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BULLETIN

TO: All Licensed Insurers

FROM: Julie Mix McPeak, Commissioner Julie Mix McPeak

RE: Electronic Notifications

DATE: January 26, 2012

The Insurance Division of the Department of Commerce and Insurance ("Division") has received recent inquiries from insurers as to whether electronic mail messages are allowable to comply with statutorily required notification to policyholders. The purpose of this bulletin is to offer the Division's interpretation of whether electronic mail messages constitute effective notice under the Tennessee insurance law, codified in Title 56 of Tennessee Code Annotated (the "Law").

Insurers are directed several times in the Law to notify policyholders of cancellation, conditional renewal, and nonrenewal events and in certain circumstances of premium increases. Each of these directives are specific in requiring insurers to either "mail" or "deliver" notice to their insureds *at the address shown in the policy* prior to or within a time after the occurrence of one of the above named events. After having reviewed the various laws requiring notice and in considering their intent, the Division interprets effective notice as required under the Law to include electronic mail messages to policyholders **where the policyholder's electronic mail address is on file with the insurer and where the policyholder elects to receive communications through electronic mail.**

The Division understands that allowing electronic mailings in place of physical mailings could result in significant cost savings to the insurers, which may then presumably be passed on to insureds. However, physical mailings delivered through the United States Postal Service do provide safeguards not available to electronic mailings; for example, a policyholder who moves will leave a change of address with the post office and will have his mail forwarded, even where he forgets to change his address with his insurance company. The delivery of certain notifications to the policyholder, such as cancellation, are of paramount importance for consumer protection.

In order to ensure that those consumer protections contemplated by the statutory notice requirements are upheld, the Division will require that policyholders be given the option

to continue to receive hard copy mailings of notice requirements or other communications. Further, the Division will require that the insurer make a disclosure to any policyholder electing to receive communications electronically, either in the language of the policy itself or in a separate disclosure form presented for the policyholder's signature. The policyholder's signature may include an electronic signature as contemplated by the Uniform Electronic Transactions Act found at Tennessee Code Annotated, Section 47-10-101, et seq. This disclosure must contain the following or substantially similar language:

"The policyholder electing to allow for notices and communications to be sent to the electronic mail address provided by the policyholder should be aware that the insurer rightfully considers this election to be consent by the policyholder that all notices may be sent electronically, including notice of nonrenewal and notice of cancellation. Therefore the policyholder should be diligent in updating the electronic mail address provided to the insurer in the event that the address should change."

An insurer's failure to grant a request from a policyholder to continue to receive hard copy mailings of communications from the insurer or an insurer's failure to provide the above disclosure where required could result in the Division taking action against the insurer's license pursuant to the authority of Tenn. Code Ann. § 56-2-305.

This Bulletin should not be construed to apply to any notice required to be given to enrollees in the TennCare program.

Any questions about the intent of this Bulletin should be directed to the Insurance Division, 4th Floor, Davy Crockett Tower, 500 James Robertson Parkway, Nashville, Tennessee, 37243, and/or telephone number (615) 741-2176.

JMM/lnw