

NATIONAL COUNCIL OF INSURANCE LEGISLATORS
NCOIL – NAIC DIALOGUE COMMITTEE
NCOIL SUMMER MEETING - SALT LAKE CITY, UTAH
JULY 13, 2018
DRAFT MINUTES

The National Council of Insurance Legislators (NCOIL) NCOIL – NAIC Dialogue Committee met at the Little America Hotel in Salt Lake City, Utah on Friday, July 13, 2018 at 4:00 p.m.

Senator Dan “Blade” Morrish of Louisiana, NCOIL Vice President and Chair of the Committee, presided.

Other members of the Committee present were:

Rep. Sam Kito (AK)	Rep. Joseph Fischer (KY)
Sen. Jason Rapert (AR)	Rep. Michael Webber (MI)
Rep. David Livingston (AZ)	Rep. Lois Delmore (ND)
Asm. Ken Cooley (CA)	Rep. George Keiser (ND)
Rep. Martin Carbaugh (IN)	Sen. Bob Hackett (OH)
Sen. Travis Holdman (IN)	Rep. Glen Mulready (OK)
Rep. Matt Lehman (IN)	Sen. Roger Picard (RI)
Sen. Jeff Raatz (IN)	Rep. Tom Oliverson, M.D. (TX)

Other legislators present were:

Rep. Deborah Ferguson (AR)	Asw. Ellen Spiegel (NV)
Rep. Steve Riggs (KY)	Rep. Rodney Anderson (TX)
Rep. Edmond Jordan (LA)	Rep. Joe Schmick (WA)
Asw. Maggie Carlton (NV)	

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 2, 2018 meeting in Atlanta, GA.

DISCUSSION ON ENABLING INSURTECH INNOVATION

Sen. Dan “Blade” Morrish, NCOIL Vice President and Chair of the Committee, stated that Insurtech innovation is occurring across the entire insurance value chain and across all lines of insurance, and as a result, the very nature of the business of insurance is transforming. NCOIL applauds the NAIC’s efforts to stay ahead of the curve on Insurtech innovation, as demonstrated by the NAIC Innovation and Technology Task Force (Task Force). Sen. Morrish asked if an update could be provided on the Task Force, and if the Task Force is expected to produce any work product soon.

Gordon Ito, Hawaii Insurance Commissioner and NAIC Secretary-Treasurer, stated that innovation and consumer expectations are rapidly changing the insurance marketplace. Technology is changing rapidly and transforming our lives in dramatic ways. In 1975, the fastest computer cost about \$5 million and today, a standard iPhone costs several hundred dollars and has much more computing power than the fastest computer available in 1975. As insurance regulators and legislators, the challenge is to balance critical consumer protections with the demand for innovation and to maintain stable and competitive markets. As an example, Cmsr. Ito recalled the discussions many years ago surrounding credit scores being used as an insurance rating factor. Cmsr. Ito stated that the past few years, the NAIC and U.S. insurance regulators as a whole have been reaching out to startups early in the process to understand the technology being developed. Insurers, as well as the innovators, understand the regulatory landscape and regulators can verify that they are following applicable laws and regulations.

Cmsr. Ito stated that insurance regulators have engaged in a strong commitment to insurance innovation by forming the Task Force. Through the Task Force, insurance regulators have been able to connect with many key players in the Insurtech arena. Insurance regulators are also examining regulatory sandboxes to lower barriers to market entry where appropriate. However, Cmsr. Ito stressed the words “where appropriate” as he noted that the current insurance regulatory structure has the ability to be adaptive to innovative practices. Cmsr. Ito stated that while innovation allows insurers to use data to more accurately price risk, it is important to ensure that any innovative practices do not harm consumers. Insurance regulators need to understand the new data sets being driven by new data collection efforts and non-traditional insurance players such as data scientists and coding analysts need to assist insurance regulators in doing so. In February of 2018, the NAIC adopted its strategic “State Ahead” plan (Plan), in part to help the NAIC meet the challenges facing the insurance industry in light of the innovative practices being developed.

