



PRESIDENT: REP. CRAIG EILAND, TX
VICE PRESIDENT: REP. FRANK WALD, ND
SECRETARY: SEN. ALAN SANBORN, MI
TREASURER: REP. BRIAN KENNEDY, RI
EXECUTIVE COMMITTEE CHAIR: SEN. JAMES SEWARD, NY

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 San Diego, California, from November 17 through 20, 2005.

At the meeting, legislators focused on issues including patient safety; certified aftermarket crash parts; reinsurance collateral and enforcement of judgments; insurance (credit) scoring; fundraising at NCOIL conferences; market conduct surveillance; identity theft; payday lending; long-term care partnership programs; the Small Employers Health Benefits Program Act of 2005; Hurricanes Katrina and Rita and possibilities for a national mega-catastrophe program; and solvency and guaranty funds.

Over 350 state legislators, insurance regulators, and industry, consumer, and media representatives attended the meeting.

SYNOPSIS

At the NCOIL Annual Meeting, legislators:

- Adopted a proposed *Patient Safety Model Act*
- Adopted a proposed *Resolution Regarding Motor Vehicle Crash Parts*
- Adopted a proposed *Resolution Regarding Reinsurance Collateral Requirements*; moved for further consideration a proposed *Approved List of Reinsurers Model Act*; and accepted a report from the Insurance Legislators Foundation (ILF) regarding enforcement of judgments as related to reinsurance collateral requirements
- Readopted the *NCOIL Model Act Regarding Use of Credit Information in Personal Insurance*
- Adopted a proposed *Resolution Urging the Prohibition of Fundraising Events at NCOIL Meetings*
- Considered amendments to the *NCOIL-NAIC Market Conduct Surveillance Model Law*
- Moved for further consideration the bylaws-required review of the *NCOIL Identity Theft Protection Model Act*
- Moved for further consideration proposed payday lending model legislation
- Moved for further consideration proposed long-term care partnership program model legislation
- Moved for further consideration a proposed *Resolution Regarding the Small Employers Health Benefits Program Act*

- Participated in a general session on fallout from Hurricanes Katrina and Rita, and held a special Task Force on Terrorism/Subcommittee on Natural Disaster Insurance Legislation meeting on development of a national mega-catastrophe program
- Participated in a general session on solvency and guaranty funds

DETAILED REPORT

PATIENT SAFETY

On November 18, the NCOIL Property-Casualty and Health Insurance Committees unanimously adopted a proposed *Patient Safety Model Act* that would establish mandatory error reporting requirements for hospitals, ambulatory surgical centers, and mental facilities. Events to be reported would include wrong-site surgery, death, medication errors, foreign objects left inside patients, suicide, sexual harassment, and hemolytic transfusion reactions as a result of using incompatible blood products, among other “never” events. The model law, which the NCOIL Executive Committee adopted on November 19, also would establish a mandatory reporting system for hospital infection statistics. This system would feature a one-year phase-in period, during which states would keep reported data confidential in order to insure the completeness and accuracy of submitted information. Both sections of the model act would include whistleblower and privacy protections.

The patient safety model law, which emanated from the P-C Committee’s investigation into rising medical malpractice insurance premiums, represents the culmination of more than a year of examination into healthcare error reporting. Before addressing patient safety, NCOIL adopted a spring 2004 *Resolution Regarding Medical Malpractice Reform*, which supported certain state tort-reform initiatives including, among others, reasonable caps on non-economic and punitive damages.

CERTIFIED AFTERMARKET CRASH PARTS

On November 17, the NCOIL Property-Casualty Insurance Committee unanimously adopted a proposed *Resolution Regarding Motor Vehicle Crash Parts* that recognizes the importance of competition in the crash repair industry. The resolution, which replaces further consideration of a draft *Certified Aftermarket Crash Parts Model Act (substitute amendment)*, supports 1) use of all kinds of crash parts when appropriate; 2) consumer awareness of the differences between types of crash parts, as well as notification regarding the kind of part for which an insurer will reimburse; and 3) having an insurer stand behind the part(s) it requires. The NCOIL Executive Committee adopted the resolution on November 19.

