

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS
NCOIL-NAIC DIALOGUE
NEWPORT, RI
JULY 14, 2011
MINUTES

The National Conference of Insurance Legislators (NCOIL)-National Association of Insurance Commissioners (NAIC) Dialogue Committee convened at the Marriott Newport in Newport, RI, on Thursday, July 14, 2011, at 4:45 p.m.

Rep. Kathleen Keenan of Vermont, chair of the Committee, presided.

Other members of the Committee present were:

Rep. Kurt Olson, AK	Sen. William J. Larkin, Jr., NY
Rep. Greg Wren, AL	Sen. Kevin Bacon, OH
Sen. Vi Simpson, IN	Sen. Keith Faber, OH
Rep. Robert Damron, KY	Rep. Brian Kennedy, RI
Rep. George Keiser, ND	Rep. Charles Curtiss, TN
Sen. Carroll Leavell, NM	

Other legislators present were:

Sen. Dean Cameron, ID	Assem. Nancy Calhoun, NY
Rep. Susan Westrom, KY	Rep. Marguerite Quinn, PA
Rep. Charles Kleckley, LA	Sen. Joshua Miller, RI
Sen. Dan Morrish, LA	Rep. Armando Walle, TX
Rep. Paul Brodeur, MA	Rep. Bill Botzow, VT
Sen. Jerry Klein, ND	Rep. Herb Font-Russell, VT
Sen. David O'Connell, ND	Sen. Maralyn Chase, WA
Rep. Don Flanders, NH	

Also in attendance were:

Commissioner Susan Voss, IA, NAIC President
Commissioner Kevin McCarty, FL, NAIC President-Elect
Superintendent Joseph Torti III, RI
Susan Nolan, NCOIL Executive Director
Candace Thorson, NCOIL Deputy Executive Director
Mike Humphreys, NCOIL Director of State-Federal Relations
Jordan Estey, NCOIL Director of Legislative Affairs & Education

MINUTES

After a motion made and seconded, the Committee voted unanimously to approve the minutes of its March 4, 2011, meeting in Washington, DC.

MARKET CONDUCT EXAMS

Rep. Keiser reported that he had hoped—after he and Sen. Leavell had met with Commissioners Voss and McCarty earlier in the year—that NCOIL and NAIC would have made more collaborative progress on market conduct reform. He said that prior to the Summer Meeting, he asked industry representatives to provide data on costs, frequency, and other items associated with state exams. He said that, in one case, companies surveyed reported that in an

18-month period they had been subjected to an average of 101 market conduct actions. Rep. Keiser said that general, simultaneous exams of a single company by several states were expensive and hard to justify. He then requested, after regulators said they had not seen the survey data, that NCOIL place the issue on the Annual Meeting agenda.

Commissioner Voss said that regulators agreed that collective, general exams made sense. She cited several reasons why coordinating targeted exams is more difficult, including companies that operate differently state-by-state and regulators who approach exams differently. She reported that an NAIC Market Regulation and Consumer Affairs (D) Committee had reviewed an NCOIL *Market Conduct Surveillance Model Act* and had discussed concerns regarding the model's provisions on sharing confidential information between states and on domestic deference, among others.

Rep. Kennedy overviewed the history of the NCOIL model. He said that the NAIC had approved an early NCOIL-NAIC version in a close vote, but that regulators had not supported the act in the states. He said that NCOIL then reconsidered the model act and addressed certain interested-party concerns before adopting the model in its current form. He said that Rhode Island and Texas, among others, had enacted the NCOIL model.

UNCLAIMED PROPERTY EXAMS

Rep. Keiser said that he became aware of an issue relating to life insurance benefits and unclaimed property laws while at a recent NAIC meeting. He learned since then, he said, that state treasurers are also involved.

Commissioner McCarty said that responsibility for the issue was bifurcated between state auditors and insurance regulators. Many state auditors, he said, had processes in place for remitting unclaimed property to states after a dormancy period of three or five years.

Regarding regulator activity, Commissioner McCarty said that the NAIC formed a task force on claim settlement practices that reviewed insurer use of a Social Security Death Master File (DMF). He described the DMF as a periodically updated compilation of everyone who has passed away. He said that some companies use the DMF to find deceased owners and stop annuity payments but not to initiate payment of insurance benefits. Commissioner McCarty said that while the New York attorney general had already weighed in on such insurer claims practices, and there may be other attorneys general who have specific authority to weigh in, the NAIC believes that the issue is more appropriately the jurisdiction of insurance regulators.

Rep. Damron expressed concern that state treasurers had entered into a multi-state agreement without including insurance regulators. He then explained his proposed amendments to an NCOIL *Beneficiaries Bill of Rights*—which he noted that Kentucky and Rhode Island had enacted—that would make sure companies could not use a data source to protect one side of their businesses without using the same information to pay claims. He said that he hoped the NAIC, The Council of State Governments (CSG), and the National Association of State Treasurers (NAST) would embrace the model act after NCOIL completed its consideration of the amendments.

