NAIC Insurance Summit

The Council of Insurance Agents & Brokers
September 2021

Overview

The NAIC held its bi-annual Insurance Summit conference last month. This meeting provides the Commissioners (and their staff) with the opportunity to take a deeper dive into many of the issues discussed at the summer national meeting. The event also brings together innovators and regulators to explore the future of insurance regulation and discuss what's happening now and what lies ahead in the areas of financial solvency, producer licensing, market conduct, and more. In addition, attendees heard presentations from industry experts on the NAIC federal health reform efforts, the private flood market, and cyber security challenges. Below is a summary of the important key takeaways for Council members.

NAIC Federal Health Reform

ACA Status Update

Brian Webb, the NAIC's Assistant Director of Health Policy and Legislation, provided an overview of the Affordable Care Act (ACA) marketplaces. This year, 12.2 million people enrolled in the exchanges. Many enrollees enjoyed greater access to more choices than in the previous years, with only 10% of counties and 3% of overall enrollees having only one carrier option. At the same time, enrollee affordability has improved, with 90% of enrollees receiving subsidies and half paying less than $10 a month for plan coverage. Not surprisingly, the market continues to remain unaffordable for the unsubsidized population. Individual enrollment numbers remain flat despite increased subsidies, extended open enrollment, and more flexible special enrollment rules. In addition, the small group market continues to decline. Some regulators are looking to shore up this market by using the Center for Medicare and Medicaid Services (CMS) market stability grant awards to develop 1332 waivers to address the dwindling enrollment.

Implementation of No Surprises Act

The NAIC submitted comments to the tri-agencies encouraging clear definitions to minimize consumers falling through No Surprises jurisdictional cracks. In addition, they will be helping states focus their compliance efforts by developing educational materials for insurers, providers, and consumers. They are also working to ensure state regulators better understand where state and federal laws intersect. For example, many insurance regulators have little authority over providers and will likely need federal enforcement assistance. States may also consider passing legislation, like West Virginia's new law, that gives the Insurance Commissioner enforcement authority over providers.[1] Meanwhile, last month, CMS issued frequently asked questions providing

[1] **§33-2-24.** Authority of Insurance Commissioner to enforce No Surprises Act; administrative penalties; injunctive relief; regulatory assistance of other agencies; rulemaking; effective date.

temporary relief to individual market insurers (FAQ 49), which indicates the agencies will delay enforcement for several requirements.

Also of particular interest to state regulators, the NAIC, and the Council is how the Department of Labor (DOL) will enforce the No Surprises Act regulations on ERISA plans. We provided previous guidance for ERISA plans and encouraged Council members to follow the CIAB updates as new rules and guidance are enacted. In addition, the NAIC has asked the DOL to provide state regulators educational documents to ensure consumers find a "no wrong door" if confronted with a surprise bill.

Other Health Updates

Other health items discussed amongst regulators included telehealth, anti-trust enforcement, an FFA air ambulance report, improper marketing of health plans, and long-term care. In particular, the NAIC reported they have or are actively;

- Supporting maintaining the telehealth flexibilities that remain in effect due to the pandemic
- Endorsed Senator Pat Tumey's legislation, allowing consumers to use a portion of their IRA or 401K to purchase long-term care insurance.[2]
- Monitoring the McCarran-Ferguson Act reforms, which require the Department of Justice to enforce anti-trust rules on health insurers. The Federal Trade Commission has not reached out to the NAIC but is expected to coordinate enforcement efforts in the near future.
- Awaiting a final report from the Federal Aviation Administration regarding air ambulances and a need to re-open the airline deregulation act.
- Filed an Amicus Brief on allowing limited partnerships schemes to buy into employer plans and avoid state regulatory requirements.[3]

Finally, several consumer-driven initiatives related to short-term limited duration plans and healthcare sharing ministries improperly marketing health insurance have spearheaded a new NAIC Working Group. And in Congress, Senator Bob Casey (D-PA) introduced the Junk Plan Accountability and Disclosure Act to protect consumers against misleading advertisements in the individual market.[4]

