NATIONAL COUNCIL OF INSURANCE LEGISLATORS
NCOIL – NAIC DIALOGUE COMMITTEE
2024 NCOIL SUMMER MEETING – COSTA MESA, CALIFORNIA
JULY 19, 2024
DRAFT MINUTES

The National Council of Insurance Legislators (NCOIL) NCOIL – NAIC Dialogue Committee met at The Westin South Coast Plaza Hotel in Costa Mesa, California on Friday, July 19, 2024 at 10:45 a.m.

Representative Tom Oliverson, M.D. of Texas, NCOIL President and Co-Chair of the Committee, presided.

Other members of the Committee present were:

Rep. Deborah Ferguson, DDS (AR)
Rep. Rod Furniss (ID)
Sen. Dan McConchie (IL)
Rep. Matt Lehman (IN)
Rep. Cherlynn Stevenson (KY)
Sen. Kirk Talbot (LA)
Rep. Brenda Carter (MI)
Sen. Lana Theis (MI)
Sen. Michael Webber (MI)
Sen. Paul Utke (MN)
Rep. Bob Titus (MO)
Rep. Nelly Nicol (MT)
Sen. Jerry Klein (NY)
Asw. Pam Hunter (NY)
Sen. Bob Hackett (OH)
Rep. Ellyn Hefner (OK)

Other legislators present were:

Sen. Dafna Michaelson Jenet (CO)
Rep. David Silvers (FL)
Rep. Joseph Gullet (GA)
Rep. Martin Momtahan (GA)
Sen. Jared Carpenter (KY)
Rep. Matt Lockett (KY)
Rep. Michael Meredith (KY)
Rep. Rachel Roberts (KY)
Sen. Royce Duplesis (LA)
Rep. Gabe Firment (LA)
Rep. Brian Glorioso (LA)
Rep. Chance henry (LA)
Rep. Jason Hughes (LA)
Rep. Shaun Mena (LA)
Sen. Arthur Ellis (MD)
Sen. Jeff Howe (MN)
Sen. Walter Michel (MS)
Asm. Alex Bores (NY)
Rep. Greg Scott (PA)
Sen. Roger Picard (RI)
Sen. Patty Kuderer (WA)
Sen. Mary Felzkowski (WI)

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. Deborah Ferguson, DDS (AR), 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 Rep. Carter and seconded by Rep. Ellyn Hefner (OK), the Committee voted without objection by way of a voice vote to adopt the minutes of the Committee's April 12, 2024 meeting.

INTRODUCTORY REMARKS

Rep. Oliverson stated that before we get started I just want to say how truly grateful I am to see so many Commissioners here at the table joining us. We consider you at NCOIL to be an integral part of what we do here and I know a lot of the members being able to work with our commissioners and thinking about issues and policies and ideas and working through these matters collaboratively is really critical for us to actually make the right decisions legislatively. It requires working with you and your departments and understanding what you're seeing on the ground and how things are actually working and so I'm tremendously grateful. I remember my first NCOIL meeting, I think we had three Commissioners or maybe four around the table and so I'm just really grateful to see you all here and I would I think before we dive, we have several legislators here who are attending their first NCOIL meeting so it would be beneficial for everyone to introduce themselves: Colorado Commissioner Mike Conway; Georgia Commissioner John King; Idaho Director Dean Cameron; Indiana Commissioner Amy Beard; Kansas Commissioner Vickie Schmidt; Oklahoma Commissioner Glen Mulready; and Pennsylvania Commissioner Mike Humphreys.

RECAP OF NCOIL AND NAIC D.C. FLY-INS

Rep. Oliverson stated that the first thing on the agenda deals with NCOIL having its ninth consecutive Washington DC fly in June. And I know that the NAIC conducted its annual fly in in May so we were reinforcing hopefully some of the same things at the fly-ins. And I know from our perspective, we found the Members of Congress and their staffs to be very receptive and generally very supportive of the state based system of insurance regulation. I met with a number of Members on both sides of the aisle and their staff that were equally concerned about some of the things that have been cropping up in various federal agencies, most particularly with regards to the "Title Acceptance Pilot" from the Federal Housing Finance Agency (FHFA) which in my opinion, at least in my state, title insurance is literally the one area of insurance that we never have an issue with. If there's an area of insurance that works fairly flawlessly in Texas, other than workers comp, it's title insurance. And now we're having this federal encroachment and on that area but I found that people on the Hill were very receptive to our concerns. And we actually did succeed in getting the support of Congressman Pete Sessions at our visit to introduce legislation at the federal level which would create an Employee Retirement Income Security Act of 1974 (ERISA) waiver process where we would just like a like a 1332 waiver or an 1115 waiver it would give states the ability to approach U.S. Department of Labor (DOL) and say for purposes of continuity, there's this small area of ERISA health plans that seems to be in direct conflict with the way the rest of our marketplace is going and we believe we have the authority. Do you agree? If so, could we regulate this under your supervision? And so, we're very excited about that and we look forward to hopefully getting your support on that moving forward. And we know the wheels of Congress grind very slowly but we're hopeful that they will move forward.

