

# Insurance Legislation in 2002

## House Bills

**House Bill 1889 (PA 92-0764) effective 1/1/03**—amends the Illinois Insurance Code, Health Maintenance Organization Act, Voluntary Health Services Plans Act, and the State Employees Group Insurance Act of 1971 to require that policies of individual and group insurance provide coverage for charges incurred for hospital care and anesthetics which are provided in conjunction with dental care provided in a hospital, ambulatory surgical treatment center or by a certified anesthesiologist. The mandated coverage is limited to: 1) children under the age of 6; 2) individuals with a medical condition that requires hospitalization or general anesthesia for dental care; and 3) disabled individuals.

The coverage established by HB 1889 is subject to any limitations, exclusions or cost sharing generally applicable under the policy of insurance. HB 1889 specifically states that dental services are not required to be covered. HB 1889 also specifies that the requirements are not applicable to dental-only, short-term travel, accident-only, limited, or specified disease insurance policies, nor to policies or contracts designed for issuance to persons eligible for coverage under Title XVIII of the Social Security Act, known as Medicare, or any other similar coverage under state or federal governmental plans.

**House Bill 4220 (PA 92-0770) effective 1/1/03**—amends the **Managed Care Reform and Patient Rights Act** to prohibit health care plans (HMOs) from requiring enrollees in individual and group contracts to utilize the services of a physician other than their attending physician without the agreement of the enrollee's attending physician.

**House Bill 4371 (PA 92-0669) effective 1/1/03**—amends the Illinois Insurance Code to create a new section (215 ILCS 5/143.24c) which stipulates that an insurer may not cancel, refuse to issue, or refuse to renew a policy solely on the basis that one or more claims have been made during the preceding 60 months for a loss that is the result of a hate crime committed against the person or property insured if the insured provides evidence to the insurer that the act causing the loss is identified as a hate crime on a police report. HB 4371 defines an insured (for purposes of the applicability of the new change) to be an individual, a religious organization (as defined by federal law), an educational organization (as defined by federal law), or a nonprofit organization (as described in federal law) that is operating for religious, charitable or educational purposes.

HB 4371 also provides that a violation of this legislation constitutes an unfair method of competition or deceptive business practice.

**House Bill 4407 (PA 92-0751) effective 8/2/02**—amends the **Illinois Vehicle Code** to provide that if an insurance company has paid a total loss claim for hail damage that does not affect the operational safety of a vehicle, the registered owner may retain the vehicle.

**House Bill 4975 (PA 92-0835) effective 6/1/03**—amends the Illinois Vehicle Code to provide that if the permitted user of a new or used vehicle dealer’s automobile has a liability insurance policy that provides for liability coverage of at least \$100,000 for bodily injury to, or the death of any person, \$300,000 for bodily injury to, or the death of any two or more persons in any one accident, and \$50,000 for damage to property, then the permitted user’s insurer is considered primary and the dealer’s insurance policy is secondary. If the permitted user does not have a liability insurance policy that provides for the specified limits or does not have any insurance at all, then the new or used vehicle dealer’s insurer is considered the primary insurer and the permitted user’s insurer is secondary.

HB 4975 also requires that when a permitted user is “test driving” a new or used vehicle dealer’s automobile, the dealer’s insurance is to be considered primary and the permitted user’s insurance is secondary. HB 4975 defines the term “permitted user” as a person who, with the permission of the new or used vehicle dealer or an employee of the vehicle dealer, drives a vehicle owned and held for sale or lease by the vehicle dealer which the person is considering to purchase or lease, in order to evaluate the performance, reliability, or condition of the vehicle. The term “permitted user” also includes a person who, with the permission of the dealer, drives a vehicle owned or held for sale or lease by the vehicle dealer for “loaner purposes” while the user’s vehicle is being repaired or evaluated.

According to HB 4975, “test driving” occurs when a permitted user, with the permission of the new or used vehicle dealer or an employee of the dealer, drives a vehicle owned and held for sale or lease by a vehicle dealer that the person is considering to purchase or lease in order to evaluate the performance, reliability, or condition of the vehicle. HB 4975 also defines the term “loaner purposes” to mean when a person, with the permission of a new or used vehicle dealer, drives a vehicle owned or held for sale or lease by the vehicle dealer while the user’s vehicle is being repaired or evaluated.

