

**Inside this issue :**

Capital Corner	P.1
Message regarding NCOIL SP Mtg	P.1
Peer-to-Peer Car Sharing Program Model	P.4
Charlotte Schedule	P.5

NCOIL Spring Meeting
March 5th—8th
Charlotte, NC

[Click Here to Register](#)



Rep. Matt Lehman, IN
President



Thomas B. Considine
NCOIL CEO



Asm. Ken Cooley, CA
Vice President

Capital

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By Will Melofchik

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 issues that NCOIL will be discussing at the upcoming NCOIL Spring Meeting and throughout 2020.

Work of NAIC Casualty Actuarial and Statistical Task Force Causing Concern

The National Association of Insurance Commissioners (NAIC) Casualty Actuarial and Statistical Task Force (CASTF) has been working on the development of a Regulatory Review of Predictive Models White Paper. The White Paper is focused on “identifying best practices to serve as a guide to state insurance departments in their review of predictive models underlying rating plans.”

Cont'd on Page 2

NCOIL SPRING MEETING CONTINUING AS PLANNED

The 2020 NCOIL Spring Meeting will be taking place as scheduled.

We have been monitoring the spread of COVID-19 (coronavirus) carefully, and have consulted with public health experts. We are aware that there have been elevated warnings against travel to specific regions of the world, but none in the United States. CDC is operationalizing all of its pandemic preparedness and response plans, working on multiple fronts to control the spread of COVID-19.

Please visit <https://www.cdc.gov/coronavirus/2019-ncov/index.html> to keep up to date with recommendations and to avoid misinformation. We will continue to closely watch travel advisories and warnings.

Also, in an abundance of caution and to avoid putting anyone in a position of feeling standoffish, we are going to follow the advice of public health officials and declare this to be a “Handshakes Free Meeting”. Studies have shown that fist bumps reduce the spread of infection by 90% compared to a handshake, while a friendly head bow at arms’ length reduces the risk even further.

We at NCOIL look forward to seeing you for a great meeting in Charlotte.



Asm. Kevin Cahill, NY
Treasurer



Rep. Joe Fischer, KY
Secretary



Sen. Jason Rapert, AR
Immediate Past President



Sen. Travis Holdman, IN
Immediate Past President

Capital Corner Cont'd

Throughout the development of the White Paper, concerns have been raised over some of its provisions, one of which is the movement away from the established correlation standard towards a causation standard. Specifically, the White Paper “establishes that a rating/modeled variable should not only be correlated to expected costs but that there should be a rational explanation as to why the correlation exists.”

This has caused many eyebrows to be raised as the correlation standard has been controlling law for decades, and, many rating factors are not necessarily causative. A great example is auto insurance companies’ use of credit-based insurance scores. The value of the use of credit in underwriting may seem odd at first, but the actuarial math to support correlation is beyond question.

Perhaps equally as concerning as the departure from the correlation standard is the notion that such a decision should only be determined by a legislature – not a regulatory body. Certain rating factors cannot be utilized by insurers – those that are unfairly discriminatory – but the determination as to which factors those are is legislatively determined.

At the upcoming 2020 NCOIL Spring National Meeting attendees will hear from a panel that will discuss the White Paper and the aforementioned issues. Panelists include: The Honorable Nat Shapo, Partner at Katten Muchin Rosenman LLP and Former Director of the Illinois Department of Insurance; Brian Fannin, Research Actuary at the Casualty Actuary Society; an NAIC representative; Erin Collins, VP, State Affairs at the National Association of Mutual Insurance Companies (NAMIC); and Frank O’Brien, VP, State Gov’t Relations – American Property Casualty Insurance Association (APCIA).

What are your thoughts on the White Paper? Should the transition to a causative approach be further pursued? If so, does such a decision belong before the legislature? Join us in Charlotte to be part of this discussion.

