

## 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 TO CONGRESS: STATES AND FEDS SHOULD PARTNER ON SYSTEMIC RISK

Pressing the need for more structured communication between financial regulators—and sounding an alarm against consolidating power in a single federal body—NCOIL on May 11 announced key components for systemic risk regulation in a letter to U.S. Senate Banking and House Financial Services Committee leaders. NCOIL officers underscored the successful track record of state regulation and called for an equal partnership between and among state and federal regulators.

The officers said that a systemic risk oversight approach that relies on horizontal communication “avoids the dangers associated with consolidating power in any one agency or entity, such as regulatory capture, bias in favor of one particular financial sector or perspective, and inadvertent ‘loopholes’ or unintended consequences.”

Legislators wrote that “...the value of state regulation must be recognized in the reform process.” Stressing a need for state expertise in systemic oversight, they said “It

is frankly difficult to trace our current financial crisis to lapses in state regulation. Indeed, some of the problems our markets now face might have been mitigated had the states’ consumer protection authority not been curtailed or preempted in certain areas.”

Outlining NCOIL components for systemic oversight, the letter said regulation should reject creation of a super or “uber” regulator in favor of an entity that would capture and coordinate data. The letter said any new structure should preserve state regulatory authority, place all regulators on an even footing—and hold them all accountable. Transparency, the officers continued, would be paramount to the success of a system.

NCOIL also stressed that any change in oversight cannot come at the expense of ongoing state modernization efforts, such as the 35-jurisdiction-strong Interstate Insurance Product Regulation Compact, and should be built on our existing regulatory framework. The states are achieving *(continued on page 4)*

## NCOIL WELL-VERSED IN LIFE SETTLEMENT PROTECTIONS, LETTER SAYS

Protecting vulnerable seniors from life settlement abuse is an issue in which NCOIL is well-versed, stated NCOIL President Senator James Seward (NY) to the U.S. Senate Special Committee on Aging. In his April 28 letter to Chairman Herb Kohl (D-WI) and Ranking Member Mel Martinez (R-FL), Seward stressed the need to finely balance senior safeguards with properly regulated life settlements through transparency, disclosure, and accountability—such as contained in an NCOIL *Life Settlements Model Act*.

Seward cited lessons learned in development of the model law and highlighted its strong provisions to isolate and make illegal stranger-originated life insurance (STOLI); require extensive disclosures to policy-owners about tax and other consequences, as well as disclosures *(continued on page 4)*

NCOIL has the honor of welcoming **Richard H. Neiman**, NYS Supt. of Banks, as keynote speaker at its Summer Meeting in Philadelphia. Mr.

Neiman—a member of the Congressional Oversight Panel (COP) for the Troubled Asset Relief Program (TARP)—will discuss the COP’s

work and its recommendations for financial services regulatory reform, including a role for the states. The luncheon is slated for 11:45 a.m. to 1:00 p.m. on July 9.



**“...the Senate Finance Committee held health roundtables with experts from across the ideological spectrum participating—except for single-payer advocates, who objected by standing in the audience and yelling to the Committee.”**

## VIEW FROM THE HILL: CONGRESS ON A MISSION

The furious pace in DC continues unabated this month as key Congressional committees hold hearings aimed at producing landmark healthcare and financial services reform. The GAO also issued its latest insurance study, which pointed a critical finger at state oversight.

On the 5<sup>th</sup> and 12<sup>th</sup>, the Senate Finance Committee held health roundtables with experts from across the ideological spectrum participating—except for single-payer advocates, who objected by standing in the audience and yelling to the Committee. Chairman Baucus (D-MT), along with Health, Education, Labor & Pensions Committee Chairman Kennedy (D-MA), are due to mark up legislation in June that would restructure the nation’s overwrought healthcare system.

