ISSUE
10
2010

NCOILETTER

inside this issue

NAIC Narrows Credit Score Data Call P.2
NCOIL Advances Life Disclosure Model P.2
NCOIL to Turn Keys on Auto Models P.2
NCOIL to Size up Dodd-Frank Implementation P.3

REGISTER NOW FOR THE AUSTIN NCOIL MEETING!

www.ncoil.org

Legislators at NCOIL to Explore What's, How's of Health Exchanges

Faced with their most daunting healthcare reform task—creation of state-based health insurance exchanges—legislators at the NCOIL Annual Meeting will explore what's required and how they can get there during a special November 18 session entitled *Health Reform Call to Action: State Legislator Responsibilities*. The event will feature high-ranking state and federal officials who will explore best practices—including those discovered during the Massachusetts and Utah experiences—as well as recent NAIC guidance.

Slated to speak are Joel Ario, the new HHS Office of Insurance Exchanges Director; Speaker David Clark of the UT House of Representatives; former Deputy Executive *(cont. on page 2)*

NCOIL MOVES FORWARD ON LIFE INSURANCE DEATH BENEFITS MODEL

As state and federal officials around the country consider options for retained asset account (RAA) regulation, insurance legislators at NCOIL are moving forward with a proposed *Beneficiaries' Bill of Rights*—a bill that would protect consumers through strong new disclosure and reporting requirements. Review of the model law, which lawmakers developed during a series of fall conference calls, will include consideration of new amendments that would shorten the time it takes to declare an RAA inactive and would establish file-and-use rules for insurer materials, among other things. The long-awaited discussion is slated for November 19, during the NCOIL Annual Meeting in Austin, Texas.

The draft model law—spearheaded by NCOIL President Rep. Damron (KY) and co-sponsored by NCOIL Past President Rep. Brian Kennedy (RI)—requires insurer notice of RAAs before they are established, as well as disclosure of beneficiaries' rights to receive a lump-sum payment of life insurance proceeds in the form of a bank check. The bill also sets out extensive written disclosures to consumers about RAA features—including interest rates, fees, and Federal Deposit Insurance Corporation (FDIC) coverage.

Responding to concerns that beneficiaries too often lose their money to state unclaimed property funds, the proposed model also requires *(cont. on page 4)*

FINANCIAL STABILITY OVERSIGHT COUNCIL HITS THE GROUND RUNNING

A little more than two months after President Obama signed the *Dodd-Frank Wall Street Reform and Consumer Protection Act,* the law's new Financial Stability Oversight Council (FSOC) held its inaugural meeting and agreed to seek comments on one of the group's most important powers—designating systemically risky financial firms.

Just 11 of the Council's 15 members participated in the October 1 meeting—including the sole state insurance regulator on the Council, Missouri Insurance Director John Huff. NCOIL had urged throughout development of *Dodd-Frank* for inclusion of even a non-voting state insurance regulator—asserting that state commissioners are essential to evaluating insurer solvency and gathering industry data. *(cont. on page 3)*

Legislators...

(cont. from page 1)

Director Rosemarie Day of the MA Health Insurance Connector; and NAIC President/Iowa Insurance Commissioner Susan Voss.

During the 1:15 to 3:00 p.m. session, state legislators will hone in on how adverse selection can be avoided; whether a government agency or non-profit entity should run an exchange; coordinating public subsidies and Medicaid/ SCHIP programs; and how regional exchanges could work.

Legislators will also discuss a recently exposed NAIC *American Health Benefit Exchange Model Act*. The draft legislation, developed to help states meet minimum federal requirements, raises several implementation issues, such as whether to merge individual and small group exchanges and whether an exchange or insurance commissioner should determine unjustified premium rate increases.

Under the *Patient Protection & Affordable Care Act*, exchanges must be functional by 2014. The act gives states flexibility, under the purview of federal regulators, to build exchanges, through which individuals and small businesses can purchase coverage. ■

NAIC Narrows Insurer Data Call Plan in Face of NCOIL Challenge

Challenged by NCOIL leaders in a late-September letter and facing aggressive opposition from key stakeholders, regulators at the NAIC scaled back a complex plan for insurer reporting of credit and other factors in early October—opting to base the plan on hypothetical consumer profiles rather than questions on insurer methodology. In its September 20 missive, NCOIL noted grave concerns with the original NAIC draft, highlighted the consumer protections—including those on extraordinary life events —that already exist in a 2002 NCOIL model, and asserted a need for strong legislative input.

