

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS
NCOIL – NAIC DIALOGUE COMMITTEE
PORTLAND, OREGON
JULY 15, 2016
DRAFT MINUTES

The National Conference of Insurance Legislators (NCOIL) NCOIL – NAIC Dialogue Committee met at the Portland Marriott Waterfront Downtown on Friday, July 15, 2016, at 2:15 p.m.

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

Other members of the Committee present were:

Rep. Matt Lehman, IN	Sen. Dan “Blade” Morrish, LA
Rep. Joseph Fischer, KY	Sen. Bob Hackett, OH
Rep. George Keiser, ND	Sen. Roger Picard, RI
Sen. Jerry Klein, ND	Rep. Bill Botzow, VT
Rep. David O’Connell, ND	Rep. Kathleen Keenan, VT

Other legislators present:

Rep. Lana Theis, MI
Sen. Gary Stanislawski, OK

Also in attendance were:

Commissioner Tom Considine, NCOIL CEO
Paul Penna, Executive Director, NCOIL Support Services, LLC
Will Melofchik, Legislative Director, NCOIL Support Services, LLC

MINUTES Upon a motion made and seconded, the Committee unanimously approved the minutes of its February 26, 2016, meeting in Little Rock, Arkansas.

DISCUSSION OF NCOIL PARTICIPATION AT NAIC KANSAS CITY SUMMIT

NAIC Interim CEO & Chief Operating Officer Andrew Beal stated that NAIC held a special program for state legislators at its recent insurance summit and it was a great success. It provided an opportunity to introduce state legislators, including NCOIL officers, to NAIC’s central office and to have a dialogue with them which covered national and international issues. Mr. Beal stated that ultimately it furthered the goal of providing greater transparency and educating state legislators as to how NAIC functions as an organization. Mr. Beal stated that the plan is to hold a similar summit next year, which will again involve NCOIL leadership.

Rep. Riggs stated that from NCOIL’s perspective it was very informative and we look forward to participating again.

REPEAL OF FEDERAL EXEMPTION OF AIR AMBULANCE REGULATION

Rep. Riggs stated that usage of air ambulances has risen over the last few years, which has impacted insurance costs – the debate is how to best regulate the issue.

Julie Mix McPeak, Commissioner of the Tennessee Department of Commerce and Insurance, agreed with Rep. Riggs' statement that we have seen a substantial increase in consumer activity and in some instances, it has resulted in consumers being balance billed. Some states have tried to regulate in this area but have been preempted by the Airline Deregulation Act (ADA). Additionally, to further complicate things, under the ACA, consumers who receive air ambulance services are protected from balance billing if it is a hospital based air ambulance service. In Florida, there are 24 air ambulances operating across the State and not 1 is under contract as an in-network provider with an insurance company. In Texas, there are 22 air ambulance companies operating but only 1 has contracted with an insurance company. In North Dakota, legislation was drafted to address certain issues with air ambulance services but it was ultimately preempted by the ADA. Commissioner McPeak closed with saying now is the time to discuss how best to deal with these problems.

Tom Considine, NCOIL CEO, then spoke about recent developments regarding air ambulances in New Jersey. Since the State Police started providing this service in NJ, rates have increased from \$1,300 to \$3,500 per run, with the medical costs being billed by the participating hospitals as emergency charges. With the increase in preemption-protected companies, the demand for the services has gone down so much so that no hospitals were bidding to partner with the state police on the service. Further, when the preemption-protected companies entered the market, rates went over \$20,000, and are now approximately \$40,000.

Rep. Keiser stated that this is an issue that NCOIL and NAIC should be working together on. Additionally, Rep. Keiser stated that it is and will be difficult to get anything done on this issue until the ADA is amended. Sen. Hackett agreed with Rep. Keiser in that serious efforts need to be made to amend the ADA.

Eric Cioppa, Superintendent of Insurance for the State of Maine stated that a complaint about this issue was recently sent to his office that stated a consumer was balance billed \$128,000 for an air ambulance ride. He stated that this is a really tough issue to deal with because due to preemption, the states are basically powerless to help. Supt. Cioppa encouraged efforts to amend the ADA.

