

INSURANCE DIVISION[191]

Adopted and Filed

Pursuant to the authority of Iowa Code chapter 505, the Insurance Division hereby adopts amendments to Chapter 20, “Property and Casualty Insurance,” Chapter 30, “Life Insurance Policies and Annuities,” Chapter 35, “Accident and Health Insurance,” Chapter 39, “Long-Term Care Insurance,” and Chapter 40, “Health Maintenance Organizations,” Iowa Administrative Code.

The purpose of these amendments is to clarify the authorized methods of delivery for notices of cancellation, suspension, forfeiture, nonrenewal and termination, so as to implement the various policyholder protections intended by Iowa Code sections 509B.5, 513B.5, 514B.17, 514B.17A, 514D.3, 514G.111, 515.125, 515.126, 515.127, 515.128, 515.129, 515.129A, 515.129B, 515.129C, 515D.5, 515D.7, 518.23, 518A.29 and 519.8 and rules 191—39.22(514G), 191—40.10(514B) and 191—92.6(508).

The Uniform Electronic Transactions Act, in Iowa Code section 554D.110(4)“b,” provides that a requirement under a law, other than Iowa Code chapter 554D, “to send, communicate, or transmit a record by first-class mail postage prepaid may be varied by agreement to the extent permitted by the other law.” The notification laws contain varied statutory language, all with the express intent to require that policyholders are provided reasonable advance notice that insurance coverage will cease on a date certain. Iowa Code chapter 505B, which became effective on July 1, 2014, authorizes insurers and policyholders to consent to the delivery of notices or documents by electronic means. Iowa Code section 505B.1(6) provides “[i]f a provision of this title or applicable law requiring a notice or document to be provided to a party expressly requires verification or acknowledgment of receipt of the notice or document, the notice or document may be delivered by electronic means only if the method used provides for verification or acknowledgment of receipt.” This provision must be applied in the context of the importance of the actual receipt by policyholders of notices of cancellation, suspension, forfeiture, nonrenewal or termination. The presumption of receipt in the context of a postal service mailing is a well-settled principle of Iowa law. The Iowa Supreme Court has held that “[p]roof that a document was properly mailed raises a presumption that it was received.” *Montgomery Ward v. Davis*, 398 N.W.2d 869, 870-871 (Iowa 1982). Electronic transmission does not carry a similar presumption of receipt, so verification or acknowledgment of receipt would be required for electronic delivery of all notices of cancellation, suspension, forfeiture, nonrenewal and termination by an insurer. As of the date these amendments were proposed, the Iowa Insurance Commissioner had not found, reviewed or evaluated any reliable electronic verification or acknowledgment methods, so the Commissioner must conclude that electronic transmissions currently fail to satisfy the notice requirements of the Iowa Code sections referenced above. However, additional communication by electronic means of these notices may be provided by the insurer as a service to the policyholder.

These amendments were published under Notice of Intended Action in the April 1, 2015, Iowa Administrative Bulletin as **ARC 1943C**.

A public hearing was held on April 21, 2015, at the offices of the Iowa Insurance Division, Two Ruan Center, Fourth Floor, 601 Locust Street, Des Moines, Iowa. Interested persons had the opportunity to make written suggestions or comments on the proposed amendments on or before April 21, 2015. Comments were received.

One comment suggested creating a system by which the Iowa Insurance Commissioner could approve newly developed electronic notification procedures, if an insurer could demonstrate that the procedures satisfactorily verify receipt. This suggestion has not been adopted. Instead, if the Commissioner deems newly developed electronic notification procedures can provide satisfactory verification of receipt, the Division will amend the appropriate rules in a future rule making to allow such procedures.

Based on comments received and reviewed by the Division, the following changes have been made to the amendments published under Notice of Intended Action:

1. The terms “suspensions” and “forfeitures” were deleted from the division heading and from new rule 191—20.80(505B,515,515D,518,518A,519) in Items 2 and 3.

2. Language indicating that Iowa courts have not yet recognized a presumption of receipt for electronic transmissions has been added to subrules 20.80(1), 30.9(1), 35.9(1), 39.33(1) and 40.26(1).

3. The words “proof of” were deleted from the catchphrases of subrules 20.80(3), 30.9(3), 35.9(3), 39.33(3) and 40.26(3).

4. The first sentences of subrules 20.80(4), 30.9(4), 35.9(4), 39.33(4) and 40.26(3) were deleted, and language was inserted to recognize that electronic transmissions do not “currently” satisfy the notice requirements of the listed subrules.

