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NORTH CAROLINA ASSOCIATION OF HEALTH UNDERWRITERS 2009 LEGISLATIVE CLOSING REPORT

The North Carolina General Assembly adjourned on August 11, 2009, completing a prolonged session that began on January 28, 2009. Writing a budget for difficult economic times caused the session to linger a bit more than legislators would have liked.

The 2010 “short” session will convene on Wednesday, May 12, 2010 at noon. This session is designed to fine-tune the budget, and the scope of the bills eligible for consideration during the short session is a good bit narrower than it is for long sessions.

Set out below is an overview of bills of interest that passed during the 2009 session and bills that did not. For ease of reference, I have arranged these bills numerically by House and by Senate.

BILLS THAT PASSED

HB 2 – Prohibit Smoking in Public and Workplaces. This bill was the second bill introduced in the House during this session, and was hotly debated prior to its enactment. It operates to prohibit smoking in State government buildings and State vehicles. Smoking is also prohibited in enclosed areas of restaurants and bars. Exceptions exist for designated smoking rooms in hotels and cigar bars. Local governments may restrict smoking, but may not prohibit smoking in private clubs. This legislation became effective on May 19, 2009, and was spearheaded by House Major Leader Hugh Holliman (D-Lexington).

HB 274 – Clarifying Changes to State Law. This legislation was passed on the last day of the legislative session, and addresses a variety of statutory revisions. Section 9 of this bill contains a technical “fix” to \$5 million in funding directed to the Health Insurance Risk Pool during the 2008 session. Due to a drafting error, an incorrect budget code was referred to in the 2008 bill. This legislation corrects that budgetary reference, and will enable \$5 million from the Health and Wellness Trust Fund to be transferred to the Risk Pool to fund its inaugural operations.

HB 212 – Health Insurance Pilot Project. This legislation was sponsored by the Buncombe County legislative delegation, and permits a single pilot project to be initiated which is very similar in nature to an association health plan. The hospital system and the Chamber of Commerce in Asheville were staunch supporters of this legislation. As originally drafted, it would have permitted projects statewide to have been initiated. However, a chorus of opposition – which included our Association -- arose against this proposal, and at the close of the legislative session, this bill was narrowed in scope to permit but one project. Thereafter, the bill proceeded towards passage during the final days of the session.

HB 535 – Health Insurance/Cover Lymphodema. This legislation is a mandate and requires health insurers, including the State Health Plan, to provide coverage for the diagnosis and treatment of lymphodema. This act becomes effective on January 1, 2010, and applies to all health benefit plans that are issued or renewed on or after that date.

HB 896 – Cancer Compendia Update. Dr. Bob England of the House of Representatives (D-Ellenboro) sponsored this legislation. It addresses coverage by health plans of drugs to treat cancer. There is a listing of such drugs which are required to be covered, and this legislation revises established reference compendia which address the cancer treatment drugs that are covered by health plans.

HB 1294 – NC Risk Pool Clarifications. This legislation was promoted by the Risk Pool and was supported by the DOI. It provides that if federal funds are available for premium subsidies that the Board may be implement such subsidies. Additionally, the DOI suggested that insurers provide notice to applicants of the existence of the Risk Pool if applicants are denied coverage. Lastly, the bill extends the abbreviated pre-existing condition waiting period for new enrollees until the end of the year. The abbreviated period of time had been for only the first six months of the Pool’s existence. It was extended to cover the first year of the Pool’s existence.

HB 1297 – Provider Credentialing/Insurer Provider Contracting. This legislation would quicken and streamline the credentialing process by which providers join insurer networks, and it amends the notice and contract negotiation provisions of law to address agreements to these contracts being made by mutual consent of the parties. It was sponsored by Rep. Randy Stewart (D-Rocky Mount).

SB 202 – 2009 Appropriations Act. This was the budget bill, which is truly a voluminous and formidable document. It raises the insurance regulatory charge that helps fund DOI operations to 6% for 2010. This fee was 5.5% for 2009. It increases a variety of fees that insurers, TPAs and agents must pay to the DOI. Note that an extremely important issue this session was the one

relating to whether the premium tax on life insurers would be increased and whether the premium tax offset enjoyed by insurers for contributions to the life and health guaranty fund would be repealed. Our Association joined others in opposing these measures, and neither of these provisions were enacted. However, note that the Senate may well revisit these issues during the 2010 short session, and we will have to be vigilant with respect to these issues.

