

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS
LIFE INSURANCE COMMITTEE
CHICAGO, IL
JULY 15, 2004
DRAFT MINUTES

The Life Insurance Committee of the National Conference of Insurance Legislators (NCOIL) met at the Hotel Inter-Continental in Chicago, Illinois, on Thursday, July 15, 2004, at 12:30 p.m.

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

Other members of the Committee present were:

Sen. Steven Geller, FL
Rep. Ronald Crimm, KY
Rep. George Keiser, ND
Sen. Carroll Leavell, NM
Sen. William J. Larkin, Jr., NY
Sen. James Seward, NY
Rep. Virginia Milkey, VT

Other legislators present were:

Rep. Carl Domino, FL
Rep. Pat Patterson, FL
Rep. Michael Ripley, IN
Rep. Tom Buford, KY
Rep. Robert Damron, KY
Sen. Alan Sanborn, MI

Also in attendance were:

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

MINUTES

Upon a motion moved and seconded, the Committee voted unanimously to approve, as submitted, the minutes of its February 26, 2004, meeting in San Antonio, Chicago.

LIFE SETTLEMENTS SUBCOMMITTEE

Ms. Liebich reported that the Subcommittee voted to remove amendments to the NCOIL *Life Settlements Model Act* that had been proposed in accordance with the NCOIL 30-day deadline rule that would have required separate licensure, continuing education, and disclosure of the availability of life settlements as an option to life insurance policyholders at certain times.

NCOIL LIFE SETTLEMENT MODEL ACT

Ms. Liebich said that the remaining proposed amendments to the *NCOIL Life Settlements Model Act* included, among other things:

- a provision prohibiting persons, wherever located, to enter into a sales contract if the policy was obtained by false, deceptive or misleading means
- a provision allowing brokers, life settlement investment agents or licensed providers to conduct or participate in advertisements and would require the advertisements be accurate, truthful and not misleading in fact or by implication

Upon a motion made and seconded, the Committee unanimously adopted the *Life Settlements Model Act*, as amended, and referred the model to the NCOIL Executive Committee for consideration.

PROPOSED GENETIC DISCRIMINATION MODEL ACT

Ms. Liebich reported that the model act was designed to protect consumers applying for life and disability insurance products from discrimination relative to genetic testing. She said the model was based on an Oregon bill and had been a working draft in the Committee since 2002.

Dr. Robert Gleeson of Northwestern Mutual Life Insurance said the model proposed radical changes to risk classification. He said that if adopted, the model act would fundamentally change an insurers' ability to classify risk, would establish a guaranteed underwritten insurance limit, and would require insurers to seek approval from each state before underwriting for catastrophic genetic diseases. He said that he was unaware of documented instances of discrimination. He said that the model would not fix a problem, but would cause a problem. He said the model would be a challenge to underwriting for life and disability insurance, and he urged the Committee to remove it from further consideration.

Dawn Allain of the National Society of Genetic Counselors (NSGC) said her organization supported the model. She said the NSGC was aware of the lack of documented cases of genetic discrimination in life and disability insurance application, but was concerned that families were avoiding testing because of fear of genetic discrimination.

In response to a question from Rep. Keiser, Dr. Gleeson said that he believed that about 1,000 diseases might meet an 80 percent correlation with the specific gene or gene mutation that would have a 50 percent chance of causing premature death. He said all 1,000 diseases were rare and the probability affects one in 10 people, with muscular dystrophy being the most common.

Rep. Crimm said that he was concerned that genetic testing was another way of denying a claim. In response, Dr. Gleeson said that life insurance companies are limited in many instances to a two-year contestability period in determining fraud after issuance of a policy. He said accessing information unless fraud was involved was egregious.

Rep. Keiser asked what the rationale was in determining the \$100,000 and \$60,000 limits as specified in the proposed model. Ms. Nolan said the language came from the Oregon bill and that the policy amounts were the end result of comments from interested industry parties.

Rep. Keiser made a motion to waive the 30-day deadline rule for an amendment to Section Eight,

regarding consumer fraud. Ms. Liebich said the amendment clarified language regarding penalties and enforcement of fraud. Upon a motion moved and seconded, the Committee voted to waive the 30-day deadline rule. Dr. Gleeson said that the model would permit unequal treatment of insurance applicants. Ms. Allain said that the amendment represented a technical change.

Upon a motion moved and seconded, the Committee voted unanimously to amend Section Eight of the proposed *Genetic Discrimination Model Act*.

Rep. Milkey made a motion to move the model for adoption, but for lack of a second the model did not prevail. Upon a motion made and seconded, the Committee voted unanimously to remove the proposed *Genetic Discrimination Model Act* from Committee consideration.

