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MEMORANDUM

To: L&L Committee

From: Robert C. Paschal

Date: August 10, 2007

Re: Closing Report
2007 Session; North Carolina General Assembly

From our Association's perspective, this was a productive legislative session. The establishment of a high risk pool had long been goal #1 on our agenda, and on the last day of the session the risk pool sprang to life. There were starts, stops, and setbacks, but our collective perseverance paid off. See my report below for risk pool details.

The tax credit for long term care policies was also reenacted. Various bills were introduced to revive the long term care tax credit, and though I received assurances from legislators that this would occur, none of the LTC bills advanced. What did happen is that this credit was buried deep within the budget bill. So, with a bit of subterfuge and positively no fanfare, the LTC tax credit lives again.

Taxation of annuities was considered, and strongly so. But ultimately this tax was rejected, and we emerged unscathed, but not without a good bit of anguish and effort.

This, then, was a good session for us, and below I will report on matters of interest to us. Our industry is a popular one with legislators, and I expect that the legislative crosshairs will continue to focus on us.

My report documents both bills that passed and bills that did not. I have referred to them in numerical order, starting with the House and concluding with the Senate.

I hope that this report will be a useful tool for you, and know that I would welcome your thoughts, comments and learned observations after you have reviewed it.

Bills That Passed

H.B. 265 – Establish High Risk Pool. Just prior to adjournment last week the North Carolina General Assembly voted to enact legislation bringing a health insurance high risk pool into existence. Enrollment in the pool is to commence no later than January 1, 2009. Funding of the pool was the primary subject of debate. There were two camps with respect to funding: one favored the use of State monies, while the other favored assessments on insurers. Leadership in the House and the Senate ultimately determined that State funding was the way to go, and the funding mechanism decided upon is based upon the premium tax. At the end of each fiscal year, the State Treasurer will transfer from the General Fund to the North Carolina Health Risk Pool Special Fund an amount equal to the growth in net revenue of the premium tax. It is my understanding that all of the growth in the premium tax for the next two fiscal years will be directed to the Risk Pool account, while in later years an amount equal to 30% in the growth in revenue of the tax will be directed to the Fund. The 30% figure is an approximation of the total percentage of premium taxes attributable to health insurance. Note also that \$5 million in start-up funds will be directed to the Risk Pool from the Health and Wellness Trust Fund. Also, the State Health Plan shall be subject to an annual surcharge to the Risk Pool in the amount of \$1.50 per member per year based on enrollment of active employees and their dependents covered under the Plan.

The North Carolina Department of Insurance will supplement a pending grant application on file with the federal government to receive additional start-up funding. Lastly, note that the tax credit available to small employers sponsoring health benefits plans remains alive and well, though the Senate sought to scuttle it on more than one occasion.

H.B. 502 – Repeal Chiropractic Special Provision. You will recall that during the 2005 legislative session, a special provision was inserted into the budget benefiting chiropractors. It provided that chiropractors would not be subject to deductibles less favorable than those applied to services rendered by other health care professionals. The General Assembly repealed this special provision, and the effective date of this legislation is October 1, 2007.

H.B. 731 – Revise Life and Health Insurance Laws. This legislation adopts “suitability” requirements for the sale of annuities as proposed by the NAIC. It was ratified on July 19, 2007 and applies to violations of suitability provisions occurring on or after January 1, 2008.

H.B. 737 – Insurance Financial Omnibus. This was an agency bill introduced for the Department of Insurance that makes changes to the laws relating to the monitoring and solvency of insurance companies. It was ratified on June 21, 2007, and became effective on that date.

H.B. 748 – Insurers/Cover Rx in Emergencies. This legislation requires health benefit plans to cover extra prescriptions during a state of emergency or disaster. It was ratified and became effective on June 18, 2007.

H.B. 773 – Protect Military Personnel/Life Insurance. This legislation is based on an NAIC model act that, after being revised, was endorsed by the American Council of Life Insurance. It is designed to prevent predatory life insurance sales practices with respect to our military personnel. The bill was ratified on July 27, 2007, and becomes effective on January 1, 2008.

