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For Immediate Release
December 20, 2024
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NCOIL ADOPTS FIVE NEW MODEL LAWS AT ANNUAL MEETING IN SAN ANTONIO

Model Laws Include the NCOIL Value Based Purchasing Model Act; the NCOIL Earned Wage Access Model Act; the NCOIL Transparency in Third Party Litigation Financing Model Act; the NCOIL Model Act in Support of Mental Health Wellness Exams; and the NCOIL Strengthen Homes Program Model Act

Belmar, NJ – At the 2024 National Council of Insurance Legislators (NCOIL) Annual National Meeting in San Antonio, the organization adopted five new NCOIL Model Laws. All five Models passed overwhelmingly via voice vote by their respective policy committees and the NCOIL Executive Committee.

The NCOIL Health Insurance & Long Term Care Issues Committee, Chaired by Rep. Jim Dunnigan (UT), NCOIL Secretary, adopted the NCOIL Value Based Purchasing Model Act, sponsored by Sen. Mary Felzkowski (WI). The NCOIL Financial Services & Multi-Lines Issues Committee, Chaired by Sen. Felzkowski, adopted the NCOIL Earned Wage Access Model Act, sponsored by Asw. Pamela Hunter (NY), NCOIL President, and the NCOIL Transparency in Third Party Litigation Financing Model Act, sponsored by Rep. Matt Lehman (IN), Past NCOIL President, and co-sponsored by Del. Steve Westfall (WV).

Additionally, the Joint State-Federal Relations & International Insurance Issues Committee, Chaired by Rep. Rachel Roberts (KY), adopted the NCOIL Model Act in Support of Mental Health Wellness Exams, sponsored by Rep. Roberts. And the Property & Casualty Insurance Committee, Chaired by Rep. Forrest Bennett (OK), adopted the NCOIL Strengthen Homes Program Model Act, sponsored by Rep. Dunnigan and co-sponsored by Rep. Matthew Gambill (GA).

“NCOIL had a great year as the organization worked to address some of the most pressing and frequently discussed issues impacting the insurance and financial services industries,” said Asw. Hunter. “The long hours of deliberative discussions that take place leading up to and during our meetings resulted in the adoption of five well vetted and significant Model Laws. The sponsors and co-sponsors thoroughly engaged on their respective issues and collaborated with stakeholders to bring these Models to where they needed to be for NCOIL committee passage.

As we look towards the new year, we will be watching with interest as these Model bills inspire new legislation in statehouses across the country.”

The NCOIL Value Based Purchasing Model Act aims to create authority for states to enter into a value based purchasing agreement with a drug manufacturer. The Model does not require states to enter into these agreements. Rather, the Model creates the authority if the state wants to do so.

As medical treatments continue to advance, it has opened the door to a wide variety of medical solutions, especially when dealing with very rare diseases. However, the cost of these treatments are extremely high. A value-based purchasing agreement aims to ensure that the cost of the treatment is based on the value that it provides to the patient. This is done through an agreed upon metric between the state agency and the manufacturer stating what benchmarks need to be met to receive the full payment.

“I sponsored a law very similar to this Model in Wisconsin, and I was proud to see its swift adoption here at NCOIL as it is important that patients have access to the most cutting-edge treatments,” said Sen. Felzkowski. “This is a very straightforward Model and I’m confident other states will follow NCOIL’s lead and implement it.”

No opposition to the Model was voiced throughout the drafting and deliberation process, and NCOIL legislators and staff heard from interested parties including the Campaign for Transformative Therapies (CTT) and Michael Heifetz, former Wisconsin Medicaid Director.

The NCOIL Earned Wage Access (EWA) Model Act provides states a licensing framework and sets forth several consumer protections related to the EWA industry. The Model outlines an application process in which EWA providers can obtain a license from an appropriate regulatory department and establishes several compliance requirements and reporting and enforcement provisions. The Model requires EWA providers to give the consumer notice before a consumer enters into an EWA transaction, of all fees associated with the transaction and the full potential cost of the transaction, including any expediting fees, any suggested tips, any other potential charges a provider might impose directly on a customer and the cost expressed as an annual percentage rate. If an EWA provider offers consumers the opportunity to pay an additional amount for an EWA transaction voluntarily, such as a tip or donation, the Model requires providers to offer \$0 among any amounts suggested to the consumer.

“Several states, including my home state of New York, have either introduced or passed earned wage access legislation and it’s clear that the issue will be discussed in many more legislatures in the new year,” said Asw. Hunter. “As the earned wage access market has rapidly expanded, so have concerns on how these products are utilized and what guardrails are necessary. I’m proud of the work we did at NCOIL to lead on this issue by providing important guidance to legislators on how to best protect consumers.”

Throughout the Model drafting and deliberation process, the Committee heard from a wide range of interested parties including: the Center for Responsible Lending (CRL); the Connecticut Department of Banking; Consumer Reports; DailyPay; EarnIn; the Financial Technology

Association (FTA); the Missouri Division of Finance; the National Consumer Law Center (NCLC); the New Economy Project; and Payactiv.

The NCOIL Transparency in Third Party Litigation Financing Model Act establishes that such transactions be subject to state regulation and sets requirements regarding disclosure, registration, funding company and attorney responsibilities and limitations, violations, and other items, such as setting forth a rate cap for consumer litigation funding transactions. The Model prohibits both consumer and commercial litigation financing transactions from being directly or indirectly financed by a foreign entity of concern, or a foreign country or person of concern.

