

ILHIC Legislative Committee “Zoom” Call Summary

April 17, 2020

DOI Regulatory Updates

The Department of Insurance Chief of Staff Lauren Peters joined us along with Deputy Director of Health Products Ryan Gillespie to provide an update on the status of key regulatory and compliance issues that the Council has been working with the Department for the past few weeks on. These issues and updates are as follows:

Regulatory Filing Relief

The Council shared the NAIC model bulletin outlining regulatory compliance during the public health emergency that offers flexibility in meeting certain filing deadlines that may be operationally difficult for companies to meet given the current environment. The Council noted that some of these filing deadlines are less than a month out, but based on the NAIC model, the Department could temporary delay for 30 – or 60-days to allow companies additional time to meet the requirements without additional compliance risk.

The Department issued [Bulletin 2020-10](#) yesterday providing for a delay in the Corporate Governance Annual Disclosure (CGAD) until August 1.

The Department indicated that for other filings, companies should contact their designated financial analyst if they need more time to finalize a particular filing. They reference back to [Bulletin 2020-06](#) that indicates if a company is unsure of their designated financial analyst at the Department, they can contact Eric Moser at eric.moser@illinois.gov. ILHIC is also happy to reach out if companies need assistance on seeking regulatory flexibility.

With respect to signatures, the Department indicated that they will accept electronic signatures for the time being until companies are able to safely obtain a wet signature.

Producer Licensing

The Department indicated that they are “very close” to issue guidance regarding temporary producer licensure and they would hope to have that guidance out this week or next week. The guidance will not address virtual classes and testing, but the Department is working with their vendor Pearson Vue on a remedy.

The Council will continue to keep in close communication with the Department on this issue and will share any updated guidance once that has been issued.

COVID-19 Premium Grace Period

The Department has issued premium grace period guidance for property casualty products ([Bulletin 2020-09](#)), but there has been no guidance issued to date regarding health and life products. The Council has been in close communication with the Department to encourage guidance remain tied to consumer requests for premium payment accommodations and that the accommodations also be time limited so as to ensure that insurance companies are able to maintain flexibility in working with consumers financially impacted by the public health emergency while mitigating accounting issues for the company.

The Department has indicated that they anticipate issuing guidance and that guidance will also likely touch upon prescription drug issues, specifically addressing drug supply shortage problems that are emerging.

Health Insurance Issues- QHP Filing, Material Modification Notifications and Provider Reimbursements

Deputy Director Gillespie responded to a few inquiries regarding health insurance specific issues:

- With respect to the QHP filing bulletin, the Department is still waiting for federal CMS to finalize their Letter to Issuers and the Notice of Benefit and Payment Parameters to determine their timeline for filing at the state level.
- The Department is working on separate guidance regarding issuer compliance with [P.A. 101-0393](#) regarding a mandatory offer of coverage for hearing aids as the law presents several implementation challenges. The Department has confirmed that it agrees with the Council that the law does not apply to Medicare Supplement plans, but ILHIC has asked that any guidance underscore that point as well.
- With respect to the recent [HHS guidance](#) released regarding material modification notifications with respect to regulatory flexibility for COVID-19-related coverage changes implemented without the 60-day notification required, the Department indicated that they are open to considering notification to the members to be satisfied via posting of the coverage changes on a centralized COVID-19 specific website. The DOI, however, is not committing to that approach at this time, but will be discussing this internally further before issuing any guidance that might allow for that notification flexibility.
- The Department indicated that they have received the information ILHIC shared with them regarding the various state actions limiting out-of-network billing practices, specifically prohibiting balance-billing beyond the in-network rate or a rate capped at a percentage of Medicare during the public health crisis. DOI is discussing the guidance internally and will coordinate with the Governor's office to explore the possibility of issuing an Executive Order that might provide for similar limitations as those imposed in states like CT, MA, MD, and WI.

Legislative Session Update

The General Assembly has not yet announced plans regarding the exact date of their return, but both the House and the Senate have convened a variety of working groups to tackle certain legislative issues when they do reconvene. While nothing has been confirmed at this point, there is some discussion that legislators could extend the session in June if needed.

