

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS
STATE-FEDERAL RELATIONS COMMITTEE
BOSTON, MASSACHUSETTS
JULY 9, 2010
MINUTES

The National Conference of Insurance Legislators (NCOIL) State-Federal Relations Committee met at the Park Plaza Hotel in Boston, Massachusetts, on Friday, July 9, 2010, at 10:45 a.m.

Rep. Greg Wren of Alabama, chair of the Committee, presided.

Other members of the Committee present were:

Sen. Ralph Hudgens, GA	Sen. William J. Larkin, Jr., NY
Sen. Travis Holdman, IN	Sen. James Seward, NY
Sen. Vi Simpson, IN	Sen. Keith Faber, OH
Sen. Ruth Teichman, KS	Rep. Brian Kennedy, RI
Rep. Robert Damron, KY	Rep. Charles Curtiss, TN
Rep. Barb Byrum, MI	Rep. Craig Eiland, TX
Rep. George Keiser, ND	Rep. Kathleen Keenan, VT
Sen. Carroll Leavell, NM	Rep. Gini Milkey, VT

Other legislators present were:

Rep. Barry Hyde, AR	Sen. Jerry Klein, ND
Rep. Steve Fontana, CT	Rep. Don Flanders, NH
Rep. Pat Patterson, FL	Sen. Karen Gillmor, OH
Rep. Jeff Greer, KY	Sen. Jake Corman, PA
Rep. Steve Riggs, KY	Sen. David Thomas, SC

Also in attendance were:

Susan Nolan, NCOIL Executive Director
Candace Thorson, NCOIL Deputy Executive Director
Mike Humphreys, NCOIL Director of State-Federal Relations
Jordan Estey, NCOIL Director of Legislative Affairs & Education

MINUTES

After a motion made and seconded, the Committee voted unanimously to approve the minutes of its March 5, 2010, meetings in Isle of Palms, SC.

INTERSTATE INSURANCE PRODUCT REGULATION COMMISSION

Ohio Insurance Director Mary Jo Hudson, Chair of the Interstate Insurance Product Regulation Commission (IIPRC), reported that the Illinois House and Senate had approved Compact legislation. She said that the New Jersey Assembly and the New York Senate had also approved legislation. Regarding rulemaking, Director Hudson said that the IIPRC was working on a package of long-term care standards. She added that because Alabama had withdrawn its request for associate member status, an associate membership proposal was being postponed.

IIPRC Executive Director Karen Schutter reported that almost 100 companies had registered with the IIPRC this year and that 200 filings had been made. Director Hudson commented that the filing activity and registration numbers had doubled every year since the IIPRC became operational.

Rep. Keiser asked whether legislators and consumer advocates have a voting role at the IIPRC. Director Hudson replied that the IIPRC process is meant to resemble state administrative rulemaking proceedings. She said that the Legislative Committee and the industry and consumer advisory groups play a valuable role at the IIPRC and contribute to a robust process that, she said, resulted in better product standards.

PROPOSED MARKET CONDUCT ANNUAL STATEMENT (MCAS) MODEL

Rep. Wren said that Sen. Seward had introduced a draft *Market Conduct Annual Statement Model Act* at the 2009 Spring Meeting. He said that the Committee had considered the draft in 2009, as well as during four calls following the 2010 NCOIL Spring Meeting.

Mr. Humphreys reported that the Committee had reviewed amendment proposals submitted by America's Health Insurance Plans (AHIP), the Center for Economic Justice (CEJ), and various property-casualty insurers and trade associations during the calls. He said that the Committee, among other decisions, had focused the scope of the proposed bill on insurers writing \$100,000 in direct premium nationwide, clarified language regarding the collection and review of MCAS data by a Commissioner's designee, and converted language that could conflict with existing state contract law into a drafting note in Section 7. He added that due to time constraints, the Committee had deferred remaining amendments for the Summer Meeting.

Director Hudson, on behalf of the National Association of Insurance Commissioners (NAIC), said that the NCOIL model was introduced when there were concerns about possible changes to the MCAS process. She said that after taking over Ohio's role in MCAS, the NAIC had not changed the process. She said that the NAIC keeps MCAS data confidential, does not aggregate it, and cannot distribute data to non-regulators. She reported that 47 states would soon collect MCAS data and commented that some provisions of the NCOIL draft could make the process less efficient. She requested that the Committee shelf the bill and instead monitor the evolution of market analysis, noting that the NAIC would work with the Committee on any concerns.

