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MEMORANDUM

To: NCAHU L&L Committee

From: Robert C. Paschal

Date: July 24, 2008

Re: Closing Report; 2008 Session
North Carolina General Assembly

The 2008 “short” legislative session adjourned last Friday, July 18, 2008. The session had convened on May 13. The primary focus of this session was to fine-tune the State budget, and this occupied a significant portion of our legislators’ time. However, a number of matters of interest to our industry were considered. The bills that did pass were generally salutary, and things of an unsavory nature did not advance.

Set forth below is my annual report on bills that passed and on bills that did not. For ease of reference, I have arranged them in numerical order.

BILLS THAT PASSED

H.B. 738 – Insurance Amendments. This bill was initiated by the Department of Insurance, and contained a potpourri of miscellaneous amendments to North Carolina’s insurance laws. This legislation increased the deposit requirements for foreign life insurance companies. It addressed surplus requirements for non-stock companies. It strengthened the laws on unauthorized insurers, and raised from three years to five years the record retention requirements for health insurers and utilization review organizations. It revised the Health Insurance Risk Pool’s enabling legislation by clarifying that the Executive Director is to take direction from the Board rather than work “in collaboration with” the Board, and it added provisions permitting the Risk Pool to terminate coverage for applicants who engage in fraud or submit material

misstatements to the Risk Pool. Additionally, it tweaked the preexisting condition provisions of the Risk Pool's enabling legislation to bring them into conformity with federal law. Professional employer organizations will have to increase the deposit they make to transact business in North Carolina, and PEOs will no longer be able to self-insure their health insurance obligations. This legislation moved from March to May the annual reporting deadline for health insurers to file certain managed care data with the DOI. Finally, it provided that there can no longer be "free insurance" when consumers purchase warranties that are sold in connection with consumer goods.

H.B. 2431 – Studies Bill. This bill was passed on the final day of the session and authorizes legislators to study over 49 different types of issues. Section 31 of this legislation authorizes the North Carolina Institute of Medicine to convene a panel to study issues related to access to appropriate and affordable health care for all North Carolinians. This provision of the Study Bill comes from **H.B. 2688** as introduced by Rep. Verla Insko. Note that there are far more items authorized for study during the "off season" than the Legislature will be able to undertake, and I shall endeavor to keep you advised should the Institute of Medicine commence its study on access to health care.

H.B. 2436 – Budget Bill. This legislation was passed shortly before adjournment, and among other things sets the insurance regulatory fee at 5.5% under N.C.G.S. 58-6-25. Note that this fee was not changed from last year. This provision can be found in Section 28.13(a) of the budget bill, and was incorporated into the budget rather than being ratified as a stand alone bill (**HB 2415**).

H.B. 2438 – Budget Technical Corrections was also passed on the last day of the session. It made a variety of changes to current operations and capital improvements for State government. However, also included in its provision were statutory changes which make clarifications to the North Carolina Health Insurance Risk Pool Fund. The Risk Pool's enabling legislation as originally drafted contained problems relating to how monies appropriated to the Risk Pool could be expended by the Risk Pool, and this needed revision provides the proper governmental framework for funds to be transferred to the Risk Pool.

On the health care side of things, note that the budget extends the sunset for the credit for small business employee health benefits from January 1, 2009 to January 1, 2010. The relevant tax code provision can be found at N.C.G.S. 105-129.16E(d), and the reference under the budget bill is Section 28.9A. **HB 2225** and **HB 2550** were both introduced to extend this credit, but the budget bill became the vehicle of choice for enacting the extension of this credit.

BILLS THAT DID NOT PASS

S.B. 1258 (= H.B. 2786) State Health Plan – Local Government Participation. This legislation would have permitted local governments to determine for themselves whether they wanted to enroll their employees in the State Health Plan. This legislation was never actively considered. The Senate version died in the Senate Select Committee on Employee, Hospital and Medical Benefits, while the House version of the bill died in the House Health Committee.

