NATIONAL CONFERENCE OF INSURANCE LEGISLATORS
HEALTH, LONG-TERM CARE & HEALTH RETIREMENT ISSUES COMMITTEE
BURLINGTON, VERMONT
JULY 13, 2012
MINUTES

The National Conference of Insurance Legislators (NCOIL) Health, Long-Term Care & Health Retirement Issues Committee met at the Hilton Burlington in Burlington, Vermont, on Saturday, July 14, 2012, at 11:15 a.m.

Rep. Tommy Thompson of Kentucky, acting chair of the Committee, presided.

Other members of the Committee present were:

Rep. Greg Wren, AL	Sen. Carroll Leavell, NM
Rep. Barry Hyde, AR	Sen. Neil Breslin, NY
Rep. Ron Crimm, KY	Sen. William J. Larkin, Jr., NY
Rep. Susan Westrom, KY	Rep. Brian Kennedy, RI
Sen. Dan Morrish, LA	Rep. Charles Curtiss, TN
Rep. George Keiser, ND	Rep. Bill Botzow, VT
Sen. David O'Connell, ND	Sen. Mike Hall, WV
Rep. Don Flanders, NH	

Other legislators present were:

Rep. Dawn Pettengill, IA	Rep. Kirk Talbot, LA
Rep. Isaac Choy, HI	Rep. John Picchiotti, ME
Rep. Robert Damron, KY	Rep. Sarah Copeland Hanzas, VT
Rep. Greg Cromer, LA	Rep. Michele Kupersmith, VT

Also in attendance were:

Susan Nolan, Nolan Associates, NCOIL Executive Director
Candace Thorson, Nolan Associates, NCOIL Deputy Executive Director
Michael Keegan, Nolan Associates, NCOIL Director of Legislative Affairs–DC
Michael Carroll, Nolan Associates, NCOIL Director of Legislative Affairs

MINUTES
Upon a motion made and seconded, the Committee unanimously approved the minutes of its February 24, 2012, meeting in Biloxi, Mississippi.

DISCONTINUED HEALTH PLANS
Jolie Matthews of the National Association of Insurance Commissioners (NAIC) spoke to a March 12 NAIC response letter to Rep. Curtiss regarding discontinued health insurance plans and state disclosure requirements. She said that the NAIC, unfortunately, did not compile data on premium and other impacts but was aware that Arkansas, Kansas, and North Carolina had disclosure laws in place related to discontinued plans. She said that an NAIC working group had developed a white paper, adopted by the NAIC in 2008, that offered six proposed "solutions" but that the NAIC had not reached consensus on whether to pursue one or more of them.

Rep. Curtiss expressed concern over impacts on consumers when insurers close certain blocks of business, and he moved that the Committee consider the issue further at the Annual Meeting. After discussion regarding how the Affordable Care Act (ACA) and upcoming elections might affect closed

blocks of business, as well as concerns over closed blocks of long-term care insurance, the Committee voted unanimously to continue discussion in November.

LONG-TERM CARE COSTS

Rep. Thompson said that in April interested parties had submitted comments, at the Committee's request, regarding long-term care (LTC) cost issues and that representatives of those groups were present to offer overviews.

Steve Schoonveld, representing the American Academy of Actuaries (AAA), said that financial soundness, affordability, eligibility, efficient use of funds, comprehensiveness of benefits, and consumer choice were key considerations when designing a long-term care financing system. He commented that a "one-size-fits-all" approach was not appropriate. Regarding Medicaid, he opined that options to reduce consumer and state Medicaid program costs included:

- enabling state Medicaid LTC programs to provide effective care for the indigent population for which they originally were intended
- promoting alternative approaches to address LTC risks
- truly encouraging partnership programs
- supporting the development of private LTC insurance

Geralyn Trujillo of AARP said that 75 percent of adults 65 years or older will need LTC in their lifetimes. She said that a recent "state scorecard" developed jointly by AARP, The Commonwealth Fund, and The Scan Foundation offered detailed information on LTC services and supports in states across the country and would assist consumers and state policymakers making LTC insurance decisions. She said that additional data was forthcoming.

Ms. Matthews of the NAIC said that the NAIC in 2000 had adopted amendments to its LTC model acts that would encourage insurers to appropriately price their products at issuance and, therefore, would help to eliminate major price increases later on. She said that the amendments appeared to have made a difference in states that had adopted them. She said that a small group of regulators within the NAIC currently was evaluating the 2000 amendments to determine if further revisions were warranted. Ms. Matthews reported that another group within the NAIC was looking at issues related to consumer disclosure.

Dianne Bricker of America's Health Insurance Plans (AHIP), also representing the American Council of Life Insurers (ACLI), said that the average cost of a private room in a nursery home had risen to more than $81,000, while the cost of staying in an assisted living facility had risen, on an annual percentage basis, even more significantly. She said rates charged by homecare providers for non-skilled services had remained relatively flat. She predicted that the costs of providing healthcare, LTC, and hospice care for Alzheimer's patients would reach $1.1 trillion by 2050. Ms. Bricker also said, among other things, that:

- According to the findings of an AHIP report, Americans believed that tax incentives could help encourage purchase of LTC insurance but that people were unaware of the actual costs of LTC services.
- A partnership program in Connecticut had saved more than $6 million in state Medicaid costs, while a program in New York, established in 2005, had reaped more than $75 million in Medicaid savings.

