



NAIC Advances Medical-Loss Ratio Rules, Thorny Tax Issue Remains

After months of study, the National Association of Insurance Commissioners (NAIC) this month approved a preliminary financial form that—once insurers fill in their services, fees, and other expenses—will show if companies are playing by the Fed's new medical loss ratio (MLR) rules. Regulators signed off on the guidance at the recent NAIC Summer Meeting in Seattle—but left unresolved how federal taxes will apply.

Under the *Patient Protection and Affordable Care Act (PPACA)*, insurers must spend at least 85 and 80 percent of premiums in large and individual/small group markets, respectively, on things that “improve healthcare quality,” or issue *(cont. on p. 3)*

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NCOIL SCHEDULES NOVEMBER MODERNIZATION SUMMIT, LOOKS TO UNITE STATE FORCES

Looking to fill regulatory gaps that could encourage federal preemption, NCOIL lawmakers will convene a special *State Leader Summit: Working Session on Financial Modernization* on Friday, November 19, that will bring together key officials from across the state spectrum. Participants at the 8:00 to 11:30 a.m. strategy event, which will take place during the Austin NCOIL Annual Meeting, will discuss how to ensure producer licensing uniformity, market conduct regulation, streamlined surplus lines rules, and other items.

NCOIL President Rep. Robert Damron (KY)—who highlighted the summit schedule during an August 10 Conference of State Governments (CSG) webinar—plans to invite state insurance and securities regulators, attorneys general, governors, and others at the National Association Insurance Commissioners (NAIC), North American Securities Administrators Association (NASAA), National Association of Attorneys General (NAAG), and National Governors Association (NGA). Representatives of the CSG and National Conference of State Legislatures (NCSL) also are on the list. *(cont. on page 4)*

NCOIL UNVEILS BENEFICIARIES' BILL OF RIGHTS, SEEKS COMMENTS

Aiming to protect beneficiaries as they consider life insurance payment options, NCOIL President Rep. Robert Damron (KY) released on August 12 a draft *Beneficiaries' Bill of Rights* that would set forth clear disclosures regarding insurer retained asset accounts (RAAs). The bill—which is on track for consideration at the November NCOIL Annual Meeting—was aired at the National Association of Insurance Commissioners (NAIC) Seattle Summer Meeting and is now open for interested-party comment by September 1.

According to Rep. Damron, the proposed *Beneficiaries' Bill*—which he had hoped would be a focal point of NAIC debate—“would forbid insurers from using RAAs as a default method of paying death benefits and require that beneficiaries *opt in* to allow use of such accounts. The legislation would mandate that insurers using RAAs provide clear and comprehensive disclosure about beneficiaries' policy options and would require the specific disclosure that beneficiaries can write one single check to access the entire death benefit.” *(cont. on page 2)*

NCOIL Unveils...

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Rep. Damron stressed **importance of the opt-in rule**, saying “I know of no other regulator of any other industry that follows the premise that the regulated company knows what’s best for its customers and is allowed to decide for the customer what is best for the customer, especially when the company refuses to **accept a fiduciary responsibility** for those decisions and stands to profit from [them].”

Other provisions require insurers to give beneficiaries a full explanation of the retained-asset account’s features—including **whether monies are guaranteed by the FDIC** or by a state guaranty fund. Among other things, it would have insurers disclose the number of beneficiaries with RAAs and the total funds held in such accounts on their annual financial statements.

The bill responds to AG and other concerns and comes as **Members of Congress and the NAIC take action**.

Rep. Halvorson (D-IL) dropped a July 30 bill focused on military families, Sen. Schumer (D-NY) said he would draft a bill, a House committee is examining Prudential, and Sen. Shelby (R-AL) urged Senate Banking Committee review. **At state level, an NAIC working group** held its first session at the NAIC Seattle meeting and, in line with an announced NAIC focus on disclosure, issued a consumer alert updating a more general 1993 one.

NCOIL will consider comments on its draft bill via conference call on September 8. ■

NCOIL to Spotlight Legislator, Employer Health-Reform Realities, Consider Exchange Model

State lawmakers—who face a colossal task implementing the *Patient Protection and Affordable Care Act (PPACA)*—will take their solution-seeking to Austin, Texas, this November, where at the NCOIL Annual Meeting they will look at next steps for state legislators and realities for employer-sponsored coverage. They also will debate a much-

needed model framework for creating state exchanges.

The framework proposal will, among other things, bring forward concepts from other state mechanisms, like those in Utah and Massachusetts, in order to fashion workable guidance for states. The proposal aims to go beyond best practices to offer solid suggestions for state legislation.

Speaking to lawmaker efforts, an interactive forum on Thursday, November 18, entitled *Health Reform Call to Action: State Legislator Responsibilities* will discuss how lawmakers might avoid sacrificing their authority to other state officials. The event, slated from 1:15 until 3:00 p.m., will de-

termine whether legislatures are on track to make changes—or whether they’re slipping behind—and discuss the input state regulators are giving to the Department of Health & Human Services (HHS).

A November 21 session from 8:00 until 9:30 a.m. entitled *Employers and Healthcare Reform: What’s Next?* will analyze whether the healthcare overhaul will encourage employer coverage or whether small and large businesses will just say “no”. The meeting will weigh impacts of new employee vouchers and subsidies, explore how tax advantages and disadvantages will factor in, and debate whether—as promised—people will keep their coverage.

