National Conference of Insurance Legislators

NCOIL ETTER

...for the states

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NCOIL URGES LONG-TERM STATE SOLUTIONS OVER FEDERAL QUICK-FIXES

NCOIL President Rep. Brian Kennedy (RI) expressed concern recently regarding H.R. 5840, the *Insurance Information Act of 2008*—legislation introduced late last week by Congressman Paul Kanjorski (D-PA), chair of the U.S. House Capital Markets Subcommittee—that would create a new federal insurance office and in effect preempt long-established state structures.

Speaking out on April 21, Rep. Kennedy said, "Instead of 'tilting at windmills' and laying the foundation for untried federal approaches like an Office of National Insurance (ONI) and an optional federal charter (OFC), we are hoping that Chairman Kanjorski will look to the many state-based successes, such as the Interstate Insurance Product Regulation Compact. With 31 member jurisdictions, and many other states considering passing necessary legislation to join, the Compact has proven itself a model for insurance reform."

Rep. Kennedy said legislators share many of the Chairman's concerns but that states are already modernizing and streamlining regulation, as appropriate, to promote healthy insurance markets while protecting consumer, policyholder, and investor interests. He stressed that primary insurance authority should remain with the states, which have a strong, 150-year track record.

Rep. Kennedy noted, "With any legislation, regardless of whether it is a congressional or a state proposal, the devil is always in the details. H.R. 5840 raises many questions concerning proper insurance oversight and the role of the states under the proposed bill's parameters."

Rep. Kennedy opined that the bill is not clear as to the scope of the federal government's authority, the magnitude of resulting state preemptions, enforcement of the federal policy, responsibility for consumer protections, and the role of state legislators and other state officials under the bill.

"NCOIL questions what the future would hold for successful state mechanisms—including the National Insurance Producer Registry and the National Association of Insurance

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TREASURY BLUEPRINT CALLS FOR OFC, DIMINISHES STATE PROGRESS

On March 31, in a move that came as little surprise to some astute observers, U.S. Department of the Treasury Secretary Henry Paulson released a pro-optional federal charter (OFC) *Blueprint for a Modernized Financial Regulatory Structure*—the result of a year-long Treasury review into the efficiency and global competitiveness of the U.S. financial services sector. State officials, including NCOIL President Rep. Brian Kennedy (RI), and other stakeholders promptly criticized the report, citing the ongoing success of the state-based system and—in the midst of a nationwide housing and mortgage crisis—cautioning against expanded federal involvement in insurance.

Rep. Kennedy said, "The report draws state insurance regulation—which is constantly developing and responding to its healthy competitive markets to meet business and consumer needs—into the fray along with less regulated and less accountable financial services sectors, such as banks, thrifts, and securities, that are presently managed by the federal government."

"The Feds' most recent subprime fiasco," Rep. Kennedy noted, "as well as FEMA's evidenced shortcomings in Hurricane Katrina, and the 1990s savings and loan crisis do not encourage state legislators to greet federal intervention with open arms."

The *Blueprint* recommends creating an OFC for licensing, regulation, and supervision of insurers, reinsurers, and insurance producers, and establishing an Office of National Insurance

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Preserving State Insurance Regulation...

- By interacting with Congress on issues of critical importance to insurance public policy
- By educating state lawmakers on the solutions to their insurance-market crises
- By fostering relationships between state legislators
- By asserting the primacy of state insurance regulation under the McCarran-Ferguson Act of 1945

Inside This Issue:

"Rolling out this plan in the middle of the current crisis is like telling Hurricane Katrina victims stranded on their rooftops in New Orleans, 'Don't worry, if you can hold for a few years, we've got a really great plan to restructure the federal emergency response system.'"

VIEW FROM THE HILL: "REFORM" BILLS KEEP COMING

Despite never making a credible case for federal—a.k.a. preemptive—legislation, the House Subcommittee on Capital Markets, Insurance, and Government Sponsored Enterprises on April 16 held a long-awaited third hearing on insurance regulatory reform. Unlike previous, more general hearings, this one focused on specific strategies—letting Members and witnesses alike tout individual plans and giving the Treasury Department a much-relished chance to present its new *Blueprint for a Modernized Financial Regulatory Structure (see story page 1)*.

Before the first panelist uttered a word, Chairman Paul Kanjorski (D-PA) surprised everyone with an announcement that he would introduce legislation to establish an Office of Insurance Information within Treasury *(see story page 1)*. From his description, an OII seemed consistent with a Treasury recommendation that Congress immediately establish an Office of Insurance Oversight. The surprise remarks elated the Treasury rep who—before embarking on a *Blueprint* walk-through—said he welcomed the proposed bill. He also said that just because something works well, doesn't mean you shouldn't try to fix it.

