

# Property & Casualty Top Regulatory Changes Top 10 Market Conduct Issues



# 2009 to 2010 - An Overview

- Credit Scoring
- Cancellation/Nonrenewal
- Fraud
- Claims
- Other

# Credit Scoring - 2009 Background

- Was definitely a “hot topic” last year
- Half the states experienced activity
- Total bans on its use were proposed in 5 states
- Some limitations enacted
- Indiana and Illinois enacted limitations in 2009, impacting insurers’ abilities to use Credit Scoring information
- “Extraordinary life circumstances” - NCOIL

# Focus of Credit Scoring Activity

- As states continue to take a closer look at insurers' use of credit score information, the regulatory environment generally falls under one of these categories:
  1. Prohibition on the use of credit score information in one or more personal lines
  2. Prohibition on the use of credit score information as the sole reason for an adverse action in one or more personal lines
  3. Permissive use consistent with Fair Trade practices and FCRA in rating or underwriting

# Credit Scoring - 2010

- NAIC: Multi-state voluntary data call planned
- Various states proposed additional restrictions
- Some limitations enacted

# Credit Scoring - 2010

Connecticut:

- Adverse action cannot be based solely on information contained in an insured's or applicant's:
  1. credit history
  2. credit rating, or
  3. lack of credit history

Effective January 1, 2011

# Credit Scoring - 2010

## New Hampshire:

- Insurers prohibited from cancelling, nonrenewing, or declining *automobile* or *homeowners* policies solely on the basis of credit information obtained from a credit rating, a credit history, or a credit scoring model, without consideration of any other applicable and permitted underwriting factors independent of credit information

Effective January 1, 2011

# Credit Scoring - Extraordinary Life Circumstances

- Looks to insurers to provide reasonable exceptions to the insurer's rates, rating classifications, company or tier placement, or underwriting rules or guidelines for a consumer who has experienced with negative credit impact:
  - Catastrophic event, as declared by the federal or state government
  - Serious illness or injury, or serious illness or injury to an immediate family member
  - Death of a spouse, child, or parent
  - Divorce or involuntary interruption of legally-owed alimony or support payments
  - Identity theft
  - Temporary loss of employment for a period of 3 months or more, if it results from involuntary termination
  - Military deployment overseas

# Credit Scoring - ELC Activity

- Connecticut
- Iowa
- Kansas
- New Hampshire

# Credit Scoring - ELC

## Connecticut

- Insurers must disclose to each applicant that the credit history maybe used in the underwriting or rating of applicant's policy, and
- That the applicant has the right to request, in writing, that the insurer consider an extraordinary life circumstance which occurred within 3 years before the date of the application
- Insurer must provide at policy issuance a written disclosure that includes:
  1. Insurer name, address, telephone number and toll-free telephone number
  2. Details about how credit information is used to underwrite or rate
  3. Summary of consumer protections regarding the use of credit

Effective July 1, 2011

# Credit Scoring - ELC

## Iowa

- Written request from a consumer
- Insurer shall provide reasonable exceptions to the insurer's rates, rating classifications, company or tier placement, or underwriting rules or guidelines for a consumer who has experienced and whose credit information has been directly influenced by extraordinary life circumstances

Effective July 1, 2010

# Credit Scoring - ELC

## Kansas

- Written request from an applicant or an insured
- Provide reasonable exceptions to the insurer's rates, rating classifications, company or tier placement, or underwriting rules or guidelines for a consumer who has experienced an extraordinary life circumstance, as defined in the statute, and whose credit information has been directly influenced by that circumstance

Effective July 1, 2010

# Credit Scoring - ELC

## New Hampshire

- Written request from an applicant or an insured
- Insurer shall provide reasonable exceptions to the insurer's rates, rating classification, company or tier placement, or underwriting rules or guidelines for a consumer who has experienced certain life events

Effective July 1, 2010

# Cancellation/Nonrenewal/Renewal

# Cancellation

## Iowa

- Material misrepresentation or fraud
- Substantial change in risk
- Change in risk increasing hazard
- Breach of contractual duties, conditions, or nonpayment of membership dues

