

Legislative & Regulatory Update

January 2010

NAIC Winter Meeting Summary

Health Care Reform

The NAIC held a special hearing on health care reform issues. The hearing was broken into five segments:

- An overview of the federal proposal with a focus on the open issues between the Senate and the House proposals;
- A consumer panel featuring AARP and Consumers Union that discussed how Commissioners can engage in outreach and education efforts to ensure that states understand changes that are coming to the health insurance market;
- A provider and payor panel featuring Delta Dental Plans Association, the American Medical Association, America's Health Insurance Plans and the Blue Cross Blue Shield Association that addressed insurance market implementation and provider workforce issues as well as what steps the NAIC and states will need to take if health care reform passes;
- A producer panel featuring the National Association of Health Underwriters and the Massachusetts Commonwealth Connector that discussed issues relating to the development and implementation of health insurance exchanges; and
- A panel featuring the American Academy of Actuaries and the National Association of State Comprehensive Health Insurance Plans that discussed transition issues and the use of high risk pools to provide immediate coverage.

Health Information Technology

The NAIC will be examining how expenses for health information technology and other cost containment items should be classified as an accounting expense. The issue arose when the vendor of a hand-held prescription device requested that the expense of its technology be classified as part of claim cost rather than as an administrative expense. The classification of expenses takes on new urgency with Congress and state legislatures looking at mandating high minimum loss ratios and/or caps on administrative expenses. The NAIC decided it will not look at the issue on a vendor-per-vendor basis but rather will conduct an overall review of the issue.

Policy Rescission Survey

The NAIC released a draft copy of the findings from its policy rescission survey. To the disappointment of the consumer representatives, and at least a few regulators, the report found that “overall, the rescission rate for the industry (based on the sampling) seems to present no issues on an industry wide scale.” The NAIC is taking comments on the draft report and it is expected that the NAIC will complete the report at the spring meeting.

Third Party Administrators Model Act

The NAIC is in the process of amending its Third party Administrators Model Act. In doing so, the drafters of the amended model have significantly expanded the scope of the model act. As amended, the model would require insurers that provide TPA services to comply with the model act provisions including licensing, financial requirements and reporting.

Under the original model act, insurers could operate as TPAs under their insurance license. As a result of industry concerns the NAIC agreed to make revisions to the amended model. The revisions are not yet completed.

Canada:

Amendment to Part XIII of the Insurance Companies Act:

Effective 1/1/2010, Canadian Insurance Law requires that non-Canadian Insurance Companies include the following notice in all applications for insurance (all lines), all insurance documents (policies and certificate), and premium notices sent to residents in Canada:

For purposes of the Insurance Companies Act (Canada) this document was issued in the course of ABC company’s insurance business in Canada.

States Issues

Alaska:

H93 Direct Response: Telemarketing

Defines “telephone solicitation” to include solicitation by a person on the customer’s cellular or mobile phone.

Arkansas:

Rule 97

Effective 1/1/2010, implements a replacement regulation that follows the NAIC Model except for the additional requirement of a comparison memorandum. On December 23, 2009, the Arkansas Insurance Department issued a letter clarifying Rule 97. The department indicated that where insurance is solicited by direct response the comparison memorandum referenced in Rule 97, Section 8(b)(3) is not required provided the material does not encourage, induce, or solicit the replacement of existing contracts.

The comparison is required when an agent is involved in the sale.

California:

- S40 Display of Social Security Numbers

Effective 1/1/2010, a document containing more than the last 4 digits of a Social Security number is not entitled for recording.

- S54 Same Sex Marriage: Out of State Contracts

Effective 1/1/2010, recognizes same sex marriages if they were valid in the jurisdiction in which the marriage was contracted.

- A285 Electronic Signature

Effective 1/1/2010, eliminates requirement to satisfy federal Electronics Signature in Global and National Commerce Act.

- A1094 Privacy: Disposal of Personal Information

Effective 1/1/2010, provides guidelines for the disposal of customer records containing personal information and the control of such information.

