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This letter will present a brief synopsis and then a more detailed report of action taken at the National Conference of Insurance Legislators (NCOIL) Spring Meeting in Hilton Head, South Carolina, from March 3 through 6, 2005.

At the meeting, legislators focused on issues including broker compensation and disclosure; NAIC efforts to apply Sarbanes-Oxley requirements to privately held companies; association health plans; reauthorization of the Terrorism Risk Insurance Act (TRIA); investor-owned life insurance; OSHA ergonomic guidelines for nursing homes; long-term care tax credits; exhaustion of administrative remedies; certified aftermarket crash parts; claims history databases; long-term care partnership programs; patient safety; drug retail price disclosure; drug importation; and Medicaid.

Nearly 300 state legislators, insurance regulators, and industry, consumer, and media representatives attended the meeting.

## **SYNOPSIS**

At the NCOIL Spring Meeting, legislators:

- Overwhelmingly adopted a revised version of an NAIC proposed amendment to the NAIC *Producer Licensing Model Act*
- Voted unanimously to send a letter to the NAIC opposing its efforts to apply Sarbanes-Oxley requirements to privately held companies
- Voted unanimously to send a letter to Congress opposing association health plans (AHPs)
- Voted to send a letter to Congress renewing NCOIL's support for reauthorizing TRIA
- Adopted a *Resolution Opposing the Expansion of State Insurable Interest Laws to Permit Private Investors to Purchase Life Insurance on the Lives of Unrelated Individuals*
- Adopted a *Resolution Supporting OSHA Ergonomic Guidelines for Nursing Homes*
- Readopted the NCOIL *Long-Term Care Tax Credit Model Act*
- Readopted the NCOIL *Exhaustion of Administrative Remedies Model Legislation*
- Moved to renew consideration of a proposed *Certified Aftermarket Crash Parts Model Act*
- Moved for further consideration a proposed *Model Act Regarding the Use of Insurance Claims History Information in Homeowners and Personal Lines Residential Property Insurance*
- Moved for further consideration a proposed *Model Act Enabling States to Create Partnership for Long-Term Care Programs*

- Moved for further consideration a proposed *Model Act Implementing State Partnership for Long-Term Care Programs*
- Moved for further consideration a proposed *Model Act Regarding Patient Safety (working draft)*
- Participated in a general session on Medicaid

## **DETAILED REPORT**

### **BROKER DISCLOSURE**

During a special Executive and State-Federal Relations Committee meeting on March 5, legislators overwhelmingly adopted a revised version of an NAIC proposed amendment to the NAIC *Producer Licensing Model Act*. The NCOIL revision, sponsored by NCOIL President Rep. Craig Eiland (TX), builds upon the NAIC December 29 *Compensation Disclosure Amendment to the Producer Licensing Model Act*, which relies on disclosure and transparency. Critical to the NCOIL version are several changes that narrow the focus of disclosure and acknowledgement requirements to transactions where a conflict of interest is inherent.

As adopted, the NCOIL revised version would:

- Impose new disclosure and acknowledgement requirements on any producer who is compensated for an insurance placement by both a client and an insurer in the same transaction
- Require a covered producer to disclose a description of the method and factors utilized for calculating the producer's compensation
- Provide that disclosure and acknowledgement requirements are not triggered by an insurance placement in a secondary or residual market
- Enable an affiliate of a producer to provide the required disclosures
- Add new disclosure and acknowledgement requirements to duties and obligations imposed under existing state law
- Suggest, by a drafting note, that states review their common law on a broker's fiduciary or other legal duty to determine if statutory standards are necessary
- Not conflict with Marsh and AON settlement agreements

The special meeting immediately followed an NCOIL hearing, in which experts representing regulatory, agent, and property-casualty, health, and life insurance interests testified to proposals aimed at addressing the broker antitrust and fraud violations exposed when NYS Attorney General Eliot Spitzer began investigating broker compensation practices last year. NCOIL delayed action on its November 2004 proposed model act in order to monitor NAIC activity in hopes of addressing the issue uniformly. A Steering Committee, comprised of NCOIL officers and committee chairs said, prior to the NCOIL Spring Meeting, that the NAIC amendment was a good start, but that more focus was needed.

### **SARBANES-OXLEY**

On March 4, the NCOIL Executive Committee unanimously voted to send a letter to the NAIC opposing its efforts to apply Sarbanes-Oxley (SOX) requirements to privately held companies. Legislators determined that NCOIL President Rep. Craig Eiland (TX) should contact the NAIC on behalf of the full NCOIL Executive Committee. The subsequent letter, sent on March 10 to NAIC President Diane Koken (PA) and to AICPA Working Group Chair Alfred Gross (VA), objects to the NAIC's initiative on both substantive and procedural grounds. Among other things, NCOIL says that SOX was intended to apply to public companies and that current state solvency regulations already provide similar, if not more stringent, protection for private insurers. Procedurally, NCOIL opposes regulator plans to add SOX-friendly amendments to the NAIC Model Audit Rule as NAIC Annual

Statement Instructions. Doing so would then automatically incorporate those changes into the laws of states that integrate the Instructions into their laws by reference either through statute or regulation.

