

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS  
LIFE INSURANCE & FINANCIAL PLANNING COMMITTEE  
NEW ORLEANS, LOUISIANA  
MARCH 4, 2017  
DRAFT MINUTES

The National Conference of Insurance Legislators (NCOIL) Life Insurance & Financial Planning Committee met at the New Orleans Downtown Marriott on March 4, 2017 at 1:15 pm.

Representative Joseph Fischer of Kentucky, presided.

Other members of the Committee present were:

Sen. Jason Rapert, AR  
Asm. Ken Cooley, CA  
Sen. Travis Holdman, IN  
Rep. Jeff Greer, KY  
Rep. Steve Riggs, KY  
Rep. Michael Webber, MI

Rep. John Wiemann, MO  
Rep. George Keiser, ND  
Sen. James Seward, NY  
Sen. Bob Hackett, OH  
Rep. Marguerite Quinn, PA

Other legislators present:

Rep. Lois Delmore, ND

Rep. Deborah Ferguson, AR

Also in attendance were:

Commissioner Tom Considine, NCOIL Support Services, LLC  
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 18, 2016 meeting in Las Vegas, Nevada.

## UPDATE ON DOL FIDUCIARY RULE

Sen. Jason Rapert (AR) expressed his appreciation to the committee for discussing and working on his Resolution opposing the Rule which he stated was brought to a halt earlier this year. Sen. Rapert said some of the largest firms have already changed business models and that it was an interesting dynamic. Some of them refused to change their models and he went on to say that they listen to the industry and organizations like NCOIL.

Kate Kiernan from the American Council of Life Insurers (ACLI) stated that the DOL has delayed the rule until April and ACLI is hopeful to have the rule further delayed. Ms. Kiernan reported account minimums were raised and the rule limit choices. Currently

the ACLI seeks to replace, not repeal this rule and is looking forward to working with the Administration on this.

Sen. Rapert stated that in talking to advisors in the industry, the rule has presented an ethical dilemma. Many advisors are considering leaving firms because they reject the notion that client accounts that they have in a good situation and have been managing for the past 20 years will have costs raised without a change in investment approach. Sen. Rapert stated that he has read the rule will result in \$15-17 billion dollars in extra costs that ultimately will be passed on to consumers.

Rep. Joseph Fischer (KY) asked if the moratorium has impacted the ongoing court cases. Ms. Kiernan responded yes, it has, and that the ACLI is at a pause to wait and see what happens before moving further.

Birny Birnbaum from the Center for Economic Justice (CEJ) stated four courts have upheld the rule and those are courts selected by industry to pursue these challenges. The courts have found that the multi-year process and deliberations regarding the rule was done appropriately and fully within the DOL's authority and responsibility to workers. He stated that many advisors were already adhering to the fiduciary standard and many more have pledged to do so regardless of the outcome of legal challenges, and that consumers need and deserve retirement investment advice from advisors who put the clients interest first. Hundreds of consumer, worker and adviser organizations have and continue to support his rule and dozens of editorials across the country have urged support of the rule. More than ever, the opposition to the rule is coming from organizations selling the higher-cost products. Mr. Birnbaum also stated that the mere prospect of the rule has already increased reasonable options for small investors.

Mr. Birnbaum stated that another issue is the federal government acting because states haven't. States could have pre-empted the DOL rule by addressing the issue of conflicted advice – either by mandating a fiduciary standard for insurance producers or even by addressing the compensation schemes used by insurers which fail to align the interests of consumers with producers. He suggested that state legislatures and regulators work on those issues to broaden consumer protection beyond retirement investments and to render the rule unnecessary.

## DISCUSSION ON THE USE OF BIG DATA IN LIFE INSURANCE UNDERWRITING

Mary Bahna-Nolan, MAAA, FSA, CERA, Executive Vice President, Head of Life R&D at SCOR Global Life, stated that from a customer perspective, underwriting has been perceived as the major obstacle on the customer's pathway to purchase. Consumers find it to be a complex, time consuming and lengthy experience. Many consumers do not understand the purpose of underwriting or the process. Enhanced and accelerated underwriting techniques remove the perceived barrier to the insurance application process. Accelerated underwriting (AUW) is a process by which non-medical and medical information gathering may be customized to the individual applicant. The information gathered on two applicants for the same product, at the same face amounts, and for the same gender, age, and smoking status may be different. The impact on the

retail premium is not expected to be significantly different from the impact of traditional fully underwritten processes as we know them today. The result of AUW processes can be less invasive. AUW may look like an expanded simplified issue process but with mortality that aligns more closely with fully underwritten business. AUW is often modeled using predictive modeling and complex algorithms. Ms. Bahna-Nolan stated that AUW may include traditional underwriting sources collected through different means such as Medical Information Bureau (MIB), Motor Vehicle Record (MVR), criminal history, pharma data/prescription history, electronic lab data, health records, expanded application and tele-interview process, non-traditional data such as clinical lab data, credit profiles, facial analytics, and in many cases it excludes extraction of blood and urine.

