



# Advisor Newsletter

*(Monthly Newsletter of the Florida Association of Insurance and Financial Advisors)*

## **SEPTEMBER 2006**

### **LEGISLATIVE AND REGULATORY REPORT**

by Timothy J. Meenan, FAIFA Lobbyist

#### **REGULATORS OFFER RULES ALLOWING GROUP HEALTH INSURANCE MULTIPLE-YEAR RATE GUARANTEES**

The Florida Office of Insurance Regulation (OIR) is promulgating rules allowing group health insurers and HMOs to offer multiple-year rate guarantees and rating caps. The proposed rules, amendments to Florida Administrative Code Rules 690-149.005 and 690-191.054, place restrictions on how these multiple-year rate guarantees and caps may be provided.

The rate cap or guarantee may only be offered for 24 months, must be offered to every group with coverage under a particular form, and the rate must be sound for the entire multiple year rating period. This provision may only be offered when the HMO or the group insurer has group experience and it is used within the insurers experience rating formula.

FAIFA will continue to monitor the process as this rule moves through the rulemaking process.

#### **OIR AND AHCA IMPLEMENTING LONG TERM CARE PARTNERSHIP**

The Agency for Health Care Administration (AHCA) is drafting changes to the State of Florida Medicaid plan to implement the long term care partnership program in Florida. The 2006 Florida Legislature enacted implementing legislation to adopt this program. The program allows purchasers of long term care insurance policies to protect assets equal to the benefits payable under an LTC policy yet still qualify for Medicaid nursing home and other benefits. Currently, seniors are forced to "spend down" substantially all of their assets prior to being eligible for government assistance for nursing home and other long term care needs. On Oct. 9th, OIR will hold a workshop on rules it must promulgate to implement the program. The workshop is set for 1:00 p.m. in Tallahassee.

These rules will likely address form and rate issues for qualifying LTC policies eligible under the partnership program. FAIFA, and several of its member agents, will be present and participating in this hearing.

#### **SPECIAL SESSION POSSIBLE IN OCTOBER: AGENT'S CPIC COMMISSIONS IN THE BULLSEYE**

While nothing is certain, the Governor and legislative leaders appear to be working towards a special session in October to address the continuing residential and commercial property insurance crisis in Florida. Senate President Tom Lee tells me that they are working hard on a list of consensus items that can be addressed without much controversy. Absent such a set of consensus issues, no special session will be forthcoming. This move towards a special session just prior to the general election is a bold move and will likely engender significant debate throughout many legislative and statewide elections.

Issues considered likely for consideration are dropping the retention level in the CAT fund below the current \$5.3 billion level on an optional buy down basis, changing the date CAT fund contracts start, a potential rate roll back, increasing the total CAT fund payout (currently set at \$15 billion) on a sliding scale basis, amending the commercial JUA law to enlarge its assessment base, and supporting a constitutional amendment to protect the CAT fund from legislative "raiding." Many other issues are on the table, including whether Citizens Property Insurance Corporation should be dismantled as a claims paying organization, and migrated into a reinsurance facility, or even into the CAT fund.

Most disturbing are the comments by leadership and the Governor concerning agent commissions at Citizens. Describing the actual dollar amount received by agents under the commission percentage levels as a "windfall" due to the substantial rate increases received by CPIC over the past couple of years, the Governor noted that it is a problem that must be dealt with. Obviously, the amount of work and effort undertaken by responsible agents forced to place risks with Citizens in my mind justifies the current commission levels. This will be a battle, and frankly I am concerned that agents may see some freezing or reduction of CPIC effective commission levels.

#### REGULATORS LOWER SINKHOLE PREMIUM RATES BY OVER 14 PERCENT

OIR's Kevin McCarty announced that due to changes to laws governing property coverage for sinkhole damage, the sinkhole portions of residential insurers rates will be reduced by 14.4%. The overall rate will be reduced much less, as the sinkhole portion of the rate is small. The most significant reductions will be in the Pasco, Hernando, and Citrus county regions of the state.

