

LEGISLATIVE BILL 969

Approved by the Governor April 12, 1996

Introduced by Landis, 46

AN ACT relating to insurance; to amend sections 44-402, 44-32,180, 44-3602, 44-3603, 44-3604, 44-3607, 44-4040, and 44-4726, Reissue Revised Statutes of Nebraska, and section 44-6606, Revised Statutes Supplement, 1995; to change reserve provisions; to change provisions relating to medicare supplement policies; to change tax calculations; to change policy requirements; to change enforcement provisions; to repeal the original sections; and to declare an emergency.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 44-402, Reissue Revised Statutes of Nebraska, is amended to read:

44-402. The Department of Insurance shall annually value or cause to be valued the reserve liabilities, hereinafter called reserves, for all outstanding life insurance policies and annuity and pure endowment contracts of every domestic life insurance company doing business in this state, except that in the case of an alien company, such valuation shall be limited to its United States business; and shall issue a certificate as to the amount of any such reserves. In lieu of the valuation of the reserves herein required of any foreign or alien company, it may accept any valuation made or caused to be made by the insurance supervisory official of any state or other jurisdiction. Any such company, which at any time has adopted any standard of valuation producing greater aggregate reserves than those calculated according to the minimum standard, may, with the approval of the department, adopt any lower standard of valuation but not lower than the minimum standard.

Sec. 2. Section 44-32,180, Reissue Revised Statutes of Nebraska, is amended to read:

44-32,180. (1) Any health maintenance organization subject to the Health Maintenance Organization Act shall also be subject to (1) (a) the premium taxation provisions of Chapter 77, article 9, to the extent that the direct writing premiums are not otherwise subject to taxation under such article and (2) (b) the retaliatory taxation provisions of section 44-150.

(2) Any capitation payment made in accordance with the Managed Care Plan Act shall be excluded from computation of any tax obligation due and payable on or after March 1, 1996, imposed by subsection (1) of this section.

Sec. 3. Section 44-3602, Reissue Revised Statutes of Nebraska, is amended to read:

44-3602. For purposes of the Medicare Supplement Insurance Minimum Standards Act:

(1) Applicant shall mean:

(a) In the case of an individual medicare supplement policy, the person who seeks to contract for insurance benefits; and

(b) In the case of a group medicare supplement policy, the proposed certificate holder;

(2) Certificate shall mean any certificate delivered or issued for delivery in this state under a group medicare supplement policy;

(3) Certificate form shall mean the form on which the certificate is delivered or issued for delivery by the issuer;

(4) Director shall mean the Director of Insurance;

(5) Issuer shall include insurance companies, fraternal benefit societies, health care service plans, health maintenance organizations, and any other entities delivering or issuing for delivery in this state medicare supplement policies or certificates;

(6) Medicare shall mean the Health Insurance for the Aged Act, Title XVIII of the Social Security Amendments of 1965, as then constituted or later amended;

(7) Medicare supplement policy shall mean a group or individual policy of sickness and accident insurance or a subscriber contract of health maintenance organizations, other than a policy issued pursuant to a contract under section 1876 or section 1833 of the federal Social Security Act, 42 U.S.C. 1395 et seq., or an issued policy under a demonstration project authorized pursuant to amendments to the federal Social Security Act specified in 42 U.S.C. 1395ss(q)(1), which is advertised, marketed, or designed primarily as a supplement to reimbursements under medicare for the hospital, medical, or surgical expenses of persons eligible for medicare; and

(8) Policy form shall mean the form on which the policy is delivered or issued for delivery by the issuer.

Sec. 4. Section 44-3603, Reissue Revised Statutes of Nebraska, is amended to read:

44-3603. (1) The Medicare Supplement Insurance Minimum Standards Act shall apply to:

(a) All medicare supplement policies delivered or issued for delivery in this state on or after April 16, 1992; and

(b) All certificates issued under group medicare supplement policies, which certificates have been delivered or issued for delivery in this state.

(2) The act shall not apply to a policy of one or more employers or labor organizations or of the trustees of a fund established by one or more employers or labor organizations, or a combination thereof, for employees or former employees, or a combination thereof, or for members or former members, or a combination thereof, of the labor organizations.

(3) The Except as otherwise specifically provided in subsection (4) of section 44-3607, the act shall not be intended to prohibit or apply to insurance policies or health care benefit plans, including group conversion policies, provided to medicare eligible persons, which policies or plans are not marketed or held to be medicare supplement policies or benefit plans.

