NCOILETTER

May 2005 www.ncoil.org

NCOIL URGES CONGRESS TO OPPOSE AHP LEGISLATION, CAUTIONS AGAINST HARM TO CONSUMERS

In a letter sent recently to each member of Congress, NCOIL President Rep. Craig Eiland (TX), acting on behalf of all NCOIL legislators, urged lawmakers to oppose pending federal legislation that would exempt association health plans (AHPs) from state laws and oversight. Such action, Rep. Eiland warned, would threaten consumers' access to health coverage and would deny them important consumer protections. The letter was the latest NCOIL effort to oppose federal preemption of state laws regarding certain health insurance arrangements.

According to Rep. Eiland, "The pending legislation [H.R. 525] would undermine many of the hard-fought victories that state legislators have achieved on behalf of small employers and consumers. While promoted as a way to help improve affordability of coverage for small businesses and their workers, AHPs would have the opposite effect—making health insurance coverage less affordable for most small firms and making it difficult, if not impossible, for firms with high-risk workers to have access to affordable coverage."

Noting that federal AHP legislation would invite unauthorized and fraudulent insurers to operate outside the umbrella of state regulation, Rep. Eiland said that states already had laws protecting consumers from such abuse. He added that state legislatures, with NCOIL support, have pursued legislation expanding coverage for the uninsured; requiring important health benefits; establishing quality assurance standards; and providing independent, external reviews of consumer grievances. Rep. Eiland said NCOIL and state lawmakers also have endorsed efforts to establish strong solvency standards in order to ensure that health insurers can deliver the benefits that they promise.

Recent studies by well-respected organizations, including the Congressional Budget Office, conclude, in part, that AHPs would hurt small firms and the uninsured and would lead to widespread fraud.

During the NCOIL Spring Meeting, legislators voted to reaffirm their opposition to AHPs by sending Congress a letter warning of the consequences associated such arrangements. The move follows an NCOIL resolution, adopted in 1999 and subsequently readopted to reaffirm NCOIL's position, that opposes federal preemption of state laws regarding certain health insurance arrangements.

CALIFORNIA COMMITTEE PASSES NCOIL CREDIT SCORING BILL

On May 5 the California Assembly Insurance Committee overwhelmingly passed a bill that would implement credit scoring protections substantially similar to those in the NCOIL *Model Act Regarding Use of Credit Information in Personal Insurance*, adopted in 2002.

Assembly Bill 1454, which at this writing has moved to the floor for a full Assembly vote, follows NCOIL-based bills introduced in several other states, including Montana and New Mexico, where last month state governors signed NCOIL-influenced legislation into law.

In general, the NCOIL model act strikes a balance between protecting consumers and promoting a healthy insurance marketplace. Adoption by NCOIL of its model law followed more than a year of legislative deliberation and emanated from legislators' concerns regarding the appropriate use of consumer credit information in insurance.

Twenty-six states have instituted the NCOIL approach, and more are expected to consider similar proposals.

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 LEGISLATOR WARNS OXLEY-BAKER: SMART ACT WOULD LEAD TO LAX INSURANCE OVERSIGHT, DIMINISHED CONSUMER PROTECTIONS

Larkin made the case that the SMART proposal would create a federally engineered insurance system that would weaken consumer protections and would encourage an inefficient insurance market.

Delivering a powerful message to federal lawmakers looking to modernize insurance regulation by preempting state laws, **New York State Senator William J. Larkin, Jr.** last month sent Reps. Michael Oxley (R-OH) and Richard Baker (R-LA) strong evidence that the draft State Modernization and Regulatory Transparency (SMART) Act was unwise and unwarranted.

In a white paper entitled "Enacting the 'SMART' Act May Unintentionally Diminish the Nation's Ability to Properly Monitor the Production, Sale, and Use of Insurance Products," Larkin made the case that the SMART proposal would create a federally engineered insurance system that would weaken consumer protections and encourage an inefficient insurance market.

Larkin, an NCOIL past president, offered a "Top 10 Reasons" why the SMART Act was troublesome to state legislatures. Key among his concerns were the mandatory deregulation of all insurance rates following a brief transition period; full reciprocity for producer licensing that would restrict a state's ability to impose appropriate continuing education requirements on nonresident producers; limits on the abilities of state officials to enforce state consumer protection laws; prohibitions on an insurance department's ability to raise existing filing fees; and deregulated form-filing procedures that would curtail a state's ability to identify and prevent the sale of improper policies.

