

This memo will present a brief synopsis—and then a more detailed report—of action taken at the National Conference of Insurance Legislators (NCOIL) Annual Meeting in Nashville, Tennessee, held from November 21 through 24, 2013. More than 330 state legislators, insurance regulators, federal officials, media, and consumer and industry representatives attended.

Legislators at the Annual Meeting:

*Financial Services & Investment Products Committee*

- determined to further consider a proposed *Pension De-Risking Model Act*

*Health, Long-Term Care & Health Retirement Issues Committee*

- co-adopted NCOIL best practices to curb opioid abuse (*in conjunction with the Workers' Compensation Insurance Committee*)

*International Insurance Issues Committee*

- adopted a resolution reaffirming support for the U.S. state-based system in international insurance regulatory discussions

*Property-Casualty Insurance Committee*

- determined to further consider proposals regarding consumer legal funding
- adopted a resolution calling for a delay of certain *Biggert-Waters Act* rate increases

*Workers' Compensation Insurance Committee*

- co-adopted NCOIL best practices to curb opioid abuse (*in conjunction with the Health, LTC & Health Retirement Issues Committee*)
- adopted a model law regarding volunteer firefighter coverage
- determined to further consider a proposed model regarding agricultural laborer coverage

*Articles of Organization & Bylaws Revision Committee*

- adopted a bylaws amendment to expand Nominating Committee membership

In addition, legislators participated in:

- a symposium on health exchanges
- a general session on Medicaid costs and quality
- a special Life Insurance Committee meeting on principle-based reserving/captives
- a special Property-Casualty Insurance Committee meeting on auto insurance verification
- a keynote luncheon delivered by Congressman Jim Cooper, TN
- a Griffith Foundation legislator luncheon workshop regarding subrogation

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## **FINANCIAL SERVICES & INVESTMENT PRODUCTS**

### **PENSION DE-RISKING**

On November 23, the Committee determined to further consider a proposed *Pension De-Risking Model Act*, including its impacts on defined benefit pension plans and federal preemption. The model law would establish certain state-level protections for retirees whose pension benefits were transferred from a pension plan protected under the Employee Retirement Income Security Act ("ERISA") to a substitute pension benefit plan, such as an annuity, provided by an insurance company licensed and regulated under state law. The proposed model would require regulatory approval for these de-risking transactions, reinsurance or a third-party supplemental guarantee, mandatory disclosures, an opt-out option, creditor protections, and approval for subsequent transfers.

## **HEALTH, LONG-TERM CARE & HEALTH RETIREMENT ISSUES COMMITTEE**

### **BEST PRACTICES TO ADDRESS OPIOID ABUSE**

On November 22, during a joint session with the Workers' Compensation Insurance Committee, the Health, LTC & Health Retirement Issues Committee unanimously adopted proposed NCOIL *Best Practices to Address Opioid Abuse, Misuse, and Diversion*, subsequently adopted by the Executive Committee on November 24. The *Best Practices*, which were expanded following the Summer Meeting in response to a second round of interested-party comments, create a multi-faceted framework for states to compare with and enhance their own reforms.

In adopting the *Best Practices*, legislators determined to consider additional items—including, among others, more in-depth treatment, recovery, and prevention recommendations and the role of Good Samaritan/Safe Harbor laws—in a future version of the document.

The *Best Practices* address how to:

- establish, evaluate, and fund prescription drug monitoring programs (PDMPs) that require real-time reporting
- create strong evidence-based prescribing standards that recognize “one-size-does-not-fit-all” and that crack down on “pill mill” pain clinics
- promote enhanced and effective education of physicians and the public, including opportunities for safe drug disposal
- pursue options for encouraging treatment and prevention, including use of certain drug treatments and of drug courts

## **INTERNATIONAL INSURANCE ISSUES**

### **STATE REGULATION & INTERNATIONAL DISCUSSIONS**

On November 22, the Committee adopted a *Resolution Reaffirming Support for the U.S. State-Based System in International Insurance Regulatory Discussions*, adopted by the Executive Committee on November 24. The resolution reaffirms support for state insurance oversight in response to suggestions that the U.S. consider migrating to a federalized regulatory approach, as posed in a recent Financial Stability Board (FSB) U.S. peer review report. The resolution requests that all representatives of the U.S. in international insurance regulatory discussions advocate positions that are consistent with U.S. state-based oversight. In conjunction with approval of the resolution, NCOIL leadership agreed to form a three-year task force to further address emerging international insurance issues.

## **PROPERTY-CASUALTY INSURANCE COMMITTEE**

### **CONSUMER LEGAL FUNDING**

On November 23, the Committee agreed to continue debate on draft regulation of consumer litigation financing and to leave the door open for a new model law in 2014, perhaps in lieu of NCOIL proposals currently on the table. Committee members discussed initiatives in Tennessee and Indiana to develop legislation that could influence a new NCOIL draft, neither of which would regulate consumer legal financing as a loan, as would a proposed NCOIL *Model Consumer Lawsuit Lending Alignment Bill* sponsored for discussion by Rep. Matt Lehman (IN) that currently is being considered.