On the 6<sup>th</sup> and 14<sup>th</sup>, the Senate Banking Committee and House Capital Markets Subcommittee, respectively, convened hearings to discuss the “too big to fail” concept—the phrase of the hour—and a role for feds in insurance regulation. Some Subcommittee members touted federal-first policies for insurance oversight—such as an optional federal charter (OFC)—while others just as strongly championed state authority and cautioned against efforts to displace it.

The new GAO report took not-

unexpected stabs at state modernization. True, the report acknowledged, states have made progress on uniform/reciprocal producer licensing, product approval, and market conduct surveillance. But that’s not enough, the study said, since there’s no all-out standardization. GAO said regulators should work with industry to improve product approvals and Congress should promote consistent use of producer criminal background checks.

Where would a financial services discussion be without mention of credit default swaps? As an NCOIL Task Force moves forward with key legislation to regulate CDS as insurance, Senators Susan Collins (R-ME) and Carl Levin (D-MI) introduced on May 4 a bill to authorize federal regulation of these and other swaps. S. 961 would repeal provisions in Gramm-Leach-Bliley and other laws that would prohibit federal control. Treasury Secretary Geithner then made his own headlines, sending a letter to Congressional leaders that outlined an Administration plan for derivative regulation.

The days are getting longer, and so is Congress’ to-do list. Advocates of other issues, such as SEC Rule 151A, take heed: Your bills will compete for time with monumental efforts to revamp financial services and healthcare. Congress is on a mission.

## GENDER-BASED HEALTH INSURANCE PRICING: END IN SIGHT?

The well-established use of gender-based health insurance pricing came under fire recently, as at least five states sought to ban the practice and health insurers themselves offered to sacrifice it in exchange for certain federal reform. The activity follows an October 30, 2008, *New York Times* article which found that women, on average, pay considerably more than men for health coverage.

Legislative measures in CA, CO, CT, MD, and NM were those states’ early efforts to address the issue. CA SB 54 passed the Senate and awaits an Assembly vote. An amended version of CO HB 1280, which initially banned consideration of gender, establishes a new study commission, pending the governor’s signature. NM HB 110 unanimously left the Health

& Gov.’t Affairs Committee but didn’t move beyond the Business & Industry Committee. CT SB 822 and MD HB

1280 failed to exit committees of origin.

Gender pricing is already prohibited in ten states—NH, ND, MN, and MT have laws against it, while NJ, NY, ME, MA, OR, and WA have community rating laws that require insurers to charge the same premium, regardless of factors such as gender.

Federally, lawmakers including influential Senate Finance Committee Chair Max Baucus (D-MT), are looking to prohibit the practice. During a May 5 hearing, America’s Health Insurance Plans President Karen Ignani offered concessions to Baucus’ Committee and said that health insurers could stop charging women more if coverage was mandated.

Insurers say gender is cost-reflective because women use more healthcare services than men and incur high costs during pregnancies. Critics say the practice unfairly discriminates against women even when maternity benefits aren’t covered.

## POINT-COUNTERPOINT: REGULATING INSURANCE CREDIT SCORES

Today's economy is raising fresh doubts over credit-based scores and prompting policymakers, including NCOIL, to reinforce consumer protections. At the NCOIL Summer Meeting, in fact, legislators will consider an amendment to the NCOIL insurance scoring model that will even more specifically target victims of today's extraordinary crisis. The writers below answered the following question: How should state insurance scoring laws respond to the economic downturn?

### Insurance Scoring Doesn't Work As Intended in the Current Economy

By Brenda J. Cude

State insurance regulators should declare a moratorium on the use of insurance scoring. Changes in the economy have the potential to lower scores across the board, through no fault of the consumers. In the April 2009 Senior Loan Officer Opinion Survey from the Federal Reserve System, 65% of banks indicated that they had lowered credit limits to either new or existing credit card customers (<http://www.federalreserve.gov/BoardDocs/SnLoanSurvey/200905/fullreport.pdf>). A lower credit limit, without a decrease in the amount charged to the card, reduces credit scores. A study by Fair Isaac Corp., creator of the widely-used FICO score, reported that reductions in credit lines in 2008 primarily affected consumers who didn't have any late payments, collections accounts, or public records in their credit reports (*Wall Street Journal*, March 28, 2009). In other words, credit limits were cut, not for consumers whose credit card behaviors suggested they were likely to default, but for those who were the least profitable for the credit card companies.

