

April 13, 2023

TozziniFreire
ADVOCADOS

NEWS IN INSURANCE

Changes in SUSEP, Development Plan of the Sector, and New Steps of the Insurance Bill of Law

After the first three months of 2023, some news and events were highlighted:

- i. the changes in the Superintendence of Private Insurance (SUSEP);
- ii. the publication of the Development Plan of Insurance, Open Pension Plan, Supplementary Health and Capitalization (PDMS); and
- iii. the new steps of the Insurance Bill of Law.

Find out below the main highlights.

CHANGES IN SUSEP

Mr. Alessandro Serafin Octaviani Luis is the new Superintendent of the Superintendence of Private Insurance (SUSEP) – the insurance regulator;

Insurance sector awaits for the nomination of the new Board and the publication of the Regulation Plan of the new management.

DEVELOPMENT PLAN OF INSURANCE, OPEN PENSION PLAN, SUPPLEMENTARY HEALTH, AND CAPITALIZATION PRODUCTS

The Development Plan of Insurance, Open Pension Plan, Supplementary Health, and Capitalization Products was published on March 16, 2023, as a result of CNSeg and its associated federations (FenSeg, FenaPrevi, FenaSaúde, FenaCap, and FENACOR), and also many companies from the Brazilian insurance market.

Divided into 65 INITIATIVES, which must be promoted **by 2030**, FOUR LINES OF WORK were defined aiming to increase by 20% the population served with the various products of the insurance market, open pension plan, supplementary health, and capitalization, as well as increase revenue in indemnities and surpass the mark of 10% of the national GDP in 2030.

AS FOLLOWS ARE THE FOUR LINES OF WORK:

- Insurance Image (extension of the ESG and beneficiary basis, plus fortification of insurance study);
- Distribution Channels (commercial intelligence, broker qualification, Open Insurance);
- Products (fortification of new products, with emphasis on civil liability insurance);
- Regulatory Efficiency (flexibility with responsibility).

65 INITIATIVES:

1. Consumer at the Center of Strategy.
2. Promoting new Visibility for the Economic Activity of Insurance, Capitalization, Supplementary Health, Open Pension and the intermediation activity.
3. Encouraging the ESG agenda – ENVIRONMENTAL.
4. Encouraging the ESG agenda – SOCIAL.
5. Encouraging the ESG agenda – CORPORATE GOVERNANCE.
6. Fortification of School of Business and Insurance (ENS).
7. Extension of Telehealth.
8. Stimulation of Primary Health Care.
9. Promotion of the Conscious Use of the Health Plan.
10. Mobilization for the prevention and fight against fraud.
11. Defining the concept of embedded insurance and assessing its potency and adherence by the market.
12. Proposing a Conduct Practices Guidance Document for Embedded Insurance.
13. Disclosing Embedded Insurance.
14. Disclosing Civil Liability insurance.
15. Identifying barriers to leveraging low-income products.
16. Ensuring Compliance with the Law Related to Mandatory Insurance.
17. Identifying the barriers that influence the unreached market by Insurance.
18. Including Insurance as an Instrument to Mitigate the Credit Risk of Financial Institutions.
19. Making clear the tax treatment of Universal Life Insurance.
20. Building complementary regulations for structuring Universal Life insurance.
21. Providing communication for disclosure and explanation of Universal Life insurance.
22. Disseminating Universal Life insurance for distribution.
23. Approving the PrevSaúde legislation plan.
24. Regulating the PrevSaúde plan.
25. Providing communication to disclose the PrevSaúde plan.
26. Disseminating the PrevSaúde plan for distribution.
27. Developing more modern dishoarding models that can encourage conversion into income: “income cycles”.
28. Providing communication for dissemination and clarification of new income models: “income cycles”.
29. Disseminating “income cycles” for distribution.
30. Regulating the institution of automatic adherence to collective pension plans (CNSP Resolution).
31. Providing communication for disclosing the benefits of automatic membership.
32. Expansion of Pension Plans offered by employers in favor of their employees.
33. Personal and Pension Insurance as a Guarantee Instrument.
34. Possibility of the option of taxation, between the regressive or progressive regime, to be made by the participant upon the first redemption or granting of the benefit, whichever occurs first.
35. Reviewing the regulation of pension plans and insurance for people with survival coverage, as well as the investment rule.
36. Identifying the potential and barriers that influence the non-penetrated capitalization market.
37. Optimizing the distribution of Capitalization Products.
38. Succession Planning – Establishing the figure of the beneficiary in Capitalization Bonds.
39. Reformulation of the programmed-purchase product for greater commercialization, making the application of indexes and fees more flexible.
40. Expansion of the waiver of the documentation required to carry out the promotion in the Incentive modality to other companies inspected by other public authorities, such as Previc and ANS.

