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NCOIL PREPARING FOR ANNUAL MEETING IN LAS VEGAS

The NCOIL Annual Meeting is fast approaching and we are working hard to ensure it is filled with exciting and emerging topics in addition to continuing the important discussions that took place at the Summer Meeting in Portland, OR. “We are excited about Las Vegas” said NCOIL CEO Tom Considine. “Each conference we hold is a great opportunity to educate legislators and interested parties about issues that require action in the states. Even in the short time since our last conference, there are new issues that lend themselves to being discussed and analyzed.” The General Sessions are tentatively scheduled to be focused on whether policymakers should address the increasing costs of drug prices, and the challenges facing the insurance and financial service industries in dealing with the evolving marijuana industry in the face of existing federal law. The Annual Meeting is in Las Vegas, NV from November 17th – 20th at the Paris Hotel. You can register for the meeting here: <https://www.eventbrite.com/e/ncoil-annual-meeting-tickets-27227068896>

NCOIL COMMENTS ON PROPOSED FEDERAL RULES THAT WOULD ENCROACH UPON STATE INSURANCE REGULATION

NCOIL recently wrote a letter expressing concern over another display of federal encroachment on the state-based system of insurance regulation. The letter was in response to the invitation for public comment appearing in the Federal Register by the Federal Tri-Agencies (DOL, HHS, Treasury) with joint jurisdiction over implementation of the ACA (the Departments) in connection with a notice of proposed rulemaking (NPRM) entitled “Expatriate Health Plans, Expatriate Health Plan Issuers, and Qualified Expatriates; Excepted Benefits; Lifetime and Annual Limits; and Short-Term, Limited-Duration Insurance.”

Specifically, the letter was offered in connection with the excepted benefits provisions of the NPRM that: (1) proposed restrictions on short-term medical insurance; (2) proposed changes to current regulations for hospital indemnity or other fixed indemnity insurance offered in the group market; (3) requested information for specified disease or illness insurance offered in both the group and individual insurance markets; and (4) requested information on aligning the treatment of hospital indemnity or other fixed indemnity insurance offered in the individual market compared to the same type of **Continued on page 2.**

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coverage offered in the group market. NCOIL noted that those portions of the regulatory proposals represent an abrogation of longstanding State authority in those areas.

“It is important that NCOIL continue to monitor and speak out against things like this NPRM that serve to erode the proven system of state-based insurance regulation,” said Rep. Steve Riggs, NCOIL Vice President.

Additionally, NCOIL noted that the NPRM directly conflicts with the U.S. Court of Appeals for the District of Columbia’s recent ruling in *Central United Life, Inc. v. Burwell*. At issue in that case were regulations proposed by HHS that attempted to amend the definition of “excepted benefit” set forth in the Public Health Service Act

(PHSA) in such a way so that, in essence, they prohibited the sale of standalone fixed indemnity insurance. The court ruled that HHS had no basis in the statutory text it purported to interpret for a certain rule and as a result the agency exceeded the scope of the statutory language. “We were incredulous that federal agencies proceeded with this rule in the face of the *Central United* case,” stated NCOIL CEO Tom Considine. Similarly, NCOIL asserted in its letter that the NPRM proposes provisions and restrictions to excepted benefits products that are not expressly included in the statutory text adopted in the 1996 Health Insurance Portability and Accountability Act (HIPAA) and that remain unchanged by the ACA.

NCOIL PRESIDENT AND CEO ATTEND NAIC SUMMER CONFERENCE



The National Association of Insurance Commissioners (NAIC) recently concluded its Summer Conference in San Diego, California. NCOIL President Sen. Travis Holdman and NCOIL CEO Tom Considine attended and had a productive dialogue with NAIC leadership and insurance industry representatives. Some of the highlights from the Conference included: a public hearing to examine the future of private solutions to long-term care financing; an application

that can aid consumers in finding lost life insurance policies; and an event focusing on autonomous vehicles and their potential impact on the insurance sector. “The NAIC did a great job with their conference in San Diego,” said Sen. Holdman. “NCOIL looks forward to continuing to work with the NAIC as new opportunities to do so present themselves.”

