



Legislative & Regulatory Report

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

June 30, 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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Alabama

High-Risk Insurance Pool Now Open for Applications

One of the first components of the health care reform law is now open for consumers to apply for coverage, State Insurance Commissioner Jim Ridling said.

“This is a federal program that we do not administer,” Commissioner Ridling said. “But it is important that we share this information for interested Alabamians, so they can visit the web site or call the toll-free number of the program to see if it will benefit them.”

To qualify for the Pre-Existing Condition Insurance Plan:

- You must be a citizen or national of the United States or lawfully present in the United States. You must provide a copy of a document that confirms your citizenship, such as a copy of your U.S. Passport, a copy of your birth certificate, a copy of your certificate of citizenship, or a copy of your naturalization certificate.
- You must have been uninsured for at least the last six months.
- You must have had a problem getting insurance due to a pre-existing condition.

The easiest access for the plan is to visit <http://www.pcip.gov>. The telephone number is 866-717-5826. Help via telephone is available Monday through Friday, 7 a.m.-10 p.m., (Central Time).

The United States Department of Health and Human Services, which is operating the plan, says the plan will cover primary and specialty care, hospital care and prescription drugs. The rates for the plan will be announced July 15, but HHS estimates that the plan will cost between \$514 and \$628 per month for a 50 year old. Those who apply and are accepted prior to July 15 will be covered effective August 1. Those who apply after the 15th of any month will not have coverage until the first day of the second month following.

Applications, for now, must be downloaded from the web site and mailed to: National Finance Center Pre-Existing Condition Insurance Plan P.O. Box 60017 New Orleans, LA 70160-0017. An application that can be submitted online will be available August 1, according to HHS. The plan will be in effect until December 31, 2013, giving way to the health insurance exchange system that will be in effect on January 1, 2014.

This notice is available at <http://www.aldoi.gov/PDF/News/HighRiskInsurance.pdf>.

Alabama Insurance Day 2010

Thursday, September 30, 2010 – Bryant Conference Center, Tuscaloosa, Alabama

Alabama Insurance Day, I-Day, is a day devoted to the professionals who work in and with those in the insurance industry.

I-Day includes topics from outstanding speakers, updates from the Alabama Department of Insurance, breakout sessions on Life/Health and Property/Casualty issues. Up to six hours of Continuing Education Credit will be available, along with the networking opportunities.

Lunch speakers for this year’s event will be former quarterbacks Tyler Watts from the University of Alabama and Stan Waite from Auburn University.

Mark your calendar and watch for more details at <http://www.aldoi.gov/>.

Alaska

Proposed Regulations

The Alaska Division of Insurance is planning to make changes to existing regulations as listed below. Interested persons may send comments on the following rule changes by close of business **July 9, 2010** to the Division of Insurance; Attention: Gloria Glover; 550 West Seventh Avenue, Suite 1560; Anchorage, AK 99501-3567; fax to (907) 269-7912; or e-mail to Gloria.Glover@alaska.gov.

Derivative Investment Instruments, Valuation of Life Insurance Policies, and Mortality Tables

The Division of Insurance proposes to adopt regulation changes in Title 3 of the Alaska Administrative Code, primarily dealing with derivative investment instruments, valuation of life insurance policies, and mortality tables as follows:

- 3 AAC 21.213, 3 AAC 21.271, 3 AAC 21.365, and 3 AAC 21.399 are proposed to be added or amended to address the requirements that must be met for an insurer to engage in a derivative investment transaction and to define terms regarding derivative investments.
- 3 AAC 21.835 is proposed to be amended to clarify the disclosure of interim results by an appointed actuary in the actuarial opinion and memorandum.
- 3 AAC 21.900 - 3 AAC 21.949 are proposed to be added to establish standards for the valuation of life insurance policies and to define terms used in these sections.
- 3 AAC 28.620, 3 AAC 28.630, and 3 AAC 28.635, are proposed to be amended or added to update the mortality tables used by life insurers and the requirements for their use.
- 3 AAC 31.210 is proposed to be amended to repeal the retaliatory filing fee requirement for insurers.

Annual Audits

The Division of Insurance proposes to adopt regulation changes in Title 3 of the Alaska Administrative Code, dealing with annual audits of financial statements and a management's report of internal control over annual audited financial reporting for admitted insurers as follows:

- 3 AAC 21.705 is proposed to be amended to clarify when and how a foreign or alien insurer is exempt from filing requirements of an audited financial statement.
- 3 AAC 21.775 is proposed to be added to outline who must file and the requirements necessary to be in a management's report of internal control over financial reporting.
- 3 AAC 21.799 is proposed to be amended to add definitions for terms used in section 775 referenced above.

The rules are available at <http://www.commerce.state.ak.us/insurance/notices/notices.htm#proposed>.