**House Bill 4989 (PA 92-0556) effective 6/24/02**—amends Article XL (Insurance Information and Privacy Protection Act) of the Illinois Insurance Code (215 ILCS 5/1001, et seq.) to authorize the Director to enforce the **privacy provisions** of the federal Gramm-Leach-Bliley Act (GLBA). Specifically, the Director would be authorized to make reasonable rules and regulations as may be necessary to permit enforcement of the privacy provisions of Title V (Privacy Provisions) of the GLBA.

**House Bill 5606 (PA 92-0630) effective 7/11/02**—amends the **Comprehensive Health Insurance Plan Act (CHIP)** to extend to 90 days, rather than 63, the requirement for an individual to apply for coverage following the involuntary termination of the individual’s health insurance coverage due to the insolvency of an insurance carrier.

**House Bill 5607 (PA 92-0541) effective 7/1/02**—amends the Illinois Insurance Code to modify the minimum interest rate used in calculating nonforfeiture values for individual deferred annuities issued from July 1, 2002 until July 1, 2005. The Act sets the minimum rate at 1.5% per annum, rather than 3% per annum.

**House Bill 5615 (PA 92-0775) effective 7/1/03**—amends the Illinois Vehicle Code to provide that a person convicted of a third or subsequent time for driving without liability insurance must submit proof of financial responsibility to the Illinois Secretary of State for at least one year. This legislation also requires that the Illinois Secretary of State must suspend the license of any person who fails to provide the required proof of financial responsibility.

**House Bill 5822 (PA 92-0578) effective 6/26/02**—amends the Illinois Insurance Code (215 ILCS 5/155.32) as well as numerous other Acts to provide that entities and persons regulated under those Acts may conduct transactions in a language other than English through an employee or agent acting as an interpreter or through an interpreter provided by a customer.

**House Bill 5842 (PA 92-0579) effective 1/1/03**—amends 215 ILCS 5/370i and adds 215 ILCS 5/356z.2 to the Illinois Insurance Code and 215 ILCS 125/4.5-1 of the Health Maintenance Organization Act. HB 5842 requires insurance companies to provide prominent disclosure in the policy and certificate that states that when consumers utilize a non-participating provider for a non-emergency covered service, their benefit payments will be reduced by the insurer.

In accordance with HB 5842, insurance companies would be required to provide a disclosure explaining that the basis of the benefit payment will be determined according to the policy fee schedule, usual and customary charge (which is determined by comparing charges for similar services adjusted to the geographical area where the services are performed), or other method as defined in the policy. HB 5842 also requires that consumers be advised that to obtain further information about the participating status of professional providers and information on out-of-pocket expenses, they must call the toll-free telephone number on their identification card provided by the company.

## Senate Bills

**Senate Bill 1996 (PA 92-0587) effective 6/26/02**—amends the Illinois Insurance Code to provide that a signed disclosure be obtained by the producer if the producer's compensation or fee exceeds 10% of the premium amount. According to SB 1996, the producer would be required to maintain the requisite fee disclosure for seven years. SB 1996 also provides that if a policy or contract is cancelled for any reason within 90 days following the inception date, the producer or business entity must refund a prorated portion of the fee or compensation within 30 days after receiving proper documentation that the policy or contract has been cancelled. This legislation also stipulates that at no time can a producer or business entity charge the consumer a fee or obtain compensation for cancellation of any insurance policy or contract.

**Senate Bill 2098 (PA 92-0594) effective 6/27/02**—creates the Senior Pharmaceutical Assistance Act and establishes a Senior Pharmaceutical Assistance Review Committee consisting of 17 members. Each of the four caucus leaders are to appoint two members of the General Assembly and one member of the general public. Other members of the committee include:

- the Director of Aging;
- the Director of Revenue;
- the Director of Public Aid;
- the Secretary of Human Services;
- the Director of Public Health.

SB 2098 requires that the members appointed from the general public must represent: statewide, membership-based, senior advocacy organizations; pharmaceutical manufacturers; pharmacists; dispensing pharmacies; physicians; and providers of services to senior citizens. No single organization may have more than one representative appointed as a member from the general public. The President of the Senate and Speaker of the House each must designate one member to serve as co-chairs. The Committee is required to report to the General Assembly and the Governor annually, or as it deems necessary, regarding proposed or recommended changes to pharmaceutical assistance programs that benefit Illinois seniors and any associated cost of those changes.

SB 2098 creates the Senior Health Assistance Program within the Department on Aging to become operational within 90 days of enactment. The Senior Health Assistance Program will provide outreach and education to senior citizens on available prescription drug coverage and discount programs. The Senior Health Assistance Program will also operate a clearinghouse for all information regarding prescription drug coverage programs available to senior citizens. This entity will also be responsible for maintaining a toll-free telephone number staffed by trained customer service representatives.

