

The weekly news source for insurance legal and compliance professionals

## Insurance Compliance

## INSIGHT

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Issue Archives

[January 23, 2012](#)[January 9, 2012](#)[January 2, 2012](#)[December 19, 2011](#)[December 12, 2011](#)[More Archived](#)[Contact Info](#)[Search Articles](#)**Print Version of Articles in Jan. 30 ICI****California, Insurers Reach Agreement on Iran Investments**

California and the insurance industry have settled their differences about investments in companies doing business in Iran.

The terms of the settlement permit the insurance commissioner to maintain a public list of businesses involved in volatile sectors of the Iranian economy. In fact, its [list of 43 businesses](#) engaged in the Iranian nuclear, military or energy sectors of Iran is available on its website. The commissioner also retains the power to independently review and publicize the names of insurers with investments in businesses related to Iran.

But insurers will no longer be required to file quarterly reports about those investments – that information is already reported in annual statements – and those investments will be counted for purposes of determining financial solvency of the insurers.

“The resolution of this litigation is an important step forward for our efforts to make sure that the public, insurers, and investors are aware of companies doing business in the nuclear, military and energy sectors of Iran’s economy, particularly in light of the growing nuclear threat posed by Iran,” said commissioner Dave Jones. “

The situation dates to 2009 when then-commissioner Steve Poizner first told insurers to disclose their investment holdings in companies in foreign companies that do business with Iran – specifically with its nuclear, oil, weapons and banking industries. He also issued an immediate order telling California-based insurance companies to divest any direct holdings in the Iranian government ([ICI, June 29, 2009](#)).

Poizner later gave insurers two options for those investments – voluntarily divest investments in companies that do business with Iran, or be ordered to do so ([ICI, Dec. 7, 2009](#)). Insurers disclosed at the time that they held \$12 billion in investments with companies that do business with Iran in the four critical economic sectors.

Poizner wanted companies to sell off those holdings because, in his view, they supported state-sanctioned terrorism. He later said no investments that an insurer holds in any of the 50 companies on his list would be recognized on its financial statements in California ([ICI, Feb. 22, 2010](#)). It was a threat insurers took seriously because the elimination of statement credit for those investments would mean that insurers would have had to reduce the capital and surplus reported on their financial statements by the amount of investments in these 50 companies. That might lead some to perhaps fall below the minimum level of capital and surplus needed to be licensed to sell insurance in the state.

Insurance trade associations sued to overturn the rule. Parties to the lawsuit were the American Council of Life Insurers, the American Insurance Association, the Association of California Insurance Companies, the Association of California Life and Health Insurance Companies, and the Personal Insurance Federation of California.

They were later upheld by California’s Office of Administrative Law, a government

agency that ensures state regulations are clear, necessary and legally valid. It ruled Poizner's rule to be improper and said the rulemaking should have been adopted pursuant to the state's Administrative Procedure Act ([ICI, Oct. 18, 2010](#)).

The commissioner later filed [a lawsuit](#) in state Superior Court contesting the OAL's analysis. In a nutshell, the commissioner said he was just doing his job, not writing new regulations.

That's where things have sat until the recent litigation settlement. It calls for the insurance commissioner to withdraw the lawsuit against OAL, and for the insurance trade associations to withdraw their legal challenge to the commissioner's efforts to publicize insurer investments in companies engaged with Iran.

The trade associations issued a statement emphasizing that insurers' investments are legal under both state and federal law. "We also believe supervision of insurers' lawful foreign investments must remain uniform and is best administered at the federal level so that the United States can effectively respond to international challenges," the groups said.

Since the Insurance Department began publicizing information about insurance companies investing in companies doing business in Iran, significant numbers of insurance companies have ended those investments, Jones noted.

## Washington Fines Unicare for Rate, Licensing Violations ...

Washington state has fined an insurance company that writes medical insurance policies for college students \$100,000 for using unapproved rates and other violations.

The Office of the Insurance Commissioner said that, from mid-2004 to mid-2009, Unicare Life and Health Insurance Company used unapproved methods to set its rates. According to [the consent order](#), Unicare's approved rating required the use of age-banded rates, but the carrier used unapproved community- and experience-based rates for more than six years. Further, the company said it would file revised rates in 2009, but didn't do it until 2011.