SB 1980 included numerous provisions to reduce litigation and the attendant costs associated with costly sinkhole legal battles, and this reduction is a natural response to those changes.

#### FAIFA MEMBER APPOINTED TO NEWLY RE-OPENED COMMERCIAL PROPERTY JOINT UNDERWRITING ASSOCIATION

CFO Tom Gallagher, at FAIFA's request, appointed FAIFA member Mark Slagle of Ocala to the newly re-opened Commercial JUA. The JUA Board is under strict instructions from the Governor and the Cabinet to launch its first program in early September, and has met that goal.

Selecting ICAT, an independent insurer of wind as a servicing carrier, the JUA's first program will be a wind only policy of up to \$1,000,000. The JUA will be moving quickly to open a program with higher limits in the coming months. Two other insurers, Bankers Insurance Company, and Service Insurance Company, have agreed to be servicing carriers, as well.

The initial program will be issued on ICAT's policy form, but will be completely reinsured by the JUA. The rate is \$1.49 per \$100 of coverage, a rate deemed by the OIR to be actuarially sound. Of note, I testified in front of the first meeting of the JUA and asked for an increase in the proposed agent commission rate of 5%. The Board eventually voted to authorize a 7% agent commission. Many fear this new Commercial JUA will evolve into an unwieldy and costly entity like CPIC, and the laws governing the Commercial JUA, originally drafted over 20 years ago, must undergo substantial change by the Legislature.

## OIR EXAMINES THREE DISCOUNT MEDICAL PLAN ORGANIZATIONS

The OIR has concluded the first three exams of licensed Discount Medical Plan Organizations (“DMPOs”) and has found compliance problems. DMPOs are not insurance plans, but merely provide discounts on medical, dental and vision services, and have been controversial due to confusion many consumers experience, thinking these plans are insurance. The exams uncovered the use of unfiled forms and rates, use of insurance type terms such as “co-pay” and other problems. The OIR intends to examine all licensed plans over the coming months.

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## Congress Passes Pension Reform, Senate Puts Breaks on Estate Tax Reform/Repeal

*(The following item is from NAIFA Political Frontline newsletter.)*

On August 3rd the U.S. Senate passed pension reform legislation (H.R. 4) by a fairly comfortable margin. A week earlier the House passed an identical bill after acrimonious debate. The Pension Reform bill contains provisions that likely will impact the business of NAIFA members. President Bush has signed the bill.

The Senate, however, did not follow the House’s lead on the very contentious estate tax reform/repeal issue. The House has easily passed “permanent” estate tax repeal (H.R. 8) several times in the past, and has twice in two months passed different “reform” bills. The Senate, on the other hand, has twice failed to muster sufficient votes to proceed to debate the issue. (Because of the need to overcome a filibuster, it takes 60 votes to proceed.) Fifty-seven Senators voted to proceed when the Senate took up the issue June 8, while 56 voted to proceed on August 3rd.

### **Pension Reform: Substance Mixed with Politics**

The pension reform law contains most of the provisions from another pension reform package (H.R.2830) that had passed both the House and Senate previously, but which had become mired in a Conference Committee between the House and Senate. While there may have been substantive issues and differences yet to be worked out in Conference, the primary sticking point appeared to be how the politics of the estate tax issue could be advanced by using one or more parts of the Pension Reform bill package as a vehicle to pass an estate tax repeal/reform proposal.

In the end, Congressional leaders stripped a widely-supported group of tax provisions called the “extenders” package out of the Pension bill and combined it with a proposal to increase the federal minimum wage and roll back the estate tax to about 80 percent of full repeal. It was the extender/minimum wage/estate tax package, H.R. 5970, which did not get sufficient votes to proceed. See below for details on the estate tax reform proposal.