Dir. Cameron stated that first, we want to say thank you for the opportunity to be here with you and to have this dialogue and we have really appreciated how the relationship between the NAIC and NCOIL has developed and continues to develop in large part thanks to your own leadership of Rep. Matt Lehman (IN), past NCOIL President, Cmsr. Tom Considine, NCOIL CEO, and everybody else. I don't mean to exclude anybody. We really appreciate your support. First and foremost, our state based regulatory system, we know that's the best way to govern insurance. We know that's the best way to protect our consumers in our states, our constituents and your constituents. We know that gives us the ability to be laboratories of innovation and to try different things and we know that is best suited for not only us regulators, but for you as lawmakers to be able to have that. And we continually see federal encroachment in a number of areas. You mentioned title insurance, but the list is pretty long. That continues to take place and of course we continue to push back. We held our fly in in May and we had 35 jurisdictions that attended in that week. We had an international forum the week before so we had some jurisdictions that came a week early and did sort of their private visits with Members of Congress and staff members the week before. But overall, on our fly in we had 35 jurisdictions and 144 different visits that were very informative. We want Members of Congress to be able to reach out to us and you as they have issues or questions about insurance proposals. There are many proposals that you guys push for that we support and that we were on the same page. Disaster mitigation was probably at the top of the list for us as we all are continuing to deal with a tightened property insurance market and try and figure out ways to make coverage available and affordable for consumers who are trying to buy it.

And the Disaster Mitigation and Tax Parity Act of 2023, Senate Bill 1953 and House Bill 4070, which is a bipartisan bill, we support it and we talked about it. And of course, you guys also discussed flood insurance reforms, as did we. There were a number of other proposals we discussed and I want to touch on just a couple of others in the interest of time. As insurance commissioners, we have been long advocating for voting membership on the Financial Stability Oversight Council (FSOC). We have a member, Rhode Island Commissioner Beth Dwyer, who has been a participant but she's a non-voting member. We're pleased to say that this administration nominated Commissioner Gordon Ito from Hawaii to be on FSOC. Unfortunately, it means he has to give up his role as commissioner in order to be an FSOC voting member but we're grateful to have somebody with insurance understanding and background serving on FSOC along with Cmsr. Dwyer. So, to the extent you helped us that way, we appreciate it. Also, a huge issue besides the property insurance issue is protection of our seniors from financial abuse. And we are very supportive of trying to have that protection. I think most of you know that we regulate most forms of insurance. We regulate Medicare. We don't regulate Medicare supplement plans. We don't get to regulate Medicare Advantage plans. We have been pushing Congress to give us that authority because we feel like those plans aren't being adequately watched over and there are financial abuses going on with seniors in that aspect and it goes beyond that. We appreciate your support in protecting policyholders when insurers fail and unfortunately, that happens from time to time. We also appreciate your support in combating improper health insurance marketing that's been taking place. We also appreciate your support in opposing federal preemption of state data privacy and cybersecurity and artificial intelligence protections. We feel like that should happen at the state level through the NAIC and we feel like you should have a big say in what that looks like in your state. And we also appreciate your support and ask for your continued support in opposing federal preemption of states in the Liability Risk Retention Act. There's been an effort to try and expand that Act that's already in place and we're pushing back on that and we appreciate your support. We appreciate collaborating with you and working through these challenging issues that all of our states are facing in various degrees.

Rep. Oliverson stated that I love the idea of continuing to work in tandem and I think the more times that these folks at the federal level hear from us at the state level the better. The repetition is beneficial and I know that's something that we've talked about prioritizing trying to increase our turn out in our representation at the fly in and getting it to a much bigger place to where we actually have lawmakers essentially from every state represented. I would love to work with you and make sure that we're always comparing notes on these things ahead of time so that when feasible, I think we can go up and reemphasize things, especially if you're going in May and we're going in June. I think it's good for us to basically remind them of what you said on these issues because we're going to be in alignment and I think the more times they hear it the better.

UPDATE ON DEVELOPMENT OF NAIC'S DATA PRIVACY PROTECTION MODEL LAW

Rep. Oliverson stated that speaking of data privacy, we're going to get an update on the development of the NAIC's Data Privacy Model Law. For the benefit of everybody in the room, last year the NAIC began efforts to try and develop a new consumer data privacy protection model law. There were concerns raised throughout the process and so those efforts were paused and the NAIC sort of started from scratch. And we understand that you've had a working group that has had multiple meetings and decisions are being made and so we're looking forward to hearing an update on what the working group is doing.

Cmsr. Beard stated that as you just mentioned, the privacy protections (H) working group has been around for a couple of years now. So, it was appointed in 2019 and was charged with researching and looking into reviewing state laws about the collection, the use, and just how information is gathered in connection with insurance transactions. So, that working group was also charged with making recommendations as needed in conjunction with NAIC models. Currently right now there are two NAIC models that primarily address privacy concerns. The first one is the NAIC Insurance Information and Privacy Protection Model Act, which is model 670. It was approved in 1980 following the federal enactment of the Fair Credit Reporting Act in 1970 and the Federal Privacy Act in 1974. And then the other model that exists right now is the NAIC Privacy of Consumer Financial and Health Information Regulation - that's model 672. And that was approved in 2000 to implement the requirements set forth in title five of the Gramm-Leach-Bliley Act. These two models have been a pretty effective regulatory framework for consumer privacy protections but there's been a lot of business developments, technology has evolved. We've seen artificial intelligence, machine learning, accelerated underwriting, algorithms with rating models being presented. And so, the working group determined that it either needed to amend and modernize the existing models or start from scratch and develop a new Model Law.

