NATIONAL CONFERENCE OF INSURANCE LEGISLATORS
LIFE INSURANCE AND FINANCIAL PLANNING COMMITTEE
NASHVILLE, TENNESSEE
NOVEMBER 21, 2013
MINUTES

The National Conference of Insurance Legislators (NCOIL) Life Insurance and Financial Planning Committee met at the Nashville Hilton Downtown in Nashville, Tennessee, on Thursday, November 21, 2013, at 8:30 a.m.

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

Other members of the Committee present were:
Rep. Greg Wren, AL
Rep. Ron Crimm, KY
Rep. Robert Damron, KY
Rep. Joseph Fischer, KY
Sen. Dan Morrish, LA
Rep. Pete Lund, MI
Rep. George Keiser, ND
Sen. Jerry Klein, ND
Sen. Carroll Leavell, NM
Sen. Neil Breslin, NY
Sen. Bill Larkin, NY
Sen. James Seward, NY
Rep. Bob Hackett, OH
Rep. Brian Kennedy, RI
Rep. Bill Botzow, VT

Other legislators present were:
Sen. Brian Bushweller, DE
Rep. Martin Carbaugh, IN
Sen. Travis Holdman, IN
Rep. Matt Lehman, IN
Rep. Peggy Mayfield, IN
Rep. Jim Gooch, KY
Sen. Ronnie Johns, LA
Rep. Janice Cooper, ME
Rep. Joe Hoppe, ME
Rep. Ken Goike, MI
Rep. Don Gosen, MO
Rep. Paul Wieland, MO
Sen. David O'Connell, ND
Assem. Paul Aizley, NV
Rep. Craig Eiland, TX
Sen. Curt Bramble, UT
Sen. Ann Cummings, VT
Rep. Warren Kitzmiller, VT
Rep. Michael Marcotte, VT

Also in attendance were:
Susan Nolan, Nolan Associates, NCOIL Executive Director
Candace Thorson, Nolan Associates, NCOIL Deputy Executive Director
Jennifer Webb, Nolan Associates, NCOIL Director of Legislative Affairs–DC
Eric Ewing, Nolan Associates, NCOIL Director of Legislative Affairs

MINUTES
Upon a motion made and seconded, the Committee unanimously approved the minutes of its July 11, 2013, meeting in Philadelphia.

CAPTIVES TAXATION
Deputy Commissioner David Provost of Vermont explained that the original intent of the Non-admitted Reinsurance Reform Act (NRRA) was to simplify tax collections on surplus lines insurance, but that it was never intended to allow for captive insurers to be taxed outside of the home state. He said that the Chair and other members of the Congressional committee that oversaw NRRA development have stated that the NRRA was never intended to cover captives, nor does any discussion of captives appear in either the Congressional record or record of any National Association of Insurance Commissioners (NAIC) proceedings.

However, Mr. Provost said that the language is sufficiently broad enough that it causes some doubt among regulators and insurers. He said that while the intent of the law is very clear, the definitions within are broad. He explained that the confusion over the definition of a non-admitted reinsurer has led some to suggest that NRRA provisions apply to captives. He said that state taxation rules regarding captives remain unchanged, but uncertainty over NRRA regulations has convinced some companies to move their captive insurers from domiciled states to their home state, so long as the home state has a captive law. He said that many captives, such as fronted captives, have been unaffected so far, but that captive insurers, such as the Captive Insurance Association, hope to see the NRRA amended to specifically exclude captives in order to remove any uncertainty.

Mr. Provost said that because the states did not adopt any of the tax-sharing compacts authorized by the NRRA, the winners have been larger states where companies have their main offices and the losers have been smaller states where companies have their side operations. He said that the assumption now is that the home states are collecting all of the tax, including those on captive insurers, and have no mechanism to distribute it to the other states. He noted that in Vermont, surplus lines collection has decreased by about twenty percent.