SB 2098 required the Illinois Comprehensive Health Insurance Plan (ICHIP) to study a catastrophic pharmaceutical assistance coverage option. The ICHIP study was to estimate the cost of providing a catastrophic pharmaceutical coverage option through ICHIP or another public or private entity. The study was also to recommend ways to create a catastrophic pharmaceutical assistance coverage option. SB 2098 allowed ICHIP to seek private and public funds to be held in trust to conduct the study. ICHIP was required to issue the report with recommendations to the Governor and General Assembly by January 1, 2003.

**Senate Bill 2245 (PA 92-0745) effective 1/1/03**—amends the prompt pay law of the Illinois Insurance Code (215 ILCS 5/368a) to require Physician Hospital Organizations (PHOs) and Independent Practice Associations (IPAs) to make periodic provider payments (capitation) after the enrollee has selected their health care professional or health care facility in accordance with a monthly periodic schedule. SB 2245 represents a cleanup to the prompt pay statute by deleting the phase-in provisions applicable only to IPAs and PHOs which stated that, “Before January 1, 2001, subsequent periodic payments shall be made in accordance with a 60-day periodic schedule, and after December 31, 2000, subsequent periodic payments shall be made in accordance with a monthly periodic schedule.”

# Insurance Rulemaking in 2002

**Rule 801** (Valuation of Investments) was repealed effective January 18, 2002, because it was superseded by the addition of Section 126.7, Valuation of Investments, to the Illinois Insurance Code (215 ILCS 5/126.7).

**Rule 802** (Purchasing and Selling Call and Put Options Contracts) was repealed effective January 18, 2002, because it was superseded by the addition of Sections 126.18, Derivative Transactions, and 126.31, Derivative Transactions, to the Illinois Insurance Code (215 ILCS 5/126.18 and 126.31).

**Rule 803** (Lending of Securities) was repealed effective January 18, 2002, because it was superseded by the addition of Section 126.16, Securities Lending and Repurchase, Reverse Repurchase, and Dollar Roll Transactions, and Section 126.29, Securities Lending and Repurchase, Reverse Repurchase, and Dollar Roll Transactions, to the Illinois Insurance Code (215 ILCS 5/126.16 and 126.29).

**Rule 804** (Repurchase and Reverse Repurchase Agreements) was repealed effective January 18, 2002, because it was superseded by the addition of Section 126.16, Securities Lending and Repurchase, Reverse Repurchase, and Dollar Roll Transactions, and Section 126.29, Securities Lending and Repurchase, Reverse Repurchase, and Dollar Roll Transactions, to the Illinois Insurance Code (215 ILCS 5/126.16 and 126.29).

**Rule 805** (Financial Futures Contracts) was repealed effective January 18, 2002, because it was superseded by the addition of Sections 126.18, Derivative Transactions, and 126.31, Derivative Transactions, to the Illinois Insurance Code (215 ILCS 5/126.18 and 126.31).

**Rule 2004** (Accident and Health Reserves) was amended effective February 19, 2002, because the current rule had not been revised for years and was outmoded. Further, the adoption of the NAIC Statutory Accounting Practices and Procedures Manual incorporated the NAIC Model Law for Minimum Reserve Standards for Individual and Group Health Insurance. The manual is revised yearly and automatically adopts any changes to the model law.

**Rule 2008** (Minimum Standards for Individual and Group Medicare Supplement Insurance) was amended effective March 25, 2002. The NAIC amended its model regulation for Medicare supplement contracts to comply with current federal regulations by adding wording regarding time periods for guaranteed issued products when an individual's contract is being terminated. In addition, changes have been made so that if coverage is terminated, subsequent enrollment with another plan or program shall be deemed to be the initial enrollment.

At the urging of the NAIC, the Department of Insurance amended the Illinois regulation to comply with federal standards. These changes were necessary to ensure the state's regulatory authority over Medicare supplement policies.

**Rule 2016** (Mastectomies) was promulgated on an emergency basis effective March 25, 2002, to avoid federal preemption of, and regulatory jurisdiction over, mastectomy and related coverage in insurance contracts as required by the federal Women's Health and Cancer Rights Act of 1998 (WHCRA) (42 USC 300gg-6, 300gg-52, incorporating 29 USC 1185(b)).

