

NATIONAL COUNCIL OF INSURANCE LEGISLATORS
NCOIL – NAIC DIALOGUE COMMITTEE
LAS VEGAS, NEVADA
MARCH 4, 2022
DRAFT MINUTES

The National Council of Insurance Legislators (NCOIL) NCOIL – NAIC Dialogue Committee met at Harrah's Las Vegas in Las Vegas, Nevada on Friday, March 4, 2022 at 1:30 p.m.

New York Assemblyman Kevin Cahill, NCOIL Vice President, Chair of the Committee, presided.

Other members of the Committee present were:

Sen. Keith Ingram (AR)	Sen. Jerry Klein (ND)
Asm. Ken Cooley (CA)	Sen. Shawn Vedaa (ND)
Rep. Martin Carbaugh (IN)	Sen. Bob Hackett (OH)
Rep. Matt Lehman (IN)	Rep. Tom Oliverson, M.D. (TX)
Sen. Paul Utke (MN)	

Other legislators present were:

Rep. Deborah Ferguson, DDS (AR)	Asw. Maggie Carlton (NV)
Asm. Tim Grayson (CA)	Asw. Michelle Gorelow (NV)
Rep. Kerry Wood (CT)	Rep. Wendi Thomas (PA)
Rep. Roy Takumi (HI)	Rep. Lacy Hull (TX)
Sen. Robert Mills (LA)	Rep. Dennis Paul (TX)
Rep. Jim Murphy (MO)	Sen. Janis Ringhand (WI)
Rep. Richard West (MO)	
Sen. Randy Burckhard (ND)	
Rep. Emily O'Brien (ND)	

Also in attendance were:

Commissioner Tom Considine, NCOIL CEO
Will Melofchik, NCOIL General Counsel

QUORUM

Upon a Motion made by Rep. Matt Lehman (IN), NCOIL Immediate Past President, and seconded by Sen. Jerry Klein (ND), the Committee voted without objection by way of a voice vote to waive the quorum requirement.

MINUTES

Upon a Motion made by Rep. Lehman and seconded by Sen. Klein, the Committee voted without objection by way of a voice vote to adopt the minutes of the Committee's November 19, 2021 meeting in Scottsdale, AZ.

INTRODUCTORY REMARKS

The Hon. Dean Cameron, Director of the Idaho Department of Insurance and President of the National Association of Insurance Commissioners (NAIC) thanked Asm. Cahill and stated that we appreciate the opportunity we have to be in front of you and appreciate the dialogue. We thank you for the dialogue that we've been able to have and look forward to today's dialogue and we thank NCOIL for the collaboration and congratulations to you on a successful meeting and thank you for your leadership. The NAIC exists to support state based regulation and exists to support each other. We exist as regulators to protect consumers, first and foremost by guarding and ensuring company solvency. We look at everything that we do through that lens and wanted you to know that we take our responsibilities seriously. We enjoy and appreciate working with our state legislators and particularly with NCOIL. You are the experts in the legislative field. You are the body that gets to set that public policy and we certainly understand that and we pledge and want to be a support to you and to be helpful to you as you deliberate on public policy that's important to consumers in your state.

We are ready to answer questions that you have for us and we thank you for the opportunity to be here with you and I probably should mention, and I think most here know that The Hon. Glen Mulready, Oklahoma Insurance Commissioner, has been around here for a long time as he served as legislator, an agent, and now serves as Commissioner. I also had that privilege of serving as an agent and had the privilege of serving in my state senate for 25 years and I used to come and attend NCOIL meetings as often as I could. So, it's been fun to be able to come back in this role.

Asm. Cahill stated that for the purposes of being completely candid with the audience, Dir. Cameron and I met last week on a Zoom call and we went over the agenda topics for today generally to make sure we were on the same page and we hope to do more of those in between meetings. We think that kind of collaboration can really be helpful and give us an opportunity to put a finer point on things when we get here.

Cmsr. Mulready stated that on the collaborative relationship with NAIC and NCOIL, I think we've seen a great improvement in that relationship and as I just looked down here, I realized not only do we have a good representation of NAIC but as you look down we don't just have six Commissioners here, we've got the President of the NAIC, we have the Vice President of the NAIC, we have the Health Insurance Committee Chair, the Vice Chair of the Health Insurance Committee, the C Committee Vice Chair, and Utah Commissioner Jon Pike as the D Committee Chair. So, we've got leadership with NAIC here and actually if Alaska Director Lori Wing-Heier's flight hadn't been canceled, she is also an NAIC Committee. So, I just thought it was significant as I looked down actually who was here working collaboratively with you so I thought I'd just acknowledge that.

Asm. Cahill stated that I've spoken to the Superintendent of the New York Department of Financial Services in New York and if she did not have a scheduling conflict, it was her hope to be here today too. So, she's very much interested in getting very involved with NAIC.

