

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS  
SPECIAL PROPERTY-CASUALTY/HEALTH INSURANCE COMMITTEE:  
PATIENT SAFETY MODEL ACT (WORKING DRAFT)  
SAN DIEGO, CALIFORNIA  
NOVEMBER 18, 2005  
DRAFT MINUTES

The National Conference of Insurance Legislators (NCOIL) Property-Casualty and Health Insurance Committees met at the Hilton San Diego Resort in San Diego, California, on Friday, November 18, 2005, at 10:45 a.m.

Rep. George Keiser of North Dakota, chair of the P-C Committee, and Rep. Geoffrey Smith of Ohio, chair of the Health Committee, presided.

Other members of the Committees present were:

Rep. Donald Brown, FL	Assem. Nancy Calhoun, NY
Sen. Steven Geller, FL	Assem. Ivan Lafayette, NY
Sen. William R. Haine, IL	Sen. William J. Larkin, Jr., NY
Rep. Susan Westrom, KY	Sen. James Seward, NY
Rep. Ronald Crimm, KY	Sen. Harvey Tallackson, ND
Rep. Ed Gaffney, MI	Rep. Frank Wald, ND
Rep. Morris Hood III, MI	Sen. Jay Hottinger, OH
Rep. Joe Hune, MI	Rep. Ron Peterson, OK
Rep. Leslie Mortimer, MI	Rep. Brian Kennedy, RI
Sen. Alan Sanborn, MI	Rep. Gene Seaman, TX
Sen. Pamela Redfield, NE	Del. Harvey Morgan, VA
Rep. Donald Flanders, NH	Sen. Ann Cummings, VT
Sen. Carroll Leavell, NM	Rep. Kathleen Keenan, VT
Sen. Neil Breslin, NY	Rep. Virginia Milkey, VT

Other legislators present were:

Rep. Robert McCluskey, CO  
Rep. Robert Herkes, HA  
Rep. Terry Parke, IL  
Sen. Delores Kelley, MD  
Rep. Todd Kiser, UT

Also in attendance were:

Susan Nolan, Nolan Associates, NCOIL Executive Director  
Candace Thorson, NCOIL Director of Legislative Affairs & Education,  
Property-Casualty Insurance  
Erik Olson, NCOIL Director of Legislative Affairs & Education, Health, Life, and  
Workers' Compensation

## PROPOSED PATIENT SAFETY MODEL ACT PREVIOUS COMMITTEE ACTIVITY

Ms. Thorson reported that at the 2005 Spring Meeting in March, the Committees held a special session on a proposed *Patient Safety Model Act (working draft)*. She said time constraints had prevented fuller discussion of the issue at the NCOIL Summer Meeting. She said, among other things, that the proposal would require the reporting of medical errors by hospitals, ambulatory surgical centers, and mental hospitals, as well as the reporting of hospital infection rates.

Ms. Thorson said legislators in March had determined to 1) delete a proposed section of the model regarding establishing an effective state medical board; 2) reject an amendment that would have made medical-error reporting voluntary, rather than mandatory (as currently drafted); and 3) consider revising the mandatory reporting system to include an initial, voluntary phase-in period.

Rep. Keiser said consideration of the patient safety model law emanated from the P-C Committee's discussions regarding medical malpractice. He said the P-C Committee had adopted a 2004 *Resolution Regarding Medical Malpractice Reform* that endorsed certain state tort-reform initiatives, including reasonable caps on non-economic and punitive damages. He said legislators recognized that a comprehensive investigation into medical malpractice also must address patient safety.

## PROPOSED AMENDMENTS TO WORKING DRAFT

Ms. Thorson directed legislators to a document in their meeting binders that offered details regarding the eight (8) proposed amendments for Committee consideration. She said the amendments would do the following:

- Delete reference to “medical malpractice” in the title, in order to clarify that the model would not relate to tort reform (**Amendment 1**)
- Add a drafting note clarifying that in addition to improving medical care quality, a further purpose of the Act was to reduce the medical liability rates that are based, in part, on costs associated with medical errors (**Amendment 2**)
- Delete certain provisions regarding the confidentiality/absolute privilege of medical error info submitted by a hospital, ambulatory surgical center, or mental hospital (**Amendment 3**)
- Change the manner of reporting medical error info to require submission of individual hospital/ambulatory surgical center/mental hospital statistics, rather than aggregate results (**Amendment 4**)
- Delete a provision that prohibits the annual report of a hospital/ambulatory surgical center/mental hospital from distinguishing between events that took place at those facilities and events occurring at outpatient facilities owned or operated by those institutions (**Amendment 5**)
- Add language requiring the Department to publicize its summary report re: the success of its patient safety reporting system, including distributing it to a variety of interested parties and to consumers upon request (**Amendment 6**)
- Add whistleblower protections to both the error-reporting and hospital-infection reporting sections (**Amendment 7**)