New York Supt. Eric Dinallo then testified on behalf of the NAIC. After describing the successes of state regulation and the uncertainty inherent in an optional federal system, Supt. Dinallo expressed support for targeted federal assistance in state-suggested areas. He described key reform principles, including uniform standards, a need for gradual state-based reform, and granting state regulators authority to develop and implement consistent programs, among other things.

With the afternoon's excitement all but over, members commenced an anti-climatic question-and-answer period with a second panel. Regarding OFC, NARAB, and risk retention groups, the Subcommittee questioned each panelist on the specific strategy that he or she endorsed. Little new information was revealed, challenging questions were not asked, and rebuttals were rarely requested.

Bringing traction *(continued on page 4)*

FACT FINDINGS: SAYI NG "NO" TO TREASURY BLUEPRINT

Folks for and against recommendations in a Treasury Department Blueprint for a Modernized Financial Regulatory Structure held little back when Secretary Henry Paulson released the report on March 31. Below is what some opponents said.

"It might serve Congress well to look past the likely ruinous proposals of Secretary Paulson to the very real problems inherent in federal oversight, rather than to speculate about 'potential inefficiencies' in the present state-based system." —Rep. Brian Kennedy (RI), NCOIL Pres.

"Since this is opening day in baseball, I might as well make a baseball metaphor. This is a wild pitch. It is not even close to the strike zone."—Sen. Chris Dodd (D-CT), Senate Banking Comm. Chair

"The challenge that I always ask to proponents of the optional federal charter, and it's something I've never heard a decent answer to, is 'what federal regulatory agency have you ever been happy to see come over the horizon.' And there's really not a good answer to that, so my argument is, be careful what these guys wish for."—Rep. Peter Roskam (R-IL), House Capital Markets Subcommittee

"Clearly, the current climate of less regulation and less accountability has led to the turmoil affecting broad sectors of our nation's economy. We agree that federal action to look at system risk is long overdue. We agree that the federal government needs to remodel their financial regulatory house, but they need to leave the insurance 'room' alone!"—Commissioner Sandy Praeger (KS), NAIC President

"Rolling out this plan in the middle of the current crisis is like telling Hurricane Katrina victims stranded on their rooftops in New Orleans, 'Don't worry, if you can hold for a few years, we've got a really great plan to restructure the federal emergency response system.'"—Robert Hunter, Director of Insurance, Consumer Federation of America

RETAIL HEALTH CLINICS FUEL PRIMARY CARE DEBATE

As healthcare worries climb up the short list of consumer concerns, several of the nation's largest retail chains—including Wal-Mart, CVS/Caremark, Target, and Walgreen's—have announced plans to operate a total of 1,500 retail clinics by year-end. The controversial walk-in facilities, which are staffed by nurse practitioners and offer basic and preventative care outside the traditional healthcare delivery system, have increased attention on the need to promote primary services.

Consumer advocates and insurers claim that the clinics offer a quick, convenient, and relatively inexpensive way to obtain basic services. Prices are listed on a clinic's wall; patients can receive immunizations, screenings, and treatments for common ailments; referrals are available when a clinician believes a patient requires special care; and most visits last no longer than 15 minutes.

For consumers with health insurance, the costs of visiting a walk-in clinic are comparable to their co-pays for primary care doctors. For individuals without coverage, basic treatment generally costs less than $65 per visit.

According to Tine Hansen-Turton, exec. director of the new Convenience Care Association, which represents retail health clinics, the facilities reduce "inappropriate" use of emergency rooms and serve as entries into the healthcare system. "With 47, or 48 now, million uninsured, and another 30 million underinsured," she said, "we need more access. And, certainly, policymakers get that."

Many skeptics—including those in the physician community—charge that state lawmakers should do more to regulate retail clinics and to hold them to the same standards as hospitals and doctors' offices. "Our primary focus is patient safety and

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NFIP REFORM STALLS WHILE COMPENSATION CHANGES

Despite a sunset deadline of September 30 and a widely accepted need for major reform, the National Flood Insurance Program (NFIP) remains unchanged as federal lawmakers struggle with disparate approaches to update the 40-year old program. As Congress remains gridlocked, however, the NFIP is redoing how it compensates—and many say over-compensates—insurers who write flood program coverage.

House legislation passed last September, H.R. 3121, now sits in the Senate Banking, Housing, and Urban Affairs Committee. The controversial bill would phase in actuarially sound rates for certain properties, increase penalties, add additional living expenses coverage, prohibit Write-Your-Own (WYO) insurers from denying payment for wind claims when flood also factors in, and require the NFIP to repay the Treasury in ten years the more than $17 billion it had loaned program. But—most noticeably—H.R. 3121 would require that the NFIP also offer wind coverage.

