NATIONAL COUNCIL OF INSURANCE LEGISLATORS
NCOIL – NAIC DIALOGUE
BOSTON, MASSACHUSETTS
JULY 16, 2021
DRAFT MINUTES

The National Council of Insurance Legislators (NCOIL) NCOIL – NAIC Dialogue met at the Westin Boston Waterfront Hotel on Friday, July 16, 2021 at 10:45 A.M. (EST)

Assemblyman Ken Cooley (CA), Chair of the Committee and NCOIL Vice President, presided*.

Other members of the Committee present were (* indicates virtual attendance via Zoom):

Sen. Mathew Pitsch (AR)
Sen. Travis Holdman (IN)
Rep. Matt Lehman (IN)
Rep. Joe Fischer (KY)
Rep. Brenda Carter (MI)
Sen. Paul Utke (MN)
Rep. Tracy Boe (ND)
Sen. Jerry Klein (ND)
Sen. Shawn Vedaa (ND)
Sen. Bob Hackett (OH)

Other legislators present were:

Sen. Keith Ingram (AR)
Rep. Steven Meskers (CT)
Rep. Tammy Nuccio (CT)
Rep. Kerry Wood (CT)
Rep. Roy Takumi (HI)
Rep. Jim Gooch (KY)*
Del. Courtney Watson (MD)
Sen. Mike McLendon (MS)
Sen. Walter Michel (MS)
Sen. Chuck Younger (MS)
Rep. Hank Zuber (MS)
Sen. Randy Burckhard (ND)
Asm. Kevin Cahill (NY)
Asw. Pam Hunter (NY)
Rep. Wendi Thomas (PA)
Sen. Mary Felzkowski (WI)

Also in attendance were:

Commissioner Tom Considine, NCOIL CEO
Will Melofchik, NCOIL General Counsel
Tess Badenhausen, Assistant Director of Administration, NCOIL Support Services, LLC

QUORUM

Upon a motion made by Rep. Matt Lehman (IN), NCOIL President and seconded by Rep. Joe Fischer (KY), NCOIL Secretary, the Committee voted without objection by way of a voice vote to waive the quorum requirement.

MINUTES

Upon a motion made by Rep. Fischer and seconded by Rep. Brenda Carter (MI), the Committee voted without objection by way of a voice vote to adopt the minutes of the Committee's April 16, 2021 meeting.

NO SURPRISES ACT (NSA) REGULATORY ISSUES

Asm. Cooley stated that one of the main issues addressed in the NSA is the prohibition of balance billing. I'm proud to note that NCOIL in 2017 took great action on that issue with the adoption of the Out of Network Balance Billing Transparency Model Act (Model). Asm. Cooley asked Mississippi Insurance Commissioner Mike Chaney if he could provide an update as to the status of balance billing of consumers since enactment of the NCOIL Model Act and the NSA. Before proceeding to Cmsr. Chaney, Idaho Insurance Director and NAIC President-Elect Dean Cameron thanked NCOIL for the opportunity to be with you and present with you as Rep. Lehman said to me earlier it's unique the three of us here are former state legislators and have walked in your shoes and know the difficult choices you have to make in fact as I was packing for this conference I found an NCOIL badge and brochure from when I attended NCOIL several years ago in Boston so its an interesting time and we're grateful for the opportunity to be with you and we look forward to a continued great relationship as we deal with important issues.

Cmsr. Chaney stated that ill reiterate what Dir. Cameron said of how we're pleased to be here and have an open dialogue. Very briefly, our state has had a longstanding law on the books which says that if a consumer assigned their health benefits to a healthcare provider that they could not balance bill if they were in the network and in the last two years we've strengthened the law to give the commissioner some regulatory authority to enforce balance billing and of course if you go to the hospital and assign your benefits and they are not in the network then the payment would be at the out of network rate. We have basically done this to prevent balance billing in emergency rooms where you have a provider that's on contract and they get a $8,000 or $9,000 surprise bill when a mother takes their child into the ER at 2 am. Its worked very well to prevent balance billing and protect consumers and we've also used this as enforcement against air ambulances. We've had instances where air ambulances would go and pick someone up 10 miles off the interstate and fly them in and the insurance carrier may pay $10,000 or $15,000 depending on how far the flight was which is a normal payment and then the consumer would get a $50,000 or $60,000 bill three or four weeks after and that's not just in my state its common in a lot of states so we took the position that we did regulate to some degree the medical providers on the aircraft and the air ambulances had to prove that it actually cost them $50,000 for a 45 minute flight so we've bene able to keep that genie in the bottle and I'm pleased to say in four years we haven't lost a single case. That may not hold true in the future but so far we are batting fairly well without having to go to court which is a little different than the states like Montana and North Dakota where they have a lot of rural areas so ill now let Oklahoma Insurance Commissioner Glen Mulready talk about some of the issues they have in OK with balance billing.