TEXAS LONG-TERM CARE AND LIFE INSURANCE LEGISLATION

Rep. Craig Eiland (TX) reported on legislation he sponsored in Texas that was enacted in early 2013, which allows life insurance policies to be converted into life settlements and used for long-term care. He pointed out that in Texas, seventy percent costs for nursing home beds are paid by Medicaid. He said that the state Medicaid program takes assets into account when determining a consumer's eligibility. He noted that this includes life insurance policies, and that a consumer may be forced to get rid of a policy with a cash value greater than $10,000, either by allowing it to lapse or cashing it in for a small amount. Rep. Eiland said that his bill sets up a structure whereby a consumer can sell a life insurance policy and direct the proceeds into a trust. The funds in that trust can only be spent on long-term care bills, and all bills are paid directly to the caregiver. He said that the consumer can then make a seamless transition to Medicaid once the money in the trust has been spent. He argued that it also saves money for the state by utilizing consumers' assets before they enroll in Medicaid.

Michael Freedman of Coventry reported that Medicaid payments cover forty-nine percent of long-term care costs. He said that paying for long-term care remains a challenge for many Americans. He noted that a Federal Commission on Long-Term Care recently recommended further exploration of using life insurance to fund long-term care. He said in order to qualify for Medicaid policyholders must typically surrender universal and whole-life policies with cash values greater than $2,000. He said that consumers can often keep term-life policies, but they still have to pay the premiums. He noted that Medicaid enrollees are unlikely to have cash reserves to continue premium payments. He brought up a recent study in which thirty-eight percent of Medicaid applicants reported having a life insurance policy.

Mr. Freedman concurred with Rep. Eiland's assessment that the Texas bill will result in cost savings for the state, noting that it was allow for much longer stays in long-term care facilities before Medicaid begins paying out. He also stated that providers will benefit as they receive a private care rate due to the patient using with his or her own money rather than Medicaid funds.

In response to a question from Rep. Keiser, Mr. Freedman explained that increased use of life settlements will not affect insurer solvency because most of these policies are small face-value and have long-since satisfied their reserve requirements. He added that this market only impacts a small portion of the overall in-force life insurance policies.

Sen. Rapert questioned the value of irrevocable life insurance trusts when most families are not trying to spend their savings, but rather keep those resources for their families. Rep. Eiland responded that if a consumer dies before they spend down all the money in the trust, that money still goes to the estate and is distributed as planned. He noted that his bill includes a provision that preserves a funeral benefit even as the long-term care trust is spent down.

Birny Birnbaum of the Center for Economic Justice stated that he supports increased consumer access to the life settlements market, but he questioned whether Rep. Eiland's bill will benefit needy consumers or merely affluent consumers. He said that life settlement transactions typically involve universal life policies with small cash values or term life policies with no cash values due to the absence of policies with greater value in the market. He further stated that the typical Medicaid applicant has a policy which has too little value for a life settlement when one takes into account the costs incurred by brokers and investors. He expressed concern the state will be promoting life settlements instead of allowing the market to do so, pointing to long-term care partnerships as an example of where that has happened previously. He stated that there is a lack of hard data and that there should be further study on these types of proposals, especially in terms of financial benefit to the state.

Rep. Eiland clarified that his bill does not mandate life settlements, but does require the state to inform consumers of the option available to them. He said that all regulations which currently apply to life settlement companies still apply under his bill.

UNCLAIMED LIFE INSURANCE BENEFITS

Bruce Ferguson of the American Council of Life Insurers (ACLI) reported on recent activity among stakeholders regarding unclaimed life insurance benefits. He stated that to date nine states have enacted a version of the NCOIL *Model Unclaimed Life Insurance Benefits Act*. He said that in early 2013 ACLI developed some enhancements to the NCOIL model based on new information gathered from company practices. He said that North Dakota, Nevada, and Rhode Island, among other states, were looking at those enhancements. He said that ACLI is encouraged that the NAIC has discussed undertaking a study of the issue. He noted that state vital records agencies recently ceased transmission of some data to the Social Security Death Master File (DMF), making that database less reliable at a time when more and more insurers are required to use it to identify decedents. He said that now is a time for all parties to review what they have learned over the past three years and consider how they can work toward a more consistent framework.

