

NATIONAL COUNCIL OF INSURANCE LEGISLATORS  
NCOIL – NAIC DIALOGUE COMMITTEE  
JERSEY CITY, NEW JERSEY  
JULY 15, 2022  
DRAFT MINUTES

The National Council of Insurance Legislators (NCOIL) NCOIL – NAIC Dialogue Committee met at the Hyatt Regency in Jersey City, New Jersey on Friday, July 15, 2022 at 11:15 a.m.

Representative Tom Oliverson, M.D. of Texas, NCOIL Treasurer and Vice Chair of the Committee, presided.

Other members of the Committee present were:

Asm. Ken Cooley (CA)	Rep. Brenda Carter (MI)
Rep. Stephen Meskers (CT)	Sen. Jerry Klein (ND)
Rep. Tammy Nuccio (CT)	Sen. Bob Hackett (OH)
Rep. Rod Furniss (ID)	Rep. Brian Lampton (OH)
Rep. Matt Lehman (IN)	Rep. Lacey Hull (TX)
Sen. Beverly Gossage (KS)	Del. Steve Westfall (WV)
Rep. Joe Fischer (KY)	

Other legislators present were:

Rep. Deborah Ferguson, DDS (AR)	Sen. Walter Michel (MS)
Asm. Tim Grayson (CA)	Rep. Hank Zuber (MS)
Rep. Kerry Wood (CT)	Sen. Nellie Pou (NJ)
Sen. Mike McLenson (MS)	Rep. Wendi Thomas (PA)

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. Brian Lampton (OH), the Committee voted without objection by way of a voice vote to waive the quorum requirement.

## MINUTES

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 to adopt the minutes of its March 4, 2022 meeting in Las Vegas, NV.

## INTRODUCTORY COMMENTS

Rep. Oliverson stated that as the first time that I've had an opportunity to chair this meeting, I would be remiss if I didn't mention that the Chair, Asm. Kevin Cahill (NY), NCOIL Vice President, couldn't be with us and we wish him well and wish he was here with us and he is missed. And

I'm also very excited that the first time I get to preside over this committee meeting that there is a record attendance level by Insurance Commissioners and I am truly blessed to see all these faces here from all of these different states - big states, small states, blue states, red states. Rep. Oliverson then asked each participating Commissioner to introduce themselves.

## DISCUSSION ON INITIATIVES TO PROMOTE HEALTH EQUITY

Rep. Oliverson stated that we wanted to begin today's dialogue with a brief update. Earlier this year the Pennsylvania Insurance Department announced a statement of policy that it would permit entities issuing insurance products regulated by the Department to collect information about race and ethnicity on an application from for diversity, equity and inclusion (DEI) purposes. And colleagues you can find on page 152 in your binders that directive. Commissioner Humphreys I was just wondering if you could give us a brief update as to what led to that and what's the end game here in terms of where we're going with this. The Hon. Mike Humphreys, Acting Pennsylvania Insurance Commissioner, thanked the Committee for the opportunity to speak and stated that it we did issue that statement of policy in April of this year as a result of a number of different kind of conversations. Last year, former PA Commissioner Jessica Altman was the chair of the National Association of Insurance Commissioners (NAIC's) Special Committee on Race and Insurance Workstream on Health. We also separately in Pennsylvania had a series of meetings with our health insurance community in particular to talk about race and ethnicity and DEI efforts in the health space. And there's also a federal component here that I'll get to in a minute. The health insurers actually came to us and asked to be able to collect race and ethnicity data as part of their efforts to advance health equity. They call it the "golden record" similar to what they have in Medicare. Golden record meaning information that's directly provided by the member versus information that health carriers may come to today through providers or other third parties. So, the carriers came to us and at the same time earlier this year the federal government issued its notice of benefit and payment parameters (NBPP) and in that NBPP for next year is a requirement to report data that includes race and ethnicity information.

So, there's a phase-in in how insurers are going to be reporting that but kind of coupled with the federal requirement and now a request from insurers it felt like it was time and what the statement of policy did is it announced non-enforcement of a prohibition that was issued by the Department as guidance in 1969 so it predated our rule process that's in effect today. It has since been treated as a rule. So, in kind of promulgating the statement of policy we did work with the legislative staff and made clear that really this is the short term solution to allow companies to ask the question about race or ethnicity on applications but we would be following up with a more formal process that would go through kind of a rulemaking-like process. So, part of the reason that we felt comfortable and felt it appropriate to issue the statement of policy was it was 1969, a different era, and the policy was effectively superseded by the unfair insurance practices Act that was enacted in Pennsylvania five years later and that Act explicitly prohibits the use of race and ethnicity in underwriting or eligibility. So the protections remain from kind of nefarious uses of information outside of the guidance that that we issued at the time and what I want to stress is there's no requirement related to the statement of policy - not on health companies, not on property & casualty (P&C) companies. We didn't come out and say you must collect. We simply said you may collect and if you're going to collect when you do that, as kind of best practices you should clearly articulate why you're requesting the information. How it's going to promote equitable care efforts? How are you going to be maintaining it as private?