Cmsr. Mulready stated that as everyone knows some states have passed their own state regulations and laws and some have not and in OK we tried for a couple of years and weren't able to get something pushed through and I jokingly mentioned that it felt like I was beating my head against the wall but the federal legislation came along and the importance of that is that it was meant to supplement and not take the place of anything that any of the individual states have done and it does supplement in some very important areas like Employee Retirement Income Security Act of 1974 (ERISA) self-insured plans and air ambulances as Cmsr. Chaney mentioned. In the law it required a definition of geographic areas and input was sought by the NAIC and we gave our input but they ultimately did not take that and they decided instead of the geographic areas currently used for Affordable Care Act (ACA) plans within the state for pricing purposes they did a different definition instead so there will be fewer areas and fewer payment amounts we'll see what happens there. A survey has gone out to all regulators in fact I believe it was due yesterday and there are a lot of states like OK when we are being asked who regulates provider billing in your state and you get on some conference calls and hear some crickets because a lot of them are not authorized to do that so there are many states including ours that need to take some action on that or it will just revert to the feds to fulfill the enforcement on that.

There is some feedback and additional space for comments on NSA regs that I believe is due on Sep. 7th and I'll read some feedback we received that will probably be included in our comments to them – 1.) need a clear definition of covered services to prevent carriers form using provider exclusions, tiered networks and other language to limit protections for consumers; 2.) specify the authority of the states to enforce air ambulance provisions to avoid any challenges under the Airline Deregulation Act (ADA); 3.) suggesting we need flexibilities for the states to define geographic areas as I mentioned earlier they are using a different definition than we recommended; 4.) need funding for the states to enforce those federal laws as there currently is no funding provided at all; 5.) clarification for how more protective state laws might play out especially in areas of disclosures where states don't allow waivers of protections; 6.) needing more info on how state and federal oversight will be coordinated with complaints that are filed. We have a potential collaborative agreement with the feds that they've talked about but there is no detail for that so what would that look like we don't really know. That's about it for feedback with us for the NSA as its playing out.

Asm. Cooley stated that the points you make on geographic regions is sort of a theme - as state regulators do you have an undercurrent of worry that you have the federal level in various areas entities jumping into the insurance space and not understanding how state based regulation has worked with the regulators and resources and the systematic way you have sought to undertake your responsibilities and not understanding the logic to your issues at the state level and not wanting to reinvent the wheel. Cmsr. Mulready stated that's at the center of the NAIC's concerns with the definition it just shrinks it down too much and when you are talking about paying a fair reimbursement level we believe that the better approach is what was suggested and used in the pricing areas under the ACA. Asm. Cooley stated that its just a question of they are introducing their take on how to solve these things and not necessarily knowing how its regulated. Cmsr. Chaney stated that under the ACA most states were required to have geographic districts and that's for billing purposes and the NAIC took the position that and the Centers for Medicare & Medicaid Services (CMS) has told us that they must consult with the NAIC on the definition of geographic areas and the NAIC recommended using the geographic areas that already exist within the states under the ACA so for premium pricing purposes and consistency and alignment with premiums. Its out there and we think the states should be able to regulate like you say Asm. Cooley we are in your corner on that.