Also on the table now is a draft *Civil Justice Funding Model Act*, sponsored by Sen. Neil Breslin (NY), that specifically states that consumer litigation financing is not a loan. The draft model requires certain disclosures, prohibits conflicts of interest and other items, requires registration of third-party funders, and addresses how fees and charges can be calculated and for how long, among other provisions.

An alternative *Consumer Legal Funding Model Act*, sponsored for discussion by Rep. Charles Curtiss (TN), also establishes that such financing is not a loan. The proposed model includes similar disclosure and conflict-of-interest provisions as Sen. Breslin's draft, but takes a different approach to, among other items, the calculation of fees and charges.

### **FLOOD INSURANCE RATES**

On November 22, the Committee adopted a proposed *Resolution Requesting United States Congress to Pass the Homeowners Flood Insurance Affordability Act*, adopted by the Executive Committee on November 24. The resolution specifically supports H.R. 3370 and its Senate companion, SB 1610, which would suspend rate increases called for under the 2012 *Biggert-Waters Flood Insurance Reform Act* until two years after FEMA completes an affordability study, required under *Biggert-Waters*, on the impact of those

increases. The NCOIL resolution also, among other things, urges Congress and FEMA to actively and expeditiously explore the use of private reinsurance to protect against catastrophic losses and to financially stabilize the National Flood Insurance Program (NFIP).

## **WORKERS' COMPENSATION INSURANCE COMMITTEE**

### **BEST PRACTICES TO ADDRESS OPIOID ABUSE**

On November 22, during a joint session with the Health, LTC & Health Retirement Issues Committee (see *Health Committee entry above*), the Workers' Compensation Insurance Committee unanimously adopted *Best Practices to Address Opioid Abuse, Misuse & Diversion*.

### **VOLUNTEER FIREFIGHTER COVERAGE**

On November 21, the Committee unanimously adopted a *Model Act on Workers' Compensation Coverage for Volunteer Firefighters*, subsequently adopted by the Executive Committee on November 24. The model creates a definition of "public employment" that makes a volunteer eligible for workers' comp when he or she performs firefighter-related duties that are not directly related to emergency response. The model also requires state fire marshals to receive yearly rosters of volunteer firefighter personnel and requires an insurance commissioner to establish, every five years, a minimum annual payroll amount per volunteer firefighter—in order to set workers' comp insurance rates. Also included in the model is a drafting note regarding state funding approaches.

### **AGRICULTURAL LABORER COVERAGE**

On November 21, the Committee deferred for further consideration a proposed *Model Act Regarding Workers' Compensation Coverage for Agricultural Laborers*. The proposed model, which may be revised prior to the 2014 Spring Meeting, currently would require an agricultural employer to provide workers' compensation coverage when the employer has an aggregate payroll of at least \$50,000 and pays hourly wages or salaries to, and not on a piecework basis, five (5) or more regular, non-seasonal employees.

## **ARTICLES OF ORGANIZATION & BYLAWS REVISION COMMITTEE**

### **NOMINATING COMMITTEE**

On November 22, the Committee unanimously amended Bylaws Section IV, subsection B.12, to expand membership on the Nominating Committee to all NCOIL past presidents, with the Immediate Past President serving as Chair.

## **MODELS FOR SUNSET/RE-ADOPTION, AS PER BYLAWS**

The Health, Long-Term Care & Health Retirement Issues Committee unanimously agreed to sunset an NCOIL *Mental Health Parity Model Act*, first adopted in 2001, due to related state activity and proposed federal legislation.

The Property-Casualty Insurance Committee deferred, due to time constraints, review of an NCOIL *Post-Assessment Property and Liability Insurance Guaranty Association Model Act* and related amendments. The model establishes a comprehensive framework for the protection of claimants when a p-c insurer becomes insolvent. Proposed amendments would (1) further limit how much a guaranty fund will pay for a claim and (2) more closely align the model's claim-filing deadline requirement to a typical, 24-month state statute of limitations. Legislators originally adopted the guaranty fund model in November 2007.

The Workers' Compensation Insurance Committee unanimously readopted an NCOIL *Model Act Regarding Workers' Compensation Insurance Coverage in Professional Employer Organization (PEO) Relationships*, first adopted in 2007. In conjunction with readopting the model, the Committee approved a 2014 charge to explore issues regarding PEO regulation and to consider possible amendments to the NCOIL model, as warranted. The model currently requires registration of PEOs and, among other things, establishes that workers' comp insurance premiums are determined using a PEO client's risk exposure and claims experience.

