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NCOIL Spring Meeting
April 15th-18th Charleston, SC
[REGISTER NOW](#)

Capital

C By Will Melofchik – NCOIL General Counsel

R Greetings -

n Welcome to the latest installment of Capital Corner, a column that aims

e 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 monitoring throughout 2021.

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On December 10, 2020, the U.S. Supreme Court issued an 8-0 opinion (Justice Barrett did not take part) that could be a gamechanger in the area of Employee Retirement Income Security Act (ERISA) preemption. In [Rutledge v. Pharmaceutical Care Management Association](#) (PCMA), the Court ruled that ERISA did not preempt Arkansas's law (Act 900) regulating pharmacy benefit managers (PBMs). The specific question presented to the Court was whether "the Eighth Circuit erred in holding that Arkansas's statute regulating PBMs' drug-reimbursement rates, which is similar to laws enacted by a substantial majority of States, is preempted by ERISA, in contravention of this Court's precedent that ERISA does not preempt rate regulation."

ERISA has long been a source of frustration for states seeking to enact meaningful healthcare reforms, mainly due to the inconsistent and arguably illogical manner in which courts have ruled how and why ERISA preempts certain state laws. NCOIL has been an active participant in calls to reform ERISA, having adopted a Resolution "[In Support of Amending ERISA to Enable State Policymakers to Enact More Meaningful State Healthcare Reforms](#)" and filed an *amicus* brief in [Rutledge](#).¹

¹ While NCOIL's *amicus* brief was supportive of upholding Act 900, the arguments set forth in the brief were not grounded in ERISA rate-regulation preemption case law but rather focused on the state's right to regulate the business of insurance pursuant to the McCarran-Ferguson Act; and that ERISA has grown far beyond its original intent of establishing uniform federal standards to protect private employee pension plans from fraud and mismanagement, and has transformed into a critical barrier for states seeking to enact meaningful healthcare reforms. The NCOIL *amicus* brief can be viewed here: https://www.supremecourt.gov/DocketPDF/18/18-540/134593/20200302125355235_01%20-%202018-540%20-%20NCOIL%20Amicus%20Br..pdf



Rep. Matt Lehman, IN
President



Thomas B. Considine
NCOIL CEO



Asm. Ken Cooley, CA
Vice President

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Asm. Kevin Cahill, NY
Treasurer



Rep. Joe Fischer, KY
Secretary



Sen. Jason Rapert, AR
Immediate Past President



Sen. Travis Holdman, IN
Immediate Past President

While Rutledge is indeed a positive development, Justice Thomas's concurrence was much more responsive to the arguments set forth in NCOIL's *amicus* brief, and is more illustrative of what NCOIL believes should be the law governing ERISA-preemption matters going forward. The majority's opinion applied the Court's technical and muddled ERISA-preemption precedent, but Justice Thomas noted that the incoherent nature of ERISA-preemption jurisprudence "offers little guidance or predictability" for lower courts, and "we can and should do better." We at NCOIL agree.

During the upcoming NCOIL Spring Meeting in Charleston, the Joint State-Federal Relations & International Insurance Issues Committee (Committee) will hear from Professor Elizabeth McCuskey at the University of Massachusetts School of Law who will discuss the Rutledge opinion and its implications for state healthcare reform.

Prof. McCuskey is a nationally recognized expert in health law, and her presentation at the 2018 NCOIL Annual Meeting in Oklahoma City was the inspiration behind the abovementioned NCOIL Resolution. Prof. McCuskey's extensive work on ERISA-preemption and other issues can be viewed here: <https://www.umassd.edu/directory/emccuskey/>

NCOIL will continue to monitor these issues very closely and we hope you can join us for this discussion in Charleston, either in-person or via Zoom.

Federal Surprise Billing Legislation Signed into Law

On December 21, 2020 Congress passed the Consolidated Appropriations Act, which proposed \$2.3 trillion in government spending and \$900 billion in COVID-19 stimulus relief. The Act was signed by then President Trump on December 28, 2020. The Act contains a measure titled the No Surprise Act (NSA) that protects patients against balance bills from out-of-network providers. NCOIL has been heavily involved in the issue of protecting consumers from balance bills, having discussed the issue at length for several years and adopting the [NCOIL Out-of-Network Balance Billing Transparency Model Act](#) (NCOIL Model), adopted in 2017.

