NATIONAL COUNCIL OF INSURANCE LEGISLATORS
NCOIL – NAIC DIALOGUE
ATLANTA, GEORGIA
MARCH 2, 2018
DRAFT MINUTES

The National Council of Insurance Legislators (NCOIL) NCOIL – NAIC Dialogue Committee met at The Whitley Hotel in Atlanta, Georgia on Friday, March 2, 2018 at 4:15 p.m.

Senator James Seward of New York, Vice Chair of the Committee, presided.

Other members of the Committees present were:

Rep. Sam Kito (AK)
Sen. Jason Rapert (AR)
Asm. Ken Cooley (CA)
Rep. Bart Rowland (KY)
Rep. Justin Hill (MO)
Rep. George Keiser (ND)
Sen. Jerry Klein (ND)
Sen. Bob Hackett (OH)
Rep. Glen Mulready (OK)
Rep. Tom Oliverson (TX)

Other legislators present were:

Rep. Deborah Ferguson (AR)
Rep. Paul Mosley (AZ)
Rep. Darlene Taylor (GA)
Rep. Steve Riggs (KY)
Sen. Thomas Middleton (MD)
Rep. Joe Hoppe (MN)
Sen. Ed Buttrey (MT)
Rep. Ron Tusler (WI)

Also in attendance were:

Commissioner Tom Considine, NCOL 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 November 17, 2017 meeting in Phoenix, Arizona.

UPDATE ON NAIC TRAVEL INSURANCE WORKING GROUP

Sen. James Seward (NY), Vice Chair of the Committee, asked for an update on the progress of the National Association of Insurance Commissioners (NAIC) Travel Insurance Working Group (Working Group). Mike Chaney, Commissioner of the Mississippi Insurance Department, stated that the last meeting of the Working Group took place on February 26 and its progress has been steady. The Working Group's next scheduled meeting is on March 12, and it has been using the NCOIL Travel Insurance Model Law as a starting point in developing an NAIC Travel Insurance Model Law. Sen. Seward stated that having two separate Model laws from two separate organizations on the same topic is not in anyone's best interests, particularly in states that have already adopted the NCOIL Model or that have had it introduced for discussion. Sen. Seward stated that it would be best for NCOIL and NAIC to work together on this issue. Cmsr. Chaney stated that a lot of the discussions in the Working Group have been focused on the Sales Practices provisions of the Model and how best to protect consumers.

Sen. Seward stated that as NCOIL's Model starts to be introduced in States, and as NAIC is developing its own Model, there are no codified standards for travel insurance. Accordingly, Sen. Seward asked what the basis is for the Market Action Working Group (MAWG) actions directed at the travel insurance industry. Cmsr. Chaney stated that one of the lead states in MAWG had conducted a market conduct exam on some in the travel insurance industry, and they entered into some forward-looking agreements that not everyone agreed with. States should not be entering into forward-looing agreements for the rest of the country. Cmsr. Chaney noted that he refused to sign any such agreements in Mississippi because in Mississippi, travel insurance is classified as inland marine which is not regulated by the insurance department. Cmsr. Chaney also noted that his department has received just one complaint about travel insurance throughout his tenure as Commissioner, and it was resolved in 12 hours.

Rep. Steve Riggs (KY), NCOIL Immediate Past President, stated that the procedure for the development of Model laws between NCOIL and NAIC needs to be improved. The process should be similar to how it is often done in states, that is, state insurance departments will advise legislators on what needs to be improved or implemented in a certain industry. If the NAIC thinks that an NCOIL model needs improvement, it should discuss those improvements with NCOIL rather than creating a separate Model. Cmsr. Chaney stated that he understands Rep. Riggs' concerns but that the NAIC is committed to adopting a travel insurance Model law now, while the time is right, to ensure the industry has proper guidance. The worst thing to do is to delay the process further. Sen. Seward closed by reiterating the need for better collaboration between NCOIL and NAIC going forward.

DISCUSSION ON LONG TERM CARE DEVELOPMENTS

Sen. Seward asked for an update and background on the amendments to the NAIC Life and Health Guaranty Association Model Act. Ray Farmer, Director of the South Carolina Department of Insurance, stated that according to the Federal government, 12 million of the current senior citizens in the U.S. will need some form of long term care by 2020. Long term care insurance is a way to defer to those expenses, which has been around since the 1960s, but now there are only about a dozen companies that sell the product. In 2002, there were approximately 754,000 policies and in 2014 that number was down to about 129,000. Dir. Farmer stated that when the product came into the market in the 1960s, it was overpromised, underpriced, and oversold. Other factors have also played a role such as decreased mortality and increased persistency rates.

