NATIONAL CONFERENCE OF INSURANCE LEGISLATORS
HEALTH, LONG-TERM CARE AND RETIREMENT ISSUES COMMITTEE
LAS VEGAS, NEVADA
NOVEMBER 19, 2016
DRAFT MINUTES

The National Conference of Insurance Legislators (NCOIL) Health, Long-Term Care and Retirement Issues Committee met at the Paris Las Vegas Hotel on Saturday, November 19, 2016, at 1:45 p.m.

Assemblyman Kevin Cahill of New York, Chair of the Committee, presided.

Other members of the Committee present were:

Sen. Jason Rapert, AR
Rep. Jeff Greer, KY
Sen. Dan "Blade" Morrish, LA
Rep. Ken Goike, MI
Rep. George Keiser, ND
Sen. Jerry Klein, ND
Sen. David O'Connell, ND
Rep. Don Flanders, NH
Sen. James Seward, NY
Sen. Bob Hackett, OH
Rep. Bill Botzow, VT
Rep. Kathie Keenan, VT
Sen. Mike Hall, WV

Other legislators present were:

Rep. David Livingston, AZ
Asm. Ken Cooley, CA
Asm. Will Barclay, NY
Rep. Glen Mulready, 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 July 16, 2016, meeting in Portland, Oregon.

DISCUSSION OF PROPOSED MODEL REGARDING PRIVATE DISABILITY INCOME INSURANCE

Rep. Keiser introduced and made brief remarks on the Employer-Sponsored Group Disability Income Protection Model Act. Overall, the Model encourages employers to establish group disability income protection plans for their employees and to enroll eligible employees in those plans. Upon a motion made and seconded, the Committee unanimously passed the Model.

AIR AMBULANCE REGULATORY EFFORTS

Rep. Keiser stated that NCOIL needs to stay engaged on this issue and accordingly made a motion to recommend to the Executive Committee that a Task Force be formed to address this issue. Upon the motion being seconded, the Committee unanimously agreed to make such recommendation to the Executive Committee. Rep. Greer stated that he believes that at the Spring Meeting in New Orleans he will have an Air Ambulance Model Act to introduce. Rep. Greer also stated that he supports the idea of an NCOIL Air Ambulance Task Force.

LONG TERM CARE ISSUES

Eric Cioppa, NAIC Secretary-Treasurer and Superintendent of the Maine Bureau of Insurance, stated that in Maine, despite the health insurance market being significantly larger than the long term care market, he spends as much time on long term care issues as he does health insurance issues. Supt. Cioppa stated that the long term care market is crying out for a private solution. The NAIC has created a Senior Issues Task Force and a Long Term Care Benefit Adjustment subgroup. The subgroup is looking at, among other things, partnership plans which are part of federal law. If you buy a plan that's partnership qualified, people can protect some of their assets. Many States have adopted such plans and one of the requirements for them is that the product being sold has to contain the consumer protections adopted by the NAIC – this will be discussed at the upcoming NAIC Fall Meeting. Supt. Cioppa further stated that the NAIC believes that there is a need for a private sector solution in the long term care industry. There is a tremendous strain on State Medicaid budgets and there needs to be a way for modestly priced and innovative products to be sold on the market. The NAIC has held several hearings to try and understand what the impediments are, both at the federal and state level.

Supt. Cioppa then spoke to the actuarial aspect of the long term care industry. The recognition of trying to sell a product for 20-30 years with a level premium is not working. Some of the actuarial underpinnings like establishing the interest rates at the beginning of a product life cycle don't seem to make sense anymore. The NAIC has a Health Actuarial Task Force and a Long Term Care Pricing subgroup is working on how to deal with rate increases for old closed-block businesses. Some rate increases are exceedingly high – over 50%. But at the same time when, you look at the generous benefits from old policies you can quickly recognize that there are solvency issues for those policies. For example, Penn-Treaty will be put into liquidation and it is a big insolvency with which guaranty funds will have to deal. There is a delicate balance with rate sufficiency and affordability for consumers. One of the things the NAIC has seen are "landing spots." Landing spots are essentially a more structured version of inflation protection reductions. Landing spots allow insureds to reduce their current inflation protection amounts to lower amounts in such a way as to offset the rate increase. The policyholder's current daily benefit keeps the inflation-based increase accrued to date and then begins inflating at a new, lower rate.

