

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS
LIFE INSURANCE COMMITTEE
DUCK KEY, FLORIDA
NOVEMBER 18, 2004
DRAFT MINUTES

The Life Insurance Committee of the National Conference of Insurance Legislators (NCOIL) met at Hawks Cay Resort in Duck Key, Florida, on Thursday, November 18, 2004, at 9:15 a.m.

Rep. Gregory Davids of Minnesota, chair of the Committee, presided.

Other members of the Committee present were:

Sen. Steven Geller, FL
Rep. Larry Julian, MI
Rep. Mary Ann Middaugh, MI
Sen. Alan Sanborn, MI
Sen. Carroll Leavell, NM
Rep. George Keiser, ND
Rep. Virginia Milkey, VT
Rep. Mark Young, VT

Other legislators present were:

Rep. Carl Domino, FL
Rep. Pat Patterson, FL
Rep. Michael Ripley, IN
Rep. Matt Whetstone, IN
Rep. Robert Damron, KY
Rep. Don Pasley, KY
Rep. Susan Westrom, KY
Rep. Brian Kennedy, RI
Rep. Craig Eiland, TX
Rep. Larry Taylor, TX
Del. Harvey Morgan, VA
Rep. Kathleen Keenan, VT

Also in attendance were:

Susan Nolan, Mackin & Company, NCOIL Deputy Executive Director
Fran Liebich, NCOIL Director of Legislative Affairs & Education, Life and Health Insurance

MINUTES

Upon a motion moved and seconded, the Committee voted unanimously to approve, as submitted, the minutes of its July 15 Committee meeting in Chicago, Illinois.

2003 VIATICAL SETTLEMENTS MARKET SURVEY RESULTS

Doug Head of the Viatical Life Settlements Association of America (VLSAA) reported that are only 15 states that regulate the traditional terminally ill viatical settlement marketplace and that 20 include the life settlement market. Mr. Head said that many policy transactions are not being reported through the system. He said that it directly affected the system. He said, as a result, it is difficult to measure the effectiveness of state laws. He encouraged the Committee to continue conducting the viatical market survey.

Sen. Geller suggested that the NCOIL International Insurance Issues Committee look at the rapid explosion of life settlements business through American-based sellers in the international market. Mr. Head said that a large amount of German capital was coming to the American marketplace to purchase policies. He said that balance of trade and the need for overseas dollars in the American market were responsible. Mr. Head expressed concern regarding the valuation of life policies being considered by the International Accounting Standards Boards.

INVESTOR-OWNED LIFE INSURANCE (IOLI)

Mr. Leigh Griffith, representing LILAC Capital, reported that IOLIs are available in Texas, North Carolina, and Virginia. He explained that IOLIs are owned by trusts and that charities are beneficiaries. He said investors assist in the transaction. He said IOLIs are not “investor-owned” but “charity-owned” life insurance (CHOLI). Mr. Griffith said that investors do not know the insureds or have ownership in the policies. He said that investors cannot sell, borrow, or assign against policies. He said that CHOLIs match annuities and life insurance, where the annuity cash flow pays the life insurance premium and a fix-yield to the investors. He said that the insured consents to the trust and is aware of the death benefit the charity will receive. He said that the practice does not infringe on state insurable interest laws because of the insureds wish to further his or her charitable desires. In addition, he said that, charities are recognized as having an insurable interest and investors receive only a return on an initial investment. He said charities receive five to seven percent of the death benefit. Mr. Griffith said that states need to make a technical change to insurable interest laws to permit a charity to use a bankruptcy remote entity, which holds assets with limited activity. He said that the entity is not apt to have third-party claims credits that could put the charity in bankruptcy.

Mr. Bill Anderson of the National Association of Insurance and Financial Advisors (NAIFA) said that NAIFA, the Association for Advanced Life Underwriting (AALU), and the American Council of Life Insurers (ACLI) are engaged in a nationwide defense of insurable interest laws. He said that the groups feel that expanding insurable interest laws is bad public policy. He said that insurable interest laws were created to ensure that a person taking out a life insurance policy had an interest in the life of that individual either for family, business, or charitable reasons. He said the amendment proposed by proponents of IOLIs would allow unrelated third parties to have an interest in the life of the individual where they would not otherwise be able to. He said that the charity acts like a cloak in this transaction. He said that NAIC has two working groups looking at the issue in 2004 and 2005.

