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REGULATORY BULLETIN 2019-02¹

To: Insurance Producers, Surplus Lines Brokers, Insurance Industry Representatives, Insurance Trade Associations, Life & Disability Insurers, Property & Casualty Insurers, and Other Interested Parties.

From: Keith A. Schraad 
Director of Insurance

Date: August 27, 2019

Re: 2019 Arizona Insurance Laws

This Regulatory Bulletin summarizes the major, newly enacted legislation affecting the Department, its licensees and insurance consumers. This summary is not meant as an exhaustive list or a detailed analysis of all insurance-related bills. It generally describes the substantive content but does not capture all details or necessarily cover all bills that may be of interest to a particular reader. The Department may follow this bulletin with more detailed bulletins related to the implementation of specific legislation. All interested persons are encouraged to obtain copies of the enacted bills by contacting the Arizona Secretary of State's office at (602) 542-4086, or from the Arizona legislative web site at <http://www.azleg.gov>. Please, direct any questions regarding this bulletin to Stephen Briggs, Legislative Liaison at (602) 364-3761.

Arizona's Fifty-fourth Legislature, First Regular Session, adjourned *sine die* on May 28, 2019. Except as otherwise noted, all legislation has a general effective date of **August 27, 2019**.

¹ This Substantive Policy Statement is advisory only. A Substantive Policy Statement does not include internal procedural documents that only affect the internal procedures of the Agency, and does not impose additional requirements or penalties on regulated parties or include confidential information or rules made in accordance with the Arizona Administrative Procedure Act. If you believe that this Substantive Policy Statement does impose additional requirements or penalties on regulated parties you may petition the agency under Arizona Revised Statutes Section 41-1033 for a review of the Statement.

INSURANCE-RELATED BILLS ENACTED IN 2019

Laws 2019, Chapter 139 (HB 2063): Vehicle insurance Cards; Assigned Numbers

Amends ARS § 28-4133 to require the number assigned to an insurer by ADOT be indicated on the motor vehicle insurance identification cards, rather than on all documentary evidence issued by the insurer.

Laws 2019, Chapter 75 (HB 2166): Health Plans; Cost Sharing; Calculation

Creates ARS § 20-1126 to require any cost-sharing amount paid by either the enrollee or another person on their behalf for a prescription drug to be included when calculating an enrollee's contribution to any out-of-pocket cost-sharing requirement for a prescription drug that is either without a generic equivalent or has a generic equivalent but the enrollee obtained access to the prescription drug through prior authorization, step therapy or through the insurer's exception or appeal process. Defines Generic equivalent and Health Care Insurer. This bill is effective January 1, 2020.

Laws 2019, Chapter 122 (HB2175): Insurance; Third-Party Administrators; Exemptions

Amends ARS §§ 20-485, 20-1401, and 20-1404 to expand the list of parties that are exempt from the definition of administrator. Defines qualified marketplace contractor (QMC) and qualified marketplace platform (QMP). Allows an insurer to issue a group blanket disability or a blanket disability insurance policy to a QMP that covers a QMC.

Laws 2019, Chapter 152 (HB2285): Pharmacy Benefit Managers; Pharmacy Benefits

Amends ARS §§ 20-3321 and creates 20-3331. Adds a definition for list and maximum allowable cost. Requires a pharmacy benefit manager (PBM) to update the price and drug information for each list maintained by the PBM every seven business days; make available the sources used to determine maximum allowable cost pricing at the beginning of the contract, at renewal and at least once annually; establish an appeal process for appeal by a network pharmacy of its drug reimbursement; and allow a pharmacy service administrative organization to file an appeal of a drug on behalf of its contracted pharmacies.