Rep. Oliverson stated that my only question is if they're not asking the question, you can be pretty sure that they're not using it in underwriting or for nefarious purposes, right? But if they're now going to be able to ask the question, how do you as a department determine the reason and

the authenticity I guess or the veracity of why they're asking the question and what they're doing with the data that they're gathering? How are you going to maintain oversight over that? Cmsr. Humphreys stated that I think it would still play itself out in the rate and form filing process. As you all know the companies come to us every year, they file rates, they tell us how they've developed their rates. If there's a suspicion or if we have triggers or complaints from the market analysis side, we could go into a company on the back end through a limited scope exam to see how exactly they're using the information but I think with that kind of frontend review and the opportunity for backend oversight that we feel comfortable that the carriers will be using it appropriately, certainly at the risk of running afoul with not only us at the Department but certainly on the health side at the Centers for Medicare and Medicaid Services (CMS) and the Federal Government.

## DISCUSSION ON DEVELOPMENTS IN PRIVATE EQUITY'S ROLE IN THE INSURANCE MARKETPLACE

Rep. Oliverson stated to The Hon. Dean Cameron, NAIC President and Idaho Insurance Commissioner, that we had a pretty good discussion yesterday in a general session regarding private equity's influence and impact on the insurance industry. I think some important questions came out of that. I know the NAIC has been very involved in the area and there have been some letters back and forth with the U.S. Senate Banking Chair and colleagues you can find information on this starting on page 157 of your binder. I was just wondering what's your thought process on this and I know for some of us one of the questions that came up yesterday was sort of we don't see the problem here. What is the issue in terms of private equity versus the bond market or whatever. Dir. Cameron stated that before I answer that, The Hon. Glen Mulready, Oklahoma Insurance Commissioner, was going to go over some additional healthcare items and then we'll come to the private equity side of things.

Cmsr. Mulready stated that I'll provide a quick update on the NAIC's B Committee (health insurance and managed care committee) and some of things that we have been up to and we did send letters to Congress and to the Administration on a few key items. And just to highlight that one was the fix of the "family glitch" that really goes to the definition of affordable coverage and I think many of us saw that as a misinterpretation of affordability when it comes to family coverage and so I think most of you are familiar with that. We sent a letter asking them to fix that and literally a week later or days later the Administration came out with their fix on it. I think it was the week before we sent it out, it was all going through our process and so I joked that just the threat from the B Committee took action on the federal administration. So they have a proposal to that and that fix should provide some more affordability to upwards of five million people on that issue. A letter also went to the House and Senate Tax Committees to try to address that legislatively to try to protect against some legal appeals on that.

Another topic that we sent letters on was the health savings account (HSA) and copay accumulator issue, something NCOIL is familiar with. I know I've heard you talk about it numerous times and with help from our friends at the American Bankers Association (ABA) a number of states passed some legislation to try to address that and it has to do with coupons and third party payment and therefore not being eligible for high deductible health plans. So, we similarly sent letters out to Treasury and as well to the tax committees to try to address that legislatively. And the third item that was in those letters was the extension of the American Rescue Plan Act (ARPA) subsidies that are scheduled to expire at the end of this year and I've been calling it the perfect storm of the Medicaid unwinding. You heard quite a presentation yesterday from Miranda Motter of American's Health Insurance Plans (AHIP) on that and that plus the ARPA subsidies going away is going to be a perfect storm of a number of folks being left

without coverage. And so, a letter was sent there encouraging them to extend those somewhat. A couple of other quick things. Medicare Advantage and some of the states have had great difficulty in being limited to only being able to address solvency on licensing issues and we received in our states a lot of complaints this year in the marketing side of things that some of those ads had misrepresentation, but our hands are tied on that. So, there's some effort to look to allow our states to try to address some of those things outside of solvency and licensing. So, a letter went to Congress urging them to allow us to do that. And then we had federal mental health parity. We are not having federal funding provided for that. There has been a letter sent to Congress encouraging grants to the states to help address that issue. The Medicaid unwinding is really front and center on our agenda and how that is going, as well as the No Surprises Act (NSA) and tracking how that is going within our states.

Rep. Oliverson asked Cmsr. Mulready if he has any specific thoughts or if the B committee had any specific thoughts as far as the end of the public health emergency (PHE) and the looming consequences and I feel like that's something we kind of need to be arm and arm in as lawmakers and regulators because there is some tremendous consequences around the bend. Has there been any effort on that as far as here's a roadmap, here's what we need next to get ready for that? Cmsr. Mulready stated that I'm glad you asked as that's part of our agenda in a few weeks here in Portland, Oregon for our next meeting. But prior to that at our previous meeting there was conversation and sort of a call to arms to regulators because I think some regulators weren't as tuned in as others. I think the thinking was well that's Medicaid, we don't regulate Medicaid but not understanding that our Medicaid folks, they understand Medicaid but they don't understand the private market. We understand the private market and what's happening there. So, I know in our state we've been doing a lot, we've been meeting regularly with leadership in our healthcare authority that oversees our Medicaid Agency and providing information to them that they're posting on their webpage. So, really educating out there I think is the key thing as far as our role in that. Rep. Oliverson stated that well they will certainly understand being uninsured and I think that's the thing I worry about coming from a non-expansion state and having a lot of folks that are currently on the rolls that in a non-public health emergency state what sort of the consequences are. I think we all would love to work with the NAIC on making sure that we're kind of prepared for that. Cmsr. Mulready stated that the numbers are a little staggering. I mean you're talking anywhere from five to 14 million people. I know in our state it's over 200,000 that we're expecting to fall off those rolls.

