



# The AAICP Compass

Newsletter of the American Association of Independent Claims Professionals

## Inside

Insurance Reform Still Ripe for Discussion..... 1

AAICP Opposes NAIC Proposed Guidelines For Workers' Compensation Large Deductible Policies... 3

Around the Country ..... 4

NAIC Update ..... 4

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## Insurance Reform Still Ripe for Discussion

Insurance reform has shown recent signs of life in the Congress, both in general terms and on specific issues important to the AAICP. On the Senate side, the Banking Committee held two hearings in July on insurance reform, focusing on S. 2509, the optional Federal charter (OFC) legislation introduced by Senator John Sununu (R-NH) and Senator Tim Johnson (D-SD). Congressman Ed Royce (R-CA) has introduced a similar OFC bill in the House, H.R. 6225. Meanwhile, the House Financial Services Committee used the summer to hold hearings on and ultimately pass H.R. 5637, the Nonadmitted and Reinsurance Reform Act authored by Congresswoman Ginny Brown-Waite (R-FL) and Congressman Dennis Moore (D-KS). H.R. 5637 passed the full House on September 27, 2006, but it has not yet been considered by the Senate.

As part of the Senate and House debates over the bills, as well as in separate recent outreach initiated on behalf of the AAICP with the staffs of approximately 20 House Financial Services Committee Members, several issues emerged that could prove particularly important to **independent adjusters**. Those developments are discussed in more detail below. The essential point, though, is that key Senate and House Members and staff are increasingly aware of adjuster licensing problems and of the AAICP's role in proposing legislative solutions to those problems. Moreover, they seem to appreciate the AAICP's willingness to work to improve the status quo regardless of whether OFC-type reform or a more state-oriented "SMART Act" approach moves forward.

### Optional Federal Charter Bill Still Standing

The Senate Banking Committee held insurance reform hearings on July 11 and July 18, 2006. Both hearings focused on S. 2509, the Sununu-Johnson National Insurance Act. If enacted into

law, S. 2509 would enable insurers and the adjusters they contract with to choose to be licensed and regulated at the Federal level, rather than by the state or states in which they operate. The AAICP has engaged in discussions with Senator Sununu and Senator Johnson's staffs to stress that adjusters should be allowed to choose state or Federal regulation under the bill, regardless of the decisions of the insurers. Both staffs recognized this point.

Senators Sununu and Johnson will have the chance to rectify that oversight because it is almost certain that S. 2509 will not pass the Congress this year. The Senators have yet to garner sufficient support for their bill in the Banking Committee or in the Senate as a whole. Therefore, the AAICP will have the opportunity to work with Senator Sununu and Senator Johnson as they move toward introducing a new version of their bill after the next Congress convenes in 2007.

Still, the recent Banking Committee hearings show that the optional Federal charter concept is alive and kicking in the Senate over the longer term. First and foremost, Senate Banking Chairman Richard Shelby (R-AL) demonstrated in the July 11th hearing that he is open to considering the Sununu-Johnson approach. In comparison, the Committee's Ranking Member Paul Sarbanes (D-MD), confirmed his doubts about an OFC, citing the potential for

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*continued on page 2*



## Insurance Reform Still Ripe for Discussion *continued from page 1*

inadequate consumer protections under a Federally-regulated system. However, Senator Sarbanes is retiring at the end of this year. His probable replacement as the top Democrat on the Committee, Senator Chris Dodd (D-CT), has kept a lower profile on the issue so far, but he seems willing to at least consider the optional Federal charter concept.

In all, partially by simply introducing their bill in advance of any possible alternatives, Senator Sununu and Senator Johnson have succeeded in framing S. 2509 as the baseline for debate in the Senate on insurance reform. Almost all Senate Banking Committee Members seem to have cleared the ideological hurdle of leaving the insurance reform debate to the National Association of Insurance Commissioners (NAIC) and the states. Having come that far, if the debate, at least for now, is largely framed as a choice between an OFC and no reform at all, the “reform” choice is winning the argument.

### House Financial Services Committee Passes Surplus Lines and Reinsurance Bill

On July 26, 2006, the House Financial Services Committee unanimously approved the Nonadmitted and Reinsurance Reform Act. H.R. 5637 sets national standards for state insurance regulations covering surplus lines carriers. The bill also advances uniformity by requiring the state where a reinsurer is domiciled to be the sole regulator of that company’s financial solvency. In the weeks leading up to the subcommittee and full committee votes on the legislation, the AAICP sent a statement of support for H.R. 5637 to the staff of every Financial Services Committee Member. The AAICP’s statement both urged support for the Brown-Waite/Moore bill and updated staff members on **adjuster licensing** issues. Again, the bill passed the full House just before Congress went out of session in late September.

Although the Brown-Waite/Moore legislation passed the House, it still faces

significant challenges in order to become law this year. Most importantly, there is little time remaining for it to be taken up on the Senate floor after Congress returns for a lame duck session following the mid-term elections. Many bills will be competing for floor time. H.R. 5637 may or may not make the final list. This tight timeline could prove particularly difficult, since the Senate Banking Committee has not yet officially considered the bill. If H.R. 5637 falls short in the Senate before Congress adjourns for the year, the legislation would have to be re-introduced after the next Congress convenes in January.

