

## NCOIL to Debate New York-Based Out-of-Network Provider Model

NCOIL legislators at their November 12 Health, LTC & Health Retirement Issues Committee meeting in San Antonio will kick off debate on a proposed *Model Act Regarding Network Adequacy and Use of Out-of-Network Providers*—language based significantly on a 2014 New York State law. The proposal looks to ensure that patients have ample choice of in-network physicians and to protect consumers from surprise bills when they unknowingly use out-of-network doctors. The Committee will consider the draft during the November 12 to 15 NCOIL Annual Meeting.

The proposed model requires insurance department approval of each insurer's provider network and re-approval at least every three years. The draft calls for disclosure of estimated out-

(cont. on p. 2 sidebar)



### inside this issue

NCOIL to Explore Reasons for Today's Health Premiums **P.2**

Legislators to Evaluate "Sharing" Economy Impacts **P.3**

Congressman Urges Caution, Coordination on Capital Rules **P.3**

Trade Partnership Update **P.3**

**ANNUAL MEETING**  
November 12 - 15  
San Antonio, TX



## Study Raises Concern over "Opt-Out" Workers' Comp Benefits, Prompts Federal Action

A study published on October 14 raised concerns that employees receive scaled-back benefits under "opt-out" workers' compensation plans and prompted key U.S. House and Senate members to call for a Department of Labor (DOL) investigation. The joint NPR and ProPublica report, which included anecdotes from injured workers and their beneficiaries, compared 120 opt-out plans used by companies in Texas and Oklahoma against plans in the traditional, state-regulated workers' compensation market.

Texas and more recently Oklahoma are the only two states that allow employers to opt out of state workers' compensation requirements, though Tennessee has considered legislation and momentum is building in South Carolina and elsewhere. Proponents say that an opt-out system can bring much-needed savings for companies large and small—reportedly more than one billion dollars over the last decade in Texas alone—without compromising benefits. In fact, proponents say, opt-out plans often (cont. on page 2)

## Federal Cyber-Security Legislation on the Move, Passes Senate

On October 27, the U.S. Senate overwhelmingly approved the *Cybersecurity Information Sharing Act*. The legislation, years in the making, would give companies legal immunity for sharing potential data breaches with the Department of Homeland Security (DHS) and authorize DHS info sharing with the FBI, the NSA, and other federal agencies. The bill, S. 754, heads to conference to reconcile with the House version, *The Protecting Cyber Networks Act (PCNA)*, which passed in May by a 307-116 vote.

Supported by p-c insurance companies and op-

posed by civil liberty and privacy advocates, as well as by tech trade groups—the legislation received qualified support by Administration, hoping to make improvements in conference.

Cyber-security and insurance will be a key topic of the NCOIL Financial Services Committee when it



meets on Nov. 12 at the NCOIL Annual Meeting.

## NCOIL to Debate New York-Based...

(cont. from p. 1 sidebar)

of-pocket costs for frequently billed out-of-network health-care services and allows a consumer to appeal when an insurer denies treatment because the provider is out-of-network.

The New York-based provisions also, among other things, require various contact information and other disclosures related to hospitals, physicians, and specialists that may play a role in the patient's treatment. The draft excludes emergency services.

Sponsored for discussion by NCOIL Past President Sen. James Seward (NY), the proposed model is consistent with a 2011 NCOIL *Healthcare Balance Billing Disclosure Model Act*, which also lets consumers know that surprise bills are possible. New York provisions not included in the newly introduced network adequacy/out-of-network provider model would establish a comprehensive dispute resolution process when patients disagree on the amount of their balance bills. Those other provisions may be considered in 2016 as an enhancement to the existing NCOIL balance billing model.

(cont. on page 3 sidebar)

## Study Raises Concern over "Opt-Out"...

(cont. from page 1)

require an employer to pay a higher percentage of worker wages than standard plans do—while eliminating inefficiencies found in traditional markets.

