National Conference of Insurance Legislators

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...for the states

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TREASURY TO REVIEW GLOBAL ASPECTS OF INSURANCE

The U.S. Treasury Department recently announced that insurance will come under the spotlight when the agency furthers its examination into America's global competitiveness—a development that has OFC supporters hopeful.

The second phase of the Treasury investigation will study all financial market players, including the Treasury, and will build upon earlier agency initiatives, announced in May, that attempted to strengthen financial reporting and to improve auditing accountability.

According to the Department, the next step aims for a "rationalized regulatory structure with improved oversight, increased efficiency, reduced overlap and the ability to adapt to market participants' constantly changing strategies and tools."

Treasury Secretary Henry Paulson, Jr., said that "To maintain our capital markets' leadership, we need a modern regulatory structure complemented by market leaders embracing best practices."

Robert Steel, Treasury's Undersecretary for Domestic Finance, acknowledged the agency's interest in the state-federal authority struggle, saying that the issue will be "open for discussions."

Such talk pleased OFC enthusiasts. Frank Keating, president of the American Council of Life Insurers (ACLI), remarked that "The insurance industry is currently regulated exclusively by the states…But to meet the challenges of the 21st century, an optional federal charter would provide needed comprehensive reforms."

On May 24, Senators John Sununu (R-NH) and Tim Johnson (D-SD) introduced S. 40, the *National Insurance Act of 2007*, which would establish a dual federal-state system of insurance regulation—similar to that for banking—as well as supervision for insurers and insurance producers. States would maintain responsibility for regulating only those insurers and producers licensed in their state.

A similar OFC bill is expected to appear in the House shortly.

SENATE CLIMATE CHANGE COMPROMISE HOLDS HOPE

Congressional attempts to enact comprehensive climate change legislation have traditionally met a dismal fate, but a newly introduced bill by several prominent senators may see a brighter day—in part due to support from certain stakeholders.

Senators Jeff Bingaman (D-NM) and Arlen Specter (R-PA) on July 11 introduced *The Low Carbon Economy Act of 2007*, which would set a firm limit on the emissions of carbon dioxide and other heat-trapping gases that are reportedly responsible for climate change. The complicated bill would allow for the buying and selling of such emissions and would establish a clear cap on the amount of money that industry would pay for these rights, with their payments going toward mitigation and similar efforts. The plan also would penalize foreign countries that do not sufficiently rein in their carbon emissions, and would give billions of dollars in new aid to Alaska, in order to help the state deal with climate change impacts on its roadways, bridges, and long stretches of coastal exposure.

This latter provision is an admitted effort to win the

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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

Inside This Issue:

VIEW FROM THE HILL: SCHIP IN JEOPARDY, BUT NOT DEAD

But reauthorization has turned into a political opportunity for Democrats looking to win favor from an increasingly cynical American public. According to a June 28 memo, Democrats hope that an SCHIP expansion will be "the signature Democratic health achievement" of this Congress.

Reauthorization of the State Children's Health Insurance Program (SCHIP) seemed all but certain earlier this year when legislators from both sides of the aisle praised the program for covering at least 5.5 million children that otherwise would be uninsured. Now, as the 110th Congress and lame-duck President Bush begin tightening their partisan belts, SCHIP appears to be the next political battle ground.

The program is designed to help children from families that make too much money to qualify for Medicaid but not enough to buy health insurance in the private market. Without reauthorization, the ten-year old SCHIP will expire this year.

Reauthorization has now turned into a political opportunity for Democrats looking to win favor from an increasingly cynical American public. According to a June 28 memo sent by Rep. John Dingell (D-MI) and others, Democrats hope that an SCHIP expansion will be "the signature Democratic health achievement" of this Congress. Democrats included a $50 billion SCHIP increase in the congressional budget resolution (S Con Res 21). Bills introduced by Sen. Hillary Clinton (D-NY) and Rep. Dingell, as well as by an independent-minded Sen. Olympia Snowe (R-ME) and Sen. John Rockefeller (D-WV), would do the same.

The Administration is far from on board. President Bush recently declared that a $50 billion expansion would be a step towards "government-run health care" and voiced support, instead, for his proposed $5 billion growth plan. He has cautioned that the $50 billion number would erode the private insurance market, and has blasted Democratic suggestions to fund an SCHIP expansion by increasing the cigarette tax or by cutting Medicare payments to private insurers.

It remains to be seen if an early July tentative compromise in the U.S. Senate Committee on Finance can overcome such adversity and carry the program through reauthorization. On July 10, Committee Chair Max Baucus (D-MT) announced that members were coming together on a final agreement. Committee member Sen. Gordon Smith (R-OR) said "there is general bipartisan support on the committee" for the SCHIP agreement.

The compromise, to be marked up on July 17, would reauthorize and expand SCHIP by $35 billion over five (5) years. It would omit funds for outreach efforts and dental benefits, and would remove parents from SCHIP rolls. However, it would provide coverage for pregnant women. The federal cigarette tax would increase by 61 cents to an even $1 in order to pay for the expansion.

The President is certain to oppose the agreement, but its success ultimately rests in Congress. Whether Democrats will view the compromise as too limited or Republicans will deem it too expansive could ultimately determine whether SCHIP is renewed. Otherwise, it is entirely possible that the program will survive on short-term fixes and budget appropriations.

WILDFIRE SPARKS INSURANCE CLAIMS

Aided by unusually dry weather and sparked by factors such as lightning and human activity, wildfires across the western U.S. are causing significant devastation and what is sure to be a sizeable number of insurance claims. Though details on claims activity for what is likely the most publicized fire—in CA's Lake Tahoe area—remain uncertain, the event met the Insurance Services Office definition of a catastrophe on June 26, when estimated insured losses exceeded $25 million. As of July 2, those estimates had risen to between $100 and $150 million.