The NSA and NCOIL Model share a critical provision – allowing parties to initiate an independent dispute resolution (IDR) process to settle disputed out-of-network claims. This IDR process is "baseball style" which means the arbitrator must choose either the payment proposal submitted by the payor or the payment proposal submitted by the provider — with no ability to split the difference. This framework encourages payors and providers to reach their own compromise whenever possible.

NCOIL's position on federal balance billing legislation has been, and remains, that while the intent of such legislation is laudable and one NCOIL shares, protecting consumers from balance billing is properly within the state's jurisdiction to regulate the business of insurance pursuant to the McCarran-Ferguson Act. NCOIL believes the proper role for Congress when dealing with balance billing is to undertake efforts to amend ERISA so that the protections set forth in state balance billing laws apply to all health insurance plans – including self-insured plans. Hopefully, as noted above, the Rutledge decision changes the tide on ERISA-preemption.

Nonetheless, it is encouraging to know that NCOIL was ahead of the curve on this issue as the NCOIL Model that recommends states implement a baseball style IDR system was adopted in 2017.

The NSA also contains provisions relating to air ambulances which will certainly be discussed when the NCOIL Health Insurance & Long Term Care Insurance Committee determines the next steps for the Model Act Regarding Air Ambulance Patient Protections. Among other things, the NSA holds patients harmless from surprise air ambulance medical bills, and provides for a 30-day open negotiation period for air ambulance providers and payers to settle out-of-network claims. If the parties are unable to reach a negotiated

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Future NCOIL Meetings:

Spring 2021
April 15—18
Charleston, SC

Summer 2021
July 14—17
Boston, MA

Annual 2021
November 17—20
Scottsdale, AZ

Spring 2022
March 3—6
Las Vegas, NV

Summer 2022
July 13—16
Jersey City, NJ

Annual 2022
November 16—19
New Orleans, LA

REGISTRATION FOR NCOIL SPRING MEETING IS OPEN

Registration for the 2021 NCOIL Spring Meeting at the Francis Marion Hotel in Charleston, SC from April 15th—18th is open.



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

DON'T FORGET TO BOOK YOUR HOTEL!!!

*The hotel block closes on **March 13th***

Legislators book here:



General Participants book here:



NCOIL Property & Casualty Insurance Committee Holds Virtual Interim Meeting

NCOIL's Property and Casualty Insurance Committee (Committee) held an interim virtual meeting on Friday, February 19. Kentucky Representative Bart Rowland chairs the Committee and North Carolina Senator Vickie Sawyer serves as vice chair. The Committee discussed state actions relating to COVID-19 business immunity statutes, and adopted the NCOIL COVID-19 Limited Immunity Model Act (Model), sponsored by Rep. Rowland and Indiana Representative Matt Lehman, NCOIL President. The Model will be considered by the NCOIL Executive Committee for final adoption at the NCOIL Spring Meeting in April.

Rep. Rowland said, "I want to thank everyone who participated in the interim meeting. We had a great initial discussion on these issues in December at the NCOIL Annual Meeting, which included a number of speakers with differing views. That discussion enabled us to digest all the feedback on the initial draft of the Model and move forward with adoption of the Model during this interim meeting. I am pleased we were able to adopt the Model as so many states, including my home state of Kentucky, are now considering legislation concerning this issue."

Rep. Lehman said, "Rep. Rowland led a great discussion on these issues in Tampa at our Annual Meeting, and again during this virtual interim meeting. As co-sponsor of the Model, I agreed with Rep. Rowland's goal of working to get this Model adopted in advance of the Spring Meeting so that states considering the issue could be provided helpful guidance. I certainly didn't expect to be discussing an issue like this when I began my term as NCOIL President, but here we are. Businesses, individuals, and insurers are looking for help when it comes to reopening and getting back to a sense of normal."

