

NATIONAL COUNCIL OF INSURANCE LEGISLATORS
NCOIL – NAIC DIALOGUE COMMITTEE
2023 NCOIL SUMMER MEETING – MINNEAPOLIS, MN
JULY 21, 2023
DRAFT MINUTES

The National Council of Insurance Legislators (NCOIL) NCOIL – NAIC Dialogue Committee met at the Minneapolis Marriott City Center Hotel in Minneapolis, MN on Friday, July 21, 2023 at 10:45 AM.

Representative Deborah Ferguson, DDS, (AR), NCOIL President and Co-Chair of the Committee, presided.

Other members of the Committee present:

Rep. Stephen Meskers (CT)	Sen. Michael Webber (MI)
Rep. Tammy Nuccio (CT)	Sen. Paul Utke (MN)
Rep. Rod Furniss (ID)	Rep. Nelly Nicol (MT)
Rep. Matt Lehman (IN)	Sen. Vickie Sawyer (NC)
Sen. Beverly Gossage (KS)	Sen. Jerry Klein (ND)
Rep. Michael Sarge Pollock (KY)	Sen. Bob Hackett (OH)
Rep. David LeBoeuf (MA)	Rep. Tom Oliverson, M.D. (TX)
Rep. Brenda Carter (MI)	
Sen. Lana Theis (MI)	

Other legislators present were:

Asm. Tim Grayson (CA)	Rep. Tim Barhorst (OH)
Rep. Cara Pavalock-D'Amato (CT)	Sen. Geroge Lang (OH)
Rep. Kerry Wood (CT)	Rep. Bob Peterson (OH)
Rep. Brian Lohse (IA)	Rep. Forrest Bennett (OK)
Rep. Megan Srinivas (IA)	Rep. Ellyn Hefner (OK)
Rep. Camille Lilly (IL)	Rep. Mark Tedford (OK)
Sen. Michael Fagg (KS)	Del. John Paul Hott (WV)
Rep. Michael Meredith (KY)	
Rep. Rachel Roberts (KY)	
Sen. Pam Beidle (MD)	
Sen. Arthur Ellis (MD)	
Del. Mike Rogers (MD)	
Rep. Mike McFall (MI)	
Sen. Gary Dahms (MN)	
Rep. Liz Reyer (MN)	
Sen. Walter Michel (MS)	
Sen. Pam Helming (NY)	

Also in attendance were:

Commissioner Tom Considine, NCOIL CEO
Will Melofchik, NCOIL General Counsel
Pat Gilbert, Director, Administration & Member Services, NCOIL Support Services, LLC

QUORUM

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

MINUTES

Upon a Motion made by Sen. Bob Hackett (OH) and seconded by Rep. Lehman, the Committee voted without objection by way of a voice vote to adopt the minutes of the Committee's March 10, 2023 meeting in San Diego, CA.

INTRODUCTORY REMARKS

Rep. Ferguson stated that before we get started, I just want to thank all of the Commissioners for being here. We started this Dialogue with the Commissioners several years ago and as I said at our opening meeting, we really value our relationship with the Commissioners. We function together. We're the legislative part and they are the regulatory part and we couldn't do it without each other. So, we're grateful for this Dialogue to really discuss important issues that come before both of our groups. Rep. Ferguson then asked all of the participating Commissioners to introduce themselves: Idaho Director and NAIC Immediate Past President Dean Cameron; Indiana Commissioner Amy Beard; Louisiana Commissioner Jim Donelon; Minnesota Commissioner Grace Arnold; and Oklahoma Commissioner Glen Mulready.

Commissioner Tom Considine, NCOIL CEO, then stated that to take a moment as a matter of personal privilege, this is the Summer Meeting and between now and our Annual Meeting is election day and it will be the first time in Louisiana that Cmsr. Donelon is not on the ballot in a long time. And I've known Cmsr. Donelon for decades. We served together. He held office back when I was in the corporate world doing work. He was accessible to people on all sides. He went on to have an unbelievable career that continues today at the NAIC and in Louisiana. I said to him yesterday, and I meant it, and I'll say it now that the day after his term concludes there should be a statute unveiled outside the Insurance Department in Louisiana. Cmsr. Donelon, we thank you for all you've done and all the good kindnesses you've shown to NCOIL and to me personally over the years.

Rep. Ferguson stated that I've said many times, that's one of the things I value most about NCOIL is just the people that come are just a wealth of information with experience and I'm just very grateful that we have you all to go to for questions and input.

RECAP OF NAIC D.C. FLY-IN AND PREVIEW OF NCOIL'S D.C. FLY-IN

Rep. Ferguson stated that first on our agenda is a recap of the NAIC's D.C. fly-in and a preview of the NCOIL D.C. fly-in. Every year we take a group of legislators to D.C. to meet with Members of Congress and their staff. In October, NCOIL will have its eighth consecutive D.C. fly-in. The fly-in is a great opportunity for us to meet with Members of Congress and discuss NCOIL initiatives and to educate them about the importance of the state based system of insurance regulation. Some of the issues that we plan to discuss this year are: the reintroduction of the Prohibit Auto Insurance Discrimination (PAID) Act which seeks to prohibit auto insurers from using certain factors in underwriting such as educational level or marital status; preserving the ability of the states to regulate state healthcare via an amendment to the Employee Retirement Income Security Act of 1974 (ERISA) to add a statutory waiver provision;

and enacting a long term reauthorization of the National Flood Insurance Program (NFIP). We understand that the NAIC held its annual fly-in earlier this year. Would you be able to please provide us with a recap of that along with noting the main issues that you discussed when you were in D.C. at your meetings?

