

## SPECIAL POST-ANNUAL MEETING EDITION

### NCOIL, State Regulators Weigh in on Health Agent/ Broker Fees

As the clock ticks down to 2011 implementation of sweeping new medical loss ratio (MLR) rules, NCOIL and state regulators have boldly stepped forward to safeguard the possibly endangered role of agents and brokers. According to certain policymakers, including NCOIL in a December 7 letter to HHS, the MLRs should not tag producer commissions as an administrative expense. The MLRs require insurers to spend, depending on the markets they serve, at least 80 or 85 percent of premiums on medical care.

The NCOIL letter—submitted on the heels of a newly released draft MLR rule—asserted that agents do more than just broker policy sales—they help navigate complex (cont. on p. 3)



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## STATE GROUPS COALESCE AROUND SLIMPACT-LITE

A *Surplus Lines Insurance Multi-State Compliance Compact* (now known as SLIMPACT-Lite) won the third leg of its winter Triple Crown last weekend when the National Conference of State Legislatures (NCSL) joined NCOIL and The Council of State Governments (CSG) in endorsing the proposal. With full support of the major national organizations of state lawmakers, SLIMPACT-Lite now rounds the bend into 2011 legislative sessions.

NCOIL President Rep. Keiser (ND) said, “The states’ collective burden to implement Dodd-Frank’s surplus lines provisions just got a whole lot lighter....The endorsements by our three policymaking organizations

should provide a comfort level for state legislators—both new and seasoned—to quickly move compacting legislation through their respective state houses.”

NCOIL Past President Rep. Damron (KY) said, “We commend the NCSL for approving a resolution supporting SLIMPACT-Lite....Critical premium tax dollars could be left on the table come July 2011 without decisive state action in the early part of next year.”

NCOIL Past President Rep. Kennedy (RI) declared, “Vast numbers of new faces will enter state houses...in 2011, while insurance departments will see a major change at the Commissioner level. The consensus endorsement of our legislative groups...should alleviate any hesitation from our new colleagues.” (cont. on p. 4)

## NCOIL MODEL PROTECTS BENEFICIARIES, SETS PAYMENT DISCLOSURE

Beneficiaries of U.S. military members and other life insurance consumers will be fully informed of their death benefit options under a newly adopted NCOIL *Beneficiaries’ Bill of Rights*. Passage at the November Annual Meeting of the model—which responds to scrutiny of a controversial retained asset accounts (RAAs)—closes out three months and four conference calls of in-depth work with a multitude of consumer and insurer representatives.

Co-sponsor Rep. Damron (KY), outgoing NCOIL president said, “Upon hearing of the plight of beneficiaries of military death benefits, NCOIL moved swiftly to develop a model to require appropriate disclosure. I believe that the families of our fallen heroes in their time of need will benefit from these strong disclosures in the NCOIL model when the legislation is passed by the states. They deserve no less from a grateful nation...”

The model—the focus of the four (cont. page 4)

## NCOIL Forges Toward Final Vote on Balance Bill Model

Compelled to protect patients from unforeseen medical “balance bills,” state policymakers will move toward final resolution of a draft *Healthcare Balance Billing Disclosure Model Act* at the DC Spring Meeting. The bill—which would enhance transparency and disclosure in the health delivery system—would place requirements on healthcare facilities, insurance plans, and facility-based providers.

A March vote would culminate two years of NCOIL work—including extended testimony, a 2009 special session, and a legion of calls with stakeholders such as the American College of Emergency Physicians, America’s Health Insurance Plans, American Hospital Assoc., and American Medical Assoc. The model, which builds on TX and LA laws and other state initiatives, was brought to the full Health Committee in November.

The bill would establish pre-and post-



treatment disclosures about insurance networks and balance billings. It also would provide for payment plans when a bill exceeds \$200.