As you mentioned, at the NAIC summer 2022 national meeting the executive committee approved the request for a new model law development and that was to draft the insurance consumer privacy protection Model Law. Which is number 674. So, I've thrown multiple numbers at you, we've got two existing models, 670, 672 and then 674 was approved to be started on in 2022. Throughout 2023, the Privacy Protection working group held meetings and met with interested parties and exposed two drafts of Model 674 but ultimately, there was no consensus. And so, each committee approved the working groups request this year to extend and and kind of pause the drafting of Model 674. So, all of that being said we've had a transition of leadership. So, there's new leadership of the privacy protections working group this year and in 2024, we reconsidered whether we want to continue down the road of using Model 670 or updating and revising the NAIC privacy models, 670 and 672. On June 12th of this year we held an open group call, and we took a roll call vote and decided to pause on drafting 674 indefinitely and to continue revising existing Model 672. And some of the thought behind that is 672 has been adopted by all the States so we think it's an existing framework that can be built upon to modernize what those consumer protections are right now in the privacy world. We also held an open call on July 10th, and we announced that we would begin the drafting process on Model 672 and we really wanted to emphasize transparency, open dialogue and I really want to emphasize how much we want to hear from you all and Indiana is chairing the new Privacy Protections working group and our Co-chair is Illinois and a lot of you have worked on privacy models in your state to pass them. And then, of course, whatever we're working on right now at the NAIC we can't implement in our states without you all so we definitely want this to be a collaborative process working with industry, consumer groups and NCOIL as we discuss what protections we want to provide next. So, between now and the open call in Chicago in August we are going to talk with fellow regulators about what consumer protections we want to see, overarching themes, and kind of group those privacy protections into workable groups that we can work on the drafts of updating Model 672. And then we'll break apart into working groups going forward.

Rep. Oliverson stated that we do appreciate the collaborative nature of what you're doing. Regarding the decision to do 672 instead of 674, was the thought process that since that was already adopted that it wouldn't require passage of new legislation? But if I heard you correctly it sounds like even the reworking of 672 may require additional legislative lifting on our part, is that correct? Cmsr. Beard stated, yes. It wouldn't be done in a vacuum at the NAIC with just the insurance commissioners. We thought it would be a good foundational framework that 672 has already been adopted by every state so it's a good starting point but we will still need everybody's input and work on the passage at the state level of updates to the model.

Rep. Oliverson asked if it would be useful to you if NCOIL designated an ad hoc working group of NCOIL members to participate in your calls so that whenever you're having these meetings, you could have a few lawmakers who are interested in this issue that are essentially on the call with you and then reporting back to us as to what's been happening. Cmsr. Beard stated that I would welcome any input from NCOIL. I think these open calls are a great forum as we get industry on them, we have consumer groups on them so if we've got legislative voices on them, that helps too. And then of course working off the calls and just having discussions and dialogues, it's always helpful as well and then bringing things to the forum on the calls to be transparent is always helpful. So, I think we want this to be as collaborative as possible so any input that you have, we welcome.

Rep. Oliverson stated that if anybody has any comments on this particular issue just raise your hand or let NCOIL staff know that you want to speak. And if you're interested in this topic and you think this is important, please see me or NCOIL staff at the conclusion of this meeting and I'm going to go ahead and create a small working group to work with Cmsr. Beard to make sure that we're providing that legislative input as these models are being developed.

Rep. Lehman stated that I couldn't agree with you more and I've had some conversations with Cmsr. Beard about these issues. When you talk about data privacy you can go all the way back to when this whole thing started talking about credit scoring. Collecting that credit data was always the concern but now we heard yesterday in the aerial photography space of privacy, we're going to get deeper into artificial intelligence. So, I think there's a bit of a I don't want to say a collision course, there may be a bit of a blending over the next couple of years really, the issue of artificial intelligence and data privacy. So, I think that long term it's good if we kind of start not from scratch but to start with 672 as our basis and move forward. I think we can bring a lot to the table as legislators and I would like to be a part of that.

DISCUSSION ON NAIC'S "FRAMEWORK FOR REGULATION OF INSURER INVESTMENTS" INLUDING PROPOSAL RELATING TO SVO'S RATINGS DISCRETION PROCESS

Rep. Oliverson stated that for those who aren't aware, the NAIC has an organization within it called the Securities Valuation Office (SVO), which looks at the financial stability of investments that insurers are making and seeks to provide some objective non conflicted independent guidance to NAIC Commissioners in terms of the strength of investments and things like that. Recently, there's been a discussion that has generated a tremendous amount of interest here at NCOIL regarding some changes or expansion of scope, I guess you could say in terms of how the SVO conducts its duties and what its duties are. And I know that you have been working on this and I want to say before we get into this that I think all of us at NCOIL are deeply appreciative of the fact that the NAIC has listened to us as lawmakers and has taken our suggestions and has been very open with us in terms of the direction that this is going and has been responsive to some of the concerns that have been raised in terms of where is this going and what does this lead to. There are some issues with the current proposal said to fall into three basic buckets: due process and appellate issues rights for those entities that the ratings are being challenged for; unintended consequences in the macroeconomy; misguided financial incentives for the SVO. My understanding is that there was a work group call recently and I want to hear your perspectives on this because what I'm hearing and what I think other members here are hearing is that proposal sort of was pushed out of committee maybe even without a recorded vote and that essentially, there's still some ongoing issues that need to be looked at and resolved. I was given a list of proposed suggestions and things that people are still concerned about like the ability of a commissioner in a state that would be impacted by an SVO's decision to essentially have the authority to override or essentially say I don't want that rating right now and I want to be involved in the process with the SVO and I essentially have that authority on a state by state basis to participate in whatever review process the SVO is engaged in.