There were over 100 participants registered for the interim virtual meeting which included 34 legislators from 17 states. In addition to the robust dialogue from legislators, NCOIL heard perspectives on these issues from a wide array of interested parties at both the December and interim meetings including: Rebecca Dixon, Executive Director at the National Employment Law Project; Professor David Vladeck, A.B. Chettle, Jr. Professor of Law at the

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NCOIL Property & Casualty Insurance Committee Holds Virtual Interim Meeting Cont'd

Georgetown University Law Center; the National Association of Mutual Insurance Companies (NAMIC); the American Property Casualty Insurance Association (APCIA); the Independent Insurance Agents & Brokers of America (IIBA); and the National Association of Professional Insurance Agents (PIA)

NCOIL CEO, Commissioner Tom Considine stated, "This Model allows us to be proactive by developing Model Legislation to offer assistance to states as they adapt during these challenging times. We developed the Model being mindful that a blanket level of immunity should not be provided but rather a presumption of protection should be provided for businesses and individuals that act in a reasonable manner and abide by certain health and safety measures in order to remove from businesses during this time of crisis the specter of frivolous lawsuits when the businesses have complied with all CDC guidance." Considine continued, "We had great leadership guiding this Model from Rep. Rowland and Rep. Lehman, and I am confident that states will find it useful when developing their own legislation."

Additionally, Rep. Rowland announced his intention to introduce and sponsor amendments to the NCOIL Peer-to-Peer Car Sharing Program Model Act at the NCOIL Spring Meeting in April. The Model, also sponsored by Rep. Rowland and adopted by NCOIL in December of 2019, has been introduced and adopted by several states. The amendments are related to definitions, insurance, and recordkeeping and serve to enhance the original Model by promoting an innovative, consumer-centric peer-to-peer car sharing marketplace in every state. The amendments will appear in the 30-day materials for the Spring Meeting next month.

The video recording from the meeting will be posted on the NCOIL website soon and can be viewed [here](#).

All material discussed during the meeting can be viewed [here](#).

A copy of the NCOIL COVID-19 Limited Immunity Model Act adopted by the Committee can be found [here](#).

Upcoming Interim Meeting for Special Committee on Race in Insurance Underwriting on March 5 from 1:00PM—2:30PM

New York Senator Neil Breslin will be hosting an interim Zoom meeting of the NCOIL Special Committee on Race in Insurance Underwriting on Friday, March 5th from 1:00 p.m. to 2:30 p.m. (EST).

The purpose of the interim meeting is for the Committee to further discuss and consider adopting the definition of "proxy discrimination" that is sponsored by Senator Breslin and Indiana Representative Matt Lehman, NCOIL President, and was discussed during the Committee's previous meeting in December. Additionally, the Committee will discuss its intended next steps as it further considers whether unfair racial discrimination exists in insurance underwriting factors, and further examines disparate impact.

This meeting will be conducted via Zoom. Meeting ID and Password information will be provided to you via-mail upon registering.

Please click [here](#) to register and for more information leading up to the meeting.

Please direct any questions or comments about meeting material to NCOIL General Counsel Will Melofchik at wmelofchik@ncoil.org. Please also send any suggestions for speakers for the Committee's April Meeting as it further considers whether unfair racial discrimination exists in insurance underwriting factors, and further examines disparate impact.

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agreement, they may access the baseball style IDR process mentioned above. Again, NCOIL was ahead of the curve on this issue as the NCOIL [Model Act Regarding Air Ambulance Insurance Claims](#) – adopted in 2017 - also recommends that a baseball style IDR system be utilized to resolve air ambulance billing disputes.

Additionally, the NSA requires air ambulance providers to submit two years of cost data to the Secretaries of Health and Human Services (HHS) and Transportation and requires insurers to submit two years of claims data related to air ambulance services to HHS. The NSA also requires the Secretaries to publish a comprehensive report on the cost and claims data submitted, and establishes an advisory committee on air ambulance quality and patient safety.

It is worth noting that the NSA pushes a lot of the important details on how these new requirements will work in operation to the federal departments. Accordingly, those departments (i.e., HHS, DOL, Treasury) will have their hands full when it comes to developing implementing regulations and will undoubtedly be spending the next several months hearing from numerous interested parties trying to influence the rulemaking process.

During the upcoming NCOIL Spring Meeting in Charleston, the Joint State-Federal Relations & International Insurance Issues Committee (Committee) will hear from Chris Garmon, PhD – a Senior Consultant with Compass Lexecon, Assistant Professor of Health Administration at the University of Missouri – Kansas City, and former economist at the Federal Trade Commission – who will discuss the NSA and its implementation process. Dr. Garmon's publications and research can be viewed here: <https://bloch.umkc.edu/wp-content/uploads/2019/02/garmon-christopher-CV.pdf>

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

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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 contact Tess Badenhausen at tbadenhausen@ncoil.org with any questions.

