

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS  
HEALTH, LONG-TERM CARE & HEALTH RETIREMENT ISSUES COMMITTEE  
POINT CLEAR, ALABAMA  
NOVEMBER 17, 2012  
MINUTES

The National Conference of Insurance Legislators (NCOIL) Health, Long-Term Care & Health Retirement Issues Committee met at the Grand Hotel Marriott Resort in Point Clear, Alabama, on Saturday, November 17, 2012, at 9:15 a.m.

Sen. Jake Corman of Pennsylvania, chair of the Committee, presided.

Other members of the Committee present were:

Sen. Ruth Teichman, KS	Sen. Carroll Leavell, NM
Rep. Ron Crimm, KY	Sen. Neil Breslin, NY
Rep. Robert Damron, KY	Assem. Nancy Calhoun, NY
Rep. Tommy Thompson, KY	Rep. Charles Curtiss, TN
Rep. Pete Lund, MI	Rep. Bill Botzow, VT
Rep. George Keiser, ND	Rep. Sarah Copeland Hanzas, VT
Sen. David O'Connell, ND	Del. Harry Keith White, WV
Rep. Don Flanders, NH	

Other legislators present were:

Sen. Travis Holdman, IN	Rep. James Dunnigan, UT
Rep. Steve Riggs, KY	Rep. Kathleen Keenan, VT
Rep. Greg Cromer, LA	Rep. Warren Kitzmiller, VT
Sen. Peter Pirsch, NE	Rep. Tyler August, WI

Also in attendance were:

Susan Nolan, Nolan Associates, NCOIL Executive Director  
Candace Thorson, Nolan Associates, NCOIL Deputy Executive Director  
Ed Stephenson, Nolan Associates, NCOIL Director of Legislative Affairs—DC  
Daniel Valente, Nolan Associates, NCOIL Director of Legislative Affairs

## MINUTES

Upon a motion made and seconded, the Committee unanimously approved the minutes of its July 13, 2012, meeting in Burlington, Vermont.

## ORAL CHEMOTHERAPY COVERAGE

Rep. Cromer reported that oral chemotherapy treatments are becoming more common. He stated that there are currently 20 states with laws regarding coverage for oral chemotherapy treatment. Rep. Cromer said that ten to 15 percent of cancer prescriptions now are administered orally and that about 40 percent of cancer treatments being developed will be administered orally. He stated that there tend to be better results with oral prescriptions because the treatments are specialized and targeted to treat specific genes or cells.

Rep. Cromer said oral treatments are being treated as pharmaceutical benefits and not major medical benefits. Further, he stated that the co-pays for oral treatments often far exceed those of traditional intravenous treatments and that access to care is inhibited for the middle class due to

limited government assistance. He cited a Louisiana law (LA Act 410), which limits the amount of a co-pay for any cancer treatment to \$100, as a way to address the problem.

In response to a question by Sen. Leavell as to how Medicare is handling the use of oral chemotherapy treatments, Rep. Cromer said that Medicare currently treats oral cancer care as a prescription drug, at a very high deductible, rather than as a standard medical treatment. Sen. Leavell then inquired into whether the LA Act 410 changed the Medicare policy to include cancer treatment as a medical care benefit rather than a prescription drug. Rep. Cromer stated that the Act does not change the Medicare policy. Rep. Cromer said that he would be willing to assist any other states considering legislation.

Rep. Keiser commented that the states face an “interesting dilemma” when considering oral chemotherapy coverage requirements. He stated that the Affordable Care Act (ACA) requires each state to identify essential health benefits by January 2013 and that states will have to pay for any benefits not included. He described the coverage of such treatments as a mandate if states are unable to include the treatment as an essential health benefit. Rep. Cromer concurred and added that LA Act 410 prevented any oral chemotherapy benefits covered under a qualified health exchange from being considered mandates.

