

NAIC/NCOIL Activity

Overview

This Spring, the Council's Director of State Government Affairs, Cari Lee, attended the NAIC and NCOIL conferences to hear discussions regarding the latest state-based insurance efforts. Although the Council's main government affairs goals have always been federally focused, we understand the importance and synergy with state insurance regulators. Therefore, when necessary, the Council works to influence state policies of most importance to our members. And to support our efforts, the Council continues to strengthen our NAIC regulator relationships by co-hosting a happy hour during the NAIC national meetings. We are pleased to report that our combined efforts with the Wholesale Specialty Insurance Association and the Association of Bermuda Reinsurers drew a large crowd, including Council Chair Nancy Mellard and many Council members and state regulators.

Our state priorities continue to include NARAB implementation, NAIC surplus lines model law revisions, market conduct lender-placed insurance examination standards, and state discussions to improve PBM transparency. We also closely monitor climate risk, cannabis regulations, cyber security requirements, and employer-based ERISA plan oversight. In addition, we continue to serve on the NIPR Board of Directors to promote new services that make it easier for our members to comply with state-based producer compliance.

Once again, we continued our participation and support of the NCOIL Industry Education Council (IEC). The IEC provides the Council an opportunity to sponsor NCOIL legislator participation, as well as educate lawmakers on emerging policy issues. As a member of the IEC, we meet with NCOIL leadership at each meeting to suggest timely topics for discussion. But, more importantly, our membership fosters strong relationships with NCOIL legislators, including current President, California Assemblyman Ken Cooley, and other members of the Executive Committee.

On the NAIC front, we were pleased to see Idaho Director and NAIC President Dean Cameron follow through so quickly on his vision to attract more talent to the insurance industry by announcing a new NAIC Foundation. The foundation will help individuals obtain skills relevant to the regulation and business of insurance. In addition, scholarships will be awarded to students for college education, internships, and apprenticeships. More importantly, retiring South Carolina Director, Ray Farmer, will chair the new foundation. In addition, director Cameron has made great efforts to streamline the NAIC committees and their work. As a result, we are seeing an increase in regulator-only meetings, where it appears they are streamlining their charges and focusing on what they can realistically achieve.

The NAIC Executive Committee moved quickly to appoint Beth Dwyer, Superintendent of Banking and Insurance for Rhode Island's Department of Business Regulation, to serve as NAIC members' representative on the Financial Stability Oversight Council (FSOC). She will succeed recently retired Maine Bureau of Insurance Superintendent Eric Cioppa and will provide FSOC with critical expertise and the perspective of state insurance regulators.

Meanwhile, State regulators continue to work through their role with the Center for Medicaid and Medicare (CMS) in enforcing federal legislation related to the No Surprises Act. The same is true for mental health parity, in which the Department of Labor (DOL) has begun enforcing compliance. The DOL's new reporting requirements are informing the future regulation of state-regulated plans. Once again, CMS's Center for Consumer Information and Insurance Oversight (CCIO) presented before the NAIC Managed Health Care Committee to express their commitment to work with states on the No Surprises Act enforcement, which will prove challenging.

Both NCOIL and NAIC continue to scrutinize data and AI in insurance, with the NAIC recently reporting aggregate data demonstrating insurer use of AI models in private passenger auto. They plan to look at homeowners and life insurance lines this summer. In addition, weather-related climate disasters and resiliency issues continue to be a top priority. As a result, regulators adopted the NAIC Catastrophe (CAT) Center Model of Excellence, which will help states review CAT models and an updated climate risk survey mirroring the Federal Task Force on Climate Risk Disclosure (TCFD) reporting. These new surveys will help state regulators better understand insurer climate risk exposures.