Effective July 1, 2010

# Cancellation

## Louisiana

- Insurers must provide notice of reinstatement to every known person shown by the policy to have an interest in any loss that may occur and who received the notice of cancellation

Effective August 15, 2010

# Nonrenewal

## Louisiana

- Homeowners insurers prohibited from nonrenewing or dropping an insured due to the presence of Chinese drywall imported before Dec. 31, 2009
- Insurers can raise rates on the affected homes if the increases are actuarially sound

Expires July 31, 2013

# Renewal

## Maryland

- Insurers must provide notice to independent insurance producers of premium increases for commercial and workers' compensation insurance

Effective October 1, 2010

# Fraud

# Fraud - 2009

1. Maryland's new fraud warning - April 1<sup>st</sup>
2. Hawaii's HB 262 Fraud Bill
  - Established an insurance fraud investigations branch - all lines, except WC
  - Replaced the existing insurance fraud investigations, which had its jurisdiction limited to motor vehicle insurance
  - But, repealed the fraud warning requirement

# Fraud Initiatives - 2010

- Arizona: Makes it a crime for an auto glass repair shop to bill an insurer for misrepresentations on a repair of an automobile
- Florida: Property insurance reform bill sets stricter regulations on public adjusters
- Louisiana: Requirement to submit fraud plans to DOI

# Fraud - 2010

## Louisiana

### Anti-fraud plan

- Must be filed with the commissioner
- Must outline specific procedures, actions, and safeguards
- Must include how the authorized insurer or health maintenance organization will:
  1. Detect, investigate, and prevent all forms of insurance fraud ,
  2. Educate appropriate employees on fraud detection and the insurer's or health maintenance organization's anti-fraud plan.
  3. Provide for fraud investigations
  4. Report a suspected fraudulent insurance act to the DOI and others
  5. Pursue restitution for financial loss caused by insurance fraud

# Fraud Initiatives - 2010

- Maine: WC Board can issue stop work orders for misclassifications
- New York: Annual report filed with legislature to include incidences of misrepresentation of where vehicle is garaged
- Rhode Island: Act strengthens anti-fraud requirements

# Fraud - 2010

## Rhode Island

- Effective January 1, 2011, all insurance companies must have anti-fraud initiatives in place for detection, reporting, preventing fraud
- May include:
  1. Fraud investigators, who may be insurer employees or independent contractors; or
  2. An antifraud plan

# Claims

# Claims - 2009

- Oregon's Total Loss Process
- ✓ Provide any valuation or appraisal reports relied upon by the insurer to determine value
- ✓ DOI developed disclosure form that includes information about the total loss, vehicle valuation, and the duties of the insurer, how and when the insured may contact the Division

Effective January 1, 2010

# Claims - 2010

## Connecticut

- Retail value of a total loss vehicle may be determined from any publicly available automobile industry source approved by the DOI
- Insurers must provide written notice including the insurance company's calculation of the vehicle's total loss, a valuation report and a notice to dispute the claims settlement

Effective January 1, 2011

# Claims - 2010

## Oklahoma

- Insurer may elect the cash settlement actual cost
- May be determined by the cost of a vehicle in the local market area if the vehicle is currently or recently available in the prior 90 days
- Cash settlement and owner retention in total loss under specified conditions

Effective November 1, 2010

# Claims - 2010

## Utah

- UM/UIM insurance companies must provide a written response to a covered person's demand for uninsured or underinsured motorist compensation within 60 days
- Additional procedures for litigating or arbitrating a demand for UM/UIM

Effective March 30, 2010

# Filings - 2010

## Michigan

- Effective August 1, 2010, prior approval requirements are reinstated for all personal insurance sublines
- The reinstated filing requirements apply only to new policies as of August 1, 2010, and will not apply to policies in use before that date.

