



# NCOILETTER

March 2006

[www.ncoil.org](http://www.ncoil.org)

## NATIONAL CONFERENCE OF INSURANCE LEGISLATORS

### 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:

NCOIL Forms Market Conduct Subcommittee, Renews Efforts **2**

Lawmakers Look to PBM Model Act **2**

NCOIL Sends Letter to Enzi Opposing S. 1955 **3**

Sign Up Now for the NCOIL Summer Meeting, July 20 through 23\* **4**

**\*PLEASE NOTE  
CHANGE  
FROM PREVIOUS  
DATE**

## SENATE PANEL PASSES ENZI BILL

At a March 15 Health, Education, Labor & Pensions (HELP) Committee hearing in the U.S. Senate, lawmakers passed S. 1955, the *Health Insurance Marketplace Modernization and Affordability Act.*, sponsored by Sens. Michael Enzi (R-WY) and Ben Nelson (D-NE). In a letter to Enzi and Nelson prior to the 11 to 9 party-line vote (see *letter page 3*), NCOIL opposed S. 1955 on grounds that it would preempt state consumer protections, among other concerns.

The bill would create Small Business Health Plans (SBHPs) that would be exempt from state rating rules and most state benefit mandates. SBHPs would have to offer one alternative health plan with benefits comparable to a comprehensive plan offered in one of the five most populous states.

At the HELP Committee hearing, members rejected 17 proposed amendments, including mandates that would have allowed women to designate an ObGyn as a primary care physician; prohibited discrimination against

women based on domestic violence; given states the option of rejecting S. 1955 implementation; and limited rating variations based on health and age status to a 2:1 ratio. A proposed revision that would have provided needed coverage for autistic individuals failed also.

During an earlier, March 8 Committee hearing, members rejected amendments that would have mandated pre-screening for cancer and diabetes and required health coverage for newborns.

The bill now heads to the Senate floor, where Democrats are expected to open up the national healthcare debate with issues such as drug reimportation and mental health parity. Sen. Enzi would like to bring the legislation to the floor as soon as possible, but, as of press time, no date had been set.

The House of Representatives has several times passed association health plan (AHP) bills and likely would fast-track SBHP legislation. The House could revise the bill by inserting more restrictive language.

## NCOIL IN ACTION

*During the February 23 through 26 NCOIL Spring Meeting in Weston, Florida, legislators took the following public policy actions, among others:*

- Adopted an amended NCOIL resolution on catastrophic natural disaster insurance issues; a resolution opposing application of SOX-like standards to non-public insurers; an extraordinary life circumstances drafting note to the NCOIL credit scoring model act; and, in the Workers' Compensation Committee, an IAIABC model agreement regarding claims reciprocity
- Held special meetings on market conduct reform and PBMs (see *stories page 2*)
- Moved for further consideration the bylaws-required reviews of the NCOIL *Identity Theft Protection Model Act*, *Mental Health Parity Model Act*, *Insurance Compliance Self-Evaluative Privilege Model Act*, and *Secondary Addressee Model Act*
- Moved for further consideration proposed legislation regarding payday lending, long-term care partnerships, and reinsurance collateral requirements
- Participated in sessions on fragmented health insurance and building codes

## NCOIL RENEWS MARKET CONDUCT REFORM EFFORTS, FORMS SUBCOMMITTEE

**Legislators at the session addressed issues including the need for confidentiality of market conduct exam data and reports, as well as the need for domestic deference and/or interstate cooperation and coordination.**

At a special NCOIL meeting on February 24, legislators renewed their efforts to enact market conduct surveillance reform and created a special subcommittee charged with examining viable NCOIL options, including an initial, February 2004 NCOIL *Market Conduct Surveillance Model Law*. The discussion, which also included a call for interested party comments, was held by the State-Federal Relations Committee during the recent NCOIL Spring Meeting in Weston, Florida.

Legislators at the session addressed issues including the need for confidentiality of market conduct exam data/reports, as well as the need for domestic deference and/or interstate cooperation and coordination.

They also noted the lack of state, and particularly regulatory, support for a joint NCOIL-National Association of Insurance Commissioners (NAIC) market conduct model act that NCOIL adopted in July 2004 and NAIC in September 2004. Legislators have received testimony from interested parties that point to continued inconsistencies in state market conduct efforts.

At the special meeting, Committee Chair and NCOIL Past President

Rep. Craig Eiland (TX) announced that a new subcommittee would receive additional comments from consumer, insurance industry, regulator, and other groups regarding the February draft.

