

## 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

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## GAO FINDS INCONSISTENT LONG-TERM CARE STANDARDS, CONGRESS ON THE MOVE

A long-awaited General Accountability Office (GAO) report, released on July 23 as Congress debated even more publicity-grabbing issues, found inconsistencies in state long-term care (LTC) insurance standards for rate-setting and claims settlements. The findings appeared one day before a key congressional hearing and fanned growing legislative interest in the LTC insurance market.

The report, which was nearly a year in the making, found that variations in how states oversee rates means that many consumers remain vulnerable to significant rate increases depending on where they live and when they purchased their policies. The study also concluded that the definition of “timely” claims payments varies widely throughout the country.

In a statement issued upon release of

the findings, House Committee on Energy and Commerce Chairman Rep. John Dingell (D-MI) argued that strong national standards may be the answer to “troubling weaknesses in the states’ ability to protect consumers from abusive practices.”

Coinciding with the report’s release was a July 24 hearing of the House Subcommittee on Oversight and Investigations entitled *Long Term Care Insurance: Are Consumers Protected for the Long Term?* Panelists explained that many insurers had significantly underpriced their “first generation” of LTC policies because the insurers had underestimated the costs and kinds of claims they would see. This led to drastic rate increases for some policyholders, witnesses said.

While the July 24 hearing focused solely on rate setting

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## SEC WAGES TURF WAR OVER EQUITY-INDEXED ANNUITIES

In a move that has reawakened the turf battle over regulation of annuities, the Securities and Exchange Commission (SEC) has issued a controversial rule that would reclassify equity-indexed annuities as securities—not insurance—and would subject the products to federal—not state—control.

The SEC plan is based on the fact that the value of an indexed annuity is partially tied to the rise and fall of equity markets. Some insurance agents, the SEC states, may misrepresent or misunderstand these annuities, particularly when discussing them with older consumers. The agency says that this is of special concern due to the growth of the now \$123 billion market.

According to some observers, though, the SEC itself misunderstands how indexed annuities work. In a recent meet-

ing with SEC Chairman Christopher Cox, Commissioner Susan Voss (IA) reportedly said that insurers that write indexed annuities are the ones that shoulder the risk. They have guaranteed returns regardless of what the market does, she said.

By contrast, Voss explained, securities place the risk entirely on the investor. To say that the federal government should take over indexed-annuity regulation, Voss commented, “[is] like saying that, if your ham sandwich contains a slice of lettuce, it’s a salad.”

Other opponents of the SEC idea claim that its purpose is to give greater market share to big, struggling brokerage houses that lost out when insurance producers began selling indexed annuities.

The SEC is accepting comments on the plan until September 10. If it takes effect, the rule would apply to future business.

**While the Senate weighs how much to bite off in September, House members have made their decision—it is full-speed-ahead on H.R. 5840 and H.R. 5611, the National Association of Registered Agents and Brokers Reform Act (NARAB II).**

### **VIEW FROM THE HILL: ONE AND DONE FOR THE SENATE?**

After its first insurance reform hearing of 2008, the Senate Banking, Housing, and Urban Affairs Committee—at least its Chairman Senator Chris Dodd (D-CT)—appears poised to approve legislation after the August recess. At the July 29 hearing, Sen. Dodd suggested that the Senate may consider an insurance package that could include S. 929/H.R. 1065, the *Nonadmitted and Reinsurance Reform Act*, and H.R. 5840, the *Insurance Information Act of 2008*.

While the hearing was billed as the *State of the Insurance Industry: Examining the Current Regulatory and Oversight Structure*, it seemed to turn into an effort to find legislation that the Senate could approve in 2008. The companion bills of S. 929/H.R. 1065 appeared to several members to be perfect vehicles to advance insurance reform, as a strong majority of hearing witnesses voiced support for the measures. The bills would, among other things, require regulation by an insured's home state for nonadmitted insurance and for surplus lines brokers, and would give sole responsibility for regulating a reinsurer's financial solvency to the reinsurer's home state regulator.

Whether Sen. Dodd will attach

parts, or all, of H.R. 5840—which would create a federal Office of Insurance Information (OII)—to S. 929/H.R. 1065 will be decided in the coming weeks. H.R. 1065 itself, despite being passed unanimously by the House twice, is not a sure thing, as the NAIC would like to see its reinsurance provisions amended or deleted.

While the Senate weighs how much to bite off in September, House members have made their decision—it is full-speed-ahead on H.R. 5840 and H.R. 5611, the *National Association of Registered Agents and Brokers Reform Act (NARAB II)*. The bills were rumored to be headed to the floor via the Suspension Calendar in each of the last two weeks of July but were delayed when freshman Congresswoman Jackie Speier (D-CA) raised red flags over how preemptive provisions in H.R. 5840 might affect California's rate-setting Proposition 103.

NCOIL remains steadfastly opposed to H.R. 5840, a bill that, to date, has been voted on only once—by fewer than 15 members of the almost 50-member House Capital Market Subcommittee. Only time will tell whether due process will temper the lightning speed of 5840 and the OII.

