

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS  
NCOIL-NAIC DIALOGUE  
INDIANAPOLIS, INDIANA  
JULY 17, 2015  
DRAFT MINUTES

The National Conference of Insurance Legislators (NCOIL) NCOIL-NAIC Dialogue met at the Indianapolis Hilton Hotel & Suites in Indianapolis, Indiana, on Friday, July 17, 2015, at 3:30 p.m.

Rep. George Keiser of North Dakota, Vice Chair of the Committee, presided.

Other members of the Committee present were:

Rep. Kurt Olson, AK  
Rep. Deborah Ferguson, AR  
Sen. Jason Rapert, AR  
Rep. Joseph Fischer, KY  
Sen. David O'Connell, ND  
Sen. Neil Breslin, NY  
Rep. Bill Botzow, VT

Other legislators present were:

Rep. Steve Riggs, KY  
Rep. Joe Atkins, MN  
Sen. Jerry Klein, ND  
Assem. Maggie Carlton, NV  
Sen. Kevin Bacon, OH  
Rep. Kathleen Keenan, VT

Also in attendance were:

Susan Nolan, Nolan Associates, NCOIL Executive Director  
Candace Thorson, Nolan Associates, NCOIL Deputy Executive Director  
Molly Dillman, Nolan Associates, NCOIL Director of Legislative Affairs  
Andrew Williamson, Nolan Associates, NCOIL Director of Legislative Affairs

#### MINUTES

Upon a motion made and seconded, the Committee unanimously approved the minutes of its February 27, 2015, meeting in Charleston, South Carolina.

FEDERAL INSURANCE OFFICE (FIO)/FEDERAL ADVISORY COMMITTEE ON INSURANCE (FACI)  
Commissioner Jim Donelon of Louisiana said the relationship between the NAIC and FIO/FACI is challenging. He noted that the NAIC had supported the creation of an FIO so the U.S. would have a spokesperson on international matters, but he said that Dodd-Frank specifically states that FIO is not a regulator. He said FIO has called for an international covered agreement on reinsurance collateral, which has become a growing issue. He said the NAIC has expressed concern with this because 31 states have passed reinsurance collateral reform, representing 66 percent of the United States' market premium.

Commissioner Donelon noted that Dodd-Frank mandates that FIO issue a number of reports, including an initial report discussing modernization of insurance regulation at the state level. He said that FIO released the report two years late, in December 2013. He said FIO is also required to release an annual report and a reinsurance report and that the NAIC reviews every one. He said additionally that state regulators have been participating and monitoring efforts of FACL, which was created to assist and provide advice and recommendations to FIO in carrying out its statutory authority. He said the NAIC continues to communicate and cooperate to the extent it can and feels that regulators have established the communication that Dodd-Frank anticipated five years ago.

Rep. Keiser encouraged the NAIC to approach FIO regarding what FIO plans to do that states do not. He said that if FIO were able to identify what states are not doing, then states could accommodate.

Commissioner Donelon said that three FSOC-designated companies have initiated litigation and are challenging their dual regulation. He said that the NAIC supports the litigation and has encouraged the Federal Reserve to create an "exit ramp" and guidelines for designated companies that would like to become undesignated.

#### STATE AFFORDABLE CARE ACT (ACA) IMPLEMENTATION

Commissioner Sharon Clark of Kentucky, NAIC Vice President, reported that states have begun to move past their concerns prior to the *King vs. Burwell* decision but that there are still a number of issues. She said states still don't have a contact at the Center for Consumer Information and Insurance Oversight (CCIIO) and are not getting timely answers to questions. She also said that duplicate regulation is another issue and that CCIIO now has separate teams performing market conduct exams, such as the Department of Labor (DOL) performing reviews on group plans, which is already done at the state level. She noted that there is a continued federal creep on responsibilities given to the states.

Commissioner Clark said that rate increases for 2016 are an issue. She said that when the ACA was passed in 2014, insurance companies were trying to price products on a number of unknowns. She said that in 2015, because of timing, there had been only three months of information to go on. She said there have been adjustments to costs, including increases and decreases. Commissioner Clark said that Essential Health Benefit decisions were left to the states but that they now had until July 1 to choose their new benchmark plans or the federal government would choose for them. She said there are concerns about changing the definition of "small group" in 2016 and how it will affect smaller groups. She also said that co-ops are experiencing solvency issues. She said regulators have been working with co-ops, specifically on getting responses from CCIIO when states are trying to find alternative funding sources.

