



NCOILETTER

February 2005

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NCOIL TO HOLD HEARING ON CLAIMS DATABASE PROPOSALS

In what promises to be a heated debate over what counts as an insurance claim and how insurers can use it, a March 3 hearing held by the NCOIL Property-Casualty Insurance Committee will feature deliberation on proposed model legislation to restrict practices related to claims history databases. The hearing, scheduled from 3:00 to 5:00 p.m., will be held in conjunction with the March 3 through 6 NCOIL Spring Meeting in Hilton Head, South Carolina.

Legislators are looking for testimony on specific provisions of two separate sets of proposed amendments to a draft *Model Act Regarding the Use of Insurance Claims History Information*, which was brought before the Committee at the November 2004 NCOIL Annual Meeting. Both sets of amendments are intended to serve as substitute model acts.

At the November 2004 meeting, the Committee voted that rather than consider the initial draft, interested parties should find consensus on the issue and should return to the legislators in March with a compromise bill. The initial draft considered in November would prohibit taking an adverse action based solely on claims/loss history of a previous property owner, unless the insurer completed a physical inspection of the property.

It also would, regarding new applicants, prohibit an insurer from using 1) prior claims experience of the property or consumer more than five (5) years old, and/or 2) a property claim resulting from natural causes/water damage, unless the insurer could prove that preventative acts against recurrence were not taken. The draft would prohibit taking an adverse action based on consumer inquiries or claims without payments, unless more than three such claims occurred in the last three years, and would require various filings by

insurers and claims-history report providers, among other things.

Interested parties were unable to reach consensus on a single substitute model. The first substitute act, submitted by the Independent Insurance Agents & Brokers of America (IIABA) and the American Insurance Association (AIA), would change the initial proposal by omitting provisions regarding both natural causes/water damage claims and filing requirements for insurers; would amend the number of allowable claims without payments from three in three years to one in three years; and would clarify that the Act would not restrict insurer handling of claims by existing policyholders.

The Property-Casualty Insurance Association of America (PCI) and the National Association of Mutual Insurance Companies (NAMIC) have submitted their own substitute bill, having been unable to fully support the IIABA/AIA version. The second substitute bill also would omit the natural disaster provisions of the November draft but further would

NCOIL has the honor of welcoming former NYS Lieutenant Governor **Betsy McCaughey** as the keynote luncheon speaker during the NCOIL Spring Meeting in Hilton Head, South Carolina. On Friday, March 4, Lieutenant Governor McCaughey, a health policy expert and founder and chairwoman of the Committee to Reduce Infection Deaths (RID), will address the controversy surrounding hospital reporting of infection rates. Her remarks, scheduled for between 12:15 and 1:30 p.m., will build on NCOIL's current deliberations regarding a proposed patient safety model act. The NCOIL draft includes, among other items, provisions that would require mandatory, public reporting of **hospital infection statistics**.

CLAIMS DATABASE HEARING

(continued from page 1)

omit 1) all provisions related to rating homeowners' insurance and 2) all filing requirements for both insurers and claims-history report providers. The PCI/NAMIC bill would specifically allow an insurer to deny or cancel coverage based, in whole or in part, on an inquiry or a claim without payment, if such inquiry or claim seemed to indi-

cate a change in the risk assumed.

Consideration of proposed claims database model legislation responds to a 2005 Committee charge to, among other things, draft a model law on the issue. The March 3 hearing follows a general session, held during the 2004 NCOIL Summer Meeting, in which interested parties spoke to the need for a model act.

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Due to popular demand, the all-new 2005 NCOIL *Insurance Legislative Fact Book & Almanac* is now available in both online and print editions.

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and/or affiliation.

The Almanac is the only directory to exclusively focus on the government officials who make the major public policy decisions when it comes to insurance. The print edition of the 2005 Almanac is available for \$85 before March 1, \$105 thereafter. The combined print and Web-based access package is available for \$300 prior to March 1, \$325 following. Special discounts are available for bulk orders.

The Almanac was first published in 1985 and is now in its 21st edition. The 2005 edition may be ordered online at www.ncoil.org. For more information, please contact the NCOIL National Office at 518-687-0178.

NCOIL WELCOMES NEW DIRECTOR OF STATE-FEDERAL RELATIONS

NCOIL welcomes **Paul Donohue** as its new Director of State-Federal Relations.

