

The Current State of Federal Insurance Regulation

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By

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Recent Developments

- Various federal insurance initiatives introduced since The Gramm-Leach-Bliley Act of 1999
- The worldwide financial meltdown in the fourth quarter of 2008 caused many to call for broad reforms in the regulation of the U.S. financial services industries
- Systemic problems encountered by some of the largest and most well recognized U.S. insurance holding company groups

Recent Developments (cont.)

- The recent proposals introduced in Congress seeking to reform the U.S. insurance regulatory system generally fall into two categories:
 - Proposals to create an optional federal system of insurance regulation; and
 - Targeted proposals to reform specific aspects of the current U.S. insurance regulatory framework

Financial Services Reform

- Introduced April 15, 2010
 - Passed out of Senate Banking, Housing & Urban Affairs Committee
 - Major financial overhaul bill
 - Provide financial stability, improve accountability and transparency in financial system
 - End “too big to fail”
 - Protect consumers
 - Subject to a number of amendments
 - Includes insurance provisions

Restoring American Financial Stability Act of 2010

- Title V – Insurance
 - Office of National Insurance Act of 2010
 - Nonadmitted and Reinsurance Reform Act of 2010

Restoring American Financial Stability Act of 2010

- Office of National Insurance Act of 2010
 - Office of National Insurance
 - There is established within the Department of Treasury the “Office of National Insurance”
 - Headed by a Director, who shall be appointed by the Secretary of the Treasury
 - Formerly, Insurance Information Act of 2009 (HR 2609)

Restoring American Financial Stability Act of 2010 (cont.)

- The Office, pursuant to the direction of the Secretary, shall have the authority –
 - to monitor all aspects of the insurance industry
 - to recommend to the Financial Stability Oversight Council that it designate an insurer as an entity subject to regulation as a nonbank financial company supervised by the Board of Governors

Restoring American Financial Stability Act of 2010 (cont.)

- to assist in administering the Terrorism Insurance Program established in the Department of the Treasury under the Terrorism Risk Insurance Act of 2002
- to coordinate Federal efforts and develop Federal policy on prudential aspects of international insurance matters
- to determine whether State insurance measures are preempted by International Insurance Agreements and Prudential Measures; and
- to consult with the States regarding insurance matters of national importance and prudential insurance matters of international importance

Restoring American Financial Stability Act of 2010 (cont.)

- Advisory Functions
- Gathering of Information

Restoring American Financial Stability Act of 2010 (cont.)

- A State insurance measure shall be preempted if, and only to the extent that the Director determines, that the measure –
 - results in less favorable treatment of a non-United States insurer domiciled in a foreign jurisdiction that is subject to an international insurance agreement on prudential measures than a United States insurer domiciled, licensed or otherwise admitted in that State; and
 - is inconsistent with an International Agreement on Prudential Measures

Restoring American Financial Stability Act of 2010 (cont.)

- Nothing shall –
 - preempt –
 - any State insurance measure that governs any insurer's rates, premiums, underwriting, or sales practices
 - any State coverage requirements for insurance
 - the application of the antitrust laws of any State to the business of insurance; or
 - any State insurance measure governing the capital or solvency of an insurer, except to the extent that such State insurance measures results in less favorable treatment of a non-United States insurer than a United States insurer

Restoring American Financial Stability Act of 2010 (cont.)

- be construed to alter, amend, or limit any provision of the Consumer Financial Protection Agency Act of 2010; or
- affect the preemption of any State insurance measure otherwise inconsistent with and preempted by Federal law
- Nothing shall be construed to establish or provide the Office or the Department of the Treasury with general supervisory or regulatory authority over the business of insurance

Restoring American Financial Stability Act of 2010 (cont.)

- Annual Report to Congress.
 - The study and report shall be based on and guided by the following considerations:
 - Systemic risk regulation with respect to insurance
 - Capital standards and the relationship between capital allocation and liabilities, including standards relating to liquidity and duration risk

Restoring American Financial Stability Act of 2010 (cont.)

- Consumer protection for insurance products and practices, including gaps in state regulation
- The degree of national uniformity of state insurance regulation
- The regulation of insurance companies and affiliates on a consolidated basis; and
- International coordination of insurance regulation

Restoring American Financial Stability Act of 2010 (cont.)

