



One Size Does Not Fit All: Network Adequacy in Health Insurance

by Katherine A. Morgan

Nationwide, regulators and health insurers are seemingly at odds over the best way to structure provider networks. Regulators in more and more states are passing network adequacy regulations to ensure that there are enough providers where members need them. Meanwhile, carriers are increasingly implementing narrow networks as a means of controlling costs. While it may technically be possible for carriers to implement narrow networks and still comply with network adequacy regulations, there are a host of controversies and complexities at the crossroads of provider network arrangements.

Network Adequacy

Network adequacy regulations are nothing new. More than a dozen states had network adequacy regulations prior to the 2010 passage of the Affordable Care Act (ACA), and most of the remaining states have passed laws and regulations since then. The National Association of Insurance Commissioners (NAIC) also has a model act pertaining to network adequacy. The ACA's implementing regulations broadly require that all Qualified Health Plans (QHPs) include essential community providers and a network that is "sufficient in number and types of providers, including



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providers that specialize in mental health and substance abuse services, to assure that all services will be accessible without unreasonable delay." See 45 CFR 156.230.

Increasingly, however, states are passing even more prescriptive network adequacy regulations focused on geographical availability, access to appropriate primary and specialty care, and transparency. In addition, lawmakers and regulators are aiming to reduce the "surprise bill" effect for members (for services provided by out-of-network providers, in some cases beyond the member's reasonable control and/or without the member's knowledge). These requirements take many forms.

Network adequacy regulations are nothing new.

For example, in March of this year, the California Department of Insurance (CDI) announced the formal adoption of network adequacy regulations¹ that Commissioner Dave Jones first issued and

¹ The regulations amend and add to Title 10, Chapter 5, Subchapter 2, Article 6 of the California Code of Regulations by amending sections 2240, 2240.1, 2240.2, 2240.3, 2240.4, 2240.5 and adding new sections 2240.15, 2240.16, 2240.6, and 2240.7.

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May 10-12, 2016
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August 7, 2016
AMCM® Class | Scottsdale, AZ

August 7-10, 2016
CDS & Regulatory Skills Workshop | Scottsdale, AZ

August 10-12, 2016
MCM® Program | Scottsdale, AZ

September 28-30, 2016
MCM® Program | Chicopee, MA

Visit go-ires.org/events/upcoming for details and more upcoming events. ■



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implemented, on an emergency basis, in January 2015.

Key Changes for Insurers Licensed by the CDI

- Include sufficient numbers and types of providers in the network to deliver covered services (with option for CDI to require additional specialty care by geography on a case-by-case basis);
- Include adequate full-time equivalents of primary care providers in the network accepting new patients to accommodate anticipated enrollment growth;
- Adequately provide for the treatment of mental health and substance use disorders;
- Include an adequate number of primary care providers and specialists with admitting and practice privileges at network hospitals;
- File provider selection and tiering criteria with the CDI;
- Monitor and adhere to new appointment wait time standards (differ by type of service and urgency);
- Regularly report information about the networks and changes to the networks to the Department of Insurance for review;
- Maintain accurate provider network directories available to the public and update them weekly; and
- Arrange out-of-network care at in-network prices when there are insufficient in-network care providers.

Similarly, New York passed one of the most stringent provider access and reimbursement laws in the nation last year. Its surprise bill and emergency services law went into effect March 31, 2015, with the goal of protecting consumers from out-of-network emergency bills and from surprise bills when services are

performed by an out-of-network physician at an in-network facility and when an in-network provider refers an insured to an out-of-network provider. Under the Emergency Services Hold Harmless provision, members will not be required to pay non-participating provider charges for emergency services (typically for services in a hospital emergency room) that exceed their in-network copayment, coinsurance, or deductible.

Still other states incorporate requirements of third party accreditation entities such as URAC. *See e.g., Conn. Gen. Stat. Ann. § 38a-472f.*

Narrow Networks

On the other side of the coin, carriers are moving towards offering narrow networks, also referred to as tailored networks, with fewer provider choices. As described below, narrow networks tend to be cost-driven from the carrier's perspective and heavily scrutinized by regulators.

Narrow networks tend to reduce health care costs and premiums in multiple ways. In particular, when a provider has fewer carriers in-network, the carrier can typically negotiate a lower provider reimbursement rate with network providers on the theory that those providers will be receiving an increased volume of members as compared with a traditional network (i.e., the providers in the narrow network face less competition for that carrier's members). In addition, with fewer providers managing care, particularly to the extent that those carriers are integrated, the member's care should be managed more efficiently and with higher quality. The idea is that the member will have fewer unnecessary procedures and better care, the so-called "right amount of care." Contractually, many narrow networks go hand-in-hand with accountable care organization (ACO) models, which provide financial incentives to increase efficiency and quality of care.

Narrow networks come under fire, however, from all sides: members,

providers, and regulators. Members may choose narrow network products based on the lower premium; however, in practice, members typically prefer a broader choice of providers and some want or need the ability to use a particular provider. Providers who are rejected from the network take issue with both the model and the selection process and criteria used by carriers. Regulators are left in the middle, balancing the need for lower cost health insurance options against member and provider complaints regarding choice and, in some cases, access to care.

It is clear that state and federal law will continue to require network adequacy, which is a foundational element of health insurance coverage.

As a result, there has been a call for transparency in the narrow network process. To that end, many states have passed legislation and/or regulations aimed at disclosure of the carrier's provider selection criteria and process with a focus on the related issue of network adequacy. Georgia is the most recent state to adopt such a law; Senate Bill 158, the "Consumer and Provider Protection Act," was signed by the Governor April 26 of this year.