Rep. Wren stated that a tremendous amount of confusion continues to exist nationwide regarding unclaimed property issues. He said that inconsistency continues to be seen among unclaimed property administrators, even with passage of the NCOIL model in nine states. He noted that even in the nine states where the NCOIL model has been passed variations exist both in statute and interpretation. He further stated that there may be regulatory overreach taking place. He said, for example, that in Alabama his own state treasurer signed onto a 38-state audit dealing with in-force business, which is not a provision of the NCOIL model passed in that state. He said that it is appropriate for the NAIC to look at studying the unclaimed property issue, but argued that it is more appropriate for NCOIL and states to be stronger and bolder in looking at unclaimed property. He said to that end

NCOIL will form a task force that will bring together the various parties to address unclaimed property. He said that NCOIL has a unique opportunity to take a lead on this issue.

Rep. Damron added that for states considering the NCOIL model, one change that should be taken under consideration is that provisions calling for semi-annual or quarterly checks of the DMF should be based on the update files and not the complete DMF file. He agreed that legislators should seek to address unclaimed property by statute. He said that insurance regulators and state treasurers will step in regardless, and without statutory authority they effectively will be writing law.

LONGEVITY RISK

Commissioner Julie McPeak of Tennessee, representing the NAIC, stated that policyholders' increased life spans have implications for consumers' retirement income and for pension plans. She said that the federal government is considering ways to increase use of annuities in product and defined-contribution plans. She said that federal officials hope to make annuities more available as a choice for plan funding. She said that the primary concern among plan sponsors is their fiduciary responsibilities under ERISA law, which requires that all investments be fiscally sound. She said that the NAIC is currently working with the White House Council of Economic Advisors and the Department of Labor to identify reliable products for plan sponsors. She stressed that plan sponsors should not see guarantyfunds and safety nets as additional tools because they are meant to be last resorts.

Nancy Bennett of the American Academy of Actuaries (AAA) stated that lifetime income risk, or the risk of outliving ones assets, is one specific type of longevity risk. She said that lifetime income should be structured to cover basic needs. She stated that advanced lifespans, baby boomer retirement, changes in pension plans, and uncertainty over Social Security are contributing to lifetime income risk.

Ms. Bennet said that the challenge of lifetime income risk will require a number of different approaches from multiple stakeholders. She said that workers need to be better prepared to manage their income needs in retirement, while plan sponsors should learn to manage new or increased exposures. She suggested that insurers could adapt products to meet modern needs, for example by offering deferred income annuities, accelerated benefits riders, or combination products such as annuities with long-term care benefits. She said that like plan sponsors, insurance regulators will need take a more risk-focused approach toward regulation.

Jason Berkowitz of the Insured Retirement Institute (IRI) reported that baby boomers especially have a growing need for income in retirement due to a lack of savings, but a number of possible regulatory activities could affect the current product offerings. He said that the deferred income tax treatment of annuities is still being assessed closely by tax reform-minded federal officials. He also said that proposed changes to fiduciary standards by the Department of Labor and the Securities Exchange Commission would increase product costs and complexity in sales, decreased consumer choice in pension plans and IRAs, and decreased access to financial advice. He noted, however, that on the state side significant progress has been made toward uniform adoption of annuity suitability and disclosure regulations.

Birny Birnbaum of the Center for Economic Justice (CEJ) noted that lifetime income needs has been a historic problem, but in modern times companies have moved away from pensions and toward defined-contribution plans. He said that the latter necessitate a degree of investment expertise that many consumers do not have. He said that while there are many good lifetime income products, some of them are essentially “fee harvesters” that only strip consumers of assets. He said that overall life expectancy is increasing, but not evenly across different parts of the population. In particular, he said that life expectancy is decreasing for low and moderate-income consumers, but increasing for affluent consumers.

Mr. Birnbaum said that the most important contribution insurance companies make to society and to consumers is a risk pool. He said that new life insurance products have moved from simply insuring mortality risk to covering investment risk by guaranteeing portfolios. He argued that this increases systemic risk by concentrating the effects of an economic downturn into risk pools. He urged policymakers to focus on products that have benefits in terms of mortality risk and not to promote products like contingent deferred annuities that primarily address investment risk.

