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This letter will present a brief synopsis and then a more detailed report of action taken at the National Conference of Insurance Legislators (NCOIL) Annual Meeting in Duck Key, Florida, from November 18 through 21, 2004.

At the meeting, legislators focused on issues including the State Modernization and Regulatory Transparency (SMART) Act; long-term care partnership programs; OCC banking regulations; company licensing modernization; insurance fraud; the NCOIL consumer participation program; financial information privacy; insurance broker disclosure and fiduciary duty; claims history databases; medical malpractice and patient safety; prescription price disclosure; drug importation; exhaustion of administrative remedies; and retirement planning.

Nearly 300 state legislators, insurance regulators, and industry, consumer, and media representatives attended the meeting.

SYNOPSIS

At the NCOIL Annual Meeting, legislators:

- Voted overwhelmingly to send a letter to Congress opposing the SMART Act
- Adopted a *Resolution Urging Congress to Pass the Long-Term Care Partnership Program Act of 2004 (S.2077/H.R.1406)*
- Adopted a *Resolution Opposing Office of the Comptroller of the Currency (OCC) Regulations Preempting State Laws*
- Readopted the *NCOIL Company Licensing Modernization Model Act*
- Readopted the *NCOIL Insurance Fraud Model Act*
- Readopted the *NCOIL Consumer Participation Program*
- Sunset the *NCOIL Financial Information Privacy Protection Model Act*
- Moved for further consideration a proposed *Insurance Broker Fiduciary Duty and Conflict of Interest Model Act*
- Moved for further consideration a proposed *Model Act Regarding the Use of Insurance Claims History Information*

- Moved for further consideration a proposed *Model Act Regarding Medical Malpractice and Patient Safety (working draft)*
- Moved for further consideration a proposed *Partnership for Long-Term Care Program Implementation Model Act (working draft)*
- Moved for further consideration a proposed *Drug Retail Price Disclosure Model Act (working draft)*
- Moved for further consideration a proposed *Resolution Encouraging Congress to Pass Legislation Providing Safe, Accessible, and Affordable Prescription Drugs*
- Moved for further review the NCOIL *Exhaustion of Administrative Remedies Model Legislation*
- Participated in a general session on retirement planning

DETAILED REPORT

SMART ACT

During a special Executive Committee meeting held on November 20, legislators voted overwhelmingly to send U.S. Reps. Michael Oxley (R-OH) and Richard Baker (R-LA) a letter voicing legislators' concerns with the SMART Act. The letter, signed individually by members of the Committee, follows a substantially similar letter, dated September 10, from then-NCOIL President Sen. Steven Geller (FL) to Oxley and Baker, who chair the U.S. House Financial Services Committee and the Subcommittee on Capital Markets, Insurance, and Government-Sponsored Enterprises, respectively. Among other things, the Executive Committee stated that the SMART Act would:

- undermine the role of state legislatures in developing insurance public policy
- undermine the authority of state insurance commissioners, including those elected and those duly appointed by their elected governors
- impose on taxpayers and consumers the costs of a new quasi-federal entity that will very likely evolve into a federal regulatory body
- nullify and preempt many state insurance statutes that were enacted after input from consumers and businesses and after thoughtful consideration by state legislatures
- hand over unprecedented legislative authority to the NAIC, a non-governmental organization not directly accountable to voters, therefore violating state sovereignty to make laws and nullifying the state authority that now exists under McCarran-Ferguson

The special Executive Committee meeting immediately followed an NCOIL general session entitled "*Federal Regulatory Reform: SMART Act or Dead End?*", in which experts representing regulatory, consumer, agent, and property-casualty and life insurance interests debated the role of state legislators in insurance regulation; the ability of the SMART Act to protect consumers and facilitate a streamlined state insurance system; the consequences of a new national advisory body for insurance oversight; the role of the NAIC under the SMART proposal; the effectiveness of state modernization efforts and the proposed preemption of state laws; the future of state premium taxes; and the potential impacts on other state officials.

MODEL RESOLUTION REGARDING LONG-TERM CARE PARTNERSHIPS

On November 19, the Executive Committee voted unanimously to adopt a proposed resolution, sponsored by Senator Carroll Leavell (NM), *Urging Congress to Pass the Long-Term Care Partnership Program Act of 2004 (S.2077/H.R.1406)*. The federal bi-partisan legislation, sponsored by Senator Larry

Craig (ID) and co-sponsored by Senators Evan Bayh (IN) and George Allen (VA), would amend title XIX (Medicaid) of the Social Security Act to repeal an impediment that prevents additional states from creating long-term care partnership programs. Partnership programs encourage people of moderate income to purchase affordable long-term care insurance, with protection against full Medicaid spend-down requirements if they should exhaust their benefits.