Larkin also was distressed by the SMART draft's "Partnership" board, which he noted did not include any state legislative representation. The overwhelming influence of federal appointees on the board, he said, would place insurance regulation in the hands of a distant federal body and would significantly hamper states' ability to maintain proper authority over their individual insurance markets.

Reps. Oxley and Baker, chairs of the U.S. House Financial Services Committee and the Subcommittee on Capital Markets, Insurance, and Government-Sponsored Enterprises, respectively, circulated a draft proposal in August 2004 that responded to what they perceive is the slow pace of state insurance modernization. The SMART Act addresses issues including rate and form deregulation; market conduct surveillance reform; an interstate insurance compact for life, disability, annuity, and long-term care insurance products; producer and company licensing; surplus lines; insurance fraud; reinsurance; receiverships; and viatical settlements.

NCOIL immediately opposed the draft and, in November 2004, sent a letter—signed by members of the full NCOIL Executive Committee—encouraging Oxley and Baker to reconsider their proposal and to abandon plans to preempt state laws. Lawmakers suggested that the future of state premium tax money would be jeopardized by creation of a federal insurance body. The letter highlighted the significant accomplishments that states have achieved to help insurance markets respond to an increasingly complex, global insurance environment.

NCOIL legislators have reached out to state leadership, including governors and attorneys general, to apprise them of the profound consequences that SMART would have on their authority to protect consumers. NCOIL also has distributed insurance modernization packets to states and key members of Congress that overview what states have accomplished and outline next steps for legislative action.

The National Association of Insurance Commissioners, whose *Framework for a National System of State-Based Regulation* largely contributed to the draft SMART Act, recently criticized SMART in a letter sent by NAIC President Commissioner Diane Koken (PA) to Oxley and Baker. The letter largely reiterated NCOIL's concerns and elicited disapproval from insurance industry representatives, who generally support SMART and who, legislators believe, have secured their pieces of the pie with Oxley and Baker.

FACT FINDINGS: PLAYING SMART—CONSEQUENCES OF A FEDERAL PROPOSAL FOR INSURANCE MODERNIZATION

Following are excerpts from Sen. William J. Larkin, Jr.'s (NY) recent white paper entitled "Enacting the 'SMART' Act May Unintentionally Diminish the Nation's Ability to Properly Monitor the Production, Sale, and Use of Insurance Products." The paper cites key reasons why the draft State Modernization and Regulatory Transparency (SMART) Act would hurt consumers and impede effective regulation of insurance.

"State legislative leaders and insurance regulators should be very cognizant of the political environment in Washington….Except for [them], no aggregation of political forces has materialized to offset the powerful influence being exercised by the insurance industry in Washington."—*page 1*

"The SMART Act, if some within the insurance industry have their way, could mistakenly lead Congress to the promised land of a new, deregulated, but unstable, regulatory system. This new regulatory system cannot provide an ample support network to systematically protect consumer interests either nationally or on a state level. Indicators such as the condition of insurance markets, consumer satisfaction ratings, and industry accountability would begin to look like the 'monitoring' of ERISA health insurance plans by Washington."—*page 4*

"Perhaps the underlying assumptions and consequences of implementing the 'SMART' Act are not so 'smart' after all. Congress, state legislators, and state insurance regulators should carefully weigh the costs and benefits of a federally sponsored deregulation of the insurance industry before boarding a train that leads to a quagmire-like land of no return. In that land, insurance markets would most likely be more unstable, increase the risks posed to the insurance buying public, and lead to more insurer insolvencies."—*page 5*

"The goals, I believe, of state and federal legislators, with regard to the future regulation of insurance, are the same—to create a responsive market that provides to the public a ready supply of insurance products that are safe, reasonably priced, and which protect our constituents from those potential risks that we face each and every day."—*page 5*

"State governmental officials, be they governors, legislators, or insurance department officials, must act quickly and in a coordinated manner to concisely, persuasively, and forcefully articulate all of the benefits our nation receives from the current state-based regulatory system."—*page 2*

