

The Regulator[®]

INSURANCE REGULATORY EXAMINERS SOCIETY

The CDS Commissioners' Interview

Assessing Health Care Reform

*The interview below was conducted following the Commissioners Roundtable at the Albuquerque Career Development Seminar (CDS) on Tuesday, August 31. Participating were NAIC Chief Executive Officer **Dr. Therese Vaughan**, West Virginia Commissioner and NAIC President **Jane Cline**, Georgia Commissioner **John Oxendine** and New Mexico's newly appointed Superintendent of Insurance **John Franchini**. Regulator editor **Wayne Cotter** conducted the interview.*

Regulator: *State insurance departments obviously need all the financial help they can get. What are likely to be the costs associated with states implementing the federal health care reform act and will the federal government help defray some of these costs?*

Commissioner Jane Cline: The federal government has made available to this point three grant opportunities. There is a million dollar grant available to each state for rate authority. Grants were also made available of a million dollars for each state to implement state exchanges after we expressed concern about the costs associated with implementing these exchanges. Then there is also money available to states for ombudsman activity.

Regulator: *So that process is going on now?*

JC: The rate authority grants have already been awarded. Forty-six states were awarded million dollar grants. Some states chose not to apply because they believed they had adequate resources. The exchange grants are due September 1 so we'll see how many states apply for those.

Commissioner John Oxendine: I would just simply add that, yes, the federal government has been very generous in offering a lot of grants to help the states defray costs. But I think states have to ask themselves what strings might be attached. There could be additional reporting

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LEFT TO RIGHT: Oxendine, Vaughan, Franchini, Cline — wearing official IRES shirts

Insurance Regulatory
Examiners Society
2010
ALBUQUERQUE

Leslie Krier: Washington regulator is new IRES prez

ALBUQUERQUE — Leslie A. Krier, AIE, is the new president of the Insurance Regulatory Examiners Society.



Leslie Krier

She assumed the post here during the Society's annual meeting and Career Development Seminar.

After 22 years in the industry, Krier started with the Washington Office of the Insurance Commissioner in 1994 as a life and health market conduct examiner. In 2000, she was promoted to Chief Market Conduct Examiner. In 2006, she became Manager of Market Conduct Oversight and tasked with creating a unit to perform both market analysis and market conduct activities in accordance with Washington's Market Oversight law that was effective in 2007.

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From the President

IRES at a Crossroads

Some of you have heard me say many times that I think IRES is at a crossroads. Do you remember when you were in your mid-20s? For me, I had just graduated from college. I'd found a job, was getting a paycheck and had just moved into my first apartment. Part of me was trying to still live my life as a carefree student, but I was learning that I needed to be an adult to move forward in life.



That's where I see IRES today. We are 23 going on 24 years old. It's time for us to decide which path we will take — to continue as we are or to move into the next phase of our organization's life cycle. I consider us to be lucky right now. We have founding members of IRES who are still active and bring a sense of the organization's history to the table. We have new members with lots of energy, fresh ideas and new perspectives. During the next year, I hope we can find a way to meld the old with the new. I also hope we can craft a vision that we can pass on to my successors, a vision that not only retains the integrity of our original purpose but moves us to our next phase.

To do that, I need your help and your ideas. Most of you are like me — you don't want to be center stage and have the spotlight on you. You'd rather be the one in the back, handing off your ideas to someone else or looking for someone to listen. I want to be that person for you.

I've heard your great ideas many times over the past 15 years. Some are small and some are pretty aggressive, but I don't think I've heard an idea that did not deserve to be vetted.

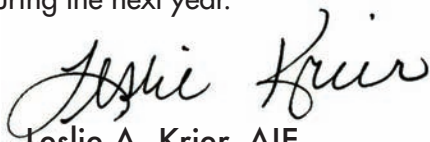
Now is the time to tell us your ideas. You're the ones who know how to make IRES relevant and

integral to your career. Tell us what you think needs to be changed. Tell us what works. How can we get you more involved? Do we need more educational webinars? Do we need to change our designation programs? Do you have an idea for a new education program? Do you have ideas about how we can promote membership?

Tell me; Call me; email me; text me. Join a committee. Make your voice heard. We can't change without knowing what's important to you — without hearing from you.

IRES is our organization. It's time for us to work together to decide where IRES goes next. This is a journey I cannot embark on by myself. It will take all of us working together to make sure that IRES moves into adulthood.

Thanks for making IRES the great organization it is today. I look forward to working with each of you during the next year.



Leslie A. Krier, AIE
IRES President

To our Readers

Beginning with this issue, *The Regulator* will be published four times a year rather than six.

The IRES Web site, www.go-ires.org, will continue to feature valuable news and information.



