



US Supreme Court Upholds the Majority of the Affordable Care Act

by Kara Baysinger and Keith Woodeshick

Introduction

On June 28, 2012, the United States Supreme Court (the “Court”) issued its decision regarding the constitutionality of President Obama’s health care reform law, the Affordable Care Act. In its ruling regarding Obama’s signature domestic policy achievement, authored by Chief Justice John Roberts in a 5-4 decision, the Court declared that the majority of the law was constitutional, a ruling that ensures continued implementation of the law.

Interestingly, the Court did not rule that the individual mandate was constitutional under the Commerce Clause of the Constitution, but under the taxing authority vested by the Constitution to Congress. A different 7-2 majority of the Court did find that the Medicaid expansion as written would have been unconstitutionally coercive, but the Court remedied that problem by removing the ability of the federal government to take away existing Medicaid funding if states do not expand their programs in accordance with the Affordable Care Act’s requirements. The decision thus could impact the ability of nearly 16 million individuals expected to receive health insurance coverage under the Medicaid program if individual States choose not to expand their Medicaid programs. These individuals might be able to obtain coverage through the health insurance exchanges.

The Court’s decision will have far-reaching impacts on the US health



care system, employers, businesses, and consumers, and the upcoming November 6 elections.

The Court ruled on the following issues:

- **Anti-Injunction Act** – The statutory construction of the penalty imposed on those who do not have insurance did not render it a “tax” for purposes of the Anti-Injunction Act.
- **Individual Mandate** – The Court upheld the penalty for failure to obtain health insurance as a constitutional use of Congress’s taxing powers, effectively upholding the individual mandate.
- **Severability** – The Court did not need to rule on the issue of severability due to upholding the individual mandate.
- **Medicaid Expansion** – The Court found the Medicaid expansion to be constitutionally coercive of states but invalidated the federal government’s ability to withhold existing Medicaid funds for states that choose not to comply with the Affordable Care Act’s Medicaid expansion.

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MARK YOUR CALENDAR

November 7-9, 2012
MCM Designation Course
Atlanta, GA

March 4-6, 2013
MCM Designation Course
New York City, NY

April 28-30, 2013
IRES Foundation School
Savannah, GA



Background on the Affordable Care Act and lawsuit

On March 23, 2010, President Obama signed into law the Patient Protection and Affordable Care Act (Pub. L. No. 111-148). One week later, the Health Care and Education Reconciliation Act of 2010 (Pub. L. No. 111-152) was enacted. Together, these two laws comprise the Affordable Care Act. The Affordable Care Act was aimed primarily at decreasing the number of uninsured Americans and reducing the overall costs of health care by providing incentives (including subsidies, tax credits, and fees) to employers and individuals in order to increase the coverage rate. In addition, the Affordable Care Act required insurance companies to cover all applicants and offer the same rates regardless of pre-existing conditions or gender.

Twenty-six states brought suit against the Department of Health and Human Services (“HHS”) challenging the constitutionality of the law, among dozens of other lawsuits that were filed across the country. Over three days in March 2012, the Court heard an unprecedented six and a half hours of oral argument to determine the constitutionality of the law. The following reviews the key issues debated before the Court and its final disposition.

Anti-Injunction Act

The Anti-Injunction Act prevents a taxpayer from challenging a tax in court before the taxpayer has been assessed the tax. The individual mandate becomes effective in 2014 and penalty payments will not be collected by the Internal Revenue Service until 2015. The Court construed the Anti-Injunction Act (“AIA”) narrowly, holding that the statutory construction of the penalty imposed on those who do not have insurance did not render it a “tax” for purposes of the AIA. Nevertheless, as noted below, the Court also held that the nature of the penalty and its imposition were both constitutional and within Congress’s power under its taxing authority.

Individual Mandate

The Affordable Care Act requires most US citizens to obtain acceptable health insurance coverage (i.e., “minimum essential coverage”), effective January 1, 2014. The individual mandate will be enforced by imposing annual penalties on individuals who fail to demonstrate that they have obtained and maintained minimum essential coverage throughout a given year. The Court concluded that the penalty for failure to obtain health insurance is a constitutional use of Congress’s taxing powers.

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Severability

The Affordable Care Act does not contain a severability clause. The Court was therefore tasked with determining whether certain parts of the law are not severable from the individual mandate (and thus must fall with the mandate), or whether the individual mandate is severable from all other provisions of the Affordable Care Act. Because the Court upheld the individual mandate, however, it was not required to, and did not rule on, the issue of severability.

Medicaid Expansion

Under the Affordable Care Act, beginning January 1, 2014, states must provide Medicaid coverage to individuals and families below 138% of the federal poverty level. The federal government will cover 100% of the added cost in 2014, 2015, and 2016. States will be required to cover 5% of the cost in 2017, transitioning to 10% in 2020 and beyond. While the Court concluded that the expansion of Medicaid is unconstitutionally coercive, it resolved that issue by eliminating the federal government’s ability to withhold existing Medicaid funds for states that choose not to

comply with the Affordable Care Act’s Medicaid expansion.

Sector impact of Court’s decision

Health care sector

Insurance companies – The individual mandate was a compromise to the insurance reforms that require companies to offer coverage to all applicants regardless of health status, age, and without lifetime or annual limits on medical benefits (among other reforms). Insurance companies argued that without the mandate, people would wait to get insurance once they needed it, taking younger and healthier people out of the insurance pool and substantially raising premiums. Because the mandate was held constitutional, insurance companies stand to gain younger and healthier enrollees.

Medicare providers – In general, most providers who treat Medicare beneficiaries received provider reimbursement cuts to help pay the Affordable Care Act’s coverage expansions. The law also contains numerous delivery system reforms and pilot programs designed to increase the quality, and reduce the cost of, care. The Medicare provisions of the Affordable Care Act remain in place, including the continued implementation of the Medicare Shared Savings Program and Pioneer Accountable Care Organizations.

Hospitals – The hospital trade associations agreed to annual Medicare reimbursement cuts and reduced Medicare and Medicaid DSH payments in exchange for an expected influx of newly-insured patients and reduced uncompensated care. While hospitals will gain newly-insured through private insurance, the number of estimated Medicaid beneficiaries may be lower in practice.

Pharmaceutical manufacturers – The prescription drug industry agreed to various reimbursement and monetary changes under Medicare and Medicaid, similar to the hospital industry, with the belief that the 32 million newly-insured individuals would equate to greater volume to offset

any loss associated with these changes. These provisions include increased Medicaid drug rebates, expansion of the 340B drug discount program, and the Medicare Part D “Coverage Gap Discount Program,” which eventually will fill in the Part D doughnut hole. If fewer Americans are insured due to the Medicaid expansion than previous estimates, pharmaceutical manufacturers will lose more customers, yet pay fewer Medicaid rebates.

Medicare Advantage organizations – Medicare Advantage plans received substantial cuts, most of which have not been fully implemented. To date, the cuts that have been realized have not resulted in fewer Medicare Advantage enrollees and a controversial quality bonus program has offset a non-inconsequential percentage of these cuts. Medicare Advantage plans will continue to see implementation of the Affordable Care Act.

The Court’s decision and the continued politicization of the Affordable Care Act ensures that health reform will continue to play a role in the November 6 elections.

Medicare Part D plans – The Medicare prescription drug benefit (Part D) did not see substantial negative changes under the Affordable Care Act. The closing of the doughnut hole and offering 50% discounts on brand name drugs under the Coverage Gap Discount Program come at the expense of the pharmaceutical industry. Medicare Part D plans will continue to see implementation of the Affordable Care Act.

Medicaid program and Medicaid managed care plans – The Medicaid expansion under the Affordable Care Act is estimated to be responsible for half of the newly-insured once the law is fully implemented. As states increasingly rely on managed care to help control

the costs of their Medicaid programs, these organizations stand to gain millions of new customers. Because the Court invalidated the penalty for states that do not comply with the Medicaid expansion, it is unclear whether certain states (especially the ones objecting to the Affordable Care Act) will expand their Medicaid programs, despite the fact that these expansions are largely funded with federal dollars. A reduced Medicaid expansion would result in fewer enrollees for Medicaid managed care plans.

Medical device manufacturers – The Affordable Care Act imposes a 2.3% excise tax on manufacturers and importers of medical devices. This provision was designed to raise revenue to help pay for the coverage expansions under the law. This excise tax will go into effect in 2013, unless Congress intervenes with legislation.

Taxes

The Affordable Care Act contains many new taxes on health care industry sectors and wealthier taxpayers. As with the provider cuts and other non-health related provisions in the law, these new taxes are designed to increase revenue to pay for the increased costs of providing health insurance to 32 million people (namely, the Medicaid expansion, premium tax credits, and cost-sharing reductions). These taxes, including the Court’s determination that the individual mandate’s penalty is a tax, will go into effect as originally scheduled absent congressional action.