UPDATE ON STATE ADOPTION OF CREDIT FOR REINSURANCE MODELS

The Hon. Alan McClain, Arkansas Insurance Commissioner, stated that it's a pleasure to visit with you and I'm going to give you a little bit of the update on the adoption of the NAIC Credit for Reinsurance Models. My background is workers' comp and as I've been Commissioner for two years now, I've had fun learning some of the other lines of insurance and I appreciate your attention to workers' comp. I chair the workers' comp task force for the NAIC and I'm looking forward to some dialogue this year. Regarding the credit for reinsurance modes, a number of

you may have seen this come through your legislature whether it's the model law or the model regulation and it's steadily making some progress and we appreciate your help in your states in getting those passed. To date, the 2019 revisions to the NAIC credit for reinsurance model law have been adopted in 48 states - it's pending is in Hawaii, Wisconsin, District of Columbia, Puerto Rico and the U.S. Virgin Islands. We have good reason to expect adoption in these jurisdictions during this legislative year.

In most jurisdictions the passage of a law requires passage of a regulation or a rule and they're working on that and getting past that as well. We got ours passed in the last few months in Arkansas. The 2019 revisions of the credit for reinsurance model implement the reinsurance collateral provisions of the EU-US and UK-US covered agreement which requires states to eliminate collateral requirements entirely within five years, September 1, 2022, or be subject to federal preemption. So, that's why it was important to get these things passed and moved along, as you can appreciate and as we all appreciate the state based system of insurance regulation. We don't need federal preemption. So that's why the deadline's there and why we've been pushing the states and you should have a map in your material that shows the adopting states. We think that the continued state action on the NAIC models is our best defense against federal action and we do appreciate NCOIL's support of the models.

Asm. Cahill stated that the federal government has a process to deal with non-compliant states - when does that kick in and what exactly is the assessment function? Dir. Cameron stated that effective September 1 of 2022 they can begin assessment implementation. We are hopeful that they will see the efforts that the NAIC has made and the states have made and are willing to let us continue to move forward and continue to work with those states that are outstanding. However, there are two thresholds - we also have this as an accreditation standard, and so for those other states, that will be an issue for them. The accreditation standard begins January 1 of 2023.

UPDATE ON RACE AND INSURANCE ISSUES

Asm. Cahill stated that NCOIL had a Special Committee on Race in Insurance Underwriting which met several times and arrived at certain determinations that resulted in some of the responsibility being sent over to NCOIL standing committees and they're now taking them up. But we know that NAIC is also been heavily involved in this issue – can someone provide an update on that?

Dir. Cameron stated that in 2020 in the wake of the national events on race and inequity the NAIC took the unprecedented move of creating a Special Committee on Race and Insurance - the first of its kind in our history. After the officers decided to make this effort, of which The Hon. Andrew Mais, Connecticut Insurance Commissioner and NAIC Vice President, were a part of, the first call that I made was to Rep. Lehman because we felt like we needed to have collaboration and at least an understanding of the direction that we're headed when it comes to this issue. The Special Committee now is chaired by myself as NAIC President, The Hon. Chlora Lindley-Myers, Director of Missouri Department of Insurance and NAIC President Elect, Cmsr. Mais, and The Hon. Jon Godfread, North Dakota Insurance Commissioner and NAIC Secretary-Treasurer. We have five critical work streams and I'm going to let Cmsr. Mais go into the efforts of those work streams.

Cmsr. Mais thanked the Committee for the opportunity to be here and stated that I can tell you back in my days at Deloitte I used to be a regular visitor to NCOIL and it really is good to be here and to see everyone here again and I know others have mentioned the spirit of openness and

cooperation. I think we all know that has not always been there and we do appreciate all the efforts you've made and I hope that you found that similar sense because we want to work together with you as much as we can and we really do appreciate the opportunity to come here to talk to you as well as to have the informal discussions we've had. As Dir. Cameron mentioned we have five work streams - the first two work streams focus more on the regulator side. We're looking at what's going on with the NAIC. We're looking at what's going on with a state and with regulators because we do not feel that the focus is entirely on industry. We are a part of this larger industry and we think it's only fair that we look at ourselves as well.

The third, fourth, and fifth work streams are what I call the functional work streams and they look at the barriers that exist whether it is to inclusion, to employment, or to participation in any way to products in the various functional areas of the industry. That's the property-casualty work stream, work stream three; life insurance and annuities, work stream four; and health insurance, work stream five. And we're looking at any barriers that exist that would prevent disadvantaged people, people of color, and other under-represented minorities from being a part of this industry. Last year in July we adopted the charges which reflect the work streams initial recommendations. And we last met during the Fall National Meeting of the NAIC to hear what we've done so far and the way we're moving forward. And I will tell you, this is not going to be a quick process. This didn't happen overnight and we want to make sure that we get things right, that we make decisions based on data.

