

NATIONAL COUNCIL OF INSURANCE LEGISLATORS  
NCOIL – NAIC DIALOGUE COMMITTEE  
OKLAHOMA CITY, OKLAHOMA  
DECEMBER 7, 2018  
DRAFT MINUTES

The National Council of Insurance Legislators (NCOIL) NCOIL – NAIC Dialogue Committee met at The Renaissance Oklahoma City Convention Center Hotel in Oklahoma City, Oklahoma on Friday, December 7, 2018 at 1:45 p.m.

Senator Dan “Blade” Morrish of Louisiana, NCOIL Vice President, presided.

Other members of the Committees present were:

Sen. Jason Rapert (AR)	Rep. Michael Webber (MI)
Rep. Martin Carbaugh (IN)	Sen. Jerry Klein (ND)
Sen. Travis Holdman (IN)	Rep. Lewis Moore (OK)
Rep. Matt Lehman (IN)	Rep. Tom Oliverson, M.D. (TX)

Other legislators present were:

Rep. Deborah Ferguson (AR)	Sen. Paul Utke (MN)
Rep. Steve Riggs (KY)	Asm. Kevin Cahill (NY)
Sen. Gary Dahms (MN)	Rep. Joe Schmick (WA)

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

After a motion was made by Sen. Jason Rapert (AR) – NCOIL President – and seconded by Rep. Lewis Moore (OK) to waive the quorum requirement, the Committee voted without objection by way of a voice vote to approve the minutes of its July 13, 2018 meeting in Salt Lake City, UT upon a separate motion made by Rep. Michael Webber (MI) and seconded by Sen. Rapert.

## DISCUSSION ON NAIC CANNABIS INSURANCE WORKING GROUP

Sen. Dan “Blade” Morrish – NCOIL Vice President - stated that as states continue to legalize both medicinal and recreational marijuana, the marijuana industry has become a multibillion-dollar business in the U.S. that’s drawing attention from some legislators eager for tax revenue and investors looking for profits. That is in despite of the fact that the Federal government has still not taken any action to remove marijuana from its Schedule 1 drug classification. Sen. Morrish asked the Commissioners for some background as to how the NAIC Cannabis Insurance Working Group (WG) was formed and what its goals are in light of those realities. Sen. Morrish also asked what the WG has identified so far as the main policy gaps for cannabis insurance coverage availability and gaps in coverage for cannabis businesses.

The Honorable Gordon Ito, Hawaii Insurance Commissioner and NAIC Vice President, stated that Hawaii was actually one of the states that adopted medical cannabis many years ago. Recently, Hawaii enacted a law relating to cannabis dispensaries. From an insurance aspect, last year, Hawaii's work comp carrier insurer of last resort decided that it would not be providing any work comp policies or coverages to any companies or entities involved with medicinal cannabis in Hawaii. That is an issue that the WG is examining. Cmsr. Ito stated that more than 45 states have passed laws legalizing cannabis or a derivative of it. Nine states (AK, CA, CO, ME, MA, NV, OR, WA, D.C.) have legalized cannabis for medicinal and recreational use. Michigan voted to legalize for recreational use on Nov. 6 of this year. Vermont made it legal to possess limited cannabis amounts on January 22, 2018. About 20 other states allow medical cannabis and 17 states allow cannabinoid products. FL, NJ, NY, and PA are currently looking into legalizing cannabis. Therefore, Cmsr. Ito stated that most states are involved with cannabis in one way or another.

With regard to the issues in Hawaii and other states relating to the difficulty for those involved in the cannabis industry in obtaining insurance, the insurance market for cannabis is very fragmented with about 27 carriers. There is a general lack of data for the market which makes underwriting requirements difficult. Coverage is primarily available in the surplus lines market. Cmsr. Ito stated that just a few months ago when Hawaii was experiencing the aforementioned issues in its work comp market, he and others had heard that some states were looking at using captives to provide coverage in addition to surplus lines.