Quote of the Month

“The ability of Wall Street traders to see themselves in their success and their management in their failure would later be echoed, when their firms, which disdained the need for government regulation in good times, insisted on being rescued by government in bad times. Success was individual achievement; failure was a social problem.”

— Michael Lewis, *The Big Short*

Commissioners Interview

continued from page 1

requirements [or requirements for] possible changes in the law to continue to get those grants. And how long will these grants continue? You know, a lot of these costs are continuing costs and states have a lot of difficulty bringing on new employees and then those grants expire down the road, then you're stuck with a lot of employees that you can't pay for. And especially in the more unionized states that can be even more problematic. It's always problematic to fire state employees, but in unionized states that can be extremely challenging. Georgia's not one of those states, but many are.

Regulator: *Georgia applied for the grants?*

JO: We've applied for some; we've not applied for some.

Superintendent John Franchini:

In New Mexico, we did get the million dollar grant and we are applying for the ombudsman grant. But we feel the same way as John in that we don't know what the long-term effects are so we're setting up the whole grant on the basis of a one-year study. We are going to use [the grant] for a year and then we will decide after that whether we can integrate it into our health care operation.

There are also other grants out there, but we're finding that we have competing agencies in our state trying to go after this money and it doesn't fit the operation at

all but we still have to compete with these agencies. That's a problem.

JC: Yes, health care does

not just affect the insurance departments although a lot of this is insurance reform. There is the Medicaid Expansion piece and as we go forward there are going to be other demonstration grants that are going to be available. There is one dealing with medical liability reforms. There's a whole myriad. So it goes beyond the insurance piece. With respect to the insurance piece, there clearly is the sustainability aspect as you move forward beyond the 2014 implementation of the exchanges and the transition to 2016 and 2017.

Regulator: *Will states that currently have the authority to approve or disapprove health insurance rates, retain that authority under the new law?*

JO: I think so.

JC: Much of what we are dealing with is still based on rules that have yet to be developed by HHS (Editor's Note: U.S. Department of Health and Human Services) as we move through this process. For example, the rules implementing

exchanges; the rules dealing with rate authority. I would hope that there is deference given to states, particularly the 29 states that already have some form of rate approval in place. What we indicated with respect to our state is that we would enhance our rate review process through obtaining some outside consulting assistance to give more in-depth training to our analysts and, from time to time, use consulting actuaries. We haven't always been able to afford that.

Again, I'm hopeful that the federal government gives deference and opportunity to the states. More states may be incentivized now — and this has become an issue from a political standpoint — to move to rate authority as opposed to having the federal government pre-empt that authority.

Regulator: *One of the most outrageous practices, in my view, that existed in many states was when individuals would get sick and then see their insurance premiums skyrocket to unaffordable levels or they ended up being dropped by their individual carriers.*

“
The federal government is requiring individual families to purchase a product from a private company. In my opinion that is clearly unconstitutional.”

— Commissioner Oxendine



Does this law address this issue in a meaningful way?

Dr. Therese Vaughan: The individual market, as I recall, under the new law, it all has to be in one pool [in each state] and the small group market has to be one pool. I think states then can combine their individual and small group markets into a pool, and that should help this situation. With respect to the . . . what was the term you used . . . *outrageous* practices?

Regulator: *Yes*

TV: These practices were clearly very detrimental to consumers and any one of us could have entered the individual market and faced that problem. It was something, though, that was a result of the way the insurance market functioned. Consumers could leave one company and go to another company and get underwritten and get cheaper coverage, and as long as fresh underwriting and moving into a new pool was allowed, you created this dynamic of the existing insureds in the old pool going through the death spiral. So putting all in one pool will help, assuming that you don't have the adverse selection problem of the healthy people staying out of the pool.

Regulator: *That brings me to my next question for Commissioner Oxendine. Georgia is one of the states that is challenging the constitutionality of the health care reform mandate that requires that everyone purchase coverage. Commissioner, could you explain the basis for that challenge?*

JO: Yes, basically there are two types of governments around the world. There are governments that have inherent police power and state governments are those. The state has the all the authority that it has not given up under its state constitution or [is] given up

under the U.S. Constitution. The federal government is a government of delegated powers. It has no police power. It has no inherent authority whatsoever. It only has the authority specifically delegated to it. You could argue through the interstate commerce [clause of the U.S. Constitution] that to require companies to buy health insurance would be constitutional. On the individual requirement, had [legislators] done it properly and gone through the 16th Amendment, through the taxation authority, they probably could have taxed everybody for the cost of health insurance and then given them a credit if they bought health

insurance on their own. That would have probably been constitutional. I personally think it would have been bad policy, but it would be constitutional.

But what they did was that the federal government is requiring individual families to purchase a product from a private company. In my opinion that is clearly unconstitutional. It

is not a delegated authority. It is not being used as part of the taxation authority. And I would say that anyone who has even suggested that this would be part of the interstate commerce authority doesn't know what interstate commerce is. I've heard a lot of people in Congress use that as a justification and I think they honestly don't understand the law or the Constitution.

