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NCOILETTER

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European Officials Advance Historic Regulatory Reform

Responding to calls for broad rethinking of the EU's patchwork approach to financial regulation, the European Parliament in late September adopted major reforms to the region's regulatory system—creating new oversight of systemic risk that expands pan-European authority and establishes EU structures for regulating insurance, banking, and securities.

The reforms, first approved by the EU Council on September 7, establish a European Systemic Risk Board (ESRB)—which would macro-oversee the EU financial system—as well as create three supervisory agencies to monitor specific industries in the 27-member EU. The reform sets out a European Insurance and Occupational Pensions Authority based in Frankfurt, a European Banking Authority located *(cont. on p. 3)*

NCOIL FINALIZES RETAINED ASSET ACCOUNT RULES, PLANS VOTE

An NCOIL committee debating rules for retained asset accounts (RAAs) is closing in on a final vote—wrapping up controversial language in a draft *Beneficiaries' Bill of Rights* after substantial input from consumer advocates, regulators, insurers, and others focused on transparency in death benefit payments.

The NCOIL Life Insurance Committee, led by Sen. Ralph Hudgens (GA), will hold its fourth in a five-week series of calls on October 7 and anticipates a November 19 decision on the model at the NCOIL Annual Meeting.

Initial language in the proposal—which is spearheaded by NCOIL President Rep. Robert Damron (KY)—that required a consumer's prior written consent, as well as language that banned use of RAAs as default options, has fallen by the wayside during the calls. Lawmakers have said that a default approach could make sense if a beneficiary fails to choose a payment method.

Legislators have chosen to base their review of draft disclosure rules on a proposed amendment—offered by the Louisiana Insurance Department—that largely consolidated the model's initial language. The proposed model now sets out 13 required disclosures that address payment of death benefit proceeds by checks, drafts, or similar means; access to the entire proceeds by use of such a mechanism; limits, if any, on the number/amount of RAA withdrawals, as well as delays, if any, on completing RAA transactions; consultation with a financial advisor; services *(cont. on page 4)*

NCOIL PRESSES NAIC ON SLIMPACT DRAFT, URGES CONSENSUS

NCOIL President Rep. Robert Damron (KY) urged an NAIC Surplus Lines Implementation Task Force on September 2 to use an already-vetted surplus lines compact as a basis for implementing the Dodd-Frank financial reform law. Rep. Damron—reaffirming NCOIL support for the *Surplus Lines Insurance Multi-State Compliance Compact* (SLIMPACT)—recognized the short time frame for action, expressed willingness to tailor SLIMPACT, and looked toward consensus at a November NCOIL *State Leader Summit*.

Rep. Damron wrote, "Rather than discussing individual issues cited in draft [NAIC] *Guiding Principles for Surplus Lines Reform Implementation*, the Task Force should debate the already developed SLIMPACT, which encompasses major issues reflected in your discussion draft, including collection and allocation of surplus lines taxes." He added that "We are willing to work with the NAIC and others to modify SLIMPACT, if necessary, so that we can expedite guidance to the states."

Rep. Damron stressed that SLIMPACT *(cont. on p. 3)*

NCOIL Balance Billing Model on Home Stretch

After nearly eight hours of calls and working sessions, legislators hope to finish a draft *Healthcare Balance Billing Disclosure Model Act* in time for NCOIL Annual Meeting review and—if enacted by the Health and Executive Committees on November 20 and 21, respectively—for 2011 state legislative action. The model would empower consumers thinking all their bills are covered in-network through much-needed transparency, accountability, and disclosure of billing practices, network benefits, and financial obligations.

An NCOIL subcommittee held an August 5 call to wrap up changes on penalty language and plans an October call to consider other issues, including a title change and "balance bill" definition. The group will also decide if healthcare facilities, plans, and providers should give payment estimates to consumers on request.

Balance bills—which occur when doctors charge patients any fees remaining after insurer reimbursement—are reportedly common in hospitals and other facilities, where facility-based providers may not be in the same networks as the hospital. The NCOIL model—stemmed from a 2007 Texas law—aims to give consumers info through pre- and post- treatment notices about balance billing for elective non-emergency procedures.

