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MEMORANDUM

TO: Mr. Chris Harrison and Colleagues
North Carolina Association of Health Underwriters

FROM: Robert C. Paschal

DATE: September 25, 2005

RE: Closing Report on 2005 Session
North Carolina General Assembly

The 2005 session of the North Carolina General Assembly began on January 26 and ended on September 2 and was indeed a “long session.” Bills of interest to the insurance community were many and varied, and a steady dose of vigilance was required throughout the session.

Our industry was the object of much attention, most of it unwanted. I continue to see us in the legislative spotlight. Issues of cost continue to be of interest to employers and legislators, and I believe we should expect to see continued legislative activity on a variety of issues important to us.

Set forth below is a report on bills that passed and bills that did not. I start with Senate bills and then turn to House bills and all bills are listed in numerical order. Should you have any questions about any of these bills, please contact me at your convenience.

BILLS THAT PASSED

S.B. 577 (= H.B. 659) – Unauthorized Insurer Misconduct was ratified on July 13, 2005 and was signed by the Governor on July 25, 2005. This Department of Insurance bill clarifies that unauthorized insurers shall not operate in this state in their own name or under a “doing business as” designation as a third-party administrator.

S.B. 622 – State Appropriations Act was the annual budget bill and included in the initial House version of this bill were two special provisions of note. One was an “any willing pharmacy” provision which was ultimately deleted. This required serious lobbying of the Senate leadership, which refused to accept this provision. A second provision of the bill as enacted prohibits a co-payment from being charged to an insured for chiropractic services that is higher than the co-payment charged to the insured for primary care services for comparable services.

H.B. 320 – Modify 2005 Appropriations Act was passed on September 2, 2005, the last day of this year’s session and amended the payment provision relating to chiropractic care. This amendment provides that an insurer shall not impose as a limitation on treatment or level of coverage a co-payment amount charged to the insured for chiropractic services that is higher than the co-payment amount charged to the insured for the services of a duly licensed primary care physician for a comparable medically necessary treatment or condition.

S.B. 626 (= H.B. 727) – HIPPA Compliance and Fairness. This bill was ratified on July 20, 2005 and brings North Carolina law into compliance with federal health insurance portability and accountability statutes to provide special enrollment periods without penalties for persons enrolled under a group plan whose coverage is terminated when an insurer discontinues writing a certain type of group health insurance coverage throughout the entire small or large group market.

S.B. 1048 (=H.B. 1248) – Identity Theft Protection Act of 2005. This bill was introduced by Senator Dan Clodfelter (D-Charlotte) on behalf of Attorney General Roy Cooper. It was ratified on August 23, 2005. It seeks to restrict the corporate use of consumer credit reports and Social Security numbers in an effort to shield consumers from the theft of their identities. The Attorney General’s office worked closely with the insurance industry on the issues of encryption and palatable provisions on prohibitions on the use of Social Security numbers or health insurance identification cards.

S.J.R. 1184 – House Adjournment Resolution was ratified last Friday, September 2, on the last day of the session. It establishes Tuesday, May 9, 2006, at 12:00 noon as the convening date for the 2006 “short” session, and, as usual, limits the scope of matters that may be addressed in 2006. Short sessions meet primarily to fine tune budget matters. Bills introduced in 2005 which passed the house in which they were introduced by the June 2, 2005 crossover deadline are eligible for consideration in the 2006 short session, as are recommendations of study commissions.

H.B. 646 – Insurance Company Fee Consolidation. This bill was ratified on August 23, 2005, and consolidates various fees into the annual license continuation fee paid by licensed insurers. The Department indicated that the bill was meant to be revenue neutral and was not designed to create new sources of revenue for the Department. It becomes effective on January 1, 2006, and applies to licenses continued on or after that date.

H.B. 654 – Confidential Insurance Market/Financial Documents. This bill was ratified on July 14, 2005 and was signed into law by Governor Easley on July 20, 2005. It would enhance the confidential treatment of insurance market conduct analysis and financial analysis files. Under prior law, the Commissioner had discretion as to whether or not to release to the public

documents he received in market conduct exams. He could release such documents if he felt them to be in the public interest. This legislation revises the disclosure process so that a Superior Court judge now determines if the “interests of justice” require that the documents be discoverable or admissible in evidence. The documents are confidential, are not open for public inspection and are not discoverable or admissible in evidence in a civil action brought by a party other than the Department against a person regulated by the Department unless the court finds that the interests of justice require that the documents be discoverable or admissible. This legislation will become effective on October 1, 2005.

