

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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HOUSE HEARING TARGETS CAUSES, EFFECTS OF AIG TROUBLE

On October 7, the U.S. House Committee on Oversight & Government Reform held a hearing to investigate the ongoing financial crisis—this time focusing on financial services giant American International Group (AIG). The hearing followed an October 6 session on the recent Lehman Brothers bankruptcy and preceded hearings on rating agencies and on Fannie Mae and Freddie Mac. It also preceded a \$37.8 billion AIG transaction with the Federal Reserve in which the Fed—in addition to an earlier \$85 billion loan—helped bolster AIG liquidity.

Testifying were Eric Dinallo, New York State Insurance Superintendent; Lynn Turner, former Securities and Exchange Commission (SEC) chief accountant; and former AIG CEOs Martin Sulli-

van and Robert Willumstad.

The Committee, led by Chairman Rep. Henry Waxman (D-CA), focused on “The Causes and Effects of the AIG Bailout.” Supt. Dinallo differentiated between AIG’s financially strong—and state regulated—insurance subsidiaries and its weaker, federally regulated financial products division. Among other things, he recommended that lawmakers revisit the 1999 *Gramm Leach Bliley Act* in order to address financial “supermarkets.” He also cautioned that the U.S. was in danger of pursuing regulation similar to the European system that grants a holding company more control over its subsidiaries.

Following Mr. Turner, who said the SEC over the years had “guttled” its risk-management staff, the

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SEC EXTENDS CONTROVERSIAL ANNUITY COMMENT PERIOD

In response to widespread calls for due process, including an August 18 extension request from NCOIL, the SEC this month decided to re-open the comment period on proposed Rule 151A—a controversial bid that, if enacted, would treat equity-indexed annuities (EIAs) as securities rather than insurance.

Almost all of the 2,328 responses submitted during the original comment period opposed the plan. The SEC cites

concerns over fraud and abuse as rationale for the Rule. Opponents say EIAs must pay minimum returns regardless of financial market behavior and that states are eradicating unsuitable sales. The SEC opted to provide 30 additional days for interested party input before taking further action.

The NCOIL Life Insurance Committee will consider a resolution supporting state regulation of EIAs at its November NCOIL Annual Meeting in Duck Key, Florida.

FINANCIAL CRISIS TAKES STAGE AT NEW NCOIL SESSION

With congressional interest piqued and players pointing fingers, NCOIL has scheduled a new November 22 general session entitled *U.S. in Financial Crisis: Where Do We Go from Here?* The 10:00 to 11:45 a.m. Annual Meeting program will examine what led to collapse of financial services giants, what shape reform should take, and whether Glass-Steagall, GLBA should be revisited. It also will look at whether communication between thrift, banking, and insurance regulators is an issue and to what extent

state oversight should serve as a model.

Invited speakers represent consumer, state insurance regulator, Coalition Opposed to a Federal Insurance Regulator, Financial Services Roundtable, and former SEC perspectives. The session replaces a previously scheduled roundtable on natural disaster financing.

Also scheduled is a 12:15 to 1:45 p.m. November 20 legislator luncheon on *Understanding the Basics: Derivatives, Credit Default Swaps, and Other Financial Instruments.*

VIEW FROM THE HILL: MENTAL HEALTH PARITY PREVAILS, AIG GRILLED

The third time was a charm for federal mental health parity (MHP) legislation, which made its way into a massive federal economic bailout bill passed by the Senate and House on October 1 and 3, respectively, after two earlier attempts at success this session. Following two weeks of political wrangling, Congress delivered to the President a bailout that he could sign—and did on October 3—before turning its attention to collapse of AIG and other financial giants (see *article page 1*).

The MHP language would require that group health insurance plans that offer mental health coverage and out-of-network options do so on par with those provided for other medical and surgical benefits. MHP requirements

were among many proposals added by the Senate to the bailout bill in order to “sweeten” House interest in passage.

Each Chamber had already passed MHP bills twice this session. The first versions included substantive differences that legislators ultimately resolved. But the Senate came back in September and approved the consensus draft as part of a broader tax-extenders measure, while the House took up the MHP bill as a stand-alone proposal—thus stalling its progress.

The MHP provisions—which take effect on January 1, 2010—should end plan designs that discriminate against mental illnesses. As for AIG, its financial struggles, and congressional interest in, is long from over.

[Some]
regulators
opposed
collecting market
conduct data on
the public Annual
Statement,
preferring to use
their current
market conduct
authority.

NAIC APPROVES MARKET CONDUCT TRANSITION PLAN AMID REGULATOR CONTROVERSY

Following an extensive debate and regulator infighting at last month’s NAIC Fall Meeting, the NAIC voted in favor of a “transitional” plan to collect market conduct data, as a first step toward a broader, and more controversial, market conduct data system.

The transitional plan—effective through 2009—will extend a 29-state market conduct annual statement (MCAS) pilot project in which insurers now submit state-specific company data to the NAIC. Under the plan, the NAIC will keep the data confidential while it determines whether publicizing it would violate state confidentiality laws.

The subsequent infighting centered on whether to tie solvency filings with market conduct. In particular, regulators debated whether to adopt an April 2008 Market Analysis & Consumer Affairs (D) Committee proposal that would make insurers send their market conduct data as part of their public, solvency-related Annual Statement filings. Annual Statements are due by March 1—market conduct submissions, however, would be due by May 1. The plan would apply with 2010 data.