The Plan capitalizes on the opportunity to build a credible state vision for evolution of the regulatory support tools to build an enduring and robust insurance regulatory framework. The Plan is designed to give state insurance regulators, through the NAIC, the tools, talent, and technology to make informed regulatory decisions. The Plan is about empowering state insurance regulators, not the NAIC, as all regulatory decisions will continue to be made by state insurance regulators. The basic format of the Plan is broken down into three core themes: a.) maintain safe, solvent and stable markets; b.) protect consumers and educate them; and c.) enable the NAIC to provide superior services and resources. Cmsr. Ito stated the Plan is necessary and important to help state insurance regulators, and the NAIC, adapt to insurance innovation.

Chlora Lindley-Myers, Director of the Missouri Department of Insurance, stated that regarding regulatory sandboxes, Missouri has a statute in place that allows the Insurance Director to issue a “no action” letter. Carriers can apply to utilize certain functions and/or practices, and it is up to the Insurance Director to determine whether the carrier will do what is necessary to ensure that consumers are not harmed, and if so, a letter can be issued.

Sen. Jason Rapert (AR), NCOIL President, stated that insurance regulators and legislators need not ignore the power of disruption that can occur in the insurance industry due to innovative ideas, and such ideas force everyone to be a quick study on

all related issues. Sen. Rapert stated that he was intrigued by the appetite the British delegation had for working with the U.S. on Insurtech and Fintech innovation issues when he participated in a recent event with the Lord Mayor of London. It may be that they are finding some very willing regulatory bodies in the smaller U.S. states as such states can perhaps be more nimble than the larger ones regarding insurance regulatory practices. Sen. Rapert noted that Insurtech company Lemonade has been approved to operate in Arkansas and stressed how it is important for insurance regulators and legislators to continue to learn as much as they can about innovative insurance practices.

DISCUSSION ON NEW FEDERAL AHP AND STLD REGULATIONS

Sen. Morrish stated that the Executive Order issued by President Trump this past October outlined several of the Administration's healthcare policies which included Association Health Plans (AHPs) and Short Term Limited Duration Insurance Plans (STLDs). Sen. Morrish asked what the NAIC's thoughts were on the recently issued AHP regulations, and their thoughts on STLDs in general as the final regulations on them are expected to be released soon.

Dean Cameron, Director of the Idaho Insurance Department, stated that the Executive Order had four major components: a.) direct the DOL to expand the rules for AHPs; b.) direct HHS to work on STLD rules; c.) direct Treasury to offer more flexible options and alternatives for health reimbursement arrangements (HRAs); and d.) direct HHS to report back on all state and federal laws and requirements that impede competition, choice, and delivery in the healthcare delivery system. With regard to AHPs, Dir. Cameron stated that the regulations expand the situations in which employers can join together and offer health insurance coverage as a single employer. Dir. Cameron stated that the NAIC is grateful for some of the language included in the regulations. Associations whose members operate in the same industry may offer an AHP. An association whose members are in the same geographic area may sponsor an AHP, including some geographic areas crossing state lines. Only employment-based associations may sponsor an AHP. Sole proprietors are able to participate and consider being both either an employer or an employee for purposes of an AHP. In the final rule, the hours per week requirement in the definition of a "working owner" was changed from 30 to 20.

Dir. Cameron stated that an AHP must have an organizational structure, which is important to the NAIC. AHPs must be controlled functionally by its members and the association must have a governing body, bylaws, and maintain legal formalities based on the type of entity of the association. The association's employer-members are required to oversee the activities directly, or indirectly by electing board members or other representatives. AHPs formed under the new rules must comply with non-discrimination provisions which the NAIC believes to be very important. AHPs are prohibited from conditioning membership in the association based on a health factor such as medical status or claims experience. AHPs must also comply with non-discrimination rules that govern benefit eligibility which includes enrollment and effective dates of coverages.

Dir. Cameron noted that existing AHPs may continue to operate under the current rules but if they want to take advantage of any new flexibility, they must comply with the new rules. Determination of whether large or small group rules apply has also changed

under the new rules as it is now based on the size of the association, not the size of the individual members. Current law requires associations of small employers to comply with the small group market. The final rules also state that the enhanced enforcement tools under the ACA regarding Multiple Employer Welfare Arrangements (MEWA's) will continue which is very important to the NAIC. Multiple welfare trusts, or multiple welfare associations are currently regulated by most insurance regulators and the NAIC believes that is important to protect consumers from fraudulent activities.