Ms. Bahna-Nolan further stated that the number of companies with AUW programs is increasing at a rapid rate. In a Society of Actuaries survey of 27 respondents: 10 have implemented in some form; 10 working on implementing; 3 currently evaluating. The majority of applicants through age 55 or 60 can be fully underwritten towards "Standard Mortality", including preferred, without exam/fluids, using combinations of alternate information sources. This can be achieved by, knowing and appreciating the degree and power of appropriate pipeline selection and carefully stratifying applicants suitable for "no fluid" selection by using other favorable parameters that can be obtained non-intrusively, (Rx check, MIB, MVR, credit profiles, enhanced application, detailed questioning, etc.) Use of other data sources, smarter applications and tele-interviews are replacing the traditional underwriting process for certain ages and face amounts. Ms. Bahna-Nolan stated that new data sources include enhanced applications with use of behavioral economics, predictive models, credit profiles, Rx risk scores/algorithms, electronic health records, electronic clinical lab records, smoker propensity, APS summaries, applicant candor, use of wearable devices, facial analytics, criminal history and other emerging technologies.

Ms. Bahna-Nolan also noted that all companies are using e-data sources of some sort and there is a false presumption that today's underwriting approach appropriately classifies all the risks. Use of new data sources and predictive modeling can lead to more consistent risk selection and can better segment profiling with re-classification of risk. The execution of AUW strategy varies widely amongst companies but often utilizes a combination of traditional and new data sources. Company motivations for AUW also vary and often drive the approaches taken. Motivations may include: attract new customers; an aging underwriter workforce; an aging distribution network; reduce expenses; improve the customer experience; and improve risk selection and add constancy.

The mortality outcome for any underwriting regime is a factor of many selection levers. While the more favorable scores have a greater percentage of higher incomes, all income ranges include all possible scores and vice versa. Ms. Bahna-Nolan stated that the use of risk scores via single or combined data sources is becoming common in AUW programs. Unlike legacy UW approaches, selection by risk score can be finely tailored towards a specific target across a wide range of possible scenarios. Common risk scores are credit profiles, prescription scores, and lab scores. As less favorable (by

score) are 'removed' from the group, the mortality of the remaining applicants improves in predictable fashion.

Rep. George Keiser (ND) asked if companies are setting ceiling limits for a benefit above which you would not use the AUW and if so what is that limit. Ms. Bahna-Nolan responded yes, companies today are entering that market carefully. Ms. Nolan also reported that some companies are considering expanding to higher base amounts. As companies are learning and getting more experienced they are looking into expanding those limits.

Rep. Keiser stated that in ND they have run into a recent problem where they have three primary health care providers. All three were providing medical data in about ten days. They then suddenly arbitrarily made the decision that it will now be thirty-one working days before the medical data will be made available. That creates a problem for health and life insurance companies. The consumers want the policy now. Ms. Bahna-Nolan reported not seeing this as a problem although her focus has been primarily on the life insurance side and she could not really comment on the health insurance side of this issue. Ms. Bahna-Nolan did state that insurance companies are trying to utilize health records and electronic health records would be the gold standard. Ms. Nolan also stated that as of now that is not accessible as an instant format. Rep. Keiser then pointed out the electronic health record is available but they are not transferring it. Ms. Bahna-Nolan stated it is not available in a data format that can easily be implemented.

Rep. John Weiman (MO) commented that it looks like life insurance companies are going through the transformational period that the auto insurance companies did about fifteen years ago. Auto insurers refrained from using the word "credit scoring" and they used the "insurance score", where they take data information from your credit, driving record etc. to create a score that they would then use for their pricing models. Then they would put you into various rate classes. Rep. Wiemann went on to state that it is his understanding that is what the life insurance companies are on the cusp of doing right now and asked if life insurance rating scores are being created based on credit and health status to help speed up the underwriting? Ms. Bahna-Nolan stated there is a fair correlation as to what is being done. There are differences though, as life insurers cannot change the rating once the policy is issued. There is a combination of traditional and new data sources to be considered. But she answered yes as far as the credit attributes, criminal history and motor vehicle records are concerned. Some of these things have always been used. They are just being used in a smarter way. Rep. Wiemann asked if companies are using an external third-party agency to create those profiles or internally, within companies? Ms. Nolan stated they use Nexus Lexus and Trans Union for the credit profiles.