Balance billing occurs when doctors charge patients for any unpaid medical services after insurer reimbursement. This is a common practice when practitioners in hospitals are not part of the hospital network. ■

## NCOIL Spring Meeting to Conclude Recurring Aftermarket Crash Part Debate

Dispute over the safety and suitability of aftermarket crash parts—a recurring NCOIL issue for nearly ten years—will come to a longed-for close in March, when legislators at the Washington, DC, NCOIL Spring Meeting hold a vote—albeit delayed—on a consumer-choice *Model Act Regarding Motor Vehicle Crash Parts and Repair*. Although expectations of a November Annual Meeting vote were high, lawmakers at the time chose to step back and evaluate possible unintended impacts of certain lan-

guage in the bill—after they had rejected an amendment that deemed aftermarket and car-company parts to be equivalent.

According to Sen. Ruth Teichman (KS), former chair of the Property-Casualty Insurance Committee, “Legislators felt that defeat of the equivalency amendment, in addition to a vote that had freed insurers from paying for needed modifications to non-OEM parts, could create a loophole in which consumers would be



unprotected from poor quality materials. Though many of us gathered in Texas [at the Annual Meeting] expected to walk away with a decision,” she said,

“it just wasn’t time to end debate.”

The equivalency amendment—rejected in a 13 to 11 vote—honed in on the most vexing crash part concern: whether aftermarket and original equipment manufacturer (OEM) parts are comparable. The failed revision also addressed warranties, requiring insurer confirmation that an aftermar-

ket guaranty was—at minimum—equivalent to an OEM.

The draft, after more than a year and a half debate, would require disclosure/consent before a part is

repaired/replaced; set ground rules for insurers to specify aftermarkets; require lasting, visible labels on crash parts; and promote accountability. ■

## NCOIL Endorses Life Insurance Disclosure Model

Capping a series of heated debates throughout 2010, legislators at the NCOIL Annual Meeting signed off on model legislation to empower consumers at life insurance crossroads. Adopted by the Executive Committee on November 21, the *Life Insurance Consumer Disclosure Model Act* calls on life insurers to tell people who might relinquish their policies of alternatives that could exist.

Former NCOIL Pres. Rep. Damron (KY) said, “It is imperative that policy-

holders understand they have alternatives to merely lapsing or surrendering their policy. The model would require a clear notice to consumers, listing eight available options, including accelerated death benefits, conversion to long-term care, and the possibility of a life settlement.”

The model—sponsored by Rep. Crimm (KY) and based upon a 2010 KY law—requires insurers to tell people over age 60 or terminally/chronically ill in easily understandable language of alternatives to giving up a policy. The notice explains that alter-

natives may or may not be available depending on circumstances such as age, health status, and policy terms.

As well as listing options, the notice—which regulators would develop at no cost to insurers—would advise policyowners to contact their financial advisor, insurance agent, broker, or attorney.

NCOIL developed the model with input from a range of interested parties, including legislators, regulators, and representatives of life insurer, life settlement, and other industries. ■



## NCOIL ...

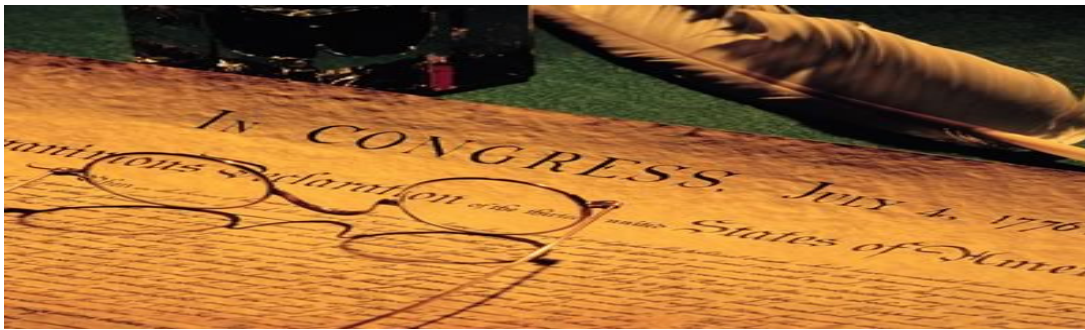
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and confusing billing, claims, coverage, and other post-sale issues. Agent/broker fees, the letter stated, actually "are pass-through fees that are merely collected from the purchaser of insurance and passed on to the agent." The NCOIL missive, signed by Pres. Rep. Keiser (ND) on behalf of the Executive Committee, also asked for technical changes.

