

Legislators Seek Alternative to Catastrophe Insurance Funds

After voting overwhelmingly in February to sunset a 17-year old NCOIL catastrophe fund model act, NCOIL legislators are renewing their efforts to promote catastrophe insurance reform by considering alternate approaches for Summer Meeting review. The Property-Casualty Insurance Committee, looking at a gamut of existing initiatives, will meet via conference call prior to the July 12 through 15 meeting to set a course for Committee action. The effort builds on NCOIL's support for strong building codes and land-use strategies, among other items.

New options for consideration include tax/premium credits, insurer incentives, various residual market reforms, retrofitting and other mitigation grants, use of *(cont. on page 2)*



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NCOIL SUMMER MEETING
Burlington, VT
July 12 — 15
www.ncoil.org



NCOIL SEEKS ANSWERS ON SUPREME COURT HEALTHCARE RULING

A few short weeks after the U.S. Supreme Court weighs in on healthcare reform constitutionality, legislators at the NCOIL Summer Meeting will explore what the ruling means for consumers and the market—and, of course, for state implementation. The Friday, July 13, symposium, entitled *Healthcare Reform: What Hurdles Lie Ahead?*, will feature experts well-versed in what the Justices said, why they said it, and what states can expect going forward. The event also will look at how states can prepare—given the Affordable Care Act's (ACA) take-all-comers require-

ment—for a 2014 influx of patients needing substance abuse treatment.

The 12:30 to 3:00 p.m. symposium will kick off with a briefing from the White House Office of National Drug Control Policy (ONDCP). Deputy Director David K. Mineta of the Office of Demand Reduction will outline how substance abuse treatment plays out across the states—and in context of a 2008 federal mental health parity law—as well as offer thoughts on the need for a sufficient workforce to care for substance abusers and on allowing for a full complement of benefits.

Invited guests in the next phase *(cont. on page 4)*

NCOIL TO EXPLORE FINDINGS, IMPACTS OF OVERDUE FIO REPORT

With expectations for a long-delayed Federal Insurance Office (FIO) report continuing to grow, NCOIL has scheduled a special July 12 Summer Meeting roundtable in Burlington, Vermont, on what the study says and the changes it portends. The session, entitled *States and the FIO: What Does the FIO Report Mean for U.S. Insurance Regulation?*, will look at both the broad implications of the possibly game-changing report and at subject areas highlighted within it.

geted state reform and state legislators' concern over growing interest in a larger, unwarranted federal role.



Speakers will look at whether the FIO is a partner in—or a threat to—state oversight; *(cont. on page 3)*

The roundtable reflects NCOIL's commitment to tar-

Legislators...

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catastrophe savings accounts, creation of captive insurers, and other approaches. The Committee after the Spring Meeting solicited, as a **starting point for discussion**, interested-party suggestions on reforms that NCOIL should pursue. A common theme in the responses—in addition to endorsement of statewide building codes—was a **de-emphasis on public-sector mechanisms**.

The American Academy of Actuaries (AAA), American Insurance Association (AIA), The Heartland Institute, Property Casualty Insurers Association of America (PCI), and SmarterSafer.org at present have responded to the Committee's query.

The **1995 NCOIL Model State Legislation Creating a Natural Disaster Catastrophe Fund** was based on a Florida fund established after Hurricane Andrew. Advocates of the NCOIL model said it was **critical to state catastrophe preparedness** and helped inform discussion. Opponents of the model said that catastrophe funds distort **insurance markets** and that the model had garnered insufficient support.

The P-C Committee's goal is to discuss a new catastrophe proposal during its Friday, July 13, meeting from 3:00 to 4:15 p.m. in Burlington, Vermont. ■

U.S. Supreme Court Considers Fate of 2010 Healthcare Reform

Lawyers debating the constitutionality of the *Affordable Care Act (ACA)* concluded their arguments before the U.S. Supreme Court in late March, leaving the future of the wide-ranging reform law in the hands of nine justices. Following six hours of debate that extended over three days—the most time that the Court has dedicated to a single law in over 40 years—the justices will rule on four critical items, including the hot-button individual mandate. Decisions are expected in June.

Too soon to challenge?

Under ACA, people who do not buy health coverage—do not comply with the individual mandate, in other words—must pay a penalty when filing their 2014 income taxes. ACA advocates say the penalty is essential to making the individual mandate work. If the penalty is considered a tax, though—as some people say it is—then the question is whether a 19th century *Anti-Injunction Act* makes it unlawful to



dispute the tax until it's actually paid. In other words, is it

too early to challenge?

