

## 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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## NCOIL LEADERS CRITICIZE FEDERAL INSURANCE OFFICE DRAFT

On October 23 NCOIL reasserted its strong opposition to a pending Federal Insurance Office (FIO) proposal, writing House Financial Services Committee Chair Barney Frank (D-MA) and Ranking Member Spencer Bachus (R-AL) that the expanded H.R. 2609, known as the *Federal Insurance Office Act of 2009*, would lead dangerously to creation of a federal insurance czar at the U.S. Treasury Department.

In announcing the letter, NCOIL President Sen. James Seward (NY) said, "NCOIL has long argued that the creation of any FIO, OII, or ONI would represent the first step down a path to federal insurance chartering—a concept that few interests outside some large banks and insurance companies endorse."

NCOIL officers stressed in the letter

the success of state oversight and a need to build on states' existing regulatory structure, writing that "The [FIO's] enhanced preemptive power and lack of answerability are alarming to state officials who have seen the success of checks and balances in the state system. H.R. 2609 permits a FIO—to be led by an unconfirmed appointee of the Secretary—to override existing law without meaningful dialogue with the states."

NCOIL noted that "as currently drafted, the FIO only must consult the states *prior* to requesting insurance data from the private sector and *after* a determination that a state law will be preempted. Other consultation with state officials is limited 'to the extent the Director determines appropriate.'"

The NCOIL State-Federal Relations Committee will consider a draft *Resolution Opposing H.R. 2609, the Federal Insurance Office Act*, on November 20 during the NCOIL Annual Meeting. The October 23 letter apprised Reps. Frank and Bachus that NCOIL would consider the resolution.

## HEALTHCARE REFORM BILLS NEAR FLOOR DEBATES

During the final days of October, House Speaker Nancy Pelosi (D-CA) unveiled the House's new healthcare reform bill and Senate Majority Leader Harry Reid (D-NV) disclosed the contents of a soon-to-be-released Senate version. Their respective chambers are scheduled to begin floor debate on the controversial and long-awaited measures in early November.

Speaking from the Capitol steps on October 29, Speaker Pelosi said the over 1,900-page H.R. 3962, *The Affordable Health Care for America Act*, would cost \$894 billion over ten years and cover 96 percent of the eligible population, according to Congressional Budget Office estimates. The bill would be financed through Medicare Advantage cuts, Medicaid/Medicare savings, and taxes on family incomes above \$350,000 and individual incomes above \$280,000. The bill aims to merge proposals approved by the House Ways and Means, Education and Labor, and Energy and Commerce Committees and would feature a public insurance option and

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NCOIL has the honor of welcoming **Jayann Sepich**, founder of *DNA Saves*, as keynote luncheon speaker at the NCOIL

### Annual Meeting in New Orleans.

Ms. Sepich will speak to Katie's Law, which requires DNA testing upon most felony arrests, and its impacts on the insurance system. The luncheon is slated for 12:00 to 1:15 p.m. on Friday, November 20.



## VIEW FROM THE HILL: PARTISANSHIP RUNS RAMPANT AT MARKUPS

Though observers had hoped that financial services regulatory reform would be more bipartisan than health-care debates, House Financial Services Committee markups have been partisan business-as-usual. With Democrats sensing an opportunity for wholesale reform and Republicans entrenched in their opposition to an expanded federal government, it seems highly unlikely that anything resembling a consensus will head to the floor this fall or winter.

Even one of the more bipartisan ideas—that derivatives regulation should be enhanced—fell along party lines in a 43 to 26 vote, with a single Republican supporter. Many amendments had already come down to Rs versus Ds.

Though Republicans did get some of what they wanted, including an amendment to the derivatives bill that would prevent taxpayer-funded bailouts of central clearinghouses, Republicans maintained that it meant overregulation and could disrupt the economy and kill jobs.

During a mid-October Consumer Financial Protection Agency (CFPA) markup, Republicans on the Financial

Services Committee offered amendments to replace the entire text of the bill with language supporting their own reform plan—which would create an Office of Consumer Protection within a new consolidated bank regulatory system. Republicans knew full well that the amendment would simply extend debate on the CFPA bill and stood no chance of approval. Their measure also died along party lines.

According to Republicans, creating a CFPA would limit access to credit, reduce availability of financial products, and limit company innovation. Democrats have countered that the bill would simply consolidate the consumer protection responsibilities of existing federal regulators in a single agency that, for the first time, would have consumer protection as its sole mission. They have eagerly highlighted the questionable consumer protection record of the Federal Reserve, to be given authority over systemic risk by some reform plans.

One can expect more of the same acrimony as new proposals head to markup. Bipartisanship, if it ever really existed in the financial services debates, seems over.

**One can expect more of the same acrimony as new proposals head to mark-up. Bipartisanship, if it ever really existed in the financial services debates, seems over.**

## NCOIL SUBCOMMITTEE APPROVES CONSTRUCTION INDUSTRY WORKERS' COMP MODEL

Following seven conference calls since the July Summer Meeting, an NCOIL Subcommittee on Employee Misclassification recently concluded review of a draft *Construction Industry Workers' Compensation Coverage Model Act*. Legislators on an October 16 call voted unanimously to approve the model and to recommend its adoption by the full Workers' Comp Insurance Committee at the upcoming Annual Meeting.

The model is a construction-specific version of a broader bill introduced in July. Subcommittee changes have narrowed the scope to target only abuses in the problematic construction industry by requiring employers and most sole

proprietors to have coverage and by assigning liability to protect injured workers.