David Korsh of Blue Cross and Blue Shield Association (BCBSA) said that it is important to consider oral treatment in the essential health benefit package and that consumer costs for such treatments should not be overlooked. He stated that costs for healthcare are rising and that flexibility of plan design would help to control spending. He stated that the BCBSA does not have a position on any state laws regarding oral chemotherapy coverage.

Rep. Keiser added that NCOIL should evaluate studies that measure the effectiveness of oral versus injected cancer treatments before developing a model law.

#### OPIOID-RELATED COSTS

Ms. Thorson reported on a special November 15 session entitled *Wasted: Prescribing Solutions for Opioid Abuse*. She stated that the session had laid groundwork for a possible NCOIL model law. She said speakers addressed the causes and consequences of opioid abuse, various state initiatives, and a Kentucky prescription drug monitoring program.

Ms. Thorson reported that the Workers’ Compensation Insurance Committee decided to hold a joint session at the NCOIL Spring Meeting with the Health, Long-Term Care, and Health Retirement Issues Committee to examine the issue further.

#### LONG-TERM CARE REGULATION AND REFORM

Chara Bray of the National Association of Insurance Commissioners (NAIC) gave a report on NAIC Senior Issues Task Force activity related to long-term care (LTC) insurance, including improvements to the NAIC rate-stability standard contained in the NAIC LTC model. She said that the NAIC adopted amendments to the LTC insurance model in 2000 to address the problem of unstable rates and said that many states have adopted the amended provisions. She noted that the amendments were enacted to incentivize companies to set accurate initial rates to mitigate against subsequent rate changes unless necessary, as well as to establish disincentives for future rate increases. She stated that the provisions have had positive effects, but that more improvements are needed.

Ms. Bray said that the Task Force has established a subgroup to examine how LTC provisions should be improved to ensure adequate pricing. She stated that the subgroup will review draft amendments to its model at the NAIC National Meeting in November 2012 in Washington, D.C. She

also said that the Task Force will hold a public hearing to learn about changes in LTC insurance markets. She said the group will look at trends related to selling of products, profiles of typical purchasers of products, and overall impacts. Ms. Bray concluded that the NAIC has also developed a subgroup of regulators tasked with updating the NAIC consumer publication, *A Shoppers Guide to Long-Term Care*.

Chris Orestis of Life Care Funding Group addressed the Committee about converting a life insurance policy into a private LTC insurance policy. Mr. Orestis stated that there is a LTC funding management crisis due to aging demographics, the economic recession, and the current political environment. He stated that the cost of LTC increases yearly by four to five percent and the average cost for LTC in a nursing home is approximately \$90K per year. He said that the costs to Medicaid increased from \$240B in 2009 to \$427B in 2011. He stated that one of the biggest concerns surrounding the issue is that families are unprepared and uninformed about how to handle costs for LTC.

Mr. Orestis said that because life insurance policies are unqualified assets for Medicaid eligibility, many policyholders are “dumping” their policies, or spending them down, in order to qualify for Medicaid. Mr. Orestis stated that the conversion of a life insurance policy to a LTC funding policy is a qualified spend-down of the asset that would allow consumers to delay their entries into Medicaid and provide them with a monthly revenue stream that would go directly to a LTC provider.

Mr. Orestis said that the LTC system is already under stress and must deal with the fact that since January 2011, the “baby boomer” generation has been turning 65 at a pace of 10K per day. He said that rate will continue, uninterrupted, for 20 years and that the need to look for private-pay options is critical.

Rep. Keiser asked who owns the LTC policy once it is converted. Mr. Orestis stated that the conversion is considered a secondary market conversion that is owned by a third party.

Rep. Botzow asked if the LTC policy, once converted, is considered an asset. Mr. Orestis stated that once converted to LTC insurance, the policy is no longer considered an asset. He said that the policyholder would be considered a beneficiary of a benefit plan and, upon death, any remaining balance would be available to the family.

Rep. Dunnigan asked, among other things, what determines the insurance benefit for the policyholder. Mr. Orestis said that it is a combination of policy dynamics and the health of the consumer. Rep. Dunnigan then asked whether there are any stipulations on the type of facility that can be used. Mr. Orestis stated that a conversion does not dictate the type of facility to be accessed and that the family can determine how the money is used for any type of LTC.

