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BULLETIN 11-14

To: All Interested Parties Including Insurers, Non-Profit Health Service Plans, Health Maintenance Organizations, Dental Plan Organizations, Pharmacy Benefit Managers, and Producers

Re: Summary of 2011 Insurance Legislation Signed into Law by Governor Martin O'Malley

Date: June 2011

This summary is meant to place insurers, non-profit health service plans, health maintenance organizations, dental plan organizations, pharmacy benefits managers, and producers (hereinafter "regulated entities") authorized to do business in Maryland on notice of certain laws passed during the 2011 Session of the Maryland General Assembly that are enforced by the Maryland Insurance Administration (MIA). *The attached synopsis is intended only as notice of the passage of the legislation and is not a representation of the MIA's interpretation of the legislation, nor is it a representation of how the MIA may choose to enforce these new provisions.* All regulated entities should refer to the 2011 Chapter Laws of Maryland for the complete text of these recently enacted laws. Regulated entities are advised that other bills passed by the General Assembly and not listed on the synopsis may also affect their business operations in Maryland.

You may obtain a copy of a specific law passed by the General Assembly during the 2011 legislative session by accessing the Maryland General Assembly's web site at <http://mlis.state.md.us> on the Internet or by contacting the Department of Legislative Services at 410-946-5400. You should refer to the House or Senate Bill number when searching for a law on the web site. You can also obtain a copy of "*The 90 Day Report – A Review of the 2011 Legislative Session*" on the Internet or from Library and Information Services, Office of Policy Analysis, Department of Legislative Services.

For additional information concerning the Maryland Insurance Administration's summary of 2011 insurance legislation, please contact Tinna Damaso Quigley, Director of Government Relations, at 410-468-2202.

2011 INSURANCE LEGISLATION

LIFE AND HEALTH

HOUSE BILL 83 (Chapter 426) / SENATE BILL 154 (Chapter 425) - Health Insurance – Ambulance Service Providers – Direct Reimbursement

- Requires insurers and nonprofit health service plans to honor an assignment of benefits by an insured to an ambulance service provider under certain circumstances;
- Requires a health maintenance organization (HMO) to reimburse an ambulance service provider directly for covered services provided to its members;
- Provides that an ambulance service provider that receives direct reimbursement may only collect copayment, deductible or coinsurance amount owed by the insured, subscriber or enrollee for covered services;
- Specifies that an HMO's allowed amount for a covered service provided by an ambulance service provider that is *not* under contract with the HMO cannot be less than the allowed amount paid to a contracted ambulance service provider for the same service in the same geographic region;
- Provides that for nonpreferred ambulance providers, an insurer or nonprofit health service plan's allowed amount may not be less than the allowed amount paid to a preferred ambulance provider for the same service in the same geographic region; and
- Requires the Maryland Health Care Commission to study various aspects of the impact of the bill and submit reports to the General Assembly by January 1, 2014 and January 1, 2015.

Effective Date: January 1, 2012

HOUSE BILL 156 (Chapter 104) – Health Insurance – Small Group Market – Self-Employed Individuals – Sunset Extension

- Extends the sunset date until December 31, 2013 for laws relating to health insurance policies for self-employed individuals in the small group insurance market, allowing enrollees to retain coverage.

Effective Date: July 1, 2011

HOUSE BILL 166 (Chapter 2) / SENATE BILL 182 (Chapter 1) – Maryland Health Benefit Exchange Act of 2011

- Establishes the Maryland Health Benefit Exchange as a public corporation and a unit of State Government;
- Establishes the Maryland Health Benefit Exchange Fund as a special, nonlapsing fund that is not subject to Section 7-302 of the State Finance and Procurement Article;
- Establishes the Board of Trustees of the Exchange and lists its powers and duties;
- Requires the Board to create and consult with advisory committees;
- Provides the duties to be performed by the Executive Director, including hiring staff;
- Requires the Board to forward an annual report to the Secretary, Governor and General Assembly on the activities, expenditures, and receipts of the Exchange;
- Requires the Exchange, in consultation with the advisory committees and other stakeholders, to study and make recommendations on several items and report to the Governor and General Assembly by December 23, 2011; and
- Requires the Exchange, in consultation with the advisory committees and other stakeholders, to study and report by December 1, 2015 regarding whether the Exchange should remain an independent public body or should become a nongovernmental, nonprofit entity.

