

STATE OF OKLAHOMA

2nd Session of the 43rd Legislature (1992)

HOUSE BILL NO. 2202

BY: COX of the HOUSE

and

HOOPER of the SENATE

AS INTRODUCED

AN ACT RELATING TO INSURANCE; AMENDING 36 O.S. 1991, SECTIONS 321, 1116, 1472, 3611.1 AND 4103, WHICH RELATE TO THE INSURANCE CODE; PROVIDING A FEE FOR CERTAIN CERTIFICATES; AUTHORIZING THE WAIVER OF THE FINE FOR FAILURE TO REMIT SURPLUS LINES TAX, WITH RESTRICTION; MODIFYING DEFINITION IN THE MANAGING GENERAL AGENTS ACT; REMOVING REFERENCES TO AGE IN PROVISIONS RELATING TO MEDICARE SUPPLEMENT POLICIES; MODIFYING THE AUTHORITY OF THE COMMISSIONER TO REGULATE MEDICARE SUPPLEMENT POLICIES AND CERTIFICATES; AUTHORIZING THE COMMISSIONER TO EMPLOY CERTAIN PERSONNEL TO EXAMINE MEDICARE SUPPLEMENT FILINGS; PROVIDING PROCEDURE FOR EMPLOYMENT OF TECHNICIANS; PROVIDING FOR PAYMENT OF EXPENSES FOR MEDICARE SUPPLEMENT FILING REVIEW; MODIFYING MANDATORY PROVISION FOR GROUP LIFE INSURANCE POLICIES; AND PROVIDING AN EFFECTIVE DATE.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 36 O.S. 1991, Section 321, is amended to read as follows:

Section 321. A. The Insurance Commissioner shall collect in advance the following fees and licenses:

1. For filing charter documents:

Original charter documents,
articles of incorporation,
bylaws, or record of organization
of alien or foreign insurers,
or certified copies thereof \$50.00

2. Certificate of Authority:

(a) Issuance:

Fraternal benefit societies,
alien or foreign \$150.00
Hospital service and medical
indemnity corporations, alien
or foreign \$150.00
All other alien or foreign
insurers \$150.00

(b) Renewal:

Fraternal benefit societies,
alien or foreign \$150.00
Hospital service and medical
indemnity corporations, alien
or foreign \$150.00
All other alien or foreign
insurers \$150.00

3. For filing appointment of Insurance

Commissioner as agent for service
of process \$10.00

4. Miscellaneous:

(a) Copies of records, per page \$0.40

- (b) Amended charter documents,
articles of incorporation or
bylaws of alien or foreign
insurers \$20.00
- (c) Certificate of Commissioner,
under seal \$10.00

B. All fees and licenses not above dedicated, nor dedicated by Section 628 of this title, collected by the Insurance Commissioner as provided by this Code, shall be paid into the State Treasury weekly. The State Treasury is authorized and directed to deduct from said amount so paid a sum equal to one-tenth (1/10) of such payment and place the same to the credit of the General Revenue Fund of the state. The remainder of said amount so paid is hereby allocated and appropriated to the State Insurance Commissioner Revolving Fund and shall by the State Treasurer be placed to the credit of the State Insurance Commissioner Revolving Fund.

C. There shall be assessed an annual fee of Two Hundred Fifty Dollars (\$250.00) payable by each insurer, fraternal benefit society, hospital service and medical indemnity corporation, charitable and benevolent corporation, or United States surplus lines insurance companies licensed to do business in this state, to pay for the filing, processing, and reviewing of annual financial statements by personnel of the Office of the State Insurance Commissioner.

SECTION 2. AMENDATORY 36 O.S. 1991, Section 1116, is amended to read as follows:

Section 1116. A. If any surplus line broker fails to remit the surplus line tax provided for by Section 1115 of this title for more than sixty (60) days after it is due, he shall be liable to a fine of not to exceed Twenty-five Dollars (\$25.00) for each additional day of delinquency. The Insurance Commissioner shall collect the tax by distraint and shall recover the fine by an action in the name

of the State of Oklahoma. All fines shall be paid into the general fund of the state.