Supporters maintain that opt-out plans are governed only by the federal Employee Retirement Income Security Act (ERISA). NPR and ProPublica note that if this is true—and the authors question if it is—then states have no jurisdiction when injured workers say they were treated unfairly. ERISA makes it more difficult for workers to prove their case, NPR and ProPublica report, and the federal court system often takes longer than state systems.

Opt-out opponents form an unlikely coalition of plaintiff attorneys, insurers, worker advocates, medical providers, and other entities. Challengers allege that opt-out benefits are far less generous than those provided under traditional workers' compensation, that employers deny coverage by narrowly defining what a workplace injury is and by imposing tight rules on when an employee must report an injury (such as before the end of a shift), and, among other things, that opt-outs often deviate from state law by requiring workers to accept all-or-nothing settlements offered by employers.

NPR and ProPublica noted that

payments made under an opt-out plan are taxable, while payments made through traditional workers' compensation insurance are not.

Though federal intervention is no certainty, some Democratic lawmakers think it's time for DOL to weigh in on the adequacy of workers' compensation benefits and on possible cost-shifting to government programs. An October 20 letter from Democratic leadership in the Senate HELP, Budget, and Finance Committees and in the House Education & Workforce, Ways & Means, and Budget Committees cited the NPR/ProPublica (cont. on page 4)

## NCOIL to Explore Reasons Behind Today's Health Insurance Premiums

The primary goal of the Affordable Care Act (ACA) was to increase the number of Americans with health insurance, an objective largely achieved. On November 14, legislators at the NCOIL Annual Meeting will look at what the newly insured are discovering about the cost of their coverage and will consider causes of premium increases/decreases in the overall market. The 11:00 a.m. to 12:30 p.m. *Health Insurance Premiums: Will What Goes up Ever Go Down?* symposium also will explore potential regional differences and, among other things, differences among exchange and non-exchange plans. Panelists will represent the American Academy of Actuaries (AAA), America's Health Insurance Plans (AHIP), and the National Association of Insurance Commissioners (NAIC).



Sen. Robert Hayes  
South Carolina  
Legislature  
(moderator)



Karen Bender  
President  
Snowway Actuarial &  
Healthcare Consulting



Matt Eyles  
Executive Vice  
President for Policy  
AHIP



Brian Webb  
Manager, Health  
Policy & Legislation  
NAIC

## Congressman Seeks Caution, Consensus on Capital Rules & State Reg.

In an October 19 letter to Tom Sullivan, Senior Advisor at The Federal Reserve Board of Governors, and to Michael McRaith, Director of the Federal Insurance Office (FIO), a key voice in the U.S. House Financial Services Committee urged caution and consensus when developing domestic and global capital standards.

Rep. Blaine Luetkemeyer (R-MO), who chairs the Committee's Subcommittee on Housing & Insurance, wrote that thanks to the 2010 Dodd-Frank Act "we have seen a dramatic increase in control over our domestic insurance industry by the federal government, while international regulators have sought to impose

global standards on domestic companies and products."

"Given the numerous regulators now involved and the serious ramifications of these rules," Luetkemeyer asserts, "the sequencing of events surrounding capital standards is critical to the future of the industry and U.S. consumers."

Luetkemeyer's letter urges the Federal Reserve Board to develop domestic capital standards "in close coordination" with state insurance regulators—and to finalize those standards before agreeing to an international capital standard put forward by IAIS.

The letter expresses concern that an IAIS definition of "non-

traditional insurance products" could cause more U.S. firms to be designated as global systemically important insurers (G-SIIs).

The letter also entreats U.S. parties at IAIS to "insist on immediate and meaningful changes" to the "non-traditional insurance products" definition—and said that anything short of that "calls into question our government's ability to adequately represent U.S. interests abroad."

The U.S. has "the world's most robust insurance industry," Luetkemeyer says—and it's clear EU regulators "have a wildly different approach to insurance regulation; one that does not successfully translate to the U.S. market."

