THE REGULATOR®
FALL 2016
INSURANCE REGULATORY EXAMINERS SOCIETY

Why Go Captive

by Steve Kinion

Steve Kinion, Delaware's captive insurance director, explains some facets that a prospective domicile should consider before making the decision to become a leading captive insurance domicile.

Steve Kinion

With the exception of a few, nearly every state, district, and territory has a captive insurance law. (Figure 1 shows the states that have adopted captive insurance legislation). The reasons to allow this form of self-insurance within a regulatory jurisdiction vary, but increasing tax revenue and economic development are a couple of motives. The pace to become a captive jurisdiction increased in the early 2000s with the entry of South Carolina. Previously, Vermont, which remains the largest U.S. captive domicile, was for practical purposes the only state in which to form a captive. Vermont entered the captive arena in the early 1980s and developed a sound, but also business friendly, regulatory system now emulated by many other U.S. jurisdictions.

Captive insurance is merely another form of self-insurance. The simplest form of a captive is when the insured also owns the insurer. Hence, the fact that it is self-insurance. Variations have grown over the years to allow association or group captives where multiple owners/insureds own their insurer, to cell captives wherein different owner/insureds own, or sometimes rent, a cell and use it as an insurer.

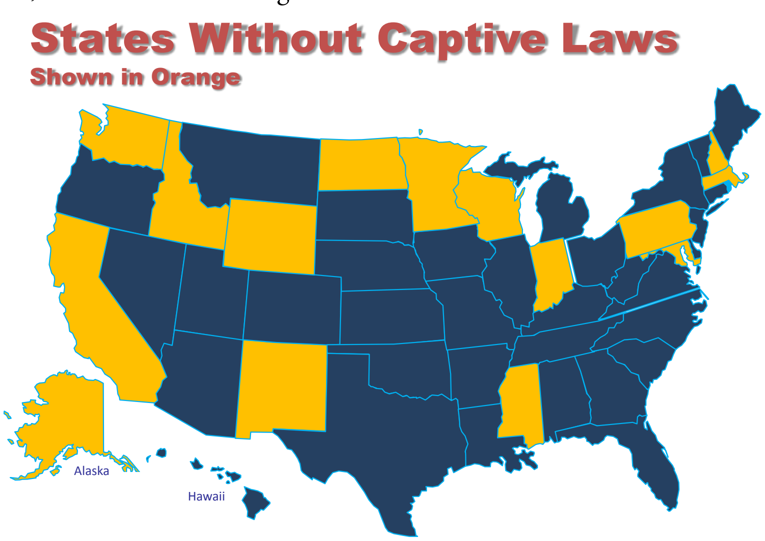

FIGURE 1

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WHAT'S INSIDE

MARK YOUR CALENDAR

March 10-12, 2017
MCM® Class | St. Petersburg, FL

April 5-7, 2017
MCM® Class | Denver, CO

August 13-16, 2017
CDS & Regulatory Skills Workshop | Providence, RI

August 12-15, 2018
CDS & Regulatory Skills Workshop | San Antonio, TX

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

Why Go Captive – continued from **page 1**

An Analysis Before Going Captive

Before a jurisdiction makes the decision to go captive, it should engage in the same process undertaken by those seeking to form a captive insurer. This means conducting a feasibility analysis to determine if there is enough interest within a jurisdiction's business community to form captive insurers, or can the jurisdiction attract external businesses to form captives within the jurisdiction. For small states like Delaware, the latter is the best model, whereas large states like Texas have enough internal businesses without having to resort to attracting businesses. Those states in the middle, such as a Oklahoma, may need to consider a hybrid approach.

A Commitment of Time and Resources

When I became Delaware's captive insurance director in July 2009, the state only had 38 captive insurers. Today, the total number of risk bearing captive insurers of all types exceeds 1,000. The reason for this tremendous growth is that Delaware Insurance Commissioner Karen Weldin Stewart made a commitment to devote the necessary time and resources to build and sustain the captive program. The result is that in 2016 the University of Delaware determined that the captive program generated a $359 million economic impact upon Delaware and it provides $4.5 million of annual net revenue for the state's budget.

Recognize a Domicile's Strengths

A captive domicile should select a niche or area in which it can excel. Delaware is the corporate capitol of the world. Its corporate and business entity laws are second to none. Its chancery court has the reputation for efficiently resolving corporate and business disputes. Utilizing this strength, Delaware's captive law is a licensing statute built upon the state's flexible business entity laws. This is an attractive aspect because a Delaware captive insurer can be formed as a corporation, limited liability company, partnership, trust, and any other business organization recognized under Delaware law.

Do Not Fear Innovation

Innovation is a facet of captive insurance and a captive domicile should embrace new coverages and alternative transfer vehicles. Delaware was the first and today one of the few domiciles that licenses series captive insurance companies. (Figure 3 displays series captive insurers). This type of insurer is formed under either the Delaware Limited Liability Company Act or Statutory Trust Act. It contains a two-part structure. The first structure is the limited liability company or statutory trust, referred to as the core. The second is an unlimited number of series captive insurers. This structure allows for the segregation of assets and liabilities between each series captive. On the other hand, under Delaware's freedom of contract the series captive owners can decide to share assets and liability with the others in the series. This contractual flexibility makes the series captive very popular.

Delaware Series Captive

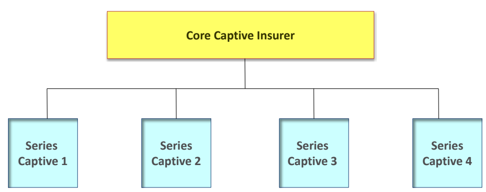


FIGURE 2

The idea to license series captive insurers came from the mutual fund industry. Some mutual funds separate different funds into different series. For example, series number one may contain the international bond funds, series two could contain European stock funds, series three may have only U.S. stock. When using the series structure mutual fund managers are able to segregate and encapsulate the assets and liabilities of each fund, as they reside in a different series. This is the beauty of the Delaware Limited Liability Company (LLC) Act Law, as it allows for the formation of these types of series.

There are many reasons and motives for a jurisdiction to decide why it wants to be a captive domicile. Just ensure the reasons focus on a domicile's strengths, are carried through, and supported for the long-term. ■

Steve Kinion, Bureau of Captive and Financial Insurance Products. Mr. Kinion became director of the Bureau of Captive and Financial Insurance Products on August 1, 2009. Prior to his appointment, he was the senior advisor for regulatory policy for Insurance Commissioner Karen Weldin Stewart. Mr. Kinion's experience includes re domesticating insurers, reinsurance agreements, premium tax matters, assessments, and receiverships. He has also analyzed proposed mergers and acquisitions. A member of the Illinois and Oklahoma bar associations, he is licensed to practice before a number of federal courts as well as all military courts. As a judge advocate in the United States Army Reserve, he practices government procurement law, international law and military criminal law. He holds the rank of lieutenant colonel.

Captive Insurance is . . . Self-Insurance

An insurance company that has as its primary purpose the financing of the risks of its owners or participants.

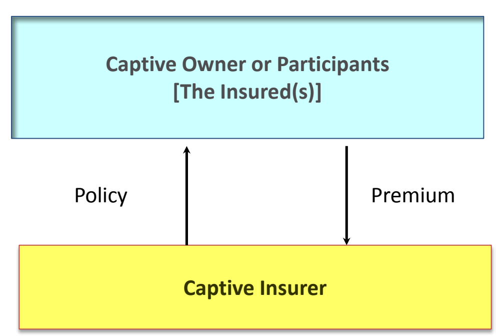


FIGURE 3

Annuity Suitability and the Role of the Examiner

by John Humphries and Sam Binnun

Annuities can play a key role in financial planning. In its most basic form, a life annuity takes a lump sum, such as someone's life savings, and converts the lump sum to a stream of guaranteed payments over the contract holder's lifetime. Annuities transfer the risk of "outliving your savings" as well as the investment risk from the contract holder to the insurance company. These features have always provided value in financial planning but can be especially valuable in today's economy. A generation ago, retirees commonly had defined benefit pension plans which function much like an annuity to guarantee the retiree monthly income over their future lifetime. Today, defined benefit pensions are no longer common. The vast majority of retirees depend upon defined contribution plans such as 401K plans and personal savings which must last the lifetime of the retiree. Today's low interest rate environment is also not favorable for retirees. Often, investors emphasize fixed income investments to reduce risk and provide monthly income. In today's low interest rate environment, yields are low and many fear risking the loss of principal should interest rates rises if they are holding fixed income securities. Annuities offer a financial planning solution to these issues by converting a lump sum to guaranteed monthly income, but there are issues to consider as well. The annuity must be suitable for the buyer.