Individual mandate

The issue is whether the U.S. gov-

ernment can tell a person to do something—in this case, buy insurance. The Justice Department says “yes” because, among other things,



it argues that failure to buy insurance affects interstate commerce, which the U.S. government is allowed to regulate under the Constitution's Commerce Clause. ACA opponents say “no” on the grounds that the government has never before forced people to buy a product and participate in a market they may not otherwise.

Severability: individual mandate vs. rest of law

People both for and against ACA say that eliminating the mandate



while still requiring insurers to take all comers would lead to a “death spiral,” in which insurance costs rise because there are fewer healthy people to help spread risk. If the individual mandate is struck down, should guaranteed issue also go by the wayside? Should other ACA requirements—such as creating new insurance exchanges—be affected?

Say the Court wants to strike down all of ACA...would the Justices be usurping congressional authority?

Medicaid expansion

Observers agree that expanding state-federal Medicaid is vital to the ACA goal of insuring an additional 30 million Americans. According to the 26 states challenging the ACA, the expansion would



financially burden states that are already strapped for Medicaid dollars, and the extra funds being provided by the Feds, which will vary over time, are not enough. Challengers say that the expansion is coercive because a state without an expanded program stands to lose all its federal Medicaid money. Justice Department defenders of the expansion requirement say, among other things, that the Feds wouldn't do that. ■





Legislators Move Toward Model on WComp Repackaged Drugs

In line with efforts to prevent spiraling workers' comp costs, NCOIL legislators soon will deepen their investigation into controversial physician sales of "repackaged" drugs and move the organization one step closer toward development of a model law. The Workers' Comp Insurance Committee, which determined at the NCOIL Spring Meeting to pursue the issue further, is responding to concerns that allegedly overpriced repackaged drugs, which are dispensed by doctors in offices rather than via pharmacies, lead to higher medical costs and, therefore,

higher insurance premiums.

The Committee—which meets next on July 12 at the Burlington Summer Meeting—is planning to review state cost-containment strategies following activity in places such as Florida and Maryland, as well as in light of other, already-existing state requirements. The comparison of state standards and restrictions will be the springboard from which the Committee could develop a model based on one or more methods. Proposed legislation could be aired as early as the Summer Meeting.

Before choosing to move forward with a model, the Committee had heard from the National Council on Compensation Insurance (NCCI) and

healthcare provider and insurer reps. NCCI noted that repackaged drug sales are escalating, especially in the South and Midwest. The provider representative asserted that physician dispensing is critically important and that though some repackaging companies set high prices, there are repackagers whose rates are more "reasonable." The insurer rep urged support for amending fee schedules so that the average wholesale price of a repackaged drug is no more than of a non-repackaged version. It was noted that three states—MA, NY, and TX—prohibit repackaging.

A repackaged drug industry representative was unavailable to comment. ■

NCOIL to Explore...

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examine how the report impacts key issues, such as **market conduct and producer licensing**; explore opportunities for state legislators to weigh in going forward and a possible role for NCOIL; and consider whether and how **Congress might take action**, among other things. Participants,



in addition to invited FIO Director Michael McRaith, are expected to represent the National Association of Insurance Commissioners (NAIC) and consumer, insurer, and agent communities.

The 2010 Dodd-Frank Act required the FIO—an entity with the U.S. Department of Treasury—to submit its report to Congress **back in late January** of this year. Some observers, including legislators, have expressed concern that the report—which has been directed to address the **costs/benefits of potential federal regulation** and the feasibility of federally regulating certain insurance lines, among other things—may foreshadow a greater federal role in insurance. ■



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- healthcare reform costs & legal challenges
- life insurance unclaimed benefits
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- lawsuits and third party loans
- oral chemotherapy coverage rules
- natural disaster insurance reforms
- FIO report & future of state regulation

NCOIL SUMMER MEETING



JULY 12 - 15, 2012

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NCOIL Seeks...

of the symposium include representatives of the U.S. Department of Health & Human Services (HHS), the National Association of State Medicaid Directors (NAMD), and employer, consumer, and insurer groups. Participants will consider ramifications of the Supreme Court ruling on state efforts to comply with ACA and on HHS rulemaking; will explore what could happen if the Court strikes down the ACA individual mandate and Medicaid expansion provisions; will suggest possible state-based solutions that might exist absent the individual mandate; and will speak to the role of single-payer.

In rulings expected in June, the Supreme Court will decide whether the individual mandate is constitutional and, if not, whether the remainder of the ACA should stand. The Justices will determine whether

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it's even the right time to challenge the mandate, since the monetary penalties for violating it haven't kicked in yet, and will decide whether the ACA Medicaid expansion oversteps constitutional grounds. *(See article page 2 for details.)*

The July NCOIL symposium is the group's latest in-depth look at ACA issues and implementation. The Summer Meeting will take place from July 12 through 15 in Burlington, Vermont. ■

