National Conference of Insurance Legislators

NCOIL LETTER

...for the states

Special Federal Edition

www.ncoil.org

CONGRESS OVERHAULS HEALTHCARE, STATES TO IMPLEMENT

After 15 months of legislative wrangling, Congress in March enacted comprehensive —and costly, states fear—health insurance reforms. President Obama signed HR 3590, the *Patient Protection and Affordable Care Act*, into law on March 21, just two days before Congress amended the law by passing HR 4872, *The Healthcare and Education Reconciliation Act of 2010*.

The two-step effort to advance reform —planned by White House and Democratic leaders to resolve differences between House and Senate members—required Senate approval of compromise changes contained in HR 4872 using a controversial "reconciliation" process. "Reconciliation" required only 51 Senate votes once both the House and Senate passed the underlying bill, HR 3590.

The House "fixes," among other things, increased subsidies for purchasing insurance, revised penalties for being uninsured, raised state aid for Medicaid, closed a gap in Medicaid prescription drug coverage, and delayed a tax on high-cost insurance plans. The changes earned final congressional approval after the House quickly held a second, procedural vote on HR 4872—striking two unrelated student loan provisions that were deemed by the Senate to have no impact on the budget, as Senate rules require.

HR 3590 met strong House-member objections, including concerns that the bill was not progressive enough. The bill also stalled because the Senate in January lost its 60-member, filibuster-proof majority. Preventing a filibuster would have been critical if Senate Democrats had wanted to adopt House "fixes" without using the controversial reconciliation process.

Supporters of the reform say it will insure 32 million new Americans, help lower healthcare costs, and decrease the deficit by $143 billion over ten years. The law bans unpopular insurer practices such as pre-existing condition exclusions and revoking policies after patients become sick. It lets young adults remain on parents' insurance until they are 26 and creates medical-loss ratio standards for insurers—directing them to spend at least 85 and 80 percent of premium dollars, respectively, in the large and individual/small group markets on medical care.

Critics say, in part, that cost estimates are off-the-mark and that the law will actually increase the deficit. Attorneys general in 14 states are suing to prevent the law's new funding mandates. State officials are underscoring the sizeable budget impacts that new require-

(continued on page 4)

SENATOR DODD UNVEILS, ADVANCES REG. REFORM BILL

In record time, Senate Banking Committee Chair Christopher Dodd (D-CT) circulated and secured Committee approval for a 1,300-page *Restoring American Financial Stability Act of 2010* that aims to transform the way financial services companies are regulated. Dodd released the long-awaited bill—a revision of a November draft—on March 15. Just seven days later, during a 23-minute markup, the Committee voted to send the bill to the full Senate.

As approved, Sen. Dodd's bill—including some new changes made by Dodd in a Manager's Amendment—would establish a Financial Stability Oversight Council to monitor financial markets and designate systemically risky companies, an NCOIL-opposed Office of National Insurance (ONI) to collect insurance information and preempt state laws inconsistent with new international insurance agreements, and a Bureau of Consumer Financial Protection to regulate consumer financial products and services, among other things.

The legislation would also create a Federal Deposit Insurance Corporation (FDIC)-based liquidation process and corresponding liquidation fund that would unwind failing non-bank financial companies; clarify the regulation of banks by the FDIC, Federal Reserve, and Office of the Comptroller of the Currency (OCC); and regulate derivatives transactions. The bill in-

(continued on page 2)

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:

HEALTHCARE REFORM IMPLEMENTATION TIMELINE

The 2010 healthcare reform bill contains numerous requirements and new programs that will be phased in over the next ten (10) years. Implementation dates for certain key aspects of the law are listed below.

March 23, 2010, through March 2011

* Authorizes *tax credits* to small businesses for offering coverage to employees
* Gives a $250 *rebate* to seniors reaching Medicare Part D donut hole in 2010

June 2010

* Requires states to have temporary *high-risk pools* or mechanisms for uninsured people with preexisting conditions

September 2010

* Prohibits insurers from *rescinding coverage* after a sickness, imposing *life time caps*, and denying *coverage to children* with preexisting conditions
* Allows parents to keep *children* on their policies until age 26

2011

* Requires medical *loss ratios* of 80 and 85 percent, respectively, for individual/small group and large group plans
* Begins a voluntary *LTC program* financed through payroll deductions

2012

* Imposes a new *annual fee* on drug manufacturers

2013

* Raises the Medicare *payroll tax* for high-income workers and imposes a new tax on medical device sales

2014

* Requires states to implement insurance *exchanges* for individual/small business markets (federal funding to states is available from 3/2011 to 1/1/2015)
* Prohibits insurers from denying coverage based on *preexisting conditions* and imposes a new *annual fee* on health insurers
* Imposes a mandate that individuals *acquire health insurance* coverage or pay, by 2016, the greater of $695 or 2.5 percent of income
* Imposes *mandates on employers* with 50+ workers: offer coverage or by 2014 pay $2000/FT worker (excluding the first 30); if offer unaffordable coverage, pay $3000/employee receiving taxpayer assistance to buy it or a total of $2000/employee, whichever is more *(Employers of 50 or fewer workers are exempt.)*
* *Expands Medicaid* to those making under 133 percent of the Federal Poverty Level

2018

* Imposes *new taxes* on so-called "Cadillac" health insurance policies

Despite the partisan 13-10 Committee vote, members on both sides of the aisle have expressed a willingness to develop bipartisan [regulatory reform] legislation...

SENATOR

(continued from page 1)

cludes the widely supported *Nonadmitted and Reinsurance Reform Act*, which would require that an insured's home state regulate surplus lines insurance/broker licensing, a reinsurer's state of domicile regulate solvency, and a ceding insurer's home state regulate credit for reinsurance.