Cmsr. Humphreys stated that Pennsylvania might recommend that when you go back home maybe talk to your Medicaid agencies. CMS has actually issued some guidance that clarifies that Medicaid managed care organizations (MCO's) with affiliated qualified health plans (QHP's) so both the Medicaid side and now the commercial side, that they can provide members with information about the exchange during that redetermination process. As Cmsr. in Pennsylvania I also chair of our exchange board so the communication between those two groups is very important and I think to the extent that Medicaid agencies may be interested in at least exploring whether to give the MCO's the ability to go and let their members know what the exchange is, that may be something that states would want to consider. Dir. Cameron stated that I would just add that there are some states, ours being one of them, where the exchange is actually working on a direct transfer, a direct pipeline if you will, to help mitigate some of that. And it won't solve all of it because there will still be some people that have to pay for something whereas under Medicaid they weren't but I think we're really gearing up. The Hon. Lori Wing-Heier, Alaska Insurance Director, is leading an effort for the Commissioners to be prepared and we will do a better job of communicating what we're doing with you so that we're all on the same page.

The Hon. Marlene Caride, New Jersey Banking and Insurance Commissioner, stated that here in New Jersey, we've been working with Human Services and we have worked on information that's going to be sent to the individuals who will probably be weaned off of Medicaid so that they have information on the exchange. So, we have been working together on this a long time in order to avoid losing folks and having uninsured individuals as you mentioned. If I may as well, with regards to ARPA, we here in New Jersey were able to use those funds to provide subsidies to individuals that were earning income up to the 600% of the federal poverty level so we had individuals that were making \$77,000 that were able to get subsidies to help them pay and make insurance affordable. If we lose the ARPA, we're going to have to readjust all of that and we're going to go back to having a lot of individuals that will not be able to afford insurance so anything that you and your colleagues can do to get that message across at the federal level would be greatly appreciated at least for me because I run the exchange here in New Jersey and I want to recognize Sen. Nellie Pou (NJ) who I worked with very long as an NJ Assemblywoman and now I have the pleasure of working with her as the Commissioner.

Dir. Cameron stated to Rep. Oliverson let's move to private equity and I would say that we as Commissioners generally agree with you. There are things that give us some concern that we're watching but we don't know that there's an action for us as Commissioners just yet. I'm going to turn the time over to Dir. Wing-Heier who will give you more details. Dir. Wing-Heier stated that Dir. Cameron hit the nail on the head. This isn't necessarily a bad thing. Private equity, we need it in the insurance industry not only to look at startups or new products but also existing companies and providing financing where needed. This is not new to the NAIC and in our state framework we have been dealing with this since 2013. We already have guidelines in place to address the corporate structure, risk-based capital, and looking at the financial statements of not only the private equity firm but also in the insurance company within and those that are investing in it. Admittedly, the transactions have become more complex in the last few years and we are currently reevaluating through the NAIC Macroprudential Working Group if we need to go a little bit further delving into the transactions but we do think that at this time we're not seeing a red herring. We're not seeing a hair on fire that this is a bad thing for the industry. It's new, it's becoming more complex, there's becoming more transactions and the NAIC is up to the task. All of us are keeping up with these transactions, the Macroprudential Working Group as well as others such as the Life Actuarial Task Force are all keeping abreast of the trends and current statutory accounting principles and other guidelines that are in place. They apply to these too and we are watching it.

Rep. Oliverson stated that I appreciate your comments and I have been giving this a lot of thought in the run up to this meeting and then of course with our presentation yesterday and I think the question in my mind that I haven't really heard a good answer to and I'm wondering if you have any thoughts on it is that with private equity when we're talking about modern private equity firms, we're not talking about the corporate raiders of the 80s and 90s where they buy something just to bust it up and sell off the assets and stuff like that. Normally, when private equity gets called into an industry it's because there's an opportunity to improve efficiency, enhance profitability, and I would use the word save that sector and so I the question in my mind is, and I asked this yesterday, what's prompting this? Does the NAIC have any thoughts as to why now? Why all of a sudden is there a role for private equity in insurance marketplaces in our states? Dir. Wing-Heier stated that my personal opinion is that I think that with the low interest rates that have been in for the last decade or so, it's a means for them to get additional capital from those that they're either qualified investors, or an accredited purchaser, and maybe I have the terms wrong but you have to have the wherewithal behind you to come into private equity and I think it's an easier way for some of the insurance companies to raise capital to continue operations when the interest rates in the past few years have been so low they have not been

able to make the returns that they hoped they could. So, I think it's another means for them to maintain solvency to pay the claims of the future, particularly in life insurance companies, but we're seeing it in other areas too.

Sen. Beverly Gossage (KS) stated that yesterday it was brought up about Security Benefit Life in Kansas and I called The Hon. Vicky Schmidt, Kansas Insurance Commissioner, and she said that yes this got her team on board and they said this was 2010. It was a real positive for the private equity company to come in and help out and they've just seen nothing but growth and it basically saved that insurer. So, we've seen good results with that in our state. Dir. Wing-Heier thanked Sen. Gossage and stated that when they step up to the plate, they help the companies, and just like any other company or new buyer of an insurance company, we're going to watch it.