### **Benefiting NAIFA Members**

H.R. 4 contains many law changes that will enhance the business interests of NAIFA members. These include:

#### **1) Life Insurance/Annuity/Long-term Care Insurance Combinations**

AHIA and NAIFA have long sought to remove tax barriers to create new combinations of life insurance, annuities and long term-care insurance. H.R. 4 permits LTC riders on life insurance and annuity contracts under favorable tax. It will also allow the cash value of life insurance or annuity contracts to pay for LTC insurance policies while reducing the tax basis of the life policy or annuity used to buy LTC benefits. Tax-free Sec.1035 transfers between annuity and/or life insurance contracts with an LTC rider would be permitted. To lower the immediate tax revenue impact of the whole bill, the LTC rules become effective for years beginning after 2009 for contracts issued after 1996.

## **2) Investment Advice**

NAIFA has consistently supported efforts to increase the pool of advisors available to help rank and file employees choose investment options available under their employer sponsored 401 (k) plans. H.R. 4 modifies ERISA prohibited transaction rules to allow insurance company agents (as well as broker/dealer registered reps, etc.) to offer investment advice to 401(k) plan participants. The advice could be provided in person or through a computer model that is certified by an independent party as long as the advisor's compensation does not vary with the investments selected. H.R. 4 reduces an employer's potential liability as a fiduciary to the plan if the new rules are met.

## **3) Corporate Owned Life Insurance**

AALU and NAIFA have worked to clarify the tax rules applicable to the business use of life insurance since the early 1990's. H.R. 4 would make taxable any death benefits of life insurance payable to an employer unless the insured person was an employee within 12 months of his/her death, proceeds paid to the insured's beneficiary are used to buy back equity interests owned by the insured at the time of death, or the insured was a highly compensated employee.

Highly compensated employees would be defined as more than 5 percent owners, directors, and anyone else in the top 35 percent of employees ranked by pay. Written notice to and consent of the insured would be required. The legislation also calls for regulations to be developed under which employer owners of COLI policies would report statistics to the U S Treasury. The new rule would be effective as of the date of enactment.

## **4) Investor Owned Life Insurance**

NAIFA and AALU have sought legislation for over two years at both the state and federal level aimed at curtailing a practice known as investor owned life insurance (IOLI) or charitable owned life insurance (CHOLI). Last year, the Bush Administration proposed an excise tax on IOLI transactions. When finally reduced to legislative language, NAIFA and AALU determined that the language was overly broad.

Therefore, NAIFA and AALU recommended either amending the language or dropping it so that new language could be drafted. H.R. 4 modifies the original language in an acceptable fashion. It would require charities to report IOLI transactions to the IRS for two years beginning on the date of enactment. The bill also requires the Treasury Department to report to Congress on the use of IOLI insurance contracts, particularly as to their appropriateness and whether they are consistent with the charities' tax-exempt status.

## **5) EGTRRA Permanence**

H.R. 4 makes "permanent" the pension and IRA contribution limits enacted as part of the Economic Growth and Tax Relief Act (EGTRRA) in 2001. H.R. 4 repeals EGTRRA's sunset provision that would have taken effect in 2011. If left in place, the sunset would cause contribution limits to revert back to 2001 levels.

## **6) Qualified Tuition Programs (529 Plans)**

H.R. 4 repeals the 2011 sunset features of the EGTRRA rules enacted in 2001. The sunset provision would have caused Sec. 529 Plan rules to revert to pre 2001 rules.

## **Estate Tax**

Prior to passing the pension reform bill, the Senate debated H.R. 5970, a bill that packaged an increase in the federal minimum wage, an extension of a number of business and personal tax provisions that have expired or will expire shortly, and a "permanent" reform of federal estate tax rules. While the "extenders" package and the idea of raising the minimum wage enjoy fairly strong bipartisan support, including estate tax reform in the mix doomed the package—at least for now.

AALU and NAIFA have steadfastly supported "politically sustainable" estate tax reform that reduces federal tax revenues from the estate tax at about 50 percent of full repeal. Such a level would exempt about 99.7 percent of all

individuals from ANY tax. The long-term revenue loss from the estate tax reform provisions of H.R. 5970 is estimated at approximately 80% of full repeal.

