

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS  
HEALTH INSURANCE COMMITTEE  
SAN DIEGO, CALIFORNIA  
NOVEMBER 18, 2005  
DRAFT MINUTES

The Health Insurance Committee of the National Conference of Insurance Legislators (NCOIL) met at the Hilton San Diego Resort in San Diego, California, on November 18, 2005.

Rep. Geoff Smith of Ohio, chair of the Committee, presided.

Other members of the Committee present were:

Sen. Steven Geller, FL  
Sen. William Haine, IL  
Sen. Tom Buford, KY  
Rep. Ronald Crimm, KY  
Rep. Robert Damron, KY  
Rep. Ed Gaffney, MI  
Rep. Leslie Mortimer, MI  
Sen. Alan Sanborn, MI  
Rep. Fulton Sheen, MI  
Sen. Bob Dearing, MS  
Rep. George Keiser, ND  
Sen. Harvey Tallackson, ND  
Rep. Donald Flanders, NH  
Sen. Carroll Leavell, NM  
Assem. Nancy Calhoun, NY  
Sen. William J. Larkin, Jr., NY  
Rep. Robert Godshall, PA  
Rep. Brian Kennedy, RI  
Rep. Larry Taylor, TX  
Sen. Ann Cummings, VT  
Del. Lidella W. Hrutkay, WV

Other legislators present were:

Rep. Pat Patterson, FL  
Rep. Michael Ripley, IN  
Rep. Susan Westrom, KY  
Rep. Francis Wald, ND  
Sen. Pam Redfield, NE  
Assem. William Barclay, NY  
Rep. Ron Peterson, OK  
Rep. Corbin Van Arsdale, TX  
Rep. Craig Eiland, TX  
Del. Harvey Morgan, VA

Del. Dale Martin, WV  
Del. Gil White, WV

## MINUTES

Upon a motion duly made and seconded, the Committee voted unanimously to approve the minutes of its July 8, 2005, meeting in Newport, Rhode Island.

### HURRICANE KATRINA'S EFFECT ON HEALTH INSURANCE MARKETS

David Korsh of Blue Cross Blue Shield Association (BCBSA) discussed a BCBSA initiative that had begun prior to Hurricane Katrina: the retrieval of medical records and their subsequent conversion into electronic format. He said this effort was especially timely in light of the loss of paper records following the hurricane, and he noted that BCBS of Florida was particular helpful as a result of its experience with hurricane loss. He referred Committee members to a document that outlined other BCBSA initiatives to address Hurricane Katrina issues.

Martin Mitchell of America's Health Insurance Plans (AHIP) recounted AHIP efforts to implement a rapid response to the hurricane. He directed legislators to [www.ahip.org/HurricaneResponse](http://www.ahip.org/HurricaneResponse) and said the Web site aimed to help consumers affected by the disaster, including offering an 800 number to address consumer needs. He discussed work done in conjunction with state and federal regulators to alleviate victims' concerns, and he indicated that the lessons learned from Hurricane Katrina would be applied to future catastrophic events. Mr. Mitchell discussed the larger issue of loss of medical records and noted that after-the-fact review of emergency response efforts would be very helpful in planning for the future.

Rep. Taylor inquired whether people calling the 800 number could access the database of member companies. Mr. Mitchell responded that the number was used as a conduit for callers to access their own company, where the medical data was located.

### STATE REPEAL OF ALCOHOL EXCLUSION LAWS (UPPL)

Mr. Olson offered background on the 1947 UPPL law and cited recent actions taken in California and New York. He noted that NCOIL has been educating legislators with respect to the UPPL, and he cited work done by Dr. Larry Gentilello of the University of Texas Southwestern Medical School to encourage state repeal of the law.

Ms. Nolan updated Committee members on, among other things, actions taken to date by NCOIL in order to promote UPPL repeals.

Rep. Eiland offered Committee members an example of the law's effect.

Sen. Haine referenced Illinois case law on workers' compensation claims.

Rep. Keiser suggested that the bottom line was that doctors and hospitals are not getting paid. He noted the existence of federal statute that requires hospitals to provide services to persons presenting themselves in need of treatment. He expressed reservations about transferring responsibility from an injured person to an insurer, as would occur in the event of UPPL repeal. Ms. Nolan noted that the issue had been debated by the Health Insurance and Executive Committees in prior meetings. She offered to re-open the forum and re-involve those who had originally participated.

Rep. Sheen echoed Rep. Keiser's concerns regarding personal responsibility.

#### PROPOSED RESOLUTION REGARDING THE SMALL EMPLOYERS HEALTH BENEFITS PROGRAM (SEHBA) ACT OF 2005

Mr. Olson summarized the SEHBP Act for Committee members. He reported that the Act would open the federal employees' health benefits program to enable the participation of small employers. He said that an issue of concern for NCOIL would be the proposal's preemption of state regulatory authority over certain participating plans, including its preemption of state rating laws.

Sen. Haine suggested that, given NCOIL's position on other federal preemption initiatives, the Committee should defer consideration of the proposed resolution until the NCOIL Spring Meeting. He said this would allow NCOIL more time to examine the issue.

Mary Beth Senkewitz of the National Association of Insurance Commissioners (NAIC) summarized action on a separate, though related, bill in the U.S. Senate. She reported, among other things, that S. 1955 had been proposed by Sen. Michael Enzi (R-WY) and that the NAIC had not yet taken a position on the bill. Ms. Senkewitz overviewed the three titles to the legislation in detail, calling legislators' attention to Title III, entitled "Harmonization of State Health Insurance Laws." She commented that this section constituted preemption of state health insurance laws. She briefly mentioned other federal legislation that could come into play.