Lastly, the NAIC's new Innovation, Cybersecurity, and Technology (H) Committee, chaired by up-and-coming Maryland Commissioner, Kathleen Birrane, met for the first time during the spring meeting. The Committee will focus on cyber security, data modeling and, most importantly, create a collaborative forum to develop a common framework that can inform each of their workstreams. The forum is another example of Director Cameron's goal of eliminating unnecessary duplication because it will remove redundancies amongst the workstreams.

And finally, NCOIL introduced a regulatory sandbox model law that would allow for new product innovations and potential new flexibilities in the sale and marketing of insurance products.

Innovation, Technology, and Cybersecurity

The NAIC's new (H) letter committee devoted specifically to Innovation, Cybersecurity, and Technology met for the first time. The Committee began by conducting a few housekeeping measures by moving the Speed to Market Working Group to the Market Regulation (D) Committee and adding the Privacy Protections Working Group under their purview. Then, they appointed a new Innovation in Technology and Regulation Working Group to be chaired by Arizona Commissioner Evan Daniels. The following charges are of interest to CIAB:

- The Big Data and Artificial Intelligence Sub Group presented an aggregate report of the private passenger auto's use of AI models. In addition, they reported the homeowners and life insurance surveys would be underway this summer. There was no discussion about including commercial lines at this time, but they plan to issue a whitepaper intended to inform any future regulatory model law regulations.
- The Privacy and Consumer Protection Working Group announced a new Chair, Virginia's Katie Johnson. They plan to conduct a state survey of privacy

protection practices and reporting requirements, issue a whitepaper, and suggest revisions to the NAIC privacy model acts.

Insurance Innovation Regulatory Sandbox

NCOIL introduced the [Insurance Innovation Regulatory Sandbox Model Act](#) based on Kentucky Representative Bart Rowland's legislation ([KY HB 386](#)). The draft model would allow insurers to BETA test products and enable regulators to provide an extended or limited safe harbor from administrative or regulatory action. In addition, the Model specifies that innovation applications must consider consumer value, public interest and be economically viable for the applicant with the appropriate consumer protections that do not pose an unreasonable risk.

The possibility of insurance departments waiving specific statutes in a sandbox setting that otherwise cannot be waived outside the sandbox is important to the broker community. Especially the potential for regulators to waive regulations that could create an unlevel playing field, such as temporarily relaxing licensing, marketing, and rebating requirements.

General Producer Topics

The Council continues to prioritize our focus on implementing the NARAB board. In addition, to our extensive federal efforts, we will continue collaborating with the NAIC to identify Commissioner nominees for submission to the White House.

Meanwhile, the NAIC Producer Licensing Task Force has not met since the December meeting. This year, the Task Force will be chaired by Kentucky Commissioner Sharon Clark and South Dakota Director Larry Deiter and is charged with identifying barriers to licensure, such as prior cannabis convictions. In addition, the Council has begun discussions with industry trade groups regarding a strategy to minimize the burden of surplus lines broker designations.

Healthcare

In addition to the No Surprises Act implementation, legislators also discussed the federal 340B program and exposed a [potential draft model law](#). The program enables covered entities to stretch scarce federal resources as far as possible, reaching more eligible patients and providing more comprehensive services. Concerns were raised by Texas Representative and Physician Tom Oliverson on whether certain providers and hospitals were "double-dipping." He mentioned that large health systems and wealthy non-profit hospitals are taking advantage of the reimbursements. At the same time, legislators heard from Hopewell Health, a federally qualified health center, how critical the 340B program is to their overall financial operations. Any restrictions or decrease in reimbursement rates would have devastating effects on the comprehensiveness of their programs.

Meanwhile, the NAIC's Improper Marketing of Health Insurance Working Group met in an open session to discuss continued problems with limited health benefits and non-insurance products marketed as comprehensive health coverage. In addition, the

NAIC Managed Health Insurance Committee heard an update from CCIO on the No Surprises Act implementation, mental health parity enforcement, and continued regulation of Pharmacy Benefit Managers (PBMs).

