STATE OF ARIZONA

DEPARTMENT OF INSURANCE

JANE DEE HULL
Governor

2910 NORTH 44th STREET, SUITE 210
PHOENIX, ARIZONA 85018-7256
(602) 912-8456 (Phone) (602) 912-8452 (FAX)

CHARLES R. COHEN
Director of Insurance

Circular Letter 1999-5

TO: Insurance Agents and Brokers, Insurance Industry Representatives, Insurance Trade Associations, Life & Disability Insurers, Property & Casualty Insurers, And Other Interested Parties

FROM: Charles R. Cohen
Director of Insurance

DATE: July 22, 1999

RE: **1999 Arizona Insurance Laws**

This Circular Letter summarizes the major pieces of newly enacted legislation that affect the Department and its licensees and consumers. This summary is not meant as an exhaustive list or a detailed legal analysis of all bills that bear on insurance. It is meant only to describe the main areas of substantive change. Please do not regard this summary as a legal opinion or a binding interpretation of the legislation. All interested persons are encouraged to obtain copies of the enacted bills by contacting the Arizona Secretary of State's Office at (602) 542-4086 or from the Arizona legislative web site at the following internet address: http://www.azleg.state.az.us.

Sine die for the 1999 Arizona Forty-fourth Legislature, First Regular Session was May 7, 1999. Except as otherwise noted below, all insurance related legislation has a general effective date of August 6, 1999.

HB 2029: Insurance License Omnibus (Ch. 195)

- Repeals A.R.S. § 20-303(F), which prohibits non-resident agents and brokers from having an office within Arizona or having an interest in a resident agent, broker, or agency. Repeal of this provision eliminates the only remaining substantive prohibition based on residency of a producer and permits Arizona to accept a multi-state uniform license application for non-resident producers from states granting reciprocal treatment to Arizona resident producers.

- Amends A.R.S. § 20-314 to provide that an application for a license that expired within the past six months is deemed a renewal application rather than a new application (and is thus subject to payment of a late renewal fee). This will ensure that residents and non-residents, seeking late renewal of a license that expired within the past six months, are similarly treated.

- Repeals A.R.S. § 20-286, the section establishing the licensing category of "solicitor" and amends multiple sections to strike all references to the term "solicitor." Persons currently licensed as solicitors may renew their licenses as agent licenses. (Bill, § 27)

- Adds language to A.R.S. § 20-287(B) to preserve the licensing exception (previously found in A.R.S. § 20-286) for salaried, clerical personnel who assist in taking insurance applications.

- Amends A.R.S. § 20-316 by adding an additional ground for revocation and suspension of a license. Under A.R.S. § 20-316(A)(1), the Director already had the authority to revoke or suspend a license for the same reasons the Director could have denied a license application under A.R.S. § 20-290(B), which includes "a record of dishonesty in business or financial matters." Adding this ground to the section on revocation clarifies current practice.

HB 2030: Health Care Insurance Coverage of Breast Reconstructive Surgery (Ch. 29)

Under current law, all health insurance companies that provide coverage for surgical services for mastectomies are also required to cover reconstruction of the breast subject to the mastectomy, and at least 2 external postoperative prostheses. This bill:

- Tracks a federal health care mandate in the Women's Health and Cancer Rights Act of 1998, by requiring such insurers to also cover: (1) surgery and reconstruction of the other breast to produce a symmetrical appearance; (2) prostheses; and (3) treatment of physical complications for all stages of mastectomy, including lymphedemas.

- Makes an identical language change in the following: A.R.S. §§ 20-826, 20-934, 20-1057, 20-1342, 20-1402, and 20-1404.

HB 2400: Mortgage Guaranty Insurers (Ch. 116)

- Amends A.R.S. § 20-1541 to define "policyholder position." The "minimum policyholder position" as prescribed by A.R.S. § 20-1550 replaces the phrase "policyholder surplus" throughout the Article.

- Amends A.R.S. § 20-1556 to allow a mortgage guaranty insurer to seek approval from the insurance director or commissioner of the insurer's state of domicile, to withdraw, from the insurer's contingency reserve, up to the amount by which the insurer's policyholder position exceeds the minimum policyholder position.

- Enacts A.R.S. § 20-1560, allowing the Director to use independent contractors to conduct any examinations necessary to evaluate an insurer's request for withdrawal from the contingency reserve, and to charge examination expenses to the insurance examiners' revolving fund.

