



NCOIL to Explore New Reserving Method as NAIC Promotes State Adoption

As the National Association of Insurance Commissioners (NAIC) promotes a new, principle-based reserving (PBR) method in the states—as opposed to the current formulaic approach—NCOIL will ask hard questions aimed at giving state legislators a comfort zone as they consider enactment in their states. The discussion will serve as primer on the impact of PBR as well as a forum for potential legislative and other concerns, particularly in the wake of New York State’s announcement that it will opt out of the PBR regime.

At an NAIC meeting in August, NCOIL Past President Rep. Bob Damron of Kentucky commented that “It’s not something guys in our state would do without feeling pretty solid, pretty safe.”

“Principle-Based Reserving Coming to the States: How Do Captives Play In?” will feature (*cont. on p. 2 sidebar*)

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FSB REPORT FINDS U.S. INSURANCE SUPERVISION FRAGMENTED, REGULATORS AND INDUSTRY GROUP DISAGREE

On August 27 the Financial Stability Board (FSB), an international advisory group, completed a peer review of the U.S. that examined topics relevant to financial stability. Relating to insurance supervision, one of the three topics covered in its report, the FSB criticized the state-based insurance regulatory system for a lack of organized focus and suggested that the U.S. consider a more federalized regulatory structure. Following the release of the FSB report, state regulators, the NAIC, and the insurance industry voiced disagreement with its findings.

The report found that while federal and state authorities have made many positive steps in modernizing and streamlining insurance regulation, significant work is still required. Particularly, the report stated that the state-based regulatory system lacked a systemic focus and the capacity to exercise group-wide oversight.

Connecticut Insurance Commissioner and NAIC International Insurance Relations Committee Chair Tom Leonardi criticized the report, saying that it exhibited a lack of understanding (*cont. on page 2*)

GUIDING LEGISLATORS THROUGH ACA: NCOIL LOOKS AT THE NUMBERS

As the weeks following October 1 will offer the first hard data on health exchange enrollment and costs, NCOIL has committed to guide state legislators through the next stages of Affordable Care Act (ACA) implementation. At its Annual Meeting in Nashville in late November, NCOIL will explore how ACA is playing out in the states.

At a November 21 special session entitled “Exchange Enrollment: What We Know So Far,” legislators will have the opportunity to review the early returns on enrollment. Invited panelists in-

clude Gary Cohen, Director of the Center for Consumer Information & Insurance Oversight (CCIO); Anita Fete of Enroll America; and Richard Birhanzel of private exchange consultant Accenture.

“Healthcare Costs in the ACA Era: Emerging Trends,” immediately following, hones in on one of the more controversial questions surrounding the ACA—its costs to consumers, employers, providers, and ultimately the states. Audrey Halvorson of the American Academy of Actuaries; James O’Connor of Milliman; (*cont. on page 3 sidebar*)

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perspectives from NAIC President Commissioner James Donelon of Louisiana, Deputy Commissioner David Provost of Vermont, and Deputy Superintendent Robert Easton of NY.

On September 12, New York Department of Financial Regulation (DFS) Superintendent Benjamin Lawsky informed fellow regulators that his department is opting not to participate in **the PBR regime** based on preliminary results from a "PBR-lite" approach put in place via Actuarial Guideline 38. In his statement, the Su-



perintendent alluded to the relationship between PBR and the **use of captives** by life insurers, noting that a combination of the two could represent a "potent cocktail."

The NAIC Standard Valuation Law requires that **42 states representing 75 percent of total premium** volume enact any change before it becomes effective. Currently, eight states have enacted PBR.

The PBR session will take place in conjunction with the NCOIL Annual Meeting.

Legislators Seek Uninsured Motorist Solutions, Plan Meeting on Auto Insurance Verification

Legislators at the NCOIL Annual Meeting will work to reduce numbers of uninsured motorists and lower insurance costs during a special November 22 session on approaches to auto insurance verification. The event, taking place in Nashville, will offer insight into the three verification systems most considered in states.

"The goal of auto insurance verification," said Rep. Brian Kennedy (RI), an NCOIL Past President and moderator of the session, "is to link state motor vehicle offices and insurers together in an effort to reduce the number of uninsured vehicles on the roads. The ultimate end result,"

he said, "should be fewer uninsured motorists, and that should translate into policy savings for all the other motorists on the road who are abiding by mandatory auto insurance laws."

Speakers at the 3:15 to 4:30 p.m. NCOIL event will include Richard Kasteler, President/CEO of Insure-Rite, which matches vehicle registration info against insurer data and then sends letters to drivers who appear to be uninsured, and Jonathan Miller, President of InsureNet, which uses roadside cameras to scan passing license plates and compare them with an interstate database.

In addition, George Cooper, P&C

Underwriting Manager at State Farm and on behalf of the Insurance Industry Committee on Motor Vehicle Administration (IICMVA), will speak to an IICMVA model law calling for a web-based, insurer-maintained system that state officials would check on an "as need" basis. The approach would be in lieu of insurers submitting their coverage records to an outside database on a pre-arranged schedule.

Speakers will explain how their systems use information, where it comes from, and when; what costs are involved and who pays; how law enforcement and DMVs factor in; and how the systems are playing out in the states.

FSB Report...

of what state regulators do. Commissioner Leonardi further questioned the idea of federalizing insurance regulation, noting that the state-based system had worked effectively for 150 years.