Tiered networks, which are arguably a form of narrow networks, face similar issues. Omnia Health Plan, a product of Horizon Blue Cross Blue Shield of New Jersey, offers a tiered network that has been met with very significant challenges, including a number of lawsuits and bills authored in reaction. One such package of bills was passed by an Assembly committee last month.

The Future

It is clear that state and federal law will continue to require network adequacy, which is a foundational element of health insurance coverage. Without access to

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the appropriate types of providers in the necessary geographies, coverage would be effectively unusable. And, despite public outcry for broader networks, contracting with most of the providers in a geography is no longer financially tenable for many carriers. These major medical carriers, under the ACA and state law, must generally cover robust benefits and keep premiums as low as possible, particularly

where rate increases are subject to regulatory review and approval. As a result, we expect that we will continue to see carriers looking for ways to change reimbursement while continuing to provide the benefits mandated by law and required to remain competitive. We will continue to watch this space closely as network and cost models evolve. ■

Katherine Morgan is an associate at Dentons in the Insurance Regulatory practice group. She advises health insurance and managed care clients on regulatory issues including health care reform and the full range of state individual and group laws. She also counsels insurance-related entities such as producers and start-ups on all manner of licensing and other insurance regulatory issues.

Board of Directors Evaluations Required by Corporate Governance Regulations

by C. J. Rathbun, FLMI, HIA, CCEP, AIRC and Carol Stern, FLMI, AIRC, ACS

“The organization should describe the processes in place for the Board to evaluate its performance and the performance of its committees, as well as any recent measures taken to improve performance. The organization is also encouraged to describe any Board or committee training programs that have been put in place.”

NAIC Corporate Governance Annual Filing Guidance Manual, October 2013¹

The new Corporate Governance Annual Disclosure (CGAD) filing requires, among other points, a narrative documenting how well the Board of Directors performs its responsibilities and duties, and how the various Board Committees perform theirs. If your company does not already have an evaluation protocol in place, here are some essentials.

Evaluate When?

- The assessment must be performed on an annual basis.

- Preferably schedule this exercise about the same time of year.
- Evaluating late in the year helps newer Board members have the time to gain a sense of their own performance, as well as the Board as a whole.

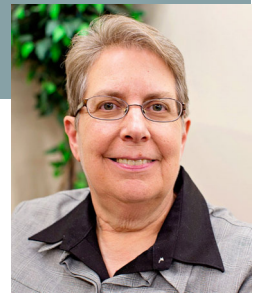
Measure What?

In order to know what to evaluate, the company should:

- Document the qualifications and characteristics which they feel would make a person effective at the assigned tasks and accountabilities of Board members.
- Whenever possible, give examples. For instance, how does a member document his/her integrity? What are some of the tough questions Board members should be considering?
- Document the policies, procedures, and protocols in place for the Board and each committee. Include such items as succession planning for the company, Board member rotation and replacement policies, diversity and expertise goals, oversight responsibility of the nominating and compensation committee, and expectations for open dialogue, transparency, collaboration, and confidentiality.



C.J. Rathbun



Carol Stern

- Ask the Board to measure themselves and their committees against those established standards.
- Review the work of the standing Board Committees and their charters to assure they are performing effectively and reporting to the full Board as required.
- If new Board members were put in place, determine whether the Board followed established protocols and selection criteria.
- Assess whether the Board participated fully in the financial and strategic planning process for that year, with the cost of initiatives balanced against the cost of risk mitigation.
- Review Board activity related to selecting, monitoring, evaluating, and compensating the company's senior executives that year.
- Determine if the Board has adequate access to all the necessary advisors to perform its oversight responsibility for the key risk areas (the actuarial function, investment decision-making

¹ From the National Association of Insurance Commissioners (NAIC) adopted Corporate Governance Annual Disclosure Model Act and supporting Model Regulation in November, 2014. Insurance department regulators have been introducing legislation to implement annual reporting for every type and size of insurance company.

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processes, reinsurance decision-making processes, business strategy/finance decision-making processes, compliance function, financial reporting/internal audit processes, market conduct decision-making process, and cyber security functions).

Review What?

Prior to the evaluation timeframe, the participants should be given materials including at least:

- Board minutes for the year,
- The previous year's evaluation report,
- Board training records, and
- Improvement measures undertaken in that year (and perhaps the year before).

Evaluate Whom?

The only requirement of the model law is for evaluation of the performance of the committees and of the Board as a whole. Best practices, however, suggest the following.

- Ask each participant to evaluate his or her own performance as a Board member. This part of the evaluation should ask about time commitment, preparedness, willingness to ask hard questions, working as a team, performance of fiduciary care for the company, and if they can make a good-faith statement that their individual votes were for the larger good of the policy-owners and other stakeholders.
- In this section, also ask questions designed to evaluate the individual's contribution to any of the Board Committees in which he or she may participate.
- Your company may also choose to ask each participant to evaluate the other Board members by name, confidentially.
- Direct the members' thoughts to the improvement initiatives that were implemented and how those initiatives did or did not result in enhancement of the Board's processes.
- Whatever questions are asked on these parts of the evaluation, also add an

open-ended question such as, "What else do you want the Chair to know?"

Each Board member's evaluation(s) should be confidential. Access to these individual documents (electronic or hard copy) should be strictly limited to the Chair and a designated analyst or trusted support person. The resulting evaluation report for use by the Board should be an aggregate of the individual scores and comments.