Sec. 5. Section 44-3604, Reissue Revised Statutes of Nebraska, is amended to read:

44-3604. (1) No medicare supplement policy or certificate in force in the state shall contain benefits that duplicate benefits provided by medicare.

(2) Notwithstanding any other provision of law, a medicare supplement policy or certificate shall not exclude or limit benefits for losses incurred more than six months from the effective date of coverage because it involved a preexisting condition. The policy or certificate shall not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six months before the effective date of coverage.

(3) The director shall adopt and promulgate reasonable rules and regulations to establish specific standards for policy provisions of medicare supplement policies and certificates. Such standards shall be in addition to and in accordance with applicable laws of this state. No requirement of Chapter 44 relating to minimum required policy benefits, other than the minimum standards contained in the Medicare Supplement Insurance Minimum Standards Act, shall apply to medicare supplement policies and certificates. The standards may include, but shall not be limited to:

- (a) Terms of renewability;
- (b) Initial and subsequent conditions of eligibility;
- (c) Nonduplication of coverage;
- (d) Probationary periods;
- (e) Benefit limitations, exceptions, and reductions;
- (f) Elimination periods;
- (g) Requirements for replacement;
- (h) Recurrent conditions; and
- (i) Definitions of terms.

(4) The director shall adopt and promulgate reasonable rules and regulations to establish minimum standards for benefits, claims payment, marketing practices and compensation arrangements, and reporting practices for medicare supplement policies and certificates.

(5) The director may adopt and promulgate rules and regulations necessary to conform medicare supplement policies and certificates to the requirements of federal law and regulations promulgated under federal law, including:

- (a) Requiring refunds or credits if the policies or certificates do not meet loss-ratio requirements;
- (b) Establishing a uniform methodology for calculating and reporting loss ratios;
- (c) Assuring public access to policies, premiums, and loss-ratio information of issuers of medicare supplement insurance;
- (d) Establishing a process for approving or disapproving policy forms and certificate forms and proposed premium increases; and
- (e) Establishing a policy for holding public hearings prior to approval of premium increases; and
- (f) Establishing standards for medicare select policies and certificates.

(6) The director may adopt and promulgate reasonable rules and regulations which specify prohibited policy provisions not otherwise

specifically authorized by statute which, in the opinion of the director, are unjust, unfair, or unfairly discriminatory to any person insured or proposed to be insured under a medicare supplement policy or certificate.

Sec. 6. Section 44-3607, Reissue Revised Statutes of Nebraska, is amended to read:

44-3607. (1) In order to provide for full and fair disclosure in the sale of medicare supplement policies, no medicare supplement policy or certificate shall be delivered in this state unless an outline of coverage is delivered to the applicant at the time the application is made.

(2) The director shall prescribe the format and content of the outline of coverage required by subsection (1) of this section. As used in this section, format shall mean style, arrangement, and overall appearance, including, but not limited to, the size, color, and prominence of type and arrangement of text and captions. Such outline of coverage shall include:

(a) A description of the principal benefits and coverage provided in the policy;

(b) A statement of the renewal provisions, including any reservation by the issuer of a right to change premiums and disclosure of the existence of any automatic renewal premium increases based on the policyholder's age; and

(c) A statement that the outline of coverage is a summary of the policy issued or applied for and that the policy should be consulted to determine governing contractual provisions.

(3) The director may prescribe by rule and regulation a standard form and the contents of an informational brochure for persons eligible for medicare which is intended to improve the buyer's ability to select the most appropriate coverage and improve the buyer's understanding of medicare. Except in the case of direct-response insurance policies, the director may require by rule and regulation that the informational brochure be provided to any prospective insureds eligible for medicare concurrently with delivery of the outline of coverage. With respect to direct-response insurance policies, the director may require by rule and regulation that the prescribed brochure be provided upon request to any prospective insureds eligible for medicare but in no event later than the time of policy delivery.

(4) The director may adopt and promulgate rules and regulations for captions or notice requirements determined to be in the public interest and designed to inform prospective insureds that particular insurance coverages are not medicare supplement coverages for all sickness and accident insurance policies sold to persons eligible for medicare by reason of age, other than:

(a) Medicare supplement policies; or

(b) Disability income policies; or

~~(c) Basic, catastrophic, or major medical expense policies; and~~

~~(d) Single premium, nonrenewable policies.~~

(5) The director may further adopt and promulgate rules and regulations to govern the full and fair disclosure of the information in connection with the replacement of sickness and accident policies, subscriber contracts, or certificates by persons eligible for medicare.