Effective Date: June 1, 2011

HOUSE BILL 170 (Chapter 4) / SENATE BILL 183 (Chapter 3) – Health Insurance – Conformity with Federal Law

- Applies the following provisions of the Affordable Care Act to individual, small group and large group coverage issued or delivered in the State by an authorized insurer, nonprofit health service plan, or health maintenance organization:
 - coverage of children up to the age of 26 years;
 - preexisting condition exclusions;
 - policy rescissions;
 - bona fide wellness programs;
 - lifetime limits;
 - annual limits for essential benefits;
 - waiting periods;
 - designation of primary care providers;
 - access to obstetrical and gynecological services;
 - emergency services;

- summary of benefits and coverage explanation;
 - minimum loss ratio requirements and premium rebates; and
 - disclosure of information;
- Requires insurers, nonprofit health service plans and HMOs to comply with the loss ratio requirements of Sections 1001(5) and 10101(f) of the Affordable Care Act under 45 CFR Part 158;
- Authorizes the Insurance Commissioner (Commissioner) to require a carrier to file new rates if the loss ratio reported is less than that required;
- Changes the definition of “small employer” in Section 15-802 of the Insurance Article (regarding treatment of behavioral health and substance abuse);
- Modifies the complaint and grievance process to comply with the Affordable Care Act including the expansion of the time to file a complaint with the MIA from 30 days to 4 months after receipt of an adverse or grievance decision;
- Requires the Commissioner to select an independent review organization or medical expert to advise on complaints that involve a question of medical necessity;
- Requires carriers to provide certain notices to members in a culturally and linguistically appropriate manner;
- Amends the definition of “coverage decision” to include:
 - A determination by a carrier that an individual is not eligible for coverage; or
 - Any determination by a carrier that results in the rescission of an individual’s coverage.
- Defines the term “member’s representative” to mean an individual who has been authorized by the member to file an appeal or a complaint on behalf of the member;
- Authorizes a member’s representative to participate in an appeal or complaint;
- Prohibits carriers who calculate minimum participation rates by small employers from counting employees who are under the age of 26 and covered under their parent’s health benefit plan; and
- Amends the timing requirement applicable to insurers, nonprofit health service plans and HMOs for providing notice to a parent that a child’s health coverage is ending and other options for coverage of the child.

Effective Date: July 1, 2011

HOUSE BILL 226 (Chapter 9) / SENATE BILL 44 (Chapter 8) – Qualified State Long-Term Care Insurance Partnership Program – Reporting

- Clarifies that the MIA must report annually to the General Assembly the number of long-term care policies offered under the Long-Term Care Insurance Partnership Program.

Effective Date: October 1, 2011

HOUSE BILL 444 (Chapter 529) / SENATE BILL 710 (Chapter 528) – Health Insurance – Provider Panels – Notice of Receipt of Application

- Provides that notice from a certain online credentialing system to a provider verifying receipt of the provider’s application shall be considered notice that the application is complete;
- Requires carriers who do not accept applications through online credentialing systems to give notice to the provider within 10 days after receipt of the application; and
- Exempts carriers that arrange for dental provider panels.

Effective Date: October 1, 2011

HOUSE BILL 452 (Chapter 527) / SENATE BILL 702 (Chapter 526) – Health Insurance – Coverage of Hearing Aids

- Requires insurers, nonprofit health service plans and HMOs that provide coverage for hearing aids to covered individuals who are not minor children under a policy or contract with a dollar limit on the hearing aid benefit to allow the covered individual to:
 - Choose a hearing aid that is priced higher than the benefit payable under the policy or contract; and
 - Pay the difference between the price of the hearing aid and the dollar limit on the hearing aid benefit.

Effective Date: October 1, 2011

HOUSE BILL 496 (Chapter 42) / SENATE BILL 255 (Chapter 41) – Life Insurance - Definition and Permitted Riders and Provisions

- Extends the definition of “life insurance” to include:
 - Additional benefits for a second opinion for specified health conditions as listed in the policy;
 - Additional benefits that provide a lump-sum benefit for a specified disease and that meet the requirements of Section 15-109 of the Insurance Article;

- Permits a life insurance policy to include a rider or supplemental policy provision that operates to safeguard the contract from lapse in the event of involuntary unemployment; and
- Requires the MIA , in consultation with the life insurance industry, to conduct an analysis of the appropriate scope of health insurance products that may be sold in conjunction with a life insurance policy, determine any necessary legislative changes, and report by December 1, 2011.