When the Board is reviewing the aggregate report, some key items to discuss:

1. What is the composite score of the Board's self-evaluation?
2. What is the composite score of each of the Board Committee's performance?
3. What are the key takeaways for:
 - a. what the Board and each committee did well, and
 - b. what the Board and each committee needs to improve in the coming year.
4. Did the Board achieve its attendance goals or is there an absenteeism issue with the Board as a whole or some members?
5. Did the Board perform its key governance responsibilities such as reviewing by-laws, charters, Code of Conduct, and other core governance documents for any necessary updates or revisions?
6. Did all committees have adequate agendas and minutes, and did they meet frequently enough to perform their oversight responsibilities effectively?
7. If improvement initiatives were put in place during the last two years, did those initiatives remain in place?
8. Did those initiatives actually further the targeted improvement?
9. Did the training provided to the Board meet the stated objectives as a whole?
10. Did the Board and each of the committees, as a whole, fulfill its duties of care to serve the company and its stakeholders?

11. If not, what improvement initiatives should be implemented in the upcoming year?
12. What training objectives and specific topics for training should be set for the upcoming year?
13. What additional expertise should the Board seek for the coming year in new Board members, if available, or in new speakers, training, or outside expert consultants?
14. What other measurements should the Board take of itself, its commitments, and its members next year?

Regulatory Outlook

The Corporate Governance reporting requirement is currently in place in only a handful of states. However, a number of jurisdictions will address this requirement in 2016 and a majority of states are expected to pass it in the next three years. Putting the Board and committee evaluation protocols in place now will better position your company to submit a more robust first-year report when it comes due. ■

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Carol Stern is a senior consultant at First Consulting & Administration, Inc. and is an intrinsic member of the operational compliance, enterprise risk management (ERM), and corporate governance consulting practice. With 30 years of experience in the industry, she brings a chief compliance officer perspective to the practice for corporate governance, insurance, annuity, retirement, and wholesale broker dealers. For ten years, she coordinated the compliance risk management function in implementation of policies, procedures, and reporting to establish an ERM program, including development of key risk indicators and a formal risk assessment process.

Market Regulation and Consumer Affairs (D) Committee

April 27, 2016

by Tim Mullen, CIE

The NAIC's Market Regulation and Consumer Affairs (D) Committee, its task forces, and working groups had successful meetings in New Orleans during the NAIC Spring National Meeting. The use of big data in insurance was in the spotlight in New Orleans, and big data will be a major focus of the Market Regulation and Consumer Affairs (D) Committee through most of 2016. Many of the issues discussed in 2015 are continuing into 2016 with discussions surrounding market regulation accreditation, enhancements to the Market Conduct Annual Statement, and privacy disclosures continuing to be at the forefront.

The Use of Big Data in Insurance

The Big Data (D) Working Group is a new group in 2016 and is charged with exploring insurers' use of big data for claims, marketing, underwriting, and pricing. In addition, the Working Group is exploring potential opportunities for regulatory use of big data to improve efficiency and effectiveness of market regulation. If appropriate, the Working Group will make recommendations no later than the NAIC Fall National Meeting for 2017 charges, which are necessary to address any recommendations identified by the 2016 exploration.

The Working Group began its exploration of issues by holding a public hearing at the NAIC Spring National Meeting (*hear public hearing audio at www.naic.org/committees_d_big_data_wg.htm*). The Working Group heard presentations from four separate panels which included an academic perspective, an industry perspective, a consumer perspective, and a state insurance regulator perspective. The hearing began with a presentation from Harold Weston, Clinical Associate Professor at Georgia State University,

who, in addition to discussing the variety of definitions of "big data," the multiple sources of big data, and types of data points being used, provided an overview of the ethical parameters on the use of big data. The other panels discussed their perspectives on the following questions:

- How does the insurance industry define big data?
- What are the sources of big data and what are some data points being used?
- Which lines of insurance use big data for predictive analytics and for what purposes?
- What are the consumer benefits and/or concerns surrounding the use of big data?
- What data would be of greatest value to state insurance regulators and for what purposes?

Based upon information received during the public hearing, the Working Group is now focusing its discussions on insurers' and regulators' use of big data. Coming out of the public hearing, there was a general impression the Working Group needs to review insurers' use of big data in rating and underwriting to better understand how existing laws and regulations apply. In addition, there may need to be additional transparency for both regulators and consumers on how insurers use big data in rate development and risk segmentation. Regarding the use of big data in claims settlement, the Working Group will likely focus on what parameters should apply to the use of big data in claims settlement. Is all data appropriate for use? How is data used for loss prevention and fraud? How might the use of data impact a claim settlement offer?



Tim Mullen

While not a primary focus of the public hearing, the Working Group will take up the discussion of regulators' use of big data by identifying what data jurisdictions currently have, how this data is being used, potential gaps in the use of currently available data, and potential gaps in data needs.

Market Regulation Accreditation

The Market Regulation Accreditation (D) Working Group and Market Regulation and Consumer Affairs (D) Committee adopted the "First Tier of Requirements for Market Regulation Accreditation" during the NAIC 2015 Fall National Meeting. These requirements include standards addressing state authority to conduct market regulation activities, staffing levels for conducting market analysis, and market conduct examinations; staff qualifications; interstate collaboration; collection of Market Conduct Annual Statement data; data reporting to the NAIC's Market Information Systems; and participation in national analysis projects.

With the adoption of these requirements, the Market Regulation Accreditation (D) Working Group began work on a more detailed assessment checklist and implementation plan. There is still much work to be completed to provide the detail necessary for states to determine their compliance with the standards. The Working Group plans to present a final checklist and implementation plan to the Market Regulation and Consumer Affairs (D) Committee at the NAIC Fall National Meeting. The NAIC's Executive Committee and Plenary would then consider the adoption of the first tier

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requirements, assessment checklist, and implementation plan by the end of 2016.

If adopted by the D Committee by August 1, companies will be required to report 2017 health data in April of 2018 to jurisdictions which collect Market Conduct Annual Statements.