Dir. Cameron stated that the final rules clearly state that all AHPs are MEWA's and as such, under ERISA, state authority to regulate them, whether fully or self-insured, is preserved. As noted in the final rules, courts have consistently ruled in favor of state regulation of MEWA's, including rating requirements, benefit requirements, licensure or certification requirements, and other consumer protections. The final rules note that some commenters wanted to preempt such state authority, but the choice was made not to do so. Accordingly, AHPs must meet any relevant state requirements. Dir. Cameron noted that the rules state that there is "phase-in" language regarding effective dates for fully-insured plans – September 1, 2018; for existing, self-insured plans – January 1, 2019; and for new, self-insured plans - April 1, 2019.

Mike Chaney, Mississippi Insurance Commissioner, stated that the new AHP rules will present a variety of questions to state insurance regulators as to how they will regulate AHPs. For example, if multiple farm bureaus in different states form an AHP, no one state will have state regulatory sovereignty over the AHP. The NAIC looks forward to working with HHS in order to figure out some of the rule's intricacies. Cmsr. Chaney stated that the NAIC submitted comments on the proposed STLD regulations and noted that the provision in the current STLD regulations that limit such plans to 3 months is arbitrary and unnecessarily limits the ability of consumers to purchase plans to meet their needs. Returning the Federal definition of an STLD plan to "less than 12 months," as proposed, is consistent not only with longstanding federal law but also with how this term has been long defined by most states. The NAIC also believes that educating consumers and ensuring that they are aware of the limitations of these plans is paramount. Cmsr. Chaney stated that STLDs serve to fill the "doughnut hole" that occurs when people lose their job and a COBRA plan may be too expensive. The NAIC also recommended to HHS that the final regulation allow states, if they so choose, to begin enforcing the new rules in 2020, thus giving them time to review their rules and seek statutory or regulatory changes to facilitate a smooth transition. Cmsr. Chaney closed by stating there is a lot of uncertainty regarding when the final STLD regulations will be issued and states need to be prepared to act.

Sen. Morrish asked Cmsr. Chaney to clarify whether the regulations limit STLD plans to 3 months or 12 months. Cmsr. Chaney stated that no one knows yet as the final regulations have not been released. The NAIC hopes that the regulations will set the limit at 364 days. Dir. Cameron stated that in Idaho, they felt that the 3-month limitation stated in the current STLD regulations is arbitrary and each state handled the regulations differently – Idaho did not enforce the 3-month limitation. Dir. Cameron stated that he believes that it will be similar under the new STLD regulations in that different states may set different time limitations for the plans. Dir. Cameron also noted that there are other discussions about STLDs besides time limitations such as guaranteed renewability and limitations on pre-existing conditions. Cmsr. Chaney stated that most states don't enforce the current STLD regulation's 90-day time limit, and that

most current sellers of STLD policies allow the consumer to renew such policies. STLD plans are not ACA compliant.

Rep. George Keiser (ND) stated that his understanding is that AHPs are not backed by state guaranty funds and asked if MEWA's are; and if not, how will state insurance regulators handle such solvency issues? Dir. Cameron stated that the jury is still out on those questions. Some states cover MEWA's under their guaranty funds and some don't. Solvency of MEWA's and AHPs is an important issue to watch going forward. Dir. Cameron also stated that it will be important to monitor the impact AHPs will have on the marketplace and on carriers. Carriers are not required to offer AHPs. The health insurance market is a management of risks and over the years, AHPs have started out great but as soon as the healthy members figure out they can purchase coverage outside of the association, they leave, and that starts a death spiral. Accordingly, carriers will have to determine how to prevent such death spirals.

Rep. Keiser asked if state insurance regulators have full authority for rate approval for AHPs. Dir. Cameron stated that it depends on the state, but most state insurance regulators don't have the authority to approve rates on health insurance but have the authority to review the rates and determine if they are unreasonable. Dir. Cameron noted that in Idaho, he has the authority to regulate MEWAs, review their rates, and to say to MEWAs whether or not the rates are adequate or unreasonable. Typically, the conversations focus on adequacy of rates and putting at risk the member's health insurance benefits.