Dir. Cameron stated that we had a very successful fly-in. This was the first in-person fly-in in the last three years. I pushed really hard last year as NAIC President to have it in person but we just couldn't get it put together with all the restrictions that were in place. We had 30 jurisdictions that attended and we had 133 meetings. We met with our Congressional delegations. We also supported the long-term reauthorization of the NFIP. We'd love to see Congress stop playing politics with it and to have a long-term solution there. We support a vote on the Financial Stability Oversight Council (FSOC). The insurance industry's the only economic financial industry who's not represented with a vote on that council and so we've pushed for that. We have promoted and shared our efforts as state regulators to avoid targeted attacks on seniors with fraud and other means. We also expressed the importance of policyholder protections in insurance receiverships, and shared our experiences with Medicare Advantage and the marketing of Medicare Advantage plans in states. You may know that we regulate Medicare supplements but we don't have very much authority under Medicare Advantage plans. We believe consumers ought to have the same regulatory protections regardless of the product that they purchase and so we promoted that. We had lots of other discussions where we were also opposing federal preemption of state's rights and opposing federal preemption of state data privacy and cyber-security safeguards. And then we also, as we talked about this morning, oppose expansion of risk retention groups. We believe that non-for-profits have access to coverage. Our C Committee's doing a study to make sure that's the case and we believe that those non-for-profits need the same consumer protections as anybody else buying coverage.

Rep. Ferguson asked if the meetings with Congress lead to any federal action? Dir. Cameron stated that it does at times but as you know it is slow progress in our nation's Capital. First and foremost, we like to cement our relationships with our Members of Congress and also to point out who they can come to in the event that they've got insurance questions or insurance regulatory questions and that's a great success. For example in that last piece, the risk retention piece, that was being heavily promoted at the last minute and would have potentially passed had we not done the fly-in and had those relationships and being able to reach out and convey our concerns.

Cmsr. Mulready stated that regarding the Medicare Advantage piece, state legislators and regulators don't control those plans but multiple voices is helpful. That was something where I know certainly with my delegation every single one of them we hammered on that. We get the phone calls. We get those complaints on Medicare Advantage and we have to tell them, "tell the feds" - and it goes into a black hole. They don't have the resources. The Centers for Medicare & Medicaid Services (CMS) has made the decision now because as they've checked around things were kind of quiet. Well, my response to that would be, "Yeah they're quiet. It's not during the enrollment period here - come talk to us at the end of the year." And so they're going to let it ride and see if that works. However, when the Chief Administrator for CMS was in front of us like this I know I jumped in and asked a question about granting us more authority and she was very open to that, that they'd love to work more collaboratively with us but ultimately they've not done that. But we want to continue to keep pushing on that issue because it's a big issue for each our departments.

Sen. Beverly Gossage (KS) stated that I appreciate that you were speaking up about Medicare Advantage plans. As an agent who writes Medicare Advantage and supplements, it's frustrating with the federal government because there are some bad actors out there who are putting ads on television with Joe Namath or whomever and they really are not taking care of the consumer like the local agent would. And we know that if it was in the hands of the state regulators that would be a very different story. Instead, they overreact and say you must record every single phone call even if they called to ask you a question, you have to keep that for 10 years, etc. and actually make it difficult for good people to help seniors and so I fully support that and thank you for asking that. Dir. Cameron thanked Sen. Gossage and stated that we thank you for the compliment. We worked very hard on it last year and are continuing to work hard on it. We also did a lot of media outreach. I personally ended up doing two media events where I was interviewed by over 30 television and radio stations across the country and had nearly 40 million views on it and we focused on Medicare Advantage in them and the improper marketing and approaches. Most of us who have folks within our departments still try and help to the best of our ability but as Cmsr. Mulready said, our abilities are limited and we have seen some movement from the federal government on willing to hand some more of that over to us. They may not be willing to give it all up but they're willing to give some additional authority I believe.

UPDATE ON ACTIVITIES OF TRIBAL INSURERS AND THEIR ROLE WITHIN THE STATE-BASED SYSTEM OF INSURANCE

Rep. Ferguson stated that we did invite the General Counsel for the Sovereign Nations Health Consortium to come to this meeting but he unfortunately had to cancel. I think it would be beneficial for us to all hear from them, but I know we all have some concerns about the tribal nations and how they're selling insurance products. Nonetheless, we do want to hear from you. I know at our last Dialogue in San Diego we discussed the work of the NAIC's American Indian and Alaska Native Liaison Committee regarding the insurance issues specific to tribal nations and we discussed the survey that was conducted by that Committee relating to the growing insurance markets and business models of certain tribal insurers. Can you share with us any updates on the work of that committee and the results of the survey and what, if anything, the NAIC is doing moving forward on this issue and you might want to summarize it for people who weren't here last time or don't understand the issue of what the tribal insurers are doing.