Birny Birnbaum of the CEJ said that consumer groups could not support the model because it did not strike a balance between insurer, regulator, and public interests. He said that, if adopted, the model could undermine market analysis' promise to improve market regulation since it would limit data collection to once a year and limit the scope to companies that write \$100,000 in premiums nationwide, among other things. He commented that the bill's confidentiality requirements served no regulatory or public purpose and that industry-wide data collection was not a market conduct exam. He said that there was no reason to consider MCAS data elements trade secrets and added that insurer financial and complaint data are currently made public.

Marty Mitchell of AHIP described two needs for information: a regulatory need—which he said was addressed by the model bill—and a consumer need. He said that AHIP supported getting appropriate data to consumers so that they could make informed choices. He added that insurers needed the NAIC to continue clarifying the data that regulators may need for analysis purposes.

Eric Goldberg of the American Insurance Association (AIA) said that the Committee had thoroughly vetted the model legislation. He urged members to adopt it, saying that the model would help to establish a uniform framework for MCAS collection, aggregation, analysis, and sharing. He expressed concern regarding the proposed \$100,000 nationwide threshold and urged the Committee to instead use a \$100,000 or \$50,000 per-state threshold.

Deirdre Manna of the Property-Casualty Insurance Association of America (PCI) said that MCAS was originally intended as a tool for regulators to look at how companies operate in the market

and to identify outliers for further action. She said that it was not intended to provide information to the public. She stated that the NCOIL model would allow regulators to use the MCAS tool while continuing to protect confidential and privileged information.

Neil Alldredge of the National Association of Mutual Insurance Companies (NAMIC) commented that MCAS collection may be new to legislators because until recently collection of information was a pilot project. He said that no state statutes specifically governed the MCAS process and he called data collection an area in need of reform.

Mr. Birnbaum argued that because the MCAS program is new and evolving, it would be inappropriate to approve a model that would limit its use.

Rep. Milkey said that the whole premise of a marketplace was consumer choice and competition. She said that there should be a way to make market information publicly available in an understandable way.

Sen. Seward said that the model bill would codify the existing MCAS process and asked if it would make private any information that is currently available to consumers. Mr. Birnbaum described Oklahoma's MCAS law that, he said, permitted a commissioner to publish data that he/she deemed useful to the marketplace. He said that the NCOIL bill would declare MCAS data confidential without requiring regulators to make certain information available to the public.

Rep. Keiser discussed the draft model and an NCOIL *Market Conduct Surveillance Model Act* and said that MCAS data could trigger a market conduct exam. He recommended that NCOIL approve the MCAS model and, before transmitting it to the states, discuss regulator concerns with the NAIC. He suggested that a failure to address inefficiencies in market regulation could fuel optional federal charter efforts.

Responding to Rep. Keiser, Director Hudson suggested that the NAIC provide a more comprehensive presentation to NCOIL at a future meeting.

Sen. Faber said that some of the MCAS data elements in the abstract seemed like they would be irrelevant to consumers. He said that ratios and percentages could be helpful and asked whether the model would prevent insurance departments from standardizing the abstract data and publishing quality assessments. Mr. Birnbaum highlighted a provision in the model that would prohibit indirectly or directly placing MCAS data before the public.

Mr. Birnbaum said that NCOIL and the NAIC had previously developed a joint market conduct surveillance model act. He commented that after both organizations approved the bill, Texas adopted a different version. He said that NCOIL subsequently adopted the Texas changes.

Rep. Kennedy clarified that the NAIC had passed the joint model by a vote of approximately 30 to 20. He said that no regulator subsequently made an effort to have it introduced in his/her state. As a result, he said, NCOIL modified the model to encourage state adoption. He said that Rhode Island had enacted the updated model act.

The Committee then debated the draft MCAS model bill and approved amendments that, among other things:

- clarified the purpose section and added a drafting note regarding state MCAS participation and accreditation by the NAIC

- based the scope of the model on lines of business subject to the NAIC MCAS, but required that any changes to the MCAS be adopted by law in the state or recommended by the state insurance commissioner and approved pursuant to the *Administrative Procedures Act*
- incorporated the property-casualty insurance industry's proposed revisions to the definitions of "designee" and "insurer"

Sen. Seward made a motion to defer the model act, as amended, until the NCOIL Annual Meeting. He said that deferring the model would give the NAIC an opportunity to provide any additional feedback during its August meeting in Seattle. Director Hudson said that she would inform the NAIC Market Regulation and Consumer Affairs (D) Committee. She suggested that the NAIC could also present information on the current MCAS and market analysis systems to the NCOIL Committee at the NCOIL Annual Meeting.

Rep. Milkey requested that the Committee begin a discussion at the Annual Meeting of how to get better information out to consumers.

After Sen. Seward's motion was seconded, the Committee voted unanimously to defer the amended model act to the NCOIL Annual Meeting.

ADJOURNMENT

There being no further business, the meeting adjourned at 12:25 p.m.