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Recent Developments: Administrative Agency Actions

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Administrative Agency Actions

Agency: Maryland Insurance Administration
Maryland Code of Regulations - Title 9, Subtitle 31
Topic: Lead Poisoning - Section 8

Effective September 22, 1997, COMAR 09.31.08 emphasizes that an insured must be indemnified by their insurer in lead paint litigation if the insured has complied with provisions of Title 6 of the Environment Article of the Annotated Code of Maryland for any single unit of rental property. MD. REGS. CODE tit. 9, § 31.08 (1997). The provision also defines the types of "affected property" subject to the provision and the term "person at risk" for purposes of the regulation. The regulation clarifies the requirements of Article 48A, section 735(b), recodified as section 19-704 of the Insurance Article of the Annotated Code of Maryland.

Under section .02 (B)(1), the definition of affected property was revised to conform with the definitions pursuant to Chapter 124, Acts of 1997. *Id.* Chapter 124, introduced as Senate Bill 17, was introduced to clarify inconsistencies between lead paint provisions in the Insurance and Environment Articles of the Annotated Code of Maryland. 1997 Md. Laws 124. Before the law was enacted, insurers were able to refuse to indemnify based on an exclusion of the property as a whole, rather than individual units. The original intent of the lead paint registration statute was to permit registration of lead-affected properties on a unit by unit basis. Therefore, failure to indemnify based on the entire property, rather than unit by unit, goes against the intent of the statute.

The definition of "affected property" includes the following: (1) residential property built before 1950 that contains not more than one rental dwelling unit; (2) residential property that contains not more than one rental dwelling unit under which the owner makes an election under section 6-803(a)(2) of the Environment Article of the Annotated Code of Maryland; and (3) an individual rental unit within a residential rental property that contains more than one rental unit for which the owner makes an election under section 6-803(a)(2). MD. REGS. CODE tit. 9 § 31.08.02(B)(1)(a) (1997). Under section 6-801(t) of the Environment Article, Annotated Code of Maryland, a "rental dwelling unit" consists of "a room or group of rooms that form an independent habitable rental unit." MD. CODE ANN., ENVIR. § 6-801(t) (1997). Properties that are exempt under section 6-803(b) of the Environmental Article, Annotated Code of Maryland are not included in the regulation. MD. REGS. CODE tit. 9 § 31.08.02(B)(1)(b) (1997).

Another addition was section .02(B)(4), which defines the classification of a "person at risk." The new rule retains pregnant women occupying the affected property for more than twenty-four hours per week. The regulation amends the "at risk" child category to include children under the age of six years. MD. REGS. CODE tit. 9 § 31.08.02(B)(4) (1997).

Section .03(B) of the regulation waives lead hazard exclusion clauses in insurance policies issued or renewed after January 1, 1995 to the extent that a "qualified offer" under Title 6, Subtitle 8, Part III of the Environment Article of the Annotated Code of Maryland exists and the affected property meets the qualifications of Title 6. The waiver is effective regardless of a change in tenancy provided the affected property passes a test for lead-contaminated dust or undergoes the lead reduction treatment. MD. REGS. CODE tit. 9 § 31.08.03(B) (1997).

Sections .03(C) and .04 explain the necessary procedures that the insured must follow to ensure coverage. Section .03(C) qualifies coverage on the submission by the insured of a current report from a verified inspector to the insurer. MD. REGS. CODE tit. 9 § 31.08.03(c) (1997). Section .04, codifies the duty to defend standard discussed in Maryland case law. Insurers must defend all lead poisoning claims for which the qualified insured is potentially liable. MD. REGS. CODE tit. 9 § 31.08.04 (1997).

Economic impact analysis for the regulation indicated that small businesses that own rental property will be positively affected by this change. Properties for which insurance may have been unattainable in the past can now be protected against potential lead paint litigation. While most business owners will experience an increase in premiums, the benefit of protection in the event of lead paint litigation outweighs the cost. An

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estimate provided by the Maryland Insurance Administration indicates nearly 25,000 businesses will be affected. Furthermore, approximately 1,000 insurance agencies in the state will benefit from the new regulation through an increase in the number of premiums collected on lead-affected properties. Increased premiums will result in an increase in premium taxes to the benefit of the Maryland Insurance Administration. The agency also anticipates that the number of failure to indemnify filings will decrease due to the change in the regulation.

- Amy Tate

Agency: Department Of Public Safety And Correctional Services
Subtitle 15 Criminal Justice Information System Central Repository
Topic: Criminal History Records Check of Individuals Who Care For or Supervise Children

On October 6, 1997, a safety regulation was enacted by the Department of Public Safety and Correctional Services which established the procedure to be followed for a criminal history records check of persons who care for or supervise children. The purpose of this regulation was to notify employers and child placement agencies of employees who may be unsuitable to work closely with children. Section 5-561 of the Family Law Article, Annotated Code of Maryland, specifically defines the categories of employers and employees who are required to obtain a criminal history records check. This includes child care centers, family day care, child care home, child care institutions, juvenile detection, correction or treatment facilities, public and private schools, foster care family homes or group facilities, and day or overnight camps. First, these individuals must fill out an application which contains their Social Security number, and other identifying information and submit it to the Central Repository. Secondly, they must submit two sets of fingerprints that must be taken on a form approved by the Director of the Central Repository and the Federal Bureau of Investigation.

In addition to the above requirements, an employee or employer must apply for a criminal history check before the first day of their employment. However, if a child is taken into the custody of the Department of Social Services and is placed with an adult relative, then an application for a criminal history check must occur five working days after the placement occurs. The processing of the application for a State and national criminal history records check is then conducted by the Central Repository in accordance with Family Law Article, sections 5-563 and 5-564, Annotated Code of Maryland.

The Central Repository screens the child caretaker's criminal history record from the Federal Bureau of Investigations for crimes such as child abuse, assault, battery, indecent exposure, sex offenses, and possession of or possession with intent to manufacture, distribute, or dispense a controlled dangerous substance. The Central Repository then sends the statement to the child caretaker's employer. This statement may not identify the particular crime or attempted crime the caretaker committed. The only information disclosed is whether the person has a charge pending, was convicted, received probation before judgment, or was held not criminally responsible for a crime or an attempted crime. This information is considered confidential, and may only be given to the caretaker who applied for the screening, the caretaker's employer, an appropriate regulatory authority, or licensed child placement agency.

In conclusion, this regulation establishes the procedures to which individuals who care for and supervise children and their employers must adhere to the application and processing of a criminal history records check. The regulation ensures that employers are aware of the criminal backgrounds of their employees before they begin work so that they may make well-informed decisions as to whether a potential employee is suitable to care for or supervise children. Additionally, it allows placement agencies to decide whether a particular placement is appropriate for the child.

- Melony Joe Ellinger