



The AAICP Compass

Newsletter of the American Association of Independent Claims Professionals

Inside

NAIC Suspends Work on Model Law for Independent Adjusters	1
Federal Update – Insurance Reform	2
Who or What Is the NAIC?	3
Around the Country	4

Give us your feedback!

Tell us about topics of interest to you and email your comments regarding issues we've covered at info@aaicp.net. You can also visit our website and review this and previous issues of *The AAICP Compass* at <http://www.aaicp.net>.

The American Association of Independent Claims Professionals
150 South Warner Road, Suite 156
King of Prussia, PA 19406
Email: info@aaicp.net

NAIC Suspends Work on Model Law for Independent Adjusters

Almost eighteen months after executive leadership of the National Association of Insurance Commissioners (NAIC), determined that the development of a model act for licensing independent adjusters was an appropriate endeavor for state insurance regulators, work was suspended on just such an effort. After applying recently developed criteria to the project and following months of drafting and dialogue among industry representatives and state licensing chiefs, the NAIC's Producer Licensing Working Group (PLWG) recommended against further development of the "Independent Adjuster Licensing Draft" model act which would have fostered greater uniformity and reciprocity among states' adjuster licensing laws.

As a prelude to this decision, and just days before the NAIC's National Meeting was to convene in San Francisco, the PLWG met by teleconference to discuss new procedures, only recently established by the Executive Council of the NAIC, governing the development of all new model acts by NAIC committees.

For a quick refresher on the NAIC and its role with regard to the development of Model Acts, see an excerpt from our May 2005 edition of *The AAICP Compass* on page 3.

New Rules Applied to Work Already in the Pipeline

The published agenda for the teleconference proposed 30 minutes for a discussion that was limited to regulators. While interested industry parties were allowed to listen, they were not permitted to participate in the dialogue. The chair of the PLWG convened the teleconference by stating that the purpose of the call was to discuss new procedures for model act development and specifically, the latest draft of the **Independent Adjuster Licensing model**. The chair explained



that a vote of the regulators would be taken at the end of the discussion to determine whether the Working Group should recommend to its parent committee that the Independent Adjuster Licensing draft should be further considered as a model act or be established as "guidelines." After discussion among regulators from various states, the call concluded with a decision not to recommend further work on the model act in favor of recommending non-binding guidelines upon which states could base their respective adjuster licensing laws.

"Hasn't That Train Already Left the Station?"

The new NAIC rules provide that a Committee, Task Force, Working Group or Subgroup may discuss the issue of developing a model law but may not devote resources to actual development or drafting of a model law until it receives approval of the Parent Committee and Executive Committee. With regard to the Independent Adjuster Licensing Model, some are scratching their heads and asking: "Hasn't that train already left the station?"

By way of background, the Working Group's co-chair explained to other fellow regulators that the new procedures were established to confirm that any model laws developed would

continued on page 3



Federal Update – Insurance Reform

As expected, the new Democratic-led Congress has begun to change the direction of insurance reform issues. House and Senate leaders, including the Chairmen of the House Financial Services and Senate Banking Committees, are generally focused on other matters at present.

To the extent the new House and Senate leadership is focused on insurance reform, there are still no clear-cut objections to Congressionally-spurred licensing uniformity and reciprocity. On another front, others in the 110th Congress, notably including Senate Judiciary Committee Chairman Patrick Leahy (D-VT), Senate Judiciary Committee Ranking Member Arlen Specter (R-PA), and Senate Minority Whip Trent Lott (R-MS), are willing to explore a full or partial repeal of the McCarran-Ferguson antitrust exemption for insurance regulation.

Senate Banking Committee Chairman Chris Dodd (D-CT) and House Financial Services Committee Chairman Barney Frank (D-MA) have kept to their plans to concentrate initially on areas under their jurisdiction other than insurance reform.

Housing policy and predatory lending issues have jumped to the forefront of their respective agendas. However, both the Senate and House have examined the role of the insurance industry in the post-Katrina rebuilding effort. Suffice it to say that reviews generally have been unfavorable, thereby leading Senator Lott and others to call for McCarran-Ferguson repeal.

The Senate Banking and House Financial Services Committees also have begun to focus on Terrorism Risk Insurance Act (TRIA) reauthorization. Congress still appears to support the concept of a Federal terrorism insurance backstop, but skepticism from the Bush Administration might lead to only a temporary extension of the TRIA program.