An NCOIL Aftermarket Crash Parts Subcommittee, formed following the July NCOIL Summer Meeting, officially recommended that the P-C Committee consider the resolution in place of the aftermarket model law. The Subcommittee initially agreed to a series of amendments to the model but ultimately determined that they were unworkable and that a resolution would be more appropriate. At the Annual Meeting, the Subcommittee presented, for the full P-C Committee’s review, the rejected amendments so that the Committee could appreciate the scope of the Subcommittee’s work.

The proposed model act would have, among other things, endorsed certification of aftermarket crash parts by third-party organizations, such as the Certified Automotive Parts Association (CAPA); required disclosure as to the use of certified aftermarket crash parts; deemed that certified parts are of “like kind and quality” to car-company parts; provided that a person leasing or financing a vehicle could not be penalized for using a certified part; and identified the Act’s purpose as creating a market incentive for the use of certified aftermarket crash parts.

REINSURANCE COLLATERAL/ENFORCEMENT OF JUDGMENTS

On November 19, the NCOIL Executive Committee adopted a proposed *Resolution Regarding Reinsurance Collateral Requirements* that, among other things, recognizes the importance of both domestic and non-U.S. reinsurers. The resolution supports 1) continuing to reassess credit for reinsurance rules in light of an evolving reinsurance market and changes to regulatory and accounting standards, and 2) collateral rules that are effective and fair and that provide contract security while not increasing costs or reducing capacity. The resolution supports the work of the National Association of Insurance Commissioners (NAIC) on this issue; urges the NAIC to complete its review as soon as possible; requests that NAIC leadership report progress to NCOIL at the 2006 Spring and Summer Meetings; and commits NCOIL to reconsidering a draft *Approved List of Reinsurers Model Act* no later than the 2006 NCOIL Summer Meeting.

Also on November 19, the Committee accepted a report from the Insurance Legislators Foundation (ILF) Board regarding enforcement of judgments as related to reinsurance collateral requirements. The report, prepared by the law firm of Herrick Feinstein, represented an independent legal analysis of the enforceability of U.S. judgments and arbitration awards against unauthorized, non-U.S. domiciled reinsurers pursuant to terms of reinsurance agreements. The report determined that, as a rule, U.S. judgments are enforced overseas. It noted three potential exceptions to this conclusion: 1) parties' failure to strictly follow the arbitration provisions outlined in the reinsurance contract; 2) a default decision against a reinsurer based on its inability to post 100 percent security before filing pleadings in a case, rather than a decision based on merits; and 3) punitive damage awards based on a reinsurer's bad faith conduct. The study recognized that the punitive damage issue is not especially relevant to reinsurance collateral requirements.

The NCOIL Executive Committee has deferred consideration of the *Approved List of Reinsurers Model Act* since its 2004 Summer Meeting by request of the NAIC, in order to allow regulators further study into the issue. An ad hoc regulator group and industry have been working toward resolution of the matter and report to the NAIC. In November 2002, the NCOIL International Insurance Issues Committee adopted the model law and referred it to the Executive Committee. The model would provide for reduced collateral requirements for non-U.S. reinsurers that meet certain financial solvency criteria.

CREDIT SCORING

On November 17, the NCOIL Property-Casualty Insurance Committee unanimously readopted the *NCOIL Model Act Regarding Use of Credit Information in Personal Insurance*, originally adopted on November 22, 2002, and amended on July 16, 2004, and voted to consider at the 2006 Spring Meeting an amendment regarding extraordinary life circumstances. NCOIL bylaws require the organization to periodically review its model acts. The model would, in part, 1) prohibit an insurer from denying, canceling, or non-renewing a policy based solely on credit information; 2) require an insurer to re-underwrite and re-rate an insured whose credit report was corrected; 3) require an insurer to notify an applicant that credit information would be used, as well as notify when an adverse action was based on credit information and what the four primary credit-related factors were; 4) indemnify insurance producers obtaining credit information/ insurance scores according to an insurer's procedures and according to applicable law and regulation; and 5) restrict a consumer reporting agency's ability to provide or sell data submitted in conjunction with an insurance inquiry. The NCOIL Executive Committee readopted the model law on November 19.

FUNDRAISING AT NCOIL CONFERENCES

On November 19, the NCOIL Executive Committee adopted a proposed *Resolution Urging the Prohibition of Fundraising Events at NCOIL Meetings*. The resolution recognizes, among other things, that NCOIL is an educational organization of state legislators. It opposes the sponsorship, attendance, or support of political fundraising events for the benefit of any legislator or related group at or near a sanctioned NCOIL meeting, seminar, or event.

