

## NCOIL Weighs in on Dept. of Labor “Fiduciary” Definition Proposal

In a lead-up to four days of U.S. Dept. of Labor (DOL) hearings on a proposed DOL change to the ERISA definition of “fiduciary,” NCOIL on July 28 wrote to DOL Secretary Perez, urging further consultation with NAIC and other state officials before DOL finalizes the rule. The letter, signed by NCOIL President Sen. Neil Breslin (NY), reaffirmed NCOIL’s belief that state regulation of agents and brokers results in effective consumer protection and that federal standards may not be helpful. Copied on the letter were Senator Lamar Alexander, Chair of the Committee on Health, Education, Labor & Pensions; Senator Orrin G. Hatch, Chair of the Committee on Finance; Rep. John Kline, Chair of the Committee on Education & the Workforce; and Rep. Paul Ryan, Chair of the Committee on Ways & Means.

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**2015 NCOIL ANNUAL MEETING**  
November 12 to 15  
San Antonio, TX



## NCOIL ADOPTS MODEL LAW REGULATING TRANSPORTATION NETWORK COMPANIES (TNCs)

As policymakers grapple with how to regulate Uber, Lyft, and similar companies, NCOIL legislators on July 19 adopted critical guidance related to transportation network company (TNC) insurance requirements, financial responsibility, licensing, disclosure, and other concerns. Lawmakers unanimously approved the *Model Act to Regulate Insurance Requirements for Transportation Network Companies and Transportation Network Drivers* during the NCOIL Summer Meeting in Indianapolis.

Rep. Michael Stinziano (OH), sponsor of the model, said the language is an effective, balanced response to debate that’s heating up state legislatures and “will help states overcome the divisiveness that has made it difficult to pass legislation. The model,” he said, “will allow TNCs to continue offering consumers a product they enjoy while updating state laws to eliminate gaps.”

The NCOIL model calls on a TNC driver and/or the TNC to buy primary auto liability insurance that covers (1) when a driver is logged into the TNC’s digital system and is available to receive a trans-

portation request and ends (2) when the last passenger leaves the driver’s vehicle.

The model requires certain disclosures to TNC drivers, identifies factors and past behavior that would ban someone from driving for a TNC, and mandates that a TNC driver have a permit from the state in order to operate there. In addition, the model sets out rating-agency standards for TNC insurers and includes a drafting note that acknowledges existing state law related to lienholder requirements.

The NCOIL model, which was adopted with input from insurer, TNC, state insurance regulator, and taxi/limousine representatives, is similar to a new Indiana law that incorporates language in a recent Uber-insurer compromise approach.



## NCOIL Weighs in on “Fiduciary”... (cont. from page 1)

The July 28 letter is below.

Dear Secretary Perez:

On behalf of the National Conference of Insurance Legislators (NCOIL), I write to you today regarding the Department of Labor’s proposed rule to change the definition of “fiduciary” in relation to ERISA plans and IRAs. NCOIL joins with the National Association of Insurance Commissioners, the National Governors Association, individual governors, and other public officials to urge additional consultation with state officials before the proposed rule is finalized. Since the proposal would make significant changes to retirement plan fiduciary rules in place for almost 40 years, we believe it would best serve state and federal officials—in our shared responsibility—to make sure that its impact is not adverse in any way.

As a group of state lawmakers who have worked diligently over the years with our governors, insurance commissioners, and others to build a comprehensive statutory framework that effectively protect consumers, we want to ensure that this proposed rule will be compatible with our state framework and that retire-

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## International Monetary Fund Issues Report on U.S. Regulation, Calls for National Insurance Overseer

Every five years, the International Monetary Fund (IMF) examines the ins and outs of financial services regulation in individual countries—to gauge how strong and stable a regulatory regime is and how closely it adheres to the Insurance Core Principles (ICPs) that the International Association of Insurance Supervisors (IAIS) has developed as a benchmark for good regulation. Last month, the IMF released its latest report on the United States.

There is some good news. The



IMF determined that U.S. insurance regulation has “a reasonable level of observance of the Insurance Core Principles,” that state oversight has “powerful capacity for financial analysis,” and that state “regulation and supervision continue to be conducted with a high degree of

transparency and accountability,” among other positives.

But the July IMF study (available at [www.imf.org](http://www.imf.org)) also includes some disturbing recommendations, including those cited below, that should give pause to state legislators and other advocates of state oversight.