- S98 Life Settlements

Effective 10/2009, California enacted legislation amending life settlement laws by including new provisions prohibiting brokering or soliciting life settlements without a license, outlining the requirements for a license, establishing disclosure requirements when soliciting life settlements and establishing requirements for keeping the insured's medical and financial information confidential.

Colorado:

- Emergency Regulation 08-E7

Repeals Reg. 08-E7 which required the disclosure of compensation at the time sale, including direct marketing sales.

Connecticut:

- S899 Domestic Partners

Effective 4/23/2009, recognizes same sex couples and provides for the merger of existing civil unions into marriages.

- H5019 Health Ins: Prescription Drugs

Effective 1/1/2010, prohibits use of prescription drug history in medical underwriting for health coverage.

DC:

General Statutes

Recognizes same sex marriages that were legally entered into in other jurisdiction and recognizes domestic partnerships.

Idaho:

Bulletin 09-08 Effective 1/1/2010, state regulated health and disability insurers will be required to offer external reviews of some types of claim denials.

Maine:

S384 Domestic Partnership Effective 9/12/2009, repeals provision limiting marriage to one man and one woman.

Maryland:

S8 Unfair and Deceptive Practices Limits on Gifts Effective 10/1/2009, increases limit on acceptable gifts from \$10 to \$25.

Bulletin 10-01

Repeals Bulletin 09-31 on the acceptance of credit or debit cards for premium payments. Also leaves in effect previously issued bulletin 98-15 regarding the acceptance of credit cards for premium payments.

Michigan:

Form Filings No longer Exempt in Michigan

The Michigan Insurance Department (OFIR) has recently published Order 10-005-M, which rescinds a 1997 order which exempted most contracts and other documents from filing requirements. The new Order applies to all policies purchased for personal, family and household purposes, which includes group and individual life and health insurance. The Order applies to all new or revised forms as of August 1, 2010.

The order does not apply to forms currently in use. First Consulting & Administration has been informed that at some future date the OFIR will require the re-filing of existing forms. The timing and procedures for such are yet to be determined.

Each company should make their own determination as to whether Michigan laws are extra-territorial as it pertains to coverage issued to Michigan residents under group policies issued outside the state of Michigan.

Missouri:

S.B. 126 Travel Underwriting Prohibited

Effective 8/2009, no insurer can refuse to accept an application for life insurance or charge a surcharge based on a person's past or future lawful travel.

Montana:

SB141 Franchise Disability

Repeal the franchise disability insurance statute and outlines the withdrawal process for existing franchise disability policies.

Nevada:

SB283 Domestic Partners

Establishes civil unions and recognizes same sex marriages that were valid on the state were contracted.

New Hampshire:

• HB436 Same Sex Marriages

Marriage is the legally recognized union of two people.

- S46 Group Life Insurance Changes the definition of group life insurance.

New York:

SB6030 Dependent Age

Instate Major Medical, Hospital Indemnity, and Specified Disease policies must define dependent child as an unmarried child through age 29 regardless of financial dependence.

Ohio:

Bulletin 2009-13 – Gifts

Promotional items with or value of \$50 or less are permitted.

Oregon:

H.B.2589 Hearing Aids

Requires coverage for hearing aides up to \$4,000 every 48 months.

Rhode Island:

Ins. Code 27-29-13.3

Fraud notice requirement implementation extended to 3/31/2010.

Tennessee:

Rule 1220-04-11.08 Telephone Solicitation Requirements

New rules regarding automated dialing and announcing devices (ADAD).

Texas:

• HB806 Prosthetics Orthotics

Effective 1/1/2010 mandates coverage for prosthetics and orthotics.

• Rule 28TAC 21.4801 Noninsurance Benefits

Effective 1/4/2010 establishes requirements for insurers for noninsurance benefits (such as discount prescription cards) that are provided or disclosed as part of an accident and health, annuity or life insurance policy.

Vermont:

S115 Same Sex Marriages

Effective 9/1/2009 Recognizes legal equality in civil unions.

Wisconsin:

S.B. 27 Hearing Aids

Effective 1/1/2010 mandates coverage for the cost of hearing aids and cochlear implants.