

NCOIL to Explore Regulatory Exclusion for Healthcare Ministries

Should healthcare sharing ministries (HCSMs) be regulated as insurance?

NCOIL—in an effort to provide the answer—will weigh the pros and cons of such a move when it considers a proposed state *Healthcare Sharing Ministries Freedom to Share Model Act* at the Spring Meeting in Washington, D.C.

HCSMs—which are faith-based, non-profit cost-sharing arrangements between individuals—became a hot topic last year when Congress said ministry members are exempt from having to buy health insurance under federal reforms.

The proposed NCOIL model would follow the lead of 11 states with similar laws and would define HCSMs as ministries and not insurance, effectively exempting them from state insurance regulations.

The model— (cont. page 2)



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SLIMPACT EXCEEDS 10-STATE THRESHOLD, ON TRACK FOR PASSAGE

NCOIL leaders drove a *Surplus Lines Insurance Multi-State Compliance Compact (SLIMPACT)* closer to realization last week, introducing bills in three additional states, for a total of 11 states with active legislation. The rush of activity—which will soon be followed by introduction in a twelfth state—carries SLIMPACT over a ten-state benchmark that is one way to activate the Compact Commission. States are pursuing SLIMPACT—adopted by NCOIL and supported by CSG, NCSL, and numerous insurance trade asso-

ciations—as a means to protect state premium tax monies and to implement Dodd-Frank Act requirements.

NCOIL Secretary Rep. Charles Curtiss and Sen. Bill Ketron have introduced bills in Tennessee, Past President Rep. Craig Eiland has sponsored in Texas, and Executive Committee Member Sen. Ruth Teichman has proposed language in Kansas. At press time, NCOIL Treasurer Rep. Greg Wren was awaiting a number for his SLIMPACT bill, which would (cont. on page 4)

CSG RELEASES LEGAL CRITIQUE OF NIMA SURPLUS LINES REFORM

Rick Masters, Special Counsel for Interstate Compacts at The Council of State Governments (CSG), recently released an analysis challenging the legality of a National Association of Insurance Commissioners (NAIC) *Non-admitted Insurance Multi-State Agreement (NIMA)*. Regulators approved NIMA—touted as an alternative to a *Surplus Lines Insurance Multistate Compliance Compact (SLIMPACT)*—as a state-based solution to Dodd-Frank's surplus lines provisions.

NCOIL has the honor of welcoming as its Spring Meeting keynote speaker **Steve Larsen**, Deputy Administrator/Director of the Center for Consumer Information & Insurance Oversight in the U.S. Dept. of Health & Human Services. The March 4 luncheon is slated for 11:45 a.m. to 12:45 p.m.



Mr. Masters, in a memo to NCOIL, CSG, and the National Conference of State Legislatures (NCSL), said he conducted the analysis (cont. on page 3)

NCOIL...

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which is sponsored for discussion purposes by Rep. Ron Crimm (KY) and Sen. James Seward (NY)—also offers an alternative definition, in the form of a drafting note, that would provide for a written disclaimer on all promotional materials that HCSMs are not insurance.

Three national ministries servicing over 100,000 members feel they aren't insurance because individuals' healthcare bills are voluntarily shared, no risk is assumed, and payments aren't guaranteed. Advocates say ministries, which courts in IA and KY have ruled do not conduct the business of insurance, also don't collect traditional premiums, maintain reserves, or underwrite health status, but act as clearinghouses between members.

Critics, however, worry that an exemption could impede vital consumer protections. Skeptics—including some state regulators, consumer representatives, and state courts in MT and SD—assert that HCSMs are similar to insurance, with features like cost-sharing and coverage limitations. Insurance regulators in IL and MT have also banned one ministry from accepting new members.

Legislators on the NCOIL Health Committee will consider the proposed model law on March 5. ■

NCOIL Roundtable Investigates Dodd-Frank Impacts

In its ongoing effort to educate lawmakers on the consequences of Dodd-Frank reform, NCOIL has convened a blue-ribbon roundtable entitled *Dodd-Frank Act: What Impact on the States?* The Saturday, March 5, event



takes place in Washington, DC, just as the Act's new agencies begin to take shape.

Moderated by NCOIL Past President

Sen. James Seward (NY), the expert panel will include NAIC President/Iowa Commissioner Susan Voss; Neil Alldredge, Senior Vice President of Policy & State Affairs with the National Association of Mutual Insurance Companies; Ed Mierzwinski, Consumer Program Director at U.S. PIRG; and

Kathleen Ruane, Legislative Attorney with the Congressional Research Service's American Law Division.

Scheduled for 10:30 a.m. to 12:00 p.m.,

the roundtable will analyze aspects of last year's comprehensive financial reform bill. Legislators and panelists will discuss how an Office of Financial Research will interact with the new Federal Insurance Office (FIO) and with the NAIC, and whether the emerging Consumer Financial Protection Bureau may effect state credit scoring and/or privacy laws, among other things.

The NCOIL dialogue follows a successful Annual Meeting roundtable on the roles and responsibilities of the FIO and the Financial Stability Oversight Council. ■

NCOIL Signals End to Its Aftermarket Parts Debate, Plans Vote

Legislators seeking resolution to NCOIL's recurring crash parts debate have scheduled closing arguments on a proposed *Model Act Regarding Motor Vehicle Crash Parts and Repair*. The model—which lawmakers committed to vote on at the Spring Meeting—reflects concerns over aftermarket part quality and safety. The March 6 discussion will feature review of final amendments, including several on the value of aftermarket part certification.

