**NAIC/NCOIL Activity**

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| **Summer 2021** |

**Overview**

This summer, the NAIC and NCOIL began ramping up their regulatory efforts after focusing much of the last year and a half on COVID-19. They each held hybrid summer conferences, which will likely continue into the November/December meetings. NCOIL legislator participation was at an all-time high, with 68 legislators from 29 states. The NAIC experienced a much smaller in-person conference with many regulators attending virtually due to state regulator travel restrictions. They also held many of their working group and sub-committee meetings in the weeks prior to the national conference.

Race and diversity, equity, and inclusion (DE&I) in insurance continue to be high on the priority list within both organizations. The NAIC and NCOIL will continue robust discussions about the use of DE&I data in rate making, affordable access to coverage, as well as the marketing of insurance products to communities of color. Additionally, NCOIL passed three DE&I resolutions related to rating factors in private passenger auto, life insurance, and access to insurance in general. There was also interest in examining the insurance product sales cycle to identify ways to address disparities in coverage.

Otherwise, states once again find themselves reacting to significant federal health legislation related to the *No Surprises Act* and scrambling to understand their role in enforcing the new and, in some cases, yet to be released rules. The Center for Medicare and Medicaid Services (CMS) presented before the NAIC Managed Health Care (B) Committee and expressed its commitment to Commissioners to create a collaborative regulatory approach. They emphasized that States will have primary enforcement authority over the Act's provisions whenever possible and stated they would work with regulators by encouraging a very transparent and open dialogue as the January 1st compliance deadline nears.

Both organizations continue to scrutinize the use of artificial intelligence (AI) in insurance, especially as it relates to DE&I and the use of credit scores, as well as the privacy and security of consumer information. A new private passenger market entrant, Root Insurance, raised eyebrows at the NAIC with a PR campaign called "[Let's Drop The Score](https://www.joinroot.com/drop-credit-scores-from-insurance-rate-pricing/)," which included a fake pizza restaurant across the street from the conference designed to attract regulators and attendees. They also had sidewalks around the conference stamped with the "Let's Drop The Score" slogan and large trucks displaying "End Discrimination" outside the venue. Root CEO Alex Timm later presented arguments pushing for a model law to ban credit scoring to the Race and Insurance Task Force.

Climate disaster and resiliency issues were highlighted again as insurers react to the increasing costs and frequency of disaster events due to shifting climate change patterns. Flooding continues to be the number one disaster event amongst all states, which has led the NAIC and NCOIL to increase their outreach with FEMA to manage better manage coordination.

Finally, the NAIC is considering creating a new letter committee focused on innovation, cyber security, and technology. This new Committee will likely focus on consumer data ownership, including whether agents and brokers should share or further protect consumer data. There was also a discussion from concerned regulators and legislators about the scope and increase of the recent Ransomware attacks and whether or not the private market will offer meaningful coverage in the future.

**Race and DE&I in Insurance**

As mentioned above, NCOIL continued its focus on race and diversity in insurance and adopted three resolutions despite industries initial concerns with the language. Of note, the three resolutions put insurers on notice that certain factors such as criminal convictions unrelated to the risk, the lack of transparency in consumer insurance scores, and the use of artificial intelligence (AI) all have the potential for discrimination. As a result, NCOIL will move forward, charging the committees overseeing each line of authority to examine the use of AI in their underwriting practices.

Additionally, the Rating Factor Resolution states that NCOIL does not find, at this time, based on currently available data, any additional factors used in the underwriting of private, non-commercial insurance to be unfairly discriminatory but does find that they could be potentially unfairly discriminatory in their application. NCOIL recognizes that legislatures may conclude, either today or in the future, that such rating factors should be prohibited or restricted due to public policy and fairness considerations that are deemed to outweigh the actuarial justifications. Further, the Rating Factor Resolution noted that NCOIL believes the review of underwriting fairness is one that States should conduct annually.

