National Conference of Insurance Legislators

NCOIL ETTER

...for the states

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ADMINISTRATION CHANGES RULES ON SCHIP, FEDERAL SHOWDOWN LOOMS

While Congress was away on August recess, the Bush administration redefined the debate over the State Children's Health Insurance Program (SCHIP)—outlining new standards that seek to ensure the program addresses only the poorest of the uninsured. The new rules directly challenge provisions in legislation passed by both Houses of Congress that would reauthorize and expand SCHIP funding.

In a letter sent to state health officials during the evening hours of Friday, August 17, Dennis G. Smith, director of the federal Center for Medicaid and State Operations, told states they must demonstrate that they have "enrolled at least 95 percent of children in the state below 200 percent of the federal poverty level" in Medicaid or the state's SCHIP program before raising SCHIP eligibility limits.

Smith further outlined standards that would require states wishing to cover children above 250 percent of the federal poverty level (FPL) to show that "the number of children in the target population insured through private employers has not decreased by more than two (2) percentage points over the prior five-year period." The standards would also require children above 250 percent of the FPL to "go bare," or be uninsured, for at least one year before enrolling in SCHIP.

These new standards have been widely criticized by state officials and members of Congress, who view the approach as too restrictive. Senator Max Baucus (D-MT), Senate Committee on Finance chair, said "No state can meet 95 percent. No state currently meets 95 percent."

New Jersey Governor Jon Corzine said, "This is a shortsighted and harmful policy that will leave over 10,000 New Jersey children without health insurance."

New York Governor Eliot Spitzer—whose state passed a reform package this year that would permit families with an income of up to 400

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As a sea of Democrats and Republicans battle for the **2008 presidential nominations**, attendees at the NCOIL Annual Meeting will hear a pollster's view of what lies ahead when **Jordan Lieberman**, publisher of *Campaigns & Elections* magazine, delivers a keynote luncheon address on November 16. Lieberman—who has wide-ranging experience on political consulting, advocacy, and campaign strategy in both this country and abroad—is cited often in the New York Times, Wall Street Journal, BBC, Washington Times, and National Public Radio, among others. The Las Vegas event will take place from 11:45 a.m. to 1:00 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

Inside This Issue:

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VIEW FROM THE HILL: CONGRESS RETURNED TO A FULL PLATE

After four weeks away from the Beltway, Congress returned in early September with a full plate of critical insurance issues to address. Reauthorization of the terrorism insurance program and the State Children's Health Insurance Program (SCHIP) *(see story page 1)*, as well as consideration of optional federal charter (OFC) and natural catastrophe legislation *(see story page 4)*, all awaited congressional debate. Members should have been prepared to hear the boisterous opinions of the industry and of others across the wide political spectrum. In the coming months, nothing will be easy for a Congress that has been relatively unproductive during its first eight months.

Regarding the terrorism insurance initiative, the House-passed H.R. 2761, the *Terrorism Risk Insurance Revision and Extension Act (TRIREA)*, directly challenges Bush administration plans for the Terrorism Risk Insurance Program (TRIP).

Whereas the Department of Treasury recommended that reauthorization language include a short program extension, limited coverage of additional lines of insurance, high trigger levels, and avoidance of nuclear, chemical, biological and radiological (NCBR) risk, the version of H.R. 2761 approved by the House on September 19 would expand TRIA for 15 years, include group life insurance, decrease the program trigger to $50 million, and eventually require NCBR coverage.

Proponents of the bill hit a new hurdle—a recent Congressional Budget Office finding that H.R. 2761 would cost the federal government $8.4 billion over ten (10) years. Congress needs to offset that cost elsewhere in the budget in order to comply with a new "pay-as-you-go" requirement enacted this year….