Rep. Keiser then stated that the whole idea of pre-authorization does not and will not work with air ambulance services. In the situation where a family has an emergency, especially in a rural state, no one is going to be thinking about pre-authorization and prices.

Tim Pickering, Director of Government Affairs at Air Evac EMS expressed his support of the efforts to work together in solving the problems prevalent in the air ambulance marketplace.

DISCUSSION OF FEDERAL EFFORTS OF PRIVATE FLOOD INSURANCE

Supt. Cioppa mentioned that H.R. 2901, The Flood Insurance Market Parity and Modernization Act, passed the House and it encourages the private market to be involved with flood insurance. Congress, therefore, is showing signs of trying to provide more choice to consumers in the flood insurance market. In response to questioning

from Rep. Riggs, Supt. Cioppa stated that the private market is probably not a realistic replacement for the NFIP but we will never know unless it is given a chance.

Rep. Keiser stated that it seems everyone wants the private market to get involved but questioned how it would compete with a subsidized program that is \$23 million in debt. Supt. Cioppa stated that 2 factors may help: 1.) in 2017 the NFIP is up for reauthorization and the issue of actuarially sound rates will be raised and; 2.) the breadth of coverage will be attractive such as content coverage being included.

Washington Insurance Commissioner Mike Kreidler stated that he thinks subsidies are on their way out but they have to be phased out over time – we cannot turn the switch off in one instance. He also stated that he thinks if NCOIL took the position that experience data in the NFIP needs to be public, that would be beneficial for the private market.

Birny Birnbaum of the Center for Economic Justice (CEJ) stated that if we really want to bring flood insurance back to the states in a way that is equitable to taxpayers and consumers, then all of flood insurance should be brought back to the states – make flood part of residential property insurance packages and leave NFIP to be a mega-catastrophe reinsurer and leave the federal government a role to provide financial assistance for those who cannot afford the premiums but not as a subsidy, as an investment in loss mitigation.

NAIC UNCLAIMED PROPERTY INITIATIVE

Commissioner McPeak stated that NAIC is currently working on reviewing and implementing the comments it received on the latest draft of the Model.

Rep. Riggs questioned whether it was necessary for NAIC to get involved in developing a model law on unclaimed property when the NCOIL model has been very successful. Rep. Riggs stated that this was an example of how NCOIL and NAIC need to do a better job of working together and communicating. Rep. Riggs asked whether the NAIC Model is duplicative of NCOIL's or are there differences. Commissioner McPeak stated that many provisions from the NCOIL Model have been adopted into the NAIC Model but what has been very valuable to NAIC has been the opportunity to have frank discussions with State regulators on all provisions

Sen. Hackett asked about retroactivity when dealing with this issue. Commissioner McPeak stated that NAIC is still considering how best to approach retroactivity and that regulators feel strongly about it on each end of the spectrum.

Mr. Beal noted that it is important to mention that NAIC is working on material regarding lost policies. Approximately 15 States have set up lost policy locator services. Mr. Beal stated that the NAIC website provides links to those State services and for the remaining States, NAIC plans to have a form that consumers can fill out to forward to the relevant State consumer service staff. The permanent solution is hopefully by the end of the year to have a national system so that someone can go on the NAIC website and fill out a form which will be available to life insurance companies to do searches in their systems.

Rep. Riggs then stated that he has heard from NCOIL stakeholders that it is important to be as efficient as possible and questioned whether it was a good use of resources for NAIC to work on an unclaimed property Model when NCOIL has already done so. Rep.

Riggs also stated that if it was the other way around, NCOIL would not pursue a model in the same arena NAIC was working in. Commissioner McPeak stated that NAIC has heard the same thing from its stakeholders, and that if NAIC was not so close to a finished product on unclaimed property they would consider dropping it.

Sen. Holdman echoed Rep. Riggs' concerns and stated that as lawmakers, it is frustrating when we feel we've done the battle on an issue and then we see another model being drafted. Accordingly, Sen. Holdman stated that going forward, when NCOIL or NAIC works on model legislation, it would be beneficial to work together and find common ground.

