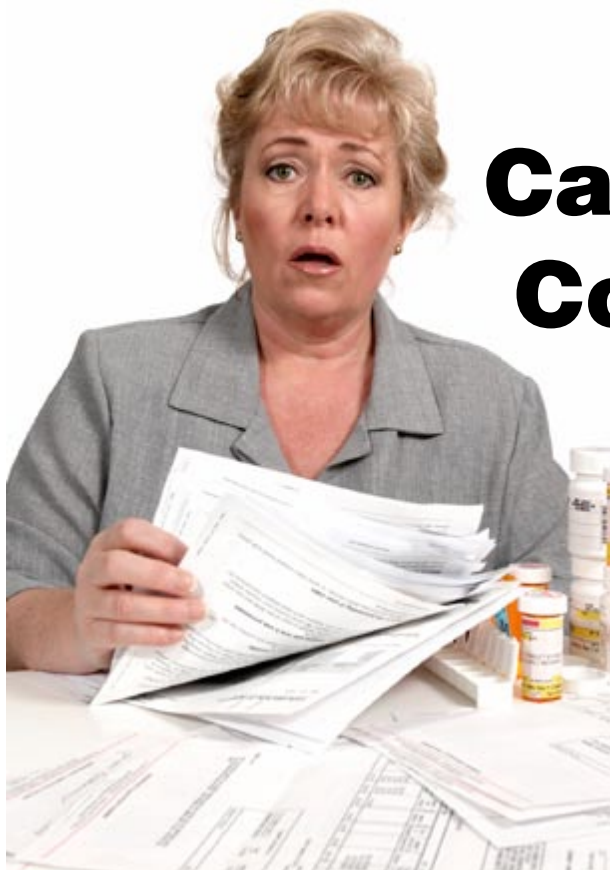


March 9, 2009



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The next issue of Capitol Journal will be available on March 16th.

Top Story

While President Barack Obama's focus is now on providing health care to the uninsured, a small but growing number of states are trying to prevent health insurers from unfairly dropping thousands of people who already have coverage.

SNCJ Spotlight

States slowly clamping down on insurance rescissions

President Barack Obama recently made big news by introducing a budget that includes \$634 billion toward universal health care programs. But while the president's focus is now on providing health care to the uninsured, a small but growing number of states are turning their attention to preventing health insurers from unfairly dropping thousands of people who already have coverage.

That practice, known as rescission, is certainly nothing new. Insurers have long held the option of cancelling an individual health policy if they determine

that the applicant misrepresented their health history or current medical condition on their application, intentionally or otherwise. Most states allow health plans up to two years to revoke an individual policy if they find such omissions or deceptions.

Insurers claim, however, that rescissions are a relatively rare occurrence. For instance, a 2007 survey by America's Health Insurance Plans (AHIP), an industry trade group representing almost 1,300 health insurance providers nationwide, found that in 2005 its member companies voided slightly less than 2,700 of the 1.16 million individual health policies they enacted, less than 1 percent. Those numbers were even smaller in 2006, as AHIP members cancelled just 1,842 of the 1.2 million policies they wrote, or .15 percent.

But that is precious little comfort to consumer advocates and state regulators, who contend that insurers routinely issue policies without first verifying that the information they are being given is accurate. Only when the policy holder submits claims for expensive care does the company fully review the application, often in search of reasons to cancel the coverage. Because a rescission is retroactive, the consumer is left holding the bag for all of their accumulated medical costs, including care covered under the policy even if it had already been approved and paid for by the insurer. In some cases, the health plan will also attempt to make the doctor or hospital reimburse the company for those paid claims.

Over the last two years, CALIFORNIA regulators have charged that such rescissions are not solely the result of a lack of due diligence, but are rather a calculated effort by insurers to collect premiums for the maximum amount of time allowable before they kick policy holders off the rolls. CALIFORNIA has in fact become ground zero for regulatory efforts against just such onerous rescission practices, as the state Department of Managed Health Care has levied millions of dollars in fines against some of the nation's largest health insurance providers, including Health Net, Kaiser Permanente, Anthem (a subsidiary of WellPoint) and Blue Shield. In February, Health Net also agreed to pay \$14 million to settle two pending rescission lawsuits: a class action claim involving 800 cancelled policy holders and a similar suit filed by Los Angeles City Attorney Rocky Delgadillo, who accused the insurer of "gaming the system" to illegally void 1,600 policies. According to trial documents, those cancellations saved Health Net more than \$35 million over a several year period. Although the company denies any wrongdoing, Health Net has agreed to pay over \$40 million in fines and settlements over its rescission practices, which included paying employee bonuses for voiding policies. Delgadillo still has pending actions against the other companies, which also face additional class action litigation.