LEGISLATOR STIPENDS NOW AVAILABLE FOR CONTRIBUTING STATES

CLICK HERE FOR MORE INFORMATION

Congratulations In Order

NCOIL congratulates Texas Representative Tom Oliverson for being named Chair of the Texas House Insurance Committee. Rep. Oliverson serves on the NCOIL Executive Committee. Well Deserved!

NCOIL Highlights February as Insurance Careers Month

NCOIL joins the Insurance Careers Movement (ICM) in focusing on February as Annual Insurance Careers Month. Overall, the ICM includes more than 1,000 insurance carriers, agents/ brokerage firm, trade associations and industry partners working to engage the next generation for careers in insurance. The ICM first designated February as Insurance Careers Month in 2016.

NCOIL CEO, Commissioner Tom Considine said, “The insurance industry offers a wide variety of stable and rewarding careers, and has done so for well over a century. Getting involved early can make a large difference long term for those considering a career in insurance. Looking back on the start of my career, a pivotal moment came when I accepted a position with MetLife, where I stayed for 18 years only to leave to become the Banking and Insurance Commissioner of New Jersey. It is important for young professionals to know that there are many career opportunities in the insurance industry.”

NCOIL President, IN Rep. Matt Lehman remarked, “I began my career as an insurance agent with Bixler Insurance Inc. in 1991, became a partner in 1995, and then went on to expand that insurance practice. In my experience, insurance is a field with significant professional growth potential, and the ability to truly help make a difference in people’s lives remains constant.”

Considine continued that “I come from a family of insurance professionals. My grandfather, brother, niece and nephew all had or are having successful careers in insurance ranging from marketing to sales to underwriting, so I know firsthand that virtually all skill sets can thrive in insurance”.

“Additionally, it is fitting that this focus on insurance careers comes during Black History Month because, sadly, Black Americans historically have been underrepresented in insurance careers, which likely plays a role in the minority community being underinsured,” he concluded.

More information about the Insurance Careers Movement can be viewed here: <http://insurancecareerstrifecta.org/>

Reminder to subscribe to the NCOIL YouTube Channel

Weren’t able to attend our past meetings? Interested in our upcoming meeting, but not able to attend? Good news— you can visit our YouTube channel for recordings of past meetings. We will also be posting sessions from the upcoming Annual Meeting in Tampa after the meeting, so stay tuned!

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

<https://www.youtube.com/channel/UCe09Z77z4q6HG1kv3fDG7Bq>

NCOIL One on One

NCOIL is implementing a new program: NCOIL One on One! Interested in hearing about how your colleagues got involved in NCOIL and what their background is? Get excited, because you are about to find out!

Every month, we will be interviewing a new legislator and sharing their stories on our NCOIL YouTube channel.

Keep a look out for our first Legislator of the Month, NCOIL President, Representative Matt Lehman, coming out in March! You can view NCOIL One on One videos [here](#).

NCOIL 2021 SPRING MEETING TENTATIVE SCHEDULE

THURSDAY, APRIL 15TH

CIP Planning Meeting	10:00 AM - 2:00 PM
Special Committee on Race in Insurance Underwriting	2:30 PM - 5:30 PM
Welcome Reception	6:00 PM - 7:00 PM

FRIDAY, APRIL 16TH

Welcome Breakfast	8:30 AM - 10:00 AM
Networking Break	10:00 AM - 10:15 AM
Joint State-Federal Relations & International Insurance Issues Committee	10:15 AM - 11:30 AM
General Session	11:30 AM - 12:45 PM
Legislator Luncheon	12:45 PM - 1:45 PM
NCOIL- NAIC Dialogue	1:45 PM - 3:00 PM
Networking Break	3:00 PM - 3:15 PM
Life Insurance & Financial Planning Committee	3:15 PM - 4:30 PM
Workers' Compensation Insurance Committee	4:30 PM - 5:45 PM
CIP Member & Sponsor Reception	6:00 PM - 7:00 PM

SATURDAY, APRIL 17TH

Financial Services & Multi-Lines Issues Committee	9:00 AM - 10:30 AM
Networking Break	10:30 AM - 10:45 AM
General Session	10:45 AM - 12:00 PM
Luncheon with Keynote Address	12:00 PM - 1:30 PM
Health Insurance & Long Term Care Issues Committee	1:30 PM - 3:00 PM

SUNDAY, APRIL 18TH

Property & Casualty Insurance Committee	9:00 AM - 10:30 AM
Business Planning Committee & Executive Committee	10:30 AM - 11:30 AM