Rep. Stephen Meskers (CT) stated that I've sat on the Insurance Committee in Connecticut for four years and what I'm looking for from guidance from the NAIC is either at the State or Federal level what kind of regulatory framework we need to improve transparency and pricing? I worry about the insurance industry and it's in the healthcare industry particularly and the sustainability of the business model where the expenses are compounding somewhere between 7% and 15% a year for insurance coverage and we've moved around the needle with higher deductible plans, transferring the risk from the corporate to the individual policyowner to try to cost contain. But I don't see any transparency in the hospital industry at all and I can't price a standard hip replacement or shoulder replacement which without being the mathematical genius I'd say 90% of which are going to be pretty standard. And I can't go online and figure out which hospital is going to price me where. So, even my high deductible plan I don't know what my deductible looks like and what the cost looks like. And on the pharmaceutical model, right now we're paying four times what the Organization for Economic Cooperation and Development (OECD) countries are paying for pharmaceuticals and that's either something we need to be looking at the state level or I need you to be pushing forward at the federal level. So, where do we go, because if we don't solve the problem of affordable insurance we end up with a public option which is not necessarily any more affordable, we're just shifting the burden. So, I'd love some of your thoughts on where we need to go on that on a regulatory framework or political framework.

Dir. Wing-Heier stated that part of the problem is we don't regulate hospitals. We don't regulate providers. So, I can't go to one of the big hospitals in Alaska and say "you must." Now, what I will tell you is that the federal NSA that was passed a year or two ago does require hospitals and other providers to disclose and there is a transparency component to it. It has not really rolled out yet for us to be able to tell you how well it's going to work but right now that's probably our best shot. I know that various states have passed transparency laws regarding the cost of healthcare that have to be provided to the consumer but it is very hard for a consumer to go to the hospital and say, "how much is a hip replacement?" and then go to their insurance company and say how much are you going to pay? And nobody took into consideration did you meet your deductible or not or what your copay is. It becomes very confusing for the consumer. And so I think because of the NSA and the requirements that are going to go on the insurance companies as well as the providers hopefully we'll see a path forward between those two. I don't know that it's going to be perfect, but I think it's a step forward from what we have now.

Cmsr. Mulready stated that the difficulty on our end is that we don't regulate medical providers or drug companies as far as the pricing on that end and that's what makes it difficult and has made it difficult with the NSA when they were looking to us to say who's going to enforce that, well we have no statutory authority to take care of that with the medical providers. And so, unfortunately, we've had to defer to the federal gov't on that with the NSA on the actual enforcement. There is some progress being made and in fact Surgical Center of Oklahoma has been a national leader

on this for at least a decade with full transparent online pricing of every procedure they do. So they literally have created a medical tourism for replacements like you're talking about and things like that and there's some third party applications as well but it's nowhere near where it needs to be to your point and hopefully it will improve with the Federal action and anything you can take at the state level on a transparency standpoint. I personally have been in the health insurance field for the last 25 years and I think it's a critical piece that's missing. I often when I speak publicly joke about being able to go online and find out more about my \$200 watch then I do about a \$20,000 procedure that I'm about to have. That's a problem.

The Hon. Kathleen Birrane, Maryland Insurance Commissioner stated that I would just mention that Maryland actually does regulate hospitals so we have an all payer system that's been in place for a long time and it's very clear and precise and hospitals are not allowed to deviate except within a very small margin for very specific reasons and that is extremely helpful. There are pros and cons. The pro is the transparency and the consistency and we believe that over time it has kept rates lower, and costs lower in Maryland. The flip side of that is that we have a 14% uptake in Medicare Advantage Plans compared to the average of 40% or more in other states and that is because Medicare Advantage Plans are not able to negotiate hospital costs and rates so you do have to look and balance and that's something that we're addressing right now in Maryland is how to support Medicare Advantage Plans but keep our all payer total cost of care system in our waiver with CMS with regard to that. We're also now beginning to explore other things as our legislature has asked the insurance administration and other groups to begin to look at whether there are other kinds of areas or different types of providers where it would be appropriate to have similar sorts of guidelines around what appropriate pricing is.

Cmsr. Caride stated that in New Jersey through the Governor's office we put together a committee and the purpose of that is to bring together the industry, hospitals, pharmaceuticals, and providers to discuss how can we be more transparent and how do we make insurance affordable? So, we just started this process through the Governor's office and I know that this has been an issue for our legislature as well from my time in the legislature where we've been trying to figure out how do we make it affordable, and they've been good partners to work with with regards to legislation. But we're in the process right now of working and having communications and we're going to start beginning to take data down and look at it to see how can we make it transparent and how can we make insurance affordable and at that point in time I'm sure our Senators and our Assemblymembers will get involved as well.

Rep. Oliverson stated that I would just point out as well that a number of states now have established all payer claims databases including my home state of Texas. And Rep. Meskers, if this is something you'd be interested in, I'd be honored to work with you on it. There has been bipartisanship both at the federal level and the state level as far as advancing policies that actually require hospital price transparency. We had a good executive order passed by the previous presidential administration which has now been strengthened by the Biden administration. And similarly we have both the state of Texas as well as the state of Colorado have advanced very strong comprehensive hospital price transparency laws that require publication of contracted rate information and giving patients the ability to shop competitively in a manner where the information has to be immediately publicly available. So, I know those things are out there and maybe that might be something that would be worth bringing to NCOIL for a future meeting as model policy if that's something you're interested in working on. I'd love to work with you on it. Rep. Meskers stated that it sounds like a deal.