Rep. Damron said that expediting the settlement of policies was important because of the potential consumer need for resources to continue paying for LTC. Rep. Damron then asked if the process is being slowed down by carriers. Mr. Orestis stated that he has not experienced any slowdowns because the policies are typically small and that the average time to enroll someone is less than 30 days.

Sen. Breslin said that he failed to see how the conversions are any different than a life settlement, and he asked if conversions should be regulated any differently. Mr. Orestis stated that he believes that there are significant differences, but that the conversions are currently regulated the same way as life settlements.

Assem. Calhoun asked if conversions are restricted to certain states and if a model law is needed to allow states to provide certain protections. Mr. Orestis stated that there are currently no restrictions

in the states. He stated that consumer protections are already in place because conversions are regulated as a secondary market transaction. He stated that any additional consumer protection could make sure that a consumer is aware of his/her options.

Rep. Keiser expressed concern that this business model could result in insurance companies ultimately recovering any losses by raising premiums. Mr. Orestis stated that he is unsure if the volume is enough to raise premiums.

#### DISCONTINUED INSURANCE PLANS

Rep. Curtiss said that developing a model law to require notifications of discontinued insurance plans could be important. He stated that the model law could require a company to alert consumers when the company plans to close a block of business. He stated that the notification should tell a policyholder about his/her options.

A motion was made by Rep. Curtiss, seconded by Rep. Keiser, to develop a model law regarding insurance company notification to consumers. The motion was approved by unanimous voice vote.

#### HEALTH BENEFITS AND MENTAL HEALTH PARITY

Dianne Bricker of America's Health Insurance Plans (AHIP) stated the essential health benefits provision of the ACA requires coverage of behavioral health and substance abuse treatments for individual and small group markets. In addition, she said that a 2008 federal mental health parity law requires behavioral health and substance abuse treatments coverage. She stated that as a result, an NCOIL *Mental Health Parity Model Act* could be considered redundant, though one exception could be for large group markets.

#### REVIEW OF MENTAL HEALTH PARITY MODEL ACT

Sen. Corman stated that as per the NCOIL bylaws, the Committee needed to review the [NCOIL Mental Health Parity Model Act](#). He said that the Committee either needed to adopt the model act or allow it to sunset.

Rep. Keiser stated that the Committee should consider deferring the review of the Act to the Spring 2013 meeting due to time constraints.

Ms. Nolan then provided background on the model act. She stated that the model is not like other NCOIL model laws because it was developed to recognize different approaches to mental health parity and to provide options to states that elect to pursue legislation.

Upon a motion made by Rep. Keiser, and seconded by Sen. O'Connell, the Committee voted unanimously to defer review of the model act until the Spring 2013 meeting.

#### 2013 COMMITTEE CHARGES

Sen. Corman stated that the 2013 charges would be amended to include the development of a model law for notifications of discontinued insurance plans.

The Committee, upon a motion made by Rep. Damron, unanimously adopted the following amended charges:

- follow impacts of federal reform and take positions as appropriate
- continue to provide guidance to states implementing federal healthcare reform

- consider model law regarding closed blocks of business
- consider resolution regarding licensing of health exchange navigators
- explore issues regarding Medicare and Medicaid
- investigate long-term care insurance issues and approaches
- further examine state activity on mandated oral chemotherapy treatments
- review mental health parity model act, as per bylaws

#### OTHER BUSINESS

Wes Bissett of the Independent Insurance Agents & Brokers of America (IIABA) overviewed concerns regarding licensing of health exchange navigators, including whether they would be well-equipped to guide consumers. He urged the Committee to develop a resolution that would support state licensing and regulation.

Upon a motion made by Sen. Leavell, and seconded by Assem. Calhoun, the Committee voted unanimously to add to the 2013 charges the development of such a resolution.

#### ADJOURNMENT

There being no other business, the Committee adjourned at 10:30 a.m.