

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

The National Council of Insurance Legislators (NCOIL) Financial Services Committee met at the Little America Hotel in Salt Lake City, Utah on Friday, July 13, 2018 at 9:00 a.m.

Senator Bob Hackett of Ohio, Chair of the Committee, presided.

Other members of the Committee present were:

Rep. Sam Kito (AK)	Rep. Bart Rowland (KY)
Sen. Jason Rapert (AR)	Rep. Edmond Jordan (LA)
Rep. David Livingston (AZ)	Rep. Joe Hoppe (MN)
Sen. Travis Holdman (IN)	Rep. Lois Delmore (ND)
Rep. Matt Lehman (IN)	Rep. George Keiser (ND)
Rep. Joseph Fischer (KY)	Asw. Pamela Hunter (NY)
Rep. Jim Gooch (KY)	Rep. Tom Oliverson, M.D. (TX)

Other legislators present were:

Rep. Deborah Ferguson (AR)	Asw. Maggie Carlton (NV)
Rep. Paul Mosley (AZ)	Asw. Ellen Spiegel (NV)
Rep. Bryon Short (DE)	Sen. Neil Breslin (NY)
Rep. Richard Smith (GA)	Rep. Rodney Anderson (TX)
Rep. Steve Riggs (KY)	Rep. Joe Schmick (TX)
Sen. Paul Utke (MN)	

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 3, 2018 meeting in Atlanta, GA.

CONTINUED DISCUSSION ON THE PRODUCER APPOINTMENT PROCESS

Chlora Lindley-Myers, Director of the Missouri Department of Insurance, stated that in Missouri, the producer appointment process was amended with the enactment of SB 193, which became effective in January 2003. Prior to that date, companies were required to notify the Director of any appointments or terminations and pay a \$10 fee for each notification. As a result of SB 193, several changes were made to the producer law in an effort to reach uniformity, including the change from combined agent-broker, to a producer license.

In 2011, and again in 2015, there were legislative proposals that were submitted to reinstate the appointment process, but neither moved beyond internal review. The most recent 2015 proposal would have been revenue-neutral for the Department with no fees collected by the Department itself. SB 193, while removing the appointment termination fees in one part of the statute, raised the producer license fee to \$100. The increased producer license fee did not make up for the financial losses as a result of the removal of the appointment and termination requirements and fees. With regard to whether Missouri is still able to protect consumers and track those who are fraudulent or abuse their privileges, there is room for improvement.

In the 2015 legislative proposal, the Department's Consumer Affairs and Market Regulation divisions jointly requested the reinstatement of the appointment laws to improve monitoring of the underwriting and sales activities at the agency level. It is more common for agents to represent multiple companies which makes ascertaining the extent of their illegal or possible fraudulent activities difficult if not impossible. Dir. Lindley-Myers stated that the Department has identified producers who have engaged in illegal activity, but the Department lacks the ability to fully identify other insurance companies or policyholders that might be affected.

Dir. Lindley-Myers stated that if the Department was able to reach out to other affected insurance companies, the Department would have the ability to work with those companies prior to an enforcement action to both determine the scope of the activity and to coordinate actions to lessen the impact on consumers in Missouri. Being able to take the agent's complaints and track patterns among specific producers to the company at the underwriter level would increase the Department's ability to identify companies with less stringent controls, poor training, and any other issues that might be there for a particular company.

That information would be invaluable to the market analysis process in determining which companies have indications of greater systemic problems that warrant an examination. This additional protection would keep the market more stabilized and provide greater protections for insurance consumers throughout Missouri. Dir. Lindley-Myers stated that the Department lost \$2,750,000 by eliminating the appointment process, but by raising the license fee, the Department gained \$2,860,000 due to more producers and that increased fee.

Ron Jackson of the American Insurance Association (AIA) stated that the producer appointment process is an issue of great importance to AIA's members and that said members are continuing to discuss the corresponding issue of revenue-neutrality. One possibility being discussed among AIA and its members is an assessment based upon the number of agents licensed in the state and producing for the companies licensed in the state. By way of example, if the 2018 revenue for the Missouri Department was \$16.4 million and there were 100,000 agents in the state, then the agent fee would be \$164, and that assessment could be assessed on the insurers by their premium volume in the state and that revenue would increase and decrease based upon the number of agents licensed in the state each year.

Mr. Jackson stated that with that type of assessment, there is an issue of retaliatory charges. To address that issue, one proposal might be to impose the assessment on domestic companies only. Mr. Jackson stated that AIA appreciates the opportunity to

continue to discuss the issue of producer appointment process reform, including the accompanying issues of revenue-neutrality and Department enforcement.

