

# Market Conduct: Top Challenges



# Today's Discussion on the "Top Ten"

- Look at the "top" market conduct challenges
  - Variation between P&C, L&A, and Health
- 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 acknowledge, pay or deny claims within specified time frames
- Failure to pay claims properly (sales, tax, loss of use)
- Improper documentation of claim files
- Failure to communicate a delay in the settlement of claims in writing
- Use of unlicensed claims adjusters or appraisers
- Failure to provide required and appropriate disclosures
- Claims: statute of limitations, reasons for denials, and bill of rights
- Underwriting: such as selection/rejection or coverage notices

# Property & Casualty Issues

- Using unapproved or unfiled rates and/or rating errors
- Using unapproved or unfiled forms
- Failure to properly terminate a policy, including inadequate days' notice, improper reasons, and omitted required language
- Failure to use licensed producers and provide proper notification of producer appointments or terminations, including maintenance of producer register

# 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

## Companies failed to:

- include all applicable taxes, license fees and other fees
- provide written notice for additional time every 30 calendar days
- accept or deny the claim within 40 calendar days
- provide written basis for the denial of the claim
- adopt and implement reasonable standards for the prompt investigation and processing of claims
- effectuate prompt, fair and equitable settlements of claims in which liability had become reasonably clear
- begin investigation of the claim within 15 calendar days

CA 12/08

# 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...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

# Underwriting

New York: 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.

Prepare for this type of non-renewal 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)

12/09

# Underwriting

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

# 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

# Life & Health Issues

- Failure to adhere to grievance and appeals and utilization review requirements
- Improper documentation of files
- Failure to pay claims properly
- Failure to properly acknowledge, pay, investigate, or deny claims within specified time frames
- Failure to provide required disclosures, such as:
  - fraud warnings, right of appeal, explanation of benefits statements, coverage issues
  - fraud warnings, free-look periods, or GF notices

# Life & Health Issues

- Failure to properly terminate a policy, including conversion requirements
- Failure to adhere to advertising requirements
- Failure to adhere to replacement requirements
- Using unapproved, un-filed or noncompliant forms
- Failure to use licensed and appointed producers and to provide proper notification of producer appointments or terminations, including maintenance of producer registers

# Life & Annuities

- Claims
- Replacement
- Advertising
- Forms
- Free Look
- Policy Summaries
- Record Retention
- Licensing



# Replacement

- ...The Company violated Section 51.6 (a)(2) of Department Regulation No. 60 when the Company failed to require with or as part of each application, a completed definition of replacement signed by the applicant and agent.

NY 10/08

# Replacement

- ... failing to furnish to some insurers whose coverage was being replaced a copy of any proposal, including the sales material used in the sale of the proposed annuity contract and the completed Disclosure Statement.

NY 2/09

# Advertising

- ...the review revealed 3 violations of this section, where irrelevant and misleading statements were made due to the fact that the statements were based on net yields and rates from 1987 through 1996 and data from a 1998 Consumer Reports. In addition, the marketing communication failed to clearly define the scope and extent of the recommendation made by Consumer Reports.

VA 1/08

# Advertising

- ...misleading sales presentations and policy illustrations to induce policyholders to believe that its universal life product would produce higher total returns than other competing products.

IA 12/08

# Advertising

- ... failing to maintain an advertising file at its home office, and by failing to maintain a notation indicating the manner and extent of distribution of its advertisements.

NY 2/09

# Advertising

- ...advertisements and telephone interview forms and applications contained the question relating to prior declinations, cancellations or non-renewals for life or health insurance.

MO 6/09

# Claims

## Communications/Timely Claim Handling

- ...failed to adequately investigate claims, assist claimants, accurately calculate the amount of the claims and applicable thereon, and timely pay certain life policy claims, thereby violating §375.1007.

MO 6/09

# Claims

## Interest Due

- ...Company failed to include interest on a claim that was paid beyond 30 days from the date of death.
- The Company did not compute interest payable on death benefits to include interest on the return of unearned premiums.

