MARYLAND INSURANCE ADMINISTRATION

REPORT ON LIMITED LINES INSURANCE

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I. Introduction

During the 2013 Session, the Maryland General Assembly passed Senate Bill 682, Chapter 525 (Chapter 525), regarding Portable Electronics Insurance – Compensation of Employees of Vendor, Disclosures to Customers, and Study.[1] Chapter 525 amended the manner in which a vendor that holds a limited lines license to sell coverage under a policy of portable electronics insurance, or the vendor's authorized representative, may compensate the vendor's or authorized representative's employees. National Association of Insurance Commissioner (NAIC) uniform licensing standards provide that such employees are not themselves required to hold a limited lines license, provided that the employee "does not receive a commission or compensation that is dependent on the placement of insurance." Previously, Maryland law was consistent with this standard. Chapter 525 amended the law by adding the word "solely" to the following provision: "A vendor or an authorized representative of the vendor may compensate the employees of the vendor or of the authorized representative in a manner that does not depend *solely* on the sale of portable electronics insurance." Md. Code Ann., Ins. Art. § 10-703(e)(2) (emphasis added).[2] For the first time under Maryland law, this amendment permits a person who is not licensed or otherwise authorized or regulated by the Insurance Commissioner (Commissioner) to sell, solicit or negotiate insurance contracts for compensation.

Section 4 of Chapter 525 also requires the Commissioner to track the number of complaints from consumers regarding the sales practices of unlicensed vendor employees and compile a summary of the allegations and the disposition of the complaints. On for before January 1, 2017, the Commissioner is to report her findings and recommendations to the Senate Finance Committee and the House Economic Matters Committee based on this complaint data and any other information that the Commissioner deems necessary to determine whether and how unlicensed vendor employees should be compensated for selling portable electronics limited line insurance.

This report complies with an additional provision of Chapter 525, which required the Insurance Commissioner to:

(1) determine the types of limited lines insurance that are authorized to be offered in other states;
(2) review the laws and practices of other states relating to the offering of limited lines insurance, including whether a license to sell a limited lines insurance policy is required, and whether and how employees of a licensee are compensated for selling a limited line insurance policy;
(3) review the NAIC guidelines and standards relating to the authorization of limited lines insurance;
(4) determine the appropriate regulatory structure, including consumer protections, for the sale of a limited lines insurance policy; and
(5) report the Commissioner's findings and recommendation to the Senate Finance Committee and House Economic Matters Committee.

[1] A copy of Chapter 525 is included in Appendix 1.
[2] Unless otherwise indicated, all statutory references are to the Insurance Article of the Annotated Code of Maryland.

Maryland law currently authorizes eight limited lines,[3] including:

1. Credit - § 10-101(g)(1)[4]
2. HMO Enrolling Medicaid Recipients - § 10-124
3. Motor Vehicle (liability and physical damage) - § 10-123
4. Portable Electronics - §§ 10-701 through 10-708
5. Rental Vehicle - § 10-101(g)(3)
6. Title (attorneys and law firms) - § 10-125
7. Travel - § 10-122
8. Viatical Settlement Brokers - §§ 8-601 through 8-611

In addition, § 10-119(d) is a reciprocity provision, which grants non-resident producers a Maryland limited line producer license equivalent to that issued in the person's home state. National standards, as discussed in more detail below, provides that a state should authorize nine or fewer limited lines of insurance.

II. National Association of Insurance Commissioners Guidelines and Standards Relating to the Authorization of Limited Lines Insurance

The NAIC established Uniform Resident Licensing Standards (the Standards)[5] and the Producer Licensing Model Act (PLMA).[6] The purpose of the PLMA and the Standards is to facilitate uniformity and reciprocity among states regarding producer licensing and some producer-related regulations, while preserving a state's right to license, supervise, and discipline insurance producers and to pass and enforce laws protecting consumers and prohibiting unfair trade practices. The Standards establish testing and continuing education guidelines for insurance producers and the PLMA identifies and defines six major lines of insurance: life, accident and health, property, casualty, variable life and variable annuity, and personal lines.

