

# National Underwriter

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THE LEADER IN PROPERTY & CASUALTY NEWS

IS YOUR AGENCY  
A ROLE MODEL?



For Entry Details,  
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## TOP STORIES OF THE WEEK

### Willis Fires Up Broker Compensation Debate

A public awareness campaign to educate insurance buyers about the evils of contingent commissions launched by Willis last week sparked heated debate at a risk managers meeting. ▶ Page 6

### Flood, Cat Bills Clear House Committee

A Congressional panel voted to move forward on flood insurance legislation and two other natural catastrophe bills. ▶ Page 8

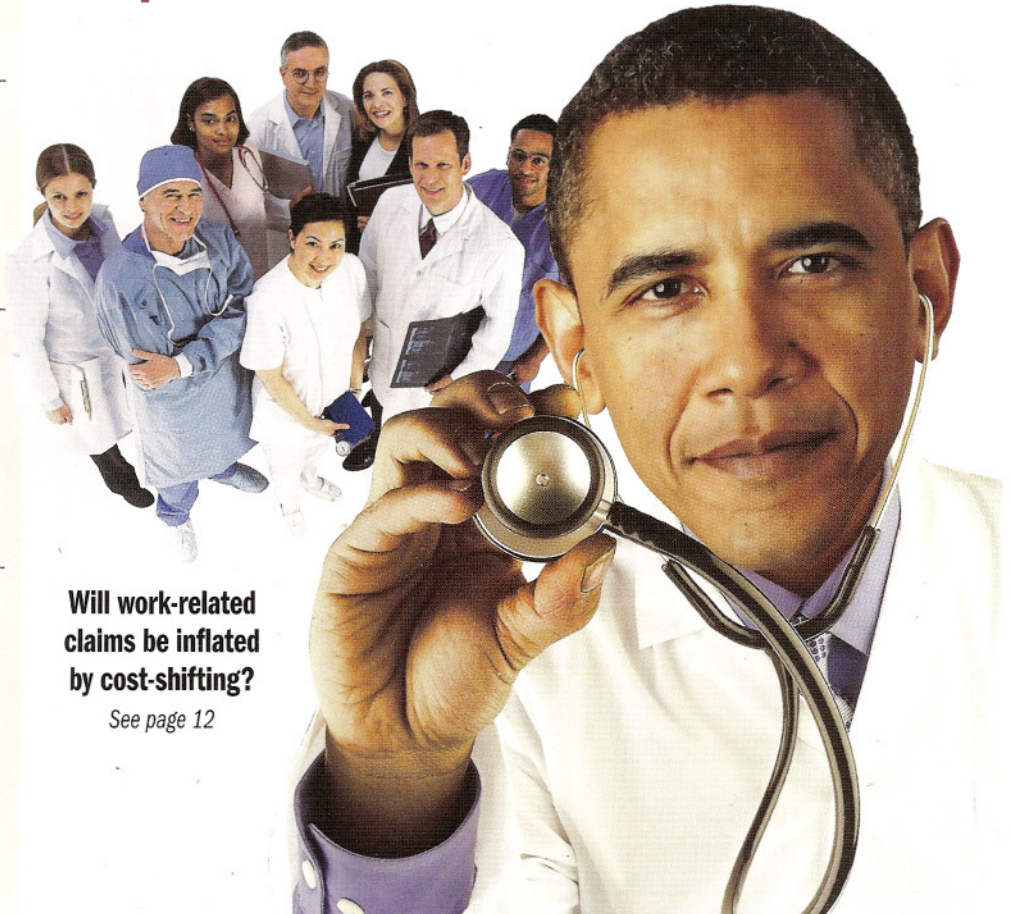
### Oil Spill Costing Hannover Re \$53M

German reinsurer Hannover Re estimated a loss of more than \$50 million from the sinking of the Deepwater Horizon drill rig in the Gulf of Mexico. ▶ Page 10

### Judge Awards \$164,000 In Chinese Drywall Case

A federal judge in Louisiana awarded \$164,049.64 to a family whose home was affected by Chinese drywall in a ruling that came a day after the state Senate passed legislation to prevent insurers from cancelling or nonrenewing policies on properties with Chinese drywall. ▶ Page 24

# Workers' Comp Could Come Up Short In Health Reform



Will work-related claims be inflated by cost-shifting?

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Steve Piontek



Dan Hays

### NU HONORS COMRADES IN ARMS

Retiring *NU* Editors Set High Standards For Staff To Follow

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■ ANOTHER PERSPECTIVE

## Medicare Reporting Rules Require Further Alterations

BY KATIE FOX

**T**HIS PAST MARCH, IMPORTANT legislation was introduced in Congress that will change how Medicare Secondary Payer claims can be handled and managed. This exciting development has important implications for Medicare beneficiaries, corporations, insurers and third-party administrators.

