

NATIONAL COUNCIL OF INSURANCE LEGISLATORS  
LIFE INSURANCE & FINANCIAL PLANNING COMMITTEE  
LAS VEGAS, NEVADA  
MARCH 4, 2022  
DRAFT MINUTES

The National Council of Insurance Legislators (NCOIL) Life Insurance & Financial Planning Committee met at Harrah's Las Vegas in Las Vegas, Nevada on Friday, March 4, 2022 at 4:30 p.m.

Nevada Assemblywoman Maggie Carlton, Chair of the Committee, presided.

Other members of the Committee present were:

Rep. Deborah Ferguson, DDS (AR)	Sen. Shawn Vadaa (ND)
Asm. Ken Cooley (CA)	Rep. Wendi Thomas (PA)
Rep. Matt Lehman (IN)	Rep. Carl Anderson (SC)
Sen. Randy Burckhard (ND)	Rep. Tom Oliverson, M.D. (TX)
Sen. Jerry Klein (ND)	

Other legislators present were:

Sen. Robert Mills (LA)	Asw. Michelle Gorelow (NV)
Sen. Paul Utke (MN)	Asw. Danielle Monroe-Moreno (NV)
Rep. Jim Murphy (MO)	Asm. Steve Yeager (NV)
Rep. Richard West (MO)	Rep. Forrest Bennett (OK)
Rep. Emily O'Brien (ND)	Rep. Lacy Hull (TX)

Also in attendance were:

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

## QUORUM

Upon a Motion made by Asm. Ken Cooley (CA), NCOIL President, and seconded by Rep. Carl Anderson (SC) the Committee voted without objection by way of a voice vote to waive the quorum requirement.

## INTRODUCTION AND DISCUSSION ON DRAFT PAID FAMILY MEDICAL LEAVE (PFML) INSURANCE MODEL ACT PROPOSAL

Asw. Carlton stated that the first order of business on the agenda is a discussion on PFML insurance model act proposal. This is merely a discussion and introduction of the language as you'll notice the American Council of Life Insurers (ACLI) is proposing it and a legislator has not signed on a sponsor yet. So, no action will be taken on this today but we wanted to go ahead and start the conversation.

Karen Melchert, Regional Vice President of State Relations with the ACLI stated that I've been before this committee several times over the last few NCOIL meetings to talk about what it is we're presenting to you today and the concept behind that. A few years ago we started looking

at how we might be able to as the insurance industry offer a paid family leave option that was from the private sector. We saw a lot of PFML proposals in the states and many of them did contain a private component. Some of them were state run systems. And we thought, who better to provide that insurance than those of us who write disability income? We have the built-in administrative structure. It won't cost the state anything. It's something that as we look for as the employment market becomes more and more competitive and companies want to offer more enhanced benefits. It's something we can provide to them that they can offer along with the other medical benefits that they provide. It's not a medical product, it is your ability to take time to care for a family member that needs your assistance in whatever capacity that is.

So, we set about creating a model act and we actually did bring this before the committee in March of 2020 which seems like it was eons ago but obviously with the pandemic we put that on hold and really started to re-work it as we talked with some insurance departments about what this would be if we brought it to them. The main issue we have with being able to offer this product is that there is no line of authority in most states for this particular product. So, what the model before you does is create that line of authority in your state insurance code. And we offer in the appendix, which was the body of our original model proposal, something that can be adopted as a regulation or it could be included in the statute. It's really up to the particular state and how you want to factor that into your own code.

Some states are very particular and want more detail in the statutes. Some states want less detail in the statute and more detail in the regulation. So, we feel that this proposal before you gives you that option to do either way but the most important part of it is giving us the authority to write the product so that we can bring that as a solution. Even if your state does not have a paid family leave act or any kind of requirement like that, it is the intention of our members that they would like to bring it forward to business where we do other supplemental benefit type products, they would like to be able to bring this forward as something they can add to enhance the benefits that they provide for their employees. So, that's the gist of our proposal and I would also like to take this opportunity as Asw. Carlton mentioned, we do not have a sponsor so, if anyone would like to sponsor this for formal introduction at the July meeting, I would be happy to speak with you after the committee.