Some states have also taken legislative action to stop abusive rescission practices. In June 2007, CONNECTICUT Gov. M. Jodi Rell (R) signed SB 1214 (Public Act 07-113), which bars Constitution State health insurers from "post-claim underwriting," and requires all health insurance rescissions to be approved by the



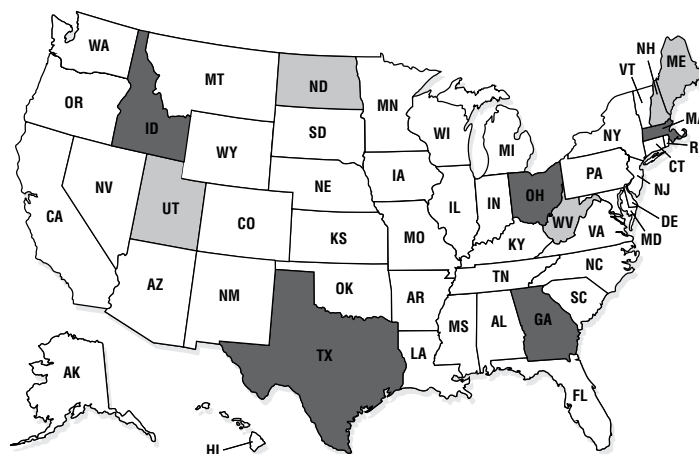
state insurance commissioner. Later that year, CALIFORNIA Gov. Arnold Schwarzenegger (R) signed AB 1324, which requires insurers to pay doctors and hospitals for any pre-authorized care they provide even if the insurer later rescinds the patient's coverage.

NEW MEXICO got into the game in March of 2008 when Gov. Bill Richardson (D) endorsed SB 226, a bill that requires insurance companies to prove that applicants deliberately lied on their application before the policy can be cancelled. Just months later, Schwarzenegger signed AB 1150, legislation that bars insurance companies from paying employees rescission-related bonuses like those that Health Net was handing out. He also signed AB 2569, which requires insurers that revoke

a policy to offer coverage to other individuals on that policy if they were not the reason for its cancellation. At the same time, although Schwarzenegger repeatedly chastised insurers, calling rescissions "outrageous" and "a deplorable practice," he ultimately vetoed AB 1945, legislation that would have required insurers to gain approval from state regulators before rescinding a person's coverage. Like the NEW MEXICO statute, that measure would have required health plans to prove that applicants lied to obtain their coverage.

According to State Net, MARYLAND (HB 235, SB 79), ILLINOIS, (HB 3923), SOUTH DAKOTA (SB 28) and TEXAS (SB 206, SB 207, SB 303) are all considering bills this session that address health insurers' ability to rescind a policy holder's coverage. CONNECTICUT (HB 6531) and CALIFORNIA (AB 2, AB 730) also have more rescission legislation in the queue. Although the bulk of those proposals are currently locked down in committee, SOUTH DAKOTA lawmakers approved SB 28 on February 24, sending the bill to Gov. Mike Rounds (R), who signed it on March 4. That measure allows health plans to rescind a policy within the contestable period, but would require them to give the consumer a full refund of their paid premiums.

Bird's eye view



Source: New York Times, Stateline, Pew Center on the States

States with largest correctional populations:

States with smallest correctional populations

State correctional spending up

More than 7.3 million Americans — one out of every 31 adults — are in prison or on probation or parole, according to a study released this month by the Pew Center on the States. GEORGIA has the largest correctional population, with 77 of every 1,000 adults under state supervision, while NEW HAMPSHIRE has the smallest: 11 per 1,000. Managing those populations cost the states \$47 billion last year, four times what they spent on corrections two decades ago, when one in 77 adults was under correctional supervision.





Dick Cauchi, Health Program Director for the National Conference of State Legislatures (NCSL), says it is still too early to tell whether other states will follow up with similar legislation. “I hesitate to call it a trend just yet,” he says. “But it is definitely an emerging issue.”

It is an issue, says CALIFORNIA Assemblyman Dave Jones (D), that Golden State lawmakers are “keenly interested” in following up on this session. Jones, who chairs the Assembly Health Committee, says “Once you have entered into a contract with someone and taken their money, you shouldn’t then go back and try to figure out some way to knock them off the rolls when they become sick or injured. That’s

not what health insurance is supposed to be about.”

Jones says there are several things lawmakers could consider to better ensure fair treatment for medical consumers, including establishing a shorter deadline for

“Once you have entered into a contract with someone and taken their money, you shouldn’t then go back and try to figure out some way to knock them off the rolls when they become sick or injured.”

companies to make those decisions. “It makes sense for the health plans to have to review the contract within a short period of time, perhaps a month or two, and decide whether or not they will continue on,” he says. “As it is right now, the standards are all weighted in favor of the health plans.”

J.P. Wieske, State Affairs Director for the VIRGINIA-based insurance industry advocacy group Council for Affordable Health Insurance (CAHI), disagrees, contending that giving insurers less time to review contracts is “totally missing the point.”

“The real issue here is about people hiding their illnesses,” Wieske says. “Reducing the contestability period just makes it easier for them to hide their condition.” That, he says, ultimately leads to higher insurance premiums for everyone else.

Wieske argues that consumers are far better served if state regulators and lawmakers focus on ensuring that insurance applications are clear and easily understood, and that

“The real issue here is about people hiding their illnesses.”

all rescission investigations are independently reviewed internally — i.e., by someone other than the original

underwriter — prior to any cancellation action. Should the policy be voided, he says, consumers should be able to appeal their case directly to an independent third party.