"Annuities transfer the risk of "outliving your savings," as well as the investment risk from the contract holder, to the insurance company."

To understand suitability, we should first consider common buyers of annuities.

Buyers of annuities vary but commonly they are looking for security and to reduce risk. They are likely retired and cannot easily recover investment losses through earning additional income. They may also be older and see the agent as a friend and someone they enjoying visiting. In today's low interest rate environment, annuity buyers may be looking for alternative investments to increase yield and may be considering investments that they would not have considered if bank products offered higher yields. As a result, the buyer may not fully understand the complexities, expenses, and potential surrender charges that may be associated with the annuity contract.

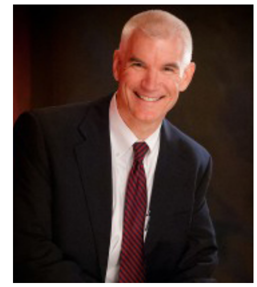
Types of Annuities

Types of annuities typically vary by the following characteristics:

- Number of lives covered (single or multiple)
- Method of premium payment (single payment or periodic)
- Start date of annuity payments (immediate or deferred)
- Disposition of Proceeds (Certain, Pure Life or combination)
- Denomination of Values (Fixed or Variable)

Annuity Types include:

Fixed Annuity: A fixed annuity is the most basic type of annuity. The contract identifies the person who will receive a payment and this person is known as an annuitant. For fixed annuities, the amount of the payment is "fixed" based upon a guaranteed interest rates and the expected future lifetime of the annuitant (or annuitants if a joint annuity) for a given present value or lump sum to be converted to a stream of future income. While interest is commonly credited at a fixed rate, some insurers also offer a "bonus" rate if certain conditions are met. For Immediate Annuities, the payments to the annuitant start immediately after the contract is issued. For Deferred Annuities, there is an accumulation period in which additional payments can be made into the annuity that grow on a tax deferred basis. The annuity has a cash surrender value during the deferral period that is typically based upon the accumulation value less applicable surrender charges. Surrender charges are defined in the policy contract which are commonly a fixed percentage by duration of the amount withdrawn. Many contracts also allow some limited withdrawals each year without surrender charges.



John Humphries

Sam Binnun

Varible Annuity: A variable annuity has cash values and benefit payments that are directly linked to specified assets that back the annuity and are maintained in a separate account. The assets linked to the annuity can be stock, bonds, or mutual funds. Amounts paid to the insurance company are used to buy units of the underlying asset linked to the annuity after deduction of expenses. The contract holder bears the investment risk and is exposed to any risk associated with the underlying assets. While no cash surrender value is guaranteed, variable annuities often provide a minimum guaranteed death benefit during the accumulation period in an amount equal to the greater of the cash value or the amount invested in the contract. This means that the annuity is also providing a life insurance benefit during down markets. Key provisions to understand when reviewing Variable Annuities are

1 Kenneth Black, Jr and Harold Skipper, Life and Health Insurance, Thirteenth Edition, Pearson Education, 2000.

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Annuity Stability continued from page 3

surrender charges, mortality and expense charges, and administrative fees noting the that underlying asset such as a mutual fund may also impose an administrative fee.

Equity Indexed or Fixed Index Annuity:

Equity Indexed Annuities or Fixed Index Annuities may be referred to as Index Annuities and have characteristics of both fixed and variable annuities. Interest is credited based upon the performance of an underlying index such as the Standard & Poors 500 (S&P 500). Index Annuities commonly have a minimum guaranteed interest rate that provides protection in down markets. Index Annuities base the current crediting rate on the performance of the underlying index to participate in up markets subject to various limits defined in the contract. These limits include a Cap which may limit the rate earned in any particular year to a set percentage or a Participation Rate that specify how much of the gain in the index will be applied to the crediting rate. It should also be noted that the index used as a basis for Index Annuities is commonly the "price return" instead of the "total return". The difference is that the "price return" does not provide the benefit of dividends that can be a significant. The current dividend yield of the S&P 500 is currently over 2% per year.

What is Suitability

"…the index used as a basis for Index Annuities is commonly the "price return" instead of the "total return" price return does not include the benefit of dividends…"

When it comes to suitability in life or annuity products some industry professionals, and especially consumers, may have different understandings or sometimes are not sure what suitability means. Over the course of my professional career, I have narrowed it down to "An appropriate product or investment based on the consumers' family needs, income, long and short term financial goals, liquidity, risk tolerance and growth objectives". This definition may not sound so simple if you have not dealt with suitability from the industry or regulatory standpoint, so let me simplify it for purposes of this article. Consider that suitability is purely common sense; does the product offered makes sense based on the needs of the consumer.

When determining if an annuity is appropriate for a consumer, consideration should be given to the consumer's investment profile. For example, the consumer's family needs, their income, long and short term financial goals, liquidity, risk tolerance and growth objectives

The producer or broker should have a reasonable basis to believe that a recommended transaction or investment strategy involving a security or securities is suitable for the consumer. This type of information can typically be obtained through discussion with the consumer through the use of a suitability form or a needs analysis. The producer or broker should evaluate the consumer's overall investment profile and perform reasonable diligence to ascertain the consumer's investment profile.

The Investment Firm (Firm) and Insurance Company (Company) should review all of the documented information collected by the producer or broker to ensure the information on the suitability form or needs analysis matches the investment profile of the consumer and that the appropriate annuity type was selected. Financial Industry Regulatory Authority (FINRA) Rule 2111 lists the three main suitability obligations for firms and associated persons.

Reasonable-basis suitability broker to have a reasonable basis to believe, based on reasonable diligence, that the recommendation is suitable for at least some investors. Reasonable diligence must provide the firm or associated person with an understanding of the potential risks and rewards of the recommended security or strategy.

Customer-specific suitability requires that a broker, based on a particular customer's investment profile, has a reasonable basis to believe that the recommendation is suitable for that customer. The broker must attempt to obtain and analyze a broad array of customer-specific factors to support this determination.

Quantitative suitability requires a broker with actual or de facto control over a customer's account to have a reasonable basis for believing that a series of recommended transactions, even if suitable when viewed in isolation, is not excessive and unsuitable for the customer when taken together in light of the customer's investment profile.

Factors to Consider

When determining what type of annuity to offer a consumer or when the Firm or Company is reviewing the application during underwriting, the information collected from the consumer should include some or all of the following:

- Insurance Needs
- Purpose of Insurance
- Investment Objectives
- Risk Tolerance
- Time Horizon
- Source of Funds
- Annual Income
- Tax Bracket
- Net Worth
- Liquid Net Worth
- Current Investment Experience
- Prior Investment Experience
- How Solicited
- Existing Customer
- Number of dependents
- Replacement Information, if applicable
- Age

It is important to consider and understand these factors when making a recommendation. Insurance needs should demonstrate the long term goals of the consumer which could be any combination of the following:

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Annuity Stability continued from page 5

- Purpose of Insurance - this may include estate planning, family protection, accumulation of wealth, retirement, etc.;
- Age of consumer – this should be considered to evaluate if the consumer's age is a factor in issuing the policy's limit and if the investment type is appropriate based on the age of the consumer;
- Surrender charges - how do they affect the long term goals of the consumer;
- Annual Income – the annual income of the consumer should support the investment amount;
- Source of Funds - this should be identified and the consumer should have disposable income to invest;
- Liquidity – liquidity is key factor in evaluating if the consumer can afford a one-time payment or monthly payments? Will the consumer have a need to withdraw money before the expiration of the surrender charges; understand if the consumer's Risk Tolerance is aggressive, moderate, conservative or somewhere in the middle.

Reasons Sales May Be Unsuitable

When reviewing an application for suitability, verify that the information on the application or suitability form was complete and that the producer or Company had sufficient information to make a reasonable determination on an appropriate annuity type.

For a large annuity dollar amount, the underwriting file or suitability form should contain financial information, bank records or independent third party verification (certified financial advisor, CPA, attorney) that the annuity amount was justified. In addition, if the application indicates that the sale if from a replaced policy, it is recommended that a cost vs. benefits analysis should be performed to support that a replacement was suitable.