The Senate has convened 17 different working groups tackling issues ranging from the budget to regulatory relief and cannabis-specific issues. The Healthcare & Human Services (6D/5R) working group includes insurance issues and is chaired by Senator Mattie Hunter. Senate Insurance Committee Chair Napoleon Harris is a member of that committee along with Senate Insurance Committee Spokesperson Dave Syverson.

The House has convened 14 new working groups in addition to the 4 existing working groups charged with budget, Medicaid, ethics, and energy issues. There are 3 working groups in the House that could take up certain insurance-related issues, including the Access to Healthcare (18D/2R) co-chaired by current House Insurance Committee Chair Thaddeus Jones, Representative Mary Flowers, Representative Anna Moeller, and Representative Art Turner; Mental Health & Addiction (9D/5R) co-chaired by current House Mental Health Committee Chair Deb Conroy and Representative Fred Crespo; and Health Care and Human Services (16D/4R) co-chaired by current Human Services Committee Chair Fran Hurley, Representative Robyn Gabel, and Representative Camille Lilly. Republican spokespersons for these committees are Representative Ryan Spain, Mark Batinick, and Tom Demmer respectively.

These working group sessions are not open to members of the public or interested parties, but the Council will be communicating with members of the working group and their staff as their work moves forward.

The Council has previously communicated to legislators and staff regarding considerations for legislative priorities, including moving back the July 1st mental health parity compliance reporting date ([P.A. 100-1024](#)), as well as applying a legislative fix to [P.A. 101-0452](#) to exempt HSA-eligible high-deductible health plans from the copay accumulator requirements. ILHIC, along with the IL Chamber of Commerce, has also communicated with legislative leaders about the importance of pulling back on any legislative efforts that might seek to codify coverage changes implemented that are specific to the public health emergency.

State Budget Status

Governor Pritzker made it clear in his daily briefing on Wednesday, April 15 that he expects legislators to enact a new budget after delivering sobering news about the state's projected fiscal situation for the remainder of the current and forthcoming fiscal years. For FY 2020, the projected shortfall in state revenues is \$2.7 billion, \$1 billion of which is due to the delay in the state income tax payment until July 1 – the start of the new 2021 fiscal year. In order to address this shortfall, the Governor outlined an effort that includes instituting across-the-board administrative cuts and spending efficiencies at state agencies, identifying \$700 million in other state funds that can be moved to fill in spending gaps, and securing \$1.2 billion in short-term borrowing.

For FY 2021, the projected shortfall in state revenues will grow to \$4.6 billion, which, when taken with the state's short-term borrowing with interest payment increases to a \$6.2 billion shortfall. The Governor also stated that if voters do not approve the graduated income tax measure in the November election, that hole will grow by another \$1.2 billion to \$7.4 billion. These figures are also preliminary projections and will likely increase as the public health emergency continues.

IL COVID-19 UPDATES

Workers' Compensation Emergency Rule

The Illinois Workers' Compensation Committee issued an [emergency rule](#) on Monday, April 13 that applies workers' compensation coverage to essential workers who contract COVID-19. Proof the illness was contracted at the workplace is not required, as exposure will be "rebuttably presumed" to have arisen during the course of employment and "rebuttably presumed" to be causally connected to the hazards of COVID-19 essential work.

The emergency rule issued on Monday applied the "COVID-19 First Responder or Front Line Worker" eligibility to include: individuals employed as police, fire personnel, emergency medical technicians, or paramedics and all individuals employed and considered as first responders, health care providers engaged in patient care, correction officers, and the crucial personnel identified under the following headings in Section 1 Part 12 of Executive Order 2020-10 dated March 20, 2020: "Stores that sell groceries and medicine"; "Food, beverage, and cannabis production and agriculture"; "Organizations that provide charitable and social services"; "Gas stations and businesses needed for transportation"; "Financial institutions"; "Hardware and supplies stores"; "Critical trades"; "Mail, post, shipping, logistics, delivery, and pick-up services"; "Educational institutions"; "Laundry services"; "Restaurants for consumption off-premises"; "Supplies to work from home"; "Supplies for Essential Businesses and Operations"; "Transportation"; "Home-based care and services"; "Residential facilities and shelters"; "Professional services"; "Day care centers for employees exempted by [Executive Order 2020-10]"; "Manufacture, distribution, and supply chain for critical products and industries"; "Critical labor union functions"; "Hotels and motels"; and "Funeral services".