No Surprises Act (NSA)

Once again, the NAIC heard from Jeff Wu, Acting Deputy Administrator at CCIO, on updating state regulators on the new NSA rules and future regulations. CCIO continued to express its commitment to working with states on enforcement and jurisdiction matters when possible and mentioned they have reached out to states to discuss collaborative enforcement (at least two states are still waiting to hear from them). The new Help Desk went live on January 1st and is expected to generate enforcement action when necessary, although CCIO reiterated enforcement efforts would need to be coordinated with each state. Most of the initial inquiries were looking for information, but it has shifted to providers with arbitration dispute concerns.

Furthermore, the NAIC Regulatory Framework Task Force, led by Kansas Commissioner, Vicki Schmidt, heard an update from Georgetown University's Center on Health Insurance Reforms (CHIR) and its [interactive map](#) outlining the roles of federal and state officials on various aspects of the NSA. In addition, the CHIR is working on an issue brief based on interviews with 12 state departments of insurance (DOIs) on their approaches to NSA implementation. The CHIR's future work includes: 1) studying state-based marketplace (SBM) outreach and advertising efforts during the most recent open enrollment period; 2) comparing network adequacy rules across the marketplaces and Medicaid managed care organizations (MCOs); 3) state efforts to improve compliance with the MHPAEA; and 4) SBM efforts to improve health equity.

Mental Health Parity

Regulators invited Amber Rivers, the Director of the Department of Labor's (DOL) Office of Health Plan Standards and Compliance Assistance (OHPSA), to provide an update on mental health parity compliance for ERISA plans. She noted enforcement and compliance are very high priorities for the Secretary and summarized the recent findings from the latest [report to Congress](#). Specifically, the DOL issued 156 letters to plans and issuers requesting comparative analyses for 216 unique NQTLs across 86 investigations. They found many plans were unprepared, and none provided sufficient responses, with many cases of unsupported conclusions. Plans have just 45 days to submit corrective action plans. DOL will issue its following report in October and will issue a proposed rule soon in light of the deficiencies.

Tim Clement from the American Psychiatric Association provided [an example](#) of a sufficient response to help health plans demonstrate compliance. He said the analysis does not need to be a thesis, but it must provide the evidentiary standards, process, and strategies used to conduct the comparative analysis. He cautioned against attaching documents that make it harder for the regulators to determine compliance and suggested documents should only provide evidence of compliance.

NAIC PBM Efforts

The NAIC PBM subgroup continues to meet to discuss their upcoming whitepaper, which will provide states with a current landscape of PBM regulations and regulatory best practices. Since the December meeting, the Subgroup has held a series of regulator-only organizational meetings to gather information and look at the total charge and what other possible resources or informational meetings might be needed. They also heard from Oklahoma and Oregon about their recent PBM enforcement and transparency efforts. In particular, Oklahoma has been actively enforcing its regulations and is currently involved in five settlement agreements with PBMs, including \$2.6 million in reimbursements to pharmacies, and has enforced \$2.7 million in penalties. NAIC Consumer Representative, Carl Schmid, advocated for an NAIC model law, although it's doubtful the Subgroup will consider his request given the NAIC failed to adopt a model last summer.

The Subgroup will continue meeting periodically to work on the white paper outline, including analysis of the *Rutledge v. PCMA*, *PCMA v. Wehbi*, and likely the recent [PCMA vs. Mulready](#) decisions.

High Deductible Health Plans (HDHPS) and Copay Accumulators

Last year, NCOIL adopted its [copay accumulator model law](#), allowing drug coupons to count towards health plan deductibles. Momentum from the NCOIL model caught the attention of the NAIC Regulatory Framework Task Force, which heard a discussion on the issue of health savings accounts (HSAs) tax status. The speakers discussed potential conflicts of state copayment accumulator ban laws with federal requirements related to HSA-qualified HDHP plans and continued eligibility to contribute to an HSA in light of such a law. In addition, the Task Force discussed potential solutions and options to address this issue, including a suggestion that the Task Force consider developing a model bulletin that state DOIs can use to educate consumers. The presenters also suggested model language for states contemplating legislation banning copayment accumulator use as a carve-out for HSA-qualified HDHP plans to address any potential conflict with federal HSA-qualified HDHP plan requirements.