In addition to the fact that President Bush has vowed to veto H.R. 2761 should it reach his desk, proponents of the bill hit a new hurdle—a recent Congressional Budget Office finding that H.R. 2761 would cost the federal government $8.4 billion over ten (10) years. Congress needs to offset that cost elsewhere in the budget in order to comply with a new "pay-as-you-go" requirement enacted this year—which aims to prevent the massive federal deficit from growing any larger. A last minute amendment by Congressman Barney Frank (D-MA) eluded this challenge by requiring Congress to schedule an emergency appropriations vote following a terrorist attack. The amendment allowed Congress to pass the bill without appropriating money.

Hearings on bills to create a federal insurance regulator via S. 40/H.R. 3200, the *National Insurance Act of 2007*, face an uncertain future. Though the return of Senate co-sponsor Tim Johnson (D-SD) helps the OFC cause, the battle for the Democratic presidential nomination is *(continued on page 4)*

INTERIM PEO MEETING TO PURSUE MODEL LAW ADOPTION

NCOIL will hold an interim meeting of its Professional Employer Organization (PEO) Working Group on Saturday, October 27, in order to allow interested parties to offer additional information on issues including, among others, master, multiple-coordinated, and client-level insurance policies. The session will also give Working Group members an opportunity to vote on a draft *Model Act Regarding Workers' Compensation Insurance Coverage in Professional Employer Organizations' (PEOs) Relationships*, should they choose to do so.

Legislators are scheduled to complete their review of mark-up proposals already submitted by interested parties, which were prepared at the request of the Working Group following the NCOIL Summer Meeting in July. Following review of the mark-ups, the Working Group then anticipates approving the draft model law as a whole and offering it for the full Workers' Compensation Insurance Committee to consider at the November NCOIL Annual Meeting in Las Vegas, Nevada.

The interim session will take place at the Hyatt Regency Crystal City at Reagan National Airport, outside Washington, D.C., from 10:00 a.m. to 3:00 p.m.

NCOIL KICKS TIRES ON RENTAL VEHICLE DAMAGE WAIVERS

Legislators concerned with the fairness of rental-vehicle damage waiver sales will study the issue from a fresh perspective at the NCOIL Annual Meeting, when the Property-Casualty Insurance Committee will consider a controversial new model act that would regulate how consumers should be covered for damage to vehicles they rent.

Development of the draft model law follows the close of a 30-day comment period, initiated following the July NCOIL Summer Meeting, during which interested parties offered input regarding the future direction of the Committee. Suggestions from insurance industry and rental-vehicle company representatives, as well as consideration of existing state laws and regulatory proposals, are being taken under review during development of the new model bill.

Earlier state approaches have focused on mandating inclusion of rental damage in auto liability insurance policies, requiring certain disclosures by rental companies, and, in some cases, actually prohibiting the sale of rental damage waivers.

The new NCOIL draft model will be submitted in accordance with the 30-day deadline for the Annual Meeting. The proposal follows the vetting of two previous NCOIL drafts, aired this year, that focused on auto liability coverage and disclosure requirements, respectively.

NCOIL LIFE SETTLEMENTS CALL LEADS TO SECURITIES REGULATOR AMENDMENTS

During a late afternoon conference call on Friday, September 14, the NCOIL Subcommittee on Life Settlements sought input from insurance and securities regulators regarding whether the purchase of a life settlement by an institutional buyer or an investor should be regulated by an NCOIL *Life Settlements Model Act*. Following discussion, securities administrators on the call expressed their intent to propose amendments to the model law for NCOIL consideration in November.

The call was scheduled after representatives of the life settlement and institutional market industries raised concerns at several NCOIL meetings, arguing that the purchase of a settlement falls solely under the jurisdiction of securities regulators. Life insurance representatives countered that, in practice, insurance and securities regulators often regulate such transactions jointly.

Representatives of the North American Securities Administrators Association (NASAA) clarified that once a settlement provider acts as an issuer of securities by selling an interest in a life settlement, the transaction comes under the jurisdiction of securities administrators.

At the request of Subcommittee Chair Representative George Keiser (ND), NASAA will provide mark-up comments to the NCOIL model law prior to the 30-day deadline for the NCOIL Annual Meeting in Las Vegas. The mark-ups will recommend, among other possible proposals, that legislators delete language regarding securities regulation.