Sec. 7. Section 44-4040, Reissue Revised Statutes of Nebraska, is amended to read:

44-4040. All policies and applications, the solicitation of which involves an insurance agent, insurance broker, or insurance agency, shall identify the name of each such agent, broker, and or agency. If the application is attached to the policy upon issuance, the required identification may be contained in either the application or the policy.

Sec. 8. Section 44-4726, Reissue Revised Statutes of Nebraska, is amended to read:

44-4726. (1) The same taxes provided for in section 44-32,180 shall be imposed upon each prepaid limited health service organization, and such organizations also shall be entitled to the same tax deductions, reductions, abatements, and credits that health maintenance organizations are entitled to receive.

(2) Any capitation payment made in accordance with the Managed Care Plan Act shall be excluded from computation of any tax obligation due and payable on or after March 1, 1996, imposed by subsection (1) of this section.

Sec. 9. Section 44-6606, Revised Statutes Supplement, 1995, is amended to read:

44-6606. (1) In order to investigate activities involving insurance fraud, the Director of Insurance shall appoint a sufficient staff to be known as the Insurance Fraud Prevention Division which may include two investigators and one attorney.

(2) (a) As specified by the Director of Insurance, certain personnel who are certified law enforcement officers of the State of Nebraska shall be vested with the authority and power of a peace officer to carry out the laws

of this state administered by the Director of Insurance. Such personnel shall be empowered to arrest with or without a warrant, file and serve any lien, seize property, serve and return a summons, warrant, or subpoena issued by a court of law or the Director of Insurance, and bring an offender before any court with jurisdiction in this state, except that such personnel shall not be authorized to carry weapons or enforce any laws other than laws administered by the Director of Insurance.

(b) Subdivision (a) of this subsection shall not be construed to restrict any other law enforcement officer of this state from enforcing any state law, insurance or otherwise.

(3) The division shall:

(a) Initiate independent inquiries and conduct independent investigations when the division has cause to believe that an act of insurance fraud has been or is currently being committed;

(b) Review reports or complaints of alleged insurance fraud to determine whether such reports require further investigation and to conduct such investigation;

(c) Conduct independent examinations of alleged fraudulent insurance acts and undertake independent studies to determine the extent of fraudulent insurance acts; and

(d) Cooperate with federal, state, and local law enforcement, prosecuting attorneys, and the Attorney General in the investigation and prosecution of insurance fraud violations. At the request of the division, through the Director of Insurance, the Attorney General shall prosecute fraudulent insurance acts through criminal or civil proceedings as authorized by the Insurance Fraud Act if, after investigation, the Attorney General is convinced that there is sufficient legal merit to justify the proceeding. The Attorney General, after consultation with the director, may refer cases of fraudulent insurance acts to a special assistant attorney general or county attorney for prosecution. Any costs directly associated with the prosecution and attorney's fees for any special assistant attorney general shall be paid by the division.

~~(3)~~ (4) If the division seeks evidence, documentation, or related materials located outside this state pertinent to an investigation or examination, it may designate representatives or deputies, including officials of the state where the matter is located, to secure and inspect the evidence, documentation, or materials on its behalf.

~~(4)~~ (5) The papers, documents, reports, and evidence of the Department of Insurance regarding the subject of an investigation of insurance fraud shall not be subject to public inspection for so long as the director deems reasonably necessary to complete the investigation or to protect the person investigated from unwarranted injury or so long as the director deems it to be in the public interest. Such papers, documents, reports, and evidence regarding the subject of an investigation of insurance fraud shall not be subject to subpoena until they are opened for public inspection by the department, unless the director consents, or until after notice to the department and a hearing, the court determines the department would not be unnecessarily hindered by such subpoena. Department investigators shall not be subject to subpoena in civil actions by any court of this state to testify concerning any matter of which they have knowledge regarding a pending insurance fraud investigation by the department.

~~(5)~~ (6) On or before March 1 each year, each insurer as defined in section 44-103 holding a certificate of authority to transact the business of insurance in this state shall pay a fee as established by the director not to exceed one two hundred dollars to the director to be remitted to the State Treasurer for credit to the Department of Insurance Cash Fund, which fees may be appropriated only to carry out the purposes of the Insurance Fraud Act. Assessment associations and unincorporated mutual associations shall not be subject to this subsection.

Sec. 10. Original sections 44-402, 44-32,180, 44-3602, 44-3603, 44-3604, 44-3607, 44-4040, and 44-4726, Reissue Revised Statutes of Nebraska, and section 44-6606, Revised Statutes Supplement, 1995, are repealed.

Sec. 11. Since an emergency exists, this act takes effect when passed and approved according to law.