During the review of the consumer's application and suitability form, red flags may determine if additional information or questions need to be asked. Instances of red flags may include, but not be limited to, the following:

- The underwriting file only contained an application with no suitability form or applicant investment profile. However a variable annuity was requested.
- If the application is from an existing insured and the producer provided a power of attorney with the client's signature, verify that signature of the client matches the signature on file. Having a producer retain power of attorney does not always indicate a problem, but should always be verified to ensure the producer or broker is conducting business in the best interest of the consumer.
- When replacing an existing annuity, there must be clear documentation that shows a long-term benefit to the consumer compared to the surrender charges and cost of replacing the existing annuity.
- Is the annuity described as tax-free, when it is actually tax deferred?
- Does the applicant indicate they were interested in liquidity yet they were sold a deferred annuity? Although the consumer can withdraw up to 10% a year from their annuity, based on the consumer's suitability form, a deferred annuity may not have been in the consumer's best interest.
- The application indicated the reason for the annuity was college funding with the consumer depositing $1,000 annually and the age of the child was 17 (and would begin college at age 18). This was clearly a red flag and unsuitable as it was impossible to provide sufficient college funding after one year based on these factors.
- Does the separate account investment match the need of the consumer? In this situation the application was for a variable annuity but 100% of the deposits were in fixed accounts which unless indicated and confirmed by the consumer, may offset the reason for purchasing a variable annuity.

Examination Approaches

Examinations of annuity products can be performed using multiple examination methods. Targeted examinations will focus on one or more specific areas of the company's or agents business, for example, claims and underwriting. Comprehensive examinations will focus on every business area of the company or the agent, for example, operations

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Annuity Stability continued from page **5**

and management, complaint handling, marketing and sales, producer licensing, policyholder services, underwriting and rating, and claims. Risk focused exams will review all of these areas at a high level which may include a few samples to validate the information provided by the Company or agent. Upon completion of the high level assessment, a risk level (low, medium or high) is assigned to each area for determination if further review is warranted.

Exam Protocols

Market conduct examinations will typically include certain testing standard to determine compliance with state statutes and regulations. It is standard practice to review all of the Company's policies and procedures for compliance with the laws of the state that is conducting the examination.

- Sales practice and suitability guidelines: what information is the Company providing to its agents and staff to ensure compliance with state regulations?
- Sales training materials: does the sales training materials used by the Company or its agent comply with state regulations?
- Designations used by agents: there are many legitimate designations for agents in the insurance marketplace. For example, FINRA includes the Certified Annuity Specialist. The Life Office Management Association (LOMA) has the Associate, Annuity Products and Administration. However, there are many non-accredited designations used by some producers and brokers. Companies should monitor that the designations used are accredited from a legitimate organization.

During the course of a market conduct examination, examiners may speak with staff who perform the everyday business functions to get a better understanding of how the Company or producer conducts business. Does the Company perform audits of their producers? How often? How does the Company resolve non-compliant issues identified in the audits? Does it include correction action steps and timelines for completion? The Examiners may also review all communications between the agency, Company and the sales force, sales and training manuals, complaint logs, and disciplinary actions against agents or agencies.

Additional Red Flag Indicators

The Company and regulators may also review and analyze the Market Conduct Annual Statement (MCAS) for red flags. MCAS trending of multiple years of data can help a Company and regulators find red flags which may warrant further review or questions. For example, trending of replacement information can help determine the number of policies issued within certain age groups, the number of free looks and surrendered policies. Trending annual MCAS data can help to identify certain agents or agencies with red flags. Consumer complaints is another source for determining red flags. Trending complaints by policy types or agents can also to help identify red flags.

Conclusion

Annuities offer a valuable financial planning tools to shift longevity and investment risk from the contract holder to the insurance company. While there can be significant value to the consumer, the terms of the annuity can be complex and not easily understood. This complexity and a lack of consumer protection can lead to sales that are not suitable for the buyer. For a product to be suitable, it must meet the consumers' family needs, income, long and short term financial goals, liquidity, risk tolerance and growth objectives. It is the responsibility of the agent and the companies they represent, to have processes in place to ensure that every sale is suitable. It is our job as examiners to confirm that these processes are working consistently and effectively for every buyer. ■

John Humphries, ASA, MAAA, CFE, CISA, AES, MCM, is a Partner with Risk and Regulatory Consulting, LLC. He has worked exclusively with State Insurance Departments for over twenty-five years on examinations and regulatory projects covering both financial and market conduct issues. Because John's work is focused on the needs of regulators, he understands the regulatory process and works hard to identify both problems and solutions. John can be contacted at john.humphries@riskreg.com or 770-774-1102

Sam Binnun, LUTCF, MCM is a Managing Director with Risk & Regulatory Consulting, LLC. He leads the Market Regulation practice where he coordinates and manages a team providing market regulation consulting projects related to comprehensive, targeted, and risk-focus market conduct examinations, investigations, enforcement, compliance, market analysis, quality assurance, internal audits, policies and procedures reviews, operational reviews and training for all lines of insurance including life and annuities. He has over 23 years of insurance, regulatory, industry, and field experience. Before joining RRC, Sam was Director, Market Investigations with the Florida Office of Insurance Regulation. Sam began his career in the insurance industry as a registered financial representative with MetLife. He was formerly licensed and registered as a life, health, variable annuity and Series 6 mutual funds representative. Sam can be

IRES Online, In Numbers

Go-Ires.org

10/20/2016 - 11/20/2016

New website visitors: **56.2%**

Returning website visitors: **43.8%**

Monthly Website Users: **1348**

Pages per session: **3.74**

Email Statistics:
January 2015 to Present
72,521 Emails sent
41,472 Emails were opened
6,796 Clicks

Most Popular Campaign:
2016 CDS: Know Before You Go
73% Opens
43% Clicks

LinkedIn:
www.linkedin.com/company/10503453
17 followers

Twitter:
https://twitter.com/go_IRES
Tweets: 262
Following: 37
Followers: 35
Likes: 22

Executive Committee Update

The Board has approved the 2016-17 Executive Committee. The Committee Chairs are as follows:

Tracy Biehn	Accreditation & Ethics
Cristi Owen	Budget & Finance
LeAnn Crow	CDS
Randy Helder	Education
Tanya Sherman	MCM/AMCM
Ken Allen	Meetings & Elections
Martha Long	Membership & Benefits
Parker Stevens	PR & Publications

If you would like to join a committee or subcommittee please contact Synergos (IRES's Management Company: 1611 County Rd B West, Ste 320 - St. Paul, Minnesota 55113,

Phone: 651-917-6240) or one of the committee chairs noted above. Synergos can direct you to our committee chairs.

The Executive Committee has met since the IRES CDS, and many of the actions noted in my last article for the Regulator have been put into motion. Committees have met and are hard at work for the membership.

The Education Committee put on a webinar on Annuity Suitability sales on Thursday, September 22nd. The presenting hosts were John Humphries and Sam Binnun. The session was open to all IRES General and Sustaining members and was eligible for IRES Continuing Education Credits for those individuals who pre-registered for the webinar. From all the feedback received from those in attendance it was an outstanding presentation. Thank You to Sam and John for their great work and presentation. The Education Committee is planning on hosting at least five more webinars this year.

The A&E Committee has reached out to the America's Health Insurance Plans ("AHIP"), and AHIP has agreed to extend the discounts for our IRES membership during 2017. IRES will be receiving a new code for its membership to use during the first two weeks in December. The code was used 17 times during 2016. This Committee has several other items on its plate for consideration of new ideas for achievement of designations and CE credits.

The MCM class will be offered at the IRES Foundation meeting and at the Colorado Division of Insurance. For the class at the Foundation meeting, it will be held from March 10th thru the 12th and will be held in St Petersburg, FL. You must register by Wednesday, February 22, 2017. For the class at the Colorado Division, it will be held from April 5th thru the 7th and will be at the Division's offices in Denver, CO. You must register by Tuesday, March 21, 2017.

The future of the MCM class will see some upgrades and changes. The text book is being upgraded for the ever changing insurance industry and the changes at the NAIC. Plus, the Committee has started on a new chapter for cybersecurity.

IRES is working on renewal applications for the AIE and CIE trademark registrations. This must be completed every ten years, and therefore an attorney has been hired by IRES to ensure our designations are protected.

Potential changes in the insurance industry and the ever changing regulatory challenges:

What will healthcare look like in this country a year from now? Will the Affordable Care Act still be law? Will it be repealed? Will it be tweaked, changed, corrected, or over-hauled? Will the subsidies remain? Will more carriers leave the market? Will rates continue to rise? The presidential election will certainly influence the look of healthcare in 2017, and the outcome may or may not answer most if not all of the noted questions.

