

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS  
HEALTH, LONG-TERM CARE & HEALTH RETIREMENT ISSUES COMMITTEE  
INTERIM MEETING  
JANUARY 27, 2017  
DRAFT MINUTES

The National Conference of Insurance Legislators (NCOIL) Health, Long-Term Care & Health Retirement Issues Committee held an interim meeting via phone conference on Friday, January 27, 2017 at 3:00 p.m.

Asm. Kevin Cahill of New York, Chair of the Committee, called into the conference and presided.

Other members of the Committee present were:

Rep. Bart Rowland, KY  
Rep. Don Flanders, NH  
Sen. Neil, Breslin, NY

Sen. James Seward, NY  
Sen. Bob Hackett, OH  
Rep. Glen Mulready, OK

Other legislators present:

Asm. Ken Cooley, CA  
Sen. Dorsey Ridley, KY  
Rep. Greg Cromer, LA

Rep. Justin Hill, MO  
Rep. Marguerite Quinn, PA

Also in attendance were:

Commissioner Tom Considine, NCOIL CEO  
Paul Penna, Executive Director, NCOIL Support Services, LLC  
Will Melofchik, Legislative Director, NCOIL Support Services, LLC

#### DISCUSSION ON IMPACT OF AFFORDABLE CARE ACT (ACA) REPEAL/REFORM

Asm. Cahill began by stating that it is important to note that at this time, it is hard to know what will happen regarding any efforts to repeal and/or replace the ACA. However, NCOIL, as a group of bi-partisan State legislators, is uniquely qualified to offer help to Congress and the Trump Administration as they consider their options. Asm. Cahill then summarized some of the recent actions of the Trump Administration aimed toward the ACA such as the Executive Order and the suspension of ACA-related advertising. Asm. Cahill stated the goal of the interim committee call is to try and arrive at "principles on healthcare reform," to share with Congress and the Trump Administration - similar to what NCOIL did in 2009 - and to encourage NCOIL legislators to reach out to their Congressional members to offer NCOIL's assistance in helping with any ACA repeal/reform efforts.

Asm. Cahill noted that in New York, repealing ACA without replacement could result in approximately a \$3.5 billion loss in federal Medicaid funding, \$600 million of which is county aid. Asm. Cahill further noted that hundreds of thousands of people qualify for Medicaid and federal subsidies under the ACA; if ACA is repealed without replacement, some will remain on the roll while some may not. Asm. Cahill also noted that his district

could lose approximately \$6 million in federal funding and approximately 45,000 people would lose health insurance coverage.

Asm. Cahill then discussed some of the statistics in a report from the Center for State Budget and Policy Priorities and The Urban Institute. That report contained State-by-State data of the number of people who would lose coverage and the loss of related federal funding if last year's failed reconciliation bill, H.R. 3762, were used as the basis for ACA repeal without replacement. Asm. Cahill noted the following State data: Missouri would lose \$1.2 billion in federal marketplace spending and 504,000 people would lose coverage; Arkansas would lose \$194 million in federal marketplace spending and 361,000 people would lose coverage; Kentucky would lose \$259 million in federal marketplace spending and 486,000 people would lose coverage; Alaska would lose \$171 million in federal marketplace spending and 62,000 people would lose coverage; Pennsylvania would lose \$1.9 billion in federal marketplace spending and 956,000 people would lose coverage; Louisiana would lose \$366 million in federal marketplace spending and 558,000 people would lose coverage; North Dakota would lose \$54 million in federal marketplace spending and 69,000 people would lose coverage. (Note – those state statistics are for 2019).

Sen. Hackett noted that 700,000 people signed up for Medicaid expansion in Ohio and stated that there are big questions facing State budgets if there is an ACA repeal without replacement. Rep. Mulready asked how the abovementioned numbers were arrived at and what specific portions of the ACA were repealed to arrive at those numbers. Will Melofchik, Legislative Director for NCOIL Support Services, stated that the numbers were arrived at using last year's reconciliation bill, H.R. 3762, which removed, without replacement: individual tax penalties for not keeping qualifying health coverage; tax penalties for employers that do not offer qualifying health coverage; premium tax credits; cost-sharing subsidies; transitional reinsurance program; Medicaid expansion; and other taxes specified in the ACA. Chris Condeluci of CC Law and Policy then stated that it is extremely important to note that the numbers projected in all reports using H.R. 3762 are hypothetical in nature because we not know what the specific ACA repeal/reform legislation will look like. Mr. Condeluci stated, however, that Congress is aware that if it does not come up with a proper plan, the numbers stated could become a reality.