### **ASSOCIATION HEALTH PLANS (AHPs)**

On March 4, the NCOIL Health Insurance Committee voted unanimously to renew an NCOIL letter to Congress in opposition to federal legislation allowing AHPs to be exempt from state insurance laws. The NCOIL Executive Committee ratified the action later that day. The letter argues, among other things, that exempting AHPs from state regulation would increase the potential for fraud and abuse, as well as would undermine state health reforms, eliminate consumer protections, and threaten access for many small employers and consumers. The action followed the Committee's adoption of an NCOIL *Resolution on Preemption of State Laws Regarding Certain Health Insurance Arrangements*, originally adopted on February 29, 1999, and amended on February 21, 2003.

### **TRIA REAUTHORIZATION**

On March 3, the NCOIL Task Force on Terrorism voted to send a letter to Congress renewing NCOIL's support for reauthorizing the Terrorism Risk Insurance Act (TRIA). The NCOIL Executive Committee ratified the action on March 4. The letter will transmit an NCOIL *Resolution in Support of the Extension of the Terrorism Risk Insurance Act of 2002*, adopted by the Task Force and the NCOIL Executive Committee in July 2004. The resolution, which was first sent to federal lawmakers following its adoption by NCOIL, urges Congress and the Administration to reauthorize TRIA and to include group life insurance in the program. Further, the resolution recognizes that, absent a terrorism backstop, numerous economic activities in this country would suffer and consumers would pay significantly more for their insurance coverage.

### **INVESTOR-OWNED LIFE INSURANCE**

On March 3 and 4, respectively, the NCOIL Life Insurance and Executive Committees adopted a proposed *Resolution Opposing the Expansion of State Insurable Interest Laws that Permit Private Investors to Purchase Life Insurance on the Lives of Unrelated Individuals*, sponsored by Rep. Larry Taylor (TX). The Resolution opposes efforts to expand state insurable interest laws to permit charities, which otherwise have a legitimate insurable interest in donors, to allow their interest to be used by investor groups primarily for private investment purposes.

### **OSHA ERGONOMIC GUIDELINES**

On March 3 and 4, respectively, the NCOIL Workers' Compensation Insurance and Executive Committees adopted a proposed *Resolution Supporting OSHA Ergonomic Guidelines for Nursing Homes*, sponsored by Sen. Ann Cummings (VT). The resolution supports the implementation of a safe work program for nursing home caregivers, as set forth in the 2003 OSHA *Ergonomics Guidelines for Nursing Homes*. Such a program would to prevent the numbers of nursing home work-related injuries and their associated costs.

### **LONG-TERM CARE TAX CREDITS**

On March 3 and 4, respectively, the NCOIL Life Insurance and Executive Committees reviewed, as per NCOIL bylaws, the NCOIL *Long-Term Care Tax Credit Model Act*, which the Health Insurance Committee originally adopted on July 10, 1998, and the Life Insurance Committee readopted on March 1, 2001. The model act would allow taxpayers a credit against the state income tax in an amount equal to 15 percent of the premium costs paid during the taxable year for qualified long-term care policies. *Note: The Health Insurance Committee transferred long-term care insurance issues to the Life Insurance Committee after the model was originally adopted.*

### **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

On March 4, the NCOIL State-Federal Relations and Executive Committees voted unanimously to readopt an NCOIL *Exhaustion of Administrative Remedies Model Legislation*, which NCOIL originally adopted on November 22, 2002. The model would require a court to dismiss or abate a civil action filed against an insurance entity unless all applicable state insurance department administrative remedies had been pursued. An abatement

would last for a period of at least six months. If a court abates or dismisses an action, the court would be required to refer issues or claims within an insurance department's jurisdiction to that department for action.

### **CERTIFIED AFTERMARKET CRASH PARTS**

On March 4, the NCOIL Property-Casualty Insurance Committee voted to renew consideration of a proposed *Certified Aftermarket Crash Parts Model Act*, sponsored for discussion by Committee Chair Rep. George Keiser (ND), as well as to hold a hearing on the draft during the 2005 NCOIL Summer Meeting. In November 2002, the NCOIL Executive Committee had remitted the model to the P-C Committee and had deferred the matter until the 2005 Spring Meeting. Legislators at the time had cited a need to address other issues. Among other items, the model act would endorse certification of aftermarket crash parts by third-party organizations, such as the Certified Automotive Parts Association (CAPA), and would require disclosure as to the use of certified aftermarket crash parts. On March 4, legislators asked that those interested in offering changes to the model law submit those amendments in accordance with the NCOIL 30-day deadline rule.