Cmsr. Mulready stated that very briefly for those that are new, the SVO is an arm of the NAIC based in New York City. They really are there to assist the regulators in our financial areas. The overriding concern for us is the financial stability and solvency of companies. And so, with these different investments, how do those rank if you will, within risk-based capital and the valuation and the liquidity and the risk and that sort of thing. So, that is their role. And in fact I had a very recent, very specific example where we had a company that was in supervision and they needed some money and they sent us notification that they had $5 million in investments in one of the U.S. territories in the bank there. Well, what do we do with that as far as what exactly is that investment? And I will tell you, watching the SVO work and this was literally 30 days ago to evaluate that quickly and respond back to us very quickly because we needed that to happen quickly because they needed capital immediately for us not to take further action. But determine what that was and how liquid was that and that sort of thing and so literally within one week's time they had that information back to us with full documentation that we could then present to them why that was not acceptable or that was not admissible as an asset for them. So just a quick personal example there from literally 30 days ago. That said, thank you to NCOIL for being engaged with this and Cmsr. Dwyer previously was chair of the NAIC's E committee but she was elected NAIC secretary-treasurer and now the Chair is Cmsr. Nathan Houdek of Wisconsin. And I know Cmsr. Dwyer addressed this issue at a prior NCOIL meeting and then Cmsr. Houdek did at the last NCOIL meeting in April. The issue that this is trying to address is the E Committee is trying to come up with some solutions on when there is an investment that maybe we've got double rating agencies that have quite a difference in how it is rated, what do we do with that and how do we make sure that there's not some, I've used this example of my three sons that have recently gone through or are in college and that conversation at the fraternity house about I got to take this course and which Professor is going to give me the easiest grade on that? How do we look out for that? And so maybe a poor example, but that's the general concern. Or a rating comes in and just seems very inconsistent. What do we do with that?

And so that's the genesis of this really. And so typically on over 80% of these ratings, we just take those and they do not get looked at. And so, part of the concern is what we would call blind reliance on those credit agencies, on those ratings. And maybe we should utilize the SVO's risk analysis capabilities to sort of have a little bit more informed reliance on some of those ratings. Currently, there's no mechanism for that. There's no mechanism for a regulator to look into that or check into that and we don't have the resources and capabilities that they do at the SVO office. So, that's what we're trying to address for very specific situations. I will tell you that if you've heard conversations about sort of a three-tranche difference, if there's a three-tranche difference that's when we will step in and that wasn't arbitrary as that three tranche difference is because there's a 100% difference in risk-based capital required on that three-tranche difference and so that's how that was selected and it would be used on a very limited basis. It was originally exposed in May of 2023. We've been working through that. At our most recent national meeting we worked on things as far as the level of transparency and the oversight of the SVO's discretion and I will say I was handed this document just as I sat down here as far as some concerns and some changes that may need to be made but I think most all of those have already been done or are in my mind have been done ultimately. And I'll just make this statement, the domestic regulator has 100% total control over that period and so they will be involved if there is a challenge and the rating agency will be involved. The SVO will be involved. The domestic regulator will be involved. But again, ultimately the total control and ultimate say lies with the domestic regulator as to how that impacts that individual insurer. So that does stay with the domestic regulator.

The other thing is as far as the market impact, there is no intent that this would be an evaluation or a review of total classes of investment. This will be the investment specific, not looking at certain security structures or asset classes. These will be individualized issues. And then also as far as the financial incentives, the SVO I'll say this, those rating agencies that are out there that we're utilizing for more than 80% of that business, we can't afford to do what they're doing. We would have to staff up into a crazy amount of staffing. We've got about 50 employees up there in New York now but we would have to staff up unbelievably to make that happen. So, they play a really critical role for us and overseeing that solvency. So, we being the NAIC, there's something that actually I initiated because as this conversation was coming up here at NCOIL way back I realized I didn't know a lot of detail about what they did up there in that New York office. And as I asked around I realized I was not the only one amongst my colleagues who didn't know much about exactly what they did there. I knew very generally, that's all. So we did a trip up there on May 29th and we sat in a room like this with about maybe 40 of us and kind of learned in a lot more detail what they're doing and what this proposal is doing and is not doing. So, it was super helpful. Along those lines I know we are working on right now nailing down a date to have the NCOIL officers at least go and do the same thing that they would have a little fly in to New York so that you can ask the questions there and be in person and hear from the folks that are doing that. So, I think that would be super helpful as well. I don't think a date has actually been set there but we've been working on it. The work continues on this proposal. I will tell you that it's going to be a very slow and methodical process. Even when the ultimate decision is made, we're talking a year or two before that's fully implemented. And so, we have taken comments. We have a call next week, a regulator only call, to review the comments that have come in. It will then be sent out for exposure again, probably pretty quickly prior to our summer meeting. I know the intent was to get it out there at least 30 days in advance of our summer meeting. But that will be an additional comment period. Then we'll head into our summer meeting from there.

Rep. Oliverson stated that I've said before that my biggest concern with this goes back to my own personal experience with the American Medical Association (AMA) and how they got in the business of publishing code books and suddenly that became lucrative and that ended up being the only thing they actually really cared about was publishing code books. And so, what I think I'm hearing you say is that the SVO essentially serves at the pleasure of the state regulator, and they do not initiate, nor do they get involved in reviewing or rating existing ratings, unless you ask them to. They're not out there essentially rating every product whether you want them to or not. Because to me, that would be a big difference between being a fact checker, which is what I hear you saying, and being a market participant which is what I think the fear is, is are they functioning autonomously and essentially out there rating everything and essentially competing against the private market providing their own rating system? Or are they waiting to be called by the state regulator saying, "we have some concerns here. Can you guys take a look at that?" And I was handed the same document as you, but it talks about the state regulators should have to initiate that process. The SVO shouldn't be out there doing that on their own. And furthermore, they shouldn't be slapping an under review label on a company's ratings unless they were asked to do so by the state's regulator in that state. So, I'm just curious because that's what I thought I heard you say. Is that kind of how the process works? Or are they autonomously out there constantly rating everybody whether you asked them to or not?

