

NATIONAL COUNCIL OF INSURANCE LEGISLATORS
NCOIL – NAIC DIALOGUE
PHOENIX, ARIZONA
NOVEMBER 17, 2017
DRAFT MINUTES

The National Council of Insurance Legislators (NCOIL) NCOIL – NAIC Dialogue Committee met at the Sheraton Grand Phoenix Hotel on Friday, November 17, 2017 at 3:00 p.m.

Senator Jason Rapert of Arkansas, Chair of the Committee, presided.

Other members of the Committee present were:

Rep. David Livingston, AZ	Rep. George Keiser, ND
Rep. Martin Carbaugh, IN	Sen. Jerry Klein, ND
Rep. Matt Lehman, IN	Sen. James Seward, NY
Rep. Joseph Fischer, KY	Sen. Bob Hackett, OH
Rep. Michael Webber, MI	Rep. Bill Botzow, VT
Rep. Lois Delmore, ND	

Other legislators present were:

Rep. Bryon Short, DE	Asw. Maggie Carlton, NV
Rep. David Santiago, FL	Asw. Pamela Hunter, NY
Rep. Park Cannon, GA	Rep. Marguerite Quinn, PA
Rep. Peggy Mayfield, IN	Rep. Tom Oliverson, TX
Rep. Steve Riggs, KY	Rep. Jim Dunnigan, UT
Rep. John Wiemann, MO	

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 July 14, 2017 meeting in Chicago, Illinois.

DISCUSSION ON NAIC INSURANCE DATA SECURITY MODEL LAW

Sen. Rapert asked how the NAIC thinks State receptiveness to the NAIC's recently adopted Insurance Data Security Model Law (Model) will be as State legislative sessions are fast approaching.

Ray Farmer, Director of the South Carolina Department of Insurance, stated that out of 56 jurisdictions that voted on the Model last month, only one opposed. The reason the NAIC got involved in drafting such a Model in the first place was because of the massive health insurer data breaches in 2014. The adopted Model went through six prior drafts and benefited from a wide range of input. Notably, the report recently issued by Treasury encouraged States to

adopt the Model. Dir. Farmer stated that the Model will be introduced in South Carolina's next legislative session and it is his understanding that it will be introduced in other States' upcoming sessions as well. The Model gives guidance to regulators, industry, and consumers, and contains important exemptions. Throughout the drafting process, the NAIC was concerned about the Model's applicability to small entities and independent agents. Accordingly, entities with fewer than 10 employees are exempt from the Model's requirements. Additionally, health insurers that comply with HIPAA's privacy requirements are deemed to have met the Model's requirements. The Model mirrors the recently promulgated New York Department of Financial Services cybersecurity regulations, and accordingly, compliance with the regulations means compliance with the Model.

Sen. Rapert stated that it is important that the financial services and insurance industries work together on these issues because if multiple silos are created regarding different ways of doing things, it could make the problems worse. Sen. Rapert also noted that he is concerned that such a large number of independent insurance agencies are exempt from the Model because such a large amount of important data is trusted with such agencies. Dir. Farmer stated that regarding coordination of efforts across industries, he sits on the Financial Banking Information Infrastructure Committee (FBIIIC) and that there is a great relationship amongst all members in terms of sharing what different industries are doing with cybersecurity developments. Additionally, based on his experience, Dir. Farmer stated that the insurance companies are doing a good job of understanding the seriousness of the threat and working towards protecting themselves and in turn consumers.

John Doak, Oklahoma Insurance Commissioner, stated that Dir. Farmer has done a tremendous job leading the drafting of the Model. Cmsr. Doak also noted that in Oklahoma, the Insurance Department has held meetings on cybersecurity for its domestic insurers and will continue to do so.

Rep. Matt Lehman (IN) stated that he appreciates the version of the Model adopted by the NAIC as compared to prior drafts but stated that if you look at the 14 largest data breaches, only one was to an insurance company – Anthem. Many of the entities that have been breached are governed by Treasury and accordingly Rep. Lehman questioned Treasury's endorsement of the NAIC Model. Rep. Lehman stated that more focus needs to be on the breach itself and asked Dir. Farmer if other industries that are represented on FBIIIC are taking the breaches as serious as the insurance industry. Dir. Farmer stated that the other industries definitely are. Rep. Lehman asked if the market has been growing for cyber insurance. Dir. Farmer stated that the cyber-insurance market is still relatively a niche market but noted that it has been growing and that he expects it to continue to grow.