Effective Date: October 1, 2011

HOUSE BILL 888 (Chapter 525) / SENATE BILL 701 (Chapter 524) – Health Insurance – Prescription Eye Drops – Refills

- Requires insurers, nonprofit health service plans and HMOs that provide coverage for prescription eye drops to cover a refill of those drops in accordance with certain federal guidance and *if*:
 - The prescribing health care practitioner indicates on the original prescription that additional quantities of prescription eye drops are needed;
 - The refill requested does not exceed the number of additional quantities indicated on the original prescription; and
 - The prescribed eye drops are a covered benefit.

Effective Date: October 1, 2011

HOUSE BILL 1085 (Chapter 155) – Disability Insurance Policies – Discretionary Clauses – Prohibition

- Prohibits an insurer or nonprofit health service plan from selling, delivering or issuing a disability insurance policy if the policy contains a clause that purports to reserve sole discretion to the carrier to interpret the terms of the policy or to provide standards of interpretation or review that are inconsistent with the laws of Maryland.

Effective Date: October 1, 2011

HOUSE BILL 1178 (Chapter 301) / SENATE BILL 850 (Chapter 300) – Licensed Insurance Producers – Information on State Health Programs

- Permits a licensed insurance producer to provide small employers with general information about the Maryland Medical Assistance Program and Maryland Children’s Health Program, including information about income eligibility thresholds and application instructions.

Effective Date: October 1, 2011

HOUSE BILL 1338 (Chapter 569) / SENATE BILL 974 (Chapter 568) – Health Insurance – Pharmacy Benefit Managers - Claims

- Specifies that a clerical, recordkeeping, typographical, or scrivener’s error in a required document or record does not constitute fraud or grounds for recoupment of a claims payment if the prescription was otherwise legally dispensed and the claim was otherwise materially correct. Though the claims may not be denied outright, they remain subject to recoupment of overpayment or payment of any undiscovered underpayment by the pharmacy benefit manager.

Effective Date: October 1, 2011

SENATE BILL 217 (Chapter 38) – Life Insurance & Annuities – Retained Asset Accounts – Beneficiaries’ Bill of Rights

- Prohibits an insurer from offering a retained asset account as the mode of settlement of the proceeds payable under a life insurance policy unless the insurer offers the beneficiary at least one other mode of settlement of proceeds.
- Requires an insurer who offers a certain retained asset account as the mode of settlement of the proceeds payable under a life insurance policy or annuity contract to make certain written disclosures to a beneficiary.

Effective Date: October 1, 2011

SENATE BILL 705 (Chapter 85) – Health Insurance – Dental Provider Contracts – Prohibited Provision

- Prohibits a carrier from including in a dental provider contract a requirement that the dental provider provide health care services that are not covered services, at a fee set by the carrier.

Effective Date: October 1, 2011

PROPERTY AND CASUALTY

HOUSE BILL 244 (Chapter 584) – Anne Arundel County – Workers’ Compensation – Occupational Disease – Deputy Sheriffs

- Specifies that an Anne Arundel County deputy sheriff who suffers from heart disease or hypertension resulting in partial or total disability or death is presumed to have an occupational disease that is compensable under workers’ compensation law, provided that the

condition is more severe than the individual's condition existing prior to employment as a deputy sheriff.

Effective Date: October 1, 2011

HOUSE BILL 417 (Chapter 436) / SENATE BILL 212 (Chapter 435) – Workers' Compensation – Death Benefits - Dependency

- Alters the calculation of benefits paid by employers or insurers to surviving spouses, children, and other dependents to replace income lost when a person dies due to a work-related accident or occupational disease.
- Benefits are paid to surviving dependent spouses and children proportionally to reflect family income.
- Eliminates the current statutory distinction between wholly and partially dependent spouses and children.

