



States Continue to Scrutinize Growing Captive Industry

The growth of the captive insurance industry, which rating agency A.M. Best reports is now outperforming commercial insurers, continues to draw attention from state and federal regulators. Use of captives, or special-purpose vehicles (SPV), by life insurers is under particular scrutiny from regulators.

The National Association of Insurance Commissioners (NAIC) proposes allowing its Financial Analysis Working Group (FAWG) to review future transactions and collect data on reserve ceding. NAIC is also preparing to push for further adoption of its principles-based reserving (PBR) model in 2014. At NCOIL meetings, NAIC representatives have argued that PBR will right-size reserves, mitigating at least some need for captives.

Yet, the potentially lucrative industry has proven very attractive to states amid a period *(cont., p. 2 sidebar)*

inside this issue

NCOIL to Investigate Cyber-Insurance Issues, Fed Efforts **P.2**

Treasury Renews FACI Charter, NCOIL Weighs in **P.3**

NCOIL Urges TRIA Reauthorization **P.3**

REGISTER TODAY!

ANNUAL MEETING
Nov. 21 - 24
Nashville, TN
www.ncoil.org



NAVIGATORS GROW IN IMPORTANCE FOR ACA ENROLLMENT EFFORT

The Department of Health and Human Services (HHS) August 15 announcement of \$67 million in grants for navigators in Federally-Facilitated Exchanges (FEEs) highlights the increasing importance of navigators in consumer outreach efforts during the upcoming open enrollment period of the Affordable Care Act (ACA). The funding is \$13 million higher than originally anticipated as navigators will be expected to shoulder more of the outreach in states resistant to the ACA.

Navigators in federal-exchange states Florida and Texas, where state officials are not planning their own outreach efforts, received the most funding—

though the money has yet to be disbursed. In states such as these, navigators may constitute one of the few means of reaching consumers during the crucial open enrollment period. Enrollment, especially of healthier consumers, is critical to the success of the ACA.

Announcing the grant, Secretary Sebelius said in a statement that “A network of volunteers on the ground in every state – health care providers, business leaders, faith leaders, community groups, advocates, and local elected officials – can help spread the word and encourage their neighbors to get enrolled.” *(cont. on page 2)*

NCOIL PLANS NEW APPROACH TO CONSUMER LEGAL FUNDING MODEL

NCOIL legislators, seeking to wrap up nearly two years of debate over fairness and fees in consumer legal funding, are taking a new approach to possible model legislation. After considering three distinct proposals for many months, lawmakers’ plan for the November Annual Meeting is to explore the pros and cons of a single model law—including one that could cap lender charges.

Property-Casualty Insurance Committee Chair Rep. Matt Lehman (IN) has called for the new strategy, saying recently that “Although there’s been value in

looking at different approaches to best serve consumers and others involved, the time has definitely come—if we want to resolve this long-standing NCOIL issue—to focus our efforts on one piece of legislation.”

The most controversial proposed model, sponsored by Rep. Lehman, would set a strict cap on how much lenders can charge. The draft *Model Consumer Lawsuit Lending Alignment Bill* would put the regulation of consumer legal financing on par with oversight of credit card *(cont. on page 4)*

States Continue to Scrutinize...

(cont. from page 1)

of sluggish economic growth.

This year alone, Texas, North Carolina, South Carolina, Michigan, and Montana have all enacted legislation to expand or establish captives within their borders.

Captive growth has also raised interest among federal and international supervisors. European captive insurers are wary of the impact that the European Union (EU) Solvency II



initiative will have on regulation. Though the Federal Insurance Office (FIO) has expressed desire to take a close look the sector, it remains unclear what steps the Office will take or how it will address captives in its long-awaited insurance modernization report.

NCOIL will continue to examine captives during a special November 22 session on principles-based reserving (PBR), to be held during the November 21 to 24 Annual Meeting in Nashville, Tennessee.

NCOIL to Investigate Cyber-Insurance Issues, Federal Efforts

Earlier this year, President Obama signed an Executive Order designed to promote the development of a Cybersecurity Framework aimed at increasing the ability of our nation's critical infrastructure systems to appropriately manage cyber risks. As part of this process, officials are seeking to create a dialogue with the insurance industry. In response to federal efforts to engage insurers, NCOIL will explore cyber-insurance issues and opportunities at the Annual Meeting.

As directed by the President's

Executive Order, the National Institute of Standards and Technology (NIST), housed in the Commerce Department, is taking steps to engage the insurance industry in developing the Framework. According to White House Cybersecurity Coordinator Michael Daniel, "The goal of this collaboration is to build underwriting practices that promote the adoption of cyber risk-mitigating measures and risk-based pricing and foster a competitive cyber-insurance market." NIST aims to complete a draft Cybersecurity Framework by this October and to finalize the

Framework in February 2014.

Chair of the NCOIL Financial Services Committee Rep. Tommy Thompson (KY) said, "Mitigation of cyber risks and cyber-insurance is a crucial emerging issue that could affect the insurance industry. NCOIL is looking to engage stakeholders in discussing issues surrounding the market, such as cyber-insurance take-up rates, affordability and availability. NCOIL will consider these issues and more during the November meeting in Nashville as an entrée to more extensive discussions in 2014."

Navigators Grow...

In contrast to neighboring Texas, California has budgeted over \$250 million of its own money over the next two years for its consumer assistance program, and many other state-based exchanges are also making an active effort to engage consumers.

For some, the increasing role of

navigators is cause for concern. Wes Bissett of Independent Insurance Agents & Brokers of America said that over time the navigator program has shifted from a consumer advisory role to a more active participant in federal outreach. He remarked that for agents, "the issue is not who HHS

picks to be the navigators in the exchanges. For us it's a states' rights, state jurisdiction, issue when it comes to navigators."