Both the PLMA and the Standards address limited lines insurance. The PLMA included one limited line (credit) and one catch-all for any other line of insurance permitted under state laws or regulations. The PLMA defines limited line credit insurance to include credit life, credit disability, credit property, credit unemployment, involuntary unemployment, mortgage life, mortgage guaranty, mortgage disability, guaranteed automobile protection (gap) insurance, and any other form of insurance offered in connection with an extension of credit that is limited to partially or wholly extinguishing that credit obligation that the insurance commissioner determines should be designated a form of limited line credit insurance.

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[3] Like many other states, Maryland law refers to limited lines *insurance* in some instances and limited lines *licenses* in others. As such, when conducting this study, laws for both limited lines insurance and limited lines licenses were reviewed.

[4] Limited line credit insurance, as set out in §10-101(e) of the Insurance Article includes: (1) credit life insurance; (2) credit health insurance; (3) credit property insurance; (4) credit unemployment insurance; (5) credit involuntary unemployment benefit insurance; (6) mortgage life insurance; (7) mortgage guaranty insurance; (8) mortgage disability insurance; (9) guaranteed automobile protection (GAP) insurance; and (10) any other form of insurance that: (i) is offered in connection with an extension of credit; (ii) is limited to partially or wholly extinguishing that credit obligation; and (iii) the Commissioner determines should be designated a form of limited line credit insurance.

[5] NAIC, Revisions and Clarifications to the Uniform Licensing Standards (Nov. 30, 2012).

[6] Copies of the PLMA and the Standards are contained in Appendices 2 and 3, respectively.

The NAIC Standards contain greater detail about limited lines insurance. Standard 33 provides that a state should authorize nine or fewer limited lines of insurance, including four "core" limited lines of insurance: credit, crop, rental car, and travel. Standard 34 is dedicated to limited line travel insurance. A "travel retailer" is defined as a "business entity that offers and disseminates Travel Insurance on behalf and under the direction of a Limited Line Travel Insurance Producer." Standard 34(A)(2). A "Limited Lines Travel Insurance Producer" is defined as "an insurer designee, such as a managing general underwriter, managing general agent, or limited lines producer of Travel Insurance." Standard 34(A)(1). Among other requirements, to sell travel insurance, a travel retailer must identify in its marketing materials a Limited Lines Travel Insurance Producer who holds a business entity license and must be registered with that licensed business entity. Standard 34(B)(1)-(2). The licensed business entity must designate one of its employees who is a licensed insurance producer as a designated responsible producer (DRP) who is responsible for the business entity's compliance with the state's insurance laws. Standard 34(B)(3). Further, employees of the travel retailer must receive a program of instruction that may be subject to review by the state's insurance commissioner. Standard 34(B)(6).

The Standards provide that if a state offers non-core limited lines, the state must have certain licensing requirements. Standard 37(A), (B). Specifically, a license may be issued to a person or business entity that sells, solicits or negotiates the limited line insurance. If issued to a business entity, the entity must: (1) obtain the license by completing the appropriate application and paying the designated fee; (2) identify a licensed individual producer as the business entity's DRP, who must meet the state's requirements for a DRP and would be responsible for the business entity's compliance with the state's insurance laws; (3) comply with fingerprinting requirements; and (4) keep a register of each employee that offers insurance on behalf of the business entity. Standard 37(B). Employees of the business entity offering limited line insurance must receive a program of instruction or training subject to review by the insurance department. Standard 37(D)(2).

For non-core limited lines, Standard 37(C)(2) provides that an employee of a business entity with a limited line license does not need to hold a license if the employee "[d]oes not receive a commission or compensation that is dependent on the placement of the insurance product." However, "[i]ndividuals who sell, solicit or negotiate insurance or who receive commission or compensation that is dependent on the placement of the insurance product must obtain a limited line producer license." Standard 37(D). The passage of Chapter 525 during the 2013 legislative session amended the law by adding the word "solely" to the provision: "A vendor or an authorized representative of the vendor may compensate the employees of the vendor or of the authorized representative in a manner that does not depend *solely* on the sale of portable electronics insurance." Section 10-703(e)(2) (emphasis added). As a result, Maryland law is inconsistent with Standard 37.