H.B. 655 – Better Insurance/Annuity Disclosure. This bill also filed on behalf of the Department of Insurance, was ratified on July 21, 2005 and signed into law by Governor Easley on August 1, 2005. It would amend the current disclosure requirements for solicitation of life insurance products and annuities. It regulates the life insurance solicitation of policies with small face amounts, which are defined as policies of \$15,000.00 or less. Annuity solicitation is also regulated. Also note that **employer-owned life insurance** disclosure was addressed in this bill and employees could be insured by their employers only if the employee receives written notification from the insurer of the existence of the coverage or that coverage will be purchased. Notice shall be provided to the employee in connection with application for coverage or within 30 days after the effective date of the coverage and shall include a statement that the employer may maintain the life insurance coverage on the employee after the employee is terminated. This legislation becomes effective on January 1, 2006 and applies to policies issued or renewed after that date.

H.B. 659 (= S.B. 577) – Unauthorized Insurer Misconduct. This Department of Insurance bill would have clarified that unauthorized insurers shall not operate in this state in its own name or under a “doing business as” designation as a third party administrator. This bill died in House Insurance.

H.B. 660 – Insurance Financial Changes. This Department of Insurance bill was ratified on July 11, 2005 and signed into law by Governor Easley on July 20, 2005. It makes various changes to insurance financial laws under North Carolina’s insurance code. The provisions do not look to be objectionable and this was passed with very little discussion or debate.

H.B. 673 – Interstate Insurance Product Regulation Compact. This Department of Insurance bill was ratified on July 6, 2005 and signed by Governor Easley on July 12, 2005. It establishes North Carolina as a member of the Interstate Insurance Product Regulation Compact. The Commissioner is permitted to determine whether continued participation by North Carolina in the compact is in the best interest of the citizens and policyholders in this state, and the bill contains a sunset provision which requires the bill to expire on October 1, 2009. The bill was meant to be part of the “speed to market” process by facilitating the approval of policy forms and contracts.

H.B. 735 – A&H Insurance; Rate Stabilization. This legislation was introduced at the request of the NC Department of Insurance by House Insurance Committee Chairman Hugh Holliman, and was ratified and presented to the Governor on August 23, 2005. This legislation requires actuarial certification of rates, and, with respect to closed blocks of business, creates notification

requirements when insurers make the determination to close a block of business. Notice this must be provided to policyholders, agents and the Commissioner. The bill will become effective on July 1, 2006 should it be signed by the Governor.

H.B. 737 – Improve Health Insurance Underwriting. This bill was also a Department of Insurance bill introduced by Rep. Holliman. It was ratified and signed by Governor Easley on July 27, 2005. The salient issue in this bill requires that premium rates for A&H policies issued by associations be actuarially sound. It also prohibits health insurers from calculating an individual's renewal premium based on any health-status related factors. Please note that **H.B. 734 – Improve Managed Care Statutes** was stripped late in the session and used as a vehicle for municipal zoning legislation. Its provision relating to improvements to uniform credentialing statutes and the elimination of external review outside of normal business hours were included in H.B. 737 as ratified.

BILLS THAT DID NOT PASS

S.B. 34 – Counsel of State Elections. This bill, introduced by Sen. Charlie Albertson (D-Beaulaville) would have called for a referendum to amend the State Constitution to change the method by which the Commissioner of Insurance and certain other Counsel of State members are called to office. Currently, the Commissioner of Insurance is elected. Under this legislation, the Commissioner would have been appointed by the Governor. This bill was referred to the Senate Committee on Ways & Means, and never emerged from that committee.

S.B. 37 – Reenact LTC Tax Credit. Senator A.B. Swindell (D-Nashville), introduced this legislation, which would have reenacted North Carolina's tax credit for premiums paid for long term care insurance. This bill died in Senate finance.

S.B. 44 – Health Care Liability Claims. This effort at tort reform was referred to Senate Commerce, but was never considered. It would have limited the amount of damages that may be awarded in civil actions against health care providers for health care liability claims. The limitation on non-economic damages would have been \$250,000. The qualifications for expert witnesses would have been strengthened, collateral source evidence would have been admissible, periodic damage payments would have been permitted, and there would have been a limitation on attorney's fees paid on a contingency fee basis. This bill was filed early in the session by Senator Robert Pittenger (R-Charlotte) and several co-sponsors, but was never placed on the agenda of Senate Commerce for consideration.

Other tort reform initiatives appear below, and I include them simply to keep you up to speed on these measurements.

S.B. 122 – LTC Tax Credit. Senator Bill Purcell (D-Laurinburg) introduced this legislation to reenact the LTC tax credit. It was referred to Senate Finance and did not emerge from that committee.