Small businesses

The Affordable Care Act creates health insurance exchanges to operate in each state beginning in 2014. Within each health insurance exchange is a small business health options (SHOP) exchange, tailored to provide coverage to small businesses. The Affordable Care Act also contains a tax credit for certain small businesses to offset the cost of providing coverage. Small business employees will be required to obtain coverage even though their employers are not required to offer coverage. These provisions remain in effect.

Large employers

Employers with greater than 50 employees will be required to provide acceptable health insurance to their employees beginning in 2014 (and their employees will be required to accept it). Employers also will be required to report on numerous elements of the health coverage offered to employees. These provisions remain in effect.

Consumers

Many of the health insurance reforms are geared toward making health insurance accessible to any prospective consumer. Subsidies, the exchanges, the Medicaid expansion, and delivery system and insurance reforms, among other provisions of the law, are designed to make health insurance coverage affordable for consumers. While the mandate, subsidies, and delivery system and insurance reforms remain constitutional, the penalty mechanism for states that do not expand their Medicaid programs was removed. Thus, while the Medicaid expansion remains in effect, the federal government may not penalize states by withholding funding for a state’s entire Medicaid program.

It is unclear what impact this will have on states (i.e., whether they will refuse to expand Medicaid), and the subsequent impact on such a state’s consumers. To date, at least five governors, in Texas, Mississippi, Florida, Louisiana and South Carolina, have indicated that they will not expand Medicaid and other states still remain undecided (e.g., North Carolina).

Political impact of decision

The Affordable Care Act was one of the key political issues impacting the 2010 mid-term elections and a large factor assisting the Republican takeover of the House of Representatives. The Court’s decision and the continued politicization of the Affordable Care Act ensures that health reform will continue to play a role in the November 6 elections. The congressional response to the Court’s decision and whether President Obama

remains in office or the Romney administration comes to power in 2013 will shape the future of health care reform. Because of the Court's holding, both sides of the aisle and stakeholder groups of every stripe will step up their efforts to translate the Court's decision into an electoral victory. The outcome of this strategy is a complete unknown as most political observers expect the economy to

primarily dictate who wins and who loses the elections. ■

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The 2013 Forecast for State Health Insurance Regulators

by Christina Lechner Goe, JD

What happens to the state regulation of health insurance now that the U.S. Supreme Court has upheld the Patient Protection and Affordable Care Act of 2009 (ACA) (Public Law 111-148)? The ACA encourages the states to continue their role as the primary regulator of the health insurance market. However, the states must first adopt the minimum requirements of the ACA. The preemption provisions in the Health Insurance Portability and Accountability Act (HIPAA) are mirrored in the ACA. Therefore, if a state wants to continue fully regulating health insurers, it must adopt the minimum provisions of the ACA.

The preemption provision in the ACA states:

“Nothing in this title shall be construed to preempt any State law that does not prevent the application of the provisions of this title.” [§ 1321 (d)]

In practice, this federal statute allows states to enforce state laws that afford the same or greater consumer protections, but preempts state laws that fall below that federal “floor” of protection. The

preemption provision ensures that there will be a federal minimum standard of protection across the country, no matter where a citizen resides. The ACA also provides for federal “fallback” programs, such as the federal high risk pool and the federally facilitated exchange (FFE), which are implemented if a state declines or is unable to put those programs in place.

If a state fails to adopt or enforce the minimum standards of the ACA, the Center for Medicaid Medicare Services (CMS) may enforce those laws in that state in a variety of ways, as described in 45 CFR 201, et seq. When a few states failed to implement the minimum requirements of HIPAA, CMS set up enforcement offices in those states (notably Missouri). After the immediate market reforms of the ACA went into effect in September 2010, almost every state department of insurance (DOI) sought voluntary compliance from insurers through the policy form review process, even though those reforms had not yet been incorporated into state law. That effort was coordinated through the National Association of Insurance Commissioners (NAIC) and the System for Electronic Rate and Form Filing (SERFF). In January 2014, the majority of the most significant ACA reforms

become effective, such as guaranteed issue in the individual market, adjusted community rating, and the prohibition of pre-existing condition exclusions. DOIs will be faced with finding a way to ensure compliance with extensive and comprehensive legal reforms. If they do not, they may have to deal with the consequences described in 45 CFR 201 et seq. Seeking voluntary compliance from insurers is one solution, but it may not provide a permanent fix.

Now that the ACA has been upheld by the highest court, states must decide how to move forward.

Despite political uncertainties, the ACA remains the law. Normally, when federal health insurance law changes, DOIs move forward with efforts to adopt the minimum provisions of federal law into state law through a legislative or rule-making process. After HIPAA passed, its provisions were adopted in the vast majority of states within two years. Because of the political climate that exists as 2013 approaches, passing legislation to adopt ACA requirements may not be immediately possible in some states. Many DOIs

may not be able to fully enforce legal provisions that exist only in federal law. State regulators will be placed in a difficult position if state health insurance law is widely preempted in 2014. DOIs may move forward, reviewing rates and forms and engaging in market conduct and consumer complaint resolution activities by applying the minimum standards of federal law because their own state's laws have been rendered partially unenforceable. However, the state regulator's box of enforcement "tools," such as fines, cease and desist orders, and actions against a license, are usually effective only when applied to state law and often cannot be used to enforce federal law. DOIs may be forced to seek voluntary compliance from insurers for an extended period of time until the conflicts between state law and federal law can be resolved through appropriate legislation. In the meantime, CMS may step in, particularly through the operation of the FFE.

The NAIC is moving forward with model law changes to incorporate the 2014 ACA reforms. A state may use those models as a guide if it chooses to legislate changes to state law.

DOIs must also determine how to interact with the exchange authority in the state, regardless of whether it is a state-based exchange or an FFE. In 2014, individuals seeking individual insurance coverage must apply through an exchange in order to be eligible for federal tax credits or cost-sharing reductions. Small employer group coverage may be purchased through a SHOP exchange. Federal assistance is available in the individual market for families that have incomes up to 400% of the federal poverty level and are not eligible for employer group coverage. In many states, a large percentage of the population is below that threshold, and all of those individuals will necessarily seek coverage

sold through an exchange. Exchanges will sell only "qualified health plans" (QHPs). The process for certifying a qualified health plan tracks very closely with the rate and form review and approval process already conducted by most DOIs. Form approval must occur in most states before QHP certification can be obtained. In 2014, every individual and small employer group health plan must meet the essential health benefits benchmark and conform to actuarial value requirements (bronze, silver, gold or platinum), regardless of whether it is sold inside or outside the exchange. If a DOI wishes to ensure that insurers in their state meet the minimum federal requirements, it must review all individual and small group products for those standards.

In order to avoid duplicative regulation, additional administrative costs for insurers and premium-payers, and possible legal conflicts resulting from dual regulation, many DOIs are evaluating whether they can perform the QHP certification function on behalf of the exchange by utilizing existing insurance department authority and established processes. The NAIC is facilitating this process for interested states. DOIs may pursue this option through a partnership agreement with the FFE or a state-based exchange may delegate the authority to perform this exchange function to the DOI. QHP certification may require the DOI to collect and verify issuer data and supporting documentation that goes beyond the normal rate and form review process, such as information pertaining to accreditation and discriminatory benefit design. The timeframe for QHP certification will begin as soon as January 2013. In order to be ready for open enrollment in the exchange on October 1, 2013, QHPs should be certified by mid-summer 2013.

All insurance department divisions may be affected by ACA implementation.

New health insurers will enter the major medical market, such as the healthcare co-ops created by the ACA and the multi-state health insurers that contract with the Office of Personnel Management to operate in all 50 exchanges. Those insurers may need to obtain new certificates of authority. Other health insurers, many of whom were only marginally active in major medical, may exit that market. All major medical health insurance forms and rates (inside and outside of the exchange) must be revised, filed, and approved. However, there may be fewer products to review because forms and rates will necessarily become more uniform. Rates may experience turmoil and be difficult to review as the market adjusts to community rating, especially before the full impact of reinsurance, risk adjustment, and risk corridors is known. More consumers will be seeking assistance to help them understand their new options.

Time is very short and, because of political turmoil and pending elections, the path to achieve compliance still seems uncertain. However, those of us charged with protecting insurance consumers and upholding the law must move forward, despite the uncertainty. It is clear that State insurance departments will be very busy in 2013, no matter what approach is taken. ■

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The Affordability and Workability Challenges Ahead

by Candy (Colleen M.) Gallaher

Regulators and health plans share a common goal: an efficient, effective, competitive, and robust health insurance market. As implementation of the Affordable Care Act (ACA) continues, significant affordability and workability challenges will need to be addressed to ensure the health insurance marketplace works for consumers and employers. This includes streamlining processes for implementing the new reforms, eliminating duplicative and overlapping regulatory requirements, and addressing provisions in the law that will make health care coverage more expensive.

Since the ACA passed, health insurers have faced an unprecedented number of changes to the coverage they offer, including new benefit mandates; new oversight, regulatory, and reporting requirements; increased scrutiny of premiums; and caps on administrative costs. These changes have created challenges of scale, scope, and costs that have been significant—and underestimated.