OCC BANKING REGULATIONS

On November 19, the Financial Services Subcommittee and the Executive Committee overwhelmingly adopted a proposed *Resolution Urging Congress to Overturn Office of the Comptroller of the Currency (OCC) Regulations Preempting State Banking Statutes*. The resolution urges Congress to use its authority under the Congressional Review Act to overturn regulations promulgated by the OCC that preempt state banking statutes and that could potentially diminish consumer protections. During the 2004 NCOIL Summer Meeting, legislators had deferred consideration of the resolution in order to hear commentary from additional interested parties.

COMPANY LICENSING MODERNIZATION

On November 19, the State-Federal Relations and Executive Committees readopted the NCOIL *Company Licensing Modernization Model Act*, which the Committees originally adopted on July 12, 2002. The model would require all states to use the current version of the National Association of Insurance Commissioners (NAIC) Uniform Certificate of Authority Application (UCAA). The UCAA is a process designed to allow insurers to file copies of the same license application for admission in numerous states. The model calls for repeal of all additional state company licensing requirements and licensing forms not specifically contained in the UCAA.

INSURANCE FRAUD

On November 19, the Executive Committee readopted the NCOIL *Insurance Fraud Model Act*, which the Committee originally adopted on July 28, 1995, amended on February 26, 1998, and readopted on November 16, 2001. The model would facilitate the detection and would reduce the occurrence of fraud through stricter enforcement and deterrence, restitution, and increased partnership among consumers, the insurance industry, and the states.

CONSUMER PARTICIPATION PROGRAM

On November 19, the Executive Committee readopted the NCOIL *Consumer Participation Program*, which the Committee originally adopted on November 21, 2003. The proposal had required Committee review during the 2004 NCOIL Annual Meeting and waives the registration fees of three (3) consumer advocates per NCOIL conference. These advocates may be chosen from among national and regional representatives and are required to meet certain eligibility criteria determined by NCOIL.

FINANCIAL INFORMATION PRIVACY

On November 19, the Executive Committee voted to sunset the NCOIL *Financial Information Privacy Protection Model Act*, which the Committee originally adopted on November 17, 2000, and amended on March 2, 2001. The model addressed financial privacy issues and touched on medical privacy by allowing a consumer to opt-in in order to have his or her health information shared for marketing purposes.

BROKER DISCLOSURE AND FIDUCIARY DUTY

On November 19, the State-Federal Relations Committee voted to defer a proposed *Insurance Broker Fiduciary Duty and Conflict of Interest Model Act*, sponsored by Rep. Craig Eiland (TX). The action was taken in order to allow additional input from interested parties. The purpose of the model, which is in discussion draft form, is to require disclosure of compensation from any entity other than the insured in a broker versus agent relationship; establish a fiduciary duty for insurance brokers to ensure that brokers protect the best interests of their clients; and create uniformity in allowing insurance commissioners to

perform market conduct examinations on brokers. The proposed model act would apply to all licensed brokers or subagents that conduct the business of insurance on behalf of, and purport to represent the best interests of, the client, as opposed to representing an insurance company. Further, the model stresses strong enforcement of broker misconduct penalties, as compared to other proposed regulatory approaches.

CLAIMS HISTORY DATABASES

On November 19, the Property-Casualty Insurance Committee voted to defer until the 2005 NCOIL Spring Meeting a proposed *Model Act Regarding the Use of Insurance Claims History Information*. The action was taken so that legislators and interested parties might further develop the draft prior to its consideration during a hearing at the Spring Meeting. The proposed model law, which would apply to homeowners' insurance, responds to a Committee charge to monitor issues related to claims history databases and to develop model legislation. Among other things, the model would address the treatment of consumer inquiries and claims without payments; the importance of claims experience/loss history of a previous property owner; losses due to natural causes or water damage; appropriate disclosures to consumers, including notifications during real estate transactions; and the filing of various information by insurers and claims-history report providers.