Florida Could be First State to Deny Life Insurers Access to Genetic Test Results

A bill moving its way through the Florida legislature could impose some of the nation’s strictest rules on how life insurers and long-term care insurers use genetic tests in their underwriting decisions. As introduced, [HB 1189](#) would expand “existing prohibitions on the use of genetic information by insurers to include entities that issue policies for life insurance and long-term care insurance. Specifically, the bill prohibits issuers of life insurance and long-term care insurance from canceling, limiting, or denying coverage, and from setting different premium rates, based on personal genetic information without a specific diagnosis related to the genetic information. The bill also prohibits life insurers and long-term care insurers from requiring or soliciting genetic information, using genetic test results, or considering a person’s decisions or actions relating to genetic testing for any insurance purpose.”

HB 1189 overwhelmingly passed the FL House of Representatives and is now pending in the FL Senate. The [Senate version](#) contains an amendment which clarifies that “Nothing in this section shall be construed as preventing a life insurer from accessing an individual’s medical record as part of an application exam. Nothing in this section prohibits a life insurer from considering a medical diagnosis included in an individual’s medical record, even if a diagnosis was made based on the results of a genetic test.”

Federal law, such as The Genetic Information Nondiscrimination Act of 2008 (GINA), generally prohibits health insurers from soliciting genetic information and using such information for underwriting purposes. However, federal law does not apply these prohibitions to life insurance, disability insurance, or long-term care insurance.

Some states already have taken action to limit or prohibit the use of genetic information by life insurers, but not as severely as the pending Florida legislation. For example, Massachusetts 175 § 120E (2006) states that:

- Insurer may not use genetic test results to determine eligibility/premium unless action relates to insured’s mortality or morbidity based on sound actuarial principles or reasonable expected experience
- Insurer may not require an applicant to undergo a genetic test as a condition issuance or

Capital Corner Cont'd

- renewal of a policy
- Insurer may ask an applicant if she/he has undergone a genetic test. Applicant is not required to answer, but if they decline to answer, the application must note that this may result in a higher premium or denial of coverage
- If applicant provides genetic information, insurer may use that information to determine eligibility or premium provided the information relates to insured's mortality or morbidity based on sound actuarial principles or reasonable expected experience

NCOIL has held educational sessions on this topic, during which attendees heard from experts who support and oppose legislation such as what is currently pending in Florida. In an effort to take a step back and gain broader understanding of the life insurance underwriting process as a whole, at the upcoming 2020 NCOIL Spring National Meeting, the Life Insurance & Financial Planning Committee will hear from Dr. Robert Gleeson, Medical Consultant for the American Council of Life Insurers (ACLI) who will deliver a "Life Insurance Underwriting 101" presentation.

What are your thoughts on the Florida legislation? Should NCOIL continue to stay involved with this issue and if so, in what form? NCOIL is interested in hearing your thoughts and will continue to monitor these issues and weigh in as necessary.

What States Preparing for Opioid Lawsuit Funds Can Learn from Tobacco Settlements

As states prepare to receive funds from the historic opioid settlements, debate has sparked as to how the money should be spent. For some, the \$246 billion "Tobacco Master Settlement Agreement" in 1998 serves as a lesson for what states should *not* do.

Despite the tobacco settlement stipulating that the money be used to prevent people from smoking and to help those already addicted to cigarettes quit, 20 years after the settlement states had spent only 2.6% of the settlement revenue on smoking prevention and cessation programs.

At the upcoming 2020 Spring National Meeting, attendees will hear from a panel with differing and interesting perspectives as to how states should best utilize the opioid settlement funds. The panel will include Adam Kintopf, Director of Strategic Communication at ClearWay Minnesota (CWM); Ryan Hampton, Organizing Director at the Recovery Advocacy Project; and Creighton Drury, CEO of the Center on Addiction.