In addition, there will be an unprecedented volume of rate and form filings submitted to states in 2013 to meet the 2014 effective date. The minimum coverage requirements, new adjusted community rating standards in the individual and small groups markets, and

newly required classification of offerings by actuarial value—all as defined in the ACA and yet to be released regulations—create huge challenges ahead. And these operational challenges are in addition to the work being done to implement new health insurance exchanges.

To create an affordable and sustainable health care system, key provisions in the ACA will need to be addressed to avoid significant cost increases for consumers and employers. These include:

- *Essential health benefits* – Ignoring affordability issues when designing the essential health benefits package could force millions to purchase coverage they do not need, want, or are able to afford, in turn discouraging some from purchasing coverage and driving up costs even further.
- *Age rating compression* – The ACA limits the age rating band to a 3:1 ratio, starting January 1, 2014, causing an overnight increase in premiums for younger individuals (18–49) that live in states with broader age bands, such as 5:1. This increases the likelihood that younger, healthier people will choose to pay the penalty and wait to purchase health insurance until after they get sick or injured, thus driving up costs for everyone else.
- *Health insurance tax* – A new \$100 billion federal tax on health insurance premiums could add on average at least 2–3% to the cost of coverage starting in 2014. This tax will impact people purchasing coverage in the individual market, small employers, and beneficiaries with private coverage in Medicare and Medicaid.
- *Broad participation in the market* – Experts agree that broad participation in the health care system is needed to create a well-functioning marketplace that is affordable for consumers and sustainable in the long-run. Policymakers and state regulators should pursue a broad array of strategies to encourage as many people as possible participate in the health care system.
- *Rising medical costs* – Much more needs to be done to address the unsustainable rise in medical costs that is driving the rise in insurance premiums. Specifically, there needs to be a much greater focus on the prices that are being charged for medical services, driven in part by the acceleration of provider consolidation across the country.



Putting Administrative Cost into Perspective

With respect to private health insurance profits in 2011, the average profit margin for the health plan industry was 3.2%—a 26% reduction from 2010's 4.2%. A question often raised is how much health plans' administrative costs contribute to the growth in health care spending—and the answer may surprise you. Health plan profits accounted for one half of one percent of total national health spending in 2011—or roughly two days of total national health care spending.

If we are going to get health care spending under control, then we need to address the other 96.8% of health care costs. And in order to do that, we have to figure out what is driving the growth in health care spending.

It is also important to note that while the ACA includes subsidies on a sliding scale to help people purchase coverage through an exchange, the Congressional Budget Office (CBO) has estimated that many people (40 percent) are not eligible for subsidies and they phase out quickly for those with moderate incomes—further highlighting the need to address provisions of the law that could make coverage unaffordable.

AHIP and our members look forward to leadership in the states to help address the affordability and workability challenges ahead. ■

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to the National Association of Insurance Commissioners (NAIC) as well as the lead for AHIP's policy group on Individual SHOP Exchanges being established in states and by CMS. Prior to joining AHIP, Ms. Gallaher was the director of regulatory affairs at Highmark, Inc.

'Zoning' In

Northeastern Zone

by Jason M. Kurtz

New York State Gov. Cuomo signs bill permitting gifts up to \$25 from insurers, brokers, or agents



New York State Gov. Andrew Cuomo recently signed legislation (S.6812-A/A.9702-A)—amending N.Y. Ins. Law § 2324(a)—which will permit property/casualty insurers, brokers, and agents to provide merchandise worth up to \$25 to insurance applicants during the insurance sales process. N.Y. Ins. Law § 2324(a) historically prohibited rebating, reducing commission, or offering inducements to purchase insurance unless the item was valued at less than \$15 and designated as a “keepsake.” The new law also removes the previous restriction that such gifts must have “conspicuously stamped or printed thereon the advertisement of the insurer, agent, or broker.” Pursuant to the new law, the merchandise need not be strictly promotional for the insurer, agent or broker.

Delaware's Insurance Commissioner touts growth of state's captive insurance industry

Delaware's Insurance Commissioner, Karen Weldin Stewart, recently touted the rapid growth of Delaware's captive insurance industry. Commissioner Stewart noted that, since the formation of the state's captive bureau in 2009, the

number of captive insurers in the state has grown from 38 to 338 captive risk bearing entities, which generated close to \$1 billion of insurance premium. The recent success of Delaware's captive program has allowed the insurance department to give \$250,000 in the captive insurance program's surplus monies to the state. The commissioner also stated that Delaware now ranks as one of the top five captive domiciles in the U.S. and is among the top 15 in the world. In 2011, Delaware's captive bureau generated more than \$1.2 million in tax revenue, marking a 100 percent increase from the \$600,000 generated in the captive bureau's first year of operation.

New York Regulator investigates risks posed to consumers by life insurance captives

New York's Department of Financial Services (“DFS”) recently requested information from approximately 80 life insurers domiciled in the state in an effort to investigate whether the life insurance industry's use of captives is posing risks to policyholders. The DFS is concerned that New York insurers are taking advantage of less stringent regulation of captives in other states that would potentially leave consumers unprotected. Industry analysts point to recent transactions such as a 2008 deal between MetLife and Deutsche Bank AG as the basis for regulators' concerns. In that transaction, the bank provided a \$2.4 billion commitment to backstop the insurer's policy risk.

Pennsylvania adopts NAIC revisions to Insurance Holding Company System Regulatory Act

Pennsylvania recently joined eight other states in adopting the NAIC's revisions to the Insurance Holding Company System Regulatory Act. Pennsylvania reported that it added a unique section to its version of the law to give it clear authority to act as the group-wide supervisor for any international insurance group when the international insurance group's ultimate controlling person is domiciled in Pennsylvania. The Pennsylvania Insurance Department may acknowledge another jurisdiction as the group-wide supervisor when various conditions are met. If the Pennsylvania Insurance Department is the group-wide supervisor for an international insurance group, it is authorized to engage in some of the following group-wide supervisory activities: (1) assessing the enterprise risks within the international insurance group; (2) requesting from any member of the group subject to the department's supervision information necessary and appropriate to assess enterprise risk; (3) compelling development and implementation of reasonable measures designed to assure that the group is able to timely recognize and mitigate material risks to members that are engaged in the business of insurance; and (4) communicating with other insurance regulatory officials for members within the international insurance group and share relevant information subject to certain confidentiality provisions.

Southeastern Zone

by Scott G. Paris

Premium refunds related to the replacement of scheduled items in North Carolina



A recent amendment to a North Carolina regulation, 11 N.C. Admin. Code 04.0432, changes the calculation of refunds that are due when scheduled items are replaced with amounts that are less than the scheduled values. Under the regulation, the insurer must refund the difference between the premium for the scheduled amount of insurance and the premium for the actual amount of coverage provided. Effective July 1, 2012, premium refunds must be calculated from the date of policy issuance or a period of five years, whichever is less. The number of years was three under the previous version of the regulation.

Coverage outlines and comprehensive policy checklists for policies in Alabama

Alabama House Bill 166, signed by Governor Robert Bentley, requires insurers to provide a coverage outline and comprehensive policy checklist for personal lines property insurance policies. Coverage outlines and comprehensive policy checklists must contain: 1) information about coverages provided by the policy, riders, or endorsements, including whether the policy provides for replacement cost or actual cash value; 2) a summary of any exclusions, limitations, or possible coverage reductions; and 3) specific disclaimer language outlined in the legislation. Information about the property and/or structures covered by the policy, perils insured against, and any additional coverage must also be included. The new law permits insurers to use coverage outlines and/or checklists prepared by the Alabama Department of Insurance or seek Department approval to use their own forms.

Florida court strikes down solicitation ban for public insurance adjusters

The Florida Supreme Court, in *Atwater v. Kortum*, No. SC11-133 (Fla. July 5, 2012), has declared a law banning public insurance adjusters from soliciting policyholders for 48 hours to be unconstitutional. Fla. Stat. Ann. 626.854(6) prohibits public adjusters from directly or indirectly contacting a policyholder until 48 hours after an occurrence that triggers a claim. The Florida Supreme Court held that the ban on solicitation violates the right of free speech under the First Amendment.

Midwestern Zone

by Molly E. Lang

Nebraska bulletin addresses training for producers



On July 6, 2012, the Nebraska Department of Insurance issued Bulletin CB-128 outlining new annuity training requirements for producers with a life line of authority as a result of the State's adoption of the National Association of Insurance Commissioners' Suitability in Annuity Transactions Model Regulation. The adoption of the model amended the current Nebraska Protection in Annuity Transactions Act and became effective July 19, 2012. The bulletin lists topics that must be covered by a training course, including but not limited to the types and classifications of annuities, the application of income taxation of qualified and nonqualified annuities, and appropriate sales practices and requirements for replacement and disclosure. Both resident and non-resident producers soliciting the sale of annuity products in Nebraska are required to complete the annuity training. A non-resident producer's satisfaction of another state's training requirement may satisfy Nebraska's training requirement to the extent they are substantially similar.