Bulletin No. 2010-02-INS

# Contract Certainty

## New York

- Focus is on:
- Large commercial insureds, written on standard or manuscript basis
- Special risk market
- Excess line market
- Reinsurance
- Latter half of 2010 - DOI may issue letters of inquiry to gather information regarding how, and to what extent, licensees have developed and implemented practices to assure that contract certainty is routinely achieved

# Contract Certainty -2010

## New York

- Policy documentation should contain all the agreed terms of the contract
- May include an insurance policy, binder of insurance, schedule of cover, signed contract wording, endorsement, or a complete slip
- Reinsurance contract documentation can be evidenced by a binder, cover note, or similar documents, provided that it reflects all agreed terms and conditions to which the reinsurers have agreed
- Deliver to insured within 30 days
- DOI issued guidance regarding time frame allocation
- Insurer should try to deliver policy terms and conditions to the producer within 18 business days
- This provides the broker 12 business days to deliver the contract

# Federal



# Claims Reporting “From the Hill” - 2009

## Medicare Claims Reporting

- 2009 RRE deadline was approaching
- Testing timeframes
- Penalties were “dead ahead”
- Insurers concerned about SSN’s and other personal information
- 2009 *was* the year to prepare and implement...
- Now it’s 2010

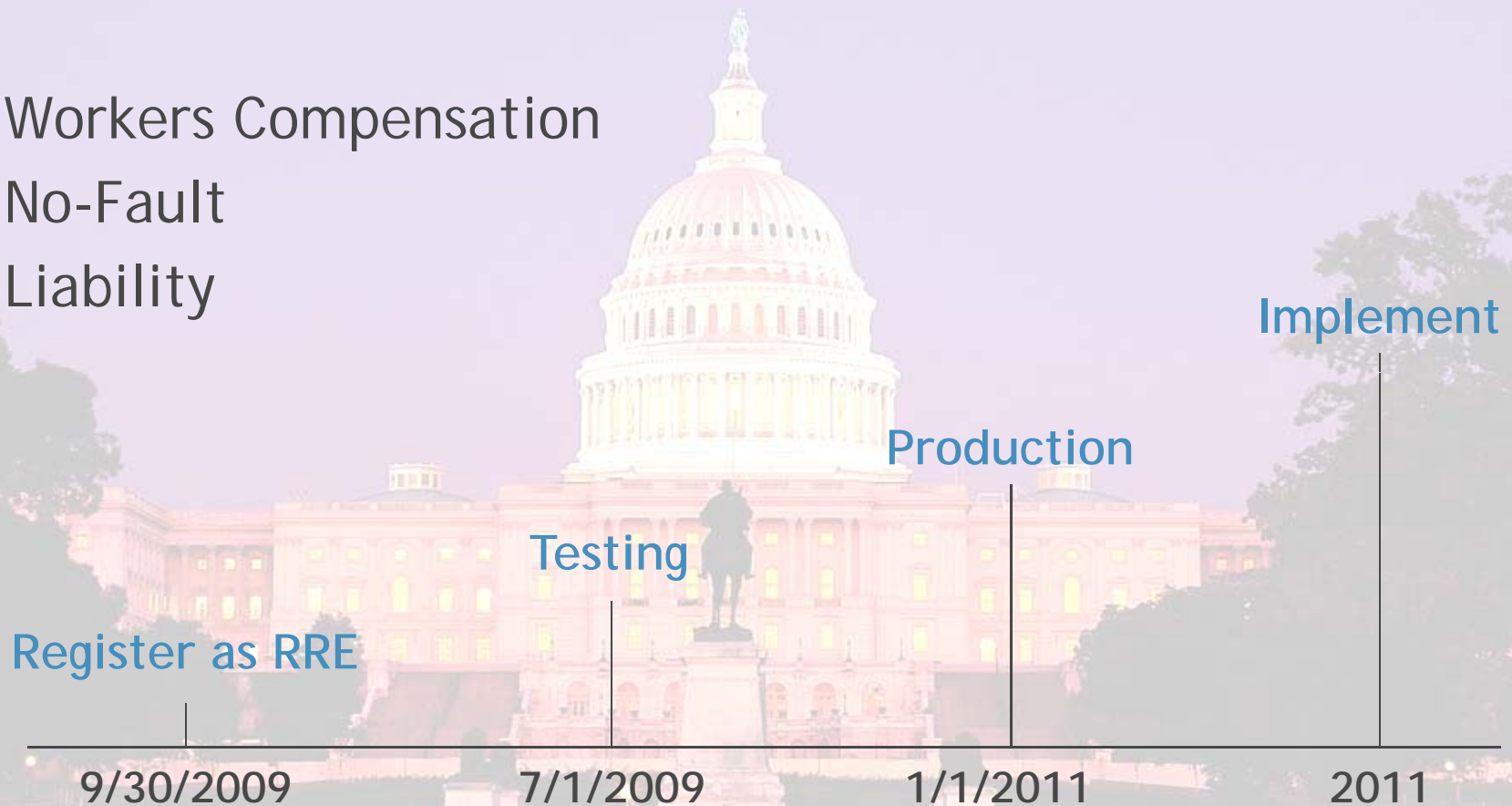
# Medicare Claims Reporting - 2010

- Who Must Report: “applicable plan” includes the following:
  - ✓ Liability insurance
  - ✓ No-fault insurance
  - ✓ Workers' compensation
- What Must Be Reported:
  - ✓ The identity of a Medicare beneficiary
  - ✓ Information specified by HHS for appropriate determination concerning coordination of benefits, including any applicable recovery claim

Use of Agents: May use 3<sup>rd</sup> parties to act as agent; insurer responsible

# Medicare Reporting Timeframes: 2010

- Workers Compensation
- No-Fault
- Liability



# 2010 Update “in the works”

“Medicare Secondary Payer Enhancement Act of 2010” (H.R. 4796)

- Increase the reporting threshold to \$5,000 or more
- Minimize penalty provisions
- Create a “Safe Harbor”
- Address potential liability issues for claimants’ personal information, particularly SSN and HIC numbers