Will more carriers offer flood insurance as a covered benefit under homeowner's coverage? Will carriers offer it and compete with the NFIP? Can carriers compete in the flood market without the NFIP using rates based on sound actuarial principles?

Will long-term care insurance still be available in five years? Will rates continue to rise?

This is just a small reminder of the challenges of state insurance regulation both today and tomorrow. This is a valid reason that IRES exists, as we strive to provide education to our membership through webinars and our CDS, to help state insurance departments meet the challenges of today and to come. ■

Have your say – make someone's day … for a whole year!

6th Annual Al Gross/Jim Long Rookie of the Year Scholarship

Martha Long & Katie Dzurec-Dunton

The Insurance Regulatory Examiners Society (IRES) and the IRES Foundation are sponsoring the 6th Annual Al Gross/Jim Long Rookie of the Year Scholarship for calendar year 2017.

This award is named after two long-serving Insurance Commissioners who passed away shortly after retiring from their positions; North Carolina Insurance Commissioner, Jim Long, and Virginia Commissioner of Insurance, Al Gross. Both of these Commissioners were dedicated to serving their constituents. In reading about these men, the same attributes came up again and again – dedication, leadership, innovation, and mentorship – neither were afraid to get involved in difficult issues and find solutions by looking outside the box. Both men were recognized and touted as exceptional leaders by their peers and those who worked for t¬hem.

The scholarship will be awarded to four (4) State Regulators (one in each zone) who have demonstrated exceptional promise and professionalism. Recipients will be reimbursed up to $1,000.00 in travel related expenses, as well as waived registration fees, at one of the following programs:

•IRES Foundation National School on Market Regulation: March 12-14, 2017, in St. Petersburg, FL

•IRES Career Development Seminar: August 13-16, in Providence, RI

•MCM (Market Conduct Management) Designation Program

The awardees must be current State Insurance Department Employees with less than 2 years of service as of January 1, 2017. They must demonstrate exceptional promise and professionalism in representing their states as regulators and seek to develop skills through completion of training programs provided by recognized insurance industry institutional programs including, but not limited to, those provided by The Institutes (formerly AICPCU), The American College, LOMA, and the NAIC.

The Society and the Foundation will be partnering with NAIC Zone Officers in the selection process. Each NAIC member may nominate one individual for this award. Nominees should complete the form here, http://www.go-ires.org/documents/IRES_Scholarship_App.pdf, with a letter of recommendation from their Commissioner, Director, or Superintendent no later than December 31, 2016.

Nominees and recipients are not required to be IRES members. Members, feel free to circulate this announcement to nonmembers!

We understand the ability to accept the scholarship may vary by state due to ethics consideration; as such, participation by states is voluntary. Should you have any questions please contact IRES Membership and Benefits Chair, Martha B. Long at 573-751-2303 or Martha.Long@insurance.mo.gov or Recognition and Awards Chair, Katie Dzurec-Dunton at 207-624-2666 or Katie.DzurecDunton@cms.hhs.gov.

Know a superstar who no longer qualifies as a rookie?

Know a superstar who no longer qualifies as a rookie, but deserves recognition? IRES offers two other awards to recognize outstanding performance by seasoned IRES members--the Al Greer Award, and The Chartrand Communications Award.

The Al Greer Award

In 1998, the IRES Board of Directors established the Al Greer Achievement Award in honor of Al Greer. Mr. Greer was one of the original state insurance examiners who had the vision to establish the Insurance Regulatory Examiners Society in the late 1980s. As a founding father of IRES, 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 and was always willing to help where ever he was needed. 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 himself was the first recipient of this award in 1997. Recently, the Al Greer Award has been presented to the following recipients:

• Anne Marie Narcini, 2016

• Susan Ezalarab, CIE, MCM, 2015

• Jo A. LeDuc, 2014

• William (Bill) McCune, 2013

• Don Carbone, 2012

Visit www.go-ires.org/awards/recipients#al-greer for a list of all those to whom the Al Greer Award has been presented. Candidates for the Al Greer Award must be insurance regulators who not only embody the dedication, knowledge and tenacity of a professional regulator, but also exceed those standards. In addition, a nominee must:

• Have at least ten years of regulatory experience

•Have at least five years as an IRES general member

• Be a current general member of IRES.

• Not currently serving on the IRES Board of Directors

To nominate a deserving individual, complete an Al Greer Award Nomination form and send it to IRES. Nominations must be received no later than April

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Rookie of the Year continued from page 8

30, 2017.Visit www.go-ires.org/awards/nominations/al-greer for the Al Greer Achievement Award nominations form.

The Chartrand Communications Award

For over 20 years David Chartrand and his incredible associates, Susan Morrison, Elaine Bickel, Joy Moore, and Art Chartrand, were at the helm of IRES. Without the dedication and devotion of these diligent individuals, IRES would not be the organization that it is today.

To honor the legacy and work Chartrand Communications did for IRES, the Executive Committee and Board of Directors created the Chartrand and Associates Award.

This award is to recognize those that have made a difference to IRES through their actions. Who has really strived to keep IRES moving toward the future? Who has helped increase membership and promoted us outside the conference and in the Insurance Community? Who continually tries to make a difference in IRES? We know these unsung heroes deserve to be recognized.

Recently, the Chartrand Communications Award has been presented to the following individuals:

- Tracy Biehn, 2016
- Cristi Owen, MCM, CPA, CFE, CPM,
- Tanya Sherman, 2014
- Erin Mirza, 2013
- Joe Bieniek, 2012
- Holly Blanchard, 2011

Visit www.go-ires.org/awards/recipients#chartrand for a list of all those to whom the Chartrand Communications Award has been presented. Nominations are open to all IRES members, sustaining members and organizations that have been involved with IRES for at least two years. Nominate a deserving individual please complete the nomination form. Nominations must be received no later than April 30, 2017.

Visit www.go-ires.org/awards/nominations/chartrand for the Chartrand Award nominations form.

If you have any questions about the Al Greer and Chartrand Communications awards, contact IRES Membership and Benefits Chair, Martha B. Long at 573-751-2303 or Martha.Long@insurance.mo.gov or Recognition and Awards Chair, Katie Dzurec-Dunton at 207-624-2666 or Katie.DzurecDunton@cms.hhs.gov. ■

IRES Member of the Month

Parker Stevens & Kallie Somme

IRES would like to introduce the September 2016 IRES Member of the Month, Kallie Ruggiero Somme. Kallie has been an IRES members since 2008. During her time with IRES she has been an active volunteered, service on a number of committees.

Q1: Who do you work for? What is your job tile? And in a very short description what are your daily duties?

A1: I work for the Louisiana Department of Insurance. My job title is an Insurance Specialist 2. My daily duties include but not limited to: Researches insurance laws, analyzes insurance contracts, renders decisions, and composes correspondence to interested parties pertaining to insurance inquiries and complaints; researches background data of submissions from Property and Casualty, Long Term Care, Life, Annuity, Health insurance companies involving use of rules and rates through the aid of computer and physical files. Documents evidence against agents, agencies, or companies in violation of the Louisiana Insurance Code, reports finding and recommends action to be taken. Assists subordinates on a project basis in resolving problems with respect to rating policies, premium modification cases and investigations. Communicates by telephone or correspondence advising insurance agents or company representatives or consumers on complaints filed, and status of these complaints, etc. Answer phone calls.

Q2: How long have you been an IRES Member and what made you decide to join?

A2: I have been a member of IRES since 2007. I joined at the urge of Larry Hawkins, which was a great decision.

Q3: What committees have you served on and what roles did you hold?

A3: I am on the CDS Planning Committee, The Accreditation and Ethics Committee, Meeting & Elections Committee and Chair of Elections Subcommittee and on the Publication Committee as the Vice-Chair.

Q4: What is a personal or career goal that you would like to accomplish in the next 5 years?

A4: To grow, continue learning and advancing in all my personal and career endeavors.

Q5: What is your biggest personal or professional accomplishment?

A5: my greatest accomplishment was becoming a mom 6 years ago to Michael Allen Somme, Jr.

Q6: When you aren't working what are your hobbies?

A6: Playing softball and teaching dancing (not nearly as much as I used to since the birth of my son who is very active and takes up most of my time)! I also enjoy spending quality time with my family and friends.

Q7: What are your IRES goals for 2016-2017?