MARKET CONDUCT SURVEILLANCE

On November 18, the NCOIL State-Federal Relations and NCOIL-NAIC Liaison Committees began discussions regarding amending the NCOIL-NAIC *Market Conduct Surveillance Model Law* in order to facilitate its enactment in the states. Committee members expressed concern that states have not implemented the joint model since its NCOIL and NAIC adoptions a year and a half ago. Among other things, they noted a lack of regulator and industry support.

An NCOIL Market Conduct Surveillance Subcommittee, created after the July NCOIL Summer Meeting, suggested that the issues involved in amending the model law were too complex to handle at the Subcommittee level. The Subcommittee suggested that since the current model represents a joint work product with the NAIC, representatives of the NAIC should be present during amendment discussions.

The Subcommittee recommended, because of the lack of implementation in the states, Committee review of:

- legislation that has actually passed in the states
- an earlier version of the market conduct model adopted by NCOIL in February 2004
- amending the joint model

The Subcommittee recommended that the Committee begin its deliberations by examining a newly enacted Texas *Insurance Market Conduct Surveillance Act*, SB 14. The law, while based on the NCOIL-NAIC bill, differs in many important ways, among them the inclusion of a domestic deference provision, an exam budgeting provision, and a privacy provision for exam reports.

The Committee briefly discussed the Texas market conduct legislation but ultimately decided to review the original NCOIL *Market Conduct Surveillance Model Law*, approved in February of 2004, to see if it offered insight into what amendments might now be appropriate for the joint model act, which NCOIL adopted in July 2004 and the NAIC adopted in September 2004. Committee Chair Rep. Robert Damron (KY) gave interested parties until December 20, 2005, to submit comments on the original NCOIL model bill.

The joint market conduct model law would establish methods for collecting marketplace data, set forth a continuum of market conduct actions to be considered prior to undertaking a targeted exam, require states to participate in an enhanced NAIC National Consumer Complaint Database, set forth a structure for performing targeted market conduct examinations, address the use of contract examiners, and require regulators to include the company's response in examination reports. In response to proposed NAIC amendments to the original February 2004 version, NCOIL amended its market conduct model in July 2004 with the understanding the NAIC would adopt it in September of that year.

IDENTITY THEFT

On November 17, the NCOIL Financial Services & Investment Products Committee deferred review of the NCOIL *Identity Theft Protection Model Act*, originally adopted on November 22, 2002, in order to investigate whether the newly proposed federal *Personal Data Privacy and Security Act of 2005* would preempt parts of the model law. NCOIL bylaws require that the organization review its model acts every two years. The model law would protect consumers from the misuse of their personal financial information by those with the intent to defraud another person or with the intent to commit any violation of federal, state, or local law.

PAYDAY LENDING

On November 17, the NCOIL Financial Services & Investment Products Committee continued consideration of a proposed *Model Deferred Presentment Services Act* by reviewing a newly enacted Illinois *Payday Loan Reform Act*. The *Deferred Presentment Act*, which the American Legislative Exchange Council (ALEC) adopted in 1999, was a starting point for NCOIL discussion and would, among other things, require that lending agreements be in writing

and that consumer disclaimers be included in payday lending transactions, including notification that failure to obey state law regarding loan limits could create financial hardship. The act would cap maximum transaction amounts, disallow more than two transactions at any one time, limit renewals of those transactions to no more than three times, and eliminate criminal culpability, absent fraud, on the part of the consumer.

The Illinois bill, which represents consensus among consumer and industry representatives, includes a number of provisions not present in the *Deferred Presentment Act*. These provisions would, in part, limit the minimum and maximum loan terms; cap a loan at 25 percent of a consumer's monthly income; establish a cap on the fees a lender may charge for every \$100 loaned; require lenders to use a state-certified reporting service to verify a consumer's income; allow consumers to make payments in increments as small as \$5; require lenders to establish repayment plans, without additional finance charges or interest fees, for consumers with loans older than 35 days; require lenders to adhere to strict reporting requirements on all aspects of their business; and prohibit payday loans facilities from locating within one mile of military bases and gambling establishments.

LONG-TERM CARE PARTNERSHIPS

On November 17, the NCOIL Life Insurance Committee again deferred consideration of a proposed *Model Act Enabling States to Create Partnership for Long-Term Care Programs* and a proposed *Model Act Implementing State Partnership for Long-Term Care Programs (working draft)* to allow for development of federal legislation to authorize partnerships by amending Medicaid plans.

