

Commissioner's Monthly Column
Closer Look at State and Federal Legislation
July 2013

In last month's column I addressed insurance legislation that passed in Louisiana's 2013 Regular Legislative Session. This month I'd like to delve further into one of those bills regarding surplus lines insurance as well as update you on some legislation on the federal level, specifically the impact of the Biggert-Waters Flood Insurance Reform Act and recent activity with Medical Loss Ratio (MLR) legislation.

Act 203 passed in the 2013 Regular Legislative Session and will impact those of you working with surplus lines insurance. The Act liberalizes the rules for obtaining surplus lines insurance coverage by removing the requirement that authorized insurance be unavailable for personal and commercial lines placements. Municipalities, parishes and school boards as well as individuals and businesses will no longer be required to accept authorized insurance that was sometimes more expensive than available surplus lines insurance. This much needed revision to our surplus lines law helps alleviate some challenges in obtaining property and casualty coverage.

There is no longer a diligent search affidavit requirement for personal lines policies but now one must have written authorization to procure surplus lines coverage for a client seeking personal lines insurance in the surplus market. Act 203 also changes filing requirements for surplus lines insurers with the Louisiana Department of Insurance (LDI) to make them less burdensome and to permit reliance on filings made by domestic surplus insurers with their domiciliary regulators that are available through the National Association of Insurance Commissioners (NAIC). Alien surplus lines insurers are required to be listed on the Quarterly List of Alien Insurers maintained by the International Insurers Department of the NAIC.

Act 203 also adds a new definition of "eligible unauthorized insurer" that may write surplus lines insurance in Louisiana. This implements the Dodd-Frank Act (Nonadmitted and Reinsurance Reform Act of 2010 or NRRRA) and makes the prior "white list" of approved unauthorized insurers voluntary. Reliance on the white list by surplus lines brokers will be "prima facie" evidence that the broker meets the requirement of placing coverage with financially sound and eligible unauthorized insurers. I believe Act 203 will enhance competition in the Louisiana property and casualty market, conform state law to federal requirements, and reduce the administrative burden on insurers and producers without impairing the ability of the LDI to perform its regulatory function.

At the federal level there has been some activity surrounding the MLR provision of the Patient Protection and Affordable Care Act (PPACA) that became effective January 1,

2011. That law requires insurers to spend 85 percent of large-group revenue and 80 percent of individual and small-group revenue on coverage for health care or quality improvements. If the MLR target is missed, the company must provide rebates to insureds. According to the Center for Consumer Information & Insurance Oversight (CCIIO), for 2012 U.S. insurers will pay about \$504 million in rebates to 8.5 million enrollees and in 2011, insurers paid \$1.1 billion to 13 million enrollees. To comply with this requirement, insurers have said they must reduce commissions, making it difficult for producers to operate profitably. Relief for this requirement may be in the offing.

In June the Access to Professional Health Insurance Advisors Act, [H.R. 2328](#), was reintroduced in Congress. This measure has been proposed in the past and would amend PPACA to remove the agent and broker compensation from the definition of “administrative expense” in the MLR. This is critical in preserving consumer access to insurance agents and brokers that provide small businesses and individuals more opportunities to make educated and affordable insurance decisions for less than five percent of the total premium cost of health insurance. Agents and brokers serve a more critical role than ever in guiding individuals through the many changes occurring in the health care sector as PPACA becomes fully implemented. This Act has been referred to the House Committee on Energy and Commerce and is one about which you may wish to consider contacting your Senator and/or Representative.

Another hot legislative topic we are watching is the Biggert Waters Flood Insurance Reform Act passed by Congress in July 2012. The Act extended the National Flood Insurance Program for five years and made a number of changes related to solvency, flood risk mapping and flood mitigation programs. The Act also created an affordability challenge for many in Louisiana and nationwide.

In an effort to delay implementation of Biggert-Waters we have seen a number of legislative measures introduced in Congress recently, although none have yet seen complete success. Representative Bill Cassidy’s House-passed amendment to the Fiscal Year 2014 Homeland Security Appropriations Act delays implementation by one year through 2015. This measure is also introduced in the Senate, where it has cleared the Senate Homeland Security Appropriations Subcommittee which Senator Mary Landrieu chairs and the Senate Appropriations Committee.

All of Louisiana’s congressional delegation have expressed their support of Rep. Cassidy’s amendment and a coalition of parish presidents came together in support of the measure as well as both Senators Landrieu and Vitter.

These measures at the state and federal levels point to the ongoing changes in our industry and underscore the need to stay informed and abreast of the evolving insurance landscape. I am hopeful that the liberalization of surplus lines will help both

you and your insureds find appropriate insurance. I am also encouraged by the conversations taking place at the federal level regarding the MLR provision and flood insurance. I encourage you to stay connected and engaged in these developments and to please contact us at the LDI if you have questions or feedback.