Regulator: *The new health reform law, as I far as I*



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Commissioners Interview

continued from preceding page

can see, will not prevent a hospital from charging \$60 for a Tylenol or a health insurer from not reviewing a hospital bill that is below \$50,000. Will this bill help reduce health care costs?

JC: I'm hopeful as we move through the process that there will be more transparency in the whole billing system. Consumers need to have a better understanding of this. The legislation does provide for some reporting requirements on hospitals and other entities. The legislation is also looking to measure Medicare results and Medicaid results. As we move forward with the implementation phases, I'm hoping we can get transparency on the costs of the billers and not just the payers.

JO: One problem we do have with costs is that it is a system that really doesn't work. We have one health care facility – meaning your local hospital – that is providing coverage for three types of people: insured people, people on government pay systems like Medicare and Medicaid, and people who are totally indigent and nobody's paying. That doesn't work, especially with the indigent group with no coverage which is growing. It is the people buying health insurance that are subsidizing them. By doing that it is simply driving the costs up and up.

The reason [hospitals] are charging \$60 for Tylenol is not because they are greedy but [it's because] they've given away a thousand free Tylenols to people that they never get reimbursed for either because they are indigent or because they are under a government program that doesn't adequately reimburse. So that shifts it to those with insurance and their insurance goes up because that Tylenol is \$60. You add that to the costs of expensive medical procedures and that runs up the cost of health care and the costs of health insurance. I personally am an advocate of private surgical centers. These centers provide health care at a much lower cost because they do not have the huge burden of the Medicare, Medicaid and indigent populations. They are simply charging insurance plans for the cost of

delivering [services] and the costs are a fraction of what hospitals are charging.

TV: It's easy to beat up on insurers or the insurance premiums going up, but as John so articulately explained, there is only so much you can squeeze out by squeezing the insurance companies. You really have to go down to the underlying costs of care and the [health care reform] bill doesn't directly attack that. The reason it doesn't directly attack that is because it's very hard politically. It's easy politically to beat up on insurance companies; it's very hard politically to beat up on providers. Medicare and Medicaid face exactly the same challenges that consumers in the private health insurance markets are facing and the government has not figured out how to tackle these rising costs.

There is something in the bill — the Independent Payment Advisory Board — that is supposed to look

at things to reduce costs in Medicare. The bill says if costs go up so much, then the commission has to make recommendations and the HHS Secretary has to implement those recommendations. Congress has the authority to weigh in but if they want to do something other than the Commission recommends they have to have cost savings that are equal to what the Commission is recommending. The problem is that this doesn't go into effect until 2014, and there's a whole list of things that the Commission is not permitted to recommend – proposals to increase taxes, reduce benefits, or increase premiums deductibles, or copays. So, given what they can't do, it's not really clear where they will find the savings.

Regulator: *What can state regulators expect from the Federal Insurance Office (FIO). Will this Office be a good thing or a bad thing?*

TV: It could go either way. I am optimistic that it's going to be a good thing. It's going to provide a place in Treasury for us to work with on a consistent basis. They will get to know us and understand us and they will know where to go when people need help. And

“
It's easy to beat up on insurers or the insurance premiums going up, but . . . there is only so much you can squeeze out by squeezing the insurance companies.
”

— Dr. Vaughan

that's going to be good – to have somebody in Treasury who understands insurance and the state regulatory system.

The threat is that there are others who have long advocated for a federal regulator who see this as the first step in getting that done. Now the law is very clear that the FIO does not have any regulatory authority, so it's an information-gathering organization with some ability to pre-empt state law in the area of international issues, such as reaching agreements with other countries on how their companies come into our markets to do business. So it's got limited ability to impact the state regulatory system, but there will be people who will try to push it. It certainly has the potential to be a very powerful platform.

Regulator: *Superintendent Franchini, you've been in office for about a week. What do you see as your biggest challenge in this new position?*

JF: My biggest immediate challenge is that we have some employment shortages in our office due to financial restraints and we need to fill these important positions so the public can be protected.

Regulator: *Is this a legislative dispute?*

JF: No it's not. It's really not even a dispute. It's just that because of our budget restraints and that employees have retired lately or are ready to retire, we need to reload. We need the support of New Mexico's Public Regulatory Commissioners to help us do this.

Regulator: *Has anything surprised you in your first week of office?*

JF: In spite of the fact that our Department had three months of interim leadership, I'm surprised at the resiliency, the positive attitude and the great cooperation our staff has displayed. Their willingness to protect the public has never diminished and I'm very proud of that.