#### INTERSTATE HEALTH INSURANCE SALES LEGISLATION

Ms. Senkewitz cited the existence of a U.S. House bill, *The Health Care Choice Act of 2005*, that would allow the sale of health insurance in any state after an insurer obtained licensure in one state. She said, among other things, that Congress was not actively discussing the legislation.

Rep. Keiser asked whether harmonization was similar to the concept of a compact. Ms. Senkewitz replied that the principle in question was creation of uniform national standards.

## LEGISLATION AFFECTING PHARMACY BENEFIT MANAGERS (PBM'S)

Mr. Olson provided Committee members with background information on the role of PBM's and reported that they were essentially intermediaries in the supply/demand equation of pharmaceutical distribution.

Regina Benjamin of the National Community Pharmacists Association (NCPA) updated Committee members on recent state actions regarding PBM's. She reported that in March North Dakota had enacted a PBM law that recently took effect and noted that the governor of California had recently vetoed legislation there, despite the fact that a report in that state had called for more transparency. Ms. Benjamin noted that 14 states had introduced PBM legislation in 2005 and that the number was expected to increase in 2006. She then briefed the Committee on recent trends in litigation, highlighting action on a Maine lawsuit.

Barbara Levy of the Pharmaceutical Care Management Association (PCMA) summarized state activity and indicated that only North Dakota had acted in 2005. She stressed that PBM's are not insurers but are, rather, administrators that must comply with existing state insurance (and other) laws. She suggested that Committee members not look at PBM's in isolation because such a view would lead to duplicative and overlapping laws. Ms. Levy made note of the Maine litigation as well as litigation in D.C. Finally, she cited a recently issued FTC study on PBM's that found allegations of conflict-of-interest were without merit.

## HEALTH INSURANCE REIMBURSEMENT TRANSPARENCY ISSUES

Dr. Jeremy Lazarus of the American Medical Association (AMA) commented on the unregulated secondary market for physician discounts. He suggested that this market provides no value to the health care system or to patients. He explained, among other things, how a "rental [preferred provider organization] PPO network" would operate without transparency and how such a network could lead to hundreds of physician payer arrangements. He indicated that such arrangements decimate a physician's right to freely contract. Dr. Lazarus asked NCOIL to adopt model standards for the regulation of rental PPO networks, outlining seven necessary principles for the regulation of the secondary discount market. He suggested that without regulation, up to \$60 million in claims could be siphoned out of the health care system.

Rep. Smith asked whether unregulated PPO networks were similar to "wrap" systems. In response, it was suggested that wraps or wrap-arounds were somewhat similar to how some, but not all, of these entities operate. Rep. Smith inquired further about whether selling to one downstream entity could result in losing control of where the physician information eventually was subleased to. He was informed that model legislation proposed by the AMA would prevent subleasing.

Del. Morgan noted the multiplicity of players gaining entry into the healthcare field, including third-party administrators. He supported the concept of transparency and noted that anti-trust laws prevent physicians from communicating with each other. He opined

that these unregulated entities should be subject to regulation. Dr. Lazarus responded by recounting a personal anecdote that demonstrated the incentives present for physicians to leave PPO networks.

Assem. Calhoun inquired as to why physicians would enable the sale of their information even once if the practices described resulted in a loss of physician income. In response, it was noted that there were legitimate reasons for the initial sale of this information but that the problem was with the unregulated secondary market beyond the initial sale. Rep. Smith concurred with Assem. Calhoun's points and suggested the Committee should address this issue.

#### COMMITTEE CHARGES FOR 2006

Rep. Wald noted that changes approved by NCOIL's Articles of Organization & Bylaws Revision Committee would revise the name of the Health Insurance Committee to the Health, Long-Term Care & Health Retirement Issues Committee and moved that legislators incorporate the change into the Committee's 2006 charges. Upon a motion made and seconded, the Committee voted unanimously to accept this amendment.

Rep. Keiser moved that, with respect to the Committee's second charge for 2006, the term "underinsured" also be included. He added that references to "Association Health Plans" in other proposed Committee charges should be replaced with language calling for the "...study of relationships between federal programs and the private health insurance market and to communicate NCOIL's positions to Congress..." Rep. Keiser also asked that the Committee address the general issue of transparency in health insurance issues.

Sen. Haine asked how changing the AHP language would relate to the State-Federal Relations Committee. Rep. Keiser noted the importance of actions contemplated in Washington regarding state health insurance markets. Ms. Nolan clarified that the role of the State-Federal Relations Committee was to convey the position of NCOIL on issues previously discussed in other NCOIL Committees.

Upon a motion made and seconded, the Committee unanimously adopted the proposed 2006 charges, as amended. Rep. Smith said they were as follows:

- Explore possible solutions to the issue of the nation's growing uninsured and underinsured population
- Examine and report on consumer-driven health insurance issues and establish a position, if appropriate
- Continue NCOIL involvement with the issue of and educate legislators on repeal/amendment of state statutes based on the NAIC *Uniform Accident and Sickness Policy Provision Law* (UPPL) and Robert Wood Johnson Study
- Study the relationships between federal programs and insurers and communicate position to Congress as appropriate
- Research and report on regulation of Pharmacy Benefit Managers (PBMs)

- Investigate and report on health insurance reimbursement transparency
- Continue to monitor long-term care legislative initiatives and pursue model legislation, if necessary

Rep. Sheen addressed the Committee regarding a draft resolution calling for a two-step product approval process that would streamline Food and Drug Administration (FDA) approval of new prescription drugs. He suggested that such a process could lower drug costs, allow choice, and help consumers.

Rep. Keiser agreed and suggested that NCOIL establish a position on the issue.

Rep. Sheen noted that many of these drugs under examination are already being sold and that it was important to bring drugs to market that could save lives.

#### ADJOURNMENT

There being no further business, the meeting adjourned at 9:30 a.m.