# Top Ten

# Today's Discussion on the "Top Ten"

- Look at the "top" market conduct challenges
- Identify the perennial issues
- Note some recent developments
- Look at compliance challenges in a different light

# MCE/Compliance Enforcement Actions

Sources:

- State market conduct exams
- DOI orders

Content:

- Criticisms
- Comments
- Regulatory requirements/standards

# Property & Casualty Issues

- Failure to pay the appropriate claim amount
- Failure to acknowledge, to pay, or deny claims within specified time frames
- Failure to non-renew policies in accordance with requirements
- Using unapproved forms, unfiled rates and/or misapplication of rating factors
- Failure to provide required disclosures in the claims process

# Property & Casualty Issues

- Failure to adhere to producer appointment, termination and/or licensing requirements and adjuster licensing requirements
- Failure to cancel policies in accordance with requirements
- Failure to respond to the Department of Insurance and/or produce records requested during the exam process
- Failure to adhere to underwriting rules and/or provide required disclosures
- Improper documentation of claim files

# Claims

# Claims

- Failed to complete an investigation within 30 days of notification of the claim. While the investigation remained incomplete, Company failed to send the claimant a letter within 45 days from the initial date of notification and every 45 days thereafter setting forth the reasons why additional time was needed
- Did not maintain the claim file so as to show clearly the inception, handling and disposition of the claim
- Failed to send the claimant a tax credit affidavit for the total loss of their vehicle

MO 12/09

# Claims

Company failed to:

- Provide written notification to a first party claimant as to whether the insurer intends to pursue subrogation, or it failed to provide written notification to a first party claimant of its decision to discontinue subrogation...The Department alleges these acts are in violation of CCR §2695.7(p)
- Include a statement in its claim denial that, if the claimant believes the claim has been wrongfully denied or rejected, he or she may have the matter reviewed by the California Department of Insurance...The Department alleges this act is in violation of CCR §2695.7(b)(3)