Cmsr. Chaney stated that most states only approve individual rates and with MEWAs, most states manage them to some degree but have little, if any, regulatory authority over AHPs. The failure rate for past AHPs has been close to 90% and Cmsr. Chaney stated that it is fine to have an AHP, but they need to be sure they have enough solvency and reinsurance. Cmsr. Chaney also noted that, unrelatedly, the state guaranty funds are in for trouble regarding long term care insurance and the issue is worth monitoring. Companies and entities that did not write LTC policies are now being assessed.

Commissioner Tom Considine, NCOIL CEO, asked if the requirement in the new AHP rules for associations who offer AHPs to have its members operate in the same industry trumps the existing MEWA rule where employers in different industries could band together and start a MEWA. Dir. Cameron stated that his interpretation of the AHP rules is that for existing MEWAs, they could continue their operation but if they wanted to take advantage of the new flexibility, they would have to follow the requirements of the new rules. Cmsr. Chaney stated that the issue is that when the Federal government looked at AHPs, they did not give state insurance regulators the ability to fully run the AHPs, so what worries state insurance regulators is if AHPs get lumped together with MEWAs, which state insurance regulators do regulate, what should such regulators do if an AHP goes "belly up." Dir. Lindley-Myers stated that it is important to make sure that the AHP is not a fictitious grouping which is a big hurdle to overcome.

DISCUSSION ON MAWG ACTIVITY

Sen. Morrish stated that the NAIC Market Action Working Group (MAWG) plays a very important role in protecting consumers and asked if some background on it could be provided on what exactly MAWG is and how it carries out its functions.

Todd Kiser, Utah Insurance Commissioner, stated that MAWG was formed in 2006 to provide a forum primarily for chief regulators within NAIC jurisdictions to address multi-action state regulatory issues. There are 16 states that participate in MAWG: AR, CA, IN, IA, KS, ME, MN, MO, UT, NE, NY, NC, OH, PA, TX, and WA. Alan Kerr, Arkansas Insurance Commissioner, serves as the Chair of MAWG, and Cmsr. Kiser serves as Vice Chair. Despite having only 16 members, all state insurance departments are invited to participate. MAWG is a regulator-only workgroup because there are sensitive issues involving market action work with insurance companies.

Cmsr. Kiser stated that he believes one of the reasons MAWG is very helpful is that if a company is involved in issues in different states, many state insurance regulators don't have the ability to handle everything themselves. Accordingly, "lead states" are designated on issues in MAWG so if an insurance company is involved in activities in HI, MO, IA, UT and MS, those states can participate as "lead states" in an investigation even though they may not be members of MAWG. Accordingly, there is opportunity for regulators to involve those who are most affected by an insurance company's actions which saves insurance departments money; and it saves insurance companies time and money since they don't have to prepare separate audits and investigative work for each insurance department.

Cmsr. Kiser stated that MAWG also permits state independence regarding request for settlements (RSA). If one state wants to pursue more penalties against an insurance company than what is set forth in the RSA, or vice versa, the state does not have to sign the RSA and can pursue its own actions. State Insurance Commissioners typically do not participate in MAWG meetings - state insurance department's chief regulators usually do. Notably, Dir. Lindley-Myers was licensed as a market conduct examiner. Cmsr. Kiser stated that he believes the purpose of MAWG is for jurisdictions to work together on multi-action issues. One big issue that was recently closed involved life insurer's use of the death master file (DMF).

Dir. Lindley-Myers stated that enforcement actions are important to look at on a state-by-state basis as there may be a law in Indiana that is not in existence in Missouri. Accordingly, state insurance regulators must be respectful of other states, and Dir. Lindley-Myers stated that she would never punish an insurer in MO for something it did in IN. MAWG is supposed to be a collaborative effort among states so that the company does not have potentially 50 jurisdictions examining them for the same issues, and at the same time, there is a realization that there are differences among the 50 states but there are some common elements that can be reviewed together.

