NATIONAL CONFERENCE OF INSURANCE LEGISLATORS
LIFE INSURANCE COMMITTEE
HILTON HEAD, SOUTH CAROLINA
MARCH 3, 2005
DRAFT MINUTES

The Life Insurance Committee of the National Conference of Insurance Legislators (NCOIL) met at the Hilton Oceanfront Resort on Thursday, March 3, at 10:45 a.m.

Rep. Larry Taylor of Texas, Chair of the Committee, presided.

Other members of the Committee present were:

Rep. George Keiser, ND
Rep. Kathleen Keenan, VT
Rep. Virginia Milkey, VT
Rep. Mark Young, VT

Other legislators present were:

Rep. Pat Patterson, FL
Rep. Shirley Bowler, LA
Sen. Pam Redfield, NE
Rep. Donald Flanders, NH
Sen. Neil Breslin, NY
Sen. Stewart Greenleaf, PA
Rep. Craig Eiland, TX
Sen. Claire Ayer, VT
Sen. Ann Cummings, VT

Also in attendance were:

Susan Nolan, Nolan Associates, NCOIL Executive Director
Fran Liebich, NCOIL Director of Legislative Affairs & Education, Health, Life, and Workers' Compensation Insurance

MINUTES

Upon a motion moved and seconded, the Committee voted unanimously to approve, as submitted, the minutes of its November 18, 2004, Committee meeting in Duck Key, Florida.

INVESTOR-OWNED LIFE INSURANCE (IOLI)

Rep. Taylor overviewed a proposed *Resolution Opposing the Expansion of State Insurable Interest Laws that Permit Private Investors to Purchase Life Insurance on the Lives of Unrelated Individuals*, which he sponsored. He said that the resolution opposed efforts to expand state insurable interest laws to permit charities, which otherwise have a legitimate insurable interest in donors, to allow investor groups to use that interest primarily for private investment purposes. He said the states of North Carolina, Tennessee, and Texas had passed legislation expanding their insurable interest laws to allow IOLIs.

Bill Anderson of the National Association of Insurance and Financial Advisors (NAIFA) said that NAIFA, the Association for Advanced Life Underwriting (AALU), and the American Council of Life Insurers (ACLI) were engaged in a nationwide opposition to the expansion of insurable interest laws. He said that the United States Treasury Department was proposing a 25 percent excise tax on IOLI contracts. He said that the Treasury's proposal had led the current Administration and the Chairman of the Senate Finance Committee to say that serious problems existed with the arrangements.

Nancy Davenport of the ACLI said that IOLIs would undermine the long-standing integrity of state insurable interest laws. She said that unrelated third-party investors were using charities as investment vehicles. She said that Virginia had passed legislation that prevented unrelated third parties from using charities to purchase life insurance on individuals.

Craig Goldman of LILAC Capital said that LILAC was the only company offering charity-owned life insurance (CHOLI). He said that the program's goal was to help charities and non-profits to raise money. He said that in Texas CHOLIs had raised over $60,000,000 to benefit charities. He said hospitals, churches, universities, and synagogues had benefited from the arrangements. Mr. Goldman said that not one state had expressed a concern since the charities began using CHOLIs.

Rep. Young moved that the Committee amend the resolution to make certain that it would not interfere with life or viatical settlement transactions. Rep. Eiland suggested amending the resolution by adding a drafting note to clarify that the resolution would not interfere with life or viatical settlements.

After some discussion, it was moved and seconded to refer the model to the NCOIL Executive Committee for consideration later the next day, and to address any proposed amendments to the resolution at that time.

LONG-TERM CARE PARTNERSHIP PROGRAM ENABLING MODEL

Ms. Liebich overviewed a proposed working draft of an NCOIL *Model Act Enabling States to Create Partnership for Long-Term Care Programs*. She said the proposed enabling legislation would allow a state to amend its Medicaid statute to provide for asset disregard under a long-term care partnership program and would establish minimum standards for the program. She said that the enabling legislation would precede the enactment of a proposed NCOIL *Model Act Implementing Partnership for Long-Term Care Programs (working draft)*. She said it would establish a partnership program in preparation for Congressional repeal of an impediment in Omnibus Budget Reconciliation Act (OBRA) of 1993, which limited the program to only four states: California, Connecticut, Indiana, and New York.