With regard to the NAIC's involvement with these issues, the NAIC Property & Casualty Committee created the WG to consider the insurance regulatory issues surrounding the legalized cannabis business, including availability and scope of work comp coverage, and consumer information and protection. That includes the development of a white paper outlining the issues containing recommendations for development of regulatory guidance as appropriate. The WG is expected to sunset in 2020. At the 2018 NAIC Fall National Meeting, the WG heard presentations from various industry associations as well as insurance companies and law firms. Cmsr. Ito stated that the white paper is intended to identify insurance gaps such as coverage for such things as product contamination, landlord liability, distribution, and transportation, due in part to the regulatory uncertainty. The white paper will include state-by-state comparisons of insurance availability by line and discuss state, local, and federal authority, the operation of the cannabis industry from seed to sale, how insurers determine rates, and the best practices and recommendations. Cmsr. Ito stated that in addition to meeting at the recent NAIC Fall National Meeting, the WG has had a number of conference calls. The current timeframe anticipates WG adoption of the white paper at the NAIC 2019 Spring National Meeting and adoption by the NAIC at the 2019 NAIC Fall National Meeting.

The Honorable Ken Selzer, Kansas Insurance Commissioner, stated that he believes that everyone needs to work to get the federal government to remove marijuana from schedule 1 classification. That is the biggest issue in the insurance industry. The issue should at least be bifurcated so that ag hemp and medical non-THC marijuana are taken off schedule 1 classification. Anything that comes from a cannabis plant even though it hardly has any THC in it still mandates a schedule 1 classification. Cmsr. Selzer stated that in Kansas, an ag hemp bill was recently passed and in the Summer of 2019, applications will start being processed to grow ag hemp. The incredible regulations that

have to be met are bizarre; you will burn your lungs out before you get high from ag hemp, which is something that not everyone understands. Cmsr. Selzer stated that legislators and regulators should take some time to understand the difference between something that has THC in it and something that does not such as CBD oils.

Cmsr. Selzer stated that he looked into growing 10 acres of ag hemp and it turned out that he needed to be willing to sit out by the fields armed during the last 3 weeks or so of growth because the Kansas Bureau of Investigation (KBI) was concerned about people coming along and cutting off some of the plants and altering them in such a way as to change their chemical makeup so as to get high from them. The point is that there are a lot of issues surrounding cannabis. The plants look different when comparing ag hemp and regular marijuana but ag hemp can be camouflaged and used for inappropriate purposes. One of the big issues with marijuana around the country is that it is sometimes getting sprayed with fentanyl. Cmsr. Selzer stated that there are many issues to be discussed but above all he believes that they should be bifurcated between the products that have THC and those that do not or have hardly any in them. Doing so will make a big difference in insurance availability. Cmsr. Selzer stated that when he asked his insurance carrier this morning about growing ag hemp, the carrier told him to think about it because although it is not specifically excluded by the policy they have no interest in continuing the policy if he grows ag hemp. Cmsr. Selzer stated that he is very thankful that the NAIC is taking the time to study these issues.

The Honorable Jessica Altman, Pennsylvania Insurance Commissioner, stated that PA legalized medical marijuana last year and is therefore beginning to grapple with the myriad of regulatory issues. The issue is twofold in terms of the issue of insuring the production line itself, the liability insurance, the work comp insurance, but also the potential for insurance covering it as the medicine it is intended to be. It is also important to keep in mind that the availability of medical marijuana is not the same as accessibility because it is quite expensive and potentially too expensive for many patients that need it on an ongoing basis. Cmsr. Altman also noted that banking regulators are also grappling with similar difficult issues and her team is making sure to be in close contact with them in order to understand the issues together.

Sen. Rapert asked if the NAIC has attempted to formally request that marijuana be removed from schedule 1 classification? Cmsr. Selzer stated that he was speaking with regard to his own personal beliefs and not on behalf of the NAIC. Sen. Rapert stated that the entire country needs to take a long look at these issues because to his knowledge there has never been a peer-reviewed scientific report from the medical community that has deemed any medicinal benefit from marijuana even though there has been ample time for such a report to be issued. Sen. Rapert acknowledged that CBD oil differs in certain ways but in Arkansas, it was found that it is never advisable to light something on fire and inhale it. The fact of the matter is that this whole issue has never been about medicine in the first place; it is about having access to smoke marijuana whenever people want to under the guise of medical benefits.

