

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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NCOIL MOVES ON CREDIT DEFAULT INSURANCE BILL

The NCOIL Financial Services & Investment Products Committee will consider groundbreaking *Credit Default Insurance Model Legislation* during the NCOIL Spring Meeting on July 9, in response to concern over the enormity of the credit default swaps (CDS) market and its impact on the financial crisis. Sponsored by Committee Chair Assem. Joseph Morelle (NY), the model would create a regulatory regime for credit default insurance—including licensing, capital, and reserving standards—and prohibit so-called “naked” credit default swaps (CDS). Adoption of the model, which spring-boarded from

financial guaranty insurance law, is anticipated.

An NCOIL CDS Task Force—established at the 2009 Spring Meeting—has held six interim calls to develop the model. The Task Force heard from parties including the International Swaps & Derivatives Assoc. (ISDA)/Securities Industry & Financial Markets Association (SIFMA), as well as American Council of Life Insurers (ACLI), Assoc. of Financial Guaranty Insurers (AFGI), and Marketcore.

The Committee must waive the NCOIL meeting 30-day deadline rule in order to consider amendments adopted by the Task Force at its latest, June 30 call.

MODEL PUSHES FOR AFTERMARKET PART, REPAIR PROTECTIONS

Legislators will challenge crash part mandates and auto body steering on Saturday, July 11, when during a special meeting the NCOIL Property-Casualty Insurance Committee opens discussion on a consumer-choice *Model Act Regarding Motor Vehicle Crash Parts and Repair*. The bill, slated for review at the Philadelphia NCOIL Summer Meeting, aims to protect people navigating the auto repair industry.

Due to the issue’s complexity, it’s anticipated that consideration of the model will continue at the November Annual Meeting. The model applies to personal lines motor vehicle insurance policies and requires no-

tice and approval prior to crash part repair or replacement. It sets conditions whereby insurers could require use of aftermarket parts, including provisions for new vehicles and those under car-company warranty.

The model would mandate permanent, transparent identification of crash parts, demand consumer choice in selection of an auto repair facility, and promote accountability.

The special July 11 meeting also will spotlight a draft anti-fraud model that sets felony penalties for airbag crimes and, among other things, requires that auto body shops show airbag bills of sale/invoices to prove they had purchased new, suitable replacement airbags.

CREDIT SCORING AMENDMENT TARGETS EXTRAORDINARY EVENTS

Responding to today’s widespread credit crisis, legislators at the July 12 NCOIL Property-Casualty Insurance Committee meeting will consider amending a 2002 NCOIL insurance scoring model to directly relieve victims of financial and other extraordinary life circumstances (ELC). Adoption of the *Model Act Regarding Use of Credit Information in Personal Lines Insurance* amendment is scheduled during the NCOIL Summer Meeting.

The proposal expands on an existing drafting note and moves it into the body of the model. The amendment mandates that insurers give rating/underwriting relief to consumers whose credit has suffered from an ELC. ELCs would include federal or

state-declared catastrophes; serious illness or injury to a consumer or his/her immediate family; death of a spouse, child, or parent; divorce or involuntary interruption of legally owed alimony or support payments; ID theft; temporary and involuntary loss of employment for three months or more; and military deployment overseas, among other items.

The amendment allows an insurer to require written, verifiable proof of the ELC and proof that the event harmed the consumer’s credit. The amendment also addresses methods and timeframes for requesting and granting extraordinary circumstances exemptions, granting multiple exemptions for the same event, and consumer disclosure.

VIEW FROM THE HILL: HEARINGS, HEARINGS, HEARINGS

With the final days of June came more hearings on healthcare reform—and rumors that the last hope for bipartisanship lies within the Senate Finance Committee—as well as the beginning of hearings on the Administration’s financial services reform proposals.

