

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS  
HEALTH, LONG-TERM CARE & HEALTH RETIREMENT ISSUES COMMITTEE  
SEATTLE, WASHINGTON  
JULY 20, 2007  
MINUTES

The National Conference of Insurance Legislators (NCOIL) Health, Long-Term Care & Health Retirement Issues Committee met at the Sheraton Seattle Hotel & Towers in Seattle, Washington, on Friday, July 20, 2007, at 1:00 p.m.

Rep. Susan Westrom, chair of the Committee, presided.

Other members of the Committee present were:

|                          |                                 |
|--------------------------|---------------------------------|
| Rep. Kurt Olson, AK      | Sen. Alan Sanborn, MI           |
| Rep. Greg Wren, AL       | Rep. Fulton Sheen, MI           |
| Rep. Pat Patterson, FL   | Rep. George Keiser, ND          |
| Sen. Ralph Hudgens, GA   | Rep. Frank Wald, ND             |
| Rep. Michael Ripley, IN  | Rep. Donald Flanders, NH        |
| Sen. Vi Simpson, IN      | Sen. William J. Larkin, Jr., NY |
| Sen. Chris Steineger, KS | Sen. James Seward, NY           |
| Sen. Ruth Teichman, KS   | Rep. Ronald Peterson, OK        |
| Rep. Ronald Crimm, KY    | Rep. Robert Godshall, PA        |
| Rep. Robert Damron, KY   | Rep. Brian Kennedy, RI          |
| Rep. Ed Gaffney, MI      | Rep. Virginia Milkey, VT        |

Other legislators present were:

|                             |                             |
|-----------------------------|-----------------------------|
| Rep. Tommy Thompson, KY     | Rep. William Coley II, OH   |
| Sen. Delores Kelley, MD     | Sen. Keith Faber, OH        |
| Rep. David Law, MI          | Rep. Jim Raussen, OH        |
| Rep. Joe Atkins, MN         | Rep. Charles Curtiss, TN    |
| Sen. David O'Connell, ND    | Rep. Craig Eiland, TX       |
| Sen. Pete Pirsch, NE        | Rep. Warren Kitzmiller, VT  |
| Rep. William Batchelder, OH | Rep. Michele Kupersmith, VT |

Also in attendance were:

Susan Nolan, Nolan Associates, NCOIL Executive Director  
Candace Thorson, NCOIL Deputy Executive Director  
Mike Humphreys, NCOIL Director of Legislative Affairs and Education,  
Health, Life, and Workers' Compensation

MINUTES

The Committee voted unanimously to approve the minutes of its meeting on March 1, 2007, in Savannah, Georgia.

## PENDING FEDERAL INITIATIVES

Mr. Humphreys updated Committee members on federal initiatives. He noted that H.R. 4, the *Medicare Prescription Price Negotiation Act*, had passed in the House of Representatives but that its Senate companion, S. 3, had failed to overcome a cloture vote. Regarding state reform programs, he indicated that H.R. 506, the *Health Partnership through Creative Federalism Act*, had gained support in the House, and noted that it would provide grants to states to implement innovative healthcare reform initiatives. He said that a Senate companion bill did not have the same level of support.

Regarding the State Children's Health Insurance Program (SCHIP), Mr. Humphreys noted that NCOIL had sent a letter following the NCOIL Spring Meeting that urged Congress to reauthorize and expand the program.

Marty Mitchell of America's Health Insurance Plans (AHIP) discussed Senate and House SCHIP efforts. He noted that a Senate bill would rename the program "CHIP" rather than "SCHIP." He discussed proposed allocations to states under this bill, indicating that states would see funding increases of at least ten (10) percent. He said the House was not as far along in its development of legislation and that the President was believed to be opposed to the Senate draft.

Regarding mental health parity, Randi Reichel of Reichel Consulting, Ltd. said that current Senate and House bills were very different. She indicated that the Senate bill, S. 558, would only apply to large groups and that it was not constructed as a new mandate. She emphasized a provision that would, in many instances, preempt state laws. With respect to the House, she indicated that its bill, H.R. 1424, would create four categories of mental health parity, depending on whether the benefits provided were inpatient or outpatient and in-network or out-of-network, and noted that it has 268 co-sponsors.

Brett Palmer of the National Association of Insurance Commissioners (NAIC) informed members that the NAIC had sent a letter to Senator Edward Kennedy (D-MA), chair of the Senate Health, Education, Labor, and Pensions Committee, opposing the preemptive provisions of S. 558.

After further discussion of issues related to mental health parity, Guenther Ruch of the Wisconsin Insurance Department said that there was a great deal of Congressional activity regarding the Medicare Advantage (MA) program. He said that Congress had focused on marketing/sales practices and reimbursement rates, and noted that several bills were being introduced addressing various aspects of MA plans.

## CONCERNS RELATED TO LONG-TERM CARE INSURANCE

Mr. Ruch offered members a historical perspective of the long-term care insurance product line and discussed issues encountered during the 1980s and 1990s. Among other things, he said, the product was not adequately priced and was sold on a stand-alone basis. He reviewed NAIC efforts to develop an appropriate regulatory framework via a model bill on long-term care insurance, and he indicated that most states had adopted

some form of the NAIC model or related regulation. He informed members that, in connection with a recent *New York Times* article that was critical of insurers' claims-paying practices, states need only to enforce existing laws and regulations, rather than to enact new ones.