Meanwhile, the NAIC held discussions at many letter committees addressing race in insurance and has specifically created five workstreams within its Special Committee on Race and Insurance to examine these issues. Those workstreams 2021/22 charges were adopted prior to the summer meeting, and the individual working groups are now beginning their work.

Charges of interest to CIAB members include:

* The Academy of Casualty Actuaries is working with workstream three to examine DE&I in rate making. They will have a meeting in September to formulate a work plan and timeline. They will specifically look at unfair discrimination and disparate impact and develop tools to identify unfair discrimination in the P&C industry.
* The Health workstream five will examine the possibility of collecting provider race and ethnicity data and whether or not the use or collection of that data is discriminatory. They will also look at provider networks, directories, and ways regulators can incentivize culturally competent providers.
* The Producer Licensing Task Force will look at offering licensing exams in foreign languages, whether prior criminal charges impede individuals from obtaining a license, how exam vendors can minimize culturally biased exam questions, and how the number and location of producers by company compare to an areas' demographics.

Finally, the Committee heard a presentation from Robert W. Klein and Associates on *Matching Rate to Risk: Analysis of the Availability and Affordability of Private Passenger Automobile Insurance*. Mr. Klein's research demonstrated that loss ratios tend to be higher in low-income areas, but he found that was not the case in at least 16 states. He recommends further economic, demographic research to include the uptake rates and access to coverage as additional factors.

**Innovation, Technology, and Cybersecurity**

The NAIC is considering a new letter committee devoted specifically to Innovation and Technology. Nebraska Commissioner Jon Godfread, Chair of the Innovation and Technology Task Force, made a motion to suggest a new (H) Committee, which the Executive Committee will now consider. In addition, the Big Data and Artificial Intelligence, E-Commerce, and Speed to Market working groups along with initiatives from the Race and Insurance, Accelerating Life Insurance Underwriting, and Privacy Protections Working Group may report up to this Committee.

In the meantime, the Task Force discussed the following charges of interest to CIAB:

* The Big Data and Artificial Intelligence Sub Group are surveying private passenger auto's use of credit scores. The Subgroup sent out a call letter to 188 companies in 9 states requesting compliance with the survey. The Subgroup plans to prepare a report for FIO with the information obtained from this survey.
* The Privacy and Consumer Protection Working Group (PCWG) reported the cyber security model has now been adopted by 18 states, with two more states expecting adoption soon. Meanwhile, the NAIC encourages states to conduct IT cyber tabletop exercises to measure state insurance department risks.
* The task force continued its discussions on consumer information privacy and whether the data producers and agencies receive should be held confidential. In addition, questions arose as to whether independent agents have consumer data and, if they do, should they share it? The consumer data privacy working group will work on these issues further.

NCOIL continued to draft a remote notarization model act and heard from a vendor who demonstrated to committee members how the software allows for secure notarizations while streamlining the process.

*Privacy – Focus on Consumer Protections*

As noted above, the NAIC's Privacy Protection (D) Working Group will be very active over the next six months. They are charged with developing a comprehensive report concerning privacy protection statements. They will focus on six consumer protection rights; 1) right to opt-out of data sharing, 2) right to opt-into data sharing, 3) right to correct information, 4) right to delete information, 5) right to data portability, and 6) right to restrict the use of data. In addition, consumer representatives are encouraging an even more robust list of consumer rights and principles, which the working group will consider over the coming months.

Other industry groups, including APCIA, NAMIC, and a coalition of health insurers, have been encouraging the NAIC's Working Group to consider privacy regimes already in place for insurance, like HIPAA and Gramm-Leach-Bliley – systems that, they contend, work well and should remain the primary pillars of any insurance-based privacy regime. Recommendations coming out of the working group may flow up to the Innovation and Technology Task Force as a new charge for 2022.

*Cyber Security*

The NAIC Cybersecurity Supplemental filing on surplus lines data showed cyber policies combined premium at 2.74 billion in stand-alone premium and package policies, a 22% increase over 2019. In addition, there were more than 4 million cyber policies in force in 2020, an increase of 21% over the prior year, with the largest writers being Chubb, AXA, and AIG. Loss ratios varied across companies, with the top five insurers making up more than 50% of the market and the top 20 insurers writing 84% of the total premium. 2020 saw exceptionally high losses compared to prior years, rising from 65% in aggregate from below 50% in prior years.