SB 468 – Authorize Insurance for Former Employees. This legislation, sponsored by Rep. Floyd McKissick (D-Durham), authorizes counties to provide health insurance benefits to former employees who are not receiving retirement benefits. To be eligible former employees must have obtained at least ten years of service with the county prior to separation, and the health insurance must be paid entirely by the county or the by employee or by some combination of the two. Note that the bill was specifically amended to ensure that these individuals are not to be covered by the State Health Plan.

SB 877 – Health Benefit Plan Provider Contracts. Sen. Dan Clodfelter (D-Charlotte) sponsored this bill, which addresses contracts between health benefit plans and health care providers. It addresses changes to the terms of contracts, and specifically includes modifications to fee schedules. Health benefit plans may not unilaterally change fee agreements or other contractual provisions, and providers are given the opportunity to object to the proposed amendment. The parties may terminate the contract if they cannot reach agreement on amendments. This legislation becomes effective on January 1, 2010.

SB 957 – Special Enrollment Period/Group Health Insurance was introduced by Sen. Martin Nesbit (D-Asheville). It creates a special enrollment period in the NC Group Health Continuation law and provides eligible individuals with the same continuation rights as under the federal American Recovery and Reinvestment Act of 2009. The bill became effective in early June.

BILLS THAT DID NOT PASS

H.B. 14 – Chiropractic Services/Insurance. Rep. Cullie Tarleton (D-Blowing Rock) introduced this bill, which would have provided that insurers may not impose as a limitation on treatment or level of coverage a co-payment amount charged to the insurer for chiropractic services that is higher than the co-payment amount charge under the State Health Plan. This bill was a follow-up to legislation sponsored by former Speaker Jim Black. However, it never got out of committee and was not voted upon the floor of the House or of the Senate.

HB 397 – Insurance/Contraceptive Coverage. Rep. Mark Hilton (R-Conover) sponsored this legislation, which would have allowed group health insurance plans not to cover services related to abortions. It was not considered in any substantive way.

HB 589 – Insurance/Cover Hearing Aids/Autism. Representatives Bob England and Martha Alexander (D-Charlotte) introduced this legislation, which would have required insurers and the State Health Plan to provide certain coverage for hearing aids and for the care and treatment of autism. This legislation received a considerable amount of attention. It passed the House in July and the Senate in early August. However, the House version of this legislation differed from the

Senate, and there was not sufficient time prior to adjournment for differences in the two bills to be resolved to the satisfaction of both houses. It has, therefore, been postponed until the short session.

HB 1040 – Amend Viatical Settlement Contract Definitions was sponsored on behalf of one viatical settlement provider by Rep. Jerry Dockham (R-Denton). It would have broadened the exclusion for what is not a viatical settlement to include activities of certain accredited investors. We and others objected to this bill as being unnecessary and potentially harmful. Rep. Dockham, to his credit, was quick to withdraw support for this measure, and it was thereafter never seriously considered.

HB 1392 – NC Risk Pool/Out-of-State Services. This legislation would have authorized the Risk Pool to negotiate rates for services provided to Pool participants by out-of-state providers. The Risk Pool’s reimbursement rates are tied to those of Medicare, and out-of-state providers often charge more than this amount. Sen. Tony Rand suggested that the Pool be aggressive in seeking to have out-of-state providers accept the standard rates of reimbursement, and the Pool will analyze this issue as it receives additional out-of-state claims.

HB 1402 – Cover NC Health Care Access Program. Rep. Will Neumann (R-Belmont) and Rep. Pearl Burris-Floyd (R-Dallas) introduced this legislation, which contained one or more untested approaches to providing health insurance coverage to the uninsured. It would have established the NC Health Care Access Program. Licensing and other DOI mandates and requirements would not apply to those providing benefits, and a competitive market program would have been initiated where non-risking bearing entities could have provided services on a fee for service basis. This legislation never achieved any traction, and it was ultimately turned into a study bill whereby the Legislative Research Commission could study its proposals during the “off season”.

