

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 San Francisco, California, held from November 19 to 23, 2014. More than 310 state legislators, insurance regulators, federal officials, media, and consumer and industry representatives attended.

Legislators at the Annual Meeting:

Financial Services & Investment Products Committee

- adopted a proposed resolution regarding best practices for pension de-risking through private annuitization
- determined to send a letter to the Consumer Financial Protection Bureau (CFPB) seeking clarification regarding CFPB actions related to state regulation and asking for formal NCOIL-CFPB dialogue

Health, LTC & Health Retirement Issues Committee

- declined to adopt a proposed resolution regarding coverage for obesity treatment and prevention

International Insurance Issues Committee

- determined to send a letter to FIO, Federal Reserve Board, and NAIC officials re: NCOIL inclusion in “Team USA”

Property-Casualty Insurance Committee

- adopted a proposed model law on Medicaid interception of insurance payments
- deferred, due to time constraints, bylaws-required reviews of the NCOIL insurance scoring and guaranty fund model acts
- declined to adopt proposed model legislation regarding consumer litigation financing

Unclaimed Property Task Force/Life Insurance & Financial Planning Committee

- adopted enhancements to the NCOIL *Model Unclaimed Life Insurance Benefits Act*

Workers’ Compensation Insurance Committee

- adopted a resolution supporting Medicare Secondary Payer reform
- deferred consideration of proposed amendments to the NCOIL PEO model to allow for additional interested-party discussion
- postponed indefinitely a proposed model law re: farm laborer coverage

Articles of Organization & Bylaws Revision Committee

- adopted proposed amendments brought forward by an Ad Hoc Strategic Planning Working Group

In addition, legislators participated in:

- a general session on PPACA exchanges
- a general session on ridesharing regulation
- a keynote luncheon delivered by California Insurance Commissioner Dave Jones
- a Griffith Foundation legislator luncheon workshop regarding medical marijuana

FINANCIAL SERVICES & INVESTMENT PRODUCTS COMMITTEE

PENSION DE-RISKING

On November 22, the Committee adopted a *Resolution Concerning Best Practices for Pension De-Risking through Private Annuitization*, which the Executive Committee adopted on November 23. The resolution notes that while state insurance law and regulation is generally sufficient to protect consumers whose pensions were transferred to annuity providers, certain best practices identified in the resolution—related to uniform protection from creditors, subsequent transfer of liability to another insurer, annuitant disclosure, and state guaranty coverage levels—could be helpful for states. Legislators approved the resolution in lieu of continuing to consider proposed pension de-risking model legislation, i.e., a draft model law first vetted in November 2013.

CONSUMER FINANCIAL PROTECTION BUREAU (CFPB)

On November 22, the Committee determined to send a letter to CFPB Director Richard Cordray, with copies sent to Members of the U.S. House Committee on Financial Services and to the Senate Committee on Banking, Housing & Urban Affairs, among others. The letter asks for clarity on CFPB rationale for enforcement actions related to the business of insurance and it requests a formal dialogue between NCOIL and the CFPB. On November 23, the Executive Committee also approved sending the letter as part of NCOIL's effort to ensure the integrity of state regulation in light of federal and international challenges.

HEALTH, LTC & HEALTH RETIREMENT ISSUES COMMITTEE

OBESITY AND CHRONIC DISEASE

On November 20, the Committee declined to adopt a proposed *Resolution in Support of Efforts to Reduce the Incidence of Obesity and Chronic Disease* after discussing, among other things, potential costs associated with requiring states and healthcare exchanges to cover obesity treatment and prevention. The resolution had noted certain economic, health, and insurance impacts of obesity and had called on states to require obesity-related coverage as part of their health exchange essential benefits requirements and in Medicaid and other state programs.

PROPERTY-CASUALTY INSURANCE COMMITTEE

CONSUMER LEGAL FUNDING

On November 21, the Committee declined to adopt a proposed *Consumer Litigation Funding Model Act* that was offered as a possible compromise between two initially proposed models: a proposed *Civil Justice Funding Model Act* that would have established, among other things, that consumer litigation funding transactions are not loans, and a proposed *Model Consumer Lawsuit Lending Alignment Bill* that would have established that such transactions are loans and would have subjected them to fee and rate caps.