Market Conduct Annual Statement Health Blank

The Market Analysis Procedures (D) Working Group adopted a new Market Conduct Annual Statement Health Blank during the NAIC Spring National Meeting. The health blank and corresponding data definitions are the product of review and discussion by regulators, industry representatives, and consumer representatives that began in 2015 and builds upon the results of the pilot health reform data call. The proposed health blank collects information on policy issuance and terminations, claims administration, and internal and external grievance reviews. This information is further segmented by “in exchange” and “out of exchange” plans and, where useful and appropriate, by metal level.

Per the established process for adding additional lines of insurance to the Market Conduct Annual Statement, the Market Regulation and Consumer Affairs (D) Committee must provide at least a 30-day comment period and consider the adoption of the blank prior to August 1. If adopted by the D Committee by August 1, companies will be required to report 2017 health data in April of 2018 to jurisdictions which collect Market Conduct Annual Statements.

Privacy Notification Requirements

While the enactment of the Fixing America's Surface Transportation (FAST) Act into law late last year does not appear to address insurance issues, the FAST

Act includes amendments to the Gramm Leach Bliley Act (GLBA) to eliminate the requirement for financial institutions to provide GLBA annual privacy notices provided certain conditions are met. In response to these changes, the Privacy Disclosures (D) Working Group adopted an NAIC model bulletin for voluntary state use to clarify that a licensee of an insurance department is not required to provide an annual privacy notice if the licensee only provides nonpublic personal information to nonaffiliated third parties pursuant to permitted exceptions and the licensee has not changed its policies and practices with regard to disclosing nonpublic personal information from the policies and practices that were disclosed in the most recent disclosure sent to consumers. The bulletin further clarifies that all licensees must continue to provide the GLBA initial privacy notices.

In conjunction with the adoption of the bulletin, the Privacy Disclosures (D) Working Group adopted changes to the NAIC's *Privacy of Consumer Financial and Health Information Regulation* to address the change in requirements for the delivery of annual privacy notices. The Working Group will next review the NAIC Model Regulation to determine if any changes should be made to the sample privacy notices to be more consistent with Privacy Model Notice Form promulgated by federal regulatory agencies for use by financial institutions, such as banks and security firms. This is an important next step as financial institutions that use the Privacy Model Notice Form are provided a safe harbor of compliance with the privacy notification requirements of GLBA.

Financial Exploitation of Seniors

There has been a lot of activity on senior protection model laws in the securities sector and, while the Market Regulation and Consumer Affairs (D) Committee does not have a specific charge, the D Committee is beginning discussions about the financial exploitation of seniors and what might be appropriate for the NAIC to pursue in this area. The

D Committee discussed the safe harbor initiatives in the securities sector. These include (1) a safe harbor from administrative or civil liability for a financial professional who notifies an adult protective services agency or a state securities commissioner when financial exploitation is suspected, and (2) a safe harbor from administrative or civil liability for a financial professional who exercises discretion in placing temporary holds on the disbursement of funds or securities if financial exploitation is suspected.

The D Committee discussed the possible development of informational materials for state insurance regulators and/or insurance industry professionals to raise awareness about identifying and reporting suspected financial exploitation of seniors or other adults with diminished capacity. In addition, the D Committee discussed the development of a guideline or model act to provide safe harbors for insurance professionals who report suspected financial exploitation or forego processing a policy change request, such as a change of beneficiary or withdrawal of cash value, because of suspected financial exploitation. Recognizing that the nature of insurance transactions is different than securities or banking transactions, the D Committee is reviewing this issue in more detail and welcomes input from all parties.

Additional information about these and other activities of the Market Regulation and Consumer Affairs (D) Committee, its Task Forces, and Working Groups, may be found at the following web link on the NAIC website: www.naic.org/committees_d.htm.

Tim Mullen is director of the NAIC's Market Regulation Department. As the director of the Department, he provides professional expertise and support to state insurance regulators for the following market regulatory functions: antifraud, consumer assistance, market analysis, market conduct examinations, and producer licensing. Tim is a member of the Missouri Bar and the Kansas Bar, a Chartered Property & Casualty Underwriter, a Certified Insurance Examiner, and the 2009 recipient of the Paul L. DeAngelo Memorial Teaching Award from the IRES Foundation.

Getting to Know Your Executive Committee

This Issue: Member At Large Tracy Biehn, MCM

by Parker Stevens, CIE, AMCM

As we are well into the new IRES year, we want to highlight one of our Executive Committee members so that you might get to know them a little better. In this issue of *The Regulator*®, we want to introduce to you EC Member At Large Tracy Biehn. Below is an interview style Q&A with Ms. Biehn.

Q: Who do you work for? What is your job title? And, in a very short description, what are your daily duties?

I work for the North Carolina Department of Insurance (“The Department”). I am the Director/Deputy Commissioner of the Market Regulation Division. I am responsible for overseeing the market regulation examinations and market analysis activities within the Market Regulation Division of The Department. This includes but is not limited to division operations, supervision, and coordination of examinations, and oversight of market analysis in the regulation of HMO and PPO, P&C, and L&H insurers that offer commercial and private passenger automobile coverages, homeowner coverage, commercial coverage, worker’s compensation coverage, life coverage, and accident and health coverage, etc. through the review of marketing, sales and advertising, underwriting and rating, and claims records.

Q: How long have you been an IRES member and what made you decide to join the Board/Executive Committee?

I was an IRES Member in 2011 and then 2013 to present. I began following the Accreditation and Ethics Committee after the 2010 CDS in Albuquerque, NM. Once I started to get more involved and became the Curriculum

Subcommittee Co-Chair, I realized the value of the contributions made, and I wanted to do more for the organization and its membership. Overall, I want to make a difference.

Q: What committees have you served on and what roles did you hold?

Accreditation and Ethics-Curriculum Subcommittee Co-Chair, 2015 CDS Mixed Bag Co-Chair, and Chair of the Accreditation and Ethics Committee.