Dir. Farmer stated that long term care is one of the most important issues in his department and it is troubling that the insurers can probably justify their rate increases but citizens simply cannot pay those amounts. Dir. Farmer still believes in the product. The product is sold as a life product but for purposes of the guaranty fund, the health insurers bear the brunt of it. Accordingly, the NAIC amended its Life and Health Guaranty Association Model Act to make the guaranty fund assessments more equitable among those involved, in addition to assessing HMO's for the first time. Dir. Farmer noted that there have been discussions about placing both solvent and insolvent long term care books of business in run-offs, which has worked well in the property &

casualty industry, but at this point there are more questions than answers surrounding that process and the NAIC has not taken a position yet on whether run-off facilities are a viable solution to the problems in the long term care insurance industry. Dir. Farmer stated that consumers believe they were told in the beginning that their rates would never go up.

Rep. George Keiser (ND) asked if Dir. Farmer could provide the Committee with a sense of the general market condition of the long term care insurance industry without going outside the domain of confidentiality. Dir. Farmer stated that there is some good news in that the product is being revamped in certain ways. Companies are starting to use their imagination to come up with new products but a lot of the rate requests that he sees are on closed blocks of business.

Sen. Jason Rapert (AR) asked how many states have adopted the amendments to the NAIC Life and Health Guaranty Association Model Act. Dir. Farmer stated that the amendments are new so the NAIC does not have that information yet.

Sen. Bob Hackett (OH) asked if the NAIC is seeing more involvement from managed care in the private industry long term care industry because such involvement has increased with Medicaid. Dir. Farmer stated that he has not seen such involvement. Cmsr. Chaney stated that he has seen such involvement mostly with Medicaid and that the real issue with long term care is that most states do not regulate the rates for long term care. In Mississippi, they have been trying to find solutions that result in the consumer keeping their policy without their premiums increasing. Cmsr. Chaney stated that he thinks the problem is that actuaries sold the industry a bill of goods. Some new models are now coming out that are based upon whole-life models which specifies the pay-out amount. Cmsr. Chaney noted that health and long term care insurance costs will never be controlled until we figure out a way to control healthcare costs.

Kate Kiernan of the American Council of Life Insurers (ACLI) announced that they submitted to NCOIL staff information on what states have adopted and introduced the NAIC's amendments to its Life and Health Guaranty Association Model Act.

DISCUSSION ON AHP AND STLD FEDERAL REGULATIONS

Sen. Seward asked what the NAIC thinks about the proposed Federal regulations concerning association health plans (AHPs) and short term limited duration health plans (STLDs). Ralph Hudgens, Commissioner of the Georgia Office of Insurance and Safety Fire Commissioner, stated that carriers continue to leave the individual market and states continue to make sure that everyone has at least one option. In Georgia, Blue Cross Blue Shield was the only provider and last year they had asked to reduce their involvement to only 1 county that has about 1,100 policies in it. After negotiations, in 85 counties, BCBS is the only option. In Georgia, the overriding concern is that premiums continue to rise, and networks continue to narrow. The individual mandate has been reduced to 0 effective January 1, 2019 which means we will see deterioration in the risk pools, higher premiums and more carriers pulling out of ACA compliant markets.

With regard to STLDs, the rule has just been released for comment, and it seeks to change the length of time which they may last, from 3 months to 1 year. STLDs are not subject to ACA requirements. The proposed AHP regulations seek to expand the definition of what is considered an AHP. The NAIC has urged Congress to: ensure that the cost-sharing reduction payments will be made going forward; provide federal reinsurance funding; make the section 1332 waiver process more efficient and flexible; and reinstate the moratorium on the federal premiums tax. Cmsr. Hudgens stated that he believes AHPs are good policy and that comments on the proposed AHP regulations are due on March 6th. Dir. Farmer stated that the NAIC has had discussions with DOL about the its concerns with the AHP regulations and that NAIC will be submitting formal comments by the deadline. Dir. Farmer stated that he has some concerns about the AHP regulations definition of “employer” that could create ambiguity regarding the ability of states to regulate multiple employer welfare arrangements (MEWAs) – which have been problematic for states in the past.

