

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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SENATE ENACTS HEALTHCARE BILL, CHALLENGES REMAIN

For certain health reform supporters, Christmas came a day early when the U.S. Senate voted 60-39 along party lines to pass H.R. 3590, *The Patient Protection and Affordable Care Act*. The vote—which took place early on December 24 after 25 straight days of hostile legislative maneuvering—put federal lawmakers on the edge of a healthcare overhaul, although key obstacles remain.

With a paper-thin majority of 60, Senate leadership limited debate and forced a pre-holiday recess vote on the bill, which supporters contend will cover 30 million uninsured Americans, guarantee access to coverage, lower costs, and increase the quality of healthcare. Senate Democrats will be challenged to maintain their filibuster-proof majority when the Senate votes on a final, House-Senate compromise bill in January. Reflecting its own struggle to pass a bill, the House adopted its *Affordable Healthcare for America Act*, H.R. 3962,

in a 220-215 vote on November 7.

Though many provisions in the House and Senate bills are the same—including certain insurance market changes—a joint conference committee will need to bridge the gap between the chambers on, among other things, creation of a public option, government subsidies, abortion coverage, and financing. The Senate approached these issues very differently than the House—rejecting the House's call for a public plan and choosing to tax high-benefit, "Cadillac" health insurance coverage, for instance.

According to Senate Republicans, cost projections for the Senate bill are flawed. The bill would not control or reduce costs as claimed, they say, but would increase taxes and eliminate consumer choice due to a greater government healthcare role. Republicans have vowed to extend their opposition through the conference committee process, while other

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NISC PROCESS, PROPOSAL DRAWS LEGISLATIVE IRE

State legislators raised profound misgivings recently regarding the development and substance of a National Association of Insurance Commissioners (NAIC)-proposed *National Insurance Supervisory Commission (NISC)*—asserting that the plan would preempt legislative authority in a misguided effort to avert federal preemption.

Building on debate at the November NCOIL Annual Meeting and again at a December NAIC Winter Meeting, NCOIL leaders wrote the NAIC on December 18 to express "grave and fundamental concerns with the substance, process, and politics" of the NISC proposal. Among other things, they wrote, "NCOIL believes that any comprehensive regulatory modernization initiative must (1) involve all state stakeholders in its development and structure, (2) provide essential checks and balances, and (3) build on state successes and restrict federal involvement."

The letter noted that once a state

joined NISC, the commission would oversee insurance regulation "without further state legislative action" in areas such as producer and company licensing, life insurance and other asset-based products, surplus lines and, potentially, market conduct, solvency regulation, and reinsurance. NISC, the letter said, would channel state information to a potential federal insurance office (FIO), which would supersede state insurance regulation in states that do not comply.

NCOIL's letter recommended that NAIC withdraw its support for an FIO and that state officials "start from the beginning" by holding a summit at the Council of State Governments (CSG)—an organization, the letter said, that serves all three branches of state government and is home to the *National Center for Interstate Compacts*.

NCOIL legislators at the group's November Annual Meeting already had taken issue with regulators' failure to hold a summit of state officials

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VIEW FROM THE HILL: SLOW SENATE MEANS ELECTION-YEAR VOTES

If and when the Senate approves a financial services bill, it should be daunting for a conference committee to merge the House and Senate proposals...

Members hoping to avoid controversial votes during an election year must be lamenting Congress' inability to finalize healthcare and financial services legislation before leaving for Christmas break. Completion of a healthcare bill is still weeks away (see story page 1) and a financial services regulatory overhaul has barely met the halfway mark. Eyes are on the Senate, which lags well behind House financial services activity.

Despite the hopes of its Chairman, the Senate Banking Committee failed to consider financial services legislation in December, after Chairman Chris Dodd (D-CT) introduced a *Restoring American Financial Security Act* in November. Senator Dodd—whose bill would create a Consumer Financial Protection Agency (CFPA), Office of National Insurance (ONI), and post-funded federal resolution authority—had ambitiously hoped that Committee members, working in pairs, could develop compromise language for a December

markup. A recent statement by Dodd and Ranking Member Richard Shelby (R-AL) painted an upbeat view of behind-the-scenes negotiations.

The markup will take place when the Committee convenes in 2010, possibly in mid- to late-January. With such a timeline, legislation wouldn't move to the floor until February at the earliest.

If and when the Senate approves a financial services bill, it should be daunting for a conference committee to merge the House and Senate proposals, especially if the final Senate plan tracks Dodd's. Though similar in certain ways, the House and Dodd proposals differ significantly on one critical element: the structure of banking regulation. Dodd's draft opts for a new, consolidated regulator, while the House's H.R. 4173, the *Wall Street Reform & Consumer Protection Act*, seeks to reform and strengthen the existing structure.

A long conference season could push final votes into March or beyond, well into the much-anticipated election year.