Despite the partisan 13-10 Committee vote, members on both sides of the aisle have expressed a willingness to develop bipartisan legislation for floor consideration, which could occur in late April. To what extent members remove insurance from the bill remains to be seen.

Recently, at the NCOIL Spring Meeting, lawmakers unanimously adopted resolutions urging the Committee to exempt insurers from systemic regulation, federal liquidation, and liquidation fund assessments, and opposing creation of the ONI. NCOIL reiterated its concerns in a letter to the Committee prior to the markup.

STATES CALLED ON TO CREATE NEW HEALTH EXCHANGES

One of the highlighted requirements of the new federal law is a mandate that states create health insurance exchanges by 2014 to help individuals and small businesses purchase coverage. Federal lawmakers hope the exchanges will modernize individual and small-group health insurance markets by creating competition for consumers while streamlining and simplifying administration and enrollment.

Some have compared exchanges to the popular internet Web site www.travelocity.com, where consumers can access and compare multiple prices and other features of hotels and airline tickets in a centralized location—thereby maximizing their purchasing power.

The law mandates that insurers participating in an exchange offer four types of plans meeting certain minimum actuarial standards—platinum, gold, silver, and bronze—as well as a catastrophic plan for young adults. The law allows either a government or private entity to administer an exchange and requires a standardized format to compare health benefit options, a phone hotline and Web site, and a strong distribution role for agents/brokers. The exchange should be designed to help low and middle-income families and individuals access government subsidies. Insurers could also sell outside of exchanges.

Funded through federal start-up grants and premium assessments, exchanges are intended to reflect the unique markets/populations they cover.

MEDICAID EXPANDS UNDER HEALTHCARE LAW

The new federal healthcare law attempts to cover 32 million uninsured Americans, in part, by expanding eligibility for Medicaid—the jointly funded state-federal healthcare program for the poor and disabled. New requirements could cover an estimated 15 million additional legal, non-elderly residents whose incomes are below 133 percent of the Federal Poverty Level (FPL).

In an attempt to soften the price tag of the expansions, the law requires the federal government to fully fund new enrollees for 2014, 2015, and 2016 and then requires the states to gradually share in that expense—contributing up to ten percent by 2020 and each year after. In states already bearing the full costs of their expanded Medicaid, the federal government over the next ten years will increase how much it contributes. By 2020 all states will be contributing equally to help fund a more inclusive Medicaid. The reform also increases federal funding for physician reimbursements, hoping to prevent a shortage of doctors willing to treat Medicaid patients.

Currently, state Medicaid programs insure approximately 60 million people across the country.

FLOOD PROGRAM LAPSES, AGAIN

The beleaguered National Flood Insurance Program (NFIP), surviving for years on last-minute federal extensions in lieu of broad reform, has lapsed again in the U.S. Senate—shutting down funding after March 28.

The extension, which would have taken the program through April 30, was part of a broader *Continuing Extension Act* (HR 4851) that also would have extended, among other things, a 65 percent government subsidy for the purchase COBRA coverage. Sen. Tom Coburn (R-OK) stopped passage of the bill on March 25, asserting that enactment of the wide-ranging legislation would add to the deficit.

Until the NFIP is reinstated, real estate closings on properties requiring flood insurance are on hold. Existing policyholders, although their claims will still be paid, cannot increase or renew their coverage.

The Senate will return from its Easter recess on April 12, at which time Members reportedly will pass HR 4851 and make coverage retroactive. This is not the first time the NFIP has lapsed. Most recently, an eight-line extension of the program, included in February's *Hiring Incentives to Restore Employment Act*, was dropped when Senate Majority Leader Harry Reid (D-NV) chose to introduce several targeted bills instead. The Senate ultimately approved an NFIP extension on March 2—taking the program to the now-expired March 28 deadline.

NCOILetter

Susan F. Nolan, Publisher/Editor

Candace Thorson, Managing Editor
Mike Humphreys, Associate Editor
Jordan Estey, Associate Editor

Simone Smith, Production Assistant
Laurie Dingmon, 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.

CONGRESS

(continued from page 1)

ments—adding potentially 15 million Americans to Medicaid, the jointly funded state-federal program for the poor and disabled—will have on states *(see article page 3)*. In addition, some states—including Virginia and Idaho—have passed laws to opt out of a new federal requirement that the uninsured buy insurance.

States are expected—within 90 days—to have temporary high-risk pools for uninsured people with preexisting conditions and, in doing so, to resolve conflicts with already-existing state high-risk mechanisms. By 2014 states must create and run new insurance exchanges for individuals and small businesses to buy health coverage *(see article page 3)*. The exchanges will use sliding-scale premium subsidies to help low and middle-income consumers buy insurance. Also by 2014, employers with more than 50 employees will be penalized if their workers receive government-subsidized tax credits when participating in an exchange. *(See article page 2 for further details regarding law requirements and implementation deadlines.)*

Certain aspects of the state-based system will remain under the new law—including oversight of premium rates, solvency, marketing, and insurer reserve standards. In addition, the law will let states form compacts—with certain restrictions—that would allow insurers to sell across participating-state lines.

The Department of Health and Human Services (HHS) must issue guidance to state insurance departments and the NAIC before they can implement many of the new requirements.

NCOIL will guide state legislators—during its July 7 through 11 Summer Meeting in Boston—on what the law means for states. Key issues include what the law expects of states and insurers—and when; federal and state funding challenges integrating Medicaid, Medicare, and private plans; reconciling reform with existing and future laws; creating health insurance exchanges; and where the law leaves other lines of insurance.

Special Federal Edition

www.ncoil.org

NCOIL
...for the states

D.C. Office:
601 Pennsylvania Avenue N.W.
Suite 900, South Building
Washington, D.C. 20004

National Office:
385 Jordan Road
Troy, NY 12180