

April 2009

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Preserving State Insurance Regulation...

- By interacting with Congress on issues of critical importance to insurance public policy
- By educating state law-makers 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

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NCOIL TO REIN IN CREDIT DEFAULT SWAPS

Seeking to tame a market that is accused of partially causing the economic crisis, an NCOIL Task Force on Credit Default Swaps (CDS) Regulation has voted to draft model legislation establishing strong solvency and disclosure requirements for CDS—and treating these hard-to-handle transactions as insurance. During a late-April conference call, the Task Force approved plans to develop an initial draft for consideration in mid-May.

Conversations regarding the proposed model were spurred by concepts included in Virginia House Bill 2320—which is based on New York State's financial guaranty insurance statute, Article 69, as well as requirements proposed in Superintendent Eric Dinallo's (NY) Circular Letter 19. The Task Force will also consider New York statute concerning insurer derivative use

plans that permit the limited—and Department-supervised—use of CDS by smaller entities.

In announcing creation of the Task Force, NCOIL President Senator James Seward (NY) said, “When the Congress passed the *Commodity Futures Modernization Act (CFMA)*, it effectively preempted state ‘bucket shop’ laws that prohibited betting on securities while simultaneously exempting CDS from federal regulation—thus, allowing the market to flourish without oversight. It is clear that state legislators and regulators have jurisdiction over the insurance market and that certain CDS should be considered insurance.”

Specifically, Task Force Chair Assemblyman Joseph Morelle (NY) said that so-called ‘covered’ swaps should be treated like financial guaranty insurance and, he said, “...as a

(continued on page 4)

Caution to States: Deadlines to Avoid Federal Preemption

July 1, 2009

Comply with at least the minimum requirements contained in the federal *Genetic Information Nondiscrimination Act (GINA)*—which prohibits health insurers from using an individual's genetic information—or else the Department of Health & Human Services (HHS) could enforce GINA mandates in the Medigap market. Further details available at www.genome.gov.

August 1, 2009

Implement a licensing system for mortgage loan originators, as set forth in the *Housing and Economic Recovery Act of 2008*, or else the U.S. Department of Housing and Urban Development (HUD) may do so. NCOIL has endorsed model legislation to help states implement the requirements. Further details available at www.csbs.org, under “S.A.F.E. Mortgage Licensing Act.”

September 24, 2009

Comply with changes in the *Medicare Improvements for Patients and Providers Act (MIPAA)*—which establish minimum standards for new Medigap plans that increase cost-sharing and lower premiums—or else regulation goes to the Center for Medicare & Medicaid Services (CMS). Further details available at www.naic.org under “Committees & Activities/Health Insurance & Managed Care (B) Committee.”

Legislation soon to be offered by the Administration might try to sideline local regulators and, unfortunately for advocates of state oversight, will be a top priority ...

VIEW FROM THE HILL: A REFORM FREEWAY

Congress wasted no time upon returning from a two-week break—with gusto, lawmakers on their second day back held three hearings on financial services and healthcare overhauls. U.S. lawmakers hope this drive for reform will result in significant progress before America's patience wears thin and Congress goes home for summer.

On April 21, two of the country's foremost economic experts—Joseph Stiglitz of Columbia University and Simon Johnson of MIT—testified before the U.S. Joint Economic Committee regarding systemic risk and the “too big to fail” concept.

Their testimony, coupled on that same day with Treasury Secretary Geithner's first-ever testimony before TARP's Congressional Oversight Panel (COP), showed that the Feds are eager for resolution authority to wind down failing non-bank institutions.

Witnesses, namely Geithner, were unclear on where so-called “reforms”

would leave states. Legislation soon to be offered by the Administration might try to sideline local regulators and, unfortunately for advocates of state oversight, will be a top priority as the House Financial Services and Senate Banking Committees push ahead.

As for the ailing healthcare system, the Administration and key lawmakers are marshalling support for broad reform and talking about making bipartisan change. Senators Kennedy (D-MA) and Baucus (D-MT) sent a letter to President Obama—just before an April 21 Senate Finance Committee roundtable on reform—that promised a bill markup in June. The Health, Education, Labor & Pensions Committee, chaired by Kennedy, had already held a similar hearing. Both Committees plan future roundtables on items such as a new public plan, individual mandates, and coverage/pricing.

Congress has a full schedule with little legislative down time. Where they take us, we don't yet know.

LAWMAKERS TO PROBE AUTO FRAUD BAN, CRASH PART MODELS

Against the backdrop of a tough economy and fears of auto fraud and excessive cost, legislators gathered at the Philadelphia NCOIL Summer Meeting will consider model legislation to curtail airbag schemes and to promote competition in the crash part industry.