Director Mary Jo Hudson (OH), in

conjunction with Commissioners Thomas Hampton (DC), Thomas Sullivan (CT), and Roger Sevigny (NH), objected to the April 2008 plan on substantive and procedural grounds. Regulators were inclined to collect market conduct data on the public Annual Statement, preferring to use their current market conduct authority. They also took issue with the idea that regulators had determined—via a “straw” vote at a previous closed-door regulator meeting—to adopt the full D Committee plan.

Despite support from Commissioners John Morrison (MT) and Kevin McCarty (FL), and from Director Michael McRaith (IL), the NAIC eventually deleted the specific reference to using the Annual Statement as the market conduct vehicle. Regulators then adopted the less specific D Committee draft and committed to work on outstanding issues.

In July, an NCOIL resolution raised concerns over NAIC authority to collect the data, compliance costs, and confidentiality. The September 24 NAIC vote took many industry groups by surprise—who said the new transitional strategy was devised during the closed regulator meeting.

PPO RENTAL NETWORK MODEL TO HIGHLIGHT SPECIAL NCOIL MEETING, VOTE EXPECTED

The NCOIL Health, Long-Term Care, and Health Retirement Issues Committee will hold a special November 19, 3:00 to 5:00 p.m. session at the NCOIL Annual Meeting to advance adoption of a controversial *Rental Network Contract Arrangements Model Act*. Consideration of the model—which the Committee began developing earlier this year after more than two years of interested party back-and-forth—follows a series of open conference calls and responds to a Committee charge to develop a model for Annual Meeting consideration.

NCOIL Secretary Rep. George Keiser (ND), sponsor of the original model law, said, “Preferred provider organizations (PPOs) are important to today’s healthcare system, but the

improper access to discounts by some rental networks can hamper the day-to-day efforts of doctors and hospitals. Our model would shed light on rental networks to bring openness and stability to the system.”

The draft model will set requirements for networks and payers—including compliance with the original contract, disclosure of contract terminations, notifications of network access, and a prohibition on unauthorized access. The Committee also is looking at ways to nullify provider discounts if network access information is not available before patient service.

The Committee also will discuss the model at its regularly scheduled November 21, 1:45 to 3:15 p.m. meeting.

“...(PPOs) are important to today’s healthcare system, but the improper access to discounts by some rental networks can hamper the day-to-day efforts of doctors and hospitals...”

NCOIL TO TALK HEALTHCARE BEST PRACTICES

Recognizing that healthcare is a key 2009 issue, NCOIL will hold a roundtable discussion entitled *Health Insurance Reform: Finding Best Practices* on Saturday, November 22, during the NCOIL Annual Meeting. The 8:00 to 9:45 a.m. session will let legislators dialogue with healthcare experts about the viability of various state reforms, in order to develop best practices for

availability and affordability, among other things.

Confirmed speakers include Merrill Matthews of the Council for Affordable Health Insurance, former New York State Insurance Superintendent Greg Serio of Park Strategies, Shelly Ten Napel of the Robert Wood Johnson Foundation, and Paulette J. Thabault of the Vermont Healthcare Reform Office.

ON THE AGENDA: 2008 ANNUAL MEETING

Legislators will tackle critical insurance policy issues at the November 19 through 23 NCOIL Annual Meeting in Duck Key, Florida. Items include, among others:

AIG bailout developments	interstate life insurance compact
bond insurance activity/federal legislation	market conduct annual statement
climate change disclosure	nationwide mortgage licensing
education/occupation in underwriting	producer licensing uniformity
federal preemption/OFCs	reinsurance collateral
financial services crisis	SEC annuities preemption
health insurance best practices	transparency in PPO contracts

HOUSE

Committee criticized AIG corporate leaders. Members said that they had ignored red flags raised by the U.S. Office of Thrift Supervision (OTS) and by AIG auditors regarding the risk-

taking AIG financial products division. Legislators also challenged executive compensation and an almost \$500,000 resort trip that AIG representatives took after the first federal bailout.

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**REGISTER
ONLINE
for the
NCOIL
ANNUAL
MEETING**

November 20—23
in Duck Key, FL

www.ncoil.org

NAIC ACTS ON GROUNDBREAKING REINSURANCE COLLATERAL REFORM, FLORIDA EASES RULES

At the September NAIC Fall Meeting, a Financial Condition (E) Committee approved a groundbreaking reinsurance modernization and collateral plan that, for the first time, would link collateral requirements with financial strength, rather than geography.

The long-anticipated proposal—seven years in the making—would base collateral on the rankings of SEC-approved rating agencies and would come at the discretion of a either a home state or port-of-entry regulator. The NAIC plan would eliminate collateral for insurers in Tiers 1 through 3 of a new five-tiered system. Tier 4 companies would pay 75 percent collateral, and Tier 5 insurers, considered vulnerable, would pay 100 percent.

The proposal, scheduled for a

vote by the full NAIC membership at its meeting in December, is supported by the reinsurance industry, which, in general, views it as more favorable than earlier NAIC plans. Ceding companies have opposed the new approach on the grounds, among other things, that full collateral is important to protecting insurers.

In Florida, state regulators will be the first in the nation to tie collateral to financial strength. Acting on a 2007 state law, the Insurance Department will examine a non-U.S. reinsurers' solvency in order to determine what level of collateral is required—some companies may pay nothing. New York is proposing something similar, in which foreign reinsurers could avoid collateral if, among other things, they had favorable rankings from major rating agencies.

NCOILetter

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NCOILetter

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