Most states have adopted all or part of the PLMA and the Standards to move toward uniformity in producer licensing. According to the NAIC's most recent assessment, 47 states were in compliance with the producer licensing reciprocity requirements.

III. Types of Limited Lines Insurance Authorized in Other States

In February 2013, the NAIC compiled a compendium of state-authorized limited lines (the Compendium).[7] According to the Compendium, at least half of the 52 jurisdictions reviewed (the 50 states, the District of Columbia, and Puerto Rico) have authorized the sale of the four core limited lines identified in the NAIC Standards, as follows: credit insurance (47 jurisdictions, including Maryland); crop insurance (26 jurisdictions); rental car insurance (36 jurisdictions, including Maryland); and travel insurance (46 jurisdictions, including Maryland). The MIA's independent research indicates that a majority of states has authorized at least one additional limited line – portable electronics (45 jurisdictions, including Maryland).

A combination of the NAIC's Compendium and the MIA's independent research indicates that there are at least seven additional limited lines authorized by less than half but more than 10 jurisdictions, including bail bonds, mortgage insurance, motor club, surety, title agent, self-service storage insurance, and prepaid legal insurance. Only 14 states permit the sale of self-service storage limited line insurance. The Compendium identifies over 40 additional limited lines authorized by fewer than 10 states, with the vast majority of those limited lines adopted by fewer than five states. Examples include prepaid dental insurance, accidental death insurance, pet insurance, malpractice insurance, common carrier insurance, home warranty, and optometric service plans.

By the NAIC's count, as of February 2013, 41 jurisdictions had nine or fewer limited lines, including the core lines, in accordance with NAIC standards. Only three states – California, North Carolina, and Virginia, had authorized more limited lines than had Maryland.

IV. Review of the Laws and Practices of Other States

The MIA reviewed the statutes, regulations and practices of all other states and the District of Columbia to determine states' laws and practices regarding the four core limited lines (car rental, credit, crop insurance, and travel) plus the non-core limited lines of portable electronics and self-service storage. State regulation of limited lines insurance focuses largely upon:

- the licensure and appointment of those selling the insurance product, including the designation of DRPs for certain limited lines;
- producer education requirements;
- non-producer employee training;
- required consumer disclosures; and
- compensation of those selling limited lines insurance.

Each of those areas is addressed in turn below.

[7] A copy of the NAIC Compendium is included as Appendix 4. The Compendium counted limited lines slightly differently than the manner in which they are codified in Maryland law, separating, for example, limited lines for motor vehicle liability and motor vehicle physical damage, and limited lines mortgage insurance from other types of limited lines credit insurance. The Maryland Insurance Administration (MIA) has not independently verified all of the NAIC's data, but it appears that in the past year, some jurisdictions have authorized additional limited lines. Also, the Compendium fails to reflect that Maryland allows a limited line for travel insurance.

A. Licensure and Appointment of Those Selling Insurance

Nearly all states require a licensed individual or entity to be involved at some level in the sale, solicitation, or negotiation of authorized limited lines insurance. Licensure of an individual, a retailer, or both creates a public record of every person authorized to sell insurance in the state. In most states, as in Maryland, a consumer may query the state's database to determine if a person offering insurance coverage is licensed. The MIA, like many state insurance departments, investigates complaints filed against licensed producers, and substantiated complaints result in appropriate administrative action including actions against unlicensed persons selling insurance.

Insurers "appoint" licensed insurance producers to sell their insurance policies. Insurer appointment provides the producer with the legal authority to act on behalf of the insurer to complete applications, bind coverage, collect premium, and remit premium to the insurance company. Producer appointment is a benefit to consumers because if issues arise regarding the date that coverage was bound, the benefits of the coverage, or the amount of premium paid, generally an insurer can be held responsible for the actions of its appointed producer. The number of states that require insurance producer appointment to sell limited lines varies substantially with the type of limited line. A clear majority of states require producer appointment for the sale, solicitation, or negotiation of credit insurance, crop insurance, and self-service storage insurance, for example, while only a handful of states require producer appointment for travel insurance.