- The ability of any potential Federal regulation or Federal regulator to provide robust consumer protection for policyholders
- The potential consequences of subjecting insurance companies to a Federal resolution authority
- The Director shall consult with the National Association of Insurance Commissioners, consumer organizations, representatives of insurance industry and policyholders, and other organizations and experts, as appropriate

Restoring American Financial Stability Act of 2010 (cont.)

- The Nonadmitted and Reinsurance Reform Act of 2010
 - Most recently sponsored by Representative Dennis Moore (D-KS) on June 25, 2009. Its companion bill, S. 1363 reintroduced into the Senate by Senators Evan Bayh (D-IN) and Mel Martinez (R-FL)
 - On September 9, 2009, the House passed H.R. 2571, making it the third straight time the House has voted to pass a version of this legislation
 - Now part of S. 3217

Restoring American Financial Stability Act of 2010 (cont.)

- Would give regulatory oversight of nonadmitted insurance to the insured's home state
- Only the home state may levy a premium tax for nonadmitted insurance or require a surplus lines broker to be licensed
- Surplus lines broker must be included in national insurance producer database of NAIC or State won't be able to impose fees for surplus lines licenses. Must be within two years from enactment

Restoring American Financial Stability Act of 2010 (cont.)

- The bills are intended to foster uniformity among state laws with respect to premium tax allocation and eligibility criteria for nonadmitted insurers
- The bills also grant direct access to the surplus lines market for sophisticated commercial purchasers

Restoring American Financial Stability Act of 2010 (cont.)

- Reinsurers subject only to the solvency rules of their state of domicile
- Prevents a state from denying credit for reinsurance if the domiciliary state of the insurer purchasing reinsurance allows credit for reinsurance; and
 - Is either an NAIC-accredited state; or
 - Has financial solvency requirements substantially similar to NAIC accreditation requirements
- Preempts state law to extent requires a reinsurance contract to be under that state's law or apply laws of state to a reinsurance agreement of ceding insurer not domiciled in state

Restoring American Financial Stability Act of 2010 (cont.)

- International Insurance Agreements on Prudential Measures
 - The Secretary of the Treasury is authorized to negotiate and enter into International Insurance Agreements on Prudential Measures on behalf of the United States

Restoring American Financial Stability Act of 2010 (cont.)

- Currently subject to amendments
- Next steps

National Insurance Consumer Protection Act of 2009

- On April 2, 2009, Representatives Melissa Bean (D-IL) and Ed Royce (R-CA), introduced H.R. 1880, the National Insurance Consumer Protection Act of 2009
- Establish an optional system of federal regulation and supervision of insurance under the newly created Office of National Insurance
- Headed by a National Insurance Commissioner, which would be a Presidential appointment requiring the confirmation of the Senate

National Insurance Protection Act of 2009

- Similar to the dual bank regulatory system in the U.S.
- Insurance companies and entity producers could obtain a national charter
- Regulated and licensed by the ONI as a national insurer or national insurance agency
- Individual licensed insurance producers could also select to be licensed and regulated by the ONI as national insurance producers

National Insurance Protection Act of 2009 (cont.)

- The ONI would supervise national insurance companies and individual and entity producers
- The ONI would consist of several offices and divisions
 - The Division of Consumer Affairs
 - The Office of the Ombudsman
 - The Division of Insurance Fraud

National Insurance Protection Act of 2009 (cont.)

- State regulators would maintain responsibility for supervising state-licensed insurance companies and producers
- Nationally chartered and licensed entities would be regulated primarily by federal law
 - Exceptions

National Insurance Protection Act of 2009 (cont.)

- Establishes standards and would provide the ONI with the authority to place financially impaired national insurers into receivership for rehabilitation or liquidation
- National Insurance Guaranty Corporation
- National insurance companies would be required to participate
- Assessments would be used to pay claims
- National insurance companies would also be required to participate in state guaranty associations
- The ONI would also have supervision over national insurance holding companies

National Insurance Protection Act of 2009 (cont.)

- The President would designate a Systemic Risk Regulator separate from the ONI
- It would make recommendations to the ONI or state insurance regulatory authorities regarding corrective actions
- May issue rules or orders to address the conduct that poses the risk
- The SSR, in consultation with the ONI, is charged with the duty to determine if an insurer is systemically important, and if so, whether the insurer should be required to be chartered under the NIPA

National Insurance Protection Act of 2009 (cont.)

