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NCOIL SPRING MEETING
March 2 – 4, 2018



Sen. Jason Rapert, AR
NCOIL President



Thomas B. Considine
NCOIL CEO

From the President's Desk.....

By Sen. Jason Rapert

Welcome to my first in an occasional series of columns as NCOIL President for the NCOIL Newsletter.

Under the leadership of Rep. Steve Riggs (KY), NCOIL Immediate Past President, we wrapped up a busy and productive 2017. We owe Steve great thanks, and I look forward to building on the momentum both he and Sen. Travis Holdman (IN) have established.

Over the course of 2017 we had more than 800 participants at the 3 NCOIL meetings including more than 165 legislators from 40 states. That represents 16% growth over 2015 in total attendees. We look forward to continuing to grow this year with both more states and legislators participating. I want to thank those organizations that contribute to our legislator scholarship and education efforts through the ILF such as the IEC and one company that makes a significant annual contribution but asks not to be credited.

We are excited about the agenda and discussions for the 2018 Spring Meeting in Atlanta. We have three top-tier speakers, including our host Governor, Nathan Deal, who will speak at the Welcome Breakfast on Friday, Florida CFO Jimmy Patronis who will speak at the luncheon on Saturday and CMS' CCIIO Director Randy Pate who will participate in the Health General Session on Health Insurance Exchanges.

2018 is shaping up to be an interesting and exciting year, and I would like to touch on a few of my goals for NCOIL.

First, I want to ensure that insurance remains a state regulated industry, and that international encroachment is minimized. I am pleased to say that I have had positive feedback from Acting Director Stephen Seitz of the Federal Insurance Office and found him to be much more favorable toward the primary role of the states in insurance regulation than was his predecessor. After all, state regulation has brought the world's strongest insurance market for 75 years now, and there is no reason to change just to please some international regulators. *Con'd on Page 3.*

Florida CFO Jimmy Patronis to Keynote NCOIL Luncheon

Commissioner Tom Considine, NCOIL CEO announces that Florida CFO Jimmy Patronis will be the Keynote Speaker at the 2018 Spring Meeting luncheon on March 3rd.

"We are excited to hear from CFO Patronis about the innovative ideas he has brought forward to protect first responders, combat insurance fraud, and highlight financial literacy" said Considine. "At NCOIL, we strive to bring interesting policy-based speakers that will educate legislators and participants. CFO Patronis fits the bill and will provide a dynamic lunchtime address."

As CFO, Patronis has advocated legislation that would make mental health services more accessible and affordable for first responders, worked with insurance companies to ensure consumers are protected after natural disasters, fought and highlighted insurance fraud to prevent *Con'd on Page 2.*



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Immediate Past President

Capital

O By Will Melofchik – Legislative Director – NCOIL Support Services

r Greetings -

n This is the first in a series of columns that will aim to update you on some of the issues that NCOIL is following. With State legislative Sessions in full swing, and a persistent stream of Federal developments, 2018 is starting out as a busy and exciting year for NCOIL. In this initial column I will look at three issues that are garnering attention among policymakers and will be discussed at our upcoming Spring Meeting in Atlanta.

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The Fiduciary Rule – Not All Quiet on the State Front

r NCOIL has been following the Department of Labor's (DOL) Fiduciary Rule (Rule) since the DOL's rulemaking process began several years ago. In November 2016, the NCOIL Executive Committee adopted a Resolution in Opposition to the Rule sponsored by NCOIL President – Sen. Jason Rapert (AR). Since that time, the Rule has traveled a tumultuous path. Currently, the Rule has partially taken effect, but its future is somewhat of a mystery since President Trump has ordered the DOL to examine the Rule "to determine whether it may adversely affect the ability of Americans to gain access to retirement information and financial advice." Making matters even less certain is the fact that the Securities and Exchange Commissioner (SEC) is also working on its own Fiduciary Standard that is due out sometime this year.

States are reacting to this uncertainty by passing their own laws, and in one instance, using the Rule to assert violations of State securities law. As the saying goes: "nature abhors a vacuum." On June 5, 2017, Nevada Governor Brian Sandoval signed into law SB 383 which places fiduciary duties on broker-dealers, registered investment advisers, and some financial services sales representatives. Connecticut Governor Dannel Malloy has signed into law: HB 7161, requiring administrators of certain retirement plans to disclose conflicts of interest; and HB 6992, requiring financial planners to disclose to a consumer, upon request, whether or not such financial planner has a fiduciary duty to such consumer for each recommendation made.