*Ransomware Risk*

Both NAIC and NCOIL learned about the hardening cyber market from AON and Marsh McLennan. As a result, insurers have acted to address changes to the market, including pulling out of the cyber market in the most extreme cases. In addition, they have responded to significant ransomware events by adding coinsurance and sub-limits on their cyber policies, especially for businesses that do not have the best cyber hygiene. Other insurers have refreshed policy language to address the scope of coverage, exclusions, and sub-limits and identify areas with greater exposure.

An Aon report called on the NAIC to create separate statutory categories for cyber insurance to illustrate better how the industry handles cyber risk as premiums and claims continue to grow. In addition, there have been numerous reports such as 1) the [*Verizon Data Breach Investigations Report*](https://enterprise.verizon.com/resources/reports/2021/2021-data-breach-investigations-report.pdf?_ga=2.75021904.319831944.1630430214-1097819208.1630430214), which provides information on data breaches and incident classification patterns by industry; 2) an [*AM Best report*](https://news.ambest.com/presscontent.aspx?refnum=30762&altsrc=9)that provides an analysis of the data contained within the Annual Statement Supplement; 3) the [*Betterley Report*](https://www.irmi.com/products/betterley-report-cyber-privacy-insurance), which includes insights from 20 insurers and covers exclusions found in policies and the increasing costs of cyber insurance; 4) a [*Gallagher report*](https://www.ajg.com/us/news-and-insights/2021/jan/2021-cyber-insurance-market-report/) that provides information about the hardening cyber insurance market and market capacity; 5) a U.S. [*Government Accountability Office (GAO) report*](https://www.gao.gov/products/gao-21-477) that summarizes take-up rates coverage limits; and 6) the [*Coalition Cyber Insurance Claims Report*](https://info.coalitioninc.com/download-2020-cyber-claims-report.html), which covers different types of incidents that make up cyber insurance claims.

**General Producer Topics**

*Producer Licensing*

The Producer Licensing Uniformity and Continuing Education Working Groups have not met since the Spring meeting as their Chairs resigned. The NAIC is seeking new Chairs to continue the working group's charges. However, the Producer Licensing Task Force met virtually in lieu of the summer meeting to discuss charges passed down from the Special Committee on Race and Insurance. In addition, they discussed best practices to ensure exam questions are reviewed for cultural bias and individual state practices allow certain individuals with criminal records to obtain a license.

Additionally, 40 (up from 32 in the Spring) states now offer remote, proctored producer licensing examinations and are seeing a growing uptick in online exam test-takers. Pass rates have not shown to differ amongst in-person and online exams, and regulators seem to believe online exams make sense. Still, they are also interested in the security of the exam process to ensure the integrity of exam results. Further information is being gathered from the exam vendors on the number of terminated exams due to the test taker not following the online exam protocol, such as showing the exam proctor the room where the test taker is taking the exam. Overall, regulators plan to offer online exams; however, three jurisdictions have indicated they will not implement remote examinations.

**Healthcare**

In addition to DE&I, the No Surprises Act was the primary focus of the summer meetings. Implementation and the cross-section between state insurance departments and the tri-agencies will be a top priority.

*No Surprises Act*

The NAIC heard from Jeff Wu, Acting Deputy Administrator at Center for Consumer Information and Insurance Oversight (CCIIO), the American Hospital Association, the American Medical Association, and the Federation of State Medical Boards.

CCIIO expressed commitment to work with states on enforcement and jurisdiction issues and expects States to have primary enforcement when possible. CMS has sent each state a written survey regarding its authority and ability to enforce certain provisions and plans to schedule follow-up calls to figure out how the process will work with each state and agency. They also sent each Governor, and copied Commissioners, a final determination of which provisions of the law the state or CMS will enforce and any provisions that a collaborative enforcement agreement could enforce.