Donald Walters of the Insurance Marketplace Standards Association (IMSA) discussed IMSA plans to develop long-term care claim standards over the coming months and provided an overview of IMSA's role in accrediting insurance companies.

John Gerni of the American Council of Life Insurers (ACLI) referenced a letter sent by ACLI President Frank Keating to congressional leaders that summarized the ACLI response to the findings in the *New York Times* article. He noted that several model laws concerning long-term care insurance existed and suggested that NCOIL members ensure that all pertinent consumer protections are in place in their individual states. With respect to claims, he observed that all states have unfair claim settlement practices laws and highlighted key elements of the statutes.

Mr. Mitchell said the long-term care insurance industry took the issues highlighted in the *New York Times* article very seriously. He noted that AHIP contacted the California Insurance Department to check the data in the article and that AHIP also undertook an independent review.

Mr. Mitchell said that based on AHIP analysis, about 3.4 percent of claims have been mishandled, rather than the 25 percent alleged in the article. He indicated that his presentation was based on the industry's data analysis but he was confident that the California Insurance Department's review would substantiate these results. He further noted that a U.S. Department of Health and Human Services Policy Committee review of claims indicated that, over an 18-month period, approximately 2.5 percent of claims were not properly paid.

Rep. Keiser inquired about state success with long-term care partnership programs. Mr. Gerni replied that states were still implementing partnership plans and that he did not have specific enrollment data.

Rep. Ripley asked Mr. Walters whether uniform underwriting standards were being considered by IMSA. Mr. Walters replied that the IMSA standards being considered concerned marketing and sales, rather than underwriting.

#### PREFERRED PROVIDER ORGANIZATIONS (PPOs)

Karen Greenrose of the American Association of Preferred Provider Organizations (AAPPO) provided an overview of how PPOs operate and how, in her opinion, they benefit consumers. She described PPO structure and financing, discussed the differences between risk and non-risk PPOs, and noted the advantages of each type of PPO to different constituencies. She noted that there are currently 158 million Americans enrolled in PPOs.

Alan Spielman of URAC discussed its efforts to provide PPO accreditation. He noted that 23 states recognize URAC health plan accreditation standards applicable to PPOs and indicated that URAC standards address “silent PPOs.” He said that these PPOs exchange discounted provider terms with other PPOs. He said that URAC standards would allow providers participating in a PPO to identify contracts from which discounts are taken.

Rep. Crimm inquired whether the volume of patients recruited to doctors due to their PPO membership would result in a lower standard of medical care. Ms. Greenrose replied that the concept should be viewed as steering or drawing patients into a medical practice, rather than actually treating a higher number of patients.

Sen. Kelly asked whether patients going out of a PPO network could be, in essence, their own claims manager due to insurers not authorizing claims. Ms. Greenrose answered that in most out-of-network circumstances, fees were typically paid by both insurers and consumers.

Dr. Michael Connair from New Haven County, Connecticut, said that PPOs only work because of their market power in an unbalanced anti-trust playing field. He relayed a story of being forced by Blue Cross to accept lower rates or risk losing access to patients insured by this carrier. With respect to silent PPOs, he related his experience with Aetna in Connecticut, describing what he felt were abuses by Aetna in the workers’ compensation market. He indicated that the problem was one of anti-trust enforcement and suggested that doctors should be authorized to collectively negotiate with insurers as a remedy to their market power and anti-competitive behavior.

#### PHYSICIAN REIMBURSEMENT

Rep. Eiland told Committee members that he had drafted a bill for consideration in Texas that was similar to a proposed NCOIL *Model Act Concerning Regulation of the Secondary Market in Physician Discounts*. He said the bill was advanced by one committee but was stopped in another and would be re-introduced with modifications in the next session. He argued that the time was right for movement on this issue.

Rep. Keiser supported Rep. Eiland’s effort and noted that NCOIL has been working on the issue, trying to reach an agreement between interested parties.

Kai Sternstein of the American Medical Association (AMA) said the AMA had been internally discussing the NCOIL model bill. She said progress was being made with other parties on the NCOIL proposal but noted that there were 11 outstanding principles to discuss. She maintained that consensus was being pursued and indicated that more time was necessary to further discussions with industry representatives.

Mr. Mitchell concurred with Ms. Sternstein’s comments and also suggested that more time was needed.

Upon a motion made and seconded, the Committee voted unanimously to defer consideration of a proposed *Model Act Concerning Regulation of the Secondary Market in Physician Discounts* until the NCOIL Annual Meeting.

#### STATE AUTHORITY UNDER ERISA

Upon a motion made and seconded, the Committee voted unanimously to defer, due to time constraints, discussion regarding clarifying state authority under ERISA until the NCOIL Annual Meeting.

#### STATE REPEALS OF ALCOHOL EXCLUSION LAWS

Mr. Humphreys informed members that NCOIL had historically supported repeal of alcohol exclusion laws. He said that since the NCOIL Spring Meeting, Illinois, Oregon and Indiana had repealed alcohol exclusion statutes. He further discussed ongoing efforts to study and/or address the issue in other states. He also noted that in New York Governor Eliot Spitzer had indicated that he would sign into law an alcohol exclusion bill that had previously been vetoed by his predecessor, should the legislature pass such a bill.

#### ADJOURNMENT

There being no further business the Committee adjourned at 2:40 P.M.