Sen. Rapert stated that he has yet to see a physician verify certain medical assertions from the proponents of legalized marijuana, and in Arkansas, physicians actually clamored to be removed from prescribing it because they feared they would lose their medical license. Sen. Rapert stated that he believes this whole issue to be a farce because marijuana is not medicine and he hopes that the issues continue to be studied. Sen. Rapert further stated that he understands the differences with hemp and he is fine

with that but noted that marijuana was already approved in the form of marinol but nobody wants to take a pill – they want to smoke it. Sen. Rapert stated that he had asked his colleague in Arkansas who sponsored medical marijuana legislation, what is the dosage level and he replied that if you don't feel pain alleviated at first, you smoke more until you do. Sen. Rapert stated that he understands the issues are being grappled with across the country but he is not sure that ignoring science, reality, and facts so that certain people can feel good is good policy.

Cmsr. Selzer stated that the FDA just approved its first cannabinoid medicine so clearly there was some research behind that and he suspects more approvals will be coming. Cmsr. Selzer again stressed his belief that the the issues need to be bifurcated as he does not believe he would ever support recreational marijuana but would support non-THC CBD oils and ag hemp. Sen. Rapert stated that it would be helpful to the whole country if the supporters would admit that this is all about opening the door to federal law that legalizes recreational marijuana. Sen. Rapert stated that there was a report recently issued from a University in Colorado that stated Colorado was spending \$4 for every \$1 in tax revenue Colorado was making off of legalized marijuana. Sen. Rapert stated that is not good policy.

Rep. Deborah Ferguson (AR) stated that with regard to the bifurcation issue, that concerns her because all over Arkansas you see billboards advertising CBD oils in vaping shops and many purchase CBD oil online. Rep. Ferguson stated that she does not disagree that CBD oil should be available but it is concerning. It is Rep. Ferguson's understanding that this is an un-litigated area and the Hemp Act is being used to sell CBD oil in vape shops but CBD oil may not be properly placed under the Act's jurisdiction. Accordingly, it is concerning as to how pure and validated for safety the CBD oil is. Cmsr. Selzer stated that some states have addressed the issue by requiring CBD oil to be distributed through a pharmacy which is something that he would support. The question becomes do you want to deal with part of the issue or just say no to all of it? Cmsr. Selzer stated he personally would like to do the former. Rep. Ferguson stated that she has spoken to pharmacists in Arkansas about having it only distributed through them.

Rep. Tom Oliverson, M.D. (TX) stated that if it is a schedule 2 classification, lets treat it like a pharmaceutical. Rep. Oliverson stated that he can obtain IV fentanyl as an anesthesiologist to use on his patients on a daily basis since it is a schedule 2 drug. But that does not mean that you can go to the local dispensary and get it and you cannot grow it in your backyard. Rep. Oliverson believes that these issues get muddled when there is a rush to allow people to, for example, have up to 6 plants in your backyard and harvest it and smoke it whenever you want so that you feel better in an effort to treat your pain, PTSD or seizure activity. However, there is no attention paid to purity, potency, dosage, or an actual chain of custody in terms of how a controlled substance is getting from the manufacturer to the user who is a patient who has a legitimate medical reason to have it. Rep. Oliverson stated that he believes the devil is in the details related to questions such as how you actually regulate the dispensing of marijuana and CBD oils. If you say you are going to treat it as a schedule II drug, should you treat it like every other schedule II drug out there? Should a licensed pharmacist always be dispensing it and does it have the appropriate safeguards in place through the Dep't of Pharmacy and FDA so that we know what drugs are being dealt with and we know how pure it is and how it is protected.

Cmsr. Altman stated that many of the questions put forth today are outside the realm of insurance departments and insurance regulators but that she believes many of those questions are dealt with in the PA legislation and regulations. For example, in PA, marijuana in its raw form is not available even for medical purposes. Cmsr. Altman also clarified that the NAIC is focused on ignoring the question of whether marijuana should be legalized because that is not for them to decide and instead ensure that the white paper outlines what the regulatory implications that are necessary to understand for states that do decide to legalize marijuana, either medicinally, recreationally, or both. Cmsr. Selzer stated that the insurance regulator in almost every state is working between the insurance carrier and the consumer. The insurance regulator is not involved with the providers or the pharmaceutical companies, other than where PBM statutes have been passed. The insurance department is focused on protecting the consumer in that contract with the insurance company. It is not until a law gets passed in a state regarding marijuana and a specific assignment is made to the insurance department that a lot of the questions discussed today are relevant for insurance departments.