CA 3/09

# Claims

- In 20 instances, the Companies failed to conduct and pursue a thorough, fair and objective investigation of a claim and persisted in seeking information not reasonably required for or material to the resolution of a claim dispute
- In 12 instances, the Companies failed to conduct and pursue a thorough, fair and objective investigation
- In 8 instances the Companies persisted in seeking information not reasonably required or material to the resolution of a claim dispute.
- The Companies did not take into consideration hand written notes and previously submitted information confirming medical bills were incurred as result of an automobile accident
- The Companies sent repeated Documentation Requests for information which was either in the claim file or not reasonably required or material to the resolution of claim

CA 5/10

# Claims

DOI raised the following areas of concern:

- consistency in claims handling when independent adjusters were used
- consistency in claims handling when engineers were used
- application of the appraisal provision for the insurance policy
- speed and efficiency of claims handling when multiple estimates and re-inspections were required

IN 5/09

# Claims

- Company failed to maintain all documents, notes and work papers in the claim file.
- In one instance there was nothing in the file documenting the reason that the claim was closed without payment.
- In one instance the dates of inspection and appraisal were not documented in the claim file.
- In the third instance cited there were no activity log notes, correspondence or other working papers in the file documenting the details of pertinent events that took place on the file from the date the claim was received until the date the claim was closed.

CA 4/10

# Claims...it's not just "exams"

## Maryland's MIA:

- Conducted year-long industry survey of 119 insurers
- investigated mishandling of vehicle insurance claims following changes to the taxes and fees associated with total loss
- 67 out of 119 companies were in violation
- Almost \$250,000 in collective fines
- Almost \$500,000 in restitution

# Cancellation/Nonrenewal

# Nonrenewal

Required language on Non-renewal notices Failure to advise the homeowner of the availability of coverage through the New York Property Insurance Underwriting Association (NYPIUA)

- Failure to provide contact information for the Coastal Market Assistance Program (C-MAP). C-Map is administered by NYPIUA to help homeowners obtain insurance in coastal areas.

NY 12/09

# Nonrenewal

Prepare for this type of nonrenewal criticism by:

- Providing homeowners non-renewal notice 45 and 60 days before the effective date to give them time to obtain a replacement policy (Days' Notice)
- Stating the specific reason the policy is not being renewed (Permitted Reason)
- Advising homeowners of NYPIUA and C-Map (Required language)

NY 12/09

# Cancellation

New York: And make sure reasons used are “permitted”:

- Insurer may not consider non-occupancy as the *sole* factor in issuing a mid-term homeowners cancellation
- Non-occupancy may be considered only if it is among other factors that increase risk to a property.

NY 12/09

# Nonrenewal

- Notice of nonrenewal does not consistently state the specific reason for termination, and rather contains language instructing insureds to write to {Company} for an explanation of the adverse underwriting decision. This issue may potentially affect any {Company} PPA {Private Passenger Automobile} insurance policyholder about whom an adverse underwriting decision is made which results in the nonrenewal of the policy.
- This issue was identified in the 1998 exam in the PPA and CMP lines of business. The issue was raised again in 2002 in the exam of the HO line of business. This practice was noted in the current examination as affecting the PPA and HO lines of business.

CA 4/10

# Cancellation

- ... It was determined in a sample of twenty (20) policies that the company cancelled seventeen (17) policies for nonpayment of the first premium on a new policy without giving the required fifteen (15) day notice, in violation of Connecticut General Statutes, Section 38a-343(A).

