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NCOIL 2016 -Year in Review

Volume 2 of 2



Rep. Steve Riggs, KY
NCOIL President

NCOIL YEAR IN REVIEW

Thank you for working with and supporting NCOIL throughout 2016. Attached is Volume 2 of 2 of the NCOIL Newsletter Year in Review that highlights accomplishments from this year. Whether you traveled to Little Rock, AR, Portland, OR and Las Vegas, NV to participate in each of the meetings and shared your thoughts about how to increase NCOIL's value, came to just one, participated in any of the interim committee conference calls, helped educate Members of Congress about the threat of international encroachment to state-based regulation of insurance we appreciate your participation and look forward to seeing you in 2017.

NCOIL CONCLUDES SUCCESSFUL SUMMER CONFERENCE IN PORTLAND, OR

NCOIL recently concluded its 2016 Summer Conference at the Downtown Waterfront Marriott in Portland, Oregon. Over 250 attendees, 54 Legislators representing 25 States, 4 Insurance Commissioners, 9 Insurance Departments, and 6 new Legislators participated in committee hearings that covered a wide range of issues dealing with Life & Health Insurance, Property & Casualty Insurance, Workers' Compensation Insurance and International and State-Federal Relations.

Former Utah Governor and HHS Secretary Mike Leavitt provided an insightful and engaging keynote address about the importance and challenges of protecting the state based regulation of insurance, the future of the Affordable Care Act and how legislators can ensure their constituents are best served by ideas emanating from the states and not the federal government.

Several of NCOIL's Model Laws were also re-adopted by their respective committees. The Property & Casualty Committee re-adopted the Flex Rating Regulatory Improvement Model Act. The Workers' Compensation Committee re-adopted the Trucking and Messenger Courier Industries' Workers' Compensation Model Act and the Model Agreement Between Jurisdictions to Govern Coordination of Claims and Coverage. The Workers' Compensation Committee tabled the re-adoption of the Model State Structured Settlement Protection Act in order to consider amendments to it at the November Conference.

The luncheon speaker was former European Diplomat Dr. Nicholas Whyte, PhD, Senior Director of Global Solutions at APCO Worldwide and Director of the Brussels office.

Dr. Whyte spoke and participated in a

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Thomas B. Considine
NCOIL CEO



Sen. Jason Rapert, AR
Vice President



Rep. Bill Botzow, VT
Secretary



Rep. Matt Lehman, IN
Treasurer



Sen. Travis Holdman, IN
Immediate Past President

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fascinating discussion regarding the impact of Brexit and the potential impacts on the U.S. and international insurance markets.

Among the other Conference highlights were: a discussion of the complex regulation of annuities; a continued discussion of alternatives to workers' compensation insurance; input on the latest draft of the NAIC Insurance Data Security Model Law; a productive dialogue between NCOIL Legislators and NAIC Commissioners; the costs associated with the use of air ambulances and balance billing; EU "equivalence" and covered agreements; and a discussion on H.R. 2901, the "Flood Insurance Market Parity and Modernization Act" and the overall flood insurance market.

The NCOIL Annual Meeting is in Las Vegas, NV from November 17th - 20th at the Paris. Registration will open in August.

NCOIL COMMITTEES PASS RESOLUTION IN SUPPORT OF NAIC REINSURANCE MODELS

The NCOIL International Insurance Issues and State-Federal Relations Committees passed a resolution sponsored by Kentucky Representative Joseph Fischer during the Summer Meeting in Portland, Oregon in support of the National Association of Insurance Commissioners (NAIC) Credit for Reinsurance Model Law and Regulations (Models). The Resolution was unanimously adopted by the Committees.

The Resolution comes at a time during which U.S. and European Union (EU) representatives continue discussions regarding a covered agreement and whether the United States will be deemed "equivalent" under the EU's new insurance regulatory reform known as Solvency II. Non-EU based companies from countries that have been deemed equivalent will be subject to less stringent regulatory standards to operate in the EU than those jurisdictions that have not been deemed equivalent.

The Resolution sets forth NCOIL's belief that a covered agreement relating to reinsurance collateral requirements with collateral requirements below those set forth in the Reinsurance Models will pose an economic threat to the state-based regulation of insurance thereby undermining U.S. policyhold-

ers and companies. In 2011, the NAIC worked with State regulators and amended its Reinsurance Models to allow foreign reinsurers to post significantly less than 100% consumer protection collateral for U.S. claims, provided the reinsurer is evaluated and certified. To date, 35 States have passed legislation to implement those Models. NCOIL believes that States that have passed or will pass the Reinsurance Models strengthen the argument that State regulation is flexible, adaptable to changes in the global reinsurance markets, and respectful to other competent regulatory structures.

If a covered agreement on reinsurance collateral is implemented, the Resolution urges it to maintain at its floor the collateral requirements set forth in the NAIC's Reinsurance Models. NCOIL strongly supports the NAIC Reinsurance Models and urges all States that have not already done so to adopt them.

NCOIL looks forward to continuing the discussions surrounding covered agreements, equivalency, and Solvency II at its Annual Meeting in Las Vegas, NV in November. You can view the Resolution here:

<http://ncoil.org/wp-content/uploads/2016/07/reinsurance-resolution-portland.pdf>

NCOIL URGES OBAMA ADMINISTRATION TO IMPLEMENT NARAB II BY SELECTING BOARD MEMBERS AND SENATE TO ACT ON NOMINATIONS PREVIOUSLY MADE

In a press-release issued on July 7, 2016, NCOIL called upon federal officials to implement the National Association of Registered Agents and Brokers Reform Act of 2015 (NARAB II), enacted on January 12, 2015.