“A national-level insurance regulatory body is needed to deliver enhancements and greater consistency across states in both regulation and supervision. The current regulatory architecture lacks capacity to fully address the resulting risks. The authorities should review the options for change, which include strengthening the capacity of the FIO to bring about convergence on uniform high standards of regulation and supervision as well as comprehensive market oversight. An agency at the national level, with appropriate independence and expertise, should be given a mandate and powers to establish national standards, and

ensure regulatory consistency and supervisory coordination. Such an agency would require sufficient resources, accountability and independence, in line with the expectations of the Insurance Core Principles.” (page 95)

“While recent reforms are bringing benefits, the regulatory system for insurance remains complex and fragmented and reform should be considered to address the resulting risks. There are differences between state insurance regulators and between state and federal regulators, in both regulation and supervision. The regulatory system is complex and there are risks from a lack of consistency, including the creation of opportunities for unhealthy arbitrage (which accounts in part for the growing use of affiliated captive reinsurers, for example); and risks of failure to act on gaps or weaknesses in regulation with sector or system-wide implications.” (page 95)

### Recent General Accountability Office (GAO) Reports

- » **Medicaid:** Additional Reporting May Help CMS Oversee Prescription-Drug Fraud Controls (*publicly released August 10*)
- » **Disability Insurance:** Actions Needed to Help Prevent Potential Overpayments to Individuals Receiving Concurrent Federal Workers’ Compensation (*publicly released August 3*)
- » **PPACA:** IRS Needs to Strengthen Oversight of Tax Provisions for Individuals (*publicly released July 29*)

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## NCOIL Takes Stand Against “Storm Chasing” Roofers

NCOIL legislators at their Summer Meeting in Indianapolis unanimously adopted a *Storm Chaser Consumer Protection Act* on July 19 to safeguard homeowners from people who pose as legitimate roofing contractors. The NCOIL model law takes aim, in particular, at fraud that follows natural disasters—including hurricanes, tornados, floods, earthquakes, and winter storms.

Sen. Jason Rapert (AR), NCOIL Treasurer and co-sponsor of the model law, said that “The NCOIL model’s comprehensive provisions will prevent roofing companies from chasing after natural disasters and from traveling

state-to-state in order to commit civil and criminal acts. It is shameful,” he asserted, “that some people take advantage of consumers who are truly in need and who trust in others to repair their homes and help them return to normal lives.”

Co-sponsor Rep. Rich Golick (GA) in a June letter to fellow legislators said that roofing contractor fraud “increases overall costs, takes business away from reputable contractors and ultimately drives up insurance costs. As a result, model legislation is needed,” he said, “to help protect consumers, the reputable roofing contractor industry, and the insurance market from these

unprincipled individuals.”

The NCOIL model sets out ground rules for roofing contracts. It safeguards consumers from unexpected costs and allows them to cancel contracts and have deposits returned if insurers deny all or part of a claim. The model lays out mandatory roofer insurance requirements, addresses costs associated with making emergency repairs, and establishes various prohibitions and registration rules—as well as some exemptions.

The NCOIL language also, among other things, allows for criminal penalties.

## Insurance Should Cover Obesity Treatments, NCOIL Says

The significant costs that stem from obesity—and the adverse health impacts on those who struggle with it—demonstrate a need for states to consider insuring for obesity treatments and prevention, asserts NCOIL in its recently adopted *Resolution in Support of Efforts to Reduce the Incidence of Obesity and Chronic Disease*. The resolution, approved on July 19 at the NCOIL Summer Meeting, supports voluntary state action.

Managing obesity is a “high priority,” the resolution avows,

and so states with their own exchanges and those in state-federal partnerships should consider choosing benchmark plans that allow access to a range of approaches—including pharmacotherapy, bariatric surgery, nutritional counseling, and other choices. The resolution supports similar coverage in the chronic disease management programs (CDMPs) of Medicaid and other state systems—coverage that might be funded through grants

and/or other public and private sources.

In addition, the resolution calls on state exchanges to offer incentives so that Qualified Health

Plans cover the spectrum of obesity treatments.

“Passage of this resolution,” said its sponsor, Rep. Marcus Hunter (LA), after NCOIL adoption on July 19, “demonstrates the legislative awareness that obesity is

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## NCOIL Weighs in on “Fiduciary”...

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ment security policy and insurance regulation do not conflict.

Concerns have been voiced that the proposal may have an inadvertent negative effect on middle-income Americans and small businesses—making it harder for our constituents to plan and save for retirement and hurting small business's ability to start up and maintain retirement plans for workers. Questions have been raised as to whether the rule will inadvertently limit access to financial advice and certain financial products, as well as result in potential liability and costs that will drive committed financial advisors from the market.

In keeping with our common goal—to safeguard and enable consumers moving towards and in retirement—we urge you, while regulating the ERISA plan market, to consider the impact on the insurance marketplace generally and on the successful consumer protection standards that states have worked so hard to develop and enforce. We ask that you further dialogue with the NAIC, NCOIL, and other state officials to ensure that federal and state approaches in this arena are consistent and compatible so that we may all best serve our constituents.



## NCOILetter

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## INSURANCE SHOULD COVER OBESITY... (cont. from page 3)

a disease having the latent effect of reducing worker productivity and increasing medical costs. Preventative care and treatment are critical. As such, enacting legislation targeting all socioeconomic strata is ideal.”

According to the resolution, obesity is one of the largest drivers of healthcare costs and is expected to represent \$620 billion in medically related expenses by 2030. The disease affects a disproportionate percentage of minorities and people with low incomes, the resolution notes, and costs employers \$4.3 billion annually due to worker absenteeism. More than one-third of adult Americans are obese.



## SAVE THE DATE! NCOIL ANNUAL MEETING

Join us in **San Antonio** to explore solutions to state, federal, and global challenges facing your state.

**November 12 to 15, 2015**  
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