**Rule 5421** (Health Maintenance Organization) was promulgated on an emergency basis effective March 25, 2002, to avoid federal preemption of, and regulatory jurisdiction over, mastectomy and related coverage in insurance contracts as required by the federal Women's Health and Cancer Rights Act of 1998 (WHCRA) (42 USC 300gg-6, 300gg-52, incorporating 29 USC 1185(b)).

**Rule 2012** (Traditional Long-Term Care Insurance) was amended July 1, 2002, to conform to changes in the NAIC model and to reflect the inclusion of a "tax-qualified," long-term care insurance product pursuant to the Internal Revenue Code.

**Rule 919** (Improper Claims Practices) was amended July 22, 2002, to address the problem of unpaid death benefits when insurance companies issue multiple insurance policies on the same life, but either do not check for multiple policies upon receiving a death claim or lack an effective system to do so. The rule sets forth standards for insurance company record searches to ensure the proper payment of all death claims. The rule will become effective on July 1, 2004, to allow insurance companies adequate time to prepare for and implement the search requirements.

**Rule 2016** (Mastectomies) and **Rule 5421** (Health Maintenance Organization) were adopted August 19, 2002, to ensure Illinois' compliance with the federal Women's Health and Cancer Rights Act with respect to reconstruction, symmetry and prostheses for policies and plans that provide medical and surgical benefits for mastectomies. These rules replaced emergency Rule 2016 and Rule 5421 cited above.

**Rule 2403** (Producer Felony Review) was adopted effective July 5, 2002, to set forth felony review standards that the Director will consider when determining the appropriate action to take pursuant to Section 500-70 of the Illinois Insurance Code. The 92nd General Assembly enacted Public Act 92-0386, effective January 1, 2002. This Act essentially mirrored the NAIC Producer Licensing Model Act. Because this Act added multiple new sections to the existing Article XXXI of the Code (215 ILCS 5/500-5 through 500-150) while repealing similar sections under the same Article (215 ILCS 5/490.1 through 511.1), the Department was left with a new statutory framework that required regulatory standards.

Previously, Section 505.1(a)(7) of the Code allowed the Director to suspend, revoke or deny an insurance producer's license if the individual had been convicted of a felony within 3 years, unless rehabilitation could be shown. The equivalent new section (215 ILCS 5/500-70(a)(6)) does not include the "within 3 years" language, nor does it statutorily set discretionary authority permitting the Director to consider whether sufficient rehabilitation has been demonstrated to warrant the public trust when a licensee or applicant has been convicted of a felony.

**Rule 909** (Advertising & Sales Promotion of Life Insurance & Annuities) was amended effective October 28, 2002, to update all statutory references affected by the enactment of Public Act 92-0386 which replaced the current producer licensing law in the Illinois Insurance Code with a new licensing law modeled after the National Association of Insurance Commissioner's (NAIC) model.

**Rule 917** (Life Insurance & Annuity Replacement Regulation) was amended effective October 28, 2002, to update all statutory references affected by the enactment of Public Act 92-0386.

**Rule 3109** (Insurance Producers Doing Business Under an Assumed Name or Firm) was amended effective October 28, 2002, to update all statutory references affected by the enactment of Public Act 92-0386.

**Rule 3113** (Premium Fund Trust Account) was amended effective October 28, 2002, to update all statutory references affected by the enactment of Public Act 92-0386.

**Rule 3119** (Pre-licensing & Continuing Education) was amended effective October 28, 2002, to update all statutory references and terminology affected by the enactment of Public Act 92-0386. In addition, the text of Section 3119.40 of the rule was repealed again formally because the text was inadvertently left intact when the Department filed its official copy with the Index Department following the previous repeal.

**Rule 4415** (Payment of Annual Compliance Fees for Pension Funds) was amended effective October 28, 2002, so that pension funds would no longer be required to utilize the Automated Clearing House (ACH) method for payment of annual compliance fees. The court in *Board of Trustees of the Chicago Heights Police Pension Fund v. Department of Insurance* (1-99-1589) held that the requirement was void, and JCAR identified this as an issue that the Department should address by rulemaking. The changes make the ACH payment method optional and present alternative methods for payment of the annual compliance fees.

**2 Ill. Adm. Code, Chapter XI Department of Insurance, Part 951** (Access to Public Records) was amended effective December 16, 2002, to incorporate the Department's policies regarding the determination of confidentiality of certain types of documents and information, and to update the Department's requirements and procedures concerning Freedom of Information requests.