REVIEW OF NAIC & STANFORD UNIVERSITY CYBERSECURITY FORUM

Cmsr. Doak noted that the NAIC-Stanford University Cybersecurity Forum was a well-attended event and was held to provide insight into cyber threats and the role that insurance plays in mitigation of those threats. The forum was part of National Cybersecurity Awareness Month and one of the speakers was Richard Clarke – former National Coordinator for Security, Infrastructure Protection and Counter-terrorism for the U.S. There were also panels held to discuss underlying cyber risks, the range of cyber threat scenarios, and how to identify potential gaps in cyber insurance coverage. The NAIC is committed to better understanding the cybersecurity landscape, how insurance fits into that arena, and to ensure that consumers are protected from data breaches. Cmsr. Doak welcomed NCOIL participation at such events in the future.

Dir. Farmer stated that the Forum was important because a lot of the conversations focused on avoiding the breach in the first place rather than focusing on the aftermath. Everybody has to be focused on what they “click” on how they safeguard their information. Additionally, companies and/or agents doing business with a third party need to make sure the third party is properly secured – that is an aspect that often gets forgotten. Cmsr. Doak brought up the issue of ransomware and stated that a lot of work needs to be done in that area. Sen. Rapert agreed and stated that it is important to remember that, while the technical aspects of firewalls and the like are extremely important and necessary in protecting information, common sense goes a long way.

Rep. George Keiser (ND) asked if the National Security Agency (NSA) breach was discussed at the Forum. Dir. Farmer stated that it was. Cmsr. Doak stated that Richard Clarke noted that he has been through five separate data breaches himself and stressed better understanding of the prevalence of data breaches on an individual level.

Sen. Bob Hackett (OH) stated that in Ohio a Task Force was formed on cybersecurity and they learned that a lot of the concerns from companies centered around the fear that they could be breached even if they follow the best prevention systems in the world. Legislation was just introduced in Ohio that incentivizes companies to adhere to certain standards – if they do, they are provided with an “affirmative defense.” Sen. Hackett asked if incentivizing adherence is a good approach. Dir. Farmer stated that every State has to address their own issues but that he would be reluctant to provide a safe-harbor.

Rep. Bill Botzow (VT) noted that State legislators need to aggressively respond to these issues even if they risk not getting everything perfect because State legislator’s basic job is to protect the public.

Rep. Joseph Fischer (KY) stated that his concern with the NAIC Model is that it is silent on the issue of a private cause of action and asked if the NAIC is opposed to States adding a provision that specifically preempts a private cause of action. Dir. Farmer stated that was a repeated suggestion throughout the drafting process, but it was ultimately decided to not be included. Dir. Farmer noted that he supports States adopting the Model as-is, but acknowledged that it is in fact a “Model” and accordingly, States are free to modify it as they wish.

DISCUSSION ON NAIC GROUP CAPITAL CALCULATION ACTIVITIES

Sen. Rapert stated that one need look no further than the Texas, Florida and Puerto Rico hurricanes to appreciate the compelling public policy that insurance companies should have sufficient resources to pay claims when due, and asked Dir. Farmer and Cmsr. Doak if they could provide an update on what the NAIC has been working on recently with regards to possible ways of calculating group capital requirements.

Cmsr. Doak stated that in late 2015 the NAIC began exploring the potential approaches to group capital calculation. Group capital calculation is an additional regulatory tool for U.S. group supervision that is intended to provide additional data to the lead State within the holding company structure. The goals and objectives of the calculation from a regulatory perspective include: adding a valuable, analytical tool to compliment the U.S. holding company analysis; assisting the group supervisor in monitoring the overall financial flexibility and strength of the group as a whole since it captures the group capital information as well as the material legal entity capital information; providing a quantitative measure to be used by regulators in

