NATIONAL COUNCIL OF INSURANCE LEGISLATORS
FINANCIAL SERVICES & MULTI-LINES ISSUES COMMITTEE
LAS VEGAS, NEVADA
MARCH 5, 2022
DRAFT MINUTES

The National Council of Insurance Legislators (NCOIL) Financial Services & Multi-Lines Issues Committee met at Harrah's Las Vegas in Las Vegas, Nevada on Saturday, March 5, 2022 at 1:30 p.m.

Utah Representative Jim Dunnigan, Vice Chair of the Committee, presided.

Other members of the Committee present were:

Sen. Keith Ingram (AR)
Rep. Bart Rowland (KY)
Sen. Randy Burckhard (ND)
Sen. Jerry Klein (ND)
Sen. Shawn Vedaa (ND)
Sen. Bob Hackett (OH)
Rep. Brian Lampton (OH)
Rep. Tom Oliverson, M.D. (TX)

Other legislators present were:

Rep. Deborah Ferguson, DDS (AR)
Rep. Kerry Wood (CT)
Rep. Roy Takumi (HI)
Sen. Robert Mills (LA)
Rep. Jim Murphy (MO)
Rep. Richard West (MO)
Sen. Paul Utke (MN)
Sen. Paul Lowe (NC)
Rep. Emily O'Brien (ND)
Asw. Michelle Gorelow (NV)
Rep. Wendi Thomas (PA)
Rep. Lacy Hull (TX)
Rep. Dennis Paul (TX)
Sen. Janis Ringhand (WI)

Also in attendance were:

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

QUORUM

Upon a Motion made by Sen. Jerry Klein (ND) and seconded by Sen. Bob Hackett (OH) the Committee voted without objection by way of a voice vote to waive the quorum requirement.

MINUTES

Upon a Motion made by Rep. Tom Oliverson, M.D. (TX), NCOIL Treasurer, and seconded by Sen. Hackett, the Committee voted without objection by way of a voice vote to adopt the minutes of the Committee's November 18, 2021 meeting in Scottsdale, AZ.

AI-ENABLED UNDERWRITING BRINGS NEW CHALLENGES FOR INSURANCE: POLICY AND REGULATORY CONSIDERATIONS

Rep. Dunnigan stated that he will first provide some introductory remarks regarding this topic. NCOIL's Special Committee on Race in Insurance Underwriting which sunset last year, referred

two issues for further discussion to NCOIL's standing committees. One of those issues is the use of artificial intelligence in insurance underwriting. Specifically, the special committee found via a resolution that NCOIL should undertake a review of the use of artificial intelligence in insurance underwriting through the committees of jurisdiction over each line of insurance to ensure that such use is not unfairly discriminatory. Accordingly, the presentation that we will hear shortly is meant to be the first of series that NCOIL will have in order to meet the directive from the special committee.

Sophia Duffy, J.D., CPA, Associate Professor of Business Planning at The American College of Financial Services thanked the Committee for the opportunity to speak and stated that she and her colleague, Azish Filabi, Executive Director, Maguire Center for Ethics, Associate Professor & Charles Lamont Post Chair of Business Ethics at the American College of Financial Services, came into this research question as far as the data factors that are used in underwriting and how the inferences that machine learning systems or algorithmic systems can actually lead to making inferences about protected characteristics such as race. And the presentation that we're going to cover today will talk about some of those challenges as well as some regulatory approaches that we've seen from different states and the existing regulatory approach. And then our paper actually covered a system or a framework that includes a certification process as well as a backend audit to try and mitigate some of those risks. We heard from our presenters earlier, yesterday as well as today, about the technical end and even social difficulties that can arise from using different data factors and we know that as consumers, and as individuals, we all have a data footprint that's created from our credit card usage, from our lifestyle activities, and social media habits and the risk that we've seen and the concern that some experts have posed is, by taking that data footprint, a machine system can actually start to infer things like where a person lives and their race and things that would otherwise be prohibited from use in insurance underwriting. Now, we only focused our research on life insurance, but we believe that the principles broadly apply to many other lines of insurance as well.

Ms. Filabi thanked the Committee for the opportunity to speak and stated that it's a privilege to be with you. So, this slide here is about the chain of data ownership and how that raises new questions with respect to accountability. So, let's consider for example, credit scores or criminal history records, which are data points that insurers use and have used for underwriting for a number of years in numerous states. What's different today is that data is aggregated and more easily accessible and therefore, there's a possibility that the algorithms are creating correlation between credit scores and criminal history and other data sets such as social media and medical records. So, we viewed that as presenting some new challenges. The data aggregators in the first instance are looking for new patterns of behavioral activity that can be valuable for decision making. For example, the data footprints that Ms. Duffy mentions, we're leaving footprints from our purchasing history, from our internet searches and this is the big data that's been accumulating for many years now. The data aggregators are able to start making inferences about other behaviors through this data. The chain continues with algorithm developers. Some insurers do develop algorithms in house. Many are outsourcing them to third-party vendors. So, this raises accountability and transparency issues around those processes.

And then finally, the insurer is the last company in this chain, and financial regulators have limited authority to reach the actors earlier in the chain. So, if a regulatory process only reaches the insurance company and misses this chain of activity above but also, even an attempt to hold the insurer responsible may not address the full issue because the insurers oftentimes don't have a transparent view of the data that's used and the assumptions that are built into the algorithms which are often proprietary. On the other hand, the data aggregators and the algorithm designers do have knowledge and control. They're probably best positioned to

address any problems or issues but how do you reach them in a sustainable way from a regulatory perspective? But also, importantly, how do you balance the ability to address these concerns while allowing for innovation and market access? So, we see this as a new challenge and therefore, we see the need for a new framework.