H.B. 973 – Mental Health Parity. After many years of debate, the General Assembly will now require mandatory health insurance coverage of certain mental health illnesses and will require that this coverage be equal to the coverage provided to other types of injuries and illnesses. Note that substance abuse coverage on a parity basis was removed from the bill. One House version of the bill included a limitation that the parity provision would not apply to businesses with fewer than 25 employees. However, this limitation was ultimately deleted. The bill in its final form provides that durational limits for the following mental illnesses shall be subject to the same limits as benefits for physical illness generally: bipolar disorder, major depressive order, obsessive compulsive disorder, paranoid and other psychotic disorder, schizoaffective disorder, schizophrenia, post-traumatic stress disorder, anorexia nervosa and bulimia. This legislation was ratified on July 16, 2007, and applies to health benefit plans that are delivered, issued for delivery, or renewed on or after July 1, 2008.

H.B. 1473 – 2007 Appropriations Act. As I noted above, the vehicle for reenacting the **long term care tax credit** was the State budget. In Section 31.5(a), the long term care tax credit provided under NCGS 105-151.28 was revived. The tax credit will be allowed equal to 15% of the premium costs the taxpayer paid during the taxable year, but the credit allowed may not exceed \$350 for each qualified long term care insurance contract. The tax credit legislation imposes income limitations. The credit is available to married couples filing jointly with an income of less than \$100,000. The “head of household” limitation is \$80,000. The “single” limitation is \$60,000, and the “married, filing separately” income ceiling is \$50,000. The credit is effective for taxable years beginning on or after January 1, 2007, and note that this section “sunsets” for taxable years beginning on or after January 1, 2013.

Also note that **529 Plans** were addressed in the budget bill. Like the LTC tax credit, numerous bill were filed to increase the 529 deduction. None advanced, but the issue was handled in the budget. Effective January 1, 2007, the available deduction for a sole taxpayer goes from \$750 to \$2,500. For married couples filing jointly, the available deduction goes from \$1,000 to \$5,000. Note that in the year 2012, the adjusted gross income ceilings applied to the LTC tax credit will also be applied to 529 plans. The General Assembly did not adopt legislation permitting the deductibility of 529 contributions in states other than North Carolina, thought this issue will certainly be revisited during next year’s “short” session.

Lastly, note that the budget sets the percentage rate to be used in calculating the **insurance regulatory charge** under NCGS 58-6-25 as 5.5% for the 2007 calendar year. This provision appears in Section 31.12(a) of the budget bill.

H.B. 1577 – Pilot Election; Commissioner of Insurance. This legislation would provide that the State Auditor, Superintendent of Public Instruction and Commissioner of Insurance, if they secure a certain number of campaign contributions, can qualify for public campaign funds in exchange for accepting fundraising and spending limitations. This legislation is patterned after

campaign reform tried by North Carolina's judiciary. It is a voluntary program, and we will keep you advised as to how this approach is used in next year's elections.

HJR 2071 – Adjournment Resolution . Note that 2008 “short” session will convene on May 13, 2008 at 12:00 noon.

S.B. 1032 – Health Insurance/Prompt Pay Timelines. This legislation imposes timelines on overpayment recovery operations conducted by health benefit plans. The bill also requires insurers offering health benefit plans to provide their subscribers with insurance identification cards, but provides that the information on the cards may be provided through other electronic technology. The bill's provisions relating to recovery of overpayments go into effect on January 1, 2008, while the insurance identification card portion of the legislation goes into effect of January 1, 2009.

S.B. 1527 – Amend Insurance Laws. This legislation “grandfathers” the licensing status of existing agents, but effective January 1, 2008 creates licenses tied to various individual lines of coverage. Earlier drafts of this legislation would have increased continuing education expenses, but the final text of this bill makes no such changes. Note that this bill was amended prior to ratification to address an unintended consequence of S.B. 527, which addresses contracts with automatic renewal clauses. Under S.B. 527 businesses selling services to consumers - pursuant to a contract where the contract automatically renews unless the consumer cancels the contract – shall disclose the automatic renewal clause in the contract. Section 17 of S.B. 1527 was added to clarify and affirm that provisions of S.B. 527 do not apply to insurers. Note also that language relating to a change in the methodology of P&C premium refunds that appeared in early versions of S.B. 1527 was deleted and is no longer part of this legislation. The bill was ratified on August 2, 2007, and becomes effective on January 1, 2008.