John Fielding of the Council of Independent Agents and Brokers (CIAB) stated that CIAB does not believe the appointment process is necessary and urged the Committee to continue examining the issue. Mr. Fielding stated: a.) CIAB believes producer appointments are not needed for consumer protection. The process may be a convenient way for regulators to get information but its anachronistic, unnecessary and costly. There are other ways to get that information that is cheaper and more efficient. Nine (9) states currently do not have the producer appointment process and the CIAB believes the consumers in those states are well-protected; b.) CIAB believes the appointment process imposes costly and timely regulatory burdens as the process differs from state to state; and c.) CIAB knows that states raise important revenue through producer appointments and terminations, but CIAB believes there are ways to make sure that any changes to the process are revenue-neutral. Mr. Fielding welcomed the Committee to use CIAB as a resource on this issue going forward.

Sen. Bob Hackett (OH), Chair of the Committee, asked Dir. Lindley-Myers to confirm that the Missouri reformed the producer appointment process in a revenue-neutral fashion. Dir. Lindley-Myers replied, yes, and noted that while the Department currently protects consumers very well, it could do so even better. Sen. Hackett stated that he believes this is issue is a perfect example of how a solution can be reached by collaboration among all interested parties.

UPDATE ON HEALTH SAVINGS ACCOUNTS DEVELOPMENTS

Dr. Bill West began by providing some brief background information. Dr. West is a board-certified OB/GYN and graduate of Jefferson Medical College. He founded First MSA (later First HSA) in 1999 as one of the first companies of its kind. First HSA was acquired by HealthEquity in 2011. Dr. West is Senior Vice President of Business Development for HealthEquity. Dr. West has been actively involved in the Consumer Directed Healthcare (CDH) industry. He is a member of the HSA Coalition, the AHIP HSA Council, the American Bankers Association (ABA) HSA Council and many other committees and councils. Dr. West noted that when he says “we” – he is referring to the ABA HSA Council, not Health Equity.

Dr. West stated that there are several public sector entities such as school systems, municipalities, counties, and states, that are looking to HSA’s as a solution to their problems. The question is – do HSA’s work? The ABA HSA Council is in the second year of a four-year study in which two school districts in Southcentral Pennsylvania went from a traditional co-pay plan to an HSA-only plan. The districts experienced a significant reduction in medical costs – an average of 25.7% reduction. After HSA contributions, the savings were 17.6% compared to prior utilization. Together, both districts saved over \$3.8 million in the first two years (a total of 500 employees). Additionally, not only have the school districts done well, the employees have done well. The year-end average account balances have been: \$1,406.70 (2015); \$2,425.17 (2016); \$3,422.88 (2017 – study not yet published). Dr. West stated that one of the districts just went back to their collective bargaining agreement early and resolved their healthcare issues very quickly – the district and unions agreed on keeping the HSA funding the same.

Dr. West stated that the ABA HSA Council has several legislative priorities, one being addressing chronic disease and HSA's. People with chronic diseases are blowing through their deductible just on prescriptions alone and are unable to save for future healthcare expenses. Another legislative priority relates to working seniors. There are a lot of people who are 65 and older who continue to work and if they are in a co-pay or PPO plan and they enroll in Medicare, it is not a problem since there is coordination of benefits. However, if they are in an HSA-qualified plan and they enroll in Medicare, they are precluded from making any further contributions to their HSA account and from getting employer contributions in the HSA account.

The ABA HSA Council (Council) would also like to see increases to contributions to the OOP maximums to allow people to pay their entire OOP healthcare expenses with pre-tax dollars vs. post-tax dollars, not just an arbitrary number that was arrived at initially. Also, to provide some perspective, Dr. West stated that HSA's were enacted at the end of 2003 and the iPhone debuted in 2007. There have been 15 new models of the iPhone but no changes to HSA's. The initial HSA legislation was not prepared for the new developments we have seen in the healthcare system.

The Council would also like to see HSA's expanded into Medicaid, similar to what was done in Indiana with Healthy Indiana. Also, HSA's need to be protected from mandates or other issues that potentially could disallow or preclude HSA's from operating. For example, in Maryland, they provided coverage for male sterilization and because that was deemed to be non-preventive, it was deemed that there were no HSA-qualified plans in Maryland. That was subsequently correct via legislation in Maryland, but issues like that need to be monitored.

Dr. West stated that there have been over 30 bills introduced in Congress this session, and there was no action on any of them until the past two days. During the past two days, the House Ways and Means Committee marked-up and voted through 11 bills that work to improve HSA's. The aforementioned Council priorities were included in those bills, in addition to others. Dr. West closed by stating that there was bi-partisan support for those bills and that hopefully, they will be merged into one bill, passed through the House before the August recess, and presented to the Senate.