This slide is about the type of algorithm risks and potential mistakes that are of concern. We all read a lot about algorithm bias these days but we think that's actually not a great construct for how to address the problems of algorithms in insurance. We prefer instead to talk about mistakes and risk management and we suggest the following three categories, which is partly based on what experts in this space have done research on historically. The first category on the left side of the screen, these are what we're referring to as category mistakes. These are instances where the data's mischaracterized or mislabeled. One example could be around false positives. Facial recognition software indicates that you're a smoker, when in fact, you're not a smoker - that's a false positive. If that input that has been mischaracterized gets into an algorithm how do we have transparency and who do we hold accountable for that mistake?

The second category is around process mistakes. These are inappropriate design elements of the design algorithm itself. Irrelevant data for example. So, they're assumptions that are made that are relating to the relevance of an input as it relates to assessing mortality. For example, there's a data input, let's say, around African American breast cancer survivor groups on Facebook. Is that really relevant to assessing mortality? Well that's embedded into this process, and if the relevancy is a mistake, how do we have transparency and accountability relating to that? Another example in this middle category is around unlawful data. So, in many states using national origin data is unlawful and it's settled law. But the designers could unintentionally include that information into an algorithm design raising transparency and accountability questions.

And then the third category around social implications, this is what we can all think about in terms of public policy considerations, some of which were discussed earlier today. This is legal action, it's accurate information but there are questions relating to the allocation of societal benefits and their ethical implications that come from the algorithms. This is much broader because it considers the impact of the decisions made by the algorithm on an individual, but there's a whole host of long-term implications around the allocation of resources between communities, demographics, and questions about equality - a much bigger category which we attempt to address with the framework that we'll talk about in the next few slides.

Ms. Duffy stated that this a very simplistic diagram about how unfair discrimination might actually occur in one of these systems. And we use the term AI enabled because there's a broad spectrum of how artificial intelligence and machine learning can actually be used. So, we start with the big data sources that as Ms. Filabi had talked about earlier, social media history, criminal history, credit scores, really potentially thousands of different factors that can be built into the algorithm. And then the algorithm as it starts to learn and develop and make these correlations, the system could start to infer protected characteristics such as someone's race, or someone's gender, or any other kind of protected characteristic. And if that resulted in, for example, a higher recommendation for premium pricing, or a different more adverse risk classification, then unfair discrimination would have occurred and the challenge is that the insurer may not even realize this is happening because the system is so complex and it's very technical. The expertise might actually be in a third-party that developed the algorithm and not within the insurer themselves and so they don't have necessarily the insight into what's going on in the system to see that this is even occurring.

And we know that based on the discussions today, and what we've seen happening for the last few years is that some states have actually taken an approach to try and solve for some of these risks. As we heard Rep. Matt Lehman (IN), NCOIL Immediate Past President, talk about earlier, the need for transparency also exists in the life insurance world just like it does with property and casualty, and identifying when we need to report some kind of action is still going to be a general issue for life insurance as well. Then we have the approach that we're all familiar with which is the factor by factor analysis where states actually determine whether or not we can use a specific rating factor. The problem with that, and really one of the major challenges is that now with the multitude of big data factors that are available to insurers, and they're growing everyday - there's thousands and thousands of them - how can regulators keep up with all of these data sources and individually determine which ones are appropriate and which ones may not be?

And then other states have taken an approach or other proposals have taken an approach about just saying there's to be a blanket prohibition on unfair discrimination. But there's some challenges with that - it will identify and it will be good for when protected characteristics are directly used but it would not be able to uncover when they're inferred by the system and what those sort of backend inferences are being made. And then the other general approach that we're seeing which we also are advocating for is some kind of testing framework that would identify when the system has been engaging in unfair discrimination or even just potentially investigating whether or not something might have occurred. What are those flags that we want to report to insurers so that they can then investigate that and determine whether or not something has occurred. And that is going to have some challenges as well. How do we set standards for that? How do we even define unfair discrimination so that we can test for it?

Ms. Filabi stated that Ms. Duffy and I just published in the National Association of Insurance Commissioners (NAIC) Journal of Insurance Regulation our proposed multi prong approach to attempt to tackle this challenge. The base of the approach is certification as well as audit and testing. So, starting with certification, before the algorithm is used, we believe that a designer should certify that it was created in accordance with standards that are necessary which we'll talk about in a few minutes. So, what should be certified? We think the algorithm itself should be certified and we believe that the vendor or the designer, if it's in-house at the insurance company, they can self-certify at this stage as long as it is in accordance with the standards and that there is consideration related to governance around model control and testing and the procedures that are in place for model selection as well. And then on the auditor testing side, we see this as a backwards looking assessment of whether the algorithm worked as originally intended via the design. We think that the audit and testing should be done by an independent third-party. The algorithm designer or the insurance company's not necessarily in the best position to do such audits and an outside firm can bring the necessary skills and independence for the review.