Q: Which IRES CDS has been your favorite and why?

It’s hard to pick my favorite CDS. I have only been to five since joining The Department in 2007. My first CDS was in 2008 in St Louis, MO. As a new member of The Department, I believe I got the most out of that CDS. I attended a broad range of sessions. The sessions and topics were a great benefit and enhanced my insurance and market regulation knowledge. I felt like a sponge trying to absorb as much information as I could. I felt like I was able to contribute the most as the Mixed Bag Co-Chair during the 2015 CDS in Charleston, SC. I could not continue in that role in 2016 because I became the Chair of the Accreditation and Ethics Committee.

I make a point to send new members of the Market Regulation Division to the next available CDS upon their arrival at The Department.

Q: Is there one session at a CDS that stands out in your mind? Why?

I believe my favorite session was from the 2012 CDS in Hollywood, FL. The session was on Wednesday, August 29, 2012. The name of the session was: “If You Were the Czar of Market Conduct,

What Would It Look Like?” This session was the best as the attendees were split up into random groups and we were asked to prepare a set of recommendations (Best Practices for Market Analysis and Market Conduct/Regulation). I came out of that session with a number of great ideas.



Parker Stevens

My husband has a great video of a 15-foot tiger shark coming towards me that was truly arm’s length away. It was little too close for comfort.

Q: Looking forward, what is one goal you want to accomplish if you become the IRES President?

I want to make a difference. Therefore, I am focusing on the here and now.

Q: When you aren’t working or helping make IRES the best organization on earth, what are your hobbies?

Scuba diving. My husband and I travel every six months on a scuba diving trip for a week. We are PADI Master Divers and prefer the Caribbean for our dive locations. We have dove off the coast of North Carolina and saw too many large (12- to 15-foot) tiger sharks for our liking. These tiger sharks were very territorial and made it known. They did not hesitate to swim by you and be an arm’s length away. My husband has a great video of a 15-foot tiger shark coming towards me that was truly arm’s length away. It was little too close for comfort. I do not desire to dive off the

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North Carolina coast anytime soon. Believe it or not, we enjoy scuba diving with sharks. In the Georgia Aquarium, PADI scuba divers can dive in the whale shark tank. The tank has a laundry list of sharks that are fed right before the scuba divers enter, which is a really good thing. Children are amazed to see scuba divers in the tank as they walk through the whale shark exhibit.

In the Caribbean, we see mostly sand and reef sharks, which are small and see divers as potential predators because of their size in relation to them.

Q: What is your biggest bucket list item?

Dive the Great Barrier Reef off the coast of Australia. ■

Parker Stevens has been working in the field of insurance regulation for over 16 years, performing market regulation and market analysis work on all the major lines of insurance. He is currently a manager with Risk & Regulatory Consulting, LLC.

We're Moving!

As of June 1, 2016, our new mailing address will be:

1611 County Rd B West, Ste 320
St. Paul, MN 55113

(Our phone, fax, and email will remain the same.)

President's Remarks

By Tanya Sherman, AMCM

This has certainly been a busy spring for IRES between the most recent NAIC National Meeting in New Orleans and the IRES Foundation School in San Antonio.

For those of you who attended the IRES CDS this past year in South Carolina, you might recall that one of the initiatives IRES was going to work on was to continue efforts in marketing our organization. At the recent NAIC, a few of our dedicated volunteers spoke at each of the NAIC zone meetings about our organization and some of the new initiatives we are working on. Thank you to Leslie Krier, Jim Mealer, Tracy Biehn, Doug Ommen, and Paula Pallozzi for taking the time to share with your zones about our great organization. IRES is going to continue promoting the organization to the state departments of insurance with an additional outreach in the next month, as well.

IRES has also been looking into recruiting new student members and looking at potential ways on how our organization can work together with others to help increase awareness about our industry. There has been a group of individuals meeting about these marketing topics. This group has been researching universities that have insurance related programs, even attending some of the recruiting sessions to figure out how to reach these millennials and potential graduates. This same group has also been working with other groups to get promotional materials ready for distribution. The IRES Publications and Public Relations Committee has been working on these same marketing efforts, updating brochures and promotional documents and conducting an analysis on social media. Special thanks to this committee and especially to Jo LeDuc, who created



Tanya Sherman

a social media strategy for IRES. We are now active on Twitter and Google Plus, we have an account for YouTube, and we've updated the IRES LinkedIn site to be better suited for promoting IRES.

The drafted changes to the bylaws related to electronic voting for new Board

members were exposed for a thirty-day comment period and then subsequently voted on by the Board of Directors. Those changes have now been approved and the updated bylaws have been posted. With this new electronic voting for IRES Board members, it will be extremely important for all of us to remember to log in and vote for the candidates.

The first of the four scheduled Market Conduct Management (MCM®) courses was completed immediately following the IRES Foundation School in San Antonio. If you still want to get to one of them, there are three additional MCM® courses and one Advanced Market Conduct Management (AMCM®) training event coming up this year. Check out the upcoming events page on the IRES website for more details.

If you haven't already registered for the upcoming Career Development Seminar (CDS) in Scottsdale, Arizona (August 7-10, 2016), we recommend that you do so soon. I just registered myself and was amazed at how beautiful this location is! The online registration is open and, if you register by June 30, 2016, you will receive the reduced rate. At this CDS, there will be seven consecutive tracks: market regulation, financial, health, property/casualty, life/annuity, mixed bag, and information technology. Additionally, there will be sessions within these seven specific to other topics, such as complaints specific to lines of business,

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etc. As we have mentioned in previous articles, there are some new topics that have been added, including cyber security, ethics, and some new sessions on technology related issues, as well as ACA related topics. A few of the IT sessions may require pre-registration or for you to bring your own laptop, so make sure to check the agenda and website for further details. Oh, and don't forget that there are also sessions on Wednesday morning available for additional continuing education credits.