S.B. 139 (= S.B. 162) - Session Limits. Senator David Hoyle (D-Gastonia) made his annual effort to place session limits on the sessions of the North Carolina General Assembly. This bill was referred to the Committee on Ways & Means, but it never advanced. The bill would have limited long sessions to no more than 135 calendar days and short sessions to 60 calendar days. The Constitution of North Carolina would have to be amended for session limits to be enacted.

S.B. 255 – Finance Law Changes is in actuality a bill that addresses the Healthy North Carolina program. S.B. 255 was stripped of its finance provisions and a proposed committee substitute (“PCS”) relating to the Healthy North Carolina concept was substituted in its place. This PCS was never adopted and is, therefore, not officially of record. The concept of the proposal would be to borrow from the Healthy New York program and provide state subsidies to small employers to make employee benefit plans more prevalent in North Carolina. State funding would create a pool of stop-loss funds from which insurers would receive reimbursement for 90% of claims paid. Funding estimates were in the range of \$40 million per year, and funding at that level and the complexities of the proposal brought the concept to a halt in the Senate.

S.B. 364 – Small Business Health Insurance Credit. Senator Walter Dalton (D-Rutherford) introduced this matter which would have provided a tax credit for small businesses that provide their employees with health insurance. This matter died in Senate Finance.

S.B. 478 – LRC Study: Assist Small Business Health Insurance. Senator Walter Dalton also introduced this legislation, which would have authorized the Legislative Research Commission to study ways to assist small businesses in providing affordable health care coverage for their employees. This bill was referred to Senate Rules and did not emerge from that committee.

S.B. 534 – High Risk Insurance Pool. Senator Phil Berger (R-Eden), the Senate minority leader, introduced this legislation to authorize the creation of a high risk pool for health insurance. This bill was referred to Senate Commerce, but was never considered by that Committee.

S.B. 615 (= H.B. 675) – Insurance Technical Corrections. This legislation sponsored by the Department of Insurance would have made various technical corrections to North Carolina’s insurance code. This bill passed the Senate, but died in House Insurance.

S.B. 739 – Health Insurance Market/Small Businesses. Senator Tony Rand (D-Fayetteville), Senator Majority Leader, introduced this legislation, which addressed association health plans. This topic has been of continuing interest to Senator Rand for several sessions, and it is backed by the N.C. Association of Home Builders and the N.C. Association of Retail Merchants. This legislation would have permitted AHPs where (1) the association had been in existence for at least 25 years, (2) had a determination letter from the IRS that it was exempt from taxation and (3) maintained reserves at an FDIC insured institution of at least \$1 million. The curious thing about this AHP legislation is that it would likely have applied only to the Homebuilders. This bill never emerged from Senate Commerce.

S.B. 764 – Health Insurance/Assignment of Benefits. Senator Bill Purcell (D-Laurinburg) introduced this legislation, which would have provided that no insurer shall prohibit an insurer's assignment of benefits to a health care provider nor refuse to directly reimburse a health care provider pursuant to a valid assignment of benefits. This measure was referred to Senate Commerce, but never got out of committee. It was never publicly debated.

S.B. 791 – Health Care Provider Solicitation. Senator Phil Berger (R-Eden) introduced this bill which would have shortened the time within which health care providers are prohibited from direct solicitation of prospective patients. This bill died in Senate J-I.

S.B. 893 – State Health Plan Subrogation. This bill was introduced by Senator Tony Rand, Senate Majority Leader and would have provided that the State Employee Health Plan may include a subrogation provision in its plan so that the plan could be reimbursed in situations where the plan participants receive payments from another carrier. This bill passed the Senate, but did not get out of the House health committee. Note that **H.B. 327 (2005 Technical Corrections Act)** incorporated a subrogation provision for the State Health Plan into its text, but H.B. 327 was not enacted prior to adjournment.

S.B. 935 – No Social Security Numbers on I.D. Cards. This bill was introduced by Sen. Linda Garrou (D-Winston-Salem) and was referred to the Senate Civil Justice Committee. It was not enacted. However, note that this issue is addressed in **S.B. 1048 - Identify Theft Protection Act of 2005**, which was enacted.

S.B. 1100 (= H.B. 893) – Mental Health Parity. Senator Martin Nesbitt (D-Asheville) introduced this bill, which represents the annual effort at the General Assembly to implement mental health parity in health insurance plans. It was referred to Senate Commerce, but neither this bill nor the House version of it ever received a public hearing.