Arkansas

Installment Plans for Payment of Premium (Bulletin 4-2010)

Insurance companies, agencies, brokers and producers may offer installment payment plans to policyholders for the payment of premium. However, except for those fees specifically allowed by Ark. Code Ann. § 23-66-308, such fees must be included in any rate filing made by the insurer with this Department pursuant to Ark. Code Ann. §§ 23-67-201, et seq. The Commissioner will disapprove any installment fee that is excessive or exceeds the actual cost of processing and servicing the installment payment plan. The charging of such a fee absent the requisite filings pursuant to Ark. Code Ann. §§ 23-67-201, et seq., would constitute a violation of Ark. Code

Ann. § 23-66-310(b)(1), which prohibits collection of a fee in excess of the premium rate as filed and approved, where necessary, by the Commissioner or a fee that exceeds the premiums and charges specified in the policy.

If an installment payment fee is charged and the fee was not specified in the policy itself, except to the extent provided in an applicable filing with this Department, the fee could be a violation of Ark. Code Ann. § 23-66-308. Subsection (a) of that statute prohibits the provision of credit or any other benefit not specified in the policy as an inducement to insure.

This bulletin is not intended, and should not be interpreted, to prohibit any charges allowable pursuant to Ark. Code Ann. § 23-66-310. If you have any questions regarding this bulletin, please contact the Department's Legal Division at (501) 371-2820.

This bulletin is available at <http://www.insurance.arkansas.gov/Legal%20Dataservices/PCBulletinYR.htm>.

Rule 82: Annuity Training (Bulletin 5-2010)

Section 9 of Rule 82 requires all producers marketing annuities in Arkansas to complete a four (4) hour annuity training course by July 15, 2010, and annually thereafter. This provision applies to resident and non-resident producers.

The training requirement was added to the NAIC model regulation on suitability in annuity transactions. Since our adoption of Rule 82, other states have also adopted the NAIC model. Some states have also added new training requirements and others are considering adding similar provisions.

The Department has become concerned that our training requirement will not be consistent with the requirements set forth in other states. In order to be more consistent with other states and include a better annuity training requirement, the Department feels that it should revise this Section of Rule 82. Since this process may take several months, the Department will no longer enforce the provision of Section 9 of Rule 82. Until Rule 82 is revised, the four (4) hour annual annuity training will no longer be required.

Any questions regarding this Bulletin should be directed to the Legal Division of the Arkansas Insurance Department at insurance.legal@arkansas.gov.

This bulletin is available at <http://www.insurance.arkansas.gov/Legal%20Dataservices/PCBulletinYR.htm>.

Connecticut

Notice of Intent to Amend Regulations

The Connecticut Insurance Commissioner proposes to amend a regulation defining standards and the Insurance Commissioner's authority for insurance companies deemed to be in a hazardous financial condition.

Statement of Purpose: To amend regulations that set forth standards and the Insurance Commissioner's authority for insurance companies deemed to be in a hazardous financial condition.

All interested persons are invited to submit written data, views, or arguments in connection with the proposed action within thirty days following publication of this notice in the Connecticut Law Journal to the State of Connecticut, Insurance Department, Attention: Jon E. Arsenault, Esq., P.O. Box 816, Hartford, CT 06142-0816.

The notice and regulation are available at <http://www.ct.gov/cid/cwp/view.asp?a=2479&q=254494>.

District of Columbia

Notice of Proposed Rulemaking: Senior-Specific Certifications

The Commissioner of the Department of Insurance, Securities, and Banking hereby gives notice of intent to establish a new chapter 58 of Title 26A and a new section 169 of chapter 1 of Title 26B, of the District of Columbia Municipal Regulations. The new chapter will set forth certain guidelines and prohibitions regarding the use of senior-specific certifications, designations, and credentials by insurance producers, and investment advisers and investment adviser representatives.

This chapter shall apply to any solicitation, sale, or purchase of, or advice made in connection with, a life insurance or annuity product by an insurance producer. The use of a senior-specific certification or professional designation by any person in connection with the solicitation, sale, or purchase of life insurance or annuity products that indicates or implies that the insurance producer has special certification or training in advising or servicing seniors or retirees, in such a way as to mislead, constitutes an unfair and deceptive act or practice in the business of insurance.

Persons desiring to comment on these proposed rules should submit comments in writing to Gennet Purcell, Commissioner, Department of Insurance, Securities, and Banking, 810 First Street, N.E., Suite 701, Washington, D.C. 20002. The proposed rule is available at <http://disr.dc.gov/disr/cwp/view,a,11,q,641434.asp>.

Idaho

Bulletins

The Idaho Department of Insurance has issued the following bulletins. The full bulletins are available on the Idaho DOI website at <http://www.doi.idaho.gov/laws/2010bulletins.aspx>.

Senate Bill 1327: Annuity Sales to Consumers - Disclosures (Bulletin 10-06)

The 2010 Idaho Legislature enacted Senate Bill No. 1327 creating new disclosure requirements for annuity sales to consumers. The new law, Idaho Code Section 41-1941, takes effect July 1, 2010, and will affect any person involved in selling annuity contracts where the contract owner is a resident of Idaho. Persons involved in the sale of annuity products should carefully review this law. The full text of Senate Bill No. 1327 is available at the Idaho Legislature website at: <http://www.legislature.idaho.gov/legislation/2010/S1327Bookmark.htm>

A key part of the disclosure requirement is providing annuity applicants a buyer's guide in a form prescribed by the director. The purpose of this bulletin is to inform carriers and producers that the form prescribed by the director is that of the most current version of the NAIC Buyer's Guide to Fixed Deferred Annuities with Appendix for Equity-Indexed Annuities.