HB 1459 – Health Insurance/Network Provider Choice. Rep. Randy Stewart (D-Rocky Mount) introduced this bill, which would have required health insurance companies that provide in-network health coverage to allow all providers to join the network if the provider is willing to comply with the insurers’ network requirements. This legislation never advanced out of committee.

HB 1483 – Insurance Health Care Provider Relationship. Rep. Fred Steen (R-Salisbury) introduced this bill, which would have reformed the process for recovery of overpayments to providers by insurers.

HB 1510 – Extend Small Business Health Insurance Benefit Credit. This legislation would have extended the tax credit for small employers which provide health insurance benefits to their employees. The credit is now scheduled to expire in 2010, and was likely the victim of the economic downturn. It may well be that this credit will be considered for renewal during the short session.

SB 88 – Health Insurance Tax Deduction was introduced by Sen. Jerry Tillman (R-Archdale), and would have allowed individuals to deduct the cost of their health insurance from their income tax liability.

SB 165 – State Review of Group Insurance Claims. This legislation would have required the DOI to develop a state review process for group insurance claims and would have given the DOI regulatory authority to make benefit determinations. It was introduced by Sen. Fletcher Hartsell (R-Concord), and never received any substantive consideration.

SB 725 – Out-of-State Insurance Policies/Allow Purchase was introduced by the Senate Minority Leader, Phil Berger (R-Eden). It would have authorized insurers licensed to sell health insurance policies in other states to offer their policies in this state.

SB 979 – Health Care Liability Claims was sponsored by Sen. Stan Bingham (R-Denton), and would have limited the amount of damages that may be awarded in suits against health care providers in negligence/malpractice actions. Claimants would have been limited to \$250,000 in non-economic damages, and wrongful death actions would have been limited to recoveries up to \$500,000.

SB 1025 – Healthy NC Program was sponsored by freshman Sen. Josh Stein (D-Raleigh), and was an effort to fund health insurance programs for small employers who did not have prior coverage. It would have covered claims in a “risk corridor” between \$15,000 and \$75,000, and would have provided reimbursement to insurers covering certain claims. There was a multi-million cost associated with this legislation, and it never generated any serious traction.

DOI LEGISLATIVE PACKAGE

The Department of Insurance had a broad range of issues that it wished the Legislature to consider. Below is an outline of the bills sponsored by the Department. Note that each of these bills was ratified prior to adjournment.

HB 1159 – Insurance Licensing. This legislation permits the Commissioner to adopt rules to require licensees to make e-filings with the DOI. Also included was legislation which provides that for purposes of determining the number of appointments for an agent there shall be one appointment for each kind of insurance for which the appointed agent is licensed in North Carolina, unless specifically limited.

HB 1161 – Revise Insurance Financial Conditions. This legislation revises accounting standards for insurers and employers which self-insure their workers' compensation obligations.

HB 1164 – Modernize HMO Oversight Requirements. This bill eliminates obsolete data collection requirements for HMOs.

HB 1165 – Update Standard Fire Insurance Policy. This legislation simply updated obsolete nomenclature contained within the standard fire insurance policy.

HB 1166 – Insurance law Changes. This legislation passed very late in the session, and addresses circumstances under which funeral homes may obtain information from life insurers about the coverage of burial insurance on the life of individuals for whom funeral homes provide services. Also note that this legislation addresses the fingerprinting of applicants for an insurance producer’s license. Carriers are required to file notices of appointment within 15 days after the date the first insurance application is submitted. Applicants for licenses are to provide the DOI with an email address. Also note that this bill streamlines the appellate process for the Rate Bureau by eliminating the used of assignments of error when cases go up on appeal.

HB 1183 – Health and Other Insurance Law Changes. This legislation updates NC law to comport with federal changes concerning creditable coverage and portability.

HB 1313 – Regulate Public Adjustors. This bill was ratified on the final day of the session and addresses the licensing, examination and fingerprinting of public adjustors. It also addresses non-resident adjustors, reciprocity with North Carolina, and bonding.

HB 1314 – Annual Financial Reporting. This bill improves the Commissioner’s ability to monitor the financial condition of insurers.

