

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS
HEALTH, LONG-TERM CARE & HEALTH RETIREMENT ISSUES COMMITTEE
SAN ANTONIO, TEXAS
NOVEMBER 12, 2015
DRAFT MINUTES

The National Conference of Insurance Legislators (NCOIL) Health, Long-Term Care & Health Retirement Issues Committee met at the Hilton Palacio Del Rio in San Antonio, Texas, on Thursday, November 12, 2015, at 2:30 p.m.

Assem. Kevin Cahill of New York, Chair of the Committee, presided.

Other members of the Committee present were:

Rep. Ron Crimm, KY	Sen. Neil Breslin, NY
Rep. Tommy Thompson, KY	Sen. Jim Seward, NY
Sen. Dan "Blade" Morrish, LA	Rep. Bob Hackett, OH
Rep. George Keiser, ND	Sen. Robert Hayes, SC
Sen. Jerry Klein, ND	Rep. Bill Botzow, VT
Sen. David O'Connell, ND	Rep. Sarah Copeland Hanzas, VT
Rep. Don Flanders, NH	

Other legislators present were:

Assem. Kevin Cooley, CA	Rep. Maggie Carlton, NV
Rep. Janak Joshi, CO	Rep. Kathie Keenan, VT
Rep. Richard Smith, GA	Sen. Jen Angel, WA
Rep. Martin Carbough, IN	Rep. Don Zwonitzer, WY
Rep. Jim Gooch, KY	
Rep. Bart Rowland, KY	

Also in attendance were:

Susan Nolan, Nolan Associates, NCOIL Executive Director
Candace Thorson, Nolan Associates, NCOIL Deputy Executive Director
Andrew Williamson, Nolan Associates, NCOIL Director of Legislative Affairs

MINUTES

Upon a motion made and seconded, the Committee unanimously approved the minutes of its July 16, 2015, meeting in Indianapolis, Indiana.

DISCUSSION OF OUT-OF-NETWORK PROVIDER MODEL LAW

Sen. Seward, sponsor of a proposed *Model Act Regarding Network Adequacy and Use of Out-of-Network Providers*, said the proposed model was based on a New York law that helps consumers navigate the insurance process and avoid costly surprise bills. He stated that the proposed model establishes network adequacy standards and improves disclosure requirements for insurers, healthcare providers, and hospitals to ensure that a patient has full knowledge of coverage in and outside the network. He noted that the proposed model also provides for an appeals process for out-of-network referrals and delays.

Assem. Cahill said the Committee had received a comment letter from consumer representatives that outlined their position on the bill. He reported that they expressed general support for the proposed NCOIL model, though they suggested that NCOIL include New York dispute resolution provisions and add specifics regarding what would make a network adequate.

In response to a question from Rep. Hackett, Sen. Seward said that the proposed model would give discretion to a state's insurance department to define what would be required for a network to be adequate.

Commissioner Ted Nickel (WI), Secretary-Treasurer of the National Association of Insurance Commissioners (NAIC), stated that out-of-network balance billing protections were included in a revised NAIC Network Adequacy Model Act #74, which was expected to be approved at the NAIC Fall Meeting. He said the model addresses one aspect of so-called surprise bill situations, specifically when a covered person receives services at a participating facility from a non-participating facility-based provider.

Commissioner Nickel said the NAIC model establishes limitations on balance billing for non-participating facility-based providers and, among other things, requires a written notice from health carriers to covered persons at the time of precertification that there is a possibility that they could be treated by a healthcare professional who is not in the same network.

Dianne Bricker of America's Health Insurance Plans (AHIP) noted that AHIP and its member companies recognized the importance of balance billing and recently issued a report on the subject. Ms. Bricker said AHIP supported focusing on facility-based providers because most surprise bills come when patients go to an in-network facility but receive care from out-of-network physicians. She also said, among other things, that out-of-network providers are usually physicians, such as radiologists, anesthesiologists, pathologists, and even emergency room physicians. She said while these physicians practice at a hospital, they usually are not employed by the hospital and often make decisions about which networks to join without considering which networks the hospital has joined.

Rep. Keiser said there needs to be a distinction between balance billing and extreme billing. He said that when balance billing is considered, people are generally discussing extreme billing. He commented that narrowed networks were being ignored in the discussion.

PROPOSED MODEL LAW TO REGULATE PROVIDER DIRECTORIES

Assem. Cahill introduced a proposed *Meaningful Access to Provider Directories* model act that Rep. Ferguson had offered at the NCOIL Summer Meeting. He said that the draft model act focused on patients having access to accurate and up-to-date provider directories in order to make informed healthcare decisions.

Ms. Bricker of AHIP said that with the passage of the Affordable Care Act (ACA), many consumers were making health coverage decisions for the first time and partially relying on provider directories. She commented that AHIP and its member companies understand the value of accurate provider directories for their members.

Emily Carroll of the American Medical Association (AMA) said that patients need accurate and up-to-date information from directories in order to make choices about their healthcare needs.

She stated that patients need to be able to know whether their preferred physicians and hospitals are in-network and whether these physicians are accepting new patients, what the physician hours are, and what additional cost-sharing may exist. She said the draft model legislation addressed all of the above concerns. She also said that AMA was open to making edits to the bill.

In response to questions from Assem. Cahill, Ms. Carroll said the bill does not define network adequacy and that the AMA purposely included the private right of action provision because AMA recognizes the harm associated with inaccuracies in provider directories.

In response to a question from Assem. Carlton, Ms. Carroll said there are different ways that individual insurers tier their networks.

PROPOSED 2016 COMMITTEE CHARGES

The Committee considered the following proposed Committee charges for 2016:

- Continue consideration of proposed model laws to regulate telemedicine reimbursement/licensure
- Continue consideration of proposed model law to regulate provider directory updates
- Consider development of proposed model act to promote network adequacy and regulate use of out-of-network providers
- Develop proposed amendments/enhancements to the NCOIL balance billing model act in order to address resolution of disputed balance bills, based on New York law
- Monitor state and federal activity related to Section 1332 waivers, including issues regarding funding and allowed flexibility, as well as address other aspects of Affordable Care Act (ACA)
- Continue effort to educate states pursuing opioid-related insurance reforms, i.e. NCOIL best practices (*in conjunction with the Workers' Compensation Insurance Committee*)

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

ADJOURNMENT

There being no further business, the Committee adjourned at 3:45 p.m.