Those are the efforts that we're making and we continue to move forward. And as Dir. Cameron will tell you, one of his emphases is that we have to have deliverables, concrete deliverables this year. So, there is a consensus among us that we need to focus on equal access to insurance markets and products to education and to make sure that insurance companies are not unfairly discriminating. And as I mentioned we plan to focus on financial literacy and on identifying and removing the barriers that we're aware now exist. We also want to continue to encourage industry practices around diversifying and I will tell you based on my previous occupation in the industry, one of the things that we used to do was every year we'd do a survey, and it was amazing how important diversity was to the people in this industry and we hope to continue to work on that.

We have to evaluate how the work of this work stream is related to our core insurance regulatory functions. We're also going to consider the principles for data collection that were developed last year by the health work stream. And as I've mentioned, we're looking at data. We're going to look at what data we need, and how to get that data. I will tell you we are committed to a thoughtful deliberative process. Issues like unfair discrimination, unfair bias, proxy discrimination, they're complex issues and easy answers are not going to solve this. We're not looking for the easy answers. We have had discussions that I would consider unprecedented both among us as regulators and with industry and we will continue those discussions. I think the efforts, speaking personally, they're clearly overdue but I'm proud to be a part of this, proud to work with Dir. Cameron, and proud to work with NCOIL on this.

Asm. Cahill stated it sounds like based upon the various specific issues that you're talking about that there is a sense that there's a finiteness to the process. Is there a sense of when you think you're going to have your deliverables? Cmsr. Mais stated that there's clearly an intention to move along step by step. We're not going to solve the problem completely but there are things that we hope to be able to do as soon as possible. Dir. Cameron stated that we recognize we didn't get here overnight and we're not going to fix it overnight and so our first effort was for this year was we've spent a lot of time discussing, looking at, arguing about how to collect data and all of the issues surrounding that arena. And I think there is consensus on the importance of

data but there is not consensus on how to do it, who collects it, how is it stored, etc. Those things are still being discussed.

Work stream five did a tremendous effort in trying to put forth sort of a principles of what data collection would look like. We decided this year that we really wanted to focus on things that we thought we could deliver this year which was identifying barriers where individuals of different races, ethnicities, genders were not having access to: the products that are offered, the industry, and the regulatory community. And we wanted to focus on identifying those barriers and try and figure out how to mitigate those barriers so that we can allow others of different races and ethnicities to have access and so that's our focus for this year. We hope we can deliver some progress on that at the end of this year. I'm happy to come back and report the progress we made at your final meeting of the year or early next year, whatever suits you. And then it will be Dir. Lindley-Myers who will be NAIC President and in my mind she will have the opportunity to steer it to what deliverables she thinks she can obtain in that year.

Asm. Cahill then invited Rep. Lehman to discuss the issue of artificial intelligence (AI) and insurance score transparency. Rep. Lehman stated that this is an issue that came out of our committee and I want to focus on the data portion. I know you have multiple lanes that you're going down such as employment and others and we're in the insurance world, so we're going to stay in the insurance world. And so, I think it comes down to data collection and my concern is finding the balance between regulation and prohibition because, and you're going to hear this tomorrow when we talk about the model law that we're going to start working on, I think there's a path we're going down where we're in a world of technology that we knew it'd come some day and I think it's upon us. But, I want to make sure that we're working together in finding that place of regulation because I do have a concern on prohibitions. I think sometimes we prohibit if we can't get our hands around it. I think we just have to make sure we get our hands around it. I know it's a challenge, but I look forward to working with you and the industry and all the interested parties in trying to find a way to make sure we're protecting consumers. We both have the same goals. You as regulators and us as legislators – we must protect the consumer, have competitive marketplaces, etc. I look forward to at least that piece being something that we can collaboratively work on together. Dir. Cameron stated that we look forward to working with you on it.

Asm. Cahill stated that I think one of the things that Rep. Lehman's point brings out is that when we start to really delve into this issue we find that it has a lot more ramifications and a lot more avenues than maybe our instincts told us that it did. And now it's time to really review it with the concept of getting any vestiges of racism or racial bias out of our insurance laws all together.

UPDATE ON ENHANCED CASH SURRENDER VALUE ENDORSEMENTS AND THEIR INTERACTION WITH STANDARD NONFORFEITURE LAW

Cmsr. Mulready stated that this came up at the last NCOIL meeting as Sen. Travis Holdman (IN) had sent a letter to Indiana Insurance Commissioner Amy Beard asking about the issue. We had just learned of it at the last meeting so we didn't have a chance to dig into it at all. Since then, the NAIC, and me, have dug into it quite deeply. Basically, we're talking about a universal life insurance policy, where there's a spike in the cash surrender value and there's a limited time offer to policyholders to surrender their policy for a substantially higher cash value than it normally would have. There are concerns about are we actually doing life settlements and calling it something else and within life settlements there are certain requirements and consumer protections in place. On a personal level, we've dug into it in our state and what I found was in our rate and form area, there's three companies that are doing it and they were approved by our

rate and form team from the very innocent basis of this is a great opportunity for the consumer. They get to choose - they're not being forced to surrender this, if they choose too they can. And so, I think across the board I think 49 states had approved most of these but I think that's the basis of it was it's in the consumer's favor and they get to choose whether they exercise that or not.