Washington also said Unicare continued to wrongly cite a policy exclusion for five years after a state law had been changed to ban using the exclusion. That 2004 state law prohibits an insurer from denying coverage for the treatment of an injury solely because it was sustained as a result of the insurer being intoxicated or under the influence of a narcotic. Unicare's new forms were approved by the OIC in June 2006, but the company didn't start using them for another three years after that.

Unicare was also found to have used unlicensed and unappointed insurance agents to market and sell its policies. The primary company marketing the policies, Firebird International Insurance Group, began selling Unicare's policies in 2005, but that agency wasn't licensed to do business in Washington until June 2009 – and wasn't appointed by Unicare until 2010.

The company was cited for being unable to respond to Kreidler's requests for supporting documentation on rates at specific colleges. The carrier said the documents were prepared by employees who no longer worked for the company at locations that were now closed.

## ... As Health Insurers, New York AG Settle on Accuracy of Online Provider Directories

Several health insurance companies have reached an accord with the New York attorney general, promising their online provider directories will be accurate from now

on.

The eight insurers have agreed to remove providers who no longer participate with their plans and correct any listing errors for providers who are in the plans. Authorities said the errors had led to some consumers paying more than they should have because they went to providers their insurers erroneously listed as in-network.

None of the carriers were fined, but they have to chip in to pay the \$60,000 cost of the investigation.

“Consumers are entitled to accurate information from their health care insurers, especially for something as basic as whether or not their doctor is in their network,” said attorney general Eric Schneiderman. “Inaccurate directories lead to delays in care and additional costs to the consumer, particularly when that consumer winds up seeing a doctor who is not actually a provider in the plan and pays out of pocket.”

The settlements also require the insurers to implement new business practices for updating their online provider directories in a timely manner going forward, and to pay restitution to consumers who paid more than they should have because they went to providers their insurers erroneously listed as in-network. The correction plan calls for the companies to:

- update their online provider directories within 30 days of receiving verified provider information going forward and to also track changes;
- prepare and file reports on a regular basis to keep the attorney general posted about the status of continual correction of their directories;
- have an independent audit of their compliance with the settlement; and
- log complaints related to the accuracy of participating provider listings and document how each complaint was resolved.

The companies are: Empire HealthChoice HMO, Empire HealthChoice Assurance, Health Insurance Plan of Greater New York, HIP Insurance Company of New York, Oxford Health Plans of New York, United HealthCare of New York, United HealthCare Insurance Company of New York and Vytra Health Plans.

It is the second agreement in 13 months dealing with the accuracy of online provider information. In December 2010, the attorney general reached settlements with Magnacare LLC and Multiplan – companies that created networks of doctors and other providers and leased the networks to insurers for them to use as their participating providers – and with health insurers Aetna, CIGNA and GHI. Those settlements also require the network companies to fix online directories they provide insurers and to reform their business practices to maintain updated directories.

## Illinois, New Jersey Prepare for New Commissioners

Illinois has a new permanent insurance director and New Jersey will have a new commissioner soon.

Andrew Boron, a former industry executive, is the new director at the Illinois Department of Insurance.

Boron began his career at CNA Financial, serving as counsel and then director of state government relations, and also was vice president and counsel at the ACE Group, where he served as primary liaison to the insurance departments in nine states, including Illinois. He also served as deputy chief of staff at the Illinois Toll Highway Authority between 2009 and 2010.

“Andrew Boron brings a wide range of experience to the Department of Insurance, and I am confident his strong leadership will enhance the essential regulatory and consumer protections DOI provides,” said Gov. Pat Quinn.

Boron replaces Michael McRaith, and three interim directors – Robert Wagner ([ICI, Jan.](#)

[9, 2012](#)), Andrew Stolfi and Jack Messmore – who have been serving 60-day terms since McRaith left to become the director of the Federal Insurance Office last year ([ICI, March 21, 2011](#)).