Regulator: *Thank you.* ■

IRES CHAPTER NEWS



VIRGINIA — The Virginia State Chapter held its Quarterly Meeting on June 2. Guest speaker, **Leland Nye**, General Manager of the Virginia Property Insurance Association (VPIA), presented an informative overview of the VPIA and the homeowners' assigned risk market in Virginia. There were 16 attendees.

In addition, on June 1, the Bureau of Insurance's Ann Colley, **Julie Blauvelt**, and **Jim Young** presented A Synopsis of Virginia 2010 Insurance Law: Life and Health. The session focused on 20 new insurance laws or amendments to existing Virginia statutes recently passed by the Virginia General Assembly. Emphasis was placed on how the new legislation would affect the regulation of life insurance, annuities, and/or accident & sickness insurance, particularly in the areas of forms and rates, consumer services, and market conduct. The one-hour session was repeated on June 2 and June 3 to allow additional employees to participate. A total of 40 IRES members and Bureau of Insurance employees attended the three sessions. — *Bryan Wachter; bryan.wachter@scc.virginia.gov*



State chapter representatives met at the Albuquerque CDS to discuss common issues and concerns.

Insurance Regulatory Examiners Society

ALBUQUERQUE

The 2010 Annual Meeting & Career Development Seminar



Heard in the Halls

Why do you keep coming back to the CDS?



"It's educational and you develop great relationships with regulators and representatives from the industry."

— Regan Johnson, AIE, MCM, 5-year member, fifth CDS
Michigan Insurance Department



"It's difficult to find another place to get such pertinent information about my job in such a short amount of time."

— Doug Pennington, CIE, MCM, 4-year member, third CDS
Washington State Office of the Insurance Commissioner



"I like the diversity of the topics and the interaction between regulators and the industry."

— Nitza Pfaff, MCM, 4-year member, third CDS
State of Wisconsin, Office of the Commissioner of Insurance



"It's a good opportunity to get new ideas and see what's changing."

— Stacy Rinehart, CIE, MCM, 6-year member, fifth CDS
Kansas Insurance Department

Missouri's Gary Kimball receives 2010 President's Award

ALBUQUERQUE — Gary W. Kimball, CIE, MCM, CCP, ALHC, FLMI has been named recipient of 2010 IRES President's Award.

In making the presentation, Dennis Shoop, outgoing IRES president, thanked Kimball for his work in a wide variety of areas — resolving hotel contract negotiations to balancing the IRES budget during a difficult economy. Mr. Shoop noted Kimball's history in the market regulation area, which included more than 10 years of regulatory service to the Missouri Department of Insurance, most recently serving as an Examiner in Charge.

Before joining the Missouri Department of Insurance in 2000, Kimball worked in the life and health insurance industry for 32 years, gaining experience in claims, underwriting, systems administration, and management.

Kimball has served IRES on the Finance & Budget, A & E, Education, Curriculum and CDS Format Committees, was Missouri State Chair for three years,



Gary Kimball (left) with IRES President Dennis Shoop

and wrote a chapter in the MCM textbook. He is currently serving his third term as IRES Treasurer.

Gary has been married to his wife, Virginia, for 41 years. They have two children and three grandchildren, all of whom live in Florida.

Schrader-Nelson Award Goes to Ex-Washington Commissioner

ALBUQUERQUE — The Schrader-Nelson "Article of the Year" Award went to former Commissioner of the District of Columbia Department of Insurance, Securities and Banking, Thomas Hampton.

Mr. Hampton's article, "Annuities: Protecting Consumers with Suitability Regulation," appeared in the March 2010 issue of *The Regulator*.

Mr. Hampton, who attended the CDS as a presenter, is a Senior Advisor with SNR Denton.



Thomas Hampton



IRES members enter the Albuquerque Isotopes Park for a contest with the Iowa Cubs. Several members snagged autographs of former major leaguers, including Hall of Famer Ryne Sandberg.

INSET: Autographed baseball cards from the E. Nordman collection.

Cindy Amann receives 2010 Al Greer Award

ALBUQUERQUE — The 2010 Al Greer Achievement Award was presented to Missouri's Cynthia Amann, an 18-year veteran of insurance regulation. From 1994 until 2005 she served as a Market Conduct Compliance Auditor for the State of Missouri



Cynthia Amann [center] with IRES Past President Dennis Shoop and 2010-2011 President Leslie Krier.

Department of Insurance. In 2005, she joined INS Regulatory Insurance Services, Inc. where she currently serves as the Deputy Director, Market Regulation.

A graduate of the University of Missouri-Columbia with a Master of Arts in History, our recipient also received a Master of Arts in

Legal Studies from Webster University, her Paralegal designation, and the designation of Market Conduct Management Specialist.

She is an active participant on many NAIC Committees, Sub-Committees, and Working Groups. She played an integral role in developing the concept of Market Analysis and drafting the first Market Analysis Handbook.