IRES has a number of webinars in the hopper and the e-blasts for them will be

coming out shortly. As always, this committee is looking for additional webinar ideas and presenters. Please contact Lisa Brandt at Lisa.Brandt@wisconsin.gov if you have ideas for webinars and if you might be interested in being a presenter. We are hoping to keep a balance within these webinars and ideally would like to have contributions from regulators, contractors, and companies to maintain well balanced perspectives.

This year is flying by! As always, we are interested in your thoughts and ideas on how we can continue offering additional membership benefits

for our IRES members. If you have ideas you would like to share, please feel free to reach out to me directly at tsherman@risdelaware.com. Hope to see you soon. ■

Tanya Sherman is currently the senior market analysis manager for the Delaware Department of Insurance and for INS Regulatory Insurance Services, Inc. In her current role, she conducts market analysis for Delaware and conducts market analysis and provides training on the market analysis process for other states.

23rd Annual National School on Market Regulation

by Christine Palmieri, AMCM, IRES Foundation 2016 School Chair

Despite Mother Nature's attempt to wreak havoc on our event, almost 250 people were in attendance for our School on the quaint San Antonio Riverwalk, a perfect venue for the 2016 "Regulatory Roundup."

Representing 12 state insurance departments as well as the NAIC, CCIIO, and IIPRC, 24 regulators participated as faculty on panels covering three tracks (property & casualty, life & health, and mixed bag) during our two-day event. In support of local culture, the IRES Foundation spotlighted San Antonio's Youth Orchestra Group and attendees enjoyed a performance by a flutist at the welcome reception as well as a violinist's version of the national anthem during Monday's opening session.

During our welcome reception on Sunday evening, Pam O'Connell, Market Conduct Division Chief from the California Department of Insurance, was awarded, in absentia, the prestigious Paul DeAngelo Memorial Award. Jim Mealer, the 2015 award recipient, accepted on Pam's behalf. Congratulations, Pam!

Commissioner David Mattax of the Texas Department of Insurance commenced our two-day event with a keynote address to conference attendees. He also joined Texas Division of Worker's Compensation Commissioner Ryan Brannan and Executive Director Albert Betts from the Insurance Council of Texas in a "Texas Roundtable" discussion moderated by IRES Foundation Board member Bennett Katz, touching on various federal and state matters concerning catastrophes, corporate governance, worker's compensation, unclaimed property, and health matters.

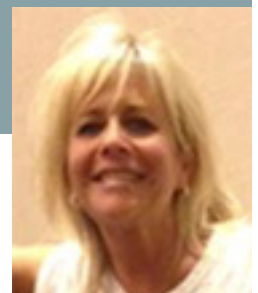
Via Skype, Director Anne-Melissa Dowling from Illinois joined Commissioner Ken Selzer from Kansas and

Commissioner Mattax in our esteemed Commissioner's Forum, moderated by

Fred Karlinsky from our IRES Foundation Board. Among other topics, the trio touched on consumer protection, corporate governance, consumer outreach, and cyber issues as well as ORSA.

A video message from NAIC President and Missouri's Director John Huff highlighted the importance of state-based regulation and the contributions of IRES and the IRES Foundation with regard to education and providing a forum for fostering communications between industry and regulators.

Commissioner Brannan engaged the lunch crowd in a thoughtful keynote address and IRES President Tanya Sherman highlighted the accomplishments of the Insurance Regulatory Examiners Society. Art Chartrand, Chartland Legal Management, Inc., was awarded the 2016 Gary A. Hernandez



Christine Palmieri



□ continued on page 10

▣ *National School on Market Regulation* – continued from page 9

Memorial Insurance Education Leadership Award. Congratulations, Art!

At our 2015 School in La Jolla, the IRES Foundation first introduced a panel dialogue highlighting the role of the chief compliance officer. Continuing with a view from the C Suite, our 2016 School spotlighted the role of the regulated entity's chief risk officer in a panel dialogue moderated by IRES Foundation Board member Kara Baysinger. Marsha Hopwood from Allianz Life Insurance Company of North America and Rhonda Aikens from USAA Property & Casualty Company provided insight into their roles, including their interactions with company compliance staff.

In addition to our key general sessions described above, many regulators, consultants, industry personnel, and subject matter experts served on 18 well-attended breakout panels.

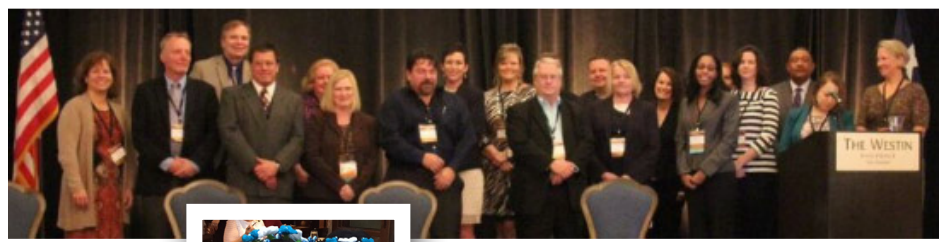
As customary, we concluded our event with "Regulatory Rivalry," a friendly competition between three teams of industry professionals, regulators, and former regulators. Bennett Katz's alter ego Alex Trainwreck once again hosted this funny, yet educational, game of insurance trivia. Backstage, a lot of preparation is necessary for a game show, not only on the part of our host but also by John Mancini, who is the producer behind the creative technology that makes this session so successful.