The Commission held an emergency meeting on Wednesday, April 15 and adopted another [emergency rule](#) that expands the list of applicable essential workers to include those entities covered under parts 7, 8, 9, 10 and 11

of [Executive Order 2020-10](#). These parts cover essential workers in healthcare and public health operations, human services operations, essential infrastructure, essential government functions, and all businesses covered by the EO, including “for-profit, non-profit, or educational entities, regardless of the nature of the service, the function it performs, or its corporate or entity structure.”

Jay Shattuck, the Executive Director of the IL Chamber’s Employment Law Council, joined us to outline the business community’s concerns with both emergency rules, including:

Arising Out of & in the Course of Employment: The original provision to create the rebuttable presumption has a couple of clarifications but continues to provide that “if the petitioner’s injury, occupational disease, or period of incapacity resulted from exposure to the COVID-19 virus during the Gubernatorial Disaster Proclamation 2020-38 and any subsequent COVID-19 disaster proclamations, the exposure will be rebuttably presumed to have arisen out of and in the course of the petitioner’s COVID-19 First Responder or Front-Line Worker employment”

Causal Connection: the emergency rule goes on to provide that the petitioner “will be rebuttably presumed to be causally connected to the hazards or exposures of the petitioner’s COVID-19 First Responder or Front Line Worker employment.

Rule Attacks “Increased Risk” Doctrine: Our read is that the emergency rule will result in undermining Illinois’ long standing application of the law’s doctrine of “increased risk” which states a workers’ compensation claimant must show that they were at greater risk of injury than the public because of the requirements of their job. Replacing this doctrine would be “positional risk”, a standard where an employee is entitled to workers’ compensation benefits if his or her job was responsible for him or her being at the location of the accident.

IWCC Exceeds Its Authority with Emergency Rule: Illinois current law provides a rebuttable presumption already for first responders. Subsection (f) of Section 6 of the Workers’ Compensation Act (820 ILCS 305/6) provides a rebuttable presumption to firefighters, emergency medical technicians, emergency medical technician-intermediates, advanced emergency medical technicians, or paramedics for any bloodborne pathogen, lung or respiratory disease or condition, heart or vascular disease or condition, hypertension, tuberculosis, or cancer resulting in any disability (temporary, permanent, total, or partial). It also provides a presumption for these workers for any hernia or hearing loss. A similar provision is provided in the Occupational Diseases Act (820 ILCS 310/1). The Commission is exceeding its authority by expanding the scope of the rebuttable presumption to workers who are not identified under the statute.

While current statute may provide workers’ compensation or occupational disease benefits based on the facts of the claim of the petitioner regardless of their profession, trade or worker classification, the statute does not provide a rebuttable presumption to workers other than those delineated in the statute.

The IL Chamber, along with the Illinois Retail Merchants Association, and the IL Manufacturers’ Association, and other members of the business community are preparing a Temporary Restraining Order (TRO) and also working on a joint letter to the members of the legislative Joint Commission on Administrative Rules (JCAR) to request an objection or an extension of the emergency rules.

Midwest Regional Partnership Formed

While Governor Pritzker has not yet announced any formal plans to continue the disaster proclamation and the current stay-at-home order as provided for under [Executive Order 2020-18](#) and [Executive Order 2020-09](#), he has indicated that his Administration is continuing to explore possible modifications to the order, but those modifications will be based on certain preconditions, including downward trends in the number of positive cases and access to testing and treatment, among other things. Like other regions of the US, the Governor announced this week that IL has joined with IN, OH, MI, MN, KY, and WI to coordinate on how the region will begin approaching the reopening of its economy.

UPCOMING MEETINGS/IMPORTANT DATES:

April 30 – Committee Deadline (Extension)

May 31 – Scheduled Adjournment Date

June 8-10 – ILHIC Annual Meeting – Lake Geneva - POSTPONED

November 3, 2020 – General Election Day