National Conference of Insurance Legislators

NCOIL LETTER

...for the statess

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HEALTHCARE REFORM HITS ELECTION OBSTACLE

The well-publicized election of Republican Scott Brown (MA) to the U.S. Senate has thrown the future of healthcare reform in doubt. The Senator-elect, who campaigned on a promise to vote against current reform proposals, ended the Democrats' 60-vote filibuster-proof majority in the Senate.

Before the election, Democratic leaders had bypassed a formal conference committee to meld the House and Senate overhaul bills and had proceeded with a game of "ping pong" to avoid procedural delays that might threaten reform altogether. The strategy allowed leaders to negotiate a bill—privately, as they rejected an effort by C-SPAN to broadcast ongoing deliberations—and to send it back and forth between chambers for final approval. House Speaker Nancy Pelosi (D-CA) and Senate Majority Leader Harry Reid (D-NV) had hoped to approve compromise legislation before the President's late-January State of the Union address, but were unable to reach consensus on key policy differences.

Now, without enough votes to overcome a filibuster in the Senate, Congressional Democrats are faced with several options. Members and leaders have discussed having the House approve the Senate bill verbatim, although House Dems reportedly don't have enough votes to do so. The House could approve the bill with an agreement to later pursue a "corrections" bill that would move through the Senate in an expedited fashion. Or, lawmakers could scale back the legislation to focus on "consensus" areas—including certain insurance reforms.

Among such reforms, some say, might be the federal antitrust exemption granted to insurers under the 1945 *McCarran-Ferguson Act*. House members

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SPECIAL FINANCIAL SERVICES DISCUSSION SET FOR NCOIL MEETING

During the March NCOIL Spring Meeting in South Carolina, legislators will hold extended debate on what many believe will still be an open question—that of how to overhaul financial services regulation.

The Financial Services & Investment Products Committee on March 5 will hear from insurance regulators and banking and insurer representatives regarding what federal lawmakers are thinking and what lies ahead. With Congress bracing for this fall's mid-term elections, participants will address the causes and consequences of recent financial services partisanship and the impacts of a possible congressional shakeup, among other things. The Committee, meeting from 10:00 to 11:00 a.m., also will consider the role that state legislators and other state officials have, and will, play in the debate.

NCOIL previously has weighed in to federal lawmakers on a proposed systemic risk council and Consumer Financial Protection Agency, and has reasserted its strong opposition to any new federal insurance office.

While the House approved H.R. 4173, the *Wall Street Reform and Consumer Protection Act* on December 11, Senate legislation remains in the Banking Committee—weeks, maybe months, from floor consideration. Legislation also has been introduced that would isolate commercial from investment banking and banking from insurance, boundaries that were eliminated by the 1999 *Gramm-Leach-Bliley Act (GLBA)* *(see View page 2)*.

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Inside This Issue:

VIEW FROM THE HILL: DODD OUT, GRAMM-LEACH-BLILEY REPEAL IN?

Senate Banking Committee Chair Christopher Dodd's (D-CT) January 6 announcement that he will not seek re-election has excited the optimism of those for and against current proposals to overhaul financial services regulation. Adding to the mix is a push by Senators outside the Banking Committee to reenact Glass-Steagall restrictions that may pick up steam and lead to Senate floor drama.

With much at stake, ... the Senate takes aim at regulatory reform and a ban on "too big to fail"—and learns what Dodd's retirement really means.

Despite the hopes of Senate Republican leadership—who some say would prefer no reform bill at all this year—Sen. Dodd's Committee appears to be making bipartisan progress on broad overhaul legislation. Senators had paired off in late 2009 to work on outstanding issues and had planned to reconvene for markup in late January—a deadline that's been bumped to mid to late February, at the earliest.

Dodd's announcement could either speed the process toward bipartisanship or fan political flames. Republicans and many business-sector advocates believe that his pending retirement ends any chance of a proposed Consumer Financial Protection Agency (CFPA)—a new, independent entity that would be given authority over financial services consumer protection—while some Democrats and consumer groups hope that his new-found independence from campaign politics will actually reinvigorate the fight for a CFPA.

Meanwhile, a move by Senators Maria Cantwell (D-WA) and John McCain (R-AZ) to segregate commercial from investment banking—and banking from insurance—is gaining strength. The Senators and four colleagues may seek to attach their bill—S. 2886, the *Banking Integrity Act*—to the final reform legislation reported out of Banking. S. 2886 would prohibit certain affiliations between financial companies that were made possible by the 1999 *Gramm-Leach-Bliley Act*, thereby returning the U.S. financial marketplace to a Glass-Steagall–based system.

Seeking to capitalize on public sentiment against massive financial conglomerates and their respective bailouts, the Senators' effort will no doubt be opposed by financial services interests, who will portray the measure as unrealistic and/or dangerous. The President, perhaps also responding to the wave of consumer angst, recently unveiled a proposal to limit the size and scope of financial institutions. It remains to be seen whether his remarks will help the cause or force a partisan reply.

With much at stake, the next few weeks and possibly months will be intense, as the Senate takes aim at regulatory reform and a ban on "too big to fail"—and learns what Dodd's retirement really means.

