



# FEDERATION OF REGULATORY COUNSEL

*National Network of Skilled Insurance Regulatory Attorneys*

## Alert Edition July 2021

FORC combines submissions from FORC counsel members to produce a synopsis of the latest news in insurance regulatory law. FORC maintains a searchable archive of both FORC Alerts and the *FORC Journal of Insurance Law and Regulation*. Please go to [FORC.org](http://FORC.org) to receive publications directly and for access to the links included within the news items below.

**Category(s):** [National - 07/30/2021](#)

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### **Collapse of Aon-Willis Deal**

In a surprising move to many, on Monday, July 26, Aon and Willis disclosed their merger deal announced in March 2020 was off. The United States had sued to stop the deal on antitrust grounds, whereas the EU had approved the merger. It will be interesting to see how this unwinding effects the insurance brokerage market, and what fallout will happen from some divestitures that Aon had agreed to in order to make the deal happen. Aon paid a \$1 billion breakup fee. Gallagher and others were looking to acquire some divestitures. Click [here](#) for more information.

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**Category(s):** [National - 07/29/2021](#)

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### **U.S. House Committee on Financial Services FAQ Regarding CARES Act**

To Read FAQ go to - <https://financialservices.house.gov/news/documentsingle.aspx?DocumentID=406472>

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**Category(s):** [Alabama - 07/26/2021](#)

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### **Alabama Department of Insurance: Commissioner Approves Regulations**

Commissioner Ridling announced on June 11 that he has approved all fourteen regulations that were subject to a hearing this week. The regulations were approved Thursday afternoon and filed with the Office of the Secretary of State and Legislative Services Agency on June 10. To read the individual regulations, please click [here](#).

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**Category(s):** [Alabama - 07/30/2021](#)

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### **The Alabama Department of Insurance has issued/updated the following Bulletin and Legal Regulations**

Bulletin No. 2021-08

On July 29, 2021, the Alabama DOI issued Bulletin No. 2021-08 regarding audit and examination fees.

Bulletin No. 2021-07

On July 29, 2021, the Alabama DOI issued Bulletin No. 2021-07 regarding filing procedures and fees under Insurance Holding Company System Regulatory Act.

Bulletin No. 2021-06

On July 21, 2021, the Alabama DOI issued Bulletin No. 2021-06 regarding a revision of SERFF fees and mandatory use of electronic funds transfer payments for SERFF filings.

Bulletin No. 2021-05

On July 23, 2021, the Alabama DOI issued Bulletin No. 2021-05 regarding claims of trade secret confidentiality on insurance filings with the Department of Insurance.

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**Category(s):** [Colorado - 07/26/2021](#)

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**Colorado Passes Law Addressing Unfair Discrimination in Insurance Practices**

The Colorado General Assembly passed [SB 21-169](#). The bill prohibits an insurer from unfairly discriminating (as that term is defined in the bill) based on race, color, national or ethnic origin, religion, sex, sexual orientation, disability, gender identity, or gender expression with regard to certain types of insurance practices. In addition, the Commissioner of Insurance must adopt rules that prohibit an insurer, with regard to certain types of insurance practices, from using any external consumer data and information sources, as well as any algorithms or predictive models that use external consumer data and information sources, in a way that unfairly discriminates based on race, color, national or ethnic origin, religion, sex, sexual orientation, disability, gender identity, or gender expression. The provisions of the bill, however, do not apply to title insurance, surety bonds, and commercial insurance policies except for business owners' policies with annual premiums of \$10,000 or less and commercial general liability policies with annual premiums of \$10,000 or less.

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**Category(s):** [Colorado - 07/26/2021](#)

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**Colorado Passes Law Creating Standardized Health Benefit Plan and Authorizing Commissioner to Set Reimbursement Rates**

The Colorado General Assembly also passed [HB 21-1232](#). The bill requires the Commissioner of Insurance to establish, by rule, a standardized health benefit plan to be offered by health insurance carriers in the individual and small group markets beginning on January 1, 2023. Each carrier must offer the standardized health benefit plan in the individual and small group markets at a premium rate that is at least 5% in 2023, 10% in 2024, and 15% in 2025, less than the premium rate for the health benefit plans the carrier offered in 2021 in the individual and small group markets, as adjusted for medical inflation. In 2026 and thereafter, each carrier must limit any annual percentage increase in the premium to the rate of medical inflation relative to the previous year. In the event a carrier is unable to comply with network adequacy requirements or the foregoing premium rate requirements, the bill outlines a process for a carrier

or health care provider to initiate non-binding arbitration. If non-binding arbitration is unsuccessful, the Commissioner of Insurance may hold a public rate hearing and establish carrier reimbursement rates for hospitals and health care providers.

