure Requirements For Life Insurance Illustrations  
[http://www.dora.state.co.us/insurance/regs/p4-1-8\\_040110pdf.pdf](http://www.dora.state.co.us/insurance/regs/p4-1-8_040110pdf.pdf)

4-2-2 Hospital Indemnity and Disability Income Policies  
[http://www.dora.state.co.us/insurance/regs/p4-2-2\\_040110.pdf](http://www.dora.state.co.us/insurance/regs/p4-2-2_040110.pdf)

A written comment period will be permitted for three business days after the public hearing. The notice is available at <http://www.dora.state.co.us/insurance/regs/noh.htm>, and includes links to the text of the proposed rules. Please send all comments, questions, and requests for information to the Division via email to [DOIRulesAndRecords@dora.state.co.us](mailto:DOIRulesAndRecords@dora.state.co.us). Please reference the proposed or amended regulation in the subject line.

## Kentucky

### *Advisory Opinion 2010-01: Discretionary Clauses*

In Advisory Opinion 2008-05, the Kentucky Department of Insurance (Department) stated that the Insurance Code did not prohibit the use of discretionary clauses in insurance policies unless their application rendered the policy fraudulent, unsound, or illusory. The Department allowed discretionary clauses so long as the insurer construed and interpreted the benefits within the confines of the four corners of the insurance contract and did not use discretionary clauses to deny benefits promised within the terms and conditions of the contract.

Based upon developments in recent case law and in the insurance market as a whole, the Department is hereby rescinding Advisory Opinion 2008-05 and replacing it with this Advisory Opinion 2010-01. The purpose of this opinion is to set forth the Department's current position on discretionary clauses. Any insurance policy, certificate, or contract containing a discretionary clause shall be reviewed in accordance with this opinion.

Discretionary clauses are contract provisions that confer on the insurer discretionary authority to determine eligibility for benefits and to interpret the terms and provisions of the policy. The following is an example of a discretionary clause:

“[This] benefit plan gives the administrator or fiduciary discretionary authority to determine eligibility for benefits or to construe the terms of the plan.”

The Department is concerned that the use of discretionary clauses functions to undermine the promise to provide benefits as set forth in the policy. If the insurer has unfettered ability to interpret and construe benefits, the insured can never be certain that they will be provided with the benefits as set forth in their policy. Further,

there is an inherent conflict of interest when the payer of benefits is also afforded broad discretion to interpret eligibility for benefits. It appears that in the marketplace, these clauses are still used to deny benefits to participants that would otherwise be guaranteed under the terms of the contract.

KRS 304.14-130(1)(b) instructs the Department to disapprove any form filed if the form “contains or incorporates by reference...any inconsistent, ambiguous, or misleading clauses, or exceptions and conditions which deceptively affect the risk purported to be assumed in the general coverage of the contract.” Discretionary clauses by their nature alter the risk and terms of the agreement by allowing the insurer to have final authority to interpret and construe the eligibility and benefits under the contract. It is the Department’s position that discretionary clauses deceptively affect the risk purported to be assumed in any policy and as such, any forms containing discretionary clauses may be disapproved.

The bulletin is available at <http://insurance.ky.gov/kentucky/ALSearch/Information/Bulletin.aspx>. Any questions should be directed to Andrea Fegley, Counsel, Office of Legal Services, at 502-564-6032 or [andrea.fegley@ky.gov](mailto:andrea.fegley@ky.gov).

## Missouri

### *Insurance Bulletin 10-03: Premium Tax Form Changes*

Earlier this month, the Department posted modified forms for insurers to calculate premium taxes for the March 1st filing. These modified forms moved certain tax credits in the calculation of the retaliatory tax. This modification put Missouri’s treatment of tax credits at variance from the treatment tax credits receive in other states. The purpose of this bulletin is to withdraw those modified forms and notify companies of the posting of the Department’s traditional forms for insurers doing business in Missouri.

The consistent treatment of tax credits throughout the states supports state-based insurance regulation and should be accomplished when statutorily permissible. The Department has concluded that its traditional method of calculating the retaliatory tax is statutorily permissible and preferred.

The Department is aware that some companies have already made their March 1 filing. There is no need for these companies to revise their filings. When the Department reviews these filings, we will make any adjustments necessary to effectuate the filing as if the traditional form had been utilized.

The bulletin is available at <http://insurance.mo.gov/laws/bulletin/index.htm>.

## New York

### *Circular Letter No. 3 (2010): Disaster Planning, Preparedness and Response*

This circular letter replaces and repeals Circular Letter No. 8 (2009). Authorized life insurers, retirement systems and fraternal benefit societies hereafter referred to as "life companies" in this circular letter and its attachments. Disaster planning, preparedness, and response for health insurers and property/casualty insurance industries are covered by separate circular letters.

This circular letter includes the complete requirements for disaster preparedness. It includes a table of contents referring different types of carriers to various sections of the plan.

The entire letter and plan are available at <http://www.ins.state.ny.us/circltr/2010.htm>.

## Utah

### *Utah Insurance Legislation*

The Utah Insurance Department has created a page to follow insurance related legislation through the legislative process. While many insurance departments have pages related to legislation, the unique aspect of Utah's page is that they invite public comment on the legislation and include a link to an e-mail address for this feedback.

The page is organized by chamber, and includes the bill number with a link to the bill text and a short description of the bill. In some cases, the Department has prepared a summary of the bill as well.

This page is available at <http://www.insurance.utah.gov/legislation/Leg2010.html>.