In 1980, Congress adopted the MSP law to preserve the integrity of the Medicare Trust Fund. Medicare is now secondary to other forms of coverage for medical care.

In short, Medicare will pay first in some situations to limit inconvenience to the beneficiary, but will later seek reimbursement of these “conditional payments” from the responsible plans.

Section 111 of the Medicare & Medicaid SCHIP Extension Act of 2007—which set mandatory reporting requirements for workers’ comp and other medical insurers—generated a wave of awareness as well as confusion regarding MSP compliance.

Congress sought to improve awareness by the Center for Medicare and Medicaid Services, an agency of the U.S. Department of Health and Human Services, of all settlements, judgments and awards in workers’ comp and liability matters. Therefore, it was mandated that insurance plans report to CMS payments made to a Medicare beneficiary.

The Medicare & Medicaid SCHIP Extension Act of 2007 created a new and significant enforcement tool for the federal government to pursue MSP claims, both by creating a new reporting process and shifting compliance responsibilities to the newly regulated community.

Plans must now identify Medicare beneficiary status and electronically report to the HHS secretary or face penalties of \$1,000 per day per claim, which could be

devastating to the regulated community.

This transmission of information will be the first of its kind and establish complete awareness on the part of CMS, which will in turn use this knowledge to assert their recovery rights against beneficiaries, insurance carriers and self-insured entities—in most cases after the settlement.

CMS has and continues to adjust the reporting structure, currently scheduled to be in production as of 2011. Many entities



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Katie A. Fox

are exchanging data to check Medicare beneficiary status in preparation for the production of claim-detail reporting.

The recent increase in MSP compliance has caused a great deal of confusion in the months leading up to electronic reporting under Section 111. CMS has now delayed implementation for electronic reporting three times, partly because of the confusion in the industry.

Claims administrators, insurance carriers and self-insureds are particularly vulnerable to these stops and starts, but it is clear that CMS is intent on implementing the law.

While it is appropriate for Medicare to be reimbursed by plans, the practical effect of the law will result in delays and increased litigation. To remedy this practical effect will require a change in the law—to create a process that will promote the public policy of settlement. That change and improvement begins with HR 4796—The Medicare Secondary Payor Enhancement Act of 2010 supported by the Medicare Advocacy Recovery Coalition.

MARC was formed in September 2008 to advocate for the improvement of the MSP program for beneficiaries and affected companies. Formed by a group of entities in the regulated community, the coalition has been collaborating and developing strategic alliances with congressional leaders and government agencies to focus on broader MSP reform.

MARC’s membership is comprised of entities representing virtually every sector of the MSP-regulated community—including attorneys, brokers, insureds, insurance carriers and trade associations, self-insureds, and third-party administrators. Presently, MARC has over 60 active organizations.

H.R. 4796 was introduced by Rep. Patrick Murphy, D-Pa., and co-sponsored by Rep. Tim Murphy, R-Pa., in March 2010. The bill speeds the Medicare Trust Fund’s recovery of Medicare expenses while streamlining the payment process and providing certainty and finality to all parties to a claim.

When enacted, the Medicare Secondary Payer Enhancement Act of 2010 would:

- **Revise the information flow** so that the Medicare Secondary Payer can be determined, and paid, before settlement.

The bill would create an avenue for parties involved in a case to either obtain the conditional payment amount, or allow beneficiaries and others, based upon a good faith estimate from billing records, to calculate and make the reimbursement payment to the Medicare Trust Fund directly.

Finality is achieved by establishing a time period for CMS to respond, or the payment becomes the final MSP amount and the MSP obligation is completed. CMS can dispute the payment amount and pursue resolution through an administrative appeals process.

- **Establish the right of appeal.** The bill would give non-group health plans the same right of appeal through an administrative law judge and the federal court system as group health plans enjoy today.

- **Set MSP recovery thresholds.** To eliminate the waste and expense associated with small-dollar MSP recoveries, the bill would create a \$5,000 threshold, measured by the settle-

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## MEDICARE REPORTING

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ment or other payment, below which parties are exempt from all MSP obligations.

■ **Take out of the reporting process** Social Security numbers and health insurance card numbers. To protect beneficiaries and their privacy rights, the legislation will give CMS one year to adopt a system of reporting without requiring responsible reporting entities to obtain these sensitive numbers

## BROKERS FACE OFF

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have had to give up the compensation as part of the transaction.

That disadvantage no longer exists.