Cmsr. Mulready stated that's a great question and the answer is yes and no. And I'll clarify. And that is absolutely not, they're not reviewing even close to every investment out there. Like I said, 80% or more is reliance on those credit rating agencies. However, they will be utilized for our purposes to flag some things that they see. It may be something that they flag, they come to us we move forward with this challenge and look at that. But they will be the ones sort of boots on the ground if you will flagging some things. Now, it can also come from us as well. Even like it just did with me and this most recent example. But that really is unrelated to what we're doing here. So, it's sort of like a triage but it does not have to be initiated by the regulator. They may flag something and then we would be involved in that going forward. Rep. Oliverson stated but when they flag something, do they bring it to that state regulator and then say "Hey, we've noticed this. Would you like us to do something further?" And then they have to get permission before they do anything else? Or do they just sort of do it on their own? Cmsr. Mulready stated that yes, it would be flagged and then there will be a process with the subgroup of the E committee that involves the domestic regulator, I guess the domestic regular absolutely at that point could say we don't need that. They will have that final control but the process would work for it to move forward. And as far as the public under review status, I don't know of any mechanism that would signify that as being under review of something. That would be to a private regulator only scenario.

Rep. Oliverson stated that to me it seems like that literally would be the best mechanism to defend against what my main concern is which is that essentially this just becomes the money tree in the background printing money. Essentially they have to either go to you as the state Commissioner and say, "hey, we saw something, would you like for us to take a look at this? What do you think?" Or you call them and say, "Hey, I'm worried about what this company's assets are. This is some funny business stuff here. And I'm not sure I trust this rating. Can you take a look at that?" And I feel like as long as they're essentially having to work through the individual state's Commissioner to make those decisions then they can't function autonomously which I think makes a lot of us that have some anxiety about this feel more comfortable that they're actually working with you on a state by state basis essentially as that fact checker which is what my understanding is that's what this whole thing is about is we want to have a fact checker that we can trust, which is great. Cmsr. Mulready stated that's a great way to put it.

Sen. Lana Theis (MI) stated that my concerns aren't exactly the same as I am concerned about the due process issues. I'm concerned about their ability to appeal. I'm concerned about the unintended consequences. I would love to know whether or not the authority to do what it is that the SVO is doing is statutory. Because I'm actually interested in the Chevron implications of what I see as a significant expansion of authority within the SVO. But also, I am extraordinarily concerned, even with our commissioner's oversight. The U.S. Securities and Exchange Commission (SEC) is already heavily regulating this area. It's not like there's only one organization that's looking at this and doing the ratings. And you're detrimentally relying on a singular organization that's looking at the ratings. There are many of them from which you can compare and I understand absolutely you shouldn't just take it on blind faith. But is this actually the best approach? And do you even have the statutory authority to do it in the first place given the changes? Cmsr. Mulready stated that my response to that would be that I think we have that authority as we're doing it today. This isn't really any different than what we're doing today as far as determining what the value is from a financial stability and risk based capital standpoint and how that counts in the financial equation. That's what we do today.

Sen. Theis stated yes, to a certain extent. But you're expanding it significantly and that's where we've had some debate as to whether or not there was an expansion on this. I'm willing to participate at a future time in discussions but I just I want to express my concerns and then also just because you've been doing it doesn't mean you had the authority to do it to begin with. Cmsr. Mulready stated that I would say that is one of our main roles. From a statutory standpoint, it's the financial oversight of those carriers and what sort of investments they're making and to ensure that they have the financial wherewithal in the event of a claim to fulfill the contract that they have with their policyholders. That is one of our main roles. Also, I would raise consumer protection and I think all we're doing here is utilizing another tool to make sure that is being done well. Sen. Theis stated that's where I disagree about whether or not it's an expansion, this additional tool and how you're approaching it. So, how is it that you define what a good investment looks like? Who's the one who should be saying what that is? And then whether or not they're participating in it, those are all different questions. And I understand where you are coming from, absolutely oversight needs to exist. Absolutely, they need to be investing well. Who is it that's determining what a safe investment is and how is the question?

Rep. Brenda Carter (MI) stated that I also share a lot of the concerns that I've heard here today. I attend the NAIC conferences whenever I can and I appreciate the work that the NAIC does but when it comes to taking away the authority of state regulators, I work very closely with our regulators in the state of Michigan and I am deeply concerned about any type of possible relationship breaking because of statutory and non-statutory issues that we may not have looked at as unintended consequences. I heard a lot of good conversation here today. I think I heard you say the states would still have their autonomy and they will have the direct decision making on ratings. I appreciate that very much. And I will be at your next meeting in Chicago. I implore that you look at unintended consequences because that is what sneaks in behind and by the time it mushrooms up it's too late.