Participating on behalf of the National Association of Insurance Commissioners (NAIC) were Kansas Insurance Commissioner and NAIC Vice President-Elect Sandy Praeger, as well as Kentucky Insurance Director and Life Insurance & Annuities (A) Committee Chair Julie McPeak. Representatives of NASAA included, among others, Alabama Director and NASAA President Joe Bork, as well as North Dakota Commissioner and NASAA President-Elect Karen Tyler.

The life settlement and institutional market industries raised concerns… —arguing that the purchase of a settlement falls solely under the jurisdiction of securities regulators. Life insurance reps countered that, in practice, insurance and securities regulators often regulate...jointly.

SAVE THE DATE

NCOIL Annual Meeting & Seminar

November 14 through 18, 2007

Las Vegas, Nevada

ADMINISTRATION

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percent FPL to be eligible for coverage under the state's Child Health Plus program—said, "We are calling on President Bush to abolish these troublesome roadblocks to insuring our nation's children" and "…allow states like New York…to implement programs that will help ensure that more and more children receive the healthy beginning they deserve."

On August 1 and 2, respectively, the U.S. House and Senate passed H.R. 3162, the *Children's Health and Medicare Protection Act* and H.R. 976, the *Children's Health Insurance Reauthorization Act*. The House would reauthorize SCHIP for five years and expand funding by $47 billion; the Senate also would reauthorize for five years but expand funding by just $35 billion.

President Bush has called for an increase of just $5 billion and has vowed to veto the congressional initiatives. SCHIP is scheduled to expire on September 30.

Following its March Spring Meeting, NCOIL sent a letter to members of Congress urging reauthorization and expansion of SCHIP. The NCOIL Health Insurance Committee will discuss developments at the Las Vegas Annual Meeting.

VIEW

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slowing matters, as Senate Banking Committee Chair Christopher Dodd (CT) is an active contender. It is expected that the House will wait to act until the Senate makes a move.

Opposition to OFC proposals from state officials has been strong. Last month NCOIL sent a letter to the National Governors Association (NGA) urging it to stand strong in its OFC opposition, and NAIC followed in a letter commending the NGA for its opinion. Among other concerns, NCOIL asserts that a federal charter would destroy consumer protections, threaten state revenue, and create a new, unneeded federal bureaucracy.

At the NCOIL Annual Meeting, legislators will discuss these and other pending federal initiatives as they strategize how to maintain states as "laboratories of democracy" and work with Congress to uphold state sovereignty regarding the business of insurance.

HOUSE HOLDS HEARING ON CATASTROPHE BACKSTOP BILL

On September 6, two key subcommittees of the House Financial Services Committee held a joint hearing on H.R. 3355—a bill offering a unique approach to creating a federal natural catastrophe backstop. Despite strong opposition from some observers, the bill has momentum within the Committee and may be marked up in coming weeks.

H.R. 3355, introduced by freshmen Reps. Ron Klein (D-FL) and Tim Mahoney (D-FL), would use capital markets and short-term loans to help state reinsurance programs pay claims and stay solvent.

The bill would allow state catastrophe funds—that choose to participate—to pool their catastrophe risks into a newly created National Catastrophe Risk Consortium. The Consortium would then transfer these risks into capital markets (e.g., catastrophe bonds) and via reinsurance. Also, H.R. 3355 would authorize loans to help cat funds short on financial resources.

Supporters say the bill is a creative attempt to help consumers struggling with availability and affordability problems, and might be included in a more comprehensive natural disaster bill. Opponents argue that the loan provisions would unnecessarily crowd out the private reinsurance market and unfairly impact taxpayers nationwide. Both sides, however, strongly endorse spreading risk via capital markets.

Although the Senate is not expected to consider the issue this year, H.R. 3355 may pass the House, if nothing else in a show of support for the freshmen representatives' effort.

NCOILetter

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