The proposed models follow the Committee's November 2004 adoption of a resolution urging Congress to amend title XIX of the Social Security Act to allow additional states to establish long-term care partnership programs. During the 2004 Annual and the 2005 Spring Meetings, legislators deferred consideration of the model laws in order to monitor action on proposed federal legislation that would address implementing a long-term care partnership program.

The proposed *Model Act Enabling States to Create Partnership for Long-Term Care Programs* would amend state's Medicaid statutes to allow for asset disregard under a state's long-term care partnership program. The proposed *Model Act Implementing State Partnership for Long-Term Care Programs (working draft)* would implement 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)*.

SMALL EMPLOYERS HEALTH BENEFITS PROGRAM (SEHBP) ACT

On November 18, the NCOIL Health Insurance Committee deferred consideration of a proposed *Resolution to Urge Passage of the Small Employers Health Benefits Program Act of 2005 (S.637)* in order to hear more discussion of the issue. The resolution expresses support for SEHBP and urges congressional adoption. SEHBP would permit self-employed persons and employers with less than 100 employees to participate in health insurance coverage offered under the guidance of the U.S. Office of Personnel Management. The minimum standards prescribed for health benefit plans designed for federal employees would apply to plans and carriers under SEHBP. The U.S. Office of Personnel Management would review rates and would permit annual rate adjustments by geographic area, marital status, and age. Generally, plans offered under SEHBP would supersede and preempt state legislative and regulatory authority over insurance, unless a plan was offered in only a limited geographic area within a state.

NATIONAL MEGA-CATASTROPHE PROGRAM/HURRICANES KATRINA AND RITA

On November 18, the NCOIL Task Force on Terrorism and Subcommittee on Natural Disaster Insurance Legislation held a special joint meeting regarding, among other things, development of a national mega-catastrophe program to prepare for the next 1-in-100 year natural disaster. Legislators stressed that such an event is inevitable and will devastate markets and policyholders across the country. Key to the discussion was consideration of a

layered system, in which the private market would bear the first and largest responsibility, followed by state and/or regional fund liability and finally by federal involvement. Legislators determined to consider amending at the 2006 NCOIL Spring Meeting the NCOIL *Resolution Regarding Natural Disaster Insurance Issues*, adopted in February 2004, in order to recognize such a layered program. The resolution currently supports congressional investigation of various options for a national system, including, among others, folding natural disaster risks into the Terrorism Risk Insurance Act (TRIA), creating a TRIA-like system for natural catastrophes, and folding natural disaster exposure into the National Flood Insurance Program (NFIP).

On November 19, legislators participated in a general session entitled *Recovering from Katrina and Rita: Exploring the Profound Consequences*. Speakers representing academic, Federal Emergency Management Agency (FEMA), state insurance department, reinsurer, property-casualty, and insurance agent perspectives discussed fallout from the storms on domestic and global lines of insurance; whether federal involvement is necessary to secure capacity and affordability; how best to mitigate for catastrophic events; and impacts on the National Flood Insurance Program (NFIP), among other items. The roundtable discussion followed reports in NCOIL committees regarding more immediate concerns related to the hurricanes, such as initial loss estimates and agent/adjuster access issues.

SOLVENCY AND GUARANTY FUNDS

On November 19, legislators participated in a general session entitled *Solvency & Guaranty Funds: Are States Covering the Future?* Speakers representing academic, state insurance department, property-casualty insurance industry, and guaranty fund perspectives addressed whether the current insurance environment challenges the ability of state funds to pay claims; what impact there is on insureds; and what steps state legislatures should take to improve the operations of guaranty funds, among other items.

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

- **natural disaster** mitigation and federal legislation
- federal initiatives to **preempt state insurance regulation**
- **financial modernization**, including the NAIC *Interstate Insurance Product Regulation Compact*
- **finite insurance and reinsurance** arrangements
- reauthorization of the **Terrorism Risk Insurance Act (TRIA)**
- application of Sarbanes-Oxley **corporate governance** to non-public companies
- **interstate health insurance sales and reimbursement**
- **Medicare/Medicaid**
- **professional employment organizations (PEOs)**
- **regulation of insurance and financial services products**

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