CT 3/10

# Rating

# Rating

- The Company made rating errors in applying applicable credits, or charging appropriate minimum premiums or rating in the appropriate territory
- Company's file did not provide either written justification or required back-up information to substantiate the IRPM modifications

MD 6/09

# Rating

- In 60 files reviewed, the Company filed rating information that was ambiguous, contradictory, or conflicting, in that individual risks had more than one possible rate, thus making it impossible for the company to use both of the rates filed for a given risk

MO 3/09

# Rating

- Company filed personal automobile policy comprehensive and collision coverage rates for vehicle model years up to 2005. Each newer model year's rate was 2.5% higher for comprehensive and 3.5% higher for collision than the rate for the prior model year. No additional rates were filed until 2007.
- The 2007 filing showing rates for model years from 2006 to 2009, was approved effective February 20, 2008. In the meantime, the Company used the same 2.5% and 3.5% increases it had used for prior model years to issue comprehensive and collision coverage on 2006 and 2007 model vehicles without filed and approved rates for these specific model years.
- Between 2005 and 2007, the Company charged its policyholders \$73,407 more for comprehensive and collision coverage on 2006 and 2007 model vehicles than its filed and approved rates permitted. WA 1/09

# Forms/Rating

- The examiners review the Company's policy forms to determine compliance with filing, approval and content requirements. This helps to assure contract language is not ambiguous and is adequate to protect those insured. The Company failed to file applied territory codes for rating of policies issued during the time frame.

MO 3/09

# Forms/Disclosures

# Forms/Record Retention

- Management provided a file containing numerous disorderly papers, but the file did not include complete policy forms that had been approved by the ALDOI.
- The examiners requested and received the Company's approved filings from the Rates and Forms Division of the ALDOI, and furnished them to management

AL 5/09

# Forms/Fraud Warning

- The examiners found evidence that the company violated the following Arizona insurance law(s) and/or rules(s) during the period of the examination: ... ARS §20-466.03 by using claim forms and/or letters that failed to include a fraud warning notice. (Claims Processing Standard 3)

AZ 8/09

# Disclosures

- ...with regard to 228 Idaho policies, the Company failed to give a standard statement regarding uninsured and underinsured motorist coverage as approved by the Director of the Idaho Department of Insurance on new, renewal, or replacement policies after January 1, 2009 as required by Idaho Code § 41-2502(3)

ID 2/10

# Disclosures

- The company failed to obtain a signed written rejection of UM limits equal to the liability limits on the policy
- The companies' long form Notice of Financial Information Collection and Disclosure Practices did not contain all of the information required by this statute

VA 5/10

# Disclosures

- The company failed to use an adverse underwriting decision notice that contained substantially similar language as that of the prototype notice set forth in the Administrative Letter

VA 7/09

# Disclosures/Rating

- In three instances, the company failed to provide the adverse action credit notice.
- In two instances, the company failed to update the credit information at least once every three years.
- In one instance, the company failed to properly rate the policy from credit information obtained.

VA 11/09

# Recent “Score Card”

- Florida: Automobile claims handling issues - \$260,000
- Connecticut: Multiple findings of licensing, rating errors, improper claim denials, and record retention violations in commercial and personal lines policies - \$235,000
- Maryland: Multiple findings including failure to supply clear and specific cancellation reasons and policy nonrenewals based on inquiries that did not result in a claims payment - \$175,000
- Pennsylvania: Noncompliant adverse action notices - \$50,000
- Washington: Improper use of the number of credit inquiries on some consumers' credit reports to set premiums - \$25,000

# “Top Ten”: Trends

## Market Conduct: What’s Out There?

- Compliance-focused
- Consumer Protection
- Continuous
- Costly



# What can we expect?

- Criticisms: Recent history demonstrates noncompliance across claims, underwriting, and licensing processes (“Top Ten”)
  - Expect continued focus in exams on these frequently criticized areas
  - Expect some “perennials” to continue their appearance
- Expect MCAS to increase in use
  - 29 states participating now
  - 47 committed for 2011
  - NAIC to centralize collection of market conduct data

# Understand your compliance needs

Existing & evolving regulatory requirements:

- Evaluate existing, enacted, and adopted measures
- Develop plan and implement changes
- Control the new processes: make sure that all understand the importance of the change...no slippage back to old habits
- Establish accountability/ownership for the new process steps
- Market conduct findings = “High grades”

# Questions