Oklahoma amends laws to address travel destination

Effective August 23, 2012, a life insurer doing business within Oklahoma may not deny or refuse to accept an application for life insurance or refuse to renew, cancel, restrict, or otherwise terminate a policy, or charge a different rate for the same life insurance coverage, based upon lawful travel destinations of an applicant or the insured. However, the law does not prohibit insurers from taking such actions if the action is based on sound actuarial principles or is related to actual or anticipated experience.

Use of credit-based insurance scores in Michigan

On June 26, 2012, Governor Rick Snyder signed House Bills 4593-4596 and Senate Bill 300, addressing the use of credit information by personal lines insurers. The legislation creates a new chapter in the Insurance Code: Chapter 21A, titled "Credit Information and Credit Scores." The legislation prohibits denying, cancelling, or not renewing a personal insurance policy because of credit information. Credit information may be used for decisions regarding premium installment options. When credit information is used in the application process, its use must be disclosed to the insured. Insurers must also provide notice to an insured of any adverse action taken because of a credit score. The legislation includes additional restrictions on the use of credit information. For example, insurers cannot consider credit information that has been directly influenced by serious illness or injury or the death of a spouse, child, or parent.

Western Zone

by Peg Ising (Non-Lawyer Consultant)

Underwriting of personal lines in Montana



On June 29, 2012, the Montana Commissioner of Securities and Insurance issued an advisory memorandum addressing complaints from consumers

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who were denied coverage due to wildfire risk. The memorandum states that cancellation, nonrenewal, or limitation of policies based on the threat of wildfires when property does not have an increased risk of loss constitutes unfair discrimination. The memorandum also states that several complaints were received from consumers who lived in areas not threatened by wildfires, including in cities. The memorandum provides that insurers should make underwriting decisions on a case-by-case basis and any blanket restrictions, including denying coverage based on zip codes, will be closely evaluated.

Contesting adverse action by auto insurers in Colorado

On April 12, 2012, Governor John Hickenlooper signed legislation, Colorado House Bill 12-1289, revising the

process for an insured to contest an adverse action taken by an insurer. The legislation repealed a provision that granted insureds the right to request a hearing to contest the cancellation, nonrenewal, or denial of an auto insurance policy. Under the new law, an insured may file a complaint regarding an insurer's action with the Division of Insurance but no longer has the right to a hearing before the Insurance Division.

Certificates of insurance in Idaho

Idaho Code Ann. § 41-1850, which took effect on July 1, 2012, provides that all certificates of insurance issued in Idaho must be approved by the Department of Insurance. Certificates must contain language similar to that specified in the statute. Insurers using forms created and filed by ACORD or ISO are not required to re-file the forms. ■

"Zoning In" is developed by members of Nelson Levine de Luca & Hamilton's Insurance Regulation Practice Group. With a team of professionals that includes former insurance regulators, Nelson Levine assists insurance companies with a broad range of regulatory issues affecting the business of insurance. Monthly contributors to "Zoning In" include: Susan T. Stead (614-221-7543, sstead@nldhlaw.com), Molly E. Lang (614-456-1634, mlang@nldhlaw.com), Peg Ising (non-lawyer consultant, 614-456-1632, pising@nldhlaw.com), Jason M. Kurtz (212-233-2633, jkurtz@nldhlaw.com), and Scott G. Paris (212-233-2716, sparis@nldhlaw.com).

The above material is for informational purposes only and should not be construed as legal advice, nor is it designed to create any attorney-client relationship.



Photos from the 2012 CDS & RSW



Angela Ford, Don Koch and Doris Walker



Don Carbone and Holly Blanchard -
Winning the Al Greer Award



Past Presidents Leslie Krier & Tom Ballard



California Staff



Jeannie Misenheimer and Lisa Crump



Chuck Vanasdalan, Leslie Krier, Tim
Mullen and Commissioner Sharon Clark

CDS Photos— continued from page 9



Tanya Sherman and Peggy Willard-Ross



Polly Chan and Dawn Murphy

CDS through the Eyes of One Attendee

by Tom Whitener

Reflecting on the recent 2012 CDS, our members faced challenges from the onset, including the uncertainty of tropical storm conditions during their very arrival into the Fort Lauderdale-Hollywood International Airport. During the allotted time for this annual gathering, good discussions concerning current issues and important technical aspects arose under an encompassing umbrella of market regulation. I enjoyed meeting new people and reconnecting with friends that I hadn't seen in years. While state regulators, company professionals, and industry insiders primarily assembled to obtain knowledge and skills to enhance their daily insurance activities, I thought it might be entertaining to share some whimsical observations noted during the "lighter side" of the conference. (Yes, our members are allowed to have fun at the CDS!)

- Paraphrasing an opening comment made in the first general session: "Several people could not make it to the CDS due to flight cancellations, but we do acknowledge the appearance of an unexpected visitor named Isaac."
- A slight grammatical controversy was averted during the first general session after Insurance Commissioner Scott Kipper informed the audience how to correctly pronounce the name of his state, Nevada.
- The view from my room on the 28th floor was absolutely breathtaking. When first walking on my balcony, I was greeted by gusty winds and steady rain. (In retrospect, I should have been more aware of the patio furniture neatly stacked in the corner of my room before I ventured outside).
- Receptions seemed to be better received after drink tickets were distributed.
- People were attracted to the assorted trinkets and free stuff at the exhibitors' tables. After witnessing one unidentified individual carry away three stress balls, I wondered if he was collecting souvenirs to take home to his co-workers or possibly expressing an interest in learning how to juggle.
- Kristin Koonmen from Ampere! garnered attention for her friendly assistance at the registration desk and her trendy fashion choice of wearing knee-high boots in Florida in August.
- Joe Bieneik, the recipient of both the 2012 Schrader-Nelson Publications Award and the Chartrand Communications Award, proclaimed he was "speechless" during his

acceptance remarks.

- In a world saturated with alphabetical abbreviations and industry-specific jargon, current IRES president Mark Hooker unveiled a new acronym (ARE) to be prominently featured in the upcoming year.
- One cluster of attendees united its efforts to quickly resolve a pressing dilemma. This group was determined to get to South Beach even after charter buses were no longer available due to weather and safety concerns. The solution came when they decided to split the cost of securing a taxi. ■

Tom Whitener has been employed as a senior market conduct analyst at the West Virginia Offices of the Insurance Commissioner since August 2008, at which time he also became a member of IRES. Celebrating a 25-year career in 2013, Tom spent the majority of his time in both public and private sector jobs in West Virginia, with the exception of working a few years in North Carolina as a property and casualty underwriter for several regional insurance carriers. In addition to acquiring all four designations currently available through IRES, Tom has earned 18 other professional insurance designations offered by such reputable organizations as AICPCU, LOMA, AICP, and NAIC.



President's Remarks

by Mark Hooker, CIE, MCM



Words cannot express how excited I am and what an honor it is to serve as your president during the upcoming year. Some of you may think that I came in like a hurricane, but I guess it was more like a tropical storm.

I want to thank each of you that braved Hurricane Isaac to make it to our CDS and Regulatory Skills Workshop. To those of you that couldn't make it: We really missed you.

I want to thank the Education Committee for putting on what all have told me was a fantastic program. Special thanks go out to our sponsors:

- ★ INS Regulatory Insurance Services, Inc.
- ★ Eide Bailey, LLP
- ★ Risk & Regulatory Consulting, LLC
- ★ The Huff Group, LLC
- ★ Examination Resources
- ★ Colodny, Fass, Talenfeld, Karlinsky, Abate, & Webb P.A.
- ★ SNR Denton
- ★ Spilman Thomas & Battle, PLLC
- ★ Carr, Riggs, & Ingram, LLC
- ★ Dixon Hughes Goodman LLP
- ★ NAIC
- ★ Northstar Exams
- ★ Stalker Vogrin Bracken & Frimet LLP
- ★ DDP Group, LLC

Thanks also go to **Kelly Armstrong** and **Kori Johanson** for coordinating the sponsors

I don't know about you, but I recently determined that IRES is more than 25 years old. With only a few exceptions, our bylaws are the same age. During this

year's annual meeting, the membership voted to make a couple of changes to the bylaws, but we have a long way to go to bring the bylaws current with our needs today. In order to fix this, I have asked the Past Presidents Counsel to submit a comprehensive rewrite of this document to the board of directors by the end of the year. I have asked Immediate Past President **Tom Ballard** to oversee this activity.

In another break with tradition, Past President Ballard will chair the Meetings and Elections Committee this year. Usually, the immediate past president chairs the Publications Committee. However, Tom's experience in site selection will be invaluable as IRES continues to pursue joint meetings in 2014 and 2015 with the IRES Foundation and SOFE respectively.

Another area that I plan to concentrate on is to elevate IRES' name recognition among commissioners as well as prospective members.