On December 27, 2017 the New York Department of Financial Services (NY DFS) proposed regulations that would require life insurance and annuity sales to meet a "best interest" standard. NY DFS Superintendent Maria Vullo has also recommended that the NAIC Annuity Suitability Working Group incorporate her department's proposal into the Suitability in Annuity Transactions Model Regulation for use as a national Model regulation. New Jersey has also introduced legislation that would require "non-fiduciary investment advisors" to disclose to clients that they are not required to act in their best interests.

So, what is to make of all this activity? One thing is certain – trying to meet requirements in a shifting regulatory landscape is no enviable task. Additionally, creating a patchwork of State laws might lead those who have urged the DOL to do away with the Rule entirely to be sorry if their wish is granted. Multistate brokers and financial advisors could be forced to deal with different State laws, each defining "fiduciary" and other terms differently.

At the upcoming NCOIL Spring Meeting in Atlanta, GA, former NY Superintendent of Insurance Howard Mills, now Global Insurance Regulatory Leader at Deloitte, will lead a panel that will discuss the status of the Rule and related State laws. NCOIL will continue to diligently monitor this issue.

Principles Based Regulation – Innovation Inspired Waiver of Legs & Regs

As the insurance industry continues to develop in the face of innovative insurance products, services, and technologies, the concept of "principles-based regulation" (PBR) has become a topic of frequent discussion. PBR – not to be confused here with the other PBR of "principles-based reserving" - focuses on assuring desired outcomes more than the details or technicalities of traditional regulation. Broad but well-articulated principles are laid out that companies are expected to follow. An example would be: "A licensee shall take reasonable care to organize and control its affairs responsibly and effectively, with adequate risk management systems." Such a system of regulation obviously differs from a "rules-based" system *Con'd on Page 4.*

Patronis con'd

further occurrences and introduced tools that ensure financial literacy. Registration for the 2018 NCOIL Spring Meeting is open at www.ncoil.org/register-now. The meeting takes place at the Whitley Buckhead from March 2nd – 4th. The NCOIL Workers' Compensation Committee is scheduled to discuss Presumptive PTSD legislation on March 2nd at 3:15 p.m.

From the President's Desk con'd

Second, NCOIL is and will continue to be the only insurance legislator organization that enacts Model Laws. Our organization is attracting more and more legislative leaders as active members of our organization which ensures that the work we do will continue to be well respected around the nation. We have been providing this valuable function since 1969, with NCOIL Models being enacted into law all across the country.

Third, we will continue to build NCOIL as a solvent going concern. When I became NCOIL Treasurer in 2015, I was concerned about how close to the edge we were, and our top line growth was negative. I am happy to say that revenue is up 70% in two years. To be clear, we still have much work to do in order to build our reserve to the standards deemed best practices necessary for a not-for-profit organization of our size, but we are moving in the right direction. I want to thank those companies and organizations that have joined the NCOIL Corporate & Institutional Partners Program (CIP) now in its second year. The CIP has been a key component in our being able to strengthen our finances, and I would encourage everyone to consider it.

Fourth, in terms of substance, we will remain on top of the cutting edge issues of the day. At the Spring National Meeting in Atlanta, we were already scheduled to discuss a Model Towing Act, significant Amendments to the NCOIL Model State Uniform Building Code, and significant Amendments to our Model Act on Workers' Compensation Repackaged Pharmaceutical Reimbursement Rates to address physician dispensing and drug compounding. We have since added agenda items related to pharmaceutical price increase transparency, a proposed model for 'innovation waivers' for certain existing regulatory & legislative requirements, and state activity related to the ill-advised and thankfully delayed US DOL fiduciary rule, all of which NCOIL Legislative Director, Will Melofchik, discusses in more detail in his Capital Corner column.

Finally, we will begin discussions leading to a Model Act Regulating Pharmacy Benefit Managers (PBMs). This issue could not be timelier as it has exploded with great passion on legislators' desks across the country in the past few weeks. We have learned that PBMs are often unlicensed and unregulated, with no uniform standards in place, yet wield enormous influence over the healthcare market. Legislators have been inundated with complaints from community pharmacists that the reimbursements they receive from PBMs are lower than the amount they actually pay for the drugs involved. I have personally seen data showing where some PBMs are reimbursing independent pharmacists at one level and their affiliated pharmacies at a higher level for the same exact drug purchases. However, as policymakers we understand that there are many sides to issues, and so we are going to hear from the community pharmacists in Atlanta, as well as the PBMs, and also the health insurers and pharmaceutical companies, and of course consumer representatives. We will then proceed with the drafting of a Model Bill that very likely will provide regulatory authority over PBMs to the state insurance regulators across the country. It is my hope that the NAIC will join with us in our efforts as we seek to bring transparency, fairness and stability across the country by proposing state insurance departments have primary regulatory authority over PBMs. As for other provisions of the legislation, that will depend on what we hear during our meetings.

