



## **DOMESTIC/FOREIGN INSURERS BULLETIN NO. 46**

**TO: ALL INSURERS, PRODUCERS, THIRD PARTY ADMINISTRATORS, MEDICAL SERVICE PLANS, AND HOSPITAL SERVICE PLANS LICENSED TO DO BUSINESS IN DELAWARE; AND OTHER INTERESTED PERSONS**

**RE: THE CIVIL UNION AND EQUALITY ACT OF 2011**

**DATED: November 7, 2011**

The purpose of this bulletin is to provide guidance regarding the implementation of the Civil Union and Equality Act of 2011 (S.B. 30; 2011 Del. Laws Ch. 22) (the "Act"), which was enacted by the Delaware General Assembly on April 15, 2011, was signed by the Governor on May 12, 2011, and becomes effective on January 1, 2012.

The Act creates a form of legal union between two persons of the same sex who establish a civil union in accordance with the requirements of Delaware law. The Act provides that parties to a civil union shall have all of the same rights, protections and benefits, and shall be subject to the same responsibilities, obligations and duties, under Delaware law as are granted to, enjoyed by, or imposed upon married spouses. The Act further provides that a party to a civil union shall be included in any definition or use of the terms "dependent", "family", "husband and wife", "immediate family", "next of kin", "spouse", "stepparent", "tenants by the entirety", and other terms, whether or not gender-specific, that denote a spousal relationship or a person in a spousal relationship, as those terms are used throughout Delaware law. The Act further provides that for all purposes of Delaware laws that refer to marriage or marital status, other than Chapter 1 of Title 13 of the Delaware Code, parties to a civil union will be included in such reference. The Act also automatically recognizes as civil unions for all purposes of Delaware law legal unions between two persons of the same sex, such as civil unions, marriages and domestic partnerships that are validly formed in jurisdictions other than Delaware and are substantially similar to Delaware civil unions.

The provisions of the Act apply for all purposes of Delaware law, whether derived from statutes, administrative rules or regulations, court rules, governmental policies, common law, court decisions, or any other provisions or sources of law, which includes the Insurance Code and all regulations and bulletins promulgated thereunder.

Under existing insurance laws, it is unlawful for any insurance company licensed to do business in Delaware to discriminate in any way because of an insured's sexual orientation, including in the writing of any policy or application. See 18 Del. C. § 2304.

Accordingly, as of January 1, 2012 (the effective date of the Act), any insurance policy issued must be in compliance with the Act. Those insurance policies subject to Delaware law that are issued prior to January 1, 2012 will be construed by the Department of Insurance (the "Department") to comply with the Act as of January 1, 2012. The Department does not require companies to file amended forms. However, existing and newly-issued policies must be administered to provide parties to a civil union and their dependent children with identical benefits, rights and protections as those afforded to married spouses and their dependent children. Furthermore, an insurer's processes and systems must also be exactly the same with respect to parties to a civil union and married spouses. For example, if an insurer does not require proof of marriage for an insured to add his or her spouse to a policy, the insurer cannot require proof of a civil union for an insured to add his or her same-sex spouse to a policy. Rates may not differ for two-person coverage (spousal) or family coverage based on whether the couple is in a civil union or a marriage.

The Department shall interpret the term "spouse" as used in any insurance policy, contract or application to include a same-sex spouse in a legal relationship that is recognized as a Delaware civil union. As of January 1, 2012, the Department will not approve of newly-filed forms that exclude same-sex spouses from the definition of "spouse" or otherwise do not provide identical coverage or treatment for a same sex-spouse as for an opposite-sex spouse.

Companies should notify their policyholders, insureds and potential policyholders and insureds as to compliance with this Act through information on all policy forms, applications or other materials provided or made available to their policyholders, insureds or potential policyholders or insureds. The Department strongly suggests that amendments to applications and other documents given to policyholders and insureds be made by January 1, 2012.

For determining eligibility for benefits, the date of the valid qualifying event for same-sex couples that enter into a civil union after January 1, 2012, shall be the date upon which the civil union is solemnized. Since the Act also automatically recognizes as civil unions legal relationships entered into in jurisdictions other than Delaware that are substantially similar to Delaware civil unions, the date of the valid qualifying event for same-sex couples that have entered into these relationships (i) before January 1, 2012 shall be January 1, 2012, and (ii) after January 1, 2012 shall be the date upon which such legal relationship is validly recognized under the laws of such other jurisdiction. On or after January 1, 2012, insurers and third-party administrators must give insureds an opportunity to elect coverage of any person becoming a dependent during a civil union in the same manner as if the person became a dependent through marriage.

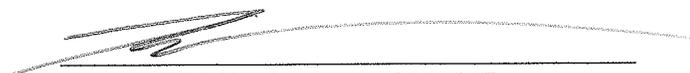
The Department will take administrative or legal action against any Delaware-licensed insurer, third-party administrator, or producer that fails to comply with the Act.

Although Federal law may impact the treatment of eligibility and benefits for certain insurance products, Federal law does not preempt Delaware laws regarding civil unions. Accordingly, insurers filing forms in Delaware may not limit policy coverage to opposite-sex spouses. The Department is aware, however, that the federal Defense of Marriage Act, *1 U.S.C. § 7* (“DOMA”), yields disparate federal tax treatment between a same-sex, civil union spouse and an opposite-sex, married spouse. The Department thus encourages insurers with products that fall in this category of being subject to disparate federal tax rules (for example, annuities) to include a clear disclosure on their policy and application forms that explains the disparate federal tax consequences. Further, the disclosure should encourage same-sex spouses to consult a tax advisor prior to the purchase of any such annuity or similar product with disparate federal tax treatment that provides benefits based on spousal status.

The Act provides that it shall be “broadly construed to accomplish its intended purposes.” Accordingly, if there is any ambiguity about the applicability of the Act to any insurance product, law, regulation or policy, the ambiguity shall be resolved to the benefit of the parties to the civil union.

The Department is in the process of promulgating a Regulation to implement the Act. This bulletin is being issued for guidance in the interim. Insurers, third-party administrators, and producers may wish to seek guidance regarding the Act from their legal counsel.

This bulletin shall be effective on January 1, 2012.



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**Karen Weldin Stewart, CIR-ML**  
**Insurance Commissioner**