The November discussions will build on forums at the NCOIL Summer Meeting that gave lawmakers a chance to ask experts hard questions on challenges and changes ahead. ■



FTC to Gain Insurance Powers Under Senate Bill

A trio of U.S. Senators introduced legislation in the waning days of session that—spurred by the healthcare overhaul—would widen the Federal Trade Commission’s insurance reach. Senators Mark Pryor (D-AR) and John D. Rockefeller IV (D-WV), along with Barbara Boxer (D-CA), introduced controversial S. 3685, the *Insurance Competition and Transparency Act*, on August 2.

The two-page bill would revise the *Federal Trade Commission Act* to authorize FTC to investigate insurers and their industry, conduct studies, and prepare reports without prior Congressional approval. The current Act allows studies only after a request from the Senate Commerce, Science & Transportation or House Energy & Commerce Committees.

Sen. Rockefeller, chair of the Commerce Committee, said, “The FTC must have the freedom to oversee and eliminate market

manipulation in the health insurance industry, so we can bring more competition into the system—this will help to bring down costs and remove barriers to necessary medical care for the people who need it.”

However, opponents say the bill goes further than that. In an August 9 statement, for instance, the Nat.’l Assoc. of Professional Insurance Agents issued vehement opposition, saying the bill was “another attempt to usurp the authority of the states to regulate insurance.” ■

NAIC...

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consumer rebates. By offering MLR guidance, which now goes to the Department of Health & Human Services (HHS), the NAIC aims to give insurers time to digest the rules before they are effective in 2011.

While consumer groups praise the NAIC vote as a good first step towards controlling costs and promoting healthcare value, insurers are frustrated that anti-fraud expenses, among others, were left out of the financial “blank”. In an August 17 statement, Karen Ignani of America’s Health Insurance Plans said that, unless revisited, the standards “could have the unintended consequence of turning back the clock on efforts to improve patient safety, enhance the quality of care and fight fraud.”

On taxes, the problem is whether some should be considered premium revenue. Congressional Dems chairing the six Committees with health/tax-law jurisdictions asserted in an August 10 letter to the NAIC and federal regulators that income taxes and payroll fees should count as revenue—even though PPACA says revenues shall exclude “Federal and State taxes”. Insurers fired back in an August 13 legal opinion that “the post-enactment interpretive opinions of several members of Congress cannot alter the meaning of an otherwise unambiguous statutory provision.” ■



View from the Hill: Insurance Issues After August Recess

Federal lawmakers are in their districts now, adjourned from grueling special sessions on state funding and border security. Yes, they’re talking of tax cuts, immigration reform, and other hot-button constituent issues in their race to November elections. But Members also are setting sites on potentially big changes to flood insurance, life settlements, and how life insurers pay beneficiaries.

Members will likely try again to long-term extend the National Flood Insurance Program (NFIP) after starts and stops in 2010. The NFIP, with a deficit of nearly \$20 billion, is set to expire on September 30. As legislation

advances, pressure is on to actually reform the NFIP rather than push an overhaul down the road. Rep. Taylor (D-MS) has urged inclusion of wind coverage, while Sen. Wicker (R-MS) recently floated a “compromise” bill that—in order to speed payments to property owners—would have insurers and the NFIP split a claims payout 50-50 if need be.

Congress may also jump into the life settlements debate. In light of two July reports on settlements regulation by the Government Accountability Office and Securities and Exchange Commission, respectively, the Senate Special Committee on Aging seems poised to hold a second hearing on settlement transactions.

It also seems definite that Congress will wade further into use of retained asset accounts (RAAs) to pay life insurance beneficiaries. Already, a bill to rein in alleged abuses has been dropped in the House and promised in the Senate, among other efforts. Regardless of what Congress does, NCOIL has unveiled a draft *Bill of Rights* to ensure consumer protections, mandate disclosures, require opt-ins, and prevent RAAs from being default payment mechanisms (see article page 1).

Congress’ recent sessions may have been tough and campaign events in the summer heat may be trying, but this fall Congress won’t escape debate on more insurance issues. ■

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NCOIL ANNUAL MEETING
Austin, TX — November 17 to 21



NCOILetter

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NCOIL

During a legislator-regulator dialogue at the NCOIL Summer Meeting, lawmakers asked NAIC to schedule a summit of state officials at the group's August Seattle meeting. Despite dozens of legislative attendees there, officials did not have an opportunity to discuss specific plans for state reform.

The NCOIL summit in November will target still-elusive uniformity in producer licensing—and promote, for

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instance, broader use of a National Insurance Producer Registry. Officials will discuss plans for an NCOIL-endorsed Surplus Lines Insurance Multi-State Compliance Compact, which would achieve uniformity called for in the recent federal financial overhaul, and an NCOIL model on market analysis and conduct exams.

NCOIL will transmit to states—in time for 2011 sessions—any consensus decisions made in November. ■

LEGISLATOR-ONLY SEMINAR TO PROBE SPIRALING PENSION DEBT

Legislators at the NCOIL Annual Meeting will seek solutions to unfunded pension liabilities on November 18, during a legislator luncheon seminar entitled *State Budget Crises and Pension Security: What Can States Afford?*. Attendees at the 12:00 to 1:15 p.m. seminar in Austin, TX—conducted by the nonprofit Griffith Insurance Education Foundation—will investigate how

to guaranty retirement and healthcare security without further deepening state liabilities. Policymakers also will discuss emerging strategies—such as cost-of-living limits—that have retirees up in arms.

Space is limited. To sign up, register at info@griffithfoundation.org or www.griffithfoundation.org/workshop. ■