Several insurers, including Blue Shield and Health Net, have already started developing their own third-party rescission review systems, and many have agreed to make their applications more user-friendly. KANSAS Insurance Commissioner Sandy Praeger (R) says she believes a consistent application across the states would definitely help reduce rescissions, but she is more circumspect about requiring



commissioners to approve every such cancellation until lawmakers settle what is and is not legal practice in each state.

“An insurance commissioner needs clear guidelines before deciding these cases,” she says.

Wieske does not favor pushing that responsibility onto insurance regulators, who he contends are already overworked, and who already must approve the language in health insurance applications. Rather, he says companies should reduce rescissions by encouraging consumers to maintain an accurate personal health record in order to avoid leaving out information on an application that later could lead to their policy being voided.

“If a company gets a personal health record from the applicant, it is virtually impossible to have a rescission,” he says.

Wieske says CAHI also supports state laws barring insurance companies from paying bonuses for rescinded policies, something he calls “shocking.”

NCSL’s Cauchi notes that while the issue is gaining steam, it is possible that many states may wait to see what comes of Washington’s new push for health care reform before taking on a new fight of their own. That possibility doesn’t do much for regulators like Praeger.

“Insurance is a very personal product, and we’re there to make sure that policy gets upheld,” says Praeger. “Nobody who needs help with their health care insurance is better off calling a federal government 800 number rather than their own state insurance commissioner’s office.”

— *By RICH EHISEN*

Budget & taxes

O BAMA BUDGET OUTLINES STATE-RELATED POLICY SHIFTS: Among the proposals included in the budget outline released by the Obama administration last month was a call for nationwide limits on carbon dioxide emissions, including those from automobiles. It was just one of several marked shifts in policy Obama proposed that will directly impact states.

Also on the environmental front, the administration recommended sending \$3.9 billion to states to help them build drinking water and sewage treatment plants, especially in small towns, more than doubling the \$1.8 billion allocated for that purpose in 2007.

“People who live in small towns deserve to have clean water just like people in big cities do,” said Steve Brown, executive director of the Environmental Council on the States, a nationwide group of state environmental regulators.



On education, the budget includes \$2.5 billion in funding to help states raise college completion rates and an unspecified amount to help them improve early childhood education.

On crime, the budget proposes adding \$1 billion to the Justice Department's budget, including money for 50,000 more local police officers and \$75 million for the Second Chance Act, which provides grants to state and local governments, nonprofits and other groups to help former prisoners adjust to society. The act was signed by President Bush last year but has not been funded by Congress.

"It's really a milestone that Second Chance is included in the president's budget," said Jessica Nickel of the Justice Center of the Council of State Governments.

The budget also pledges to make the federal government "a better partner" to states and localities on homeland security initiatives. Real ID is likely to be one major area of focus, with Homeland Security Secretary Janet Napolitano — now in charge of implementing the act — having been among the numerous state officials who opposed it when she was governor of ARIZONA.

And on health, Obama called on Congress to set aside \$634 billion over the next decade to fund the expansion of healthcare programs.

The proposals were only broadly outlined in the plan released by the administration on Feb. 26. Many of the details about specific programs and agencies will be provided in April. (STATELINE.ORG)

STATES ROLL OUT STIMULUS ROAD PLANS: More than a dozen states have already indicated how they plan to spend at least some of the nearly \$50 billion in transportation funds allocated to them in the economic stimulus package passed by Congress last month, and they're taking very different approaches.

Some, like KANSAS, will spend their money on a few marquee highway construction projects.

"We wanted to build projects that would have a lasting impact, so that 20 years later people could look at them and see what we did," said KANSAS Transportation Secretary Deb Miller.

Other states, like MARYLAND, are adopting a fix-it-first policy, using their money to repair roads and bridges rather than build new ones.

The week in session

States in Regular Session: AK, AL, AR, AZ, CA, CO, CT, DC, FL, GA, HI, IA, ID, IL, IN, KS, KY, MA, MD, ME, MI, MN, MO, MS, MT, NC, ND, NE, NH, NJ, NM, NV, NY, OH, OK, OR, PA, RI, SC, SD, TN, TX, US, UT, VT, WA, WV, WY

States in Recess: VT, WI

States in Special Session: CA "c"

States in Budget Hearings: DE

States Currently Prefiling or Drafting for 2009: LA

States Projected to Adjourn: UT, WY

States Adjourned in 2009: VA

State Special Sessions Adjourned in 2009: AZ "a", CA "a", CA "b", CT "a", DE "b", FL "a", IL 2007-08 Special Sessions "a"-z"

Letters indicate special/extraordinary sessions

— Compiled By JAMES ROSS
(session information current as of 3/6/2009)
Source: State Net database



“It’s like maintaining your car: if you neglect the relatively easy periodic maintenance, you’re building up to a very big bill — and eventually replacing it,” said John D. Porcari, MARYLAND’s transportation secretary.

