

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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OBAMA UNVEILS REGULATORY REFORM PLAN—MIXED BAG FOR INSURANCE

Unveiling perhaps the most significant financial services reform since the 1930s, President Obama on June 17 released a plan that defines systemic risk, re-fashions bank and derivatives oversight, calls for new consumer protections and, among other things, pushes for greater international cooperation. The long-anticipated proposal also represents a mixed bag for insurance, as it recognizes critical state-level protections but calls for more federal involvement—perhaps through a federal charter.

The proposal would grant the Federal Reserve new authorities as a systemic risk regulator and would subject so-called “Tier 1” financial holding companies (FHCs)—those large enough to threaten the financial stability of the U.S.—to stricter capital, liquidity, and other standards. The plan would create a Financial Services Oversight Council of federal financial regulators—noticeably excluding state officials—to identify emerging systemic risks and improve federal coordination.

The proposal calls for a new National Bank Supervisor to oversee all federally chartered banks; eliminates the thrift

charter; sets up a comprehensive regulatory regime for derivatives, including credit default swaps; establishes a Consumer Financial Protection Agency (CFPA); and offers a formal resolution process to wind down failing Tier 1 FHCs.

Regarding insurance, the plan supports creation of an Office of National Insurance (ONI) to gather data, advise the Feds on insurance issues, and represent U.S. interests overseas—including entering into trade agreements. The ONI is fashioned after Office of Insurance Information (OII) legislation first introduced last session—and which NCOIL has opposed on the grounds that it would set the stage for greater federal involvement. The Obama plan also allows for a federal insurance charter as one avenue for promoting greater regulatory uniformity.

The National Association of Insurance Commissioners (NAIC) praised the plan for upholding state regulatory authority and urged expansion of the Oversight Council to include state regulators—an idea previously floated by the NAIC, North American Securities Administrators Association (NASAA),

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NCOIL MODEL LAW TO REGULATE CREDIT DEFAULT SWAPS (CDS) AS INSURANCE

A first-of-its-kind model act seeks to regulate CDS as insurance products and ban “naked” swaps contributing to the current financial crisis.

Thursday, July 9, during Philadelphia NCOIL Summer Meeting — Financial Services & Investment Products Committee



VIEW FROM THE HILL: HEALTH REFORMS HIT ROUGH PATCH

Despite grand plans and media talk, an early summer rough patch has proven that healthcare reform will advance slower than some expected. Comprehensive efforts were dealt financial and partisan blows in key Senate Committees this month, during the same week that President Obama unveiled his wide-ranging financial services overhaul plan (see *article page 1*).

The Senate Health, Education, Labor, and Pensions (HELP) Committee began markup sessions during the third week of June on Chairman Ted Kennedy's (D-MA) yet-to-be-officially-introduced, 615-page reform package. Handled by Senator Christopher Dodd (D-CT) in Kennedy's absence, the markups were roundly criticized by Committee Republicans, who argued that Dems had locked them out of the drafting process. As of press time, the full Committee had met for four days, with more meetings scheduled, and had waded through several hundred amendment proposals—amounting to reams and reams of paper—in highly charged and not very productive sessions.

Meanwhile, Senate Finance Committee Chairman Max Baucus (D-MT)

hoped to begin markup on a Finance Committee plan, but a steep Congressional Budget Office (CBO) price estimate approximately \$1.6 trillion over ten years—set the group back. The price tag was far higher than even liberal lawmakers anticipated.

In order to minimize the partisan wrangling that's bogged down the HELP Committee, Finance Committee leaders must significantly cut costs to gain support from both sides. As currently drafted, the Finance Committee proposal includes an individual mandate and an insurance exchange, but avoids controversial items like business mandates and a public health insurance option.

Perhaps hoping that their bipartisanship will rub off, former Senators Tom Daschle (D-SD), George Mitchell (D-ME), Bob Dole (R-KS), and Howard Baker (R-TN) are readying their own plan, albeit a skinner and less controversial one, that also aims to expand coverage throughout the U.S.

The Administration and congressional Dems say they're still confident that major healthcare and financial services reform will take shape this year. We'll see if they can do both.

“Comprehensive efforts were dealt financial and partisan blows in key Senate Committees this month, during the same week that President Obama unveiled his wide-ranging financial services overhaul plan...”

OBAMA

and other state groups. Testifying before a House Subcommittee on June 16, Insurance Director Michael McRaith (IL) —on behalf of NAIC—noted that no single insurance company poses systemic risk and said that “Insurance companies are more often the conduits or receivers of risk rather than the creators...”