conjunction with group-specific risk and stresses identified in ORSA and Form F filings that may not be captured in the legal entity's RBC filing. The basis for the calculation will be an RBC aggregation methodology. The calculation will require an inventory of the carrying value of the capital requirement of the material companies within the group. Once the companies are inventoried, the calculation requires the elimination of the carrying value and the capital requirement of any stacked entities as well as potential adjustments for captives and permitted practices. A number of the potential approaches to group capital calculation were considered at the start of the process. The NAIC rejected the use of a counting consolidation method for a number of reasons, including that it inaccurately assumes that capital is fungible throughout the group. The scope of the group is an informational consideration although the calculation itself must be first developed before the scope can be fully vetted and determined. The current thinking is that the calculation would apply to the ultimate controlling party in the group and its subsidiaries. Therefore, the scope of the group is initially set to be all legal entities within the group which is consistent with the scope including the NAIC Holding Company Models and Financial Analysis Handbook. Once the calculation is developed, the NAIC's Group Calculation Working Group can consider it and whether it is appropriate to exclude any groups within that group. As far as the implementation deadline for field testing, a tentative timeline has been established but there are no strict deadlines at this point. The NAIC has undertaken a baseline exercise with approximately 10 companies in 2017 to capture the specific data to help make the decisions on some of the details on the ultimate calculation. The baseline exercise allowed the working group to compare the capital requirements using RBC figures to compare against the alternatives. More formal testing is expected in 2018 through some type of beta-version. Treatment of captives along with the treatment of potential grouping of non-insurance affiliates are currently under discussion. Cmsr. Doak noted that Florida Insurance Commissioner David Altmaier is Chair of the Group Capital Calculation Working Group.

Sen. Rapert noted that the U.S. policy statement on the Covered Agreement states that the U.S. expects that the NAIC's group capital calculation will satisfy the 'group capital assessment' condition of Article 4(h) of the Covered Agreement, provided that the work is completed and implemented within five years of the date on which the Agreement is signed. Sen. Rapert asked if the NAIC expects that to be the case and if there is any concern that the work won't be completed and implemented within five years. Dir. Farmer stated that NAIC fully expects its work in that area to be completed within that timeframe and to satisfy the Covered Agreement's 'group capital assessment' condition.

DISCUSSION ON NAIC INSURE-U USAGE INSURANCE ACTIVITIES

Dir. Farmer stated that the NAIC's "Drive Check" tool allows for an individual to go on the NAIC website and answer a few questions to determine if usage-based insurance (UBI) is appropriate for them. Dir. Farmer also noted that in the context of technology and the NAIC, after a natural disaster, it is almost impossible for individuals to remember what items were in their apartments or homes after it was severely damaged or destroyed. Accordingly, the NAIC came up with a home-inventory app – something that several insurers now have.

Cmsr. Doak stated that the "drive check" feature is a tremendous tool gaining popularity, and that in the context of innovation, it is amazing how Insurtechs are growing which is reflected by the increased participation in the recent Insurtech Conference. The first conference two years ago had approximately 1,500 attendees, this year there were 3,500 attendees, and next year 7,500 attendees are expected. Cmsr. Doak encouraged everyone to attend the conference as it is State insurance regulators and legislators job to keep abreast of how innovation is affecting the industry.

UPDATE ON PRESIDENT TRUMP'S HEALTHCARE EXECUTIVE ORDER AND CANCELLATION OF COST-SHARING REDUCTION PAYMENTS

Dir. Farmer stated that there are two types of subsidies. One is on the front-end for when consumers purchase premiums, and the other are the cost-sharing reduction (CSR) payments made directly to insurers. The Trump Administration has decided to stop making the CSR payments to insurers. For the insurers that already had their rates in effect, they will have to "eat" that expected CSR payment. Dir. Farmer stated that South Carolina citizens will experience a 31% increase in Exchange premiums due to the lack of CSR payments to insurers. Dir. Farmer noted that he and Cmsr. Doak, along with several others, testified before the HELP Committee and asked them to: a.) fund the CSR payments; b) provide for more flexibility in the 1332 waiver process; and c.) re-institute the reinsurance program. Dir. Farmer stated that unfortunately, partisan politics are a problem with those issues. Cmsr. Doak agreed with Dir. Farmer's statements and noted that Oklahoma citizens are experiencing similar rate increases due to the lack of CSR payments made to insurers.

Rep. Park Cannon (GA) asked if there are any pertinent lawsuits that State legislators should be aware of regarding the CSR payments. Cmsr. Doak stated that he believes there are and stated that NAIC staff can provide that information to the Committee after the meeting.

UPDATE ON NAIC LOST LIFE INSURANCE POLICY LOCATOR

Cmsr. Doak stated that in November 2016, the NAIC introduced the life insurance policy locator that provides for nationwide access for assistance with finding life insurance policies and annuities. Since introduction, \$92.5 million has been returned to consumers which consists of 8,210 beneficiaries and over 40,000 searches. Cmsr. Doak urged the Committee members to promote the service in their respective States.

ADJOURNMENT

There being no further business, the Committee adjourned at 4:15 p.m.