Effective Date: October 1, 2011

HOUSE BILL 647 (Chapter 446) / SENATE BILL 317 (Chapter 445) – Homeowner's Insurance – Victims of Crimes of Violence – Discrimination Prohibited

- Prohibits an insurer, based solely on an individual's status as a victim of a crime of violence, from (1) canceling, refusing to underwrite or renew, or refusing to issue a policy of homeowner's insurance; (2) refusing to pay a claim under a policy of homeowner's insurance; or (3) for a policy of homeowner's insurance, increasing a premium, adding a surcharge, applying a rating factor, retiering a policy, removing a discount, or taking any other adverse underwriting or rating action.
- Even if a policy of homeowner's insurance excludes property coverage for intentional acts, an insurer may not deny payment for a loss to a victim who (1) is an innocent coinsured; (2) did not commit, cause to be committed, or direct the crime of violence leading to the loss; and (3) cooperates in any criminal investigation and, if undertaken, any prosecution of the perpetrator.
- In the event of a violation, the Commissioner may order the insurer to accept the risk or business.
- Payment to an innocent coinsured may be limited to the amount of the loss up to the homeowner's insurance policy limits, less any applicable deductible and coinsurance and any payment to a secured party.

- An insurer has the right of subrogation against the perpetrator of the crime of violence that led to the loss and may exclude any property owned solely by the perpetrator from coverage under the homeowner’s insurance policy.
- Defines a “victim” as a policyholder or claimant who suffers personal injury, death, or property loss as a result of a crime of violence; and a “crime of violence” is defined as any of the acts specified in § 14-101 of the Criminal Law Article.

Effective Date: October 1, 2011

HOUSE BILL 763 (Chapter 260) / SENATE BILL 571 (Chapter 259) – Insurance – Delivery of Notices by Electronic Means - Authorized

- Authorizes an insurer to deliver by electronic means any notice to a party (an applicant, insured, or policyholder) related to cancellations, nonrenewals, premium increases, or reductions in coverage if (1) the party has affirmatively consented to that method of delivery and has not withdrawn the consent; (2) the process used to obtain consent meets the requirements of the Maryland Uniform Electronic Transactions Act; and (3) the party is provided, before giving consent, with a clear and conspicuous statement informing the party of specified rights and other information about the scope of the party’s consent.

Effective Date: October 1, 2011

HOUSE BILL 982 (Chapter 515) / SENATE BILL 656 (Chapter 514) – Property and Casualty Insurance – Certificates of Insurance and Certificates of Insurance Forms

- Prohibits a person from requiring an insurer or insurance producer to prepare or issue, or a policyholder to provide, a certificate of insurance that contains false or misleading information relating to the policy of insurance referenced in the certificate. A person is prohibited from preparing or issuing a certificate of insurance that the person knows contains false or misleading information or that purports to amend, alter, or extend the coverage provided by the policy of insurance referenced in the certificate. In addition, a person may not prepare, issue, or require, either in addition to or in lieu of a certificate of insurance, an opinion letter or other document that is inconsistent with the provisions of the bills.
- A “certificate of insurance” is any document or instrument, however titled or described, that is prepared or issued by an insurer or insurance producer as evidence of property insurance or casualty insurance coverage. A certificate of insurance does not include a policy of insurance or an insurance binder.
- A certificate of insurance is not a policy of insurance and does not amend, alter, or extend the coverage provided by the policy referenced in the certificate or confer on the certificate holder any new or additional coverage not provided by the policy.

- A certificate of insurance or any other document prepared, issued, or required in violation of the law is void and unenforceable.
- The Commissioner may examine and investigate the activities of any person the Commissioner reasonably believes has been or is engaged in an act or practice prohibited by the bills.
- Requires the Commissioner to study the impact of requiring a certificate of insurance to be in a form that must be filed with and approved by the Commissioner before use and to report the findings by December 1, 2011. The study must include a review of states with similar requirements.

Effective Date: October 1, 2011

HOUSE BILL 1082 (Chapter 154) – Homeowner’s Insurance – Model Information – People’s Insurance Counsel

- Requires an insurer that uses a catastrophic risk planning model or other model to set homeowner’s insurance rates or refuse to issue or renew a homeowner’s policy because of the geographic location of the risk to make arrangements for the vendor of the model to explain to the People’s Insurance Counsel the data used in the model and the manner in which the output is obtained.
- The People’s Insurance Counsel is authorized to review proprietary and confidential information it has obtained and is required to maintain the confidentiality of such material.