Cmsr. Mulready stated that I chair the Native American Liaison Group for the NAIC and in three weeks at our national meeting we'll have a presentation in that group on a similar update on what is happening around the states so you get to hear some of that a little bit early. It'll be presented by my legal team. The Sovereign Nations Health Consortium for those of you that may not know, it's a group out of Utah and I was disappointed personally too that their General Counsel, Mark Echo Hawk, canceled for this meeting as I would love to have heard anything new that he had to say. He presented to our group at our Portland meeting about a year ago. And this is a group that is selling health insurance to tribal members and non tribal members on reservation and off reservation and so Utah has had a number of conversations with them. They have specifically put in writing, asking them about the McCarran Ferguson Act and their response to that. They have not heard from them on that. They have agreed I guess with Utah to now back off and only sell to tribal members. Anecdotally, it appears to me from all the conversations I've had with other States and what's happening there is that this group is not looking for a showdown. The state of Washington has a cease and desist in place with them, and on the very last day of that cease and desist they offered to withdraw from their state. And so I think they're not looking for that legal challenge and I understand the state of Colorado, they have agreed to withdraw from there. I met with their executive team personally as they came to Oklahoma. I asked them similar questions. Their response to me on the McCarran Ferguson

issue was that McCarran Ferguson was silent on tribes so therefore, that allowed them to go about their business how they chose. I'm not an attorney but it's an interesting legal interpretation of that. So we continue to monitor what's happening around those states. As far as we can tell, they've been selling products only in about 15 states. They're not across every state. I can tell you that in my meeting with them I asked about future expansion and their plans for that and they certainly expected to expand into the life insurance business. But they believe that they are not held to any state laws as a sovereign nation and so eventually it may end up in court and we'll have a decision I suppose.

But at this point there is nothing in court at the moment. I'll also tell you from my conversation with them when we met in my office, they clearly misunderstood how the insurance business operates in our country and at the NAIC and getting licensed in each state and capital requirements. Because I asked them why they wouldn't just go down the traditional path of becoming a traditional admitted insurance carrier and clearly they misunderstood the capital requirements and how that all works. So, my financial team followed up with them to explain that all in writing and direct them on how that all works that if they chose to go down that path they could do that and we were there to help them do that. I will comment that in the meantime too, we have encountered some other situations. One in particular, I may have shared last time I was with you. But we learned of it through an op ad in our Oklahoma City newspaper where there was an op ad about some changes that they thought should be made in the captive insurance space and it was signed by this tribe in Oklahoma. It was signed by their insurance commissioner. I read that and I thought I was the insurance commissioner so we then went out to investigate that and our fraud unit went out and I think clearly what we have happening there and probably in some other situations is some, not ready to quite call them bad actors, but folks that are taking advantage of tribes. And that tribe is involved in name only. They were clueless about the insurance. I think some group based out of another state, not out of Oklahoma, had gone to them with this idea of we can operate as a sovereign nation, start our own insurance company, we'll funnel X percentage of the money to you and you're really just kind of lending your name. And I'm pretty sure that's what's happened here. And so we're investigating a number of different things at the local level there in Oklahoma but I think it's just sort of the tip of the iceberg on this issue.

Rep. Ferguson asked Cmsr. Mulready if in most places they have backed off of selling outside the tribe. Cmsr. Mulready stated that yes - when pressed with a cease and desist or other threats of action they did stop and that's why I'm saying I think they're not looking for a legal showdown. They have backed off each time to date and they've not pressed that so, we'll see if that continues. But they have agreed to only sell to tribal members. And that's a different issue.

UPDATE ON DRAFT NAIC CONSUMER PRIVACY PROTECTION MODEL LAW

Rep. Ferguson stated that next, we'll have a update on the draft NAIC Consumer Privacy Protection Model Law (Model). The NAIC is working to amend its Insurance Information and Privacy Protection Model Act and its Privacy of Consumer Financial and Health Information Regulation with the end result being a new NAIC Consumer Privacy Protection Model Law. Just last week a new draft of the proposed amendments was released and they can be viewed together with the cover page on the website and our app and on page 217 of your binders. Can you provide us with an update as to what the comments have been like thus far; a summary of the latest amendments; and what the timeline for the next draft is and possible adoption?

Cmsr. Beard stated that as you said, there is a second draft of the Model available on the NAIC's website that is open for comment until July 28th. So, I'll do a little bit of a summary of

what the Working Group (WG) has done since we last met. The comment period for the first draft closed in April and the WG reviewed the written feedback it received and held public calls and a few meetings and the feedback that was received on the initial draft included some industry concerns with the Model being overly burdensome to the insurers and licensees. It had an opt in provision. It requires prior consent for consumers for marketing purposes. And there were concerns with enhanced third party oversight, consumer notices, and concerns with a timeline for deleting personal information. So, last month the WG held a two day in person meeting in Kansas City and they considered all of these comments and concerns and it looks like they discussed providers, the definitions of insurance transactions and other permitted transactions, marketing, joint marketing agreements, marketing consent, and the content and frequency of consumer notices. So, the WG has met in regulator only sessions seven times since June 22nd and on June 26th that's when the second version was exposed for comment period. So, with the updated draft the WG is trying to take into consideration the feedback that it received and wants to keep an eye towards uniformity and consumer protections. The WG is going to have a public call on July 25th to discuss the changes and receive additional comments and the goal is to have the Model ready for consideration for adoption by the H Committee at the NAIC Fall National Meeting in Orlando. So, to date the WG has met multiple times and intends to meet publicly at least five more times before presenting to the H Committee this Fall and we welcome the conversation and your thoughts on this draft and we're happy to assist you with getting involved or helping to provide the documents on our website.

