

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS
LIFE INSURANCE & FINANCIAL PLANNING COMMITTEE
SANTA FE, NEW MEXICO
NOVEMBER 17, 2011
MINUTES

The National Conference of Insurance Legislators (NCOIL) Life Insurance & Financial Planning Committee met at the Eldorado Hotel & Spa in Santa Fe, New Mexico, on Thursday, November 17, at 8:00 a.m.

Sen. Mike Hall of West Virginia, chair of the Committee, presided.

Other members of the Committee present were:

| | |
|--------------------------|---------------------------|
| Rep. Greg Wren, AL | Sen. Neil Breslin, NY |
| Sen. Jason Rapert, AR | Assem. Nancy Calhoun, NY |
| Sen. Vi Simpson, IN | Assem. Joseph Morelle, NY |
| Sen. Ruth Teichman, KS | Sen. Jim Seward, NY |
| Rep. Ron Crimm, KY | Sen. David Thomas, SC |
| Rep. Robert Damron, KY | Rep. Charles Curtiss, TN |
| Rep. Pete Lund, MI | Del. Harvey Morgan, VA |
| Rep. George Keiser, ND | Rep. William Botzow, VT |
| Rep. Don Flanders, NH | Sen. Ann Cummings, VT |
| Sen. Carroll Leavell, NM | |

Other legislators present were:

| | |
|--------------------------|----------------------------|
| Rep. Kurt Olson, AK | Sen. Ralph Hise, NC |
| Rep. Nancy McLain, AZ | Sen. David O'Connell, ND |
| Rep. Ken Ito, HI | Rep. Glen Mulready, OK |
| Sen. John Goedde, ID | Sen. Jean Hunhoff, SD |
| Rep. Mat Lehman, IN | Rep. Craig Eiland, TX |
| Rep. Tommy Thompson, KY | Rep. Herb Russell, VT |
| Sen. Dan Morrish, LA | Rep. Warren Kitzmiller, VT |
| Sen. Jonathan McKane, ME | Sen. Maralyn Chase, WA |

Also in attendance were:

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

MINUTES

Upon a motion made and seconded, the Committee unanimously approved the minutes of its July 15, 2011, meeting in Newport, Rhode Island.

MODEL UNCLAIMED LIFE INSURANCE BENEFITS ACT

Rep. Damron said that some life insurers, unless they received a death claim, were not identifying deceased policyholders in order to pay benefits to beneficiaries. He said that many beneficiaries weren't aware that they were entitled to benefits, and so the funds remained with the insurance company, unclaimed, for decades.

Rep. Damron said that several 2011 developments had demonstrated a need for legislative action, including a spring agreement between 36 state treasurers and John Hancock Financial. He said that the company had agreed to pay unclaimed life insurance benefits to states, per abandoned property

laws, and to institute new business practices. He said that the agreement had sparked insurance regulator interest in California, Florida, and New York, and had prompted several state hearings related to insurer business practices.

Rep. Damron said that companies commonly used tools such as a U.S. Social Security Death Master File (DMF) to identify any deceased owners of annuity contracts and cease annuity payments. He said, though, that most insurers did not use the tools to find deceased life insurance policyholders, for which benefits were owed. He said that stronger company standards should be required to compel routine identification of deceased policyholders, establish steps for beneficiary notification, and promote timely payment of claims to beneficiaries or transfer to states.

Rep. Damron said that state legislators—as the policymakers who draft laws to protect consumers—must ensure that benefits are paid. He introduced a proposed *Model Unclaimed Life Insurance Benefits Act*, which he had prepared for Committee consideration.

Rep. Damron said the model was originally introduced at the NCOIL Summer Meeting as proposed amendments to an NCOIL *Beneficiaries' Bill of Rights*—a 2010 model that deals with a related issue of death benefits payments using retained asset accounts. He said that he had since withdrawn the amendments in favor of a stand-alone proposal.

Rep. Damron said the model reflected the terms and business practices of the John Hancock agreement with state treasurers, including that companies must compare life insurance policies against a DMF each quarter to identify deceased policyholders. He said the model would also establish rules and procedures for companies to locate beneficiaries and facilitate claims payment when a DMF “match” occurs. He said the model would require only insurers already using the DMF or a similar tool for their annuities business to do so for their life insurance lines, but he said that he would offer an amendment requiring quarterly DMF searches for all insurers.

