

This memo present a brief synopsis and then a more detailed report of action taken at the National Conference of Insurance Legislators (NCOIL) Annual Meeting in New Orleans, Louisiana, held from November 18 through 22, 2009. More than 325 state legislators, insurance regulators, federal officials, and industry, consumer, and media representatives attended.

## **SYNOPSIS**

At the Annual Meeting legislators, among other things:

### Adopted:

- *Credit Default Insurance Model Legislation*
- *NCOIL Principles on Healthcare Reform*
- *a Resolution Concerning the Role of Insurance Agents and Brokers in the Healthcare Delivery System*
- *a Model Act Regarding Auto Airbag Fraud*
- *a Resolution Opposing Legislation to Create a Federal Insurance Office*
- *a Construction Industry Workers' Compensation Coverage Act*

### Readopted:

- an NCOIL *Insurance Fraud Model Act*

### Created:

- a Subcommittee on Balance Billing Regulation

### Considered and deferred until the NCOIL Spring Meeting:

- *a Model Act Banning Fee Schedules for Uncovered Dental Services*
- *a Model Act Regarding Motor Vehicle Crash Parts and Repair*
- *a Market Conduct Annual Statement Model Act*
- a public-private natural catastrophe financing proposal

### Determined to further address:

- reinsurance collateral/modernization activity

### In addition, legislators:

- participated in a special meeting on proposed IIPRC guaranteed benefit annuity standards
- participated in a keynote luncheon with Jayann Sepich, founder of *DNA Saves*, on *Katie's Law*
- participated in roundtables on health reform costs and on financial services overhaul measures/ consumer protection

## **DETAILED REPORT**

### **EXECUTIVE**

#### *INSURANCE FRAUD*

On November 22, the Committee unanimously readopted an NCOIL *Insurance Fraud Model Act*, first approved in 1995. The [model law](#)—which legislators reviewed as per NCOIL bylaws—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. The model law had been amended in 1998 and readopted in 2001 and 2004.

#### *REINSURANCE COLLATERAL*

On November 22, the Committee determined to further address a National Association of Insurance Commissioners (NAIC) reinsurance collateral effort at the 2010 Spring Meeting—specifically, NAIC implementation of a *Reinsurance Regulatory Modernization Framework* and development of federal enabling legislation. The Framework, NAIC reported, creates two classes of reinsurers in the United States: U.S.-domiciled national reinsurers and non-U.S.-based port of entry (POE) reinsurers, and it

introduces modified collateral requirements for eligible reinsurers.

NCOIL has supported, since 2002, reassessing collateral rules in light of changes in global markets and accounting standards and recently expressed concerns regarding governance of the *Framework's* Reinsurance Supervision Review Department (RSRD) and proposed federal involvement.

## **FINANCIAL SERVICES & INVESTMENT PRODUCTS**

### ***CREDIT DEFAULT INSURANCE***

On November 20 and 22, respectively, the Financial Services & Investment Products and Executive Committees unanimously approved *Credit Default Insurance Model Legislation*. The [model bill](#)—based on New York State financial guaranty insurance law—would include a first-of-its-kind definition of credit default insurance (CDI) and would establish a state regulatory regime to oversee the CDI market. The model would contain requirements regarding company licensing; contingency, loss, and unearned premium reserves; policy forms and rates; and reinsurance, among other things. It would define authorized CDI and prohibit and penalize parties that engage in unauthorized CDI. In doing so, the model—developed following nearly a year of Financial Services Committee work—would ban so-called “naked” CDS.

## **HEALTH, LONG-TERM CARE & HEALTH RETIREMENT ISSUES**

### ***HEALTH REFORM PRINCIPLES***

On November 20, the Health, Long-Term Care & Health Retirement Issues Committee overwhelmingly adopted—followed by unanimous Executive Committee adoption on November 22—proposed NCOIL *Principles on Healthcare Reform*. The [principles](#) address state consumer protections, costs, and fraud, and speak to long-standing NCOIL positions regarding federal preemption.

### ***ROLE OF AGENTS AND BROKERS***

On November 20 and 22, respectively, the Health, Long-Term Care & Health Retirement Issues and Executive Committees unanimously adopted a *Resolution Concerning the Role of Insurance Agents and Brokers in the Healthcare Delivery System*. The [resolution](#) recognizes the role of agents and brokers in the U.S. healthcare system and supports their right to enroll consumers in any health insurance plans.

### ***BALANCE BILLING REGULATION***

On November 20, the Committee directed the NCOIL President, Health Committee co-chairs, and staff to form a Subcommittee on Balance Billing Regulation. The Subcommittee—which will further recent NCOIL consideration of the issue—will look at various state and other approaches to protect healthcare consumers and will convene interim meeting conference calls to develop model legislation for discussion during the NCOIL Spring Meeting.

### ***FEES FOR UNCOVERED DENTAL SERVICES***

On November 20, the Committee deferred until the NCOIL Spring Meeting a *Model Act Banning Fee Schedules for Uncovered Dental Services*, to allow for further discussion. The [model bill](#), which is based on a 2009 Rhode Island law, would prohibit an insurance plan from requiring a dentist to accept a fee for uncovered services set by a plan, unless the plan compensates the dentist. The model would also prohibit insurers from leasing their dental network providers to third-party administrators or other plans that set similar fee schedules.

## **LIFE INSURANCE AND FINANCIAL PLANNING**

### ***GUARANTEED LIVING ANNUITY BENEFITS***

During a special meeting on November 19, the Committee discussed, in order to form an NCOIL position, proposed Interstate Insurance Product Regulation Commission (IIPRC) Compact standards that would apply to individual deferred variable and non-variable annuities. At issue is a provision in the standards that would allow insurers to cancel guaranteed living benefits when an annuity changes ownership.