Rep. Botzow stated that to complicate things further on unclaimed property, the Uniform Law Commissioner (ULC) has recently issued a draft of the Revised Uniform Unclaimed Property Act (RUUPA). Rep. Botzow questioned whether we are aware of the differences and implications of all the models out there.

Sen. Hackett agreed that there needs to be better communication between NCOIL and NAIC when working on model legislation.

Tom Considine, NCOIL CEO, stated that a good example of not duplicating drafting efforts is to look to the NAIC Reinsurance Model Law and Regulation. Later on at this Meeting, NCOIL will propose a Resolution endorsing the Model Law and Regulation, not create our own Model.

Commissioner McPeak stated that those concerns are well received and agreed that NAIC and NCOIL needs to improve their communication. Commissioner McPeak also stated that NCOIL and NAIC seem to be in similar positions with regard to the problems surrounding air ambulances so perhaps this would be a good issue for NCOIL and NAIC to work together on a Model.

Rep. Keiser then stated that he was concerned with the 60 Minutes segment on unclaimed property and was disappointed that an NAIC member gave such a one-sided presentation on the issue.

A Representative from Illinois stated that they passed unclaimed property legislation recently but deferred the question of what to do with lapsed policies. He encouraged the NAIC to continue efforts speaking with regulators and the industry about how best to deal with that issue.

REGULATORY EFFORTS REGARDING CYBER-RISK AND INSURANCE

Rep. Riggs stated that Kentucky passed legislation on this issue a couple of years ago and it was well-received. Rep. Riggs further stated that 47 States have passed legislation on cyber-risk and insurance and wondered if NAIC was reinventing the wheel.

South Carolina Department of Insurance Commissioner Ray Farmer stated that this issue is moving quickly and has several moving parts. Additionally, the legislation passed in 47 States does not go into the same detail that the NAIC model does. In the past few years, the NAIC has been involved with cyber-risks and insurance by forming a task force and adopting guiding principles to advise on what to do when a breach occurs. Additionally, NAIC has adopted a supplement to its annual financial statement

to give them a better idea on cyber-risk insurance. With regards to the NAIC model, Commissioner Farmer stated that they are in the process of reviewing the comments received and putting together the next draft; the NAIC welcomes NCOIL input.

Rep. Riggs stated that as more and more cyber-attacks occur, a dilemma is trying to get law enforcement more involved and interested in finding the perpetrators. Rep. Riggs stated that NAIC help is needed when talking with law enforcement on this issue. Commissioner Farmer agreed.

Rep. Fischer stated that he has reviewed the NAIC draft Model and asked how committed NAIC is to the private cause of action. Commissioner Farmer stated that it will most likely be removed in the next draft.

Birny Birnbaum stressed the importance of the NAIC efforts on this issue for two main reasons. First, mitigation – developing best practices for companies to employ to stop breaches. Second – articulating responsibilities of various parties when breaches occur.

PRICE OPTIMIZATION

Commissioner Kreidler stated that 19 States have effectively banned price optimization, mostly through the use of bulletins issued through their respective insurance departments. Commissioner Kreidler stated that he prefers not to call it price optimization but rather a loyalty penalty. His experience is that the industry would balk at the idea of such a practice but he has noted that the filings that come into his department are becoming increasingly complex with intricate algorithms that are very challenging to decipher.

Commissioner Kreidler stated that this issue relates directly to the use of big data. For example, one insurance company stated that frequent voters are better risks. Additionally, social media is being used to categorize risk. These types of things have nothing to do with standard underwriting practices. However, it is tough to draw a line because there is no doubt that some of the data can be useful. This represents a challenge as a regulator: make sure the data isn't used for discriminatory purposes which is hard to do with more and more complex algorithms being used.

Birny Birnbaum stated that big data and price optimization are an existential threat to the state-based rate regulation of insurance. They are obliterating classes of risk. With big data, there is a rate level for individual consumers based on practices that aren't approved by regulators. These types of things will destroy competition and remove the ability of regulators to prevent unfair discrimination in the marketplace.

ADJOURNMENT

There being no further business, the Committee adjourned at 3:30 p.m.