ENVIRONMENTAL, SOCIAL, AND GOVERNANCE (ESG) ISSUES

Asm. Cooley stated that brings us to ESG issues which has become an important new acronym across the entire govt and business sector and asked for comments from NAIC representatives.

a.) NAIC Special Committee on Race in Insurance

Dir. Cameron stated that the NAIC acknowledges and thanks NCOIL's work in this area and looks forward to reading and understanding its work and collaborating on that. I have to tell you when we started this one of the first persons I called after the NAIC officers decided to take on this issue was to Rep. Lehman because we knew this was a big enough issue and important enough and that we all despise inappropriate discrimination and unfair treatment of your constituents and consumers. He was one of the first persons I called and solicited NCOIL's help. As you know NAIC created this Special Committee last summer the first of its kind in it's history which is currently chaired by NAIC President and Florida Insurance Commissioner David

Altmaier and myself as President-Elect and then with Missouri Insurance Director Chlora Lindley-Myers as Vice President and Connecticut Insurance Commissioner Andrew Mais and Secretary-Treasurer serving as co-vice chairs. The Committee has five critical workstreams. The first two are on researching and analyzing the level of diversity within the insurance industry and then on the state regulatory front within our state depts. as workstream two. The third, fourth and fifth workstreams look at what barriers exist in the insurance sector that politically disadvantage people of color or historically underrepresented groups and we are wanting to make sure they are equally protected and treated under either property & casualty or life and aunties or health insurance lines.

The full committee met a few weeks ago to hear comments form interested parties on our draft charges and we just recently this week discussed those draft charges and we will be publishing those draft charges after our July 21 meeting in which we hope to adopt the charges for the remainder of 2021 and through 2022. Those charges will be on our website and we will make sure that NCOIL has an opportunity to see them and will appreciate any thoughts and comments. We know that they are not going to be perfect and are not written like me or Cmsr. Mulready or Cmsr. Chaney would write them but they are a combination of voices within the NAIC. The special committee will hold a public meeting in our national summer meeting in Columbus in August and the other workstreams will continue to work and meet and gather info. There are a variety of opinions some stronger than others on this process that its taking a little longer than we would hope as you know the NAIC is a thoughtful and deliberative organization that takes its time on things but we are committed to exploring and making sure there is no unfair discrimination, unfair bias, proxy discrimination, or disparate impact on the products being offered but we acknowledge these are complex and difficult issues and we need to be deliberative in order to avoid unintended consequences in the market. We have been working equally with out consumer reps and industry to make sure things are treated appropriately and I have to say we are encouraged with the open and unprecedented discussions that have taken place on these difficult issues.

Asm. Cooley stated as you alluded to NCOIL concluded its fifth and final meeting of its Special Committee on Race in Insurance Underwriting yesterday. There is an ongoing curiosity of the work of the NAIC's committee but Rep. Lehman would you like to offer some comments about our experience and work product. Rep. Lehman stated that we did wrap up yesterday with our special committee with three resolutions but specifically the one on the use of certain factors in underwriting I would love to see how that is received at the NAIC and the direction its going. We had very good meetings and saw a lot of data that was presented over the course of those meetings and what really kind of rose to the top was the one issue that we included in the resolutions which is the arrest issue. Other issues I think are probably ripe for continued discussion. I do think it's a broader discussion than the use of artificial intelligence (AI). I think with our resolutions now being adopted as issues come forward specifically they will be assigned to respective committees but we will continue to watch and be a resource if needed with the NAIC. Rep. Lehman asked the NAIC reps if there are any comments on the NAIC's timeline with its specific committee.

Dir. Cameron stated that they look forward to reading the Resolutions. I know that we have a group that is also looking at AI and how its utilized and we have a couple of different working groups and task forces I will tell you that we are pushing forward and creating a another letter committee that focuses on cyber and data and AI and that's the first time we will have a new letter committee in a long time but that was prompted at a recent meeting and we will be voting on that bylaw change probably in Columbus and we look forward to collaborating with you because I think as regulators we want to know what's in that black box that's determining rates as that's our responsibility and we think carriers should be able to explain and justify what the calculations are and how they arrived at their calculations. Cmsr. Mulready stated that as described a new letter committee added that was at Dir Cameron's initiative so that was his push and kudos to him because we do have big concerns about that and the black box and rate review and that process used to be a lot simple a few decades ago but has become complex and I think that new committee will be very helpful to dig through some of that stuff.