Rep. Damron said that he had struggled with a small life insurer to locate a policy purchased by his recently deceased mother. He said that, without his persistence, the company wouldn't have found the policy and that many consumers are not as vigilant or successful in their efforts. He said the experience had changed his perspective on who should be required to run DMF searches. Rep. Damron then presented the amendment that would require all companies to conduct quarterly DMF searches, and he noted that, because the amendment was submitted after the 30-day deadline, it would need a two-thirds vote to suspend the deadline and a separate two-thirds vote for approval.

The West Virginia Deputy Treasurer of Unclaimed Property, Carolyn Atkinson, who was speaking on behalf of the National Association of Unclaimed Property Administrators (NAUPA), said that NAUPA and state treasurers looked forward to working with NCOIL on appropriate policy solutions to protect consumers. She said that NAUPA had no position on the proposed NCOIL model but recognized that legislators are responsible for drafting and enacting legislation in the states.

Brendan Bridgeland of the Center for Insurance Research (CIR) said the issue was an important one for consumers. He said that he had first learned the pervasiveness of unclaimed life insurance benefits when reviewing company efforts to demutualize from policyholder to stock-owned companies. He said that companies were trying to find policyholders in order to issue stock payments but couldn't find hundreds of thousands of the holders. He noted that, for each instance where a demutualization check was owed and the policyholder was deceased, a death benefit was also due. He said that Rep. Damron's personal experience, in which the company struggled to locate his mother's policy because it had been sold from one company to another, was a common occurrence.

John Gerni of the American Council of Life Insurers (ACLI) said that carriers shared Rep. Damron's concerns, that companies should make use of new technologies to help pay claims, and that the proposed model was a good start. He said that although a number of life insurers already employed

some of the new business practices called for, the model law—coupled with updates to out-of-date unclaimed property laws—was a step in the right direction. He said that the ACLI on November 9 had submitted a series of proposed amendments, sponsored for discussion by Rep. Keiser, to strengthen the model. He said that the amendments also attempted to mitigate potential unintended consequences.

Jim Hodges of the National Alliance of Life Companies (NALC) said that small and mid-sized life insurance companies were concerned with the added expenses and burdens of conducting required DMF searches. He urged the Committee to pursue a cost-effective solution to the problem, which he said the model was not. He said that state insurance department registries, where consumers can search for policies, and other innovations may be more appropriate.

John Camillo of the Life Insurers Council (LIC) said that state laws and regulations didn't require life insurers to use the DMF and that the model would be cost-prohibitive for small life insurance companies. He said that retroactively requiring DMF searches would violate existing contracts that require companies to pay death benefits only when a claim is filed.

Mr. Camillo spoke to company methods of pricing policies and said that retroactive searches could threaten insurer solvency. He said that companies establish premiums based on assumptions regarding insureds' life expectancies and future claims payment. He said that he agreed, however, that technological advancements had occurred and that it may be reasonable to require searches and related company procedures on a prospective basis.

Nancy Bennett of the American Academy of Actuaries (AAA), responding to several legislator questions that followed up on Mr. Camillo's statements, said that companies use insureds' mortality risks and life expectancies to price their policies. She said that companies anticipate that all claims will be paid, and she said that reserves reflect these assumptions. She did note, however, that DMF searches would likely generate additional administrative expenses that weren't anticipated when older policies were first priced.

Sen. Leavell said that he had been a life insurance agent for decades and had concerns about the tracking of policies once companies merge or are sold. He said that, in one instance, he had spent six months trying to find a life insurance policy for a beneficiary. He said that the model would help remedy these consumer struggles.

Rep. Keiser said that if insurers can't find beneficiaries and the benefits are transferred to state unclaimed property funds, then states should ensure that unclaimed property administrators are required to also conduct DMF searches. He said that it's important to ensure the return of unclaimed property to owners.

In response to Rep. Keiser's comment, Ms. Atkinson said that states successfully locate most owners of unclaimed property and already use various tools to do so. She believed that state treasurers and unclaimed property administrators would be open to using a DMF as a means to find beneficiaries. She said that life insurance benefits aren't turned over to states until the limiting age is reached, which can be an extremely long time after a policyholder has died.