Amends ARS §§ 44-1751 and creates 44-1453, and 44-1754. Adds a definition for plan sponsor. Specifies that a plan sponsor or PBM may not prohibit an in-network retail pharmacy from dispensing a ninety-day fill of a prescription, except for Schedule II or III controlled substances, if certain conditions are met. Species that a plan sponsor or PBM may not prohibit a retail pharmacy from delivery of a prescription except that the pharmacy cannot charge for the delivery unless certain disclosures are made to the patient. Exempts the Arizona Health Care Cost Containment System Administration and its contractors.

Laws 2019, Chapter 138 (HB 2494): Health Insurers; Notice; Providers

Creates ARS § 20-241. Prohibits a contract that is issued, amended or renewed on or after January 1, 2020, from restricting the method of payment from the insurer to the provider in which the only acceptable payment method is a credit card payment. An insurer that initiates or changes payments to a provider using electronic funds transfer (EFT) shall include notice of any fee and any other available methods of payment with clear instructions on selecting an alternative payment method and remit or associate with each payment the explanation of benefits. A *health insurer* may not charge a fee solely to transmit the payment to a health care provider unless the provider has consented to the fee. A *health care provider agent* may charge reasonable fees when transmitting an EFT or automatic clearing house related to transaction management, data management, portal services and other value-added services above and beyond the bank transmittal. *Adds definitions for electronic funds transfer payment, health care provider, health care provider agent, and health insurer.*

Creates ARS § 20-242. Requires a health insurer acquiring another insurer's network to notify each health care provider in the acquired network and allows the provider to continue or terminate the provider relationship or enter into a new contract with the health insurer that acquired the network. *This section does not apply to disclosures in the network contract to which the health provider has already agreed.*

Laws 2019, Chapter 113 (HB 2674): Insurance; Exceptions; Guaranteed Asset Protection

Amends ARS § 20-103 to clarify that guaranteed asset protection (GAP) waivers *are not insurance* and this title does not apply to those waivers. Adds definition of guaranteed asset protection waivers.

Laws 2019, Chapter 10 (SB 1004): Insurance; Surplus Lines; Reports; Payments

Amends ARS §§ 20-408, 20-416 and 20-417: Modifies the surplus lines broker report to include the *city, state and zip* of the insured rather than the *address*. Allows the Director to require surplus lines brokers to report and make payments electronically *from and after December 31, 2019*. If electronic submission is required, the director shall post to the Department's web site a list of one or more acceptable third-party services through which an insurer must submit reports and payments. Makes a penalty inapplicable for a payment of tax or interest that was late due to delays caused by the third-party service.

Laws 2019, Chapter 11 (SB 1006): Internationally Active Insurance Groups; Supervision

Amends ARS §§ 20-481 and creates 20-481.33. Defines *group-wide supervisor* and *internationally active insurance group* (IAIG). Allows the director to act as the group-wide supervisor or under certain circumstance to determine or acknowledge another regulatory official as the group-wide supervisor. Specifies what activities the director may engage in as the group-wide supervisor of an IAIG.

Laws 2019, Chapter 180 (SB 1007): Insurance; Corporate Governance; Disclosure

Creates ARS §§ 20-492, 20-492.01, 20-492.02, 20-492.03, 20-492.04, 20-492.05 and 20-492.06 that require insurers to submit to the Director a corporate governance annual disclosure (CGAD) report. Specifies that certain documents, materials and other information provided as part of the disclosure are recognized as being proprietary and are subject to confidentiality standards. Exempts the department from the rulemaking requirements of title 41, chapter 6 for one year after the effective date. Contains a non-severability clause.

Laws 2019, Chapter 12 (SB 1008): Insurance; Prohibited Inducements; Exceptions

Amends ARS §§ 20-450, 20-451 and 20-452 to allow an insurer and certain other persons to provide or offer to provide products or services that are ancillary or related to any policy or coverage and that are intended to minimize or prevent claims-related losses or expenses.