Asm. Cooley asked a question but it was difficult to hear due to technical difficulties with Zoom. Dir. Cameron stated he believes he understood the question which was what is the status of the adopting of charges. Dir. Cameron stated that we discussed the charges at length during our recent meeting and we will be meeting next week on the 21st and be voting on those charges is the intention. They have been modified and we have sought public comments and received it and have modified them to accommodate some of the suggestions made by industry, trade groups, and consumer reps. They're still not going to be perfect but its time that we move passed adopting the charges and start to get into the real data collection. Cmsr. Chaney stated that I think Cmsr. Mulready and Dir. Cameron have covered everything very well but the arrest issue is something that we will have to tackle in the C committee especially in P&C and how do you address that issue and I know every legislator is always asked about credit scoring and other issues so with AI and proxy discrimination you have some issues with the databases we have today because we aren't certain what the data contains on AI as an example if somebody is improperly discriminated against simply because of AI or proxy discrimination you don't know what proxy was sued so it presents a whole host of issues for us as regulators to address those issues.

Rep. Lehman stated that one of the key issues which was used in one of the resolutions is transparency – its one thing to know what's in the box and its one thing to be able to explain it to the end user and we are seeing that now in our industry where someone will say I know when we did credit scoring you had to give me the factors that went into the adverse selection of my rate yet now with my insurance sore I went form a t5 to a t7 and had a percentage increase and I ask what's in there and the answer is we don't know. So I think part of this is not just what data is going in but how is that being displayed to the end user and consumer and I think we all saw the tweet about Lemonade about the collection of 1,600 data points and you have to ask the question what 1,600 things does an insurance carrier know about me to determine my rate. That's troubling I think just in the sense of the unknown of what is being collected so I think we are on a joint mission in a way of consumer protection as regulators and public policymakers so I think we will want to work with you on that with transparency and AI and discriminatory issues.

b.) Regulating Climate Change Risks

Asm. Cooley stated that we're seeing in the West and really all over the country unprecedented things related to droughts and wildfires and other things. Asm. Cooley asked for an update as to what specifically the NAIC's Climate and Resiliency Task Force will be working on and what its timeline is. Cmsr. Chaney stated that this isn't a new topic for the NAIC as its an old topic as the NAIC has had its climate and resiliency TF under the C committee for many years and has been elevated to an executive TF and highlights our goal at the NAIC to address climate issues and to that effect the TF includes 33 states and territories and is led by CA Insurance Commissioner Ricardo Lara along with SC Insurance Director and NAIC Immediate Past President Ray Farmer. We have five members that serve as vice chairs. The mission of the TF is to serve as the coordinating NAIC body for discussion and engagement on climate related risk and resiliency issues acknowledging there are other groups in the NAIC who have or will need to be involved in any regulatory recommendation related to climate risk and resiliency and that's important for members of NCOIL to understand that we don't work as one man on an island we work as a group and try to coordinate some of our efforts which is especially important with data collection and AI with the new committee Dir. Cameron has put together.

The pre-disaster workstream is led by WI Insurance Commissioner Mark Afable; the building code and mitigation part of that includes 19 state DOIs and if you are from a coastal state you will understand you need building codes and its not rocket science to understand that you need a stronger house if you are on the coastline and stay out of the floodplain as its real simple stuff if we can do this. The climate resiliency workstream is led by OR Insurance Commissioner Andrew Stolfi and there are six states in that group. The solvency workstream is led by MD Insurance Commissioner Kathleen Birrane and the HI Insurance Commissioner Colin Hayashida leads the innovation workstream which is charged to consider new innovative insurance products. You must have new products which might include non admitted products to try to address some of the climate change issues and things like earthquakes and wildfires. The final workstream is the technology workstream and that will have to work very closely with the new AI committee if adopted so we have our work cut out for us on climate change – whether you agree with it or not we do face climate change and we know from history that its been around for a long time I'm not going to debate whether its caused by man or not you have to remember I'm from the south so I may gave a different opinion but if you are from AZ and its 114 degrees you may start wondering what climate change is about today. We have some new committees that we have formed under the C committee and the catastrophic working group at the NAIC and one of them deals with the Federal Emergency Management Agency (FEMA) and I will let Cmsr. Mulready address that as he has been asked to be the Vice Chair along with WV Insurance Commissioner James Dodrill to address some issues so if we can have a better working relationship with FEMA on some of the issues of climate change that would be great.