Bills That Did Not Pass

H.B. 447 – Health Care Provider/Balance Billing. This bill would have prohibited balance billing by health care providers if the facility-based physician or health care provider accepted the usual and customary rate under the health benefit plan.

H.B. 927 – Certain Entities Subject to Insurance Regulation. This bill would have authorized the Commissioner of Insurance to consider the reserves of an insurer when reviewing the rates filed by an insurer. This legislation was a thinly veiled attack on Blue Cross, and has been customary in recent sessions.

H.B. 928 – Insurance/Commissioner Rate Making Factors. This bill would have authorized the Commissioner of Insurance to clarify rate making factors for entities such as Blue Cross in determining whether or not rates for Blue Cross were excessive, inadequate or unfairly discriminatory. The Commissioner could have considered current and projected surplus levels and such other data as the Commissioner deemed appropriate.

S.B. 1256 – Study Bill. Study legislation is typically passed at the end of each session, and draft

study bills listed a truly voluminous number of topics to be studied prior to the “short” session. There were specific provisions, for example, for studying funding sources for the high risk pool. The Senate passed the Study Bill just before adjournment and sent the bill to the House. The House modified the Study Bill and passed its version of the bill. However, the House did not return the bill to the Senate for concurrence prior to adjournment, and therefore, the Study Bill died a quiet if unexpected death.

H.B. 1307 – Reenact Chiropractic Provision. This legislation would have reenacted the special provision concerning health benefit plan co-payments for chiropractic services. This legislation stood no chance of advancing during this session.

H.B. 1361 (= S.B. 730) – Copy Fees/Medical Records. This bill would have increased the minimum fee for copying and searching medical records under N.C.G.S. 90-411. The minimum fee for each medical records request would have increased from 75 cents to 90 cents per page for the first 25 pages, and from 50 cents to 75 cents per page for pages 26 through 100. A minimum fee of \$20 rather than \$10 could have been imposed, and the fee for each request for microfilm or electronic media would have been \$1 per page for the first 25 pages, 90 cents for pages 26 through 100, and 50 cents per page above that level. Future fee increases would have been tied to the Consumer Price Index. Research suggested that the cumulative fiscal impact of this bill on the insurance industry could have been substantial.

H.B. 1373 – State Supplemental Post Tax Insurance Products. This legislation would have provided for the central coordination of supplemental post-tax insurance products available to state employees. The State Personnel Commission would have established a centralized supplemental benefits committee. This committee would have offered post-tax supplemental benefit options on a statewide basis to state agencies, departments, institutions and the UNC system.

H.B. 1476 – Health Insurance for All Children. This legislation would have established the “Carolina Cares for Children Health Insurance Program.” The purpose of the program would have been to provide comprehensive health insurance to children who are residents of North Carolina and who are not eligible for Medicaid and the Health Insurance Program for Children. Premium assistance would have been available for children with families with incomes between 200% and 300% of the federal poverty level. A total of \$4,700,000 would have been appropriated for this fiscal year with \$7 million being appropriated for the following fiscal year.

H.B. 1489 – Life Settlement Transactions. This measure was being pushed by the ACLI and was designed to address the concept known as “stranger owned life insurance.” It would have required owners of life insurance policies to own their policies for five years before they could sell them to life settlement companies. However, a number of reasonable and legitimate exceptions to the five year requirement were written into the bill. This legislation was vigorously debated in Senate Commerce after having passed the House, but the bill never got out of committee in the Senate. It will be eligible during the 2008 short session.

H.B. 1590 – Health Insurance Policy Change/Fiscal Impact. This legislation would have required insurers that provide health benefit plans to provide providers with a fiscal impact report when the insurer made a substantial policy change.

