National Conference of Insurance Legislators

NCOIL ETTER

...for the states

October 2007 www.ncoil.org

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:

HOUSE HOLDS HEARING ON REGULATORY REFORM

The House Financial Services Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprises commenced its examination of the effectiveness of the state-based insurance system on October 3, when it held the first of two hearings entitled *The Need for Insurance Regulatory Reform*.

In his opening remarks, Subcommittee chair Rep. Paul Kanjorski (D-PA) emphasized that members no longer face a question of whether to pursue regulatory modernization, but how. He said, "I have no battle plan, no axe to grind, and am open to considering all points of view…I may have inclinations toward pursuing certain reforms, but I have made no final decisions about how to implement such reforms and how to build a broad consensus that garners the support of many, not just a slim majority."

Panelists representing the NAIC, the National Association of Mutual Insurance Companies, the American Council of Life Insurers, the Council of Insurance Agents and Brokers, the American Insurance Association, and the Independent Agents & Brokers of America discussed the current state-based regulatory system and described efforts to promote uniformity.

Rep. Richard Baker (R-LA) was the most vocal critic of state efforts. He described previous years' hearings in which state regulators said uniformity was a few years away and stated, "As an organization, the one most likely to drag reform down is the NAIC."

Alabama Insurance Commissioner and NAIC President Walter Bell countered that the Interstate Insurance Product Regulation Commission, which has 30 member states, and the NAIC System for Electronic Rate and Form Filing were successful examples of state-based efforts.

While panelists and members of Congress were split on whether an optional federal charter (OFC) for insurance would benefit the regulatory system, all agreed that some degree of federal action would be required for uniformity.

NCOIL—a strong supporter of state regulation and fierce critic of an OFC—will discuss Subcommittee hearings on regulatory modernization at its State-Federal Relations Committee meeting on November 16.

The controversy over whether to add wind coverage to the **National Flood Insurance Program** (NFIP) will blow into Las Vegas on Friday, November 16, when **David Maurstad**, assistant administrator of the FEMA Mitigation Directorate, addresses NCOIL's Property-Casualty Insurance Committee during the NCOIL Annual Meeting. Maurstad will offer his thoughts on whether proposals, such as the one advanced by Rep. Gene Taylor (MS), would fairly balance the needs of some taxpayers against those of all citizens. The P-C Committee will meet from 9:30 to 11:00 a.m.

Phase II will offer specific recommendations in areas such as the principles that should underlie an effective regulatory scheme; the definition of the role of the NAIC and strengthening of state legislative oversight; and alleviation of potential jurisdictional issues between state attorneys general and state commissioners.

VIEW FROM THE HILL: CONFERENCE SHOWDOWNS LOOM

With a few weeks until Congress adjourns in mid November, key insurance issues including mental health parity, reauthorization of the terrorism insurance program, and reform of the National Flood Insurance Program (NFIP) appear headed for conference committee showdowns.

Mental health parity legislation remains on the track to a family feud as House members have rebuffed efforts to substitute the Senate-passed S. 558, the *Mental Health Parity Act*, sponsored by Sen. Edward Kennedy (D-MA), for their own H.R. 1424, the *Paul Wellstone Mental Health and Addition Equity Act*, sponsored by Rep. Patrick Kennedy (D-RI). On October 16, the House Energy and Commerce Committee moved one-step closer when it approved H.R. 1424 in a 32 to 13 vote.

An area of contention for House members with S. 558 is its inclusion of cost-control mechanisms that would permit health plans to use utilization review or authorization practices. H.R. 1424 does not contain such language and actually expands parity requirements to all conditions listed in the *Diagnostic and Statistical Manual of Mental Disorders* (DSM). Rep. Joe Barton (R-TX) noted that DSM would require parity for "jet lag" and commented that "I've had jet lag and I've had a heart attack…It's not the same."

Though it's too early to handicap whether Congressman Kennedy can pull out a victory in conference, he faces tough obstacles as employer groups and several health insurers have aligned with S. 558 and opposed his legislation.