Last year, we started sending comments to the NAIC "D" Committee as well as doing outreach through State Chapters and the NAIC Zone meetings. To help continue in this endeavor, I've asked **Lynette Baker** to serve as Director of Public Affairs and External Communications. Lynette will coordinate communications with other organizations such as the NAIC, ICAE, and SOFE as well as oversee the development of IRES marketing materials. **Kelsey Brunette** will assist Lynette in developing a promotional campaign. Kelsey, who is Foundation board member and Cheryl Brunette's daughter, is performing a similar role for the IRES Foundation.

Each year, IRES recognizes that it needs to expand membership. Recognizing that fact, as well as the fact that members with designations tend to renew, IRES is looking into a program that will help its members earn the AIE, CIE, and CICS designations. We hope to be able to hold facilitated study groups via webinar within each of the curricula. We believe this is a much needed service to our non-designated members and will help to improve membership retention.

These are just a few of the things I want to get started for the coming year. It's going to be an interesting and busy year, with lots of opportunity and lots of challenges. In order to be successful, we need you to be involved, whether it is sending suggestions for new programs or how to improve existing ones or volunteering to serve on a committee. **Please get involved!** I'm sure that you will find it as rewarding as I do. ■

Mark A. Hooker, CIE, CPCU, FLMI, CWCP, CCP, MCM, AIRC, AAI, AU, AIS, LUTCF

Mark Hooker is the Chief Market Conduct Examiner and Market Analysis Chief for the State of West Virginia, Offices of the Insurance Commissioner. Mark was elected to Insurance Regulatory Examiners' Society's board of directors in 2009 serving as its Education Committee Chair from 2009-2012. He is currently the society's President. Mark was the 2012 recipient of the IRES President's award.

It's Been a Blast!

by Thomas Ballard, CIE, MCM, Immediate Past President of IRES

I want to thank you, the members of IRES, for allowing me to serve as your president for the past year. I'd like to take a few minutes and talk about what our board of directors and executive committee have been doing this past year.

- Developing webinars at a faster pace, allowing for more educational opportunities for our membership.
- Working on joint meeting projects with SOFE and our own Foundation.
- With our organizations' financial health at stake, renewing efforts to work on a more balanced budget, keeping expenses in line with our income.
- Developing expanded MCM classes, including the very first CE class for MCM being held at this very meeting.
- Adopting changes in the bylaws, changing the make-up of the board and having this change vetted and voted on by the members in attendance at this meeting.
- Meeting with NAIC officials, state chapters, and additional schools of our sister organizations, putting IRES out there for more regulators.

In reflection, I'd like to thank all those people associated with IRES, including Ampere! staff, for a fine year. This includes those folks that disagreed with us on some things but who were able to air those differences in an open forum. Thank you, as well.

One reason I am so locked in with IRES may be tied to my late father, "Big Tommy" Ballard. While both of his sons towered over him, his "bigness" described who he was as a man, not his physical being. Through no fault of his own, he was limited to an eighth grade education. He later found out he was legally blind at age 49. This was after working for the

local natural gas company for more than 33 years.

It has been said that people with disabilities use their other senses to compensate for the handicaps they have. In the case of my father, while his hands were rough, they were also beautiful and talented. His feel and touch enabled him to create many beautiful things that are still with us. His love for education is also still with us.

There are lots of challenges ahead of us. I'm sure we can overcome them with the efforts like those given at the CDS.

But even with those problems, my father taught himself how to be a great carpenter, capable of building houses, doll houses to scale, and even finish carpentry. He built dining room suites, bedroom suites, and other furniture. He would argue over 1/64 of an inch while others were arguing over 1/16 of an inch. It wasn't until years later that I understood why he wanted me to be there in the shop working with him instead of playing ball at the local ball park.

His lifelong message to my brother and me as we grew up was to get an education and to educate our children. I'd like to say we've done that and will continue to do that with our grandchildren. I am convinced that he knew more about education and the benefits of an education than many of today's professional educators. He would like that I'm affiliated with an organization so based on education.

There are lots of challenges ahead of us. I'm sure we can overcome them with the efforts like those given this week at the CDS. As for the future of regulation, it is my opinion that, once again in the near future, the failure of a large carrier will require more work at the state regulatory



level to stave off federal regulation and to prove again that state regulation is the best way to resolve issues, place corrective measures in place and, most importantly, protect the consumer.

I do have a few people I'd like to thank for helping me be here today:

- My late father and his push for education and that resolve to get up every morning and get to work
- My mother in West Virginia and her teaching me to treat people like I'd want to be treated
- My wife – I really did "marry up," as they say. She is the best mother of my children that I could ask for. She has put up with the travel, meetings, and phone calls and always been supportive. Many here know her—and those who don't should.
- Bob Flege – A friend, mentor, and someone who keeps reminding there's more than one way to do things and to think outside the box.
- Gary Domer and Stephen King – Two of my best friends with IRES who have helped keep "historical perspective" and "professional credibility" of IRES at the forefront. Both are here today and I want to thank them very much.
- Larry Hawkins – My "sidekick" on the Meetings and Elections Committee for several years. He has been the backbone of the committee and would have been here this year except for being a victim of travel budget cuts. Larry never turned down a request to do some task and he never sought the limelight. He truly cares about IRES.

It's Been a Blast! – continued from page 12

- Angela Ford of North Carolina – She has been a member of this group for years. We met at an NAIC meeting years ago and have been friends since. She and I would end up serving several terms on the board of directors and we took it upon ourselves to act as the protectors of the designations. Any attempt to weaken them would have to go through us. She and my wife have way too much fun finding ways to make life tough for me.

- Holly Blanchard and Parker Stevens – These are the “new kids” on the block. They have been great to work with on the Executive Committee with new ideas and great leadership. The future of IRES leadership is in good hands.

Finally, and certainly not least, I'd like to thank you, the attendees, who stepped up and showed up at the CDS despite the weather. We have a great membership and it really showed that week.

Once again, thank you for allowing me to serve as your president.

It's been a BLAST. ■

Tom Ballard, CIE, CFE, MCM, FLMI, ALHC, is the immediate past president of IRES and works as a market conduct examiner. Tom has more than 24 years of insurance regulatory experience (including working for various state departments of insurance) along with 15 years of experience working for various companies.

May 22, 2011: The Aftermath

by Lisa B. Crump, CIE, MCM, ACS, ALHC, AIAA, FLMI, CPI

A little more than a year has passed since the eventful day that changed the lives of many—and a town—forever. But for those who were there that day, it still seems like only yesterday. It was just the other day, on a flight out of Springfield, MO, that I sat by a young man in his late teens. In our conversation, it wasn't long before the young man told me that he had been in Joplin at Wal-Mart during the day of the storm. He recounted how lucky he was, some of what he saw, the difficulty in establishing contact with family and friends right after the event, and the feeling of emerging from familiar surroundings to those of the most bizarre. That day, Josh had been to a friend's graduation and had left to stop by Wal-Mart for a short shopping excursion. Funny; many of the same stories would ring true as the year of 2011 passed.

Joplin has a lot to be proud about. The fortitude of the people has proven strong. In some circles, it's been looked upon as the example of how to do things the right way. The city is now in the rebuilding phase and its leaders are continuing to plan for the future. But how did it get to this point and how did insurance provide the important assistance along the way?

As with so many devastating events, first the response team arrives, then the insurance adjusters. For Joplin, this area was quickly termed a Federal Disaster Area. President Obama visited, along with numerous dignitaries, to look over the area. This was a catastrophe like no other. The path of the devastation was huge (14 miles long, 5 miles wide) and the city of Joplin had emerged with a gaping hole in the heart of the city.

Governor Nixon's office was quick to respond. A State Resource and Recovery Center was established in Joplin by Governor Nixon as a “one-stop shop” in order for people to get everything they needed in one place. The Missouri DIFP (DOI) was there, along with many other agencies. The State Resource and Recovery Center was opened so that individuals who needed assistance could literally walk from one agency booth to the next in order to get items restored or to seek assistance/direction with their needs. To help replace items such as driver's licenses and marriage/birth/death certificates and to obtain housing aid and mental health assistance, the Attorney General's office, DOI office, and many others were there to help.

As time progressed, many of these agencies went away—with the exception of the DOI, Economic Development,

Credit Counseling, and the Attorney General's office. The assistance of these offices was found to be a staple throughout the recovery process.

For the DOI, in addition to providing consumer representatives, a hotline, kiosk, and maintaining an office for the year, the Department added in measures with insurance company support that allowed for a first-time use of a “Life Policy Locator.” The department created the Life Policy Locator service to help consumers locate benefits from life insurance policies or annuity contracts purchased in Missouri. This allowed those who may have lost loved ones to find out information from those companies who had a record of the missing individual.

