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# NCOILETTER

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## New Health Loss Ratios Forecast Big Change

Prescribed by federal health-care reform as a way to block excessive rate hikes, new medical loss ratios (MLRs) forecast big change for health insurer spending habits—and mean big challenges for state regulators playing out the rules.

Effective in January 2011, the MLRs will require insurers to spend on patient medical care at least 85 and 80 percent of premiums, respectively, in the large group and individual/small group markets or provide consumer rebates. State insurance regulators, working through the NAIC, are creating a new category of costs that would "improve healthcare quality" and be counted toward insurers' medical spending. Although the Department of Health and Human Services (HHS) has asked the NAIC for its recommendations by June 1, regulators *(cont. page 3)*

## FINANCIAL REFORM PASSES, HEADS TO CONFERENCE

After surmounting well-publicized filibusters during a month of debate, Senators approved S. 3217, the *Restoring American Financial Stability Act of 2010*, in a largely partisan 59 to 39 vote on May 20. The legislation now heads to a conference committee where Senator Christopher Dodd (D-CT) and Congressman Barney Frank (D-MA), respective chairs of the Senate and House financial services committees, hope to reconcile differences by their July 4 recess.

Among other things, the 1,500-page bill would form a Financial Stability Oversight Council (FSOC) to monitor financial risks, authorize an FDIC-like process to end failing non-bank firms, create a Consumer Financial Protection Bureau, and significantly reform derivatives oversight.

While Senators acted on numerous amendments, certain insurance proposals hardly budged. NCOIL has supported amendments that would affirm state regulation of fixed-indexed annuities (FIA) and add state officials to the FSOC, and has opposed efforts to repeal the McCarran-Ferguson Act's antitrust exemption for health insurers and to authorize federal health insurance rate authority. NCOIL also has applauded Sen. Jeff Merkley's (D-OR) effort to narrow the powers of a proposed Office of National Insurance (ONI)—which NCOIL continues to oppose.

The FIA amendment, introduced by Sen. Thomas Harkin (D-IA), was twice blocked on the floor, despite broad bipartisan support, while an FSOC amendment by Sen. Patty Murray (D-WA)—which mirrored a House-passed approach—might have been included in a final manager's amendment that never materialized.

Sen. Dianne Feinstein (D-CA) kept her powder dry and held her rate authority bill for another day, while Sen. Patrick Leahy's (D-VT) McCarran repeal died after cloture. Merkley's amendment—which pitted state and consumer interests against large insurers and banks favoring federal regulation—also stalled. With Sens. Dodd and Richard Shelby (R-AL) tightly managing the floor, Merkley focused on his proprietary trading amendment and did not bring forward the ONI substitute.

Leaders publicly forecast a smooth conference process, but conferees must wrestle with key differences over resolution authority, derivatives restrictions, and the nature of a consumer protection entity—as well as the extent to which an ONI or similar federal insurance office may challenge state laws. ■

## NCOIL Advises Congress

*In May NCOIL weighed in on critical issues under congressional review, sending **letters** that:*

- Support adding state officials to a **Financial Stability Oversight Council** in the *Restoring American Financial Stability Act* (S. 3217)
- Oppose an S. 3217 amendment to repeal the McCarran-Ferguson Act's health insurer exemption
- Support U.S. House insurance scoring interest and highlight NCOIL model protections
- Endorse Sen. Harkin S. 3217 amendment in favor of state indexed-annuities regulation
- Weigh in on Sen. Merkley amendment to limit federal ONI powers, as proposed in S. 3217
- Oppose adding federal health insurance rating authority to S. 3217

*Copies of the letters can be viewed online at www.ncoil.org.*

## NCOIL to Act on Trucking, Courier Industries Workers' Comp Model

Looking to clarify a complex, inconsistent system of workers' comp rules, legislators at the Boston NCOIL Summer Meeting will debate and take votes on a draft *Trucking and Messenger Courier Industries Workers' Compensation Model Act*—and look specifically at independent contractor status in light of the degree to which employers control work performed.

The proposed model law hinges on a seven-point test to determine who is an independent contractor, not an employee, for workers' comp in these trades. Discussion on Thursday, July 8, will include review of amendments that would make it harder for an employer to misclassify a worker as an independent contractor. Without the amendments, labor and regulator representatives say, the proposed model could be manipulated and actually encourage misclassification and abuse.

> "...amendments would make it harder to misclassify a worker as an independent contractor..."

Many industry groups assert that the model as written would bring appropriate consistency and clarity to cross-border industries that are inherently difficult to regulate.