### **CLAIMS HISTORY DATABASES**

On March 3, the NCOIL Property-Casualty Insurance Committee moved to defer until the 2005 NCOIL Summer Meeting or earlier consideration of a proposed *Model Act Regarding the Use of Insurance Claims History Information in Homeowners and Personal Lines Residential Property Insurance*, co-sponsored by Sen. David Bates (RI), Rep. Dan Tripp (SC), and Rep. Rich Golick (GA). The proposed model law, which reflects consensus among several interested parties, was the subject of a March 3 Committee hearing and would, among other things: 1) prohibit taking an adverse action based solely on claims/loss history of a previous property owner; 2) prohibit taking an adverse action based on consumer inquiries or claims without payments (CWOPs), unless an insurer could prove that such claims would impact the carrier's risk; 3) prohibit an insurer from using prior claims experience of a property or consumer that is more than five (5) years old; 4) restrict an insurer from using claims/loss experience to underwrite more than 30 days after that insurer had issued a coverage binder; 5) require an insurer to re-underwrite/re-rate an insured within 30 days notice that claims information was incorrect or incomplete, and return any overpayment; 6) require various disclosures to consumers; and 7) mandate filings by claims-history report providers.

Consideration of the proposed model law responds to a Committee charge to consider model legislation on the issue. During the 2004 NCOIL Annual Meeting in November, legislators deferred consideration of a November 2004 version of the model act and voted that certain interested parties should reach agreement on the issue and return with a compromise bill at the 2005 Spring Meeting. Interested parties have until April 1 to comment on the current draft, particularly regarding CWOPs and the restriction on using claims information more than 30 days after issuing a coverage binder. The Committee will actively pursue consideration of the proposed model after April 1.

### **LONG-TERM CARE PARTNERSHIPS**

The Life Insurance Committee voted to defer until the 2005 NCOIL Summer Meeting consideration of a proposed *Model Act Enabling States to Create Partnership for Long-Term Care Programs*, sponsored by Senator Carroll Leavell (NM). The model act would allow a state to amend its Medicaid statute to provide for asset disregard under a long-term care partnership program and would establish minimum standards for the program. The enabling legislation would precede enactment of a proposed *Partnership for Long-Term Care Program Implementation Model Act (working draft)* and would establish a partnership program prior to Congressional repeal of an impediment in OBRA 1993, which limited the program to only four states: California, Connecticut, Indiana, and New York.

On March 3, the NCOIL Life Insurance Committee also voted to defer until the 2005 NCOIL Summer Meeting consideration of a proposed *Partnership for Long-Term Care Program Implementation Model Act (working draft)*, sponsored by Senator Carroll Leavell (NM). The proposed model act would follow the proposed enabling legislation (discussed above) and would further detail how the partnership program would operate, including providing certain consumer protections.

Legislators deferred the two model acts in order to monitor further action on proposed federal legislation that would address implementing a long-term care partnership program. Similar to the draft NCOIL implementation model law, the federal legislation also would include certain consumer protections.

### **PATIENT SAFETY**

On March 4, the NCOIL Property-Casualty and Health Insurance Committees voted to defer until the 2005 NCOIL Summer Meeting further consideration of a proposed *Model Act Regarding Patient Safety (working draft)*, sponsored by P-C Committee Chair Rep. George Keiser (ND) and by Assem. Nancy Calhoun (NY). During a joint Committee session, legislators amended the working draft by, among other things, 1) removing provisions regarding establishing an effective state medical board; 2) rejected a proposed amendment that would have made medical-error reporting voluntary; and 3) deleting the words “medical malpractice” from the title of the bill. Legislators also determined to investigate options for addressing the confidentiality of reported information.

In its amended form, the proposed model act would address the mandatory reporting of medical errors by hospitals, ambulatory surgical centers, and mental hospitals, as well as the mandatory reporting of hospital infection rates. The proposal, which was first vetted during the 2004 NCOIL Annual Meeting, emanates from NCOIL’s investigation into issues surrounding medical malpractice insurance.

### **MEDICAID**

On Saturday, March 5, legislators participated in a general session entitled *The Medicaid Burden: Can States Close the Budget Gap?* Invited panelists explored state Medicaid programs and overviewed demographics, enrollment trends, system abuses, and state and federal-level reimbursement issues. In addition, panelists examined the impact of Medicaid on private insurance markets as related to rate increases, the growing number of uninsured and underinsured, and the rising costs of health care and prescription drugs.

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In addition, legislators considered the following issues, among others:

- federal initiatives to **preempt state insurance regulation**
- **financial modernization**, including market conduct surveillance reform and the NAIC *Interstate Insurance Product Regulation Compact*
- **pharmacy benefit managers (PBMs)**
- **drug importation**
- **drug retail price disclosure**
- **natural disaster** multiple-deductible insurance issues
- **regulation of insurance and financial services** products
- **payday lending**
- **Social Security privatization**
- international **life settlements** sales
- **variable annuities**
- **collateral requirements** for foreign reinsurers

*If you would like to receive additional information regarding any of the above issues, or are interested in ordering a general session audiotape, please contact the NCOIL National Office at (518) 687-0178.*