Public Option

NCOIL held an open session on state public option laws. Of note, Sally Pipes, President & CEO, Thomas W. Smith Fellow in Health Care Policy, Pacific Research Institute, presented why public options might not be a good choice. She argued a government-run insurance plan would not be subject to the same rules as private insurers and could price them out of the market. In addition, States could make providers require such a plan, driving providers away from potentially lower-paying private insurers. Currently, Washington ([Washington Chapter 364](#)), Nevada ([Nevada SB 420](#)), and Colorado ([Colorado HB 21-1232](#)) have public option legislation, and Connecticut has tried three times since 2019. Connecticut's latest proposal would allow some people to join state employee plans, which still entails pitfalls. She said New York was flirting with a public option and single-payer and that 16 states are considering legislation in this area.

Connecticut Legislator Rep. Tammy Nuccio said that public option plans mislead consumers because they often think they are a better plan. She believes, in most cases, the public option does not reduce premiums or offer more comprehensive coverage.

Property & Casualty

Surplus Lines Nonadmitted Insurance Model Act Revisions

The NAIC Surplus Lines Task Force met virtually prior to the national meeting to discuss revisions to the Nonadmitted Insurance Model Act ([model #870](#)). The revisions are to bring the NAIC model in line with the Nonadmitted and Reinsurance Reform Act of 2010 (NRRRA). The NRRRA creates a uniform system for non-admitted insurance premium tax payments based on the policyholder's home state and encourages the states to develop a compact or other procedural mechanism for uniform tax allocation. Most importantly, it establishes regulatory deference for the insured's home state. Furthermore, Section 521 of the NRRRA establishes a system of allocation of premiums for "affiliated groups." It does not do so for unaffiliated groups, nor does it mention an unaffiliated group anywhere in the statute.

The Council has been working alongside the Wholesale and Specialty Insurance Association (WSIA) by providing joint comments to the drafting group regarding the definition of "home state" for unaffiliated groups and that treating unaffiliated groups differently from affiliated groups would undermine the purpose of the NRRRA and create confusion in the marketplace. The model act drafting group is considering our comments and intends to have a revised model ready for consideration for the Task Force before the summer meeting.

Cannabis Working Group

The NAIC continues its work drafting a cannabis white paper, which will provide an update on the regulatory issues related to insurance in the cannabis industry and includes a section covering the impact of the lack of admitted insurers, seed to sale needs for each segment, and vertically integrated niche players. The working group is also collaborating with the Producer Licensing Task Force to conduct a study on whether or not cannabis-related convictions prevent individuals from obtaining insurance licenses.

During their meeting, they heard from Susan Donegon, Chief Regulatory Services Officer at National Council on Compensation Insurance, about Congress's Cannabis Opportunity Act, authored by Senate Majority Leader Chuck Schumer (D-NY), Senator Cory Booker (D-NJ), and Senator Ron Wyden (D-OR). The Act would remove cannabis from the federal list of controlled substances and empower states to implement their own laws. But, most importantly, it would allow access to insurance for cannabis-related businesses.