Sen. Travis Holdman (IN), NCOIL Immediate Past President, stated that his concern relates to the protocols that are used to determine when a company should be subject to a market conduct examination. If such protocols are not standard from state-to-state, how does MAWG determine if such an examination is to be conducted? Dir. Lindley-Myers stated that the process involves several states noticing a wrongful practice by an insurance company such as perhaps late payment of claims, and those states will come to MAWG to recite the company's actions and request that MAWG get involved. Dir. Lindley-Myers also noted that sometimes companies inherit the issues of another company through purchasing that company and they might not be aware of those issues. Sen. Holdman stated that, from experience, there may be a particular Insurance Commissioner who has an axe to grind against a particular industry-type and that can influence MAWG's decisions. Cmsr. Chaney stated that has in fact been the case in the

past, but such practices are not encouraged now, and he believes such practices are no longer present. The NAIC wants collaborative efforts and actions. No one wants a "Wyatt Earp" conducting a market conduct examination simply because money can be made for a particular state. Market conduct examinations are designed to protect consumers.

Dir. Cameron stated that Julie Mix McPeak, Tennessee Insurance Commissioner and NAIC President, made a dramatic change in the chairmanship of MAWG and that it should speak volumes regarding avoiding the type of practices mentioned by Sen. Holdman. Sen. Holdman asked if there is somewhere to get information as to how many states must outsource the market conduct study work itself to a firm outside the department and if there are states that have the expertise, do they conduct that work in-house. Dir. Lindley-Myers stated that it depends on the state as some have their own market conduct examiners, such as MO, NY, PA and CA, but other states hire out market conduct examination work. Generally, if you can get states that already have in-house market conduct examiners, you use those states because hiring-out the work is very expensive.

Sen. Holdman asked who ends up paying the bill for the exams. Dir. Lindley-Myers stated that the companies do. Sen. Holdman stated that if the companies pay the bill then it does not really matter if the state has the budget and/or staff. Dir. Lindley-Myers stated that what matters is whether the company can prove to the state that they are not engaging in the suspect business practices because if the company can prove such, a market conduct exam is typically not conducted. When companies stonewall those asking the initial questions and requests for information, that is what triggers the states going to MAWG and discussing the exams. Dir. Lindley-Myers also noted that a vote must take place in MAWG as to whether to pursue a collaborative action.

Rep. Keiser stated that he thought he had heard about five years ago that the NAIC has committed to re-addressing the way in which it conducts market conduct exams, and in doing so, the NAIC agreed to move to more targeted desk exams when specific issues arose as compared to more general market conduct exams. Rep. Keiser asked if that is still the NAIC's position. Cmsr. Kiser spoke to his philosophy as Utah Insurance Commissioner. During a recent phone call, a state suggested that a MAWG action be initiated against a company, but Utah was not supportive of it as Utah saw the company's practice as an isolated incident in one state. Had 4 or 5 states cited similar complaints about the company's practice, Utah's response might have been different.

Cmsr. Kiser stated that he prides himself in his Department's efforts to educate the staff so that Utah will have qualified examiners in charge to reduce the cost to Utah domiciled insurance companies when exams are conducted. Cmsr. Kiser that at first, he thought the problem was the Department's lack of funding for qualified examiners, but in reality, the training is most important. The net result of having more qualified examiners is that instead of paying \$172 per hour for an examination, companies can pay \$72 per hour. Insurance companies can also deduct some of those exam expenses from the premium tax they pay the state. The more knowledge staff has, the better they are able to do their work. Cmsr. Kiser stated that he cannot speak to the past practices of MAWG but that he and Cmsr. Kerr are committed to conducting MAWG in a responsible manner.

Dir. Cameron stated that the Idaho Insurance Dep't has two market conduct personnel. The majority of all market conduct issues are resolved before they ever go to MAWG

and it typically takes multiple complaints which establish a trend to get market conduct personnel involved, not just one or two complaints. Idaho has a unique feature in that it does not charge companies for market conduct exams. The Idaho Insurance Dep't runs based on the fees of the companies and agents which pay for the cost of market conduct exams. The downside is that, from a company perspective, there is not much incentive to finish the exam quickly, but, the Department believes it to be a very responsible approach.