But also, importantly, an independent third-party can begin to have a horizontal view of data across the industry and aggregated to be able to have a more objective data set on what's going on with respect to some of these challenges. And finally, even if the algorithm is proprietary, we believe an audit and test approach could work particularly as it can be conducted on the outputs of the algorithm itself. The standards are to be calibrated in our proposed approach to the algorithm risks that I talked about earlier. The standards are really important, they're the pillar upon which any kind of certification and audit should be sitting upon and we think it's really difficult to imagine a scenario where only a handful of insurance companies are elevating the standards of their practice. It really should be an industry wide approach to be able to develop standards that are across the entire industry.

So, what are the standards - we believe that there are three broad categories to think about and you can think about these standards as really a set of questions that regulators can consider to ask the industry relating to the use of AI in underwriting. So, the first category is around accuracy - what is the level of accuracy of data that should be reflected in the algorithms? So, let's use an example of purchasing and credit card use can be viewed to try to predict behavior. Let's say you have someone you see is purchasing a lot of cigarettes or lots of alcohol purchases. How do you actually determine if that's an accurate reflection of whether they're consuming what they're purchasing? So, we need some standards around that.

A second category is around actuarial significance within this context. So, we think here it's important to think about a range. Let's think about the smoking example. So, the correlation between smoking and mortality is pretty well established. So, perhaps you allow that to have more weight in a data point that relates to smoking but the further you get from the actual behavior, so let's say again, you can infer data around smoking behaviors through credit card purchases. Well, how close do we want that data to be able to be actuarially significant in the context of AI? Because the data point itself is not actually about smoking, it's about an inference around smoking. So, what's that sliding scale, and how do we get some standards around that? And the last category here is around effective outcomes. So, this is a tough one that everyone's struggling with. What does good look like as it relates to a financial inclusive marketplace? What are the appropriate benchmarks?

And we believe that this answer can only be achieved through collaboration with the industry and the regulatory community. Some of the questions that should be asked are around effective outcomes that are for example, do we consider the status quo in terms of offer and acceptance rates to be the sufficient starting place? Are we doing as well now as we were in the 1980s for example? Are there differences amongst different demographic groups? These are the questions that should be considered with respect to effective outcomes and trying to get some collective views relating to the standards. This is also why we believe that the certification and audit framework allows for some learning throughout the process. There's a risk of being too quantitative and having too strict of a regulatory approach that doesn't allow for the benefits of technology to come to the consumers. So, we think that it's really important to try to think about that balanced approach. In conclusion, we recognize this is not an easy issue to identify and address in the underwriting process and that there does need to be a balance between innovation and access as well as consumer protection and we view our research really as the beginning of a conversation, it's not a definitive view, and we look forward to engaging with you all on how to advance this conversation.

Sen. Robert Mills (LA) stated that excuse my ignorance but I'm relatively new to the process - help me better understand these big data aggregators. Is this three companies, is it 300 companies? Who is it? Ms. Filabi stated that I don't have a specific number to be able to share with you today. I think it's probably somewhere in the middle. I think there are more and more algorithms being used in traditional data sets. So, you can imagine that let's use criminal history as the ability to have better electronic access to records, then you have the ability to start to aggregate them. So, there are a number of companies who can see this as a software opportunity to be able to aggregate this data and this is outside of the financial services space. There's the ability to start to view data in a more creative and an organized way that brings a lot of benefits to be able to better understand what data we have in these other domains outside of financial services. So, I think in terms of a quantitative number I don't have a specific answer today. Sen. Mills stated that I'll keep asking the question because I'm just so curious now but I've heard of policies that would have 100 data points involved in determining a rate and there

can't be that many companies around making a living out of gathering that much data. So, anybody that knows more about that I'd appreciate a little tutorial.

Rep. Dunnigan stated that as far as the certification - is this a concept that this is something that should be done and are there people that could actually do it? And the same with auditing - who will be the auditors? Ms. Duffy stated that for the certification we believe that the insurer or the algorithmic developer should certify that they've complied with best practices - they've chosen an accurate model, things that are in line with actuarial standards. So, that can be done essentially in house. But the audit, we believe, should be done by an independent party. So, whether that lies with an organization, an industry organization, somewhere in the middle and not a regulatory agency, nor a completely industry facing company, but some essentially data aggregator that has access to information from many insurers and that can sort of act as the independent party that can conduct the audits.

CONTINUED DISCUSSION ON NCOIL INSURANCE REGULATORY SANDBOX MODEL ACT (Model)

Rep. Bart Rowland (KY), sponsor of the Model, stated that today I would just like to reiterate my support for the Model and insurance regulatory sandboxes. I was sponsor of the bill that has been in effect in Kentucky since 2019. The Model that you see today on page one 188 in your binders is essentially the Kentucky law that we passed. The main goal of such sandboxes is to reduce regulatory hurdles for companies that want to introduce new concepts and products at the same speed as insurance technology develops. Since I introduced this Model there does seem to be a lot of interest from legislators but some concerns have been raised as to whether or not a Model is necessary from members in the industry. I'm certainly open to hearing suggestions as to what should be added or removed for the Model but I do believe that it would be very beneficial for NCOIL to provide guidance to states because many of them are looking at this issue at this time. Lastly, I do think it would be beneficial to have reciprocity language in the NCOIL Model. We've heard that from a lot of interested parties and that would mean that it would permit companies that obtain a waiver in one state to operate in others without going through the process from scratch.