In most states, the limited lines license application process is straight forward. In Maryland, a limited line producer license requires an application and an initial fee of $54. For the portable electronics and motor vehicle rental limited lines of insurance, Maryland law currently requires the vendor or retailer firms to obtain a license, but the employees of those vendors or retailers need not be individually licensed. In both instances, the law makes clear that acts of the employees are deemed to be acts of the licensed producers; therefore, the insurer is held to account for the actions of its producer and the MIA maintains its authority to take action against the licensed producer even when an unlicensed employee for which it is responsible may have violated the insurance laws and regulations.

In a minority of states and in the current NAIC Standards relating to travel insurance, the direct relationship between an insurer and the persons offering the insurance coverage is severed. The insurer appoints a licensed producer (often called a managing general agent) who is then directly responsible for an unlicensed retailer and its employees, that offer insurance coverage for sale. Under this arrangement, some consumer protections may be undermined and enforcement capabilities diminished. For example, the licensed producer must maintain a registration list to include the name and contact information of each travel retailer and an officer or person who directs the travel retailer's operations. That unlicensed individual must certify that the travel retailer complies with federal law applicable to persons with certain felony convictions, which is in contrast to the typical producer application process where the state regulator inquires about compliance with federal law. *See* 18 USC § 1033. Further, if the unlicensed retailer or its employee fails to comply with the insurance laws, only the responsible producer is held accountable. Administrative action against the licensed producer does little to address the behavior of the retailer or its employee, and no public record will exist about the acts of the unlicensed retailer or its employees, who may pursue business arrangements with other licensed producers.

B. Producer Educational Requirements

In contrast to the laws governing major line producer licenses, the majority of states do not require pre-licensing education, examination, or continuing education for most limited line licenses. An exception is crop insurance. Almost half of the states with a limited line for crop insurance require an examination and continuing education. Additionally, about a third of the states with a limited line for credit insurance require an examination, but only a few of those require either pre-licensing or continuing education.

In contrast, the MIA's research indicates that no state requires an examination for portable electronics and self-service storage limited lines licenses, and only one state requires pre-licensing and continuing education. A few states impose these requirements for travel, credit and car rental limited lines.

C. Non-Producer Employee Training

Whether employee training is required of unlicensed employees of vendors, retailers or licensed producers offering limited lines insurance varies among states and depends, in part, on the type of limited line insurance. Almost every state with portable electronics and self-service storage limited lines requires employee training.

Because Standard 36 generally discourages, and few states require, pre-licensing education, examinations or continuing education for limited lines insurance, employee training is important to convey information regarding appropriate sales practices and the insurance coverage offered for sale. For example, Maryland law requires a training program under the portable electronics limited line. Section 10-705(v). The training program must include:

- explanation about the limited line insurance coverage offered to customers;
- prohibition on representing or implying that the purchase of insurance is required to purchase the product or service;
- information that limited line insurance may provide duplicative coverage to that contained in other property or liability insurance policies; and
- knowledge about any disclosures that must be provided to customers.

Section 10-705(4)(i)-(iv). While employee training is not equivalent to the rigorous pre-licensing education, examination, and continuing education required of major line producers, it represents an acknowledgment that basic instruction for those offering and disseminating a limited line insurance product is necessary before insurance coverage is offered for sale.

D. Required Consumer Disclosures

Although not included in the Standards, many states mandate that disclosures be provided to purchasers of limited line insurance policies at the point of sale. This is most typical for car rental, portable electronics, and self-service storage limited lines. Disclosures generally must:

- be approved by the Commissioner;
- contain a summary of coverage including limitations and exclusions;
- state the name of the insurer providing the coverage and give the amount of the premium to be paid and any applicable deductible;
- indicate that the coverage may be duplicative of other insurance policies;
- specify that purchase of the insurance is not required to purchase the product or service;
- inform the insured how to file a claim, including whether a proof of loss is required;
- include information regarding the insured's right to cancel the policy; and
- provide contact information for the state regulator.