Sen. Gossage stated that I helped pioneer HSA's with President Bush and at that time one of things we really wanted to talk about was transparency because people were getting these big

\$1,200 deductibles. Now we all laugh now, because \$1,200 would be considered a small deductible today. So, one of the things I did was work with insurance companies about cost comparison tools. Aetna was one of the first ones to invite me to Baltimore to look at what they were offering which was fabulous - all the different hospitals within their network and the basic common procedures and how much it is. I wrote an article that came out I think it was in the USA Today called "how much is a tonsillectomy and how you can find out." But when people say, and I've been a health insurance agent for 20 years, well why is it I can find out how much is a television at Walmart but I can't find out how much it is for a knee replacement? True. But at Walmart they don't say, "how much is your income and then we'll tell you how much a TV is." And there's not a middle person buying this TV for you, negotiating the TV for you which is insurance companies. As I explained to the Trump administration when I testified there and that is you're looking at the wrong entity. If I have a contract regarding my medical services it's not with this hospital. My contract is with my insurance company. My insurance company negotiated with the hospital. The transparency should come from the insurance companies, and you all regulate them.

So, a hospital to be able to tell you, okay let's see what insurance plan you have with your employer that's self-funded - there are hundreds and hundreds of those plans out there. But a carrier knows exactly which plans they have, they know how much it would be, they can know your deductible. So, back to this cost comparison tool, it was amazing. So, I went back to Aetna and I said, "you should go to the Trump administration and show them your amazing cost comparison tool you guys have because if you don't they're going to be coming down on you and saying it has to look like this, and must be like this." He goes, "Well, I wouldn't want to show it him now." I asked "Why?" He said "Well, took a lot of people to keep that up and going and then after two years we realized that we only had 2% of our members that ever even looked at it." So, if we're going to ask them to do that, again we need to educate the public on where to go but I think if we look at the insurance companies, many of them are gearing up with it and again, I believe in looking at private solutions. Sometimes if we're lawmakers we have a big hammer that says government and everything looks like a nail and we need to have private ways in which we can be able to do this. So, just food for thought, let's look at insurance companies. They should be able to tell their members here if you go to these hospitals whether that's a phone call, whether that's online or both.

#### DISCUSSION ON NAIC EMPLOYEE RETIREMENT INCOME SECURITY ACT (ERISA) (B) WORKING GROUP

Rep. Oliverson stated that he would like to now turn things over to the work of the NAIC's Employee Income Security Act of 1974 (ERISA) Working Group and noted that NCOIL has been on record as supporting an amendment to (ERISA that would allow states to regulate self-funded plans where the entirety of that plan is essentially intra-state commerce not interstate. And I think this has sort of been a glaring oversight and I know many in this room, myself included, are unfortunately all too familiar with the concept of what we refer to as ERISA creep in this sort of regulatory expansion over time that it's blossomed into something far beyond. And I think when we look at the U.S. Supreme Court ruling in Rutledge and some of the actual statements that were made in that decision it's pretty clear that even the Court feels very strongly that ERISA has grown far beyond what lawmakers that created that statute in the 1970s could have ever contemplated that it would grow into. We actually had an NCOIL D.C. fly-in recently and I'm proud to report that the members that were there and myself actually got a lot overt positive feedback from Members of Congress that this was something that they were open to. So, I was just wondering to kind of get the NAIC's take on that and also without trying to put anyone on the



spot, to just sort of see if you all are generally amenable to the idea of joining with us and asking Congress to give us this flexibility back.

Dir. Cameron stated that we certainly are and we have very much the same sentiments and the same concerns and that's why we sent the letter that we did. I'm going to have Georgia Insurance Commissioner John King report on it but to answer your question directly, we're more than happy and willing to work with you on it. Cmsr. King thanked the Committee for the opportunity to talk about this because this is something that that we all know that the complaints either come to our legislators or come to the insurance department in our states. And so we feel, especially in Georgia, that we are the right vehicles to get this problem solved but obviously the companies throw ERISA down our throats very quickly and so the first thing that we did in Georgia is the legislature passed very strong laws. And so what we did is we took a very judicial and very proactive approach of first educating the industry that operates in Georgia for them to understand where the line is and where the difference is and of course they don't like any new regulations that come into play and people are really uncomfortable with change. And so we really at the end of the day focus on protecting our consumers in our states and I think there's a lot in common with NCOIL and NAIC and we're looking at working with the federal government to allow us to be the arm to get this done because we think we're closest to the people and we think we can be a lot more effective at getting through this. But I would welcome assistance in getting the federal government to give us authorization because a lot of these companies are hiding behind that cloak of a federal approach and we feel that we're much better at this than they are.

