

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS
NCOIL-NAIC DIALOGUE
LITTLE ROCK, ARKANSAS
FEBRUARY 26, 2016
DRAFT MINUTES

The National Conference of Insurance Legislators (NCOIL) NCOIL-NAIC Dialogue Committee met at the Little Rock Marriott in Little Rock, Arkansas, on Friday, February 26, 2016, at 11:30 a.m.

Rep. Steve Riggs of Kentucky, Chair of the Committee, presided.

Other members of the Committee present were:

Sen. Jason Rapert, AR	Rep. Brian Kennedy, RI
Rep. Joe Fischer, KY	Sen. Robert Hayes, SC
Rep. George Keiser, ND	Rep. Bill Botzow, VT
Sen. James Seward, NY	

Other legislators present were:

Sen. Greg Standridge, AR	Rep. Henry Vaupel, MI
Sen. Travis Holdman, IN	Sen. Ed Buttrey, MT
Rep. Ronald Crimm, KY	Sen. Kevin Bacon, OH
Rep. Ken Goike, MI	Rep. Michael Henne, OH

Also in attendance were:

Tom Considine, NCOIL CEO
Paul Penna, Executive Director, NCOIL Support Services
Christina Zuk, Legislative Director, NCOIL Support Services
Paulina Grabczak, Deputy Legislative Director, NCOIL Support Services

FIO (Federal Insurance Office) / FACI (Federal Advisory Committee on Insurance) ONGOING ACTIVITY

Commissioner Jim Ridling of Alabama said that there is meaningful dialogue going on between the United States and other countries. When dealing with other countries, it is important to understand the culture of the people one is dealing with and it is also important to recognize the players. The countries in Europe are very independent and this makes it difficult to deal on a consolidated basis as the United States does. Outside of Europe, there are many items the NAIC is working on other than the agreement on reinsurance with Europe. Latin America looks at the United States almost exclusively to learn, understand, and develop the insurance industry. The NAIC has a very good working relationship with most of the Latin American and South American countries when it comes to insurance. There is also a good dialogue with some of the Asian countries that are developing markets on the one hand and have well-developed markets in parts of other countries and we could learn from this.

Commissioner Ridling continued that he is not a believer of a common capital standard. The Commissioner is a believer in negotiating with the Europeans on some issues while letting them know that other issues are non-negotiable.

Rep. Riggs asked if others find the United States system unusual. Commissioner Ridling said that it takes a while for people who have not been here to understand the scheme behind the regulation. Once they do, they look at it similarly to the way they view the differences between their countries in Europe. They understand this philosophy. Commissioner Ridling said that the United States may be the only nation in the world that has a lot of state run regulation, but we look to a central government. If this is placed in a European environment where there is no central federal government it is extremely different.

COVERED AGREEMENTS

The discussion then turned to covered agreements. Commissioner Mike Chaney of Mississippi stated that it is important to understand what a covered agreement is. A covered agreement is a bilateral or multilateral agreement between or among the United States and either one or more foreign jurisdictions. The danger for state regulators is very simple. The worry is that the federal law and that covered agreement would preempt state laws and their regulatory authority to regulate the subject of that covered agreement, including capital. The danger of a covered agreement is that if it is not done correctly it can damage the state based regulatory scheme used in this country.

Rep. Riggs asked if anyone attended the meeting in Brussels recently. Commissioner Chaney said that the NAIC has designated people who attend these meetings whether it is the International Association of Insurance Supervisors (IAIS) or others. These are the people who are charged in developing capital standards for the various schemes that are used in this country. The difference between the United States and the Europeans is that the United States may have a different capital set-up requirement versus what the European sector may have.

AFFORDABLE CARE ACT (ACA) IMPLEMENTATION

Superintendent Beth Dwyer of Rhode Island said that as far as network adequacy goes, the NAIC is working on a model and does strongly oppose the federal proposal to set one benchmark because the preferred route would be to give the states the ability to set their own standards.

Commissioner Chaney said that the problem with risk corridor and risk adjustment is the fact that there is not enough money to pay everyone what they are due. If the money is not paid, the rates can't be equalized. This is a big issue.

Commissioner Ridling said that some of the law was well thought out in structure and not well thought out in procedure and how it would work. Rep. Riggs asked for clarification, stating that it was good in structure, but the delivery is a concern and the Commissioner agreed. Commissioner Ridling said that risk adjustment was put in to grade people as they are admitted to an insurance program based on health. This would result in the healthier people subsidizing those who are less healthy. What this is doing, however, is it is driving out the smaller health carriers out of the State. No new carriers will come into the State because they are under the same pressure. In short, this structure is resulting in the opposite of what was intended.

Superintendent Dwyer said that on March 31, 2016 the HHS is having an open meeting in Baltimore, Maryland to consider changes to the risk adjustment formula for 2018 and beyond.

Superintendent Dwyer said that there has been trouble with co-ops. Rep. Riggs said that in his state of Kentucky the co-ops lost their funding so they declared insolvency. Superintendent Dwyer said that out of the 23 co-ops, 12 were declared insolvent. It was just announced that 9 out of the remaining 11 are in financial trouble. This leaves 2 that are not in some financial distress. The NAIC has created a new sub-group—the Co-Op Solvency and Receivership Sub-Group—specifically to address this issue. Of primary concern for the sub-group are the federal loans foreclosed co-ops that have been terminated by HHS and sent to the Department of Justice for collection. The issue is what is the priority as far as the various creditors. There will be a lot of dialogue in the sub-group so any state involved in that can get more information from the sub-group. There is also a question if the federal government can off-set outstanding reinsurance risk adjustment or tax credit payments to collect on the loans given to the various co-ops. There have also been several Congressional Committees on co-ops.