A7: My IRES goals for the State Chapter is to keep the Chapter alive and active by getting individuals more involved. ■

Getting to know your Executive Committee

This Issue: LeAnn Crow IRES EC Title: At-Large

By Parker Stevens & LeAnn Crow

As we enter the new IRES year we wanted 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 IRES Executive Committee At-Large Member, LeAnn Crow. Below is an interview style Q&A with Ms. Crow.

Q1: Who do you work for? What is your job tile? And in a very short description what are your daily duties?

A1: I'm the Director of the Consumer Assistance Division at the Kansas Insurance Department. My daily activities include: visiting with consumers and companies about case files; discussing files with staff and working with other Divisions within the Department.

Q2: How long have you been an IRES Member and what made you decide to join the Board/Executive Committee?

A2: I have been an IRES member since 2012, almost 5 years. I joined the Board after receiving encouragement from a co-worker, Stacy Rinehart as she was active on the Board and Executive Committee for several years.

Q3: What committees have you served on and what roles did you hold?

A3: I started as the State Chair Chairperson and held that position for three years (that is under the Membership & Benefits Committee), I have also been on the Publications Committee and served as the CDS co-chair for 2016 and service as the CDS Chair for 2017.

Q4: Which IRES CDS has been your favorite and why?

A4: I really like all the IRES CDS events that I have attended; however, if I have to choose a favorite so far, it would have to be 2016 in Scottsdale. Since I was the Co-chair with Sam Binnun, it was really rewarding to see months of planning come to life.

Q5: Is there one session at a CDS that stands out in your mind and why?

A5: The one session that comes to mind quickly is from the CDS in Charleston and the session was "Three Different approaches to educate teens & their families about safe driving…." The reason that session stands out is that from that session, we, at the Kansas Insurance Department, are implementing a "Don't text #JustDrive" pledge contest and educational initiative. This was originally done in South Carolina and Ann Roberson (SC) presented their version at that conference. Also, at the 2016 conference, the Commissioners Roundtable really stood out

Q6: When you aren't working or helping make IRES the best organization on earth what are your hobbies?

A6: I love to read, so in my spare time, I'm usually caught with a book and a cup of coffee! Also, my oldest son is active in High School sports, so I'm busy watching him play. My youngest son is also active in sports (however, currently healing from a major surgery this past summer), so he will back playing again soon!

Q7: Share with us one fact about yourself that we might not know?

A7: My family owns a business in Topeka, KS called "Porubsky's Deli". (You will need to Google it). The business was started by my Grandfather and his mother in 1947 and still going strong today. Currently, my Uncle (along with my retired parents) runs the store daily along with other family members. It is known for hot pickles and chili!

Q8: What is your biggest bucket list item?

A8: Honestly, I do not have a bucket list. That probably is odd; however, I've been blessed throughout my life to get to do and see many things—very thankful!

Q9: What is your favor sport to watch and why?

A9: I really like to watch all sports, so it is hard to choose one. If not watching my boys play, I'm usually caught watching KU Basketball—Rock Chalk Jayhawk! I also like baseball, especially the Kansas City Royals! And oddly enough, I like to watch WWE, even though my favorite wrestler is retired!■

State Chapter News

By Dave Jones

Ken Allen has been promoted to Deputy Commissioner, Rate Regulation, effective September 1, 2016.

In 1989, as a recent graduate of Cal State Fullerton with a B.A. in Math, Ken joined the Department's newly-formed Rate Regulation Branch shortly after the passage of Proposition 103. Ken advanced to Associate Insurance Rate Analyst, Senior Insurance Rate Analyst, and then a Supervising Insurance Rate Analyst/Bureau Chief in 2008. Ken has interacted with many insurers on a wide array of coverages and on a countless number of rate filings.

Along the way, Ken also earned his CPCU designation in 1996 and his Associate Insurance Examiner designation in 2008. Ken is also the President-Elect for the Insurance Regulatory Examiners Society and will become its President next year.

Ken has a reputation as a knowledgeable, fair, and dedicated regulator who keeps consumer protection foremost in his priorities. ■

Past President's Remarks – continued from page 11

IRES Webinar on Cybersecurity

Wednesday, December 7, 2016

2:00 PM Central time

Tom Tollerton & Roshi Fekrat will be your hosts. They will discuss the current state of Cybersecurity, highlighting trends, statistics, and attack methodologies seen in the field. The presenters will also discuss the forthcoming NAIC Model Law, its purpose, components, and the impact of the law's requirements on insurance companies and examinations. ■

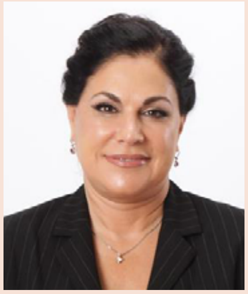
Tom Fullerton

Tom Tollerton, CISSP, CISA, QSA. Manager, IT Advisory Services at Dixon Hughes Goodman LLP (DHG)

As a manager of the IT Advisory Services group, Tom leads the firm's cybersecurity services. With over 12 years of experience in the cybersecurity industry, he specializes in cyber risk assessments, NIST cybersecurity framework integration, PCI compliance services, system security architecture assessments, and security governance assessments. Tom leads DHG's digital forensics/incident response (DFIR) services assisting clients with data breach investigations, and provides forensics services for DHG's financial forensics and litigation support teams.

Prior to joining DHG, Tom developed IT security, compliance and risk assessment solutions for a Fortune 500 defense contractor. He also has broad technical security experience, working as a data security engineer for a PCI Level 1 merchant, responsible for architecting and implementing network security solutions in support of PCI compliance initiatives

Roshi Fekrat, CPA, CFE, CIA, MCMC. Director of Regulatory Services, with Dixon Hughes Goodman LLP (DHG).



Roshi Fekrat

As an ex-regulator with the State of Alaska, Division of Insurance, Roshi has over 25 years of audit and examination experience working with the States' Departments of Insurances.

Roshi has strong experience in market conduct examinations, MCAS data integrity reviews, risk-focused financial examinations, corporate governance assessment, ERM implementation and ORSA reviews, investment services, reinsurance services, and various form filings.

Roshi is a Magna Cum Laude graduate of the University of Alaska, Anchorage where she received a Bachelor of Science degree in Accounting.

State Chair Subcommittee

by John Humphries, ASA, MAAA, CFE, CISA, AES, MCM and Sam Binnun, LUTCF, MCM

The IRES State Chairs and State Chair subcommittee were formed to provide resources for State's for education and outreach, as well as to promote knowledge and growth of IRES. This subcommittee is comprised of a dynamic team of representatives from the states, and sustaining members. The subcommittee meets monthly and discusses initiatives being implemented on the state level and works to identify resources to continue the betterment of IRES.

The state chair subcommittee will hold their next meeting on November 21st. During this meeting state chairs will discuss considerations for 2017, including marketing initiatives, and outreach to students and international regulators. Multiple states are currently hosting international regulators, which provides an opportunity for open discussions between IRES members and these international regulators to help develop a global perspective on regulation. The subcommittee will also continue efforts previously explored, such as potential webinars, and discussion boards for the state chairs.

If you would like to be involved with the state chairs, or have suggestions on ideas to assist the state chairs spread the word about IRES, please reach out to hblanchard@riaconsulting.net.

If you would like to be involved with the state chairs, or have suggestions on ideas to assist the state chairs spread the word about IRES, please reach out to hblanchard@riaconsulting.net. ■

Market Regulation and Consumer Affairs (D) Committee

By Tim Mullen

Tim Mullen

As we look back on 2016 and look forward to 2017, there are multiple initiatives underway through the Market Regulation and Consumer Affairs (D) Committee that warrant additional discussion and clarification.

The Use of Data and Complex Modeling in Insurance

Everyone has heard the buzz phrase "big data" and there are general descriptions of "big data" which relate to the volume, variety and velocity of data. The increased use of new data and complex modeling in the insurance industry have been discussed by the NAIC's Casualty Actuarial (C) Task Force and have now blended into the work of the NAIC's Big Data (D) Working Group. This Working Group spent most of 2016 obtaining additional information regarding insurers' use of big data for claims, marketing, underwriting and pricing to determine potential next regulatory steps. A secondary focus of the Working Group has been on potential opportunities for regulatory use of big data to improve efficiency and effectiveness of market regulation. State insurance regulators may need to collect more data to allow for greater insight into insurers' models.

