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Rep. Deborah Ferguson DDS AR
President



Thomas B. Considine
NCOIL CEO



Rep. Tom Oliverson MD, TX
Vice President

Capital

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By Will Melofchik – NCOIL General Counsel

Greetings -

Welcome to the latest installment of Capital Corner, a column that aims to update you on some of the issues that NCOIL is following. Below are some of the issues that NCOIL may be discussing at the upcoming NCOIL Annual Meeting and will be monitoring throughout the remainder of the year.

Third Party Litigation Funding: Will NCOIL Re-Enter the Debate?

Third-party litigation financing (TPLF) is an arrangement in which a funder who is not a party to the lawsuit agrees to provide funding to a litigant (typically a plaintiff) or law firm in exchange for an interest in the potential recovery in a lawsuit¹. This funding generally falls into two categories: commercial and consumer funding². Commercial arrangements are typically between funders and corporate litigants or law firms and involve commercial claims, such as breach of contract³. Consumer arrangements are typically between a funder and an individual person, such as the plaintiff in a personal injury case⁴.

TPLF is undoubtedly controversial with opponents arguing, among other things, that: there is a lack of overall transparency with how the TPLF industry operates; it has the potential to draw out litigation and increase costs (ultimately leading to increased insurance premiums for policyholders); and encouraging frivolous lawsuits⁵. Supporters of TPLF assert that it is a socially valuable activity, expanding access to the courtroom and enabling meritorious claims to be vindicated that otherwise would lack the funding to go forward⁶.

¹<https://www.gao.gov/products/gao-23-105210>

²Id.

³Id.

⁴Id.

⁵https://www.iii.org/sites/default/files/docs/pdf/triple_i_third_party_litigation_wp_07272022.pdf

⁶<https://nysba.org/the-economic-case-against-forced-disclosure-of-third-party-litigation-funding/#:~:text=Forced%20disclosure%20of%20litigation%20finance%20denies%20financial%20privacy%20to%20civil,not%20avail%20themselves%20of%20financing.>



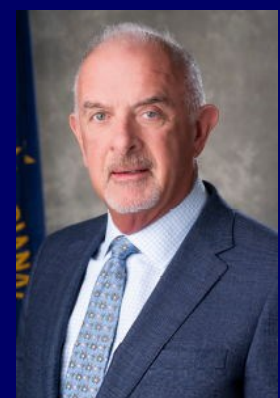
Asw. Pamela Hunter, NY
Treasurer



Sen. Paul Utke, MN
Secretary



Rep. Matt Lehman, IN
Immediate Past President



Sen. Travis Holdman, IN
Immediate Past President

Capital Corner (cont'd)

Numerous states have enacted laws addressing TPLF⁷. Such laws range from: requiring litigation funders to disclose certain information in their funding contracts, including financial terms such as the amount that must be repaid and the annual percentage rate; requiring registration and reporting requirements; and limiting the interest rates and fees that litigation lenders can charge consumers⁸.

Several years ago, NCOIL engaged in a vigorous debate over developing an NCOIL TPLF Model Law. There were multiple Models introduced, but ultimately a consensus could not be reached and nothing was voted on. However, with TPLF continuing to grow and with more states debating whether legislation is warranted, there have been calls for NCOIL to re-enter the debate and consider developing a TPLF Model Law for states to use as guidance.

What do you think? Should NCOIL re-enter the debate and develop a TPLF Model Law? If so, what provisions should or should not be in such a Model?

Please submit any thoughts or comments on this issue to wmelofchik@ncoil.org.

NCOIL to Discuss Earned Wage Access Providers

Earned wage access products are advertised as a way for employees to have access to wages that have been earned but not yet paid. Becoming very popular during the COVID-19 pandemic, the products generally are offered in two forms: employer-sponsored products and direct-to-consumer.

In the employer-sponsored model, the earned wage access provider partners with employers in order to access time and attendance information⁹. This model gives consumers on-demand access to a certain amount of their earned wages prior to payday; consumers then repay that amount by having it deducted from their next paycheck, minus fees or other charges¹⁰. In the direct-to-consumer model, the earned wage access provider interacts with consumers without involving the employer, connecting to their bank accounts to identify past income and estimate future wages¹¹. This model gives consumers access to funds based on this estimated amount of future income, and consumers repay by having that amount deducted from their bank account after payday, minus fees or other charges¹².

Supporters of these products state that they are incredibly useful for consumers that are living paycheck-to-paycheck as they provide help towards meeting the cost of bills and expenses when they need it, rather than having to fit in with pay cycles¹³. However, concerns have been raised regarding high interest rates, hidden fees, and whether or not the pre-payday payments should be categorized, and regulated, as a loan¹⁴.