### **Considine Departs N.J. for MagnaCare Post**

Meanwhile, Ken Kobylowski is poised to become the new commissioner at the New Jersey Department of Banking and Insurance. He is currently the chief of staff and acting director of banking at the department, and will replace Tom Considine Feb. 10. He has a banking, rather than an insurance, background.

Kobylowski joined the department as chief of staff in February 2010 and took on the additional role as acting director of banking in October 2011. He serves as the chief operating officer for the department with full responsibility for all legislative, regulatory, operational and administrative matters. Prior to joining the department, he was in private law practice for 20 years.

“Ken is a person of considerable talent, expertise and accomplishment, who has been instrumental every single day in the department’s successes over the last two years in his capacity as chief of staff. I thank him for taking on this new challenge and have no doubt he will build on DOBI’s strong record of the last two years,” Gov. Chris Christie said.

Considine is leaving to become the chief operating officer at MagnaCare, which specializes in the self-insured market in New York, New Jersey and Connecticut. Last year, it was one of the companies that settled a dispute with the New York attorney general over the accuracy of listings in online health care provider networks (*see related article elsewhere in this edition*).

During Considine’s tenure, the department has become decidedly more insurer-friendly, leading to nearly 60 new insurers being admitted in the state and 64 other carriers writing policies in new lines of business. Considine is also credited with rewriting or repealing a number of other regulations dealing with advertising reviews and semi-annual report filings. He was also instrumental in reforming New Jersey’s reinsurance and surplus lines laws, and in establishing New Jersey’s captive insurance market.

Still pending is the reform of personal injury protection regulations, which are being rewritten and will be put out for additional public comment.

“When the governor named me commissioner in January 2010, I said that we would hang out a sign saying New Jersey is open for business for financial services companies,” Considine said. “I am proud of the achievements and inroads the department has made in bringing a seismic cultural change that promotes growth in the banking and insurance industries as demonstrated by our repeal or scale-back of 21 burdensome regulations, as well as the reduction of our new product review and approval time by up to 58 percent.”

## **Upcoming Conferences Examine Producer Marketing Materials, Regulatory Impacts on Insurers, Fraud Management**

It is one of the most critical areas of insurance advertising, yet one that not every company addresses properly.

We’re talking about the review of producer-generated advertising and marketing materials – an evergreen issue on regulator’s watch lists that can lead to sanctions if an insurance company doesn’t have a good compliance plan to monitor them.

If your company doesn’t have one, or it could be improved, consider attending the annual meeting of the Insurance Advertising Compliance Association. The IAdCA meeting is March 28-20 at the Hyatt at Olive 8 Hotel in Seattle, and will feature a session about producer advertising from industry compliance expert Cailie Currin, president and CEO of

### [Currin Compliance Services.](#)

It is one of three industry meetings in the next few months that should be of interest to compliance professionals. Also coming are the annual meetings of the National School on Market Regulation and the Insurance Fraud Management Conference.

The IAdCA is ideal for those involved in the creation and compliance review of advertising and marketing materials. It's the best place there is to find out how to meet legal, compliance and marketing requirements and still preserve the sizzle in your company's marketing materials.

Knowing what producers are saying in the marketplace is one of those compliance requirements that can't be ignored. "If a company doesn't know what's out there, they could have a liability issue," warns Currin, whose company has a staff dedicated exclusively to advertising and producer compliance. It sees a lot.

"Regulators are looking at invitations to sales seminars, and companies should, too," she said. Insurers should also watch to see how their producers are referring to their products.

"We look at ads that no one else is reviewing regularly and see producers not calling annuities what they are – annuities. Instead, we see them calling a fixed indexed annuity a 'safe money account' or a 'smart money account,' rather than what it is."

Currin says she and her team also have seen producers discussing guarantees that could be misleading as they pertain to what's actually guaranteed in the insurance or annuity contract. One common problem: comparisons of insurance products to certificates of deposit.

Currin will be discussing ways to address such issues, and her presentation will be packed with examples of producer advertising, both good and bad. She said the presentation will be "on an advanced level," so expect more than Producer Advertising 101.