While the model's scope was narrowed—due to concern that a broader bill could conflict with well-established definitions in state workers' comp, unemployment, and disability laws—the Subcommittee kept much of the bill's original language to provide transparency, disclosure, and accountability in workers' comp through premium auditing procedures and increased penalties and regulatory enforcement authority.

The Committee will meet from 2:30 until 5:45 p.m. on November 19. Legislators at that time also will consider extending efforts to the trucking industry.

Register Online for the **NCOIL ANNUAL MEETING IN NEW ORLEANS** and **secure rooms in the host hotel at exceptional prices!**

November 18 through 22 — Royal Sonesta Hotel

## NCOIL TO VOTE ON AFTERMARKET CRASH PARTS MODEL

Legislators at the upcoming NCOIL Annual Meeting will vote on a much-debated a model law that would protect consumers in need of auto body repair—and will determine how best to proceed with controversial auto body steering regulation.

The proposed *Model Act Regarding Motor Vehicle Crash Parts and Repair*, developed over four recent conference calls, would require strict disclosure and accountability on use of aftermarket crash parts and would address both auto body facility and insurer practices. During a special November 21 Property-Casualty Insurance Committee meeting, legislators will finalize their review of the model, including consideration of

interested-party amendments to certain definitions, among other things.

Most controversial, perhaps, are New York-based provisions that would restrict how insurers communicate with their insureds regarding choice of an auto repair facility. Legislators on the recent calls quickly decided to reserve examination of the issue until the full P-C Committee met in November. The group could consider separating the steering requirements into a separate model law and will review Rhode Island, Virginia, and other state approaches.

The special Committee meeting is slated for 10:00 to 11:30 a.m. A vote on the model will take place during an 8:00 to 9:00 a.m. November 22 meeting.

## NAIC APPROVES MAJOR CHANGE IN LIFE INSURER RESERVING

In a major shift away from long-standing solvency requirements for U.S. life insurers, the National Association of Insurance Commissioners (NAIC) last month approved changes to its formula-based *Standard Valuation Law*, in existence for approximately 150 years. The revised model would establish new principles-based rules for companies to reserve against future claims liability.

After five years of work by NAIC regulators, the Executive/Plenary approved on September 23 model changes with two caveats. The first is that changes to an accompanying *Valuation Manual*—where technical details of the new approach will be contained—must be completed by January 2010. The second requires regulators to create a minimum reserve level to accompany the new rules.

Supporters say that new life and annuity products are increasingly

complex and often under-reserved by current state laws. A principles-based approach, they say, would modernize regulation and more accurately reflect a company's true risk by incorporating additional information on policyholder behavior and expenses, among others.

Opponents say that the shift gives life insurers unneeded relief from conservative standards that have kept companies solvent and consumers protected during the economic crisis. Some critics also worry that small insurers will have neither funds nor resources to comply.

Certain NCOIL legislators have strongly expressed similar concerns with the new NAIC approach.

The revised *Standard Valuation Law* could be ready for state consideration in 2010. Forty-two states would need to adopt the model—which is an accreditation standard—for it to take effect.

**Supporters say a principles-based approach would more accurately reflect true risk...**

**Opponents say the shift gives life insurers unnecessary relief...**

## NCOIL SEEKS TRANSPARENCY FOR HOSPITAL BALANCE BILLS

As Congress grapples with the uninsured, state insurance legislators in November will set their sights on a more transparent market for healthcare consumers. The NCOIL Health, Long-Term Care & Health Retirement Issues Committee will consider state approaches to protect insured patients from unexpected hospital "balance bills" as part of the November 18 to 22 Annual Meeting.

Some states have already taken action. The Committee's review—which will take place from 10:30 a.m. until 12:00 p.m. on Friday, November 20—will look at new laws in LA and TX, among others, that require Web site disclosure and reporting of insurer contracts with hospital-based providers; reasonable advance estimates of hospital-based fees; and patient mediation procedures.

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# NCOILetter

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## NCOIL SEEKS

Balance bills have become a hot issue as insureds struggle with debts caused by a lack of transparency among hospital-based radiologists, pathologists, and anesthesiologists. A July 9 NCOIL roundtable made clear that most patients assume if a hospital is in their managed care network, each of its facility-based providers is also.

Consumers, doctors, insurers, and

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regulators have pointed to larger issues of allegedly overpriced usual, customary, and reasonable (UCR) charges and to inadequate insurer reimbursements, among others, as primary causes for balance bills. While opinions on root causes of out-of-network charges have varied, there has been general agreement that more could be done to increase transparency.

## HEALTHCARE

individual and employer mandates.

Earlier in the week, Sen. Reid over-viewed concepts for a bill that would merge drafts approved by the Senate Finance and Health, Education, Labor & Pensions Committees. The Senate bill would include a public plan but would let states opt out—if they acted before 2014. The proposal would establish healthcare exchanges and would provide funds to set up health insurance “co-operatives,” among other things.

While House Dems appear likely

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to support H.R. 3962, House Republicans have uniformly rejected it. In the Senate, Olympia Snowe (ME)—the only Republican to vote for the Finance bill—has opposed the opt-out public plan, preferring an approach in which a public plan would eventually be triggered in states without competitive markets. A Democrat, Sen. Ben Nelson (NE), has said he would prefer opt-in, rather than opt-out, language.

Once each chamber passes a bill, a consensus group will draft compromise legislation for House and Senate approval.



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