The amount of latitude the stimulus law gives states in determining how they spend their transportation dollars and the fact that many states were expecting significantly more money has spurred battles in some states. In WASHINGTON, for instance, Gov. Christine Gregoire (D) was pushing for \$75 million to jumpstart a project to replace the aging elevated highway spoiling Seattle’s waterfront with a tunnel. But the Democrat-controlled Legislature is planning to shut the state’s largest metropolitan area completely out of the stimulus-funding lottery, spending its allocation instead on state controlled roads and projects put on hold due to fiscal constraints.

Such battles won’t last long, however, since states have to start spending their money within four months. (NEW YORK TIMES)

VA RELIEF FOR MEDICAID: States seeking new ways to tighten their belts may want to look in the direction of WASHINGTON state. A program that went statewide there in 2003 shifts the cost of eligible veterans’ health care from Medicaid — one of the biggest expenditures for states — to the federal VA system.

By summer, the two-person office in the state’s Department of Social and Health Services that runs the program will have transferred more than 4,400 veterans and their dependents from Medicaid to VA or U.S. Department of Defense care, saving the state more than \$16.2 million.

On top of that, veterans receive better benefits from the VA than Medicaid, according to Bill Allman, manager and founder of the state’s Veterans Benefit Enhancement project.

“It’s the right thing to do, to give citizens access to coverage that they’re eligible for,” said Allman, a Vietnam veteran himself. “The fact that you save state dollars, that’s a bonus.”

Officials in several states have contacted Allman asking how to set up similar programs. CALIFORNIA will actually have a pilot program running in several counties by July, and the state’s Legislative Analyst’s Office estimates that the state could one day save up to \$250 million by shifting about 144,000 veterans to VA health care. (STATELINE.ORG)

STATES SHORTCHANGING PROBATION AND PAROLE: States are spending disproportionately more on prisons than on probation and parole programs

Upcoming elections

3/05/2009 - 3/26/2009

03/07/2009

Louisiana Special Primary
Senate District 16

03/24/2009

California Special Primary
Senate District 26 (Ridley-Thomas)

Connecticut Special Election
House District 15

— even taking into account the greater costs of prison operation — according to a new study by the Pew Center on the States.

The study, released last week, found that states spend seven times more money on prisons than on probation and parole, even though the vast majority of those under correctional supervision aren't actually behind bars. The report also indicated that, despite a quadrupling in corrections spending over the last two decades, recidivism rates have remained fairly steady.

Pew researchers say states focused on cutting services like education and health care to control their budgets, consequently, are misguided.

“States are looking to make cuts that will have long-term harmful effects,” said Sue Urahn,

managing director of the Pew Center on the States. “Corrections is one area they can cut and still have good or better outcomes than what they are doing now.”

The Pew report provided six recommendations to help states improve their probation and parole systems, including providing incentives to offenders enabling them to reduce their sentences, as ARIZONA is doing; classifying offenders and allocating resources based on risk, as WISCONSIN Gov. Jim Doyle (D) has proposed; and using electronic monitoring technology. (NEW YORK TIMES, STATELINE.ORG, PEW CENTER ON THE STATES)

BUDGETS IN BRIEF: CALIFORNIA's unemployment rate has broken the 10 percent barrier for the first time since 1983. The rate jumped to 10.1 percent in January, up from 8.7 percent a month earlier, the Employment Development Department reported last month (SACRAMENTO BEE). • The **COLORADO** Senate gave initial approval to SB 228, sponsored by Sen. John Morse (D), which would lift the state's 6 percent cap on general fund growth (DENVER POST). • **MASSACHUSETTS** business groups endorsed a 25-cent increase in the state gas tax, a more aggressive hike than the 19-cent increase Governor Deval Patrick (D) has proposed. Business leaders say the state needs to move faster on repairing its ailing roads and bridges in order to foster a strong business climate (BOSTON GLOBE). • The **NEW HAMPSHIRE** House approved a plan to nearly double the state's gas tax over the next three years from its current 18-cents-per-gallon rate to 33 cents per gallon. House Bill 644, sponsored by David Campbell (D), passed the House 190-162, largely along party lines (CONCORD MONITOR).

— *Compiled by KOREY CLARK*

“States are looking to make cuts that will have long-term harmful effects. Corrections is one area they can cut and still have good or better outcomes than what they are doing now.”

Politics & leadership

S TIMULUS SPURS STATES' RIGHTS REVOLT: Despite the billions of dollars in state aid promised by President Obama's economic stimulus package, not every state official supports it. Some consider it the last straw.

Lawmakers in at least 16 states have introduced resolutions asserting their state's right to ignore any federal law or policy they deem unconstitutional. The measures, they say, are a response to decades of overreach by the federal government, culminating with the stimulus package.

"This has been a progression from (the New Deal) days to today, with the only break being Ronald Reagan," said SOUTH CAROLINA state Rep. Michael Pitts (R),

sponsor of one of the resolutions.

"The stimulus bill is simply propellant for the resistance."

Several governors have also threatened to refuse stimulus money, claiming it would raise taxes in their states. As most of those governors — and the resolution sponsors — are

"This has been a progression from (the New Deal) days to today, with the only break being Ronald Reagan. The stimulus bill is simply propellant for the resistance."

