Commissioner's Column

January 2015

Insurance Legislation on Capitol Hill Year in Review

2014 marked another busy year for federal insurance legislation with Congress going down to the wire with several critical insurance bills during the last week of the 113th Congress. One of the most widely reported issues has been the renewal of the national Terrorism Risk Insurance Act, commonly referred to as TRIA. This program expired on December 31 when the U.S. Senate failed to concur with House amendments to the Senate bill. Fortunately, the new Congress took up TRIA as one of their first orders of business upon returning to Washington in January and swiftly passed the bill.

Renewal of TRIA will contribute to stability in the commercial insurance market and business sector for the next six years by lowering investment risk and concerns over terrorist attacks on commercial locations. The federal backstop is now designed to help reimburse businesses for catastrophic losses above $200 million (up from $100 million). The measure also increases the percentage that insurers must pay above that threshold from 15 percent to 20 percent.

Failing to renew TRIA would have impacted not only the insurance industry but also the real estate, mortgage lending, construction and other markets, nationally. Another market area that would have been severely impacted by the expiration of TRIA is workers compensation. We could see a reduction in underwriters' willingness to write workers comp insurance in large metropolitan areas thought to be terrorism targets. Workers' compensation writers are forbidden by law from excluding terrorism coverage in their policies, so they would be forced to drop coverage in areas where risks are unacceptable.

The legislation also creates the new National Association of Registered Agents and Brokers (NARAB II) which aims to streamline the licensing process for non-resident insurance producers. A 13-member board of insurance commissioners and industry leaders will be established to develop guidelines for national licensing. Producers will not be required to get licensed through NARAB and non-residents may still obtain their licenses state-by-state.

We also had good news in 2014 with some relief from the drastic flood insurance rate increases of Biggert-Waters of 2012 with the passage of the Homeowner Flood Insurance Affordability Act. The relief granted by that Act is critical to keeping Louisiana's economy moving in flood-prone areas. The Act removes time-of-sale increases for homeowners and businesses who acquired an NFIP-insured property after July 6, 2012 (the date of enactment of Biggert-Waters) and enables them to pay the same rates as the previous owners of the property. It also restores grandfathering for homes and businesses that were built to NFIP standards so that they will not be subjected to higher premiums as a result of FEMA remapping. For properties that are non-grandfathered, when updated flood maps result in increased risk premium, flood insurance rates will continue to increase, but increases will not be as large or as fast as they would have been under Biggert-Waters. Increases will be phased in over a five-year period at a rate of up to 18 percent per year beginning on April 1 for new and renewal policies. The bill provides for the financial stability of the National Flood Insurance Program (NFIP) while providing property owners with continued protection by imposing a $25 surcharge per year on homeowners and a $250 surcharge for commercial policies.

Another significant topic for 2014 is the ongoing implementation of the Affordable Care Act, or Obamacare. Many components of the law are now effective with a few left for implementation in 2015. As a result of the law, we have seen more people obtaining health insurance but at higher premiums in Louisiana. Open enrollment for the 2015 plan year, whether on or off the marketplace, runs through February 15. Beginning with the 2014 federal tax filings due in April, we will see the impact of penalties for non-participation for the first year which will be even higher for 2015 and 2016.

A critical Obamacare case will be heard by the Supreme Court with oral arguments in March and a final decision expected by the end of June. The plaintiffs in King v. Burwell challenge the authority of the Internal Revenue Service to grant tax credits for health coverage purchased through insurance exchanges run by the federal government. The issue is how much discretion the IRS and administration have to interpret the meaning of an exchange "established by the state." With 36 states, including Louisiana, opting not to run exchanges, a decision supporting the specific wording with no latitude for interpretation will strike at the heart of the program which has the goal of providing affordable health insurance through tax subsidies for those with qualifying incomes.

The subject of state-based insurance regulation versus federal regulation is always a topic brewing at the nation's capital. During 2014, a debate arose over Section 171 of the Dodd-Frank Act, which contained an ambiguity that subjected insurers' capital standards requirements to the same generally accepted accounting principles used in banking. The Federal Reserve Board, most lawmakers and the insurance industry agreed this was not intended. They agreed that when determining insurance industry capital standards, reliance should remain on statutory accounting principles used by state regulators. This was corrected in the Insurance Capital Standards Clarification Act, which was passed just before the Congressional Christmas break. Signed by President Obama on December 18, the bill prevents the use of bank-centered capital standards for insurance companies subject to federal oversight under Dodd-Frank.

The National Association of Insurance Commissioners (NAIC) meets with congressional representatives throughout the year to push back against such encroaching regulatory issues. The NAIC also rallies support for state–based insurance regulation where the many needs of individuals may be better addressed. I am grateful the House and Senate agreed with our various insurance concerns and we look forward to working with members of Congress once again this year to preserve the authority of state regulators to protect consumers.