

## NCOIL Pursues Impacts of New Essential Health Benefits

In the face of rapidly approaching Affordable Care Act (ACA) deadlines, legislators at the NCOIL Spring Meeting held a February 25 symposium entitled *Essential Health Benefits: Balancing Costs and Coverage* to shine light on how essential health benefits (EHBs) play into the overall reform package. Lawmakers and a diverse panel of experts—building on more than a year of NCOIL sessions dedicated to the ACA—played out how a December 16, 2011, U.S. Department of Health and Human Services (HHS) bulletin offering states flexibility to determine EHB benchmarks might impact policies offered on- and off-state insurance exchanges, as well as affect the cost and scope of health care benefits.

Teresa Miller of the HHS Center for Consumer (cont. on page 2)



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**NCOIL SUMMER MEETING**  
Burlington, VT  
July 12 — 15  
[www.ncoil.org](http://www.ncoil.org)



## NCOIL COMMITTEE DEBATES UNCLAIMED BENEFITS BILL, PREPS FOR INTERIM CALLS

As part of its ongoing effort to ensure the timely allocation of life insurance death benefits, members of the NCOIL Life Insurance & Financial Planning Committee sorted through controversial amendments to a *Model Unclaimed Life Insurance Benefits Act* on February 25, tentatively approving two revisions and determining to further consider several others during public conference calls in advance of the July NCOIL Summer Meeting. Amendments approved at the February Spring Meeting would exempt from the

model's scope policies to fund preneed funeral contracts, as well as credit life or accident and death insurance.

The newest amendments under review were sponsored by Rep. George Keiser (ND) and submitted ahead of the NCOIL 30-day meeting deadline. In addition to proposed exemptions from the model, amendments would, among other things, require insurers to compare policies to a U.S. Social Security Death Master File (DMF) semi-annually, rather than quarterly; add a drafting note suggesting (cont. on page 4)

## NCOIL PLANS NEW APPROACH TO CERTIFICATES OF INSURANCE MODEL, RESPONSE TO LENDERS

On February 26, lawmakers at the NCOIL Spring Meeting voted unanimously to explore a new statutory approach to address how policyholders, such as contractors and real estate developers, prove they have insurance to third parties like potential employers and lenders. The Property-Casualty Insurance Committee will meet via conference call over the next several months to draft a proposal for Summer Meeting review that could work in concert with an already-introduced *Certificates of Insurance Model Act* and could focus

on the challenges that lenders face when verifying coverage.

The decision, which responds to strong concerns expressed by property-casualty insurance and lending industry representatives, aims to ensure that the original purpose of the existing model—to stem fraud and misuse—remains intact.

"After nearly a year of debate and submission of dozens of amendments," said Committee Chair Rep. Steve Riggs (KY), "it's pretty (cont. on page 2 sidebar)

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clear that we need a new way to clarify what certificates are and what they aren't. Rather than exempt lenders from the model, which could create an unintended loophole and expose agents to greater liability, perhaps we should **respond to the lenders** separately. They have valid and unique concerns—it's just a matter of figuring out how to answer them."

In addition, Rep. Riggs recommended that "if the lenders have complaints about not getting policy documentation in a **timely manner** they should also make a complaint with the respective state's

## NCOIL Supports Enhanced Senior Protections, Backs NASAA and NAIC Models

At the Biloxi NCOIL Spring Meeting, the NCOIL Executive Committee unanimously advanced life insurance and annuity consumer protections by endorsing two model regulations curbing use of misleading senior-specific sales titles. Adopted on February 26 and sponsored by NCOIL Pres. Sen. Carroll Leavell (NM), a *Resolution in Support of Regulating the Use of Senior-Specific Certifications and Professional Designations* furthers lawmakers' goal of ensuring accountability, transparency, and disclosure in insurance markets and supports North American Securities Administrators Assoc. (NASAA) and

National Assoc. of Insurance Commissioners (NAIC) models.

Sen. Leavell said, "NCOIL is proud to join our securities and insurance regulator colleagues in advocating for these important consumer protections. Eradicating misleading sales titles is a goal we all share and our resolution encourages states to take appropriate actions."

"Implementation of these models and an NCOIL-backed NAIC *Suitability in Annuity Transactions Model Regulation* would also put states in prime positions to use federal dollars to beef up state protections," the NCOIL President added.

The NCOIL resolution supports the NAIC *Model Regulation on the Use of Senior-Specific Certifications and*

*Professional Designations in the Sale of Life Insurance and Annuities*, as well as the *NASAA Model Rule on the Use of Senior-Specific Certifications and Professional Designations*. The resolution also urges the Consumer Financial Protection Bureau (CFPB) to implement a program authorized by the Dodd-Frank Act to give state grants of up to \$500,000 for three consecutive years if a state implements the three models.