### **NCOIL IN ACTION: 2008 SUMMER MEETING**

*Legislators at the NCOIL Summer Meeting took the following actions, among others:*

Adopted:

- a proposal to extend an ILF *Study on State Authority* to address an NAIC market conduct annual statement (MCAS) plan and, among other things, offer alternatives for market conduct reform
- resolutions on extended dependent health benefits for young adults, Life Insurance Awareness Month, state regulation of insurance scoring, and the MCAS plan
- a 2003 NCOIL model on flood insurance, with amendments
- amendments to NCOIL Bylaws that deem all states to be NCOIL members and distinguish between general and contributing jurisdictions

Moved for further consideration:

- physician discount model legislation and resolutions on prescription drug transparency and legal settlements as public policymaking instruments

In addition, legislators:

- considered current proposals on reinsurance collateral, relating to a previously proposed *Approved List of Reinsurers Model Act*

## NCOIL TAKES REINS AND ADVANCES RENTAL NETWORK MODEL LAW

Responding to a standstill among interested parties, the NCOIL Health, Long-Term Care & Health Retirement Issues Committee took matters into its own hands during a special July 10 meeting last month—and committed to develop controversial physician rental network model legislation, with a goal of adoption at the 2008 Annual Meeting in November. The Committee will advance the model during conference calls over the next three months.

The model act, which will be derived from bills submitted by trade, industry, and provider representatives, aims to regulate the secondary market for physician discounts through, among other things, comprehensive transparency and disclosure requirements. Physicians and other healthcare providers discount their customary reimbursement fees when contracting with a rental network preferred provider

organization (PPO), in exchange for gaining more patients provided through the network. Third parties contract to access the network and discount information, and then these third parties may sell the data to other parties.

The Committee decision to advance a new model followed discussions at the July meeting, as well as on conference calls in May and June, regarding interested parties' inability to reach compromise and the need for development of a Committee model. Parties involved in the discussions included the American Association of Preferred Provider Organizations (AAPPO), America's Health Insurance Plans (AHIP), and the American Medical Association (AMA).

The Committee postponed indefinitely its consideration of a previous model at the 2008 NCOIL Spring Meeting in order to pursue development of new legislation.

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## NCOIL PLANS FINAL ACTION ON DRUG TRANSPARENCY RESOLUTION

Legislators will take final action on a resolution that supports full disclosure of financial compensation tied to drug substitutions when the NCOIL Health Insurance Committee convenes at the November Annual Meeting.

The Committee deferred a draft *Resolution Regarding Prescription Drug Transparency* at the July Summer Meeting to allow for interim discussion with interested parties. At the meeting, parties expressed concern over the resolution's impact on physician incentive programs, overall transparency requirements, and generic substitutions—which some groups maintain are critical to reining in prescription

drug costs. The inter-meeting discussions will try to resolve these issues in order to arrive at language that clarifies the resolution's intent.

The resolution encourages states to ensure drug transparency by supporting full disclosure to a patient or legal guardian when compensation is received for substituting brand or generic drugs. The proposal, which has deferred since the 2008 Annual Meeting, responds to concerns raised by many in the medical community, including the American Medical Association, about the ethics of basing a clinical decision on monetary reward, especially without patient prior approval.

## GAO

and claims settlements, future hearings likely will examine the impact of state LTC partnership programs and related consumer issues. It is unlikely that Congress will schedule another hearing prior to 2009.

*(continued from page 1)*

The GAO report was conducted at the request of several members of Congress—including Rep. Dingell and Sen. Chuck Grassley (R-IA)—and in response to alleged abuses in the LTC insurance market.

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for the  
NCOIL  
ANNUAL  
MEETING**

November 20—23  
in Duck Key, FL

[www.ncoil.org](http://www.ncoil.org)

## FIX FLOOD RECORD-KEEPING, GAO TELLS FEMA

In the latest critique of federal flood insurance efforts, a recent General Accountability Office (GAO) report called on the Federal Emergency Management Agency (FEMA) to improve the way that it collects key data and to put an end to inconsistencies in its monitoring of National Flood Insurance Program (NFIP) contractors.

According to the study, FEMA has no way of keeping up-to-date information on how many properties FEMA has purchased as part of its flood-reduction effort. As best GAO could tell, one-third of the properties approved for acquisition between 1997 and 2006 had been purchased. That number could be higher, though, because FEMA doesn't count ongoing projects. In other words, if buying a property is just one part of a larger FEMA project, then the property pur-

chase isn't recorded until the entire project is complete. GAO says that isn't good enough.

The GAO also found that FEMA lacks consistent oversight of its contractors—partly because it violates certain federal operating standards. The GAO said FEMA offices do not share data on contractor problems and payments—leaving critical officials out of the loop; do not maintain proper records; and subsequently do not know how many contractors meet their obligations. According to the GAO, FEMA couldn't produce most of the reports GAO wanted when drafting the study.

In offering its findings, GAO said FEMA agrees with a need to improve how it handles contractor records and is taking steps toward that end. But, GAO said, FEMA also questions whether “real-time” data on property purchases is necessary.

## NCOILetter

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