Asm. Cahill then asked, as a bi-partisan group of State legislators, what can NCOIL do to assist Congress and the Trump Administration as they work on ACA repeal/reform legislation. Asm. Cooley stated that the general conversation requires disciplined thinking and it is important to convey what the ripple effects of ACA repeal/reform legislation could have on the States. Asm. Cooley noted that any communications with Congress should note the State budgetary impacts of such legislation, how risk-pools will be effected, and the consequences that the entire health care industry could face. Asm. Cooley also noted that it is important to have America's Health Insurance Plans (AHIP) be involved. Mr. Condeluci stated that a good idea might be to formulate answers to the questions that House Majority Leader Kevin McCarthy, Senate HELP Committee Chairman Lamar Alexander, and members of the Senate Finance Committee sent to State Governors and Insurance Commissioners requesting their feedback on how best to implement changes to the ACA. Mr. Condeluci noted that he has heard talk in D.C. that States will be encouraged to use 1332 and 1115 waivers. Asm. Cahill stated that he is leaning towards thinking that the waiver process should be more flexible, but with more flexibility there will of course be substantial changes – will there be a finite amount of dollars from the federal government to States as opposed to a "relative"

amount of dollars? Asm. Cahill urged all to review the letters mentioned and to think of responses.

Asm. Cahill then asked Commissioner Tom Considine, NCOIL CEO, what did NCOIL agree upon in its 2009 “Principles on Healthcare Reform” which were sponsored by Sen. Seward. Cmsr. Considine then paraphrased the principles, which are:

**General** 1) NCOIL supports healthcare reform that would provide consumers with access to affordable coverage and quality care. 2) NCOIL believes that the states, acting as laboratories of democracy, are appropriate venues for reform. 3) NCOIL supports examination of the impacts on other lines of insurance, including workers’ comp and auto.

**State/Federal** 4) NCOIL opposes any preemption of state regulatory authority and subsequent insurance consumer protections. 5) NCOIL opposes any attempt to repeal the insurance antitrust exemption under the McCarran-Ferguson Act of 1945. 6) NCOIL questions the federal government’s health insurance reform track record, including ERISA, which hinders a state’s authority to make health insurance market changes. 7) NCOIL is on record as opposing federally directed interstate health insurance sales because of domicile state shopping and cherry picking risks, but supports states’ ability to enter freely into compacts with neighboring states. 8) NCOIL believes that healthcare reform should include greater cooperation and coordination among the Justice Department, U.S. Department of Health and Human Services (HHS), state insurance regulators, law enforcement, and private insurers to combat healthcare fraud.

**Cost Implications** 9) NCOIL believes that any meaningful reform should not increase the cost of healthcare. 10) NCOIL opposes any new unfunded federal mandates. 11) NCOIL opposes any federal reform that adds to state Medicaid costs. 12) NCOIL is on record as supporting efforts to provide federal funding for innovative state insurance reform programs. 13) NCOIL supports pilot projects that allow willing states to experiment with medical malpractice cost controls.

Asm. Cahill noted that the context in which we view those principles are different now – we’ve had about 5 full years of the ACA and it is engrained in States’ budgets. Sen. Hackett stated that he does not object to coming up with principles but noted that there are going to be disagreements during the process and noted that the ACA broke down in Ohio. Asm. Cahill stated that he thinks drafting a set of Principles is a good place for NCOIL to start. Asm. Cooley and Sen. Seward agreed.

Asm. Cahill asked AHIP for their stance on the validity of the claim that health plan providers will leave the market if a repeal/reform solution is not clarified. Dianne Bricker of AHIP stated that AHIP believes that whatever the repeal/reform legislation looks like there will be a need to extend the deadline for submitting health plans for review. Asm. Cahill asked if the deadline remained being May, will there still be a full array of products available? Ms. Bricker stated that it would be very difficult to do so. Rep. Hill stated that he believes that there will be huge rate increases issued in an effort to pressure repeal/reform action to materialize. Rep. Hill also stated that he is supportive of expediting 1332 waivers to come up with some flexibility. Ms. Bricker stated that AHIP is supportive of State flexibility and noted that if the May deadline remains, it will discourage some plans. Cmsr. Considine stated that he had a conversation with a large

health plan provider recently who stated that if things remain this uncertain going forward, “we will play nowhere.”

Mr. Condeluci stated that it is important that everyone know that the frustrations and concerns that have been stated during the call are well known in D.C. and that there are steps being taken to improve the regulatory environment, part of which is to extend the deadline for health plan review. Mr. Condeluci stated that he has heard of contemporaneous action occurring: extending 1332 waivers to States and improving the regulatory environment. Asm. Cahill asked if 1332 waivers will be used for States to have blanket authority to run their health care systems. Mr. Condeluci stated that he is not sure about it being used for blanket authority, but he has heard that the Trump Administration wants maximum flexibility for States to implement their health care systems and the issue of whether the Administration wants a 1332 waiver to encompass such blanket authority comes down to whether it wants to circumvent the statute as it is currently written.

Asm. Cahill stated that after the minutes for this interim committee call are drafted, they should be circulated and then everyone can communicate via e-mail to suggest what the Principles should look like. Asm. Cahill then announced the Health Committee Model Laws that are up for re-adoption at the upcoming Spring Meeting in New Orleans and asked if anyone had any comments on them – no comments were received.

An unidentified person then asked if there will be an NCOIL Model Act on Air Ambulances introduced in New Orleans. Asm. Cahill stated that there will not be a Model Act introduced but it is expected that the NCOIL President will appoint an Air Ambulance Task Force by then.

#### ADJOURNMENT

There being no further business, the Committee adjourned at 4:00 p.m.