Rep. Keiser asked if there is anything preventing an individual from buying multiple STLD plans from multiple carriers. Cmsr. Hudgens stated that he believes there are no limits on such a practice in the proposed regulations.

REVIEW OF NAIC PUBLIC HEARING ON COVERED AGREEMENT

Sen. Seward asked for an update on the recent public hearing held by the NAIC to discuss the Covered Agreement. Dir. Farmer stated that the international groups generally want the states to strongly consider qualified jurisdictions - extending the same benefits to other jurisdictions that were not part of the covered agreement. The NAIC has begun the process of examining its Credit for Reinsurance Models to see if amendments are necessary. Notably, there are still some states who have not passed that Model yet, namely, South Carolina. Hopefully, necessary amendments will be ready by the NAIC Fall National Meeting.

THE GROWING SIZE OF THE ERISA HEALTHCARE MARKET: WHAT ARE STATE REGULATORS DOING?

Rep. Dr. Tom Oliverson (TX) stated that last year in Texas a law was passed that required mental health parity in benefits but there are a growing number of citizens in Texas that are enrolled in a plan that falls under ERISA jurisdiction. Accordingly, Rep. Oliverson asked what the NAIC’s perspective is about what we should be doing to ensure that the states are governing insurance, not the Federal government. Cmsr. Chaney stated that the growing ERISA market is an issue for state regulators and the problem that arises in situations such as Farm Bureaus forming AHPs is that the consumer does not understand what they are buying. Whether you support Obamacare or not, Cmsr. Chaney believes that the essential health benefits (EHBs) are a good thing and that there should be mental health parity. When you start to pick away at the EHBs, you are left with a policy that is not worth much. Rep. Oliverson stated that state legislators and regulators should work together to ensure that the state-based system of insurance regulation is preserved. Cmsr. Chaney stated that a deep and involved dialogue is needed going forward on just AHPs and STLDs alone to determine their impact on the state-based system of insurance regulation.

Cmsr. Hudgens asked who will regulate health insurance when it is permitted to be sold across state lines. Rep. Keiser opined that it will be the domicile state.

Rep. Darlene Taylor (GA) stated that problems arise when more and more plans are classified as being under the jurisdiction of ERISA as MEWAs were several years ago. Rep. Taylor sated that she is anxious to see how the Tennessee Farm Bureau will be monitored and regulated under the new AHP regulations. Cmsr. Chaney stated that he has cautioned the Mississippi Farm Bureau to crawl before they can walk with regard to ERISA plans, and at some point, states will need to be able to regulate ERISA solvency or else there will be a lot of unpaid claims. Rep. Oliverson stated that this is an opportunity for NCOIL and NAIC to work together to demand more oversight over ERISA plans. Cmsr. Chaney agreed and stated that if regulators and legislators are to fulfill their duty of protecting consumers, they must regulate ERISA plans.

Rep. Justin Hill (MO) stated that ERISA plans are becoming popular because of the mandates. In Missouri, instead of fighting federal law, they are trying to entice people or employers to get back into the individual market by reducing mandates and incentivize STLD plans because they can be underwritten. Rep. Hill encouraged the committee members and the NAIC representatives to encourage the use of STLD plans in their states and bring back underwriting.

Asm. Ken Cooley (CA) encouraged the NAIC representatives to have their legal counsel look into prior opinion letters from the DOL from the early days of ERISA. Buried in those letters issued throughout the past decades, there may very well be a path towards state regulation of ERISA plans. The emergence of 401(k) plans grew out of that procedure.

DISCUSSION OF PHARMACEUTICAL BENEFIT MANAGER REGULATION

Sen. Rapert stated that he hopes that the NAIC will be involved as NCOIL begins the process of developing a Model Law focusing on the regulation of pharmaceutical benefit mangers (PBMs). All parties involved in this issue are regulated, except for PBMs. PBMs have ignored certain laws in Arkansas which has led to the Arkansas Attorney General opening an investigation. The problems associated with PBMs are not unique to Arkansas which is why the time is now to have NCOIL and NAIC involved in developing a Model Law. There needs to be a referee in place to make sure everyone plays fair. Sen. Rapert believes that state Insurance Commissioners are best suited to be that referee.

The Committee then recognized Cmsr. Hudgen’s retirement and thanked him for his years of service and his hard work.

ADJOURNMENT

There being no further business, the Committee adjourned at 5:30 p.m.