MEDICAL MALPRACTICE AND PATIENT SAFETY

On November 18, the Property-Casualty Insurance Committee voted to defer until the 2005 NCOIL Spring Meeting a proposed *Model Act Regarding Medical Malpractice and Patient Safety (working draft)*. The proposed model would address the mandatory reporting of medical errors by hospitals, ambulatory surgical centers, and mental hospitals; the mandatory reporting of hospital infection rates; and guidelines for establishing an effective state medical board.

The draft model law, which is one element of NCOIL's investigation into medical malpractice insurance issues, was presented to the NCOIL Health Insurance Committee and will be the focus of a joint P-C/Health Insurance Committee session during the 2005 NCOIL Spring Meeting. A revised, expanded version of the draft will be considered at that time.

MODEL LEGISLATION REGARDING LONG-TERM CARE PARTNERSHIPS

On November 18, legislators on the Life Insurance Committee voted unanimously to defer until the 2005 NCOIL Spring Meeting, consideration of a proposed *Partnership for Long-Term Care Program Implementation Model Act (working draft)*, sponsored by Senator Carroll Leavell (NM). Among other things, the proposed model act would:

- establish a long-term care partnership program that would become effective following Congressional enactment of the *Long-Term Care Partnership Program Act of 2004* (S.2077/H.R.1406)
- allow individuals, who would have exhausted qualified private long-term care policy benefits, to protect their assets without violating Medicaid's financial eligibility requirements
- allow for dollar-for-dollar asset protection as well as total asset protection
- provide reciprocity between states for comparable and qualified policies established under the long-term care partnership programs
- make available to any individual interested in participating in the partnership information on the program and on long-term care insurance in general
- provide the option of tax incentives to persons buying qualified long-term care partnership policies

PRESCRIPTION DRUG RETAIL PRICE DISCLOSURE

On November 19, the Health Insurance Committee voted to defer a proposed NCOIL *Prescription Drug Retail Price Disclosure Model Act* until the 2005 NCOIL Spring Meeting. The model, sponsored by Rep. Kathleen Keenan (VT), is based on New York §6826 Education Law.

The proposed model act would require:

- drug retail operations to disclose to consumers the prices for the most 150 frequently prescribed medications
- pharmacies to indicate to consumers the availability of a generic where generic medications are available for prescribed brand name drugs
- pharmacies to post conspicuously a sign notifying consumers of the drug retail price list and that prices for medications vary between pharmacies

PRESCRIPTION DRUG IMPORTATION

On November 19, the Health Insurance Committee voted to defer a proposed *Resolution Encouraging Congress to Pass Legislation Providing Safe, Accessible, and Affordable Prescription Drugs* until the 2005 NCOIL Spring Meeting. The resolution calls upon the United States Congress to pass legislation to permit the importation of prescription drugs. The model is based on a resolution proposed by the New York City Council and is sponsored by State Representative Brian Kennedy (RI).

EXHAUSTION OF ADMINISTRATIVE REMEDIES

On November 19, the State-Federal Relations Committee deferred until the 2005 NCOIL Spring Meeting consideration of the NCOIL *Exhaustion of Administrative Remedies Model Legislation*, which the Committee originally adopted on November 22, 2002. The model would require a court to dismiss or abate a civil action filed against an insurance entity unless all applicable state insurance department administrative remedies had been pursued. An abatement would last for a period of at least six months. If a court abates or dismisses an action, the court would be required to refer issues or claims within an insurance department's jurisdiction to that department for action.

RETIREMENT PLANNING

On November 20, legislators participated in a general session entitled "*The Transition from Saving for Retirement to Living in Retirement.*" Panelists examined potential issues with the over reliance on state and federal programs, including Social Security and Medicaid, and discussed the need for the aging baby-boom population to plan ahead for their financial futures. Panelists also explored the range of insurance-related retirement planning products that allow individuals to secure guaranteed financial income. Speakers represented academic, insurance industry, and consumer perspectives.

In addition, legislators considered the following issues, among others:

- market conduct surveillance reform
- property-casualty insurance rate modernization
- insurance (credit) scoring
- direct-to-consumer advertising
- state health insurance risk pools for the uninsured
- corporate governance and accountability
- investor-owned life insurance
- reauthorization of the Terrorism Risk Insurance Act (TRIA)
- collateral requirements for foreign reinsurers
- SUTA dumping
- consumer-driven health insurance

If you would like to receive additional information regarding any of the issues discussed above, or are interested in ordering a general session audiotape, please contact the NCOIL National Office at (518) 687-0178.

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