Cmsr. Schmidt stated that we have broad regulatory authority over this and the statutes in my state are very broad about that. I think what is missing in my state is the expertise. I don't have people on my staff that have the expertise. And if the SVO is one place we can go, or we can hire outside consultants that are no different in some respects and in my mind, I need help. Some of these investments are incredibly complex. And I have said before that they are five steps ahead of the regulator. Always. We're trying to play catch up all the time. But I do want to go back to when Cmsr. Beard talked about the privacy data working group calls and those types of things The same thing applies to all of our committees. If you want to be alerted to our calls when they happen, we have public calls all the time. And we ask for interested parties and maybe we should add a thing in our scripts about interested legislators. I'll be happy to do that. We're trying to be as transparent as possible. And as Cmsr. Mulready said It's going to take at least another year or two to finalize this. It is a long process to finalize things at the NAIC and sometimes it seems so long but it is a very methodical that we are doing this and I can't think of a person with a better temperament than Cmsr. Houdek to chair the E committee. It has several steps to go through. We're not trying to rush anyone. There'll be a 30 day comment period when the next draft comes out and I am 100% sure that will not proceed without more changes and more comments and that's what we want. So, please know that your concerns are very valid. All of the concerns we've heard today are very valid and we need to take that back. I'm not qualified to answer those questions on statutory authority and if we're going outside of our regulatory authority but I know that we have people that can speak to that and we want you to become comfortable with it before we move on. I really appreciate the dialogue.

Cmsr. Conway stated that to address some of the issues that have been brought up, I think it is important for everybody to understand that everything that the NAIC does, they do with our approval. We're a membership organization. So, anything that the SVO ultimately ends up doing will only be done because the members direct them to do that. And I just want to make sure that we really drive the point home about the domestic regulator and make sure that everybody understands what we're talking about with the domestic regulator. We're structured at the NAIC to really rely on each other from a financial solvency regulatory standpoint and the reason we do that is because we want to make sure that we're being robust in our regulation and the solvency of companies but we also don't want to require companies to have 56 different regulators going in and looking at their solvency issues. So, we structure ourselves that way so that the domestic regulator really does have the ultimate authority and approval for everything related to the solvency of a company. So, when Cmsr. Mulready says that the domestic regulator is going to be the one that carries the stick or doesn't carry the stick on this issue or any other issue related to solvency that's what we're talking about. It's going to be that domestic regulator that ultimately is going to make the decision as to whatever happens. And I do think that we absolutely do have this authority as we sit here today. We're talking about the solvency of companies. We have robust, very broad regulatory authority when it comes to solvency of companies and regulating the solvency of companies. I do think this is just another tool in the toolbox to make sure that we're doing our jobs well and that we understand what we're doing.

Rep. Oliverson stated that I just want to clarify one thing before we move on - all matters concerning what the SVO is doing, they're not operating essentially in a silo on their own. Whatever decisions are made essentially have to go through that state's commissioner. What I heard you say is they can come to you and say we've done some crunching of numbers, we have some concerns about the ratings that have been applied to this company, here's what we have, would you like us to investigate further? They still have to get your permission to move forward and essentially you as the regulator have the authority to either say thank you let's work on this or shut them down completely and just say, "yeah, we're done with this. Let's move on. They're not operating on their own." And I think if we're worried about them being a challenger in the marketplace and a market participant, having to work through our state regulator and actually having permission to take action to really do anything and having to work through you is an important check and balance in that marketplace. So, I just want to clarify that's what I think I heard you guys say but I just want to be clear that's actually how it works. Cmsr. Mulready replied, yes - everything the SVO does is at our direction and our ultimate control.

UPDATE ON WORK OF NAIC RELATED TO ARTIFICIAL INTELLIGENCE

Rep. Oliverson stated that the NAIC has had a working group looking at the role of artificial intelligence and insurance and I think there was some discussion early on that maybe there would be a model law or regulation but that was later changed to a model bulletin. And I know states are sort of doing different things with the NAIC's bulletin. For the benefit of people in the room, if you turn to page 186 in your binders you can see a copy of the NAIC's Model Bulletin on the Use of Artificial Intelligence Systems by Insurers. Could someone please provide a brief summary of what it does and what the NAIC is trying to accomplish?

Cmsr. Humphreys stated that in December of 2023, after a year of work, we did adopt the Model Bulletin. We did a model bulletin rather than look at new model legislation or model regulation because in this case the states already have authority over market regulation, market conduct rates, and underwriting. And artificial intelligence is a tool that companies are using in these different spaces. So, we thought that rather go down a new model perspective, we would draft a model bulletin that provides guidance to the industry and we wanted it to be uniform across the States. And so, we really have focused on what our expectations are for companies when they are using artificial intelligence in terms of the governance structure that they have internally to oversee their use of artificial intelligence, the risk management techniques that they're employing within the company and kind of the testing and the review of the outcomes of their use of artificial intelligence. We put that guidance together towards the end of last year. Right now, 13 jurisdictions have approved it and they are Alaska, Connecticut, the District of Columbia, Illinois, Kentucky, Maryland, Nebraska, Nevada, New Hampshire, Pennsylvania, Rhode Island, Vermont and Washington. And many of us here have had a number of conversations with our legislators and legislatures about it and I think NAIC staff came out to Texas last month to kind of walk through the bulletin. So, we're open to having staff come out and kind of overview what it is and go through why we did it and really just go through a section by section so you have confidence in the product that we're putting out there. In Pennsylvania the way that we implemented it is I took the NAIC model, we opened it up for stakeholder comments and we citied to Pennsylvania code where the Model bulletin talks about different regulations related to unfair trade practices and others. So, we did that and we vetted it with the industry. We got a number of comments. Many were supportive. Others suggested some edits that were discussed throughout the NAIC process and obviously we had a very robust process at the NAIC. We did not take all of the edits. We tried to stay as uniform as possible to the model to give the industry that level of uniformity across the state so we weren't each implementing it differently. In addition to the bulletin, I would just let you know I'm the chair of the NAIC’s Big Data and Artificial Intelligence working group and one of the activities that we are undertaking is a review of insurance company use of artificial intelligence. On the website we have already surveyed companies in the life space, the auto space and the homeowner space. We are about to start in the health insurance space where this summer we'll probably pilot with a handful of companies what we think the survey looks like to try to get feedback to make sure we're answering the questions that we hope to ask and giving us good appropriate data with the idea of after we get through the pilot stage go out with the full survey of the industry later this year, maybe early next year. I would be glad to continue to provide updates to NCOIL on any of those reports that we've already done or on the health insurance survey once we actually get there.