I look forward to a great year together with you, fellow legislators, staff, regulatory colleagues and interested parties as we continue to develop Sound Public Policy in 50 States for 50 Years.

Jason.....

CCIIO Director Randy Pate To Participate In 2018 NCOIL Spring Meeting Health General Session

Commissioner Tom Considine, NCOIL CEO announced that Randy Pate, Director of the Center for Consumer Information and Insurance Oversight (CCIIO) and Deputy Administrator, Centers for Medicare and Medicaid Services (CMS) and will participate in the Health General Session for the 2018 Spring Meeting in Atlanta, GA titled "Health Insurance Exchanges in the Trump Administration - Are Waivers the Solution?"

"We are proud Director Pate will be lending his expertise at the 2018 NCOIL Spring Meeting Health General Session." said Considine. "NCOIL continues to examine complex state-based challenges to improve insurance public policy. We strive to hear from experts that have

attempted, and in some cases, achieved, innovative solutions" Considine concluded.

Additional panelists will include Angela Lowther, Executive Director of the Arkansas Health Insurance Marketplace; Cecil Bykerk, Executive Director of the Alaska Comprehensive Health Insurance Association and Iowa Comprehensive Health Association; and Laura Colbert, Executive Director of Georgians for a Healthy Future.

The General Session is scheduled for Friday, March 2nd from 2:30 p.m. to 4:15 p.m.

Capital Corner con'd

where the regulatory agency specifically sets forth what a company can and cannot do. PBR is often touted as a means of providing regulatory flexibility which can facilitate innovation.

A related concept to PBR is the introduction of “regulatory sandboxes” which are regulatory programs that permit companies to test new products, services, and technologies in a real market with real consumers. The companies in the “sandbox” are supervised by regulators, but certain laws and regulations are relaxed or waived.

In an effort to see such “sandboxes” implemented in state insurance departments, the American Insurance Association (AIA) has recently proposed an Insurance Innovation Regulatory Variance or Waiver Model Act. This Model would allow an Insurance Commissioner to grant “variances, waivers or no action letters with respect to the enforcement or application” of a statute or regulation if the applicant demonstrates that the purpose of said statute or regulation will be or has been achieved by alternative means, and the application of the statute or regulation “would prohibit or discourage the introduction of new, innovative or more efficient insurance products, services or technologies.”

While some statutory or regulatory requirements cannot be waived, including those relating to capital and surplus requirements, licensing and certificate of authority requirements, and NAIC accreditation, it is nonetheless concerning that regulators could have such broad discretion to waive legislative requirements. Additionally, such a waiver process could end up being just de-regulation for a limited few, thereby creating an uneven playing field. Certain companies will be able to offer consumers more competitive products than their competitors who have not obtained waivers from any statutes or regulations. Perhaps such competitiveness concerns could be alleviated if the Commissioner was required to clearly articulate and publish his or her reasons for granting, or not granting, a waiver - in such a way that would protect company trade secrets.

NCOIL has always been vigilant in analyzing any process that would bypass or change law as established by legislatures. Look no further than NCOIL’s recent involvement in the NAIC’s use of Incorporation by Reference (IBR) and the American Law Institute’s (ALI) Proposed Restatement of the Law of Liability Insurance. To that end, NCOIL will hear from Michael O’Malley, AIA’s Senior Vice President for Public Policy, and others during a General Session titled: “Principles Based Regulation: Who Needs Legislation Anyway?” at its upcoming Spring Meeting in Atlanta, GA. The Session will be a great opportunity for NCOIL to learn more about AIA’s proposal and its “regulatory sandboxes” in general. Stay tuned to “Capital Corner” for more information on PBR and regulatory sandboxes.

Through the Looking Glass: States Seek to Strengthen Drug Pricing Transparency Requirements

State legislatures across the country are taking bold actions to try and answer a question many have been asking: Why are certain drugs becoming prohibitively expensive?

