Redomestication Strategy to Lower Premium Taxes

By Steven L. Imber and Robert B. Sullivan

The redomestication of an insurance company is the process of changing an insurer’s legal state of incorporation. Redomestications have become a means for insurers to reduce the impact of their retaliatory taxes. In recent years, a number of prominent insurance companies such as Pacific Life Insurance Company and American Family Life Assurance Company have successfully redomesticated to their new states of domicile.

How do insurance companies, which have redomesticated, reduce their retaliatory taxes? Take for example a state such as Oklahoma, which has a 2.25% premium tax. Domestic insurance companies in Oklahoma pay a 2.25% premium tax on business written in their home state and in many other states, even if those states normally have a premium tax rate less than 2.25%. This is due to retaliatory tax laws affecting insurance companies doing business in other states. For example, states such as Iowa and Nebraska, which have a 1% premium tax, Ohio, which has a 1.4% premium tax, and South Carolina, (continued on page 4)

Association Group Health Insurance, Part 1

Due Diligence and Master Policy Issuance

By Jennifer L. Osborn

Given the bad press that association group coverage has received over the past decade, it is no wonder that this form of health insurance is portrayed as the black sheep of the industry. However, many insurance carriers offer or have considered offering health insurance coverage to an association, either due to a desire to offer a national group product or a request from an association wanting to cover its members. This is the first article in a two-part series that explores some of the common questions we have been asked regarding association group coverage with respect to due diligence, issuance of coverage, certificate requirements, termination of coverage and other regulatory concerns. This article discusses the first two of these issues.

Due Diligence

We recommend that any carrier that considers offering health insurance coverage through an association first conduct a thorough due diligence review of the association to ensure that the association satisfies the requirements for a legitimate association under (continued on page 5)
Health Insurance Rescissions

During the 2008 Winter National Meeting, the NAIC Regulatory Framework Task Force issued a discussion draft of a questionnaire that it ultimately plans to distribute to health insurance carriers regarding the rescission of individually underwritten health insurance policies, including association policies that are underwritten on an individual basis, and claims denials based on preexisting condition exclusions. The purpose of the questionnaire is to collect information about the industry’s current practices in these areas so that the Task Force can develop a number of alternative proposals for the NAIC to consider in addressing these issues. The Task Force specifically mentioned the use of independent review as a possible means to address policy rescissions and preexisting condition exclusion denials. The Task Force indicated that a small subgroup of volunteers would work to finalize the survey by late-January or early-February 2009. The survey results will be used to complete the Task Force’s informational paper analyzing these issues by June 2009.

Producer Licensing Exemptions

The NAIC Market Regulation and Consumer Affairs Committee adopted revised uniform producer licensing standards designed to clarify the licensing exemptions related to multi-state commercial lines and commission sharing. The revised licensing standards had previously been adopted by the NAIC Producer Licensing Working Group.

The licensing standard for the multi-state commercial lines exemption was revised to clarify that it applies at a minimum to admitted business. However, the Market Regulation and Consumer Affairs Committee declined to clarify whether the exemption should be expanded to include surplus lines business, indicating that any future consideration of this particular issue should be coordinated with the NAIC Surplus Lines Task Force.

The Market Regulation and Consumer Affairs Committee also modified the licensing standard for the commission sharing exemption to clarify that the exception to the exemption for payments that would violate other state laws is not limited solely to state anti-rebating statutes, but may include other state laws that would limit the application of the exemption. Furthermore, it was clarified that states should not limit the exemption to individual producers or particular lines of insurance and should not apply the exemption based on distinctions between “override commissions” and other forms of compensation. Rather, the Market Regulation and Consumer Affairs Committee indicated that the exemption should apply if the state determines that the activity does not involve the sale, solicitation or negotiation of insurance and the payment does not violate other state laws.

Annual Statement Disclosures

The NAIC Statutory Accounting Principles Working Group adopted a proposal during the 2008 Winter National Meeting that will require insurers to disclose their credit derivative risks in greater detail beginning with the annual financial statement ending as of Dec. 31, 2008. For more detail regarding the new disclosure requirements, see the NAIC Corner in the Winter 2008 Edition of Insurance Business and Regulatory News.

For additional information regarding these issues, you may contact Justin Liby at (913) 234-7427 or jliby@polsinelli.com.
Insurance Rights for Deployed Service Members

By Jeffrey S. Bottenberg

Due to the ongoing wars in Iraq and Afghanistan, members of the U.S. military are experiencing continued, repeated deployments to these war zones. Therefore, insurers must know the applicable federal and state laws that protect the rights of deployed service members with respect to civilian insurance coverage. This article addresses those laws affecting life insurance, health insurance, and property and casualty insurance.

