National Conference of Insurance Legislators

NCOILETTER

...for the states

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INSURERS GET GREEN LIGHT FOR FEDERAL BAILOUT, INDUSTRY SPLIT

After weeks of life insurer lobbying for inclusion in the Troubled Asset Relief Program (TARP), the U.S. Department of the Treasury gave insurers the go-ahead on November 5, rolling out insurer eligibility rules that prompted a "we'll pass" response from the property-casualty industry.

Treasury declared that insurance companies that are linked to a federal regulatory mechanism—such as a thrift or a bank holding company charter—could participate in the capital purchase plan. TARP was included in the more than $700 billion *Emergency Economic Stabilization Act* that President Bush signed in early October.

Generally hit harder by the economic downturn than their property-casualty peers, life insurers began making a case for federal funds late last month, when the American Council of Life Insurers (ACLI) met with Treasury officials to petition for insurer participation. According to Frank Keating, president and CEO of the ACLI, extending TARP to insurers "is in line with Treasury's plan to increase confidence in the nation's financial institutions. Life insurers want to make sure consumers don't delay acting on their financial and retirement security needs out of concerns prompted by current economic conditions." ACLI officials were quick to note, however, that not all life insurers are interested in federal funds.

On the p-c side, American Insurance Association (AIA) Chairman Evan Greenberg said the property-casualty industry is not interested in TARP. In an October 31 op-ed in *The Wall Street Journal*, Mr. Greenberg wrote that "while my company supported creation of the rescue plan for deposit-taking institutions, and perhaps investment banks, the

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MEETINGS TO WATCH

Physician Reimbursement Transparency Model Act
Special Health Committee Meeting—November 19, 3:00 to 6:00 p.m.
Health Committee Meeting—November 21, 1:45 to 3:15 p.m.

State Health Insurance Reform: Finding Solutions
Roundtable—November 22, 8:00 to 9:45 a.m.

U.S. in Financial Crisis/Federal Bailout
Financial Services Committee—November 20, 10:00 to 11:15 a.m.
Legislator Luncheon Seminar—November 20, 12:15 to 1:45 p.m.
Keynote Address—November 21, 12:30 to 1:45 p.m.
Roundtable—November 22, 10:00 to 11:45 a.m.

Climate Change Disclosure
Property-Casualty Insurance Committee—November 21, 10:15 to 11:30 a.m.

Education and Occupation in Underwriting
Property-Casualty Insurance Committee—November 21, 10:15 to 11:30 a.m.

Market Conduct Annual Statement Filings
State-Federal Relations Committee—November 21, 3:30 to 5:00 p.m.
NCOIL-NAIC Dialogue—November 21, 5:00 to 6:00 p.m.

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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VIEW FROM THE HILL: BIG GAINS FOR CONGRESSIONAL DEMS

OFC opponents enjoyed a second election victory when Sen. John Sununu (R-NH), a long-time sponsor of OFC legislation, lost his reelection bid to former New Hampshire Governor Jeanne Shaheen (D).

The Democratic Party significantly boosted its numbers in Congress on November 4. With three Republican-held Senate seats still too close to call at press time, Democrats will pick up at least six (6) seats in the Senate and more than 21 in the House. Fifty-five Senate Democrats—plus Independents Sen. Joseph Lieberman (CT) and Sen. Bernard Sanders (VT) who generally caucus and vote with the Democrats—bring the Party within a few votes of the coveted, filibuster proof 60-vote majority. Yet, despite these gains, membership in Congressional insurance committees should see little change.

A big Senate question going into the election was whether Senate Banking Committee Chair Chris Dodd (D-CT) would leave his high-profile Committee to Chair the also attention-grabbing Foreign Relations Committee—if presidential candidate Obama won and vice presidential candidate Biden was forced to relinquish his Foreign Relations chairmanship. Had Sen. Dodd left, rumors pegged OFC-sponsor Sen. Tim Johnson (D-SD) as next in line.

Luckily for optional federal charter opponents, though, in the days after the election, Sen. Dodd said he would remain with the Banking Committee in order to help guide the country through its current financial crisis. OFC opponents enjoyed a second election victory when Sen. John Sununu (R-NH), a long-time sponsor of OFC legislation, lost his reelection bid to former New Hampshire Governor Jeanne Shaheen (D).

Another closely watched race was that of Rep. Paul Kanjorksi (D-PA), chair of the House Subcommittee on Capital Markets, Insurance, and Government Sponsored Enterprises. Rep. Kanjorski—who in September had tried to usher his Office of Insurance Information (OII) bill, HR 5840, through the House—narrowly defeated his opponent.

The House Financial Services Committee saw little turnover on election night. Thirty-five of 37 Committee Democrats were reelected, and Republicans only lost four (4) members—two to retirement. The only Committee leader who will not be back is retiring Rep. Deborah Pryce (R-OH), ranking member of the Capital Markets Subcommittee, whose seat was won—after unofficial results were counted (official results will be released on November 25)—by NCOIL Executive Committee Member Sen. Steve Stivers (R-OH).