It seems unlikely that the insurance industry will take into account the reasons for a lower insurance score to distinguish between lower scores related to industry issues versus lower scores related to consumer behavior. The continued use of insurance credit scores during the current economic conditions has several potential negative outcomes. An important one is that consumers may drop their insurance coverage because they can't afford to pay the premiums. Perhaps more importantly, consumers are likely to continue to lose faith in the insurance industry. We are all worse off with either outcome.

*Ms. Cude is Professor, Department of Housing & Consumer Economics at the University of GA in Athens, GA, and is an NAIC consumer representative.*

### NCOIL Model Benefits Consumers, the Market—Don't Break What Works

By David Snyder

The NCOIL Model Law on insurance scoring is a great success. Most states adopted it, with excellent results, especially for consumers, through improved insurance availability, affordability and consumer protections and dramatically reduced problems and complaints.

A decade of use and dozens of government and private studies verify that insurance scoring enables more accurate, objective and efficient risk assessment that reduces rates for a large majority of consumers (59%, or more for some companies). Scoring helped insurers avoid the disastrous consequences afflicting other financial services which abandoned risk based pricing.

However, critics are unhappy with the vibrant market, where competition and availability are at all-time highs; most residual markets are historically small and premiums are stable or lower. Now, they are exploiting the down economy, using heated rhetoric to try to convince policymakers to ban or regulate insurance scoring out of existence.

The facts aren't with the critics. Average insurance scores are actually stable or improving, as credit industry witnesses testified at the April 30 NAIC hearing, because, in part, consumers are reducing credit burdens.

The law isn't with the critics, either. No court has found that insurance scoring violates the "unfairly discriminatory" standard in state laws. Moreover, "disparate impact" is not occurring because there is no unlawful discrimination and a legitimate business purpose, better risk assessment, justifies scoring use.

The best advice is: "If it ain't broke, don't fix it." Heeding the critics could break two things that are working well—the NCOIL Model and the personal insurance market.

*Mr. Snyder is VP & Associate General Counsel for Public Policy at the American Insurance Association in Washington, DC.*

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***—Snyder***

# NCOILetter

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## NCOIL WELL-VERSED

*(cont. from pg. 1)*

to state regulators; and protect a policyowner's right to settle after the standard two-year contestability period.

"In amending our model to address STOLI," Seward said, "NCOIL legislators—with input from all interested parties—devoted more than 35 hours of debate and deliberation for over 18 months. The result was legislation that strikes a delicate balance between regulating life settlements and protecting policyowners."

The letter was delivered in advance

of the Committee's April 29 hearing entitled "Betty on Death in the Life Settlements Market: What's at Stake for Seniors" and highlights state efforts to rein in abuse. This April—joining the ten states that passed NCOIL-based laws in 2008—North Dakota amended a 2007 statute to make STOLI a fraudulent act and to increase disclosure requirements to both policyowners and the insurance department. Washington passed the NCOIL model act with additional disclosure provisions to seniors about settlement options, among other things.

## NCOIL

*(cont. from pg. 1)*

efficiencies in, among other things, agent/company licensing and market conduct and suitability oversight, the letter said.

Although NCOIL is committed to working with Congress on financial services reform, the officers said, the organization cannot support any plan that does not fully take advantage of state regulators' enormous contributions.

"NCOIL recognizes that reform of financial services is in order," the officers concluded, "but we firmly believe that reform based on state successes is the avenue to choose."

NCOIL efforts regarding systemic oversight will be a focus of the July NCOIL Summer Meeting in Philadelphia, when lawmakers move forward with future NCOIL strategy.

NCOIL  
...for the states

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