### Other Insurance Reform Developments in the House of Representatives

Despite these remaining hurdles, the fact that the surplus lines and reinsurance bill has come as far as it has shows that the House has begun to overcome some of its reluctance toward tackling insurance reform. That modest momentum could provide some tangible benefits for adjusters. Specifically, House Financial Services Committee staff has indicated that a producer/licensing bill likely would follow the nonadmitted/reinsurance bill on the insurance reform docket. The producer/licensing bill apparently would employ the model of the previous draft SMART Act, using carrots and sticks to promote greater state uniformity and reciprocity in insurance industry regulation. Moreover, the Committee staff appears comfortable with the AAICP’s proposed legislative language for that bill that would address **adjuster licensing** concerns. Still, even if the producer/licensing bill is introduced this year, there likely will not be enough time to pass it until the next Congress, at which point it would have to be re-introduced.

In addition, with the impending retirement of Chairman Michael Oxley (R-OH), the Financial Services Committee will undergo a change in leadership in the next Congress, no matter whether the Republicans or Democrats control the House after the

November elections. This change will necessitate that the AAICP continue its education efforts on adjuster licensing concerns, in order to help advance a bill in the next Congress. This will be particularly important since two of the leading candidates to be the new Chairman, Congressman Spencer Bachus (R-AL) and Congressman Barney Frank (D-MA), have not dealt with insurance reform matters as much as the other primary candidate, Capital Markets and Insurance Subcommittee Chairman Richard Baker (R-LA).

Congressman Frank likely will continue to work closely on insurance matters with the NAIC and current Capital Markets Subcommittee Ranking Member Paul Kanjorski (D-PA). The ranking Member has expressed significant interest in the OFC concept. In addition, fellow Financial Services Committee Member Ed Royce (R-CA)’s OFC bill will provide another avenue for discussion under either Republican or Democratic control. Based on the AAICP’s recent outreach with Financial Services Committee Members, though, the concept of the insurance industry being able to opt for Federal regulation initially appears to strike many Committee Members as a more radical regulatory reform than is currently necessary, although most would support an OFC over the status quo.

Still, in case the optional Federal charter approach were to gain more momentum in the House in the next Congress, the AAICP has briefed the staffs of Congressmen Royce and Kanjorski on the need to improve adjuster licensing across state boundaries. Both staffs acknowledged the importance of the issue.

Of course, if the NAIC makes substantive progress toward implementing national uniform and reciprocal licensing for adjusters, the AAICP will have reached its goal without the need for intervening federal Congressional legislation. (*See NAIC Update on pg. 4*)



## AAICP Opposes Proposed Guidelines For Workers' Compensation Large Deductible Policies

The AAICP recently filed objections to a proposal under consideration by the National Association of Insurance Commissioners (NAIC) that would establish guidelines for large deductible workers' compensation policies. These guidelines, if adopted, would change the fundamental role of third-party administrators (TPAs) in the workers' compensation system.

The "Workers' Compensation Large Deductible Study", produced in December, 2004, was the product of a joint working group consisting of the representatives of NAIC and the International Association of Industrial Accident Boards and Commissions (IAIABC). Based on the results and concerns outlined in this study, the NAIC issued draft guidelines for state regulators to employ relative to approval of large deductible workers' compensation policies. The NAIC is currently in the "review and comment" phase regarding the draft guidelines.

The proposed guidelines would, in part, place more direct responsibility of administering claims on the insurer and would limit the role of TPAs. The draft guidelines suggest that only the insurer, rather than an employer, be permitted to contract with a TPA to administer claims generated by that employer. These changes would include prohibiting employers from compensating any entity other than an insurer to settle or administer its claims. The changes also recommend that a large deductible policy should provide that the insurer must pay all deductible amounts directly to the person or health care provider entitled to such payments and then be reimbursed by the insured employer. In addition, a TPA could not assist the insurer in making such payments and could not be

directly compensated for such activity or service. Lastly, the study included a recommendation to make the NAIC TPA model act applicable to workers' compensation insurance. Currently, it only applies to life and health insurance.

In response, the AAICP submitted written comments to the NAIC joint committee opposing certain aspects of the proposed guidelines. The AAICP asserted that the proposed changes would fundamentally alter the role of TPAs in the workers' compensation system and would work to the detriment of the efficient and mutually beneficial current arrangement among insurers, TPAs, and employers.

The AAICP reminded the joint committee that insurers routinely authorize TPAs to settle individual workers' compensation obligations in today's system specifically

because insurers need to devote scarce resources elsewhere and because TPAs have the expertise to handle such issues in their stead. AAICP further asserted that insurers do not disengage from the current system as they provide oversight and undertake audits as needed.