Rep. Wendi Thomas (PA), co-sponsor of the Model, stated that I just want to take a moment and speak in support of this model legislation. I know that there are some concerns, but yesterday we heard a presentation from someone looking for paid family leave insurance, to do that on a fully insured basis. To me, that seems like perhaps they could go to one of these states that has a sandbox already, such as my state where this has been proposed but it hasn't been enacted and apply for this new insurance product as a test case and come back to us and tell us how that worked. So, that to me seems like an opportunity and I believe some of the concern is that nobody's actually filed a product yet. I do also want to just say that I think once we adopt legislation like this in any given state, we certainly then have to put money behind advertising it and letting people know it's there and how it might work. It kind of has to go hand and hand and I know some of the state's they've talked about what they've done to try to market it but I do believe marketing is also going to have to be a piece of this in order for it to be successful and for us to see products come through that process.

Wes Bissett, Senior Counsel for the Independent Insurance Agents and Brokers of America (IIABA), thanked the Committee for the opportunity to speak and stated that the IIABA is the largest insurance producer organization in the country. NCOIL has really done a phenomenal job in recent years promoting innovation. We really appreciate the efforts that you've made to make sure that the insurance regulatory framework keeps up with the pace of change along the

lines of what Rep. Rowland was discussing. There are lots of ways in which policymakers can promote innovation, this is just one, and sandboxes, just to give a little bit of background, it's not necessarily a particular term of art. A sandbox can mean different things to different people. There's no universal sandbox approach. Different states have done it in different ways. Countries call things a sandbox that are very different than what we call a sandbox but the core feature in the model proposal before you is an ability for insurance regulators to waive statutory requirements that would apply otherwise to certain marketplace actors. So, it's fairly significant power we would argue that you'd be granting to insurance regulators and in order to avoid potential problems, there are certain things that we would encourage you to do as you take up a proposal like this.

In some ways, this is a non-traditional framework giving regulators a quasi-policymaking ability. We have some concerns about how it could be used unintentionally to undermine marketplace fairness and to create an unlevel playing field among competitive similarly situated marketplace actors. I mean it's great if you're one of the entities that gets a waiver from a certain state requirement but if you're all those guys competing with that entity, you might not view it as favorably and we do have some concerns about the potential for lack of transparency. Transparency seems like it's the word of the meeting by the way from yesterday and today. It's kind of been mentioned already and I think Rep. Thomas was kind of hitting on this that the experience that we've seen in states has been limited so far, there's only a handful of states that have adopted an insurance specific sandbox. And there really hasn't been any insurance specific waivers that have been granted that I'm aware of. But Rep. Rowland has made the point, and I think correctly, that just because no waivers have been granted doesn't mean that there haven't been conversations that wouldn't have otherwise occurred between innovators and regulators as a result of the sandbox being in place. So with all that said, and it sounds like you are going down this road, there would be certain elements and guardrails that we would encourage you to put into place in order to avoid some of those unintended consequences. And the things that I'm going to talk about in a minute, these are all elements that have been included in one or more insurance specific sandbox proposals across the country and enacted into law.

We think one of the biggest things, and one thing that's already in the Model, is to ensure that the administrator, the sort of the enforcer-implementer of the sandbox would be the insurance departments. There are sandboxes in some places in the country where the power's been given to the Attorney General or to some other executive branch official within a state. Insurance is so technical and I would argue complex and comprehensive that I think in our world you really want a functional regulatory approach where you've got the insurance commissioner enforcing this and implementing it. With regard to transparency, we do think it's important for the public to know as much about what is happening as possible. There are always going to be confidential elements and trade secrets that you wouldn't necessarily want to require to be disclosed but there ought to be transparency because you can imagine a situation where an innovator or somebody comes in and meets with a department and makes a slick presentation and it sounds awesome if there's only one side making a presentation and offering a prospective without the ability for anybody else to weigh in - the results might not be what you want.

With regard to the potential for an unlevel playing field, we would urge you to avoid what some states have done which is to almost create a patent-like monopoly-like system, where if you're the first in line to get the waiver, it's awesome, and you don't have to comply with a particular state law or parts of state law but other entities that are maybe doing similar things, or have similar ideas are essentially blocked out and they can't get similar treatment. What other states have said is that they essentially allow for me too filings and applications. If you're doing something similar, the department's already allowed one competitor to be exempt from a

requirement and it ought to be easier for you to get similar treatment and we think that makes more sense from a level playing field perspective. There's already a list in the proposal of certain statutes that cannot be waived, things that you wouldn't want to waive related to solvency and licensing. We'd urge you to maybe look at that list and think about whether there are other things you might add and if there might be other requirements related to maintaining NAIC accreditation or prohibitions on deceptive acts. Those are the types of things you'd probably not want to allow necessarily to be waived. We'd also suggest that the waivers be as limited in time as possible. A multi-year exemption for one entity seems unnecessary. Once we kind of come to find that a particular law or regulation no longer makes sense in the 21st century, legislatures ought to go in and fix it and repeal it, or change, or amend it, or whatever might be the case. So, having a narrow window of time to engage under this sort of deregulated environment would be, we think, appropriate as well.

J.P. Weiske former Wisconsin Deputy Insurance Commissioner and currently the co-founder of the American InsurTech Council (AIC). The AIC is the first group, similar to a fintech group that is out there, dealing specifically with insurance issues across the InsurTech space across lines. The issues in InsurTech can be very different and I'm going to take a little bit of issue with the idea that there have been no products that have come out of the processes and the fact that these are relatively new and unique. Wisconsin has a law that dates back to the 1970's that we have used, and we've talked about here before, to set up the Wisconsin insurance sandbox that allows the insurance commissioner to waive any insurance law or any insurance regulation provided that they have a public hearing and have a finding, which is similar to the language in this Model, and then move forward with a finding that it will not harm consumers. And we found that process actually works really well and it's not that dissimilar to the process that's in this Model. From a structure standpoint, there was a little bit less administration around it - we get to determine the administration. We went through a number of processes and it's really important to have availability and be able to have discussions around this.