Rep. Oliverson stated that something you said that really resonated with me as a lawmaker is we go to the legislature to "fix a problem" for the constituents that want some problem fixed and we say, "Yay, we fixed it." And then we get folks that are coming to our office months or a year later saying I thought you fixed this and come to find out that it doesn't apply to me. And that's a growing problem in a number of states. I think in my home state of Texas now we're down to around 20% of our health insured patients actually have a fully insured product that our commissioner can actually regulate which is pretty embarrassing and I know there's drivers and factors that are sort of effecting that and I try to be sensitive to that obviously that there are reasons for that but it's concerning. Rep. Wendi Thomas (PA) stated that I just wanted to add not only is it a problem for constituents but the lawmakers who are doing these laws often are not involved in insurance so I find myself educating my other lawmakers that what you're passing is only going to be three of seven of your constituents who have to abide by this and I think it's been a major ongoing point of confusion and issue and it would be great if it got resolved. Sen. Gossage stated that I 100% agree. I write small group plans all the time and more and more of them are going to this level funded, self-funded plans because that gives them lower rates and then yes, we pass laws that don't really affect them. I'm very interested and I didn't realize that we had this idea from NCOIL and I very much support that. I've said for a long time I'd love to be able to say could the states have back level funded type plans instead of the high-risk self-funded plans. Those could still be ERISA plans but those level funded plans maybe could still be regulated at the state level.

#### UPDATE ON NAIC SPECIAL COMMITTEE ON RACE AND INSURANCE

Rep. Oliverson asked if we could get an update on the NAIC Special Committee on Race and Insurance. I know you've had several meetings since the charges were laid out and I'm wondering if there's a consensus or a timeline for the committee to finish its work. Dir. Cameron stated that I wish I could say there was a consensus. Our timeline is it's one of those things where it's done when it's done. I'm going to turn the time to Cmsr. Caride who's going to give you an overview and then I may make some additional comments at the end.

Cmsr. Caride stated that we at the NAIC have always been careful and curious about how the insurance products are being directed to the underserved or individuals of color and I think in our roles as Commissioners make sure that we're looking at it closely. However, events that happened in 2020 highlighted it and we at the NAIC have taken a very strong look at this and we have five workstream committees that are looking at it. Our first workstream is looking at the level of diversity and inclusion within the insurance sector and how it's being promoted and we're making recommendations at some point in time to the industry on that. Workstream two is looking at the actual departments throughout the country and how are we making sure that we are diversified and we are inclusive in our departments and again there have been many meetings and there is no final answer yet but we are looking at it very closely to make sure that as regulators we ourselves have a diverse department so that we can basically understand what individuals in our state are going through when they don't have the product or they don't have access to the product.

Workstream three has to do with property and casualty. Homeowners Insurance, vehicle, auto insurance and stuff like that and what they're looking at is making sure that individuals are not being unfairly discriminated against. There's a lot of different methods that are being used in the underwriting and we have a forum on the algorithm auditing to make sure that when companies are looking at their products and offering it to the community that they're not unfairly discriminating against underrepresented communities or individuals of color, proxy discrimination. So, they're looking at all of that and we hope to have more information on that after the forum. Workstream four is the one that I chair and we're looking at the life products and we've had a lot of conversations on access to those products. How it is a product that can also be something that can be an inheritance, a life insurance policy. You leave an inheritance and at one point in time underrepresented communities used that as an inheritance as taking care of funeral costs which is a burden. But somehow, we've moved away from that. So, we're looking at the industry closely and getting agents out there. Why aren't they making those products available to individuals? And we've had numerous meetings on that. The last one we had was a meeting with FARE, which is the Financial Alliance for Racial Equity and we discussed different things that they're doing to encourage individuals and agents to sell to our underrepresented communities, individuals of color and making the product affordable for everyone. I've had conversations where folks just don't want to sell it to my community, I'm Hispanic, because they feel that we can't afford it. Well, did you take the time to talk to me? So, those are things that we're looking at.

Workstream five is looking at how the products in the health field are being issued and provided to communities - if it's diversified, if it's inclusive, if it's affordable. So, we'll have more information on that. I'm very proud that under Dir. Cameron's leadership this year we did form a foundation that's called New Avenues in Insurance Careers Foundation and that foundation looks to foster interest in the career of insurance and we're looking at individuals and students that are primarily going to come from a diverse background or the underrepresented and bringing them into this particular area, whether it's as a regulator or as an agent. So, we're working on that and here's more to come on that. And one of things that I have heard in my committee is that we don't have agents wanting to go and sell to these communities because they don't feel they're going to make a profit. So, a lot of education needs to be brought in to make these products accessible to our communities of color and to the underrepresented.

Dir. Cameron stated that first of all let me recognize that we have several of the chairs of each of those workstreams here sitting at the table so we've got strong representation of this effort and I would also tell you that when we looked at the start of my year we looked at it from two angles

and the foundation was one angle that we really felt like there was a real opportunity for people to change their lives in the insurance regulatory field. They can be actuaries, examiners, they may have great Math skills but there's not a pathway to doing that. Very few people, no offense to any of the actuaries who might be in the room, but nobody goes to school necessarily thinking I want to grow up to be an actuary but you kind of fall into it. So, we wanted to provide an avenue and we've made the application and we're trying to get that through the Treasury through the IRS. So, our intent is to start offering scholarships, internships, and apprenticeships to help young people of different races and ethnicities be able to participate in this world. The second aspect is I have a super strong belief in insurance changing people's lives and insurance being able to allow our economy and our states to move forward. And it bothered me as we started talking about these issues that we couldn't figure out what was keeping people from buying insurance. What were the barriers that were keeping individuals in the Hispanic culture, or the African American culture, or whatever from buying coverage? Frankly, some of it's because we have federal guidelines that try and put one size fits all on things and so what we've done with each of our task forces is we've tasked them with looking at what are the barriers for people being able to buy all types of coverages and how do we mitigate them or remove them so that those individuals can participate in this market? Are the barriers regulatory? If so, let's talk about them. Are the barriers legislative? Are they product design? Are they the way we communicate those products? So, all of those items we are delving into and I wish I could say the finish line would be X date but it won't be as we didn't get here overnight and we won't rectify this overnight.