On the other side of the Capitol, Senators are working

(continued on page 4)

REVAMPING STATE REGULATION: NCOIL TO CONSIDER PHASE II OF ILF STUDY

Legislators will consider how to enhance the current state-regulatory structure on November 16, when the Insurance Legislators Foundation (ILF) Board and NCOIL Executive Committee hold a joint meeting on Phase II of an ILF *Study on State Authority: Making a Case for Proper Insurance Oversight*. The session is scheduled from 2:30 to 4:00 p.m. at the NCOIL Annual Meeting.

Phase II will build upon information revealed at the July NCOIL Summer Meeting and will offer specific recommendations in areas such as the principles that should underlie an effective insurance regulatory scheme; the definition of the role of the NAIC and the strengthening of state legislative oversight; and the alleviation of potential jurisdictional issues between state attorneys general and state insurance commissioners. It is anticipated that these recommendations will help NCOIL set a strategic agenda that states can adopt in order to enhance state oversight.

In July, legislators heard the results of Phase I, which, among other things, addressed items pertaining to NAIC authority and accountability, use of state information for profit, confidentiality of data shared by the NAIC, alleged deficiencies in the NAIC open meetings policy, and the appropriateness of the NAIC signing of memorandums of understanding with foreign nations in its present status as a 501 (c)(3) nonprofit organization.

The ILF study is being conducted by Navigant Consulting; Lord, Bissell & Brook; and Joseph Zimmerman, Rockefeller College of Public Affairs & Policy, State University of NY. The ILF is the educational and research arm of NCOIL.

CHECK OUT THE NOVEMBER NCOILETTER
FOR DETAILS ON NCOIL
LIFE SETTLEMENTS
AND **PEO**
INTERIM MEETINGS

NCOIL TO CONGRESS: STATES USING NCOIL INSURANCE SCORING MODEL TO PROTECT CONSUMERS

In an October 2 letter to a key U.S. House Subcommittee, NCOIL stressed that states are well-positioned to protect consumers from credit-based insurance scoring abuse—thanks largely to an NCOIL model law—and that Congress need not step in.

The letter, which was sent from NCOIL President Sen. Alan Sanborn (MI) to Rep. Melvin Watt, chair of the Subcommittee on Oversight & Investigations, came in advance of a Subcommittee hearing entitled *Credit-Based Insurance Scores: Are They Fair?*. While commending the Subcommittee for its interest in the issue, NCOIL wrote, "States are taking strides to protect consumers whose credit histories are used in conjunction with insurance underwriting and rating…and have proven that they are best able to restrict how insurers use credit data."

A 2002 NCOIL model law, the letter stated, was the product of intense debate and discussion and has empowered 26 states to enact strong, consumer-friendly public policy. "Our model," Sen. Sanborn said, "has been challenged by legislators and regulators across the nation—and is now the standard for state oversight of insurance credit scoring."

The letter identified key provisions of the NCOIL model, including protections for consumers with "thin" credit histories, persons who fall victim to extraordinary life events, and people who wisely "shop around" for the best auto and homeowners' loans. The NCOIL model, the letter noted, requires use of underwriting *(continued on page 4)*

"We, as fellow lawmakers," NCOIL concluded, "understand your concern with an insurer practice that, if not carefully regulated, has the potential to hurt consumers. But we emphasize that our states have done well to protect constituents from credit-based abuse...against the backdrop of healthy insurance markets."

HOUSE FAILS SCHIP OVERRIDE BID

In a much-publicized vote on October 18, the House failed in its bid to override President Bush's recent veto of a bipartisan bill to extend and expand the State Children's Health Insurance Program (SCHIP). Legislators fell an anticipated 13 votes shy of the two-thirds majority needed for the override, although Senate supporters already had a two-thirds majority.

The Administration, pleased with the override failure, suggested that Congress and White House representatives negotiate on a more Bush-friendly extension bill. Democratic leaders in both Houses quickly rejected that option, arguing that the bill Bush vetoed already reflected significant compromise. Democrats also vowed to send Bush a second SCHIP bill in the near future—and threatened that if he issued another veto, they would present him with a third extension just prior to the 2008 elections.

In his October 3 veto message, Bush wrote, "This bill would shift SCHIP away from its original purpose and turn it into a program that would cover children from some families of four earning almost $83,000 a year…government coverage would displace private health insurance for many children."