### **Estate Tax Provisions of H.R. 5970**

The estate tax reform proposal considered by the Senate on August 3 contains the following major provisions:

#### **1) Exempt Amount**

Continues the current law phase up of the individual exempt amount from \$3.5 million in 2009 to \$5 million in 2015.

#### **2) Tax Rates**

Continues the current phase down of the top tax rate, currently scheduled to hit 45% in 2009. Starting in 2010, rates would decline from 40% in 2010 to 30% in 2015. Starting in 2015, estates of \$5 million but under \$25 million would be taxed at capital gains rates—currently 15%. The top tax rate on estates above \$25 million would phase down from 45 percent in 2009 to 30 percent in 2015.

#### **3) Indexing**

Both the personal exemption amount and the size of the estate to which the top estate tax rate applies would be indexed after 2015.

#### **4) Full use of exemption**

Any unused exemption amount by one spouse would carryover to the surviving spouse, thereby creating a true \$10 million per married couple exemption amount.

#### **5) Unification**

Re-unifies estate, gift and generation skipping taxes.

Step up in basis—estate assets transferred will receive step up in basis tax treatment rather than the carryover basis treatment that applied after the 2001 repeal legislation.

If and when this issue will resurface this year is unclear. Senate leaders have indicated a continued desire to push expansive estate tax reform or full repeal through Congress before adjourning for the November elections. And then there is the looming specter of a lame duck session after the elections. Only time will tell and NAIFA will continue to keep you informed of important developments.

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### **FAIFA's Glen Malcolm Re-Elected as NAIFA Trustee**

Congratulations to FAIFA Past President Glen Malcolm, Sr., CLU, ChFC, LUTCF, RHU of Miami-Dade AIFA on being re-elected NAIFA Trustee at the 2006 NAIFA Convention in San Francisco, CA, held August 26-30. Malcolm was one of five Trustee candidates for five slots, each serving a two-year term on the NAIFA Board of Trustees.

John Davidson, LUTCF, a field representative with New York Life and based in Thousand Oaks, CA, was elected the organization's 117th president. Joining Davidson as NAIFA officers are Jeffrey J. Taggart, CLU, ChFC, LUTCF, general agent and field vice president for Union Central Insurance and Investments in Cody, WY, president-elect; Cliff F. Wilson, CLU, ChFC, LUTCF, of Southeast Arizona Insurance Services Ltd./The American National Cos. in Chandler, AZ, secretary; and Peter C. Browne, LUTCF, principal of Price, Raffel and Browne/Union Central Insurance and Investments in New York, NY, treasurer. After serving his one-year term as president, David E. Smithkey, CLU, RFC, principal of Security First Benefits Corp. in Flint, MI, becomes immediate past president.

Re-elected as trustees to the board for two-year terms were Thomas D. Currey, CLU, ChFC, owner of TDC

Financial Services in Mansfield, TX; Terry Headley, LUTCF, LIC, of The Principal Financial Group in Omaha, NE; and FAIFA's Glen Malcolm, CLU, ChFC, LUTCF, RHU, an agent with Monumental Life in Miami, FL. Elected to the board for the first time were Roger S. McCullough, CLU, an associate with AXA Advisors in Fort Dodge, IA; and Russell A. Smith, CLU, ChFC, CSA, a regional director with Genworth Financial in Canyon Lake, CA.

Remaining on the board to complete the second year of their term as trustee (NAIFA staggers elections so half of the trustees are elected each year) are Lawrence J. Fowler Jr., CLU, LUTCF, an agent with Nationwide in Norwich, CT; William J. "Buddy" Kasic, CLU, ChFC, a representative with AXA Advisors in Savannah, GA; Robert A. Miller, principal of Miller and Associates in New York, NY; Linda Ray, RHU, LUTCF, CLTC, owner of Better Benefits, Inc., in Metairie, LA; and Robert M. Roach, CLU, ChFC, a representative of Northwestern Mutual in Columbus, OH.

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