Laws 2019, Chapter 183 (SB 1035): Insurance; Small Employers; Continuation Coverage

*Amends ARS § 20-2330 to clarify the definition of small employer is an employer that employs on average of at least one but *fewer* than twenty eligible employees during the preceding calendar year.*

Laws 2019, Chapter 194 (SB 1085): Association Health Plans

Amends ARS § 20-2324. Changes the requirements by which an association qualifies as a bona fide association under Pathway 1 and establishes a new Pathway 2 in which an association can qualify as a bona fide association.

Pathway 1: Removes the requirement that the association has been in active existence for at least five years but retains all other existing requirements.

Pathway 2: Allows for the establishment of pathway 2 associations that meet the prescribed federal requirements in [29 CFR Section 2510.3-5](#). (SEE NOTE)

Allows an insurer to elect to offer a health benefits plan through a bona fide association to small employer groups of one, without obligating the insurer to make health benefits plans available to all small employer groups of one on a guaranteed issuance basis under [ARS § 20-2304](#) if the small employer is not seeking health benefits plan through a bona fide association. (SEE NOTE)

Allows the department to survey insurers to determine the number of health benefits plans issued to associations in Arizona each year.

Specifies that this section does not limit or prohibit the issuance of self-funded plans through a bona fide association if the association is in compliance with ERISA and the department retains the authority to investigate whether an association is unlawfully transacting insurance.

*Adds definitions for *bona fide association*, *small employer*, *sole proprietor*, and *working owner*.*

NOTE: On March 28, 2019, in *State of New York v United States Department of Labor, et al; Civil Action No. 18-1747 (JDB)* the court vacated certain provisions of 29 CFR Section 2510.3-5 on

Pathway 2 Association Health Plans (AHPs) including several provisions relating to the Pathway 2 standards for bona fide associations and the definition of “employer” to include groups of one, sole proprietors and working owners. The U.S. Department of Justice filed an appeal with the United States Court of Appeals Case No 19-5125 on April 26, 2019. At this time, the case has not been scheduled for oral argument. As a result of the litigation, the U.S. Department of Labor issued a [statement](#) relating to employers participating in insured Pathway 2 AHPs issued prior to March 28, 2019.

Laws 2019, Chapter 301 (SB 1087): Vehicle Liability Insurance; Minimum Limits

Amends ARS §§ 20-259.01 and 28-4009.

Requires that uninsured or underinsured motorist coverage (UM/UIM) be offered at the time of the application. Specifies the policy declarations page must be sent to the named insured and this now represents the decision of the insured to purchase or decline UM/UIM coverage and the amounts selected and applies to all persons insured under the policy. The insurer does not need to reoffer UM/UIM coverage as a result of a change in the minimum liability limits for bodily injury or death.

Increases the motor vehicle minimum liability coverage limits for a policy that is issued or renewed, beginning July 1, 2020 to:

- \$25,000 for one person sustaining bodily injury or death in an accident;
- \$50,000 for two or more persons sustaining bodily injury or death in an accident; and
- \$15,000 for injury or damage to others’ property in an accident.

Laws 2019, Chapter 111 (SB 1089): Insurance; Telemedicine

*Amends ARS §§ 20-841.09, 20-1057.13, 20-1376.05 and 20-1406.05 to prohibit a hospital, medical service corporation, HCSO, disability insurer, and group and blanket disability insurer from limiting or denying coverage of health care services because it is provided through telemedicine if the same services would be covered when provided in-person. Specifies that these insurers can only apply the same limits and exclusions on a health care service that would be applicable to an in-person consultation for the same service. Subjects services provided through telemedicine or resulting from a telemedicine consultation to all Arizona laws that govern prescribing, dispensing, and administering prescription pharmaceuticals and devices. Amends the definition of telemedicine to include asynchronous store-and-forward technologies and remote patient monitoring technologies. **Effective from and after December 31, 2020.***

Laws 2019, Chapter 108 (SB 1105): Direct Primary Care Agreements

*Amends ARS §§ 20-103, repeals 20-123, repeals Title 44, chapter 11, article 25, and creates 44-1799.91 through 1799.96. Specifies that *direct primary care agreements* as defined in section 44-1799.91 are not insurance, and title 20 does not apply to those agreements. A new Article 25 is created in Title 44 and govern direct primary care agreements.*