Effective Date: June 1, 2011

SENATE BILL 885 (Chapter 89) – Motor Vehicle Insurers – Standards for Cancellation or Refusal of Insurance – Driving While Impaired by Alcohol

- Expands the list of standards that are reasonably related to an insurer’s economic and business purposes and which do not require statistical validation by authorizing insurers to cancel or refuse to underwrite or renew a particular insurance risk or class of risk if the insured is convicted of a violation relating to driving or attempting to drive any vehicle while impaired by alcohol.

Effective Date: October 1, 2011

OTHER

HOUSE BILL 173 (Chapter 409) – Business and Economic Development – Invest Maryland Program

- Creates a State-supported venture capital program and increases funding for the Enterprise Fund and Maryland Small Business Development Financing Authority (MSBDFA) within the Department of Business and Economic Development (DBED).
- Establishes a Maryland Venture Fund Authority within DBED to raise capital through the issuance of tax credits to insurance companies in order to invest the capital within the State through venture firms.
- The Maryland Venture Fund Authority will solicit cash or designated capital from insurance companies through a competitive process overseen by an independent third party. In exchange for the cash received from the insurance companies, DBED will issue tax credit certificates.
- To make a qualified bid for tax credit certificates, an insurance company must request a minimum of \$1 million in tax credits and supply a bid of no less than 70% of the requested dollar amount of tax credits.
- The program will provide investment funds of approximately \$70 million. DBED is authorized to award a maximum of \$100 million in tax credits, which may be claimed over five years beginning in tax year 2014.
- Allows for general funds to be used to replace tax credits if general fund revenue estimates increase for fiscal 2012.

Effective Date: July 1, 2011

HOUSE BILL 959 (Chapter 521) / SENATE BILL 694 (Chapter 520) – Insurance – Surplus Lines

- Amends the Maryland Surplus Lines Insurance Law to comply with Nonadmitted and Reinsurance Reform Act of 2010 (NRRA), part of the Federal Dodd-Frank Wall Street and Consumer Protection Act.
- In accordance with NRRA, for policies effective on or after July 21, 2011, the placement and regulation of nonadmitted insurance is subject to the statutory and regulatory requirements solely of the insured's home state.
- Provides that only the insured's home state may require the surplus lines broker to be licensed.

- Clarifies that, for policies effective before July 21, 2011, the premium receipts tax continues to be imposed for nonadmitted insurance on the portion of property, risk, or exposures located or to be performed in Maryland.
- For policies effective on or after July 21, 2011, provides that Maryland imposes a premium receipts tax on the entire premium paid for nonadmitted insurance if Maryland is the home state of the insured.
- Provides that surplus lines brokers must: (1) provide the Commissioner with a report, on a form that the Commissioner prescribes, on the business subject to tax during the period since the last report; and (2) pay the total amount of tax as stated in the report.
- Provides for policies effective on or after July 21, 2011, that if a surplus lines broker is not used the insured must (1) provide the Commissioner with a report, on a form that the Commissioner prescribes, on the business subject to tax during the period since the last report; and (2) pay the total amount of tax as stated in the report. For policies effective before July 21, 2011, an insured must file the report and pay the tax within 60 days after the date that the insurance was procured.
- Aligns the criteria under which the Commissioner may approve an insurer as a surplus lines insurer with the provisions of the NAIC's Non-admitted Insurer Model Act.
- Adds the NRRA exemption for surplus lines brokers to perform a diligent search before procuring an insurance policy from a nonadmitted insurer for an exempt commercial purchaser under certain circumstances.
- Requires the Commissioner to (1) participate in the National Insurance Producer Database maintained by the National Association of Insurance Commissioners; (2) cooperate with other states to adopt and implement uniform requirements for nonadmitted insurance in compliance with NRRA; and (3) study and report by January 1, 2012 to specified legislative committees on what other states are doing to implement the NRRA and the impact on Maryland's premiums receipts taxes.

Effective Date: July 1, 2011

SENATE BILL 59 (Chapter 13) – Insurance – Company Action Level Events – Health Insurers

- Changes the definition of a “company action level event” for a health insurer. A company action level event occurs when the health insurer has total adjusted capital that:
 - Is greater than or equal to its company action level risk based capital;
 - Is less than the product of its authorized control level risk based capital and 3.0; and
 - Triggers the trend test calculation included in the health risk based capital instructions.

Effective Date: October 1, 2011