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**Category(s):** Florida - 07/27/2021

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### **DFS Directive Suspends Workers' Comp Brochure Delivery Requirement**

On June 6, 2021, the Florida Division of Workers' Compensation within the Department of Financial Services (DFS) revoked [CFO Directive 20-06](#) . The Directive suspended strict compliance with the requirement that workers' compensation insurers mail informational brochures pursuant to 440.185(3) and allowed such insurers to deliver the brochures by other means, such as email or facsimile transfer. CFO Directive 2021-04 was issued which states that, beginning June 27, 2021, the Injured Worker Informational Brochure (DFS-F2-DWC-60 and/or DFS-F2-DWC-61) must be mailed to the injured worker pursuant to [440.185 \(3\)](#), Florida Statutes and [69L-3.0035](#) Florida Administrative Code.

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**Category(s):** Florida - 07/27/2021

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### **DWC Releases Updated Report on Effects of COVID-19 on Florida's Workers' Comp System**

In June, the Florida Department of Financial Services Division of Workers' Compensation (DWC) released an updated data summary report outlining the effects of COVID-19 on Florida's workers' compensation system. The DWC intends to continually update this report as new data is reported and analyzed. The report, as of May 31, 2021, can be found [here](#) .

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**Category(s):** Florida - 07/27/2021

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### **FHCF Presents its 2020 Annual Report**

In mid-June, the Florida Hurricane Catastrophe Fund (FHCF) published a report detailing its 2020 results and accomplishments. The report includes describes the FHCF and how it works, detailing: (1) coverage, retention, and limits; (2) exposure reporting and examination programs; (3) ratemaking; (4) funding sources; (5) claims-paying capacity; (6) debt financing and risk transfer; (7) hurricane losses; (8) hurricane loss mitigation funding (9) 2020 FHCF activities; and (10) laws and rules. [Click here](#) to view the FHCF 2020 Annual Report.

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**Category(s):** Florida - 07/27/2021

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### **Florida's COVID-19 Public Health Emergency Expires**

On March 9, 2020, Florida Governor Ron DeSantis issued [Executive Order 20-52](#) declaring a state of emergency in response to the COVID-19 pandemic. The emergency declaration has continued to be extended in increments of 60 days, and the latest extension was through [Executive Order 21-94](#) , issued on April 27, 2021. Section 3 of the Order

specifically stated, "As Florida continues to realize a manageable trend in COVID-19 cases, over 8.5 million vaccinated individuals, a 4.7 % unemployment rate well under the national average, and state revenues improving significantly from worst-case projections during the pandemic, gaining \$4.1 billion additional projected revenue over three fiscal years from the August 2020 estimate, the state should prepare to resume non-emergency operations." As no additional orders were issued by the Governor, Florida's declared COVID-19 public health emergency expired at 12:00 a.m. on June 26, 2021.

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**Category(s):** [Florida - 07/27/2021](#)

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### **Governor Extends Hurricane Sally Emergency Declaration**

On May 10, 2021, Governor Ron DeSantis issued [Executive Order 21-104](#) extending the state of emergency previously declared for Hurricane Sally for the following Florida counties: Escambia, Santa Rosa, Calhoun, Franklin, Gadsden, Gulf, Holmes, Jackson, Jefferson, Liberty, Okaloosa, Walton, and Washington Counties. The emergency declared in [Executive Order 20-224](#) , as amended by Executive Orders [20-248](#) , [20-279](#) , [21-10](#) , and [21-64](#) , has been extended for 60 days until July 6, 2021. The Director of the Division of Emergency Management has been directed to continue to execute the State's Comprehensive Emergency Plan and other response, recovery, and mitigation plans necessary to cope with the emergency.

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### **Governor Makes Three Appointments to Citizens Board**

On May 14, 2021, Governor Ron DeSantis appointed Jillian Hasner, Erin Knight, and Nelson Telemaco to serve on the Board of Governors of the Citizens Property Insurance Corporation (Citizens). Further information on each appointment and a link to the full Board of Governors can be found [here](#) .

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**Category(s):** [Florida - 07/26/2021](#)

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### **OIR Final Rules Become Effective**

On February 2, 2021, and May 4, 2021, the Florida Cabinet and Governor approved rule changes proposed by the Florida Office of Insurance Regulation (OIR). The proposals included various amendments, repeals, and the creation of a new rule. Thereafter, the OIR filed the final rules with the state in early May. The rule changes became effective on May 24, 2021, or May 25, 2021. [Click here](#) for an overview of the recent rule changes with links to the latest version of the rules.