Rep. Ferguson stated that of all the bills I think this is the one I hear the most concern about in my conversations with people. Rep. Lehman stated that I do respect the process you've gone through. I still have some concerns with the issues you pointed out from the first draft and I don't think they were really addressed in the second draft: the third party language, the notification of clients to opt out for marketing, scrubbing our clients every 12 months when we have retention requirements elsewhere that require to keep it longer. But I want to ask kind of an overarching view of all of this and I know NCOIL will probably submit some comments. But the one suggestion I would have is many states have passed data privacy laws. I think 15 or 16 states have passed laws and a lot of these are out there to kind of set the stage for the federal government to get involved and set a universal standard across all jurisdictions because the problem you have now is if I'm operating in multiple states, I've got to comply with multiple data privacy laws. So, are we going down a path where what we're going to want to implement here might be somewhat of a moot point? Because I know we regulate insurance on the state level but as we passed Senate Bill 5 in Indiana, we exempted out the entities that were part of the Gramm-Leach Bliley Act and the Fair Credit Reporting Act and that falls to the majority of insurance and we've quasi exempted out of our statutory data privacy laws those entities and now we're kind of bringing them back in through a regulatory model law. So, I foresee conflict with moving forward with the feds and the states and then the NAIC saying, "Hey we want to adopt this model law that we want to bring back to your states and then implement it." Because I think it's going to be a heavy lift in our states when we're waiting to see what the feds are going to do and we've already passed a data privacy law that kind of goes contrary to some of this. So, I know you're comment period is closing quickly and we'll provide something from NCOIL but kind of in the general sense, is there any discussion at all about maybe kind of hitting the pause button just to see where we end up in the next 12 months?

Cmsr. Beard stated that I'm not aware of any considerations to pause. However, I'm sure that the NAIC, especially the WG and then the Chair of the H committee, is always open to receiving feedback and comments and so that's something that could be incorporated into the comments that you mentioned NCOIL might provide and that will be taken under consideration. And then some of the consumer protections that are being reconsidered in the second draft include trying

to limit who is effected by the Model. So, for example third party service providers has been refined and it won't include an affiliate for example. And so there are some modifications to try to limit that overreach. I know that at the federal level the U.S. House Financial Services Committee approved a vote that would amend the Gramm-Leach-Bliley Act to give consumers more control over their personal information which is similar to what this Model would encompass. And so, the NAIC has not taken a position on that federal bill, but we continue to monitor it and if necessary we will be able to make comments but as for this WG's draft there are several more meetings in the works between now and the H Committee for the group to consider what comments they receive back.

Rep. Stephen Meskers (CT) stated that in looking at the Model I haven't followed the process and procedure as we go forward. It seems to me, I sit on the Insurance Committee and I Chair the Commerce Committee, and consumer privacy is a major complaint at the state and federal level. But the harvesting of the data in many cases us used and sold to reduce the cost of various services that have been provided. I can understand within insurance why you want your privacy and in various areas I think there's different levels of security. It seems to me that one of the procedures in terms of both public hearings and raising model legislation I'm not sure if we should be thinking regionally on floating the model legislation in a legislative session in neighboring states and come back with feedback from those neighboring states to then further work on the model legislation so that we have public hearings. And we begin to get regional associations for those model laws. I'm wondering what your thoughts are on that and if that's the procedure we follow now and we've considered that. Because as you begin to try to bring a national platform on insurance legislation it seems if you bring it at the regional level you might be able to get better coordination and more impactful changes that suit whether it's the west coast, the east coast, or the center of the states. And I don't know if we've used that procedure before. So, I throw that out as a question to you.

Cmsr. Beard stated that I think that we're open to any innovation and innovative ideas for being able to move forward with any of the Models that were drafted including this one and so, it's not something that I'm aware of that we've considered before but this might be something to float around to see if that's the approach that would be effective in adopting this going forward.

Dir. Cameron stated that I'll just jump in to put a maybe a finer point on a couple of items. Remember that when we started the process, we were trying to prevent federal preemption. That appears to be not necessary now so now the NAIC, which isn't known for operating too fast, we're trying to have a very thoughtful approach and process as we develop things and mostly our focus is on protecting consumers and making sure that their information is appropriately protected. We're all just in the wake of a very large data breach. I won't say the name but it impacted several companies. I just got a call last week from a company in my state who thought that they were free from being impacted, now they find out that the reinsurance company that they bought reinsurance from is impacted and they might be indirectly. So, I think first of all we'd love for NCOIL to make comments on the Model that's being drafted. As to whether there will be a pause or not that is still up for discussion depending on if it's reached the point where there's consensus that it's good enough. As far as the regional approach, we've never taken that type of an approach – it's maybe not a bad idea. I do know that a lot of us have considered passing model laws and have looked to other states to see things and sometimes it's not the natural region that you belong to and there's nobody here from Oregon or Washington but Idaho probably wouldn't follow them. We might follow Montana and Wyoming and Utah and be more in line that way. But when we started looking at it, we started looking at what the Carolinas had done and what some of the other states that are similar minded have

done. We're open to suggestions that you have. We need your input and suggestions on the Model, so we'll look forward to seeing those.

