

GAO report may stop states meddling with RRGs: Expert

Opportunity to assert federal pre-emption seen in legislation

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By Jerry Geisel

BURLINGTON, Vt.—A forthcoming Government Accountability Office report could spur Congress to act on legislation that would make it more difficult for state regulators to illegally interfere with risk retention groups domiciled outside their borders, an attorney for an RRG trade association says.

U.S. Reps. Dennis Moore, D-Kan.; Suzanne Kosmas, D-Fla.; and John Campbell, R-Calif., last month requested that Congress' investigative arm analyze and report to Congress whether nondomiciliary states are trying to regulate RRGs directly or indirectly through filing requirements, fees, waiting periods and other actions before the groups can operate.

Under the federal law that established RRGs, the multiple-owner captives can provide coverage to policyholders nationwide after meeting licensing requirements of one state with minimal interference by regulators in nonchartering states.

Despite this broad federal pre-emption, regulators in nonchartering states continue to take action that federal law clearly bars, RRG advocates say. For example, in 2008 a small Montana-licensed RRG that provided medical stop-loss coverage to California auto dealers gave up its battle with the California Insurance Department, which said the coverage was not permitted under California or federal law.

While the auto dealers' RRG said California, as a nonchartering state, lacked the authority to decide what an RRG can and cannot write, it stopped writing the coverage because it couldn't afford the legal fees necessary to continue the fight.

More recently, a Vermont-chartered RRG offering commercial auto liability coverage to nonprofit organizations has locked horns with the Nevada Insurance Department, which contends that only Nevada-licensed insurers can provide coverage to policyholders in the state.



Dianne Salter, senior vp of Radnor, Pa.-based Jefferson Health System, is the new chair of the Vermont Captive Insurance Assn. PHOTO: MICHAEL MARCOTTE

When the GAO looks into the situation, they are going to hear some “amazing stories” about illegal state interference with RRGs, said Robert Myers, general counsel for the National Risk Retention Assn. and a partner with Morris, Manning & Martin L.L.P. in Washington.

Speaking at the 25th annual Vermont Captive Insurance Assn. conference in Burlington, Vt., earlier this month, Mr. Myers said he is optimistic the GAO report will persuade Congress to pass legislation to curb the ability of nonchartering state regulators to improperly interfere with RRGs.

One possible approach would be for the new Federal Insurance Office included in the sweeping financial services reform legislation that Congress passed last month to resolve RRG-state regulator disputes, Mr. Myers said.

“You'd have one set of rules and not 50 sets of rules” if the Federal Insurance Office issues rules to settle disputes, Mr. Myers said.

RRG advocates also have been pressing lawmakers to expand the Liability Risk Retention Act to allow RRGs to write commercial property coverage. Under the original 1981 law, RRGs could write only product liability and completed operations coverage. Amendments to that law passed in 1986 allowed RRGs to write all commercial casualty coverage except workers compensation.

Meanwhile, one state regulator, Dave Provost, deputy commissioner of the Captive Insurance Division of the Vermont Department of Banking, Insurance, Securities and Health Care Administration, says he “loves” RRGs. “They are about what captives are all about,” enabling employers to help solve insurance coverage problems, he said.

Mr. Provost said about 85 RRGs are licensed in Vermont, more than any other state and comprising just more than one-third of the 250 RRGs operating in the United States.

He said captive formations in Vermont continue to swell, with 22 captives licensed since Jan. 1. That compares with 17 new formations at the same time last year. “I'm looking for at least 40 captives licensed this year,” Mr. Provost said.

While he doesn't see any trends in formations, he noted continued interest by health care providers as pricing by commercial insurers for medical malpractice coverage in many cases has no relationship to claims experience.

“What is going on in the medical malpractice (market using conventional insurance) does not seem sensible,” he said.

While Vermont is home to captives sponsored by 44 companies on the Fortune 100 list, the state's door is open to captives and parents of all sizes, he said.

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