DISCUSSION ON LICENSURE AND REGULATION OF PBMs

Sen. Morrish noted the NCOIL Health Committee's activities in developing a PBM Licensure and Regulation Model Law sponsored by NCOIL President, Sen. Jason Rapert (AR). The Model Law would, among other things, require PBMs to be licensed by state insurance departments. Sen. Morrish stated that NCOIL understands that the NAIC did not have specific comments on that Model because when the NAIC was updating its "Health Carrier Prescription Drug Benefit Management Model Act," there was a lack of consensus among NAIC members, and accordingly, the NAIC Model does not address regulation or licensure of PBMs. However, Sen. Morrish asked if the Directors and Commissioners present could provide their individual experience with PBMs in their respective states.

Dir. Cameron thanked NCOIL and Sen. Rapert for exhibiting great leadership in having discussions about the licensure and regulation of PBMs. There several different approaches that several different states have taken regarding PBM licensure and regulation, and since the NAIC is committed to the state-based system of insurance regulation, it decided to let the states develop their own PBM licensure and regulation practices. However, PBM licensure and regulation is an important issue to the NAIC as indicated by inviting Sen. Rapert to discuss that issue at the NAIC Spring National Meeting.

Dir. Cameron stated that the topic of state PBM legislative and regulatory activities will be on the NAIC Health Insurance and Managed Care Committee's (B Committee) agenda at the NAIC Summer Meeting, and most likely on the agenda at the NAIC Fall National Meeting. The B Committee wants to hear what states are considering regarding PBM regulation, and it also wants to maintain a good working relationship with NCOIL and Sen. Rapert. Currently, the NAIC does not anticipate having its own PBM Model. Dir. Cameron also noted that Idaho is in the midst of discussing what the proper path is for PBM regulations and the Arkansas approach is part of those discussions.

Cmsr. Chaney stated that Mississippi has had a PBM law since 2006 and in 2008 the pharmacy board took over the PBMs and many of the problems that other states are having with PBMs have been alleviated. PBMs do a good job if they are responsible to the pharmacy board or state insurance department. The NAIC did not take a position on the larger issue of PBM reimbursement to pharmacies. Cmsr. Chaney stated that if thought about in the light of what Home Depot did to small hardware stores, the real issue for legislators to discuss is the giant mergers of companies such as CVS, Aetna, and Walgreens resulting in the loss of local pharmacies. State regulators will do their best to enforce the laws as written by legislators. Cmsr. Chaney then reiterated Dir. Cameron's explanation of why the NAIC did not address PBM licensure and regulation when the NAIC updated its "Health Carrier Prescription Drug Benefit Management Model Act."

Dir. Lindley-Myers stated that in Missouri the Division of Professional Registration is part of the Department of Insurance and the Division provides administrative support to 41 professional licensing boards and commissions responsible for licensing and regulating the activities of approximately 430,000 Missourians. The Missouri Board of Pharmacy is one of those 41 professional licensing boards. Missouri is trying to figure out its path forward regarding PBM regulation because one of the largest PBMs, Express Scripts, is located in St. Louis, MO, and is being bought by Cigna. At this point, Missouri requires PBMs to register with the state, and Missouri has maximum allowable cost (MAC) legislation but there is a concern at both the legislative and regulatory levels about what the path forward should be.

Cmsr. Ito stated that his Department's first foray involving PBM's was when the Hawaii legislature got involved in the issue getting local pharmacies access to the PBM's networks. Cmsr. Ito stated that his initial reaction to that law was the pharmacy board should be handling it since they have the expertise but at the end of the day, local pharmacist's complaints were resolved. Last year, Hawaii passed a law requiring PBMs to be licensed by the Insurance Division and this year, the intent was to move MAC pricing appeals from the Dep't of Health to the Insurance Division, but the bill died. Cmsr. Ito stated that he has come to learn that when discussing PBMs, the real issue is transparency more than anything else.

Cmsr. Kiser stated that about three years ago, the Utah legislature proposed legislation that called on the Utah Insurance Department to regulate PBMs, however, due to a large fiscal note that the Dep't attached to the bill, the sponsor did not think it would pass, so he transferred that authority to the Utah Department of Commerce. PBMs are now required to register with the Dep't of Commerce. Cmsr. Kiser stated that he welcomes further discussions on PBMs in Utah.