Cmsr. Mulready stated that I know in a past meeting there was discussion about NCOIL developing a similar Model. I'm assuming from this discussion you've set that aside, but has NCOIL taken an official position on HR 1165? Rep. Ferguson replied, no. Rep. Lehman stated that and maybe to that point, Dir. Cameron I think you said something that we 100% agree with and that is oversight. We want to keep state based regulations. So the genesis of this was to make sure the feds don't get involved. I do think this is maybe an issue and we've offered this in the past and I'll offer it again which is to bring us into those conversations. I know we're not on your different committees or your subcommittees but I'll come out to Kansas City and sit down and walk through what this is going to look like when we get to the actual legislative side of all this too. Because I do think this is a kind of an all hands on deck approach because as we've heard data privacy is what's driving the conversations around everything today. It's "what are you doing with my data?" I do think that as we looked at that, it's being geared to more the ones where we just don't know. Insurance companies are very transparent as they're heavily regulated as are our banks, etc. It's those unregulated industries like Facebook and other social media, those people who are collecting massive amounts of data, totally unregulated. I think that's what's driving this whole privacy discussion. So I don't know that insurance needs to get too far ahead of their skis on privacy when we're already heavily regulated but I would offer NCOIL's assistance in any way we can to be a part of that moving forward with that process.

Dir. Cameron stated that we would love to have NCOIL involved and I think it's important and I would just indicate to you, it's not been too long ago that we had a fairly significant breach on a fairly significant company and it was a ransomware breach where the company, in spite of the federal government telling them not to pay the ransom, told us that they had to pay the ransom or they would cease to exist as a company. Now, just think about that for a minute. You think about the hundreds of thousands of policyholders who would be impacted. You think about the state's economic situation that's impacted based on that ransomware and you think about how that then impacts the guaranty funds and all the other companies that it creates an issue with. So, it's super important and it's super important that we be thoughtful and super important that we get it right and we welcome the collaboration with you on it.

Rep. Ferguson stated that there are already so many Health Insurance Portability and Accountability Act (HIPAA) restrictions on healthcare providers. There all kinds of privacy issues already addressed. What does your Model do with health that's not already being done with existing HIPAA regulations and those kind of things? Cmsr. Beard stated that in the first draft there was a discussion of HIPAA and Health Information Technology for Economic and Clinical Health Act (HITECH) compliance and there were some concerns with that and so that was under consideration. And in the late June meeting, the group exposed some comments related to that and so the second draft is really looking at those specific consumer protections where the comments were made and there needs to compliance with HIPAA and HITECH in the current version but it's up for consideration and we welcome collaboration and want to walk through all of these issues to make sure that things are fully flushed out and make sure that we're collaborating between NCOIL and NAIC because as you said you are the legislators who will be enacting this possibly in your states and so the practical implications of some of these provisions are important and we welcome the discussion.

Rep. Michael Sarge Pollock (KY) stated that I'm going to speak on behalf of the small insurance agents. I'm one of them and I'd like to have that conversation with you regarding what we have to go through as far as mom and pop insurance agency. So there obviously are some concerns

and I really appreciate you making sure that we do have a voice at the table before the final draft is out but obviously just making sure that we do not handcuff ourselves in a lot of ways. Obviously this is a huge topic of protection. We get that. But also some consideration of the small insurance agencies is important. Cmsr. Beard replied absolutely, I agree and we worked in Indiana on the cyber-security data model law to make sure that producers and independent agencies were carved out of some of the more burdensome protections in there that would disproportionately affect them and still provide enough consumer protection to make sure those changes weren't going to adversely affect consumers. So, I think the same considerations in this draft can be taken under consideration as well. Cmsr. Donelon stated that I just want to echo what Cmsr. Beard just said and I've had a meeting just in the hallway before with the Independent Insurance Agents and Brokers of America (IIABA) before this meeting started urging concern for the independent agents in the process. We are one of the states that has adopted the NAIC's Insurance Data Security Model Act. We did so with lots of input from our agent force and with their approval and support of the final version so we're mindful.

DISCUSSION ON NAIC'S DEVELOPMENT OF MODEL BULLETIN ON ISSUES RELATING TO ARTIFICIAL INTELLIGENCE (AI) AND THE INSURANCE INDUSTRY

Rep. Ferguson stated that as we all know, we've seen this unprecedented growth in AI across all types of industries but certainly we want to look at it for the insurance industry. As AI relates to NAIC, your new H Committee is considering developing a model bulletin outlining the regulatory framework for the use of AI for the insurance industry. Can you share with us some of the details as to what the bulletin might look like and when it will be exposed for comments and what kind of timeline there will be for adoption?

Cmsr. Beard stated that for the AI model bulletin, currently there is a draft that is exposed out there. It was exposed on July 17th and the NAIC wanted to make sure that this bulletin was not just a product of a WG or a silo of the NAIC but that it was a work product of the entire membership. Earlier this year the Commissioners met and determined that there was consensus that the NAIC should move forward with developing an AI regulatory framework for use by the insurance industry. And so, at our Fall meeting in December the H Committee announced that the regulatory framework would take the form of the bulletin and the bulletin is supposed to be principal based, not prescriptive. It should prioritize governance, protocols that rely on external and objective standards. For example, those used by the National Institute of Standards and Technology (NIST). And then there is validation and testing of AI which there are certain practical limitations to testing, but we wanted to make sure to include that function in the bulletin and it stopped short of requiring data value by the insurance regulators. It's the responsibility of the licensees to conduct due diligence on their third party data and third party data vendors. So it really is a more principled based document that outlines what the AI and machine learning protections are. And it is corporate governance and transparency standards that are in place for a lot of insurers already and it's just codifying that into one document and it heavily reflects some NIST documents. So we wanted to work within that sphere and not work in a silo where we are just all trying to learn about AI. And we have had many education sessions on what AI is and what machine learning is. We've had industry discussions. We've received comments. And so there was a small group of insurance commissioners that were a part of a drafting WG that then produced this draft for the entire membership to review and comment on and that's where the product is today, for review and comment. The comment deadline is September 5th and initial comments are going to be heard and discussed at the upcoming summer meeting in Seattle.