B. If any person, corporation, association or partnership procuring or accepting any policy of insurance from an unauthorized insurer, otherwise than through a licensed surplus line broker in this state, fails to remit the surplus line tax provided for by subsection D of Section 1115 of this title, such person, corporation, association or partnership shall, in addition to said tax, be liable to a fine in an amount equal to one percent (1%) of the premiums paid or agreed to be paid for such policy or policies of insurance for each calendar month of delinquency or a fine in the amount of Twenty-five Dollars (\$25.00) whichever shall be the greater. The Insurance Commissioner shall collect the tax by distraint and shall recover the fine in an action in the name of the State of Oklahoma. Such fine may be totally or partially waived to the Insurance Commissioner provided the person, corporation, association or partnership that procured or accepted a policy of insurance from an unauthorized insurer and failed to pay the tax satisfactorily explains the situation to the Insurance Commissioner, or provided such failure has resulted from a mistake of either the law or the facts which subjects the person, corporation, association or partnership to such tax. The waiver of all or any part of any such fine in excess of Ten Thousand Dollars (\$10,000.00) shall not become effective unless approved by a judge of the district court of Oklahoma County, after a full hearing thereon. All fines shall be paid into the general fund of the state.

SECTION 3. AMENDATORY 36 O.S. 1991, Section 1472, is amended to read as follows:

Section 1472. As used in this act:

1. "Actuary" means a person who is a member in good standing of the American Academy of Actuaries;

2. "Insurer" means any person licensed pursuant to the Oklahoma Insurance Code to transact insurance;

3. a. "Managing General Agent" or "MGA" means any person who:

~~(1) negotiates and binds ceding reinsurance contracts on behalf of an insurer, or~~

~~(2) manages all or part of the insurance business of an insurer, including the management of a separate division, department or underwriting office, and~~

~~(3) (2) acts as an agent for such insurer, whether known as a managing general agent, manager or other similar term, and~~

~~(4) (3) directly or indirectly, with or without the authority of the insurer, whether separately or together with affiliates, produces and underwrites an amount of gross direct written premium equal to or greater than five percent (5%) of the policyholder surplus, as reported in the last annual statement of the insurer in any one quarter or year together with the following activities related to the business produced:~~

~~(a) adjusts or pays claims in excess of an amount determined by the Insurance Commissioner, or~~

~~(b) negotiates reinsurance on behalf of the insurer.~~

b. Notwithstanding subparagraph a of this paragraph, the following persons shall not be considered to be managing general agents for the purpose of this act:

(1) an employee of the insurer,

- (2) a U.S. Manager of the United States branch of an alien insurer,
- (3) an underwriting manager which, pursuant to contract:
 - (a) manages all the insurance operations of the insurer,
 - (b) is under common control with the insurer, subject to the holding company regulatory act, and
 - (c) whose compensation is not based on the volume of premiums written, and
- (4) the attorney-in-fact authorized by and acting for the subscribers of a reciprocal insurer or interinsurance exchange under powers of an attorney;

4. "Underwrite" means the authority to accept or reject risk on behalf of the insurer.

SECTION 4. AMENDATORY 36 O.S. 1991, Section 3611.1, is amended to read as follows:

Section 3611.1 A. As used in this section:

- 1. "Commissioner" means the Commissioner of Insurance;
- 2. "Medicare supplement policy" means a group or individual policy of accident and health insurance, or a subscriber contract of a nonprofit hospital service and medical indemnity corporation or a health maintenance organization 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 ~~by reason of age~~. Such term does not include:
 - a. a policy or contract 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 combination thereof, for employees

or former employees, or combination thereof, or for members or former members, or combination thereof, of the labor organizations, or

b. a policy or contract of any professional, trade or occupational association for its members or former or retired members, or combination thereof, if such association:

(1) is composed of individuals all of whom are actively engaged in the same profession, trade or occupation,

(2) has been maintained in good faith for purposes other than obtaining insurance, and

(3) has been in existence for at least two (2) years prior to the date of its initial offering of such policy or plan to its members, or

c. individual policies or contracts issued pursuant to a conversion privilege under a policy or contract of group or individual insurance; and

3. "Direct response Medicare supplement policy" means a policy of insurance 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 ~~by reason of age~~ issued as a result of solicitation of individual insureds by mail or by mass media advertising.

B. The Commissioner shall issue reasonable regulations to establish minimum standards for benefit claims payment, marketing practices, compensation arrangements, and reporting practices for Medicare supplement policies.

C. A Medicare supplement policy may not deny a claim for losses incurred more than six (6) months from the effective date of coverage for a preexisting condition. The policy may 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 (6) months before the effective date of coverage".

D. A Medicare supplement policy shall be expected to return to the policyholder benefits which are reasonable in relation to the premium charged. The Commissioner shall issue regulations to establish minimum standards for loss ratios of Medicare supplement policies on the basis of incurred claims and earned premiums for the period of coverage for which rates are computed and in accordance with accepted actuarial principles and practices.