As the 2016 School chair, I would like to thank our sponsors, especially those at our Diamond level (Wolters Kluwer Financial Services and Dentons) for their generous, continued support of our organization and our event. Both organizations were recognized with an award at our event for their ongoing commitment to the IRES Foundation. I'd also like to thank the many IRES Foundation Board members, faculty, and other presenters who volunteered hours of time in support of the School committees and panel presentations. A successful event like this would not be possible without the generosity of our sponsors and the dedication of so many individuals who

volunteer their time. Special thanks to the 2016 School chairs and co-chairs: Cheryl Davis, Kara Baysinger, Janette Adair, Mike Bedard, Mike Hailer, Pam Bishop, and Dave Abel.

Once again, our annual event symbolized the slogan of our organization: *Necessary Knowledge, Valuable Networking*. Save the date for next year's event: March 12-14, 2017, in St. Petersburg, Florida. See you there! ■

Chris Palmieri is the vice president of corporate compliance and market regulation at Travelers, where she oversees external market regulation activities and consumer complaint handling. Chris and her team also facilitate many internal compliance functions, working closely with business and corporate areas on a variety of matters, including implementation of new laws and regulations and establishment of protocols in support of market regulation.



'Zoning In'

By Kathy Donovan, MCM

Northeast Zone

Connecticut

Bulletin S-17, dated Mar. 7, 2016, presented a disclosure required for index-linked annuities, as well as filing guidance. Regarding the disclosure, the Connecticut Insurance Department specified that, at the point of sale, the carrier or producer must provide the disclosure in this bulletin to the applicant. Additionally, "any carrier offering indexed-linked annuities approved prior to the issuance of this bulletin are now required to provide the attached disclosure for all sales on or after the publication of this bulletin."

Pennsylvania

HB 1638, effective Jun. 13, 2016, specifies that an appraiser may not require the submission of photographs or videos in order to obtain an appraisal and further requires that appraisers or insurers disclose to vehicle owners during the appraisal process that there is no requirement to submit photographs or videos in order to obtain an appraisal. The bill also provides additional statutory clarification concerning supplemental repair estimates.

Vermont

Issued Apr. 22, 2016, Bulletin No. 189 reminded insurers that "non-cumulation" policy provisions and endorsements in occurrence-based liability policies are not permissible under Vermont law and will not be approved by the division. However, the division indicated that it will "continue to approve 'known loss' exclusions that bar coverage of losses that are known before policy's inception or renewal date."



Kathy Donovan

Southeast Zone

Louisiana

Dated Apr. 19, 2016, the Louisiana Department of Insurance (LDI) Bulletin 2016-03 revised and restated its position concerning an insurer's use and implementation of schedule rating plans. While the

LDI indicated that it will maintain its previous guideline, outlined in Bulletin 09-03, that "schedule rating plans should be structured such that a plan limits its maximum credit or debit to a twenty-five percent (25%) aggregate across all scheduled characteristics," it will no longer maintain its guideline relative to a specific limitation on credits or debits for each scheduled characteristic in a schedule rating plan. The LDI also reminded insurers that schedule rating plans must be filed prior to implementation.

South Carolina

Department of Insurance Memorandum of Mar. 22, 2016 addressed "Divorced Beneficiaries of Life Insurance" and reminded insurers of the South Carolina Act 100 (2013) which provides that "in the event of a divorce or annulment, a former spouse, who was earlier listed as the beneficiary to a life insurance policy, would not receive the proceeds of the policy, unless the life insurance policy, a court order, or a marital settlement contract expressly provides for the former spouse to continue as the beneficiary."

A Credits/Discounts Data Call for certain insurers who write homeowners property and casualty insurance (residential property) was issued on Apr. 28, 2016. Insurers required to submit certain information to the South Carolina Department of Insurance are those meeting one of the following criteria:

- The insurer is in one of the top 25 national groups based on homeowners

direct written premiums and has more than \$1 million in homeowners direct written premiums in South Carolina, or

- The insurer writes at least 10% of its South Carolina homeowners direct written premiums with wind coverage in Wind Pool Zones 1 and 2 combined.

Responses are due by May 31, 2016. The Department encourages participation in this data call by all other property and casualty insurers.

Virginia

Administrative Letter 2016-03, issued Apr. 15, 2016, provides examples of practices that have been determined by the Bureau of Insurance to be inconsistent with statutory rate standards including, but not limited to, the use of:

- Characteristics specific to a particular policyholder to predict and assign pricing components unrelated to losses or expenses incurred during the policy period.
- Pricing components related to an insured's predicted long-term profitability over time, based on an insured's likelihood to renew.
- Price optimization techniques intended to maximize overall retention, profitability, written premium or market share based on how much of a premium increase an individual policyholder is likely to tolerate before seeking coverage with other carriers.

Midwest Zone

Indiana

SB 336, effective Jan. 1, 2017, deleted language which provided a more restrictive definition of "mine subsidence" so that the term will now refer to the collapse of an underground coal mine that results in damage to a structure.

□ continued on page 12

□ 'Zoning In' – continued from page 11

Additional revisions include the required availability of coverage of up to \$15,000 for additional living expenses reasonably and necessarily incurred by an insured who is temporarily displaced as a direct result of damage caused by mine subsidence to the covered structure in which the insured resides. This requirement is applicable if no other type of coverage provided by the policy of the insured indemnifies the insured for these living expenses. An insured may elect to waive the additional living expenses coverage.

Nebraska

With the enactment of LB 772, effective Mar. 31, 2016, Nebraska has joined the growing list of states adopting the Corporate Governance Annual Disclosure Act, which is intended to provide the director of insurance a summary of an insurer's or insurance group's corporate governance structure, policies, and practices, allowing the director to gain and maintain an understanding of each company's corporate governance framework.