Rep. Ferguson stated that for those of us who aren't familiar with NIST can you please tell us who NIST is and what they do? Cmsr. Beard stated that NIST is the National Institute of Standards and Technology and they put forth standards and best practices for technology uses such as data security things like that. And they have released recent guidance on some of the related issues that we look at when we are looking at AI machine learning that are the gold standard for use within multiple industries.

Dir. Cameron stated that it was two years ago at this meeting where I think Cmsr. Mulready and I sat at this table and announced that we were coming up with the H committee because we were proud that we were making that progress and we wanted to see how quickly the industry would get back to the NAIC to let us know that we had announced it publicly before it was ready to be announced. And the industry did very well as I didn't leave the meeting before I received calls about it. And last year we had an extra Commissioners conference as we tried to work through our strategic plan and it was in that meeting that we decided that a model act was not what we wanted to do. We felt like the core of what we needed as insurance regulators was we wanted to give sort of a bulletin of best practices of what can be done. I know we'll get a chance to review it and we would certainly take your feedback and suggestions to us on that as well because that's a work in progress.

Sen. Bob Hackett (OH) then spoke to his experience in Ohio with cybersecurity legislation and stated that I love NIST but when you look at NIST, they're so huge and what we did is we brought all the industries in because each industry was good so we wanted to take how the NIST principles and standards apply to different industries. You have to be really careful if you use all of NIST's standards because that's not the way NIST was set up. I like NIST. I'm not criticizing them but you have to realize when you look at them they're really involved and they have a lot of standards but a lot depends on when you bring in all the different industries. And one of the things we wanted to do was protect businesses from major lawsuits and we didn't want to run the small businesses out and create premiums that were unbelievably high. So, we created a really good bill in Ohio that we think protected the companies from major lawsuits but we needed the associations involved with every industry. That's the thing that you must be really careful of with NIST. When you study NIST it is very, very involved. So, that's the only thing I'm telling you is to be wary of that and make sure it fits with the different industries. Don't create a standard thing that just takes the NIST principles that may not apply to certain industries because you'll run away the small companies.

Cmsr. Beard thanked Sen. Hackett and stated that I would agree that NIST is very expansive and comprehensive and I do not begin to purport that I'm an expert on NIST but I do know that we looked at the NIST principles, but also other AI guidance or other standards that were implemented by maybe regulators of other industries or other countries that had started the process of adopting basic standards for the governance of AI and machine learning. And so we took into consideration multiple industries' drafts of other principles and that was part of our educational review when we were looking at learning about AI and machine learning and looking at other industries as well as the federal government and what they have implemented and whether we want to go that route or not.

Rep. Megan Srinivas (IA) stated that I'm very interested to see how you incorporate NIST and all these different guidelines into the AI standards that you're looking at. One of the things that NIST has really been focused on lately is branching off of AI and even going into quantum computing because of the potential for good and the potential for security breaches so I'm really curious how you might be analyzing that alongside your AI standards. Cmsr. Beard stated that she had a hard time hearing Rep. Srinivas and asked if she was saying something about a third

party? Rep. Srinivas replied no - I was curious if you were incorporating quantum computing into your review as you go into the AI algorithms because that's really the next horizon that has even broader implications than what AI currently is anticipated to have. Cmsr. Beard stated that the bulletin does have a few definitions and part of the definitions include different phases of machine learning or different schools of thought and it doesn't go into those theories specifically, but it does make a reference to them to make sure that we are inclusive of the newest technologies out there.

DISCUSSION ON NAIC'S PUBLIC ADJUSTER LICENSING MODEL ACT AND DEVELOPMENT OF NCOIL'S PUBLIC ADJUSTER PROFESSIONAL STANDARDS REFORM MODEL ACT

Rep. Ferguson stated that tomorrow, our Property and Casualty Insurance Committee will begin discussions on the development of an NCOIL Public Adjuster Professional Standards Reform Model Act sponsored by Rep. Mike Meredith (KY) and co-sponsored by Rep. Lehman. The Model comes on the heels of several states recently enacting public adjuster reform laws. Before we go any further, I'd like to offer Reps. Meredith and Lehman the opportunity to provide any remarks on the Model as well as the actions they took on this issue in their respective states. We understand that many years ago the NAIC adopted a Public Adjuster Licensing Model Act. Has the NAIC received any comments on whether or not the Model should be amended in light of the recent activity?

Rep. Meredith stated that I appreciate this opportunity and we're looking forward to introducing the Model tomorrow in the Property and Casualty Insurance Committee. If you followed what has happened in Kentucky over the last few years, we have been hit by some major weather disasters. In December of 2021 we had a major tornado outbreak that affected the western sector of our state and then that following summer, in 2022 we had major flooding actions in the eastern part of the state. During that time, we had a significant movement of public adjusters coming into the state and were doing work that was actually just interfering in the claims process many times and slowing the process down. There were some bad actors out there and we didn't have a law that was strong enough to handle that. And so we acted working with the insurance industry and the state and working with our Commissioner in Kentucky to strengthen what had been based on the NAIC Model probably about 20 years ago in an effort to update how the Commissioner can regulate those folks and deal with those bad actors.