Cmsr. Mulready stated that I don't have a lot to add except that development is literally three or four weeks old of the creation of that new FEMA catastrophe advisory group and ill be vice chair of that along with Cmsr. Dodrill so we're just getting that going and there has been no action taken but just emphasizing the importance of bettering the relationship and interacting with FEMA going forward.

Asm. Cooley stated that he is certainly familiar with climate change being an issue at NAIC meetings for at least 15 years and we are seeing states like CT start to pass statutes involving climate related risk in the insurance business. How do you see this movement affecting the accreditation process - obviously accreditation is looking at supporting the solvency of carries – do you see a long term integration of some of these climate issues in accreditation? Cmsr. Chaney stated that if a company has risk out there that is on their balance sheet and we cant weigh that risk it affects surplus so that is really the main job as regulators is to be certain enough that insurers are solvent enough to pay claims and the other part of it is to protect the consumer so its going to present a whole host of issues for us as to how do we determine and that would be out of the E committee at NAIC on solvency how climate change will affect the balance sheet.

There are so many things we have to deal with on the balance sheet including security valuation which we have at the NAIC so when we get to statement on statutory account principle (SSAP) 71 that's another issue which is not climate related but is an example of what we have to look at as regulators in balance sheets looking at solvency and other issues. I hope that answers your question. Asm. Cooley stated that yes the question was more about accreditation but in CA I know that it passed some insurance legislation regarding green investments and it was kind of structured in a way to adjust make sure it was integrated with the solvency requirements and investment rules to support their solvency. Cmsr. Chaney stated that on that line let me just say as a Commissioner and a regulator I do worry about what constitutes accreditation at a state level when we are reviewed every five years you'll understand for accreditation the issue there should be that the body as a whole at NAIC should determine those issues and not one person or a bureaucrat on a committee that Is down in the trenches I think that will give you some solace Asm. Cooley I hope so. We are addressing that issue its just not at the top of the ladder.

Rep. Tammy Nuccio (CT) stated that NAIC is really an arbiter of a lot of data regarding info to help us make good legislative law so yesterday we learned about the Safeguarding Tomorrow through Ongoing Risk Mitigation (STORM) Act and talked a lot about flood which we can link back to climate change and there was a suggestion that as a state we should be passing legislation to utilize the money that the fed govt is making available for flood plain areas so I'm wondering if you guys have used that data regarding resiliency and climate change and if we wanted to look at passing model legislation regarding that where could we partner with you to obtain data to understand how much is flood impacting our insurance rates and if we were to pass legislation to alleviate those zones what could we expect to see in terms of returns from insurance.

Cmsr. Chaney stated that ill address that from a state specific standpoint – I've been dealing with flood for 14 years as a Commissioner and 15 years as a legislator. Risk rating 2.0 which you heard a lot about yesterday form FEMA presents a host of problems for states, not so much my state, but if you are in LA where you have almost 500,000 policies or SC you are in trouble but flood affects every state in the union just as you turned on your TV this morning you saw that so states are going to have to address the flood issue on a state by state basis the problem has been the fed govt talks a good game but they have never really tried to fix the National Flood Insurance Program (NFIP). As a regulator I've tried to go around that and say ok if that's the case lets see if we can get an admitted company to do flood endorsements which we have been able to do in our state and FL has been able to do a little bit of what we have done and to bring in some of the surplus groups like Lloyds and others to write flood insurance.

Now the reason I am telling you that is you have to understand can they write in certain zones. If you do away with the zones its not a big issue because let me tell you the technology today within the last two years has come around and we can tell you specifically what the elevation is of a home and can tell you whether a home was destroyed by a storm surge such as in Rhode Island and Massachusetts or whether it was destroyed by wind so there are a lot of new things coming out. I would be careful and put a lot of flexibility in a statute if that's what you're trying to do so I would just say from a state specific standpoint be very flexible and don't kill things that are working and leave the ability to protect the consumer. Consumers have to buy into the flood program if they are going to be protected.