- Coordinating Council for Financial Regulators (11 persons)
- Serve as a forum for financial regulators to identify, consider, and make recommendations regarding issues related to the regulation and supervision of financial services firm
- By a two-thirds vote of its membership, would be able to determine that corrective action by the SSR is necessary if it would mitigate or avoid an impending serious adverse effect on economic conditions or financial stability in the United States
- Referred to House Energy and Commerce Committee

Targeted Reform Proposals

- H.R. 2554, the National Association of Registered Agents and Brokers Reform Act of 2009 (NARAB)
- Introduced by Representative David Scott (D-GA)
- Seeks to amend the Gramm-Leach-Bliley Act to establish a national association to provide multi-state licensing to insurance producers
- Make uniform the qualifications and conditions to obtain an insurance producer license
- Retains the authority of the states to regulate insurance producers
- Once an insurance producer becomes a member of NARAB, the insurance producer will be authorized to sell, solicit, negotiate, effect, procure, deliver, renew, continue, or bind insurance in any state for all lines of insurance authorized under the insurance producer's home state license

National Association of Registered Agents and Brokers Act of 2009

- NARAB is widely supported
- Passed House on March 3, 2010
- The support of the NAIC, the Independent Insurance Agents and Brokers of America (IIABA), the National Association of Insurance and Financial Advisors (NAIFA), and the Council of Insurance Agents and Brokers (CIAB)

Insurance Industry Competition Act of 2009

- On March 18, 2009, Representative Gene Taylor (D-MS) introduced H.R. 1583, the Insurance Industry Competition Act of 2009
- Seeks to remove the anti-trust exemption for insurers from the McCarran-Ferguson Act
- Give the Department of Justice and the Federal Trade Commission the authority to apply federal antitrust laws against insurers for purported anticompetitive behavior
- Referred to Subcommittee of Courts and Competition Policy of House Judiciary Committee

Health Insurance Industry Antitrust Enforcement Act of 2009

- Similar to H.R. 1583
- Narrowly tailored to health insurers and medical malpractice insurance issuers
- Health Insurance Industry Antitrust Enforcement Act of 2009
- Introduced into both the House as H.R. 3596 by Representative John Conyers (D-MI) and the Senate as S. 1681 by Senator Patrick Leahy (D-VT) on September 17, 2009
- The proposed legislation would “specifically prohibit price fixing, bid rigging, and market allocation in the health insurance industry”

Health Care Reform

- President Obama signed into law the Patient Protection and Affordable Care Act on March 23, 2010 and the Health Care and Education Affordability Reconciliation Act on March 30, 2010
- The Act will result in extensive changes to the U.S. healthcare system

Health Care Reform (cont.)

- Benefit and Market Reforms
 - No Lifetime or Annual Limits
 - Effective six months after enactment:
 - prohibits group health plans and health insurance insurers from establishing lifetime limits on the dollar value of benefits for any participant or beneficiary
 - beginning January 1, 2014
 - prior to that date, the Act permits only “restricted annual limits”
 - apply only to services classified as “essential health benefits”

Health Care Reform (cont.)

- Coverage for Essential Health Benefits
 - Effective January 1, 2014, health insurance insurers must ensure that coverage includes the “essential health benefits” package
- Coverage of Preventive Health Services
 - Effective six months after enactment:
 - requires group health plans and health insurance insurers to provide, at a minimum, coverage for certain specified healthcare services
 - Cannot impose any cost-sharing requirements for these healthcare services

Health Care Reform (cont.)

- The covered health care services are:
 - evidence-based items or services recommended by the United States Preventive Services Task Force
 - immunizations recommended by the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention
 - with respect to infants, children and adolescents, evidence-informed preventive care and screenings provided for in the comprehensive guidelines supported by the Health Resources and Services Administration; and
 - with respect to women, such additional preventive care and screenings as provided for in comprehensive guidelines supported by the Health Resources and Services Administration

Health Care Reform (cont.)

- Coverage for Preexisting Conditions
 - Effective six months after enactment:
 - prohibits excluding children from coverage on the basis of a preexisting medical condition in all group plans and plans in the individual market
 - Extended to adults beginning in 2014
 - Creation of a temporary high-risk pool within 90 days after enactment to provide health coverage to persons with preexisting conditions
 - The pool will be effective until January 1, 2014

Health Care Reform (cont.)