On May 24, 2007, Senator John Sununu (R-NH) and Senator Tim Johnson (D-SD) reintroduced their Optional Federal Charter (OFC) legislation, the National Insurance Act (S. 40). S. 40 is essentially the same as last year's OFC legislation. However, the new Sununu-Johnson bill adds surplus lines insurance to the types of insurance eligible

for a Federal charter under the legislation. Banking Chairman Dodd has not expressed a desire to move quickly on S. 40. Moreover, Senator Johnson, who suffered a stroke last December, is not yet back to work full time.

On the other hand, House Financial Services Chairman Frank appears more open to OFC legislation than in the past, as long as Federal oversight includes what he deems to be sufficient consumer protections. Financial Services Insurance Subcommittee Chairman Paul Kanjorski (D-PA) has expressed a willingness to support an OFC for life insurance and not property and casualty lines to this point. Still, no OFC bill has been introduced in the House in the new Congress to this point, although Congressman Ed Royce (R-CA) is expected to do so in June.

The AAICP will continue to monitor developments in the Congress on insurance reform, including the progress of the OFC legislation and other bills such as the surplus lines legislation, H.R. 1065 and S. 929. Watch this column for updates on current events in the Congress.





WHO OR WHAT IS THE NAIC?

Excerpt from May 2005 AAICP Compass

The NAIC is a voluntary association, rather than a governmental agency, comprised of insurance regulators from the 50 states, the District of Columbia and the four U.S. territories and was established to better coordinate the oversight of insurance companies transacting business in multiple states. One of the first major projects undertaken by the NAIC was the development of uniform financial reporting standards for insurers.

The NAIC meets quarterly to evaluate ongoing and emerging insurance issues. The vast majority of its work is conducted through a standing framework of committees made up of senior policy makers and technical staff from various state insurance departments. These committees are organized to address major industry areas such as life insurance and annuities; health insurance; property and casualty insurance; market conduct regulation; consumer affairs; and financial conditions. In

addition, numerous working groups are formed on an ad hoc basis to focus on specific issues that fall under the umbrella of a parent committee.

A common task among all NAIC committees is the development and updating of model insurance laws. The NAIC, in collaboration with interested industry parties develops and publishes model laws, and other guidance documents in an effort to promote more standardized regulation of the business of insurance. The NAIC has developed over 260 models including acts governing insurance companies, third-party administrators, managing general agents and unfair claims settlement practices. Although the NAIC has no lawmaking authority, the model language it produces represents consensus among insurance regulators regarding standards generally considered appropriate for the industry nationally. Ultimately, however, state legislatures have the discretion to adopt a model act or amend before adoption.

NAIC Suspends Work on Model Law for Independent Adjusters

continued from page 1

be adopted and used by a majority of the states. According to materials published by the NAIC, the new procedures require that the “issue that is the subject” of the model law “necessitate a national standard” and require “uniformity amongst all states.” In addition, the new rules require that NAIC members, i.e., state insurance commissioners, be “committed to devoting significant regulator and association resources to educate, communicate, and support a model that has been developed by the membership.”

Regulator Deliberations

During the PLWG’s teleconference, one regulator noted that while new guidelines require that a model act is required to

be adopted within a three-year period, they do not require adoption by all states. Thus, the fact that only 32 states currently require licensure of independent adjusters should not necessarily result in a decision not to advance the current draft forward for adoption as a model act of the NAIC. Another regulator specifically suggested that it would be “appropriate to move forward” with the draft toward adoption as a model law. Other regulators expressed concerns about whether their states would endorse the adoption of the model act. At least one regulator acknowledged that although the current draft might be adopted as a model act, he would not have the ability to set legislative priorities and could

not guarantee that an adjuster licensing model act would be adopted by his state’s legislature. Another regulator speculated that because his state already has ten different classes of independent adjusters, (yes, ten!) that changing the status quo of licensing adjusters in his state could prove challenging.

The AAICP will remain engaged in this process in an effort to further the work already achieved and to advance a more meaningful and streamlined process for licensing independent adjusters who support insurers and self-insureds with insureds and claimants throughout the country.