HB 2596: Domestic Life and Disability Reinsurers (Ch. 170)

This bill relaxes the regulatory requirements for unaffiliated domestic credit life and disability reinsurers governed by 20 A.R.S. Ch. 4, Art. 10 and exempts these reinsurers from the Insurance Holding Company Act at A.R.S. § 20-481 *et seq.*

- Amends A.R.S. § 20-481(5), the definition of "insurer" in the Holding Company Act, to exclude unaffiliated domestic credit life and disability reinsurers.

- Amends A.R.S. § 20-1082 to define "affiliated," "credit life and disability reinsurer," and "unaffiliated," as follows:

    - "Affiliated" has the same meaning prescribed in A.R.S. § 20-481.
    - "Unaffiliated" means not affiliated with another insurer.
    - "Credit life and disability reinsurer" means a domestic life and disability reinsurer that reinsures only credit life insurance or credit disability insurance that is issued according to [20 A.R.S. Ch. 6, Art. 10] by an insurer that is authorized to transact insurance in this state.

- The Director must develop a form for a reinsurer to certify that it satisfies the criteria in the definitions.

- Changes the annual statement filing date for an unaffiliated credit life and disability reinsurer to August 1 if the reinsurer's fiscal year ends on the preceding December 31, or to November 1 if the reinsurer's fiscal year ends on a preceding date other than the preceding December 31. (A.R.S. § 20-1083(B).)

- Provides that an unaffiliated credit life and disability reinsurer is not required to have a hearing when merging with another insurer or withdrawing from this state, unless the requirement of a hearing applies to another party to the transaction. (A.R.S. § 20-1083(D).)

- Amends A.R.S. §§ 20-1083, 20-1086, and 20-1087 to exempt unaffiliated credit life and disability reinsurers from certain provisions of Title 20, as listed below.

    (1) The management discussion and analysis (MD & A) requirements prescribed by the instructions and accounting practices and procedures approved by the National Association of Insurance Commissioners (NAIC).
    (2) The requirement of an examination once every five years. (A.R.S. § 20-156(A)).
    (3) The rules related to audited financial statements. (A.R.S. § 20-223(A)).
    (4) The risk-based capital requirements. (20 A.R.S. Ch. 2, Art. 12).
    (5) Quantitative restrictions and limitations on investments.
    (6) Actuarial opinion and memorandum requirements (20 A.R.S. Ch. 3, Art. 8).
    (7) The requirement that dividends may be paid only out of earned surplus (A.R.S. § 20-722).
    (8) The requirement to have and maintain minimum surplus under A.R.S. § 20-1086, so long as the reinsurer maintains unimpaired capital stock, as specified below.
    (9) The requirement to maintain a statutory deposit under A.R.S. § 20-1087, so long as the reinsurer maintains the letter of credit, as specified below.

- Modifies the capital requirements in A.R.S. § 20-1085 by requiring that an unaffiliated credit life and disability reinsurer have and maintain unimpaired capital stock in the amount of $75,000. The reinsurer may satisfy the obligation with a clean, irrevocable, and unconditional letter of credit.

- Enacts A.R.S. § 20-1094 which requires an unaffiliated credit life and disability reinsurer to obtain the Director's approval of all reinsurance agreements and amendments to which the reinsurer is a party. Approval is deemed if the Director does not disapprove the agreement within 30 days after filing of the agreement.

- Enacts A.R.S. § 20-1094.01 which requires an unaffiliated credit life and disability reinsurer to secure liabilities that are assumed under a reinsurance agreement, with funds withheld, or with qualified trust funds in an amount not less than 110% of assumed liabilities.

The Department will soon issue a circular letter providing more detail as to how existing life and disability reinsurers can take advantage of these amendments.

SB 1016: Insurance; Reinsurance & Captive (Ch. 184)

- Reinsurance Provisions: This bill clarifies that reinsurers are not required to pay both the ceding insurer and the payee of the underlying policy when the ceding company becomes insolvent and the underlying policy holder or other payee seeks reimbursement directly from the reinsurer pursuant to a cut-through clause, or by virtue of the reinsurer's assumption of the direct policy obligations. (A.R.S. § 20-261(C).)

- Captive Provisions: The bill also establishes the Joint Legislative Study Committee on Captive Insurance to evaluate the prospect of developing a captive insurance law for Arizona, and requires the Committee to report its analysis, findings, and recommendations by November 15, 1999.

SB 1032: Department of Commerce; Appropriation

Pursuant to 41 A.R.S. Ch. 10, Art.'s 2 and 3, the Arizona Department of Commerce operates a program designed to encourage business development in certain economically depressed areas (enterprise zones and military reuse zones). Employers located in these zones are already entitled to certain income tax credits. This bill extends the tax credit opportunity to insurers.