The NCOIL Workers' Comp Committee will debate the model bill, which the group first considered at the March NCOIL Spring Meeting, from 8:00 to 10:00 a.m. on the 8th. ■

## NCOIL Plans Forum on Health Exchange Basics

On July 9 state legislators—faced with the enormity of creating new health insurance exchanges by 2014—will examine the nuts-and-bolts of how they must comply at an NCOIL session entitled *Insurance Exchanges: Interfacing between Public and Private Plans*. The event, scheduled from 3:15 until 5:00 p.m. during the Boston Summer Meeting, is part of the conference's 12 hours of seminar and Q&A on implementation of the *Patient Protection and Affordable Care Act*.

During the July 9 session, experts will explore how the new markets for individuals and small businesses will work and what federal requirements will apply. Participants also will lay out how states can access federal startup money, discuss exchange subsidies, and analyze what lawmakers might learn from experiences in Massachusetts and Utah.

Confirmed speakers include John Bertko of the RAND Corporation/ Brookings Institution; consultant Bob Carey, formerly of the Massachusetts Commonwealth Health Connector; and Cheryl Smith of the Utah Health Exchange. The NAIC will be on hand to answer questions. ■


## States Divided Over Running Temporary High Risk Pools for Uninsured

In an early test of how challenging implementation of healthcare reform may be, 19 states in May said "no" to a Health and Human Services (HHS) inquiry on their willingness to build new, temporary high-risk pools for uninsured Americans with preexisting conditions. Creation of the pools—the first requirement of the recently enacted *Patient Protection and Affordable Care Act*—aims to offer coverage to these individuals until guaranteed issue rules take effect in 2014.

Alabama, Arizona, Delaware, Florida, Georgia, Hawaii, Idaho, Indiana, Louisiana, Minnesota, Mississippi, Nebraska, Nevada, North Dakota, South Carolina, Tennessee, Texas, Virginia, and Wyoming all rebuffed their shares of a $5 billion federal fund designated to finance state programs.

The opt-outs mean that HHS will provide coverage in these states through a single, national pool now being developed. Governors and insurance commissioners in the "no" states worry that $5 billion won't address actual costs and that insufficient funding will leave states—now slashing their budgets—on the hook for money they don't, and fear won't, have.

At press time, three states—Kentucky, Rhode Island, and Utah—were still undecided, while the 28 remaining states and the District of Columbia had announced that they will run their own temporary programs. ■

## NCOIL to Highlight Financial Regulatory Reform

**NCOIL SUMMER MEETING**
Boston, Massachusetts
July 7 – 11

Join NCOIL lawmakers on July 9 to analyze insurance impacts of Congressional overhaul measures.

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## New Health ...

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say they'll need until July 1 to provide HHS with a detailed response.

Insurers are lobbying to classify as medical costs items such as wellness programs, consumer education, and quality research—expenses that previously may have been considered administrative. Companies warn of unstable insurance markets, higher premiums, limited consumer choice, and even company insolvencies if MLR implementation is too restrictive.

Consumer advocates assert that insurers are trying to "game" the system by shifting administrative and other non-medical costs to help their bottom line. In a May 7 letter to HHS, Sen. Jay Rockefeller (D-WV) also argued that MLRs should be calculated and reported so consumers living in a certain state or region can clearly see how an insurer is spending premium dollars in that area, instead of reviewing spending on just a national or parent-company level.

HHS says that it has streamlined the rule-making process to allow time for insurer implementation. ■

NCOILetter

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# NCOIL Eyes July MCAS Model Vote

Legislators on the NCOIL State-Federal Relations Committee—aiming to vote on a proposed *Market Conduct Annual Statement Model Act* at the July NCOIL Summer Meeting—are pursuing an aggressive series of conference calls to discuss controversial amendments that would limit the scope of insurer participation, revise the bill's data-sharing language, and offer broad alternatives to the pending draft.

In general, the bill would enable and set rules for an insurance commissioner to collect and share MCAS data. Legislators on May 19 reviewed a consolidated markup of interested-party comments and rejected a proposal to use complaint ratios, rather than a premium threshold, as basis for insurer participation in MCAS.

An upcoming call, scheduled for Tuesday, June 8, will focus on other proposed amendments—related to definitions, the sharing of MCAS data, commissioner designees, and confidentiality, among other things. Also, in response to May 19 discussions, the upcoming call will revisit the Committee's consideration of MCAS scope and purpose. ■

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