

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS  
LIFE INSURANCE COMMITTEE  
SAN ANTONIO, TX  
FEBRUARY 26, 2004  
DRAFT MINUTES

The Life Insurance Committee of the National Conference of Insurance Legislators met at the Hyatt Regency Hotel in San Antonio, Texas, on February 26, 2004, at 1:00 p.m.

Rep. Gregory Davids of Minnesota, Chair of the Committee, presided.

Other members of the Committee present were:

Rep. George Keiser, ND  
Sen. Carroll Leavell, NM  
Rep. Virginia Milkey, VT  
Rep. Mark Young, VT

Other legislators present were:

Rep. Jay Bradford, AR  
Sen. Steven Geller, FL  
Rep. Frank Wald, ND  
Sen. Jerry Klein, ND  
Assem. Nancy Calhoun, NY  
Sen. William J. Larkin, Jr., NY  
Rep. Larry Taylor, TX  
Rep. Robert Dostis, VT

Others present were:

Susan Nolan, Mackin & Company, NCOIL Deputy Executive Director  
Fran Liebich, NCOIL Director of Legislative Affairs & Education for Life Insurance

#### MINUTES

Upon a motion moved and seconded, the Committee voted unanimously to approve, as submitted, the minutes of its November 20, 2003, meeting held in Santa Fe, New Mexico.

#### LIFE SETTLEMENTS SUBCOMMITTEE

Rep. Young said that he had deferred the Life Settlements Subcommittee meeting to May 7 or May 14, in order to meet the 30-day rule for a working draft of the Life Settlements Model. He said the meeting would take place in Albany, New York. He asked interested parties to submit changes to the Life Settlements draft within 10 days of the February 26, 2004, subcommittee meeting. He asked that information be submitted to Ms. Liebich, NCOIL Director of Legislative Affairs, Health and Life Insurance.

## DISCUSSION OF CATASTROPHIC ILLNESS LIST FOR PROPOSED NCOIL GENETIC DISCRIMINATION MODEL ACT

Andrew Faucett, representing the National Society of Genetic Counselors (NSGC), stated that the NSGC supports NCOIL in moving forward with the *NCOIL Genetic Discrimination Model Act*. Mr. Faucett suggested clarification of wording in Chapter Six of the Model Act, to change “gene” to “gene and or specific mutation within the gene.” He explained that actual mutation within the gene makes a difference in the prognosis for the disease. He said the important issue is whether the condition will result in premature death. Mr. Faucett proposed a starter list of three catastrophic diseases:

- Huntingtons Disease (as an adult onset condition),
- Cystic Fibrosis (as an adolescent and mid life condition), and
- Tay Sachs (as a childhood onset condition).

Mr. Faucett said that the number of conditions where genetics play a strong role is relatively small. He explained differences between genetic mutation and engineering, noting that genes are in every cell of the body, and can be passed on. He said there are only four or five cases of genetic discrimination documented in the United States and that actual incidences of life insurance genetic discrimination that are proven, are low. He said that the public fear of genetic discrimination, marked by articles and stories in recent press, is delaying life insurance policy purchases. Mr. Faucett said that people are not having tests until after they purchase policies.

Nancy Davenport, representing the American Council on Life Insurance (ACLI), said that genetic testing represented an issue in search of a problem. She said that with the current underwriting process, 96 percent of the population that applies for life insurance coverage are offered policies, and 88 percent is offered coverage at standard rates or better. In response to Rep. Keiser, Ms. Davenport indicated that she did not know what the costs of genetic testing were, but would inquire.

Rep. Davids asked the Committee to waive the 30-day rule on a technical amendment on the Proposed *Genetic Discrimination Model Act* under Section 102 to change “information” to “genetic information” on the first line.

Upon a motion moved and seconded, the Committee voted unanimously to waive the 30-day rule.

Upon a motion moved and seconded, the Committee voted unanimously to amend Section 102 in the Proposed *Genetic Discrimination Model Act*.