NASAA called the Obama proposal “a positive first step in the right direction to monitor financial risks and to close the regulatory gaps that contributed to the current financial crisis...” and said that NASAA would work to ensure a role for state securities administrators.

Consumer groups also applauded the President's plan. In a June 17 press

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release on behalf of the Consumer Federation of America (CFA) and six other national groups, advocates endorsed the CFPA concept and urged Congress to act quickly. Insurer trade groups offered a less uniform response. Some cheered the plan's retention of state oversight, while others read the plan as a first step towards federal regulation.

Treasury Secretary Geithner—testifying before the Senate Banking Committee on June 18—faced senators critical of laying systemic regulation in the hands of the Federal Reserve, among other concerns. The Banking Committee and its House counterpart, the Financial Services Committee, will investigate the Obama plan throughout the next several weeks.

NCOIL MODEL LOOKS AT INDEPENDENT CONTRACTORS— TARGETS WORKERS' COMP FRAUD, ABUSE

In an effort to protect injured workers and reduce costs, the NCOIL Workers' Compensation Insurance Committee will consider on July 10 model legislation that would require employers to appropriately identify their employees for workers' compensation purposes. Scheduled for review during the upcoming Summer Meeting, a draft *Employee Misclassification Workers' Compensation Coverage Model Act* would create transparency, disclosure, and accountability and clearly distinguish independent contractors—who are exempt from most state coverage requirements—from full and part-time employees.

Sponsored for discussion by NCOIL leaders Rep. Charles Curtiss (TN) and Sen. Ralph Hudgens (GA), the model—which follows a 2008 joint National Association of Insurance Commissioner (NAIC) and International Association of Industrial Accident Boards and

Commissions (IAIABC) review of related workers' comp issues—would create a nine-point test to identify an independent contractor.

The model would mandate coverage in the oft-exploited construction industry and help employers by requiring clear insurer application, disclosure, and auditing procedures. It would create strong penalties and strict state enforcement authority, including power to temporarily shut down worksites.

The model is based on Florida and Wisconsin laws. Representatives of the Associated Builders and Contractors (ABC), Coalition Against Insurance Fraud, National Council on Compensation Insurance (NCCI), National Federation of Independent Business (NFIB), and United Brotherhood of Carpenters and Joiners of America provided input into the bill's initial development, as have certain state insurance and labor regulators.

“The model would mandate coverage in the oft-exploited construction industry and help employers by requiring clear insurer application, disclosure, and auditing procedures.”

FACT FINDINGS: VOICES OF NATIONAL HEALTH REFORM

Key U.S. House and Senate Committees worked to introduce historic healthcare legislation in June. Here's what major players had to say:

Federal:

“...there has never before been a moment like this for healthcare reform. An overhaul of the system is not only possible; it is imminent.”—*U.S. Senators Max Baucus (D-MT) and Edward Kennedy (D-MA) in a June 10 The Hill op-ed*

“Taking the time to get this right is more important than rushing to meet arbitrary deadlines, because if Congress gets this wrong, we might not be able to go back and fix it.”—*U.S. Senator Mike Enzi (R-WY) in a June 10 The Hill op-ed*

State Regulator:

“...State regulators are closer to the consumers...and have over 135 years of experience...We appreciate that most of the reforms contained in the

[Senate Affordable Health Choices Act] would be implemented at the state level.”—*Insurance Commissioner Sandy Praeger (KS), on behalf of the NAIC, at a June 11 Senate Health, Education, Labor, and Pensions (HELP) Committee hearing*

Insurer:

“While we strongly support the goal of simplifying health care choices for individuals and employers, it is crucial to develop an architecture with workable rules that ensures broad participation of health plans that offer a variety of coverage options.”—*June 9 statement from America's Health Insurance Plans (AHIP)*

Provider:

“Our American health care system is sick and getting worse. If we approach change with a hatchet instead of a scalpel, we will lose the patient.”—*American Medical Association (AMA) President Dr. James Rohack at a June 16 speech before the AMA House of Delegates*

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NCOILetter

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FACT FINDINGS

Employer:

“The Chamber strongly urges the Committee to forego inclusion of any language that would force a pay-or-play system on employers, create a new government-run insurance plan, or

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create an un-elected, unaccountable bureaucracy that would force its decisions upon American workers and employers.”
—R. Bruce Josten, U.S. Chamber of Commerce, in a June 16 letter to the U.S. Senate HELP Committee

NCOIL TO INVESTIGATE AUTO CRASH PARTS

Join debate on a consumer-choice bill targeting aftermarket crash parts and auto body steering.

Saturday, July 11, during Philadelphia **NCOIL Summer Meeting** — Property-Casualty Insurance Committee



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