Asw. Carlton stated that I just want to make sure that I understand the proposal fully. So, the proposal is to offer this as a line of insurance to employers like we would be offering workers comp and other insurance. This wouldn't be something that the employer would cost shift to the employee to cover, correct? This would be something the employer would purchase so that if they had employees that needed family medical leave, it would be a product they could access to help supplement the cost of that?

Ms. Melchert stated that you could structure it frankly, any way you would like it to but I think our vision would be that it would be a product that the employers would offer as an employer paid benefit. I don't know if we anticipate there would be a co-insurance or a co-premium pay - probably not since most of the paid family leave acts we've seen in states require the employer to provide it. So, if there is a requirement for the employer to provide it, then the employer's going to have to pay for that. And this is insurance that they can purchase to cover that requirement such as workers comp. However, if it's in a state where there is not a paid family leave mandate and they might want to share the cost, there might be a way to structure that but because we haven't created the product yet, it hasn't been approved yet, so I'm not sure how that would play out. But this was borne out of the idea that these paid family leave requirements are out there. It's something that the employer would have to pay. The employer would pay all the premium it would not be shifted to the employee.

Asw. Carlton thanked Ms. Melchert for putting that very clearly on the record and stated that I'm totally supportive of an employer being able to purchase this. As a small employer of a nonprofit with a total of six people, we offer this, we don't have a backup product. It's just something that I have to build into my budget every year. I would have concerns about cost shifting to employees. To me, when I look at family medical leave it's something that we do because we support the family, and we support our employees. I wouldn't want to see us cost shifting it to them. We don't charge our employees to cover them for workers comp. It's our responsibility to take care of our employees and I just see family medical leave as a responsibility towards your employees. So, I just want to make sure that we had that clear and on the record and I understand the difference and the line between a state that mandates it and a state that doesn't so that we can't guarantee what happens in every state.

Rep. Wendi Thomas (PA) asked if there are any states currently that offer this product. Ms. Melchert replied no, not yet but Virginia just passed the enabling legislation. We have been working with the Bureau of Insurance in Virginia on this and the bill is before the Governor, and he's expected to sign to it. And then a regulation will come forward governing it. But no, this is not offered in any state currently. Ms. Melchert then stated let me correct that, it is in a few states where the insurance companies are the administrator of the state run program. Like, Massachusetts and New York. Rep. Thomas stated that it was my understanding that there were a few large employers that offer this benefit. So, are they just self insuring? Ms. Melchert replied yes.

#### LIFE INSURER PERSPECTIVES ON COVID-19 DEVELOPMENTS

John Mangan, Vice President and Deputy for State Relations with the ACLI Insurers stated that I've been asked to give just a quick update on perspectives on COVID from the life insurance industry perspective and I thought what I would do is just cite a couple of key news articles that have come out recently that I think will give you a little bit of a sense of our perspective right now. The Wall Street Journal (WSJ) has done a couple of terrific pieces in the last month or two. The first one I'll highlight is that we've had the largest increase in death benefit claims in America in the last year and a half since the flu epidemic of 1918. That's an incredible statistic, it's been over 100 years. A 37% increase in mortality and death claims in that period. And just to give you a sense, from year to year there's always fluctuations in mortality but nothing that exceeds 4% or 5% perhaps – 37% is a very sobering number when you look at that.

And interesting in the latest article from the WSJ on the 23rd of this month is that roughly half of the increase in mortality are deaths that are unrelated to COVID. We can certainly see the effect of COVID, but then deaths that are caused by delayed medical care and by substance abuse, and by lack of access to healthcare because of the backlogs in our medical system also contribute to virtually half of that increase in mortality. So, the impact of COVID has really been two parts really - the disease itself and then the impact on people's general health. A lot of those deaths of course have affected people that are vulnerable and they're older but we've also seen a very large increase in the death rate for working age adults. A huge increase. So, that tells you that, especially during the Delta outbreak, it really affected working people. People who were in pretty good health. So, it's a very sobering fact.