The American Hospital Association presented the practical challenges of complying with the January 1, 2022 deadline by outlining scenarios where they do not have the systems, information, procedures, or training to be ready for compliance on the January 1, 2022 deadline. They also expressed concern with many of the logistical practices which are yet to be defined in the rules and regulations. For example, providing pricing estimates, determining which laws apply to patients, the process of moving patients to in-network facilities after stabilization, how providers will get information to inform the patient of out-of-network provider options, and gain consent if needed.

The American Medication Association also commented about a fair Independent Review Process (IDR) that allows small practices to participate without undue burden or cost and concerns about insurers' down coding procedures to save money. They also mentioned the IT costs and transfer of information issues that need to be created and suggested standardized forms for physician compliance so they do not have to deal with each carrier's version of a notice of consent or fair price estimate notifications.

The Committee also heard an update from the Race and Insurance Work Stream 5 subgroup, led by Pennsylvania Commissioner Jessica Altman. Commissioner Altman said the Committee is taking a close look at provider directories and incentivizing culturally diverse provider networks. They are also looking at the data collection of DE&I data from payers and if they should require payers to include this data in their insurance-related filings. The industry has expressed repeated concern that they do not currently require this information from patients or providers. Therefore, any data they have would be incomplete and not in a standard format that could be used for data measurement across payers.

*NAIC PBM Model*

Surprisingly, the PBM Model Act did not pass at NAIC Executive Plenary Committee after receiving near-unanimous consent from the NAIC's Health Insurance and Managed Care (B) Committee earlier this summer. Speculation is that several states with PBM legislation already on the books chose to abstain. These votes, coupled with many no votes, including no votes from the Chair of the Managed Care (B) Committee, Jon Godfread and Kansas Commissioner and former pharmacist Vicki Schmidt, lead to the non-adoption. The Model is not expected to be revived, but the language could be included as an appendix in a white paper currently being drafted. The Subgroup will begin work on the PBM whitepaper this fall, providing states with a current landscape of PBM regulations and providing regulatory best practices. The Subgroup will hold 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. It will provide a list of state PBM laws to the Reg. Framework Task Force and may include the *Rutledge vs. PCMA* decision.  The Subgroup promised a robust process and promised to include the industry, making sure the whitepaper considers all views.

States without a PBM law may now look to the NCOIL model as the framework for future legislation. According to the National Academy for State Health Policy, since 2017, 46 states have implemented more than 90 laws regulating PBMs. However, overheard at the NAIC, one Commissioner stated that he was disappointed the Model didn't pass as he planned to push for its adoption.

NCOIL Telemedicine Model Act

The NCOIL Health Committee continues to discuss its Telemedicine Model Act. They heard presentations related to network adequacy flexibilities that CMS has instituted, which allows Medicare advantage plans to supplement their networks with telehealth providers and still meet the provider time and distance access standards. In addition, the industry, as well as regulators, are trying to understand what specialties adapt well to telemedicine and what specialties need to have an in-patient visit. The Committee will consider model adoption at its November meeting.

NCOIL Accumulator Adjustment Program Model Act

Sen. Jason Rapert (AR) is sponsoring the NCOIL Accumulator Adjustment Program Model Act based on legislation recently passed in Arizona that he sponsored. Despite payor opposition, Accumulator Adjustment legislation has gained bipartisan traction across the country, with states such as Arizona, Connecticut, Georgia, Illinois, Oklahoma, Tennessee, Virginia, and West Virginia enacting legislation. The NCOIL model seeks to prohibit accumulator adjustment programs that prevent copayment assistance that helps patients pay for high-cost prescription drugs from counting towards their annual deductible or maximum out-of-pocket costs. They plan to vote on the Model at their annual meeting in November.