The Working Group has determined that as insurers collect more granular data about insurance consumers, state insurance regulators need greater insight into what data is available to the industry, how it is being used, and whether it should be used by insurers. And, while the use of big data can aid insurers' underwriting, rating, marketing, and claim settlement practices, the challenge for insurance regulators is to examine whether it is beneficial or harmful to consumers. Consumer concerns include how collected data is safeguarded and how consumer privacy is maintained. To the extent insurance companies are using data brokers to access new data or using outside vendors to create complex rating models, regulators need the ability to have oversight to entire process. To this end, regulators may take a more active role in the business activities of data brokers, which are essentially assisting insurers in setting rates and acting as Advisory Organizations.

State insurance regulators recognize the need to maintain the proper balance between consumer protection and innovation. The use of new data sets and complex rating models has the potential to better identity the needs of consumers, provide more real-time interaction with consumers, and enhance risk management. For example "wearables" may better track the health conditions of insured and proactively identify the need for medical treatment. To the extent "wearables" are used by insurers to provide feedback to policyholders, they offer much potential in improving health status and making the person a better life insurance risk. Similarly, telematics for auto insurance has the potential in improving the driving habits of insurers through insurer-to-policyholder feedback regarding risky driving behaviors.

Moving from exploration and identification of issues surrounding insurers' use of data, the Market Regulation and Consumer Affairs (D) Committee adopted the recommendations of the Big Data (D) Working Group to convert the Working Group into a Task Force. The mission of the Big Data (D) Task Force in 2017 would be to gather information to assist state insurance regulators in obtaining a clear understanding of what data is collected, how it is collected and how it is used by insurers and third parties in the context of marketing, rating, underwriting, and claims. This includes an evaluation of both the potential concerns and benefits for consumers and the ability to ensure data is being used in a manner compliant with state insurance statutes and regulations. The Task Force will also explore opportunities for regulatory use of data to improve the efficiency and effectiveness of insurance regulation. The specific charges of the Task Force include the following:

1. Review current regulatory frameworks used to oversee insurers' use of consumer and non-insurance data. If appropriate, recommend modifications to model laws/regulations regarding marketing, rating, underwriting and claims, regulation of data vendors and brokers, regulatory reporting requirements, and consumer disclosure requirements.
2. Propose a mechanism to provide resources and allow states to share resources to facilitate states' ability to conduct technical analysis of and data collection related to states' review of complex models used by insurers for underwriting, rating, and claims. Such mechanism shall respect and in no way limit states' regulatory authority.
3. Assess data needs and required tools for regulators to appropriately monitor the marketplace and evaluate underwriting, rating, claims, and marketing practices. This assessment shall include gaining a better understanding of currently available data and tools and recommendations for additional data and tools as appropriate. Based upon this assessment, propose a means to collect, house, and analyze needed data.

The NAIC's Executive Committee and Plenary will consider the appointment of a new Big Data (D) Task Force in 2017 during the NAIC Fall National Meeting.

Market Regulation Certification Program

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Market Regulation and Consumer Affairs Committee continued from page **12**

The beginning of 2016 began with the Market Regulation Accreditation (D) Working Group and Market Regulation and Consumer Affairs (D) Committee having adopted the "First Tier of Requirements for Market Regulation Accreditation." In July of this year, the NAIC Membership made a policy decision to change the name of the Working Group and accreditation proposal to the Market Regulation (D) Certification Working Group and Market Regulation Certification Program. This change was made to eliminate any confusion about the market regulation accreditation program being part of the NAIC's Financial Accreditation Program and including domestic deference. The Market Regulation Certification Program is being proposed as a distinct and separate program without domestic deference.

At a high level, the Market Regulation Certification Program has twelve Requirements: (1) department authority; (2) use of the NAIC's Market Regulation Handbook; (3) department staffing; (4) department staffing education/training; (5) confidentiality and information sharing; (6) interstate collaboration; (7) participation in the Market Conduct Annual Statement; (8) data submission to the NAIC; (9) participation in NAIC market conduct working groups; (10) appointment of a Collaborative Action Designee; (11) participation in national analysis; and (12) processes for communication across functional areas of a state insurance department.

During 2016, the Market Regulation Certification (D) Working Group developed Guidelines which explain what specific functions a jurisdiction should have in place to meet the First Tier of Requirements. In addition, the Working Group developed a Self-Assessment Checklist which breaks out the Guidelines into a "checklist format." The Self-Assessment Checklist was developed to provide states an easy and consistent method to assess their compliance with the Requirements. The Market Regulation and Consumer Affairs (D) Committee adopted these items at the NAIC Summer National Meeting.

The Market Regulation Certification (D) Working Group adopted an implementation plan on Nov 3rd. The implementation plan describes an initial three-year period in which jurisdictions will be able to conduct self-certifications. During the three year self-certification period, the Market Regulation Certification (D) Working Group will regularly review feedback from jurisdictions concerning any issues or recommended changes to the Market Regulation Certification Program. After the initial three-year period, jurisdictions will be allowed to continue self-certifying, apply for full certification, not participate, or withdraw from participating in the Market Regulation Certification Program.

In order to assess applications for full certification after the initial three-year period, the Implementation Plan states the NAIC will appoint a Market Regulation Standards and Certification Committee which would rely on an NAIC Review Team's assessment of a jurisdiction's compliance with the certification requirements. The NAIC Review Team will be similarly constructed as the Financial Regulation and Accreditation Standards Accreditation Review Team; however, the review teams will work independently of each other.

The Market Regulation and Consumer Affairs (D) Committee should consider the adoption of the Implementation Plan at the NAIC Fall National Meeting and the NAIC Membership should consider the adoption of the Market Regulation Certification Program by the end the year. This includes the Market Regulation Certification Requirements and Guidelines, the Self-Assessment Checklist, and Implementation Plan.

Market Conduct Annual Statement

After extensive discussion and exchange of viewpoints between regulators, consumer representatives and industry beginning in the Spring of 2015, the NAIC Membership adopted the Market Conduct Annual Statement Health Blank at the NAIC Summer National Meeting. The health blank requests that insurers provide data on their underwriting activities such as policies written, member months, cancellations and rescissions; in-network and out-of-network claims data regarding numbers of claims, speed of payment or denial and insured co-payments, deductibles and co-participations; and grievance statistics on both internal and external reviews. In addition, the data will be provided by type of plan, metal level, and whether it is on-or off-Exchange business.

When adopted by the Market Regulation and Consumer Affairs (D) Committee, consideration was given to the fact that health insurers are required to produce multiple reports each year for the Affordable Care Act. Therefore, the Market Regulation and Consumer Affairs (D) Committee and the NAIC Membership approved a filing deadline of Sept. 30th for the first filing year in 2018. To eliminate uncertainty about filing deadlines beyond 2018, the Market Regulation and Consumer Affairs (D) Committee, during a conference call on Nov. 4th, established a filing deadline of May 31st for 2019 and April 30th for all years after 2019.

During the Nov. 4th conference call, the Market Regulation and Consumer Affairs (D) Committee also decided to form a new Market Conduct Annual Statement (D) Working Group in 2017. This was done in recognition of the increasing regulatory discussions focusing on data collection and analysis. This new Working Group will be responsible for reviewing existing MCAS data elements for potential updates and developing MCAS blanks to be used for the collection of data. The existing Market Analysis Procedures (D) Working Group will continue to have responsibility for recommending changes to the market analysis framework, discussing other market data collection issues, and recommending new lines of business for MCAS. The Market Analysis Procedures (D) Working Group has adopted a recommendation that disability income

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Market Regulation and Consumer Affairs Committee continued from page 13

insurance be the next MCAS line of business.

Privacy Disclosure Requirements

During the NAIC Summer National Meeting, the NAIC Membership adopted a 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 (1) the licensee only provides nonpublic personal information to nonaffiliated third parties pursuant to permitted exceptions and (2) 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. Following up this adoption the Privacy Disclosures (D) Working Group is now working to replace the sample privacy notices in the NAIC's Privacy of Consumer Financial and Health Information Regulation with the Privacy Model Notice Form promulgated by federal regulatory agencies for use by financial institutions, such as banks and security firms.

Market Conduct Examinations Standards

The Market Conduct Examination Standards (D) Working Group received a referral from the Cybersecurity (EX) Task Force, which has requested that the Working Group review and consider updating the Market Regulation Handbook to add market conduct examination-related guidance addressing cybersecurity. Recognizing the need for a uniform approach, the Working Group will use the updates regarding cybersecurity in the Financial Condition Examiners Handbook as a basis for their work.

The Working Group continues to focus on examination standards related to the Affordable Care Act, with the most recent focus on network adequacy standards. The Working Group is also reviewing the standardized data requests for producer licensing, marketing and sales practices, and records maintenance and proper complaint handling procedures.