Western Zone

Arizona

New statutory provisions pertaining to identity theft group policies were enacted under HB 2238 including definitions, eligible groups, filing requirements, policy coverages, and permitted reasons for cancellation. Specific policy cancellation requirements include days' notice requirements for cancellation and content required in a cancellation notice.

California

The Department of Insurance (CDI) addressed availability of homeowners insurance in its Notice dated Mar. 3, 2016 titled "Residential Fire Risk Underwriting and Difference in Conditions Coverages." Insurers were requested to:

- Offer or continue to offer homeowners insurance in high-risk fire areas;
- Implement guidelines that would allow more individualized consideration of homes that warrant exception to broad underwriting restrictions when the homeowners have taken steps to effectively mitigate the risk of fire damage;

- Consider writing an additional number of higher risk exposures, subject to concentration considerations, so that the industry as a whole takes reasonable steps to include high-risk fire areas in the voluntary market; and
- Develop and file a "difference in conditions" (DIC) policy if they do not currently have one.

Colorado

Bulletin B-4.90, dated Mar. 17, 2016, provided guidance for health benefit plans on network adequacy standards and reporting/filing requirements. Included in this Bulletin are explanations of the four measurement standards (i.e. Access to Service/Waiting Time Standards; Availability Standards; Geographic Access Standards; and Essential Community Providers (ECP) Standards) which will be used to evaluate a carrier's network adequacy. ■

Kathy Donovan is Senior Compliance Counsel, Insurance with Wolters Kluwer Financial Services. Kathy has more than two decades of experience in insurance compliance. Her expert commentary on legal and regulatory issues affecting the insurance industry is widely published and she is a regular presenter at various industry events.



PARTNERSHIP IN REGULATION

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New Members

Welcome!

The following members 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

- ★ Daniel Abbondanzo (VA)
- ★ Kings Ankrah (NY)
- ★ Brandi Bush (NC)
- ★ D'Anna Feurt (unaffiliated)
- ★ Sally Fox (KS)
- ★ Ryan Gillespie (unaffiliated)
- ★ Janay D Hargrove (VA)
- ★ Sheri L Kenney, MCM (unaffiliated)
- ★ Nicholas Klug (MN)
- ★ Freddie Lindsay Oliver (VA)
- ★ Marcia Violette (VT)
- ★ Susan Weijola (NY)

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- ★ Jane Bagley (PA)
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- ★ Mary Lynn Dunton, MCM (unaffiliated)
- ★ Tanya Elkins
- ★ Annie Elliott (NY)
- ★ Cassandra Fiorito (GA)
- ★ Diane Klund (unaffiliated)
- ★ Karmela Malone (CT)
- ★ Mark Scheetz, MCM (NJ)
- ★ Peter Strauss
- ★ Lincoln Tomlin, MCM (CA)

FIRM SUSTAINING MEMBERS

- ★ CNA
- ★ The Compliance & Ethics Forum for Life Insurers

New Designees

Congratulations!

The following members have received their Accredited Insurance Examiner (AIE®), Advanced Market Conduct Management (AMCM®), 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!

MCM®

- ★ Heather Arriola, MCM (TX)
- ★ Gary Charles Bastin, MCM (OK)
- ★ Bethany F. Boske, MCM (unaffiliated)
- ★ Rich Nicholas Bradley, MCM (MA)
- ★ Heather R. Davis, MCM
- ★ Lynn DeMoura, MCM (RI)
- ★ Mary Lynn Dunton, MCM (unaffiliated)
- ★ Sandy Glaze, MCM (UT)
- ★ Stacey Hirschhorn, MCM
- ★ Rachael R. Judah, MCM
- ★ Jose S. Lara, MCM
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- ★ Joseph Vaughn, MCM
- ★ Susan Danette Wagner, MCM (unaffiliated)
- ★ Jill Witherspoon, MCM
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- ★ Barbara Ann Hudson, AIE, MCM (WV)
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- ★ Jennifer Haile, CIE (MO)

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Editor's Corner

By Stephanie Duchene, MCM



Stephanie Duchene

In case your schedule (or Mother Nature) kept you from the IRES Foundation National School on Market Regulation 2016, "Regulatory Roundup," last month in San Antonio, you can feel like you were there (in the rain!) with us thanks to Chris Palmieri's summary and pictures. Another hearty congratulations to the winners of the Paul DeAngelo Memorial Award, Pam O'Connell, and the Gary A. Hernandez Memorial Insurance Education Leadership Award, Art Chartrand.

In this issue, Kate Morgan provides us with a particularly insightful look into the current controversy over how best to structure health insurance provider networks. Thank you to C.J. Rathbun and Carol Stern for providing us with the who, what, and when on Board of Directors evaluations in the new Corporate Governance Annual Disclosure filing. Tim Mullen keeps us in the loop on the activities of the NAIC D Committee and Kathy Donovan "zones in" on recent state regulatory activity. IRES president Tanya Sherman updates us on the many exciting initiatives under way at IRES and reminds us to sign up for the upcoming Career Development Seminar (CDS) in Scottsdale, Arizona, August 7-10, 2016. In addition, we spotlight Executive Committee member Tracy Biehn from the North Carolina Department of Insurance.

Please let me know if you have any feedback on this issue, or ideas for upcoming issues. It's *your* organization; make sure your voice is heard right here in *The Regulator*! ■

Stephanie Duchene is a partner in the Insurance Regulatory group of Dentons US, LLP. Stephanie consults and advises clients on a variety of insurance regulatory compliance issues, including market conduct examinations (multi-state examinations and investigations), sales practices compliance, defense of enforcement actions, licensing, regulatory approvals, receivership and liquidation, electronic commerce and online advertising, agent and broker issues and transactional matters (including acquisition, merger and demutualization), as well as product and market development issues. She represents national insurers, insurance-related service companies, brokers and state governments.

NEXT ISSUE

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