## **NATURAL DISASTER INSURANCE**

### *CATASTROPHE FINANCING*

On November 19, the Subcommittee on Natural Disaster Insurance Legislation deferred until the NCOIL Spring Meeting a proposal regarding public-private catastrophe financing, to allow for further discussion. The [proposal](#)—which would build on long-standing NCOIL efforts to enact comprehensive catastrophe reform—attempts to establish a framework in which a state develops a long-term financing strategy based on an optional state catastrophe pool and on adherence to NCOIL-endorsed statewide building codes and land-use strategies, among other things.

## **PROPERTY-CASUALTY INSURANCE**

### *AIRBAG FRAUD*

On November 21, the Property-Casualty Insurance Committee overwhelmingly adopted—followed by unanimous Executive Committee adoption on November 22—a *Model Act Regarding Auto Airbag Fraud* that would establish a comprehensive system of state anti-fraud policy options. The [model law](#) would set forth criminal penalties; would require detailed record-keeping; and would mandate disclosures by repair facilities, law enforcement, and persons trading or selling a motor vehicle, among other things. The model would require repair facilities to place a permanent label on a dashboard disclosing use of a salvaged airbag and would add a drafting note encouraging state adoption of protocols to insure that only salvaged airbags meeting specific criteria are used.

### *AFTERMARKET CRASH PARTS/AUTO BODY STEERING*

During a special meeting on November 22, the Property-Casualty Insurance Committee, due to time constraints, deferred until the NCOIL Spring Meeting a *Model Act Regarding Motor Vehicle Crash Parts and Repair* and related amendments. The [model](#) would require disclosure and consent prior to crash part repair/replacement; establish conditions whereby insurers could require use of aftermarket crash parts; mandate permanent, transparent identification of crash parts; and promote accountability.

The model also would restrict insurer-consumer discussions regarding choice of a repair facility. During recent conference calls to develop the model, Committee members reserved their examination of the issue until the Annual Meeting—at which time they planned to consider making the provisions a separate model law and examining state alternatives.

## **STATE-FEDERAL RELATIONS**

### *FEDERAL INSURANCE OFFICE*

On November 19 and 22, respectively, the State-Federal Relations and Executive Committees unanimously adopted a *Resolution Opposing Legislation to Create a Federal Insurance Office*. The [resolution](#) asserts that many of the goals for creating any such office could be realized through enhanced information sharing and communications between state and federal officials. The resolution states that, like a related 2008 OII bill draft, an FIO or Office of National Insurance (ONI) would be the first step toward an optional federal charter (OFC).

### *MARKET CONDUCT ANNUAL STATEMENT*

On November 20, after receiving input from interested parties on November 19, the State-Federal Relations Committee deferred until the NCOIL Spring Meeting a proposed *Market Conduct Annual Statement Model Act* and determined to schedule interim meeting conference calls to further discuss interested-party recommendations, including a related Oklahoma state statute. The [model](#) would require that market conduct annual statement (MCAS) data and analysis be kept confidential and privileged and would establish a system in which state insurance commissioners could collect, analyze, and share MCAS data with other entities, including the National Association of Insurance Commissioners (NAIC).

## **WORKERS' COMPENSATION INSURANCE**

### *EMPLOYEE MISCLASSIFICATION/CONSTRUCTION INDUSTRY COVERAGE*

On November 19 and 22, respectively, the Workers' Compensation Insurance and Executive Committees

unanimously approved a *Construction Industry Workers' Compensation Coverage Model Act*. The [model](#) targets construction employee misclassification through transparency, disclosure, and accountability. The model would mandate workers' compensation with the exception of sole proprietors on residential projects and homeowners, and would hold primary contractors liable. The legislation—which is the product of input from a variety of interested parties—would establish auditing procedures, provide penalties for insurance fraud, and enhance state enforcement authority.

## KEYNOTE ADDRESS

On November 20, legislators participated in a keynote luncheon address delivered by Jayann Sepich, founder of *DNA Saves*. Ms. Sepich discussed Katie's Law, which requires DNA testing upon most felony arrests, and its impacts on the insurance system.

## ROUNDTABLES

### *HEALTH REFORM COSTS*

On November 21, legislators participated in a roundtable entitled *Health Reform in Flux: What Are the Costs?* Speakers discussed cost-shifting, benefits, and likely impacts on states, employers, and taxpayers, among other things.

Panelists represented the American Academy of Actuaries, Massachusetts State Legislature, Oklahoma Insurance Department, and State Farm Insurance Company.

### *FUTURE OF FINANCIAL REGULATION*

On November 20, legislators participated in a roundtable entitled *The Future of Financial Regulation: Will Consumers Be Protected?* Speakers discussed pending financial services regulatory reform initiatives, including a proposed Consumer Financial Protection Agency and Federal Insurance Office, and their impacts on consumer protection.

Panelists represented the Office of Congressman Keith Ellison (D-MN), American Insurance Association, National Association of Professional Insurance Agents, and Public Citizen's Global Trade Watch.

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

- federal [regulatory overhaul](#) measures
- life insurance [capital & surplus relief](#)
- the National [Flood Insurance](#) Program (NFIP)
- SEC [indexed annuity](#) activity
- health insurance [rescissions](#)
- [international accounting](#) standards
- [mortgage and title](#) insurance regulation
- state efforts regarding [life settlements](#) legislation
- federal [natural catastrophe](#) proposals
- [principles-based reserving](#) for life insurance
- federal [overseas tax](#) treatment
- international [Solvency II](#) concerns