#### DISCUSSION ON PROPOSED AMENDMENTS TO NAIC CREDIT FOR REINSURANCE MODEL LAW AND REGULATION

Sen. Morrish stated that it is his understanding that at the recent NAIC Fall National Meeting last month, amendments to the NAIC's Credit for Reinsurance Model Law and Regulation (Reinsurance Models) were preliminarily approved due to the U.S. – EU Covered Agreement that was signed last year. Rather than draft a redundant Model, NCOIL simply endorsed the original NAIC reinsurance Models. Sen. Morrish asked for a summary of what the proposed amendments entail and what state legislators need to be aware of if they want to introduce such legislation in their respective states.

Cmsr. Ito stated that over the past year through the NAIC Reinsurance Task Force (Task Force) the NAIC has undertaken efforts to amend the NAIC Reinsurance Models to conform to the U.S.-EU covered agreement. The covered agreement was signed on Nov. 22, 2017 and will require states to eliminate reinsurance collateral requirements for EU reinsurers within 60 months or 5 years of the signing, or face potential federal preemption by the Federal Insurance Office (FIO). The U.S. Dep't of the Treasury (Treasury) also issued a policy statement on the covered agreement that specifically recognized the continued role of state insurance commissioners as the primary regulators of insurance in the U.S. Cmsr. Ito stated that what we all have to remember is that the clock is ticking on the above-mentioned preemption deadline.

Cmsr. Ito stated that the NAIC has been hard at work with efforts to conform its Reinsurance Models to the covered agreement. The NAIC heard comments at its Summer National Meeting and the Reinsurance Task Force received 13 comment letters from interested parties both in the U.S. and in the EU on the Task Force's initial draft proposal. The Task Force continued to work on amending the Reinsurance Models based upon the comments received. Both the Task Force and Financial Condition Committee met at the recent NAIC Fall National Meeting on Nov. 17 and approved the amendments to the Reinsurance Models. However, during the process there were certain comments made so the decision was made to send the Reinsurance Models back for technical amendments. In the interim, additional comments have been received so the Task Force is in the process of analyzing them and the NAIC is still deliberating over when to bring the Reinsurance Models forward for adoption.

Cmsr. Selzer asked if it is likely that the amendments to the Reinsurance Models will be finished by the Spring. Cmsr. Ito stated that he is not certain but that the NAIC is aware of certain timeframes that exist and would like to have the Reinsurance Models ready for introduction in state legislatures in time for the next legislative session. That issue is under discussion internally at the NAIC. Cmsr. Ito noted that a related issue revolves around the discussions with respect to a U.S.-U.K. covered agreement. Treasury and the Office of the U.S. Trade Representative (USTR) have initiated negotiations with the U.K. regarding a covered agreement in light of Brexit. Cmsr. Ito stated that the NAIC believes that such a covered agreement will largely mirror the U.S.-EU covered agreement. The NAIC feels that the U.S.-UK covered agreement is an extension of the initial covered agreement and the NAIC is opposed to further covered agreements.

The Honorable Tom Considine, NCOIL CEO, asked Cmsr. Ito to clarify whether the NAIC is opposed to the U.S.-UK covered agreement, or only those beyond that covered agreement, as he had read a statement from the NAIC on the U.S.-UK covered agreement which stated that the NAIC was supportive of it but not additional agreements, which is similar to NCOIL's position. Cmsr. Ito clarified that the NAIC is supportive of the U.S.-UK covered agreement because the NAIC views it as an extension of the U.S.-EU covered agreement, but the NAIC is not supportive of any further covered agreements beyond those two.

#### UPDATE ON NAIC ANNUITY AND SUITABILITY WORKING GROUP

Sen. Morrish stated that it is his understanding that at the recent NAIC Fall National Meeting last month, amendments to the NAIC's Suitability in Annuity Transactions Model Regulation (Suitability Model) were preliminary approved, and asked for a summary of what the proposed amendments entail. Cmsr. Ito stated that the NAIC Annuity Suitability Working Group (WG) started drafting amendments to the Suitability Model late last year. The Suitability Model has been protecting consumers for 15 years since its adoption by the NAIC in 2003. Since then there have been two sets of significant revisions made, one made in 2006 and the other in 2010. Nearly every state has adopted one version of the Model; 39 states have adopted the 2010 version. The WG was appointed in 2017 to review and revise the Suitability Model to promote greater uniformity and access across NAIC-member jurisdictions.