Life Insurance

The Servicemembers Civil Relief Act (SCRA) protects certain individual life insurance policies against lapse, termination or forfeiture due to nonpayment of premium during the period of active duty military service, plus an additional two years. In order to receive the protections under SCRA, the insured must apply with the Secretary of Veteran’s Affairs. The law ensures protection of up to $400,000 in coverage, provided the policy has been in-force for at least 180 days prior to the insured’s entry into military service and the policy contains a provision that benefits cannot be limited, reduced or excluded because of military service. Furthermore, the policy may not require additional premiums due to military service. During the period of protection, the VA guarantees that the premiums will be paid, but the service member cannot receive dividends, take out a policy loan or surrender the policy for cash without the VA’s approval. The service member must still pay the premiums, plus interest, for the protected period within two years after release from active duty or the insurer may treat such amount due as a policy loan on the policy. If the premium due is treated as a policy loan and the cash surrender value is insufficient to support the full value of the loan, the federal government will pay the insurer the difference between the amount due and the cash surrender value. In that event, the amount paid by the federal government will be treated as a debt owed to the government by the service member.

Health Insurance

Under the Uniformed Services and Reemployment Rights Act (USERRA), which primarily concerns military reservists, an employer-sponsored group health plan may cancel a member who is called to active duty for more than 30 days, because the employee and his dependents would be covered under the federal military health plan, Tricare. USERRA, however, also provides continuation rights that allow the employee to continue coverage for up to 24 months. The employer may require the employee to pay up to 102 percent of the entire premium, plus costs, to continue the employer-sponsored coverage. If an employee elects these continuation rights, the employer’s plan would be the primary plan, and Tricare would be the secondary plan. For both employer and non-employer-sponsored health plans, reinstatement of coverage is required for reservists who are discharged from active duty without imposing exclusions or waiting periods, except as to those injuries incurred or aggravated by military service.

For non-employer sponsored health plans, the reservist must apply for reinstatement within 120 days after release from active duty or termination of federal health care benefits. The required timeframes for requesting reinstatement of coverage under employer-sponsored health plans depend on the length of service.

In 2005, Kansas enacted similar protections for the individual health insurance plans of Kansas residents activated for military service. Kansas law requires reinstatement into the same individual coverage with the same health plan that had lapsed as a result of activation for military service or commencement of coverage under Tricare. Without medical underwriting and in the same rating tier held prior to activation or becoming covered under Tricare, subject to payment of the current premium charged to other persons of the same age and gender, reinstatement, except for cases of adoption or birth that occurred during active duty, must be in the same membership type, or a membership type covering fewer persons, that the service member held prior to lapsing the individual coverage and at the same or higher deductible level. The service member must have received an Honorable Discharge in order to be reinstated.

Several other states have enacted similar provisions regarding reinstatement of individual health insurance policies.

Property and Casualty Insurance

The SCRA allows a reservist to suspend health care and legal professional liability insurance during deployment and to reinstate such coverage within 30 days after release of active duty. The reinstated coverage must continue for at least the balance of the period for which coverage would have continued had the policy not been suspended. The SCRA also provides a stay of proceedings for damages regarding professional negligence until the end of the coverage suspension for acts that occurred before or during the coverage suspension if the insurance would normally cover the type of alleged professional negligence. Such stay shall be excluded from any applicable statute of limitations.

In addition, Kansas law prohibits the cancellation, nonrenewal, premium increase or adverse tier placement with respect to the personal insurance lines of a Kansas resident, or the resident’s spouse and dependents, due to a deployment outside the borders of the United States. Personal insurance lines include automobile, motorcycle, homeowners and non-commercial dwelling fire insurance. Moreover, the SCRA allows active duty service members to request a 90-day stay in any civil action filed against them, and the judge may grant additional delays if warranted. Therefore, property and casualty insurers should be aware of this protection if they are defending/initiating actions involving service members.
United Healthcare Multi-State Settlement

In January, the Missouri Department of Insurance announced its participation in the national settlement agreement with various United Healthcare companies resulting from the Multi-State Market Conduct Examination into the companies’ claims practices. Missouri will receive $737,758.63, which will be paid into the Missouri State School Fund. The United Healthcare companies also agreed to make restitution to health care providers and insureds and to take various corrective actions.

Proposed Missouri Regulation

Proposed amendment to 20 C.S.R. 400-1.70, permitting use of 2001CSO Preferred Class Structure Mortality Table in place of 2001CSO Smoker or Nonsmoker Mortality Table as the minimum valuation standard under certain circumstances for policies issued on or after Jan. 1, 2007.