Rep. Nuccio stated that she understands that and appreciates that feedback but what I'm looking for is basically a partner in being able to identify where we could use this to actually help mitigate that so trying to find a way to get the data to help support us writing some sort of legislation that's going to help us utilize this federal money because as you said if all we are going to get from the fed govt is the ability to have a revolving loan program that they are going to do a 90-10 match on how do I optimize that in my flood zone. Cmsr. Mulready stated that he's not sure he can answer that but he will speak on behalf of his state in that they are ready and willing to find and produce data to do the best things for flood management and how to utilize money the best because it is about resiliency and mitigation efforts and there is data out there. The NFIP is not necessarily the best and quickest in terms of getting data and unfortunately in many states that's the only source of flood data. Cmsr. Chaney stated that you need to understand that FEMA agreed to share the data with us about six months ago and now Cmsr. Mulready will have to deal with that as vice chair and it's a huge problem because the data is so massive and someone has to go through it so what method do you use to get it at a granular level to something where you can actually use it. The problem is going to be you are going to get a lot of promises out of FEMA and they rarely deliver.

Asm. Cooley stated that on issues like this I suggest to Rep. Nuccio to sit down with her insurance commissioner and have a direct conversation about data as its a good path and they can help you figure out accessing what the NAIC might have and what specialty staff they have so a partnership with the insurance commissioner's office is a good way to go .

REVIEW OF INTERNATIONAL MONETARY FUND (IMF) 2020 FINANCIAL SECTOR ASSESSMENT PROGRAM (FSAP) REVIEW OF THE U.S. FINANCIAL REGULATORY SYSTEM

Asm. Cooley stated that last year the International Monetary Fund (IMF) completed its 2020 Financial Sector Assessment Program (FSAP) review of the U.S. financial regulatory system. This review included the insurance sector, as well as the banking and securities sectors, and was coordinated by the Treasury Department Office of Financial Markets. This was the third FSAP for the U.S., with previous FSAPs taking place in 2010 and 2015. There was one recommendation included in the report which caught our attention titled "The targeted review of the state-based insurance regulation and supervision found that supervisory independence remains to be addressed." So they have treated the independence of the state based regulatory system in some respects at least in their view something that needs to be addressed. They talked about supervisory independence—perceived or actual—is likely to be undermined by the appointment of insurance commissioners and their senior staff by state governors in several states or the direct election of the commissioners in others. They also expressed concern over governance and control over budgets and staff renumeration. I'm interested to hear how the NAIC is viewing this sort of FSAP process and these sorts of questions and what the NAIC's reaction was.

Dir. Cameron stated that there was a private reaction and then a public reserved reaction. Ill just say that this is a five year process and its long been felt particularly by the international community that they don't care for the sate based regulatory system and we of course strongly support it and know that there are even those at the federal level that call for a more centralized fed govt system of regulation they don't necessarily want to deal with the states. We are the largest insurance market worldwide and we really control and should control it and while we appreciate their comments we feel like the assessment went beyond the bounds of its authority and beyond the bounds of where they should have been as there is no evidence whatsoever in fact evidence to the contrary that the way we appoint, elect, unselect or unappoint commissioners has any impact on the solvency of the insurance industry in America so we respectfully disagree with their assessments. There was suggestion that you as legislators should change the way that those are appointed so that our term is a set term and coincides with the governor term well that is again really beyond their authority. There is nothing in my opinion whatsoever that indicates that our markets are less solvent because of our current appointment and election process. In the interest of time ill stop there as there are a number of suggestions that if we need to get our blood pressure up we can react to them but I'll leave it there.

Asm. Cooley stated that when I see these types of comments I was actually advising the CA assembly in the 1980s on insurance when NAIC adopted accreditation and the earliest accreditation statute passed in CA and went through my committee so I certainly recognize that the NAIC has this long tradition of accreditation related to required laws, financial standards and organizational things and I think you are 30 years into your insurance dept resources report kind of profiling what is the staff support for an insurance dept setting a sort of implicit standard for what is adequate staffing to meet the regulatory challenges and your licensing laws. I partly view this as they don't understand the character of the work and law which underpins the state regulatory system and while I am always worried about delegation I think on this issue the accreditation standards are very important and are something to be educating them on. I can understand your private conversations and more temperate public remarks.