Adam Kintopf will speak to how CWM can be looked at as a successful example that can be replicated in other states. Minnesota used \$202 million of its \$6 billion settlement to establish CWM, a tobacco control nonprofit independent of state government which was established as a limited-life organization with a 25-year lifespan. Among other things, CWM "developed a comprehensive approach including funding research, establishing a quit line, running mass-media campaigns, working with communities most impacted by tobacco, and advocating for policies that reduce tobacco use."

Ryan Hampton, a nationally recognized activist on these issues, has stressed that while utilizing some of the money on research is important, strong efforts must be made to help those already suffering from addiction, and to set up an infrastructure that supports not just recovery from opioid addiction, but also other drugs and alcohol.

Creighton Drury's organization, the Center on Addiction, was part of a coalition that worked to develop "[Opioid Settlement Priorities](#)." The priorities are divided into three "impact areas" which include: "Enhance public and professional education; Create informed demand for effective policies and interventions"; "Implement evidence-based prevention and early intervention strategies to reduce substance misuse and related harms"; and "Expand access to evidence-based addiction treatment services, integrated with mainstream healthcare."

Join us in Charlotte to discuss these perspectives and to offer yours regarding how states should best utilize opioid lawsuit funds.

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

-Will

NCOIL ADOPTS PEER-TO-PEER CAR SHARING PROGRAM MODEL ACT

During the 2019 NCOIL Annual Meeting in Austin, TX, the organization adopted the NCOIL Peer-to-Peer Car Sharing Program Model Act sponsored by Kentucky Representative Bart Rowland, 2020 Chair of the NCOIL Workers' Compensation Insurance Committee. The Model passed without objection by the Property & Casualty Insurance Committee and the NCOIL Executive Committee.

The Property & Casualty Insurance Committee had been discussing the growing sharing economy in general for several years. In 2015, NCOIL passed groundbreaking TNC legislation for ridesharing companies such as Uber & Lyft, which has passed either in whole or in part in nearly every state. This peer-to-peer car sharing model legislation was first discussed thoroughly at the 2019 Summer Meeting in Newport Beach, CA. Sensing that both the peer-to-peer car sharing and insurance industries were in agreement with several issues, the Committee, and NCOIL as a whole, acted in an expeditious manner to ensure that a Model was ready for states to consider adopting in 2020 legislative sessions.

KY Rep. Bart Rowland stated, "With the rise of collaborative consumption and sharing, it is important that the insurance industry keep up and create trust between the consumers and companies. If you pay someone to have access to transportation, there is a base level of safety that people expect. The car sharing industry must work in conjunction with legislators and regulators to properly accommodate the sharing economy. I am proud to sponsor this Model and commend NCOIL for taking the lead on this issue. Good public policy requires putting parameters in place for these rapidly emerging platforms and technologies."

A document previously negotiated between peer-to-peer car sharing companies and the American Property Casualty Insurance Association (APCIA) had served as the basis for peer-to-peer car sharing legislation enacted in some states. Rep. Rowland decided to use that document as the basis for the first draft of the Model.

"Since several states are looking to adopt legislation on this issue in 2020, it was crucial that NCOIL move quickly. It is also important to remember that this is a Model. Every state is going to have its own process for tailoring it to accommodate the particular needs of that state. The Model provides states the vehicle for that debate," stated Commissioner Tom Considine, NCOIL CEO. "I applaud the peer-to-peer companies and the insurance industry for coming together with legislators and creating a great framework on how insurance for the car sharing economy is handled. NCOIL thanks Rep. Rowland for his leadership in developing very positive public policy on this issue," continued Commissioner Considine.

During drafting discussions, NCOIL legislators and staff worked closely with interested parties such as: Turo, APCIA, Enterprise Holdings, Allstate, the National Association of Mutual Insurance Companies (NAMIC), State Farm, and Getaround.