To stay abreast of what needs the community was facing, the DOI was involved from the start with community leaders and planning committees about the needs of the community. Initially, this was done on a daily basis. As time progressed, it moved into biweekly meetings and then on to bimonthly. One of the key elements in the Joplin recovery was the Citizens Advisory Recovery Team (CART) committee. The DOI attended the Housing Sector group meetings that were a part of CART. From this, the

The Aftermath – continued from page 14

DOI was able to inform the city and other agencies as to what the trends were that insurance consumers were facing with their insurance providers. The interaction helped with the determination of the DOI sponsored Recovery Round-Up held at Missouri Southern State University. The DOI also responded to the community request for insurance education through the CART's request of a City-Wide Insurance Campaign for homeowners and renters insurance.

The DOI was involved from the start with community leaders and planning committees about the needs of the community.

The Joplin Recovery Round-Up was held approximately 100 days after the tornado. It was an event organized to provide consumers with access to the DOI, NAIC, city governmental agencies (such as city planning and zoning and economic development), federal agencies, and, most importantly, the insurance carriers themselves. During this event, the DOI acted as a liaison to bring the consumer and carrier together. Numerous claims were closed with payments made to the insured that day. Other insureds may not have received payment but had their questions answered by company officials directly and then knew what further actions were needed for a resolution to the claim. This was an event in which the insurance companies agreed to work hand in hand with the DOI to help those legitimate consumers in need.

The last big push for the DOI was the City-Wide Insurance Campaign. This event was requested by CART and evolved due to the findings that a large population of Joplin residences—and particularly those affected by the storm—were either underinsured or else did not have renters insurance.

With the help of the Missouri Insurance Coalition (MIC), the DOI put together a campaign for the month of March, 2012. The campaign included

new insurance brochures for renters and homeowners, a TV commercial directed toward homeowners, a testimonial radio commercial narrated by a local disc jockey who had experienced the renters insurance dilemma himself, and newspaper/magazine ads and articles. The DOI also manned booths at the Home Builders Association (HBA) Home show and the local TV station Weather seminar. DOI consumer representatives handed out materials and spoke with folks about their insurance situation at these events. The local news media also played an important role. The TV stations broadcast news stories that featured the CART/MIC/DOI sponsored city-wide insurance campaign. The telecasts included the HBA home show and an interview with a young lady who had experienced the tornado and the lessons she learned about insurance. Additionally, the DOI was engaged in speaking engagements throughout the community during the month of March.

The new brochures that were designed were based on feedback received from members of the Housing Sector/CART group. This group had researched other states and found that documents on websites tended to be wordy, lengthy, and not user friendly for those who didn't have an insurance background. With this in mind, the DOI set out to produce a document that was eye-catching and easy to understand. After this document was developed, the DOI went one step further and made it easy for the public to find on the DOI website (www.insurance.mo.gov).

The question posed on the website is “Have enough coverage?” with two brochures available with just a click. The Homeowner brochure titled “Protect Your Home” includes tips such as an explanation of what is usually covered in a typical policy and what is not covered, questions to ask an agent when doing comparison shopping, how to read a policy declarations page, what the difference is between actual cash value and replacement value, and the importance of an inventory checklist. The brochure

titled “Protect Your Stuff – The ABCs of Renters Insurance” lists many of the same items mentioned above but relates it back to someone who is only in need of the more limited coverage of renters insurance.

The City-Wide Insurance Campaign lasted for the month of March. When asked what the results were, there is really no way to know exactly how well the campaign performed. However, the local Joplin insurance agents reported that they had definitely seen an uptick of people reviewing their coverage currently in place, making adjustments, and buying insurance for those areas that were lacking. Kim Cox, a broker-realtor, indicated to me: “I've updated not only my insurance but I know that everybody in my office has done so as well. If something were to happen tomorrow, I know what coverage I have. I know that I am covered and that I made an informed decision.” That's what the City-Wide Insurance Campaign was all about.

In looking toward the future, as a nation, we all will continue to plan for devastating events. But we must remember that, even with the best of planning, the plans won't cause an event not to occur. However, when it does, how the industry (both companies and regulatory agencies alike) reacts will once again distinguish those who are the leaders. ■

Lisa Crump worked for the Missouri Department of Insurance, Financial Institutions, and Professional Registration (DIFP) as their disaster recovery coordinator. She is no longer with the DIFP and this is not an article sponsored by DIFP but rather based upon her own accounts. Lisa is currently employed with INS Regulatory Services.

Meet the Board: Holly Blanchard

by Holly Blanchard

Hello, everyone!
I'm Holly Blanchard, this year's president elect and chair for the Education Subcommittee.

I joined IRES in 2006 as a new market conduct examiner.

The primary reason I joined was to get “closer to the fire” and meet my counterparts across the country so that I would have some mentors in the market conduct arena.

It has been a whirlwind ever since. I reached out to then president Doug Freeman about volunteering to help on a committee. He referred me to Jo LeDuc, who was chairing the Membership and Benefits Committee, and then I was asked to be the Member Benefits subcommittee chair. Before I knew it, I was heavily involved in the committee work and would go on to be the co-chair, then chair, of Membership and Benefits by becoming a member of the board of directors and, later, the executive committee.

My work with IRES has been incredibly rewarding. I have a strong interaction with many of the members and often rely on my IRES friends in other states and companies to help me with some project that I have stumbled upon. The most rewarding part is the relationships and bonds that I have formed with some of the members. I am happy to call many of my IRES friends some of the best people I have ever met.

Outside of IRES, I am the Life and Health Administrator for the Nebraska Department of Insurance and am heavily involved in implementing the ACA. Prior to that, I was a market conduct examiner, which got me involved with

IRES. In all honesty, no matter how many policies I review, I'll always be a market conduct examiner at heart.

I also am heavily involved in our community. I'm the Girl Scout troop leader for my daughter's troop, the softball coach for her team, and the T-ball coach for my son's team. I am also on the Friends board of directors for the Lincoln Children's Museum. All of these activities keep me busy, but I love every second of it.

I am originally from Cozad, Nebraska and went to the University of Nebraska-Lincoln, where I studied speech pathology. I'm an avid sports fan and outdoors person and love to camp, hike, boat, ski, and garden. I'm also a sucker for a good action or mystery movie or novel. As a Nebraska native, I have a prerequisite to love football. Go Big Red!

My most important job is being mommy to my wonderful kids Sydnie (age 9) and Chase (age 6). Many of you have met them and my husband Matt at the CDS events. I'm always so amazed at how my IRES family welcomes my real family with open arms.

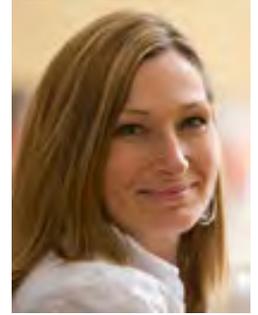
Getting involved with IRES was truly life changing to me. I learned the ins and outs of serving on a board and truly appreciate the work that goes into making an organization like this successful.

The education that I received while earning my IRES designations really gave me a lot of knowledge that paved the way for my current position.

There's a saying that I live by:

“No one changes anything by being a spectator on the sidelines complaining that things aren't the way they think

they should be. The only people that make changes are the people that are passionate and brave enough to step up to the plate and be the change.”



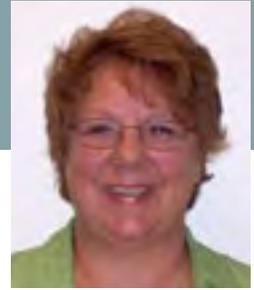
I would encourage each and every one of you to get involved. There really are IRES opportunities for everyone.

As chair of the Education Committee, I am in charge of putting together your Career Development Seminar next year. I have exciting plans to make it a great success and would love to have your input and ideas, as well. In addition to my committee, the other committees have exciting plans for the upcoming year—and the only thing that will make them better is YOU. What are you waiting for? Send me an email at holly.blanchard@nebraska.gov and we can find a great fit for your interests and talents! ■

Editor's Corner

Musings from the Northwest

by Leslie Krier, AIE



Let me tell you: For a northwesterner, where things like earthquakes and volcanos are everyday occurrences, being in the line of a hurricane was a real eye-opener. Our natural disasters aren't things you plan for; they just happen. Hurricanes are so much different—and nerve-wracking!

Because I don't experience many hurricanes, it was absolutely amazing to me how much goes into trying to predict the hurricane's path as well as pre-planning for a potential hit. The Executive Committee started meeting about the time that we heard about Hurricane Isaac and knew that there was a possibility it would hit Florida. Every day, we'd get updates from the hotel, from other emergency agencies, Hurricane Central, the Weather Channel, and anyone else who was willing to make a guess as to where Isaac was going to land. The hotel even had transportation lined up to make sure that we all got to shelters if necessary. WOW! I was really impressed.

By Saturday, when we all started arriving in Hollywood, the Executive Committee was meeting every two hours for updates about Isaac. We started hearing about flights being cancelled Saturday afternoon and then we really started questioning whether CDS would go forward. As we sat on a balcony overlooking the pool and the ocean that afternoon, wind whipping around us and humidity off the charts, I think that we all thought the worst. Presenters couldn't get to Florida. More airlines were cancelling flights.