The compromise proposal would have prohibited third-party funding companies from (1) charging fees in any 12-month period that were more than 45 percent of the original funded amount and (2) charging additional fees, except for a one-time document preparation fee, that did not exceed \$500. Other provisions mirrored language in the draft *Civil Justice Funding Model Act* and related to (1) disclosures, (2) conflict-of-interest prohibitions, (3) registration of third-party funders, and (4) guidelines for calculating fees and charges.

MEDICAID INTERCEPTION

On November 20, the Committee adopted a *Model Act Regarding Medicaid Interception of Insurance Payments*, which the Executive Committee adopted on November 23. The model law aims to make it easier for states to learn about property-casualty insurance claims that Medicaid beneficiaries file, so that Medicaid can recoup the money it paid for the beneficiaries healthcare treatment related to the claim. The model establishes a reporting process that a Medicaid agency would consult. The model also (1) applies to bodily injury claims of \$2,000 or more, (2) creates an appeals process, (3) allows a beneficiary's representative to assert a lien for attorney's fees, (4) provides for confidentiality of data, and (5) gives immunity to the parties involved in interception of payments.

UNCLAIMED PROPERTY TASK FORCE

LIFE INSURANCE & FINANCIAL PLANNING COMMITTEE

PROPOSED AMENDMENTS TO NCOIL MODEL

On November 21, the Unclaimed Property Task Force, following special discussion at the Summer and Annual Meetings and during a series of Task Force calls, adopted amendments to the NCOIL *Model Unclaimed Life Insurance Benefits Act* to address key issues arising in states since original NCOIL adoption of the model in 2011. The Life Insurance & Financial Planning Committee approved the amendments on November 22, followed by Executive Committee approval on November 23. The new model clarifies existing definitions as well as adds new ones, such as “knowledge of death,” “retained asset account” and “record keeping services”; includes language relating to “fuzzy logic” in DMF searches; addresses interest payable in unclaimed property; and clarifies initial unfair trade practices and effective date language.

WORKERS’ COMPENSATION INSURANCE COMMITTEE

AGRICULTURAL LABORER COVERAGE

On November 21, the Committee postponed indefinitely further consideration of a proposed *Model Act Regarding Workers’ Compensation Coverage for Agricultural Laborers*. The proposed model would have required an agricultural employer to provide workers’ compensation coverage if the employer, during the preceding calendar year, had an aggregate payroll of at least \$50,000 and had paid hourly wages or salaries, and not on a piecework basis, to five (5) or more regular employees. The proposed model also would have allowed exemptions for family members of an employer and have allowed owners of an agricultural enterprise to exclude themselves from workers’ compensation coverage.

MEDICARE SECONDARY PAYER REFORM

On November 21, the Committee adopted a *Resolution in Support of S. 2731, The Medicare Secondary Payer and Workers’ Compensation Settlement Agreements Act of 2014*, which the Executive Committee adopted on November 23. In line with resolutions that NCOIL passed in 2008 and 2012, the new proposal supports pending legislation that would establish clear criteria for when a Medicare Set-Aside agreement should be reviewed; create certainty as to the rules for calculating an MSA; provide an appeals process for parties to Centers for Medicare and Medicaid Services (CMS) determinations; provide optional direct payment to CMS for the set-aside to Medicare; and provide certainty for state-approved settlements.

PROFESSIONAL EMPLOYER ORGANIZATIONS (PEOs)

On November 21, the Committee deferred consideration of proposed amendments to a 2007 NCOIL *Model Act Regarding Workers’ Compensation Insurance Coverage in Professional Employer Organization (PEO) Relationships* to give interested parties additional opportunity to resolve differences related to the proposed changes. The proposed revisions were brought forward as per a Committee vote at the 2013 Annual Meeting, when legislators reauthorized the NCOIL model for one year and agreed to consider possible amendments by November 2014. As adopted, the NCOIL model requires PEO registration and, among other things, establishes that workers’ comp insurance premiums are determined using a PEO client’s risk exposure and claims experience. The proposed amendments would, in part, (1) revise the definition of “PEO” to further distinguish PEOs from staffing services companies and (2) establish that in certain cases the PEO’s experience would determine the client’s premium, not the client’s.