H.B. 20 – Small Business/Health Insurance Credit. This bill was introduced by House Insurance Committee Chairman Hugh Holliman (D-Lexington), and, in final form, would have provided a tax credit of \$800 per employee for employers who sponsored health benefit plans. This provision was of significant interest in the House, but the Senate never warmed up to the idea. The passage of this bill was complicated at the end of the session when provisions to increase the State's minimum wage were added to this legislation. H.B. 20 also appeared in House versions of the budget.

H.B. 84 and H.B. 118 – LTC Tax Credit. These bills, introduced by Rep. Edd Nye (D-Elizabethtown), would have reenacted North Carolina's tax credit for premiums paid for long term care insurance.

H.B. 180 – High Risk Health Insurance Study. Rep. Mitchell Setzer (R-Catawba) introduced this bill to authorize a study of the implementation of a high risk pool for health insurance in North Carolina. It was referred to House Rules but never reached the floor of the House.

H.B. 285 – Tax Incentive – Preventive Health Care. Rep. Garland Pierce (D-Wagram) introduced this bill, which would have provided for a tax deduction for preventive services paid for by North Carolina’s taxpayers. It was referred to House Finance, but never emerged from this committee.

H.B. 383 – Patient Care Resource Act. This bill was introduced by Rep. Edd Nye, and would have appropriated \$10 million to be used as grants or loans so that rural hospitals could address critical needs. It was referred to Rules, but died in committee.

H.B. 396 – Increase LTC Tax Credit. Rep. Bryan Holloway (R-King) introduced this bill which would have reenacted and increased North Carolina’s LTC tax credit. Under prior law, the credit was 15%. This bill would have increased that to 25%. Under prior law, the maximum allowable credit was \$300. This bill would have raised it to \$500. This bill died in House Finance.

H.B. 413/H.B. 1269 – Studies Act of 2005. Neither of these bills were enacted, but they reflect legislators’ strong desire to follow through on matters of interest. Draft studies bills included studies of assistance to small business with their health insurance (**S.B. 478**), high risk pools, tax credit (**H.B. 20**), pharmacy benefits managers regulation (**H.B. 1374**), mental health parity (**H.B. 893**), and Healthy North Carolina (**S.B. 255**). Note that the Legislative Research Commission may study these and other issues if legislators ask it to do so, and I will keep you advised as to all study activity.

H.B. 602 – 2005 Technical Corrections Act, a seriously voluminous bill, was surreptitiously amended in House Rules at the end of the session to add an “any willing pharmacy provision.” Our efforts to amend this language on the House floor failed. The Senate adjourned without taking up the bill, and, at our urging, Senate leadership has flagged this provision as being unacceptable should the bill be considered during the short session.

H.B. 644 – Applicant Petition Deadline. This bill, introduced on the behalf of the Department of Insurance, would have clarified that the 30-day deadline imposed upon agents seeking internal administrative review of a denial of licensure and subsequently seeking a hearing are mandatory and not discretionary. There was some question in the agent community when a denial of a license was at issue as to whether the agent had to initiate an internal appeal within the Department of Insurance prior to pursuing the matter in state court. This legislation would have made the internal review process within the Department of Insurance mandatory.

H.B. 647 – DOI Hearing/Unauthorized Insurance/Summary C&D Order. The was a Department of Insurance bill which would have required an unauthorized insurer against which a summary cease and desist order had been issued to petition the Department of Insurance for a hearing on the matter before pursuing the matter further in the Superior Court of Wake County.

H.B. 657 – Producer Compensation Transparency and Broker Duty. This bill was of importance to the Department of Insurance and ultimately passed the House. It was referred to Senate Commerce, but was never considered. It would have required insurance brokers to disclose compensation arrangements to customers, and the House version would have imposed a

fiduciary duty on brokers with respect to their customers. This was a serious point of contention within the agent community, and the Department never pushed the bill in Senate Commerce.

H.B. 675 (= S.B. 615) – Insurance Technical Corrections. This Department of Insurance bill did not pass. It was referred to House Insurance. It was a blank bill filed by the Department to be used if necessary.

H.B. 734 – Improve Managed Care Statutes. This bill was used late in the session as a vehicle for municipal zoning legislation, and its provisions were incorporated into **H.B. 737 – Improve Health Insurance Underwriting**, a bill which was ratified. The provisions of H.B. 734 which addressed uniform credentialing statutes and the elimination of external review outside of normal business hours were added to H.B. 737.

H.B. 893 (= S.B. 1100) – Mental Health Parity. This bill was filed again this session, but was never considered. It ended its legislative days in House Health.