Catastrophe/Natural Disaster Mitigation & Response

The NAIC Climate and Resiliency Task Force remains committed to reviewing the solvency of insurers who are increasingly exposed to extreme climate risk. As a result, they finalized the following new initiatives:

- Adopted the NAIC Catastrophe Model Center of Excellence (COE) within the Center for Insurance Policy and Research (CIPR). The center will analyze and provide reports on insurer CAT models to state insurance departments; however, they will not make recommendations suggesting approval or denial of any submitted models.
- Adopted a revised NAIC climate risk survey, which creates a common framework that aligns with the [Financial Stability Board's Task Force on Climate-Related Financial Disclosure](#) (TCFD) reporting requirements. Beginning in November of this year, 15 states will utilize the new survey for nearly 400 insurers. The industry lobbied to delay the reporting requirements for new companies until 2023 but failed to gain enough support despite multiple efforts throughout the adoption process.
- Created an [International Association of Insurance Supervisors \(IAIS\) Climate Risk Steering Group](#) to develop a gap analysis of the global standards for climate risk and whether or not updates are needed. Oregon Commissioner Andrew Stolfi will serve as the NAIC's representative.

NCOIL invited Connecticut Commissioner Andrew Mais to share the work in his state, such as the enactment of [SB 1202](#) and a 2021 survey of Connecticut insurers which found that 75% of surveyed carriers were working on climate change. In addition, Commissioner Mais said work was being done to stimulate the underdeveloped private flood insurance market, including removing obstacles such as the three-declinations hurdle for access to surplus lines products.

Workers Compensation

The NAIC Worker's Compensation Task Force heard a presentation from NAIC's Assistant Director of Financial Policy and Legislation, Brooke Stringer. She flagged federal legislation that would have required funding for the DOL office of workers compensation to monitor state workers' compensation programs, including creating a national commission. She noted a Congressional Subcommittee on workforce protections is looking at this issue and touched on DOL's authority to reinstitute the adequacy of the state workers' compensation program. A recent mark-up on this bill would have prohibited the DOL from monitoring state programs but failed on party lines. NAIC has not seen such a focus on advanced oversight of state workers' compensation programs in recent years. Of course, commissioners are concerned with maintaining state oversight given the different models states use to run their programs and that not all programs are administered within the DOI. However, any oversight changes would undoubtedly affect rates.

National Flood Insurance Program (NFIP)

The NAIC FEMA Advisory group heard an NFIP update during their meeting that the NFIP is operating under an extension through September 30th. However, the NAIC continues to advocate for long-term reauthorization efforts. In the meantime, the advisory group discussed the key bills regarding the reauthorization of the NFIP, including; the NFIP Reauthorization and Reform Act of 2021 and the Continuous Coverage for Flood Insurance Act. In addition, the advisory group discussed efforts by a bipartisan group of coastal senators, which has tried to urge FEMA to postpone Risk Rating 2.0 due to concern regarding premium hikes. These Senators have authored the following bills in the U.S. Senate; the Flood Insurance Pricing Transparency Act and the Community Disaster Resilience Zones Act of 2022.

Race and DE&I in Insurance

Efforts surrounding DE&I continue to be an overarching goal within both organizations. For example, NCOIL committees continue to discuss appropriate oversight in each line of authority to examine the use of AI in their underwriting practices. In addition, legislators heard additional testimony regarding the draft [NCOIL Insurance Underwriting Transparency Model Act](#), which would increase insurance risk score transparency.

NAIC's President, Director Cameron, discussed federal efforts led by Representative Maxine Waters (D-CA-43), who plans to hold a hearing on DE&I within the insurance industry soon. The NAIC Race and Insurance Task Force's priorities include investigating algorithmic bias in rate making and access to insurance, analyzing market distribution, especially in the life sector, and increasing financial literacy. In addition, NAIC's new Diversity and Equity Inclusion Director, Evelyn Boswell, presented new DE&I coursework and a possible future designation for insurance regulatory staff. She also highlighted the NAIC's first [DE&I report](#) issued last December and plans to offer recommendations later this year to help departments implement DE&I practices.

Notably missing from the DE&I workstream reports were specifics around the previously exposed DE&I network adequacy whitepaper outline proposed by former Pennsylvania Commissioner Jessica Altman during the December meeting. Nonetheless, the Task Force said they would focus on benefit design, culturally competent networks, and consumer empowerment and engagement.

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