

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS  
LIFE INSURANCE AND FINANCIAL PLANNING COMMITTEE  
CHICAGO, ILLINOIS  
JULY 15, 2017  
DRAFT MINUTES

The National Conference of Insurance Legislators (NCOIL) Life Insurance and Financial Planning Committee Meeting met at the Chicago Intercontinental Magnificent Mile Hotel on Saturday, July 15, 2017, at 9:00 a.m.

Senator Mike Hall of West Virginia, Chairman of the Committee, presided.

Other members of the Committee present were:

Sen. Jason Rapert, AR	Rep. Don Flanders, NH
Asm. Ken Cooley, CA	Asm. Will Barclay, NY
Rep. Joseph Fischer, KY	Sen. Bob Hackett, OH
Rep. Jim Gooch, KY	Rep. Marguerite Quinn, PA
Rep. Jeff Greer, KY	Sen. Roger Picard, RI
Rep. Steve Riggs, KY	Rep. Bill Botzow, VT
Rep. Michael Webber, MI	Rep. Kathie Keenan, VT
Rep. George Keiser, ND	
Sen. Jerry Klein, ND	

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 March 4, 2017 meeting in New Orleans, LA.

## UPDATE ON DOL FIDUCIARY RULE

Sen. Mike Hall (WV) introduced Jeff Leonard, Managing Director Pension Consulting Service, FTI Consulting. Mr. Leonard updated the attendees on the DOL Fiduciary Rule (Rule), citing that the DOL has issued field assistance bulletins, the first being an extension of the interim period to June 9, 2017. There were also Frequently Asked Questions (FAQ's) issued along with a second field assistance bulletin which addressed how to act during the transition period. The expectation is that the Rule would be in full effect by January 1, 2018. It was reported that there was no legal basis to change the effective date for the Rule and therefore the June 9, 2017 date was left in place for beginning the interim period.

Mr. Leonard stated that there are 3 parts to the impartial conduct standard: a.) Advice must be in the best interest of the client; b.) There can be no misleading statements regarding investments, compensation and conflict of interest; and c.) charge no more than reasonable compensation. Regarding the advice being the best interest of the client, there is not a lot of guidance out there on this requirement, but the thinking is that

the ERISA prudent man standard and duty of loyalty would come into play and the advisers need to understand the objectives of their client. Regarding the reasonable compensation requirement, it is not well-defined and will likely be interpreted by courts.

Mr. Leonard stated that it is expected that the DOL's emphasis during the implementation period will be on assisting with compliance efforts rather than enforcement. It is expected that the DOL will rely on good-faith efforts, and it is therefore important to have a documented process and maintain records. The FAQ's that were issued suggested that changes are likely and that the DOL will continue to ask for further public comment. Last week, the DOL issued a Request for Information (RFI) that was very prescriptive. This was the 5th RFI from the DOL and it addressed the following:

- Extension of time past the January 1, 2018 start date;
- Prohibited Transaction Exemption (PTE) and Best Interest Contract Exemption (BICE) applicability;
- Application of recent industry innovations, e.g. mutual fund "clean shares"

Mr. Leonard stated that it appears the DOL is looking for help on how best to proceed. Some general impressions from the market are that investors want advisors who work in their best interests and that industry reforms are expected to continue regardless of whether rulemaking happens.

Michael Rowden from the American Council of Life Insurers (ACLI) reported that their efforts are not limited to the repeal of the rule but rather to replace the rule with an elevated standard of care for retail annuity sales that would benefit consumers and at the same time would not damage without justification a commission-based annuity sales model. Mr. Rowden noted that ACLI is currently working on how to develop uniform and plain English definitions of "best interest" and "conflicts of interest." The key element of the framework would require uniform disclosure requirements for material conflicts of interest and the types of compensation received by financial professionals. To get to that standard of care would require working directly with regulators. At the state level, the ACLI believes that the NAIC Suitability Model is the appropriate platform for these changes to take place. The end goal is to have something greater than suitability but less than a fiduciary standard that would apply under ERISA. Regarding the suitability model, ACLI's member companies do not want to reinvent the wheel in terms of their obligations and compliance responsibilities that they have themselves as product manufacturers and with their producers and distributors. The NAIC recently formed an annuity suitability working group which is chaired by Idaho Insurance Commissioner Dean Cameron and Iowa Insurance Commissioner Doug Ommen. The group is charged with reviewing and changing as necessary the NAIC annuity suitability model.

Mr. Rowden stated that the SEC is currently in information-gathering mode. Jay Clayton, Chairman of the SEC, recently issued a call for public comment regarding the standards of conduct for investment advisors and broker dealers. ACLI believes that there is a role for the DOL, but it should be limited to circumstances where an individual is rendering true fiduciary advice. ACLI believes the regulation of annuity retail sales should be limited to the states for fixed annuities and to the SEC and FINRA variable annuities. Mr. Rowden also noted that regardless of the DOL's jurisdiction is limited to qualified space. Uniformity will be critical going forward – some States have begun to introduce Fiduciary legislation and a patchwork of standards will hurt consumers. The NAIC is hoping to create a uniform framework in the states, in which companies can

comply with and that consumers can know that they have equal protections regardless of where they live.

NCOIL Vice President Sen. Jason Rapert (AR) asked what the status is of the lawsuits seeking to stop implementation of the Rule. Mr. Rowden stated that ACLI is still actively pursuing their lawsuit which is currently at the 5th Circuit – oral argument is scheduled for July 31, 2017. Sen. Rapert asked if it was realized by everyone that consumers will pay more in fees if the Rule goes into effect. Mr. Rowden stated that ACLI has been and will continue to communicate that reality.