The Department may develop additional procedures and rules to implement the requirements of the new law. Additional information will be made available on the Department's website at: <http://www.doi.idaho.gov>.

Rate of Interest on Deferred Payment of Cash Surrendered Benefits, Effective July 1, 2010 (Bulletin 10-07 Rescinds Bulletin 09-07)

Effective July 1, 2010, insurers must pay a minimum of 5.375% on deferred payment of cash surrender values pursuant to Idaho Code Sections 41-1927(3) and 41-1927A(3)(b). The 5.375% interest rate is computed in accordance with Idaho Code § 28-22-104 and is effective from July 1, 2010 through June 30, 2011. The Idaho State Treasurer will announce a new rate by July 1st of each succeeding year. The rate calculation can be reviewed at the State Treasurer's website: <http://sto.idaho.gov/Reports/LegalRateOfInterest.aspx>.

An insurer that has not tendered payments in satisfaction of a cash surrender request within thirty days of receipt of the request will be deemed to have elected to defer payment of the cash surrender benefit. The thirty day period for processing cash surrender requests will begin upon the date the request was received by the insurer or its authorized agent or representative. An insurer that elects to defer payment of a cash surrender benefit pursuant to Idaho Code Sections 41-1927 or 41-1927A is required to pay interest from the date on which the cash surrender request is received.

2010 Insurance Legislation and Rules Summary

The Idaho Department of Insurance has prepared a summary of insurance-related legislation passed during this year's session. All legislation takes effect July 1, 2010 unless otherwise noted. The full list is available at <http://www.doi.idaho.gov/legislation/2010legislation.aspx>, and includes direct links to all legislation cited.

Department of Insurance Legislation:

- **House Bill 424** - Repeals Idaho Code Section 41-1830, which makes life insurance proceeds the separate property of a married woman. Last year, the Idaho Supreme Court ruled this old code section to be unconstitutional because it did not extend similar protections to men.
<http://www.legislature.idaho.gov/legislation/2010/H0424Bookmark.htm>
- **House Bill 431** - Clarifies that financial reports filed with the Department by self-funded health plans subject to regulation under Chapters 40 and 41 of Title 41, Idaho Code, are records open to inspection by the public. It also makes examination reports relating to title agents records open to inspection by the public. The changes are to Chapters 27, 40, and 41, of Title 41, Idaho Code, and will take effect July 1 of this year.
<http://www.legislature.idaho.gov/legislation/2010/H0431Bookmark.htm>

Other Insurance Related Legislation for 2010:

- **H593a** - Amends Idaho Code § 41-1839 to allow an award of attorney fees in arbitration proceedings involving disputed insurance claims.
<http://www.legislature.idaho.gov/legislation/2010/H0593Bookmark.htm>
- **S1327** - Adopts NAIC disclosure requirements for annuity sales.
<http://www.legislature.idaho.gov/legislation/2010/S1327Bookmark.htm>

Illinois

Prohibition on Discretionary Clauses (Bulletin 2010-05)

This advisory provides notice to all entities and individuals regulated by this Department that are engaged in the issuance of accident, health or disability insurance policies in this State. Insurance regulations prohibit accident, health, and disability insurance policies issued in Illinois from containing provisions reserving discretion in the insurer to interpret the terms of the contract.

Section 2001.3 of Title 50 to the Illinois Administrative Code (50 Ill. Admin. Code 2001.3) provides as follows:

Section 2001.3 Discretionary Clauses Prohibited

No policy, contract, certificate, endorsement, rider application or agreement offered or issued in this State, by a health carrier, to provide, deliver, arrange for, pay for or reimburse any of the costs of health care services or of a disability may contain a provision purporting to reserve discretion to the health carrier to interpret the terms of the contract, or to provide standards of interpretation or review that are inconsistent with the laws of this State.

It has come to the attention of the Department that, with respect to insurance policies originally issued before the July 1, 2005 effective date of the regulation, certain insurers continue to exercise discretionary clauses against their policyholders. Typically this is done under the theory that the regulation has no retroactive application. Such conduct does not comply with the law in that it does not properly take into account the renewal of the policy.

Policies offering accident, health and disability benefits typically are renewed annually. The Department's regulation prohibiting discretionary clauses was adopted five years ago next month. It is therefore unlikely that there are any policies in existence that have not been either renewed or issued subsequent to the effective date of the regulation.

The regulation prohibiting discretionary clauses is accordingly applicable to all currently issued and outstanding accident, health, and disability insurance policies in that all such policies will have either been issued or renewed since the effective date of the regulation. Insurers who do not comply with the absolute prohibition on discretionary clauses contained in 50 Ill. Admin. Code 2001.3 will be held accountable and subject to regulatory action.