41. Match the legal treatment with regard to the requirement of documentation for promotions in the Incentive modality, including collective ones, as adopted in the SEAE approval process.
42. Draws by Own Means – Revoking Art. 43 of CNSP Resolution No. 384/2020, which prohibits the use of own means for the Incentive Modality.
43. Inclusion of Capitalization Bonds of the Guarantee Instrument modality as guarantee for public contracts, following the example of Laws No. 8,666/1993 and No. 14,133/2021.
44. Enabling the use of Instrument of Guarantee securities in short-term contracts.
45. Expanding certification options, in addition to CEBAS, to expand the scope of the Rewarding Philanthropy modality.
46. Proposal for a bill of law within the scope of the IMK.
47. Permission to offer pure outpatient plans.
48. Reviewing the regulation to admit new protocols for carrying out online sales.
49. Investing in technology incubators for a technological solution related to online sales that can be shared.
50. Organizing a database about the broker channel.
51. Stimulating broker improvement through different levels of certification.
52. Improving the study of the branches most adherent to Open Insurance to present a proposal to SUSEP.
53. Establishing partnership with School of Business and Insurance (ENS) to train intermediaries and their representatives.
54. Mobilizing SUSEP to change the legislation.
55. Self-regulation of the Insurance Brokerage, Capitalization, Open Supplementary Pension and Reinsurance Market.
56. Approval of the Law that establishes the conditions for associations and cooperatives to operate in the insurance market.
57. Regulation for Countercyclical Measures.
58. Measuring the Cost of Compliance.
59. Strengthening of SUSEP.
60. Defining the metrics to understand the benefits generated by Open Insurance and strategic debate.
61. Revision of the Co-payment and Deductible Rules.
62. Reviewing of Readjustment Rules.
63. Maintenance of the taxing nature of ANS's procedure list.
64. Improvement of the Process of Incorporation of New Technologies in Insurance.
65. Expansion of Interoperability and Adoption of Electronic Medical Records.

The full plan can be read at https://www.cnseg.org.br/data/files/A4/30/29/A4/1BAE68105F480E683A8AA8A8/PDMS%20Completo_v3.pdf.

UNFILING OF THE NEW INSURANCE BILL OF LAW

LEGISLATIVE PROCEDURE

- On March 8, 2023, the President of the Federal Senate, Mr. Rodrigo Pacheco, requested the unfileing of Insurance Bill of Law (PLC) No. 29/2017, which provides for private insurance rules and revokes the Chapter of the Brazilian Civil Code that deals with insurance (Articles 757 to 802), in addition to some articles referring to the Statute of Limitation;
- The Request presented by the Senator must be included in the Senate's Agenda for analysis and, if approved, PLC No. 29/2017 will continue its processing in the Senate, passing through the Constitution, Justice and Citizenship Commission (CCJ), and the Economic Affairs Committee (CAE);
- If approved by the Federal Senate without amendments, the matter will be sent to the Presidency of the Republic for promulgation. If there are amendments, the PLC will return to the initiating House, for analysis of the amendments presented;
- If the text is approved, the new Insurance Law will come into force one year after its publication;
- Just to remind you, the PLC has been in process since 2004 and, after a long legislative process, it was approved and sent to the Senate for analysis in 2017. In the Senate, it even received a favorable vote in 2019, but did not reach be voted on by the Commission, remaining unchanged until 2021 and being filed at the end of year 2022.

OVERVIEW

The Insurance Bill of Law has 129 articles, separated into 6 titles:

- Title I: General Provisions (Arts. 1 to 92);
- Title II: Damage Insurance (Arts. 93 to 109);
- Title III: Life and Physical Integrity Insurance (Arts. 110 to 122);
- Title IV: Mandatory Insurance (Art. 123);
- Title V: Statute of Limitation (Art. 124 to 125);
- Title VI: Final and Transitional Provisions (Arts. 126 to 129).

In the General Provisions, the bill addresses the following matters: (i) object and scope of application; (ii) interest; (iii) risk; (iv) premium; (v) contracting insurance in favor of a third party; (vi) coinsurance and cumulative insurance; (vii) intervening parties; (viii) formation and duration of the contract; (ix) proof of contract; (x) interpretation of the contract; (xi) reinsurance; (xii) claim; (xiii) claims settlement.

The articles related to damage insurance are divided into three chapters: general provisions, civil liability insurance, and transfer of interest; however, in life and physical integrity insurance, mandatory insurance, statute of limitation, and final dispositions there is no division by chapter.

In general, the Insurance Bill of Law has an extremely protectionist character for the insured and a lack of compatibility of many devices in relation to insurance of large risks and not subject to the consumerist relationship (mass risks), influence on reinsurance, in addition to strong interference in the civil procedural law.

BÁRBARA BASSANI

Insurance and Reinsurance

bbassani@tozzinifreire.com.br