CONTINGENT DEFERRED ANNUITIES

John Gerni of the American Council of Life Insurers described contingent deferred annuities (CDAs) as products similar to those already out on the market place, such as guaranteed living benefit annuities (GLBA). He explained that CDAs can be thought of as a GLBA without the underlying annuity. He said that CDAs provide consumers with the option of getting out of the contract, or changing their monthly ‘stipend.’ He said that CDAs and GLBAs differ in the general account component, as opposed to separate accounts. He explained that in a general account component the risk is on the insurer as opposed to the individual. He said CDAs are subject to standards already in place, such as suitability, guaranteed association coverage, and disclosure requirements.

Commissioner McPeak said that the NAIC initially struggled with CDAs because it was not clear if they were true annuities and should be regulated as such or if they were better categorized with investment contracts. She said an NAIC working group determined that CDAs should be regulated as annuities, but current standards need to be reviewed to make sure that they are appropriate for this new type of product. She said that a crucial difference between CDAs and other annuities is that the assets held by the insured, not the insurer. She said that multiple NAIC committees have adopted charges for 2014 to examine issues surrounding CDA regulation and determine what if any existing statutes need to be revised. She said that the NAIC is also working on a guide for states to use when reviewing CDAs in order to make sure that there is a full understanding of the risk tolerance of all the parties involved.

AGENT/BROKER ACTIVITIES

Kim O’Brien of the National Association for Fixed Annuities (NAFA) reported that NAFA has worked concurrently with the insurance department in Iowa to develop a bulletin listing permitted activities for agents to discuss with a client as it related to diversification, risk, where money is placed. She said this effort came in response to a 2009 Arkansas bulletin that stated that recommending the replacement of a security or mutual bond constitutes investment advice. She said that NAFA felt that was too broad of a statement and wanted to define what actually does constitute investment advice and what an insurance-only agent can talk about in terms of diversification and risk. She said that Iowa’s primary motivation to work with NAFA stemmed from the adoption of the *Suitability in Annuity Transactions Model Act* by the NAIC and because of the requirements of disclosure and assessment of suitability.

Ms. O’Brien said that because of the duties required under the annuity suitability statute, an advisor will need to ask about consumer investments and financial activities during the sale of an annuity. She said that the permitted activities bulletin clarifies the areas an insurance-only agent can discuss with a client. She said that it follows the requirements of the suitability statute while making sure that the individual understands their risk exposure.

Ms. O'Brien pointed out that about thirty-five percent of all licensed agents are only licensed to sell insurance. She noted also securities-only licensed agents (about sixty percent of all securities agents) also need to understand activities permitted during their sales, for example not being able to recommend the liquidation of a life insurance policy or an annuity to fund a security. She said that the Iowa bulletin therefore defines insurance-only agents and securities-only advisors, and outlines permissible and impermissible activities for both. She said that the bulletin also talks about investment advisors and their role. She said that Tennessee adopted the permitted activities bulletin it in May, with the addition of fines for agents who engage in non-permitted activities.

Sen. Rapert suggested that the Committee take a deeper look at the information brought up by Ms. O'Brien. He said that in Arkansas they had seen tremendous abuses by people who are not properly licensed, such as recommending that consumers liquidate products when it is not in their best interest.

2014 COMMITTEE CHARGES

Upon a motion made and seconded, the Committee unanimously adopted the following 2014 Committee charges:

- Continue to consider state, insurance market impacts of principle-based reserving
- Explore conversion of life insurance to long-term care use
- Study state use of guidelines for insurance agent activity, especially as it relates to annuity sales
- Explore issues related to transparency in captive insurance transactions by life insurers
- Continue to monitor company unclaimed insurance benefit practices
- Continue to monitor activity regarding annuities and other life insurance products
- Continue study of longevity issues

ADJOURNMENT

There being no further business, the Committee adjourned at 10:00 a.m.