"State leaders must be wary of the 'Partnership' that is established by the SMART Act….The danger of not incorporating a bright line standard for determining compliance [with SMART] is that the states could believe, in good faith, that they complied with the SMART Act, but the Partnership could determine that compliance was not satisfied and direct Congress to impose its own standard."—*page 2*

"The new 'use-and-file' system contemplated in the model act does not have sufficient provisions to protect consumers in residual markets or in those regional, state, or sub-state markets that have an insufficient number of carriers to sustain a competitive market or that charge excessive premium rates."—*page 2*

"[SMART] requires each state to adopt the National Association of Insurance Commissioners' (NAIC) Model Insurer Licensing Act. While it is important to enact a uniform law to license insurers,...this means that insurers would be allowed to write business in states that the local government does not want

The SMART Act...could mistakenly lead Congress to the promised land of a new, deregulated but unstable regulatory system. This cannot provide an ample support network to systematically protect consumer interests either nationally or on a state level.

SAVE THE DATE

The NCOIL Summer Meeting

July 7-10, 2005

Newport, Rhode Island

NCOILetter

Susan F. Nolan, Publisher/Editor

Candace Thorson, Managing Editor
Paul Donohue, Associate Editor

Colin Quin, 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) 220-3016 (fax)
info@ncoil.org

NCOIL

FACT FINDINGS

(continued from page 3)

them to operate in."—*page 3*

"[The draft] requires each state to become fully reciprocal in the granting of insurance producer licenses. Requiring adoption of this producer model code will restrict the ability of the states to impose appropriate continuing education requirements on nonresident producers and reduce their ability to control who and under what circumstances agents can enter into and do business in selected states."—*page 3*

"The model laws contemplated by the SMART Act will curtail the ability of state insurance departments, state attorneys general, offices of consumer affairs, and other state agencies from enforcing consumer protection laws such as those that prohibit unfair, deceptive, or fraudulent insurance claims practices or deceptive and fraudulent trade practices covered by state 'Blue Sky' laws."—*page 3*

"[The proposal] prohibits, after two years, a state insurance department's ability to increase existing filing fees or from establishing new filing fees to review property/casualty policy forms. This will decrease state departmental revenue and the ability to hire staff to monitor insurers that sell products in their jurisdictions."—*page 3*

"[SMART] requires states to exempt from state regulation certain 'large' commercial policies that are purchased by 'sophisticated' buyers. As seen with the Marsh & McLennan situation, large 'sophisticated' purchasers of insurance may not be as sophisticated as we all thought and may still need some consumer protections."—*page 3*

"[The proposal] requires states to enact materially identical laws for personal lines form approval or to allow insurers to submit 'self-certified' form filings that are either approved, disapproved, or deemed approved within 30 days. Personal lines policies, such as auto and homeowners insurance, are insurance coverages that touch the lives of ordinary consumers the most. Compelling states to adopted this expedited approval process for all personal lines policies may curtail a state's ability to identify and prohibit inappropriate policies from being sold…."—*pages 3 and 4*

"The composition of the 'Partnership' board is heavily weighted towards federal appointees or state officials that are appointed by the President of the United States. State legislators and governors will have little or no independent ability to appoint representatives to the Partnership. Also, all disputes and arbitration proceedings will be reviewed by federal courts, not state courts. This is regardless of the state laws involved or the sites of the dispute."—*page 4*

"The SMART Act mandates the enactment of numerous model acts, but these acts may not adequately address serious local insurance market dislocations or conditions, [including]…

- managing existing Assigned Risk Plans to address uninsured motorist problems
- giving states the regulatory freedom needed to address local health care issues related to financing hospital uncompensated or charitable care or establishing quality health care provider panels by HMOs
- administering or reforming other important residual markets that exist in most states, such as medical malpractice insurance or FAIR plans. Due to local conditions, these markets may not react favorably to deregulation….
- establishing or revising catastrophe funds such as the earthquake and hurricane funds that are operating, respectively, in California and Florida...The states need to have at their disposal adequate regulatory tools to quickly address acute, but local, insurance market dislocations or other crises.
- addressing 'redlining' issues that some insurers have been known to practice"—*page 4*