Also on the IAdCA agenda are several sessions about social media, a regulator panel featuring Leslie Krier of Washington and Jim Mumford of Iowa, who will talk about advertising filing procedures, advertising violations, specific state advertising regulations and what is expected of companies doing business in those states.

The meeting will also feature discussions about:

- fixed and variable life insurance and annuities;
- health insurance;
- long-term care insurance;
- property & casualty lines;
- state market conduct issues and developments;
- variable product advertising;
- Internet advertising compliance;
- threats associated with today's technologies and how to use them responsibly.

The meeting also features a keynote speech about leadership by Howard, Behar, one of the founders of Starbucks. Register by Feb. 8 and you'll have a chance to win one of 10 copies of his book, [\*It's Not About the Coffee: Lessons on Putting People First from a Life at Starbucks.\*](#)

[Registration information](#) and [the agenda](#) are on the IAdCA website. Registration is \$575 for first-time attendees and \$475 when more than one person is attending from the same company (with a \$50 discount for those who have attended previous IAdCA meetings).

Need another reason to go? Insurance Compliance Insight is a conference sponsor, so you have a nice opportunity to stop by and say hello.

Elsewhere, registration deadlines are approaching for two other industry conferences that should be of interest to compliance professionals and fraud fighters.

### **IRES Foundation's National School on Market Regulation**

This year's National School on Market Regulation, presented by the IRES Foundation, is being held April 15-17 at the Four Seasons Hotel in Austin, Texas.

The school's opening session, Emerging Issues in Market Regulation, kicks the school off in fine style. There, industry experts and seasoned regulators will discuss emerging developments like:

- extraordinary data requests before and during a market conduct action;
- new exam testing methodologies;
- fines without notice;
- requests for self-audit and confession during exams;
- regulators' use of social media in market analysis; and
- interstate collaboration.

Another all-regulator panel will discuss emerging developments in regulation, including questions from those attending the conference.

Another noted feature of the IRES School is its opportunity to schedule private appointments with senior insurance regulators. "They say it's not what you know, it's who you know. The IRES Foundation's annual school delivers both for the regulatory professional ... necessary knowledge and valuable networking," says Mark Le Master of SafeAuto Insurance, who is helping to plan this year's school.

Those one-on-one conferences will occur over 7½ hours during the two-day event. This year's school has confirmations from regulators in a dozen states – California, Maryland, Michigan, Missouri, Nevada, New Hampshire, New Jersey, Ohio, Texas, Washington, West Virginia and Wisconsin.

Also on the school's curriculum are sessions addressing:

- the impact of risk-based financial exams on insurance compliance officers;
- state-specific criteria used to assess penalties and fines;
- changes in the continuum of regulatory oversight, and what industry can expect going forward;
- compliance audits and reporting;
- how to salvage the outcome when bad things happen during a market conduct action;
- recent developments to comply with Office of Foreign Asset Controls requirements;
- best practices for social media policies and procedures; and
- how to craft a corrective plan insurers and regulators can live with.

[An agenda](#) and complete meeting details have been posted on [the school website](#).

[A \\$100 early-bird registration discount](#) applies through March 31.

### **Insurance Fraud Management Conference**

If you or your special investigations unit needs a deep dive into insurance fraud, you can't pick a better meeting to take it than the Insurance Fraud Management Conference. This year's event is March 25-28 at the Arizona Grand Resort in Phoenix.

Organizers say the conference is a great opportunity to discover how others who work in SIUs are working to stay a step ahead of insurance fraud schemes and find ways to investigate perpetrators effectively, but without blowing the investigation budget.

The 2012 agenda features topics about:

- managing analytics;
- SIU resource analysis;
- rate evasion detection;
- forensic accounting;
- the impact of mortgage fraud and foreclosures on insurers;
- advances in predictive modeling;
- alternative litigation strategies;
- training investigators; and
- commercial property thefts and cargo losses.

The [conference website](#) has information about [registration](#), [hotel accommodations](#) and [a complete agenda](#). You can save \$100 on registration fees through March 7.

## Insurance Regulations, Bulletins & Legislation

### Health Insurance

Connecticut [Bulletin HC-89](#) has information about annual filing requirements for health benefit plans. It includes the filing form and a certificate of compliance as attachments.