Before also approving the resolution—which built on discussion at recent NCOIL State Leader Summits—the Life Insurance & Financial Planning Committee on Feb. 25 dialogued with NASAA and NAIC reps, and the National Assoc. of Insurance & Financial Advisors, American Council of Life Insurers, and AARP urged support. ■

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Information and Insurance Oversight (CCIIO) framed the issue for legislators, overviewing the EHB bulletin and outlining ongoing HHS activity. The blue-ribbon panel also included Steve Finan of the American Cancer Society Cancer Action Network, Chris Peterson of Morris, Manning & Martin for an insurer view, as well as Mollie Zito of the American Medical Assoc. and Dr. Molly Droge, chair of the American Academy of Pediatrics' State Government Affairs Committee.

Panelists, lawmakers, and other stakeholders looked at how EHBs might tie in with state mandates,

including a need to beef up a state's benchmark plan so that it will include all benefits that the ACA requires. Symposium participants also explored the treatment of and need for pediatric benefits, such as for dental care and prostheses; discussed cost-sharing and shifting; and considered, among other items, what a federal EHB benchmark plan would look if states don't select their own.

A state benchmark plan, symposium participants noted, would be based on one of four health plans available in the state—including, for instance, one of the three largest small group

plans; one of the three largest state employee health plans; one of the largest federal employee health plan options; or the largest HMO plan offered in the state's private market.

As laid out in the December 16 directive, HHS intends for states to select their benchmark plans—which must address ten categories of services, including emergency services, hospitalization, maternity/newborn care, and prescription drugs—before end of September 2012. Time is of the essence, as states must submit exchanges to HHS for the Department's certification by Jan. 1, 2013. ■



Department of Insurance. Each state has procedure in place to deal with complaints of this nature."

The Committee, in conjunction with its effort to develop a lender-based proposal, will consider whether to strike an "**information only**" disclosure requirement from the draft *Certificates of Insurance Model Act*—a provision that has spurred some of the most intense NCOIL debate. Certain interested parties have called the

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suggested deletion a **compromise** between those for and against “info only” status.

The p-c industry asserts that certificates are only courtesy documents that do not substitute for a policy and that changing a certificate’s status to something more than informational would expose agents to greater liability. Lenders, who request certificates prior to closing on a loan or at renewal, argue that the forms must have more weight—particularly since

**insurance binders may expire** and commercial policies may not arrive for months. If a borrower has no coverage, the lenders say, they must pay when a loss occurs.

Some legislators and interested parties have suggested using New York State insurance binder law as basis for a **proposal to address lender concerns**. In New York, binders do not expire and policies renew automatically unless an insurer gives notice of cancellation or policy changes.

As introduced, the *Certificates of Insurance Model Act* would require insurance dept. approval of all certificate forms, mandate “info only” disclosure, and prohibit altering a certificate or using false or misleading data. The model would **ban reference** to third-party contracts and stress that a certificate confers no rights beyond what the policy allows. Draft amendments would exempt commercial lenders, among other things. ■



## States Regulate Homeowners’ Insurance, NCOIL Tells HUD

NCOIL called on federal officials to respect state insurance authority when, on February 26, legislators at the Biloxi Spring Meeting adopted a *Resolution Urging the U.S. Department of Housing & Urban Development to Refrain from Promulgating Any Regulation Intruding on the States’ Traditional Role as the Primary Regulator of Homeowners’ Insurance*. The resolution responds to a pending HUD rule that would establish liability when an insurance practice that is facially neutral has a discriminatory, other-

wise known as disparate, effect on a certain group of policyholders.

The resolution reflects long-standing NCOIL support for state oversight, asserting that states have authority to regulate homeowners’ insurance under the McCarran-Ferguson Act. The resolution warns that the HUD rule could erode comprehensive state laws, particularly related to homeowners’ insurance underwriting and rating, and therefore harm consumers and the market.

Supporters of the HUD rule, including a consumer advocate at the Spring Meeting, say that the rule

simply clarifies long-standing HUD practices under the federal *Fair Housing Act* and that HUD’s role in homeowners’ insurance is a companion to, rather than an infringement on, state regulation.



Opponents of the rule, including insurers and others, argue among other things that courts have rejected challenges to state oversight that were based on the disparate impact of certain insurance department-approved practices, such as insurance scoring. ■

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## NCOILetter

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### NCOIL Committee...

that states consider a one-year delayed effective date; and specify when group-plan insurers must confirm the possible death of an insured.

Due to time constraints, the Committee did not address amendments that Rep. Keiser submitted after the 30-day deadline that would further detail insurer requirements following a DMF match.

Noting that the sponsor of the underlying legislation, Rep. Robert Damron (KY), was not in attendance, legislators deferred their further consideration of all of Rep. Keiser's amendments to interim meeting calls.

A related *Unclaimed Life Insurance Property Administration Model Act* that Rep. Keiser proposed will also be considered during the calls. The draft model would require unclaimed property administrators to compare property against the DMF on at least a

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semi-annual basis, among other things.

As adopted in November 2011, the NCOIL *Model Unclaimed Life Insurance Benefits Act* requires insurers to compare the DMF with holders of in-force life insurance policies and retained asset accounts. The model calls for timely insurer efforts to confirm an insured or account holder's death, locate any beneficiaries, and provide them with claims forms and instructions. In the event that benefits go unclaimed, the model provides clear procedures for life insurers to notify state treasury departments and to escheat the funds, per unclaimed property laws. ■