Sen. Travis Holdman (IN) asked if companies consider things like magazine subscriptions, credit card purchases and health club memberships. Ms. Bahna-Nolan stated that consumer purchases and social media are not utilized "today"; however, Ms. Bahna-Nolan that she can't speak as to what companies might use in the future.

Professor Brenda Cude, PH.D., University of Georgia, stated that she is in a department of consumers and economists and that most do not know what underwriting is. Some consumer concerns with underwriting relate to privacy, unintended consequences and transparency. Consumers are concerned with insurers accessibility to their privacy via Facebook as that may be a misrepresentation as a life insurance consumer. Consumers also want decisional (freedom from interference in personal choices) and informational (ability to restrict access to and control the flow of his/her own personal information) privacy. In the U.S. today, we don't really own our privacy. Some examples given were wearable data, cameras on the streets, credit card purchases as well as stolen information. Prof. Cude also reported that different consumers are likely to view privacy differently. She went on to say that she teaches college students and they have a very different view on what is private and what is not. Her guess is that they are less resistant but perhaps it is because they have no understanding of what is happening. One of the main problems for consumers is that they have no idea how much their information is worth. For example, how much is my cholesterol level to a life insurer worth? How much is my interest in basketball and gardening worth?

Prof. Cude also stated that there may be unintended consequences of companies using so much data in underwriting. Will prospective parents forgo genetic testing to apply for life insurance? Individuals also may not apply for life insurance because of a genetic condition. Prof. Cude also raised the following questions: Will the consumer know what information is being used? What information is being used? By Whom? For what purpose? Does the consumer have opportunity to contest some information? There are also problems associated with "group" profiling where data patterns suggest new associations about people which may or may not be true. For example, Target had sent a young woman pregnancy information based on her purchases. Prof. Cude stated that a lot of this boils down to transparency – will the consumer know what information is being used, by whom, and for what purpose. And will the consumer have the ability to contest inaccurate information. Prof. Cude also noted that by moving further away from traditional underwriting, we've made producer's jobs very difficult. Some of the information used with AUW can only be understood by statisticians.

Prof. Cude stated that consumers want to understand how factors relate to risk; want to understand what information is considered in underwriting; and want to understand how behavior change can make a difference in cost. NCOIL President Rep. Steve Riggs (KY) stated that privacy concerns have to be tempered with what consumers want. When you want someone to write a million dollar check when you die, to expect you don't have to give up some private information is not realistic. As you are signing a contract, you are making an agreement with somebody and they are agreeing to pay out \$1,000,000.00, therefore, privacy concerns need to be tempered with what coverage you are looking for. Prof. Cude agreed but thinks that the connection to the specific information provided and the risk assumed needs to be better understood and explained by all.

Mr. Birnbaum stated that when filling out a paper application, I know exactly what information I am giving to the insurance company. Therefore, I can look at this and decide whether I do or do not want to apply. The issue with AUW and big data is that

consumers aren't disclosing the data that is being used. Insurance companies are gathering information without disclosing it to the consumer so the consumer does not have the same option as they do with a paper application.

Rep. Keiser stated that a lot of these issues arose from the Gramm Leach Bliley Act (GLB) and interstate banking. State legislators were told that financial institutions must be allowed to sell and share information. However, there is a provision in GLB that says you can opt-out. ND was the only state that said you must notify us when you share financial information and despite fears that it would disrupt the economy, ND is doing very well. Accordingly, big data was created by government policy and the way to cure concerns about it is to go to an opt-in/opt-out system on the State level. Ms. Bahna-Nolan stated that there is disclosure on all applications but whether the consumer is aware of it or understands it is another issue. Ms. Kiernan stated that since life insurance is not mandated coverage, innovative methods to create and sell the product are extremely important.

Sen. James Seward (NY) stated that a big part of the problem is financial literacy and there needs to be a greater understanding about what underwriting is all about. That would lead to a better process done in a more expeditious manner. Prof. Cude agreed and encouraged State legislators to review their State education requirements on financial literacy - part of the problem is finding unbiased and lucid financial literacy education.

