

# Arkansas Insurance Department

Mike Beebe  
Governor



Jay Bradford  
Commissioner

June 3, 2011

**BULLETIN NO.: 3-2011**

**TO:** All Licensed Foreign, Alien and Domestic Insurers, Accredited/Trusted Reinsurers, Farmers' Mutual Aid Associations, Hospital and Medical Service Corporations, Health Maintenance Organizations, Fraternal Benefit Societies, Insurer Trade Associations, Rate Service or Advisory Organizations, All Insurance Producer Trade Associations, All Third Party Administrators, Adjuster Trade Association, Approved But Not Admitted Surplus Line Insurers, Licensed Managing General Agents and Agencies, Licensed Surplus Line Brokers, the National Association of Insurance Commissioners and Other Interested Parties

**FROM:** Arkansas Insurance Department

**SUBJECT: 2011 ARKANSAS LEGISLATION PERTAINING TO INSURANCE**

**-L-** Life & Health   **P** Property & Casualty   **A** Producers

**-L- P A**   **GENERAL OMNIBUS, ACT 760 OF 2011. Effective July 26, 2011.**

**-L- P A**   **Section 1. Ark. Code Ann. § 23-61-303 – Designation of Independent Hearing Officer:** Currently, the Commissioner has the authority to designate any employee of the Department to act as a hearing officer. However, there are situations that arise that would be more fairly handled by an independent third party not employed by or associated with the Department. The section of the Act allows the Commissioner to appoint any person to serve as a hearing officer.

**-L- A**   **Section 2. Ark. Code Ann. § 23-62-111 – Stop Loss Coverage to Self-Insuring Employers:** ERISA allows employers to self-insure their employees' health insurance liabilities. Many of these employers purchase stop loss coverage, which allows an insurance company to be responsible when claims liability exceeds a certain attachment point. This section of the Act adopts the NAIC model establishing requirements for attachment points in stop loss policies sold to self-insuring employers. It provides a formula for determining what the lowest proper attachment point should be.

**-L- P**   **Section 3. Ark. Code Ann. § 23-63-216(a) – Audited Financial Statements of Insurers:** The current law that requires the filing of an insurers' annual statement does not specifically reference audited financial statements, which insurance

companies currently file. This section of the Act explicitly requires audited financials as well as the annual statement.

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**Section 4. Ark. Code Ann. §§ 23-63-1501, *et seq.* – Risk-Based Capital Act for Insurers:** Risk-Based Capital (“RBC”) is a standard used by insurance regulators to analyze the solvency or financial stability of insurance companies. This section of the Act makes uniform the law that governs RBC reporting for all life, health, property and casualty insurers. This section of the Act also adds a trend test for property and casualty insurers in determining Company Action Level RBC.

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**Section 5. Ark. Code Ann. §§ 23-63-1301, *et seq.* – Risk-Based Capital Act for Health Maintenance Organizations:** This section of the Act modernizes the RBC reporting requirements for all health maintenance organizations. It also adds a trend test to keep the RBC law consistent with the RBC law for insurers.

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**Section 6. Ark. Code Ann. § 23-64-216(e) – Cease and Desist Orders Against Licensees:** Current law allows the Commissioner to summarily issue a cease and desist order on persons acting without a license when a license is required under the Insurance Code. That section allows for a hearing if the object of the order makes a request within thirty days. This section of the Act gives the Commissioner similar authority for licensees, and he may order a licensee to immediately and summarily stop serious misconduct with an opportunity for a prompt hearing.

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**Section 7. Ark. Code Ann. § 23-64-301 – Producer Continuing Education:** This section of the Act authorizes the Commissioner to promulgate rules to set standards for continuing education of insurance producers.

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**Section 8. Ark. Code Ann. § 23-64-508(b) – Suspension of Non-Resident Producer Licenses:** The primary requirement to receive a non-resident insurance producer license in Arkansas is a current producer license as a resident in good standing in his or her home state. However, the Department lacked statutory authority to summarily suspend a non-resident license when the underlying resident license becomes inactive. This section of the Act allows the Department to immediately suspend a non-resident license upon confirming the non-renewal, suspension, or revocation of the non-resident’s home state license. This section also provides that the non-resident license can be reinstated immediately upon proof that the resident license has been reinstated.