Republicans, some analysts dismiss the revolt as partisan posturing. But MICHIGAN Rep. Paul Opsommer (R), sponsor of a states' rights resolution in his state, said the movement transcends party politics.

"Some Democrats feel it is an attack on Obama until I explain I also introduced it last year," he said. "This is about the rights of the states and the people, not anything to do with Republicans or Democrats."

Furthermore, at least one of the sovereignty resolutions was sponsored by a Democrat, KENTUCKY Rep. John Will Stacy. And while most of the resolutions are nonbinding, at least one, OKLAHOMA SJR 10, would have the force of law if passed, although its sponsor, Sen. Randy Brogdon (R), said the state's Democratic governor and attorney general would likely refuse to enforce it.

Karl Kurtz, a policy analyst at the National Conference of State Legislatures, said that although he was unsure how many sovereignty resolutions had been passed in previous years, he suspected the current trend was no accident.

"In the case of the sovereignty resolutions it appears to be an organized campaign" that may have been influenced by states' rights activists, Kurtz said.

The sponsor of NEW HAMPSHIRE's sovereignty resolution (HCR 6), Rep. Daniel Itse (R), for instance, has ties to the New Hampshire Liberty Alliance, a states' rights group, and the Free State Project, which encourages "liberty-loving people" to move to the Granite State.



Whatever the cause, Richard Hesse, professor emeritus of constitutional law at the Franklin Pierce Law Center in Concord, NEW HAMPSHIRE sees a potential problem with the growing trend.

“When you think about this claim that if a state believes a federal law is unconstitutional it can just ignore it, then I presume if a county believed a state law was unconstitutional it could just ignore it,” he said.

“Really what’s implicit in this is an unwillingness to recognize a lawful authority.”
(NASHUA TELEGRAPH)

Upcoming stories

Here are some of the topics you will see covered in upcoming issues of the State Net Capitol Journal:

- **Balance Billing**
- **Early Legislative Trends**
- **Data Mining**

HIGH COURT WEIGHS JUDICIAL BIAS: In 2004, Donald Blankenship, the CEO of A.T. Massey Coal, based in Richmond, VIRGINIA, contributed \$3 million to help elect a WEST VIRGINIA Supreme Court justice. Two years later, that justice, Brent Benjamin, cast a crucial vote overturning a \$50 million verdict in a fraud lawsuit Massey had lost to the owner of a rival coal company. Last week the U.S.

“When you think about this claim that if a state believes a federal law is unconstitutional it can just ignore it, then I presume if a county believed a state law was unconstitutional it could just ignore it.”

Supreme Court took up the issue of whether Benjamin was required under the Constitution’s due process clause to excuse himself from the case.

“Justice Benjamin’s decision not to recuse himself was constitutionally

flawed and should be reversed,” wrote Theodore Olson, a lawyer for the plaintiff in the case, Hugh Caperton, in his brief to the court. “[Hugh Caperton] had a constitutional right to a panel of neutral and detached judges to decide this appeal.”

Lawyers for Massey counter that while judges are required to recuse themselves in cases where they might benefit financially, a “probability of bias” doesn’t constitute a constitutional mandate to step aside.

“The [\$3 million] expenditures at issue were not solicited by Benjamin and, except for a \$1,000 contribution to his campaign, were made entirely independently,” wrote Massey lawyer Andrew Frey in his court brief.

Frey added that despite the allegations that Benjamin was biased in favor of Massey, the justice had “voted against Massey affiliates in at least five other cases, including one involving a \$243 million judgment against the company.”

The case is drawing a lot of attention — retired justice Sandra Day O’Connor was among the courtroom spectators for the opening arguments — in part because it was a template for John Grisham’s bestselling 2008 legal thriller “The Appeal” and in part because it comes at a time of sky-rocketing campaign spending in judicial elections.



“There is a financial arms race in judicial elections,” Olson said.

Bert Brandenburg, executive director of Justice at Stake, a group that opposes the proliferation of money in judicial races, agrees.

“This was bound to happen, if not in WEST VIRGINIA then somewhere else,” he said in a recent panel discussion hosted by the American Constitution Society. “As big money becomes the new normal it just won’t be that surprising if a new generation of judges comes of age feeling much more comfortable with a river of interest group money swirling around them and pouring into our courts of law.”

“There is a financial arms race in judicial elections.”

But a ruling in the case could set new standards requiring judges to excuse themselves from cases involving major donors to their campaigns. Alternatively, the justices could decide to leave the recusal determination in the hands of judges just as it is for the justices themselves. A decision is expected by July. (USA TODAY, NEW YORK TIMES)

POLITICS IN BRIEF: The CALIFORNIA Supreme Court heard oral arguments last week for and against the constitutionality of Proposition 8, the controversial November ballot measure that barred same-sex unions in the Golden State (SACRAMENTO BEE).

— Compiled by KOREY CLARK

Governors

SLOW CHANGING OF THE GUARD IN KS: Sometime in the next few weeks, KANSAS Gov. Kathleen Sebelius (D) will almost certainly be confirmed as President Barack Obama’s new Health and Human Services Secretary, and current Lt. Gov. Mark Parkinson (D) will be sworn in to take her place at the helm of Sunflower State politics. Until then, however, the transition is on indefinite hold.