REPORT SAYS MED MAL DEFENSE COSTS RISING, RESERVES LAGGING

Despite rising defense costs in medical liability cases, insurers in recent years have surprisingly failed to boost their reserves to reflect higher litigation expenses, says a new report by the University of Texas Law School and the University of Illinois.

The study examined closed, personal injury tort claims in Texas from 1988 through 2004 that resulted in payouts of more than $25,000 (in 1988 dollars). The report paid particular attention to medical malpractice. According to the findings, med mal defense costs rose an estimated 4.6 percent during that time, more than double the measured 2.2 percent increase in other commercial lines, such as auto, general commercial, and multi-peril.

Lawyer fees were not to blame, the study says. Hourly rates for personal injury defense counsel remained steady. Payouts were also constant. Cases closed more quickly. Policy limits fell. The percentage of cases progressing to a full trial stayed even.

The report's authors acknowledge that the reason behind the higher defense costs is unclear, but it is obvious, they say, that insurer reserves have lagged. Companies went from calculating defense costs during the years of 1988 through 1999 as roughly 35 percent of total expense reserves, to setting that figure at just 22 percent between 2000 and 2004. Had insurers accounted for the 4.6 percent increase, the amount set aside in recent years should have been more than 42 percent.

Total legal expenses, when taking into account claims with little or no payment as well as those over $25,000, hovered at between 30 and 33 percent of all payouts, and between 23 and 25 percent of total insurer costs for malpractice exposure.

The authors posit that insurance company inattention to higher medical malpractice defense charges may have contributed to the "soft-hard" market cycle that has plagued the industry for several years.

The report was presented during a June American Enterprise Institute conference.

SiCKO QUESTIONS U.S. HEALTH INSURANCE SYSTEM

Michael Moore returned to movie theaters around the country on June 29 with the release of his new film *SiCKO*, which challenges the current healthcare system and argues in favor of a universal approach. The film enjoyed the second highest opening weekend of all time for a documentary, earning $4.5 million on 441 screens nationwide.

Moore pulls no punches in a film that opens with him stating, "Fifty million uninsured Americans… 18,000 people die because they are uninsured." He makes no claim that his film is impartial. In interviews, Moore acknowledges his failure to include an insurance industry perspective, on the grounds, he says, that insurance and drug companies receive enough publicity through advertisements in the mainstream media to promote their views.

In pushing for "universal healthcare," or a government-run single-payer system—which he argues would lead to an efficient and equal healthcare system—Moore describes hardships of people with and without insurance coverage. He interviews an insured mother whose 18-month old daughter died of cardiac arrest after she was told by her HMO that a hospital at which she sought treatment was "out of network." In a separate segment, Moore

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SENATE

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backing of Alaska's Republican Senators, Lisa Murkowski and Ted Stevens, who signed on as co-sponsors, along with a handful of other lawmakers.

Like previous climate change bills, the Bingaman-Specter plan would set carbon emissions targets, though less stringent then other efforts. Bingaman and Specter would call for holding 2020 emissions standards at 2006 levels, and 2030 standards at 1990 levels.

Of concern to individual consumers, however, should be the very likely increase in fuel prices that oil and gas companies would pass along to everyday citizens, in order to recoup the companies' costs of buying permits to release extra emissions.

Although the bill would give aid to farmers and low-income families to offset these, perhaps significantly, higher costs, most Americans would have to absorb the extra charges.

The *Low Carbon Economy Act* is endorsed by a number of large electrical utilities and labor unions, who both take comfort in the fixed prices that companies would pay to purchase additional carbon-emitting rights. Without such limits, labor unions worried that the additional expense of operating in the U.S. would compel companies to move operations overseas, to the detriment of American workers.

Environmentalists are less enthusiastic. Though they recognize that the bill is a step forward from earlier proposals, they say that it does not go far enough to reform the status quo. According to Dan Becker, global warming director at the Sierra Club, "It's too weak. It would be better to wait until more members of Congress understand that the heat is on them to act, and that may have to wait until the next Congress and the next president."

The Administration has publicly opposed any initiative that would establish a system of mandatory caps on carbon dioxide emissions.

SiCKO

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interviews an uninsured man who had cut off the tips of his ring and middle finger and was told that he could either reattach the ring finger for $18,000 or the middle finger for $60,000.

Responding to the cardiac arrest case, Matthew Schiffgens, a spokesman for Kaiser-Permanente, called the case "medical malpractice that occurred 14 years ago. It was not the denial of coverage for necessary medical care, as the movie claims." Representatives for Kaiser-Permanente were not interviewed in the film.

Moore also focuses attention on the healthcare systems of Canada, Great Britain, France, and Cuba. Through interviews with medical personnel and citizens, Moore praises government-run systems where patients receive "free" healthcare services, citizens are generally happy with their healthcare-program experiences, and consumers don't face growing medical debt.

However, *SiCKO* does not review common criticisms of government-run single-payer systems, including long wait-times for non-emergency surgeries and rationed patient services, nor does Moore address private-market, supplemental mechanisms that may exist in countries with government-run programs.

At a recent National Association of Health Underwriters (NAHU) conference, outgoing NAHU President David Fear urged health insurance representatives to improve their outreach efforts to federal and state policymakers regarding the benefits of the American system. Fear said, "It has its challenges, but so do health care systems in Canada, Japan and other countries…We should be proud of the system we have and not be apologetic, because it does work."

Moore, obviously, disagrees.

NCOILetter

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