

## Vermont Insurance Division

### BULLETIN 107: 1995 Legislative Actions, General Information & Updates

July 10, 1995

This bulletin contains information about actions of the most recent legislative session as well as clarifications and reminders in several other areas that we wish to bring to your attention.

The topics addressed in this bulletin are:

1. 1995 Legislative Actions
2. Defense within Limits
3. Pollution Exclusions
4. Department Review of Forms Filings
5. Recent Changes Meeting Solvency Determinations

1. 1995 Legislative Actions

This year, the legislature passed and the Governor signed five acts which directly or indirectly affect insurance. This bulletin supplies only a brief description of the legislation. If you believe you may be affected by the legislation, you should get a copy of the legislation and/or consult your own attorney.

H.159, An Act Relating to Financing Health Care: The act finances health care benefits for uninsured or underinsured low income Vermonters by financing the existing Medicaid program, integrating publicly-funded beneficiaries into mainstream medical care, bringing Medicaid beneficiaries into managed care plans, extending pharmaceutical benefits to elderly and certain disabled individuals, increasing residential care, home and community based Medicaid waiver services, and by increasing reimbursement levels for physicians and other providers. An office of Vermont Health Access will review the health plan operations of insurance companies and others, including quality assessment and quality improvement, grievance procedures, confidentiality, procedures to prevent discrimination, health care provider involvement, pharmaceutical benefits, preventative and health maintenance services, fraud and abuse control, economic incentives and disincentives, and provider reimbursement levels.

H.190, Cleanup of Contaminated Properties: The act establishes a process that allows persons who are not responsible for release or threatened release of hazardous materials to clean up the property and restore it to productive uses, with limits on their liability that may be incurred from that process. The act also allows responsible persons to clean up contaminated property according to an approved plan and then convey it to a purchaser who will be subjected to limited liability for future releases or threatened releases.

S.182, Relating to Motor Vehicle Accident Reports: The act requires that a motor vehicle accident report must be filed with the commissioner of motor vehicles whenever the total damage to all property is \$1,000 or more; the previous limit was \$500. The act also adjusts the financial responsibility law to require proof of financial responsibility whenever an operator is wholly or partially at fault in an accident and the total damage is \$1,000; the previous damage amount was \$500. The requirement that an accident be reported and financial responsibility proved when there is any bodily injury or death is unchanged.

S.234, Transfer and Assumption of Insurance Contracts: This act permits the commissioner of banking, insurance and securities to waive or modify the requirements of the assumption reinsurance law (transfer of insurance policies from one insurer to another) when it would be in the best interest of the policyholders and insurance companies involved. The waiver or modification only applies to nonresident policies.

S.236, Health Insurance Coverage of Children, Employer Obligations: This act makes technical amendments to OBRA 93 (H.859 -- 1993 Adjourned Session). The bill clarifies the types of coverage that can be used to satisfy a medical support order (a court order which requires a noncustodial parent to cover a child under the parent's health insurance plan), overrides seasonal restrictions a plan may have regarding switching from one plan to another during a plan year, and clarifies the fact that an employee must be eligible under the employer's health plan in order for the employer's obligations to become operative.

## 2. Defense within Limits

Property and casualty insurers issuing Directors and Officers, and Errors and Omissions policies are hereby reminded that we do not allow Defense within Limits, a practice of deducting the cost of legal defense of a claim against the insured from the value of the policy. Defense within limits, because of the high cost of defense, could cause the limits of the policy to be too impaired to pay the ordered judgment to the injured party. Defense costs must be paid in addition to the policy limit and must be paid even though the policy limit has been exhausted by payment of a judgment. For example, if the policy limits are \$1 million and the defense costs are \$100,000, the defense costs of \$100,000 are to be paid by the insurer in addition to up to \$1 million which is available for the payment of a judgment. We are willing to consider, when filed, separate limits for defense and for payment of claims within the policy. The separate nature of these funds must be clear to the policyholder, and the limit for defense must generally be equal to the liability limit.

## 3. Pollution Exclusions

Property and casualty insurers are also reminded of the requirements of Bulletin 106, Liability Insurance and Pollution Exclusions, as we continue to receive filings with pollution exclusions. The Department requires all insurers issuing liability policies in Vermont to provide coverage for pollution by endorsement, with limited exceptions. The Department will consider Consent to Rate applications from licensed insurance

companies or their agents seeking to attach a pollution exclusion to liability coverage when there is a high probability of a pollution claim. These exclusions should be used only when liability coverage would not otherwise be made available. Bulletin 106 discusses the requirements for a Consent to Rate application and other, related issues.

#### 4. Department Review of Forms Filings

All forms and related material submitted to the Department for review must:

include an explanatory paragraph related to each form, describing its intended use and how it will accomplish its goal and the marketing targets and techniques to be used for each form or group of forms.

o supply a side-by-side comparison of the new and the old forms, if replacement or revised forms are involved. The submission shall show deleted material in brackets and new material underlined and shall describe, in narrative, how a replacement form differs from its predecessor.

o use a Department File number, once it has been assigned.

o be accompanied by the required filing fee and a 49 by 69 silver emulsion microfiche with completed header strip (see Regulation 86-10), a postage-paid return envelope, and two copies of the cover letter so that one copy can be stamped and returned.

All forms and related materials must be written in non-technical, readily understandable language, using words of common usage. The filing company must test the readability of its forms and related materials by use of the Flesch Readability Formula, as set forth in Rudolf Flesch's publication, *The Art of Readable Writing* (1949, revised 1974.) A total readability score of forty (40) or more on the Flesch scale is required. A certification that the filing company has tested the forms and related materials under this section must be submitted with the filing.

For additional information relating to forms filings, see Bulletin 67, Life and Accident and Health Form and Rate Filings; Bulletin 74, All Lines Filing Procedure Changes; Bulletin 86, Clarification of Microfiche Requirements; Bulletin 88, Health Insurance Filing and Approval of Policy Forms and Premiums; and Bulletin 93, Acknowledgment of Form Filings and Status Checks on Form Filings.

#### 5. Recent Changes Affecting Solvency Determinations

Companies are also reminded that there have been significant statute and regulation changes in the last few years which relate to solvency and the examination of companies for solvency. Formal and informal contacts indicate that many companies are not aware of these changes, or have not considered the effect of these laws and regulations on their operations.

You are encouraged to refer to:

- o 8 V.S.A. 3578 and 3579, regarding Vermont's audit requirements and CPA registration
- o 8 V.S.A. 3634, regarding credit for reinsurance
- o Regulation 93-1, Life and Health Reinsurance Agreements
- o Regulation 93-2, Defining Standards and Commissioner's Authority for Companies Deemed to be in a Hazardous Financial Condition
- o Regulation 93-3, Investments in Medium Grade and Lower Grade Obligations
- o Regulation 94-2, Managing General Agents, Reinsurance Intermediaries, and Producer Controlled Insurers
- o Bulletin 104, Actions of the 1993-94 Legislative Session Which Affect Insurers Doing Business in Vermont

If you do not have a copy of a regulation, you may receive a copy by contacting the:

Secretary of State  
26 Terrace Street  
Montpelier, Vermont 05609-1101

If you do not have a copy of a bulletin, you may receive a copy by calling Linda Wheeler, at the Department of Banking, Insurance and Securities,

(802)828-2370.

Elizabeth R. Costle

COMMISSIONER OF BANKING AND INSURANCE