Commissioner Clark said a new issue has been costs related to air ambulances, specifically ones not affiliated with a hospital and not in carrier networks. She said when air ambulances are called to emergency situations, balanced billing is taking place. Commissioner Clark noted that under ACA, ambulance services are protected but in the case of air ambulances, the coverage is only for ambulances affiliated with hospitals.

Commissioner Clark also said that Pharmacy Benefit Managers (PBM), macro-pricing, and specialty drugs are presenting coverage challenges.

Rep. Kennedy said PBM legislation is pending in Rhode Island. He said that smaller pharmacies are losing money and that it will only be a matter of time until they will be forced to close, which would be a disservice to consumers in those areas.

Commissioner Donelon said that in Indiana there is legislation addressing the relationship between PBMs that are mega-operations and small independent pharmacies. He said that legislation is focused on the failure of PBMs to collect the provider fees that the state charges, even though the small pharmacists would have to pay it to the state themselves. He said that it would be advantageous to examine licensing for PBMs.

Commissioner Clark added that giving some additional authority over the licensing of a PBM could give a state capability to take action against a PBM in order help constituents.

Sen. Rapert said that Arkansas passed legislation about the transparency of PBMs and that he would like to explore the issue of licensing PBMs.

Rep. Keiser said that PBMs and specialty drugs have become emerging concerns in states and that there is a lot of frustration with getting answers on a federal level, especially when states have looming deadlines to make big decisions.

#### INSURANCE REGULATORY EFFORTS REGARDING CYBER-RISK AND CYBER-INSURANCE

Commissioner Stephen Robertson of Indiana said cyber-security has gone beyond being a simple Internet Technology (IT) issue. He said that regulators have the responsibility to set standards and safeguards. He noted that the NAIC recently put out *Principles for Effective Cyber-Security* that are regulatory guidance for insurance companies. Commissioner Robertson said that Commissioner Hamm of North Dakota, Chairman of the NAIC Cyber-Security Task Force, has participated recently in the White House Cyber-Security Summit, has been involved in the Financial Banking and Information Infrastructure Committees chaired by the Treasury Department's Assistant Secretary for Financial Institutions, was briefed by Director of the Federal Bureau of Investigation (FBI) James Comey on emerging cyber issues, and represents the NAIC in the Cyber Forum, which is a committee of regulators across sectors of the economy.

In response to a question by Rep. Botzow as to whether states have appropriate reporting requirements for cyber-attacks and, if so, to whom, Commissioner Clark said that part of the responsibility of regulators is to report any insurance breach to the Federal Bureau of Investigation (FBI) and vice versa. She noted that part of the NAIC Cyber-Security Task Force's role is to create a Consumer Bill of Rights to address issues at the state level as to when a consumer must be notified and have his financial data monitored after a breach. She also noted that recently there has been a surge in the demand for cyber-insurance and that underwriting for it remains a challenge. She said regulators are trying to identify the companies that offer this type of coverage and determine if they are in a financial position to do so.

#### DATA SHARING

Rep. Keiser reported that legislators have concern with big data and how it is being shared. He used the example of a company that was scheduled to release its financial report at a certain time and two hours earlier the information was released by a company that had fished the data. He commented that incidents where hackers take small parts of information over time and form

them together to get a big picture is an issue, especially when dealing with financial, personal or legal data. He said that moving forward, NCOIL will explore this practice as it will certainly create new risk.

#### PRICE OPTIMIZATION

Commissioner Jim Donelon said that price optimization is a new issue and that the NAIC has tasked its Casualty Actuarial and Statistical (C) Task Force to address it. He noted that there is no widely accepted definition of price optimization so the Task Force has been preparing a draft white paper defining price optimization as the "process of using sophisticated tools and models to quantify other business considerations such as market goals, profitability or policyholder retention." He said that the utilization of data has been a source of great innovation in the insurance industry and can reduce premiums and lower costs for consumers. He said that regulators have become concerned about the unintended consequences of insurance companies using rating factors that have no potential impact on insurance claims costs. He said that the NAIC white paper will explain individual state price optimization practices to date and will issue best practices for regulators.

#### ADJOURNMENT

There being no further business, the Committee adjourned at 4:30 p.m.