Sen. Rapert stated that he understands the NAIC's position regarding licensure and regulation of PBMs, but he also hears a chorus of voices within the NAIC and he believes that everyone will meet at the end on this issue. Sen. Rapert also stated that it is very telling that only four states in the nation do not have some form of PBM regulation. It is great for NCOIL to be in a position to take the best of the PBM regulatory approaches that have been enacted in the states and to put together a framework for states to consider that can calm the waters in the PBM arena.

Sen. Rapert also noted that during the past few days, Ohio Governor John Kasich and Ohio Attorney General Mike DeWine have called for state efforts to ensure that Ohio taxpayers are getting their money's worth for middlemen who are getting more than \$200 million per year to process drugs for the poor and disabled. A consultant hired by the Ohio Department of Medicaid discovered that the PBMs are getting three to six times the usual market rate. CVS Caremark and OptumRX are the two PBMs in the Ohio Medicaid program. Sen. Rapert also referenced the recent actions by the Kentucky Department of Insurance: it issued an Order of Civil Penalty and Probation against PBM CaremarkPCS Health, LLC for multiple violations of the Kentucky Insurance Code. As a result, Caremark's PBM license has been placed on probation for twelve (12) months and Caremark has been assessed a fine of \$1,551,500. The Order cites four hundred fifty-four (454) violations related to reimbursement claim denials issued to pharmacists across Kentucky, an additional thirty-eight (38) violations where Caremark provided inaccurate or inconsistent information to the Department and four hundred fifty-four (454)

violations of the Unfair Claims Settlement Practices Act for procedural violations in each pharmacy claim.

Sen. Rapert closed by stating that he hopes the NCOIL PBM Licensure and Regulation Model can serve as a chassis by which states can implement positive change in PBM's business practices to better protect consumers. Insurance companies are overseen by insurance departments, pharmacists are overseen by pharmacy boards, and doctors are overseen by medical boards, but PBMs answer to no one. Sen. Rapert stated that he looks forward to working with everyone to ensure there is a fair and level playing field for all involved in the drug supply chain.

Rep. Rodney Anderson (TX) stated that Texas has heavily investigated the issues surrounding PBMs. Rep. Anderson read an excerpt from an SEC report looking into how the money flows in the drug supply chain: "With generic drugs, the story is different. Manufacturers capture \$36 of every \$100 while companies in the supply chain capture \$64." Rep. Anderson stated that does not sound like cost savings are being passed along to taxpayers, whether it be in Texas, Kentucky, or Arkansas.

Cmsr. Chaney stated examining the business practices of PBMs is important, but drug costs are too high. Drug costs are 30-32% of every health insurance premium dollar and drug companies are not regulated. Cmsr. Chaney stated that his quinine pills to treat leg cramps have risen exponentially simply because the federal government does not regulate pharmaceutical companies – that is the real issue.

UPDATE ON CYBERSECURITY DEVELOPMENTS

Sen. Morrish stated that cybersecurity is perhaps the most important topic in the insurance sector today and NCOIL applauds the NAIC for development of its Insurance Data Security Model Law. Sen. Morrish asked how the Model has been progressing through state legislatures, and if there is potential for Congress to step in and pass legislation on data security that would preempt state laws.

Cmsr. Ito stated that since the Data Security Model was adopted by the NAIC, it has been adopted in South Carolina and introduced in Rhode Island. The NAIC anticipates a number of states to introduce the Model during the next legislative session which is important to prevent Congress from stepping into the data security realm. At the present time, Congress has a draft bill entitled the "Data Acquisition and Technology Accountability and Security Act" but due in part to efforts by the NAIC, the bill excludes insurance from its scope.

Cmsr. Ito stated that as cybersecurity becomes more important it is important to keep a regulatory eye on cyber insurance and the pricing of that product. The NAIC also plans to hold another joint cybersecurity forum with Stanford University to further explore how insurers and cybersecurity experts can better work together to solve cybersecurity challenges facing the nation's technology infrastructure.

ADJOURNMENT

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