- Substitute current provisions regarding a mandatory hospital-infection reporting system with provisions that would implement a mandatory program via a one-year pilot phase, during which time hospital-specific data would be encrypted and only available to a hospital reporting that information (**Amendment 8**)

Assem. Calhoun said that Amendment 8 was based on recently enacted New York State law and that the purpose of the one-year pilot phase was to ensure the accuracy of reported data. She explained that within 180 days of the pilot phase's conclusion, the Department of Health would issue a report regarding the success of the reporting system and recommending future improvements, if necessary. She said that once the pilot phase ended, the mandatory system would identify which hospital had reported what information.

Lisa McGiffert of Consumers' Union said she supported Amendment 8 and the pilot-phase approach because 1) no one had every really collected this information before and 2) the draft language would allow some public access to the data before the system became truly operational. She cited obstacles encountered in Pennsylvania, the first state to establish a reporting system, regarding the accuracy of submitted information. Among other things, Ms. McGiffert stressed the importance of providing for an advisory committee on hospital infection reporting.

Harry MacAvoy of the New York Assembly Minority, who helped draft Amendment 8, said the proposed language would instruct the Commissioner of Health to consult with technical advisors. He said he felt that the sentiment behind an advisory committee was addressed in that way.

Sal Bianco of The Doctors' Company said, in part, that the company agreed with NCOIL that improving healthcare quality could ultimately lower medical liability premiums. He expressed concern that the model designated a state agency with responsibility for developing a patient safety program, noting that such a state system might result in very separate reporting requirements than will be created under S.B. 544, the *Patient Safety and Quality Improvement Act of 2005*. Mr. Bianco said S.B. 544, which Congress recently passed after three years of intense debate, established a patient safety reporting and record-keeping system and that development of reporting standards were underway.

Mr. Bianco said, in sum, that The Doctors' Company supported the draft model act and particularly said that 1) the proposed whistleblower language was an important addition; 2) the model had good privacy protections; and 3) the one-year pilot phase for hospital infection reporting was an excellent approach.

Regarding S.B. 544, which addresses only medical-error reporting, Ms. McGiffert said there was similarity between the federal bill and the NCOIL model law and that, in her opinion, coordination between both was possible. She said that while the federal bill establishes complete confidentiality of submitted information, the NCOIL draft allows for public access, and so is more consumer-friendly than the federal law. She said the federal bill would preserve state statutes regarding public access to patient safety data.

Legislators adopted Amendment 8 via unanimous voice vote.

Following Committee discussion, legislators adopted Amendments 1 through 7 via unanimous voice vote.

Rep. Keiser expressed concern with the model's requirement that providers report the frequency of medical errors. He said these events should be risk-adjusted to more accurately reflect a hospital's situation.

Rep. McCluskey commented on his efforts to enact patient safety legislation in Colorado. Among other things, he said the projected \$500,000 cost to risk-adjust error events had slowed progress on the bill, despite the fact that estimates also indicated a potential state savings of \$3 million in Medicare expenditures. He emphasized the need to establish an appropriate funding source in order to encourage passage of a patient safety law.

Mr. MacAvoy noted that Amendment 8, regarding the Part II hospital infection disclosure section, would already require risk-adjusted reporting. Ms. McGiffert added that many states already have risk-adjustment tools that they could use to implement such a system. She said states that do not have adjustment tools in place would face an initial expense to develop them.

Sen. Haine observed that Part I of the model would require reporting of medical errors for which severity and risk-adjustment would not be an issue. He said there was no severity associated with wrong-site surgery, suicide, or leaving a sponge inside a patient.

Ms. McGiffert agreed with Sen. Haine's point and said the error events listed in the draft model act were widely considered "never" events with no relevance to severity or risk-adjustment. She urged legislators to move forward on the proposed model law.

Following further Committee discussion, Sen. Geller suggested amending the requirements in Part I, regarding medical error reporting, to require submission of both number and frequency of error information. Ms. Thorson said such a change would alter Section A(2)(a), Section B(2)(a), and Section C(2)(a).

The Committees unanimously voted in favor of Sen. Geller's amendment and in favor of the model act as amended.

Rep. Keiser said the patient safety model law would appear on the non-controversial calendar for Executive Committee consideration the next day.

#### ADJOURNMENT

There being no further business, the meeting adjourned at 12:20 p.m.