THE STUDIES ACT OF 2009

At the conclusion of each legislative session, the General Assembly provides for the study of various issues during the “off season”. While many different types of topics are authorized to be studied, there are so many that it is impossible for all of them to be actively reviewed. However, several topics of interest were included in the Studies Act, and they include the following.

- Study and assess the need for the merits of providing health insurance coverage for the diagnosis and treatment of autism spectrum disorders. See **HB 589** above.
- Study the feasibility and advisability of establishing a program to provide health care access to uninsured individuals and their families. The program studies would emphasize coverage for basic and preventive health care services and in-patient hospital, urgent and emergency care services on a statewide basis. See **HB 1402** above.
- Study the adequacy of public participation in the setting of rates for homeowners insurance in NC. This legislation was addressed in **HB 1439**.
- Authorize the Institute of Medicine to continue its health access study group. The access study group would study issues relating to the cost, quality and access to appropriate and affordable health care for all North Carolinians. It would also monitor federal health-related legislation to determine how the legislation would impact the cost, quality and access to healthcare.

P&C ISSUES

At the end of the 2009 legislative session, the General Assembly enacted **HB 1305 – Beach Plan Changes**. The basic issue involved making North Carolina’s coastal wind pool for property insurance a financially viable entity when catastrophic storms strike North Carolina. This legislation does a variety of things, and I will set forth the highlights below:

- The accumulated surplus of the Beach Plan is to remain with the Plan and at no point be distributed in whole or in part to its member companies.
- The maximum value of “habitational property” insured by the Beach Plan is now \$750,000. It had been \$1.5 million.
- The Beach Plan shall impose a 5% surcharge above Rate Bureau manual rates for wind coverage and a 15% surcharge on homeowners coverage.
- The Association shall offer a “named storm” deductible of 1% of the insured value of the property.
- The Association is to file with the DOI a schedule of credits for policyholders based on the presence of mitigation and construction features, and shall also file an installment plan for premium payments.
- Insurer assessments made to cover storm losses are capped at \$1 billion. When claims exceed this assessment level, a “catastrophe recovery charge” of up to 10% of the annual policy premium would be assessed against all policyholders of residential and commercial property insurance statewide. (The average homeowners premium in North Carolina is \$600.) Contents coverage can be insured up to 40% of the building value. This figure had been at 70%.
- If the value of the property exceeds the maximum coverage limits through the Beach Plan, the Beach Plan may not issue coverage without the insured’s purchase of excess coverage for the full value of the property insured.
- Whenever the Rate Bureau files for an increase in insurance rates for residential property insurance, the Bureau is to give public notice in at least two newspapers with statewide distribution within ten days after the filing.

This significant legislation poses a good many implementation challenges, and stay tuned as this legislation is put into effect.

SB 749 – Revise UM/UIM Coverage. This legislation addresses uninsured and underinsured motorist coverage. Last session this coverage was made mandatory. **SB 749** addresses the amounts of such coverage that must be purchased and provides consumers with more flexibility in the amount of such coverage that they purchase.

HB 9 – No Texting While Driving. This legislation makes it illegal to text while driving. Enough said!

TORT REFORM

The House passed **HB 813 – Comparative Fault**, but this legislation was never seriously considered in the Senate. It would have changed North Carolina’s contributory negligence standard to one of comparative fault, and the basic concept is that aggrieved plaintiffs who are more than 50% responsible for their own injuries could not recover damages.

SB 882 – Statute of Repose/Products Liability was enacted. It raises the statute of repose for products liability actions from 6 years to 12.

SB 942 – Civil Litigation Costs Reform Act of 2009. This legislation was introduced by Sen. David Rouzer, a freshman Democrat from Raleigh. This bill would have established as a general rule in civil actions that prevailing defendants are awarded their attorney’s fees. This bill was referred to Senate J-1 and never emerged from committee.

IN CLOSING

As you can see, the diversity and breadth of the issues we encountered was remarkable. I appreciate the Association's help throughout the session, and truly value the opportunity to represent the Association before the General Assembly. I welcome your questions and comments, and hope the waning days of summer go well for one and all.