- Amends A.R.S. §§ 20-224 and 20-224.01 to allow an insurer to claim a premium tax credit, (except taxes paid on fire insurance premiums and for the public safety retirement system,) if the insurer qualifies for a credit for increased employment in an enterprise zone or military reuse zone.

- Enacts A.R.S. §§ 20-224.03 and 20-224.04 to establish a premium tax credit for employment in an enterprise zone and a military reuse zone, respectively. Specifies the formula for calculating the amount of the premium tax credit and the conditions under which the insurer may qualify for the credit.

- Allows an insurer who remains in a zone to carry forward, as a tax credit, for up to 5 taxable years, the amount by which the allowable tax credit exceeds the state premium tax liability.

- Exempts an insurer that claims a tax credit against state premium tax liability from paying any additional retaliatory tax as a result of claiming the tax credit.

- Disqualifies an insurer from the tax credit if the insurer fails to report and certify to the Department of Commerce the information required by law.

- Specifies the amount of the tax credit for each new employee.

- Prohibits a credit for an employee whose place of employment is relocated by the insurer from a location in this State to the military reuse zone unless the insurer maintains at least the same number of employees in this State but outside the zone.

SB 1098: Urgent Care Centers; Standards

- Enacts A.R.S. § 20-1077. A health care services organization (HCSO) that requires its enrollees to use a freestanding urgent care center as a condition of coverage or to obtain a reduction in a co-pay or other amount, must:

    - Have a policy, approved by the HCSO's medical director, for referring enrollees to urgent care centers;
    - Advise enrollees when enrollees must use the urgent care center rather than a higher level of care such as an emergency room; and
    - Recredential the urgent care center at least every 2 years.

This bill has a delayed effective date of July 1, 2000.

SB 1099: Long-Term Care Benefits; Study

- Requires the Department of Administration to study the feasibility of offering long-term care coverage to state officers and employees and to submit a written report of its findings by November 15, 1999.

SB 1124: Motor Vehicle Insurance (Ch. 127)

- Enacts A.R.S. § 12-555 imposing a 3 year statute of limitations on claims under uninsured and underinsured motorist coverages.

- Amends A.R.S. § 20-191 by prescribing standards for an insurer to establish the payment date for mailed premium payments. The insurer may rely upon the postmark date as the payment date by retaining the postmarked payment envelope. If the insurer does not retain the envelope or the postmark date on the envelope is illegible, the payment date is presumed to be five regular mail days before the date the insurer receives the payment. The insurer may establish the date of receipt by a record generated in the course of regularly conducted business.

- Clarifies the provisions of law regarding purchase and rejection of uninsured or underinsured motorist coverage. If an insured previously rejected coverage under any prior form approved for use by the Department under A.R.S. § 20-259.01, or the insured previously bought coverage in an amount less than the amount of the insured's bodily injury coverage, any such valid rejection or purchase is valid for the purpose of rejecting such coverage for all persons under the basic motor vehicle insurance policy. An insurer may rely on the prior valid rejection or purchase for all purposes until the insured requests in writing that the applicable coverage be added to the basic policy or that the limits be increased.

SB 1224: Utilization Review (Ch. 61)

This bill excludes certain types of policies from the requirements of 20 A.R.S. Ch. 15 governing utilization review (UR) and health care appeals and makes other minor changes to the appeals process. An insurance policy that pays "benefits based on the health status of the insured and does not reimburse the cost of or provide covered services" is excluded from the appeals process. (A.R.S. §§ 20-2531(C)(4) and 20-2533(C).) The bill:

- Defines "benefits based on the health status of the insured," as a contract of insurance to pay a fixed benefit amount, without regard to the specific services received, to a policyholder who meets certain eligibility criteria, based on health status. Examples include policies that pay fixed daily, weekly, or monthly amounts because the insured is disabled, chronically ill, or confined in a hospital. (A.R.S. § 20-2501(A)(2).)

- Amends the definitions of "claim" and "denial." (A.R.S. § 20-2501(A)(3) & (5).)

- Amends A.R.S. § 20-2508(A)(1) to permit a dental service corporation and a prepaid dental plan to have a licensed dentist supervise or conduct UR activities for dental services and to permit an optometric service corporation to have a licensed optometrist supervise or conduct UR activities for optometric services.

- Expands the list of health care professionals who may review decisions as required by A.R.S. §§ 20-2533(F), 20-2536(D), 20-2537(I)(2), and 20-2538(B) to include psychologists licensed under 32 A.R.S. Ch. 19.1.

- Amends A.R.S. § 20-2537(D)(1)(b) to require the UR agent to send the Director a summary description of the applicable issues in a health care appeal of a medical necessity determination, including a statement of the UR agent's decision and any transmittal letter that is sent to the independent reviewer.