Dir. Cameron thanked Asm. Cooley for comments on accreditation as we certainly take that very seriously and work very collaboratively to make sure those standards are strong to protect consumers and the industry. Asm. Cooley stated that I do think the climate change efforts need to be kept in the solvency conversation as we start looking at rules of investing and how that relates to resiliency and sustainability we need to keep a focus on its impact on solvency so I see this as two very interconnected conversations.

UPDATE ON PROPOSED CHANGES TO SSAP NO. 71

Asm. Cooley stated that we continue to have interest in the proposed changes to SSAP No. 71 and the bottom line for us is that we feel that we are in a position of economic turmoil for those companies affected and NCOIL has supported a five year phase in for this. Is there any update on this topic? Cmsr. Mulready stated that for those who have not been involved with the issue, basically its tied to insurance companies utilizing third party arrangements to finance upfront commissions and the accounting of that. We had our accounting practices TF reviewing that and they had decided that it was a non substantive issue versus a substantive issue and that's not inconsequential because the way that process works is that if that TF calls it a non substantive issue they are just saying they are clarifying something so that immediately goes into effect upon their vote and approval. The officers I think in a very wise move decided to still call it non substantive but treat it as if it were substantive so it went through a multiple step process and it was voted on in March through the TF and moved to the E committee and that was voted on April 13 and we will next address the issue in our August meeting in Columbus.

I will let you know from an update standpoint is that two things impacting it substantively are 1.) the implementation date – the original implementation date was 12-31 of this year but there is a number of regulators who believe its not a fair timeline at all given that we're not going to vote on it until August and there are only a handful of companies that are affected as its not a widespread practice so there is a lot of move afoot to allow for a phase in; 2.) change in bylaws – Louisiana Insurance Commissioner Jim Donelon has put forth a change in our bylaws that would require any of those E committee decisions to trickle up as this has. There is also discussion about changing the rules in that committee so that decision will be made and voted on in our August committee meeting whether we change the rules in the committee or make actual changes to bylaws. I think one thing I'll throw in is that some suggestions by others are that it should just be handled with a permitted practice and some of the pushback by some of the regulators is that permitted practices are in some circles sort of frowned upon in the accreditation process so they are not thrilled about that.

Asm. Cooley stated that from prior conversations NCOIL has recommended a five year phase in and I hear you are saying there is a conversation about a delayed effective date from within the NAIC as they debate this. Do you anticipate that it will probably not be made on 12-31 of this year? Cmsr. Mulready stated that yes my opinion would be that I think there will be a push to delay the implementation and the question is how far. To be transparent I don't think it will be five years as most of these arrangements don't even carry out five years so I think somewhere there might be a delay but it probably won't be five years. Cmsr. Tom Considine, NCOIL CEO, stated that we almost have three commissioners who its preaching to the choir on this issue so I am wondering if siting on either side of you if we had the WV and ME commissioners would your confidence remain as high that the effective will be put off 12-31. Cmsr. Mulready stated that they would clearly have a different perspective. Dir. Cameron stated that I'll add that this was discussed at our recent meeting and I think most would like to see a resolution and there are very strong opinions on both sides but I think most would like to see reasonable resolution and it won't likely come into effect 12-31 but I don't think it will be five years it may be two or one year. Cmsr. Mulready stated I didn't mean to disparage my colleagues in any way but what you'll find is that those who have come from the financial accounting world they tend to have a very rigid perspective versus a market perspective others have.

DISCUSSION ON FEDERAL INSURANCE OFFICE (FIO) REQUEST FOR INFORMATION (RFI) REGARDING PERSONAL AUTO INSURANCE MARKET

Asm. Cooley stated that under FIO's statutory authority this certainly seems like something they are authorized to do – to monitor trends and engage in inquires on how the market is working. This came out in just the last two months and one can hardly ask questions about seeking information on these markets without being in the NAIC's bailiwick so is this something you have responded to or plan to respond to? Cmsr. Chaney stated that NAIC will respond but its going to take us some time and we have been dealing with FIO on auto insurance for well over a decade and there is a move at FIO to have one universal type auto insurance policy run by the fed govt claiming its run by the states. It's become an issue and the bottom line is we are state based regulators and that's where it needs to be we don't need the fed govt telling us what our auto premiums are going to be for everyone in the U.S it would be a nightmare so we will address it.