Finally, the Working Group recently discussed the concept of Process Review Methodology. While conventional market conduct examination methodology looks for violations of state statutes and unfair treatment of consumers that have already occurred, process review methodology involves a review of a regulated entity's internal controls to identify causation of errors. In summary, examiners using process review methodology review the regulated entity's procedures and controls, interview upper management to identify the communication of procedures to employees, review the regulated entity's auditing efforts to ensure compliance with its documented procedures.

Unauthorized Practice of Public Adjusting

The Public Adjuster (D/C) Working Group continues to discuss the unauthorized practice of public adjusting. The Working Group is now in the process of collecting state educational materials on the unauthorized practice of public adjusting. Upon the review of this information, the Working Group will decide if they want to develop their own educational materials for state reference or develop a catalog of developed materials for state reference. Concurrent with this activity, the Working Group is considering whether to amend NAIC's Public Adjuster Licensing Model Act to make the unauthorized practice of public adjusting a crime and prohibit contractors from acting as public adjusters on the same claim. Regarding insurers' use of Managed Repair Programs, the Working Group is not planning additional work in this area.

Pre-Dispute Mandatory Arbitration Clauses

During the NAIC Summer National Meeting, the Market Regulation and Consumer Affairs (D) Committee discussed a request from the NAIC Consumer Representatives to ban the use of pre-dispute mandatory arbitration clauses. As presented by NAIC Consumer Representatives, the use of a pre-dispute mandatory arbitration clauses for insurance claims is in need of review because consumers are unaware the insurers' use of the clause, do not understand the clause binds them in the future, and do not understand they are giving up a very important right to a trial. In response to these concerns, the Market Regulation and Consumer Affairs (D) Committee adopted the following 2017 charge during a call on Nov. 7th: Consider and, if appropriate, amend the Unfair Trade Practices Model Act (#880) or develop a new model act prohibiting the use of: 1) pre-dispute mandatory arbitration clauses in any individual and commercial insurance policies, and 2) choice-of-law and choice-of-venue clauses.

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: http://www.naic.org/cmte_d.html■

Committee Updates:

The Meeting & Elections Committee is working on securing two CDS contracts this time around: 2019 and 2020. The Committee just received RFP responses for potential 2019 cities (Chicago, IL; Denver, CO; Indianapolis, IN; and Salt Lake City, UT) but has not had a chance to review the responses yet. If there are two really good responses from two different cities, the Committee may try to work with those for both 2019 and 2020, but if the Committee only finds one good response in the current RFP, it may create a second RFP including a different set of cities for 2020. Stay tuned…■

'Zoning In'

By Kathy Donovan, MCM

Northeast Zone

Kathy Donovan

Massachusetts

The Division of Insurance issued three bulletins on Sept. 27, 2016 (Bulletins 16-10, 16-11 and 16-12), all of which address issues concerning a natural or man-made disaster. The listed bulletins cover the following topics: "Annual Pre-Disaster Preparedness Survey," "Emergency Procedures for Insurers' Adjusters of Property Insurance Claims Following a Natural or Man-Made Disaster," and "Post-Disaster Insured Damage Data Collection."

New York

Circular Letter No. 6 (2016), issued on Oct. 19, 2016, provided guidance regarding the coverage requirements for treatment of substance use disorders under applicable insurance policies or contracts delivered or issued for delivery in New York. The Letter addresses new provisions enacted this year, as well as other requirements, including inpatient coverage for the diagnosis and treatment of substance use disorders; services that must be provided in residential settings; certain prohibitions regarding preauthorization and concurrent reviews during specific timeframes of inpatient admission for treatment of substance use disorder; copayments and coinsurance for limited initial prescriptions of opioids; coverage for outpatient treatment; and various utilization review provisions.

Southeast Zone

Alabama

Dated Oct. 31, 2016, Bulletin 2016-07 provides updates to three prior bulletins concerning the application of hurricane deductibles and repeals two prior bulletins. Issues addressed include revised and additional benchmark "Hurricane and Other Wind/Hail Mitigation Discounts," effective dates, applicability and filing requirements. Insurers are required to submit their mitigation discount filings via the System for Electronic Rate and Form Filing (SERFF) for residential and commercial properties within Mobile and Baldwin Counties no later than March 1, 2017, with a filing effective date for new and renewal business no later than June 1, 2017. They are also required to submit their mitigation discount filings via SERFF for residential and commercial properties in the remainder of the state no later than October 1, 2017, with a filing effective date for new and renewal business no later than January 1, 2018.

Tennessee

Effective January 9, 2017, a new regulation will govern the "Use of Senior-specific Designations in Life Insurance and Annuities" in the state. As seen in other jurisdictions that have adopted provisions based on NAIC Model 278, this new regulation establishes standards to protect consumers from misleading and fraudulent marketing practices with respect to the use of senior-specific certifications and professional designations in the solicitation, sale or purchase of, or advice made in connection with, a life insurance or annuity product.

Midwest Zone

Illinois

HB 4633, effective Jan. 1, 2017 enacted the Unclaimed Life Insurance Benefits Act. New requirements include an initial comparison of each applicable company's in-force policies, annuity contracts and retained asset accounts by using the full Death Master File by Dec. 31, 2017, unless extended by the Department of Insurance. Consistent with other states that have adopted similar provisions, insurers will also be required to implement other processes, including conducting semi-annual comparisons to identify potential matches of its insureds, annuitants and retained asset account holders, and using documented good faith efforts to find beneficiaries in cases where potential matches were identified with a Death Master File match and the insurer has not yet been contacted by a beneficiary.

Missouri

The Department provided its position on rate stability rules in personal lines of property and casualty insurance policies in Bulletin 16-05, dated Sept. 30, 2016. Regarding enforcement activity, the Department indicated that it will not take action "against an insurer utilizing rate stability rules to modify rates or premiums for personal lines of property and casualty insurance so long as the rate stability rules are implemented within or meet" the guidelines listed in this bulletin. Included in these guidelines is a documentation requirement where "the insurer agrees to maintain sufficient information, and make such information available upon request to the Department, so that the Department may accurately reproduce premiums charged to policyholders. Such information shall include, but not be limited to, rates and premiums charged for any prior terms, rates and premiums for the current term prior to application of a rate stability rule, and the specific factors or modifications applied to the current term's rates and premiums." The Department also clarified that the provisions of this bulletin do not include the practice of price optimization, with that practice addressed in Bulletin 16-02.

Wisconsin

The Office of the Commissioner of Insurance (OCI) has provided guidance to health carriers regarding Centers for Medicare and Medicaid Services' (CMS) plans to auto re-enroll consumers into a different insurer's plan under circumstances where their current insurer will not have plans available on the federal exchange in 2017. The Bulletin dated

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'Zoning In' – continued from **page 15**

Oct. 31, 2016, addressed OCI's concerns that included the CMS plan being in violation of state insurance law, as well as consumers' personally identifiable information and financial information being shared with insurers who have not been selected by the consumer. The OCI further indicated specific required actions in which insurers, who receive notice from the federal government indicating consumers will be auto re-enrolled into one of their plans, may be requested to demonstrate each of the following actions to the OCI in order to not be found in violation of state insurance laws and regulations.

1.Upon receipt of an auto re-enrollment file from the federal exchange the insurer attempted to contact the consumer as soon as practicable and, if possible, prior to the effective date of coverage to inform the consumer that the federal exchange auto re-enrolled the consumer to the insurer. The insurer should provide the consumer with information about the federally selected plan including: premium, metal level, benefits, and network access.

2.Prior to effectuating coverage for any auto re-enrolled consumer, the insurer obtained consent from the consumer affirmatively agreeing to be insured by the plan. Consent in this case includes, but is not limited to: obtaining a signature, the consumer actively selecting the plan through the federal Web site healthcare.gov, the insurer receiving the initial premium payment, or through other means consistent with s. 631.07, Wis. Stat.

Western Zone

Colorado

Bulletin B-4.31, dated Oct. 24, 2016, establishes that the annual maximum benefit amount, effective Jan. 1, 2017, is $6,971 for early intervention services for grandfathered health benefit plans, the specified individual and group sickness and insurance policies or contracts and specified service or indemnity contracts that include dependent coverage. A grandfathered health benefit plan means a health benefit plan provided to an individual or employer by a carrier on or before March 23, 2010, that continues to maintain its grandfathered status in accordance with state and federal law)

Montana

On Nov. 4, 2016, the Commissioner of Securities and Insurance, Office of the Montana State Auditor (CSI) issued an Advisory Memorandum that provided its interpretation regarding insurance policy forms that include specific aspects of arbitration. While not requiring arbitration, these "arbitration" provisions use language establishing terms of any future arbitration. Citing §27-5-114(2)(c), CSI indicated it will not approve policy forms which contain provisions establishing terms of a future arbitration.