Previously, the full Health Committee approved disclosure mandates for facilities, providers, and health benefit plans, as earlier developed by the NCOIL subcommittee. ■

Point-Counterpoint: How Much Should Life Insurers Disclose?

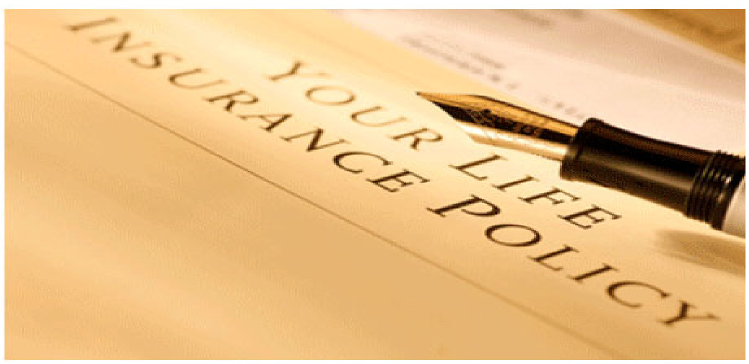
On November 19 at the NCOIL Annual Meeting, state legislators—after months of debate—will take final action on a draft Life Insurance Consumer Disclosure Model Act that would require insurer disclosure of eight (8) options in lieu of lapsing/surrendering a policy. The bill calls for notice to folks 60 or older or to folks who are chronically or terminally ill. The writers below answered the following question: Should life insurers disclose alternatives to lapsing or surrendering a policy, including life settlements?

Compelled Insurer Disclosures Is Bad Public Policy

By Michael Lovendusky

ACLI challenges the premise that "disclosure" is the objective of this initiative. Rather, this is an attempt by the settlement industry to impose its marketing costs on life insurers by forcing us to promote settlements to the elderly.

The possibility of a life settlement is non-existent for most policyowners. The U.S. Government Accountability Office found that policies of interest to settlement companies typically involve benefit amounts over $2 million. Since the average death benefit is about $100,000, and most policies are only $50,000, the notion that a settlement might be a viable option to the typical policyowner is a myth.



Even for those few owners who might be candidates for a settlement, numerous alternatives already exist within the insurance policy, including cash from the insurer, loans, contract replacements and exchanges. Creative individuals may design new alternatives in the future with benefits more valuable than life settlements. Enshrining a settlement option as a matter of law is inappropriate and may even inhibit the design of new and better products.

The U.S. Senate Committee on Aging found that settlements risk unintended consequences for the most vulnerable among us: the elderly and the infirm. Unexpected tax liabilities, decreased access to insurance, compromised eligibility for government benefits, loss of privacy and control of private health information are just a few of the dangers. The GAO observed that many states still have not enacted settlement laws that offer policyowners even a minimum level of protection. It is bad public policy to compel life insurers to promote non-insurance alternatives, including settlements. ■

Mr. Lovendusky is VP/Associate General Counsel with the American Council of Life Insurers in Washington, DC.

AFTERMARKET CRASH PARTS

NCOIL Nears Final Vote on Long-Debated Model!

NCOIL ANNUAL MEETING

Thursday, November 18
10 a.m. to 12 p.m.

Supporting the Life Insurance Consumer Disclosure Model: The Best Consumer is the Informed Consumer

By Michael Freedman

The *Life Insurance Consumer Disclosure Model Act* is a good idea whose time has come! The Model would require life insurers to provide policyowners with a simple notice that describes their rights and options before they lapse or surrender their policies. Seven states have established similar disclosure laws in the past 20 months, and NCOIL is right to promote uniformity and consistency in providing guidance to other states that will consider this issue.

The purpose of the Model is to educate consumers of their options. One of the options disclosed is the possibility of a life settlement. This is especially important since a substantial majority of life insurance policies will be lapsed or surrendered. And, in the words of Northwestern Mutual's chief actuary, "[t]he vast majority of policyholders who lapse their policies before death are the 'losers'. They receive much less at surrender than what any reasonable person would perceive as acceptable value."