5. Additional language was added to subrules 20.80(3), 30.9(3), 35.9(3), 39.33(3) and 40.26(3) to clarify that the use of U.S. Postal Service Intelligent Mail® fulfills any requirement in the listed Iowa Code sections and administrative rules for certified mail or certificate of mailing as proof of mailing.

6. The words “rescission” and “discontinuance” were added to rules 191—35.9(509B,513B,514D) and 191—40.26(514B), and the words “suspension,” “forfeiture,” and “nonrenewal” were deleted.

7. The reference to rule 191—39.29(514G) was deleted from subrules 39.33(1), 39.33(3) and 39.33(4).

8. Iowa Code sections 515.125 and 515.129A were added to the sections referenced in subrules 35.9(1) and 35.9(3).

9. The word “nonrenewal” was deleted from rule 191—39.33(514G).

10. The ZIP code was corrected in the amendment to paragraph 40.10(3)“h.”

In addition, Items 4 and 6, which added unnecessary reserved rules to Chapters 20 and 30, have not been adopted, and new Items 5 and 8 have been added to amend the implementation sentence of Chapter 30 and the Division I title of Chapter 39. The numbering of the items has been adjusted accordingly.

Insurance companies doing business in Iowa must be in compliance with these amendments beginning July 1, 2015.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code chapters 505B, 508, 509B, 513B, 514, 514B, 514D, 514G, 515, 515D, 518, 518A and 519.

These amendments will become effective July 1, 2015.

The following amendments are adopted.

ITEM 1. Reserve rules **191—20.73** to **191—20.79**.

ITEM 2. Adopt the following new division heading in **191—Chapter 20**:

DIVISION IV

CANCELLATIONS, NONRENEWALS AND TERMINATIONS

ITEM 3. Adopt the following new rule 191—20.80(505B,515,515D,518,518A,519):

191—20.80(505B,515,515D,518,518A,519) Notice of cancellation, nonrenewal or termination of property and casualty insurance.

20.80(1) Purpose. The purpose of this rule is to implement the policyholder protections of Iowa Code sections 515.125, 515.126, 515.127, 515.128, 515.129, 515.129A, 515.129B, 515.129C, 515D.5, 515D.7, 518.23, 518A.29 and 519.8 by clarifying the authorized methods of delivery for notices of cancellation, nonrenewal and termination by an insurer. Presumption of receipt in the context of a postal service mailing is a well-settled principle of Iowa law (see *Montgomery Ward v. Davis*, 398 N.W.2d 869, 870-871 (Iowa 1982)), but Iowa courts have not yet recognized a presumption of receipt for electronic transmissions. Notwithstanding Iowa Code section 554D.110(4)“b,” delivery by electronic transmission, for the purposes of this rule, does not provide for satisfactory verification or acknowledgment of receipt, as required by Iowa Code section 505B.1(6).

20.80(2) Scope. This rule shall apply to all insurance companies holding a certificate of authority to transact the business of insurance under the provisions of Iowa Code chapters 508, 515, 518, and 518A.

20.80(3) Delivery and receipt. For any notice of cancellation, nonrenewal or termination by an insurer under Iowa Code sections 515.125, 515.126, 515.127, 515.128, 515.129, 515.129A, 515.129B,

515.129C, 515D.5, 515D.7, 518.23, 518A.29 and 519.8 to be effective, an insurer must, within the time frame established by law, either deliver the notice to the named insured in person or mail the notice through the U.S. Postal Service to the last-known address of the named insured. The use of U.S. Postal Service Intelligent Mail® fulfills any requirement in the Iowa Code sections cited in this subrule for certified mail or certificate of mailing as proof of mailing.

20.80(4) *Electronic transmissions.* Electronic transmissions do not currently satisfy the notice requirements of Iowa Code sections 515.125, 515.126, 515.127, 515.128, 515.129, 515.129A, 515.129B, 515.129C, 515D.5, 515D.7, 518.23, 518A.29 and 519.8. However, additional communication of notices by electronic means may be provided by an insurer as a service to a policyholder.

This rule is intended to implement Iowa Code chapter 505B.

ITEM 4. Adopt the following **new** rule 191—30.9(505,508):

191—30.9(505,508) Notice of cancellation, forfeiture, lapse, nonrenewal or termination of life insurance and annuities.