On the 22nd, a Senate Subcommittee discussed the regulation of derivatives—including CDS. Chairs of the SEC and Commodity Futures Trading Commission (CFTC) supported requiring standardized products to be centrally cleared and traded on regulated exchanges, and subjecting dealers and other market participants to capital, margin, recordkeeping, and other standards. These two recommendations are similar to other reform proposals that have been circulating in Congress this year and were fairly well received by Members, with a few objections. Sen. Johanns (R-NE), for one, cautioned that the plan could have a monopolistic effect and crowd out smaller players.

At a hearing on the 24th, the House Financial Services Committee debated regulation of consumer financial products. Consumer groups and academics on the first panel applauded the Presi-

dent’s plan to create a Consumer Financial Protection Agency—or a similar Financial Product Safety Commission envisioned by pending Congressional legislation—while a bank representative and a conservative think tanker opposed what they considered an additional layer of regulation.

On the hearing’s less contentious second panel, four of six insurance stakeholders argued that the scope of a new financial protection agency should not extend to insurance products. Congressman Paul Kanjorski (D-PA) seemingly agreed and cautioned that including insurance in the proposal could “back door” federal insurance regulation and lead to uncertainty and legal challenges.

With few exceptions, support for the agency/commission proposal—like so much in Washington—largely fell along party lines, with Republicans opposing the new bureaucracy and Chairman Barney Frank (D-MA) planning July markups.

Members of Congress face an uphill climb following the holiday break if they hope to reform health insurance and overhaul financial services. Completing one of those tasks would be difficult, but accomplishing both may be impossible.

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FEDERAL ROUNDUP: PENDING LEGISLATION

Below is an overview of insurance-related legislation on several critical issues.

Financial Services

S. 566/H.R. 1705, the *Financial Product Safety Commission Act*; introduced; Sen. Richard Durbin (D-IL) and Rep. William Delahunt (D-MA); establishes an independent Financial Product Safety Commission

S. 664/H.R. 1754, the *Financial System Stabilization and Reform Act*; introduced; Sen. Susan Collins (R-ME) and Rep. Michael Castle (R-DE); creates a Financial Stability Council to contribute to the regulation of systemic risks; subjects CDS to clearing and other regulations by the CFTC and SEC; and abolishes OTS and transfers its authorities to the OCC

S. 961, the *Authorizing the Regulation of Swaps Act*; introduced; Sen. Carl Levin (D-MI); repeals provisions from existing federal laws, including the CFMA and GLBA, that prohibit federal regulation of swaps

H.R. 977, the *Derivatives Markets Transparency and Accountability Act*; reported favorably out of House Committee on Agriculture; Rep. Collin Peterson (D-MN); requires most OTC transactions to be cleared through a CFTC or SEC-regulated clearinghouse and subjects the transactions to certain CFTC requirements

Healthcare Reform

S.1177, the *Confidence in Long-Term Care Insurance Act of 2009*; introduced; Sen. Herb Kohl (D-WI); presses for stronger rate setting, market conduct, and

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POINT-COUNTERPOINT: CREATING A PUBLIC HEALTH PLAN

Central to the federal health reform debate is whether a new public health insurance option would or would not displace the private insurance market. The commentators below responded to the following question: What should states know about a possible public health insurance plan?

Public Health Insurance Option = Healthier Market, Happier Consumers

By Sally McCarty

Nearly 50 million Americans are uninsured and millions more are underinsured. Our endemic linkage between access to health care and the ability to pay has been cited as the root cause for more than 60 % of U.S. bankruptcies. Undoubtedly, this situation cries out for a solution to assist the growing number of Americans who cannot pay for necessary health care. One very workable solution is the proposed Public Health Insurance Option that would be sold alongside private insurance products.

The mere proposal of the Public Option has caused health insurers to declare their willingness to stop basing denials and exclusions on preexisting conditions, and to no longer use gender as a rating factor. Those concessions clearly demonstrate that the presence of the Public Option will make the health insurance market more competitive and consumer-friendly than ever before.