There are concerns though again about consumer protections that are in place with life settlement that aren't present under this scenario. And what I found in our state was that three states had those approved, two states had done nothing, and one of the carriers had done five transactions. So, that's the extent of it in Oklahoma. I was on a conference call just earlier this week with that company and was able to ask some straightforward questions with them. It really comes down to the NAIC Standard Nonforfeiture Model Law for Life Insurance - number 808. It also addresses a minimum cash surrender value with universal life policies because as you can imagine, with a flexible premium universal life policy, you want to have flexibility to have large spikes in cash value when a consumer puts substantially more premium or dollars into there. What's happening in this situation is those aren't coming from premiums; those are coming from sort of a random increase from a life insurance company to try to incentivize the surrender of that policy.

There is a smoothness test that's required so that there's a smoothness for the cash value and there are model acts on that historically within the NAIC. The Society of Actuaries in 1989 recommended that the NAIC Life Actuarial Task Force consider including nonforfeiture requirements for universal life policies. Ultimately, they took no action on that and so, this issue really at this moment is on an individual state by state basis from a market conduct standpoint. I will tell you that I have reached out to our new A Committee chair, The Hon. Judi French, Ohio Insurance Director, and I've suggested that we kick that back to the Life Actuarial Task Force. That's where that belongs for them to revisit this issue and see if they need to clarify that further.

DISCUSSION ON DRAFT PROPOSED CHANGES TO NAIC CLIMATE RISK DISCLOSURE SURVEY AND PREVIEW OF NCOIL CLIMATE-FOCUSED GENERAL SESSION

Cmsr. Mais stated that the NAIC Climate & Resiliency Task Force has held discussions on climate risk disclosure since 2009, that was when the survey was first developed and then it was adopted a year later in 2010. In early 2021, the climate risk disclosure work stream heard from other groups collecting climate related information. We've heard from a whole bunch of them - insurers, investors, the Principles for Responsible Investment, rating agencies, and CDP. And the work stream exposed a redesigned climate risk disclosure survey last year on November 15th. They collected comments through January 10th, and they held an opening meeting on January 25th to hear comments on the draft. Now, the work stream has since modified the draft survey responding to the comments received and following a meeting on February 28th will take a third round of comments. And then we're going to meet again on March 11th. The Hon. Andrew Stolfi, Oregon Insurance Commissioner is leading the survey revision work.

The intention right now is to consider the survey for adoption and to send it to the task force for consideration. NAIC plenary may consider the survey for adoption during the Spring National Meeting. The revised disclosure is based on the Financial Stability Board's Task Force on Climate Related Financial Disclosures (TCFD) and it includes insurance specific questions to identify how insurers were assessing and managing their climate related risk. And as you know, Asm. Cahill, New York has been a leader on this as well and the TCFD disclosure statements have pretty much become a template that everybody's using so, there's comparability and we

wanted to make sure there was also insurance specific questions that would provide us with the information that we need.

The goal of the revised disclosure is to create a tool for regulators to have more transparency and that's important as we have to understand how insurers are managing their climate related risks and opportunities. If you're going to be paying out claims 50 years from now, we need to make sure that the way you're investing and what you're covering is reflective of that. When I speak to insurers I say that I'm not your Chief Financial Officer (CFO), I'm not your Chief Investment Officer (CIO), I'm not going to tell you what to do but I do need to understand what you're doing, and that's where we are. The survey's voluntary. The NAIC administers the survey on behalf of the participating states. Now, just this past year I can tell you in Connecticut one of the things we did was reach out to other states in the Northeast and we brought the total number of states participating to fifteen. That may not seem like a majority of the states, but it does represent a majority of the companies doing business. Actually, that represents about 80% of the market or so – 1,300 or 1,400 companies.

So, it gives us a good idea of how companies are addressing the issue. We have various climate related risks. We have physical risk, we have transition risk, and of course the liability risk. And these are risks that the insurance industry is on the leading edge of. We are particularly well situated to address this. We are the ones that are providing the coverage, long term and short term. We are the ones that are doing the infrastructure investments and as regulators we are the ones who need to understand where this is all going in order to protect consumers. That's what we're doing, and we're doing this as you can tell from all the dates, with deliberate speed. We want to make sure that we do it right and we have the information that both the regulators, industry, and legislators will find useful as we move forward.

Asm. Cahill stated that in insurance terms, 2009 is still a relatively recent date but in real life, that was 13 years ago. What kind of changes are being considered or have been made to the survey more generally and more specifically? Cmsr. Mais stated that I can't go into specific detail on that. If you remember, Mayor Mike Bloomberg, and TCFD as they came up with the questions, that was where we made the most significant changes over the past couple years. And now using that TCFD template, it covers everybody but we felt we also needed to have insurance specific questions on there and 2009 was a long time ago in many ways but this is also an area of the industry that's fast developing. The data that we're getting is moving quickly. So, we're making sure that what we're capturing is the data that we need, the forward looking data that will be helpful.