The complete bulletin is available at <http://insurance.illinois.gov/cb/cblist10.asp>.

Iowa

Electronic Filing Requirements (Bulletin 10-01)

To: Preneed Sellers, Sales Agents and Perpetual Care Cemeteries

The purpose of this bulletin is to respond to concerns raised about the on-line filing requirements recently implemented for filings made pursuant to Iowa Code chapters 523A and 523I. The Division is aware that the new on-line filing requirements were difficult for a number of businesses and individuals. This bulletin is intended to provide flexibility in the delivery methods. First, licensees may submit their annual reports, license applications and license renewals to the Division electronically without filing on-line. Second, licensees may submit fee amounts by mailing a check to the Division.

Until further notice, licensees may submit documents (annual reports, license applications and license renewals) on a Compact Disc capable of data storage and accessible by a computer (commonly known as a "CD") or a Digital Versatile Disc capable of data storage and accessible by a computer (commonly known as a "DVD"). Licensees may also submit documents by electronic mail. Preneed Sellers and Sales Agents should send emails to Rhonda.Smith@iid.iowa.gov and Perpetual Care Cemeteries should send emails to Lisa.Lann@iid.iowa.gov. The on-line filing system will continue to be available for those who wish to utilize that delivery method.

The bulletin is available at http://www.iid.state.ia.us/news_media/bulletins.asp. If you have any questions about this bulletin, please call Dennis Britson at the Iowa Insurance Division at 515-281-5705 or email dennis.britson@iid.iowa.gov.

Kentucky

High Risk Pool Launches July 1

Information on the Pre-Existing Condition Insurance Plan (also known as the temporary federal high-risk pool), which is part of the Patient Protection and Affordable Care Act, will be available beginning July 1. It is anticipated that the plan's Web site (www.healthcare.gov) will be launched at that time. An application and information on the plan, including cost and benefits, will be available on the Web site.

To be eligible for the plan, a person must have a pre-existing medical condition and have been uninsured for at least six months. Other eligibility information will be available on the Web site. This new plan will run parallel to the state's existing high risk pool, Kentucky Access, and does not replace that program.

The new plan will serve as a bridge between now and 2014 when the health exchanges are in place. In 2014, insurers will not be able to deny coverage to anyone based on medical condition. It is anticipated that coverage in the new pool will begin September 1. Those interested should apply as soon as possible.

Additional information will be available at <http://insurance.ky.gov/>.

Insurance Legislation Adopted by the 2010 Kentucky General Assembly (Bulletin 2010-05)

The Kentucky Department of Insurance has prepared a comprehensive list of insurance-related legislation from the 2010 General Assembly. The complete documents are available at <http://insurance.ky.gov/Bulletin.aspx>.

The bulletin is for information purposes only and does not amend or interpret provisions of the Kentucky revised statutes or the Kentucky administrative regulations. The complete and accurate text of the law can be secured when the 2010 acts of the Kentucky general assembly are published in the summer of 2010. Unless otherwise noted, the effective date of the legislation is July 15, 2010. Bills as enacted are available on the LRC Web site at www.lrc.ky.gov/record/10rs/record.htm.

House Bill 126 - Financial Examination of Insurers; Disclosure Requirements for Life Insurance

With regard to the financial examination of insurers, this bill amends the following statutes:

- KRS 304.2-210(2) is amended to allow for the examination of each domestic insurer not less than every five (5) years rather than every three (3) years;
- KRS 304.2-320 is amended to require entities seeking a merger, acquisition or other change of control to be responsible for the cost of the public hearing notice;
- KRS 304.3-242 is amended to adopt the updates to the NAIC Property and Casualty Actuarial Opinion Model Law. The primary updates include the requirement that insurers file an actuarial opinion summary in addition to the statement of actuarial opinion; and
- KRS 304.3-180 is amended to require insurers to rotate accountants every five (5) years as opposed to seven (7) years.

Additionally, this bill creates a new statute in KRS 304, Subtitle 15 to require life insurance companies to provide a disclosure to insureds who are at least 60 years old and insureds that are known by the insurer to be chronically or terminally ill. The bill also permits the Department of Insurance to promulgate a regulation to exempt life insurance policies of less than \$100,000 from the notice requirements.

House Bill 278 - Local Government Premium Taxes

This bill makes technical clarifications to HB 524 enacted during the 2008 Regular Session. Specifically, the bill:

- Amends KRS 91A.0804 to clarify that the exclusive remedy began on July 15, 2008 (the effective date of HB 524);
- Amends KRS 91A.0810 to clarify that the disclosure notice is applicable to new business in addition to renewal business; and
- Amends KRS 304.10-180 to make the disclosure requirements applicable to surplus lines brokers.

Additionally, the bill includes language to exempt from local government premium taxes premiums paid by non-profit self-insurance groups whose membership consists of cities, counties, charter county governments, urban-county governments, consolidated local governments, school districts, or any other political subdivisions of the Commonwealth. This exemption is applicable for the fiscal year beginning July 1, 2010 and expires June 30, 2012.