#### UPDATE ON NAIC UNCLAIMED PROPERTY MODEL

James Donelon, Louisiana Insurance Commissioner, state that the current draft's provisions are mixed with provisions from the lead states draft model act and the NCOIL Model. Cmsr. Donelon complimented NCOIL for its leadership in this area having approximately two dozen states adopting its model act. The current draft NAIC model requires a look back period of 18 months for any lapsed policy and requires an additional search semi-annually for policies that might have lapsed during that time frame. The NAIC draft also contains a provision that gives the commissioner the discretion to exempt an insurer from having to perform DMF comparisons if the insurer can demonstrate financial hardship or that conducting such comparison would not be cost effective<sup>1</sup>. This provision also gives the commissioner the discretion to phase-in the DMF comparison requirements. While state legislators, industry, and consumer reps may have different views on how to most effectively address this issue, the NAIC remains committed to exploring different avenues in an open and transparent process.

Mr. Birnbaum stated that CEJ is concerned and troubled by the NAIC efforts developing a model in this area for several reasons. First, while regulators may have some new insights as a result of investigations and audits, it is unclear why those insights could not be provided as revisions or updates to the NCOIL model. Second, the regulators are split on key aspects of the model, most notably whether the model applies to all policies

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<sup>1</sup> Note: Just 2 days after adjournment of the NCOIL Spring 2017 National Meeting, the NAIC suspended work on its Unclaimed Property Model Act.

or only to policies issued on or after the effective date. Third, CEJ is “stunned” that many regulators will not support the application of the unclaimed benefits model to all life insurance policies, as legislators have done with the NCOIL model. The current draft of the model provides a choice of so-called retroactive or prospective applications – that is a terrible consumer protection approach and it undermines the NCOIL Model and undermines those States that have said all consumers should be protected.

#### UPDATE ON NAIC LOST LIFE INSURANCE POLICY LOCATOR

Eric Cioppa, Superintendent of the Maine Bureau of Insurance, stated that about 15 States had such a program but now it is truly national. It is designed to assist individuals in locating individual annuity contracts and individual life insurance policies after the death of an insured. Consumers are entitled to these benefits and this is a great opportunity for NCOIL and NAIC to work together to let them know this program exists.

#### RE-ADOPTION OF MODEL LAWS

Joe Thesing from the National Association of Mutual Insurance Companies (NAMIC) strongly encouraged the committee to re-adopt the Insurance Compliance Self-Evaluation Privilege Model Act. The model currently has been adopted in twelve states and all indications are that the law is working well. The whole idea behind the model is that it promotes self-evaluation. The idea is that an insurer, without fear of retribution, has the opportunity to examine their internal processes to identify problems and if they identify any problems, they correct them. It is worth noting if the insurer starts using the self-evaluation privilege and is not moving towards compliance, that privilege does not stay in place. Indications from regulators are that the laws are working well and are meeting the intention of promoting self-evaluation. NAMIC will continue to encourage other states to pass legislation in other states.

Rep. Keiser stated that he originally voted for the Model but will not vote for its re-adoption because in Section 1(b)(1), it states that an insurance compliance self-evaluative audit document is privileged information and is not discoverable, or admissible as evidence in any legal action in any civil, criminal, or administrative proceeding.<sup>2</sup> Rep. Keiser made a motion to strike “criminal.” Mr. Thesing stated that he can’t speak to that without checking with some of the insurance companies but noted that ND has adopted the Model and encouraged Rep. Keiser to speak to ND regulators to see if any problems exist. There was no second to Rep. Keiser’s Motion.

Mr. Birnbaum stated the model is biased against consumers and towards insurers because it allows the insurer to use the self-evaluative privilege when helpful, and allows the insurer to assert privilege when it would be helpful to consumers to address unfair treatment. Mr. Birnbaum also stated that the Model is premised on the fact that it will encourage voluntary compliance and improve market conduct quality of insurers. He went on to say that he is not aware of any empirical evidence or study produced over the past 20 years supporting this assertion. It seemed reasonable for NCOIL to require

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<sup>2</sup> Note: There are exceptions for criminal proceedings after an *in camera* review in other sections of the Model.

some evidence relating this privilege to improved market conduct quality before re-adopting this model. Mr. Thesing stated that it was Mr. Birnbaum's obligation to come up with evidence that it was not working well, and NAMIC has not heard about any complaints from regulators.

A motion was then made and seconded to re-adopt the Model. All committee members voted to re-adopt except Rep. Keiser.

Mr. Birnbaum stated that CEJ is supportive of the Secondary Addressee Model Act but noted that it is limited to consumers aged 64 and over and urged NCOIL to amend the model to apply to all consumers.

Upon a motion made and seconded, the committee unanimously voted to re-adopt the Model.

#### ADJOURNMENT

There being no additional business the Life Insurance and Financial Committee meeting was adjourned at 2:15 p.m.