Laws 2019, Chapter 8 (SB 1109): Short-Term Limited Duration Insurance; Notice

Amends ARS §§ 20-1379 and creates 20-1384 prescribing a notice that is required to be displayed on the fact page of all short-term limited duration insurance (STLDI) policies or certificates issued, delivered or renewed in Arizona and on any application materials provided in connection with STLDI enrollment. Insurers are required to provide notice to the insured before expiration that the policy needs to be renewed or is expiring. Extends the maximum length of an initial STLDI contract term from 185 days to less than 12 months and allows the policy to be renewed or extended for a total duration of not more than 36 months. Requires that STLDI policies or certificates issued, delivered or renewed to display the notice on the policy's fact page and in any application materials provided in connection with STLDI enrollment. Exempts STLDI from any health coverage mandates in Title 20.

Laws 2019, Chapter 17 (SB 1113): Insurance; Information Practices

Amends ARS § 20-2104 by specifying that an insurance institution or producer is not required to provide a notice of information practices at policy renewals or reinstatements if the insurer provides personal information in accordance with statutes relating to limitations and conditions for disclosing personal information and has not changed the policies and practices relating to disclosing personal information since the customer was last notified.

Laws 2019, Chapter 237 (SB 1182): Fire Insurance; Premium Tax Proceeds

Amends ARS §§ 20-951 and 20-952. Establishes June 15th as the deadline for the Department to certify to the Treasurer the amount of tax on fire premiums paid in the previous year for properties located in Arizona. Changes the deadline from July 1st to July 31 for the state treasurer to distribute the fire insurance premium tax to the incorporated cities and towns and legally organized fire districts.

Laws 2019, Chapter 18 (SB 1212): Prepaid Legal Insurance Contracts; Definition

Amends ARS § 20-1097 by adding a definition of *administrative fee* as a fixed amount paid by a corporation on a periodic basis to a contracted attorney for the contracted attorney's overhead and administrative costs. It excludes the payment of an administrative fee only from consideration as a specific legal service. Amends the definition of prepaid legal insurance contract to mean a contractual obligation to *pay or reimburse* for specific legal services rendered.

Laws 2019, Chapter 252 (SB 1469): Agency Consolidation; Department of Insurance

Amends multiple statutes within Title 5, 6, 10, 11, 13, 14, 20, 23, 25, 28, 32, 35, 38, 41, 44, 46, and 48. Contains a delayed effective date of July 1, 2020.

Effective July 1, 2020, renames Department of Insurance as the Department of Insurance and Financial Institutions (DIFI) and consolidates the current Department of Financial Institutions with DIFI as the Financial Institutions Division. The Arizona Auto Theft Authority (AATA) will also be consolidated within DIFI. DIFI will succeed to the authority, powers, duties and

responsibilities of the DFI and the AATA. The consolidation does not alter the effect of any actions that were taken by the DFI and the AATA before July 1, 2020.

Stipulates that on July 1, 2020 all administrative matters whether completed, pending or in process of the DFI and the AATA are transferred to and retain the same status with the DFI; all certificates and other indicia of qualification and authority that were issued by the DFI and the AATA retain their validity as provided by law; and all DFI and the AATA equipment, records and other property including appropriated monies that are unexpended and unencumbered are transferred to the DFI.

Requires Legislative Council to prepare proposed legislation to conform statute to the provisions of this Act for consideration in the Fifty-Fifth Legislature, First Regular Session (2020).

Laws 2019, Chapter 223 (SB 1534): Annuity Disclosure; Rules

Requires the Department to adopt rules relating to the National Association of Insurance Commissioners' annuity disclosure model regulation and illustration requirements for immediate and deferred income annuities by August 27, 2020.