

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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BAUCUS RELEASES LONG-AWAITED HEALTHCARE BILL

Following tense negotiations over the last several months, lawmakers on the Senate Finance Committee ended their closed-door sessions on September 16, when Chairman Max Baucus (D-MT) released what began as, but didn't end, a bipartisan reform proposal—the *America's Healthy Future Act of 2009*.

Beltway insiders say the long-awaited "Chairman's Mark" may have the 60 votes needed to pass the Senate. The measure searches for bipartisan support by excluding a controversial government-run health plan and omitting penalties for employers who don't offer coverage. The bill would allow interstate health insurance sales—a concept many Republicans endorse—though it would do so via interstate compacts. Liberal Democrats have decried the loss of a public plan, arguing that only through such an entity can the U.S. achieve reform. Democrats took comfort in, and Re-

publicans opposed, separate provisions in line with other federal bills. The Baucus plan would reform individual and small group markets by 1) requiring individuals to have insurance or pay a penalty; 2) expanding Medicaid and providing subsidies to help insure low-income people; 3) ending discriminations based on pre-existing conditions and health status; and 4) eliminating yearly and lifetime limits.

The bill also would create Web-based insurance exchanges and give tax credits to certain individuals and small businesses.

At a projected \$856 billion over ten years, the bill is less expensive than others but still too costly in today's economy, some say. Baucus claims the costs would be offset through new taxes on health insurers and drug companies, fines/penalties on those who don't comply with an individual mandate, and lower payments to Medicare Advantage plans, drug makers, and states.

NCOIL CHALLENGES NEW REGULATOR COMMISSION PROPOSAL

Expressing "grave and fundamental concerns" with a regulator plan that would shut state legislators out of insurance oversight, NCOIL leaders on September 9 wrote the National Association of Insurance Commissioners (NAIC) to make clear the many reasons why a NAIC National Insurance Supervisory Commission (NISC) proposal is the wrong way to reform.

In their letter, NCOIL Officers and the organization's immediate past president wrote, "This proposal upsets one of the major tenets of government—that of separation of powers—by advocating for state legislators to give up all authority over insurance oversight." It aligns the NAIC with untested federal bureaucracies, the letter said, and "lays a path to federal regulation of insurance."

NCOIL leaders—and more than 40 other state lawmakers—discussed NISC for almost two hours on September 21, during the NAIC Fall Meeting in National

Harbor, Maryland. Illinois Insurance Director Michael McRaith described the proposal as a state solution to promote uniformity and retain state-based insurance regulation and said the plan was a "starting point" for future deliberations.

Regarding the NISC's proposed structure, the letter said, "We do not believe this proposal—as claimed—is akin to the Interstate Insurance Product Regulation Compact, which NCOIL helped create and continues to support. With the lack of state buy-in and inclusion of a preemptive hammer, it would be much like a federal insurance bureaucracy...."

The letter also asserted that any proposal of NISC magnitude should have input—from the start—of a range of state officials and private sector representatives.

Legislators and regulators in MD agreed to bring state and industry parties together for a "summit" to evaluate the proposal. At press time, details were yet to be determined.

REGULATORY REFORM LAGS: OBAMA PROMISES WILL BE TOUGH TO KEEP

On the first anniversary of the Lehman Brothers collapse—a failure that kicked off an AIG bailout and other government spending—President Obama visited New York’s Federal Hall on September 14 and declared that major change would come this year.

His message fell against the backdrop of a slow congressional start. After holding dozens of hearings leading into August, Senate Banking and House Financial Services Committee members opened September quietly—meeting privately to plot fall strategy. In contrast to their once-rapid pace of activity, the Committees held just five hearings during the month’s first two weeks.

Industry opposition to reform continued to build in August as the U.S. Chamber of Commerce, for example, gathered its troops and boosted its media efforts to oppose elements of the Administration’s reform plan, specifically a Consumer Financial Protection Agency

(CFPA). The Chamber feared the impact that a CFPA could have on small businesses.

The CFPA—introduced as H.R. 3126 by House Financial Services Chair Barney Frank (D-MA)—would be an independent agency with authority to make and enforce rules regarding financial products.

Frank has amended the bill to exclude retail companies that offer layaway plans, for instance, and to remove a requirement that financial services firms offer standard policies, among other things. His effort has helped propel a more enthusiastic Committee schedule—between September 21 and October 9, the group will hold 11 reform hearings.

Frank’s Capital Markets Subc. Chair, Rep. Paul Kanjorski (D-PA), has done his part to spice things up. In late Sept. he introduced a substitute to his H.R. 2609 that would create a Federal Insurance Office modeled after his earlier Office of Insurance Information—except with greater preemptive and other authorities.

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JOINT LETTER SAYS NO INSURANCE IN FEDERAL CONSUMER PROTECTION AGENCY

NCOIL joined with the Council of State Governments and the National Association of State Legislatures on September 1 to oppose adding insurance to any new federal entity, such as a proposed Consumer Financial Protection Agency (CFPA). The letter, sent to the Senate Banking/House Financial Services Committees, followed July NCOIL adoption of a Resolution Favoring Continued State-Based Consumer Protection. Below are excerpts of the letter.

“...state insurance regulation has been effective for over 150 years and continually adapts to successfully safeguard consumers in an ever-changing marketplace. Insurance policyholders are currently protected from fraud and abuse by a comprehensive set of state laws and regulations.”