The letter pointed to worries that regulators originally wanted more data than needed to gauge how insurance scores impact consumer wallets—and that the questions didn't appreciate scoring model complexity. The legislators—writing prior to a September 30 NAIC hearing—also questioned if insurers keep all the data asked for, and they noted concerns over confidentiality.

NCOIL President Rep. Robert Damron (KY)—who signed the letter with President-Elect Rep. George Keiser (ND) and P-C Committee Chair Sen. Ruth Teichman (KS)—said later that "While NCOIL shares regulator interest in promoting fair use of credit-based scores, the proposed NAIC data call may very well be an answer in search of a problem."

Rep. Keiser said that "Review of a proposal with such significant and questionable impacts on effective state policy must include the input of state legislators and other officials—particularly since there seems to be little cause for the initiative. The NAIC," he noted, "says that it wants to gather objective data that would help inform policy debate. But we wonder what events, in particular, have prompted the effort and what the merit of the plan would be."

According to the lawmakers, regulators should support the 27-state *Model Act Regarding Use of Credit Information in Personal Insurance*—"a more effective tool against abuse," they commented—rather than the initial data call proposal. In general, the model helps young people with "thin" credit files, seniors without credit cards, low-income and minority consumers, extraordinary event victims, and others. It also requires disclosure and updated data, bans use of certain consumer info, mandates filing of scoring models, and says "no" to data selling.

The new NAIC plan—which insurers say will be less onerous, more helpful —reportedly would have insurers, and perhaps only the largest, submit rates for ten to 15 hypothetical consumers, rather than answer the initial 22 questions. ■

Amid Debate, NCOIL Closes in on Life Insurer Disclosure Model

After nearly a year of work—marked by extended meetings and heated September calls—NCOIL is prepared to put finishing touches on a draft model bill that aims to answer a key question: How much should life insurers disclose about alternatives to their products—including life settlements? Parties hoping to sway debate will make their final cases in Austin, TX, on November 19, when legislators finalize the proposed *Life Insurance Disclosure Model Act*.

Life insurer representatives have said that, though they support consumer awareness and informed choice, the model would effectively force insurers to promote competitor products. The model's supporters, including the life settlement industry, say it would empower consumers through education and that NCOIL guidance would promote uniformity as states examine the issue in coming years.

The model—sponsored by Rep. Ron Crimm (KY) and based upon a 2010 KY law—would require insurers to notify people who are over age 60 or terminally/chronically ill of alternatives to giving up their policy. The list of eight options would include, among others, life settlements and conversion to a term or permanent policy or LTC benefits. Disclosures—developed by the state commissioner—would be given when an insurer sends a lapse notice or when an owner requests surrender or an accelerated death benefit. ■

Legislators to Turn Keys on Aftermarket, Auto Body Steering Models

After years of in-depth debate over the safety and suitability of aftermarket crash parts, NCOIL is poised to take final, decisive action on November 18—when legislators at the Austin Annual Meeting conclude review of a proposed consumer-choice aftermarket crash parts model and of an amendment on the equivalency of aftermarket and non-aftermarket parts. Legislators also are primed to act on a draft and controversial model law to regulate insurer auto-body referrals.

The proposed *Model Act Regarding Motor Vehicle Crash Parts and Repair*—introduced in July 2009—would require disclosure and consumer consent before a crash part is repaired or replaced; set ground rules for insurers to specify aftermarket parts; require lasting, visible labels on crash parts; and promote accountability.

Sponsored by Rep. George Keiser (ND), the pending amendment—which zeroes in on one of the thorniest aspects of the issue—would do two things. It would require insurers to confirm that an aftermarket crash part warranty at least equals that for an original equipment manufacturer (OEM) version. It also—in reintroducing language that has recurred throughout consideration of the model —would deem certified aftermarket crash parts to be equivalent to OEMs.

Regarding auto-body referrals, the Property-Casualty Committee will extend review of a proposed substitute amendment to a draft *Model Act Regarding Insurer Auto-Body Steering*, introduced in July. The substitute—which replaces language that almost entirely bans referrals—would prevent an insurer from forcing someone to use a specific facility and would ban insurer coercion, intimidation, or interference with consumer choice.