A certification proposal sponsored by Rep. Brian Kennedy (RI) would replace earlier, unsuccessful efforts to

deem equivalency between accredited aftermarket and their original equipment manufacturer (OEM) peers. The new amendment would, instead, presume that a certified part was capable of repairing a vehicle to



its pre-loss condition.

Amendments sponsored by Rep. Barb Byrum (MI), however, would delete all certification references from the model, leaving no suggested

"middle ground" between OEMs and aftermarket. Other Byrum proposals would require insurers, in order to use aftermarket parts, to disclose that the insurers "limit their payments" to the cost of the aftermarket, rather than "specify" their use, and would establish that the bill applies only to first-party claims.

The model represents NCOIL's latest effort—in an issue first brought to NCOIL nearly a decade ago—to promote auto-part consumer protection.

The bill, which legislators deferred in November, would require disclosure and consent before a crash part is repaired or replaced; set rules for insurers to specify aftermarket; require lasting, visible part labels; and promote accountability. ■

CSG...

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to respond to questions from legislators and staff reviewing SLIMPACT and NIMA. SLIMPACT was adopted by NCOIL at its 2010 Annual Meeting and has been supported by CSG, NCSL, and insurer associations.

In his memo to the legislative groups, Masters concluded that NIMA “fails to provide any substantial or enforceable mechanism for achieving uniformity because it fails to provide a binding agreement which pre-empts



other state laws in conflict with its requirements”. He wrote that “the proposal fails to meet the required indicia to constitute a valid interstate compact.”

Mr. Masters also said that NIMA “unconstitutionally purports to vest authority in an Executive Branch official...to bind the Legislature of a State which adopts it.” Proposed NIMA-authorizing legislation, Mr. Masters wrote, would broadly permit a Commissioner to enter into a compact or multi-state agreement to address surplus lines taxation— “...clearly an impermissible delegation to an executive branch official of the power to legislate.”

Mr. Masters will overview his research during the NCOIL Spring Meeting. ■



NCOIL to Look at State Life/Health Guaranty Laws, Coverage

In a bid to modernize consumer protections against insurer insolvency, NCOIL legislators this year will review state life and health insurance guaranty association laws to see if coverage limits should be raised. Action comes on the heels of 2010 NCOIL development of a life insurer retained asset account (RAA) model that drew attention to the im-

portance of adequate coverage limits.

While developing an NCOIL *Beneficiaries' Bill of Rights* last fall that requires extensive disclosures about RAAs—in which life insurers hold death benefit proceeds in an account—legislators learned that state guaranty funds, not the Federal Deposit Insurance Corporation (FDIC), would pay for benefits if a life insurer

fails. While most state laws cover at least \$300,000 in life insurance death benefits if an insurer becomes insolvent, states vary widely in their coverage for health insurance, long-term care and annuities, with the lowest being \$100,000 and the highest \$500,000.

This year, as a first step in its review, the NCOIL Life Insurance Committee at the March (cont. on page 4)

2011 NCOIL ALMANAC OPENS DOOR TO KEY INSURANCE POLICYMAKERS

The 2011 NCOIL *Insurance Legislative Fact Book & Almanac*—packed with information on leading officials who influence insurance public policy—is now available in both electronic and print editions. Ideal for both mass and individual mailings, the more than 550-page almanac is a comprehensive resource for those whose post-election mailing lists need repair.

The Almanac comes in CD-ROM, searchable online database, and traditional hard-copy formats. The publication—called “a wealth of information for those seeking to make, affect, or administer the laws that govern insurance markets” by *Government Finance Review*—provides contact details for key state lawmakers, regulators, governors, Members of Con-

gress, and international regulators.

Now in its 27th edition, the Almanac is available at a reduced rate of \$95 before April 1, \$115 thereafter. Special discounts are available for bulk orders.

Purchase today at www.ncoil.org, or call the NCOIL National Office at 518-687-0178 for further details. ■





NCOILetter

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SLIMPACT

make Alabama the 12th state with active legislation.

North Dakota and Kentucky House chambers, as well as the Indiana Senate, have already approved SLIMPACT bills carried by, respectively, NCOIL President Rep. George Keiser (ND), Immediate Past President Rep. Robert Damron (KY), and Vice President Sen. Vi Simpson (IN) and International Committee Chair Sen. Travis Holdman (IN). The measures passed by votes of 92-1-1, 95-0, and 41-8. In addition, a New Mexico Senate Committee has approved legislation carried by

NCOIL

Spring Meeting in Washington, D.C., will hear from Peter Gallanis, Executive Director of the National Organization of Life and Health Guaranty Associations (NOLHGA), regarding state guaranty fund laws and the need for modernization. Legislators will also look at

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NCOIL President-Elect Sen. Carroll Leavell.

SLIMPACT, which will be a focus of the NCOIL Spring Meeting, has also been introduced by NCOIL Past President Rep. Brian Kennedy and by NCOIL colleagues Sen. David Bates and William Walaska, among others, in Rhode Island. In Vermont, NCOIL Past President Rep. Kathleen Keenan and several House colleagues, including Reps. Bill Botzow and Warren Kitzmiller, and Sen. Ann Cummings, have offered legislation. SLIMPACT is also pending in CT and MD. ■

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2009 updates to an NAIC *Life and Health Insurance Guaranty Association Model Act* that—in addition to the \$300,000 level for death benefits—sets limits of \$300,000 for disability insurance; \$500,000 for health insurance; and \$250,000 for annuities. ■