CA 12/08; MD 3/09

# Replacement

- ... failing to furnish to some insurers whose coverage was being replaced a copy of any proposal, including the sales material used in the sale of the proposed annuity contract and the completed Disclosure Statement. NY 2/09
- ...inaccurate or incomplete disclosures to consumers buying replacement annuity contracts and life insurance policies NY 3/10

# Forms

## Applications

- ...violated...Section 296(16) of the New York Human Rights Law by using a question on the application which inquired about arrests rather than convictions.

NY 12/08



# Forms

- Respondent violated...Section 3201(b)(1) of the Insurance Law by using policy forms and rates that were not filed with and approved by the Superintendent and by changing the language on certain approved policy forms

NY 12/08



# Forms

## Applications

- ... {Company} on two (2) occasions failed to provide insurance coverage to applicants based on their upcoming travel

FL 4/09



# Free Look Period

- ...The contracts in the 44 files noted did not contain the required 20-day "free look" statement printed prominently on the first page of such contracts or attached thereto

PA 10/08



# Record Retention

- ...retaining for only 90 days, instead of the required period of 6 years, the notification of replacement to the insurer whose annuity contract was replaced and the documentation received from the replaced insurer that was used to complete the Disclosure Statement for annuity replacements.

NY 2/09

# Licensing

- ...7 individuals were listed as producers on 8 applications reviewed in the policy issued sections of the exam ...DOI records do not identify these individuals as being appointed by the Company on the dates the applications were signed. PA 11/08



# Claims - Health

- Failure to quickly inform consumers about appeals decisions, the reason for such decisions or consumers' rights for further appeals
- Failure to pay interest on past-due claims
- Insurer to correct violations involving health-care appeals, claims handling and health-care provider grievances

AZ 2/10

# Claims - Health

- In general, the Company failed to 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.
- Specifically, the Company failed to include California denial language on the Explanation of Benefits issued in the processing of Group Dental claims.

CA 9/09

# Group Disability Income - Claims

- *Failure to adopt and implement reasonable standards for the prompt investigation and processing of claims*
- In six instances, the Company applied a 21-day or 45-day deadline for submission of proof of claim after receiving notice of claim on Group Long Term Disability policies. The Company indicated to the claimant that, if all the information necessary to make a benefit determination was not received in 45 days from the date of notice, the Company would review the information, (or lack of information) in the file and make an initial claim decision... There was *no policy language or statute to support these deadlines*.

CA 9/09

## Group Disability Income - Claims

- Forty-five denied short term disability claim files, or 45% of those reviewed, were criticized for *incomplete or inadequate "Notice of Availability"*. Thirteen or 13% of the files reviewed were criticized for failing to provide "Notice of Availability" on the denial letters.

IL 1/09

- Company *did not send required notices* to beneficiaries of denied disability claims. The notices formulated but not sent during the survey period did not contain the information required by the regulation.

MD 12/08

# Recent “Score Card”

- New York:
  - Compliance issues associated with the administration of the Healthy NY program - \$750,000
  - Replacement and application processes - \$1,800,000
- California: Disability insurance claims handling violations - \$600,000
- Texas: Failure to pay clean claims in a timely manner and to provide certain mandated coverages to insureds - \$500,000
- 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

# Recent “Score Card”

- Colorado - \$624,000:
  - missing or incorrect information provided in its policy forms and provider contracts
  - providing incomplete information in certificates of creditable coverage
  - failing to pay claims timely and accurately
  - failing to comply with the notification requirements for utilization review
  - failing to ensure that utilization review panel members had the appropriate expertise to review the case being presented
  - failing to include the names, titles and qualifying credentials of review panel members in second level utilization review notification letters
  - failing to offer coverage under the state mandated basic and standard plans to individuals whose coverage under a small group plan had terminated, or who were denied coverage under an individual plan

# “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
  - HCR and Suitability - new requirements - new challenges
  - Expect MCAS to increase in use
    1. 29 states participating now
    2. 47 committed for 2011
    3. NAIC to centralize collection of market conduct data
- Complaint Indices: Continuing high degree of dissatisfaction expressed by claimants across all lines (“Top Three”)
  - Expect continued interest in regulatory activity to further address complaint areas

# Understand your compliance needs

Existing & evolving 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