While neither a substitute for an experienced producer nor a policy that contains all terms and conditions of coverage, disclosures serve to inform the customer at the time of sale and act as a reference to be reviewed at a later date. Maryland law currently requires consumer disclosures for portable electronics insurance and motor vehicle rental insurance.

E. Compensation of Those Selling Limited Lines Insurance

For major line insurance, an individual must be a licensed insurance producer to receive compensation for the sale of insurance. Licensed insurance producers are compensated, in part, for their knowledge of the policies being sold, their expertise about the need for various types of coverage, and their professionalism. Therefore, licensed producers are permitted to accept commissions for the sale of insurance.

Compensation for limited lines insurance differs among the states and by line of insurance. Most states treat limited line crop insurance and credit insurance, for example, much like a major line, limiting compensation to licensed producers. For car rental, portable electronics, and self-service storage the general practice is that unlicensed employees of businesses selling these limited lines of insurance may receive compensation as long as it is not "based primarily" on the sale of insurance. In contrast, Chapter 525 changed Maryland's portable electronics law last session to allow compensation to unlicensed employees as long as the compensation does not depend "solely" on the sale of insurance.

Some states with limited line travel insurance allow the travel retailer (*i.e.*, a travel agency) and its employees to offer travel insurance and receive commissions as long as the travel retailer is registered with a managing general agent that holds a limited line producer license. Under current Maryland law, individual travel agents must be licensed limited line travel insurance producers; therefore, they are entitled to receive commissions directly from the insurer. Section 10-122.

V. Recommendations

1. Maryland should not authorize any additional limited lines of insurance at this time. NAIC Standards direct states to have no more than nine limited lines of insurance, including the four core lines (credit, crop, car rental, and travel). Presently, Maryland has authorized three of the four core lines (credit, car rental and travel), as well as five non-core lines (or eight distinct non-core limited lines, by the NAIC's count). According to the NAIC's compendium, as of February 2013, only New York, North Carolina, and Virginia have authorized more limited lines than Maryland. Prohibiting additional limited lines at this time and would provide the Commissioner the opportunity to report by January 1, 2017 on complaint and other data regarding the sales practices of vendor employees at point of sale as required by Section 4 of Chapter 525.

2. The MIA should review all provisions of the Insurance Article related to limited lines insurance and recommend clarifications and modernizations necessary to conform with the NAIC Standards, where appropriate.

3. Maryland should require any entity that offers and disseminates limited lines insurance to obtain a producer's license. A retailer or a vendor may apply for a license and its employees may be permitted to offer insurance coverage on behalf of the vendor or retailer without obtaining an individual producer's license, provided that appropriate employee training, consumer disclosures, and other consumer protection requirements are satisfied.

4. Consistent with current Maryland law for portable electronics and motor vehicle rental companies, employees of licensed vendors or retailers should complete a program of instruction that has been reviewed and approved by the Commissioner.

5. Consistent with current Maryland law for portable electronics insurance and motor vehicle rental insurance, consumer disclosures reviewed and approved by the Commissioner should be provided to any consumer who purchases a non-core limited line policy of insurance.

6. Maryland should not permit any further deviations from the NAIC Standards regarding compensation. For non-core limited lines this means that "[i]ndividuals who sell, solicit or negotiate insurance or who receive commission or compensation that is dependent on the placement of the insurance product must obtain a limited line insurance producer license." Standard 37(D)(1). An employee of a business entity with a limited line license does not need to hold a license if the employee "[d]oes not receive a commission or compensation that is dependent on the placement of the insurance product." Standard 37(C)(2).

APPENDICES

1. Chapter 525, Acts of 2013

2. NAIC Producer Licensing Model Act

3. Revisions and Clarifications to the NAIC's Uniform Licensing Standards

4. NAIC's Compendium of State Laws on Insurance Topics - Producer Licensing: Limited Lines