State legislative and regulatory activity on these issues has been quickly heating up. Earlier this summer, Nevada became the first state to formally regulate earned wage access providers, requiring providers to obtain a state license and setting forth other consumers protections regarding no late fees, no credit reporting, and codifying that the products are non-recourse, meaning that the provider can't go after other assets if a consumer doesn't repay the cash advance¹⁵. Missouri also enacted a similar law, and several other states introduced similar bills¹⁶.

The California Department of Financial Protection and Innovation has proposed regulations that go a step further by seeking to categorize earned wage access products as loans¹⁷. The regulations have been subject to vigorous debate and are scheduled to be finalized no later than March 2024¹⁸.

⁷<https://www.gao.gov/products/gao-23-105210>

⁸Id.

⁹<https://www.gao.gov/products/gao-23-105536>

¹⁰Id.

¹¹Id.

¹²Id.

¹³<https://news.bloomberglaw.com/banking-law/states-set-collision-course-over-pay-on-demand-for-earned-wages>

¹⁴Id.

¹⁵<https://fintechmagazine.com/articles/what-nevadas-pioneering-earned-wage-access-law-really-means>

¹⁶<https://news.bloomberglaw.com/banking-law/states-set-collision-course-over-pay-on-demand-for-earned-wages>

¹⁷Id.

¹⁸Id.

Future NCOIL Meetings:

Annual 2023
November 15 –18
Columbus, OH
Renaissance Columbus
Downtown Hotel

Spring 2024
April 11-14
Nashville, TN
Sheraton Grand
Nashville Downtown

Summer 2024
July 17-20
Costa Mesa, CA
Westin South Coast
Plaza

Annual 2024
November 21-24
San Antonio, TX
The Westin Riverwalk

Capital Corner (cont'd)

At the upcoming Annual Meeting in Columbus, the Financial Services & Multi-Lines Issues Committee will discuss earned wage access products and the abovementioned state legislative and regulatory activity in an effort to see if an NCOIL Model Law should be developed for states to consider adopting.

Please submit any thoughts or comments on this issue, including speaker suggestions for the Columbus meeting, to wmelofchik@ncoil.org.

We hope to see you in Columbus, and hear from you in the interim.

-will

Ohio Legislators to Chair NCOIL Annual Meeting Host Committee

NCOIL is delighted to announce that Ohio Senator Bob Hackett and Representative Brian Lampton will be Co-Chairing the Host Committee for the 2023 NCOIL Annual Meeting in Columbus from November 15th-18th. Both legislators have been involved with NCOIL for numerous years and Chair their respective State Insurance Committees. Together, Sen. Hackett and Rep. Lampton will help ensure NCOIL has a successful and productive Meeting in their home state.

"We are honored that Sen. Hackett and Rep. Lampton have stepped up to chair this committee. We are looking forward to closing out our last meeting of 2023 in a really strong way and robust participation from our host state is a big part of that," said NCOIL CEO Commissioner Tom Considine.

NCOIL Adopts Two New Health Insurance Model Laws at Annual Meeting in Minneapolis

Belmar, NJ – At the 2023 National Council of Insurance Legislators (NCOIL) Summer National Meeting in Minneapolis, the organization adopted two new NCOIL Model Laws. The Models were first adopted by the group's Health Insurance and Long-Term Care Issues Committee (Committee), Chaired by West Virginia Delegate Steve Westfall, and passed by NCOIL as a whole on Saturday July 22nd.

The two new Models are the NCOIL Biomarker Testing Insurance Coverage Model Act, sponsored by New York Assemblywoman Pamela Hunter, NCOIL Treasurer, and co-sponsored by Minnesota Senator Paul Utke, NCOIL Secretary, and the NCOIL Hospital Price Transparency Model Act sponsored by Texas Representative Tom Oliverson, M.D., NCOIL Vice President, and co-sponsored by Kentucky Representative Rachel Roberts, Vice Chair of the Committee.

Del. Westfall said, "The Committee has worked tirelessly to get these two Models to a place where they could be considered and I thank the sponsors and co-sponsors for listening to and incorporating input from a wide range of perspectives during the drafting and deliberation process. Hospital price transparency and health insurance coverage for biomarker testing are two issues of great interest to the public and these Models will provide effective guidance for legislators to bring back to their states."

"I was pleased to see the committee adopt two bills that are so important in helping patients to navigate the healthcare marketplace," said Arkansas Representative Deborah Ferguson, DDS, NCOIL President, "I am confident that these Models will prove to be very useful to legislators and I'll be watching with great interest as bills based on the Models are introduced in legislatures across the country."