Rep. Keiser questioned whether companies had been required to match their lists of insureds to the DMF five years ago and asked if requiring insurers to use it retroactively would be fair. Commissioner McCarty said that companies were not required to use the DMF to determine when a policyholder had died. In his opinion, he said, they should be required to retroactively

use the DMF for insurance claims purposes to parallel the time in which the companies used the DMF in their annuity business.

Responding to a question regarding the need for statutory standards, Commissioner McCarty said that he was reluctant to pursue a new model law because insurer actions, at present, may violate state statutes. Rep. Damron said that the practice was not illegal until legislatures ruled that it was, although he commented that the practice failed the smell test. He applauded the NAIC for raising the issue and said he was hopeful that the NAIC would see the benefit of putting restrictions into law. Commissioner McCarty then said that some states may already deem the practice to be illegal, and so they may be reluctant to change their laws.

MEDICAL LOSS RATIOS

Rep. Keiser commented on new medical loss ratio (MLR) requirements in 2010 federal health insurance reforms. He said that, before the reforms were enacted, North Dakota had employed similar rules but found that they did not impact insurance premiums. At that time, he added, the state of Montana, without MLR restrictions, had the same premium rates as North Dakota. He said that the validity of new federal MLR rules needed to be discussed because they posed problems for small insurers.

Commissioner Voss said that, like North Dakota, Iowa had one major player in its health insurance market and that the state wanted to keep its smaller companies. She reported that Iowa had requested a waiver from federal MLR rules until 2014 to give companies time to implement changes. She said that a special NAIC committee had studied the treatment of agent commissions under MLR rules and that regulators would work with interested parties to make sure that agents remained a valuable part of the insurance process.

Commissioner McCarty, speaking on his own behalf, criticized the use of MLR standards as benchmarks in federal healthcare reform and said that MLR requirements were counterproductive and could diminish consumer choice. He also questioned the MLR rules' impact on commissions in markets—such as those for young invincibles—where policies could cost \$100 a month.

SURPLUS LINES REFORM

Rep. Kennedy thanked Commissioner McCarty for his July 14 letter informing that the Florida Office of Insurance Regulation would remove from its Web site a white paper entitled *Advantages of NIMA Relative to SLIMPACT*. Rep. Kennedy questioned the white paper's assertion that Florida could not constitutionally delegate its statutory authority to a nongovernmental compact, and he cited numerous interstate compacts that Florida had joined.

Commissioner McCarty said that legislative counsel of the state's House and Senate Insurance Committees had made that constitutional determination. He said that counsel had the same delegation of authority concerns with the Interstate Insurance Product Regulation Compact (IIPRC). He said that there is not a bright-line constitutionality test for interstate compacts in Florida and added that he had not given up on joining the IIPRC.

In response to queries from Rep. Kennedy regarding how NIMA would impact Florida hurricane catastrophe fund assessments, and Rep. Damron as to hypothetically if Kentucky taxpayers, as NIMA members, would have to pay for Florida's catastrophe fund, Commissioner McCarty said

the NIMA allocation formula would not increase any tax assessment on any individual state and that Florida taxpayers would continue to pay for the state's fund.

Rep. Damron sought clarification regarding NIMA's process to select a software vendor to serve its technological needs and asked if NIMA had already selected a Florida company for such purposes. Commissioner McCarty answered that NIMA had not made any software determinations. He said that NIMA had issued a request-for-proposal and reported that a Florida company—as well as the NAIC—had responded.

Rep. Keenan asked how decisions were made under NIMA. Commissioner McCarty said that NIMA member states were structuring NIMA to mirror an interstate fuel tax agreement and that each state would have one vote.

NCOIL TRUCKER/COURIER WORKERS' COMP MODEL ACT

Rep. Keiser said that he reported on an NCOIL *Trucking & Messenger Courier Industries Workers' Compensation Model Act* at the NAIC Spring Meeting, and he asked for an update on NAIC activity. Commissioner Voss answered that discussion of the NCOIL model act was on the Committee's agenda for the August NAIC National Meeting.

FEDERAL INSURANCE OFFICE

Rep. Keiser asked how NCOIL and NAIC could positively influence the Federal Insurance Office (FIO) as it prepared a report on U.S. insurance regulation. He also asked if FIO had a role at the International Association of Insurance Supervisors (IAIS). Commissioner McCarty replied that FIO was statutorily recognized as a U.S. representative at the IAIS. He said that FIO had applied for admission to the IAIS and was currently a provisional member.

Commissioner Voss reported that NAIC leadership had met with FIO Director Michael McRaith and with U.S. Treasury Department Deputy Secretary Neal Wolin and that the federal officials had made clear that the Department/FIO was not interested in regulating insurance. She said that the NAIC recognized that the FIO report on insurance regulation could provide a "wake-up call" to improve regulation in certain areas, such as market conduct.

After further discussion, Reps. Keiser and Wren restated NCOIL's strong commitment to continued state-based insurance regulation. Rep. Wren cautioned that the Treasury Department in 2009 had affirmed its support for a white paper prepared by the previous Administration that, among other things, advocated for a National Insurance Office.

ADJOURNMENT

There being no further business, the meeting adjourned at 5:45 p.m.