

Commissioner's Monthly Column Department of Insurance Proposed Legislation

April 2013

In the ongoing 2013 Regular Session of the Louisiana Legislature the Louisiana Department of Insurance is offering several very important bills that have the potential to have a significant impact on consumers of health insurance. In particular, two bills would restrict the practice of "balance billing," which generates surprise medical bills for patients with health insurance after they have returned home from a hospital visit or stay.

Another area in which we support changes is one that will provide safety to insurance fraud investigators while out in the field conducting investigations. We are proposing a bill to create the Fraud Division within the Louisiana Department of Insurance (LDI) and allow fraud investigators to be armed as trained peace officers. We support this action after the tragic loss of two LDI fraud investigators in June 2011.

We are supporting a bill that addresses principle-based reserves for life, annuity, and health and accident insurance. We are also proposing a bill to liberalize the rules for obtaining surplus lines insurance coverage.

Federal law, the Public Health Service Act (PHSA) which encompasses the Patient Protection and Affordable Care Act (PPACA), has numerous provisions that impact health care and its related industries. As you are aware, individuals will begin signing up for health insurance through insurance exchanges on October 1 this year. Those new health insurance policies will become effective January 1, 2014. Louisiana, along with 25 other states, has opted to have the federal government operate its exchange. Seven states have planned a partnership exchange with the federal government and 18 states have declared that they will implement state-based exchanges.

Previously, Louisiana passed two laws that mirror provisions of PPACA but were initiatives we were taking with or without passage of the Act. The first pertains to rescission of coverage (Title 22:1063.C) and is limited to cases of fraud and intentional misrepresentation. Rescission of coverage requires prior notice of cancellation. The second law extends the age of eligibility for dependent coverage to age 26 (Title 22:1000.A(1)(vi)(aa)).

Federal law requires health insurance issuers offering group and individual coverage to have an appeals process incorporating minimum consumer protections.

Although Louisiana has an external review process that ensures consumer protections, including independent reviews of claim denials, those consumer protections are not as expansive as those found in the National Association of Insurance Commissioners (NAIC) Uniform Health Carrier External Review Model Act. These requirements do not apply to grandfathered group and individual health insurance coverage plans.

Louisiana's external review law does not comply with these minimum consumer protections required by federal law. We are one of ten states that are out of compliance with that HHS regulation.

House bill 645 will amend Louisiana's current internal and external appeals processes to align them with the standards in 40 other states. This bill directs health insurance issuers to comply with the U.S. Department of Labor's Internal Claims and Appeals Process. The bill also adopts the NAIC Uniform Health Carrier External Review Model Act which will afford Louisiana citizens as many consumer protections as required by federal law. Failure to pass legislation will continue to result in Louisiana citizens having to go to the federal government for an external review.

Another bill proposes a means for the LDI to review and approve health insurance premium rates for unreasonableness. This would help ensure that consumers receive value for their premium dollars and increase the transparency of rates in our health insurance market and promote a more competitive market. This measure is more important than ever as our health insurance has become non-competitive in recent years.

LDI has also proposed a bill (HB 592) that will address health insurance network adequacy. This measure will require health insurance issuers to submit their provider networks to the LDI for approval to determine network adequacy. This bill will help ensure that every network has an adequate number of health care providers and facilities including primary care and specialty care physicians.

LDI has two pieces of legislation addressing balance billing; one for medical emergency services and one for in-hospital non-emergency services. Both measures will ban a practice that generates surprise medical bills for patients with health insurance for out-of-network services provided without the patient's knowledge by specialists not covered under the insured's plan. This includes any billing for covered services above and beyond the co-insurance, co-payment and deductible in an insured's policy or plan.

Balance billing remains a very serious problem in Louisiana. LDI has consistently pushed for legislation to correct the balance billing practices of medical providers. With unsuccessful attempts in 2008, 2009, 2010 and 2012, we are once again addressing billing practices for emergency and in-hospital non-emergency medical services. The balance billing problem can be solved with the passage of LDI's proposed legislation this session. It's time that Louisiana stands up for consumers in the matter of medical balance billing practices.

We are also proposing a bill that creates the Fraud Division within the LDI along with a Deputy Commissioner of Fraud. In order to protect our investigators and carry out our mission to combat insurance fraud, the bill gives law enforcement investigative powers and privileges to fraud investigators, as well as access to electronic databases maintained for use by law enforcement agencies.

This bill will enable the Insurance Commissioner to commission Fraud Division personnel that have been certified via Peace Officer Standards and Training (POST) to

carry and use firearms, and to arrest persons while carrying out their duties investigating insurance fraud. Itemized in this bill is a list of specific criminal statutes limiting the scope of their investigations and the arrest powers of the division to insurance fraud. Those commissioned in the Fraud Division will have the same privileges, immunities and defenses as other law enforcement agencies.

The principles-based reserving bill is one that will lead to more choices in the life insurance and annuities marketplace with more affordable prices. It implements recent changes by the NAIC to the Standard Valuation Law and Standard Nonforfeiture Law for Life Insurance with a principles-based reserve (PBR) approach to establishing insurance company reserves. These changes were adopted in the “Valuation Manual” by the NAIC at their Fall National Meeting as a package to use as a guideline in drafting legislation in each state. The “Valuation Manual” defines the methods used by regulators and insurers to calculate the reserves of insurance companies. PBR incorporates factors beyond interest rates and mortality to better capture portfolio risks and ensure corporate solvency.

This approach has been sought by many in the insurance industry to permit more flexibility in determining reserves. For smaller insurers there are still rule-based reserves that will not require an expensive actuarial work out of proportion to the anticipated benefit.

After consulting the Surplus Lines Advisory Council, we are proposing legislation that would make several needed changes in our state’s surplus lines law. First is the elimination of the requirement that authorized insurance be unavailable. This requirement has been a particular problem for political subdivisions (i.e. municipalities, parishes, school boards) trying to procure surplus lines insurance that is often less expensive than authorized insurance that they must accept according to an interpretation of the law by the attorney general. Second is the streamlining of eligibility requirements to conform to federal law enacted as part of the 2010 Dodd-Frank Act. Third is the elimination of the affidavit requirements for personal lines placements. Replacing that is a requirement for prior written authorization to procure surplus lines coverage without regard to availability of authorized insurance.

You can follow the progression of bills through the legislative process by logging into the Legislature at www.legis.la.gov and clicking on “bill search.” Or you can follow LDI on Twitter @LAInsuranceDept for updates on the status of LDI bills. The changes we are seeking will bring about protections for consumers with health insurance as well as increase access to surplus lines insurance products.