She has been a requested speaker and presenter at numerous industry organizations like IRES and ACLI. An outstanding spokeswoman for market regulation, she volunteers to tackle difficult issues without hesitation. Her willingness to serve sets an example for all IRES members.

The Al Greer Achievement Award 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.

Mr. Greer was among the original insurance examiners whose vision established the Insurance Regulatory Examiners Society in the late 1980s.

Mr. Greer helped fashion the mission of IRES, namely to raise insurance regulation to a highly respected profession marked by technical proficiency and ethical behavior. He went on to serve on its Board of Directors and was later elected treasurer.

Welcome, new members!

- Andrew Arnott, FL
- Robert G. Arrow, RI
- C. Gary Claunch, CIE, MO
- Jeff Cordell, AR
- Patricia Covington, NJ
- Selrey N. David, CIE, NY
- Stephen J. DeAngelis, CT
- Roy A. Foster, NC
- Teresita A. Gomez, retired
- Sharon K. Gordon, RI
- Melvin D. Heaps, AR
- Dianne E. Hunt, AIE, Unaffiliated
- Kimberly S. Johnson, AR
- Benson Jones, MCM, Unaffiliated
- Teresa M. Koerkenmeier, AIE, MO
- Lisa Lemon, HI
- Linda M. Miller, DE
- Patricia Neesham, MCM, Unaffiliated
- Robert D. Potts, NV
- Yonise A. Roberts Paige, PA
- Harry Sanavitis, NY
- Kurt Swan, CT
- Donna Theriault, ID
- Dick Torti, AR
- Chad Walker, IN
- Debra M. Webb, MCM, IN
- Dorothy E. Wendoloski, RI
- Tian Xiao, MCM, NM

Krier is new IRES president; Ballard is president-elect

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Krier joined IRES in 1995 and soon became involved as a CDS presenter. She earned her AIE in 1997. She would later serve as a CDS section chair and member of the Society's Membership & Benefits Committee.

Krier's expanding service and commitment to IRES eventually landed her a spot on the Society's Board of Directors and, eventually, the managing Executive Committee where she chaired the Membership and Benefits Committee.

There are many times in the lives of individuals and organizations that bring one face to face with a "cross-road."

"That is where I see IRES today," she said.

Krier told those gathered in the Hyatt Albuquerque ballroom that, "It's time for us to decide which path we will take – to continue on as we are or to move into the next phase of our organization's life cycle.

The future leaders of IRES, she added, will be those who find a way to meld the old with the new and come up with a vision and mission to hand over to my successors that maintains our original purpose but moves us into that next phase."

Leslie offers more of her thoughts on assuming office in "From the President," on p. 2.



IRES Vice President Anne Marie Narcini and Past President Dennis Shoop

In addition to Krier, the following were elected to serve as officers on the **IRES Executive Committee:**

- IMMEDIATE PAST PRESIDENT: **Dennis Shoop**, MCM, unaffiliated

- PRESIDENT-ELECT: **Thomas Ballard**, CIE, MCM, Georgia

- VICE PRESIDENT: **Anne Marie Narcini**, CIE, MCM, New Jersey

- TREASURER: **Gary Kimball**, CIE, MCM, Missouri

- SECRETARY: **Mark Hooker**, CIE, MCM, West Virginia

- AT-LARGE: **Holly Blanchard**, AIE, Nebraska

In addition, the following were elected by the membership to four-year terms on the IRES Board of Directors:

Lynette Baker, OH; **Holly Blanchard**, NE; **Doug Pennington**, WA; **Nancy Thomas**, DE; **Donald Bratcher**, Arkansas; **Betty Bates**, D.C.

In addition, the following were appointed by the Board to serve at-large, one-year Board positions: **Katie Johnson**, VA; **Stacy Rinehart**, KS; and, **Andrea Baytop**, VA.

Details on the 2010 elections can be found at:

www.go-ires.org/leadership/index.cfm



IRES Board members Katie Johnson of Virginia and Thomas Ballard of Georgia



West Virginia's Mark Hooker, chair of the IRES Education Committee



Face to Face in Albuquerque



CLOCKWISE FROM TOP The NAIC's Joe Bieniek moderated a Monday morning panel on innovations in the p/c industry. • Panel discussion on New Mexico insurance frauds • Larry Lentini, INS Insurance Services, one of the dozens of CDS breakout presenters

Congratulations to the IRES Class of 2010

ALBUQUERQUE — The Society's 2010 "graduating class" consisted of 17 new AIEs, six new CIEs, and 119 new MCMs. They were honored in the Grand Ballroom of the Hyatt Regency in downtown Albuquerque during the IRES Annual Meeting and Career Development Seminar.



New AIE designees (left) and new CIE designees (below) were honored during Monday's opening general session in Albuquerque. New MCM designees also were recognized during the ceremony.