- Amends A.R.S. § 20-2537(E) to require the UR agent to mail a notice of the independent medical reviewer's decision to the Director, the health care insurer, the member, and the member's treating provider, within 3 workdays of receiving the decision.

- Clarifies that the Department's role in a health care appeal ends after the Director or independent medical reviewer issues a decision, except to transmit the record on appeal. The bill also provides that the Department is not a party to a subsequent appeal unless the Department files a motion to intervene. (A.R.S. § 20-2537(H) & (M).)

The UR and health care appeals laws, and the changes resulting from SB 1224, are discussed in greater detail in Circular letter 1999-3.

SB 1326: Telephone Solicitation (Ch. 192)

- Preserves licensed insurance agents' exception from the telephone solicitation registration requirements of A.R.S. § 44-1271 *et seq.* (*See* A.R.S. § 44-1273(A)(1).)

- Requires the Department of Insurance to provide the Secretary of State with a list of the requested licensees and information about the licensees, in a mutually acceptable electronic format, upon request of the Secretary of State. (A.R.S. § 44-1273(C).)

- Requires the Secretary of State to enter into an interagency service agreement with the Department to provide the list of requested licensees and related information prescribed in A.R.S. § 44-1273(C).

SB 1410: Workers' Compensation; Revisions (Ch. 331)

- Enacts A.R.S. § 23-953, providing that once a notice of award of permanent compensation benefits under A.R.S. § 23-1044 is issued, payment of benefits will not be interrupted if an appeal is filed. Any resulting overpayment is credited against future liabilities arising out of the same claim.

- Adds a new provision regarding death of or injuries to an employee of an employer with an alcohol and drug testing program meeting the requirements of 23 A.R.S. Ch 2, Art. 14 and A.R.S. § 23-1021. The employee's injury or death is not considered a compensable worker's compensation injury if the employee fails to pass or comply with specified drug and alcohol testing procedures, unless the employee proves that:

    - drug or alcohol use was not a contributing cause of the injury or death;
    - the employee's alcohol level was below legal limits; or
    - the drug and alcohol levels at which the employee was tested are lower than specified legal cutoff levels under federal transportation law.

Except that this provision does not apply if the employer actually knew about and tolerated the employee's drug or alcohol use. (A.R.S. § 23-1021(D) through (H).)

- Potentially increases the amount of a worker's compensation award by increasing the limit for amounts excluded from average monthly wages. Current law excludes all amounts above $2100/month. The bill amends A.R.S. § 23-1041(D) by increasing the amount to $2400/month. (The increased limit applies only to employees injured after the effective date of the bill.)

- Enacts A.R.S. § 23-1043.03 governing claims resulting from exposure to hepatitis C.

- Potentially reduces the amount of compensation paid for temporary partial disability by providing that 50% of retirement and pension benefits received from the employer during the period of disability, is deemed to be wages that an employee is able to earn (current law provides only that unemployment benefits are considered to be amounts that an employee is able to earn). Payments for temporary partial disability are 66- 2/3 % of the difference between pre-injury wages and post-injury wages that an employee is able to earn. (A.R.S. § 23-1044(A).)

- Amends A.R.S. § 23-1044(G) to expand the scope of the Industrial Commission's authority to adopt a rating loss schedule.

- Amends A.R.S. § 23-1046 to increase or add death benefits as follows:
  - burial expenses: up to $5000;
  - surviving spouse/no children: 66 & 2/3% of average monthly wage;
  - surviving spouse/with children:
    -to surviving spouse: 35% of average monthly wage, payable till death or remarriage with 2 year lump sum repayment upon remarriage;
    -to surviving children: 31 & 2/3% of average monthly wage, divided equally, till child:
    -reaches age 18;
    -reaches age 22 if child remains in accredited educational institution; or
    -becomes capable of self-support if child is over 18 and incapable of self-support.
    -(Children's share is paid to surviving spouse after all surviving children are no longer eligible.)

This subsection on death benefits has a retroactive effective date of March 1, 1999.

- Amends A.R.S. § 23-1061(H) to prohibit reopening a claim for an injured person who experiences only an increase in subjective pain without accompanying objective physical findings or who merely requires additional diagnostic or investigative medical tests. The employer or insurer must still cover payment for such tests that are causally related to the injury, and, if the claim is lawfully reopened, for reasonable and necessary medical, hospital, and lab expenses incurred within 15 days of the date of the petition to reopen.

- Amends A.R.S. § 23-1065(C)(2) to eliminate the requirement for written records, showing that an employer knew of an employee's pre-existing condition at the time of hire. Proof of knowledge is still required.