The substitute—to which parties have offered numerous amendments—also would let insurers recommend repair locations, regulate insurer payment of non-preferred shops, and promote disclosure and accountability. ■

NCOIL MEETING TO SIZE UP DODD-FRANK IMPLENTATION

Building on their efforts to preserve state regulation in light of the Dodd-Frank reform, legislators at

the NCOIL Annual Meeting will take stock of who's implementing the controversial insurance provisions and what that means for states. At a November 18 *Financial Services Regulatory Special Session,* NCOIL will engage some of the nation's foremost insurance experts in a dialogue—targeted to the Financial Stability Oversight Council (FSOC) and Federal Insurance Office (FIO)—over how Dodd-Frank will affect both future and day-to-day operations of state regulation. The blue-ribbon panel will include Baird Webel of the Congressional Research Service and Roy Woodall of the U.S. Treasury. It will probe the authorities, progress, and scope of the new FIO—which NCOIL asserts may be the camel's nose under the tent—and the FSOC. Legislators, less than one month after the door closes on applying for the FIO Director position, will investigate Treasury's continuing efforts to get the FIO up and running, including the envisioned relationship between the FIO and state policymakers. And, after urging Congress to include state regulators as full members on an FSOC, NCOIL also will learn how the three non-voting state officials were received at the FSOC meeting and discuss upcoming insurance-related activity. ■

Financial...

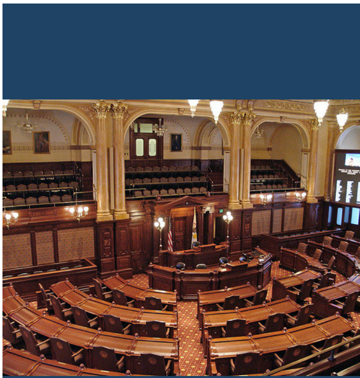
(cont. from page 1)

There are two other insurance representatives on the FSOC—the Federal Insurance Office (FIO) Director and the ambiguous "independent member… having insurance expertise." Neither of them has yet been appointed.

In October, members moved forward to request public comment on the standards FSOC would use to determine when nonbank companies—including large insurance firms—need heightened supervision. According to the Treasury Department, the Council plans to put forward a specific regulatory proposal later this year. At its first meeting, the FSOC also approved bylaws, a transparency policy, and a road-map outlining implementation goals and timelines.

Nine federal regulators sit on the FSOC, including the Chairpersons of the Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, and Securities and Exchange Commission, who all can vote, as can the yet-determined independent insurance expert. However, state insurance, banking, and securities regulators—as well as the FIO and Office of Financial Research Directors—cannot.

NCOIL lawmakers will investigate FSOC efforts, and other Dodd-Frank implementation, at a November 18 *Financial Services Regulatory Special Session* at the Annual Meeting (*see page 3*). ■



NCOILetter

Susan F. Nolan, Publisher/Editor
Candace Thorson, Managing Editor
Mike Humphreys, Assoc. Editor
Jordan Estey, Associate Editor
Simone Smith, Production Assis.
Laurie Dingmon, Bus. Manager

Opinions expressed in the *NCOILetter* do not necessarily reflect NCOIL views or opinions. The *NCOILetter* is published by Nolan Associates.

LEGISLATORS

(cont. from page 1)

insurers to report annually on how many RAAs go to state coffers. Further, under the model an insurer must return to a beneficiary any money left in an RAA if he/she doesn't, within four years, tell the insurer to maintain the account.

The draft amendments—submitted by Rep. Damron after the Life Insurance Committee conference calls but in accordance with the 30-day deadline—would sync the model's reporting requirements with proposed changes to an NAIC annual statement. Insurers, therefore, would need to provide a narrative description of how RAAs are structured and reported. Separate from the NAIC-based changes, the proposed Damron amendments would deem an RAA inactive after three years, not four, and would have insurers file all RAA marketing materials, disclosures, and forms with the Department of Insurance prior to use. ■

SIGN UP NOW for the

NCOIL ANNUAL MEETING!

Austin, Texas

November 18 through 21

www.ncoil.org

NCOIL

National Conference of Insurance Legislators

...for the states

D.C. Office:
601 Pennsylvania Avenue N.W.
Suite 900, South Building
Washington, D.C. 20004

National Office:
385 Jordan Road
Troy, NY 12180