30.9(1) *Purpose.* The purpose of this rule is to clarify the authorized methods of delivery for notices of cancellation, forfeiture, lapse, nonrenewal and termination by an insurer, so as to require reasonable procedures for providing notice to policyholders of the consequences of cancellation, forfeiture, lapse, nonrenewal or termination of life insurance and annuity contracts. In universal life contracts, specific advance notice is required by rule 191—92.6(508). The Uniform Electronic Transactions Act, in Iowa Code section 554D.110(4) “b,” provides that a requirement under a law to send, communicate, or transmit a record by first-class mail postage prepaid may be varied by agreement to the extent permitted by the other law. Notification regulation should effectively require reasonable advance notice to life insurance and annuity policyholders that insurance coverage will cease or be placed under a nonforfeiture benefit on a date certain. Presumption of receipt in the context of a postal service mailing is a well-settled principle of Iowa law (see *Montgomery Ward v. Davis*, 398 N.W.2d 869, 870-871 (Iowa 1982)), but Iowa courts have not yet recognized a presumption of receipt for electronic transmissions. Notwithstanding Iowa Code section 554D.110(4) “b,” delivery by electronic transmission, for the purposes of this rule, does not provide for satisfactory verification or acknowledgment of receipt, as required by Iowa Code section 505B.1(6).

30.9(2) *Scope.* This rule shall apply to all insurance companies that issue contracts subject to approval by the commissioner pursuant to Iowa Code section 508.25.

30.9(3) *Delivery and receipt.* For any notice of cancellation, forfeiture, lapse, nonrenewal or termination by an insurer in contracts subject to approval by the commissioner pursuant to Iowa Code section 508.25 to be effective, an insurer must, within the time frame established by law, or such reasonable time in advance and as governed by contract, either deliver the notice to the named insured in person or mail the notice through the U.S. Postal Service to the last-known address of the named insured. The use of U.S. Postal Service Intelligent Mail® fulfills any requirement for the contracts subject to approval by the commissioner pursuant to Iowa Code section 508.25 for certified mail or certificate of mailing as proof of mailing.

30.9(4) *Electronic transmissions.* Electronic transmissions do not currently satisfy the requirements of this rule or of rule 191—92.6(508). However, additional communication of notices by electronic means may be provided by an insurer as a service to a policyholder.

ITEM 5. Amend **191—Chapter 30**, implementation sentence, as follows:

These rules are intended to implement Iowa Code sections 505.8, 508.25, 508.28 and 508A.4 and ~~chapter~~ Iowa Code chapters 505B and 509.

ITEM 6. Adopt the following **new** heading before new rule 191—35.9(509B,513B,514D) in **191—Chapter 35:**

GENERAL ACCIDENT AND HEALTH INSURANCE REQUIREMENTS

ITEM 7. Adopt the following new rule 191—35.9(509B,513B,514D):

191—35.9(509B,513B,514D) Notice of cancellation, rescission, discontinuance or termination of accident and health insurance.

35.9(1) Purpose. The purpose of this rule is to clarify the authorized methods of delivery for notices of cancellation, rescission, discontinuance and termination by an insurer, so as to implement the various policyholder protections intended by Iowa Code sections 509B.5, 513B.5, 514D.3, 515.125 and 515.129A. Presumption of receipt in the context of a postal service mailing is a well-settled principle of Iowa law (see *Montgomery Ward v. Davis*, 398 N.W.2d 869, 870-871 (Iowa 1982)), but Iowa courts have not yet recognized a presumption of receipt for electronic transmissions. Notwithstanding Iowa Code section 554D.110(4) “b,” delivery by electronic transmission, for the purposes of this rule, does not provide for satisfactory verification or acknowledgment of receipt, as required by Iowa Code section 505B.1(6).

35.9(2) Scope. This rule shall apply to all insurance companies holding a certificate of authority to transact the business of insurance under the provisions of Iowa Code chapters 508, 512B, 515, and 520.

35.9(3) Delivery and receipt. For any notice of cancellation, rescission, discontinuance or termination by an insurer under Iowa Code sections 509B.5, 513B.5, 514D.3, 515.125 and 515.129A to be effective, an insurer must, within the time frame established by law, either deliver the notice to the named insured in person or mail the notice through the U.S. Postal Service to the last-known address of the named insured. Use of the U.S. Postal Service Intelligent Mail® fulfills any requirement in the Iowa Code sections cited in this subrule for certified mail or certificate of mailing as proof of mailing.

35.9(4) Electronic transmissions. Electronic transmissions do not currently satisfy the notice requirements of Iowa Code sections 509B.5, 513B.5 and 514D.3. However, additional communication of notices by electronic means may be provided by an insurer as a service to a policyholder.

