



State Lawmakers Gear up to Implement Health Reform

During 12 hours of interactive sessions—a veritable boot camp on health reform implementation—legislators at the July NCOIL Summer Meeting asked national experts tough questions on how states and the federal government will work together to implement the *Patient Protection & Affordable Care Act*. The discussions—just the beginning of NCOIL exploration of such issues—targeted timelines and responsibilities, changes for health insurers, impacts of expanded Medicaid rolls, new insurance exchanges, and projected effects on other lines.

“States will be challenged in the upcoming years to meet a myriad of responsibilities and obstacles related to reform implementation, including creation of effective state-based insurance exchanges, funding of expanded Medicaid eligibility, (cont. on page 2)

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H.R. 4173 BECOMES LAW OF THE LAND

Before an audience of hundreds, and after nearly two years of Congressional debate, President Barack Obama signed H.R. 4173, the *Dodd-Frank Wall Street Reform & Consumer Protection Act*, on July 21. The far-reaching financial reform bill—which the President touted as offering “the strongest consumer financial protections in history”—creates a Financial Stability Oversight Council (FSOC), a Consumer Financial Protection Bureau (CFPB), and a Federal Insurance Office (FIO), among other entities.

The FSOC, an envisioned “early warning system” to detect financial market threats, includes three insurance representatives—an undefined independent expert appointed by the President, the FIO Director, and a state insurance commissioner. The commissioner and Director, like state banking and securities regulators on the Council, cannot vote on the body’s actions.

The CFPB, which will be housed at the Federal Reserve, is tasked with enforcing consumer financial—but not insurance—protection laws. One day before the signing ceremony, union groups put (cont. on page 4)

BARNEY FRANK ALERTS NCOIL LEGISLATORS: OFC ON 2011 AGENDA

In a candid yet witty repertoire with state legislators at the July NCOIL Summer Meeting, U.S. Representative Barney Frank (D-MA) delivered unwelcome news to advocates of state regulation: an optional federal charter (OFC) is on Congress’ 2011 agenda.

Frank, who chairs the House Financial Services Committee, said during the July 8 *An Hour with Barney Frank* that the push for an OFC is bipartisan—and, he added, a not-surprising follow-up to this year’s enactment of H.R. 4173, the *Dodd-Frank Wall Street Reform & Consumer Protection Act*. Frank said that as Committee chair he would remain neutral during the debate

—though he saw no need for federal oversight of auto insurance. His experience as a MA state legislator, he said, taught him long ago the tough realities of regulating auto insurance. In his opinion, Frank said, 4173 recognized the importance of state oversight.



The Congressman advised OFC opponents: contact your representatives early and often—an approach that NCOIL, which strongly (cont. on page 2)

State...

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and balancing costs and benefits of new health plans,” NCOIL President Rep. Robert Damron (KY) said. He added, “NCOIL will continue to prepare legislators for this vast undertaking at an upcoming NCOIL Annual Meeting.”

Blue-ribbon panels included representatives of the U.S. Department of Health and Human Services (HHS); National Association of Insurance Commissioners (NAIC); Brookings Institution; National Association of State Budget Officers (NASBO); and National Association of State

Medicaid Directors (NASMD), among many others. Massachusetts State Rep. Peter Koutoujian and Cheryl Smith of the Utah Health Exchange described their respective state’s connector/exchange approaches during a July 9 exchange session.

A high point of the meeting was a July 8 keynote address by Vermont Governor Jim Douglas, chair of the National Governors Association (NGA), entitled *Healthcare Reform: View from a Governor’s Office*. Governor Douglas detailed innovations in Vermont that aim to lower overall costs while improving healthcare quality. ■



Legislators Eye November Vote on MCAS Model

On July 9, the NCOIL State-Federal Relations Committee moved to finalize language on first-of-its-kind model legislation to regulate—and address confidentiality of—market conduct annual statement (MCAS) data. Legislators at the Boston Summer Meeting approved amendments to a proposed *Market Conduct Annual Statement Model Act* but deferred until the November Annual Meeting a final vote on the bill, in response to requests by the NAIC and certain other parties.

“We deferred a final vote on the model until our November meeting,” Committee Chair Rep. Greg Wren (AL) said, “to allow the NAIC to further elaborate on the MCAS process and its relationships to the proposed model. At that meeting, we will also continue discussing consumer ac-

cess to company and market info.”

Sen. James Seward (NY), NCOIL past president and model sponsor, added, “Our legislation should provide legal certainty for collecting and handling MCAS data. We began developing the model last year to provide states with recommended rules to govern MCAS and to authorize regulators to collect and share information that should benefit their company and market analysis efforts.”

The model would enable a regulator to collect MCAS data yearly and would offer a confidentiality framework for its collection/sharing. The bill would base insurer participation on a national \$100,000 premium threshold.

Amendments accepted in Boston focus the model’s scope on the MCAS, as the NAIC modifies it and subject to approval by state legislators or regulators. Legislators also

clarified definitions of “insurer” and “designee” and added a drafting note saying each state should decide whether participating in MCAS is a criterion for NAIC accreditation. ■

House Leaders Pull Flood-Wind Bill

Renewed efforts to add wind coverage to the National Flood Insurance Program (NFIP)—now operating on its fourth last-minute extension of 2010—stalled on July 22 when House leaders pulled H.R. 1264, the *Multiperil Insurance Act of 2009*, from floor consideration. Despite just clearing a major procedural hurdle, the bill reportedly lacked the votes needed for passage before legislators’ August recess.