House Bill 393 - Public Protection Cabinet Reorganization

This bill ratified Executive Order 2009-535, which created the Department of Insurance, headed by a Commissioner, and abolished the Office of Insurance, headed by an Executive Director.

Maine

Life Insurance Policyholder Notice (Bulletin 374 - supersedes Bulletin 370)

The Maine Viatical and Life Settlements Act requires the Superintendent of Insurance to develop an informational brochure to apprise consumers of their rights as owners of life insurance policies. Life insurers must provide copies of this brochure to policy owners in certain situations. This requirement applies only to individual life insurance. Group life insurance policies are not subject to this notice requirement.

Individual Life Insurance Notice

Life insurers must provide copies of this brochure to owners of individual life insurance policies when the insured is 60 years of age or older, or is known by the insurer to be terminally ill or chronically ill, and:

- (1) the policyowner has requested the surrender of the policy in whole or in part;
- (2) the policyowner has requested an accelerated death benefit; or
- (3) the insurer sends an initial notice that the policy may lapse.

Insurers must begin providing copies of the informational brochure to all policyholders described in the statute no later than September 1, 2010. The brochure is Attachment 1 to this Bulletin. Insurers may reproduce the brochure as necessary, and may download copies at:

http://www.maine.gov/pfr/insurance/producer/life_settlement_brochure_05202010.html

Insurers that wish to provide standardized notice on a multistate basis may use an alternative notice, Attachment 2 to this Bulletin, based on the Washington Life Settlement Regulation, WAC 284-97-910, which may be downloaded at:

http://www.maine.gov/pfr/insurance/producer/alternative_life_settlement_brochure_05202010.html

The statute refers to “notice to the policyowner that there may be alternative transactions available, including a copy of the superintendent’s brochure.” The Bureau of Insurance has received questions as to whether this requirement contemplates some additional notice above and beyond the brochure. Sending the brochure is sufficient to satisfy the notice requirement. No cover letter or other additional information is required.

The Bureau will be conducting rulemaking to further clarify the statutory notice requirements discussed above. In the interim, it is the expectation of the Bureau that an insurer will send proper and timely notice to the owner of any individual life insurance policy with death benefits over \$100,000 when the insured is 60 years of age or older, or is known by the insurer to be terminally ill or chronically ill, and: a. the policyowner has requested the

surrender of the policy in whole or in part or has requested an accelerated death benefit; or b. the policyowner has failed to pay premium when due.

Further, life insurance for the purposes of this notice requirement does not include credit life or benefits limited to death by accident or other specified causes. Timely notice means that the policyowner has at least one month after the notice is sent in which to maintain or reinstate the policy or to rescind the policy surrender or accelerated death benefit, without fees or penalties.

The bulletin is available at http://www.maine.gov/pfr/insurance/bulletins/index_by_number.shtml, and includes the attachments.

Maryland

Proposed Regulation - Complaint Handling Standards

The Maryland Insurance Administration has prepared a draft proposed regulation setting forth certain procedures for handling complaints. Please review and submit your comments, if any, in writing to Brenda Wilson, Associate Commissioner, Life and Health, by email to bwilson@mdinsurance.state.md.us by close of business on Monday, August 2, 2010. This chapter applies to carriers that issue or deliver insurance policies or health maintenance contracts in Maryland.

The rule is available at <http://www.mdinsurance.state.md.us/sa/documents/ProposedReg31-16-10complaints6-22-10.pdf>.

Michigan

Insurance Producer Variable Life/Variable Annuities Line of Authority (Bulletin 2010-14-INS)

This bulletin clarifies how the Office of Financial and Insurance Regulation (OFIR) processes insurance producer licensing applications for the Variable Annuities (VA) line of authority. It supersedes both Michigan Insurance Bureau Bulletin No. 1990-04, issued May 25, 1990, and Bulletin 2009-15-OFIR, issued November 17, 2009.

In Michigan variable life insurance and variable annuities are considered insurance products and regulated as such, despite their status as securities under federal law. OFIR processes all insurance producer licensing applications through the National Insurance Producer Registry (NIPR). Since April 4, 2008, the V A line of authority, which encompasses variable life and variable annuities, has been issued to insurance producers as a separate line of authority pursuant to Section 1206(1)(e) of the Insurance Code, 1956 PA 218 as amended, MCL 500.1206(1)(e). All resident and non-resident applicants for the V A line of authority must first register or be registered with the Financial Industry Regulatory Authority (FINRA), <http://www.finra.org> (formerly known as NASD) and have successfully completed the FINRA Series 6 or 7 examination.

Any resident insurance producer seeking to hold the VA line of authority is also required to pass the Michigan variable annuities examination, but is no longer required, as previously specified in Bulletin 1990-04, to hold a basic life qualification as a precondition to seeking a VA line of authority. However, a producer who intends to sell life insurance other than variable life insurance must obtain the life line of authority in addition to the VA line of authority. OFIR does not require pre-licensing education for the VA line of authority. However, continuing education requirements under MCL 500.1204c do apply to the VA line of authority.