The second thing I want to note is another article that just appeared yesterday in Forbes and that has to do with how does this affect the life insurance industry and the solvency of our companies? And I was encouraged by the article because many of our large companies said we've been able to handle this increase, we've been able to take care of people during a very

difficult time. Our companies are resilient and they are financially strong and it's the view of our optimistic industry leaders that this is not going to cause a price increase overall for people who are in the life insurance market. And by the way, the increase in demand for life insurance during this period has been significant especially among younger people which is very encouraging. I mean obviously we've been trying to reach younger people to think about securing their future, and so this has been a motivator for that. So, the pricing issue is still stable. We have good strong capital, and part of that is because legislators in the states working with our commissioners have adopted financial solvency standards that have protected consumers over the years and we complement you for your work on that and we'll continue to work with you on solvency protection in your committees.

One of things we're not sure about is the long-term impact of COVID on people's health. Whether it's a minor case or a serious case, we're still uncertain what those long-term impacts will be on mortality. For serious cases, we know there are going to be some impacts to physical health but our own Chief Actuary has said that's one of the uncertainties that we're going to be having to keep our eye on and that kind of takes me to the issue of vaccinations, because I know you wanted to talk a little bit about that. I think it was last week, the Centers for Disease Control and Prevention (CDC) released its latest data and what they said is that an unvaccinated adult and that's defined as somebody who has not received any vaccine, not even one dose, is 97 times more likely to die from COVID than a fully boosted adult. That's an incredible number.

Now, for somebody who's had at least one dose of a vaccine the risk drops dramatically, but is still seven times more likely to die than somebody who's fully boosted. This really speaks to the effectiveness of vaccines in preventing serious illness and death and I mention that because it's obviously the context for a lot of state interest in vaccination and some of these issues can get very political but our focus as an industry is really on the facts and how it affects people and of course our industry. So, we've been tracking legislation in the states and have noted more than 200 pieces of legislation that affect vaccine policy and we've been looking carefully at those bills to see the impact on our industry and what we found is so far only about ten to twelve of those pieces of legislation really directly affect the process of people applying for life or health insurance and/or the underwriting process that takes place when someone applies for coverage. So, it's a pretty small percentage.

There are more bills that deal with generally discrimination in public accommodations. So, there are a lot of bills that say you can't discriminate based on vaccine status in providing access to restaurants, public buildings, stadiums, etc. Those don't directly affect an insurance underwriting process but we keep a close eye on those just in case there's some overlap. The insurance code has current protections in the Unfair Trade Practices Act regarding how insurers treat people fairly in the application process. So, we have that anti-discrimination protection already in place and we're monitoring those bills to see if they can spill over to affect our industry. We've also seen a few bills that say for instance if you're an employer who has a vaccine mandate, you're not eligible to engage in state contracting. Those can be of concern to our industry where we're providing the employee benefits for instance in a state. We provide life insurance, disability, paid medical leave, retirement, etc. So, we do have a concern about some of those bills.

The vast majority of the bills really have to do with regulating employers and the use of passports and things like that. They really affect the employer and not necessarily the insurance company. And I guess my final point would be as you look at those kinds of bills, look at the unintended consequences that could arise and we're happy to help be a resource on that. We want to make sure that as you deliberate over those that we don't interfere with the legitimate process of trying

to get people covered because we want to make sure people are covered against these risks. The employer's really at the crux of a lot of this and that's why I'm pleased that my colleague is here from Unum because I think he has some great perspectives on how employers can navigate some of this activity in the state.

