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Another issue of the Journal is now available. This issue delivers timely articles pertaining to topics significantly affecting the insurance industry, such as Florida's one-way attorney's fee statute fueling homeowners insurance AOB cases in the state, the universal health care ballot initiative in Colorado, legislative wrap-ups for Georgia and Florida, EU-US reinsurance collateral covered agreement negotiations, and constitutional challenges to Oklahoma's workers' compensation law. Thank you to our members who generously donated their time and expertise to this publication. Please share these authoritative and topical articles with your colleagues.

FLORIDA LEGISLATIVE SESSION - INSURANCE REPORT

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Florida's Governor Rick Scott approved several proposals considered by the Legislature in its 2016 regular session that will have a significant impact on the state's insurance industry. The Governor signed into state law a bill adopting National Association of Insurance Commissioners (NAIC) Model Acts, and other legislation affecting sinkhole insurance, workers' compensation, health insurance, and life insurance:

ORSA & CGAD

The NAIC's Risk Management and Own Risk Solvency Assessment (ORSA) Model Act and the Corporate Governance Annual Disclosure (CGAD) Model Act will require Florida insurers to submit an ORSA summary report to the Florida Office of Insurance Regulation (FLOIR), beginning on December 31, 2017. The legislation offers some flexibility to the form and content of the summary report and provides an exemption from the report requirement for insurers with direct premiums below $500 million and an insurance group of which the insurer is a member with premiums below $1 billion. However, the FLOIR may require an exempt insurer to

file an ORSA summary report if there are “unique circumstances.” Other insurers are allowed to request a waiver of the ORSA report requirement.

Under the CGAD provisions of the legislation, insurers must submit their disclosures to the FLOIR starting on December 31, 2018. This is designed to give the FLOIR sufficient information on insurer governance structures, practices and processes between examinations.

Insurers or insurer groups must file a CGAD no later than June 1 of each year and the disclosures must include: the corporate governance framework and structure, including duties and structure of the Board of Directors and its committees; policies and practices of the Board of Directors and significant committees; policies and practices directing senior management, including the insurer’s code of conduct and ethics, performance evaluation, compensation practices and succession planning; and the process by which the Board, its committees and senior management ensure an appropriate level of oversight of the critical risk areas impacting the insurer’s business activities. The FLOIR may request a CGAD prior to the official starting date under certain circumstances.

ORSA and Corporate Governance filings are privileged and not subject to subpoena or discovery directed to the FLOIR. These changes will be implemented on October 1, 2016.

Unclaimed Property

Also approved by the Governor was legislation requiring all life insurers to annually check the Social Security Administration Death Master File (DMF) to determine if their policyholders have died. This requirement will apply to all life or endowment insurance policies, annuity contracts and retained asset accounts that were in force on or after January 1, 1992. If a death is determined, insurers will also be required to verify the death and attempt to locate and contact beneficiaries. If the policy or contract proceeds remain unclaimed five years after the death of the insured, annuitant or accountholder, the property will escheat to the State of Florida as unclaimed property.

The legislation’s more controversial provision, however, is a legislative declaration that its requirements are remedial and shall apply retroactively to policies, contracts and accounts entered into prior to the effective date of the bill. The bill requires the annual check of DMF to be done before August 31 of each year.

Additionally, it also amends current law by establishing that funds are presumed unclaimed if unclaimed for more than 5 years after the death of the insured, annuitant or retained asset account holder. Under prior law, these funds were presumed unclaimed if unclaimed for more than 5 years after becoming due and payable as established by the records of the insurance company holding the funds. However, fines, penalties or additional interest may not be imposed on the insurer for failure to report and remit property if the proceeds are reported and remitted to the Bureau of Unclaimed Property by May 1, 2021. This bill is already in effect.

Sinkhole Insurance

Beginning on July 1, 2016, insurers in Florida will be able to offer a new type of sinkhole insurance coverage called “limited sinkhole coverage.” This policy would only cover “sinkhole loss,” which is structural damage to the covered building, including the foundation, caused by sinkhole activity. The coverage is only available for personal lines residential insurance and may

be limited to repairs to stabilize the building and repair the foundation. Insurers wishing to provide this coverage must notify the FLOIR at least 30 days prior to offering the coverage and file a plan of operation and financial projections.

Workers' Compensation Administration

Several changes to the state's workers' compensation program administration are slated to become law on October 1, 2016. The new law reduces the imputed payroll multiplier related to penalty calculations from 2 to 1.5 times the statewide average weekly wage; eliminates a three-day response requirement applicable to employer held exemption information; relieves employers of the obligation to notify the Department of Financial Services by telephone within 24 hours of a work-related death; and eliminates the Preferred Worker Program.

Health Insurance

The Governor also approved a bill dealing with several health insurance issues including requiring that health insurers cover services for persons with Down Syndrome; requiring the use of a standardized electronic form for insurers and providers to use when seeking prior authorization for health services; prohibiting out-of-network hospitals and ambulatory surgical centers from balance billing members of a preferred provider organization (PPO) or exclusive provider organization (EPO) for emergency services or for nonemergency services when the services are provided in an out-of-network hospital and the patient had no ability to choose a network provider; and requiring PPOs to be more transparent by publishing on their websites, the network provider lists, including specified demographic information, and update them monthly and including a notice in their policies regarding the implications of using an out-of-network provider and the potential for balance billing. These changes will take effect on July 1, 2016, except for the PPO notice requirements which are already in place.

Citizens Property Insurance Corporation

After January 1, 2017, Citizens Property Insurance Corporation (Citizens) – a government entity created to provide property insurance to those unable to obtain coverage in the private market – is required to publish a periodic schedule of cycles during which private insurers may identify and notify Citizens of policies that they would like to request to take out. A request must include the description of coverage offered and the estimated premium, in the manner prescribed by Citizens.

Moreover, Citizens must maintain and make available to the agent of record a consolidated list of all insurers requesting to take out a policy. That list must also include a description of coverage offered and the estimated premium. Citizens is also required to provide written notice to the policyholder and to the agent of record of the policyholder's option to accept a take-out offer or reject all offers and remain with the Citizens. The notice, in a format prescribed by Citizens, must include the amount of estimated premium, description of coverage and comparison of the estimated premium and coverage offered by the insurer to the estimated premium and coverage provided by Citizens.

In addition, general lines agents and other licensees (i.e. insurer, reinsurer, reinsurance broker, rating organization, modeling company) will be able to use Citizens' underwriting files and confidential claims files. A general lines agent can use the information to develop a take-out

plan to be submitted to the FLOIR for approval while the other licensed entities can use the information to analyze the risk for underwriting and/or developing rating plans in the private insurance market. The information must be kept confidential and cannot be used for the direct solicitation of policyholders. Most of the changes to Citizens will take effect on July 1, 2016.