E. 1. No Medicare supplement policy or certificate issued pursuant to a group Medicare supplement policy shall be delivered or issued for delivery in this state unless an outline of coverage is provided to the applicant at the time application is made.

2. The Commissioner shall prescribe by regulation the contents and a standard form of an informational brochure for persons eligible for Medicare ~~by reason of age~~ which is intended to improve the buyer's ability to select the most appropriate coverage and improve the buyer's understanding of Medicare. The Commissioner may require by regulation that the informational brochure be provided with the outline of coverage to any prospective insureds eligible for Medicare by reason of age. With respect to direct response policies, the Commissioner may require that the prescribed brochure and outline of coverage be provided upon request to any prospective insureds eligible for Medicare ~~by reason of age~~, but in no event later than the time of policy delivery.

3. The Commissioner may require notice provisions, designed to inform prospective insureds that particular insurance coverages are not Medicare supplement coverages, for all accident and health insurance policies sold to persons eligible for Medicare ~~by reason of age~~, other than:

a. Medicare supplement policies,

- b. disability income policies,
- c. basic, catastrophic, or major medical expense policies,
- d. single premium, nonrenewable policies, or
- e. other policies defined by regulation of the Commissioner.

4. The Commissioner may ~~promulgate~~ adopt from time to time, such reasonable regulations requiring full and fair disclosure of information concerning the replacement of accident and health policies, certificates, or subscriber contracts for persons eligible for Medicare by reason of age as are necessary to conform Medicare supplement policies and certificates to the requirements of federal law and regulations promulgated thereunder, including but not limited to:

- 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 policy for holding public hearings prior to approval of premium increases, and
- e. establishing standards for Medicare Select policies and certificates.

F. Medicare supplement policies or certificates shall have a notice prominently printed on the first page of the policy or certificate, or attached thereto, stating that the applicant shall have the right to return the policy or certificate within thirty (30) days of its delivery and to have the premium refunded if, after examination of the policy or certificate, the applicant is not satisfied for any reason. A direct response policy issued to

persons eligible for Medicare ~~by reason of age~~ shall have a notice prominently printed on the first page, or attached thereto, stating that the applicant shall have the right to return the policy or certificate within thirty (30) days of its delivery and to have the premium refunded if, after examination, the applicant is not satisfied for any reason.

G. The Insurance Commissioner shall have the authority to employ actuaries, statisticians, accountants, attorneys, auditors, investigators, or any other technicians as the Insurance Commissioner may deem necessary or beneficial to examine any Medicare supplement filings made by insurers or rating organizations and to examine such records of the insurers or rating organizations as may be deemed appropriate in conjunction with the Medicare supplement filing in order to determine that the rates or other filings are consistent with the terms, conditions, requirements and purposes of the Insurance Code, and to verify, validate and investigate the information upon which the insurer or rating organization relies to support such filing.

1. The Commissioner shall maintain a list of technicians who are proficient in the line of Medicare supplement insurance. If the Commissioner determines that it is necessary to utilize the services of such a technician, the Commissioner shall employ the next available technician in rotation on the list.

2. All reasonable expenses incurred in such filing review shall be paid by the insurer or rating organization making the filing.

SECTION 5. AMENDATORY 36 O.S. 1991, Section 4103, is amended to read as follows:

Section 4103. No policy of group life insurance shall be delivered in this state unless a schedule of the premium rates pertaining to the form thereof is filed with the Insurance Commissioner and unless it contains in substance the following provisions, or provisions which are more favorable to the persons

insured, or at least as favorable to the persons insured and more favorable to the policyholder, provided, however, (a) that provisions six (6) to ten (10) inclusive shall not apply to policies issued to a creditor to insure debtors of such creditor; (b) that the standard provisions required for individual life insurance policies shall not apply to group life insurance policies; and (c) that if the group life insurance policy is on a plan of insurance other than the term plan, it shall contain a nonforfeiture provision or provisions which is or are equitable to the insured persons and to the policyholder, but nothing herein shall be construed to require that group life insurance policies contain the same nonforfeiture provisions as are required for individual life insurance policies:

1. A provision that the policyholder is entitled to a grace period of thirty-one (31) days for the payment of any premium due except the first, during which grace period the death benefit coverage shall continue in force, unless the policyholder shall have given the insurer written notice of discontinuance in advance of the date of discontinuance and in accordance with the terms of the policy. The policy may provide that the policyholder shall be liable to the insurer for the payment of a pro rata premium for the time the policy was in force during such grace period.

