



## NCOIL Laying Groundwork to Rein in Opioid-Related Costs, Plans Special Session

In an effort to reduce costs associated with opioid abuse, the NCOIL Workers' Comp Insurance Committee has begun examining state approaches, such as those in Texas and Washington State, that could help states bend the cost curve. Legislators plan a special November session to spotlight other possible reforms.

The reality of opioid use is disturbing, according to Bruce Wood of the American Insurance Association, speaking at the July NCOIL Summer Meeting. From 1997 to 2007, he said, the milligram per person use of prescription opioids in the U.S. grew more than 402 percent, and in 2009 to 2010 nearly one million people reported using opioid pain relievers 200 days or more.

Specifically in workers' comp, Mr. Wood reported, injured employees receiving multiple opioid *(cont. on p. 2)*

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**NCOIL ANNUAL MEETING**  
Point Clear, AL  
November 15 – 18  
[www.ncoil.org](http://www.ncoil.org)



## LEGISLATORS ADOPT AMENDMENTS TO UNCLAIMED BENEFITS MODEL

After lively debate during the NCOIL Summer Meeting in Burlington, Vermont, the NCOIL Executive Committee on July 15—in order to stay abreast of current developments—adopted an amended *Model Unclaimed Life Insurance Benefits Act*. The updated model includes new consumer-protection provisions that enhance how and when insurers search for unclaimed funds.

Model sponsor and NCOIL Past President Rep. Robert Damron (KY) said, “This model law will go a long way to ensure that beneficiaries will no longer be denied access to benefits they are rightfully owed. By using the [Death Master File] DMF for life

insurance as they do for annuities, insurers will better serve the interests of insurance consumers.”

Rep. George Keiser (ND) said—regarding when insurers must check for DMF matches—that “It is important that the NCOIL model requires life insurers to compare their in-force policies to the DMF on a semi-annual basis. This model will close regulatory gaps that have been harming consumers for far too long.”

The amendments to the model—which was first adopted in November 2011—require insurers to compare their in-force life insurance policies against the U.S. Social Security *(cont. on p. 4)*

## NCOIL PURSUES NEW CERTIFICATES OF INSURANCE MODEL, CLOSES CHAPTER ON BINDER REFORM

After more than a year of debate, with a temporary hiatus to develop a related model on insurance binders, the NCOIL Property-Casualty Insurance Committee is pursuing a new and controversial way to address certificate of insurance liability and misuse. The latest proposed model—a substitute iteration of an original draft—will be considered in-depth in coming weeks and follows heated debate over if a certificate is “for information only” and if “info” status puts lenders at serious financial risk.

The Committee gave interested parties an August 15 deadline for submission of comments on the new proposed *Certificates of Insurance Model Act*. The Committee has determined to review proposed amendments on at least one conference call prior to the October 17, 30-day deadline for the Annual Meeting and will follow that discussion with a special working session at the November 15 to 18 conference. *(cont. on p. 2)*

## NCOIL Pursues...

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Property-casualty industry representatives assert that the certificates model is a straightforward way to bring clarity and consistency to certificate use. The industry says that certificates, which insureds use to prove coverage to third parties, are **inherently informational**. However, insurance binders, the industry says, do have authority to stand in for an policy until it's issued.

Lenders assert that the certificate versions they use—labeled “evidence of insurance”—must be **official proof of coverage** before closing on a loan because it can take many months for lenders to receive policies themselves. Lenders also say that their certificates had never before been deemed informational.

On July 15—sympathizing with lenders' concerns but ultimately determining that the certificates model was the wrong way to address them—the Committee at the Summer Meeting adopted a model that would **keep insurance binders in force** until a policy is issued or cancelled by an insurer.

According to Rep. Matt Lehman (IN), sponsor of the binder model, the language is “a good way to deal with **lenders' predicament**. It became clear that until we

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## NCOIL Laying Groundwork...

prescriptions are 2.7 times more likely to be off work, with the top one percent of claimants receiving narcotics that account for close to 40 percent of all narcotic costs. More than \$1.4 billion will be spent on opioids for workers' compensation claimants this year, Wood said. And in 2009, he noted, the narcotic OxyContin was the most popular workers' comp drug prescribed.

The Texas reform took effect in 2011 and relies on a prescription drug formulary—the only closed state workers' comp formulary in the na-

*“More than \$1.4 billion will be spent on opioids for workers' compensation claimants this year.”*

tion—based on the *Official Disability Guidelines* published by the Work Loss Data Institute. Initial data from the Texas Dept. of Insurance shows that the formulary helped reduce prescription drug costs by 26 percent in 2011 and facilitated a ten percent decrease in opioid prescriptions to injured employees.

In Washington State, opioid dosing guidelines—which include “best practices” and “yellow-flag” warnings—were implemented in 2007 and have

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led to a sharp decrease in the number of opioid prescriptions for workers' comp claimants. The guidelines replaced more permissive 1999 standards and, according to academic experts, have also helped reduce the rate of unintentional overdose deaths.

The Annual Meeting session will explore, among other potential solutions, a new KY prescription database approach. The November 15 to 18 meeting will take place in Point Clear, Alabama.

The Committee in November also will resume review of repackaged drug costs and coverage for volunteer firefighters & agricultural workers. ■

## NCOIL Investigates Consumer Legal Funding, Moves Toward Model

NCOIL legislators—not shy about tackling controversial insurance issues—are looking at regulation of financing transactions between third parties and bodily injury and other plaintiffs. After hearing sharp Summer Meeting debate between third-party lenders, insurer and business groups, and a consumer advocate, the Property-Casualty Insurance Committee has committed to extend its review of a draft *Consumer Legal Funding Model Act*, with action planned at the Annual Meeting.