Rep. Steve Riggs (KY), NCOIL Immediate Past President, urged Dr. West to discuss with NCOIL CEO, Cmsr. Tom Considine, and representatives from the NAIC, about including HSA's as a topic of discussion during each organization's next trip to D.C.

Rep. Joe Schmick (WA) asked if there has been client satisfaction in the Council's four-year study. Dr. West stated that client satisfaction has been reported at over 95%. In the first three months when it was introduced, client satisfaction was below 5%, but as they utilized their HSA's, satisfaction grew. Rep. Schmick asked if he could be provided that information. Dr. West noted that the survey was conducted by the districts themselves and he will try and get that information to Rep. Schmick.

Sen. Hackett asked if flexible spending account reform was included in the bills that the House Ways and Means Committee voted on. Dr. West replied yes but stated that there is a caveat in a provision that says any amount over \$500 that is rolled over into the next year will decrease the subsequent amount in the following year that you could deduct from your paycheck - so if the amount is \$2,500 and you rolled over \$700 you could only roll over \$2,300 the next year.

Sen. Hackett asked if there have been any discussions about improving the ability to “dump” HSA’s into IRA’s and vice versa. Dr. West stated that, currently, you have a once-in-a-lifetime contribution out of your IRA into your HSA. Sen. Hackett asked if there have been any discussions about someone getting to retirement with a huge HSA and having the ability to roll it into their IRA. Dr. West stated that an HSA is actually better than an IRA because the HSA works exactly like the IRA in that if you take it out at age 65 or beyond as income, it’s just taxable and there is no penalty, which is exactly what happens with an IRA; but if you use your HSA for qualified healthcare expenses, it’s tax-free. Dr. West stated that the Federal government is reporting that the average couple retiring this year will have \$260,000 in uncovered medical expenses during retirement. Accordingly, Dr. West stated that such couples should use an HSA to pay for those healthcare expenses and other retirement accounts to pay for other expenses.

Asw. Maggie Carlton (NV) stated that in Nevada, they use HSA’s and HRA’s, and the problem with the reimbursement account is the “doughnut hole.” Asw. Carlton asked what the utilization rates are and what are some of the outcomes in the Council’s four-year study. In Nevada, they found that some folks were putting off doctor visits because they could not pay for them and ended up with more serious conditions. Dr. West stated that there is a decrease in utilization, but those changes in utilization are oftentimes at the prescription level. The Council looked for the scenario Asw. Carlton described and found that in year two, there was an increase in specialty drug usage. Dr. West also noted that there are several studies that offer conflicting conclusions about whether lower utilization is good or bad.

DISCUSSION ON RESOLUTION IN SUPPORT OF THE SMALL BUSINESS AUDIT CORRECTION ACT OF 2018

Sen. Jason Rapert (AR), NCOIL President, and sponsor of the Resolution in Support of the Small Business Audit Correction Act of 2018, began by stating that at last year’s NCOIL Summer Meeting in Chicago, this Committee adopted without objection a Resolution in Support of an Exemption for Community Banks from Onerous and Unnecessary Regulations – sponsored by Sen. Travis Holdman (IN) – NCOIL Immediate Past President.

The reasoning behind that Resolution was that, despite their major role in the U.S. economy and their minimal role in the 2008 financial crisis, one of the most significant problems community banks faced was the sheer volume of banking regulations resulting from the enactment of Dodd-Frank. Many of those regulations were intended to stop activities that larger institutions conducted in the run-up to the financial crises – a fact that was reiterated yesterday by the President of the Utah Bankers Association during his remarks to the NCOIL Joint State-Federal Relations and International Insurance Issues Committee.

Such regulations require a degree of categorization, recordkeeping, and reporting that can be particularly onerous for smaller institutions such as community banks which do not have large compliance staffs; and, many community banks struggled with such unnecessary regulatory burdens. Sen. Rapert stated that he believes there are parallels between those issues and the issue that the Resolution before the Committee today seeks to address.

The Public Company Accounting Oversight Board (PCAOB), established by Congress in 2002 to oversee the audits of public companies in order to protect investors, was expanded by the Dodd-Frank Act in 2010 to include annual audits of all brokers and dealers – regardless of size – registered with the Securities and Exchange Commission. Currently, a three-person firm is held to the same standards as publicly traded firms. This has taken a financial toll on small firms in the investment and accounting industries around the U.S. This one-size-fits-all PCAOB audit requirement has inhibited the growth and success of small broker-dealer businesses with limited resources