**Property & Casualty**

*Captive Insurers*

NCOIL is continuing its work on the NCOIL Uniform Captive Insurer Model Act and heard a presentation from the State of Vermont about the success of its global captive market. At the same time, the NAIC agreed to open up the Non-admitted Insurance model #870 to modernize and align it with the federal Nonadmitted and Reinsurance Reform Act. In addition, the NAIC Surplus Lines Task Force appointed a drafting group to begin revisions to the Model.

*Catastrophe/Natural Disaster Mitigation & Response*

NAIC and NCOIL both continued discussions on natural disasters and catastrophe insurance, mainly related to flood risk and the need for concerted mitigation efforts. The NAIC has been actively engaged with Federal Emergency Management Agency (FEMA) on this topic and held their first call of the new NAIC FEMA Advisory Working Group to continue coordination with FEMA and build out NAIC's resources for states (they already have created a new disaster response and preparedness website housed by the NAIC). They will invite FEMA to present at their next meeting.

The NCOIL Joint State-Federal Relations & International Insurance Issues Committee heard from the Flood Mitigation Industry Association, who led a panel discussion on developing a potential NCOIL model law focused on implementing the federal Safeguarding Tomorrow through Ongoing Risk Mitigation (STORM) Act. The Committee also heard from FEMA on its new rating methodology for the National Flood Insurance Program - Risk Rating 2.0: Equity in Action. NCOIL's Property/Casualty Committee, meanwhile, heard a presentation from Marsh on community-based catastrophe insurance solutions.

NAIC's Climate and Resiliency Task Force is also looking at these issues and has divided their work into four workstreams that focus on (1) solvency, (2) innovation, (3) technology, and (4) disclosure. They heard a presentation from the Reinsurance Association of America regarding FEMA's mapping data, which is supposed to help identify communities with high pre-disaster risks using a National Risk Index. The index measures 18 different hazards and allows states to determine which communities have the greatest need. The index score can also help with applications for BRICK or FEMA funding. Still, many communities aren't taking advantage of the FEMA copayments because they are unable to afford the copay and therefore aren't making resilience improvements.

*Private Flood Insurance*

State insurance regulators embarked on a data call in 2020 to collect 2018 and 2019 private flood data broken out by commercial and residential policies. The data call also broke out stand-alone from endorsement and first dollar from excess and included new data elements such as the number of policies, claims opened, and claims closed. In addition, the NAIC will conduct a new updated 2021 Private Flood Insurance Supplement data call, which will mirror what was collected in previous years.

Furthermore, the NAIC and state insurance regulators have been working closely with FEMA to build the flood insurance market—whether that is the National Flood Insurance Program (NFIP) or the private market—to make sure individuals are better protected from flood risks. While the number of companies writing private residential flood insurance grew over the last few years, from 55 in 2018 to 58 in 2019 to 81 in 2020, the premium fell slightly in 2020. Most of the premium (82%) was in stand-alone policies rather than endorsements. Not surprisingly, residential private flood losses rose from $28 million in 2019 to $50 million in 2020, with loss ratios highest in Alabama, Massachusetts, Michigan, Tennessee, and Utah for private residential flood. In 2020, 15 insurance groups wrote at least $1 million in residential premium, with the top 15 insurers totaling $160 million in premium, which was over 85% of the market.

*Transparency and Readability*

The Transparency and Readability of Consumer Information (C) Working Group has been working on several items for a best practices document on disclosures for premium increases. At this time, this document is not required, but states can make these requests of insurers.

The recommendations include several disclosure items that should be included in communications to consumers regarding premium increases: 1) a 10% threshold (any rate change >= 10% on renewal); 2) the notice must be sent at least 30 days prior to renewal; 3) the notice must include the new premium vs. the old premium; 4) items affecting the premium increase should be listed by dollar amount; 5) the top reasons for premium increase should be listed; 6) these reasons should account for 80% of the premium increase, and 7) the top five reasons for the premium increase should be listed.

*Meetings covered during which no relevant substantive issues or discussion arose:*

* NAIC Long-Term Care Insurance (EX) Task Force
* NAIC Market Regulation (D) Committee
* NAIC Financial (E) Committee
* NAIC Life and Annuities Insurance (A) Committee