Rep. Oliverson stated that it's a complex topic and I don't think that there are any easy answers but I'm encouraged to hear that you're taking a measured approach and you're sort of looking at the data. I do believe there's truth to be found. I do believe that there's objective things that can be learned and so we can do this differently here. We can change this and this would make a difference and it's just one of those things where sometimes separating the objectivity from the emotional things that we all feel and directions that we've all been taught that we need to go is important. It's a process and it requires I think a careful examination of the facts as they are and trying to stay objective and I just applaud you for doing that.

Rep. Matt Lehman (IN), NCOIL Immediate Past President, stated that on this issue NCOIL took up the same task and had our team look at this. It's not an issue that's going to go away tomorrow but I think that the one thing I think is kind of an issue out there and we have to probably discuss at some point is the term proxy discrimination because that seems to be the one that we get hung up on and how's that defined? And, "proxy" was the term "proxy" before it got attached to discrimination so we don't want to go down a path where we just ignore it but I think we have to have an open discussion at some point about what does truly that definition mean? We defined it and I think that that wasn't as well accepted as what we maybe hoped for so I am just curious if that's still an issue that's being discussed at NAIC.

Cmsr. Caride stated that I can tell you that we agree with you that when we talk to insurance companies, when we talk to consumers there are a variety of terms one being proxy discrimination and we need to settle what it means and where it's applicable and we are working on that. When we leave here most of us are headed to Kansas City for two days of delving into discrimination, proxy discrimination, and disparity impact and looking at the algorithms and algorithmic bias within the models that we're receiving in filings, particularly rate filings. And we don't have an answer for you today but we're most definitely working on it. You're absolutely right. Defining some of these terms so that we're all playing or singing from the same hymn book is going to be very important. Rep. Lehman stated that I would put out the offer that we're willing to work with you on this so the more that you can involve us, the better and I know between Asm.

Ken Cooley (CA), NCOIL President, and others that we're very open to having those continued discussions so thank you.

Rep. Brenda Carter (MI) stated that my question piggybacks on what Rep. Lehman said. In my state of Michigan we are focusing on proxy discrimination and I was going to ask Dir. Cameron which committee deals with proxy discrimination and I'd like to have a conversation with you after this is over.

#### UPDATE ON WORK OF NEW NAIC INNOVATION CYBERSECURITY AND TECHNOLOGY (H) COMMITTEE

Rep. Oliverson stated that for the first time in several years the NAIC formed a new letter committee, the H committee, which has jurisdiction over cybersecurity, innovation, data security, privacy protection, and emerging technologies. We heard some from Steven Seitz, Director of the Federal Insurance Office (FIO) earlier and I think it sort of percolated through several meetings today and yesterday that the concept of cybersecurity and its importance and what we do because we do have access to so much protected information. I know as a healthcare worker having been bound under the terms of Health Insurance Portability and Accountability Act (HIPAA) for many years I take that kind of stuff very seriously as I know a lot of healthcare workers do but I'm just wondering can you give us an update on the committee's work, and the plans going forward for this committee?

Dir. Cameron replied certainly and before I turn it over to the Chair of that Committee, Cmsr. Birrane, I just want to note that we announced that concept and that idea here at an NCOIL meeting and we did so with reason. It is such a huge topic with multiple facets. We want to be protective of our consumers and protective of the industry and at the same time we want to be pro-innovation. We think there are solutions to some of the problems that ail us with innovation and we trying to find that right balance. So perhaps one of the most difficult decisions I had to make when I became NAIC President is who is going to chair this new committee and who had the wisdom and the ability to handle this and I turned to Cmsr. Birrane. She is an outstanding woman and has a good background both within the industry and otherwise but I also as I turn to her I want you to know as we work through the issues, we want to work with NCOIL because we recognize you make the public policy decision on some of these issues and so it's a balancing act and we'll work closely with you.

Cmsr. Birrane stated that as Dir. Cameron indicated we set up the H Committee last December and we got formally started in early February and I'm happy to report that I think we've made great progress so far this year. It takes awhile to develop the infrastructure for a brand new letter committee. The H Committee is essentially the place under which the NAIC will be doing the bulk of its work with regard to our regulation of industry in the areas of innovation, cybersecurity and technology. That doesn't mean that there won't be any other working groups and other committees that are continuing their work in these areas but what it does mean is that we sort of have a common home where we can make sure that our work is efficient, consistent, and most importantly that it's collaborative and that we're working from consensus. So, that is sort of one of the largest charges. I'm going to talk in just a second about the individual working groups and what they're doing but I wanted to start with the idea of what are we doing at the committee level so you've got a little bit of a preview of that from others that have talked about what is essentially our collaboration forum.