When we talked with companies, and we talked with numerous companies about what they were doing, what we found in a number of cases is insurers assume that certain things need to be waived to have a new product. In fact, it wasn't necessary to have that waived but those discussions only happened because we put together an innovation office to be able to have a discussion with them and we task staff internally to have a discussion internally with these folks and to go through that process. We ran through a number of companies who have had products that have moved out of the sandbox and are in the marketplace. In some cases, they were brand new products. In one case, the company ran a test on something they were targeting for individuals who were low income and to protect them against catastrophic losses. That is in fact out in the marketplace now. It's similar to a home warranty plan, but it's significantly better. They had a great experience on it. There was a renters insurance policy to owners of facilities and I'm not sure that given COVID that went too well in their experience but functionally, there were a lot of discussions internally that we had. There are public agreements and private agreements to put this together and you need to be able to cast the staff and discuss. The other piece about this that I think is really important is we consistently had problems in Wisconsin in insurers telling us where we had barriers to entry, and this is a great process for you as a regulator to have that discussion about barriers to entry. So, we fully support this Model at the AIC. We think that this is a big step forward. We like the approach and we think there's a good balance and we appreciate all the work that's gone into this so far.

Rees Empey, Director of State Government Affairs at Libertas Institute, a non-profit organization based in Utah, thanked the Committee for the opportunity to speak again and stated that in case you don't already know what a regulatory sandbox is, it is a process that allows innovators,

businesses both big and small, old and new, to work with regulators and legislators on trialing new products, services, and business models while regulations inapplicable to their idea are temporarily waived. This concept originated back in 2014 in the United Kingdom when they targeted financial technologies and in 2018, the first sandbox in the United States was passed in Arizona - a financial technology sandbox. The following year in 2019 five states implemented regulatory sandboxes of their own and began applying this concept to other industries outside of fintech. For example, Kentucky and Vermont took the sandbox concept and applied it to insurance while Wyoming implemented a medical digital innovation sandbox as well as a separate fintech sandbox. That same year Arizona expanded their regulatory sandboxes and established a separate one targeting property technologies. Now, in 2020 three states implemented regulatory sandboxes of their own, which targeted financial technologies and Utah implemented an insurance sandbox, as well as a separate legal services sandbox.

With that number growing in 2021 the total number came to 11 states with regulatory sandboxes of their own. South Dakota implemented an insurance sandbox, while North Carolina implemented an insurance and a fintech sandbox. That same year, Utah implemented its fourth sandbox expanding the concept to any and all industries. As of now in 2022 there have been 28 sandbox related bills introduced across 16 states, D.C. and Congress. Out of those bills, about 14 of them would impact insurance. In short, what I'm trying to say is that we think it's great and very important that NCOIL is considering model language for an insurance sandbox because as this concept continues to grow in popularity and as more states consider various types of sandboxes of their own, legislators will look to organizations such as this one for guidance to ensure they are implementing the best possible regulatory sandbox.

Sen. Bob Hackett (OH) stated that he had a question for Mr. Bissett on something brought up. In Ohio, we just passed a sandbox through the Senate and it's a financial services sandbox and the gentleman behind it was the Chair of the Financial Institutions Committee and he was former president of the American Banker Association so he's very high on sandboxes. But a point that Mr. Bissett said and the way our system is set up not only in Ohio but in this country is that it's a solvency issue and the issue is I know several of the insurance companies worry about the solvency issue raising its ugly head and what I ask the two other gentlemen is when you look at all your experience has there been any solvency issues because in Ohio we have the guaranty fund and so the companies in basically say normally this company wouldn't be able to do something like this because of the solvency issue but now does and then it goes broke and what happens under that scenario?

Mr. Weiske stated no. In fact, I would argue that it's an opportunity for a company to be able to test its pricing model. That's one of the key aspects here that you have the regulatory agreement. Typically, we had agreements behind the scenes that require refunding of all premiums back to the consumer depending on the tale of the product and depending on the coverage. Obviously, you couldn't have that public because it affects the experiment but it allows them to understand what the market is, what the pricing should be, and whether or not their pricing is appropriate. So, actually I would argue that it does the opposite. It actually protects solvency in a lot of ways better. It gives them an opportunity to test their product in a small area before they move forward and usually these are relatively small tests covering a relatively small number of consumers so the solvency risk is pretty limited, at least in our experience.

Rep. Dunnigan asked Mr. Empey is he familiar with Utah's sandbox. Mr. Empey replied yes. Rep. Dunnigan stated that I believe this week Utah kind of folded it into the other sandbox. So, just so Rep. Rowland and everyone is aware, Utah's had their insurance regulatory sandbox for

a couple of years now. I think we've had one applicant in it. Rep. Dunnigan then asked Rep. Rowland Rowland if the Model is intended for existing companies or more for startups to help them get underway, or both? Rep. Rowland stated that the law that we passed in Kentucky and that the NCOIL Model is based off would actually be for both. What we found out when we started the conversation about the sandbox in 2019 is that a lot of the insurance companies actually have had for some time their own InsurTech divisions inside their company and they're looking at new innovative ways to deliver policies, to pay claims, to collect premiums, and do all the things that they do behind the scenes. So, I think that the sandbox is for both new and existing insurance companies.