Sebelius’ confirmation hearings in the U.S. Senate were not even scheduled as of last week, so Sebelius and Parkinson have continued to go about their normal duties. Sebelius even skipped President Obama’s White House summit on health care reform last week, choosing instead to stay in Topeka to “attend to state business.”

But while Parkinson took care to remind the public that he is ready to assume the job and serve out the rest of Sebelius’ term, he also reiterated his previously-stated intention to not seek the office again in 2010. Parkinson had made that declaration earlier this year, when Sebelius’ name first came up as a possible cabinet-level



appointee. Democratic leaders had hoped Parkinson, who left the Republican Party to run as a Democrat on a ticket with Sebelius in 2006, would reconsider if and when such a scenario played out. He did his best to put those thoughts to rest last week.

“I’m not a career politician,” he said, noting that his intentions do not mean he isn’t geared up to handle his new job while he has it. “When 2010 ends, I’ll return to my private life. I don’t want that to in anyway be interpreted by anyone as a lack of enthusiasm [for the governor’s position].” Parkinson also declined to reveal what if any policy changes he might endorse, saying, “We only have one governor at a time.” (TOPEKA CAPITAL-JOURNAL, CONGRESSIONAL QUARTERLY)

LAWMAKERS KILL O’MALLEY’S

DEATH PENALTY PUSH: Despite intense lobbying by MARYLAND Gov. Martin O’Malley (D), lawmakers dealt his push to end capital punishment a death blow last week. The governor, a staunch death penalty opponent, had made permanently abolishing state executions a priority going into this session, but last week lawmakers instead agreed only to tighten the evidence standards used in capital cases. A disappointed O’Malley conceded defeat, and a spokesperson said he will now move to complete new regulations necessary to end the state’s de facto death penalty moratorium. “It obviously looks like we won’t have a full repeal this session, and the governor has indicated he will move forward with the regulations if the repeal fails,” said O’Malley spokesman Rick Abbruzzese. “The governor took an oath to uphold the laws of the state.” The state stopped performing executions in 2006, just one month before O’Malley took office, after the state Supreme Court ruled that lethal injection procedures had not been properly adopted. (WASHINGTON POST)

PATERSON’S APPROVAL PLUMMETS: After months of embarrassing public gaffes, embattled NEW YORK Gov. David Paterson’s (D) approval rating has hit a record low. According to a new poll conducted by the Marist College Institute for Public Opinion, Paterson’s job approval rating is at just 26 percent, the lowest mark in the 27 years the college has been surveying public opinion of Empire State governors. In comparison, disgraced former Gov. Eliot Spitzer (D), the man Paterson replaced, never dropped below 30 percent approval. Paterson has recently come under intense criticism for several issues, most notably his less-than-smooth handling of naming a replacement for Sen. Hilary Clinton (D) after she left to become

In the hopper

At any given time, State Net tracks tens of thousands of bills in all 50 states, the US Congress and the District of Columbia. Here’s a snapshot of what’s in the legislative works:

Number of Prefiles last week: 816

Number of Intros last week: 9,733

Number of Enacted/Adopted last week: 1,353

Number of Prefiles to date: 26,649

Number of Intros to date: 93,940

Number of Enacted/Adopted overall to date: 5,871

— Compiled By JAMES ROSS
(measures current as of 3/5/2009)
Source: State Net database



the Secretary of State. Paterson’s office had no comment on the poll numbers, but he noted his lagging support during a recent radio interview, saying “If it wasn’t for A-Rod and Bernie Madoff, they’d of just about run me out of this state right now.” In a further acknowledgment of his troubled public image, Paterson has overhauled his staff, which he called a first step toward getting his administration back on track. (NEW YORK TIMES)

RILEY WANTS END TO VOTING OVERSIGHT: ALABAMA Gov. Bob Riley (R) said his state no longer needs federal supervision to ensure it has fair voting practices and should be absolved from needing their approval for election-related changes. In a brief filed with the U.S. Supreme Court, Riley argued that Congress should not include the Heart of Dixie on its watch list for discrimination against minority voters, saying “Congress wrongly equated Alabama’s modern government,

“If it wasn’t for A-Rod and Bernie Madoff, they’d of just about run me out of this state right now.”

and its people, with their Jim Crow ancestors,” Riley’s lawyers wrote. Congress renewed the landmark voting rights

law in 2006, including the section that requires nine states, plus local jurisdictions in several other states, to prove that changes to election procedures, such as moving a polling place, do not disenfranchise black voters. (BIRMINGHAM NEWS)

GOVERNORS IN BRIEF: Saying that families and businesses everywhere are cutting back, CONNECTICUT Gov. M. Jodi Rell (R) ordered a freeze last week on all nonessential state purchasing for the next four months, including pens, paper, fax machines and cleaning equipment. In a statement, Rell said since people are cutting back, “We must require state government to do exactly the same thing. It is very simple — the state will get by with less” (HARTFORD COURANT). • ILLINOIS Gov. Pat Quinn (D) has ordered the state Prisoner Review Board to make clemency records open for public review. Quinn’s directive contrasts with the policy of former Gov. Rod Blagojevich (D), who ordered those records to be kept secret (STATE JOURNAL-REGISTER [SPRINGFIELD]). • The KANSAS House killed a proposal to strip the governor of the power to fill vacancies in four statewide offices. The proposed constitutional amendment would have let political parties fill vacancies in the offices of attorney general, treasurer, secretary of state and insurance commissioner (INSURANCE JOURNAL [SAN DIEGO]).