CIE

MCM

Healthcare Hodgepodge

by **Douglas A. Freeman, CIE, MCM**
Monday, August 30, 2010 (10:30-11:45 a.m.)

It was truly a healthcare hodgepodge in this early morning session as panelists discussed, among other things, new Medicare supplement plans, Medicare Advantage, new federal reporting and confidentiality responsibilities, innovative health care benefits, and long-term care insurance partnership plans.

The moderator was **Rosanne Mead** of the Iowa Insurance Division and speakers included: **Dan Honey**, Arkansas Insurance Department; **Melissa Hull**, Attorney & Insurance Regulatory Consultant; **Marie Roche**, John Hancock Life Insurance Company; and **Dan Brown**, Partner, SNR Denton. Dan Brown outlined issues concerning Medicare, which will be operating with \$135 billion less revenue in 2011. Also, the Medicare Part D prescription drug coverage gap will phase out by 2020 and increase the costs of the program by \$29 billion.

Brown detailed the Medicare Advantage program, noting that private insurers will continue to provide Medicare benefits and receive from Medicare a set dollar amount per member, per month. Medicare Advantage members pay a monthly premium, Medicare Part B premium, and co-pays. Plans will still be paid based on benchmarks, but the benchmarks will be lowered in 2012. This could result in the abandonment of small markets, reduced benefits, and increased out-of-pocket costs. As a result, providers will be squeezed. Brown also discussed Quality Bonuses, Medical Loss Ratios (MLRs), and the Medicare Advantage Rebate.

Marie Roche discussed recent developments concerning Long-Term Care (LTC). The Community Living Assistance Services & Supports Act (CLASS Act) provisions that were incorporated in the health

care reform bill signed into law by President Obama on March 30, 2010. CLASS creates a voluntary LTC insurance program administered by the federal government (no private insurers). CLASS seeks to raise public awareness about LTC and the need to plan ahead. CLASS specifically

- Helps those with functional limitations remain at home;
- Builds a supportive service infrastructure;
- Alleviates family caregiver burdens;
- Reverses institutional bias; and
- Encourages younger people to start purchasing coverage.

Employers are permitted to opt out of the CLASS program with no penalty. If an employer chooses to participate in the CLASS program, all employees would be automatically enrolled and premiums deducted from payroll. Employees not wishing to participate would have to opt out.

Dan Honey focused on the Arkansas LTC Partnership Plan. Honey stated that several carriers filed and are eligible to provide benefits, but many

are not selling the product. Honey also addressed the impact of the health care reform act on limited benefit plans. Melissa Hull discussed, among other things, new federal reporting and confidentiality duties under the health care reform act.

Based on the panelists' comments, attendees' questions, and the scope of the health care reform bill, there is no doubt that the new law will continue to elicit debate and discussion as the details develop through the implementation of rules and regulations. ■



Dan Brown (standing) with Marie Roche, Melissa Hull, and Dan Honey

Douglas A. Freeman is Chair of the IRES Past Presidents Council and an Insurance Regulatory Consultant with SNR Denton in St. Louis. The editor would like to thank Doug for his contributions to *The Regulator* over the years.

The Continuum: Two Years Later — Progress?

by **Jann Goodpaster, CIE, AIE**

Monday, August 30, 2010 (1:30-3:00 p.m.)

Led by Moderator Ron Kotowski, CNO Financial Service, four prominent regulators (past and present) analyzed the progression of the Market Analysis Continuum to determine how market regulation has been impacted by its implementation. The panel consisted of **Dudley Ewen**, recently with the Maryland Department but currently with INS Regulatory Services; **Lynette Baker**, Ohio Department of Insurance; **Anne Marie Narcini**, New Jersey Department of Insurance; and **Kirk Yeager** of RSM McGladrey, a regulatory consulting firm (formerly with the Colorado Insurance Department).

Ms. Narcini led the discussion by offering a definition of what the Continuum is and what it is not. It is, she said, a spectrum of regulatory actions to address potential violations of state laws by the insurance industry. It is not a ladder where one step must be taken before the next. In other words, it does not require that a regulator follow each step along the way before moving to the most aggressive tool: the market conduct examination. The first step in the process is to evaluate the nature of the potential issue. If the issue results in true consumer harm, then the regulator can move to a higher step on the Continuum or, in extreme cases, go directly to an exam. A simple technical violation, however, may not result in an immediate action.

The primary purpose of the Continuum is to respond to an alleged industry violation with a regulatory action that is reasonable, proportional and appropriate. Examinations are costly and intrusive to insurers and are not the only market regulation action available to insurance departments. Examples of other available actions are: phone inquiries, interrogatories, interviews, data calls, self audits, and desk audits.

