National Conference of Insurance Legislators

NCOILETTER

...for the states

March 2008 www.ncoil.org

NCOIL PROMOTES KEY REFORM, TACKLES OFC ARGUMENTS

NCOIL worked to counteract arguments for an optional federal charter (OFC) recently when legislators reaffirmed their opposition to OFC preemption and tackled two primary concerns of state regulation critics—that speed-to-market is evasive and that many roadblocks exist for agents to obtain non-resident licenses.

On March 1, during the NCOIL Spring Meeting in Washington, DC, lawmakers adopted a *Model State Resolution in Opposition to S. 40/H.R. 3200, the National Insurance Act of 2007*—a resolution that serves as a template for state legislatures to express to their Congressional delegates strong resistance to OFC usurpation of state authority. The resolution outlines the consequences of OFC implementation and recognizes the great strides states are taking to modernize.

As noted by NCOIL President Rep. Brian Kennedy (RI), "The voice of the states—which is unanimous in opposing federal insurance oversight—needs to be as loud as those of OFC advocates who seek limited oversight and a bifurcated insurance system for their own benefit and without any consumer demand from our constituents."

Building on its long-standing support of the Interstate Insurance Product Regulation Compact (IIPRC)—a notable example of successful state reform—NCOIL at the Spring Meeting approved, in concept, a draft letter to be co-signed by National Association of Insurance Commissioners and National Conference of State Legislatures leaders that will spotlight for legislative leadership and insurance commissioners from non-Compacting states the advantages of participating. The Compact—enacted in 31 states and pending in an additional 10—allows a company to make one product filing and, once approved, offer that product in all member states.

Legislators in DC also issued support for a key producer

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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

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NCOIL IN ACTION: 2008 SPRING MEETING

Legislators at the NCOIL Spring Meeting took the following public policy actions, among others:

Unanimously adopted:

- a model state resolution opposing optional federal charter legislation
- in concept—a joint letter with the NAIC and NCSL encouraging Interstate Insurance Product Regulation Compact membership
- a resolution supporting the National Insurance Producer Registry
- a model act regarding rental damage waivers

Moved for further consideration resolutions regarding:

- extended dependent health benefits for young adults
- prescription drug transparency
- state catastrophe funds and federal assistance
- legal settlements as public policymaking instruments

In addition:

- voted to establish a 30-day comment period on an ILF *Study on State Insurance Authority*, and to notify governors and attorneys general regarding the deadline
- participated in a keynote lunch by Congressman Tim Mahoney (D-FL) on H.R. 3355
- considered current proposals regarding reinsurance collateral
- postponed indefinitely models on physician discount secondary markets and accident response fees

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VIEW FROM THE HILL: CONGRESS RETALKS AGENT LICENSING, BREAKS GROUND ON BOND INSURERS

On March 13, Congressmen David Scott (D-GA) and Geoff Davis (R-KY) introduced the *National Association of Registered Agents & Brokers Reform Act*, H.R. 5611, otherwise known as "NARAB II." The bill is the second coming of a controversial NARAB requirement from a 1999 *Gramm-Leach-Bliley Act* (GLBA). A flurry of insurance industry press followed the bill's introduction, covering the spectrum from downright joyful to clearly frustrated.

The bill—which would create a national clearinghouse for producer licensing and would require at least a single-state license in order for a producer to benefit from NARAB efficiency—was praised by many agent groups, who hailed it as a must-have measure to streamline licensing while preserving state oversight. OFC advocates, however, generally fear that movement on H.R. 5611 would derail their push for bifurcated regulation. The failing of H.R. 5611, they say, is that it could not match an OFC's licensing and speed-to-market efficiency.

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H.R. 5611 has hit the ground running with more co-sponsors—14 of them—than both OFC bills re-introduced this session, which together struggle to attract more than four supporters. It is expected that both the NARAB II and OFC plans will be discussed during an April 16 House Capital Markets Subcommittee hearing—the third in a series that began last fall.

Though introduction of NARAB II was anticipated, its timing is interesting given recent ramping up of state licensing efforts. States are making real progress to fully utilize a National Insurance Producer Registry (NIPR), a key modernization tool that hastens licensing transactions and that NCOIL, in a recently adopted resolution, and other groups strong endorse. Moreover, in February, the NAIC released a *Producer Licensing Assessment Aggregate Report of Findings* that resulted from on-site regulator visits to all member jurisdictions to review state producer licensing requirements in an effort to effect any needed change. The NAIC has informally opposed NARAB II.

Adding to the House Financial Services Committee's busy month, the group held a March 12 follow-up hearing on bond insurance fallout from the burgeoning subprime lending crisis. Witnesses representing state and local officials, as well as bond insurers, rating agencies, and others, responded to concerns regarding a dual, and some say inequitable, rating system for corporate and municipal bonds and the investing wisdom (or lack thereof) of the bond insurance industry. Financial Services Committee Chairman Barney Frank (D-MA)—an unabashed critic of the status quo—made it very clear that he expected change soon and that the Committee would move quickly if little is done.

A new report issued by trustees of **Medicare** and **Social Security** offers a dim view of the programs' fiscal stability. This year, the report says, a Medicare hospital insurance fund will pay out more than it receives in taxes and other revenue—and will exhaust its reserves entirely by 2019. Social Security, which is in less immediate crisis, will begin relying on reserves in 2017 with a fiscal end date of 2041. A bright spot: not all Medicare is in danger. According to the report, a separate Medicare trust fund for doctor services and outpatient care is financially safe—because, under federal law, it can take what it needs from U.S. general revenue.