John Haley, AVP of Gov't Affairs at Unum thanked the Committee for the opportunity to speak briefly speak about COVID-19 vaccination legislation and what Unum is doing to respond to the ever changing landscape. For those who are unfamiliar with Unum we offer a suite of employee financial protection products leading with short and long term disability insurance of which Unum is the largest provider. As Mr. Mangan mentioned, industry is closely watching for potential vaccine mandate legislation out of all 50 states and the federal government. Unum, like many other carriers, offers our financial protection products in every state across the U.S. While there are many different approaches to how individual states are approaching this issue, Unum saw an employer need for compliance assistance and quickly responded with an innovative product. In the days following the now withdrawn federal Occupation Safety and Health Administration (OSHA) employer vaccine mandate, Unum developed a solutions product called Vaccine Verifier. The Vaccine Verifier solution is a simple secure way to verify vaccination status, manage exemptions and oversee testing requirements all in one place. Backed by an expert team well versed in supporting workplace policies and managing complex compliance regulations, Vaccine Verifier does more than just track employer responses. It eases the burden of COVID-19 protocols from human resources, while helping employees feel safe, secure and supported.

In addition to Vaccine Verifier, Unum has been expanding our digital solutions business that ultimately began with leave management. We continue to assess the evolving needs of employee services as businesses across the country are dealing with the uncertainties of COVID-19. While I hope the worst of the uncertainties are behind us, Unum stands ready with the rest of the insurance industry to continue to help businesses, their employees, and all our customers navigate these challenging times. A stark reminder of this pandemic challenge is the fact that through the end of 2021 Unum paid more than \$500 million in COVID related life insurance claims which is a tragic reminder of the importance of providing families with financial protection benefits when they need it the most.

Rep. Matt Lehman (IN), NCOIL Immediate Past President, stated that it's troubling and very concerning the amount of claims Unum paid out because of the pandemic. My question goes to the discussion in Indiana recently about this declining. For example, our hospitalization in Indiana went from about 3,900 on the January 19 to 500 last week. That was the peak of last week, 500 people. Are you seeing any sort of a dramatic drop in the last 30 to 60 days? Mr. Mangan stated that I think that it might be a little too soon for us to have data. I think some of these are through 2021 but we're going to be monitoring obviously that very carefully. But I do think you've seen a downturn in cases, you've seen the downturn in hospitalization. It's the hospitalizations that often lead to death so that's an encouraging factor but I don't have any statistics on the last 30 to 60 days.

#### UPDATE ON INTERSTATE INSURANCE PRODUCT REGULATION COMMISSION (IIPRC) DEVELOPMENTS

Karen Schutter, Executive Director of the IIPRC thanked the Committee for the opportunity to speak and stated that the IIPRC is one of the key partnerships of the state legislative and state regulatory community. That's been in place now for over 15 years. I really appreciate you having us as a regular agenda item to keep you apprised of our activities. Many of you around

this table are states that have joined this compact. You've enacted a piece of legislation. Likely that was 15 years ago or 10 years ago. It was to embrace and come together in a collaborative and cooperative fashion to agree upon content requirements for individual life, annuities, long term care, and disability income products as well as, group products.

I'm happy to say we have over 100 uniform standards and that has been the work of your regulators and your legislators who have engaged in the commission's process and as of 2021, I would also venture to say most of the life insurance and annuities industry, as well as long term care, and we're starting to see disability income, have filed their products through the commission on behalf of our states. And we're transparent to all of our states. All of your regulators see the work we do on their behalf, and they're also the ones that put the standards that we use to review those products in place. We also have a robust legislative committee and Rep. Lehman is our Chair this year. Four members of NCOIL are appointed: Rep. Deborah Ferguson, DDS (AR), NCOIL Secretary, is one of our newest members, as well as, Rep. Tom Oliverson, M.D. (TX) and Asm. Roy Freiman (NJ). And I want to thank Asw. Carlton for her service as she was on the legislative committee for a few years. And there are several other members in your organization that have participated and can share with you the experience and the transparency that goes on at the compact and how it really is a successful initiative.