Sen. Haine asked what unintended consequences the model posed. Mary Jo Hudson of Bailey Cavalieri responded on behalf of the ACLI and said that the model's timeframes for carriers to follow up with beneficiaries after a DMF match occurs would be difficult to meet. She said that a requirement in Section 4(B) would change long-standing insurer claims payment practices by preventing an insurer, when a DMF match occurs or the insurer otherwise has knowledge of a death, from requiring additional documentation to prove the loss. She noted this was a significant issue for insurers and urged that Section 4(B) be removed from the model.

Commissioner Kevin Clinton of the Michigan Office of Financial and Insurance Regulation said that insurers honor their contracts and pay claims but that the timing of those payments needed review. He said the “float” time between when a policyholder dies and when proceeds are considered unclaimed for purposes of abandoned property laws was extremely long.

In response to Commissioner Clinton’s comment, Ms. Hudson said that the “dormancy trigger” for considering unclaimed benefits to be abandoned property was often the limiting age, which could be more than 100 years and is established by mortality tables. As an example, she said, if a policyholder dies at age 75 but a death claim isn’t filed, the insurer maintains the benefits for 30 or more years before the money escheats to the state as unclaimed property. She said that state unclaimed property laws were outdated and in need of review.

Sen. Hall noted that the Committee had run short on time and—to facilitate a full discussion of the proposed model and any necessary changes—would meet again that evening at 5:00 p.m.

PRE-NEED FUNERAL INSURANCE

Del. Morgan said that state legislators should be aware of problems that exist with pre-need life insurance policies, which cover the pre-set cost of funeral arrangements. He said that these policies are attractive to moderate and low-income consumers, many of whom are Medicaid-eligible, as a way to provide a respectable burial. He said that—because the policies are for relatively small amounts—problems and abuses had flown “under the radar.” He said, among other things, the following:

- Some policies saw lapse rates as high as 91 percent.
- Several companies had recently become insolvent, with billions of dollars lost.
- Policies may not cover funeral costs because the values aren’t increasing over time in line with rising funeral costs.

Del. Morgan said that beneficiaries often request a cheaper funeral service than what is determined in the contract and then pocket the difference between the original policy amount and the lesser service provided. He said that, because most pre-need policyholders are on Medicaid—whose rules allow insurance policy values to be excluded from income calculations—states should be recouping this money instead of beneficiaries.

Del. Morgan said that Virginia had proactively addressed pre-need issues in statute, but that industry was looking to overturn the state’s strong consumer protections, including a requirement that policy values increase annually with the Consumer Price Index (CPI) or by five percent. He said that other interested parties in Virginia were seeking rules that would allow for an increase in policy values to levels that are far greater than funeral costs in Virginia. He urged states to look at Virginia’s laws and take action to protect consumers.

Mr. Hodges of NALC said that states and the NAIC have been reviewing many of these issues for a decade and that the NAIC had adopted a model disclosure rule. He offered to send a letter to the Committee from representatives of the pre-need insurance industry to overview these efforts before any further action was taken. Sen. Hall urged Mr. Hodges to do so.

At Rep. Keiser’s request, staff added consideration of the issue as a proposed 2012 Committee charge.

2012 COMMITTEE CHARGES

Mr. Estey said that, in addition to the charge on pre-need insurance, Rep. Damron had requested additional charges on implementation of state life settlement laws and life insurer claims settlement/payment practices. He said that the proposed chargers, as amended, were:

- develop a position on company unclaimed benefit practices
- work toward proper regulation of annuities
- monitor and report on emerging state and federal activity regarding life settlements
- monitor efforts to implement a new principles-based approach for life insurance reserves
- review pre-need insurance issues and related state activity
- monitor and report on implementation of state life settlements laws, including marketplace behavior and practices of insurers and life settlement licensees
- continue to investigate the claims settlement procedures and payment practices of life insurers
- review NCOIL model acts on insurance compliance self-evaluative privilege and secondary addressees, as per bylaws

Upon a motion made and seconded, the Committee unanimously approved the amended 2012 Committee charges.

ADJOURNMENT

There being no other business, the Committee adjourned at 9:45 a.m.