Rep. Ferguson asked Rep. Meredith to provide some background on what exactly public adjusters do after natural disasters. Rep. Meredith stated that they will sign a contract with the insured to come in and help them through the claims process and what we have found was some were going as far as harassing the staff adjusters with the companies who were trying to do their adjusting work. We had some that had conflicts of interest with maybe a roofing company that they worked along with and had a financial interest in and were trying to up those claim costs or who were maybe involved with the restoration company or something like that. And so there were conflicts of interest issues that we wanted to address but most importantly we just wanted to make sure there was disclosure and transparency in those contracts and the ability was there for the insurance commissioner to regulate them properly. Rep. Ferguson asked whether the problem is that the public misunderstands when they call them that they're an insurance adjuster? Is there proper identification? Rep. Meredith stated that I don't think it's a lack of proper identification there necessarily. I think they come in and they sell the client that they can help get them more money out of their insurance claim and the client may not know that's going on. It may be an elderly person who has not dealt with the claims process before

and they think this is somebody who is going to help me but they're also getting a fee out of that claim as well which becomes an issue in trying to mitigate those losses.

Rep. Lehman stated that what you have in front of you from what we're proposing as a Model is essentially the Kentucky law and in Indiana we worked with our department this year to pass some pretty restrictive public adjuster laws regarding conflicts of interest and the inability for them to file complaints with the department where our department was being overrun by complaints that were being filed consistently by the adjuster and not by the insured so we prohibited that. I believe the NAIC model was finalized around 2005 so hopefully we can get some good statutes on the books and get a Model out of NCOIL and as the NAIC maybe updates its Model you can use this NCOIL model as a pretty good draft. And I think Rep. Meredith was very good in laying this out because what we saw is there was some that called for a ban on public adjusters and we have to be very clear that there are sometimes some carriers who are not always the most easy to deal with or the best deal with and public adjusters can provide a valuable service so there has to be somebody protecting the interests of the individual. But there's a need for things to be done and we were very aggressive five or six years ago in Indiana and passed language to make them licensed and answerable to the departments and things like that. So, I think the Model is in a good place to begin with and I look forward to input from the NAIC.

Rep. Ferguson asked if the NAIC has any plans to update its Model? Cmsr. Donelson replied yes and stated that the NAIC really appreciates NCOIL's attention to this issue in particular those of us from coastal states. I've had 800,000 claims filed from hurricanes in the last two years and needless to say this is a really important issue for us. As we've seen from recent news stories, bad actors can and have taken advantage of policyholders at their most vulnerable time. Mitchell Adjusting International, LLC in Texas is accused of stealing \$7.9 million from policyholders in various states. The NAIC recognized a need nearly 18 years ago when it adopted its Public Adjuster Licensing Model Act, number 228. Today, nearly all states require public adjusters to be licensed. South Dakota, Arkansas, Arizona, Alabama and Alaska are those that do not. And 20 of those states that do have implemented the NAIC model. One of the key differences between the NCOIL draft and NAIC's model is that NCOIL's model establishes fee caps on non catastrophic claims at 15% and for catastrophic claims at 10%. The NAIC model leaves a fee cap optional to the states, but it does suggest that fees for catastrophic claims be no more than 10% of the insurance settlement. The NAIC is contemplating opening up its Model for revisions to enhance consumer protections and strengthen requirements of public adjusters.

Another related issue we've seen in the market that we'd like to address is the assignment of benefits or rights to property repair contractors who do not have legal authority to represent an insured. And in fact, I just concluded session back home in Louisiana and we passed that exact ban. Delaware has also done it a year before. The NAIC model is significantly similar to ours in Louisiana with a significant exception. We passed our law the year I was President of the NAIC in 2013 and the Louisiana Bar Association took on the public adjuster industry seeking licensure that we were supporting but we stepped back from the fight between the attorneys and the public adjusters and we are the only state in America that prohibits any contingency fee arrangement between a public adjuster and their insured on the basis that contingency fees are limited to the practice of law and not available to public adjusters. That has been priority number one in my state for public adjuster to repeal that and they ran a bill the year before to adopt the model with a 10% contingency fee cap, which is pretty much the standard around the country and it cleared the Senate almost unanimously but got hung up on a tie vote in the House in the last days of the session. Industry was very opposed to removing that prohibition

on contingency fees and they were successful. In addition, the NCOIL Model adds a requirement that clients funds be handled by a public adjuster in a fiduciary capacity and maintained in a trust account similar to what is required of lawyers. The NCOIL Model adds additional protections for the insured to ensure that public adjusters act in good faith in promoting access to the insured, the property, and information related to the claim. We have language in our statute guaranteeing the insurer has direct communication rights with the insured but the NCOIL Model is even more defined than that and we compliment you for that. I did have an issue in my state with a surplus lines writer out of Tennessee coming with a policy provision that prohibited the use of a public adjuster and frankly, I pushed back on that but was overruled by our Division of Administrative Law. So we went to the legislature in this just concluded session and passed a bill guaranteeing the right to a public adjuster but for residential and I think maybe small commercial as well. So, NCOIL's additions are certainly good for consumers, especially the addition of the public adjuster's defined fiduciary capacity and trust accounts considering the amount associated with many of these claims.

DISCUSSION ON RECENT FEDERAL TRADE COMMISSION (FTC) ACTIVITIES

Rep. Ferguson stated that as you know, the FTC has been very busy recently engaging in rule making activities that can arguably be described as outside the FTC's authority and encroaching on the state based system of insurance regulation. Two examples are a rule pertaining to non-compete clauses and a separate rule pertaining to service contracts. NCOIL submitted a comment letter on the service contract rule which can be found in your binders on page 242 and on the app and the website. Rep. Ferguson asked If the NAIC has been monitoring these issues and if so, does it view the FTC's activities here in the same manner as NCOIL?