Sen. Edward Kennedy (D-MA), in re-action said, "The same President who is willing to throw away a half trillion dollars in Iraq is unwilling to spend a small fraction of that *(continued on page 4)*

HEALTH REFORM RESOLUTIONS ON NCOIL AGENDA

On Friday, November 16, during the NCOIL Annual Meeting, the Health, Long-Term Care, and Health Retirement Issues Committee will consider two resolutions that take aim at the 47 million uninsured Americans.

Committee members will first consider a draft *Resolution in Support of H.R. 506, The Health Partnership Through Creative Federalism Act,* sponsored by NCOIL Officers. The resolution supports H.R. 506 and companion S. 2772; urges Congress to take action on the proposals; and commend sponsors for their leadership in developing bipartisan legislation that recognizes states as "laboratories of democracy."

H.R. 506, which *(continued on page 4)*

SAVE THE DATE

NCOIL Annual Meeting & Seminar

November 14 through 18, 2007

Las Vegas, Nevada

NCOILetter

Susan F. Nolan, Publisher/Editor

Candace Thorson, Managing Editor
Mike Humphreys, Associate Editor

Simone Smith, Production Assistant
Laurie Dingmon, Business Manager

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) 330-5004 (fax)
info@ncoil.org

HEALTH

(continued from page 3)

was introduced by Reps. Tammy Baldwin (D-WI), Tom Price (R-GA), and John Tierney (D-MA), would promote state regulation of health insurance by giving grants to states to develop and implement innovative comprehensive reform to address their uninsured. S. 2772 is sponsored by Sens. George Voinovich (R-OH) and Jeff Bingaman (D-NM).

NCOIL Committee members will then debate a draft *Resolution in Support of Extending Dependent Health Benefits for Young Adults*. The resolution supports increasing availability of dependent benefits to certain individuals up to age 25, regardless of student status, to assist in extending coverage to millions of young adults.

The resolutions will highlight a meeting in which members will also discuss federal mental health parity legislation, a physician reimbursement proposal, and a separate resolution dedicated to providing transparency in prescription drug care.

VIEW

(continued from page 2)

feverishly to complete an extension of the terrorism risk insurance program before the program expires on December 31. The House passed H.R. 2761, the *Terrorism Risk Insurance Revision and Extension Act*, which President Bush promptly promised to veto, in September. Instead of voting on the House proposal, the Senate Banking, Housing & Urban Affairs Committee on October 17 approved a measure that would extend the program for 7 years, keep the trigger level at $100 million, and resist expansions for group life or nuclear, chemical, biological, and radiological risks. Treasury Secretary Henry Paulson then sent a letter expressing White House support for the Senate bill.

Senate Banking Committee members also approved legislation to overhaul the NFIP. The bill would forgive $17.5 billion in program debt and phase out subsidies on premiums for businesses and second homes. Members decided against including a controversial measure in a House-passed H.R. 3121, the *Flood Insurance Reform and Modernization Act*, that would add optional wind coverage to the program. With more than one year until the program is schedule to expire, Senators and Representatives will have plenty of time for reconciliation.

NCOIL TO CONGRESS

(continued from page 3)

factors in addition to credit, as well as of updated credit info, and includes key disclosure, dispute resolution, and anti-data selling language.

"We, as fellow lawmakers," Sen. Sanborn concluded, "understand your concern with an insurer practice that, if not carefully regulated, has the potential to hurt consumers. But we emphasize that our states have done well to protect constituents from credit-based abuse...against the backdrop of healthy insurance markets."

The Subcommittee hearing was prompted by a recent FTC report that endorsed scoring as an accurate predictor of auto insurance loss. The FTC found that insurance scores do not discriminate against racial or ethnic minorities based upon minority status.

HOUSE

(continued from page 3)

amount to bring health care to American children." House Speaker Nancy Pelosi (D-CA) said the cost of expanding SCHIP would have equaled what the Pentagon spends every 40 days in Iraq.

H.R. 976, the *Children's Health Insurance Program Reauthorization Act*, which cleared the House in a 265 to 159 vote and the Senate by a 67 to 29 margin, would increase five-year SCHIP funding by $35 billion, expand the number of enrolled children from 6.5 to 10 million, and be funded by a $.61 rise in the tobacco tax.

SCHIP would have expired at the end of September, but Congress temporarily extended the program in a larger spending bill passed to continue funding the government into the new fiscal year.