Asm. Cahill stated that you indicated that it's voluntary - what is the compliance rate? Cmsr. Mais stated that we have 15 states participating, approximately 1,400 companies representing approximately 80% of the premium in the U.S. Asm. Cahill stated that so, in those states that are participating, compliance is pretty high – 100%? Cmsr. Mais replied yes and stated that certainly in Connecticut we require our industry to fill it out and I will tell you, much of industry has already been doing this because Environmental, Social and Governance (ESG) has become ever more important and industry itself is forward looking on this. Asm. Cahill stated that when you get to the point of picking out specifics that get into focus because of the information you've gleaned from the survey, is there a plan to send that over to the policymakers and the legislature to come up with the rules and regulations that are necessary to do it? Cmsr. Mais stated that we always love working with the policymakers and the legislature. I will be happy to share all the information we have with you. Sen. Matt Lesser (CT), one of the things he did last year in Connecticut is direct us to do an analysis of where we are in Connecticut and what we've done but this is a field that's clearly exploding and we will share as much information as we have as

soon as we have it. Asm. Cahill thanked Cmsr. Mais and stated that I appreciate that and I'm looking forward to seeing what happens tomorrow in our meeting and watching this very important existential issue evolve in the consciousness of those of us who are in the business of making sure that we think in the long term.

Rep. Tom Oliverson, M.D. (TX), NCOIL Treasurer, thanked Cmsr. Mais for his remarks and stated that I saw looking through the tool here and looking at the questions that are being asked in the survey, is the data when it gets reported deidentified as far as companies and who is that date made available to? I'm asking because I'm wondering if this data could be weaponized against companies depending on how they answer the questions. Cmsr. Mais stated that it is de-identified and we're not in the name and shame business frankly that's not where we want to go with this. The best possible outcome is that this aggregated data is used to address behavior and to address the risks that we see developing. Rep. Oliverson stated that so is the goal to sort of push them in a certain direction as far as how to think about what their answers should be on these questions? Cmsr. Mais stated that I don't think there is a what you're answer should be frankly and to go back to what I said, when I talk to industry on this, it's pretty much the same thing - I am not your CIO. What I have to do as a regulator is to make sure that whatever you do, the proper risk charges are applied. I have to make sure that your customers are going to get paid. That's what I'm looking for as I would look at anything else.

Rep. Wendi Thomas (PA) stated that I just want to be clear, you said there are 15 states participating, optionally, at the state level. In those states though, any company that operates in their state borders is required, is that correct? Cmsr. Mais replied yes.

Asm. Ken Cooley (CA), NCOIL President, stated that one of your questions in the survey concerns do companies reporting have publicly stated goals in this same area and are you finding that companies are indeed reporting that they have announced their own organizational goals so then the program sort of aligns with their goals? Cmsr. Mais stated that I think that's one of those things that as everything has come together, the rating agencies are really looking at this area as they look at ESG, and ESG has become more important. Asm. Cooley stated that stockholders are looking at this area. Cmsr. Mais stated precisely, and companies themselves. As Connecticut Insurance Commissioner I can tell you, all of the supervision and the annual meetings we do, the companies are the ones that provide this information and they tell us what they're doing and companies are doing different things. Some may be doing it right now, some may be doing it over the course of the next few years, depending on what their current book looks like and where they want to go. But they want to share that they are aware of the issue and they are addressing the risk that they see which is all we can ask for from the insurance companies. There is a risk, how are you addressing it? Share that with us. And I can't speak for everybody here but I can speak certainly in Connecticut that's something we hear from our companies, what they're doing, how they're addressing the risk and all the resources they're pouring into addressing those risks.

Asm. Cooley stated that certainly you have your perspective and lawmakers have their perspective. You have pension systems which have their own lens for looking at these things. You have organizations like New York's Council of Institutional Investors which was formed in the 1980s and plays a key role in the financial markets in advancing a lot of conversation about transparency and how significant investment in private entities can bend the public policy curve. So, there is without doubt a tremendous amount of examination in this area. Have you ever questioned whether trying to have a more structured approach including some sort of legal foundation behind this type of reporting would make sense? Sometimes we venture out in area

of laws on a tentative basis and then in time decide to get more structured. In as much as it has been 13 years, has that conversation come up?

Cmsr. Mais stated that I would say from my side of the picture, I'm a regulator, I'm not a policymaker. So, I am looking at implementing what the legislature tells me to do and as I mentioned, Sen. Lesser passed a bill last year and we're providing the information or putting together that as to what we've done. Certainly, I would defer to the legislators as to what they think should be done. What we have to do as regulators is to make sure that what is happening properly reflects the risk and that consumers are protected. It all goes back to that. But I will also tell you, we have the conversation on race, we have the conversation on climate change, and the two sometimes come together - diversity and equity because certain populations will have a greater impact from climate change according to the scientists. And we've seen insurance companies who are saying to us, this is what we want to do, we want to make these investments even if we know we are not going to make as much money on it as we could elsewhere. We also know these are necessary investments and we're the ones that are best suited to do those infrastructure investments. So, I can only speak for myself, but I've seen a willingness on the part of industry to address this and to make the changes that will benefit both industry and consumers. I'm happy with that.