Cont'd on Page 4

Future NCOIL Meetings:

Spring 2025
April 24-27
Charleston, SC
Francis Marion Hotel

Summer 2025
July 16-19
Chicago, IL
Renaissance Chicago
Downtown Hotel

Annual 2025
November 10-15
Atlanta, GA
The Whitley Hotel

Spring 2026
Louisville, KY
The Hyatt Regency

Summer 2026
July 15-18
Boston, MA
Westin Copley Place

Annual 2026
TBD

NCOIL Adopts Two New Health Insurance Model Laws at Annual Meeting in Minneapolis (cont'd)

The NCOIL Biomarker Testing Insurance Coverage Model Act requires insurance coverage for biomarker testing for the purposes of diagnosis, treatment, appropriate management, or ongoing monitoring of a covered person's disease or condition. Approximately ten states have enacted similar legislation, with another ten states having introduced bills that largely mirror the Model. The Model is intended to only apply post-diagnosis, and will help give more patients the ability to have a biomarker test conducted to guide treatment decisions in instances when the test provides clinical utility as demonstrated by medical and scientific evidence, including, but not limited to: labeled indications for a test approved or cleared by the Food and Drug Administration (FDA) of the United States government or indicated tests for an FDA approved drug; Centers for Medicare and Medicaid Services (CMS) National Coverage Determinations or Medicare Administrative Contractor (MAC) Local Coverage Determinations; or nationally recognized clinical practice guidelines.

"The passage of this Model is an important step in making sure patients are able to make the best-informed decisions about the treatment options available to them when they need it most," said Asw. Hunter. "We heard a range of differing opinions on this issue, but as NCOIL continues to prove, we were able to come together and adopt a Model on a vitally important issue that can be used to protect patients all across the country."

During the drafting and deliberation process, NCOIL legislators and staff heard from a wide array of interested parties including: America's Health Insurance Plans (AHIP); the American Cancer Society Cancer Action Network; Biotechnology Innovation Organization (BIO); Blue Cross Blue Shield Association; California Health Benefits Review Program (CHBRP); ERISA Industry Committee (ERIC); GO2 Foundation for Lung Cancer; International Foundation for Autoimmune & Autoinflammatory Arthritis; National Comprehensive Cancer Network (NCCN); Ochsner Cancer Institute; and the UC San Diego Moore Cancer Center.

The NCOIL Hospital Price Transparency Model Act will enable states to implement laws and regulations that mandate healthcare facilities to disclose prices for specific items and services, offering patients accessible and transparent pricing information. Facilities will be required to maintain a list of standard charges for their items and services as well as provide a consumer friendly list of shoppable services available at the facility. Non-compliance can result in a corrective action plan, administrative penalties, and a prohibition of collective debt actions against patients. The genesis for the Model and similar state laws is a very similar federal hospital price transparency regulation that hospitals have not been fully compliant with.

Rep. Oliverson said, "Lack of transparency in hospital pricing over the years has resulted in a lack of competition in the marketplace and led to rising healthcare costs across the nation. Unfortunately, this has made healthcare unaffordable for many Americans. This Model, combined with increased compliance with the federal regulation, will help ensure that consumers are empowered to make the best healthcare decisions for themselves and their families."

During the drafting and deliberation process, the Committee heard from a wide array of interested parties including: the American Hospital Association (AHA); the Cicero Institute; the Council for Affordable Health Coverage; the National Academy for State Health Policy (NASHP); PatientRightsAdvocate.org; and the Texas Public Policy Foundation.

NCOIL CEO Commissioner Tom Considine said, "The passage of these two Models really underscores how NCOIL continues to be on the cutting edge of emerging healthcare public policy issues. It also shows NCOIL's commitment to hearing different perspectives on all types of issues and being willing to make changes to Models throughout the drafting process. These are two issues that are very important to consumers so kudos to the Committee for working hard to reach a bipartisan consensus and getting these models over the finish line."

Full copies of the models can be found here: <https://ncoil.org/health-long-term-care-health-retirement-issues-committee/>

NCOIL August Twitter Activity:

August 2, 2023

In the lead up to the NCOIL Annual Mtg (and Ohio State home game) in Columbus this November, we will be sharing fun facts about the city including things to do.

Abraham Lincoln was at the Ohio State House in Columbus when he found out that the electoral college formally announced he had won the presidency.

August 7, 2023

Columbus, OH Fun Fact: The first woman to fly solo around the world started and ended her journey in Columbus, in her plane "The Spirit of Columbus."

August 15, 2023

Columbus, OH Fun Fact: 48% of the U.S. population lives within 500 miles of Columbus.

REGISTRATION FOR NCOIL ANNUAL MEETING IS OPEN

Registration for the 2023 NCOIL Annual Meeting at the Renaissance Columbus Downtown Hotel in Columbus, OH from November 15th—18th is open.