Cmsr. Ito stated that renewed interest in the Model was prompted in part by the work of the U.S. Department of Labor (DOL). The DOL's final Fiduciary Rule (Rule) was published in 2016 but was then vacated in its entirety by the 5th Circuit. While the DOL declined to challenge the court's ruling it is considering other regulatory options and is expected to revisit the Rule by September 2019. Separately, the Securities and Exchange Commission (SEC) released a proposed rule package in April 2018 which included a proposed best-interest regulation (BI regulation). The NAIC submitted comments to the SEC to coordinate efforts so that each respective regulatory development could be as comparable, clear, and efficient as possible. The SEC has announced that it would like to finalize its rule package by September 2019.

Cmsr. Ito further stated that the NAIC believes first and foremost in the state's authority to regulate insurance products as state-based regulation better protects consumers. Furthermore, the NAIC believes that consumers are better protected when to the extent possible there is harmonization of regulation enforced by the states, SEC, and DOL.

Insurance carriers and agents need clear and understandable uniform requirements. Just as importantly, regulators need clarity. Broad principles have public relations appeal but the inconsistent interpretation of vague requirements will be ineffective and inefficient. Consumers are more likely to be protected when carriers and agents have a clear understanding of conduct rules.

Cmsr. Ito stated that the WG has held many meetings throughout the past year, including two separate in-person meetings – one in Kansas City in June, and the other in Chicago in October. All meetings were held in an open forum with full transparency and interested parties were given multiple opportunities to submit comments. Over the course of the last year, the WG has received nearly 400 pages of comments from interested parties. Cmsr. Ito stated that the WG's goal is to elevate the standard of care for annuity sales so consumers understand that the products they purchase and are made aware of any material conflicts of interest, and are assured that those making product recommendations are making recommendations in the consumer's interest and are not placing the producer's financial interests ahead of the consumer's.

Cmsr. Ito stated that, fundamentally, the Suitability Model is changed to make it clear that all recommendations by agents and carriers must be in the interest of the consumer and that interest must always be put ahead of any interest the agent may have in the transaction. The Suitability Model would also require that agents and carriers act with reasonable diligence, care, skill, and prudence. To assure the duty of putting the consumer first, the draft requires agents to disclose and answer questions about their role in the transaction, their compensation, and any material conflicts of interest. The draft codifies as a requirement the good business practice of carefully and clearly explaining to the consumer the basis for the recommendation. Such a requirement is designed to ensure consumers understand what particular products are consistent with their particular needs, situations and objectives.

Cmsr. Ito further stated that agents and carriers are required to document in writing any recommendation and justification for that recommendation. Each of the new requirements contemplated by the draft make a more robust regulatory framework that strengthens consumer protections already available under the existing Suitability Model. Cmsr. Ito stated that there are a number of things that the WG is still considering, one of which relates to whether amendments to the Suitability Model should apply to in-force policies. The New York Department of Financial Services (NY DFS) is seeking to introduce language related to that discussion. The WG would also like to have further discussions as to whether the amendments should apply to annuities that are not individually solicited under the IRS code if established or maintained by employers.

Cmsr. Ito stated that at the recent NAIC Fall National Meeting the WG, in reporting to the Life Insurance and Annuities Committee, recommended that the preliminary draft of the amended version of the Suitability Model be exposed for comment at the Cmte level. Said Cmte adopted the WG's report and agreed to expose said version for comment up until Feb.15, 2019. The goal is to produce an NAIC draft of the Suitability Model containing placeholders for SEC issues. That would enable the SEC to benefit from the NAIC's work so that consistency can be provided to consumers, regulators and industry. Additional comments have already been received on the Suitability Model and it will be sent back to the WG for further drafting if necessary.

Sen. Morrish asked if the SEC rule, if adopted, would preempt state statutes that deal with fiduciary and best interest standards. Cmsr. Ito stated that the NAIC's view is that the SEC rule would not preempt the NAIC's Suitability Model as the goal is for the NAIC to ultimately produce something that is consistent with the SEC's rule and vice versa.