As required by the *Affordable Care Act*, the NAIC in October recommended MLR rules to HHS that, after much regulator debate, would treat agent/broker compensation as administrative. In its message to HHS, though, NAIC said, "We are very concerned about the impact the medical loss ratio requirement could have on the ability of insurance agents and brokers to continue assisting health insurance consumers at a time of rapid change that makes their role even more essential." The NAIC has formed a task force to investigate potential adverse impacts.

Many observers worry that if HHS does not exclude commissions, insurers will squeeze compensation and become less reliant on agents. Belt-tightening could mean less consumer choice, particularly in states with strong agent-broker networks.

Reports suggest that HHS has interpreted Congress' intention as to count commissions as administrative and that, absent an HHS exclusion, trade groups will pursue a congressional fix in 2011. The Interim Final Rule is effective on Jan. 1, 2011 but is in a 60-day comment period that ends January 31, 2011. ■



## NCOIL Adopts Statutory Rules for Confidential MCAS Data

NCOIL lawmakers at last month's Annual Meeting—looking to provide model legislation to the states—embraced strong confidentiality protections for the handling of market conduct annual statement (MCAS) data. Adoption of the *Market Conduct Annual Statement Model Act* on November 21 concluded lengthy NCOIL debate during the last two years over the best way to regulate the MCAS program.

Following unanimous endorsement of

the model, sponsor Sen. James Seward (NY) said: "With as much as half of our nation's insurance commissioners turning over, and 47 states scheduled to participate in the MCAS process for 2011—many without specific legislative authorization—our action to provide legal certainty for the collection and handling of MCAS data is timely."

The NCOIL model would authorize regulators to collect and review MCAS data for market analysis. It would allow commissioners to confidentially share MCAS data with other

entities, including with the NAIC, and would base insurer participation on a \$50,000 direct written premium threshold now required by the NAIC.

NCOIL debated the model at each meeting since its March 2009 introduction. Although poised for a final vote in July, legislators deferred action in part to give the NAIC, at its request, a final comment opportunity.

The American Insurance Association, National Association of Mutual Insurance Companies, and Property-Casualty Insurers Association of America support the proposal. ■

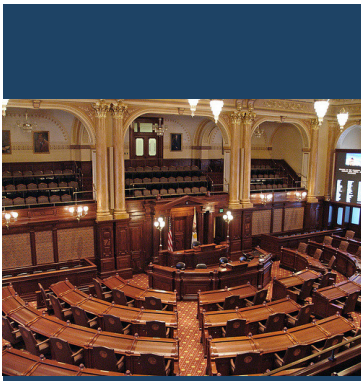
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### STATE

The NCSL Executive Committee supported the compact via resolution on December 11, following CSG's December 6 endorsement, also via resolution. NCOIL adopted the compact on November 21.

SLIMPACT-Lite—unlike other proposals—would respond to Dodd-Frank by authorizing a governing com-

### NCOIL MODEL

lengthy calls—sets out extensive disclosures to consumers when payment options other than a lump-sum payment are offered—including that beneficiaries can access the entire proceeds by cashing a single check; any interest rates, fees, limitations, and delays tied to the account; and whether benefits have available FDIC coverage, among other items. The model also would require insurers to return RAA balances to a beneficiaries if—during any continuous three-year period—they didn't give affirmative directive to maintain the account.

*(cont. from page 1)*

mission to establish allocation formulas, uniform payment methods and reporting requirements, eligibility standards, and a single policyholder notice. SLIMPACT-Lite—which responds to Dodd-Frank's interest in a surplus lines compact—would streamline taxation and ensure that each state receives its fair share. ■

*(cont. from page 1)*

Regarding insurer reporting, companies must file all RAA marketing materials, disclosures, and forms with insurance regulators prior to use and report annually on the number, amount, and duration of their retained asset accounts, among other things.