Has the implementation of Continuum reduced the number of comprehensive examinations being per-

formed? Yes, the panel agreed, the number of comprehensive examinations performed by states and jurisdictions has dropped significantly. Comments from several industry members in the audience appeared to confirm the panel's observation that fewer exams are being conducted.

Is the use of the Continuum providing effective and more efficient insurance regulation? This question is much more difficult to answer. While the number of examinations is lower, industry members indicated that the number of regulatory actions has increased. Some issues are resolved with a phone call or a quick e-mail, but some actions in the Continuum require the insurer to produce data runs or call for responses that can be costly and invasive.



The Continuum Panel: Shifting the regulatory perspective

Regulators have had to shift their perspective to ensure the success of the Continuum. The comprehensive examination approach used prior to the advent of the Continuum helped regulators ensure that most market conduct issues were being addressed in a satisfactory manner.

The use of the Continuum can make it more difficult to assign priorities within an insurance department. Also, many states fund their regulatory examination process by charging for examinations. Without such resources, states may be unable to fund their regulatory obligations.

The bottom line — the implementation of the Continuum is fairly new and still needs further tweaking. Insurance regulators and the industry are adjusting to the changes currently being implemented. Both, however, appear to feel some change is in the air that will bring about a more effective, more efficient regulatory environment on behalf of insurance consumers.

For more information on the Continuum, consult the “NAIC Market Regulatory Handbook.” ■

Jann Goodpaster is a former IRES President. She is currently a Director at RSM McGladrey. The editor would like to thank Jann for her contributions to *The Regulator* over the years.

Wild West of Viaticals, Life Settlements & STOLIs

by **Wayne Cotter, CIE**

Monday, August 30, 2010 (9:00 – 10:00 a.m.)

SCENARIO #1: You're a 70-year old widower in excellent health. Your children are grown with careers of their own. You have a whole life policy with a face value of \$500,000 and a cash value of \$200,000. Your life insurance needs have changed and you are now looking to cash out. A life settlement broker offers to buy your policy for \$275,000.

SCENARIO #2: You're a 70-year old widower in excellent health. Your children are grown with careers of their own. You have no life insurance. A broker approaches you and suggests you purchase a \$500,000 life insurance policy that will cover you for a two-year period with all premiums financed by a no-cost loan. In fact, the broker says, you could make \$20,000 on the deal, provided you allow him to buy your policy after two years.

Would accepting either of these offers be an appropriate choice for the 70-year old widower? Well, Scenario #1 could make economic sense since the policy's cash value is significantly below the \$275,000 offer and the widower would not be eligible to access any of his policy's accelerated death benefits due to



Lovendusky and Mumford

his good health. This would be an example of a traditional life settlement, whereby an individual who no longer needs a large amount of life insurance coverage sells his policy to a third party for an economic benefit.

Scenario #2, on the other hand, raises the question of insurable interest. Everyone has an insurable interest in his or her own life, but when a stranger initiates a life insurance sale and agrees to eventually buy another party's life policy, the notion of insurable interest is turned on its head.

These scenarios pinpoint some of the problems states face when trying to distinguish between so-called Stranger Originated Life Insurance (STOLI)

and life settlements. The issues surrounding such efforts were the focus of this Monday morning panel, featuring **Michael Lovendusky**, Vice President & Associate General Counsel of the American Council of Life Insurers (ACLI), **Dan Brown**, a partner at SNR Denton, and **First Deputy Commissioner Jim Mumford** of the Iowa Insurance Department.

Michael Lovendusky stressed that his organization is not opposed to a secondary market for life policies provided such sales take the form of legitimate life settlements. However, he notes that some reliable estimates show that as many as 50% of life settlements are in fact stranger originated life insurance. Lovendusky applauded the 29 states that have thus far enacted STOLI legislation noting that each legislative success was hotly contested by secondary market interests.



Dan Brown

Dan Brown discussed the differences between viatical settlement products and life settlements. A viatical settlement, he said, occurs when a life insurance policy is sold on an insured with two years or less to live. In contrast, the life expectancy for a life settlement insured typically exceeds two years. Mr. Brown also had concerns with the STOLI market, noting a potential parallel to the mortgage-backed security market. Although life policy securitizations currently represent a relatively small asset class, he said, financial markets that were thirsting after mortgages a few years ago could develop a similar thirst for life policies.

Deputy Commissioner Mumford focused on the need for federal and state regulators to work together to regulate legitimate life settlement products. When a consumer sells a policy as an investment, he said, state regulators are concerned because a life insurance sale is occurring. Meanwhile, security regulators want to ensure that investors are protected in such transactions. Deputy Mumford stressed the importance of these two groups of regulators working to achieve common goals without engaging in turf battles. ■

— Wayne Cotter is editor of *The Regulator*.