Chris Orestis of Life Care Funding Group said that more than 10 million people each year require LTC services. He said that the LTC market had been challenged by economic and other factors and that innovation was needed to meet LTC needs. He said that one option was to allow life insurance policyholders to convert their "life insurance policy assets" to LTC coverage, which he asserted would save states significant money. He said, for instance, that a Florida State University study had

concluded that allowing policy conversions could reduce Florida's annual Medicaid spending by $150 million. He said that seniors were abandoning billions of life insurance dollars each year in order to "spend down" so they could enter Medicaid and meet their LTC needs. He commented that consumer education about policy conversion options was important.

During Committee discussion that followed, Rep. Westrom expressed frustration on behalf of one of her constituents, who could no longer pay the premium on a LTC policy she had held for 30 years. Interested parties said, among other things, that Rep. Westrom's constituent likely could reduce her LTC policy benefits in order to pay the same premium.

Interested parties also said, in response to Committee questions, that:

- A life insurer re-underwrites risk when converting a life insurance policy to a LTC policy.
- Life insurers were leaving certain LTC product lines, particularly individual LTC products, but that such behavior may or may not have the same pricing impacts on consumers as when health insurers discontinue certain health plans.
- Converting a life insurance policy to a LTC product is a secondary-market exchange of an insurance policy, similar to a life settlement.

ORAL CHEMOTHERAPY COVERAGE

Rep. Cromer overviewed newly enacted Louisiana legislation that he said took into account laws passed in other states. He said that the Louisiana law required insurers that cover cancer treatment to cover all cancer treatment, regardless of how it is administered. Specifically, he said, the coverage for oral treatment must be "no less favorable" than the coverage for intravenous or other forms. Rep. Cromer said that between 35 and 40 percent of new cancer treatments were orally administered, with costs much higher than traditional intravenous care.

Sen. Leavell moved that NCOIL develop a model law regarding coverage for oral chemotherapy. He commented that such coverage would not significantly increase costs.

Rep. Curtiss said that he might be inclined to support required coverage but that establishing an oral chemotherapy benefit could prompt future efforts to require other equal treatments for a prescription drug benefit and a more standard medical procedure. He said that could be a problem down the road. He also said that during recent Tennessee consideration of the issue, legislators could not find a cancer patient who did not receive oral chemotherapy care even if denied by his/her insurer. He said that patients were receiving access to these drugs anyway. Rep. Cromer agreed that the indigent often received free access to these drugs but said that patients denied by their insurers often face extremely high co-pays for oral treatments.

Both Reps. Curtiss and Cromer agreed that this was a "life or death issue" and that an NCOIL model was appropriate.

Rep. Curtiss then seconded Sen. Leavell's motion to develop an NCOIL model act, and the Committee passed the motion via unanimous voice vote.

MENTAL HEALTH PARITY

Rep. Thompson noted that NCOIL had passed a *Mental Health Parity Model Act* in 2006 but that much had changed since then and that the model may be unnecessary.

Mr. Keegan reported that in 2008, Congress had passed the *Mental Health Parity and Equity Act* that required insurers to treat psychiatric illness under the same conditions as they treat physical illness. He said the 2008 law built on a 1996 federal law related to coverage provided under large

group health plans. Mr. Keegan said that the 2010 *Affordable Care Act* established mental health treatment as one of ten required essential health benefits, and required qualified individual health plans sold on new insurance exchanges, as well as Medicaid managed care plans, to offer mental health coverage.

Ms. Nolan, after noting that NCOIL bylaws required review of NCOIL model acts every five years, said that the NCOIL mental health parity model offered legislators a template from which they could draft legislation specific to the concerns of their respective states.

Rep. Keiser suggested that the Committee defer its review of the model until the November Annual Meeting. He said that although mental health coverage was a mandated essential health benefit, the extent of that benefit would not be known until the U.S. Department of Health & Human Services (HHS) released guidance on the issue, which he predicted would be available prior to the Annual Meeting. He also said that states would know by that time what impact the presidential election might have on federal healthcare reform.

Upon a motion made by Sen. Leavell, the Committee voted unanimously to defer review of the NCOIL *Mental Health Parity Model Act* until the Annual Meeting.

OPIOID DRUG ABUSE

Howard Goldblatt of the Coalition Against Insurance Fraud said that his organization was investigating the insurance impact of opioid “drug diversion.” He said the Coalition strongly supported effective and fully funded prescription drug monitoring programs, commenting that not all state programs were as strong and well-funded as they should be. He said that programs supported by voluntary contributions, for instance, were unlikely to succeed, while programs that mandated real-time reporting were more apt to make a difference.

Mr. Goldblatt reported that although brand-name Oxy-contin is weaker and somewhat less addictive than when it first entered the market, the generic version, when it is released, must be based on the original, stronger formula according to federal law. He also noted that insurers often require use of generic drugs when available. Mr. Goldblatt suggested that either the U.S. Food & Drug Administration (FDA) should make an exception for production of an Oxy-contin generic or insurers should make Oxy-contin exceptions to their coverage rules.

Upon a motion by Sen. Leavell, the Committee voted unanimously to draft a resolution to the FDA expressing concern with its requirement for an Oxy-contin generic. Under the motion, development of the proposed resolution was subject to further Committee investigation into specifics of the FDA rules.

Sen. Hall then described West Virginia efforts to stem the use by meth labs of over-the-counter Sudafed, which he commented was a major problem in other states also. He said that West Virginia ultimately enacted a law requiring real-time reporting of Sudafed sales. The law does not address the use of Sudafed purchased out of state, he noted.

Rep. Thompson said that Kentucky had passed a new law to address pain killer addiction. He highlighted what he said was a particularly disturbing fact: the U.S. has four percent of the world’s population but uses 96 percent of the world’s oxycodone.

ADJOURNMENT

There being no other business, the Committee adjourned at 12:30 p.m.

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