Certain industry representatives also reacted to the FSB sugges-

tion that the U.S. consider a federal-based approach to insurance regulation. The Property Casualty Insurance Association of America issued a statement cautioning against a federal system, raising concerns that the FSB approach would result in an unsuitable "bank-centric" regulatory regime

being applied to insurers.

NCOIL will consider the potential ramifications of the FSB report at its annual meeting in November. NCOIL opposes any actions that infringe on states' primacy to regulate their individual insurance markets.

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New York Launches Nation's Toughest Physician Mandate for Opioid Tracking

On August 27, New York doctors became the first in the nation who must check a prescription drug monitoring program (PDMP) every time they wish to prescribe or dispense an opioid or similar drug. The requirement—included in the state's August 2012, unanimously enacted "Internet System for Tracking Over-Prescribing Act," or "I-STOP"—is tougher than the mandates found in the handful of other states that require a physician to review PDMP records.

The I-STOP law—which NYS Attorney General Eric Schneiderman described on August 27 as "a national model for smart, coordinated communication between health care providers and phar-

macists"—applies to practitioners who want to treat a patient with a Schedule II, III, or IV drug. The practitioner or a member of his or her staff must consult the PDMP no more than 24 hours prior to treatment—looking for signs of "doctor shopping" and potentially dangerous interactions with other medicines, for instance—and failure to check the PDMP is considered willful misconduct, subject to certain exemptions.

What makes New York different from states with similar requirements—Kentucky, Massachusetts, New Hampshire, Ohio, Tennessee, Vermont, and West Virginia—is that a practitioner must look at a patient's PDMP record the first time the practitioner wants to

treat with a Schedule II, III, or IV drug, and then also every time after that. In practice, that could mean that a New York physician checks the patient's PDMP info several times a year. In the other states, a physician only must consult the PDMP the first time and then at a specified period after—generally, once annually.

As in other states, though, New York's I-STOP law allows certain exclusions. For instance, a physician does not have to consult the PDMP in an emergency room setting when the prescription is limited to a five-day supply. Consulting a patient's PDMP record does not apply to hospice patients, to prescriptions that will be administered (cont. on p. 4)

Producer Licensing Legislation May Gain Momentum in Congress

The bipartisan National Association of Registered Agents and Brokers Act of 2013, commonly referred to as NARAB II, moved out of the U.S. House of Representatives by a vote of 397 to 6 on September 10. Passage of House Bill 1155 marks the third time NARAB II legislation has garnered a successful vote in the House. In years prior, the legislation failed to make headway in the Senate. This year may be shaping up differently.

In June, the Senate Banking

Committee approved Senate Bill 534, a version of NARAB II nearly identical to the legislation accepted in the House earlier this month. While ultimate passage remains uncertain, industry sources believe that the Senate version may see a floor vote this year, moving NARAB II closer to enactment than ever before.

NCOIL has long worked toward uniformity in producer licensing, most recently passing a resolution in July 2012 advocating modernization. In the resolution,

NCOIL urged state legislators and state regulators to work together to eliminate nonresidential licensing barriers.

If enacted, NARAB II would create a national clearinghouse for multistate producer licensing, in comparison to the federal agency proposed by its predecessor, NARAB. NARAB II would be governed by a nonprofit board of current and former regulators and insurance industry representatives, on which state regulators would have a majority.

Kevin Kuhlman of the National Federation of Independent Business; and Mary Mahon of the Commonwealth Fund have been invited to help answer legislator questions on changing health costs impacting their states.

A special session entitled "A **New Era for Medicaid**: Measuring Costs and Quality" on November 23 will examine the future of Medicaid as states enter the ACA era. Matt Salo of the National Association of Medicaid Directors; Tina Brill of the Tennessee CHOICES Program; Jason Helgerson, Director of New York Medicaid; and Susan Reinhard of the AARP Public Policy Institute have



been invited to join NCOIL legislators to assess emerging state approaches to Medicaid.

To round out the exploration, the NCOIL Health, LTC & Health Retirement Issues Committee, on November 24, will hear from a Federal Trade Commission representative on **ACA-related fraud**, the federal government's efforts to combat scams, and what state legislators can do to help.



NCOILetter

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in a hospital or clinic or within the prescriber's office, or to using drugs like methadone when given to addicts awaiting admission into treatment programs, among other scenarios.

Also under I-STOP, pharmacists can, for the first time, check the PDMP before dispensing a drug, and they must report the drugs they dispense within "real time." Oklahoma is the only other state with real-time reporting.

Other I-STOP provisions establish a safe drug disposal program, end automatic refills of hydrocodone, and—in an effort to curtail forged and stolen prescriptions—require physicians to e-prescribe all controlled substances as of March 2015. The law prohibits the state from funding the PDMP by assessing fees on prescribers.

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According to New York law enforcement, I-STOP has already led to drug-related arrests because mandatory checking of the PDMP has revealed evidence of fraud and other illicit behavior.

At the NCOIL Annual Meeting on November 22, legislators will finalize NCOIL best practices to curb opioid abuse and diversion, which outline dozens of reforms related to PDMPs, pill mills, drug take-backs, education and outreach, treatment and prevention, and other items. Included



are opportunities for mandatory PDMP use and real-time reporting. Details are at www.ncoil.org.