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**Section 9. Ark. Code Ann. § 23-64-512(a)(2) – Discipline of Producer Licenses:** With a growing number of insurance producers selling financial products other than insurance, additional authority was needed to take disciplinary action against insurance producers when their conduct, in any arena, shows that they are no longer qualified to hold an insurance producer license. This section of the Act expands the grounds for discipline to include any action which impacts the producer’s qualifications to hold a license.

- L- P** **Section 10. Ark. Code Ann. § 23-69-138 – Regulatory Authority Regarding Financial Impairment:** This section of the Act clarifies the ability of the Department to take appropriate regulatory action against a financial distressed company, even when the company may meet the right to cure provisions in the RBC law.
- L- P** **Section 11. Ark. Code Ann. § 23-69-119 – Stock Company Bylaws:** This section of the Act requires stock insurance companies to provide notice to the Department when they make any change to their bylaws.
- L-** **Section 12. Ark. Code Ann. § 23-75-102 – Laws Applicable to Hospital and Medical Service Corporations:** This section of the Act cures a discrepancy in the law to make clear that hospital and medical service corporations are subject to provisions of the Arkansas Insurance Code regarding RBC reports and prior approval of mergers and acquisitions.
- L-** **Section 13. Ark. Code Ann. § 23-76-104 – Health Maintenance Organizations:** This section of the Act clarifies that health maintenance organizations must receive prior approval for acquisitions and mergers, regardless of whether the organization has elected to be regulated under the Insurance Holding Company Regulatory Act.
- L-** **Section 14. Ark. Code Ann. § 23-79-141(f) – Reimbursement for Children’s Preventative Care:** This section of the Act removes the cap on reimbursement for children’s preventative care, which was previously limited to the Medicare system’s reimbursement levels.
- L-** **Section 15. Ark. Code Ann. § 23-86-110(b) – Coordination of Benefits:** Current law exempts from the coordination of benefit requirements employer-sponsored group contracts where the employer pays one hundred percent of the premiums for the employee. This section of the Act removes this exemption from the statute.

### Other Department Bills

- L- A** **CHILD ONLY HEALTH INSURANCE, ACT 269 OF 2011. Effective March 14, 2011.**

Beginning in October 2011, health insurance carriers must hold an open enrollment period for child-only plans for at least thirty days, to be determined by the Commissioner, for children under nineteen. During open enrollment, the plans are offered on a guaranteed-issue basis without exclusion or limitation of benefits. Until the end of the initial open enrollment period, the Arkansas Comprehensive Health Insurance Pool (“CHIP”) will provide coverage to such persons. At the end of the initial open enrollment period, eligibility for CHIP will be determined by the CHIP Board of Directors. The substantive provisions of the Act will expire on January 1, 2014.

**P** **SURPLUS REQUIREMENTS FOR FMAAs, ACT 523 OF 2011.** Effective July 26, 2011.

In 2007, the Legislature passed a requirement for Farmers' Mutual Aid Associations (FMAAs) to maintain a surplus of \$500,000. The legislation mandated that they meet the requirement by December 31, 2010, but allowed FMAAs the ability to seek a one-time extension of two years from the Insurance Commissioner. This Act grants the Insurance Commissioner the authority to grant an additional two year extension to comply with the statutory surplus requirement. The Department will continue to monitor the financial condition of an FMAA that is granted an extension, and this Act does not limit the Department's authority to take appropriate action in the event an FMAA is in a hazardous financial condition.

**-L-** **WITHDRAWAL FROM THE HEALTH INSURANCE MARKET, ACT 886 OF 2011.** Effective July 26, 2011.

This Act authorizes the Commissioner to promulgate any rules or regulations related to the withdrawal of health insurance companies from the individual health insurance market which are necessary for the protection of policyholders.

**-L- P** **AMENDMENT TO THE INSURANCE HOLDING COMPANY REGULATORY ACT, ACT 887 OF 2011.** Effective July 26, 2011.

This Act adds single-state domestic insurers to the definition of "person" under the Insurance Holding Company Regulatory Act, Ark. Code Ann. §§ 23-63-501, *et seq.* It also removes the section that exempted domestic insurers only conducting business in Arkansas. Thus, the annual registration requirement now applies to single-state domestic insurers with more than 7,000,000 in gross premiums.