On November 21, NCOIL at a special Annual Meeting session will monitor progress on enrollment as exchanges open for business.

(cont. from page 1)



SIGN UP TODAY
for the
NCOIL ANNUAL MEETING!

November 21 to 24
Hilton Nashville Downtown

Register at www.ncoil.org
for low rates in room block!

*** Tentative agenda online now ***

Treasury Renews FOCI Charter, Concerns Remain over Lack of State Legislative Involvement

In early August, the Department of Treasury renewed the charter of the Federal Advisory Committee on Insurance (FOCI) for two years, until July 29, 2015. Since the formation of FOCI by Treasury in 2011, NCOIL leaders have expressed concern that the committee lacks a key perspective—that of a state lawmaker.

Following the renewal of FOCI's charter, NCOIL President Rep. Charles Curtiss (TN) noted the importance of a state legislative view, saying, "As the final word on insurance policy in their respective states, state legislators provide both relevant experience and important perspective. I hope Treasury will seriously consider

adding a state lawmaker to FOCI membership ranks going forward."

NCOIL has been a constant advocate for state legislative representation on key federal committees that may impact state insurance markets. Former NCOIL President Rep. George Keiser (ND), who in June 2011 applied for FOCI membership, said, "The lack of state legislative representation on FOCI is particularly unfortunate because the committee considers issues that could profoundly affect state oversight of the business of insurance." FOCI was created pursuant to the Dodd-Frank Act to offer advice and recommendations to the Federal Insurance Office. FOCI

subgroups examine issues such as captive insurer practices, affordability of products to underserved communities/consumers, credit rating agencies, and the NFIP. FOCI is composed of 15 national insurance experts—one



consumer advocate, one academic, seven state insurance commissioners, and six industry reps. Members are selected by Treasury and serve two-year terms.

NCOIL Weighs in on TRIA, Reiterates Need for Extension

The President's Working Group on Financial Markets, an advisory group composed of representatives from four federal financial agencies, is preparing a report analyzing terrorism insurance. At the NCOIL Summer Meeting in July, legislators adopted a *Resolution in Support of the Further Extension of the Terrorism Risk Insurance Act of 2002*, which urged Congress to take action as soon as possible to extend TRIA. In August, NCOIL again voiced support for the long-term extension of TRIA, by submitting public comments

for the President's Working Group report.

The comments submitted to the working group reiterate the vital role TRIA has served in ensuring that terrorism risk insurance is readily available at affordable rates. NCOIL's comments point out that the "uncertainty surrounding TRIA's renewal has already led some insurers not to renew certain programs for organizations with large employee concentrations in major cities. The lack of a viable market for terrorism insurance, to cover

losses from a potential terrorist attack, could result in the federal government covering such losses."

TRIA is set to expire on December 31, 2014. When TRIA was last extended in 2007, the law required the President's Working Group to undergo periodic studies on availability and affordability of terrorism risk insurance to assist Congress with policy-making decisions. The last report was issued in 2010, and the current report is set to be completed by September 30.

Opioid Best Practices Down to the Wire at NCOIL Annual Meeting

On Friday, November 22, NCOIL legislators at the Nashville Annual Meeting will hone in on proposed NCOIL *Best Practices to Address Opioid Abuse, Misuse & Diversion*—a recommended framework against which states can measure their own reforms—with an eye toward approving the document in time for 2014 legislative sessions.

The 1:30 to 3:00 p.m. event will be held jointly by the Workers' Compensation Insurance and Health, LTC & Health Retirement Issues Committees. The proposal under consideration will reflect enhancements made after the September 6 conclusion of a second interested-party comment period. The updated draft will be made available before October 21—the 30-day deadline for submitting proposals to be considered at the Annual Meeting.

The proposed best practices highlight prescription drug monitoring programs (PDMPs), physician prescribing practices, education and outreach, and treatment and recovery. They are available at www.ncoil.org, on the Model Laws & Resolutions/Committee Working Drafts page.



NCOILetter

Susan F. Nolan, Publisher/Editor
Candace Thorson, Managing Editor
Eric Ewing, Associate Editor
Jennifer Webb, Associate Editor

Simone Smith, Operations Coord.
Laurie Dingmon, Fin. Coordinator

Opinions expressed in the *NCOILetter* do not necessarily reflect NCOIL views or opinions. The *NCOILetter* is published by Nolan Associates LLC.

NCOIL PLANS...

transactions—including similar interest rate caps and disclosure mandates.

Proposed models sponsored by NCOIL President Rep. Charles Curtiss (TN), who brought the issue to NCOIL attention, and Vice President Sen. Neil Breslin (NY) take a broader approach. Both proposals would subject consumer legal funding to various disclosure requirements and also would, for instance, ban referral fees, create guidelines for distributing proceeds, and set forth attorney requirements.

Key differences between the Curtiss and Breslin drafts—respectively referred to as a *Consumer Legal Funding Model Act* and a *Civil Justice Funding Model Act*—relate to how long a lender can assess fees, whether to require arbitration when

(cont. from page 1)

disputes arise, and whether multiple lenders can fund a consumer at the same time, among other discrepancies.

The practice of consumer legal funding, likewise known as non-recourse funding, takes place when a lending company gives money to a plaintiff in return for receiving a portion of any settlement or award. The third-party lender receives nothing—including the amount of the original loan—if the plaintiff loses. Consumers often use the funds to pay daily expenses while a lawsuit works its way through the courts.

The P-C Insurance Committee will debate consumer legal funding during its November 22 and 23 meetings. The Annual Meeting will take place from November 21 to 24 in Nashville.