CLOCKWISE FROM TOP: New Mexico Gov. **Bill Richardson** addresses IRES at a general session • **Nestor Romero**, IRES member and long-time friend of Richardson • Georgia Commissioner **Oxendine** • NAIC CEO **Terri Vaughan** • IRES Past President **Dennis Shoop** (left) with **John Franchini**, newly appointed New Mexico Superintendent of Insurance



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AT RIGHT: California's Ken Allen, Polly Chan and Towanda David



BELOW: Co-chairs of the CDS Financial Section: Don Carbone, INS Regulatory Insurance Services, and New York's Jimmie Newsome



Kotowski, Shoop, Ewen, Bieniek and Kenepp participate in the Open Forum Roundtable

First Person Singular

This marks the final “Casual Observations” column and my final issue as editor of *The Regulator*. In this column we have long favored the first person plural (i.e., we) over the first person singular (i.e., I). For this piece, however — beginning with this sentence — I will break with that tradition. “We” is just too impersonal. It can’t begin to reflect my feelings as I put this final issue to bed.

My affiliation with *The Regulator* began in the mid-1990s when Board Member **Rich Lynde** urged me to volunteer for the IRES Publications Committee. Since I had been editor of the New York Department’s industry newsletter, Rich felt it would be a good fit. **Frank Seidel** was *The Regulator’s* editor back then and, as many of you know, Frank worked tirelessly on behalf of IRES.

Frank and I made a good team and it wasn’t long before he named me Associate Editor. In 1997, however, Frank stepped down and since I was going through a rough patch at work, I followed suit. The following year, however, a phone call from **David Chartrand** convinced me to return — this time as editor.

Shortly after assuming my duties, an attorney, **Dee Dee Gowan**, pitched me an idea for a column highlighting regulatory developments in various states. I loved the concept and “Regulatory Roundup” was born. Dee Dee had to drop the column in 2000, but **Stroock and Stroock and Lavan** has continued it — issue after issue — for the past ten years.

The November 1999 edition is among those of which I am especially proud. We asked ten regulatory and industry leaders: *Is State Insurance Regulation Dead?* I repeated the format in 2004 and 2009 for other special issues. The 15th and 20th IRES anniversary issues were also memorable.

Through most of my time as editor, I was lucky enough to have **Kathleen McQueen** as my Associate Editor. In editing submissions, one pair of eyes is never enough. Fortunately for me, Kathleen’s editorial vision is exceptional. She is a grammarian *par excellence* and a trusted sounding board. Without her, *The Regulator* would have been a far lesser product and I never would have lasted a dozen years at its helm.

Two other essential ingredients in the mix were David Chartrand, IRES executive secretary, and the late, great **Scott Hooper**, the publication’s featured writer. David is a layout master whose creativity has made each issue look and read better. His staff — most notably **Susan Morrison**, **Elaine Bickel**, and **Joy Moore** — also worked hard to improve every issue. In January 2009, an established insurance journalist, **Steve Tuckey**, became *The Regulator’s* featured writer and has produced thought-provoking pieces ever since.

Our Publications Committee members — far too numerous to name — were there for me too, reviewing draft issues and generating ideas. In addition, I’ve had the pleasure to work with many IRES presidents. They were all exceptionally cooperative and always met their column deadlines (well, almost always). In particular, I am indebted to **Angela Ford** for her early and ardent support. Also let it be noted that **Gerry Milsky** inspired my “Casual Observations” column (although he may not know it) after he suggested I “lighten things up a bit.” Thanks Gerry. Also a tip of the hat to **Stephen King** for always making me laugh, during good times and bad.

It’s been a long run — more than 70 issues — and now it’s time to say goodbye. **Melissa Hull** will be taking over as editor. I know Melissa will bring a lot of energy, new ideas and enthusiasm to the publication in its new quarterly format.

If there has been one theme running throughout *The Regulator* during my tenure, it has been a commitment to the integrity and professionalism of state insurance regulators. Although I always tried to solicit authors with wide-ranging opinions for each issue, my confidence in our state-based system of insurance regulation never wavered. That’s why I would like to conclude with a special thanks to you, those IRES members who each day ensure that our insurance companies are financially sound and our policyholders protected. It’s been a pleasure serving you.

— WC



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✓ Carol Cutter, the insurance commissioner for Indiana, died on September 6, one day after her 67th birthday. She had been on medical leave since June. NAIC President and West Virginia Commissioner Jane Cline said, "Carol brought a wealth of experience and expertise to her job and her dedication to the people in her state was beyond comparison. We extend our thoughts and condolences to Carol's family and loved ones."

✓ Photos for this issue of *The Regulator* by Wayne Cotter and David Chartrand.

✓ REMINDER: *The Regulator* will now be published four times a year. See you next year.

BULLETIN BOARD items must be no more than 75 words, and must be accompanied by the sender's name, e-mail address and phone contact information. Submit plain, unformatted text (no special font stylings, underlined hyperlinks or special margins).

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