What to do with CDS? Could it go on? What if we had to sit in an evacuation shelter with each other for DAYS on end? How could we survive? And, from the northwesterner, what's an evacuation shelter, anyway? Do they have internet access? Air conditioning? Electricity? Cell phone reception? Do I have to sleep on a cot in a room with 500 other people? Will there be running water? WHAT AM I DOING IN FLORIDA IN A HURRICANE? AM I CRAZY?? (Don't answer that; it's rhetorical.)

The really good thing is that we never had to find out the answers to my burning questions. But in the meantime, what we did find out is how great our IRES membership is. Most of you made it to Hollywood and helped put on an outstanding CDS and Regulatory Workshop—one of the best in recent memory. People pitched in and took over sessions for those who weren't able to make it. I know in the market regulation sessions, we had some discussions that maybe weren't quite on the topic listed in the program but were great idea exchanges. It's amazing what we can do when we all pull together and it's what makes IRES the great organization that it is.

I think that this CDS and RSW maybe took us back to our roots a bit and reminded us that IRES is made up of people: really fine people who care about their jobs, about each other, and about IRES. For me, that was the biggest take-away from the meeting and the thing that will stick with me through the coming year. It's what we need to build on in the future.

I hope that you enjoy this issue of *The Regulator*[™], which focuses on healthcare reform after the SCOTUS decision. We have some really knowledgeable contributors this month and we're lucky to have their perspective on such a timely and important issue. As always, we're happy to hear from you, so fire up your computers and tell us what you think at TheRegulator@go-ires.org. Happy reading! ■

Leslie Krier is the Market Conduct Oversight Manager for the State of Washington Office of the Insurance Commissioner. She has been a member of IRES for 18 years, has served on the Board of Directors and is a past IRES President. She is currently the Co-Editor of *The Regulator*.

Award Winners

Congratulations to each of the award winners at this year's Career Development Seminar!

Joe Bieniek was presented with the Schrader-Nelson Publications Award, which honors

the most outstanding original contribution to the Society's newsletter, *The Regulator*™.

Joe was also presented the Chartrand

Communications Award, which recognizes those who have made a difference to IRES through their actions.

The Al Greer Achievement Award, which is presented annually to an insurance regulator and IRES member who not only embodies the dedication, knowledge, and tenacity of a professional regulator but who exceeds those standards, was



presented to **Don Carbone** for his work while at the New York Department of Insurance.

Mark Hooker was this year's recipient for the President's Award, which is presented annually by the Society's president to a person of

his or her choice who has made a significant contribution to the Society and the regulatory profession. ■



Board Member Changes

Congratulations and welcome to the new board members: Don Hale, Ashley Natysin, Tanya Sherman, Martha Long, Eric Nordman, Benjamin Darnell, Tom McIntyre, and Dudley Ewen.

We would like to send out a special thanks to the outgoing IRES board members: Angela Ford, Katie Johnson, Larry Hawkins, Leslie Krier, and Lisa Crump. We thank you for your leadership, valuable time, and amazing expertise that you have graciously given as IRES board members through the years. ■

Earn Extra CE Credits During the Year

How? By joining one of the IRES committees listed below and participating in the monthly conference calls!

Looking for a way to get involved? Our committees are always looking for people to participate. Most committees meet monthly via conference call for about an hour per call. All you have to do is dial in and bring your ideas. It's a great way to start being involved in IRES and to meet your fellow IRES members from across the country.

And, for every three calls you participate on, you get one hour of CE.

If you see a committee that looks interesting to you, read more about it on the IRES website on the Getting Involved page: www.go-ires.org/getinvolved. Then contact the Committee chairperson and get started! ■

Committee	Conference Call	Chair
Accreditation & Ethics	2nd Thursday of the month @1:30pm Central	Parker Stevens, parkerstevens@examresources.net
Budget & Finance	No set call schedule	Joe Bieniek, joe.bieniek@firstconsulting.com
Education	2nd Friday of the month @11:30am Central	Holly Blanchard, holly.blanchard@nebraska.gov
Meetings & Elections	3rd Wednesday of the month @noon Central	Tom Ballard, tball32590@aol.com
Membership & Benefits	3rd Tuesday of the month @2:00pm Central	Tanya Sherman, tsherman@risdelaware.com
Publications	2nd Wednesday of the month @11:30am Central	Stacy Rinehart, srinehar@ksinsurance.org

Thanks from a Hall of Famer

by Cynthia Amann

Hello, fellow IRES members! I know that it has been a while but I want to again thank you, the members of IRES, for presenting me with the 2010 Al Greer Award. I was truly speechless because the recognition was so unexpected. No one (well, very few of us) goes into the regulatory world for the glitz and glamour of it. So when one's work is recognized by such an award

(“...a regulator who not only embodies the dedication, knowledge and tenacity of a professional regulator, but also exceed(s) those standards...”)

and recognized by one's peers, it's a little overwhelming.

Now that I have collected my thoughts, I do have a few words to share.

- Please heed the requests of almost all of our past presidents: **Get involved!** It is important that *we* make IRES what *we* need it to be. Yes, it's fun to come to CDS, renew old acquaintances, make new friends, attend a session or three, but there is more. You can do something more: volunteer to speak, volunteer to arrange for a speaker, submit topics for the sessions, or even critique a program. As a section chair, nothing is more useful to me than getting feedback from my fellow members. If I don't know what your interests are, I can't improve the sessions presented to you. We are a professional association and should strive at all times to improve ourselves and increase our knowledge. Participating at CDS is a great way to start; participating in all aspects of IRES is even better.

- **Stay involved.** When you better yourself, you better the association. If you have not yet earned your designation, work to do so. If you already have one, earn another one. If you have 17 designations, make it a nice, even 20!
- **Always learn.** New (aka young) examiners: Learn from the experienced people around you. They have a wealth of knowledge that you will never obtain by just reading a book or skimming the “interweb highway.” Ask questions and ask for assistance. You will be surprised to learn just what they do know and just what you do not know. (Affectionately) old timers: Keep up with technology and the changes in the industry—and share the knowledge that you have. You, too, can ask questions and ask for assistance. You will also be surprised to learn just what these new examiners do know.

All members: If you are not finding sessions at the CDS that allow you to learn, you need to not only let one of the section chairs know this, you need to make suggestions for sessions that will allow you to ascertain this knowledge. Remember: *You* make IRES. You can either sit there passively or you can become actively engaged, absorb information, increase your knowledge, and improve your skills.

Lastly, I never had the opportunity to meet Mr. Greer, so I asked some of my former coworkers at the Missouri DOI about him. Here are their thoughts:

“Al Greer was a super nice guy. He was short in stature but huge in heart—a true regulator who was looking out for the consumer at all times. I met him in Dallas, TX when doing a company there. After we got there, he made his way over and introduced himself. From that time forward, he would come over to our side

and I would go over to his—to the financial side. Al was a financial examiner, but not like the others, in that he saw the need in market conduct and truly believed that there was a place for it. He envisioned that the financial and market conduct sections would work side by side one day.”

“Al loved his ‘Mac’; he swore by it. He took it with him everywhere—a desktop version. This was before the rest of us even thought about dragging laptop computers around. Actually, he was a man who was ahead of his time.”

“Al enjoyed his work and loved to learn new things. Give him a project and his eyes would light up with excitement. Al was probably in his 70s when I first met him. I know that he worked a good 10 years past that time. He never gave up. I believe that he and his wife traveled everywhere together.”

So that, fellow members, is what I think I would have said back in 2010. I thank you again and I hope to see all of you at the next CDS. My best to you always. ■

Cindy Amann is currently an examinations supervisor for the insurance examination firm of InsRis. As a supervisor she has been responsible for market conduct examinations of multi-state examinations as well as company examinations for a single state. For 15 years, Ms. Amann worked for the Missouri Department of Insurance where, in addition to examination work, she was very active in IRES and working groups at the NAIC. She played an integral role in developing the concept of market analysis and drafted the first Market Analysis Handbook. Additionally, she was instrumental in drafting, editing and revising the Market Conduct Examiners Handbook.

Currently, Ms. Amann is the IT Section Chair for the annual CDS and in 2010 was awarded the IRES' Al Greer Award.

Scholarship Winners

Al Gross and Jim Long Rookie of the Year Scholarships

In 2012, IRES and the IRES Foundation created a scholarship program to promote education among new regulators. This award was such a success in its inaugural year that the program will now be a permanent part of IRES' annual activities.

The scholarship is named after two long-serving insurance commissioners, both of whom passed away shortly after retiring in recent years, and both of whom were staunch IRES supporters: Commissioner Jim Long of North Carolina and Commissioner Al Gross of Virginia.