Proposed Kansas Regulations


Proposed new K.A.R. 40-4-37v, requiring training of each licensed agent soliciting long-term care partnership program policies.


Redomestication Strategy to Lower Premium Taxes

(continued from page 1)

which has a 1.25% premium tax for accident and health business, will charge Oklahoma domestics insurers a premium tax of 2.25% for business written in their states, because Oklahoma charges domestic insurance companies in Iowa, Nebraska, Ohio and South Carolina 2.25% for any business written in Oklahoma.

States such as Iowa, Nebraska, New Hampshire, Ohio and South Carolina have intentionally lowered their premium rates to reduce the retaliatory taxes paid by their domestic insurers, to encourage new insurance company formation in their states, and to encourage insurers in other states to redomesticate to their respective states and potentially expand the number of insurance jobs in their states. According to a study conducted by Ernst & Young’s Quantitative Economics and Statistics Group, which issued a report (the “E & Y Report”) on Feb. 14, 2005, between 1998 through 2003, Ohio, which lowered its premium tax rate from 2.5% to 1.4%, had the most net redomestications into its state, while California had the largest number of net redomestications out of its state.

While a number of insurers have successfully redomesticated to states with lower premium tax rates in recent years … it is important that insurance company senior management evaluate and analyze other factors and issues when deciding whether to redomesticate to another state. These issues/factors include but are not limited to: (1) whether a “bricks and mortar” physical presence is required in the prospective domiciliary state and whether this requirement can be met by a sales office, administrative office, etc.; (2) whether the prospective domiciliary state has a director residency requirement; (3) the prospective domiciliary state’s insurance regulatory environment.

When evaluating the insurance regulatory environment, factors such as the insurance regulators’ reputation among other state insurance regulators, attitude towards the insurance industry, whether examinations are conducted by insurance department personnel or outsourced to a third party company, are just a few of the factors to consider when evaluating the insurance regulatory environment; (4) whether the prospective domiciliary state has adopted the NAIC Model Redomestication Act; (5) how the new domiciliary insurance regulator determines extraordinary dividends.

We have successfully redomesticated a number of insurance companies and would be happy to assist your company evaluate whether redomestication may be an appropriate option. If you have any questions regarding this article, please contact Steve Imber at (913) 234-7469 or simber@polsinelli.com or Robert Sullivan at (816) 360-4151 or rsullivan@polsinelli.com.
Insurers have also encountered instances in which an association group coverage frequently have to contend with a marketer’s mistaken belief that licensure as an insurance producer is not

Provisions Model Act (the “Group Model Act”) for group coverage

standards established under Section 4.E. of the new NAIC Group

covered by a group policy. Ideally, the association should meet the

(continued from page 1)

• The association shall: (1) have at the outset a minimum of 100

members; (2) have members with a shared or common purpose

that is not primarily a business or customer relationship; (3)

have been organized and maintained in good faith primarily

for purposes other than for obtaining insurance; (4) have been

in active existence for at least one year; and (5) have a constitu-

tion and by-laws providing for regular meetings, collection of
dues and member voting privileges, as well as member repre-
sentation on the governing board and committees.

• An association shall not be controlled by an insurer as

evidenced by the operation of the association. The following

factors are indicative of whether the association is insurer-

controlled: (1) common board members, officers, executives or

employees; (2) common ownership; or (3) common use of the

same office space or equipment.

• An association may use the solicitation of insurance as one

of its methods to obtain new members. A commissioner

shall consider whether the association’s primary method of

obtaining new members is through the solicitation of insur-

ance, but shall not use this determination as the sole criteria

for disapproving the group.

We also recommend carefully evaluating and overseeing the

manner in which coverage will be marketed. Insurers offering as-

sociation group coverage frequently have to contend with a marketer’s mistaken belief that licensure as an insurance producer is not

required to sell certain products in the association group market. Insurers have also encountered instances in which an association

has “leased” out group health insurance products to other entities

who made those products available to the other entities’ members.

Policy Issuance

After resolving any due diligence concerns, a carrier considering offering association group coverage is likely to next ask, “Where?”

Several options are available. (1) Issue coverage to the association directly in the association’s state of domicile or its principle place

of business; (2) Issue coverage to the association directly in a state

where the association has a business or statutory office; or (3) Issue

coverage to a trust for the benefit of the association’s members in

any given state.