NARAB will act as a central clearinghouse allowing insurance producers licensed in their respective home state to sell, solicit or negotiate in every other state in which the licensed producer intends to do business. Prior to its creation, producers had to meet each state's licensing requirements. By enabling insurance producers to quickly and efficiently obtain the authority to operate on a multistate basis, NARAB II will reduce costs and increase competition among insurance producers, thereby generating lower costs and better service for consumers.

NARAB II does not create a federal regulator but rather establishes an independent non-profit corporation, known as NARAB,

controlled by its 13-member Board of Directors. The Board is to be comprised of eight current or former state insurance commissioners and five insurance industry representatives, subject to Presidential appointment and Senate confirmation.

Under the 2015 law, the Board was supposed to be appointed within 90 days of enactment. However, just days after the press release was issued, on July 12, 2016, President Obama nominated three individuals to the Board, bringing the total number of nominees to ten which is still short of the 13 needed for the Board to operate. It is currently unclear whether the Senate will take any action on the nominations. Until nominations are announced and then confirmed by the Senate, no progress can be made in setting up NARAB and making important policy and administrative decisions for consumers to benefit from.

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 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.

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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.

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, eligible

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NCOIL SPRING MEETING IN
NEW ORLEANS, LA
MARCH 3-5, 2017

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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.

NCOIL HAS SUCCESSFUL DC FLY-IN TO EDUCATE MEMBERS OF CONGRESS ABOUT THE IMPORTANCE OF STATE-BASED REGULATION



From left to right: Sen. Mike Hall (WV), Asm. William Barclay (NY), Rep. Joe Fischer (KY), Rep. Steve Riggs, (KY), Sen. Bob Hackett (OH), Rep. Marguerite Quinn (PA), and Sen. Jason Rapert (AR).

More than a half dozen NCOIL legislators traveled to Washington DC and participated in more than 4 dozen meetings on September 7th to educate members about the well-established state-based regulation of insurance in the United States.

Participating members included Rep. Steve Riggs (KY), NCOIL Vice President, Sen. Jason Rapert (AR), NCOIL Secretary, Senator Bob Hackett (OH),

Assemblyman Will Barclay (NY), Representative Joe Fischer (KY), Representative Marguerite Quinn

(PA), Senator Mike Hall (WV) and NCOIL CEO Tom Considine.

“It is important that Members of Congress understand that state laws, which state regulators ensure, are the underpinning of the sound insurance system in this country” said KY Rep. Steve Riggs, NCOIL Vice President. “Any attempts to weaken our system by international players have awful consequences for American consumers, companies, and state-based regulation of insurance.” State-based insurance regulation, which relies on individual states working

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together to regulate insurance company solvency and consumer protection, has helped create the most competitive insurance markets in the world. In the past several years a number of federal agencies, including the Federal Reserve and the Treasury, have begun intruding into insurance regulatory issues in ways that Congress did not intend when it adopted the McCarran-Ferguson Act in 1945 and re-affirmed as recently as passage of the Dodd Frank Act.

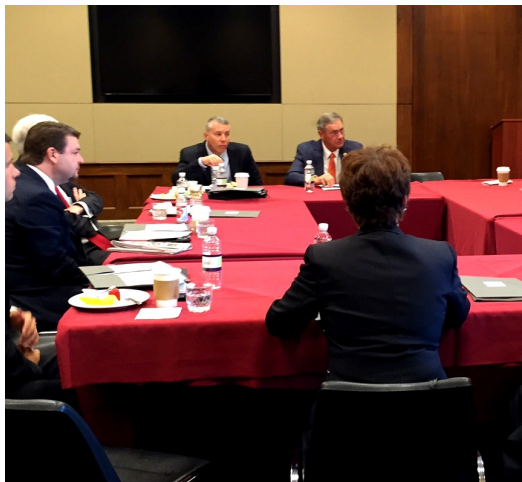
"NCOIL Legislators have worked to affirm that state-based insurance legislation and regulation has worked for nearly 75 years since the passage of McCarran-Ferguson Act" said NCOIL CEO and former NJ Banking and Insurance Commissioner Tom Considine.

"State regulators are guided by the laws enacted by state legislators" said AR Senator

Jason Rapert, NCOIL Secretary. "Attempts to make regulation at the federal or international level harms the work done to ensure solvency and protect consumers in statehouses across this country."

Recently House Financial Services Subcommittee Chairman Blaine Luetkemeyer introduced H.R. 5143, the Transparent Insurance Standards Act of 2016, which passed the House Financial Services Committee in June 2016. H.R. 5143 is similar to Senate bill S. 1086 in reiterating Congressional support for the state-based system and requiring consultation & encouraging consensus between state and federal regulators before entering negotiations with international regulatory authorities. H.R. 5143 also would strengthen the role of the Independent Insurance Expert on the Financial Stability Oversight Council (FSOC).

"We at NCOIL believe it is important for the federal legislative branch to understand while considering H.R. 5143 and S. 1086 the practical implications for the US insurance regulatory system, industry and impact on consumers of federal financial regulators entering into international insurance regulatory agreements without the benefit of those who actually regulate the insurance market here in the US" said Considine. "Members of Congress were receptive to our message and are willing to work with us."



Rep. Blaine Luetkemeyer discusses his legislation with NCOIL legislators.



Rep. Steve Riggs (KY), Rep. Blaine Luetkemeyer (MO), NCOIL CEO Tom Considine