LONG-TERM CARE INSURANCE

Janice Kupiec of the National Association of Health Underwriters (NAHU) said that long-term care partnership programs served an important role in encouraging consumers to plan for long-term care needs. She said that providing affordable and adequate long-term care would become increasingly important as the population aged. She said that in 2020 one in six Americans would be 65 years or older and the number of people in nursing homes would increase significantly. She said the average cost of a nursing home was \$60,000 a year and was expected to increase over time. She said that Medicaid had become the primary payer for long-term care expenses nationwide, paying approximately 54 percent of expenses, covering the low-income and individuals who had spent down their assets.

Ms. Kupiec said only four states, California, Connecticut, Indiana, and New York, had been granted waivers for long-term care partnership programs. She said the Omnibus Budget Reconciliation Act (OBRA) of 1993 impeded other states' ability to develop the programs. She said that an initial concern with the program was that asset protection would only benefit higher income individuals. But, she said, of the 42,000 partnership programs in force in New York, in 12 years only 38 beneficiaries had accessed Medicaid. She said that of over 150,000 policies in force in all four states, only 86 individuals had accessed Medicaid after exhausting their benefits. She said Congress should act in order to move forward with long-term care partnership programs. She said two bills pending, H.R. 1406 and S.B.2077, would eliminate the impediment in OBRA. She said that during the 2004 session, Oklahoma and Idaho passed enabling legislation encouraging Congress to act. She said that with enabling legislation, states could set up partnership programs and would not have to wait for Congress to act.

Scott Kipper of America's Health Insurance Plans (AHIP) reported that the National Association of Insurance Commissioners (NAIC) was in the process of developing long-term care standards as part of its interstate compact project. He said that 21 states had adopted the NAIC model.

Mr. Kipper reported that Congress was considering legislation entitled, "*The Ronald Reagan Breakthrough Act* (S.B.#2533/H.R.#4595)." He said the legislation would offer incentives for above-the-line tax deductions for long-term care premiums and tax credits for caregivers. He said Congress was also considering a bill that would allow individuals to access their retirement funds, such as 401Ks, to pay for long-term care premiums. He said that over 200,000 federal employees had enrolled in the existing federal long-term care program.

Mr. Kipper said Governor Kempthorn of the National Governors Association (NGA) made a

chairman's initiative on long-term care, financing, and tax incentives. Mr. Kipper said that over 20 states passed legislation concerning tax incentives for long-term care.

In response to a question from Rep. Domino regarding long-term care policy statistics, Ms. Kupiec said that she did not have statistics on how many long-term care policies were in force, but said that typically people in their mid 50s purchased policies. She said that NAHU encouraged individuals to purchase policies at a younger age when premiums would be lower. Mr. Kipper added that more employees were purchasing long-term care products sponsored by their employers.

INVESTOR OWNED LIFE INSURANCE

Bill Anderson of the National Association of Insurance and Financial Advisors (NAIFA) said that investor owned life insurance (IOLI) could have disastrous effects. He said proponents of IOLI were lobbying to amend state insurable interest laws to allow unrelated third parties to use charities to insure the lives of wealthy individuals. He said Texas and Virginia allowed the practice.

Nancy Davenport of the American Council of Life Insurers (ACLI) said that IOLIs go against insurable interest laws, allowing third parties with no interest in the insured to purchase a life insurance policy. She said that charities get money after fees are paid to investment banks and the investors. She said that charities were getting, if anything, three to four percent.

Rep. Eiland said IOLIs resembled the flip side of "dead peasant" policies, where businesses insured employees without their knowledge to cover benefits. Mr. Anderson said that "dead peasant" policies were not an issue anymore since the government changed the tax laws in 1996. He said there was no connection between investors and the insured and that using charities was a ploy by investors.

In response to a question from Rep. Ripley, Mr. Anderson said that insurable interest laws were enacted to ensure that people who took out life insurance on individuals had an interest in the person living rather than dying.

Sen. Seward said that New York had considered IOLI legislation, and that after interested party input he felt that IOLIs upset insurable interest laws basic to life insurance.

In response to a question from Sen. Leavell, Mr. Anderson said that an insured person knows that an IOLI had been taken out on them and that they had decided the charity beneficiary.

UPDATE ON FRAUD ISSUES AND LEGISLATION

Howard Goldblatt, representing the Coalition Against Insurance Fraud, said that Rep. Dan Tripp had sponsored a bill in South Carolina that would have created a civil enforcement unit in the insurance department to work with the criminal enforcement investigation bureau and the attorney general's office. He said it failed because the domestic life insurance industry and the legislature did not believe that life insurance fraud was that great of an issue that they needed to pay assessments to fund the unit. He added that many fraud cases are related to life insurance.

ADJOURNMENT

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