There are limitations with each of these options. First, an asso-
ciation may be domiciled in a state with a group health law that
does not define association group health insurance. If so, then it

may be impossible to issue an association group policy in that state

that would be recognized as valid in other states. Alternatively, a
state regulator (or a court) may assert that a carrier was forum-

shopping if it issued a master policy in a state where it does not

have a significant relationship, even if all the formal acts of creating

the insurance contract were conducted in that state. Finally, there

may be more regulatory hurdles or prohibitions in some states if

coverage is issued to a trust rather than directly to the association.

In addition, the carrier will need to determine whether it will

be permitted to write association group coverage in the states

in which it intends to market. For example, some states will not

allow individual underwriting of any group coverage. As a result,
in these states, a carrier would be prevented from offering any

association group products that the carrier intends to individu-

ally underwrite. Moreover, depending on the product marketed,
the association group coverage could be subject to a state’s small
employer law requirements.

If you have any questions about this article, please contact Jennifer
Osborn at (913) 234-7472 or at josborn@polsinelli.com.

American Healthcare Specialty is an excess and surplus shell

authorized in 22 states.

Property and casualty shell admitted in 50 states.

Bane One Kentucky, licensed in five states (IN, KY, OK, TN, TX),
is being sold as a life and health shell.

The Doctors’ Life, licensed in seven states (AZ, CA, HI, MT, NV, TX, WY) is being sold as a life and health shell.

Westward Life is licensed in 35 states and being sold as a life

and health shell.

USA Agencies Direct is licensed in 16 states and domiciled in

New York and is being sold as a P&C shell.

Maine Bonding and Casualty Company is licensed in 15

jurisdictions (DC, AK, AR, KY, ME, MA, NE, NH, ND, OH, OR, RI, SD, VT, WA) and is being sold as a P&C shell.

Maryland Insurance Company is licensed in 18 jurisdictions

(DC, AL, AK, AR, ID, IL, IA, KY, LA, NE, NM, ND, OK, OR, SD, TX, WA, WI) and is being sold as a P&C shell.

National Standard Insurance Company is licensed in 17 jurisdic-
tions (DC, AL, AK, AR, ID, IA, KY, LA, NE, NM, ND, OH, OK, OR, SD, TX, WA) and is being sold as a P&C shell.

For more information, contact Jason Mergio at Merger and Acquisi-
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Insurance Companies for Sale

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Association Group Health Insurance, Part 1

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state laws defining an association group that is permitted to be

covered by a group policy. Ideally, the association should meet the

standards established under Section 4.E. of the new NAIC Group

Health Insurance Definition and Group Health Insurance Standard

Provisions Model Act (the “Group Model Act”) for group coverage

issued to an association. These standards include the following:

• The association shall: (1) have at the outset a minimum of 100

members; (2) have members with a shared or common purpose

that is not primarily a business or customer relationship; (3)

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Insurance Business and Regulatory Law

With decades of experience assisting the insurance industry with corporate transactions and various compliance and regulatory issues across the country, the Insurance Business and Regulatory Group at Polsinelli Shughart PC has the expertise to provide outstanding services to this industry. With four former state insurance department attorneys, including two who served as General Counsel, and five attorneys who were former in-house counsel to various insurance organizations, our attorneys understand the unique needs of our insurance clients on matters involving state insurance departments, state Attorneys General, and other state and federal regulatory agencies.

We routinely handle business and regulatory issues, such as:

- Serving as national outside counsel for various property and casualty insurers, workers’ compensation insurers, life and health insurers, third-party administrators and discount medical plan organizations.
- Conducting corporate mergers and acquisitions.
- Making holding company transaction and other related regulatory filings.
- Completing complex national and multi-state regulatory and compliance research.
- Filing Uniform Certificate of Authority Applications, including Primary, Expansion and Corporate Amendment Applications.
- Conducting national and multi-state licensing and compliance projects for Third Party Administrators, Agencies, Adjusters and Discount Medical Plan Organizations.
- Assisting with Market Conduct Examinations and Financial Examinations, including a Multi-State Market Conduct Examination involving 50 states.
- Assisting with insurance company corporate governance requirements, including the recently amended Model Audit Rule, and development of appropriate committee charters, conflict of interest statements, code of conduct and ethics statements, record retention and destruction policies; whistle blower policies, and others.
- Serving as the Deputy Receiver or General Counsel to the Deputy Receiver with respect to insurance company receiverships.
- Forming captive insurers and risk retention groups and assisting with their ongoing compliance and business issues.

Clients include insurance companies, insurance brokers and agencies, third-party administrators, discount medical plan organizations and associations – virtually any individual or entity subject to regulation by state insurance departments, state Attorneys General or other state agencies. The Insurance Business and Regulatory Group has the expertise and depth to provide quality and responsive legal services to regulated entities in the insurance industry with respect to all of their business and regulatory needs.