## UPDATE ON LONG-TERM CARE INSURANCE

Ms. Davenport stated that long-term care insurance continues to play an important role in retirement planning and in protecting people from catastrophic costs of long-term care. She said that by 2040, individuals 65 and older in need of long-term care will triple to 12 million. She added that the current average cost of nursing home care is \$55,000 per year, and will escalate to more than \$200,000 by 2030. Ms. Davenport said that the ACLI continues to support tax incentives for long-term care insurance, and that 21 states currently offer tax incentives. She

said President Bush had included tax incentives in his 2005 budget proposal, including an “above the line deduction” for long-term care insurance premiums regardless of whether or not a person itemized. She said to date over 80 bills have been introduced in states on long-term care, with 20 regulations pending, and of the 80 bills only two had passed; in Michigan and New Jersey. Ms. Davenport urged state legislators to consider ways to help increase the market purchases of long-term care insurance and to address catastrophic health problems of the future.

Ms. Davenport said that legislators can help by supporting tax incentives. She said that the National Governors Association (NGA) and the New York State Governor’s office have researched the subject. She added that New York has a program called New York Partnership<sup>1</sup> and is one of four states that have Partnership for Long-Term Care programs.

#### UPDATE ON FRAUD ISSUES AND LEGISLATION

Howard Goldblatt, representing the Coalition Against Insurance Fraud, reported that a bill making fraud a defense from paying a claim beyond the two-year contestability period had passed through one chamber of the Massachusetts State legislature, and is waiting for legislature to adjourn before moving forward.

#### OTHER BUSINESS

##### REVIEW OF MODELS AND RESOLUTIONS, AS PER BYLAWS

##### LIFE SETTLEMENTS MODEL ACT

Ms. Nolan said that the *NCOIL Life Settlements Model Act* would, among other things, prohibit a person, wherever located, from:

- acting as a provider or broker with an owner or purchaser who is a resident of the state without first having obtained a license from the commissioner
- using any form of sales contract or purchase agreement unless it has been filed with and approved by the commissioner
- entering into a sales contract if the policy was obtained by false, deceptive or misleading means

It was moved and seconded to defer consideration of the *NCOIL Life Settlements Model Act* to the next meeting in Chicago.

##### INSURANCE COMPLIANCE SELF-EVALUATIVE PRIVILEGE MODEL ACT

Ms. Nolan said the *NCOIL Insurance Compliance Self-Evaluative Privilege Model Act* recognizes that insurance compliance self-evaluative privilege is necessary to protect the confidentiality of communication relating to voluntary internal compliance audits, and to encourage insurance companies to conduct audits of their compliance programs and management systems.

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<sup>1</sup> New York Partnership program combines private long-term care insurance and Medicaid to help New Yorkers prepare financially for the possible need for nursing home or home care. The program allows New Yorkers to protect their assets while remaining eligible for Medicaid, if their long-term care needs exceed the period covered by their private insurance policy.

Sen. Geller said he was in favor of the bill, though it was controversial in many states, including his own.

Upon a motion moved and seconded, the Committee readopted the Insurance Compliance *NCOIL Insurance Compliance Self-Evaluative Privilege Model Act* unanimously.

#### SECONDARY ADDRESSEE MODEL ACT

Ms. Nolan said that the *NCOIL Secondary Addressee Model Act* provides that a life insurance contract covering a person aged 64 or older cannot be lapsed for nonpayment of premium unless, after expiration of the grace period and at least 21 days prior to the effective date of the lapse, the insurer has mailed a notification of the impending lapse in coverage to the policy owner and to a specified secondary addressee, if such addressee has been designated in writing by the policy owner.

Upon a motion moved and seconded, the Committee readopted the *NCOIL Secondary Addressee Model Act* unanimously.

#### ADJOURNMENT

There being no further business, the meeting adjourned at 2:40 p.m.