H.B. 1489 – Stranger Originated Life Insurance (“STOLI”). Legislation designed to regulate STOLI while permitting personal life settlement transactions passed the House last session, and was, therefore, eligible during this session. The DOI is a strong proponent of STOLI legislation, and the NAIC and the National Conference of Insurance Legislators have adopted strong positions on regulation of STOLI. The American Council of Life Insurers is leading the charge in various jurisdictions throughout the country, and we are working well with these groups. The life settlement industry is resisting regulation of STOLI. When it became apparent late in the session that a compromise could not be reached on how STOLI legislation should be enacted, the bill was allowed to remain dormant in Senate Commerce. Look for the forces seeking to regulate STOLI to re-group and bring the matter back up during the 2009 session.

H.B. 2224 – Enhance 529 Plan Deductions. This bill was introduced by Rep. Maggie Jeffus (D-Greensboro), and would have increased the deduction from taxable income for 529 Plan contributions from \$2,500 to \$5,000. This bill died in House Finance. Note that there was little effort devoted to 529 Plans during this legislative session, and we would expect increased attention to 529 Plans during the 2009 session.

H.B. 2229 – Buncombe County Association Health Plan. This legislation was introduced at the behest of the Buncombe County Chamber of Commerce and other interested parties in the Asheville area, and it would have created a pilot program whereby employers in that region of the state could have formed an association health plan. The concept ultimately was derailed because of a constitutional provision prohibiting local bills from addressing State health issues. We have likely not heard the last of this concept and I will keep you advised of all developments concerning Buncombe County’s interest in AHPs.

H.B. 2404 – Increase LTC Tax Credit. This legislation would have raised the Long Term Care Tax Credit from 15% of premium up to a maximum of \$350 to 75% of premium up to \$1,000. This legislation would also have doubled the income caps rather than removing them altogether. Under **H.B. 211**, as introduced by Rep. Carey Allred (R- Burlington), there would have been no income limits on those purchasing LTC insurance. Note that the increase in the LTC tax credit received a good bit of discussion late in the session. House Aging, chaired by Rep. Bob England, endorsed the concept but the bill began moving too late in the session to be ratified. I would expect the LTC tax credit issue to arise in January during the 2009 long session, and I will keep you advised of all developments in this area.

H.B. 2744 – Expand Access to Health Insurance/Children. Rep. Verla Insko (D-Chapel Hill) introduced this bill, which sought a \$10 million appropriation to increase the number of children served by the North Carolina Health Choice program. This legislation did not advance as a stand alone bill, and I could find no reference to it in the voluminous appropriations bill.

H.B. 2757 – Randolph County Association Health Plan. This bill would have created a pilot program for Randolph County employers to create association health plans. It was not actively considered during this session.

MISCELLANEOUS ISSUES

In the tort reform area, please note that there were two bills of interest. **S.B. 1766 – Liability Protection for Private Entities** was enacted, and this legislation was sponsored by Sen. Tony Rand (D-Fayetteville). It provides immunity for associations and non-profit entities responding to in-state emergencies. **S.B. 1577, Assumption of Risk for Skiers** was not enacted. This legislation was an effort to require skiers in the North Carolina mountains to assume the risk that they encounter while skiing and would insulated resorts from injuries to their patrons. However, it did not advance.

For those of you with a professional or personal interest in auto insurance, please note that **H.B. 738 – Insurance Amendments** also included a provision making uninsured and underinsured motorists coverage mandatory in North Carolina. The troublesome and confusing selection/rejection form will no longer be used, and this legislation contains a provision that nothing in the law shall be construed to provide greater amounts of uninsured or underinsured motorist coverage in a liability policy than the insured has purchased from the insurer.

CONCLUSION

This year's legislation session was, on balance, a good one for us. No menacing initiatives seriously threatened us. We continue to hammer away at increased LTC tax credits and saw the extension of the small business tax credit. Despite STOLI legislation not passing, we made headway on this issue and stand ready to pursue it in 2009. Various technical "fixes" to the insurance code were well reasoned, and governmental intrusion into our industry was kept to a minimum. We will likely see further attempts to advance the association health plan concept. Enhancements to 529 Plans are deserving of attention, and, as noted above, STOLI should be an important issue come in 2009.

Thank you for permitting me to represent you before the General Assembly. It is a privilege, and I look forward to staying in touch with you to discuss issues and candidates in this fall's elections.

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