The Model also requires that in a civil proceeding in which a plaintiff enters into a consumer litigation financing agreement, the plaintiff or the plaintiff's attorney shall provide to each of the other parties in a civil proceeding, and each insurer that has a duty to defend another party in the civil proceeding, written notice that the plaintiff has entered into a consumer litigation funding contract in which a plaintiff enters into a consumer litigation financing agreement. On the commercial side, the Model requires a party or his or her counsel to, without awaiting a discovery request, provide to the other parties, and each insurer that has a duty to defend another party in the civil proceeding, any agreement under which any commercial litigation financier, other than an attorney permitted to charge a contingent fee representing a party, has a right to receive compensation that is contingent in any respect on the outcome of the legal claim.

“This issue first came up at NCOIL over a decade ago and at that time, we reached a stalemate and weren't able to finalize anything,” said Rep. Lehman. “Since then, we've seen real growth in this space on both the consumer and commercial sides so getting this Model to a place where it could be voted on is a big win for transparency and consumers. The adoption of the Model did not happen overnight, and it is a real testament to the Committee members who heard all perspectives and had robust discussions in order to get to an end result that provides a strong foundation for States to address this issue.”

During the drafting and deliberation process, NCOIL legislators and staff heard from a wide range of interested parties including: the Alliance for Responsible Consumer Legal Funding (ARC); the American Association for Justice (AAJ); the American Legal Finance Association (ALFA); the American Property & Casualty Insurance Association (APCIA); California Western School of Law; the Coalition Against Insurance Fraud; Dinsmore & Shohl LLP; the Independent Insurance Agents and Brokers of America (IIABA); the International Legal Finance Association (ILFA); the National Association of Mutual Insurance Companies (NAMIC); the National Insurance Crime Bureau (NICB); Parabellum Capital; Shook, Hardy & Bacon; State Farm; Uber; and Zurich.

The NCOIL Model Act in Support of Mental Health Wellness Exams requires health plans to provide coverage for an annual standalone mental health wellness examination that is performed by a mental health professional. The Model states that such coverage shall be no less extensive than the coverage provided for preventive services or primary care benefits, comply with the federal Mental Health Parity and Addiction Equity Act, and not be subject to copayments, coinsurance, deductibles, or any other cost sharing requirements, provided, however, that cost-

sharing shall be required if the applicable plan is governed by the Federal Internal Revenue Code and would lose its tax-exempt status as a result of the prohibition on cost-sharing for the service.

“It is essential that consumers are empowered to take care of their mental health just as much as their physical health,” said Rep. Roberts. “However, far too often people just don’t have access to the same level of coverage for mental healthcare as they do for physical care. I was proud to sponsor this Model to encourage more states around the country to ensure their citizens have access to all the care they need.”

NCOIL legislators and staff heard from several interested parties during the drafting and deliberation process including: the American Medical Association (AMA); America’s Health Insurance Plans (AHIP); the Blue Cross Blue Shield Association (BCBSA); the Association for Behavioral Health and Wellness (ABHW); the American Psychiatric Association; the Kennedy Forum; Elevance; the ERISA Industry Committee (ERIC); Inseparable; Teladoc; Mental Health America (MHA); and the National Governors Association (NGA).

The NCOIL Strengthen Homes Program Model Act provides guidance to states in the form of promoting the strengthening of homes in order to protect against severe weather. Specifically, the Model establishes a grant program, allowing the Commissioner of Insurance to make financial grants to consumers in order to retrofit roofs of insurable property to meet or exceed the “fortified roof” standard of the Insurance Institute for Business and Home Safety. The Model also requires insurers writing property insurance for any property that has been certified as complying with the “fortified roof” standard to provide a premium discount or rate reduction on the coverage if the discount or reduction is actuarially justified and there is sufficient and credible evidence of cost savings that can be attributed to the construction standards.

Rep. Dunnigan said, “This is a well thought out solution to a problem that unfortunately affects many of us across the country. Whether it be homeowners on the coastline in Florida impacted by hurricanes, Oklahomans in Tornado Alley or those impacted by wildfires like we’ve seen in Utah where I’m from, having your home strengthened to vetted standards is an important measure to be protected. It’s a win-win for insurers and consumers and I look forward to seeing this get adopted in states around the country.”

As the Model was being developed, NCOIL legislators and staff heard from several interested parties including: the American Property & Casualty Insurance Association (APCIA); the Independent Insurance Agents and Brokers of America (IIABA); the Insurance Institute for Business & Home Safety (IBHS); the Louisiana Department of Insurance; the National Association of Insurance Commissioners (NAIC)’s Center for Insurance Policy and Research; the National Association of Mutual Insurance Companies (NAMIC); the Oklahoma Department of Insurance; State Farm; and United Policyholders.

NCOIL CEO Commissioner Tom Considine said, “These five Model Laws deal with some of the most talked about insurance and financial services issues across the country and the ability of NCOIL to reach a consensus and take action on each of them is illustrative of how NCOIL has re-established its relevance and importance to public policy and the overall state-based system of insurance regulation. People know when they see an NCOIL Model Law come across their desk,

all perspectives have been considered and it has been vetted in a truly bipartisan manner which is what the organization really is all about.”

Full copies of the Models can be found in links the below:

[NCOIL Value Based Purchasing Model Act](#)

[NCOIL Earned Wage Access Model Act](#)

[NCOIL Transparency in Third Party Litigation Financing Model Act](#)

[NCOIL Model Act in Support of Mental Health Wellness Exams](#)

[NCOIL Strengthen Homes Program Model Act](#)

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NCOIL is a national legislative organization with the nation’s 50 states as members, represented principally by legislators serving on their states’ insurance and financial institutions committees. NCOIL writes Model Laws in insurance and financial services, works to preserve the State jurisdiction over insurance as established by the McCarran-Ferguson Act over seventy years ago, and to serve as an educational forum for public policymakers and interested parties. Founded in 1969, NCOIL works to assert the prerogative of legislators in making State policy when it comes to insurance and educate State legislators on current and longstanding insurance issues.