Cmsr. Mulready stated that your language is encouraging because of our frustrations with the FTC. In May we sent a letter to the U.S. Department of Justice (DOJ) and the FTC looking for an update on some of these antitrust investigations on health insurance companies and pharmacy benefits managers (PBM), and the improper marketing of health insurance. The rules that state that they will keep us up to date. Unfortunately, we have not heard a word from the FTC on any of this. Not a single response. And in polling each state regulator, not only did they not communicate with the NAIC but they haven't communicated with any of the state regulators which is part of that process or supposed to be. We recently formed an Improper Marketing of Health Insurance Working Group that is quite active in pursuing that exact thing. And something that they're now going into is lead generators and sort of looking into those as well. But unfortunately with the FTC we've had no cooperation or collaboration on that issue. So, a little background on the non compete rule, I think from the NAIC perspective we did not submit any comments on that but we're monitoring it. We're questioning whether they have the statutory authority to do so. And on the negative options component there with the service contracts, I know NCOIL submitted a letter but we have not submitted comments on the proposal but we're just kind of continuing to monitor that as well.

ANY OTHER BUSINESS

Rep. Ferguson stated that we have added two items to cover. First, as you know, some federal regulations were recently issued for comment that deal with things such as short term limited duration (STL) plans and hospital indemnity or other fixed indemnity plans. NCOIL will likely weigh in on this in some manner but we're curious what the NAIC's thoughts are on the proposals, not so much from a policy perspective but from a jurisdictional perspective in terms of federal encroachment on the state based system of insurance.

Dir. Cameron stated that certainly we are still trying to digest what the new rule has in it. There are a number of components that we have concerns with. Just as a reminder in 2016, the NAIC did send a letter in opposition to the rule that was proposed by President Obama limiting STLD plans from 12 months down to three. A number of states will be looking at it individually. I know, for example, in my state we have not only STLD plans but we also have what we call enhanced short term plans which are really the equivalent of Affordable Care Act (ACA) plans. They are by ACA's own standard there, the equivalent of a silver and bronze plan and meet all the 10 essential health benefits (EHBs) and allow for people to convert over to an ACA plan should they desire. We require that the carrier offering those plans also be offering on the exchange so there's an easy transition. CMS has said to us that they like our approach and they'd like us to make the comments and obviously the proposed rules don't align with that. So, we'll be making comments. I'm sure other states who have followed and done something similar will as well and I wouldn't be surprised if the NAIC makes some comments as well. I think for most of us we believe that individuals are better when they're insured and so we want to encourage folks to have coverage and the short term plans have a role to play in being able to access coverage in many cases they help with the early diagnosis of some of the significant health issues that people may have and if they're convertible or they can transfer over to ACA plans then they're not harmed. In our state in spite of our enhanced plans effort we really only have about 7,500 to 8,000 people that have enrolled on them as compared to those that are enrolled on the ACA plans. It's less than 10% so it's not a significant impact to the ACA plans either as maybe some might surmise. So, it certainly was an item at our discussion at our commissioners mid-year meeting and will be an item in Seattle as we work forward and submit comments. We'll be happy to share our comments with you and look forward to seeing yours as well.

Rep. Ferguson stated that you would want things to be seamless for patients when they're making the transition from short term to the ACA. Is it really seamless? Is there a continuity of care when they transition or do they have to get new prior authorization and get new medicines approved? Dir. Cameron stated that in our state it is seamless and it's required to be seamless. Not every state may have that and this is why we have state based regulation. I have devised what works in my state but it may not be what will work in Oklahoma or in Minnesota or wherever but I think that's the benefit. We are the laboratories of innovation and we get to try certain things and maybe replicate each other and try and find a solution so that people can have coverage.

Cmsr. Mulready stated that trying to come together with 50 states on a specific position on that sort of thing is extremely difficult. Right now, we are receiving comments from all states. We will submit a comment letter prior to the September 11th deadline. My guess is it would be limited to as it was in 2016, that we're opposing it from a standpoint of it's an arbitrary position with 90 days and it should be left to the states. My guess is that would be our position. Rep. Ferguson stated that NCOIL sent a letter in 2016 as well. Dir. Cameron stated that I just also wanted to add one other issue that is in that rule that we're all trying to decipher is the tax implication that is imposed in that rule which says that consumers will be taxed if they are given this sort of benefit through their employer. We're trying to figure out the authority and how that all works and so that may be another issue that we'll want you to weigh in on.

Sen. Gossage thanked Dir. Cameron for the remarks about putting it up to the states because every state has it differently. If it's helpful I have an article that just came out that I co-authored that was picked up by Forbes and others on STLD plans. And I have actual clients who have had them, who had \$100,000 worth of claims and only paid their \$2,500 deductible. Mostly middle income people who don't get a subsidy on the exchange are the folks who take the

STLD plans. It's only going to harm them if they only have the three months. So, I 'd be happy to share any of those stories with you if that's helpful.

Rep. Ferguson stated that the other topic planned for discussion was the work of the NAIC's Valuation of Securities (E) Task Force but we have now run out of time.

ADJOURNMENT

Hearing no further business, upon a motion made by Sen. Jerry Klein (ND) and seconded by Rep. Lehman, the Committee adjourned at 12:00 PM.