NCOIL TO EXPLORE SOLUTIONS FOR ANNUITY SUITABILITY

On March 5, in the midst of an unsteady economy that makes consumer protection especially critical, legislators and insurance experts will search for solutions during an interactive roundtable entitled *Regulating Annuity Suitability: What Are the Answers? How Do We Get There?* The session—scheduled from 1:15 until 2:30 p.m. during the NCOIL Spring Meeting in Charleston, SC—will explore how recent state suitability reforms have fared; whether tougher licensing, training, and disclosure standards are in order; and if seniors need special protection. Participants also will discuss how state regulatory resources, as well as a newly revised National Association of Insurance Commissioners (NAIC) model law, impact the debate.

Panelists include Ryan Wilson of AARP, Larry Kosciulek of the Financial Industry Regulatory Authority, Eric Dupont of MetLife, Iowa Deputy Insurance Commissioner Jim Mumford on behalf of NAIC, and William Anderson of the Nat.'l Assoc. of Insurance & Financial Advisors.

NCOIL TO ACT ON AUTO CRASH PARTS, STEERING

Building on its interest in auto insurance consumer protection, the NCOIL Property-Casualty Insurance Committee will consider a model law at the South Carolina NCOIL Spring Meeting that would regulate use of controversial aftermarket crash parts and would severely restrict the degree to which insurers could "steer" customers to an auto repair facility. During March 5 deliberations on the draft *Model Act Regarding Motor Vehicle Crash Parts and Repair*, legislators will likely separate the anti-steering language into a second bill.

The aftermarket crash parts model—which was the subject of more than five months of calls and debate—would address disclosure and prior consent, insurers' role in aftermarket crash part use, part identification, and accountability. Amendments related to the model address refurbished and salvaged crash part definitions, paying for part modifications, and deeming certified parts to be equivalent to original equipment manufacturer parts.

The proposed anti-steering language, based on New York law, would ban an insurer from mandating or recommending use of a specific repair shop—unless a claimant specifically asked for such input. Legislators on the conference calls decided that auto body steering was a distinct issue and might best be addressed separately. Lawmakers also chose to consider state alternatives, such as laws in Rhode Island and Virginia, as possible substitute language.

The March 5 Committee meeting, slated for 8:00 to 10:00 a.m., will feature review of the full *Motor Vehicle Crash Parts* model act. Specific discussion of the auto repair steering language will take place at a later, March 6 Committee meeting, scheduled for 11:00 a.m. to 12:00 p.m.

The Committee had planned to review the full model law at the November NCOIL Annual Meeting. Due to time constraints stemming from consideration of a airbag fraud bill, however, legislators deferred their consideration until the spring.

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NCOIL SUBCOMMITTEE ADVANCES BALANCE BILLING MODEL

Troubled by the financial consequences of healthcare billing, particularly during a national economic recession, legislators on a newly established NCOIL subcommittee are focusing on balance billing disclosure—and plan to bring forward model legislation at the March NCOIL Spring Meeting. An initial draft brought forward to spur discussion includes language from Louisiana and Texas laws, which promote transparency and accountability.

Subcommittee members on a January 21 conference call walked through provisions of the laws, including those regarding Web site disclosure and reporting of insurer contracts with hospital-based providers; disclosures from hospitals, hospital-based physicians, and insurers about the possibility of balance billing; advance estimates of hospital-based fees; patient mediation procedures; and state medical board and insurance commissioner authority to levy fines and "take disciplinary actions"; among other things.

Legislators expressed concern over whether the new disclosures might conflict with federal requirements for emergency room physicians, possible impacts on hospitals whose contracts with hospital-based physicians change frequently, and a need for more pre-treatment disclosure.

The Subcommittee will hold an early-February conference call, and perhaps additional calls, to further their deliberations and review interested-party comments prior to a March 6 meeting of the full NCOIL Health Insurance Committee.

Balance billing occurs when doctors charge their patients any fees that remain after insurer reimbursement. As reported to legislators, the practice is common in hospitals, where hospital-based physicians may not be in the same networks as the hospital itself.

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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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NCOIL MOVES MARKET CONDUCT EFFORT FORWARD

Moving ahead with its effort to address market conduct confidentiality, the NCOIL State-Federal Relations Committee determined on a January 14 conference call to further examine a draft *Market Conduct Annual Statement Model Act*—rather than change course to pursue Oklahoma's market conduct annual statement (MCAS) statutory language. Legislators also agreed to open up the draft bill for interested-party markup recommendations that are due on January 29.

The Committee will reconvene for a public conference call on February 3 at 9:00 a.m. to work through any markups received, and will approve or reject specific language in advance of the Committee's March 5 Spring Meeting session.

As introduced, the model would require confidentiality of MCAS data and analysis and would establish a system in which insurance regulators could collect, analyze, and share MCAS data with other entities, including the NAIC.

HEALTHCARE

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had included a provision, rejected in the Senate, that would repeal the limited exemption for health and medical malpractice insurers, arguing that the exemption hurt competition and raised prices.

In a January 14 letter that reasserted long-standing NCOIL support for the McCarran provision, NCOIL officers wrote Pelosi and Reid that "Rolling back the antitrust exemptions for health and medical malpractice insurers, as H.R. 3962 proposes, would increase costs while reducing competition, harm consumers by creating confusing, conflicting regulation, and ignore already-existing state antitrust protections." The legislators, joining with other state officials, asserted that states already actively pursue anti-trust violations and that repeal advocates had mischaracterized the issue.

N C O I L
...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