A non-resident insurance producer applicant, who holds a VA line of authority in his /her home state, may apply for a reciprocal Michigan VA line of authority. A non-resident insurance producer applicant from a state that issues the life line authority only must pass the Michigan variable annuities examination, register with FINRA as specified above, and apply for a Michigan VA line of authority before selling any variable products in Michigan.

Since August 3, 2009, all resident and non-resident insurance producers have been required to take the Michigan variable annuities examination prior to receiving the V A line of authority or the insurance producer must have taken an examination in another state and maintain a reciprocal license in good standing.

Any questions regarding this bulletin should be directed to: Office of Financial and Insurance Regulation Licensing and Product Review Division Insurance Licensing Section 611 West Ottawa Street P.O. Box 30220 Lansing, Michigan 48909-7720; Toll Free: (877) 999-6442.

The bulletin is available at http://www.michigan.gov/documents/dleg/Bulletin_2010_14_OFIR_325073_7.pdf.

New Jersey

Stranger Originated Annuities [STOAs] (Bulletin 10-14)

Fixed and variable annuities are vital long term insurance products largely intended to protect individuals from the financial risks associated with longevity - - running out of money saved for retirement. As such, these products offer many valuable guaranteed benefits, including minimum lifetime income guarantees.

Variable annuities also provide guaranteed death benefits at relatively low prices. The low price is achievable, in part, because variable annuities have historically attracted healthy individuals (i.e., those least likely to be motivated by an ancillary minimum death benefit guarantee).

However, in the case of Stranger Originated Annuities (STOAs), an insurance producer and/or “investor” may offer a stranger a fee for the use of their identity as the measuring life, or annuitant, in the variable annuity. Consumers who are terminally ill or in extremely poor health are targeted for such transactions, and the annuities are, in effect, being used as a wagering contract that pays off on the death of the vulnerable annuitant.

These schemes may go undetected because the producers/investors take deliberate steps to ensure that the dollar amount of annuity premium falls below the insurer’s underwriting guidelines. Often, a trust or organization is named as beneficiary of the death benefit in order to hide the identity of the beneficiary. STOAs hurt contract holders and insurers because the wagering profits realized by the producers/investors will eventually be passed on to other contract holders in the form of higher annuity fees and/or weaker guarantees. These and other similar schemes should be void as a matter of public policy, and the Department is encouraging companies to take a proactive stance in helping to eliminate them.

The Department believes that insurers currently have the ability to eliminate STOAs without the need for any new legislation or regulations. P.L. 2008, Chapter 88 (codified at N.J.S.A. 17B:25-34 et seq.), effective April 1, 2009, requires individuals selling individual annuities to make reasonable efforts to obtain and record information about the suitability of the product for the solicited consumer and the consumer’s acknowledgement of the information recorded. The Unfair Trade Practices Act at N.J.S.A. 17:29B-1 et seq. prohibits any person from engaging in unfair or deceptive acts or practices in the business of insurance. The New Jersey Insurance Fraud Prevention Act at N.J.S.A. 17:33A-1 et seq., allows for the imposition of both civil and criminal penalties in legal actions for insurance fraud violations commenced by the New Jersey Insurance Fraud Prosecutor’s Office established pursuant to N.J.S.A. 17:33A-16.

Address questions regarding this Bulletin to the Department's Life & Health Division at 609-292-5427 or via e-mail to neil.vance@dobi.state.nj.us. The bulletin is available at <http://www.state.nj.us/dobi/bulletin.shtml>.

New York

Bonus Recapture from Death Benefit Proceeds Is No Longer Permitted (Circular Letter 8-2010)

The purpose of this Circular Letter is to clarify for insurers that as a result of amendments to Insurance Law § 4223(c)(1), insurers may not “recapture” any bonus interest rates or credits from: 1) the death benefit proceeds of a fixed deferred annuity contract or certificate, or 2) the portion of the death benefit proceeds related to the fixed account portion of an annuity contract or certificate that combines both fixed and variable benefits. Because Insurance Law § 4240(d) states that Insurance Law § 4223 does not apply to variable annuities, these amendments do not affect the variable portion of a fixed and variable annuity.

Section 1 of Chapter 170 of the Laws of 2008 amended Insurance Law § 4223(c)(1) to state:

Except as provided in paragraph four of this subsection, the minimum values as specified in subsections (d), (e), (f), (g) and (i) of this section of any paid-up annuity, cash surrender or death benefits attributable to any account subject to this section under an annuity contract shall be based (except as provided in subsection (e) of this section with respect to the use of a market-value adjustment formula) upon the actual accumulation amount computed as provided in this subsection. For contracts that provide a cash surrender benefit prior to the commencement of annuity payments, the death benefit attributable to any account, other than an equity index account, shall not be less than the actual accumulation amount, as defined in paragraph two of this subsection, and the death benefit attributable to an equity index account shall not be less than the value of the equity index account, as defined in paragraph four of this subsection. [Emphasis supplied.]