Commissioner Allen Kerr of Arkansas in response to a question from Rep. Riggs said that there are problems with the risk corridors, but there are no co-ops in Arkansas.

Sen. Seward said that Health Republic in New York, the co-op there, went belly-up last fall. There is probably an excess of \$200 million in unpaid claims still outstanding. Sen. Seward asked if some on the federal level are looking to recoup the loans or federal money that went into the co-ops. Superintendent Dwyer said yes. This is something that comes up whenever there is an insolvency—the issue of the priority of distribution of the assets of the insolvent entity. The question is what is the priority—is it the claimants or the federal government. Sen. Seward asked if those that have survived were given some rate relief. The problem in New York was that the Health Republic premiums were set so low that there was just no way they could make it. Superintendent Dwyer said that there would be an analysis in the coming years. It was reiterated that of the remaining 11 co-ops that were not insolvent 9 were declared to be in

hazardous financial conditions, which only leaves 2 financially sound co-ops. The Superintendent is sure that the various factors that resulted in this will be looked at and rate relief may be one of them, but at this point there are no conclusions.

Superintendent Dwyer is working on a network adequacy model act. The draft model act will be designed to protect consumers from surprise bills when they go in-network. If the consumer chooses an in-network facility and are not told that they will be receiving care from a non-network provider then the consumer will be held harmless in any balance-billing situation. The provider payment will be worked out between the carrier and the provider. The model does not say how the final payment will be set in such cases as it leaves it for the states to decide.

Commissioner Chaney said that there is a disparity between providers' costs. This is a big issue. Rep. Riggs asked how network adequacy could be improved. Commissioner Ridling noted that it all depends on the states. The states need to handle the issue on a state-level and he does not believe this could be done by doing a one-size-fits-all network adequacy model. Commissioner Ridling noted that telemedicine will be the way to reach a lot of people in rural America, particularly where the population is spread across large areas. Commissioner Chaney added that telemedicine works. The Commissioner predicts that this will work well for Mississippi. There is a difference between telemedicine and telehealth and they are doing telehealth.

Commissioner Kerr said that network adequacy was never thought through on the federal level. NCOIL and NAIC working together will be the ones to make it happen.

Commissioner Chaney said that in terms of what NAIC is doing on the Affordable Care Act, there is an effort to try to repeal premium taxes in places like Puerto Rico and the Virgin Islands. Additionally, there is a trend of hospitals closing emergency rooms and instead transporting people to another hospital by air ambulance. Additionally, NAIC's limited benefit plan models have been revised. This must be addressed. There are pharmacy issues that the NAIC is addressing.

Commissioner Ridling said that long-term care pressure is building. There aren't a lot of active providers anymore. Life expectancy has expanded and the cost of medical care and procedures is expanding. Hospitals are procedure driven and this will drive the long-term care up even more so.

Rep. Keiser said that NCOIL left it up to the NAIC to negotiate on the partnership Act for long-term care. The entire focus of that Act was portability. The portability has not worked because states are not honoring it for a variety of reasons. In order to make long-term care insurance effective, young people need to buy into it. Superintendent Dwyer agreed that this is a hard sell for young people and the

young people must get into it. Other products can also be looked at such as annuities.

NAIC UNCLAIMED PROPERTY INITIATIVE

Superintendent Dwyer said that the NCOIL model came out a few years ago and about 20 states adopted it. The NAIC formed a working group to look at all the information. A lot of work has been done to look at every section of the NCOIL model act and statutes in other states and come to an unclaimed model that marries the two. This sub-group is still working, but they will be able to present the differences between other states and the NCOIL model.

Rep. Kennedy said that one of the issues that came up was prospective versus retrospective. In Rhode Island it was decided that all of the policies should be covered regardless of when they were purchased. Superintendent Dwyer said that there are other states that have different opinions. The NAIC's current draft of the model gives the option for either prospective or retrospective application. A lot of states have adopted the model where one can contact the insurance company when a relative has died and the family is not sure if he or she had insurance. There are about 15-16 states with different approaches to this so the NAIC is looking at a uniform way to do this. Commissioner Ridling noted that retrospective application was a nonstarter in Alabama, and further said that the search system is the key.

"TEAM USA" ACTIVITIES

Commissioner Ridling said that he is not sure if the NAIC representative and FOI have ever voted the same way on any issue, so that "Team USA" is more myth than reality.

PRICE OPTIMIZATION

Commissioner Ridling said that it is important to understand what price optimization is. It identifies how high you can go before you lose clients. The bad side is that it is done with individuals rather than groups of people. The issue is that other knowledge is used to stretch the premium as far as it can go before the individual chooses not to pay it anymore.

Commissioner Chaney said that there is a white paper on price optimization on the NAIC website. The Commissioner said that some states have declared that price optimization can't be used. The Commissioner personally believes that this is premature.

REGULATORY EFFORTS REGARDING CYBER-RISK & INSURANCE

Rep. Riggs asked if all the Commissioners and the Superintendent are opposed to H.R. 2205 the Data Security Act of 2015 and if they want NCOIL to be opposed as well. It was noted that this is correct.

Commissioner Kerr said that this is a widely publicized issue and one that is extremely serious. The NAIC has a task force that is addressing the issue. This is a serious problem that may seem like a relatively new issue, but it is not. Insurance companies have been in charge of very sensitive information from their customers for decades and have always been in charge of safeguarding that information. This should remain at the state level because each state and each regulator has his or her own issues on cyber security. The Commissioner hopes that NCOIL's involvement can be counted on to stop H.R. 2205.

ADJOURNMENT

There being no further business, the Committee adjourned at 12:36 p.m.