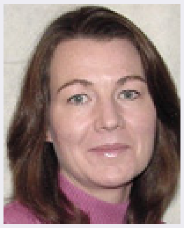
Texas

Bulletin B-0022-16, dated Sept. 15, 2016, addressed the reporting of cybersecurity incidents and provided that "a domestic insurer or HMO should contact its assigned financial analyst at the Texas Department of Insurance (TDI) if the insurer or HMO experiences or discovers an unauthorized acquisition, release or use of personal information or sensitive company information." TDI indicated that it may request additional information concerning the incident after such notification. ■

Educational Corner

Did You Miss The NICE Compliance Reporting Deadline?

By Jo LeDuc, MCM, CIE



Jo LeDuc

If you hold an AIE®, CIE®, or CICSR® designation and you missed the October 1st reporting deadline of continuing education (CE) credits for the 2015-2016 compliance period, the registration your designation has been made inactive. Without an active registration of your designation, IRES will not recognize your professional designation nor endorse it to others including but not limited to your employer, the NAIC, organizations, associations or other individuals.

To reactivate your designation, file a compliance report certifying that you have completed 15 hours of qualifying CE in the last 12 months and pay a $30.00 reactivation fee. If insufficient CE hours were earned during the compliance period, a written appeal for reinstatement must be made in writing to the Accreditation & Ethics (A&E) Committee in care of the IRES Office. At its next scheduled meeting, the A&E Committee will consider your appeal and determine the appropriate action. Complete program details, processes and reporting deadlines are contained in the NICE Program Manual. If you have questions, please contact the IRES office.■

Ms. LeDuc is an Insurance Administrator at the Wisconsin Office of the Commissioner of Insurance and has been with the office since 1993. Ms. LeDuc has served and continues to serve in various roles on various NAIC committees, including the Market Regulation Accreditation Task Force, Market Information Systems Task Force, Market Analysis Procedures Working Group, Consumer Connections Working Group, Market Actions Working Group, and Market Regulation Examination Standards Working Group.

Ms. LeDuc is a member of and a past President of the Insurance Regulatory Examiners Society (IRES). She has a M.B.A. and a B.S. in Business Administration. In addition, she has earned the CIE (Certified Insurance Examiner), MCM (Market Conduct Management), CPCU (Chartered Property & Casualty Underwriter), AIRC (Associate, Insurance Regulatory Compliance), AIC (Associate in Claims) and API (Associate in Personal Insurance) designations.

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

- ★ Sigurd Proudfit CFE
- ★ Thomas Allen CFE, CPA, CIA, CGMA, CFE (fraud)
- ★ Elizabeth Geis
- ★ Liberty Mutual
- ★ Christopher Smith
- ★ Conna Wiese FLMI, FFSI, ASRI, AIRC, AIAA, AAPA, ARA
- ★ Jerry Kennedy CPA, CFE
- ★ David Keleher ARM, CPCU, AIM, CIC
- ★ Lori Carlson FLMI, CLU HIA
- ★ Jeannie Keller SPIR
- ★ Troy Smith

INDIVIDUAL SUSTAINING MEMBERS

- ★ Janet Smithson CAMS, CLU, FLMI, AIRC, FINRA Licenses 6 & 26, HIPAA Associate
- ★ Lisa Tate J.D.; LL.M.

FIRM SUSTAINING MEMBERS

- ★ Clinton Simon
- ★ Liberty Mutual

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!

AIE®

- ★ Jenifer Christian, AIE, MC (UT)
- ★ Sheryl Hines, AIE (VA)
- ★ David Michael Keleher, AIE (unaffiliated)
- ★ Steve Schelin, AIE, MCM(WA)
- ★ David Winston Taylor, AIE (KS
- ★ Lurene Bridendall, AIE, CICSR, AMCM (IN)
- ★ Conna L Wiese, CICSR (NE)
- ★ Sarah S. Malloy, CIE, CICSR, MCM (unaffiliated)

CIE®

- ★ Connie Nowland, CIE, AMCM (UT)
- ★ Bryan D. Wachter, CIE, MCM (VA)

CICSR®

- ★ Sarah Lurene Bridendall, AIE, CICSR, AMCM (IN)
- ★ Conna L Wiese, CICSR

MCM®

- ★ Thomas Allen, MCM (unaffiliated)
- ★ Maureen Belanger, MCM (NH)
- ★ Jeff Gross, MCM (MD)
- ★ MaryLou Moran, MCM (MA)
- ★ Lucinda Woods, CIE, MCM (MA)
- ★ Karin Zimmerly, MCM (NY)

AMCM®

- ★ Andrea Baytop, AMCM (VA)
- ★ Karen Becker, AMCM (WI)
- ★ Pamela Bishop, AMCM (NE)
- ★ Bill Boyce, AMCM (unaffiliated)
- ★ Lisa Rene Brandt, AIE, CICSR, AMCM (WI)
- ★ Sarah Lurene Bridendall,AIE, CICSR, AMCM (IN)
- ★ Joanne Calvert, AMCM (PA)
- ★ Robin Clover, AIE, AMCM (CA)
- ★ Lisa B. Crump, CIE, AMCM (unaffiliated)
- ★ Arthur Dodd, CIE, AMCM (VA)
- ★ Janelle Vandervort Dvorak, AIE, AMCM (WI)
- ★ Suzette D Green-Wright, AIE, AMCM, (UT)
- ★ Heather M. Harley, AMCM, (IN)
- ★ Jim Hattaway, CIE, AMCM (unaffiliated)
- ★ Christopher Hobert, CIE, AMCM, (AZ)
- ★ Shawn Jernigan, AMCM (NY)
- ★ Laura Klanian, AMCM (VA)
- ★ Nicholas Klug, AMCM (MN)
- ★ Delbert Leonard Knight, CIE, AMCM (AZ)
- ★ Michele MacKenzie, CICSR, AMCM (ID)
- ★ Sheri Marston, AIE, AMCM (MO)
- ★ Joy Morton, AMCM (VA)
- ★ Angela Lyn Nelson, AMCM (MO)
- ★ Connie Nowland,CIE, AMCM (UT)
- ★ Darcy Paskey, AMCM (WI)
- ★ Sigurd K Proudfit, AMCM (AZ)
- ★ Mary Kay Rodriguez, AIE, AMCM
- ★ Mattia Scharfstein, AMCM (unaffiliated)
- ★ Shelly Schuman, AIE, AMCM (unaffiliated)
- ★ Steven R Sigler, AMCM (unaffiliated)
- ★ Barry L Wells, AMCM (unaffiliated)
- ★ Kirk R Yeager, The INS Companies CIE, AMCM (CO)

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Editor's Corner

By Stephanie Duchene, MCM


Stephanie Duchene

We hope you have enjoyed this issue of The Regulator®. In this issue, John Humphries and Sam Binnun explore annuity suitability and the role of the examiner in confirming that processes are working consistently and effectively for every buyer. Steve Kinion of the Delaware Department provides an interesting perspective on what a state should consider before making the decision to become a leading captive domicile. Tim Mullen provides us with a thoughtful look into the multiple initiatives underway through the NAIC Market Regulation and Consumer Affairs (D) Committee. As always, Kathy Donovan keeps us Zoned In on recent regulatory developments around the country. We also get to know our Featured Member, Kallie Ruggiero Somme from the Louisiana Department, and our Executive Committee Member, LeAnn Crow from the Kansas Insurance Department. Thank you to all of our authors and contributors.

Do you know a regulatory superstar who may qualify for an IRES award? Or newbie that could benefit from an IRES scholarship? Please remember to nominate individuals for the first inaugural Thomas L. Reents Memorial Scholarship, the Al Gross/Jim Long Rookie of the Year Scholarship, the Al Greer Award, and The Chartrand Communications Award.

Please let me know if you have any feedback on this issue, or ides 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

We encourage our readers to contribute to *The Regulator®*. In addition to completed articles, we welcome suggested topics and/or authors. Submit your content and suggestions at go-ires.org/news/the-regulator/submit-content.

– Your staff at The Regulator® (Stephanie and Dana)