- Guaranteed Ability of Coverage
 - Effective January 1, 2014, each health insurance issuer that offers health insurance coverage must accept every employer and individual in that state that applies for such coverage
- Guaranteed Renewability Coverage
 - Effective January 1, 2014, health insurance issuers that offer health insurance coverage must renew or continue in force such coverage at the option of the plan sponsor or the individual, as applicable

Health Care Reform (cont.)

- Extension of Dependent Coverage
 - Effective six months after enactment:
 - requires group health plans and health insurance issuers to provide dependent coverage for unmarried children of participants until the age of 26
 - directs the Secretary to promulgate regulations defining dependents eligible for such coverage

Health Care Reform (cont.)

- Antidiscrimination Provisions
 - Effective six months after enactment:
 - prohibits plan sponsors of group health plans from discriminating against full-time employees based on hourly or annual wages, or favoring of higher-wage employees

Health Care Reform (cont.)

- Premium variations in individual and small group markets will be restricted
- Premiums can vary with respect to a particular plan or coverage only according to:
 - (1) whether the plan or coverage covers an individual or family
 - (2) rating area
 - (3) age; and
 - (4) tobacco use
- The Secretary to define the permissible age bands for rating purposes in consultation with the NAIC

Health Care Reform (cont.)

- Prohibition on Rescissions
 - A group health plan and a health insurance issuer cannot rescind a plan or coverage with respect to an enrollee once the enrollee is covered under such plan or coverage (subject to exception)
 - This prohibition goes into effect six months after the enactment of the Act
- Prohibition on Excessive Waiting Periods
 - Effective January 1, 2014, group health plans and health insurance issuers are prohibited from imposing coverage waiting periods that exceed 90 days

Health Care Reform (cont.)

- Rate Review Reforms
 - Review of Increases in Premiums
 - Directs the Secretary to establish a process for the annual review of unreasonable increases in premiums for health insurance coverage, beginning with the 2010 plan year

Health Care Reform (cont.)

- Documentation and Reporting Reforms
 - Development and Utilization of Uniform Explanation of Coverage Documents and Standardized Definitions
 - Within 12 months after enactment, the Secretary must develop standards for group health plans and health insurance issuers to use in providing customers with information regarding their benefits and coverage

Health Care Reform (cont.)

- Group health plans and health insurance issuers must comply with the new standards within 24 months after enactment
- Quality Reporting Requirements
 - Within 2 years after enactment, the Secretary must develop reporting requirements for use by the group health plans and health insurance issuers with respect to plan or coverage benefits and healthcare provider reimbursement structures

Health Care Reform (cont.)

- Reporting of Medical Loss Ratio
 - Beginning with the 2010 plan year, health plans will be required to report to the Secretary the percentage of premiums they spend on reimbursement for clinical services, known as the medical loss ratio
 - Effective January 1, 2010, if the ratio does not fall within the parameters specified by the Act, the Act requires payment of rebates to enrollees

Health Care Reform (cont.)

- Reinsurance will play a key role in establishing the new healthcare regime
- The Act calls for the creation of state-based reinsurance programs, together with the risk corridor and risk adjustment provisions, to support operation of an insurance exchange
 - a marketplace to be created under the Act by 2014
 - potential insureds who do not have adequate health coverage can procure insurance
- The reinsurance programs, which will be in effect during the first three years of the Exchange's operation, aim to protect insureds, particularly high-risk individuals, against anti-selection based on health status
- The Act also calls for establishment of a temporary reinsurance program to promote health coverage for early retirees

Health Care Reform (cont.)

- The reinsurance programs will be based on standards promulgated by the Secretary of Health and Human Services, in consultation with the NAIC
- Health insurers and third-party administrators on behalf of group health plans will be required to make payments to a not-for-profit reinsurance entity established by or contracted with the state
- The Secretary will also develop a formula for calculating payments from health insurers and third-party administrators to the reinsurance entity

Health Care Reform (cont.)

- Provides that the target allowable costs for a qualified health plan in the individual and small group market should equal the total insurance premiums
- The Secretary is charged with developing, in consultation with states, criteria for carrying out these risk adjustment activities
- The Secretary will reimburse participating employment-based plans for part of the cost of providing health benefits to retirees aged 55 to 64 who are not eligible for Medicare, and their families

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Questions

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