Sam Morgante of Genworth Financial said that its long-term care insurance unit, GE Capital, had historically offered long-term care insurance to all four of the Partnership states. He clarified that the OBRA impediment was not inadvertent, but deliberate, because some members of Congress thought that Partnership programs were teaching people how access Medicaid. He said that of the 180,000 policies in place in all four states, fewer than 100 individuals had accessed Medicaid. He said that much had been learned from the Partnership programs. Mr. Morgante said that the proposed enabling legislation was too prescriptive. He said that long-term care insurers involved in the sale of Partnership policies were working with Congress and cautioned that developing model legislation too early could result in having to amend the language at a later date. Mr. Morgante referenced Legislative Bill 272 in Nebraska as a model that the Committee should follow for enabling legislation.

Rep. Taylor asked about the federal legislation's time frame. Mr. Morgante said that discussions on the federal legislation were just beginning.

Megan Mamarella of the National Association of Health Underwriters (NAHU) said that the enabling model legislation was timely as states were dealing with Medicaid budget issues. She said that the enabling legislation would be the first step in getting the Partnership programs started in anticipation of the federal action.

Upon a motion moved and seconded, the Committee voted unanimously to defer the NCOIL *Model Act Enabling States to Create Partnership for Long-Term Care Programs* until the 2005 NCOIL Summer Meeting.

LONG-TERM CARE PARTNERSHIP PROGRAM IMPLEMENTATION MODEL

Ms. Liebich overviewed a proposed working drafting of an NCOIL *Model Act Implementing Partnership for Long-Term Care Programs*. She said that the model legislation could be used by states to implement the long-term care partnership programs following federal repeal of OBRA 1993. She said that the proposed model act would follow the proposed enabling legislation and would further detail how the partnership programs would operate, including providing certain consumer protections.

Ms. Mamarella said that NAHU supported the Committee's work with the implementation draft. However, she encouraged the Committee to delay adoption of the proposed model act until federal legislation was developed. She offered that NAHU would provide assistance to further develop the working draft. She said that NAHU supported the model's dollar-for-dollar asset protection language because it was the simplest to implement and the easiest to understand.

Rep. Eiland asked whether NCOIL should add a drafting note indicating that states have the ability to correct inconsistencies with the legislation should federal legislation differ. Upon a request for further information, Ms. Mamarella said that a drafting note would not be effective in the implementation model act, but said that enabling legislation should have such a drafting note.

Eric Dupont of MetLife Insurance said that he supported the Committee's development of model legislation, but said that action would be premature due to ongoing federal activity on the issue.

Scott Kipper of America's Health Insurance Plans (AHIP) said that AHIP supported the Committee's development of model legislation, but cautioned the Committee not to act before the federal government did.

Rep. Keiser stressed that states were in crisis with Medicaid and that action was needed. Rep. Keiser said that North Dakota had proposed legislation based on the Indiana Partnership Program in order to provide relief to the state's budget.

Upon a motion moved and seconded, the Committee voted unanimously to defer the NCOIL *Model Act Implementing Partnership for Long-Term Care Programs (working draft)* until the 2005 NCOIL Summer Meeting.

LONG-TERM CARE TAX CREDIT

Rep. Taylor said that, as per NCOIL bylaws, the Committee would review the NCOIL *Long-Term Care Tax Credit Model Act*. He said that the Health Insurance Committee originally had adopted the model act on July 10, 1998, and that the Life Insurance Committee had subsequently adopted it on March 1, 2001. He said the model act would allow taxpayers a credit against state income tax in an amount equal to 15 percent of the premium costs paid during the taxable year for qualified long-term care policies. He said that the Health Insurance Committee had transferred long-term care insurance issues to the Life Insurance Committee after legislators had originally adopted the model.

Upon a motion moved and seconded, the Committee voted unanimously to readopt the NCOIL *Long-Term Care Tax Credit Model Act,* and then referred the model to the NCOIL Executive Committee for consideration the next day.

ADJOURNMENT

There being no further business, the meeting adjourned at 12:00 p.m.

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