

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS
HEALTH INSURANCE COMMITTEE
HILTON HEAD, SOUTH CAROLINA
MARCH 4, 2005
DRAFT MINUTES

The Health Insurance Committee of the National Conference of Insurance Legislators (NCOIL) met at the Hilton Oceanfront Resort, on Friday, March 4, 2005, at 7:45 a.m.

Rep. Geoffrey Smith of Ohio, Chair of the Committee, presided.

Other members of the Committee present were:

Rep. David Robertson, MI
Sen. Alan Sanborn, MI
Rep. Fulton Sheen, MI
Rep. Donald Flanders, NH
Assem. Nancy Calhoun, NY
Sen. William J. Larkin, Jr., NY
Rep. George Keiser, ND
Sen. Jake Corman, PA
Rep. Robert Godshall, PA
Rep. Brian Kennedy, RI
Rep. Larry Taylor, TX
Del. Harvey Morgan, VA
Sen. Ann Cummings, VT
Rep. Virginia Milkey, VT

Other legislators present were:

Rep. Pat Patterson, FL
Rep. Terry Parke, IL
Rep. Shirley Bowler, LA
Sen. Nancy Sullivan, ME
Rep. Joe Hune, MI
Sen. Jerry Klein, ND
Rep. Frank Wald, ND
Rep. Todd Book, OH
Rep. Tony Melio, PA
Rep. Craig Eiland, TX
Sen. Clair Ayer, VT

Also in attendance were:

Susan Nolan, Nolan Associates, NCOIL Executive Director
Fran Liebich, NCOIL Director of Legislative Affairs & Education, Health, Life and
Workers' Compensation Insurance

MINUTES

Upon a motion moved and seconded, the Committee voted unanimously to approve, as submitted, the minutes of its November 19, 2004, meeting in Duck Key, Florida.

DRUG RETAIL PRICE DISCLOSURE

Rep. Smith overviewed a proposed NCOIL *Drug Retail Price Disclosure Model Act* and said that the model would support the Committee's charge to investigate cost-effective state approaches to affordable prescription drugs. He said the model was based on a New York law. He said the model would require drug retail pharmacies to disclose and post prices of the 150 most prescribed medications, update the list weekly, and offer generics where available for brand name drugs.

Del. Morgan proposed a substitute model to the proposed NCOIL *Drug Retail Price Disclosure Model Act*. He said the proposed substitute model would:

- require drug retail operations to post a sign conspicuously in order to notify consumers that drug prices are available upon request
- omit a provision requiring drug retail operations to disclose to consumers the prices for the most 150 frequently prescribed medications
- omit a provision requiring drug retail operations to keep a list, updated weekly, of the most frequently prescribed medications
- omit a provision requiring pharmacies to post conspicuously a sign notifying consumers of the drug retail price list and that prices for medications vary between pharmacies

Del. Morgan said that it was not a pharmacy's responsibility to create prices for prescription drugs and that instituting such a law would be an administrative nightmare for any pharmacy.

Diane Darvey of the National Association of Chain Drug Stores (NACDS) said that price lists were well intentioned, but did not effectively help consumers. She said that the model legislation would add unnecessary burdens to pharmacies and to the regulatory system. Ms. Darvey said that NACDS would work with the Committee to find other ways to examine cost-effective approaches to affordable prescription drugs. She said that NACDS supported Del. Morgan's substitute language.

Regina Benjamin of the National Community of Pharmacists Association (NCPA) said that most requests for prices from consumers came by telephone and that the proposal would reduce the time that pharmacists spend aiding patients. She said that NCPA supported Del. Morgan's substitute language. Ms. Benjamin also suggested that the Committee look into uniform prescription-drug benefit cards.

Upon a motion moved and seconded, the Committee voted to postpone indefinitely consideration of both the proposed *Drug Retail Price Disclosure Model Act* and the proposed substitute model legislation sponsored by Del. Morgan.

DRUG IMPORTATION

Rep. Kennedy overviewed a proposed NCOIL *Resolution Encouraging Congress to Pass Legislation Providing Safe, Accessible, and Affordable Prescription Drugs*. He said that the resolution

called on Congress to address the significant price disparity between brand name prescription drugs sold inside and outside of the U.S. He said the proposed resolution encouraged Congress to create a safe and legitimate program for prescription drug reimportation or to negotiate trade agreements with other industrialized nations. He said that Rhode Island recently passed legislation allowing the importation of prescription drugs from Canada.

Rep. Kennedy also overviewed a proposed *Resolution Encouraging Canada to Continue to Provide Safe, Affordable Prescription Drugs to United States Citizens*. He said that the resolution would encourage the Canadian Minister of Health to continue to allow the importation of medications to U.S. consumers and to not take actions that may have serious health implications for individuals accessing medications from Canada. He said that the resolution called for a meeting with the Minister of Health to discuss the matter further.