HEALTH CO-OPS SUE OVER ACA’S RISK ADJUSTMENT PROGRAM

Two more health insurance co-ops have filed lawsuits against the Obama administration over the ACA’s risk adjustment program. The controversial program was designed as a mechanism to prevent insurers from cherry-picking the healthiest members by spreading the insurance risk of all ACA exchange enrollees. Companies that cover sicker, riskier people with complex

health conditions receive money from companies that have generally healthier members.

However, New Mexico Health Connections and Minuteman Health of Massachusetts, the latest co-ops to file lawsuits, argue that the Obama administration mismanaged the risk adjustment program by creating an

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NCOIL TRAVELING TO WASHINGTON D.C. TO DISCUSS H.R. 5143

On September 7, 2016, NCOIL members will travel to Washington D.C. to meet with federal legislators in an effort to discuss the importance of Rep. Blaine Luetkemeyer's bill, H.R. 5143: "The Transparent Insurance Standards Act of 2016." H.R. 5143 was introduced to protect the state-based insurance regulation from the threat of closed door international forums. Such forums, including the Financial Stability Board (FSB) and the International Association of Insurance Supervisors (IAIS), are propounding standards that do not recognize proven state-based regulatory

approaches, to the detriment of our nation's companies and consumers. H.R. 5143 defends our state-based insurance regulatory system, U.S. companies, and U.S. consumers, because it would require our U.S. federal negotiators internationally to be on the same page with the states, and assure more transparency and accountability to state insurance legislators.

"This trip to Washington D.C. will be a great opportunity to not only support H.R. 5143, but to raise the profile of NCOIL," said Sen. Travis Holdman.

NAIC ISSUES NEW DRAFT OF INSURANCE DATA SECURITY MODEL LAW

The NAIC Cybersecurity Task Force recently issued for comment a revised draft of its Insurance Data Security Model Law (Model). The revised draft addresses comments received from regulators, industry participants and the public on the initial draft that was released by the Task Force on March 2, 2016. As cybersecurity is rapidly becoming a more important and diverse issue, the initial draft of the Model was thoroughly discussed and analyzed, including most recently at NCOIL's Summer Meeting in Portland, OR.

The Model purports to "establish exclusive standards...for data security and investiga-

tion and notification of a data breach" for "any person or entity licensed, authorized to operate, or registered" pursuant to an enacting State's insurance laws. The revised draft made some key changes to the initial draft which include: removing language that stated the Model would preempt federal law; removing language that created an express private right of action; altering certain definitions; removing the requirement that licensees use the National Institute of Standards and Technology Framework for Improving Critical Infrastructure Cybersecurity as a guide when designing its information security program; adjusting the requirements placed on licensees when contracting with

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November 2016

Sun	Mon	Tue	Wed	Thu	Fri	Sat
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30			

**Mark your calendar
NOW!!!**

NCOIL 2016 Annual Meeting

Paris Las Vegas Hotel

Las Vegas, Nevada

November 17th—20th

NCOIL TO HOLD P&C INTERIM COMMITTEE MEETING VIA CONFERENCE CALL

NCOIL will hold an interim P&C Committee Meeting via conference call in late September/early October in an effort to continue the data-related discussions held during the committee at the Summer Meeting in Portland. Among the topics to be discussed are a follow-up discussion from the P&C innovation general session in Portland, and the use and ownership of big data in insurance underwriting, specifically but not limited to that generated by telematics/UBI. A complete agenda and information on how to register will soon be available.

NAIC Issues..... continued from page 3.

third-party service providers; removing requirements for licensees to provide consumers with certain information before a data breach; and modifying the notification and remedial requirements following a data breach. “Our members have concerns about various aspects about the NAIC draft model,” stated NCOIL CEO Tom Considine. “The exclusivity provisions invite potential conflict with other officials such as attorneys general; however, we look forward to a dialogue with NAIC to address these and other issues.”

To that end, a conference call will be held this month between NAIC representatives and NCOIL legislators to discuss the revised draft. “The conference call is a great opportunity for us to discuss with the NAIC how it arrived at the changes made from the initial draft of the Model and to make suggestions on how the Model can improve,” said Sen. Travis Holdman. “Cybersecurity is an incredibly important issue and we look forward to the call.”

NCOIL is in the process of reviewing the revised draft and looks forward to discussing it during the conference call and at our Annual Meeting in Las Vegas. Comments to the revised draft are due to Sara Robben at srobben@naic.org by close of business on Friday, September 16, 2016.