Cmsr. Altman stated that there has been an uptick in annuity sales following the news of the Rule being vacated and that is not a bad thing as annuities can be an incredibly valuable part of financial and retirement planning and the majority are sold to the right people for the right purposes in the right way. However, when that is not the case the consequences for the consumer can be severe and PA has been active with enforcement, particularly as it relates to "twisting" whereby an existing annuity is changed over for a new one at a significant cost to the consumer. Those cases can be very challenging to prove because there is a lot of grey area about what was done and why and with whose permission, particularly when dealing with senior citizens. That is why having really good standards in place is very important in PA to make sure products are sold appropriately. Cmsr. Altman stated that she is very pleased to see the WG focus on what is in the consumer's interest because at the end of the day that is the goal of having the standards in the first place.

#### DISCUSSION ON PBM REGULATORY ISSUES SUBGROUP

Sen. Morrish stated that the proposed charge for the NAIC PBM Regulatory Issues Subgroup (subgroup) is: "Consider developing a new NAIC model to establish a licensing or registration process for PBMs. The Subgroup may consider including in the new NAIC model provisions on PBM prescription drug pricing and cost transparency." Sen. Morrish then asked if the NAIC has decided yet whether the Model will be a Model Law or Regulation because the NCOIL Health Committee is developing separate Model Laws on PBMs and drug pricing transparency and rather than have duplicative Model Laws from NCOIL and NAIC, this may be a good opportunity for the NAIC to draft more detailed Model Regulations on those topics to help address issues that may not be addressed in the NCOIL Model Laws.

Cmsr. Ito stated that the NAIC adopted revisions to the NAIC Health Carrier Prescription Drug Benefit Management Model Act (Model #22) at the 2018 NAIC Spring National Meeting. After adoption of those amendments, questions were raised as to the Model's approach and whether direct regulation of PBMs was desired. Cmsr. Ito stated that Model #22, like other NAIC Models, is structured to maintain a health carrier's ultimate responsibility of carrying out the Model's requirements if the carrier delegates those responsibilities to a third party such as a PBM. Insurance departments do not have direct authority with respect to provider contracts – contracts entered into between health insurance carriers and the providers that provide the services. Cmsr. Ito noted that Hawaii's involvement with PBMs started with the legislature wanting the Hawaii Insurance Department to be responsible for ensuring that local retail pharmacists are allowed into a PBM's network. Since then there has been an expansion of involvement to the point where the Insurance Department licenses PBMs. During the last legislative session, the legislature tried to shift the Maximum Allowable Cost (MAC) appeal process from the Department of Health to the Insurance Department but the bill did not move.

Cmsr. Selzer stated that the Kansas Insurance Dep't requires PBMs to register with them, but not to be licensed. It is the legislature's responsibility to create a statutory framework for departments and agencies to operate under in order to get involved with

certain provider issues. In most states, including Kansas, there is very little authority to interact or get involved with providers. Most regulation is centered on the carrier but that can change if legislation is enacted.

Cmsr. Ito stated that at the recent NAIC Summer National Meeting, the subgroup was created and then met for the first time in October via conference call to discuss issues certain states have encountered relating to PBMs. With regard to the subgroup's charge, Cmsr. Ito stated that the subgroup will look at what NCOIL ends up adopting, if anything, and that could be the starting point for the subgroup's discussions. Cmsr. Altman stated that insurance regulators today do hold the system accountable for PBM activities related to the consumer. Insurance regulator's historical authority has been tied to enforcement of the insurance contract between the insurance company and the consumer and in health insurance that is inclusive of the pharmaceutical benefit. Whether or not the health insurer chooses to leverage a TPA for the pharmaceutical administration for administration of behavioral and mental health services, which is very common in PA, it is ultimately the licensed health insurer's obligation to fulfill the terms of the policy that insurance regulators generally approve, if not otherwise oversee. Some of the recent conversations at NCOIL and NAIC venture into that second contract – the contract between the insurance company and the provider and that is somewhat of an un-crossed frontier for insurance regulators and that will be a robust dialogue within the subgroup when discussing whether to pursue a Model Law.

Cmsr. Selzer stated that he is very thankful that both NCOIL and the NAIC are looking at these issues. In Kansas, approximately 1/3 of all medical claims go into a database - that does not include large self-insured plans or Medicaid or Medicare – consisting of privately, commercially insured plan claims. When looking at that database, there are 4 components: a.) in-patient; b.) out-patient; c.) providers; and d.) pharmaceuticals. The only one of those costs going up like a rocket is pharmaceutical – the others are staying relatively flat. Sen. Morrish noted that the NCOIL PBM Model that is currently being developed is aiming to be a chassis which can provide state insurance departments with rulemaking authority and determining what that rulemaking authority will be is something that the NAIC and NCOIL can work together on.