— *Compiled by RICH EHISEN*

Hot issues

B **BUSINESS:** A federal appeals court rules that a **CALIFORNIA** law barring the sale of violent video games to minors is unconstitutional. The measure, AB 1179, was signed into law in 2005, but never went into effect. The state is considering an appeal (OAKLAND TRIBUNE). • The **INDIANA** House approves HB 1633, which would require home mortgage lenders to meet with borrowers facing foreclosure if they request such a meeting. The Senate endorsed a similar measure, SB 492. Each bill has moved to the opposite chamber (INDIANAPOLIS STAR). • The **ARKANSAS** House unanimously approves SB 154, which would ban the sale of lighters that children might mistake for toys. It moves to Gov. Mike Beebe (D) for review (ARKANSAS NEWS [LITTLE ROCK]). • The **UTAH** House approves HB 349, which would allow Beehive State bars and restaurants to sell full strength draft beer. Under current law, a draft brew can contain no more than 3.2 percent alcohol by weight, or 4 percent by volume. Most beers contain 3.6 percent to 3.9 percent alcohol by weight. The bill is now on tap in the Senate (DESERET NEWS [SALT LAKE CITY]).

CRIME & PUNISHMENT: The **IDAHO** Senate unanimously approves SB 1051, legislation that would outlaw “spoofing,” or using a fake name or number to defraud somebody over the telephone or a personal communication device. It moves to the House (IDAHO STATESMAN [BOISE]). • The **GEORGIA** Senate approves SB 157, which would, among other things, allow low-risk convicted sex offenders to petition the legal system to get off the registry after completing their sentence. The bill is now in the House (ATLANTA JOURNAL-CONSTITUTION). • The **WYOMING** House approves SF 88, which would require repeat drunk driving offenders to have ignition interlock devices installed on their vehicles. Interlocks prevent the car from starting if the driver has been drinking. The measure, which would also apply to first-time offenders arrested with a blood-alcohol content of .15 or more, now goes to Gov. Dave Freudenthal (D) for review (CASPER STAR-TRIBUNE). • The **NEW YORK** Assembly approves AB 6085, legislation that would do away with the Empire State’s minimum required prison terms for lesser felonies, establish at least one drug court in every county and give judges more latitude to impose alternative sentences. It is now under review in the Senate (NEW YORK TIMES). • **ARKANSAS** Gov. Mike Beebe (D) signs SB 78, a bill that allows police to stop and ticket a driver solely for not wearing a seat belt (ARKANSAS NEWS [LITTLE ROCK]).

EDUCATION: The **ALABAMA** House endorses HB 464, legislation that would create a point system for student discipline in Heart of Dixie Schools, starting at age 12. Students who reach driving age would subsequently have to wait one week for each of their accumulated points before being allowed to apply for a learner’s permit



or driver's license. The measure is now in the Senate (TUSCALOOSA NEWS). • The **WASHINGTON** Senate endorses SB 5232, which would allow employees who have sexual relations with an enrolled student of the school where the employee works to be charged with sexual misconduct, even if the student is an adult between the age of 18 and 21. It has moved to the House (SEATTLE TIMES).

In case you missed it

For years, CALIFORNIA has had a deserved reputation as a trend setter. As Lou Cannon notes in the Feb 23rd issue of SNCJ, however, the trend it has been setting in recent years is one of fiscal brinkmanship.

In case you missed it, the article can be found on our Web site at http://www.statenet.com/capitol_journal/02-23-2009/html

ENVIRONMENT: The **GEORGIA** House approves SB 31, legislation that would allow Georgia Power Co. to collect an estimated \$1.6 billion from customers in the six years between 2011, when construction on two new nuclear reactors begins, and 2017, when the reactors are finished. It is now with Gov. Sonny Perdue (R), who is expected to sign it (ATLANTA JOURNAL-CONSTITUTION).

HEALTH & SCIENCE: The **OKLAHOMA** House approves HB 2026, a comprehensive health care reform measure that would allow Sooner State health care insurers to offer basic preventative plans with catastrophic coverage. The legislation also provides incentives to businesses that enable employees to use pre-tax dollars to purchase health coverage. It has moved to the Senate (INSURANCE JOURNAL [SAN DIEGO]). • The U.S. Supreme Court rules that drug manufacturers are not exempt from consumer liability suits just because the federal Food and Drug Administration approves the medication. The court's decision came in the case of a **VERMONT** woman who brought suit against Wyeth Pharmaceuticals, which contended that the FDA approval shielded them from state-level lawsuits (NEW YORK TIMES).