Around the Country

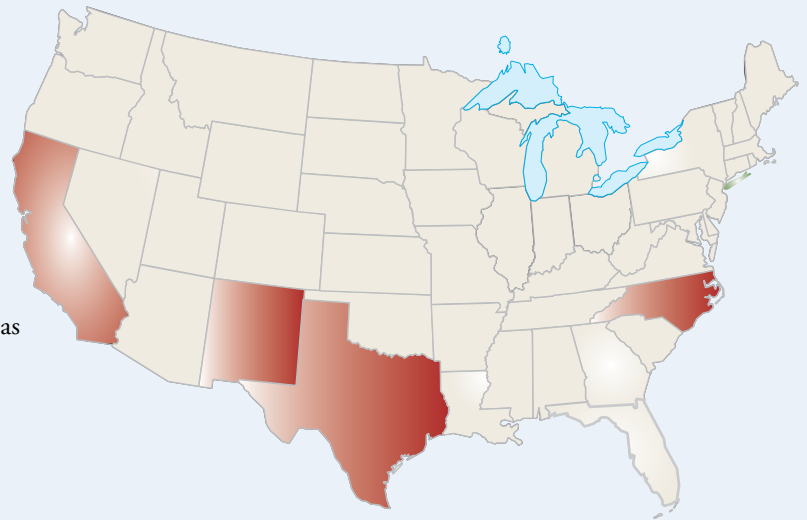
California

The California Division of Workers' Compensation (DWC) has recently adopted regulations to outline how the division will investigate employers' and insurers' compliance with the new Labor Code for utilization review of workers' compensation medical treatment. The regulations also set forth penalties for noncompliance with the requirements.

For claims administrators, a "routine" investigation will be initiated at each claims adjusting location at least once every five (5) years and will be done concurrently with the profile audit review done pursuant to related provisions of the Labor Code. The investigation must include a review of a random sample of requests for authorization received by the claims administrator during the three most recent full calendar months preceding the date of the investigation. The investigation may also include a review of any credible complaints received by the Administrative Director since the time of the previous investigation. A "return target" investigation will be conducted within 18 months of the date of any previous investigation if the performance rating was less than 85%. An investigation must include, but is not necessarily be limited to, "the practices, files, documents or other records, whether electronic or paper, of the claims administrator, and any other person responsible for utilization review processes for an employer." These new regulations became effective on June 7, 2007.

New Mexico

In a bill containing various changes to the Insurance Code, the New Mexico legislature recently passed Senate Bill 350 eliminating the requirement for an adjuster to maintain an office within that state. The new law, effective June 15, 2007, amends Section 59A-13-9 entitled "PLACE OF BUSINESS" and now provides that a licensed adjuster must maintain a "principal place of business that is easily accessible to the public and is the place where the adjuster principally conducts transactions under the license." This change will allow nonresidents to handle New Mexico claims from any state so long as it is from a location where they engage in most of their New Mexico claims activity and it is open to the public.



North Carolina

House Bill 665 is currently pending in the North Carolina House Insurance Committee and proposes to amend the Insurance Code governing the holding of an adjuster and agent's license simultaneously. Current law prohibits a licensed adjuster from concurrently holding an agent's license in North Carolina. While the bill would not materially change this prohibition, it seems to provide for a streamlined method of converting from one type to another without having to demonstrate one's qualifications a second time. Specifically, the bill states that an individual that holds a property and liability agent's license may apply for an adjuster license without having to take the adjuster license exam if the individual applies for the new license within 60 days of surrendering the agent's license. It is not clear from the legislation as to whether such an individual would be permitted to similarly re-qualify, again, for a property and liability agent's license without further examination if he or she surrenders the adjuster license and wishes to resume activities as a licensed property and liability insurance agent. North Carolina's legislature will be in session until early August. We will report the outcome of this legislation in a future edition of the AAICP Compass.

Texas

House Bill 34 was recently adopted by the Texas Legislature and adds a new provision to the Labor Code prohibiting an insurance adjuster, case manager or other person granted authority under the Workers' Compensation Act, from offering, paying, soliciting or receiving an improper inducement in exchange for the referral of medical or case management services relating to a workers' compensation claim. Such a violation is designated to be a "Class A Administrative" violation, which is punishable by an administrative penalty of up to \$10,000. The new law becomes effective September 1, 2007.