Ms. Nancy Davenport of ACLI said that such unprecedented opposition to IOLIs was because the proposed changes to expand insurable interest laws would allow unrelated third party investors to use charities as a cloaked investment vehicle. She said that charities may erode their donor base to come up with insureds for investors and that charities are not guaranteed their financial return. Furthermore, Ms.

Davenport noted that charities could be imperiling their tax-exempt status and incurring unrelated business income taxes. She said that a major concern was that IOLIs would put the unique tax treatment of life insurance products at risk. She said that if Congress views the product as an investment vehicle, it would put the tax-free benefits at risk and would hurt the public.

Mr. Griffith said that the guarantee argument is false because the only way a charity would not be able to receive benefits is if the life insurance company defaults. He said that the insureds are disclosed to and that the charity-owned life insurance model works when life insurance products are taxable. He said that the model does not use the tax benefits of life insurance. He said that he objected to using charities as cloaks, as he helped design the model. He said that charities can use their own money and don't have to use the capital markets. He said charities can liquidate their existing endowments and give up the yield and growth on their endowments but that it can be expensive. Mr. Griffith said the program permits charities to use capital market fixed-rate funding and that investors profit from the annuity, not life insurance. He asked legislators to look at the merits of the program.

Rep. Davids asked the Committee of its interest in hearing further discussion on the issue at the next meeting. After hearing no objections, the Committee voted unanimously to carry the discussion to the spring 2005 NCOIL meeting.

Sen. Geller said that he did not understand the difference between charitable remainder trust and IOLIs and asked for clarification at the next meeting.

LONG-TERM CARE PARTNERSHIP MODEL RESOLUTION

Sen. Leavell overviewed a proposed *Resolution Urging Congress to Pass the Long-Term Care Partnership Program Act of 2004 (S. 2077/H.R.1406)*. He said the federal legislation would amend Title XIX of the Social Security Act to allow additional states to establish long-term care partnership programs. He said that long-term care partnerships incorporate private long-term care insurance with special Medicaid eligibility requirements and that partnership programs allow individuals to purchase long-term care insurance while protecting their personal assets.

Megan Mamarella of the National Association of Health Underwriters (NAHU) said that long-term care partnership programs serve an important role in encouraging consumers to plan for their long-term care needs. She said the average cost of a nursing home was \$70,000 a year and that currently eight out of 10 people are not insured or prepared for this type of catastrophic expense. She said that Medicaid had become the primary payer for long-term care expenses nationwide, paying approximately 54 percent. She said that Medicaid expenses approximate two-thirds of a state's budget.

Ms. Mamarella said that long-term care partnerships create incentives for consumers to plan ahead for long-term care expenses. She said they allow individuals to purchase private long-term care insurance and protect some or all of their assets, while remaining eligible for Medicaid. She said that Medicaid becomes the last payer, not the first. Ms. Mamarella explained that dollar-for-dollar asset protection meant that for every dollar of benefit paid into the policy, a dollar in asset protection would be gained. To explain further, Ms. Mamarella said that if a person purchased a \$50,000 insurance benefit and exhausted his or her policy, then \$50,000 in assets would be disregarded or protected in the Medicaid eligibility process. She said that dollar-for-dollar gives policyholders financial choice in the disposition of their assets. She said that the

Health and Human Services Department and federal legislators have indicated support for the dollar-for-dollar model because it is easier to implement and easier for consumers to understand. Ms. Mamarella said that in total-asset protection programs premiums are slightly higher, a policy with a specified duration is required, inflation protection is included, and lengthy benefits for home health care are provided. She said that total asset protection programs appeal to higher-income individuals, but that individuals do not need to be of higher-income to purchase the policies.

Ms. Mamarella said only four states, California, Connecticut, Indiana, and New York, were originally granted waivers for the long-term care partnership programs. She said that of the 150,000 policies in force in all four states, only 86 individuals had accessed Medicaid after exhausting their benefits. She said that New York recently joined Indiana in offering total asset protection and dollar-for-dollar asset protection models. She said that there is bipartisan support at the federal level for partnership programs. Ms. Mamarella urged the Committee to pass the proposed model resolution due to a need to alleviate state Medicaid burdens and because of the growing support for federal legislation in 2005.