1264 would require the NFIP to offer multiperil wind-water coverage, as well as stand-alone wind insurance, to property owners in high-hazard flood areas. According to long-time sponsor Rep. Gene Taylor (D-MS), the bill would guard against concurrent causation exclusions—that is, when insurers reject wind claims because water also caused loss.

The Administration, Republicans, some Dems, and an unusual collection of others say 1264 would further destabilize the financially precarious NFIP, encourage hazardous development, and primarily benefit coastal property owners. ■

Barney Frank

opposes an OFC, has long-employed.

Frank spoke just days before President Obama signed H.R. 4173. The over 2,000-page bill was designed, in part, to restructure banking regulation and end “too big to fail.” It includes an NCOIL-opposed Federal Insurance Office and a Financial Stability Oversight Council with two non-voting state regulatory representatives.

H.R. 4173 also creates a Bureau of Consumer Financial Protection that—

(cont. from page 1)



as NCOIL urged—does not oversee insurance. The bill establishes that credit default swaps (CDS) are not insurance. Last year NCOIL—feeling obligated to oversee an unwatched CDS market—passed a model that defined certain CDS products as insurance. ■

New NCOIL Group Seeks Answers on Stranger-Annuity Deals

Spurred by Rhode Island reports of annuity abuse, legislators at the July NCOIL Summer Meeting set course to explore alarming stranger-initiated annuity transactions (STAT)—forming a subcommittee to further NCOIL understanding of the issue and suggest future action, which may include model legislation. In STATs, investors purchase annuity death benefits on unrelated, dying patients as a way to seek stock market profits without risk of losing an initial investment.

Members of the Life Insurance Committee created the subcommittee on July 9 after receiving reports from Rhode Island regulators on insurer lawsuits that exposed STAT practices. Regulators outlined marketing tactics used to lure dying patients and addressed interplay between state insurable interest, anti-rebating, and annuity laws.

The American Academy of Actuaries, American Council of Life Insurers, and Life Insurance Settlement Assoc. participated, and NAIC overviewed its efforts to address STATs.

The subcommittee will hold pre-Annual Meeting calls and will be chaired by Rep. Brian Kennedy (RI) and Sen. Mike Hall (WV). ■



NCOIL Preps Final Vote on Aftermarket Crash Parts Model

Legislators gathered at the Summer Meeting took action on a long-awaited model law—the latest NCOIL effort to protect consumers in need of auto-body repair—by adopting key amendments on July 8 that bring a *Model Act Regarding Motor Vehicle Crash Parts & Repair* closer to final resolution. The Property-Casualty Insurance Committee also quieted its debate on whether certified aftermarkets are equivalent to car-company options.

The Committee, building on earlier meetings and calls, reviewed an

amendment that would deem certified aftermarket parts to be equal to original equipment manufacturer (OEM) parts. After considering whether to rule on the inherent quality and safety of non-OEMs, legislators chose to pursue instead a new amendment on crash part warranties. The amendment, as noted later by Committee Chair Sen. Ruth Teichman (KS), would have insurers make certain that an aftermarket part warranty is at least as good as what's there for an OEM. "This is a different proposal," she said, "regarding kind, quality, safety, fit, and performance."

Among revisions adopted in Boston

was one letting insurers disclose they might, rather than will, specify non-OEMs. A second gives 30 days to fix a disclosure/prior consent violation.

The model would require disclosure/consent before crash part repair/replacement; set conditions for insurers to specify aftermarket parts; mandate permanent, visible part identification; and promote accountability.

Also, the Committee deferred a draft **insurer auto-body steering model** that would, in part, ban mandated use of a certain repair shop, as well as coercion, intimidation, or interference with consumer choice. ■

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NCOIL ANNUAL MEETING
Austin, TX — November 17 to 21



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put forward their choice to lead the new agency—Elizabeth Warren of Harvard University. Ms. Warren, who is widely credited with introducing the consumer agency idea, chairs the TARP Congressional Oversight Panel.

Most important to insurance interests, the bill immediately creates an FIO at Treasury. Attention is focused on who will fill the FIO Director slot, as the appointee may signal the Administration's vision of the FIO—the degree, in other words, to which it plans on impacting state oversight. Whether the Director will be a former regulator and state-regulation advocate or an industry official with years advocating an optional federal charter (OFC) could be telling. NCOIL strongly opposes an FIO, asserting that it opens the door to preemption.

H.R. 4173 also streamlines surplus lines regulation

(cont. from page 1)

and broker licensing and urges states to adopt a uniform mechanism to collect and allocate premium dollars—such as an NCOIL-endorsed SLIMPACT. Other controversial insurance provisions affirm state insurance regulator authority over fixed-indexed annuities, an authority that NCOIL champions; ban states from regulating credit default swaps (CDS) as insurance, despite an NCOIL model that would do just that; and support use of state guaranty fund systems, as opposed to including insurers in a new federal liquidation process.

While H.R. 4173 made inroads into insurance, a larger fight for the future of insurance regulation is in the queue for the next Congress. On July 8, during the NCOIL Summer Meeting, U.S. House Financial Services Committee Chairman Barney Frank (D-MA) announced to state legislators that his Committee would debate the OFC in 2011. ■