At a special meeting on July 11, the Property-Casualty Insurance Committee will review a model on airbag fraud—deception in which, through theft and insurance misdealing, auto repair shops and other entities jeopardize consumer safety. The model act would be a hybrid of cur-

rent state efforts, including requiring proof of airbag replacement and establishing airbag fraud as either a misdemeanor or felony.

The meeting also will include a proposal to ban the undisclosed switching of original equipment manufacturer (OEM) and aftermarket parts, as well as to distinguish between certified and non-certified aftermarkets. Consideration of the issue will extend earlier NCOIL efforts to ensure crash part consumer protections and to address cost-saving competition between OEMs and aftermarkets.

**SIGN UP NOW FOR THE NCOIL SUMMER MEETING
and enjoy early registration prices!**

July 9 through 12
Philadelphia, Pennsylvania
Marriott Philadelphia Downtown

LEGISLATIVE GROUPS TO CONGRESS: “DO THE RIGHT THING,” OPPOSE OFC

NCOIL, the Council of State Governments (CSG), and the National Conference of State Legislatures (NCSL) joined forces earlier this month and advised Congress to “do the right thing” and oppose optional federal charter (OFC) legislation, which the groups said would worsen the economy.

Signed by NCOIL President Sen. James Seward (NY), CSG Chair Sen. Bart Davis (ID), and NCSL Committee on Communications, Financial Services & Interstate Commerce Chair Rep. Phil Montgomery (WI), the letter to Senate Banking and House Financial Services Committee leaders said, “An OFC is not only unnecessary—it is dangerous. It would undermine ongoing efforts to modernize insurance supervision and maintain consumer protections.”

The legislative leaders wrote, “State insurance regulation was not a factor in the economic downturn and should not be swept into any proposed financial services overhaul. State-based regulation continues to

safeguard American policyholders and industry. The insurance market remains viable while many in the financial services sector—particularly in banking have failed.”

Regarding adverse effects of an OFC, the authors said, “An OFC would create a dual system of insurance regulation and result in confusing and overlapping federal and state directives. And, by its very nature, a federal insurance office also could not respond—as state regulation does—to unique state markets and constituent concerns.”

The legislative letter was sent on the same day that a new OFC bill was introduced by House Members Melissa Bean (D-IL) and Ed Royce (R-CA). H.R. 1880, the *National Insurance Consumer Protection Act*, would authorize an Office of National Insurance (ONI) to regulate federally chartered insurers. Unlike previous drafts, the bill speaks to federal consumer affairs offices and systemic risk regulation, among other things.

“State insurance regulation was not a factor in the economic downturn and should not be swept into any proposed financial services overhaul.... The insurance market remains viable....”

NCOIL HEARING AIMS FOR HEALTHCARE BALANCE BILLING TRANSPARENCY

In a bid to improve out-of-network transparency and reduce unexpected medical debt, the NCOIL Health, Long-Term Care & Health Retirement Issues Committee will hold a Thursday, July 9, hearing on controversial balance billing practices. The hearing—which will launch development of an NCOIL model law—will feature debate with consumer, regulator, and insurer representatives, as well as with those of emergency and other healthcare providers. The proposed model law will take into account state approaches to the issue.

Balance billing, *(continued on page 4)*

New Mexico Expands Compact to 35

New Mexico became the 35th jurisdiction—and second this year—to join the ever-expanding Interstate Insurance Product Regulation Compact. On April 7 Gov. Richardson signed S.B. 15. Mississippi had joined in March. Bills are pending in Connecticut, New Jersey, and New York.

The Compact, which NCOIL strongly supports, offers speed-to-market for life, annuity, disability income, and LTC insurance by letting a company make one product filing with the Compact Commission and, once approved, offer that product in all member states.

NCOILetter

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NCOIL

species of insurance, should be subject to solvency protections, insurable interest requirements, and other staples of insurance oversight.”

The Task Force was established, and its 11 members appointed, dur-

ing the NCOIL Spring Meeting in Washington, DC. Creation of the group followed a five-hour NCOIL public hearing in January and additional discussion during a February NCOIL Financial Services & Investment Products Committee meeting.

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NCOIL HEARING

which NCOIL first discussed this spring, occurs when patients—often in hospital settings—believe they have insurance coverage for emergency room and other healthcare services but are held liable for

unpaid medical bills by out-of-network providers. The 9:45 to 11:45 a.m. hearing will take place during the NCOIL Philadelphia Summer Meeting and is consistent with the group's longstanding interest in healthcare reform.

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