DISCUSSION ON NAIC LONG TERM CARE INSURANCE (LTC) MULTI-STATE RATE REVIEW FRAMEWORK

Asm. Cooley stated that yesterday we heard from guaranty association representatives that they look at LTC as an issue of long term interest and concern to the guaranty funds generally. It is outstanding the manner in which the NAIC has responded to the gravity of the LTC environment and solvency and how it affects customers. Is there an update on your LTC insurance TF that can be provided.

Dir. Cameron stated that we see this as an existential threat to our state based regulatory system because the number of companies have dramatically diminished as it wasn't too long ago we had over 100 insurers writing standalone LTC products and now we have less than 20 and probably less than 15. We have roughly 7 million policies nationwide and the solvency of those companies are a continued threat as it seems every year we have a new company that is potentially in a solvency issue so it remains a top priority. One of the challenges or issues that we have faced and there are many to the whole market is the fact that it was not appropriately underwritten or the actuaries did not adequately account for the increased costs and morbidity and mortality and length of time people would keep these policies and declining interest rates and all of those issues but on top of that as state regulators every state has addressed these issue differently and it will be shocking to no one but each carrier may be presenting their need differently to each state so we've had a number of issues and one of the solutions that the TF has been working on is a multi state review framework which would allow multiple states at the same time to gather info in a collective manner and then that data would be shared with each state. It does not however take away any authority or responsibility for the sate commissioner to review or do its own analysis it just merely is an additional data point and reference point by which we can define using the same methodologies and info as to whether a rate increase is needed and by the way we know the lack of rate increases is leading to the insolvency of some of these plans and some companies and it's a balancing act and we're working really hard to protect consumers to make sure they are not priced out of the marketplace but also that there is a product in the marketplace that you can purchase at an affordable rate. We have continued to make inroads with congress proposing different ideas as to how to improve the marketplace the most recent one was support of legislation allowing people to take money out of their 401k or IRA to help pay for premiums for their LTC product those have all been endorsed by the NAIC and are being supported and we continue to look to other areas to provide solvency in this very touchy area.

Asm. Cooley asked are you working on anything related to reduced benefit options (RBOs) such as the potential development of mechanisms to help regulators and consumers. Dir. Cameron replied absolutely and noted that we have a subcommittee of our TF that is focused strictly on that and as you know there are a coupe of legal issues where the NAIC or NAIC members are involved in trying to protect consumers and make sure consumers have adequate info and appropriate choices moving forward. Asm. Cooley stated it's a complex issue and in CA just this week the CA public employee retirement system settled a lawsuit of about 79,000 retirees who had bought a policy 15 years ago with a guaranteed benefit no increase in rates and that's a multi million settlement potentially around their LTC product so it's a very complex issue.

Sen. Bob Hackett (OH) stated that one of the things I learned in OH is that OH during the pandemic shut down all increases which I think is a major mistake because all the money is coming down from the feds so when you kick the can down the road as we have a new commissioner she's dealing with it its a tough issue. Sen. Hackett asked if a lot of the states did the same thing in terms of recommending states hold off on increases during the pandemic. Dir. Cameron stated there was no recommendation from the NAIC and in fact probably to the contrary. None of us like rate increases but at the same time when the solvency of a company is showing that in order for them to stay alive there has got to be some sort of an adjustment we want to make sure it's a reasonable adjustment and we want to make sure one state isn't subsidizing another state so that's part of the issue on our multi state analysis once it gets up and running. We've run two or three test cases through the system and trying to show folks how it will work. Hopefully it will be there and will be one more data point commissioners can address.

Cmsr. Chaney stated that the real issue for the states is most of us don't control the rates we do it by what called desk orders. The issue before NAIC is that the Senior Health Insurance Company of Pennsylvania (SHIP) is asking along with VA Insurance Commissioners Scott White to let the courts set the rates or all the various rates since SHIP is in rehabilitation and that's a bone of contention for states who think the rates should be state specific so that's a real issue and we'll work through it. Several states including MS have joined in with an amicus brief or a suit to try and rectify that so that bankruptcy courts cannot set rates for it. Cmsr. Mulready stated that the efforts being led as pushback for consumer protection are LA in one court and MA and ME leading the other one.

ADJOURNMENT

Hearing no further business the Committee adjourned at 12:00 p.m.