Accordingly, H.R. 6021/S. 3004, the “Small Business Audit Correction Act of 2018” would exempt privately-held, small non-custodial brokers and dealers in good standing from the requirement to hire a PCAOB-registered audit firm, and reinstate audit requirements to the former standard for those types of firms. Sen. Rapert stated that it is important to note, as NCOIL is a bi-partisan organization, that H.R. 6021 and S.3004 have bi-partisan support in Congress: the House Sponsor is Rep. French Hill (R-AR) and the House Co-Sponsor is Rep. Vicente Gonzalez (D-TX); the Senate Sponsor is Sen. Tom Cotton (R-AR) and the Senate Co-Sponsor is Sen. Doug Jones (D-AL). Sen. Rapert further stated that when he and other NCOIL legislators were in D.C. a few weeks ago for the NCOIL fly-in, he heard bi-partisan support for the bill from Members of Congress and their staff. Sen. Rapert further stated that over 400 small businesses in 49 of 50 states have supported this legislation and urged the Committee to support the Resolution.

Page Pierce, President of PSP Consulting, stated that she represents 3,400 small firms within the broker-dealer community in the investment industry, as well as untold small accounting firms across the country. Ms. Pierce noted that the number of small businesses that support this legislation has actually grown to over 800. Ms. Pierce stated that following the enactment of Sarbanes-Oxley and Dodd-Frank, irrespective of size, firms are required to hire a PCAOB auditor. Hiring such an auditor requires firms to follow PCAOB standards which are markedly different and significant more complex than American Institute of CPAs (AICPA) standards.

Ms. Pierce stated that there are 430,000 AICPA members. There are currently less than 438 PCAOB registered auditors and in 2012, there were 783. Accordingly, small businesses are requesting a return to the more appropriate AICPA standards. The issue with constriction of PCAOB auditors is one of supply and demand. We have the forces of the market coming into play when less than 450 PCAOB auditors are available to audit all public companies as well as the broker-dealers - you can imagine what their pricing strategy is. The broker-dealer community and the financial services industry consists of large companies, mid-size firms, and small businesses. As of January 2018, the small business community consisted of 3,400 firms – that is defined by FINRA as employing 150 representatives or less.

Less than 10 years ago, there were approximately 1,000 more small businesses in the industry than today. Ms. Pierce stated that she would like to prevent the next 1,000 small businesses from losing their livelihood and while the exemption from the PCAOB audit requirement is only one component of the trend of small-firm demise, it is an important one. If we can address and resolve this issue for small businesses, we can make a difference for small firms. There is a right fit and wrong fit – the PCAOB audit requirement is appropriate for public companies and broker-dealers which carry

customer funds and securities, like JP Morgan and Morgan Stanley, because the investing public and markets are potentially at much greater risk from those companies.

Conversely, the PCAOB audit requirement does not make sense for privately held, non-custodial, small broker-dealers. At a time when small firms should be deploying their assets, human and financial, to the benefit and protection of their customers, statutes demand their capital for an audit that does not in any way protect those customers. It is worth noting that the PCAOB's mission is investor protection. The term investor as it relates to the PCAOB refers to individuals who invest in public company stock. The companies that will be eligible for the PCAOB audit exemption under the legislation are all non-public companies that by definition do not have public company investors. The eligible small, non-public companies contemplated in the Act do not carry customer funds or securities and are at all times subject to regulatory required monthly, quarterly and annual financial reporting obligations. Additionally, the users of such financial statements are regulators, not public company investors, because the small, non-public companies have none.

Ms. Pierce stated that small firms in the brokerage industry face disproportionate regulatory and audit costs and they are struggling to survive in every state. Approximately 10 small firms are going out of business per month which means small firm customers are losing their right to choose local, loyal, sound advice from the people they trust. In surveys conducted within the small business community, the average pre-PCAOB audit fee was approximately \$9,000 while the average post-PCAOB audit fee has increased every single year and is up to an average of over \$18,000. Increased audit expenses have resulted in approximately \$28 million being pulled away from customer-focused initiatives and instead spent on hiring a PCAOB auditor. Additionally, surveys conducted showed that pre-PCAOB, the average amount of man-hours spent preparing for an audit was 44, and post-PCAOB it was 84. Broker-dealers have a mere 60 days from their fiscal year-end to file their annual audited financial statements with regulators. The weekend overtime wages add millions to the annual audit cost.

Ms. Pierce closed by noting that even consumer advocacy organizations like Better Markets have taken a neutral approach on this legislation. Better Markets stated that the legislation poses no systemic risk to the markets, customers or investing public. Additionally, the official position of the SEC is that they do not oppose this legislation. Ms. Pierce urged the Committee to support the Resolution.

Upon a Motion made by Rep. Joseph Fischer (KY) and seconded by Rep. Steve Riggs (KY), the Resolution passed without objection by way of a voice vote.

ADJOURNMENT

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