H.B. 1642 – Life Insurance/Funeral Establishments. This legislation was introduced at the behest of certain funeral homes, and sought to require insurers to verify certain life insurance information to funeral establishments in a timely manner. This legislation was technically flawed and would have imposed severe response deadlines on life insurers. It also failed to take into account significant privacy issues. The Department of Insurance will consider issues raised by the funeral homes during the “off season”.

H.B. 1719 – Study Health Insurance for Chambers of Commerce. In its original form this legislation would have created a pilot program for the Triad Chambers of Commerce which would have essentially permitted them to implement association health plans. However, the bill morphed into a study proposal whereby the Department of Insurance will examine the concept during the time that the Legislature is not in session.

H.B. 1897 – Health Care for All Planning Commission. This legislation would have established the North Carolina Health Care for All Planning Commission. The Commission would have conducted a comprehensive review of the current health care system in North Carolina and would have made recommendations to the General Assembly “on moving from a fragmented system to an integrated system of public and private health care services such that all North Carolinians have access to appropriate health care on a regular basis.”

S.B. 759 – Health Insurance Infertility Coverage. This bill would have required the State Employees’ Health Plan and all private insurers and HMOs doing business in North Carolina to provide coverage for infertility treatment.

S.B. 1021 – State Review of Group Insurance Claims. This bill would have required the Department of Insurance to develop a state review process of group insurance claims. The DOI, in collaboration with HHS, was to have developed a state review process of group insurance claims that are denied or refused by either insurers or employers “by which the Department of Insurance shall have regulatory authority to make benefit determinations in relation to group insurance policies.” The quoted language is particularly frightening, and note that this bill was never seriously debated.

S.B. 1317 – Child Health Insurance Tax Credit. Senate Republicans introduced this legislation, which would have provided for an income tax credit for the provision of qualified health insurance for a dependent child. An individual would have been allowed as a tax credit an amount equal to the premium costs the individual paid during the taxable year on qualified health coverage for a dependent.

S.B. 1318 – Health Insurance Tax Deduction. This legislation, also introduced by Senate Republicans, would have allowed for an income tax deduction for qualified health coverage.

Annuity Tax – This legislation appeared under a variety of different bill numbers. It originated in the Senate, and was part of the debate on funding a swap in Medicaid obligations that would have permitted counties to have the State cover their Medicaid responsibilities. The annuity tax was seen as a revenue enhancement mechanism that would have made the Medicaid swap work.

The ultimate answer to producing revenue was the passage of a real estate transfer tax which will provide for local referenda on whether or not to impose the real estate transfer tax. Leadership in the House was first to determine that the annuity tax should be removed from consideration. Ultimately, Senate leadership came around to this point of view. The annuity tax is dead, though we should look for similar taxation proposals in future sessions.

NEW HOUSE MEMBER

On July 12, 2007, Representative David Almond (R-Stanly County) resigned after a member of the legislative staff notified the House leadership of allegations concerning unspecified improprieties in Rep. Almond's conduct. This week it was reported that Kenny Furr has been appointed to Rep. Almond's seat in the House.

STATE AMPHIBIAN UPDATE

I have received ongoing requests for urgent updates on H.B. 958 under which North Carolina would have anointed the bull frog as the North Carolina State amphibian. The House considered other amphibians, but cast its lot with the bull frog. The Senate, alas, highjacked the bill late in the session and used it to clarify which arm of State government administers the Graveyard of the Atlantic Museum in Hatteras. Bull frog advocates saw their bill go to a watery grave, the newest in a long line of unusual legislative destinations.

CONCLUSION

Legislators continue to be fascinated with the business of insurance. Insurance issues, be they P&C, life or health, are on the front burner at the General Assembly, and this is certainly illustrated by the breadth and number of bills that I have discussed in this report. Continued vigilance on our part will be important.

The "short" session convenes on May 13, 2008 at high noon. It will be here before we know it. Thanks for your help in making the 2007 session a good one, and I would welcome the opportunity to confer with you about the work of the General Assembly.