DISCUSSION ON NAIC LONG-TERM CARE INSURANCE MULTI-STATE RATE REVIEW FRAMEWORK

The Hon. Troy Downing, Montana Commissioner of Securities and Insurance, stated that this is a priority for the NAIC and like a lot of things there are no easy answers. This is a complicated problem. Even going back in the history looking at long term care programs, both industry and regulators were somewhat at fault for where we got with these legacy programs. And solving the issues with these legacy problems while keeping an eye on consumer protection and still dealing with solvency issues is a priority. We've had to have some very difficult conversations. A lot of the assumptions for this were just wrong and one of the big assumptions when a lot of these legacy programs started was we didn't really understand how much these policies would be valued. There was an expectation of higher attrition. There was not an expectation that people would live as long as they did. There wasn't an expectation that they would claim benefits as long as they did. And, we've obviously had a very difficult interest rate environment. All these things really came into the issues here. And so, as we're looking at the legacy programs and looking at rehabilitation versus liquidation and trying to maintain solvency, there's not a lot of easy answers on the big levers. You've got a rate lever and you've got a benefit lever and at what point do you make it too expensive to be reasonable especially if you're talking to a population that's very close to taking benefits.

In Montana, we've got programs where the average insured age is in their 80s and they're being faced with an issue of increased premium, which a lot of them can't afford. And then we've got another solution of decreased benefits which leaves a lot of them in a place where they're disadvantaged. So, with that little bit of background, I just want to make sure everybody understands that it's not an easy problem to address and within the NAIC there are some rehabilitation/liquidation issues that have come up on really what the best solution is for dealing with those and how it has the least disadvantage for the consumer but does not threaten what is obviously important to NAIC, and I'm sure important with everybody in this room, which is maintaining state based regulation. And so, that's a big part of this conversation - how we can achieve all of those things. The issues with legacy programs is one part but then the second part is what does this look like moving forward? What does this need to look like? What do we need to keep in mind about making sure that these are solvent, ongoing concerns and a big part of that

discussion are hybrid products and whether you're using that in conjunction with a life policy. It's a robust conversation, I'll just say that. One of the things that we are discussing is the challenges in resolving inconsistent state rate review practices because it can create some unfairness and really understanding amongst ourselves what that looks like to make sure that it is accurate and correct. Without going too deep into the weeds of this, I think it does make sense to talk about that multi-state rate review framework that we are working on and I'm going to pass that conversation onto one of my colleagues, The Hon. Jon Pike, Utah Insurance Commissioner.

Cmsr. Pike thanked Cmsr. Downing and stated that the multi-state review framework was adopted recently by the Long Term Care Insurance Multistate Rate Review Subgroup and the Long Term Care Insurance Executive Task Force at its meeting in the Fall of last year and now the plan would be that this would be presented and hopefully adopted by the Executive Committee and the NAIC plenary in the Spring meeting coming up in April in Kansas City. That's good news. The framework outlines a process for a timely, consistent, state based approach to reviewing long term care insurance rate increase filings. A lack of uniformity and kind of the way rates have been changed across the states has created a perception that some states are not shouldering their share of the burden, if you will. And so, through this new framework regulators are seeking to reduce or eliminate the existing cross state rate subsidization and improve the rate level parity across the states. That's really the goal. It outlines operational and actuarial approaches and aspects of a rate review. This would include technical requirements for insurers to file a request, the responsibilities of the team of actuaries that would perform the review, and governance over the process, actuarial methodologies, an advisory report template, and engagement with the insurer and state insurance regulators throughout the process.

So, it's really we think comprehensive and the review process would be carried out by a team of state actuaries with expertise in long term care insurance who perform a single actuarial review of multi-state rate increase requests that can be relied upon by the state insurance departments and then used in their own respective states' review process. So, they rely on it but then they can do their own as well. All participating states will have an opportunity to review the work of the team and offer input into the review. And at the conclusion, then each state will create a detailed review rate advisory report that will contain an analysis and recommendation for the states consideration - I'm sorry, the team would do that - and then the states still retain their authority to perform their own review and make their own determinations on final rate review.

Sen. Randy Burckhard (ND) stated that this is the 1,800 pound elephant in the room. Oftentimes I get asked by senior folks who bought long term care insurance, and they're the people that are creating these legacy programs, and when I tell them the assumptions were wrong, people are living longer, they tell me so we paid increases every year and our benefits stay the same. What's a simple explanation to try and tell them that? Because they think that's the problem with the actuaries that gave the advice. Cmsr. Downing stated that it's not an easy place that we find ourselves in on these issues and we're dealing with seniors and we have them coming into our offices. As I said in the beginning, the assumptions were wrong from the carriers and in my personal opinion, the regulators weren't looking closely at that. But we are where we are and so, what's really important for us at this point is for the consumers to understand really what that universe is. If they're being faced with a premium increase that they can't afford to assume, the other option is often reduced benefit options which is another lever. But what's important is that that's well articulated by the carriers to those consumers so that they really understand the universe of those options. But again, these are not easy conversations and this is not an easy problem. Cmsr. Pike stated that he liked Cmsr. Downing's comment, "we we are where we are"

and so what the key is, is if we're going to improve the situation, we have to do something different and I think this multi-state review process will certainly help a lot in that.