So, why do the life insurers object so strenuously to providing consumers with important disclosures? We hear them say the cost they will incur will be too great. By that standard, insurers would be subject to no regulation at all.

The cost argument is both misguided and incorrect. The Model permits notices to be provided as part of other correspondence between the carrier and the policyowner and mandates that the disclosure form (which will be created by impartial insurance regulators) be developed at no cost to insurers.

Yes, this is a good idea whose time has come. ■

Mr. Freedman is Senior VP, Government Affairs with The Coventry Group in Fort Washington, PA.

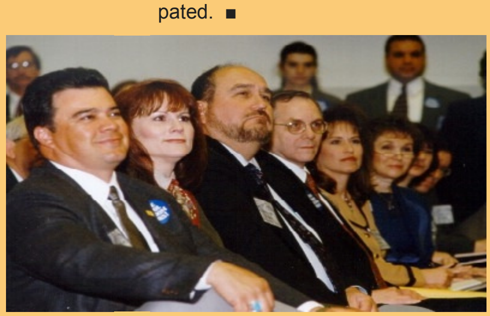
INAUGURAL NCOIL STATE LEADER SUMMIT TAKES SHAPE

A first-of-its-kind NCOIL *State Leader Summit: Working Session on Financial Modernization* will draw together key state officials aiming for **consensus on state modernization** initiatives on Friday, November 19, during the NCOIL Annual Meeting.

NCOIL President Rep. Robert Damron (KY) stressed in his invitations to state leaders that the summit would **coordinate efforts on existing regulatory gaps** because, he said, "As evidenced by recent federal initiatives, if the states do not do it, the federal government will."

Participants at the 8:00 to 11:30 a.m. event will discuss surplus lines reform—in light of the Dodd-Frank financial reform law—and annuity suitability, among other things.

NCSL President Sen. Richard Moore (MA) is confirmed to participate and representatives of The Council of State Governments, National Association of Attorneys General, National Association of Insurance Commissioners, and North American Securities Administrators Association are anticipated. ■



European…

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in London, and a European Securities and Markets Authority planned for Paris. The new offices would replace three existing EU commissions.

According to a Parliamentary statement, the supervisory agencies could take action against individual companies if there is a "manifest breach or nonapplication of law, and where there is disagreement between national authorities." The agencies also could place emergency bans on practices such as naked short selling.

The new system—which comes as EU officials work to implement an insurance Solvency II regulatory framework—follows months of EU-member negotiations and takes effect on January 1. ■

NCOIL Presses...

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—which he noted NCOIL had supported as a means to streamline surplus lines regulatory issues since 2007— "was developed over the course of several years during open meetings held at NAIC national meetings."

The NCOIL officer also pressed the need for consensus on SLIMPACT and other state initiatives during a November 19 Annual Meeting *State Leader Summit: Working Session on Financial Modernization* that would bring together state leaders of major national associations. ■

NCOILetter

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NCOIL FINALIZES

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provided for a fee, as well as the possibility of insurer income; and contact information, among other things.

Also, the Committee determined that insurers, rather than explain the methodology behind how they calculate interest, should provide less complex—but more helpful to beneficiaries, legislators felt—notice of the initial interest rate, as well as of when and how it may change.

Certain disclosure mandates in the earlier version were dropped. For instance, insurers no longer must compare advantages/disadvantages of holding settlement proceeds with the insurer in an RAA—as opposed to holding in a financial firm. Insurers also no longer must disclose any guarantee except possible FDIC protection.

Consumer advocate Birny Birnbaum of the Center for Economic Justice has asserted that RAAs are not temporary options, as insurers say—citing a NYS market conduct exam revealing nearly $31 million in one insurer's 3-to-5 year-old RAAs. Birnbaum called for periodic notice to beneficiaries of RAA existence, warned of unclaimed property issues, and pushed for more insurer reporting. Insurers countered that periodic notice was unneeded, banks don't give such disclosure, and folks often stay with RAAs because they enjoy high interest rates.■

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