Cmsr. King stated that the model bulletin has been a very deliberate process. First, we had to agree with the terms of reference because people call one thing another and that is why this is a very deliberate process. First, we have to agree when we call something it means the same for the rest of us and so nobody has rushed through this. Now that we've got the model bulletin, now we're sitting around and putting the Georgia adjustments to it and actually talking to our consumers, to our legislators, and then we will publish that in Georgia. And that's the process of we wanted to make sure it's consistent with the rest of the nation but we have to check the authority to make sure that what we are publishing, we truly have that authority in our code. So, it's a very deliberate process. Nothing is being rushed about this. And one of the concerns that I had very quick is first of all, we have accountability. All the regulators understand what we care deeply about regarding discrimination, red lining and all those things. We are applying that same process to the use of this machine learning to make sure that the basic protections are there and that our job to take care of our citizens is not being eroded with the use of artificial intelligence. And then we also have to be careful because we don't want to stymie innovation as well because we know that the industry is using this and obviously there's some privacy concerns there and we have to make sure that we can speak to those concerns to our citizens. So, it is a very deliberate process but every state is going I think through a similar process as Pennsylvania and Georgia and others had to go through.

Rep. Oliverson stated that the NAIC staff that did come to our hearing in Texas and that was really very wonderful and I would just say to all the members in the room, if you're an insurance committee chair and you want a good update on what is sort of the state of regulation in artificial intelligence and insurance, you should take Cmsr. Humphreys up on his invitation and invite the NAIC to come and update you because they do a phenomenal job and I think from my perspective as the insurance chair in Texas what I was hoping to achieve, which is actually what we achieved, is to share that message with my committee members and then hopefully the rest of the legislature what the NAIC has already found out about the degree to which this is an evolving issue and probably doesn't lend itself very well to very heavy, top-down legislative and regulatory activity. That may actually be harmful more so than helpful. So, I think that message was well received and we appreciate that the NAIC was willing to be part of that. I did want to ask one quick question and open it up to other members if they have questions too and that is what has been your experience as you've reviewed the use of artificial intelligence with respect to machines handling and processing claims? Is that something that we're seeing? And I have heard comments about we're going to hold them to the same standard that we would hold a human being to so if they're engaged in discriminatory behavior, we don't care if the machine did it or a person did it. They're still at fault. But I'm just curious about what are you hearing in terms of how insurers are using artificial intelligence to help process claims?

Cmsr. Humphreys stated that is part of what we ask in each of the surveys. It's different across the different industries that we've already surveyed. I don't have the data in front of me, but we can follow up afterwards because we do look at whether they use artificial intelligence in marketing, in claims, in pricing, in underwriting. And we report on that and how the companies are actually using it and the number of companies that are using it is part of the complete report. And again the purpose of the bulletin is to make sure the use of artificial intelligence is another insurer tool that complies with our underlying unfair trade practice statutes and other consumer protection statutes.

Cmsr. King stated that we're seeing companies using it initially in our state as fraud detection and so they identified potential fraud schemes and then it's sent over to an investigator who then adds the human and decision maker as to whether to open a case or not. But the amount of claims of being processed it's such that these companies there's no way they could ever hire a sufficient staff just like our offices are limited about how many staff we have. The machines are accelerating or going through the mundane tasks of identifying those outliers and then it rises to a human actually making a determination so those are some of the trends that we're seeing.

Cmsr. Conway stated that in Colorado we passed a law in 2021 to, broadly speaking regulate what we call external consumer data and information systems but really what we were getting at was to go in and regulate and make sure that artificial intelligence was being used appropriately and to ensure that we could go out and tell the public that we know that artificial intelligence is being used correctly and in compliance with laws. I think the short answer to your question is that yes, insurance companies are using artificial intelligence and machine learning to process claims at varying levels but I think it's going to continue to grow. Colorado was not one of the states that adopted the bulletin because we have our own state law in place but I think what we are also going to see is that regulation of artificial intelligence is coming. It's either going to be the case that we as regulators regulate it in the insurance space or somebody else is going to step into our space. I think you'll see Attorneys General start to go into that realm. Obviously, the federal government has had conversations too. So, I really do think it's incredibly important for us to fill that void as regulators because we're going to do it better than anybody else will, candidly. So, directly to your question yes, they are using artificial intelligence to process claims and it's going to continue to grow but as long as we're in that space and we're regulating that space, I think we can do it well.