Exactly how many Republicans versus Democrats will sit on the Financial Services Committee depends on House leadership negotiations, which are set to begin during the upcoming lame-duck session.

With little changed among their memberships, Congressional insurance committees should quickly resume where they left off before the elections—considering a possibly complete makeover of the financial regulatory system.

TREASURY

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insurance industry doesn't need the program and doesn't belong in it."

Mr. Greenberg concluded that "Insurers have rowed their own boats for centuries. CPP capital should be deployed elsewhere to curtain a crisis, not as a prop for weaker insurers." The National Association of Mutual Insurance Companies (NAMIC) and the Property-Casualty Insurance Association of American (PCI) issued similar statements.

The Treasury Department ruling would not preclude an insurer from applying simultaneously for a thrift or bank charter and for participation in TARP. According to the Office of Thrift Supervision (OTS), approximately 15 insurers already have thrift or thrift holding company licenses.

HEALTH INSURER TERMINATION PRACTICES IN QUESTION

Health insurers could find themselves in legislative cross-hairs in 2009, when states and the federal government step up their investigations into allegedly unfair termination practices that, officials say, leave consumers with valid claims stranded. A growing movement among media, consumer advocates, state regulators, and Members of Congress seeks to ratchet-up restrictions on insurers that retroactively terminate, or rescind, an individual's health insurance policy based on a misrepresentation of application information, whether intentional or not.

Insurer rescission practices became national news in 2008 when California, in a groundbreaking move, fined five health insurers millions of dollars in restitution and ordered them to restore thousands of policies they had rescinded over the past four years. A probe of company practices by California regulators revealed insurer abuses, such as incentive programs that benefit employees who terminate policies. Connecticut officials found similar problems in their state.

Consumer groups are calling for stronger state laws to simplify policy application forms and thereby prevent unintentional omissions and misstatements; require prior regulatory approval for rescissions; establish (continued on page 4)

NAIC TO BREAK GROUND IN PROPOSED RATING AGENCY

In pursuit of an alternative to the big three rating agencies, the National Association of Insurance Commissioners (NAIC) has disclosed plans to establish its own agency that, regulators have contemplated, could be up-and-running by early next year.

A new NAIC Nationally Recognized Statistical Rating Organization (NRSRO) would compete with Moody's Investors Service, Fitch Ratings, and Standard & Poor's Corp., among others. While the idea is reportedly in its infancy stages and NAIC members might not reach a final decision until the December NAIC Winter Meeting, regulators envision the startup as a nonprofit, independent office, rather than as an NAIC subsidiary. Comparisons have been drawn to the Interstate Insurance Product Regulation Commission (IIPRC).

According to NAIC President-Elect Commissioner Roger Sevigny (NH), the NAIC has been investigating the legality of creating a rating organization, as well as whether the Securities and Exchange Commission (SEC) would approve the plan. To date, the SEC has certified ten companies as NRSROs, all of which must meet SEC conflict of interest and disclosure standards, among other rules.

Sevigny said in late October that the rating agency idea dates back to 2004, but that it picked up speed earlier this year when it was presented to the NAIC Executive Committee at the September NAIC Fall Meeting. "If the stars really align well," he said, "then I would envisage that it could all be up and running in the first quarter [of 2009]."

Moody's Investor Services is reportedly the only rating agency to respond to the NAIC effort. According to an agency spokesperson, "Moody's believes the markets have benefited from the diversity of information that results from a robust and competitive marketplace for credit analysis, and has long supported increased competition and greater transparency." A.M. Best, Fitch Ratings, and Standard & Poor's Corporation have not commented.

The National Association of Mutual Insurance Companies (NAMIC) has questioned the need for an NAIC agency, citing concerns over the money, time, and staff required for setting up and running such an operation. NAMIC has also cautioned against possible conflicts of interest.

NAIC representatives say the rating agency concept is unrelated to the current global financial crisis. The plan comes amid criticism over how major rating agencies had assessed now-troubled financial firms.

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HEALTH

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external review processes; and maintain coverage for dependents. Advocates made some headway in California this year, when Governor Arnold Schwarzenegger signed into law a bill that will allow a dependent to obtain a new insurance policy if a parent or guardian's plan is rescinded. Schwarzenegger also signed a bill that bans company bonuses related to rescinding a policy. He vetoed, however, legislation that would have established an external review process.

According to insurers, rescinding questionable coverage helps to protect honest policyholders from the higher premium costs associated with consumer fraud, including intentional misrepresentation on insurance forms. State incontestability laws give insurers two years to investigate application statements. Insurers say they rescind only 0.2 percent of all the individual policies they write, despite media reports to the contrary.

The feds will likely join reform discussions in the coming year as Congressional leaders continue to scrutinize state regulation of the individual health insurance market. Following a July 17 hearing, U.S. House Oversight and Regulatory Reform Subcommittee Chairman Henry Waxman (D), who represents California, asked state insurance regulators and insurance companies to submit information regarding insurer rescission behavior. Among other things, Waxman expressed interest in the remedies available to consumers and providers who are involved in disputed rescissions. He also inquired as to the number of market conduct exams in each state related to rescission practices.

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