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DRAFT MEDICAID REGS COULD COST STATES $50 BILLION

House Oversight and Regulatory Reform Committee Democrats released a report this month that paints a bleak picture for state lawmakers. With many states already facing severe budget deficits, new regulations being proposed by the Bush Administration could, the report says, cost states as much as $50 billion in lost federal Medicaid payments over a five year span—almost three times more than earlier projections.

The changes include provisions that would block federal payments to state programs for physician training, limit payments to healthcare facilities operated by state and local governments, and limit coverage of ancillary and rehabilitative services for the disabled, among other things.

State and federal lawmakers have attacked the regulations, arguing that states would be forced to pick up the tab or consider major cutbacks to critical programs. Strong bipartisan opposition from the National Governors' Association (NGA) and the National Conference of State Legislatures (NCSL) echoed these sentiments earlier this month.

Federal officials argue that in many cases states have exploited federal Medicaid payments to fund services that do not assist the program's primary beneficiaries—low-income adults and children. The new rules, they maintain, simply try to curb these expensive "extras."

Calling for a timeout of sorts, Rep. John Dingell (D–MI) on March 13 introduced H.R. 5613, which would place a moratorium on the regulations until April 2009, when a new administration is in office that may oppose the cuts.

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FACT FINDINGS: NOTES ON THE SUBPRIME CRISIS

The subprime lending crisis has been painted by many as a result of lax federal oversight that allowed financial institutions to invest heavily in risky—and ultimately unwise—subprime loans. Such alleged federal weakness repudiates calls for an OFC and highlights a very real danger of allowing insurers to opt for federal oversight. The quotes below capture some of the subprime problem.

"The Mortgage Insurance Companies of America reported the number of insured borrowers who were at least 60 days behind in their payments rose 31.3% between January 2007 and January 2008, hitting a record 68,950."—*Mortgage Insurers See Bleak 2008 as Housing Markets Worsen,* BestWire, *March 10*

"The Federal Deposit Insurance Corp., the federal agency that backs bank deposits, [in late February] reported the biggest jump in 'problem institutions' it has seen since the savings and loan crisis of the late 1980s. While the extent of the problem is still low by historic standards, it identified 76 banks as in trouble - a 52% increase from a year ago."—*Bank Regulators: Asleep at the Switch,* CNNMoney.com, *March 4*

"The ratings agency Standard & Poor's said earlier this month that the total for U.S. subprime losses could hit $285 billion. The ripple effect from losses booked so far has forced bank bailouts in the United States and Europe and asset price write-downs from Berlin to Beijing."—*Recovery Hinges on U.S. Action in Crisis,* International Herald Tribune, *March 25*

SAVE THE DATE

The NCOIL

SUMMER MEETING

July 10 through 13

at the Marriott Marquis

New York, New York

NCOILetter

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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.

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ACCOUNTING REVOLUTION, SUBPRIME UNDER REVIEW AT NCOIL

Legislators at the NCOIL Spring Meeting participated in a general session on an issue of critical importance nationwide—the impact that sweeping international accounting standards will have on the U.S. market. "The Solvency Revolution: Subprime Lending and International Accounting" examined whether the subprime debacle would have been averted by new global standards, as well as whether such proposed rules would favor EU over US interests. Excerpts follow.

Wayne Upton, research director, International Accounting Standards Board (IASB):

"Why should you care about this move to international standards? Well right now over a hundred countries around the world either require or allow the use of international accounting standards.…And I think there's a growing sense in the United States that continuing to operate as the outlier and attempt to ride two horses is in the long term just an untenable position."

"If you are a U.S. country that has 80 or 90 percent of your subsidiaries in those 100 countries that already require international standards, the only reason you're using U.S. accounting standards is to keep the Securities and Exchange Commission happy. It's actually more expensive for you to use the U.S. standard."

"What are we actually proposing...?...Building block number two is a funny little animal called the 'time value of money.' That's something that in the subprime crisis became painfully clear for folks who found that they could no longer pay back their mortgages. Cash has a time value....Insurance accounting in the United States has profoundly denied that reality through most of its history."

Jerry de St. Paer, exec. chairman, Group of North American Insurance Enterprises (GNAIE):

"The process [of changing international accounting standards] began a long time ago…and has moved at the pace of grass growing compared to the other events that have influenced the industry over the past decade or so."

"The American industry view has been up to now that 'It won't happen here.' That's a mistaken view. The subprime crisis should give us a heads-up about the FAIR value accounting as it relates to the key issues affecting the insurance industry."

Thomas Hampton, commissioner, DC Dept. of Insurance, Securities &Banking:

"What we [the NAIC] want to do is make sure the world around us isn't changing so we will [are] the only outlier in the...process."

"We already know our property-casualty companies are using a principles-based approach—they use the best reserve estimate, they have a statement of actuarial opinion that verifies....On the life side it's totally different…"

NCOIL

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licensing effort. A *Resolution in Support of the National Insurance Producer Registry* (NIPR) urges states to fully utilize the NIPR. Such implementation will give agents a streamlined portal through which they can electronically address their licensing and appointment needs. The NCOIL resolution comes at a time of renewed state