So, if we're going to try to be consistent and efficient and work together collaboratively and from consensus, we need to talk to each other and so when we have issues like, for example,

algorithmic bias and things like proxy discrimination, we need to understand where across all of the different working groups people are touching that issue in one way or another. Whether it's P&C, or fraud, or market conduct, or accelerated underwriting, where is that work being done? And when we know that it's being done in many places, the methodology that we developed for managing that work effectively is what we're calling a collaboration forum. And the first collaboration forum that we're doing is on algorithmic bias. And so that forum's bringing together about ten different working groups within the NAIC including workstream three of the committee on race and insurance to talk now about what is algorithmic bias and how can it lead to illegal discrimination and unfair distinctions in people? Where does it live within the insurance ecosystem from marketing through fraud identification and claims administration? And as regulators, what is the appropriate response to that? So, the purpose of the forum is not to necessarily decide each and all of those issues. The purpose of the forum is to come together and do three things. One, to make sure that we all know what each other is doing and that you all know what we are doing so that there is a place where you can come and you can say these are the working groups that are working on these types of issues and here's what they are doing and we're informing each other and we're making sure that we're not stumbling over each other and we're not being inconsistent with each other. So, that's the first purpose of the forum.

The second purpose of the forum is to educate. To make sure that we are keeping each other educated not just about what we're doing but about the foundational elements. You know, insurance regulators are really, really smart and aware and capable in understanding insurance, and insurance laws but we are not necessarily as educated with regard to technology and complex concepts about how algorithms are developed or how artificial intelligence (AI) and machine learning drive decision making, and what's in that Blackbox. Or more importantly, what goes into and how do you test what comes out of it? So, we have embarked upon a very careful set of educational initiatives which is what is happening at the fly-in that Dir. Wing-Heier just mentioned. So in Kansas City we'll be spending a day laser focused on making sure at the commissioner level that there is education around the continuum of what data is, what data comes in, how bias creeps in. What is bias? What is algorithmic bias? How does it lead to illegal discrimination? So lots of emphasis on education and part of that process is we are identifying all of the terms that we need to define and then working on those definitions together.

The third purpose of the forum is to be able to work toward a common vocabulary so that when we say words we all know what we mean and we mean the same thing when we as the NAIC say them and to identify what are the common elements, the foundational elements of a common framework for responsible regulation of the use of AI. So, those are the goals of the collaboration forum. We are well on our way. We hope to begin to put out real work product by probably the December meeting we'll begin to show our work. We will begin to have public meetings in Portland for those of you who may be attending in Portland and we will be having webinars and we'll also be doing presentations at the insurance summit. So, this will be an evolving task. In addition to that, there are two other things at the committee level that I'll just mention. The first is I talked about this idea of who's doing what? So, we're going to have what we're going to call the ITC Hub so that people will have a single portal that you can go to and understand what committees are doing, all the research work, the papers, etc. will be housed there as well. It's a very efficient way to get information about innovation and technology and cybersecurity and data privacy work at the NAIC.

And then the other thing we're doing at the committee level is a supervisory tech sharing sort of lunch and learn but we make sure that we as regulators meet on a regular basis to share how we are using technology effectively to serve our constituents better and make sure that our work gets done more quickly and efficiently. Then if I just look briefly at the work of the working

groups. We have five working groups within the H Committee. I'll focus on cybersecurity because that's always a very large concern. The NAIC did pass a model data security Act in 2017 which has now been enacted in I think we're up to 21 states at this point, and more to come. Part of what the cybersecurity group is now going to do is look at what are the resources that regulators need when companies report cybersecurity events and how do we have the right tools, the right resources, the right information to investigate and respond to what's happening with regard to those events. So, this is also an educational year from the cybersecurity working group to make sure that we understand what kinds of events are happening and that we are equipped to respond to them. Our e-commerce working group is really focused on looking at antiquated laws and regulations that no longer really serve consumer interest but only impede the use of e-commerce in the insurance world. We all learned very quickly because of COVID just how much technology can do in terms of keeping the world moving and insurance regulators had to suspend the operation of many laws in order to allow things to happen electronically. We're now using that experience to accelerate getting rid of those antiquated laws and making sure that we're all operating in the 21st century in ways that however still continue to protect consumers and recognize the fact that not everybody has the same access to technology.

The third area is our innovation in technology and regulation working group. Which is a lot of, I think, fun in the sense that it is the place where we learn as regulators what is the cutting edge? So, it's inviting people in and it's informing other educators and other people about what is it that the industry is doing so it's kind of the insurtech world and making sure that we're up to speed on what companies are doing. Our privacy protection work group is engaged in about an 18 month to two year process of modernizing the two models that are the privacy protection models that the NAIC adopted and our big data and artificial intelligence work group which is the place where a lot of the on the ground work is with the NAIC dealing with how we regulate the use of big data and AI is focused on four things. An important one is moving our AI principles into AI guidelines and really looking at the work with third party vendors and what is the appropriate regulatory regime with regard to either the vendors themselves or the use of their work product by insurers. And then the survey work that that working group has done in looking at how AI is specifically being used. We did a survey on private passenger auto and a second survey is being done with homeowners, and with life insurance companies, so that we understand the use cases which then allows us to further drive our own investigative efforts and begin to think about differentiation in regulating those lines and those use cases. So, that is a whole lot of information that I hope you find interesting and helpful but we are always happy and willing to collaborate with you really in any of those areas.

#### ADJOURNMENT

Hearing no further business, upon a motion made by Asm. Cooley and seconded by Sen. Gossage, the Committee adjourned at 12:30 p.m.