

EXECUTIVE SUMMARY

The Council of Insurance Agents & Brokers' Legal Counsel Working Group convened a virtual meeting to discuss federal and state actions undertaken in response to the novel coronavirus (COVID-19), among other things.

The Working Group was chaired by Working Group Chair Andy Impastato, Vice President, Insurance Counsel and Director of Industry Affairs for BXS Insurance, and was attended by over 50 of the insurance brokerage industry's top legal counsels. The virtual meeting was staffed by The Council's Associate General Counsel Gracie Gerlach, Chief Legal Officer Scott Sinder, Senior Vice President of Government Affairs Joel Wood, Vice President of Government Affairs Joel Kopperud, Director of Government Affairs Blaire Bartlett, NAIC/State Legislative and Regulatory Chief Counsel Kate Jensen, and NAIC/State Legislative and Regulatory Senior Advisor LeeAnn Goheen.

FEDERAL UPDATES

The Working Group heard from Wood, Kopperud, and Bartlett on an array of political issues, including the results and implications of the general election on The Council's priorities, transitions in congressional leadership and committees, and the potential cabinet nominees for a Biden-Administration.

The future of the next COVID-19 relief package remains up in the air (as does the broader congressional agenda, for that matter). There is substantial uncertainty about the contents, timing, and cost of the competing COVID-19 relief proposals from House Democrats and Senate Republicans. Reports suggest that Senator Mark Warner (D-VA) is working on a compromise for liability protection, yet it's unclear how this and other issues (i.e., state and local aid, PPP, etc.) will shake out. Although Congress and the Trump Administration continue to discuss COVID-19 relief, it appears unlikely that a package will pass by the end of the year.

Beyond the implications of the general election and next COVID-19 relief package, the Working Group also received updates on other current and future federal issues, including:

- The hearing held by Financial Services' Subcommittee on Housing, Community Development and Insurance regarding the Pandemic Risk Insurance Act (H.R. 7011) (PRIA) and other legislative proposals, including Chubb's Pandemic Business Interruption Program and APCA/NAMIC's Business Continuity Protection Program.
- The Trump Administration's transparency final rule, which imposes new transparency requirements on insurers and group health plans, and its potential legal challenges.
- The Trump Administration's "most-favored-nation" Medicare drug pricing final rule.
- Vaccine distribution under operation warp speed and the Biden Administration's likely healthcare priorities.

STATE UPDATES

Though we have seen a significant slow-down in state regulatory activity, there continues to be incremental movement on a few state legislative issues, including:

- *Liability Protections*. Michigan enacted its [safe harbor legislation](#)—which would provide immunity for health care providers and health care facilities in the event of a pandemic. Additionally, Michigan enacted two separate bills—[HB 6031](#) and [HB 6030](#)—which extend

broad protections to “employers” and “persons,” respectively. Virginia enacted its two bills that extend civil immunity in certain circumstances. Specifically, [HB 5059/SB 5082](#) extends protections to certain hospices, home care organizations, private providers, assisted living facilities, and adult day care centers during the COVID-19 public health emergency.

- *Workers Compensation.* Michigan's Governor signed emergency rules to clarify workers' compensation coverage for health care employees and first responders who have tested positive for COVID-19. The emergency rules apply to workers in the medical industry, including hospitals, medical care facilities, and emergency medical services, as well as law enforcement, fire safety, and others.
- *State OSHA Regulations.* Oregon's Occupational Safety and Health Authority released its [Temporary Rule](#) (and accompanying documents, including an [overview table](#), [poster](#), and [exposure risk assessment form](#)) imposing several requirements on Oregon workplaces (e.g., physical distancing, mask/face covering, sanitation, ventilation, etc.). Additionally, Michigan's Occupational Safety and Health Administration issued its [Emergency Rules](#) imposing several [requirements](#) on Michigan workplaces (e.g., social distancing, sanitation, self-screenings, mask/face coverings, etc.). California is expected to release workplace standards soon.

The Council will continue to monitor this activity, but for regular and recurring updates, please continue to use The Council's [COVID-19 Resource Center](#)—including the legislative trackers on business interruption coverage and workers' compensation, a legislative tracker on enacted civil liability protections, the state premium forbearance tracker, the state insurance regulatory tracker, and the broader regulatory tracker—as a source of the recent and pending developments at the state level.

NAIC & NCOIL

The Working Group discussed The Council's recent engagement with NAIC and NCOIL, including submitting comments on the revised draft of the Unfair Trade Practices Act's rebating provisions, among other things.

Additionally, NAIC is kicking off its Fall Meeting next week. The Steptoe Team will be there to monitor activity. Look out for a report from the meeting in the coming weeks!

OTHER ISSUES

Members also spent time discussing other issues, including:

- Updates from the Council of Employee Benefits Executives Advisory Committee's October meeting, at which they discussed reframing The Council's messaging on private market alternatives to public option proposals, developing a strategy to address access to care, rising costs, and the underinsured.
- The judgment in the U.K. Financial Conduct Authority's “Test Case” providing that coverage was available for COVID-19 business interruption losses under certain policies, which is expected to be challenged in the U.K. Supreme Court.
- Updates regarding the European Union's invalidation of the Privacy Shield Framework.
- Issues regarding burdens placed on surplus line brokers for marketing and advertising.

SEE YOU SOON!

We anticipate the next call will take place on **January 19, 2021 at 2:00 PM ET**. If you have any questions in the meantime, please email Gracie Gerlach at gracie.gerlach@ciab.com.