The important thing is disclosing all compensation to the client and showing what benefits the client gets from the insurance arrangement and why, said Mr. Gault. "It is about delivering service and doing what is best for our clients."

Responding to questions about contingents, Mr. Gault pointed out that at his firm's brokers have no idea what the arrangements are, that they receive no financial benefit from them, and they do not know how the arrangements would benefit the firm. He also said that having a large book of business with an individual carrier can allow the broker to influence a carrier's decisions to a Gallagher client's advantage.

William J. Kelly, president of WJK Advisory, LLC, and a former president of RIMS, discussed what risk managers should do to control the compensation arrangements.

He noted that the most important thing is to lay out the terms of the arrangement in a well-crafted request for proposal. He added that buyers should give the broker plenty of time to thoughtfully reply to the proposal.

Mr. Kelly pointed to literature RIMS has available to members laying out the different compensation arrangements.

In separate news prior to the RIMS meeting, Connecticut Superior Court Judge Kevin G. Dubay, in Middletown, ruled on April 19 that Acordia, now Wells Fargo Insurance, was guilty of deceptive trade practices for not disclosing to its clients a special contingent compensation agreement it had with five insurers. For more details of the ruling, which came after a non-jury civil trial, see "Judge Finds Acordia Brokerage Commission Setup 'Deceptive'" on *NU's* Online News Service. ■

from a beneficiary.

■ **Set a limitations period** for MSP claims. The MSPEA will clarify that the government has a three-year period to assert its claim from the date of a Section 111 report.

■ **Revise reporting penalties.** The bill will correct the current Section 111 penalty provisions to provide the government with enforcement discretion and ensure proportional penalties, and require the Department of Health and Human Services to develop safe harbors for meeting reporting requirements.

## NU AGENCY AWARD

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keting," "Customer Service," "Technology and Operations," as well as "Recruitment and Training."

The major objective of the award program remains the same—to shine a national spotlight on agencies that serve as role models for their peers. To that end, the winning agencies will be profiled in the Oct. 4 cover story of *NU*, as well as in the November issue of *AA&B*.

Principals from the winning agencies will also participate in a roundtable discussion on "The Future of the Independent Agent," hosted by the two publications, with edited highlights appearing in the Nov. 2 edition of *NU* and the December issue of *AA&B*.

For your agency to be considered, you must send in a completed entry form (including essay questions about the agency's operations and approach in the various award categories), along with a sample proposal for a new or renewal account so the judges can see how an agency positions itself to buyers.

Although a third-party nomination is not required to enter the award program, *NU* and *AA&B* welcome nominations from insurance carriers or others doing business with independent agencies to call our attention to worthy candidates. Nominations are due by May 15. (See the entry material for further details.)

Agencies will be judged based on a variety of factors, including:

- Growth and development
- Management of client relationships
- Technology aptitude and efficiency
- Innovative solutions to sales challenges
- Projection and maintenance of brand identity

To receive a copy of the award program's rules and an entry form, e-mail [sfriedman@sbmedia.com](mailto:sfriedman@sbmedia.com). Entries are due by July 1. ■

■ **Establish a user fee** to offset the cost of the legislation of \$30 per claim if the optional expedited voluntary payment or pre-settlement request for a final demand of conditional payment option are utilized.

For more information about this bill, please visit [www.marccoalition.com](http://www.marccoalition.com). ■

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## CLIMATE RISK RULES

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said the survey is a first step in helping risk managers, capital providers and insurers to better understand climate risk perception and what role internal risk management and external risk transfer can play in mitigating such risks.

She told *NU* that risk managers unsure of who in their organization is respon-

### TOP CONCERNS

#### BEYOND CLIMATE CHANGE

Risk managers polled in the Zurich/Ceres/PRMIA survey were asked to choose their top five concerns from a list of risk management issues. The top ranking issues were:

- 1 Political and regulatory environment, ranked among the top five by 74.3 percent of respondents
- 2 Regulatory liability, with 41.1 percent
- 3 Fuel/power availability & price, with 37.6 percent
- 4 Natural disaster, selected by 37.1 percent
- 5 Employee recruitment & retention, selected by 35.1 percent of respondents

Climate change, selected by 31.2 percent of participants, ranked eighth behind IT systems & security and financial regulation.

sible for managing the risks will gain more clarity with stepped-up regulatory involvement. So far, she noted, regulations have been obscure.

The survey captured opinions of risk managers from: financial services, insurance services, high-emitting industries, health, medical, government agencies, agricultural and food/beverage. Nearly 60 percent of the survey respondents represented financial or insurance services or high-emitting industries. ■