Bonnie Burns, Training and Policy Specialist at California Health Advocates, stated almost no one thinks that the problems facing the long term care industry can be solved solely by insurance. Ms. Burns stated that everyone will not be able to buy long term care insurance even if a new product is invented. States will have a risk to their Medicaid programs because younger retirees are not going to be able to buy long term care insurance at all because they are not like their parents – they are people who have less income, less assets, and more chronic illnesses. Unless we find a way to coordinate all of the public resources for long term care with private insurance, problems will continue. Consumers have their own risks with long term care products.

Consumers did what they were told to do – buy an insurance product to pay for the care they need later in life but they are the ones facing the incredible rate increases. Ms. Burns stated that she appreciates landing spots, but if a person takes one of them and then later gets another rate increase, they may end up with a product in the end that is of very little value to them despite all the money they put into it over the years. Additionally, consumers face risk in understanding what they're buying. Some of the newer products are very complex because the industry has merged long term care insurance and annuity products. There is a real challenge for people to continue to pay long term care premiums. For example, when women lose a spouse they lose a significant amount of income. Additionally, the industry cannot tell the difference between a voluntary lapse and a lapse that occurred from a death.

Burns continued to the use of benefits, which is another issue to think about. The person who actually deals with the benefits side of the policy will probably be a family member, who is probably not going to know anything about long term care at all. In many cases, the paperwork is so complicated that claims end up being denied and that often leads to lawsuits. In closing, consumer risk tends to fall under the radar screen because it is overshadowed by the risks facing the insurance companies and States through their Medicaid program.

Supt. Cioppa stated that consumer protection is extremely important. In Maine, several brochures were issued to notify consumers of their rights under these policies. In addition, a regulation was passed that makes clear that the burden for things such as whether a long term care facility is licensed or not falls on the insurer and not the consumer. However, inflation for a product for over 20-30 years is very expensive and it seems that the people that can afford these policies are people that can self-insure anyway. Supt. Cioppa proposed possibly working with NCOIL and/or the federal government on new solutions: is there a way to adjust 401(k)'s so that buying a long term care policy is a tax-free transaction? Can Medicare serve as a reinsurer for long term care? We have to think differently on these issues because when insurers first began selling these products, they didn't know how to accurately price the risk. But now they're better at it and its extremely expensive for consumers. Asm. Cahill asked if the changes to the industry can be done regulatorily or statutorily? Supt. Cioppa stated that at the State level he thinks it can be done regulatorily.

Ms. Burns noted that when we first began thinking of long term care insurance the main issue was the catastrophic cost of a nursing home. But today, nursing home care has been replaced in many cases by assisted living. People can be kept at home at very high levels of efficiency if they have the right tools and care. Costco sells a computerized surveillance system to monitor the outside of your home. If you turn that inside you can monitor those inside your home and connect that information electronically to the adult child's cell phone. Taking that further and thinking of all the technology we have, adult children can work full-time and simultaneously know how their parent is doing. If you then add to that "care management" and "care coordination" you can have people available at certain points in the day who can check on the parent. Ms. Burns stated that you would be amazed at how efficient and cost-effective this would be. This is something for State legislators to think about.

Rep. Keiser asked Supt. Cioppa what is the scope and magnitude of the closures of companies like Penn Treaty on State guaranty funds. Supt. Cioppa stated that some of the costs will be placed on health insurers. NAIC is looking to perhaps prospectively modify State guaranty laws to reflect that long term care was not sold as a health product.