Dir. Cameron stated that it is a very difficult position that all of us are in as policymakers and regulators representing different constituents. On all lines of business our job is to look at their adequacy and their solvency and whether you're talking about auto insurance or whether you're talking about whatever product, where it particularly becomes difficult is in these products because the industry and we as regulators really missed the mark when the products were first designed. We did not anticipate how many people would want to keep them. We didn't anticipate people living as long as they have. We didn't anticipate the cost. And frankly, there's nobody that's done a really good job of examining the cost of long-term care facilities. I know I have my mother in one. I know what it costs in Boise, Idaho and it's outrageous. Nobody anticipated that. So, then the dilemma for us is how do we make sure that the company stays solvent, because it doesn't do us any good to allow or force the company into receivership. How do we make sure the company stays solvent and give consumers the ability to have these products that they have purchased? In some cases, some of the companies are well capitalized because they sell other products. In other cases, they're monoline companies. And we've gone from 100 companies to less than 20 - I think we're down to 12 - that are still offering these types of products and many of them are loaded with benefits that are expensive. You take the benefit of the inflation rider alone, that is expensive and is driving costs faster than really what they can pay out in benefits.

So, it is a no win situation for all of us. We have been working on it and working on it and frankly, we felt the best solution was first of all to get all of the regulators on the same page as much as possible without withdrawing our own autonomy and our own ability to make that tough decision. Information is power and we needed to be able to have somebody, some third-party entity, review the request and make the determination as to whether the request is reasonable or not. And then that gets hopefully applied across to all of us which will help keep the company solvent and minimize benefit reductions that consumers would receive.

Rep. Oliverson stated that he thought he heard the other day that the NAIC is looking towards the air ambulance issue regarding subscription services? Asm. Cahill stated that can be addressed under the Any Other Business portion of the agenda.

Asm. Cahill stated that I think we all appreciate the difference between a national standard and federal standard and I think we also understand the need to have standards and uniformity but also to leave the flexibility of the states. I know between then and now, some of our colleagues have heard from their commissioners that they thought that this methodology might have impinged upon their ability to individually regulate in their states but based upon the comments of Cmsr. Pike and Cmsr. Downing it sounds like those have been taken into consideration and addressed. So with that, that concludes the regular business of the meeting - we will now move to the Any Other Business portion of the agenda.

ANY OTHER BUSINESS

Asm. Cahill stated that he would like to raise an issue about the standard of insurer rating and how there is some sense that perhaps it is being used as something other than an objective means of rating insurance companies and maybe being used to make it look as though if you use one rating company you might be a little better than if you used a different rating company. Asm. Cahill asked NAIC representatives if they had heard of this issue and had any comments.

Dir. Cameron stated that we are very aware of the approach that S&P has taken. We are disappointed that there would be an insinuation that the NAIC supports their efforts. That is not the case. And let me be perfectly clear, we have not endorsed, implied, or do not necessarily support the direction that they've taken. We acknowledge that there may be some rating agencies that don't operate at the same standards as others do but we don't feel like that's our role, or our responsibility to engage in that. I had calls on this earlier today, and we will be discussing it on Monday in our officers meeting and discussing the appropriate response and approach that we will make with Congress and with S&P as we move forward.

Asm. Cahill stated that I'm pretty sure that it will be taken up in our Financial Services and Multi-Lines Issues Committee here. Is there any advice for how you think we should start to develop our framework for looking into the issue? Dir. Cameron stated that off the top of my head, my only advice would be I don't think it's the regulator's role particularly to determine what those standards are. If Congress determines that the rating agencies need to have some sort of standards than that needs to be done in their forum and I don't think we can allow one entity to unilaterally sort of change the standards for everybody else. So, I would walk carefully and clearly. That would be my advice.

Asm. Cahill then recognized Rep. Oliverson regarding his earlier comment on air ambulance memberships. Rep. Oliverson stated that I'm sorry to bring it up because I'm sure I'm causing PTSD for all the lawmakers in here but I heard a rumor that you all were going to be looking at it and I'm very curious to hear an update on that or what you're thinking because obviously as you know, we went through that here at NCOIL over the last year and we come from a variety of different states with different issues. And so, I'm just looking to kind of see what you're thinking and where your wisdom is leading you and if you have any comments for that.