For registration information please click [here](#)

See the meeting schedule on page 7 or view at the NCOIL website [here](#)

DON'T FORGET TO BOOK YOUR HOTEL!!!

*The hotel block closes on **October 27th***

Legislators book here:



General Participants book here:



Reminder that Contributing States are eligible for two legislator stipends per National Meeting to help underwrite the cost of participating.

Click below for more information

Please reach out to Pat Gilbert at pgilbert@ncoil.org with any questions

LEGISLATOR STIPENDS NOW AVAILABLE FOR CONTRIBUTING STATES

CLICK HERE FOR MORE INFORMATION

NCOIL One on One

NCOIL August Twitter Activity:

August 22, 2023

Columbus, OH Fun Fact: Columbus is home to the Center of Science and Industry (COSI), one of the largest science museums in the US which has been ranked multiple times as the top science museum in the country.

August 30, 2023

Columbus, OH Fun Fact: The first Wendy's was opened in 1969 by Dave Thomas in Columbus.

August 31, 2023

On average, 292 lives are lost to overdoses every single day. That's the equivalent of a commercial airliner crashing daily! On International Overdose Awareness Day, we recognize this tragedy and crisis as a day to raise awareness and extend our support those in need.

NCOIL One on One Interview with Rhode Island Senator Roger Picard is out now. Click the link [here](#) to check it out! Interested in learning more about other NCOIL members? Visit the link [here](#) to see past NCOIL One on One Interviews.



Thanks to everyone who has participated so far:

- IN Rep. Matt Lehman
- NY Asw. Pam Hunter
- OH Sen. Bob Hackett
- AR Rep. Deborah Ferguson DDS
- ND Sen. Jerry Klein
- LA Rep. Edmond Jordan
- CA Asm. Ken Cooley
- TX Rep. Tom Oliverson MD
- NV Asw. Maggie Carlton
- MN Sen. Paul Utke
- MI Rep. Brenda Carter
- WV Del. Steve Westfall
- SC Rep. Carl Anderson
- NC Sen. Vickie Sawyer
- IN Sen. Travis Holdman
- OK Rep. Forrest Bennett
- CT Rep. Tammy Nuccio
- MS Sen. Walter Michel
- KY Rep. Rachel Roberts
- UT Rep. Jim Dunnigan
- NJ Sen. Nellie Pou
- ND Sen. Shawn Vadaa

Don't Miss the NCOIL YouTube Channel: Subscribe Today

Weren't able to attend our past meetings? Good news— you can visit our YouTube channel for recordings of past meetings. Prior national meeting sessions and interim committee meetings are posted on our YouTube channel now.

Visit the link below to subscribe and keep up to date on all things NCOIL!

<https://www.youtube.com/channel/UCe09Z77z4q6HG1kv3fDG7Bg>



SUMMER MEETING MINUTES
CLICK HERE FOR MORE INFO

2023 NCOIL Annual Meeting Schedule

Things to See in Columbus:

[Franklin Park Conservatory](#)

[Columbus Zoo and Aquarium](#)

[National Veterans Memorial and Museum](#)

[COSI](#)

[Columbus Museum of Art](#)

[German Village](#)

[The Wexner Center for the Arts](#)

WEDNESDAY, NOVEMBER 15TH

Welcome Reception 6:00 PM - 7:00 PM

THURSDAY, NOVEMBER 16TH

Welcome Breakfast 8:15 AM - 9:45 AM

The Welcome Breakfast is an important opening session. The Committee meetings/general sessions for Thursday, November 16 will start at approximately 10:00 a.m. and end at approximately 5:00 p.m. There will also be a luncheon for public policymakers and staff at approximately 1:00 p.m. Specific committee meetings/general sessions will be listed in the next draft of the schedule

CIP Member & Sponsor Reception 6:00 PM - 7:00 PM

FRIDAY, NOVEMBER 17TH

Committee meetings/general sessions for Friday, November 17 will start at approximately 9:00 a.m. and end at approximately 5:00 p.m. There will also be a Keynote Luncheon for all attendees at approximately 1:00 p.m. Specific committee meetings/general sessions will be listed in the next draft of the schedule

SATURDAY, NOVEMBER 18TH

Committee meetings/general sessions for Saturday, November 18 will start at approximately 9:00 a.m. and end at approximately 1:00 p.m. Specific committee meetings/general sessions will be listed in the next draft of the schedule

Executive Committee 12:30 PM - 1:00 PM

Welcome Reception Venue: Station 67

NCOIL is pleased to announce the 2023 Annual Meeting Welcome Reception will be held at the beautiful and historic Station 67 Firefighters Union Hall. Originally built as a transportation hub, this building featuring a pagoda-style clock tower, brick exterior, and unique history, now serves as one of Columbus's premier event venues. The venue is just a short walk away from the conference host hotel.