Subcommittee members include Sen. Neil Breslin (NY), chair; Rep. Eiland; Sen. Steven Geller (FL), NCOIL Past President; Rep. Robert Damron (KY), NCOIL Executive Committee Chair; Rep. Fulton Sheen (MI); Sen. Pam Redfield (NE); Sen. Carroll Leavell (NM); Rep. George Keiser (ND); Rep. Brian Kennedy (RI), NCOIL Secretary; and Rep. Mark Young (VT). Sen. Breslin had chaired the State-Federal Relations Committee during its initial deliberations on the February 2004 draft.

Lawmakers at the Spring Meeting also identified the following three NCOIL market conduct options: 1) return to the February 2004 model; 2) reevaluate the joint draft; or 3) consider a recently enacted Texas market conduct bill based on the NCOIL-NAIC version.

More than four years of NCOIL investigation into the issue, including publication of two Insurance Legislators Foundation studies, have found wide disagreement regarding the scope and purpose of market conduct exams and widespread and wasteful redundancies.

## NCOIL LOOKS TO MODEL LAW REGULATING PBMs

Following a passionate debate on the regulation of pharmacy benefit managers (PBMs), legislators at NCOIL's recent Spring Meeting voted to further investigate PBM practices at the Summer Meeting in July and to consider possible adoption of an NCOIL model law.

Among other things, lawmakers will identify and examine current state legislation that could serve as a template for an NCOIL model act. According to Health, Long-Term Care, and Health Retirement Issues Committee Chair Rep. George

Keiser (ND), "States that have taken legislative action have addressed registration, regulation, and fiduciary duty of PBMs, and the relationship between PBMs and mail-order pharmacies."

At the February 23 debate, PBM critics testified to problems with PBM contracts and to documented price markups enjoyed by large PBM firms.

Supporters said PBMs already are regulated in various ways and that it would be unfair to require disclosure of PBM profit strategies when other businesses can mark up prices without legislative regulation.

## NCOIL SENDS LETTER TO ENZI: S. 1955 BAD FOR CONSUMERS, STATE REGULATION

On March 14, NCOIL sent the following letter to U.S. Senators Michael Enzi (R-WY) and Ben Nelson (D-NE) opposing S. 1955, the Marketplace Modernization and Affordability Act of 2005, which they co-sponsor. The letter was sent in advance of a March 15 mark-up session in the Health, Education, Labor & Pensions (HELP) Committee (see story page 1).

NCOIL officers, past presidents, and committee chairs were signatories. Copied on the letter were all members of the HELP Committee, as well as representatives of the National Association of Insurance Commissioners, National Conference of State Legislators, Council of State Governments, and National Governors Association.

On behalf of the National Conference of Insurance Legislators (NCOIL), we are writing to express strong opposition to S. 1955, the Marketplace Modernization and Affordability Act of 2005. NCOIL has serious concerns with inadvertent consequences of this proposed legislation. While NCOIL commends your efforts to make health insurance more accessible and affordable for small employers, we do not believe that S. 1955 would achieve the intended goal.

NCOIL opposes the preemption of tried and true state rating systems, which are a result of many years of delicate regulatory balancing. NCOIL agrees with the National Association of Insurance Commissioners (NAIC) that a "one size fits all" policy cannot determine how risk will be spread in the marketplace. Each state is best suited to establish appropriate rates for its unique health insurance market.

Small Business Health Plans (SBHPs) created under S. 1955, much like Association Health Plans

(AHPs), could result in "cherry picking" of healthier groups or individuals and displace the sick and the frail. Adverse selection would trigger a fragmentation of the market, which, ultimately, could contribute to the nation's growing underinsured and uninsured populations and place significant additional pressure on the "high risk pools" currently available in the states.

NCOIL is also opposed to any legislation that would preempt vital consumer safeguards and distance state officials from consumers or handicap their ability to protect them. S. 1955 could exacerbate existing frustration of state regulators, who are discouraged by their inability to respond to current consumer complaints regarding ERISA coverage, and could dramatically add to consumer frustrations in our individual states related to resolving problems encountered with healthcare providers.

In its current form, the bill also allows insurance companies to sue states for injunctive and/or equitable relief, but ironically provides no such relief for consumers against insurers. Without state officials to depend on for assistance or an opportunity to legally challenge insurers, consumers will be isolated in times of need.

We further question moving forward on a bill that has not been subject to a cost-benefit analysis. NCOIL believes that any such analysis will prove that costs associated with S. 1955 will be far greater than benefits received as the legislation's effects on the health insurance industry are extrapolated over time.

NCOIL remains committed to efficient and effective health care insurance for the citizens of our states served and protected by state government regulation. We remain available to assist you and your staff in addressing these complex issues.

