

THE 2014 LEGISLATIVE SESSION . . . MOST HARM TO LIFE & HEALTH INSURANCE INDUSTRY AVOIDED

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OVERVIEW

After 120 days, the 2014 legislative session adjourned on May 7, 2014. The 2014 legislative session was the antithesis of the 2013 legislative session, which was dominated by many controversial issues, including gun control, civil unions, election reform, marijuana regulations, and the death penalty. These issues produced a great amount of conflict during the 2013 legislative session, which spilled over into debates about life and health insurance bills as the two political parties battled under the Gold Dome.

At the conclusion of the 2013 legislative session, Democrats controlled both legislative chambers by healthy margins. In the House, Democrats had 37 seats while Republican only had 28 seats. In the Senate, Democrats had 20 seats while Republicans only had 15 seats. It would not have been unreasonable to assume that the 2014 legislative session would be marred with the same levels of conflict and controversy that marred the 2013 legislative session. However, something strange happened along the way to the 2014 legislative session. . .

In September 2013, the voters recalled Senate President John Morse (D-Colorado Springs) and Senator Angela Giron (D-Pueblo) because of their support of gun control legislation during the 2013 legislative session. The voters subsequently elected Bernie Herpin (R) to replace Senator Morse and George Rivera (R) to replace Senator Giron. All of a sudden, the healthy 20-15 majority that Democrats enjoyed in the Senate had withered to a razor-thin 18-17 majority.

Things could have been worse for Senate Democrats. In November 2013, Democrats faced the possibility of losing control of the Senate when Senator Evie Hudak (D-Westminster) confronted a possible recall election because of her support of gun control legislation during the 2013 legislative session. Rather than running the risk of being recalled and replaced by a Republican, Senator Hudak resigned from her seat. A hand-picked vacancy committee subsequently appointed Rachel Zenzinger (D) to replace Senator Hudak. The Democrats, therefore, retained their ever-so-slight 18-17 majority in the Senate heading into the 2014 legislative session.

Given the new political landscape in the Senate, Hall & Evans, LLC ("H&E"), alongside the life and health insurance industry and the business community, worked with legislators to successfully negotiate compromises on some bills and defeat others that were harmful to the interests of the life and health insurance industry during the 2014 legislative session. Overall, the life and health insurance industry avoided any significant harm during the 2014 legislative session.

The following is a sample of the life and health insurance bills that were introduced during the 2014 legislative session, along with their final dispositions.

LIFE & HEALTH INSURANCE BILLS

HB 1053 – Pediatric Dental Requirements

This bill authorizes the Commissioner of Insurance to adopt rules to ensure that requirements for pediatric dental benefits are consistent regardless of whether a dental plan is purchased inside or outside of the Colorado Health Benefit Exchange. H&E worked with the health plan industry and the dental plan industry to ensure this bill's early passage. The Governor signed the bill into law on February 19, 2014.

HB 1082 – Notices of Lapse of Life Insurance Policies

This bill specifies that a notice of lapse of an individual life insurance policy due to the nonpayment of a premium is effective only if: (1) the notice is mailed to the last known address of the policyholder at least 25 days before the effective date of the lapse of the life insurance policy; or (2) the notice is sent, via email, to the last known email address of the policyholder at least 25 days before the effective date of the lapse of the life insurance policy, but only if the policyholder previously consented to receive information regarding the life insurance policy via email. HB 1082 further specifies that an affidavit executed by the life insurance carrier attesting that a notice of lapse of a policy was sent to a policyholder constitutes proof that such notice of lapse was indeed sent.

HB 1082 currently awaits the Governor's signature. However, the bill's fate was uncertain shortly after its introduction. As introduced, HB 1082 was vigorously opposed by the life insurance industry. The final version of HB 1082 is the result of numerous negotiation sessions between the life insurance industry and Rep. Lee (the primary sponsor of the bill), which were spearheaded by H&E.

HB 1108 – Co-Payments for Rehabilitation Services

This bill would have prohibited a health plan from charging a policyholder a co-payment for physical rehabilitation services, occupational therapy services, chiropractic services, massage therapy services, or acupuncturist services that is greater than the co-payment charged for primary care services. As a general rule of thumb, health insurance policies with high premiums have lower co-payment requirements, while health insurance policies with low premiums have higher co-payment requirements. By artificially setting a ceiling on the co-payment amount that a health plan could charge for the foregoing specialty services, HB 1108 would have, therefore, increased premiums for a large number of policyholders who originally purchased a low premium/high co-payment policy.

The health plan industry and the business community vehemently opposed HB 1108. However, due to a unique set of political circumstances, certain legislators who traditionally support the health plan industry and the business community sided with the proponents of HB 1108. These legislators ultimately decided the outcome of HB 1108, and on March 20, 2014, the General Assembly passed HB 1108.

Following the passage of HB 1108, H&E worked with the health plan industry and the business community to organize a coordinated effort whereby various stakeholders requested that the Governor veto HB 1108. These efforts paid off as the Governor vetoed HB 1108 on March 28, 2014.