Challenges in Growing the Cyber Insurance Market

Former Montana Commissioner and NAIC President, Monica Lindeen, hosted a panel on the growing cyber security insurance market. Panelists included Mark Camillo, CEO of CyberAcuView; Michelle Chia, Head of Professional Cyber Liability at Zurich North

[2] S. 2415: Long-Term Care Affordability Act, https://www.govtrack.us/congress/bills/117/s2415
[3] Data Marketing Partnership, L.P.; L.P. Management Services L.L.C. v. United States Department of Labor; Martin Walsh, Secretary, U.S. Department of Labor; United States of America. The NAIC submitted an amicus brief to the Fifth Circuit Court of Appeals in this case on April 7, 2021, supporting the U.S. Department of Labor (DOL) in seeking a reversal of the district court's order. At issue is whether the health plan sponsored and administered by Data Marketing Partnership (DMP) and offered to its limited partners is an "employee benefit plan" within the meaning of ERISA or whether state insurance laws govern the plan.
[4] 1. S.1002 — 117th Congress (2021-2022); Junk Plan Accountability and Disclosure Act of 2021

America; Erica Davis, Managing Director at GuyCarpenter; and Tom Reagan, Cyber Practice Leader at Marsh Speciality.

The session confirmed the CIAB Cyber Market Survey results published in August. According to panelists, over the previous 24 months, the cyber market and underwriting practices have changed dramatically. Cyber insurers are experiencing more frequent and severe claims, resulting in a tightening of the market and much greater scrutiny of company cyber hygiene. There aren't any blanket exclusions yet, but there is an increased analysis of how companies manage their cyber risk and their susceptibility to Ransomware attacks. Furthermore, cyber insurers are starting to offer policies with co-insurance, rising deductibles, or sub-limits with an increased focus on the policy terms and conditions. Finally, the increased underwriting is causing a delay in quotes as well as a more comprehensive underwriting experience with a broader in-depth survey of company practices.

Panelists suggested policyholders begin a more robust and comprehensive cyber risk mitigation process, including frequent reviews, creation of an incident response team that includes legal, public relations, and IT. Finally, routine testing of internal cyber security systems is needed. Cyber insurers will be asking current and future clients to be hyper-vigilant and may vary premiums throughout the policy based on the insureds ongoing actions to secure their systems.

NAIC Advocating for Private Flood Market

Nancy Watkins, Principal Consulting Actuary from Milliman, and Jim Watje, Senior Vice President of Wright National Flood Insurance at ITC Global, provided an overview of the private flood market.

Today, Milliman estimates only 4% of U.S. homes have flood insurance. That being said, private flood is a huge market opportunity with an estimated size ranging from $37-$47 billion in potential premium. However, last year, the private flood market wrote only $735 million in direct premium due to a lack of carrier participation, policy options, and the inability to appropriately rate the risk per property due to the rapidly and frequently changing risks. In addition, pricing the risk is highly challenging because existing homes are continuously affected by the changing landscape from new construction and infrastructure, climate change, and rising sea levels, which requires frequent reviews.

Panelists discussed the challenges of attracting new carrier entrants into the market, including a need for a clear definition of what is and is not a flood peril. More importantly, access to historical flood data is spotty at best, creating challenges to price coverage appropriately. Concerns over the policy affordability and the insurers' capacity to remain solvent have deterred many insurers from entering the market.

Moving forward, panelists suggested regulators need to make sure private flood is offered in the admitted market and create less onerous regulations to attract insurers. For example, regulators can't rely solely on historical data to approve rates given the ever-changing landscape. Some states are partnering with Milliman to use their Bungalow flood risk model, which has 1.2 million grid points and details risk down to the meter level. This type of granularity is necessary to price the market accurately. The challenge is the regulator's inability to evaluate new models like Bungalow and the actuarial industry's reluctance to share the proprietary data algorithms with regulators for fear of jeopardizing the confidentiality of the model.

Some states, such as Florida, New Jersey, Alabama, Virginia, and South Carolina, recently made it easier to file flood insurance products by incorporating flexibilities and timely review into the rate approval process. The NAIC has also published a guide for state regulators to build a private market. Panelists suggested more states need to adopt these policies to attract private flood insurers to their markets.