## Legislators to Evaluate "Sharing" Economy Issues, Potential Impacts

On Saturday, November 14, NCOIL legislators at their San Antonio Annual Meeting will explore what public policy questions the "sharing" economy—which includes Uber, Lyft, Airbnb, TaskRabbit, and hundreds of other entities—raises, including possible opportunities and areas of concern. The 8:00 to 9:30 a.m. general session, entitled *The "Sharing" Economy: How Might It Change Insurance Regulation?*, will consider how the sharing marketplace affects risk-based pricing and insurance, whether existing insurance regulation is ready, and how the sharing paradigm may affect the broader economy. Speakers will offer an academic perspective from Harvard Business School, a state insurance regulatory perspective from the NAIC, and an insurance industry perspective from Insurance Services Office (ISO).



Rep. Steve Riggs  
Kentucky  
Legislature  
(moderator)



James Donelon  
Commissioner, LA  
Dept. of Insurance  
NAIC



Chiara Farronato  
Assistant Professor of  
Business Administration  
Harvard Business School



Mark Smith  
Assistant VP, Nat'l Affairs  
Gov.'t Relations Dept.  
ISO

## NCOIL to Debate New York-Based... (cont. from p. 2 sidebar)

The proposed *Model Act Regarding Network Adequacy and Use of Out-of-Network Providers* is available at [www.ncoil.org](http://www.ncoil.org). The NCOIL



Health, LTC & Health Retirement Issues Committee will meet from 3:00 to 4:15 p.m. on November 12.

Also at the Annual Meeting, the Committee will hold a November 13 session to further discussion of proposed model laws regarding telemedicine reimbursement and licensure.

## Trade Notes

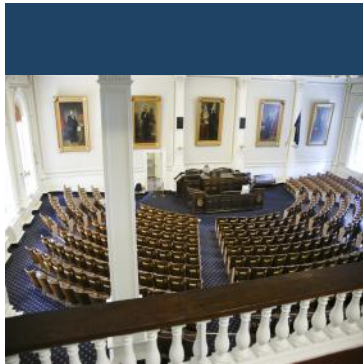
On November 5, exactly one month after U.S. and global negotiators signed off on the 12-nation Trans-Pacific Partnership (TPP), the White House delivered the more than 2,000-page agreement to Capitol Hill. The President will likely send an "intent to sign" message to Congress soon—kicking off a 90-day window in which Congress can examine the TPP before casting an up-or-down vote.

# NCOIL

National Conference of Insurance Legislators

...for the states

National Office: 385 Jordan Rd., Troy, NY 12180



## NCOILetter

Susan F. Nolan, Publisher/Editor  
Candace Thorson, Managing Editor  
Andrew Williamson, Assoc. Editor

Sarah Furman, Operations Coordinator  
Laurie Williams, Fin. Coordinator

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

## Study Raises Concern over “Opt-Out” ...

*(cont. from page 2)*

study and said that DOL “should take a renewed interest” in workers’ comp issues.

“In particular,” the lawmakers wrote, “we would welcome a report from the Department on how it will reinstitute oversight of state workers’ compensation programs, what areas it intends to address, and whether added authorities are needed to better ensure that the interests of injured workers and taxpayers are protected.”

In response to these emerging concerns, NCOIL has revised its November 12 Workers’ Compensation Insurance Committee agenda at the San Antonio NCOIL Annual Meeting in order to include a special examination of costs/benefits related to opt-out plans. The Committee also will consider a 2016

charge to further NCOIL examination of opt-out workers’ compensation issues and, as needed, respond to calls for federal intervention.

The **Texas** opt-out workers’ compensation program—in which employers who do not buy traditional coverage are called “non-subscribers”—dates to 1913, when the state established its workers’ compensation system. Oklahoma’s opt-out law was enacted in 2013, taking effect last year. Unlike the Texas approach, companies in **Oklahoma** must meet financial and other standards if they want to opt out. The Oklahoma law was upheld in 2013 by the state Supreme Court, but more lawsuits are reported to be likely.