

Insurance Times: Opinion Exchange: Molding Legislation

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A recently introduced bill that proposes to mitigate the effects of mold in homes and commercial buildings puts the proverbial cart before the horse.

That's what the Independent Insurance Agents & Brokers of America (IIABA) says.

IIABA is opposing the bill—the U.S. Toxic Mold Safety Protection Act (H.R. 5040)—introduced in the House of Representatives by Michigan Rep. John Conyers (D) late last month. Among other things, the bill proposes the establishment of an office within the Federal Emergency Management Agency charged with administering a federal toxic mold insurance program patterned after the National Flood Insurance Program.

“Congress must proceed with considerable caution as it debates this or any other federal approach to mold-related insurance claims,” says Maria Berthoud, IIABA senior vice president of federal government affairs. “This bill seeks to establish mold exposure standards, virtually overnight, without the benefit of sound research or a thorough scientific review process.

The crux of the issue is whether exposure to mold causes illness. The Centers for Disease Control and Prevention (CDC) has not established a link between the presence of mold and health conditions. Further, the National Academy of Sciences currently is working on a study of the health effects of mold that is to be released in April.

“How can Congress and other interested parties create an effective mechanism to address the mold issue without a credible scientific foundation clearly establishing a cause-and-effect link between mold and the illnesses purported to be caused by exposure to mold spores?” rhetorically asks Berthoud.

Congress should not get too far down the field until a definitive link can be identified.

“It could be a miscalculation for the federal government to espouse what it believes is credible and useful standards without the comprehensive research that is forthcoming from the National Academy of Sciences,” explains Berthoud. “By moving forward at this time, Congress would be effectively preempting their efforts.”

H.R. 5040 would mandate mold inspections for multi-unit residential property and requires local governments to modify building codes to minimize mold hazards in new construction. Also, it would mandate comprehensive research into mold growth and establish guidelines for preventing indoor mold growth; establish standards for removing mold and provide grants for mold removal from public buildings; authorize tax credits for inspection and remediation of mold hazards; set up a national database of homes infested with mold; and require the Environmental Protection Agency and the Department of Housing and Urban Development to create guidelines for certifying mold inspectors and remediators.

Agents are concerned that the Conyers bill will lead to further explosion in litigation over mold claims, says Robert K. Houton, IIABA Washington representative.

“Growing public concern over the possible health hazards related to mold exposure could inevitably lead to more unfounded lawsuits,” asserts Houton. “Since scientific research has not determined health risks and there exists conflicting information regarding mold, the increasing number of mold claims provide ample opportunity for fraud.”

Some lawyers are manipulating the confusion and lack of clear scientific knowledge. Litigators are seeking to assign responsibility for mold infestations by filing lawsuits against insurance companies, builders and contractors. Many times these lawsuits have little legal standing, but insurance companies are forced to spend thousands of dollars in defense fees, says Houton.

He notes that there are more than 100,000 species of mold and up to 10 percent of the U.S. population is allergic to them according to the CDC. But we don't know for certain yet the relationship between mold and illness.

We don't know enough at this time to create a comprehensive solution that will be effective in addressing the problem. It's best to at least wait for the pending National Academy of Sciences study. p