During drafting discussions, KY Rep. Rowland took the lead in bringing forth an amendment to the Model in the form of a "Scope" section in order to clarify what NCOIL's intent as an organization is when it comes to legislation such as peer-to-peer car sharing. The "Scope" section states, "This Act is intended to govern the intersection of peer-to-peer car services and the state-regulated business of insurance. Nothing in this Act shall be construed to extend beyond insurance or have any implications for other provisions of the code of this state, including but not limited to, those related to motor vehicle regulation, airport regulation, or taxation." This amendment proved vital in getting both the peer-to-peer car sharing and insurance industries to support the Model. "The I in NCOIL does stand for insurance, after all. We understand that legislators and regulators may need to deal with other policy issues impacted by this peer-to-peer auto business," concluded Commissioner Considine.

Highlights of the Model include the requirement that a peer-to-peer car sharing program ensure that, during each car sharing period, the shared vehicle owner and the shared vehicle driver are insured under a motor vehicle liability insurance policy that provides insurance coverage in amounts no less than the minimum amounts set forth in state minimum coverage statutes; the requirement that a peer-to-peer car sharing program assume liability of a shared vehicle owner for bodily injury or property damage to third parties or uninsured and underinsured motorist or personal injury protection losses during the car sharing period in an amount stated in the peer-to-peer car sharing program agreement which amount may not be less than those set forth in a State's financial responsibility law; the requirement of the peer-to-peer car sharing program to

Cont'd on Page 5

P2P Car Sharing Program Model Cont'd

notify the shared vehicle owner if the shared vehicle has a lien against it; exclusions in motor vehicle liability insurance policies may exclude any and all coverage and the duty to defend or indemnify for any claim afforded under a shared vehicle owner's motor vehicle insurance policy; recordkeeping requirements for peer-to-peer car sharing programs pertaining to the use of a vehicle; consumer protection disclosure requirements for peer-to-peer car sharing programs such as the daily rate, fees, and if applicable, any insurance or protection package costs that are charged to the shared vehicle owner or the shared vehicle driver; driver's license verification and data retention requirements; requiring sole responsibility of the peer-to-peer car sharing program for any equipment, such as a GPS system or other special equipment put in or on the vehicle to monitor or facilitate the car sharing transaction; and reporting requirements related to automobile safety recalls for both shared vehicle owners and peer-to-peer car sharing programs.

A full copy of the Model can be viewed [here](#).

NCOIL 2020 SPRING MEETING SCHEDULE

THURSDAY, MARCH 5TH

CIP Member & Sponsor Reception	6:30 PM	-	7:30 PM
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FRIDAY, MARCH 6TH

Welcome Breakfast	8:15 AM	-	9:30 AM
Networking Break	9:30 AM	-	9:45 AM
General Session	9:45 AM	-	11:00 AM
Property & Casualty Insurance Committee	11:00 AM	-	12:15 PM
The Institutes Griffith Foundation Legislator Luncheon	12:15 PM	-	1:15 PM
NCOIL-NAIC Dialogue	1:15 PM	-	2:30 PM
Special Committee on Natural Disaster Recovery	2:30 PM	-	3:30 PM
Networking Break	3:30 PM	-	3:45 PM
Life Insurance & Financial Planning Committee	3:45 PM	-	5:00 PM
Joint State-Federal Relations & International Insurance Issues Committee	5:00 PM	-	6:00 PM
Welcome Reception	6:00 PM	-	7:00 PM

SATURDAY, MARCH 7TH

Health Insurance & Long Term Care Issues Committee	9:00 AM	-	10:45 AM
Networking Break	10:45 AM	-	11:00 AM
General Session	11:00 AM	-	12:15 PM
Luncheon with Keynote Address	12:15 PM	-	1:45 PM
Legislative Micro Meetings	1:45 PM	-	2:15 PM
Workers' Compensation Insurance Committee	2:15 PM	-	3:30 PM
IEC Board Meeting	3:30 PM	-	4:15 PM

SUNDAY, MARCH 8TH

Financial Services & Multi-Lines Issues Committee	8:45 AM	-	10:00 AM
Business Planning & Executive Committee	10:00 AM	-	11:00 AM

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FOR CONTRIBUTING STATES**

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