This rule is intended to implement Iowa Code chapter 505B.

ITEM 8. Amend **191—Chapter 39**, division I heading , as follows:

DIVISION I
GENERAL PROVISIONS

ITEM 9. Adopt the following new rule 191—39.33(514G):

191—39.33(514G) Notice of cancellation, forfeiture, lapse or termination of long-term care insurance.

39.33(1) Purpose. The purpose of this rule is to clarify the authorized methods of delivery for notices of cancellation, forfeiture, lapse and termination by an insurer, so as to implement the various policyholder protections intended by Iowa Code section 514G.111 and rule 191—39.22(514G). Presumption of receipt in the context of a postal service mailing is a well-settled principle of Iowa law (see *Montgomery Ward v. Davis*, 398 N.W.2d 869, 870-871 (Iowa 1982)), but Iowa courts have not yet recognized a presumption of receipt for electronic transmissions. Notwithstanding Iowa Code section 554D.110(4) “b,” delivery by electronic transmission, for the purposes of this rule, does not provide for satisfactory verification or acknowledgment of receipt, as required by Iowa Code section 505B.1(6).

39.33(2) Scope. This rule shall apply to all insurance companies holding a certificate of authority to transact the business of insurance under the provisions of Iowa Code chapter 508 or 515.

39.33(3) Delivery and receipt. For any notice of cancellation, forfeiture, lapse or termination by an insurer under Iowa Code section 514G.111 and rule 191—39.22(514G) to be effective, an insurer must, within the time frame established by law, either deliver the notice to the named insured in person or mail the notice through the U.S. Postal Service to the last-known address of the named insured. The use of U.S. Postal Service Intelligent Mail® fulfills any requirement in Iowa Code section 514G.111 and rule 191—39.22(514G) for certified mail or certificate of mailing as proof of mailing.

39.33(4) Electronic transmissions. Electronic transmissions currently fail to satisfy the notice requirements of Iowa Code section 514G.111 and rule 191—39.22(514G). However, additional

communication of notices by electronic means may be provided by an insurer as a service to a policyholder.

This rule is intended to implement Iowa Code chapter 505B.

ITEM 10. Amend paragraph **40.10(3)“h”** as follows:

h. State that the enrollee may request such hearing by forwarding one copy of the notice of cancellation, marked to request a hearing, to the Commissioner of Insurance, ~~Lucas State Office Building~~ Two Ruan Center, 601 Locust Street, Fourth Floor, Des Moines, Iowa 50319 50309.

ITEM 11. Adopt the following new rule 191—40.26(514B):

191—40.26(514B) Notice of cancellation, rescission, discontinuance or termination of enrollment.

40.26(1) Purpose. The purpose of this rule is to clarify the authorized methods of delivery for notices of cancellation, rescission, discontinuance or termination by a health maintenance organization, so as to implement the various consumer protections intended by Iowa Code sections 514B.17 and 514B.17A and rule 191—40.10(514B). Presumption of receipt in the context of a postal service mailing is a well-settled principle of Iowa law (see *Montgomery Ward v. Davis*, 398 N.W.2d 869, 870-871 (Iowa 1982)), but Iowa courts have not yet recognized a presumption of receipt for electronic transmissions. Notwithstanding Iowa Code section 554D.110(4)“b,” delivery by electronic transmission, for the purposes of this rule, does not provide for satisfactory verification or acknowledgment of receipt, as required by Iowa Code section 505B.1(6).

40.26(2) Scope. This rule shall apply to all insurance companies holding a certificate of authority to operate an HMO under the provisions of Iowa Code chapter 514B.

40.26(3) Delivery and receipt. For any notice of cancellation, rescission, discontinuance or termination by a health maintenance organization under Iowa Code sections 514B.17 and 514B.17A and rule 191—40.10(514B) to be effective, a health maintenance organization must, within the time frame established by law, either deliver the notice to the named insured in person or mail the notice through the U.S. Postal Service to the last-known address of the named insured. The use of U.S. Postal Service Intelligent Mail® fulfills any requirement in Iowa Code sections 514B.17 and 514B.17A and rule 191—40.10(514B) for certified mail or certificate of mailing as proof of mailing.

40.26(4) Electronic transmissions. Electronic transmissions do not currently satisfy the notice requirements of Iowa Code sections 514B.17 and 514B.17A and rule 191—40.10(514B). However, additional communication of notices by electronic means may be provided by an insurer as a service to the named insured.

This rule is intended to implement Iowa Code chapter 505B.

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