HB 1213 – MAC Pricing Requirements

This bill requires a pharmacy benefit manager (“PBM”) to provide a pharmacy, within 10 days after a request, a current list of sources used to determine maximum allowable cost (“MAC”) pricing. The PBM must also update the MAC pricing information at least every seven days. In addition, HB 1213 requires a PBM to maintain a procedure to eliminate products from the list of prescription drugs subject to MAC pricing. In order for a prescription drug to be placed on a MAC list, the bill requires a PBM to ensure that the prescription drug meets certain requirements. Finally, HB 1213 requires each contract between a PBM and a pharmacy to include a process to appeal, investigate, and resolve disputes regarding MAC pricing.

Prior to the introduction of HB 1213, various drafts of the bill were circulated, which were opposed by most stakeholders, excluding the independent pharmacy community. Consequently, H&E actively participated in a series of stakeholder meetings with Rep. Kraft-Tharp (the primary sponsor of the bill), the health plan industry, the PBM community, and the pharmacy community. The purpose of these stakeholder meetings was to negotiate a compromise on the bill before it was ever introduced. Through these stakeholder meetings, H&E was able represent the interests of its clients and negotiate a compromise that was satisfactory to all stakeholders. HB 1213 is the result of that compromise and awaits the Governor’s signature.

HB 1281 – Access to Investigational Drugs by Terminally Ill Patients

This bill allows terminally ill patients who meet certain criteria to access an investigational drug, biological product, or device that has successfully completed the first phase of a clinical trial but has not yet been approved for general use by the U.S. Food and Drug Administration.

While HB 1281 was moving through the legislative process, the health plan industry raised concerns about: (1) whether health plans were required to provide coverage for the cost of an investigational drug, biological product, or device; and (2) whether health plans were required to provide coverage for side-effects associated with the use of an investigational drug, biological product, or device.

Ultimately, H&E and the health plan industry were successful in amending HB 1281 to provide that: (1) a health plan is not required to provide coverage for the cost of an investigational drug, biological product, or device; and (2) a health plan may deny coverage to an eligible patient from the time the patient begins use of an investigational drug, biological product, or device up until six months after the patient ceases use of the investigational drug, biological product, or device. On May 6, 2014, the General Assembly passed HB 1281 with the health plan industry’s amendment. The bill currently awaits the Governor’s signature.

HB 1359 – Medication Synchronization Plans

This bill requires health plans that provide prescription drug coverage to offer policyholders a medication synchronization plan that aligns the refill dates for policyholders’ multiple prescription drugs. Under the bill, health plans are permitted to develop their own medication synchronization plans but are required to:

1. Not charge an amount greater than the otherwise applicable co-payment amount for dispensing a prescription drug in a quantity that is less than the prescribed amount so long as the prescription drug is dispensed in accordance with the medication synchronization plan by a network pharmacy; and
2. Provide a full dispensing fee to the pharmacy that dispenses the medication.

Prior to the introduction of HB 1359, various drafts of the bill were circulated by the pharmacy community but opposed by the health plan industry. Once again, H&E actively participated in a series of stakeholder meetings with Rep. Ginal (the primary sponsor of the bill), the health plan industry, and the pharmacy community. The purpose of these stakeholder meetings was to negotiate a compromise on the bill before it was ever introduced. Through these stakeholder meetings, H&E was able represent the interests of its clients and negotiate a compromise that was satisfactory to all stakeholders. HB 1359 is the result of that compromise and awaits the Governor's signature.

SB 159 – Medical Clean Claims Task Force

Under current law, the Medical Clean Claims Task Force (the "Task Force") is required to develop a standardized set of payment rules and claim edits for use by health care providers and health plans in the processing of medical claims. SB 159 delays the deadline for when all health plans must implement the standardized set of payment rules and claim edits developed by the Task Force when processing medical claims to January 1, 2017. SB 159 currently awaits the Governor's signature.

SB 173 – Hepatitis C Testing

This bill authorizes a primary health care provider who treats a patient born between 1945 and 1965 to offer the patient a hepatitis C screening test or a hepatitis C diagnostic test unless the health care provider reasonably believes that: (1) the patient is being treated for a life-threatening emergency; (2) the patient has previously been offered or has been the subject of a hepatitis C screening test; or (3) the patient lacks capacity to consent to a hepatitis C screening test. SB 173 had broad bi-partisan support, and currently awaits the Governor's signature.

The impact of SB 173 is unclear as nothing currently prevents health care providers from offering patients a hepatitis C screening test or a hepatitis C diagnostic test. If, however, SB 173 causes an increase in the number of hepatitis C screening tests or hepatitis C diagnostic tests administered to patients, the health plan industry may experience an increase in the number of claims filed for coverage of these tests.

SB 187 – Health Care Cost Containment Commission

This bill establishes the Colorado Commission on Affordable Health Care (the "Commission") to study the drivers of health care costs and evidence-based cost containment strategies, and to issue legislative and regulatory recommendations for action. Once established, the Commission will be comprised of 12 voting members from various sectors of the health care industry and 5 non-voting members from state government. SB 187 currently awaits the Governor's signature.