#### DISCUSSION ON JOHN HANCOCK VITALITY PROGRAM – AN INNOVATIVE LIFE INSURANCE SOLUTION THAT REWARDS HEALTHY LIVING

Francois Millard, Chief Financial and Actuarial Officer of The Vitality Group, stated that The Vitality Group has changed the way life insurance works around the world to better align the interests of consumers, the insurance company, and society as whole. Vitality's unique core purpose is to make consumers healthier and to enhance their lives. Their model has been recognized by Fortune magazine as one that is help changing the world. Vitality puts the emphasis on health and not sickness. A key question in development was how to better structure incentives so that the you can reward people for things they actually want to do, i.e. eat healthy and exercise. Today, our healthcare systems are structured so that we get almost immediate benefit out of it – if you have an illness you can go to the doctor/take medicine to get better. The cost of those services are mostly hidden since benefit plans pay for a lot of it. Staying healthy is much different – it is a bigger cost upfront with things like paying for exercise and healthy food, and the benefits are not realized until later. Mr. Millard stated that in developing the product, they also had to deal with over optimism – studies showed that people thought their health was “good” despite having a chronic disease.

The Vitality Program functions in a way that if you take better care of yourself in the long term the policy will be more cost effective. They offer incentives for living a healthy lifestyle, similar to how the auto insurance industry rewards good driving with a lower premium. It was realized, however, that a more immediate benefit structure was needed so a rewards program was included. Some of the reward incentives include up to 25% off groceries for buying healthier foods, and making the process easier to buy that food. Vitality also sponsors gym memberships and has entered into a contract with Starbucks. The Starbucks contract is relevant because studies show that if you want to incentivize someone to exercise more frequently, rewarding them with a free Starbucks coffee is much more effective than any other structure such as wearing a fitness device.

Neal Kerins, VP Product Development at John Hancock stated that Vitality is an optional feature, the cost is \$24.00 per year, and in exchange, consumers have the potential to realize significant premium savings as well as other benefits. Mr. Kerins stated that, with all good innovation, Vitality is focused on specific problems. The first problem is, can life insurance companies use their expertise in longevity to help people live longer and healthier. The second problem deals with the overall life insurance protection gap across the U.S. – U.S. households are underinsured, and that applies to all demographics. There is a general awareness of the importance of life insurance, so the question is why those without it have not purchased it. Amongst those reasons is that until now, the life insurance ownership experience is very boring. Thus, if we can focus

on making a difference in the customer's day-to-day life, that may be a game changer, and will result in the re-prioritization life insurance.

Mr. Kerins stated that John Hancock has been in the marketplace for about 2 years and they are averaging about 22 positive customer interactions per month, i.e. getting credit for activities, and receiving small prizes. John Hancock has partnered with 15,000 grocery stores across the country to help consumers get discounts on healthy food. In terms of what the customer actually has to do to see the rewards, Mr. Kerins stated that healthy activities lead to points, points lead to status levels which opens up more rewards, and then at the end of the year, the next year's premium bill is reduced based on the customer's level of engagement. Some of the specific activities include physical activity – each policy is issued with a free Fitbit, but the customer can also get a discount on another fitness device; gym visits; and free biometric readings. Mr. Kerins stated that the totality of the rewards is not material relative to the total premium, but it is what gets the customer engaged and feeling different about their policy. About 1/3 of John Hancock policies have Vitality and that number is trending up.

Sen. Bob Hackett (OH) asked if rebates were discussed during development. Mr. Kerins stated that was a commonly discussed issue when visiting State insurance departments. The terms of the Vitality Program are all in the contract – rebating is something outside the contract. Vitality is now approved in 49 states - North Dakota has not approved.

Rep. Marguerite Quinn (PA) stated the product was fascinating but voiced concern over having the consumer share so much information. Mr. Kerins stated they do not sell, rent or share any of the consumer's information – protecting information is paramount. Mr. Kerins also noted the Program can encourage the consumer to “get moving” and to eat healthier, if the consumer requests such encouragement, but the consumer cannot be penalized for unhealthy choices – they can only benefit from the Program.

#### DISCUSSION ON PROPOSED AMENDMENTS TO SECONDARY ADDRESSEE MODEL ACT

Mr. Rowden stated that the Secondary Addressee Model Act requires life insurers to send out notification of an impending policy lapse to a policyholder a set number of days before the grace period would expire, and also requires the policyholder be provided with an opportunity to designate a second person to receive that same notice as a backup mechanism. Currently, the Model applies to life insurance policies covering “a natural person 64 years of age or older.” The proposed amendments would remove the age-threshold so that the Model would apply to all policyholders, and, in addition, if agreed to by the applicant, permit the life insurer to send notice of impending laps via email and texts. Mr. Rowden stated that the ACLI supports the latter amendment since it reflects consumer's growing need to receive notifications electronically, and represents a modernization of the Model.

Will Melofchik, Legislative Director at NCOIL Support Services, LLC, stated that he had discussed the proposed amendments with Birny Birnbaum from the Center for Economic Justice who had originally brought them forward at the 2017 NCOIL Spring Meeting in New Orleans. Mr. Birnbaum was prepared to testify in support of the amendments but could not attend due to travel problems.

Upon a Motion made and seconded, the Committee unanimously approved to adopt the proposed amendments to the NCOIL Secondary Addressee Model Act.

#### ADJOURNMENT

There being no further business, the Committee adjourned at 10:15 a.m.