Chris Ward of Ward Health Strategies said that he had considerable experience as a lawmaker in the Ontario legislature, and he said that he had worked with the Canadian Minister on Health on health-related endeavors. He said that the Canadian government had gone on record that it would ban the export of drugs from Canada to the U.S.

Mr. Ward said that purchasing drugs through the Internet was potentially dangerous. He said that there were no mechanisms in place for Canada to recall, oversee, or engage in post-market surveillance on mail-order prescription drugs. Mr. Ward said that Diane Gorman, the Assistant Deputy Minister of Canada Health Products and Food Branch, had said that she would be unable to guaranty the safety of drugs being exported into the U.S. by mail-order. He said it was a concern that American citizens had to waive their rights to protection under U.S. law when accessing I-SAVE-RX, an Internet clearinghouse for imported drugs. He said that the U.S. should try to address price problems within its borders as a policy matter.

Sen. Sanborn said that he supported personal importation of prescription drugs as permitted by U.S. laws, but said that he was concerned with the safety of mail-order pharmacies.

Rep. Kennedy clarified that the resolution supported the importation of FDA-approved prescription drugs into the U.S., with a chain-of-custody that could be traced to FDA-approved prescription drug manufacturing plants.

Sen. Cummings said that both houses in the state of Vermont had passed legislation supporting I-SAVE-RX. She said that individuals were still able to sue pharmacies, but not the state. She said that I-SAVE-RX was a controlled system and that prescription drugs did have recall numbers that allowed regulators to track the FDA-approved manufacturers supplying the medications.

Ms. Darvey said that the NACDS did not support drug importation other than for personal importation.

After much discussion and debate over safety concerns, Committee members voted to postpone indefinitely the proposed NCOIL *Resolution Encouraging Congress to Pass Legislation Providing Safe, Accessible, and Affordable Prescription Drugs* and the proposed NCOIL *Resolution Encouraging Canada to Continue to Provide Safe, Affordable Prescription Drugs to United States Citizens*.

PHARMACY BENEFIT MANAGERS (PBMs)

Lauren Baldwin of Caremark said that Maine and Washington D.C. had passed legislation that required, among other things, that PBMs disclose rebates and deals from drug manufacturers. She said that a lawsuit was filed on behalf of the PBM industry and that the PBMs operating in Maine and Washington, D.C. had received injunctive-relief from the law. She said that a magistrate judge in the state of Maine had issued a recommended decision against the Pharmaceutical Care Management Association's (PCMA) motion challenging the law. She said that PCMA had filed an injunction and had requested a review of the magistrate's recommendation.

Rep. Eiland asked about the role that PBMs played under the new Medicare rules. Ms. Baldwin said that since the rules were so new it would be too early to address that, but she said that she would report back to the Committee at the NCOIL Summer Meeting.

ALCOHOL-RELATED TRAUMA INJURIES AND INSURANCE COVERAGE ISSUES

Ms. Liebich said that NCOIL recently distributed a legislative education package to legislators regarding alcohol-related insurance coverage issues related to the Uniform Accident and Sickness Policy Provision (UPPL), adopted and later repealed by the National Association of Insurance Commissioners (NAIC). She said that the outdated law, passed in 1947, allowed insurers to exclude health coverage to individuals involved in accidents where doctors found any level of blood-alcohol. She said that the NAIC supported repeal of the provision, as did well as a number of other organizations, including Mothers Against Drunk Driving (MADD). She said that NCOIL supported NAIC repeal of the UPPL and that legislators had adopted a resolution stating such in 2001. Ms. Liebich said that NCOIL had sent its package to leadership in the 42 states that still enforced the UPPL provision.

Rep. Eiland said that Texas had introduced a bill repealing the UPPL provision and he urged other legislators to repeal their states' UPPLs. He said that many organizations, including MADD, would support legislators.

ASSOCIATION HEALTH PLAN (AHP) LEGISLATION

Joan Gardner of the Blue Cross Blue Shield Association (BCBSA) said that over the last several years NCOIL had prominently voiced its opposition to Congress regarding federal legislation that would exempt AHPs from important state legislative protections. She said that federal legislation would hurt the insurance marketplace, as well as state legislators' and insurance commissioners' ability to protect consumers. She said that a broad coalition of organizations had conducted research regarding AHP fraud that showed that AHPs would increase premiums for small employers. She urged the NCOIL to update and reissue its opposition letter regarding AHPs and to send the letter to members of Congress.

Upon a motion moved and seconded, the Committee voted unanimously to renew the AHP opposition letter.

ADJOURNMENT

There being no further business, the Committee adjourned at 8:55 a.m.