Rep. Lehman has asked me to update you on a couple of things and this comes out of the update that we gave at the last meeting. We did a very in-depth PowerPoint and there was a case a couple of years ago out of the Colorado Supreme Court. It seems that courts haven't really caught up in several areas and understanding that states have come together in many areas, not just in this area, but in occupational licensing many of you have probably seen a lot of compacts come past your desk in the last couple years for nurse licensing, and physical therapy. So, compacting is becoming a very common solution to state based cooperation. However, I think courts look at compacts and say, well Congress has to be in the middle of that in order to make that compact work. And in state based regulation we've been able to accomplish a lot without Congress and we've have had a lot of discussions about that Congressional intervention.

So, after this court opined that maybe the compact needs to look at whether it needed Congressional consent to come together and develop standards that would apply to products that are issued in your market, the commission members went back and looked at the history of this compact and we did obtain a form a Congressional consent. If you're familiar with the way Congress plays a role in the District of Columbia, they did enact federal law back in 2006 consenting that D.C. could join this compact and that they could delegate the authorities under this compact and after much outside counsel review, there is a good argument that this compact has already received that implied Congressional consent which wasn't argued in that Colorado case and there is a high likelihood that it would have changed the outcome of that.

So, our outside counsel has suggested, and their report is transparent - we've published that, that the commission recognized that it did receive implied Congressional consent and that it can come together, develop uniform standards that apply to products that can be issued in the compacting states. That's essentially the purpose of the legislation that you all adopted way back when, or even in the past year like Delaware. So, the commission members have developed what they call an advisory opinion laying out this approach. They asked that we also go to our outside counsel and get an opinion of support for that written approach that the commission is considering and we're in the process of doing that. So, we are hoping that by the commission's next in person meeting, which will be at the National Association of Insurance Commissioners (NAIC) meeting in April, that we will be able to distribute the advisory opinion along with our outside counsel opinion of support. I think that is very important to those states

that are looking at the compact and wanting to make sure that it does fulfill the purpose that it was intended to do and that by adopting that there was this implicit Congressional consent. Congress is not interfering with state based regulation or what the compact, and the members, and the legislators are doing. This just helps courts to understand what this compact is a little bit better.

The other item that Rep. Lehman asked me to update this committee on is that we have a first in the compact. Sometimes, we have firsts, and we have the first state who is right now undergoing the legislative process to repeal the compact and that's South Carolina and their reason for repeal has to do with long term care, which I know is an issue in all of your states. And you heard the NCOIL-NAIC Dialogue, and I would note all those commissioners participating in the Dialogue are from compacting states. And there are some other dynamics going on in the long-term care market and you heard a little bit about that and I think that that really caused South Carolina Insurance Director Ray Farmer to go back and look at his laws. Just in the past couple of years there's been a law put in place that he now has rate authority over all his long-term care products.

And the compact is a very small part of that. We do look at rate increases that are under 15% for products that we've approved. Anything else over 15% the department reviews those, and those go to the state. We worked last year to help address South Carolina's concerns but it had gotten to a point where there were a lot of political wins and it felt like the best approach is to repeal though Dir. Farmer has been very transparent to say he wants to come back in the next year or so and will likely not participate in long term care which some states don't. I really don't think this is about the compact for him and we're working with the South Carolina department very closely. The other thing I would just say is about the way this compact was built - the legislators are directly in charge of it. You have the power to enact this compact and create it and you have the power to withdraw so we are facilitating all rights in between that for the states including this right to repeal and we will work with South Carolina and welcome them back with open arms hopefully in the next year or so.