## **OTHER SESSIONS**

### **SYMPOSIUM ON HEALTH EXCHANGES**

On November 21, legislators participated in a symposium in which stakeholders offered perspectives on issues surrounding the launch of the Affordable Care Act. Panelists discussed, during sessions entitled

*Exchange Enrollment: What We Know So Far and Healthcare Costs in the ACA Era: Emerging Trends*, consumer outreach efforts in state and federal exchanges, growth of private exchanges, actuarial considerations in insurance premiums, challenges for small businesses, and the impact of healthcare costs on physician care.

Participants included:

- Richard Birhanzel of Accenture
- Amber Goodwin of Enroll America
- Audrey Halvorson of the American Academy of Actuaries (AAA)
- Kevin Kuhlman of the National Federation of Independent Business (NFIB)
- James O'Connor of Milliman, Inc.
- Dr. Barbara McAneny, representing the American Medical Association (AMA)

### **SPECIAL SESSION ON MEDICAID**

On November 23, legislators held a session entitled *A New Era for Medicaid: Measuring Costs & Quality* with experts in the Medicaid field to discuss burgeoning program costs and efforts to maintain quality of care. Speakers discussed the impact of Medicaid expansion on enrollment well as projected demographic changes. Legislators also heard about possible solutions, including an Arkansas expansion model, a Medicaid redesign program in New York, and managed care models for long-term services and supports.

Participants included:

- Tina Brill of Amerigroup
- Senator Kemp Hannon of the NYS Senate Committee on Health
- Matt Salo of the National Association of Medicaid Directors (NAMD)

### **SPECIAL LIFE COMMITTEE SESSION ON PRINCIPLE-BASED RESERVING/CAPTIVES**

On November 22, Life Insurance & Financial Planning Committee members participated in a special session entitled *Principle-Based Reserving (PBR) Coming to the States: How Do Captives Play In?* that offered insight into a proposed reserving method that could replace the current statutory model. Regulators, along with insurer and consumer representatives, discussed the impact of PBR on existing life insurer reserves, insurance department resources, and proposals to address the use of captive reinsurance by life insurers.

Speakers included:

- Birny Birnbaum of the Center for Economic Justice (CEJ)
- Robert Easton of the New York Department of Financial Services (DFS)
- Paul Graham of the American Council of Life Insurers (ACLI)
- Commissioner Julie McPeak of the National Association of Insurance Commissioners (NAIC) PBR Implementation Task Force
- David Provost of the Vermont Department of Financial Regulation (DFR)
- Superintendent Joseph Torti III of the NAIC PBR Implementation Task Force

### **SPECIAL P-C INSURANCE COMMITTEE SESSION ON AUTO INSURANCE VERIFICATION**

On November 22, Property-Casualty Insurance Committee members participated in a special session regarding approaches to verify auto insurance and rein in uninsured motorists. The approaches considered included a model law establishing a web-based, insurer-maintained system that state officials would check on an "as need" basis (*Insurance Industry Committee on Motor Vehicle Administration, IICMVA*); a system matching vehicle registration info against insurer data and then notifying drivers who appear to be uninsured (*Insure-Rite*); and a system using roadside cameras to scan passing license plates and compare them with an interstate database (*National Public Safety Consortium/InsureNet*).

Participants included:

- George Cooper of State Farm, representing the IICMVA
- Richard Kasteler of Insure-Rite
- Jonathan Miller of National Public Safety Consortium/InsureNet
- Birny Birnbaum of the Center for Economic Justice (CEJ)

### **KEYNOTE ADDRESS**

On November 22, Congressman Jim Cooper (TN), a member of the U.S. House Oversight & Government Reform and Armed Services Committees, delivered a keynote address, offering a Washington update and speaking to congressional politics and recent legislative challenges, among other things.

## GRIFFITH FOUNDATION LUNCHEON WORKSHOP

On November 21, legislators participated in a luncheon workshop entitled *Subrogation: Demystifying the Recovery Process*, led by Robert W. Peterson, J.D., professor of law at Santa Clara University. The session explored how subrogation works, as well as its impacts on consumer costs and benefits, on litigation, and on the principle of indemnity, among other things. Legislators attending the session earned credits toward certification by the NCOIL Institute for Insurance Policy.

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In addition, legislators considered the following issues:

- U.S./non-U.S. *accounting standards*
- state *annuity sales and fiduciary responsibility* regulation
- the Interstate Insurance Product Regulation *Compact*
- the *Consumer Financial Protection Bureau* (CFPB)
- *consumer fraud* related to the ACA
- *contingent deferred annuities* (CDA) activity
- White House *cyber-security framework*
- *group supervision* of insurance companies
- *G-S/Is* and state/international regulation
- *heightened insurer capital* rules under Dodd-Frank and Basel III
- a Texas law regarding *life insurance and long-term care*
- *longevity risk* in life insurance
- *new models of care* under the ACA
- *NARAB II* producer licensing legislation
- *Nonadmitted and Reinsurance Reform Act (NRRA)* and captives taxation
- *SAFE Retirement Act*
- *title insurance* regulatory issues
- *trade negotiations* and insurance impacts
- pending *terrorism risk insurance* legislation
- *unclaimed property* activity