2. A provision that the validity of the policy shall not be contested, except for nonpayment of premiums, after it has been in force for two (2) years from its date of issue; and that no statement made by any person insured under the policy relating to his insurability shall be used in contesting the validity of the insurance with respect to which such statement was made after such insurance has been in force prior to the contest for a period of two (2) years during such person's lifetime nor unless it is contained in a written instrument signed by him.

3. A provision that a copy of the application, if any, of the policyholder shall be attached to the policy when issued, that all statements made by the policyholder or by the persons insured shall be deemed representations and not warranties, and that no statement made by any person insured shall be used in any contest unless a copy of the instrument containing the statement is or has been furnished to such person or to his beneficiary.

4. A provision setting forth the conditions, if any, under which the insurer reserves the right to require a person eligible for insurance to furnish evidence of individual insurability satisfactory to the insurer as a condition to part or all of his coverage.

5. A provision specifying an equitable adjustment of premiums or of benefits or of both to be made in the event the age of a person insured has been misstated, such provision to contain a clear statement of the method of adjustment to be used.

6. A provision that any sum becoming due by reason of the death of the person insured shall be payable to the beneficiary designated by the person insured, subject to the provisions of the policy in the event there is no designated beneficiary as to all or any part of such sum, living at the death of the person insured, and subject to any right reserved by the insurer in the policy and set forth in the certificate to pay at its option a part of such sum not exceeding Five Hundred Dollars (\$500.00) to any person appearing to the insurer to be equitably entitled thereto by reason of having incurred funeral or other expenses incident to the last illness or death of the person insured.

7. A provision that the insurer will issue to the policyholder for delivery to each person insured an individual certificate setting forth a statement as to the insurance protection to which he is entitled, to whom the insurance benefits are payable, and the

rights and conditions set forth in paragraphs (8), (9) and (10)
following of this section:

8. A provision that if the insurance, or any portion of it, on a person covered under the policy ceases because of termination of employment or of membership in the class or classes eligible for coverage under the policy, such person shall be entitled to have issued to him by the insurer, without evidence of insurability, an individual policy of life insurance without disability or other supplementary benefits, provided an application for the individual policy shall be made, and the first premium paid to the insurer, within thirty-one (31) days after such termination, and provided further that:

(a) the individual policy shall, at the option of such person, be on any one of the forms, except term insurance, then customarily issued by the insurer at the age and for the amount applied for;

(b) the individual policy shall be in an amount not in excess of the amount of life insurance which ceases because of such termination, less, in the case of a person whose membership in the class or classes eligible for coverage terminates but who continues in employment in another class, the amount of any life insurance for which such person is or becomes eligible within thirty-one (31) days after such termination under any other group policy; provided that any amount of insurance which shall have matured on or before the date of such termination as an endowment payable to the person insured, whether in one sum or in installments or in the form of an annuity, shall not, for the purposes of this provision, be included in the amount which is considered to cease because of such termination; and

(c) the premium on the individual policy shall be at the insurer's then customary rate applicable to the form and amount of the individual policy, to the class of risk to which such person

then belongs, and to his age attained on the effective date of the individual policy.

9. A provision that if the group policy terminates or is amended so as to terminate the insurance of any class of insured persons, every person insured thereunder at the date of such termination whose insurance terminates and who has been so insured for at least five (5) years prior to such termination date shall be entitled to have issued to him by the insurer an individual policy of life insurance, subject to the same conditions and limitations as are provided by paragraph (8) above of this section, except that the group policy may provide that the amount of such individual policy shall not exceed the smaller of (a) the amount of the person's life insurance protection ceasing because of the termination or amendment of the group policy, less the amount of any life insurance for which he is or becomes eligible under any group policy issued or reinstated by the same or another insurer within thirty-one (31) days after such termination, and (b) ~~Two Thousand Dollars~~ (\$2,000.00) Ten Thousand Dollars (\$10,00000).

10. A provision that if a person insured under the group policy dies during the period within which he would have been entitled to have an individual policy issued to him in accordance with paragraph (8) or (9) above of this section and before such an individual policy shall have become effective, the amount of life insurance which he would have been entitled to have issued to him under such individual policy shall be payable as a claim under the group policy, whether or not application for the individual policy or the payment of the first premium therefor has been made.

11. In the case of a policy issued to a creditor to insure debtors of such creditor, a provision that the insurer will furnish to the policyholder for delivery to each debtor insured under the policy a form which shall contain a statement that the life of the debtor is insured under the policy and that any death benefit paid

thereunder by reason of his death shall be applied to reduce or extinguish the indebtedness.

SECTION 6. This act shall become effective September 1, 1992.

43-2-7241

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