**-L- P** **MARKET CONDUCT ANNUAL STATEMENT, ACT 1034 OF 2011.** Effective July 26, 2011.

This Act requires the filing of a Market Conduct Annual Statement (MCAS) to be filed each year by insurance companies doing business in the state. The basic information which will be provided in the statement regarding the handling of claims, complaints and other market conduct functions will be used by the Department to more efficiently use its resources. This will allow for the Department to have a better, more refined approach to market conduct regulation and is considered an important consumer protection initiative. The Act requires the MCAS from property and casualty insurers reporting \$7,000,000 or more in homeowner or private passenger automobile premiums and life and annuity insurers reporting \$7,000,000 or more in individual or group life or individual annuity premiums.

**-L-** **CAUSAL CONNECTION REQUIREMENT FOR RESCISSION, ACT 1054 OF 2011.** Effective July 26, 2011.

This Act clarifies that under current law, there must be a causal connection between a claim or loss and any unintentional misrepresentation on an application for life or health insurance.

It requires that there be a causal connection between the misrepresentation and the loss in order to deny a claim.

**P** **COLLECTION OF SURPLUS LINES PREMIUM TAX, ACT 1055 OF 2011. Effective April 1, 2011.**

Congress has passed a law that changes the way states collect premium taxes from surplus lines insurers. Beginning this year, states will no longer collect these premium taxes individually by state. There will be a pool that collects the premium taxes that would previously have been divided by the state to which they were owed. This legislation allows the Commissioner, with the approval of the standing committees of the Insurance and Commerce Committees of both houses, to enter into any multi-state compact or agreement that enables Arkansas to collect the surplus lines premium tax that it is owed.

### Non-Department Bills

**-L-** **TO PROVIDE HEALTH INSURANCE COVERAGE FOR AUTISM SPECTRUM DISORDERS, ACT 196 OF 2011. Effective October 1, 2011.**

This Act mandates that health insurers provide coverage for the diagnosis and treatment of autism spectrum disorders. Such disorders include, but are not limited to, autistic disorder, Asperger's disorder, and pervasive developmental disorder not otherwise specified in the current edition of the "Diagnostic and Statistical Manual of Mental Disorders."

**P** **TO CREATE AN ALTERNATIVE PROCEDURE TO OBTAIN MOTOR VEHICLE TITLE IN A TOTAL LOSS SETTLEMENT, ACT 285 OF 2011. Effective July 26, 2011.**

This Act establishes the process by which an insurance company may obtain a certificate of title on a motor vehicle when the company makes a total loss settlement. The owner or lienholder of the motor vehicle must forward the certificate of title to the insurer within fifteen days of receipt of settlement funds. If the certificate is not received within thirty days, the company may request a salvage certificate of title or parts-only certificate of title from the Office of Motor Vehicles by following the steps set forth in this Act.

**P** **TO ESTABLISH LICENSURE REQUIREMENTS OF SURPLUS LINES INSURERS, ACT 332 OF 2011. Effective March 18, 2011.**

This Act allows an Arkansas domestic insurer possessing surplus of at least \$20,000,000, with written approval of the Commissioner, to be designated as a domestic surplus lines insurer and be allowed to write surplus lines insurance in any jurisdiction in which it is eligible, including Arkansas. The Act specifies that such insurers are not subject to the Arkansas Property and Casualty Insurance Guaranty Act, Ark. Code Ann. §§ 23-90-101, *et seq.*, or the Arkansas Life and Health Insurance Guaranty Association Act, Ark. Code Ann. §§ 23-96-101, *et seq.* The Act states that all financial and solvency provisions of the Arkansas Insurance Code apply to domestic surplus lines insurers unless they are specifically exempted.

**-L-** **TO REMOVE INSURANCE RESTRICTIONS ON NON-COVERED DENTAL SERVICES, ACT 566 OF 2011.** Effective March 22, 2011.

This Act prohibits an agreement between an insurer and a dentist that establishes the fee a dentist may charge for a non-covered service. Any such agreement is rendered unenforceable under this Act. Non-covered services under the Act are those that are not reimbursable under a dental insurance plan.

**P** **TO REGULATE COMMERCIAL LIABILITY POLICIES AND PRACTICES, ACT 604 OF 2011.** Effective July 26, 2011.

This Act states that a commercial general liability policy must cover property damage or bodily injury resulting from faulty workmanship and must include this type of damage or injury in the policy's definition of "occurrence." The definition of "occurrence" must also cover accidents, including continuous or repeated exposure to substantially the same general harmful conditions. The Act also provides that it does not limit an insurer's ability to include exclusions in their policy.