**NCOIL is  
opposed to any  
legislation that  
would preempt  
vital consumer  
safeguards and  
distance state  
officials from  
consumers or  
handicap their  
ability to protect  
them.**

### SAVE THE DATE

**The NCOIL  
Summer  
Meeting**

**July 20 through  
23, 2006\***

**Boston,  
Massachusetts**

**\*PLEASE NOTE  
CHANGE  
FROM  
PREVIOUS  
DATE**

## NCOILetter

Susan F. Nolan, Publisher/Editor

Candace Thorson, Managing Editor  
Paul Donohue, Associate Editor  
Mike Humphreys, Associate Editor

Simone Smith, Production Assistant  
Robert Goodman, Business Manager

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.

Contact the NCOILetter at the:

**NCOIL National Office:**  
385 Jordan Road  
Troy, NY 12180  
(518) 687-0178 (phone)  
(518) 687-0401 (fax)  
info@ncoil.org

**The NCOIL Office in  
Washington, D.C.**

601 Pennsylvania Ave. NW  
Suite 900, South Building  
Washington, D.C. 20004  
(202) 220-3014 (phone)  
(202) 330-5004 (fax)  
info@ncoil.org

# NCOIL

## NCOIL 2006 Summer Meeting and Seminar July 20 - 23, 2006\* Boston Park Plaza Hotel & Towers, Boston, Massachusetts

Name \_\_\_\_\_ Title \_\_\_\_\_  
First Name for Badge (if different from above) \_\_\_\_\_  
Company or Affiliation \_\_\_\_\_  
Mailing Address \_\_\_\_\_ Phone (\_\_\_\_) \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_ Fax (\_\_\_\_) \_\_\_\_\_  
E-mail Address \_\_\_\_\_ Accompanied by (please list full name) \_\_\_\_\_  
(E-mail necessary to process registration) (Unless spouse or immediate family, additional occupants must register.)  
First Time Attendee? ☐ Yes ☐ No IL, KY, or WV Continuing Education Participant? \_\_\_\_\_

### REGISTRATION FEES:

☐ Legislator, staff, member state - \$350.00 ☐ Insurance Commissioner or designated Insurance dept. staff (one) - no charge  
☐ Legislator, staff, non-member state - \$475.00 ☐ Insurance Department (Other) - \$475.00  
☐ Industry Education Council - \$500.00 ☐ Industry non-IEC member - \$750.00  
☐ Media - no charge ☐ Consumer/Advocacy Groups - \$350.00  
(Upon NCOIL approval)  
☐ Industry spouse/immediate family - \$75.00

### ONE-DAY REGISTRATION: DATE \_\_\_\_\_

☐ Legislator, staff, member state - \$175.00 ☐ Industry non-IEC member - \$375.00  
☐ Legislator, staff, non-member state - \$237.50 ☐ Insurance Department (Other) - \$237.50  
☐ Industry Education Council - \$250.00 ☐ Consumer/Advocacy Groups - \$175.00  
(Upon NCOIL approval)

**PAYMENT:** Registration fee enclosed \$ \_\_\_\_\_ (please make check payable to NCOIL)

Charge to my: ☐ MasterCard ☐ Visa ☐ American Express ☐ Discover  
Card # \_\_\_\_\_ Exp. Date \_\_\_\_\_

CANCELLATION POLICY: HALF REFUND AFTER JULY 6; NO REFUND AFTER JULY 13  
CANCELLATIONS WILL ONLY BE ACCEPTED IN WRITING

**REGISTRATION WILL NOT BE PROCESSED WITHOUT PAYMENT  
HOTEL CUT-OFF DATE IS JUNE 23**

### ACCOMMODATION REQUEST (please check one):

☐ Hotel Accommodations Not Needed ☐ Hotel Accommodations Needed  
☐ LEGISLATORS Plus tax currently totaling 12.45% ☐ ALL OTHERS  
(Single/Double) \$139.00 (Single/Double) \$199.00

ARRIVAL DATE \_\_\_\_\_ DEPARTURE DATE \_\_\_\_\_

All room reservations must be guaranteed by an accepted credit card or accompanied by a check for one night's room deposit made payable to the **Boston Park Plaza Hotel & Towers**. After June 23, hotel room rates and room availability are not guaranteed. Indicate below method of guarantee:

☐ Same Account as Above ☐ MasterCard ☐ Visa ☐ Amex ☐ Discover ☐ Diners Club  
☐ Check Enclosed

Card # \_\_\_\_\_ Exp. Date \_\_\_\_\_

The above signed authorizes the Boston Park Plaza to charge this credit card for the initial deposit, as well as for cancellation, no-shows & early departures.

Mail or fax this form to:

NCOIL, 385 JORDAN ROAD, TROY, NY 12180 Tel: 518-687-0178 Fax: 518-687-0401

**\* PLEASE NOTE CHANGE FROM PREVIOUS DATE.**