Health Co-Ops Sue..... continued from page 2.

inaccurate formula that unfairly rewarded big insurers. One example of the alleged unfairness is that, in order to receive payments under the program, insurers need to produce historical data and documentation to prove they had less-healthy enrollees. But, smaller companies, including the newly formed co-ops argue that they do not have as much claims data as the bigger companies which makes their enrollee-pool look healthier than it really is.

Maryland’s Evergreen Health, which filed the original lawsuit, was denied its request

by a federal judge to stop payment on its \$24.2 million risk-adjustment payment while the merits of its lawsuit are considered.

This issues surrounding the ACA’s risk adjustment program were recently discussed at NCOIL’s Summer Meeting in Portland, OR, and will continue to be monitored. Notably, the risk-adjustment program, unlike the ACA’s reinsurance and risk corridor programs, does not expire at the end of 2016.



HHS-CMS LISTENS TO NCOIL CONCERNS ABOUT HEALTH SAVINGS ACCOUNTS, PROPOSES FAVORABLE HSA RULES FOR 2018

Earlier this year, at the request of NCOIL Officers, NCOIL CEO & former NJ Banking & Insurance Commissioner Tom Considine wrote to US Department of Health and Human Services Secretary Sylvia Burwell and Center for Medicare & Medicaid Services Acting Administrator Andy Slavitt about the adverse effects federal regulations will have on Health Savings Accounts (HSAs).

“NCOIL has worked to ensure we react when the federal government makes regulation that affect state insurance policy” said Sen. Travis Holdman, NCOIL President. “We appreciate that HHS and CMS is willing to engage in a frank dialogue to favorably resolve these issues.”

Rules proposed by the Department of Health and Human Services and the Center for Medicare and Medicaid Services indicate that HHS and CMS listened to the NCOIL’s request.

“I’m pleased that HHS and CMS has demonstrated the flexibility to listen to and agree with NCOIL’s concerns about Health Savings Accounts.” said Considine. “As stated in the letter to them, HSA’s are an important tool to keep health care costs down.”

“As the Assembly Committee on Insurance Chair and a member of the Committee on Health in New York we make laws to encourage our residents to engage in healthier activity,” said Assemblyman Kevin Cahill, NCOIL Health, Long-Term Care and Retirement Committee Chair. “This is an important example of how the federal government listened to NCOIL member states and fixed an unnecessary complication for consumers in accessing affordable health care.”

From the proposed regulations:

For 2018, we also propose a fourth standardized option at the bronze level of coverage that qualifies as a high deductible health plan (HDHP) under section 223 of the Code, eligi-

ble for use with a health savings account (HSA). HDHPs are an option valued by many consumers – enrollment in HDHPs across 2016 individual market FFE and SBE-FP QHPs constituted 9.2 percent of all FFE and SBE-FP QHP enrollment in 2016. Pursuant to the terms of the Code, the IRS releases the maximum annual limitation on cost sharing and minimum annual deductible for HDHPs annually in the spring, subsequent to the annual HHS notice of benefit and payment parameters rulemaking process.

Therefore, we propose that if any changes to the HDHP standardized option would be required to reflect differences between the HDHP standardized option finalized in the 2018 Payment Notice and the subsequently released maximum annual limitation on cost sharing and minimum annual deductible for HDHPs, HHS would publish those changes in guidance.

Accordingly, we propose to amend the definition of “standardized option” at §155.20 to provide for a plan to be considered a standardized option if it is: (1) a QHP offered for sale through an individual market Exchange with a standardized cost-sharing structure specified by HHS in rulemaking; or (2) an HDHP QHP offered for sale through an individual market Exchange with a standardized cost-sharing structure specified by HHS in guidance issued solely to modify the cost-sharing structure specified by HHS in rulemaking to the extent necessary to align with requirements to qualify as an HDHP under section 223 of the Code and meet HHS AV requirements.

In 2015, enrollment in HSA plans climbed 13% to almost 20 million, raising the total amount of assets in HSA accounts to over \$28 billion. Those numbers reflect the growing popularity of HSAs, which is the result of entrusting consumers to make decisions about their own health care and finances.

CHANGE IN MEETING REGISTRATION RATES

As you register for the Annual Meeting, you will notice that some of the registration prices have been adjusted. Some prices have decreased, some have increased and some categories have been combined. This is necessary to increase the stability of NCOIL, and increase the number of legislative and non-profit participants.