Mr. Weiske stated that you're exactly right and we've seen a number of companies that have these people that are physically located outside their main office that come up with the ideas and go through that process inside existing companies and so, they're trying to find out new ways to your point to do this inside existing companies. They've purchased InsurTech companies, or invested in InsurTech companies and the company itself serves as the testing ground for small new InsurTechs that are testing new ideas around policy, around interacting with consumers, being able to make policies more friendly, and being able to make policies better for consumers and having more choices.

Rep. Dunnigan stated that Mr. Empey I don't know if you can address this, but I'm a little concerned about what we're doing in Utah - that we're taking insurance out of its own sandbox and putting it in another one and we may not have proper regulatory expertise to determine what flexibility should be granted. Do you have any thoughts on that? Mr. Empey stated that I defer to the Utah based team at Libertas to speak to that. They're the ones up in Salt Lake City working on it. My work is in the other states working on scaling the regulatory sandbox model so an insurance sandbox model here at NCOIL we think is very important because a lot of states don't go for full universal straight out the gate like Utah did. They usually start with a fintech or an insurance sandbox. Rep. Dunnigan stated that so we've now combined at least three different categories of regulatory licensure into a sandbox. I'm just a little concerned that some of the expertise that we have currently with our insurance department, and the commissioner may not get transferred.

Mr. Bissett stated that we agree with you a 100%. Insurance is very unique for lots of reasons that you understand probably as well as anyone and we would worry too that the decision when you're looking at an application and engaging the effect that waiver would have on the marketplace. To not have an insurance regulator with knowledge of the marketplace, knowledge of the impact that those requirements are having, and that sort of just core insurance knowledge in general making those decisions, that would be worrisome. To have some other executive branch official or an Attorney General making decisions about admittance into the sandbox or waiving particular laws, or gauging the impact during the waiver, that would be really troubling. I would also think if there's an insurance entity that's getting a waiver from a particular law to the extent that there are any problems and complaints coming in, we would want those to go to insurance departments and not to some agency that's not familiar with and has no history in dealing with those types of issues. So, for us having it essentially administered by the insurance departments would be incredibly important and that's what this model does.

Mr. Weiske stated that I agree. We saw a company come in wanting to do a renters insurance product where everybody would put $1,000 into an account and then the individuals who are subscribed would individually de-identified vote on each and every claim. It's crazy. And there's a lot of insurance principles that would be violating which you may not see if you're not an insurance regulator and you're not used to that sort of issue. I mean the idea that you could vote

whether something's covered because everybody vote's on a description of what that is just does not make a lot of sense and you may not catch that if you don't experience insurance.

Mr. Empey stated that the one comment I'd make with Utah covering so many industries with its regulatory sandbox model with that consolidation that went through this week - the director of the regulatory relief office is still required to collaborate with the insurance department, as well as his advisory committee to ensure that the best decisions on the regulatory waivers are made. But I also don't want that to muddy the waters of this insurance regulatory sandbox model because of universal sandboxes, because it touches so many other industries is very different.

Rep. Tom Oliverson, M.D. (TX), NCOIL Treasurer, stated that I thought I heard a question earlier about what is our direction on this and I've heard a lot of good comments today, but I think we need this. I think we need to move forward with this. I do think there obviously are some concerns and probably some guardrails need to be included. There are obviously things that should not be suspended. And the other thing that I heard, which I agree with is, this obviously is supposed to be, I look at this as a doctor and scientist as this is really what you're doing is setting up an experiment. And you're giving a company the opportunity to test out an idea in a controlled environment where there's regulatory oversight that's more stringent than would otherwise be present for sort of a file and use situation where they have to report back. The agency has the ability to pull the plug if they feel like it's not going well, particularly for the consumer.

But I'll just throw this out here and I would be curious if my Nevada friends would agree with me on this but for those of us that are from states where we meet only once every two years, a sandbox is a very useful idea because essentially if you have a new idea and you want to bring it to the market in Texas and you're unfortunately looking at its January on an even year, you will be waiting an entire two year period to be able to try your idea out. And so this gives you the opportunity to move forward. I would assume that it would be the intent of the model legislation that these are experiments, these are trials, these are test cases. The idea of sort of creating a protected space and regarding one person having a competitive advantage over everyone else, even if that were the case for that duration of that test, that essentially expires because these are not meant to be long term changes to statute. These are short term suspensions of regulatory authority which ultimately would have to be reviewed. My guess is we could say at the earliest opportunity that the legislature has the ability after the test case is completed to come back in and say okay this worked or this didn't work, now the question is do we want to change the statute so that all companies may enter this marketplace and compete and offer the same product? That's how I view it in my state and if it's ok with you, Rep. Dunnigan and Rep. Rowland, I feel strongly enough about this that I'd like to add my name as a co-sponsor to this model that moves forward.

Rep. Dunnigan asked Rep. Rowland is the model envisions a single discipline or more of the universal nature? Rep. Rowland stated that the Kentucky law, and what's being considered here, is insurance only. It doesn't include fintech or legal services, or any of the others - it is specific to insurance only. Rep. Dunnigan stated that it sounds like you got an additional co-sponsor and again, we've had it for two years in Utah and I think we've had one applicant and it's a company that's been around for awhile, but they kind of entered a new line of insurance and they want a bit of an advantage over their competitors and so they came and applied for that. But I appreciate the work you've done on this. I'm hearing that we have interest in this. We want at least to move forward with the discussion. Is there anybody who feels differently?