“We need to take a serious look at this industry and see about establishing some parameters,” said Rep. Charlie Curtiss (TN),

sponsor of the model, at the Summer Meeting. “We'd be remiss if we ignored this emerging issue.”

The draft model—which lawmakers suggest is a starting point for possible NCOIL legislation—is based on a proposed Tennessee bill and attempts to protect consumers receiving money from lenders unaffiliated with a case.

The Committee has a clear responsibility to consider the issue in depth, according to Committee Chair Rep. Steve Riggs (KY). “Third-party funding,” he said recently, “may be an important tool for consumers looking to cover immediate expenses—such as medical bills and mortgage

payments—while waiting for a court decision. But the high fees associated with third-party funding, among other things, give many legislators some pause, and so we are obligated to explore whether state oversight is appropriate.”

In general, third-party litigation financing, also known as non-recourse financing, takes place when a lender gives money to a plaintiff in return for receiving a portion of any settlement or award. The third-party lender receives nothing—including the amount of the original loan—if the plaintiff loses. Individual consumers often use

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## NCOIL to Facilitate Broader Legislative Input into U.S. Trade Talks

Frustrated by state legislators' near-inability to weigh in on U.S. trade discussions, NCOIL is attempting to facilitate legislative membership on a U.S. advisory committee with direct access to language under international negotiation. The effort, in conjunction with a July 15 NCOIL resolution urging legislative input and appropriate transparency, seeks to preserve state authority from unintended consequences of U.S.-foreign nation agreements.

As determined at the recent Summer Meeting, NCOIL will request and submit to the Office of the U.S. Trade Representative (USTR) the names of lawmakers interested in joining an Intergovernmental Advisory Committee (IGPAC). The now 27-member group, according to the USTR, is intended to "advise, consult with, and make recommendations to the U.S. Trade Representative and relevant Cabinet or sub-Cabinet members concerning trade matters."

The Committee, according to the USTR Web site, "draw[s] on the expertise and knowledge of its members and on such data and information as is provided it by [USTR]." Though IGPAC looks to reflect state interests, only two members are state legislators.

"It is deeply unfortunate," said Sen. Travis



Holdman (IN), chair of the NCOIL International Insurance Issues Committee, when speaking at the July Summer Meeting, "that state legislators are almost completely unable to weigh in during the negotiation process. Of the 700 members on various USTR advisory committees, just two are legislators—a disturbing fact that NCOIL will work to change."

Rep. Kathie Keenan (VT), sponsor of the *Resolution Urging Support for State Authority in U.S.*

*Trade Negotiations*, said that "Time and again states have been frustrated in their efforts to add state legislators to IGPAC—our best chance to protect state rights before it's too late. We appreciate that USTR officials have participated in NCOIL debates, but the reality is that our voice has not been heard."



According to Isaac Faz, USTR Dep. Assistant for Intergovernmental Affairs & Public Engagement, the USTR welcomes receiving names of potential IGPAC legislative members. He reported at the NCOIL Summer Meeting that USTR was working to streamline its process for broadening IGPAC membership so state lawmakers could join more easily. Mr. Faz is one of several USTR reps who have participated in NCOIL discussions over the last two years. ■

the funds to pay daily expenses while a lawsuit works its way through the courts. Commercial plaintiffs, such as attorneys and law firms, may use the funds to finance the costs of bringing a case to trial.

Opponents, including insurers and business groups, say third-party loans interfere with proper functioning of the court system, force consumers to pay **excessive fees/rates**, and raise attorney conflict-of-interest concerns.

Supporters, including third-party lenders and certain consumers, say that the financing does not encourage frivolous litigation and that the fees and interest associated with litigation loans—which are higher than for typical bank loans—are justified because third-party **lenders have no guaranty of repayment**.

The proposed NCOIL model, while not banning third-party financing or capping fees, would focus on contract disclosures, attorney awareness, guidelines for distributing proceeds to lenders after a settlement or award, and rules for when and **how much a consumer pays a lender**.

The American Legal Finance Assoc., Center for Economic Justice, National Assoc. of Mutual Insurance Companies, Oasis Legal Finance, and U.S. Chamber Institute for Legal Reform, and a legal scholar, have figured prominently in NCOIL debates. ■



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**NCOIL ANNUAL MEETING**

**November 15 – 18, 2012  
Point Clear, Alabama**

Tentative General Schedule



## NCOILetter

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### LEGISLATORS ...

Death Master File (DMF) on a semi-annual basis; to remove an exemption for government and church plans; to bar insurers' service providers, as well as insurers themselves, from charging policyholders service fees associated with DMF searches; and to set up protocol for insurer conduct post-identification of potential matches.

Also, a drafting note now offers the possibility of a

### NCOIL PURSUES ...

addressed lenders' 'info only' objections, we could



not move forward with what began the debate in the first place—a certificate of insurance reform bill."

The substitute certificates model, which is spon-

*(cont. from p. 1)*

delayed effective date of up to one year to allow insurers to comply with the model.

The Life Insurance & Financial Planning Committee adopted the amended model on July 13 after also discussing regulation of contingent deferred annuities and principles-based reserving initiatives. Discussion of those items will continue at the NCOIL Annual Meeting in Point Clear, AL. ■

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sored for discussion by Committee Chair Representative Steve Riggs (KY), reflects input from certain property-casualty industry agent and insurer trade groups. The draft model act would prohibit changes to certificate forms and would assert that they are not insurance policies and do not provide different or additional coverage than the policy does. ■