ARTICLES OF ORGANIZATION & BYLAWS REVISION COMMITTEE

AD HOC STRATEGIC PLANNING WORKING AMENDMENTS

On November 19, the Committee adopted amendments to the NCOIL Articles of Organization and Bylaws brought forward by an Ad Hoc Strategic Planning Working Group established as per discussion at the 2014 Summer Meeting. Developed during Working Group calls following the Summer Meeting, the proposed amendments, which the Executive Committee adopted during a special November 20 Executive Committee

session, reflect a comprehensive review of the Articles/Bylaws, as per a Working Group charge, and address various items related to, among other things, the duties of officers and the Executive Committee and membership on standing NCOIL committees.

MODELS FOR SUNSET/RE-ADOPTION, AS PER BYLAWS

Due to time constraints, the Property-Casualty Insurance Committee deferred until the 2015 Spring Meeting its bylaws-required review of the NCOIL *Model Act Regarding Use of Credit Information in Personal Insurance*, originally adopted in November 2002, and the NCOIL *Post-Assessment Property and Liability Insurance Guaranty Association Model Act*, adopted in November 2007, and related amendments.

OTHER SESSIONS

PPACA EXCHANGE ANNIVERSARY: WHAT'S WORKING AND WHAT ISN'T

On November 22, legislators explored what the first year of PPACA exchanges has demonstrated, including information related to enrollee demographics, rate impacts, and consequences for Medicaid, Children's Health Insurance Programs (CHIPs), and the numbers of insured. The session also looked at various state experiences and federal activity.

Panelists included:

- Charles Bacchi of the California Association of Health Plans
- Mark Estess of AARP Idaho and the Idaho Health Insurance Exchange Board
- Commissioner Scott Kipper of the Nevada Department of Insurance

RIDESHARING SERVICES: DRIVING INTO CONTROVERSY

On November 22, legislators considered insurance implications of ridesharing services such as Uber and Lyft, including when coverage should begin and what coverages should apply. Speakers looked at how ridesharing requirements compare to those for taxis and limousines and also addressed various state and local initiatives to insurance regulatory concerns.

Panelists included:

- John Clarke of James River Insurance Company
- Gus Fuldner of Uber Technologies
- Robert Herrell of the California Department of Insurance
- Robert Passmore of the Property Casualty Insurers Assoc. of America (PCI)
- Gregory Serio on behalf of the Taxi, Limousine & Paratransit Association

KEYNOTE ADDRESS

On November 21, California Insurance Commissioner Dave Jones delivered a keynote luncheon address regarding federal and international threats to state-based insurance regulation and spoke to certain state regulatory initiatives, among other things.

GRIFFITH FOUNDATION LUNCHEON WORKSHOP

On November 20, legislators participated in a luncheon workshop entitled *The Property and Liability Insurance Implications of the Legalization of Medical Marijuana*, led by Brenda Wells, Ph.D., CPCU, AAI, who serves as the Robert F. Bird Distinguished Scholar of Risk and Insurance at East Carolina University. **Legislators attending the session earned credits toward certification by the NCOIL Institute for Insurance Policy.**

In addition, legislators considered the following:

- regulation of life insurer **captive arrangements**
- the Interstate Insurance Product Regulation **Compact**

- negotiation of **covered agreements**
- **cyber-insurance** and security
- Federal Advisory Committee on Insurance (**FACI**) efforts
- **Federal Insurance Office (FIO)** activity
- **IAIS** process and transparency concerns
- producer licensing reform/**NARAB II**
- health exchange **navigators**
- **NFIP** developments
- principles-based reserving (**PBR**)
- **surplus lines** activities
- **telemedicine** developments in the states
- efforts to reauthorize **TRIA**
- California **workers' compensation** insurance reforms