Both of these commissioners were dedicated to serving their constituents. When people describe them, the same attributes come up over and over again: dedicated, leaders, innovators, mentors. Neither was afraid to get involved in difficult issues and find solutions that look outside the box. Both were recognized and touted as exceptional leaders by their peers and those who worked for them.

Al Gross was commissioner at the Virginia Bureau for 14 years. He began his career with the Bureau in 1981 as a trainee financial examiner. In 1996, he was appointed to the position of insurance commissioner. He was active at the NAIC, serving as a member, vice-chair, and chair for several financial committees, including the Financial Conditions Committee and the Financial Accreditation Committee from 1998 through 2010. He was involved with the formation of the Interstate Insurance Product Review Commission (IIPRC) and remained on the oversight committee until his retirement in 2010. Commissioner Gross was awarded the NAIC Distinguished Member Leadership Award in 2010.

Jim Long served as the elected insurance commissioner in North Carolina for 24 years. He was the NAIC president in 1991 and served as the immediate past president eight times. Before becoming the insurance commissioner, he was elected to the North Carolina House of Representatives from 1971-1975. He served as chief deputy insurance commissioner before being elected to office in 1985. He served as the chair of the Information Resources Management Committee at the NAIC from 2002-2008. He was instrumental in moving the IIPRC forward and served on

the management committee from 2005-2008. Commissioner Long was awarded the first NAIC Distinguished Member Leadership Award in 2008.

Nominees for Rookie of the Year Scholarship Award must meet the following requirements:

- Currently be an employee of a state insurance department with less than 2 years regulatory experience.
- Demonstrate exceptional promise and professionalism in representing their state.
- Seek to develop job skills by completing training programs through recognized insurance programs.

The winners of the 2012 Al Gross and Jim Long Rookie of the Year scholarships are Ida Cullufi of GA, Arthur Dodd of VA, Shelly Herzing of MO and John Huh of CA. We asked each of the winners to tell us what winning this scholarship award meant to them. Read on to see what they had to say.

Congratulations to each of you from *The Regulator*™.

A few words from the scholarship winners.



Arthur Dodd

Receiving the first annual Al Gross and Jim Long Rookie of the Year Scholarship Award was a great honor. I share the Society's commitment to professional development and enjoy the educational opportunities IRES membership provides. Beyond the financial aspect of the scholarship, I truly appreciate the recognition from my peers.

The CDS allowed me to choose an educational track relevant to my responsibilities. I enjoyed hearing experts speak on a variety of market regulation topics and had the opportunity to ask questions along the way. My scholarship provided the funding that allowed me to attend the MCM program. This two and a half day class focused on the process of performing market conduct exams. In addition to learning from a textbook and our speakers, students were encouraged to provide their insights as part of the learning experience.



Shelly Herzing

Thanks to IRES and to all of you for making possible the opportunity to attend the MCM program in Hollywood, FL.

I have returned home safely and thoroughly enjoyed the MCM class and accommodations provided. The Westin Diplomat Resort was a superb choice to host the CDS and MCM activities. The staff was very helpful with any questions and the amenities were overwhelming.

The learning experience the MCM class offered was unique as it offered a good exchange of interactive dialogue among peer regulators. One learned a lot with the practical information that many participants offered in various discussions. This hands-on training is ideal when one is working toward effective and efficient market conduct exams. Everyone was very friendly and the facilitators were entertaining and informative. One also came away from the class with a group of state mentors readily available to assist you in the future with any questions on exams or market conduct topics.



John Huh

I would like to take this opportunity to thank IRES, the IRES Foundation, and industry supporters for their generosity in funding this scholarship. It is such a privilege to be one of the winners of the IRES Annual Rookie of the Year Award. With the award and \$1,000 scholarship, I could attend the IRES Career Development Seminar and Regulatory Skills Workshop. I am humbled by knowledge the speakers have shown during the sessions and will further explore the world of insurance. This scholarship will help me to sharpen my skills but, more importantly, it will help consumers in their search for better protection. It is an honor to have been awarded the Annual Rookie of the Year Award for 2012.



Ida Cullufi

This year, I had the immense pleasure of being part of the IRES Career Development Seminar and Regulatory Skills Workshop as one of the Rookie of the Year Award winners. I was highly impressed by the commitment and professionalism of the organizers to make the seminar as smooth and interesting as possible. The financial regulation and property and casualty sessions were very helpful for my daily activities and updated me on some of the key issues at hand regarding the Solvency Modernization Initiative and the Worker's Compensation Marketplace.

Thank you, IRES, for this wonderful experience and opportunity! I am looking forward to attending future events. ■

New Designees

Congratulations!

The following members have received their Accredited Insurance Examiner (AIE™), Certified Insurance Examiner (CIE™), Certified Insurance Consumer Service Representative (CICSR™), or Market Conduct Management (MCM™) designation since the last issue of *The Regulator*™.

Please join us in congratulating them!

AIE

- ★ Edward Hall, CIE
- ★ Adam Plain, AIE, NV
- ★ Tracy Stevenson, AIE, MCM, unaffiliated
- ★ Candace Walker, AIE, MCM, DE

CIE

- ★ Edward Hall, CIE
- ★ Thomas Wohlbach, CIE, GA

CICSR

- ★ Robert Parsons, AIE, MCM, CICSR, WV
- ★ Douglas Pennington, CIE, MCM, CICSR, Federal
- ★ Stacy Rinehart, CIE, MCM, CICSR, KS
- ★ Marcia Zimmer, AIE, MCM, CICSR, WI

MCM

- ★ Amy Armstrong Groszos, MCM, FL
- ★ Kaci Barreto, MCM
- ★ Sherry Barrett, MCM, MI
- ★ Sean BETTA, MCM
- ★ Jim Bialorucki, MCM
- ★ Birny Birnbaum, MCM
- ★ James Burch, MCM
- ★ David Carter, CIE, MCM, DE
- ★ Andrew Chu, MCM, MD
- ★ LeAnn Crow, MCM, KS

- ★ Jan Davis, MCM, FL
- ★ Jonathan M. Davis, MCM
- ★ Arthur Dodd, AIE, MCM, VA
- ★ David Haddad, MCM, MI
- ★ Shelly Herzing, MCM, MO
- ★ David Howe, AIE, MCM, KY
- ★ Karen Isch, MCM, FL
- ★ Dan McBay, MCM
- ★ Rick Mendez, MCM
- ★ Martha Morris, MCM, WV
- ★ Joyclyn Morton, MCM, VA
- ★ Keith Nault, MCM, FL
- ★ James Nesmith, MCM, FL
- ★ Betty Pate, MCM, FL
- ★ Derek Petersen, MCM
- ★ Cara Phillips, MCM, FL
- ★ Yonise Roberts Paige, MCM, PA
- ★ Scott Woods, MCM, FL
- ★ Adam Zimmerman, MCM, MD

New Members

Welcome!

The following individuals have joined IRES since the last issue of *The Regulator*™. Visit the online member directory to learn more about them—and please join us in welcoming them!

GENERAL MEMBERS

- ★ Jean Adams
- ★ Trina Barton
- ★ Sean BETTA, MCM
- ★ Birny Birnbaum, MCM
- ★ Phillip Chesson
- ★ Jonathan M. Davis, MCM
- ★ Cecilee Diamond-Houdek
- ★ Ann Frohman
- ★ Edward Garrison

- ★ Melissa Gerachis, VA
- ★ Edward Hall, CIE
- ★ Andrea Harbison
- ★ Kevin Jones
- ★ Dan McBay, MCM
- ★ Rick Mendez, MCM
- ★ Michael Morrissey
- ★ Mark Ossi, GA
- ★ Cara Phillips, MCM, FL
- ★ Brad Shoop
- ★ Josephine Sitter
- ★ Kevin Sullivan, CPA, CIA
- ★ Greg Welker
- ★ Scott Woods, MCM, FL

SUSTAINING MEMBERS:

- ★ Joe Bieniek, AIE, MCM

- ★ Matthew Brasch
- ★ Jane Cline
- ★ W. Braden Garrett
- ★ Michael Kreiter
- ★ Jill Morgan
- ★ John Palmer
- ★ Mary Pickens
- ★ C. J. Rathbun

The following organizations have also joined IRES since the last issue of *The Regulator*.

- ★ Cumberland Insurance Group
- ★ First Consulting & Administration
- ★ Life Insurance Settlement Association (LISA)
- ★ Spilman, Thomas & Battle, PLLC
- ★ Symetra Life Insurance Company



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May 1-3, 2013

MCM Designation Course
Savannah, GA

June 12-14, 2013

MCM Designation Course
Richmond, VA

July 28-31, 2013

Career Development Seminar & Regulatory Skills Workshop
Portland, OR

July 31- August 2, 2013

MCM Designation Course
Portland, OR

October 21-23, 2013

MCM Designation Course
Madison, WI

Watch the calendar at www.go-ires.org
for more upcoming events.

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Don't miss our next issue due out about February 1. We will be looking at Risk Focused Exams and ORSA. If you have ideas for stories, please let us know—we're always happy to take suggestions!

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