Sen. Rapert thanked the NAIC for getting involved with these issues, and for including NCOIL in its deliberations. NCOIL believes that the state insurance departments are best positioned to deal with these complex issues. Sen. Rapert believes that the subgroup is a very positive development and the sense is that NCOIL will be able to deliver a chassis in the form of a PBM Model Law that will provide state insurance departments with appropriate regulatory authority. Sen. Rapert closed by reiterating that doctors are regulated by medical boards, pharmacists are regulated pharmacy boards, insurance companies are regulated by insurance departments but PBMs are regulated by no one. That cannot continue because costs are continuing to rise and consumers are bearing those costs. Sen. Rapert noted that he did not intend to deal with these issues during his time as NCOIL President but this was about responding to concerns that were present not only in Arkansas but across the country.

Rep. Oliverson echoed Sen. Rapert's comments and agreed that state insurance departments are best positioned to deal with these issues. Rep. Oliverson also stated that insurance regulators do step into the space between the provider and the insurer in numerous ways already with issues such as balance billing and network adequacy. Any time that the relationship between the provider and insurer can potentially result in

disruption in services to the consumer then it is the insurance regulator's business to step in and be an independent third party, especially when there are stakeholders involved that have little or no negotiating ability.

## UPDATE ON NAIC LIFE INSURANCE ILLUSTRATION POLICY OVERVIEW DEVELOPMENTS

Sen. Morrish stated that it is his understanding that the NAIC Life Insurance Illustration Working Group (WG), created in 2016, has been diligently working to revise the NAIC's Life Insurance Disclosure Model Regulation (Model) – specifically, how the narrative and police summaries required by the Model can be enhanced to promote consumer readability and understandability, including how they are designed, formatted and accessed by consumers. Sen. Morrish asked for an update on the WG's efforts and what to expect for the remainder of this year and 2019.

Cmsr. Ito stated that there are two NAIC Models that address the information required to be given to consumers about their life insurance policies. The Life Insurance Disclosure Model Regulation #580 and The Life Insurance Illustration Model Regulation #582. The purpose of Model #582 is to provide rules for life insurance policy illustrations that protect consumers and foster consumer education. An illustration is a presentation or depiction that includes non-guaranteed elements of a policy of life insurance over a period of years. Model #582 provides illustration formats, prescribes standards to be followed, prescribes when illustrations are to be used, and specifies the disclosures that are required in connection with the illustration. One such illustration is a narrative summary that must accompany all illustrations. Model #582 outlines what information must be included in the narrative summary.

Cmsr. Ito stated that Model #580 requires that insurers deliver to purchasers of life insurance information that will improve the buyer's ability to select the most appropriate plan of life insurance for the buyer's needs, and improve the buyer's understanding of the basic features of the policy that has been purchased or is under consideration. Model #580 includes a requirement that for policies that are not going to be illustrated, the insurer is to provide a policy summary and describe what information is to be included in the summary. The WG has a charge to explore how the summaries required in the two NAIC Models can be enhanced to promote consumer readability and understandability including how they are designed, formatted and accessed. Cmsr. Ito stated that after much discussion, the WG decided to pursue the development of a simplified 1 to 2 page consumer-oriented policy overview document that would accompany the summary required in the two Models to achieve its charge. The WG also agreed to provide a policy overview template to be an example of a format that would meet the requirements of the two Models.

Cmsr. Ito stated that the WG on its last two conference calls discussed a proposal to simplify the approach to incorporate a policy overview document requirement. Rather than amending both Models to require a policy overview with the summaries, under the new approach only Model #580 would be amended to require that the policy overview document be distributed along with the buyer's guide for all life insurance policies. Such amendments have been circulated for a comment period which ends Dec. 10. The WG intends to meet by conference call early in 2019 to discuss any comments received and revise the draft accordingly. Once the WG finishes the Model it will start developing the template likely early next year.

## ADJOURNMENT

There being no further business, the Committee adjourned at 3:15 p.m.