H.B. 1269/ H.B. 413 – Studies Act of 2005. Neither of these bills were enacted, but they reflect legislators' strong desire to follow through on matters of interest. Draft studies bills included studies of assistance to small business with their health insurance (**S.B. 478**), high risk pools, tax credit (**H.B. 20**), pharmacy benefits managers regulation (**H.B. 1374**), mental health parity (**H.B. 893**), and Healthy North Carolina (**S.B. 255**). Note that the Legislative Research Commission may study these and other issues if legislators ask it to do so, and I will keep you advised as to all study activity.

H.B. 1290 – Health Care/Health Insurance Reform. Rep. Cary Allred (R-Burlington) introduced this legislation, which was a blank bill that would have been used in to enact health care and health insurance reform measures.

H.B. 1303 – Consumer Health Freedom Act. This bill was introduced by Representatives Paul Luebke (D-Durham) and Verla Insko (D-Chapel Hill) and would have authorized the Legislative Research Commission to study issues related to complementary and alternative forms of medicine. It was never enacted and died in House Rules.

H.B. 1334 – Patient Safety Act. Rep. Lucy Allen (D-Louisburg) introduced this legislation, which would have established a Commission that would have promoted patient safety in the provision of health care.

H.B. 1343 – Health Insurer/Prompt Pay. Rep. Edd Nye introduced this legislation which would have amended existing law with respect to the prompt payment of claims. It would have provided that policy forms could not be amended to shorten the time within which insurers have to pay claims.

H.B. 1344 – Civil Justice Reform. This was an effort at medical malpractice reform introduced by Rep. Edd Nye. It was referred to House Rules, and died there. It would have limited non-economic damages and medical malpractice actions to \$500,000. It would have also permitted collateral source payments into evidence and provided for the periodic payment of future

economic damages and medical malpractice action. It would have regulated contingency fees, but this legislation was never seriously debated.

H.B. 1358 – Health Care for All. This bill was the annual effort by Rep. Verla Insko to require that North Carolina’s Constitution be amended to provide that access to health care is a fundamental right. If this legislation is ever enacted, it would result in a single payor system in North Carolina.

H.B. 1359 – Medical Malpractice Reform. This bill would have created a medical malpractice tax credit and would have brought about medical malpractice rate reform similar to that envisioned in S.B. 602. This bill was never considered and died in House Rules.

H.B. 1363 – Commissioner of Insurance/Review Health Coverage. Rep. Cary Allred introduced this bill which would have required the Commissioner of Insurance to review Blue Cross’s rates to determine if they could be made more affordable. It was never seriously considered and died in House Rules.

H.B. 1374 – Pharmacy Benefits Manager. House Rules Committee Chairman Bill Culpepper (D-Edenton) introduced this legislation relating to the regulation of pharmacy benefits managers. It never got of House Rules, but contained the following truly objectionable provision: “A health benefit plan or a pharmacy benefits manager shall not discriminate with respect to participation in the network or reimbursement as to any pharmacy that is acting within the scope of the pharmacy’s license or certification.”

H.B. 1412 – Health Insurance for Low Income Citizens. This bill, introduced by freshman Democrat Bill Faison of Durham, would have commandeered roughly \$200 million of Blue Cross’s surplus, which he would have used to purchase health insurance for low income citizens. The bill was referred to Rules and died a quick and immediate death.

H.B. 1524 – Competitive Selection/Supplemental Insurance. This bill was introduced by Rep. Eugene Wilson (R-Boone), and would have brought the competitive bidding process to supplemental insurance purchased through payroll deduction by state employees and retirees. The bill passed the House and in modified form thereafter passed the Senate. It was referred back to the House in the waning days of the session for concurrence in Senate amendments and was actually calendared for vote on the floor. However, it was sent to House Rules at the last minute, where it died.

H.B. 1535 – Establish High Risk Pool. This bill, introduced by Representatives Hugh Holliman and Verla Insko would have established a high risk pool for health insurance in North Carolina. The bill was debated in Committee and carefully considered by a study committee. However, it became apparent that many revisions to the bill were necessary, and when the House began devoting virtually all of its attention to the State budget, the concept of the risk pool was placed on the back burner. Interest in the risk pool idea remains high, and it is definitely high on the priority list of House Insurance Committee Chairman Hugh Holliman.

H.J.R. 1792 – Urge Congress to Adopt AHPs. Rep. Hugh Holliman introduced this House resolution, which urged Congress to adopt association health plan legislation. It was adopted by the House on August 23, 2005.

Conclusion

The number of bills addressed above reveals that the 2005 session was a busy one for our industry. Legislators remain intrigued with addressing issues that affect us and I do not see this subsiding any time soon. Thanks as always for the listening, responding and contributing to the Association's legislative efforts. It is a pleasure and privilege to work with you and to represent you before the North Carolina General Assembly.

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