Dir. Cameron stated that we have been discussing it long before the passage of the No Surprises Act (NSA). One of our commissioners, North Dakota Commissioner Jon Godfread serves on the national committee that resides in the Department of Transportation and certainly we've been attempting to address it further. Many of us are grappling with how to handle the NSA and what is our appropriate role as commissioners? Some of us are deferring to the federal government, which we're not very comfortable with. Some of us are taking on the enforcement of the NSA, which is what Idaho is doing. However, I don't have any authority over providers, nor do I want any authority over providers. I do have relationships with providers and I'm confident that I can collaborate with the provider community and the carrier community which I do have authority over. Typically, we handle complaints from consumers who have purchased insurance and aren't getting what they expect to get. The NSA asks us to take complaints from people who are uninsured, which is a different standard and requires us to make some additional changes.

So, we are trying our best to implement the NSA as constituted. Obviously, there's been a recent court case that we're all watching carefully to see how that occurs. I think it's important to note that the court case maintained all of the principles of the NSA with the exception of what the measurement is for reimbursement and so we'll be watching carefully as to how that occurs. And it is a little bit of a moving target. We're sort of building this plane as it's being flown, if you will and we'll look forward to certainly working with you, and collaborating with you on any ideas or thoughts that you might have.

Cmsr. Mulready stated that I don't have a lot to add but a couple comments I would just make on the B Committee, the Health Insurance Committee, at the NAIC - a lot of our time out of the gate here this year will be spent on the NSA and how that's rolling out in each state. As Dir. Cameron

mentioned, it's all over the board how the states are handling that - whether we're just pawning that all to the feds, or whether the number of states that had some sort of surprise billing state legislation in place will be involved. And so we'll be walking through that. And regarding the court case, in addition to the reimbursement issue I think one other thing I might mention is the sort of evolution of all payers claims databases. Different states are looking at doing that, such as my state of Oklahoma and Montana. There are grant funds now available for \$2.5 million federal dollars for states to establish those so I think that'll impact a lot of those issues, as well.

Rep. Oliverson stated that regarding the NSA, the glaring omission there is the ground ambulance issue. I tried to tackle that in my state last year and I was really surprised at how complex it really is because it's not just a matter of having another sort of biller out there but you have this weird intersection of state, local, county entities that are often the ones that are setting the rates. And you also sort of have, at least in my state, you have almost a 0% penetration of in network status. It's just really bizarre and in fact, the Texas Department of Insurance actually looked at it about a decade ago and they concluded that there really was no point to having network adequacy provisions for ground ambulance because neither party really wanted to talk to the other.

I don't know what the right solution is there but I feel like it's going to take all of us if we're going to move something down the field on that. I feel very bad for consumers, that that's sort of the one issue that they're still very vulnerable on, and get pounded on and quite frankly, where they get pounded the hardest is not the trip to the emergency room because they fell off the building, or had a heart attack, or are in labor or something like that. It's the routine transports to and from the hospital to the nursing home and other facilities that tend to creep up on people and leave them with very, very high out of pocket costs and essentially no recourse. So, I'm just wondering again, if you have any comments and if not, I'm just hoping to be able to work with you all because I think it's going to take all of us to solve that problem.

Cmsr. Mulready stated that I don't have anything to add except to say, amen and I think we do need to work together on that. Dir. Cameron stated that it will be an interesting transition as we work through the NSA. I don't know that we even completely understand all aspects as to how they will impact everyone and I'll just give you an example. The leverage or the amount of effort that a hospital now has to put in for having providers and other entities who are out of network is tremendous. There's a potential that there will be an encouragement, a financial inducement if you will, that hospitals will want to contract with ground ambulances or others, anesthesiologists, etc. If that occurs, then some of the issues might go away. If it doesn't occur, then you're absolutely right we will have a lot of issues and we'll look forward to working with you on it.

Dir. Cameron stated that he would just like to finish by saying thank you for the dialogue and thank you for the relationship. I completely agree with Cmsr. Mulready. I'll just tell you the first NCOIL meeting that I attended was in Boston and the Commissioner from Vermont sat at that table and when she left, I think she was about 40 pounds lighter after NCOIL got through with her. I was on your side of the table then and felt like we really at that point needed to do a better job and with your leadership, Rep. Lehman's leadership, Cmsr. Considine's leadership, and all of your leadership, it has been tremendous in working with us. I said to you last time I was with you that we wanted to improve or continue to improve relationships and we're doing that and one of the things we're doing is we're going to have a quarterly conversation during which we're able to share concerns both ways. That doesn't mean we're always going to agree and we are certainly willing to admit that, and we do acknowledge that we look at things with a different set of glasses than what you get to look at things. But communication is the key and us being able to work

together I think is tremendously important as we work through various model acts and various issues. I look forward to that continuing.

Asm. Cahill stated that we do as well and we value your input and your expertise. Your perspective helps us do a better job as state legislators separate and apart from the fact that we often have to call upon you for constituent services and those sorts of things as well, your expertise and your view of the very same things that we're working on is very helpful. And also, where we do find ourselves on the same page, it's even more helpful.

ADJOURNMENT

Hearing no further business, upon a motion made by Asm. Cooley and seconded by Rep. Oliverson, the Committee adjourned at 2:45 p.m.