Rep. Mulready stated that not long ago, life insurance companies started allowing accelerated benefits - are there companies out there doing something similar with long term care? Supt. Cioppa stated that we are now seeing more hybrid products – a life product that has a long term care rider or an annuity product that has a long term care rider. Sen. Seward asked if there is a timetable to expect some ideas/solutions from the NAIC Task Forces and Working Groups? Supt. Cioppa stated the goal is to have policy recommendations ready at some point in 2017.

Asm. Cahill stated that due to time constraints, if any legislators or anyone in the audience has a question or statement, they can send the question to NCOIL staff and it will be added to these minutes.

NETWORK ADEQUACY STANDARDS/PROVIDER DIRECTORIES/BALANCE BILLING MODEL LAW DISCUSSION

Asm. Cahill noted that a side-by-side comparison of all the Models that deal with network adequacy standards, provider directories and balance billing will be completed by AHIP before the Spring Meeting in New Orleans.

Dean Cameron, Director of the Idaho Department of Insurance stated that the issue of network adequacy standards is very difficult. The reality is that the Affordable Care Act has changed the dynamics of the relationship between providers and carriers. Idaho has seen a consolidation of providers where physicians have been bought up or joining and participating with large hospital network groups. Additionally, particular provider entities such as dialysis companies have been bought up and owned by 1 or 2 entities. That has made the negotiation for contracts even more heightened. One thing is clear, networks are becoming narrower as carriers are struggling to figure out how to lower prices as regulators and legislators are pushing them to have those lower prices. Provider groups on the other hand are demanding exclusivity in order to offer those carrier prices.

In 2013, the NAIC acknowledged that changes needed to be made with network adequacy standards. After an extensive comment and review period, the NAIC developed the Health Benefit Plan Network Access and Adequacy Model Act. Dir. Cameron stated that he is proud of the work that went into it but it is far from perfect. Of major conflict is the issue of balance billing and in his opinion, the balance billing provisions don't go far enough to protect consumers. Both Dir. Cameron and Supt. Cioppa stated that the issue of network adequacy standards is problematic and is not going away anytime soon.

Sen. Seward stated that his Model focuses on providing protection for patients. The Model, among other things: establishes new network adequacy standards; improves the disclosure requirements for insurers, health care providers and hospitals; provides an appeal process for out of network referral denials; seeks to protect patients from unexpected medical bills from out of network providers; and addresses the problem of consumers choosing policies that allow them go out of network but the reimbursement benefits are woefully inadequate. Sen. Seward stated that AHIP's comparison of all the

Models will be very helpful towards drafting a comprehensive price of legislation on the issues discussed today.

UPDATES

Commissioner Tom Considine, NCOIL CEO, provided brief updates. Cmsr. Considine noted that after a series of correspondence with the U.S. Department of Health and Human Services and Centers for Medicare & Medicaid Services in which NCOIL expressed concern over regulations that would prevent consumers from having Health Savings Accounts (HSA's), they amended their 2017 standard plan offerings to provide an option for HSA's. Cmsr. Considine further noted that NCOIL had commented on a Tri-Agency (DOL, HHS, Treasury) Notice of Proposed Rulemaking (NPRM) that dealt with among other things, excepted benefits, short-term medical insurance and specified diseases or illnesses. Overall, NCOIL noted that the NPRM encroached upon issues that have traditionally been within the state-insurance regulatory arena. Cmsr. Considine noted that the agencies decided to not issue regulations regarding specified diseases and illnesses but did decide to proceed with short term medical product regulation. Cmsr. Considine further noted that given the recent ruling by the D.C. Circuit in *Central United Life, Inc. v. Burwell*, it was surprising to see the agencies proceed with rulemaking. No one has filed a lawsuit yet because there is thought that the regulations might be repealed during the 90-day lookback period by the Trump Administration.

Asm. Cahill closed with proposing that a teleconference be held between now and the Spring conference in New Orleans to discuss whether NCOIL wants to offer comments to Congress and relevant regulatory agencies about the future of the ACA. Rep. Keiser agreed and requested that the recommendation be sent to the Executive Committee. Rep. Keiser also requested that the teleconference be held in December.

ADJOURNMENT

There being no further business, the Committee adjourned at 3:00 p.m.