**-L- P A** **TO REGULATE INSURANCE CONSULTANT FEES, ACT 797 OF 2011.** Effective July 26, 2011.

This Act allows an insurance consultant to adjust or refund to the client a part of the consulting fee based on commissions received. The consultant and the client must enter into a prior written agreement and the client must be paying \$100,000 or more in annual premiums for all lines of business. If these two requirements are met, such an agreement is not considered rebating.

**-L-** **TO REQUIRE HEALTH BENEFIT PLANS TO PROVIDE COVERAGE FOR TREATMENT OF MORBID OBESITY, ACT 855 OF 2011.** Effective July 26, 2011.

This Act establishes a pilot program affecting only the state and public school employees' health benefit plans issued on or after January 1, 2012. Plans falling within the program must furnish coverage for the diagnosis and treatment of morbid obesity. Such coverage must include, without limitation, coverage for gastric bypass surgery, adjustable gastric banding surgery, sleeve gastrectomy surgery and duodenal switch biliopancreatic diversion. This Act is not codified as part of the Arkansas Code and will become null and void at midnight on December 31, 2017.

**P** **TO ESTABLISH REGULATION FOR INSURANCE ON PORTABLE ELECTRONICS, ACT 1018 OF 2011.** Effective July 26, 2011.

This Act establishes a regulatory scheme for the sale of insurance on portable electronics. Portable electronics include devices that are portable in nature, including accessories and related services. The coverage will provide for repair or replacement in the event of loss, theft

or inoperability due to mechanical value or similar cause. The electronics vendor must obtain a limited lines license from the Arkansas Insurance Department, which will allow the vendor and its employees to engage in the sale of portable electronic device insurance.

**-L-** **TO REQUIRE HEALTH BENEFIT PLANS TO PROVIDE COVERAGE FOR GASTRIC PACEMAKERS, ACT 1042 OF 2011.** Effective July 26, 2011.

This Act mandates that all health benefit plans issued on or after the effective date of the Act provide coverage for gastric pacemakers. Gastric pacemakers are used in the treatment of gastroparesis, which is a neuromuscular stomach disorder.

**-L-** **TO REGULATE INSURANCE COVERAGE OF IN VITRO FERTILIZATION PROCEDURES, ACT 1119 OF 2011.** Effective July 26, 2011.

This Act mandates health insurers to provide coverage of in vitro fertilization procedures performed at a medical facility licensed and certified by another state's health department. It also modernizes the language regarding the guidelines and minimum standards of the American College of Obstetricians and Gynecologists and the American Society for Reproductive Medicine.

**-L-** **TO AMEND THE MEDICAID FRAUD FALSE CLAIMS ACT, ACT 1154 OF 2011.** Effective April 4, 2011.

This Act removes the \$100,000 limit on the reward available to persons that provide information that leads to the detection and punishment of those who violate Medicaid fraud laws.

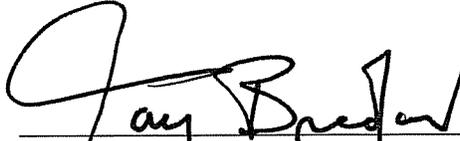
**L-** **TO PROTECT PATIENTS BY REGULATING PRIOR AUTHORIZATION PROCEDURES, ACT 1155 OF 2011.** Effective July 26, 2011.

This Act sets forth the procedures that a healthcare insurer must follow with regard to prior authorization and the deference that must be shown the healthcare provider's recommended treatment or procedure. It provides that, in the case of an adverse determination by the healthcare insurer, information must be provided to the patient and the healthcare provider explaining the appeal process. Failure by the insurer to comply with this Act results in the requested service being deemed as preauthorized.

**P** **TO ESTABLISH LAW FOR REMOVAL OF TOTAL-LOSS VEHICLE FROM A STORAGE FACILITY, ACT 1206 OF 2011.** Effective July 26, 2011.

This Act allows an insurance company to authorize its agent to remove a vehicle from a storage facility without the approval of the storage facility or the written release of the vehicle's owner. A verbal release, however, must be obtained from the vehicle's owner prior to removal of the vehicle to another location. If removal is made under these conditions, the insurance company must indemnify and hold harmless the storage facility for any liability or

expenses associated with claims arising from moving the vehicle without a written release from the owner.

  
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JAY BRADFORD  
INSURANCE COMMISSIONER  
STATE OF ARKANSAS

DATE 6/3/11