Hearing no comments or questions, Rep. Dunnigan stated that he appreciates all the work on this and we'll continue to develop this model legislation through this committee.

Mr. Weiske stated that I would just note one thing to Rep. Oliverson's point, as a regulator when you're looking at what you're waiving you are using a lot of discretion and you need to make a decision when somebody asks you to waive something whether or not they can actually ever get out of a sandbox. And so, I think to your point, there will be cases where the regulator may not be willing to waive pieces because you'll never get out of the sandbox. It's unlikely that a law would get passed. Say something that eliminates insurance agents – that would be silly and you wouldn't want to approve something like that so I think that's important to understand if there's some built-in protections from a regulatory standpoint they're there as well.

NCOIL INSURANCE MODERNIZATION INITIATIVE PART II

Rep. Dunnigan stated that before turning things over to our speaker today I'd like to provide some context to this topic. Going back to the days of pre-Covid NCOIL had embarked on an insurance modernization intuitive, the goal of which was to modernize certain insurance statutes to account for new ways of doing business. That intuitive culminated in NCOIL adopting and E-Commerce Model Act which set forth certain requirements regarding the electronic delivery of certain insurance documents. That leads us to today, and as we all know, COVID has forced many industries including the insurance industry to modify certain business practices. Today, we'll hear about whether or not certain changes should be made to the Model to account for further flexibility in electronically delivering certain insurance documents.

Jeff Album, Vice President of Public and Government Affairs for Delta Dental of California, New York, and Pennsylvania as well as 15 other states, thanked the Committee for the opportunity to speak and stated that we're the Delta licensee in those 15 states but we also have operations across the country – 38 million enrollees in every kind of business: commercial, Medicaid, Medicare, Government Business, Veterans Affairs, Federal Business. Today, my comments really are directed at the commercial segment. We're not talking about any of those others and it's important to know that when we look at the e-commerce model act. Mr. Album asked what year the Model was adopted. Rep. Dunnigan replied 2020.

Mr. Album stated that in the early 2000s, if you could imagine, place yourself where we were technologically as consumers - the types of phones we had, the type of computers we used. The ability to hook up to the internet to have a fast connection versus a slow connection and a kind of inequality of it. Not that it's not somewhat unequal now, but certainly in the early 2000s there were people who were very comfortable connecting to the internet and using web pages and web services and a lot of people that just weren't either because of their income or their age or they just had fear of technology in general. And states in that environment, probably properly, began passing laws to basically say, and I'm speaking mostly now health and dental but of course this is in banking and in other industries as well, the feeling was that a company should always assume someone should get paper based transactions unless the enrollee voluntarily waives their right to paperless transactions and wants electronic. And that was proper for the time.

Enter a pandemic and enter a lot of years of progress and think about the advances in the way goods and services can be purchased on the internet today. Think about the experience - I remember trying to by an airline ticket in 2002 on United Airlines and I could do it and if I tried it five or six times I would start to get good at it but those things are so much more intuitive today. For health companies and for dental companies, we're in a whole other world and two years of a

pandemic has really brought the dependence on electronic communications to an unbelievably new level for people of all wealth classes. Even prisoners in San Quentin have cell phones and internet and use it for all kinds of things. So, today you can get a refurbished Android for a couple hundred dollars. You can get a refurbished desktop computer. The devices are not as cost prohibitive as they were in the early 2000s and the fact is we feel it acutely in dental because as much as I would like to tell you your dental benefits are the most important thing that you have in the world to you, it's not the fact. It comes way after banking, and it comes after healthcare.

And so, when we send out a notice to 38 million subscribers that you have the right to opt in, I don't know if anybody would care to guess what percentage of people just go to the link that gives you the option to opt in? The answer is 12%. Now, of the 12%, they're the ones who have bothered to read the fine print on their dental plan, which most people don't think about until they're in pain and have to use it. They can go a whole year, they can go for three years without ever using or thinking about that dental plan but of the 12% who actually bother to follow the link that gives them a chance to create a password and an account and have access to all electronic communications, only 2% of the 12% ever go all the way through. So, we are failing at getting that adoption even though we know most people don't like paper anymore. Yes, if you're fearful you don't get it and you're not comfortable with the internet, you're going to opt out but the majority of people would rather not get it in the mail and the simple fact is with where cyber security is today, personal health information in your mailbox is far more dangerous and unsecured than in an email in your inbox which just has a link that brings you into a secure formally protected website. So, for all those reasons, we have seen recently states beginning to reverse course and say that by default a health or dental plan can opt in and can provide the opt in for all of its enrollees - the plan sponsor we're talking about - and everyone can and should be given the right to opt out.

So, here I've listed states that have begun to take that approach and the one I really want to focus on is Texas because what we did after looking at those laws and how they were set up is we decided to go a little bit further, anticipating that patient rights advocates have a legitimate and valid concern on this topic. We decided to take the concept further and say that a plan sponsor as a condition for opting in their enrollees has to formally attest that their enrollees have electronic communications during the normal course of work and are familiar and comfortable at doing that. I should also say that this is not a mandate on employers to do that. This is an option for those employers who want to opt in their enrollees as a way of basically reducing mail, reducing carbon footprint, and reducing expense. The plan can even lower its premium a little bit, not a lot, but a little bit. For dental especially, the cost of paper-based transactions relative to its premium, our product ranges from $15 to $40 a month as opposed to $600 to $1,000 a month for a health plan. For paper, we've priced it out and I think I have a slide on it and we'll get to it. I don't want to leave Texas alone here but in Texas we said an attestation must be provided and the employer has the right to just select a portion of their employees if they have employees who drive trucks, and maybe aren't in front of a desktop. They don't have to choose to opt that employee in and in fact, they shouldn't if they don't feel that person is familiar and comfortable with paperless transactions.