Thus, if an annuity contract or certificate provides for a cash surrender benefit prior to the commencement of annuity payments, and a death benefit becomes payable before those annuity payments commence, insurers must pay an amount not less than the actual accumulation amount or, in the case of an equity index account, the value of the equity index account. Put another way, if a death benefit becomes payable before annuity payments commence, then insurers may not reduce—even by recapturing any bonus interest rate or credit—1) the death benefit proceeds of a fixed deferred annuity contract or certificate, or 2) the portion of the death benefit proceeds related to the fixed account portion of an annuity contract or certificate that combines both fixed and variable benefits.

Prior to April 30, 2002, the Department's long-standing position held that an annuity contract's death benefit must not be less than the actual accumulation amount. But, since April 30, 2002, the Department permitted insurers to recapture bonus interest rates or credits from a death benefit only when death occurred within the 12 months immediately following the bonus credit. However, in light of the 2008 revisions to Insurance Law § 4223(c)(1), the law now is explicit that 1) the death benefit proceeds of a fixed deferred annuity contract or certificate, or 2) the portion of the death benefit proceeds related to the fixed account portion of an annuity contract or certificate that combines both fixed and variable benefits, must not be less than the actual accumulation amount if death occurs before annuity payments commence. Accordingly, the Department has updated its annuity product outline to reflect this position.

The effective date of Chapter 170 of the Laws of 2008 was October 5, 2008. Thus, any contract or certificate issued prior to October 5, 2008 is not subject to the prohibition in Insurance Law § 4223(c)(1). However, in accordance with Insurance Law § 3103, any contract or certificate issued on or after October 5, 2008 shall be

enforceable as if it conformed to the law. Accordingly, to prevent any confusion, every insurer must endorse any annuity contract or certificate issued on or after October 5, 2008 to remove any death benefit bonus recapture provisions or in the case of a fixed and variable annuity contract or certificate be endorsed to provide that the recapture will not be applied to the fixed account portion of the contract. An insurer need not issue an endorsement for a contract or certificate where the bonus recapture period provided for in the contract or certificate has expired prior to the date of this Circular Letter.

For new issues of annuity contracts and certificates, insurers may use endorsements or may submit new policy forms that include the revisions. All endorsements and revised policy forms must be submitted to the Life Bureau for approval.

An insurer that has recaptured bonus credits from contracts or certificates issued after October 5, 2008 shall take appropriate steps to provide restitution to the beneficiary or beneficiaries. If an insurer takes appropriate steps to provide such restitution, the Department does not intend to take further enforcement action against the insurer related to the recaptures.

Please contact Peter Dumar, Associate Insurance Attorney, Life Bureau, at (518) 474-4552 or by email at pdumar@ins.state.ny.us, with any questions about policy form submissions. The letter is available at <http://www.ins.state.ny.us/circltr/2010.htm>.

Oregon

Use of a Fraud or Misstatement Warning (Bulletin 2010-03)

The Rates and Forms Section of the Division receives form filings that include a wide variety of fraud or misstatement warnings. While the Oregon Insurance Code does not specifically address insurance fraud, the Division supports anti-fraud efforts generally and fraud or misstatement warnings specifically. This Bulletin is intended to provide guidance on acceptable fraud or misstatement warnings.

Warning statements may be included on insurance applications, claim forms and claim payments. They may appear in policies and declaration pages only if the statement is part of the application for insurance.

The Insurance Division reviews statements according to the following guidelines:

1. For remedies other than denial of a claim (e.g. rescission or cancellation, depending upon statute), fraud or misstatement warnings must assert that misstatements, misrepresentations, omissions or concealments on the part of the insured must either be fraudulent or material to the interests of the insurer in order for the insurer to assert a right to remedy.
2. Fraud or misstatement warnings must clarify that in order for an insurer to deny a claim on the basis of misstatements, misrepresentations, omissions or concealments on the part of the insured, the insurer must show that the misinformation is material to the content of the contract, that the insurer relied upon the misinformation and that the information was either material to the risk assumed by the insurer or that the misinformation was provided fraudulently (ORS 742.013).
3. Depending on the type of contract, fraud or misstatement warnings may need to include an acknowledgment that material misrepresentations must be willful or intentional in order to trigger the right to remedy (e.g. fire insurance, ORS 742.208).
4. Fraud or misstatement warnings must acknowledge that misstatements, misrepresentations, omissions or concealments on the part of the insured are not fraudulent unless they are made with intent to knowingly defraud.

5. Fraud or misstatement warnings using the term "deceptive" must clearly relate the term to activities that are material to the risk at issue or to the claim.
6. Fraud or misstatement warnings that connect fraud statements with criminal penalties must be phrased to avoid definite statements of guilt. Phrases such as, "may be guilty of insurance fraud," or "may be subject to prosecution for insurance fraud" are acceptable.
7. Fraud or misstatement warnings on life insurance policies must not conflict with the applicable two-year limit on contestability under Oregon law.
8. Fraud or misstatement warnings on health insurance policies must not conflict with the applicable two-year limit on contestability under Oregon law, except that they must disclose that there is no time limit on contestability in the event of fraud on the part of the insured.