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**Category(s):** Florida - 07/27/2021

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### **OIR Proposes Rule and Issues Several Rule Developments**

On May 10, 2021, the Florida Office of Insurance Regulation (OIR) published a proposed rule regarding the acquisition and mergers of insurers and specialty insurers, incorporating the required forms. On May 18, 2021, the OIR's Notice of Development of Rulemaking initiated its work on updating Chapter 690-203 related to prepaid limited health service organizations and discount plan organizations. The proposed rule text with forms can be found here.

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**Category(s):** Georgia - 07/27/2021

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### **Biden Administration Reviewing Georgia's Plan to Replace Health Insurance Marketplace**

On June 3, 2021, the Centers for Medicare and Medicaid Services (CMS) sent a letter to Georgia Governor Brian Kemp, requesting by July 3, 2021, a detailed analysis of the objectives and supporting justifications for the state's plan to eliminate the federal health care marketplace. The Trump Administration approved the state's Section 1332 waiver in November 2020. After Georgia's response to CMS, it plans publicly to post the updated analyses and provide a 30-day federal public comment period. It is unclear now whether, and if so, when, this proposal will move forward.

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**Category(s):** Georgia - 07/27/2021

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### **Georgia Insurance Commissioner Bulletin on Surprise Billing Dispute Arbitrations**

The Georgia Insurance Commissioner issued Bulletin 21-EX-9 (June 16, 2021) outlining how arbitrations commenced pursuant to Georgia's Surprise Billing Consumer Protection Act, which becomes effective on July 1, 2021, will be handled. This Act allows an out-of-network health care provider to initiate an arbitration with the Commissioner for emergency or non-emergency medical services reimbursement disputes with a health insurer. The Commissioner has outsourced these arbitrations to Maximum Federal, an arbitrations services provider.

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**Category(s):** Georgia - 07/27/2021

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### **Recent Georgia Health Sharing Ministry Case (Northern District of Georgia, June 22, 2021)**

In *LeCann, et al. v. The Alier Companies*, the court rejected the defendant putative health sharing ministry's motion to dismiss and alternative motion to compel arbitration in an action brought by individuals who brought class action claims to recover health care expense reimbursements under the defendant's health plans. The court found that the plaintiffs had sufficiently alleged that the defendant was not a bona fide health care ministry and its health plans constituted insurance contracts, noting that the defendant had been attacked by several other state insurance departments, and arbitration was not appropriate given that Georgia's arbitration act excludes insurance policies and was not preempted by the federal arbitration act based on the federal McCarran-Ferguson Act.

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### **Indiana Announces New Insurance Commissioner**

Amy Beard was appointed Commissioner of the Indiana Department of Insurance by Governor Eric Holcomb (R), effective June 2, 2021. Commissioner Beard has been with the Department since 2013, most recently serving as Chief Deputy Commissioner and General Counsel. Commissioner Beard replaces Steve Robertson, who retired on June 1 after 11 years as Commissioner. More information about Commissioner Beard can be found [here](#) .

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### **Insurance Data Security Law (“IDSL”)**

The Louisiana Department of Insurance (“LDI”) issued Bulletin 2021-04 on or about June 3, 2021, on the IDSL and it is now being revised and reissued to provide further clarity as to who must file annual certification and exemption forms. The IDSL establishes standards applicable to data security, investigation of a cyber security event, and notification to the Commissioner of Insurance regarding a cyber security event. Pertinent dates include August 1, 2021, which is the deadline to develop, implement and maintain a comprehensive written information security program in compliance with the IDSL; an August 1, 2022 deadline to require third party service providers to implement measures to protect data held by the provider; February 15, 2022, whereby each insurer domiciled in Louisiana must annually either submit a Louisiana Insurance Data Security Program certification form or a Louisiana Insurance Data Security Program Exemption certification form. The Bulletin contains a list of approved jurisdictions that have enacted protections that are the same as or substantially similar to the Louisiana IDSL statute absolving licensees in those jurisdictions from further requirements in this state, except the filing of the appropriate exemption form. Certain parts of the statute apply only to domestic insurers, while other parts apply to all licensees.

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### **Major Win For Property and Casualty Insurers Doing Business in Rhode Island**

In a major win for property and casualty insurers doing business in Rhode Island, a Superior Court Judge held in *East Bay Auto, Inc. et al. v. Department of Business Regulation, et al.* that the RIDBR Hearing Officer erred in considering issues not among the parties’ stipulated facts and issues, and reversed the hearing officer’s determination that certain insurers violated the labor rate survey statute R.I.G.L. § 27-29-4.4 by not differentiating between different classes of auto body shops. Importantly, the court also affirmed the RIDBR Hearing Officer’s holding that there is no formula or requirement that insurers use certain data in setting their prevailing rates and that the insurers did not run afoul of the statute by relying on factors other than the survey results.

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