The potential wind inclusion has given rise to a coalition of strange bedfellows who strongly oppose the idea. Consumer, free-market, environmental, and a host of various insurance industry organizations, among others, argue that not only would wind insurance further destabilize the NFIP, it would also encourage unwise development on environmentally sensitive land and would displace the private insurance industry.

In the Senate, the Banking Committee must hammer out S. 2284, a bill that, despite some overlap with H.R. 3121, would forgive the sizeable NFIP debt and reject the notion of adding wind insurance. Opposition by senators who oppose giving the NFIP debt a pass, as well as by senators who want a windstorm inclusion, is stalling progress.

Regarding NFIP compensation to WYO insurers, FEMA announced early this month that it would change the way it determines insurer reimbursement. In the future, under a new system slated to take effect on May 5, a WYO insurer will receive one percent of the flood premium it wrote in addition to 1.5 percent of an incurred loss. The current approach—which gives an insurer a flat 3.3 percent of the incurred loss—gives insurers arguably excessive pay-

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SAVE THE DATE

the NCOIL

SUMMER MEETING

July 10 through 13

at the Marriott Marquis

New York, New York

NCOILetter

Susan F. Nolan, Publisher/Editor

Candace Thorson, Managing Editor
Mike Humphreys, Associate Editor
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Simone Smith, Production Assistant
Laurie Dingmon, Business Manager

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Contact the *NCOILetter* at the:

NCOIL National Office:
385 Jordan Road
Troy, NY 12180
(518) 687-0178 (phone)
(518) 687-0401 (fax)
info@ncoil.org

The NCOIL Office in Washington, D.C.

601 Pennsylvania Ave. NW
Suite 900, South Building
Washington, D.C. 20004
(202) 220-3014 (phone)
(202) 330-5004 (fax)

NCOIL

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Commissioners accreditation program for financial solvency—after a federal insurance office is established in Washington, DC," Rep. Kennedy said.

H.R. 5840 would create a new Office of Insurance Information (OII) within the Department of Treasury to collect, analyze, and disseminate insurance data, establish federal international insurance policy, and advise the Treasury Secretary on domestic and international insurance issues. The OII—headed by a Deputy Assistant Secretary—would have authority to preempt state laws/regulations inconsistent with new federal policies.

The OII resembles a Treasury *Blueprint for a Modernized Financial Regulatory Structure* recommendation calling for Congress to immediately establish an Office of Insurance Oversight *(see story page 1)*.

TREASURY

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within Treasury to regulate federally chartered entities. As an immediate interim step, it recommends that Congress establish an Office of Insurance Oversight within Treasury to serve as a statutory authority on international issues and as a policy advisor to the Secretary.

Paulson acknowledged that the *Blueprint* would not ease current economic burdens and that reforms would not come quickly. However, he described state regulation as "quite burdensome," characterized state modernization efforts as insufficient, and failed to appreciate success of an Interstate Insurance Product Regulation Commission that—with 31 member states and more pending—gives life, disability, annuity, and LTC insurance products speed to market.

The *Blueprint*—discussed at an April 16 House hearing *(see View, page 2)*—earned mixed reviews from federal lawmakers. While House Capital Markets Subcommittee Chair Rep. Paul Kanjorski (D-PA) said, "In today's markets, the federal government needs in-house expertise on insurance policy," Sen. Susan Collins (R-ME) commented, "I believe the present system of state regulation largely works…The answer is not to disrupt that system by concentrating more power in Washington, DC."

NCOIL will discuss the *Blueprint*, as well as ways to promote state moderniza-

VIEW

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to the second panel, however, was Fran Arricale of the Interstate Insurance Product Regulation Commission, who offered information Members may not have heard. The Compact's success intrigued Kanjorski, who suggested future federal legislation to encourage all-state membership or a separate plan to declare the Compact a self-regulatory organization.

The hearing revealed one thing for certain: the House is not finished investigating insurance—at least not for this session.

NFIP

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ments during catastrophic years. For instance, under the old plan, an average $30,000 claim gives an insurer $990. For a catastrophic claim of $90,000, however, the insurer gets $2,970 although its claims-related expenses are no different. The new method will reduce that $90,000-claim reimbursement significantly.

RETAIL

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patient care," said Illinois State Medical Society President Dr. Rodney Osborn, "and the retail clinics have a different mission of selling products and prescriptions."

The American Medical Association (AMA) has likewise called for state and federal officials to investigate conflicts of interest. AMA officials argue that retail relationships could lead to an unethical promotion of lucrative healthcare products like prescription drugs.

The retail clinic industry began in Minnesota in 2000, initially treating a very limited number of health problems and slowly increasing their repetoire to include most basic illnesses and injuries. Today, nearly 30 companies operate retail clinics in almost 1,000 locations.