

March 3, 2010

Rundown of New Laws in the Insurance Industry

In 2009, the California Legislature passed a number of bills impacting the insurance industry. The state made several amendments to its Health and Safety Code and Insurance Code to comply with federal legislation enacted in recent years.

The federal American Recovery and Reinvestment Act of 2009 provides premium assistance of 65 percent to individuals participating in a federal or state COBRA plan because their employee-sponsored health coverage ended due to involuntary termination during Sept. 1, 2008 to Dec. 31, 2009. In response, California law now reflects that insurers must notify COBRA plan beneficiaries of the eligibility requirements for federal premium assistance. Eligible beneficiaries have 60 days from the required notice date to elect continuation coverage under COBRA. (Stats.2009, c. 3 (AB 23).)

The federal Children's Health Insurance Program Reauthorization Act of 2009 requires a group health plan to allow an eligible person to enroll in coverage if the person's coverage under Medicaid or a state child health plan was terminated, and the person applies for coverage within 60 days after that termination. California law allows for the exclusion of "late enrollees" in a group health plan for a specified period of time. Previous law excluded from the definition of "late enrollees" persons or their dependents who applied for coverage within 30 days of termination of previous coverage. The recent amendments now exclude from the definition of "late enrollees" persons who apply for coverage under the group health plan within 60 days after termination of coverage under the Medi-Cal program, AIM Program or Healthy Families Program. (Stats.2009, c. 542 (AB 1541).)

The federal Medicare Improvements for Patients and Providers Act of 2008 requires states to adopt modernization changes to Medicare supplement policies reflected in a model law developed by the National Association of Insurance Commissioners. California amended several Health and Safety Code and Insurance Code sections to adopt the modernization changes reflected in the model law. The modernization changes become effective for "2010 standardized Medicare supplement benefit plans" that are group of individual policies with an effective date on or after June 1, 2010. (Stats.2009, c. 10 (AB 1543).)

The federal Genetic Information Nondiscrimination Act of 2008 prohibits issuers of Medicare supplement policies from denying or conditioning coverage based on genetic information and from requiring genetic testing as a condition of coverage. In compliance, California law now prohibits issuers from using genetic information to deny coverage or increase premium rates. Additionally, the manifestation of a disease or disorder in one family member may not be used as genetic information about other family members. (Stats.2009, c. 10 (AB 1543).)

California also made some non-federally driven amendments affecting health and life insurance. It amended the Health and Safety Code and Insurance Code to prohibit individual health insurers from canceling, rescinding, limiting, or raising the premiums on a policy, after 24 months following issuance of the policy, for any omission, misrepresentation, or inaccuracy in the application form. The amendments provide a two-year statute of limitations for such actions. (Stats.2009, c. 406 (AB 108).)

California also amended its laws relating to viatical settlements. It redefined these financial arrangements as "life settlements" and requires that agents and brokers of life settlements be licensed with the state. The revised law also prohibits the use of trusts and special purpose entities to procure insurance for investors where the beneficiaries do not have an insurable interest in the life of the insured. (Stats.2009, c. 343 (SB 98).)

Additionally, California also enacted legislation affecting automobile and property insurance. California law requires motor vehicle insurers to provide insureds with an Auto Body Repair Consumer Bill of Rights providing certain information relating to consumers' rights in connection with covered auto body repairs. The bill of rights must now also include information concerning the right to obtain an independent repair estimate directly from a registered auto body repair shop, even when the consumer is pursuing an insurance claim for the repair. (Stats.2009, c. 141 (AB 1179).)

California law also prohibits insurers from requiring that an automobile be repaired at a specific repair dealer. Insurers may now provide claimants with specific truthful and nondeceptive information regarding services and benefits available during the claims process, including information about repair warranties offered, the type of replacement parts to be used, the anticipated repair time and the quality of the workmanship. (Stats.2009, c. 387 (AB 1200).)

California law requires mortgage guaranty insurers to maintain a certain amount of policyholders surplus. The criteria for establishing this surplus in certain circumstances was altered in 2009 by changing the definition of "face amount of an insured mortgage" to exclude the outstanding principal balance of a defaulted loan for which the insurer has established a loss reserve, if such reserve is equal to or greater than the surplus the insured would otherwise be required to establish with respect to the loan. Moreover, if an insurer expects its surplus will fall below the required minimum, it must now notify the commissioner at least 60 days in advance and may request a waiver so that it may continue transacting new business. (Stats.2009, c. 574 (SB 291).)

Changes affecting the regulation of the insurance industry include the following: The insurance commissioner must now mail to domestic insurers the reports listing reciprocal states (i.e., states whose domestic insurers may not insure California persons or property without proper certification from California's insurance commissioner) every four years instead of annually. Special examiner's and affairs of an insurer must now be at the insurer's expense, instead of at California's expense in the commissioner's discretion. Domestic insurers may now invest in credit unions in addition to other financial institutions backed by the federal government like banks or savings and loans. Domestic and commercially domiciled insurers must now give the commissioner advance notice of intent to enter into tax sharing agreements. (Stats.2009, c. 234 (AB 299).)

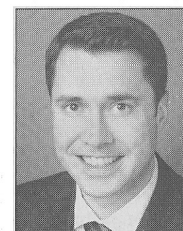
In 2009, California increased insurers' abilities to transact business electronically. If consent is obtained, insurers may now electronically provide certain types of required notice, such as the reasons for canceling a policy or notice of such cancellation to lienholders, and pay

covered claims by electronic funds transfer. However, insurers must maintain a system for confirming that any such notice was electronically sent and for electronically confirming an insured's agreement to conduct transactions electronically, and must maintain such electronic records for the same period of time as written records. (Stats.2009, c. 433 (AB 328).)

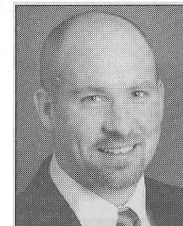
California also increased access to personal information in 2009. Insurance institutions, agents and insurance-support organizations may now disclose to an insured's lawyer personal or privileged

information about an individual received in connection with an insurance transaction when the information is from an accident or investigative report to which the insured is entitled. (Stats.2009, c. 112 (AB 470).)

The state also extended some statutes set to expire in 2010. The Life and Annuity Consumer Protection Fund, created to protect consumers of life insurance and annuities, has been extended to Jan. 1, 2015. (Stats.2009, c. 75 (AB 76).) A special purpose assessment of 30 cents per vehicle insured imposed on insurers for the funding and improving of consumer functions at the Department of Insurance has been extended to Jan. 1, 2015. (Stats.2009, c. 247 (AB 601).) A statute prohibiting lawsuits against insurers providing professional liability insurance to health care providers for statements made in bad faith, unless in specified circumstances, has been extended until Jan. 1, 2013. (Stats.2009, c. 30 (SB 119).)



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