“While we do not believe that the President intended for a CFPA to preempt or otherwise duplicate the successful state insurance regulatory system, we are concerned that his proposal includes authority over insurance. Bifurcating insurance consumer protection by transferring authority over credit, mortgage, and title insurance to the federal government would not address any tangible need and will only cause confusion for consumers seeking assistance.”

“Exempting insurance from the scope of any new federal consumer protection entity will reaffirm the strong and consistent state insurance consumer protection regime without introducing unnecessary duplication to the broader regulatory system.”

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November 18 – 22 Royal Sonesta Hotel

NCOIL TARGETS CONSTRUCTION INDUSTRY WITH COMP BILL CHANGE

Citing the unique nature of state workers' compensation systems and high levels of fraud and abuse within the construction industry, an NCOIL Subcommittee changed course in September and narrowed the focus of a controversial employee misclassification model bill.

The Subcommittee, which is tasked with reviewing an existing model draft and producing a more refined version for consideration at the November 18 through 22 New Orleans Annual Meeting, cautioned that a broad-based NCOIL proposal targeting all employments could conflict with definitions in well-established state workers' comp, unemployment, and disability statutes. The scaled-back bill, known as a draft *Construction Industry Workers' Compensation Coverage Model Act*, instead would make workers' comp coverage mandatory throughout the construction industry, with certain exemptions for residential projects.

During five conference calls in August and September, legislators worked to ensure coverage of injured workers and ultimately supplemented new construction requirements—based on a 2008 Tennessee law—with provisions from 2008 West Virginia reforms. Principal contractors on construction projects now would be liable for employees of uninsured subcontractors.

While the scope of the model has narrowed, the Subcommittee has kept the bill's original goal—to provide transparency, disclosure, and accountability in workers' compensation. Sections relating to premium auditing procedures and increased penalties and enforcement authority for regulators remain vital parts of the bill. Legislators did remove a section relating to insurance application requirements.

The Subcommittee will hold calls in early October to complete its work. The full Workers' Comp Committee will consider the draft on November 19.

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NCOIL ADVANCES AIRBAG FRAUD MODEL, DEFERS SALVAGE PARTS DEBATE

Legislators moved toward adoption of an airbag fraud model law on September 18, when members of an NCOIL Property-Casualty Insurance Committee met via conference call to complete interim review of a draft *Model Act Regarding Auto Airbag Fraud* in time for November 19 Annual Meeting consideration. Despite resolving other key issues, however, legislators deferred the most controversial item—whether to include use of salvaged airbags—to allow for fuller Committee debate.

The proposed model targets airbag fraud through transparency and disclosure, as well as through civil and criminal penalties. Legislators on September 9 and 18 interim calls expanded the bill's definition of airbag to encompass all airbag system components, including sensors, wiring, and the airbag itself. The revised model sets forth new standards by which auto part recyclers must comply. It also, among other things, adds a drafting note acknowledging that seatbelt

pretensions are part of an airbag system and may deploy even if an airbag doesn't.

As first proposed, the airbag model aimed to be a straightforward, comprehensive anti-fraud bill that would curb airbag fraud in general, without regard to the suitability of any part on the market. The safety of salvaged bags became a near-immediate flashpoint at a special July 11 Committee meeting. Car company and auto body representatives argued that any reference in the model to allegedly dangerous salvaged airbags would encourage their use.

The special November 19 Committee meeting from 1:00 to 2:30 p.m. will also examine concerns over fleet companies that negotiate lower prices for cars without airbags. Legislators will discuss whether a failure to disclose the lack of airbags would be a deceptive trade practice and subject to criminal penalties.

A vote on the draft model will take place during an 8:00 to 9:00 a.m. November 22 Committee meeting.

NCOILetter

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NCOIL TO DEBATE CONSUMER PROTECTIONS, FEDERAL BILLS

As Congress debates regulatory reform that would have wide-ranging impacts on the nation and economy, legislators at a November 20 Annual Meeting roundtable will examine likely consequences on consumer protection—including whether federal measures would complicate or clarify consumer safeguards. The 2:30 to 4:00 p.m. session, entitled *Future of Financial Regulation: Will Consumers Be Protected?*, will

analyze how federal reform measures, including a Consumer Financial Protection Agency (CFPA), could play out.

Other proposals open for discussion include an optional federal charter (OFC), Office of Insurance Information (OII), Federal Insurance Office (FIO), and Office of National Insurance (ONI).

Invited panelists include consumer, business, insurance industry, regulator, and congressional representatives.

NCOIL SEEKS ANSWERS ON FEDERAL HEALTHCARE REFORMS

As Congress pursues landmark healthcare reform this fall, state insurance legislators and a panel of experts will sort through the madness during a November 21 roundtable entitled *Health Reform in Flux: What are the Costs?* The interactive session—scheduled from 8:30 until 10:00 a.m. during the NCOIL Annual Meeting—will address cost-shifting, benefits, and who ultimately

would pay.

Confirmed panelists include MA State Rep. Peter Koutoujian and Shari Westerfield on behalf of the American Academy of Actuaries. Kansas Insurance Commissioner Sandy Praeger, for the National Association of Insurance Commissioners; LA Secretary of Health & Hospitals Alan Levine; and a consumer representative have been invited.



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