Iowa has rescinded [IAC 191-76](#), External Review, and adopted a new Chapter 76 with the same title.

Iowa has posted [the Annual Reporting Form and the Basic and Standard Plan Experience Report](#) for the Iowa Individual Health Benefit Reinsurance Program. Insurers, HMOs and organized delivery systems are among those required to complete the report by March 15.

### Life Insurance & Annuities

New York [Proposed Second Amendment to Insurance Regulation 151](#), Valuation of Annuity, Single Premium Life Insurance, Guaranteed Interest Contract and Other Deposit Reserves, would add a new subsection to address the use of substandard annuity mortality tables in valuing impaired lives under individual, single-premium immediate annuities.

### Insurance Fraud

The American Insurance Association and the Property Casualty Insurers Association of America are among those applauding the Florida House Civil Justice Subcommittee's passage of [HB 119](#), which replaces Florida's current flawed Personal Injury Protection mandatory no-fault automobile insurance coverage with Emergency Care Coverage. HB 119 would change the way accident reports are taken, provide coverage limits, establish a schedule of maximum charges, create a list of diagnostic tests deemed not to be medically necessary and control attorneys' fees. Both groups support repealing PIP and view the creation of ECC coverage as a major step in eliminating fraud and said the bill would maintain emergency care coverage but deter fraudulent claims. HB 119 is now being considered by the Economic Affairs Committee.

Kansas is looking at clarifying its law requiring insurers to have anti-fraud plans. [HB 2485](#) would require insurers to submit their plans to the insurance department. Current law merely requires a plan. Insurers also would have to include a fraud warning with all claims and application forms. It would clearly state that submitting false or fraudulent information is a crime. The language is based on the Coalition's model warning.

The New Hampshire legislature is debating a bill to define the venue in which a fraud case could start. [SB 379](#) clearly says that a fraud case can begin in a) the county where the fraud occurred; or b) the county in which the insurer has its offices and received the suspected fraudulent information; or c) where the policy provides coverage.

New Hampshire has adopted [Rule Ins 4601](#), which expands the standards for SIUs and anti-fraud plans. Current law requires insurers to have either an SIU or fraud plan, but the new rule goes into more detail about how an SIU or the insurer's vendor SIU must operate. Plans must be submitted to the insurance department within 90 days of receiving a certificate of authority, and every five years thereafter. Revisions must be submitted within 30 days of the change. Insurers also must state whether they've implemented public outreach efforts about fraud, though plans aren't required. All plans are considered confidential.

New Jersey has several fraud bills in the hopper, in addition to [AB 944](#), a comprehensive auto fraud bill. [AB 1125](#) would protect an innocent spouse when the other

spouse commits fraud. The insurer would pay the innocent spouse for losses incurred by the guilty spouse's scam. [AB 243/SB 545](#) make it a crime for a health provider to waive or rebate an insured's deductible or co-pay.

### Producers, Brokers & Adjusters

Florida [Proposed Rule 69B-213](#) would bring rules pertaining to customer service representatives in line with current statutes. A rule development workshop has been scheduled for Feb. 22.

A Kentucky [Jan. 6 announcement](#) removes the limit for the number of times an applicant may retake an examination.

### Property & Casualty Insurance

A California [Jan. 18 notice](#) is a reminder of the requirement of a sworn statement by policyholders who purchased nonadmitted insurance without using a surplus line broker.

A Montana [notice](#) alerts medical malpractice insurers of the requirement to file a new report by April 1. The report form is included in the notice.

Oklahoma and the NAIC will be hosting a National Tornado Preparedness Summit March 11-13 at the Cox Convention Center in Oklahoma City. The goal of the summit is to improve tornado preparedness, response, recovery and mitigation by using lessons learned from past disasters and sharing knowledge of state-of-the-art programs. More information is at [www.tornadosummit.com](http://www.tornadosummit.com).

### State Regulation of Insurance

New Mexico [Bulletin 2012-001](#) establishes the interest rate to be applied to unpaid claims after 45 days after required proof of loss has been furnished.

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Jan. 30, 2012

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