Rep. Eiland asked whether it was originally an 1115(b) Medicaid waiver that allowed the programs to operate and asked if he purchased a \$500,000 policy and needed long-term care at the age of 65, would his personal assets be protected from spending-down in order to qualify for Medicaid. He then asked if he had a million-dollar estate whether he would have to spend-down. Ms. Mamarella confirmed it was an 1115(b) Medicaid waiver and that Rep. Eiland would be able to protect the \$500,000 dollars of his personal assets under the dollar-for-dollar model and that with a million-dollar estate, \$500,000 would have to be spent-down in order to qualify for Medicaid.

Rep. Keiser asked if the federal bill passes if states would still have to seek a waiver. Ms. Mamarella said that she would report back to the Committee on that issue.

Sen. Geller asked if an individual purchased a \$50,000 dollar-for-dollar asset protection policy, and if a state had a spend-down limit of \$25,000, whether the \$50,000 would be added to the \$25,000 limit to total \$75,000. In addition, he asked, if that amount would remain at \$50,000, with an actual amount protected of \$25,000. Ms. Mamarella said that she would report back to the Committee on that issue.

Upon a motion made and seconded, the Committee voted unanimously to adopt the *Resolution Urging Congress to Pass the Long-Term Care Partnership Program Act of 2004 (S. 2077/H.R.1406)*.

LONG-TERM CARE PARTNERSHIP MODEL ACT

Ms. Liebich overviewed a proposed working drafting of the NCOIL *Partnership for Long-Term Care Implementation Model Act*. She said that the model legislation could be used by states to implement the long-term care partnership programs following enactment of federal legislation amending Title XIX of the Social Security Act. She said that, among other things, the model would:

- allow individuals who exhaust qualified private long-term care policy benefits to protect an amount equal to their assets without violating Medicaid's financial eligibility requirements
- allow for dollar-for-dollar asset protection as well as total asset protection
- provide reciprocity for comparable and qualified long-term care partnership programs policies

- make available to any individual interested in participating in the partnership information on the program and on long-term care insurance in general
- allow for an optional tax incentive for qualified long-term care partnership policies

Rep. Davids asked for clarification regarding a scenario where a couple had joint assets, and only one spouse qualified for the program. He also asked how an individual would protect his or her assets if they were disabled and could not qualify for a long-term insurance policy. He asked that the Committee look into these issues at the next meeting.

Upon a motion moved and seconded the Committee voted unanimously to defer the NCOIL *Partnership for Long-Term Care Implementation Model Act* (working draft) until the 2005 NCOIL Spring Meeting.

Scott Kipper of America's Health Insurance Plans (AHIP) said that AHIP had some concerns about partnership programs. He said that AHIP was promoting state legislative efforts regarding long-term care tax incentives. He said that AHIP continues to support states' adoption of the National Association of Insurance Commissioners (NAIC) *Long-Term Care Model Regulation*.

DISCUSSION OF STATE JURISDICTIONAL ISSUES REGARDING ANNUITIES

Nancy Davenport of ACLI said that in February of 2003 NCOIL unanimously passed a resolution that supported state insurance commissioners' exclusive jurisdiction over annuities and that opposed state legislation granting state security's regulators jurisdiction. She said that most states currently exempt variable products from the definition of securities. She said that annuities are already highly regulated and that regulatory oversight by state security's regulators would add yet another layer of regulation and confuse consumers. She said that in 2004 several states introduced legislation excluding variable annuities from the definition of securities. Ms. Davenport said that approximately 20 states might consider legislation on the issue during the 2005 legislative session and suggested that NCOIL should monitor the activity.

Eric Dupont of MetLife said that MetLife shared ACLI's concern regarding jurisdiction over annuities and said that he would be willing to give a more thorough presentation at the next Life Insurance Committee meeting.

CONSIDERATION OF PROPOSED 2005 LIFE INSURANCE COMMITTEE CHARGES

Ms. Liebich said the proposed 2005 Committee charges were to:

- Establish a position on investor owned life insurance (IOLI) and take action
- Support state long-term care partnership programs and urge Congress to act
- Develop model legislation that would establish state long-term care partnership programs
- Investigate and report on ways to educate consumers about retirement planning through insurance related products
- Investigate and report on the business of life reinsurance

Upon a motion made and seconded, the Committee unanimously adopted the proposed 2005 Committee charges.

ADJOURNMENT

There being no further business, the meeting adjourned at 1:40 p.m.

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