NCOIL COMMITTEE REVISITS DENTAL FEE BILL

After deferring consideration in November amid calls for more debate, the NCOIL Health, Long-Term Care & Health Retirement Issues Committee will revisit a proposed *Model Act Banning Fee Schedules for Uncovered Dental Services* at the NCOIL Spring Meeting.

The model, which generated a flood of dentist and insurer comments at the November NCOIL Annual Meeting, is based on a 2009 Rhode Island law and would prohibit insurers from requiring that dentists accept discounts on all services they provide—including "uncovered" benefits and services rendered after a consumer exhausts an annual maximum.

Dental association representatives, who plan to introduce the model in at least 20 states in 2010, have argued against the fee schedules, saying that dentists could find themselves in "take it or leave it" situations that would damage long-established patient relationships.

Insurers have argued that RI's situation was unique and that dentists willingly contract with them to gain patients, making the contracts mutually beneficial.

Rhode Island unanimously passed its law after the state's two largest insurers announced plans to implement the fee schedule policy for all dentists with whom they contract.

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AFTERMARKET CRASH PARTS MODEL NEARING FINAL VOTE

Debate on a proposed *Model Act Regarding Motor Vehicle Crash Parts and Repair* appears nearing an end, as the NCOIL Property-Casualty Insurance Committee looks to vote on the model law during a Spring Meeting special session, slated for 8:00 to 9:30 a.m. on March 6.

The draft bill—which would address disclosure and prior consent, insurers' role in aftermarket crash part use, part identification, and accountability—was scheduled for debate at the 2009 Annual Meeting but deferred due to Committee consideration of a proposed airbag fraud model act.

Draft amendments to the aftermarket crash parts model relate to refurbished and salvaged crash part definitions, paying for part modifications, and deeming certified parts to be

equivalent to original equipment manufacturer parts. The model act has been the subject of more than five months of debate and conference calls.

It is anticipated that provisions in the model law that would ban insurer auto body referrals will be addressed in separate model legislation. Discussion of the auto body language will take place during a special 3:45 to 5:00 p.m. Committee meeting, also on March 6, and will include review of state alternatives.

NCOIL CONTINUES TO EXPLORE MARKET CONDUCT CONFIDENTIALITY

The NCOIL State-Federal Relations Committee will hold an initial conference call in January—as an extension of its efforts to determine how best to preserve confidentiality while protecting consumers—to learn the Committee's will regarding a draft *Market Conduct Annual Statement Model Act*. The bill is scheduled for a vote at the March NCOIL Spring Meeting in South Carolina.

The draft model law, which the Committee has discussed at the last two NCOIL meetings, would require that market conduct annual statement (MCAS) data and analysis be kept confidential and privileged. It also would establish a system in which insurance regulators could collect, analyze, and share MCAS data with other entities, including the National Association of Insurance Commissioners (NAIC).

Introduction of the proposed *Market Conduct Annual Statement Model Act* responded to concerns over an NAIC plan to require filing of market conduct data as part of insurers' mandatory financial statement filings.

Under Committee review are, among other things, whether to pursue development of the model as introduced or consider Oklahoma legislation that the NAIC recommended at the November NCOIL Annual Meeting. The Committee at that time voted to defer the proposed model until the Spring Meeting and to convene the conference call to discuss options for action.

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2010 NCOIL COMMITTEE CHAIRS

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Health, Long-Term Care & Health Retirement Issues:

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Sen. Ann Cummings (VT)

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NCOILetter

Susan F. Nolan, Publisher/Editor

Candace Thorson, Managing Editor
Mike Humphreys, Associate Editor
Jordan Estey, Associate Editor

Simone Smith, Production Assistant
Laurie Dingmon, Business Manager

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SENATE

opponents—including many state officials, such as legislators and attorneys general—are challenging the legality of the bills' individual mandate requirements. Both Republican and Democratic governors around the country have denounced proposed Medicaid expansions that the

they feel would paralyze state budgets.

Adding to the confusion are lawmakers' political concerns in advance of next year's elections, including whether support for a more liberal-oriented healthcare bill might endanger vulnerable Democrats from moderate districts.

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NISC

prior to moving forward with the NISC draft. Regulators had offered to convene such a meeting during discussion at a September NAIC conference.

The National Conference of State Legislatures' (NCSL) Communications, Financial Services & Interstate Commerce Committee will vote in the spring on a draft resolution that echoes

NCOIL concerns and calls for collaboration between state officials that would not result in preemption of state legislative authority.

The NAIC has said that the NISC proposal is a working draft on which regulators are seeking input. Any federal preemption under the proposal, NAIC says, would be limited.

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Visit www.ncoil.org to learn more about

draft model laws at the March 5 - 7 NCOIL Spring Meeting!

NCOIL
...for the states

D.C. Office: 601 Pennsylvania Avenue N.W., Suite 900, South Building
Washington, D.C. 20004
National Office: 385 Jordan Road
Troy, NY 12180

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www.ncoil.org

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