Concerns that the Public Option will cause an "uneven playing field" in the marketplace should be allayed by the fact that all plans would be sold through an insurance exchange. The exchange would require both public and private plans to provide the same benefits and meet the same actuarial requirements.

The Public Health Insurance Option would invigorate the marketplace and force private plans to compete by operating more efficiently and devoting a greater percentage of premiums to the payment of claims. The Public Health Insurance Option will yield more affordable choices for consumers and will open doors to health insurance coverage that have been too long closed to millions of Americans.

Ms. McCarty is Insurance and Advocacy Consultant with the National Hemophilia Assoc., based in Indianapolis, IN, and was IN insurance commissioner from 1997-2004.

Government (Public) Plan Poses Problems, Not Solutions, For States

By Alissa Fox

We all recognize that significant health care reform is necessary to achieve our vital shared goals of extending coverage to all Americans, reducing costs, and improving quality.

However, a new federal health plan is unnecessary to achieve these goals and will have significant unintended consequences. States, in particular, stand to experience painful disruptions to their unique, individual markets, and erosion of state authority and state revenues.

The current draft bill in the U.S. House would create a new federal health insurance agency and a new federal health plan based on Medicare that would be exempt from state regulations, state liability, and state taxes. Private health plans are able to be sued in state courts, must abide by individual state regulations, and must pay state taxes, including premium taxes to the states where they do business.

The new federal government plan would avoid all of these obligations to states. It therefore would be an unfair competitor in state insurance markets. In fact, estimates by the Lewin Group show that within only three years, 114 million Americans -- over two-thirds of private plan enrollees -- would lose their current private coverage and be switched into the government plan. Eventually, the federal plan would take over the private market completely.

Clearly state premium tax revenues would face drastic reductions. But also, for the first time, most American health insurance activity would be completely exempt from state regulation.

We must have comprehensive health care reform, but a new federal government health plan runs counter to states' interests and should not be part of health reform.

Ms. Fox is Senior Vice President, Office of Policy and Representation, for Blue Cross and Blue Shield Association, based in Washington, DC.

"...the presence of the Public Option will make the health insurance market more competitive and consumer-friendly than ever before."

—McCarty

"...for the first time, most American health insurance activity would be completely exempt from state regulation."—Fox

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agent training requirements and requires state partnership program reciprocity.

the Affordable Health Choices Act; Senate Health, Education, Labor & Pensions Committee discussion draft; requires purchase of health insurance; expands Medicaid eligibility; subsidizes coverage for working poor; and imposes new individual/small group market regulations, among other things

Regulatory Reform

H.R. 1880, the National Insurance Consumer Protection Act; introduced; Rep. Melissa Bean (D-IL); creates an Office of National Insurance (ONI) and authorizes an OFC

H.R. 2554, the National Association of Registered Agents and Brokers Reform Act; introduced; Rep. David Scott (D-GA); creates a nonprofit NARAB as an optional national producer licensing clearinghouse

H.R. 2571/S. 1363, the Nonadmitted and Reinsurance Reform Act; introduced; Rep. Dennis Moore (D-KS) and Sen. Mel Martinez (R-FL); requires home-state regulation for placement of nonadmitted insurance, related premium tax payments, and surplus lines broker licensing; prohibits a state from denying credit for reinsurance if the ceding insurer's domiciliary state recognizes credit for ceded risk; and grants a reinsurer's state of domicile sole authority to regulate the company's financial solvency

H.R. 2609, the Insurance Information Act; introduced; Rep. Paul Kanjorski (D-PA); establishes an Office of Insurance Information (OII) in the Treasury Department

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Opinions expressed in the NCOILetter do not necessarily reflect the views or opinions of the National Conference of Insurance Legislators. The NCOILetter is published monthly by Nolan Associates.

www.ncoil.org

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NCOILetter

N C O I L
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