Rep. Oliverson stated that this may just be my own personal bias as a healthcare provider but as you look at this issue from a healthcare space it occurs to me that utilization review and prior authorization is literally such a hotly debated, contested topic that multiple states, including mine, have had to pass legislation in order to regulate the use of those two items. And so, I would be curious as the insurance chair in Texas to see how companies in the health space are using artificial intelligence to automate those processes. Because I think now we get into a situation where there's demonstrable potential negative impacts on consumers as far as access to healthcare that's a whole other level of magnitude different than paying your roofing claim. So, I'll be curious to see what comes out of that effort and to see how that's being used.

Cmsr. Conway stated that our law requires us to implement it, to put regulations together based on the line of insurance but also on insurance practice. So, we started with life insurance, we moved on to auto and now we're actually engaging in the health space. And the beginning part of the conversation is to ask folks exactly what they think we should be looking at on the insurance practice side of things. And overwhelmingly, what folks have told us is that they want us to look at those utilization management issues and they want us to step in to see how insurance companies are using artificial intelligence or machine learning or whatever it may be to really kind of process the utilization management components that you just touched on and make sure that they're being used appropriately or deal with the problems if they're not being used appropriately.

Rep. Oliverson stated that to amplify what you just said, this is where the issue of extrapolation comes in. When you're talking about reviewing claims, now you're going to let the machine review the claims but then you're going to apply the results broadly across a bunch of claims that you haven't even looked at. Would it would be possible to share the survey results with our membership when you get them.

Cmsr. Humphreys replied, yes. It'll probably be early spring of next year because we haven't started the pilot yet. We're going to pilot it over the next couple months and see what we learn and then go out at the end of this year with the formal survey. It takes maybe two months to get the survey data back and then we have to clean the data, put it in the report form. But we can absolutely do that and in the meantime, if you'd like, we can have NAIC staff share the reports that are already public in the three other lines. But just to build on Cmsr. Conway's point, utilization management and prior authorization is going to be specifically in the health survey. While there's a lot of similarities between each of the industry surveys we did want to tailor it specifically to the industry that we're looking at and obviously with all the attention being paid to prior authorization and utilization review and the articles that we see come out in the claims space we did want to make sure that we focus some of the questions in their use in those areas.

Rep. Oliverson stated that we are running a little bit short on time, but I did want to give us a chance to hear an update regarding the NAIC's Third-party Data Models Task force.

Cmsr. Conway stated that this has been a growing conversation at the NAIC among a lot a of the membership about concerns of third-party models and how they're impacting the insurance space across the board. Obviously, it's kind of front and center in the artificial intelligence conversation but it's much broader than that too. In Colorado, we're having a lot of conversations for example about how third-party models are impacting our homeowner's insurance space and how risk scores are calculated, making sure that mitigation is properly accounted for. But the list of issues can go on and on. So, the NAIC membership and the officers decided at the beginning of this year to start a new task force specifically looking at potentially regulating third-party models and how we would go about regulating third party models. In the first year of that work, I'm the Chair of that task force, we're really going to kind of have conversations about what are the different structures and models out there that we could build upon in order to build out a regulatory structure and then ideally going into next year, we'll start to put pen to paper on drafting some sort of regulatory model that we would use for third-party entities. But there's a lot of questions that we've got to get through before we get there. We have to understand exactly what types of third-party models that we're most concerned about and exactly how we would go about regulating those entities that are obviously not licensed insurance companies. So, we're in the midst of that conversation and I think it's going to be a good, robust conversation and we're looking forward to it.

UPDATE ON WORK OF NAIC'S LONG TERM CARE ACTUARIAL (B) WORKING GROUP

Rep. Oliverson stated that the last item on the agenda is an update on the NAIC's Long Term Care Actuarial Working Group. We understand that the Working Group has continued its work relating to trying to develop a single long term care insurance multi state review approach. Obviously, this is an area of insurance that has been very problematic probably over the last two decades. We're very curious to hear where you all are on that.

Cmsr. Conway stated that was an executive level task force and I was the vice chair for two years and also chair for two years. We are at the point where we've created what we refer to as a multi state actuarial (MSA) group that is reviewing filings, reviewing rate increase filings if long term care insurance companies want to go through that MSA. The whole goal of that is to make sure that we're getting as consistent as we can rate increases across the nation so that we're not supplementing each other's rate increases. One of the issues that we've struggled with along the way is that we had two different kind of structures of rate review that the MSA team would conduct. One was really a regulatory framework that came out of Texas. The other one was out of Minnesota. The MSA team now is at the point where they're trying to combine those two so that we can have one regulatory structure that insurance companies are working with and that we are getting information out to the states so that we can understand exactly what is happening with the MSA team and we have more uniformity. But that work is ongoing and it'll continue through this year. My guess and my hope is that we do get to a single approach by the end of this year going into next year.

Cmsr. Humphreys stated that I just want to stress the importance of the long-term care work and it's something that we've been working on for years now and it's really important that the regulators are finally kind of rallying around a single methodology that we can all use in that it's able to be replicated so we can bring it back to our states. So, whether it's a company filing for initial guidance through the multi state process or coming directly to my state I'm going to be able to look at it the same way and that was important to us throughout that process as we weighed it in the working group. And I think they're really getting to a good place for an industry that has been really challenged to your point of over the last 20 years ,that we're getting to a place where we will uniformly look at long term care rate requests to be fairer across the country and between our states.

Rep. Oliverson stated that on behalf of NCOIL, I thank you all for your participation and it’s great to see so many commissioners represented from so many different states. We truly value our partnership with the NAIC and look forward to working with you on these important issues.

ADJOURNMENT

Hearing no further business, upon a motion made by Rep. Ferguson and seconded by Rep. Carter, the Committee adjourned at 12:00 p.m.