This bulletin is available at <http://www.cbs.state.or.us/external/ins/bulletins.html>. It becomes effective immediately.

Rhode Island

Public Notice of Proposed Rule-Making

A public hearing to consider the following proposed amendments shall be held on August 3, 2010, at 1511 Pontiac Avenue, Cranston, Rhode Island, 02920. All interested parties are invited to submit written or oral comments concerning the proposed regulations by August 3, 2010 to Elizabeth Kelleher Dwyer, Department of Business Regulation, 1151 Pontiac Avenue, Cranston, Rhode Island 02920, edwyer@dbr.state.ri.us. The hearing notices and proposed rules are available at <http://www.dbr.state.ri.us/rules/proposed.php>.

Regulation 89: Actuarial Opinion and Memorandum

The Department of Business Regulation hereby gives notice of its intent to amend Insurance Regulation 89 Actuarial Opinion and Memorandum. The purpose of this amendment is to update the regulation to the current National Association of Insurance Commissioners Model Regulation. The hearing on this rule will begin at 10:00 a.m.

Regulation 93 Valuation of Life Insurance Policies

The Department hereby gives notice of its intent to amend Insurance Regulation 93 Valuation of Life Insurance Policies. The purpose of this amendment is to update the regulation to the current National Association of Insurance Commissioners Model Regulation. The hearing on this rule will begin at 10:30 a.m.

Regulation 104: Recognition of Preferred Mortality Tables for use in Determining Minimum Reserve Liabilities

The Department hereby gives notice of its intent to amend Insurance Regulation 104 – Recognition of Preferred Mortality Tables for use in Determining Minimum Reserve Liabilities. The purpose of this amendment is to update the regulation to the current National Association of Insurance Commissioners Model Regulation. The hearing on this rule will begin at 11:00 a.m.

Virginia

Legislation Enacted by the 2010 General Assembly (Administrative Letter 2010-06)

The Virginia Bureau of Insurance has issued a bulletin summarizing statutes enacted during the 2010 Session of the Virginia General Assembly. The effective date of these statutes is July 1, 2010, except as otherwise indicated in this letter.

The letter is available at <http://www.scc.virginia.gov/division/boi/webpages/boi2010administrativeletters.htm>.

Chapter 211 (House Bill 77): This bill revises §§ 38.2-3724 and 38.2-3735 (Credit Life and Credit Accident and Sickness) relating to disclosure requirements for credit life and accident and sickness contracts. The revision specifies the type of contracts for which notice is required to advise a debtor of his right to a refund if the insurance is terminated before its maturity date or if the debt is paid off early.

Chapter 227 (House Bill 352) and **Chapter 374** (Senate Bill 465): The bill amends § 38.2-3323 (Life Insurance Policies) relating to group life insurance coverage of spouses, dependent children, and other persons. The bill permits coverage under a group life insurance policy to any other person in whom the insured group member has an insurable interest as defined in §§ 38.2-301 and 38.2-302 as may mutually be agreed upon by the insurer and the group policyholder.

Chapter 234 (House Bill 531): The bill adds an exception to § 38.2-1907 (Regulation of Rates), which makes certain filings and supplementary rate information open to public inspection. Filings and supplementary rate information which contain information that constitutes a trade secret, as defined in § 59.1-336, shall not be open to public inspection.

Chapter 281 (House Bill 800): The bill amends §§ 38.2-1815 (License Required of Resident Life & Annuities Agents); 38.2-1825 (Duration and Termination of Licenses and Appointments); and 38.2-1869 (Termination of License) to remove the requirement that a nonresident agent must obtain an underlying life and annuities license from the Bureau of Insurance prior to applying a variable contract license.

Wisconsin

Newly Enacted Legislation

The Wisconsin Office of the Commissioner of Insurance has issued a bulletin summarizing new legislation. The following excerpt is included in that bulletin. The complete document is available on the office's website at <http://oci.wi.gov/bulletin/0610legis.htm>.

ACT 343: Suitability of annuity contracts

Act 343 requires insurers and intermediaries making recommendations on the purchase or replacement of an annuity shall have reasonable grounds to believe the recommendation is suitable for the consumer. The act also requires the disclosure to the insured of features of the annuity including potential surrender period and surrender charge, potential tax penalty if the consumer sells, exchanges, surrenders, or annuitizes the annuity, mortality and expense fees, investment advisory fees, potential charges for and features of riders, limitations on interest returns, insurance and investment components, and market risk. The Act also requires that consumers be informed of the benefits of the annuity.

Act 343 requires insurers to establish supervision systems designed to achieve compliance with the statutes including general and product-specific training requirements. Insurers must also maintain procedures to monitor all annuity sales and detect recommendations that are not suitable. The Act also places training requirements on intermediaries, including one-time training for current life insurance licensees within the next six months. New licensees must also complete the training if they wish to sell annuities. The minimum of one-time or prelicensing education on annuities must be at least 4 hours.

The complete text is available at <http://www.legis.state.wi.us/2009/data/acts/09Act343.pdf>. The act becomes effective on May 1, 2011.