Sen. Randy Burckhard (ND) stated that the thought just hit me and maybe I heard it wrong but did you say if the rate increase is less than 15% you just kind of let it go? Ms. Schutter replied no. We benefit states as we have very detailed standards about what a rate increase must comply with and it goes through a very thorough review by credentialed actuaries at the compact. So, it must be very thoroughly reviewed and these are not on your legacy products, which you probably are hearing about. The compact's only been approving long term care since 2011 so it's about ten years and we've only had probably about five products that have needed an enforce rate increase. And when we were putting in the standards, regulators very concerned said, you know anything over 15%, we want to be the ones that approve it because those could get really high. We still do a very thorough review on those but it's within the state. Each department would have to approve it. But the way the standards work is if it's 15% or less and we find that it's fully justified under those detailed standards, then we can approve on behalf of the states and we're very transparent in everything we do with that.

Sen. Burckhard stated that it's my experience that long term care insurance almost always goes up more than 15%. And that's not your fault but it's a situation of our premium increases and our benefits stay the same. What should I do with my policy? I hear that a lot. Ms. Schutter replied exactly and stated that long term care is a very sensitive subject. You're right that we don't see a lot of the under 15% increases - most of the rate increases that come in are over 15%. We do an advisory review. In 2020, we actually had our first in force rate increase under 15% and I

think that caused South Carolina to say we want to review and approve them all but again we're working with them to address their concerns.

Rep. Anderson stated that let me first reassure Rep. Lehman and Ms. Schutter that South Carolina is on solid ground but with the compact we did have a problem and the problem was with long term care. I serve on the Labor, Commerce and Industry Committee and I serve on the Insurance subcommittee. Dir. Farmer suggested that we would opt out but we will step right back in and I want everybody to understand us opting out will give us the privilege when we step back in to not go with the long term care part. So, you have to step out in order to delete something and then step back in but I just wanted to assure you that South Carolina is in support of the compact.

Rep. Lehman thanked Ms. Schutter and Rep. Anderson and stated that I think South Carolina has been a very strong proponent of the compact. It's kind of a we have to get out to get back in situation. To my colleagues, we are all here because of our relationship to being on an insurance committee in our respective bodies and I know that nothing is as dull and boring as insurance unless you're talking about insurance compacting. But I want to reassure you that it is so vital that we do this for uniformity and I think it has made our states better. And on this issue of the Colorado Supreme Court decision, we have met and we've talked about this and I think NCOIL will be putting its full support behind this opinion to say that as regulators in the state level, it is key that those states continue to have the right to do that. I think that there's some solid ground there. I hope that is successful and I just want to reiterate that there are states that are not in the compact and I think we need to continue our effort to bring them in. I think the industry would like to see them in. I got involved with the compact four or five years ago and I have learned a lot. I highly recommend that you dig deep into this, because this is something I think the carriers in your states utilize and want to continue to utilize and I think it's very important that that stay healthy.

Ms. Schutter thanked Rep. Lehman and everyone for the support and stated that it's important to know that your regulators, if you're a compacting state, they are engaged. You have regulators long time regulators in each department that are engaged. They're the experts, they're the ones that help draft the standards. It's not some third body. Our office just administers. We kind of drive the car but your commissioners tell us where to go. The other thing I just also want to point out is, a state doesn't have to fully repeal something to opt out. What happened in South Carolina is it just got to the point where, and long-term care is such a sensitive issue, that they felt that this was their best way and Indiana has opted out of long term care. Nevada did opt out, but they've opted back in and have found the benefits there. So, we are always here to facilitate any concerns any states have because really it's your sovereign right to determine how you participate in this compact or any compact.

## CONSIDERATION OF RE-ADOPTION OF MODEL LAWS

Upon a motion made by Rep. Anderson and seconded by Asm. Cooley, the Committee voted without objection by way of a voice vote to re-adopt the NCOIL Secondary Addressee Model Act and the NCOIL Insurance Compliance Self-Privilege Model Act. times.

## MINUTES

Upon a Motion made by Rep. Anderson, and seconded by Asm. Cooley, 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.



ADJOURNMENT

Hearing no further business, upon a motion made by Rep. Anderson, and seconded by Asm. Cooley, the Committee adjourned at 5:45 p.m.