Rep. Dunnigan stated that before you leave that slide, it says opt out is available to all enrollees at any time - is that on an individual basis? Mr. Album replied yes - that has to be a condition. You can always opt out and select paper. You have to have that option before your employer opts you in. You have to have had the option to opt out. Does that make sense? Rep. Dunnigan stated that I don't know. So, the benefit manager opts you all in, or all the employees in and then the employees can individually opt out or did you just say they have to opt out before

they're opted in? Mr. Album stated no, they can opt out anytime. Rep. Dunnigan stated so, the benefit manager can opt them all in and then if they choose individually after that they could opt out? Mr. Album stated that's right. The benefit manager would probably delegate their health or dental plan to send out a communication to all the enrollees as they're being onboarded for the first time into the carrier's system and that communication would represent the formal offer of opting out electronic opt in if they want to get paper-based communications.

Rep. Dunnigan asked Mr. Album to say that again. Mr. Album stated that I keep going back and forth on what this would be called - default opt in is what we have today and is what your current model act does. It's by default everyone is on paper unless they opt into electronic communications. What we are trying to do is to give the plan sponsors the authority, if they want it, to be default opt everyone in to electronic communication with the option to opt out. I call it employer opt in, employee opt out. Maybe you folks will come up with something a little catchier and more to the point to describe the concept. So, opt out is available to all employees and it's going to enhance both speed, security, and delivery of electronic communications. So, the advantages are as I just said, it's faster, it's safer, reduces mailing costs, decreases the administrative impact on premiums, better for the environment, and ensures portability for consumers. How many times do people in paper based transactions move and not notify someone and so their personal health information is being sent to an old address.

Many health consumers prefer paperless communications, but they just fail to respond under the opt in rules. Opt in is lost in the fine print, especially with an ancillary benefit like dental. I didn't want to come here with a dental only bill, because you'd ask me the question, well wouldn't this be good for healthcare too and the answer is yes, absolutely. What's good for the goose is good for the gander but for health plans it's not going to be as impactful on premium or other things because they're collecting so much more money than we are and so this business of healthcare communications with a patient is a far smaller portion of premium for health care which is why it probably won't have risen to their attention. I've had very good conversations with health carriers about this bill and this approach and they all think it's a good thing. So, I don't think you're going to get a fight from them but it means more to a smaller premium product than it probably does to a larger premium product.

Here's a look at a typical year in paper communications with a dental enrollee and you can see that in a basic year the things that we have to send by paper cost overall about $10 per enrollee. That's a lot of money when you multiply it by 38 million people although, it's not about Delta Dental. Think about in Texas the employees on the Employees Retirement System (ERS), it's our largest account, something like 400,000 enrollees in the state of Texas, everyone who works for government there. Times that by $10 - those are savings we could be turning back over to our client which in that case is the state of Texas and it's very important that as we consider this reversal of opt in, opt out for the enrollee we know who we're not talking about - not Medicaid, not Medicare, not an individual plan, not an exchange dental plan, not an individual plan. There has to be a plan sponsor in place to know whether the enrollee has electronic familiarity, and is connected to the internet and routinely deals with the employer using electronic means.

That's the only way I think it could work and it's the only way we can get patient advocates to maybe be on board with this type of approach. So, what we did to try and help you on this is we redlined your current model act. We didn't have to change very much. We added a new section D and I highlighted certain things in it and we proposed some wording that would make this reversal of opt in versus opt out from the plan sponsor with the requirement of an attestation and a provision of the opportunity to opt out of electronic if that's what the enrollee prefers. I forgot to mention that a similar law almost exactly equal to the one that just passed Texas is sailing

through the Georgia State Assembly right now and it passed the House and is now before the Senate. We also have several other states that are also considering this. I think the opportunity here is to get all states to do it the same way and that's why this organization exists. I can't tell you how many times I've testified in front of a state legislature beginning with the words, NCOIL has given this topic considerable thought and arrived at a very reasonable answer and you should try to conform with its guidelines.

ANY OTHER BUSINESS

Rep. Dunnigan stated that the one item I'd like to mention here relates to rating agencies. Specifically, S&P Global Ratings is the world's largest credit ratings company and is changing how it rates insurance companies in a way that its rivals say is intended to steer more companies to its services. Apparently, this will be the subject of a future federal hearing and it has raised concerns that it would create a caste system among rating agencies into three levels, S&P, Moody's and Fitch, and then all others. This issue will be discussed here at this committee at our next national meeting in July since this committee has jurisdiction over the NCOIL Model Act to Support State Regulation of Insurance by Requiring Competition Among Rating Agencies. NCOIL will also likely be submitting a comment letter to S&P. This issue was raised yesterday during the NCOIL-NAIC Dialogue and it certainly is on the NAIC's radar as well. So, I think it's important that NCOIL be engaged in this, and we look forward to discussing this further.

ADJOURNMENT

Hearing no further business, upon a motion made by Rep. Oliverson and seconded by Sen. Klein, the Committee adjourned at 3:00 p.m.