California Governor Jerry Brown recently signed into law what some are calling the most comprehensive drug price transparency bill in the nation. The bill, SB 17, requires pharmaceutical companies to notify public and private health insurers anytime the companies plan to raise the price of a drug by more than 16 percent over two years. Such notice must be provided at least 60 days prior to the planned effective date of the increase, and include a statement explaining the price increase. Additionally, SB 17 implements reporting requirements for certain health plans regarding: the 25 most frequently prescribed drugs; the 25 most costly drugs by total annual spending; and the 25 drugs with the highest year-over-year increase in total annual plan spending. This information is to be compiled into a report and submitted to the public and legislators demonstrating “the overall impact of drug costs on health care premiums.” PhRMA has filed a lawsuit challenging the law’s constitutionality on multiple grounds.

California is following the lead taken by Vermont, which in June 2016 became the first State to require drug makers to justify price increases, and Maryland, which in May 2017, became the first State to prohibit drug manufacturers from “price gouging” in the sale of essential off-patent or generic drugs.

Vermont S. 216 requires State officials to identify 15 drugs for which “significant health care dollars” are spent, and where wholesale acquisition costs (WACs) rose by 50 percent or more over the previous five-year period; or 15 drugs that rose 15 percent or more over a 12-month period. Afterwards, the Attorney General must contact each drug maker to obtain justification for the increases. The companies would have to submit information concerning all factors that contributed to the price. Attorney General to investigate and penalize drug manufacturers who engage in “price gouging” - defined as an increase in a prescription drug that is “unconscionable”, which in turn is defined as an increase that is “excessive” and not tied to the costs of producing the drug, among other criteria.

Con'd on Page 5.

Capital Corner con'd

While each State's efforts to increase drug pricing transparency are noteworthy, the situation in California is particularly worth monitoring due to the clout a State such as California has. If drug companies don't like transparency laws in certain States, they could theoretically decide not to sell their drugs there, but the California market would be too big to ignore. Critics of CA SB 17 also assert that its reforms may not accomplish its intended goals and could have unintended consequences. For example, by providing advance notice of a price increase, pharmacies may have incentives to purchase extra inventory and earn windfall profits. And the law is relatively toothless since it does not give the State any pricing authority – instead requiring that advance notice of price increases be given – and the enforcement provision, \$1,000 per day for every day the required information is not reported, is arguably not impactful enough as to meet the standard of true reform.

At the upcoming NCOIL Spring Meeting in Atlanta, GA, the Health, Long Term Care & Health Retirement Issues Committee will hear from Ed Silverman, a veteran reporter who has covered the pharmaceutical industry for the past two decades, and Emily Donaldson, Senior Director of Policy and Research at PhRMA, on the aforementioned legislation and other related issues. Drug pricing transparency is an issue that has captured the attention of our legislative members, with many requesting that NCOIL begin developing a Model Law on the issue. The upcoming Spring Meeting will be a good starting point in NCOIL ensuring the affordability of essential medicines.

Will

NCOIL to Discuss Potential Regulation Of Pharmacy Benefit Managers (PBMs)

Arkansas Senator Jason Rapert, NCOIL President, announced that the NCOIL Health, Long-Term Care and Health Retirement Issues Committee will be taking a comprehensive look at Pharmacy Benefit Managers (PBMs) at the 2018 NCOIL Spring Meeting in Atlanta, Georgia from March 2nd – 4th with the goal of learning about how PBMs operate and potentially introducing an NCOIL Model Act to have PBMs overseen by state insurance commissioners. PBMs are third-party administrators of prescription drug programs for government programs and self-insured entities.

"I have heard from pharmacists and pharmacy owners in Arkansas and across the country that PBMs reimburse them less than their cost for the medicine, while the PBMs receive far more from the drug companies," said Rapert, "the time is now to examine the business model of PBMs" he continued. Confirmed organizations contributing comments include Nation-

al Community Pharmacists Association, Pharmaceutical Care Management Association, Arkansas Pharmacists Association and America's Health Insurance Plans.

Additional organizations will be added before the committee convenes. "NCOIL will examine all aspects of PBMs to educate legislators" said Commissioner Tom Considine, NCOIL CEO. "If a model law is necessary to ensure proper oversight and consumer protections we will draft and debate it through 2018, but will move expeditiously; not drag this process out indefinitely." "PBMs operate outside of typical insurance oversight and it appears that their customers are not receiving benefits to which they are entitled, and the PBM industry threatens the very business model of the local community pharmacy," concluded Rapert.

The Health Committee is scheduled to meet at 8:45 a.m. on Sunday, March 4th

Please visit NCOIL.org for the latest NCOIL news!!

You can still register for the NCOIL Spring Meeting in Atlanta, GA



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