Mr. Donohue comes to NCOIL with a diverse legal and business background. After graduating from Case Western Reserve Law School, he began his legal career at a large insurance defense firm working on cases involving medical malpractice, automobile accidents, and workers' compensation. Leaving to start his own firm and expanding to three offices, he focused on issues facing individuals and employers, including risk management and

workers' compensation.

Mr. Donohue has analyzed and tried cases at both the state and federal levels. He also has trained and served as a mediator, arbitrator, and Special Master at Federal Court. On his client's behalf, he has operated as a liaison between his clients and various state and federal representatives on issues ranging from Medicare to the loss of manufacturing jobs to overseas companies. As a corollary to his law practice, he founded a private investigation and security firm.

Mr. Donohue will begin with NCOIL on March 1.

THE SPECIAL NCOIL MEETING ON **PATIENT SAFETY**

Friday, March 4—9:15 to 10:45 a.m.
Hilton Head, South Carolina

STATES TAKE ACTION ON BROKER DISCLOSURE PROPOSALS

On the heels of NYS Attorney General Eliot Spitzer's complaint against Marsh & McLennan, state legislators and regulators are considering options aimed at resolving concerns over the amount and kind of compensation paid to insurance brokers.

Ten states have suggested taking action on the issue. Most recently, **Pennsylvania** has begun considering legislation similar to amendments that the National Association of Insurance Commissioners adopted to its *Producer Licensing Model Act* in December 2004. Those amendments would require disclosure of compensation in cases where the broker is paid by both the client and insurer. The PA bill requires company-appointed producers to disclose, before placing coverage, that they are compensated by the insurer and represent the insurer's best interests.

The **California** Insurance Department in October 2004 offered a proposed rule that would require a broker to find the "best available" insurer for a client. The rule would make it a violation of State insurance code if a broker failed to take "reasonable actions" to ensure he or she obtained a quote from the best available insurer.

In **Connecticut**, the governor has introduced legislation that would require a client's written acknowledgment that he/she is aware the broker will be paid by the insurer. The state attorney general has backed a separate bill, which, among other things, would establish a fiduciary duty to clients.

The **Minnesota** Dept. has released a bulletin reminding brokers that it is illegal to engage in dishonest, deceptive, or unfair practices. Two bills have the AG's support. One mandates disclosure of all companies a broker contacts/all quotes a broker receives; the other requires insurers to give quotes to many brokers if requested.

Nevada has a temporary regulation prohibiting a broker from placing his/her interests above a client's and requiring the producer to disclose various things, including the source of any insurer compensation and the fact

that such payment may vary depending on the insurer and/or the product.

A **New Jersey** Dept. order requires that insurers and brokers submit information regarding, among other things, compensation paid above that stipulated in contracts; acknowledgement of requests to engage in bid-rigging; and recognition if/when insurance coverage has been tied to a reinsurance contract.

Prior to Spitzer's complaint, **Oregon** was in the process of implementing law that, in part, would establish minimum terms of compensation arrangements between insurance producers and customers.

In **Tennessee**, a proposed regulation was withdrawn that would have created a fiduciary duty between a broker and his/her clients, required a broker to find the best available insurer for a customer, and imposed sanctions on violators of the rule.

Moving ahead with its plan of action, the **Washington** department has issued a technical assistance advisory reminding licensed brokers of their ethical duties. The advisory says, in part, that brokers must disclose the full amount of any contingent compensation before a customer makes a product decision and that insurers should keep records of fees paid to brokers and of justification for such compensation.

Finally, a bulletin released by the **Wisconsin** Insurance Commissioner addresses mandatory disclosures that must be made by intermediaries, including insurance brokers. Many of these states, including a number of others, are engaging in ongoing investigations into broker compensation arrangements that, in some cases, involve litigation.

NCOIL will hold a **general session on broker disclosure issues** on March 5 from 9:45 to 11:45 a.m., during the NCOIL Spring Meeting. A special Executive Committee meeting will immediately follow, in which legislators will consider options for acting, including support for the NAIC amendments and adoption of the draft NCOIL broker disclosure model law that was first exposed in November 2004.

*On the heels of
NYS Attorney
General Eliot
Spitzer's
complaint
against Marsh &
McLennan, state
legislators and
regulators are
considering
options aimed at
resolving
concerns over the
amount and kind
of compensation
paid to insurance
brokers.*

NCOILetter

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