The AAICP concluded its remarks by highlighting the fact that TPAs exist today because of the expertise they bring to the claims adjusting process and because of the financial integrity and claims payment efficiencies that they can achieve through their experience. The AAICP recommended that the draft policy promote the continued use of independent third-party administrators, rather than impede the utilization of these valued and experienced participants in the claims administration process.





## Around the Country

### Florida

The Florida Department of Financial Services recently amended Rule 69B-211.320, Florida *Administrative Code*, relating to curriculum standards for professional designations. Specifically, the changes recognize the following new designations as a means to exempt prospective adjuster applicants from having to take the state's license exam: **Professional Property Insurance Adjuster (PPIA)** from the HurriClaim Training Academy and **Certified Claims Adjuster (CCA)** from the Association of Property and Casualty Claims Professionals. The new rule establishes standards for the curriculum of such designations which must include a 40-hour-course of study that has been approved by the Department. The coursework must include comprehensive analysis of basic property and casualty lines of insurance and

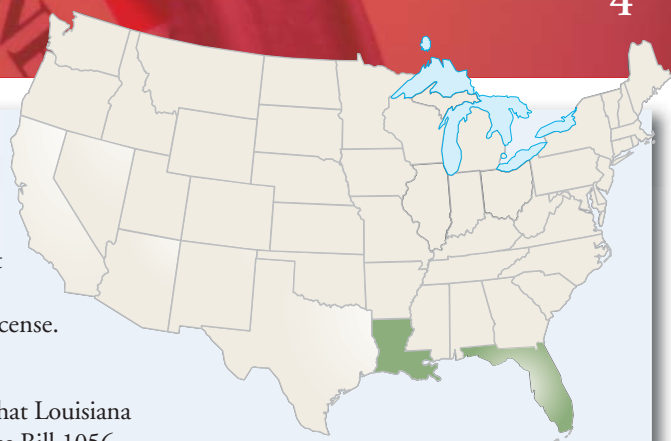
testing procedures equal to what the Department employs in testing for its all-lines adjuster license.

### Louisiana

In our last edition, we reported that Louisiana legislators were considering House Bill 1056 which would provide for licensure of certain property and casualty adjusters. The bill has since been signed by the Governor and is effective on January 1, 2007, although implementation does not begin until June 30, 2007, to allow for rulemaking necessary to implement the new law.

HB 1056 requires that claims adjusters and claims adjusting firms be licensed—renewable every two years. The bill authorizes the Commissioner to obtain fingerprints and request a criminal records check of applicants. Licensure applicants must pass an adjuster examination and pay a licensure fee set at \$55

for initial licensure and \$50 for renewal. The Department of Insurance will grant reciprocity, upon applicants meeting certain conditions, if the applicant's home state grants similar reciprocity to Louisiana residents. Twenty-four hours of continuing education, including courses in ethics, will be required every two years for individually licensed adjusters. Application materials are not yet available, however, interested persons are encouraged to periodically check the DOI's website at [www.ldi.state.la.us](http://www.ldi.state.la.us) for updated information.



## NAIC UPDATE

### Independent Adjuster Model Act Discussions

The AAICP has continued to pursue action by the state regulators regarding the development of a licensing model act for independent adjusters. The NAIC adopted such a model act for public adjusters last year, but failed to address uniformity and reciprocity issues for independent adjusters. Through continuing discussions with state licensing chiefs, the AAICP helped to move regulators closer to developing a licensing model act for independent adjusters. At the NAIC's September meeting in St. Louis, the AAICP gave a short presentation on adjuster licensing issues, obstacles and challenges. In response, the Producer Licensing Working Group (PLWG) agreed to reconstitute its

Adjuster subgroup which had been dissolved after completion of its public adjuster licensing model last year. The newly revived subgroup will be co-chaired by regulators from KY and DE and will include representatives from AK, CA, FL, NH, NY, and OK.

It is still unclear just how quickly the NAIC will act on this issue. But a significant hurdle seems to have been cleared with the reestablishment of this Adjuster subgroup. The AAICP will continue to work on parallel tracks with the NAIC and in Congress as necessary. This issue of developing a licensing model for independent adjusters is on the agenda for the next meeting of the PLWG which will be held in early November. (See *Insurance Reform Still Ripe for Discussion on pg 1*).

### Large Deductible Working Group Developments and the TPA Model Act

The AAICP has also had some recent success in spurring the NAIC and International Association of Industrial Boards and Commissions (IAIBC) to reconsider some of the potential effects of the draft guidelines issued by the NAIC's Large Deductible Working Group (LDWG) (See *AAICP Opposed Proposed Guidelines on pg 3*). While the LDWG recommended modifying the NAIC's TPA Model Act by making it applicable to workers' compensation insurance, the Producer Licensing Working Group (PLWG) articulated its concern that certain of the changes being proposed by the LDWG did not appear to be supported by adequate data. The PLWG, which is charged with maintaining the TPA Model Act, requested additional data in support of any proposed changes. Discussions regarding this issue will continue throughout the Fall and will likely be taken up at the NAIC December meeting in San Antonio.