IMMIGRATION: Saying they can't afford the costs, **CALIFORNIA** corrections officials announce they will no longer jail undocumented immigrants with prior convictions who re-enter the country illegally after being deported. Golden State officials say it is the federal government's responsibility to enforce immigration laws. The federal Dept. of Homeland Security said it is reviewing the matter (LOS ANGELES TIMES).

SOCIAL POLICY: The **COLORADO** Senate approves SB 88, which would allow the partners of gay and lesbian state employees to share state health care benefits in the same way married couples can. The measure is now in the House (DENVER POST). • **ARKANSAS** Gov. Mike Beebe (D) signs HB 1113, legislation that would ban certain late-term abortions unless the mother's life is endangered. Doctors who perform the procedure face fines and loss of their medical license (ARKANSAS NEWS [LITTLE ROCK]). • The **KANSAS** House gives initial approval to HB 2206, which would require Sunflower State abortion providers to list



the specific diagnosis used to justify performing a late-term abortion. It is now in the Senate (TOPEKA CAPITAL-JOURNAL). Still in **KANSAS**, the House endorses House Sub for SB 238, which would require abortion providers to inform a pregnant woman she could view an ultrasound picture of her baby, and force clinics to post signs stating women can't be forced to have an abortion. It returns to the Senate (TOPEKA CAPITAL-JOURNAL).

POTPOURRI: The **IOWA** Senate approves SF 117, which would require motorists to stay at least five feet away when passing a bicyclist. It would also impose fines up to \$1,000 on drivers who hit a bicyclist. The measure pedals off to the House (CHICAGO TRIBUNE). • The **UTAH** Senate approves SB 78, a measure that would force employers to make accommodations for employees who want to carry a gun to and from work and leave it in the car while they are there. The proposal shoots off to the House (DESERET NEWS [SALT LAKE CITY]). • The **MONTANA** Senate rejects SB 278, which would have required drivers to use a hands-free device while using their cell phone and barred them from sending or receiving text messages (BILLINGS GAZETTE).

— *Compiled by RICH EHISEN*

Once around the statehouse lightly

GATOR GRAVEYARD: University of **FLORIDA** alums love their alma mater. So much so, the school says, that alums regularly request to have their ashes scattered across mid-field at “The Swamp,” a.k.a. Ben Hill Griffin Stadium, where the reigning NCAA football champions play. To wit, UF is considering building a columbarium, a kind of mausoleum where well-heeled alumni can be sequestered near their gridiron heroes for all eternity. Trouble is, reports the *Orlando Sun-Sentinel*, state law says the school must first be legally recognized as a cemetery, which requires at least 30 acres of land, something the university doesn't possess. Enter lawmakers, who have introduced measures in both the House (HB 671) and Senate (SB 926) to exempt the university from the requirement. UF spokesperson Steve Orlando, however, fails to see the need. “Really, somebody could just go and spread their ashes on campus and we wouldn't find out about it,” he said.

BASHING BARBIE: Mattel Inc.'s Barbie doll turns 50 this week, and the company is definitely making a big deal out of it, tossing parties and staging events

all across the country in hopes of cashing in on the doll's iconic image. But don't count on WEST VIRGINIA Rep. Jeff Eldridge sending the 12-inch teen fashion diva a happy birthday card. As the *Charleston Gazette* reports, Eldridge thinks Barbie encourages little girls to value beauty over brains, something he thinks is just plain wrong. So, Eldridge has introduced HB 2918, which would ban the sale of Barbie "and other similar dolls that promote or influence girls to place an undue importance on physical beauty to the detriment of their intellectual and emotional development." The bill carries no penalty for those who keep selling the dolls. Mattel has chosen not to comment.

STATE OF CONFUSION: If you happen to be tooling around ARIZONA these days, you no doubt would notice that license plates proudly proclaim it to be the "Grand Canyon State." Or that publications — including this one — routinely reference that nickname when detailing the goings on there. But as the *Arizona Daily Star* reports, the state's actual moniker is, well, nothing at all. The state has in fact had no official nickname since 1959, when it was known as the "Baby State" for its status as the final one to be admitted to the union. That year, ALASKA joined the party, followed in 1960 by HAWAII, ending ARIZONA's time as the last in the litter. Not to fret, as Rep. Sam Crump has authored HB 2019, which would make "Grand Canyon State" ARIZONA's official, legal, no-doubt-about-it nickname. Unless, of course, some other state suddenly comes up with an even more impressive canyon.

DO AS WE SAY, NOT AS WE DO: Most people agree it is a good idea to keep students from gobbling down scads of sugary, fat-laden or otherwise unhealthy snacks during the school day. Subsequently, several states have in recent years adopted laws that bar or severely limit the sale of such vending machine staples on school grounds. But as *Oregon Public Broadcasting* reports, Beaver State teachers aren't so thrilled about their own such measure. That's because the law, adopted in 2007, has not only removed junk food dispensers from school yards, it has also cleared them out of teacher lounges. Many have now endorsed Rep. Mitch Greenlick's HB 2419, which would declare the situation an emergency, and exempt employee areas from the ban. The bill, which cleared the House last week, doesn't explain why teachers can't just bring sodas and other snack foods from home.

— *By Rich Ehisen*

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