



The Council of Insurance Agents & Brokers' Legal Counsel Working Group convened to discuss the Build Back Better (BBB) Act (H.R. 5376), the SAFE Banking Act (H.R. 1996), NARAB, and PRIA, as well as state developments in industry transparency, surplus lines and licensing.

The meeting was staffed by the Council's Senior Vice President of Government Affairs Joel Wood, Vice President of Government Affairs Joel Kopperud, Director of Government Affairs Blaire Bartlett, Director of Health Policy and Strategy Katie Oberkircher, Associate General Counsel Gracie Gerlach, Chief Legal Officer Scott Sinder, Associate Legal Counsel Ashelen Vicuña, and Director of State Government Affairs Cari Lee.

## **FEDERAL UPDATES**

---

The Working Group heard from Joel Kopperud on an array of issues, including the outlook of NARAB nominations moving forward, the barriers to passing the SAFE Banking Act, the limited activity of PRIA advancement, and ransomware, and the debate of ransom payment.

Regarding NARAB nominations, Cari Lee provided an update on receiving a commitment from the NAIC President, Mike Consedine to assist in securing a list of diverse commissioners and discussed the hindrance of background checks to advancing the process. Working group members inquired about the timing of this process, in which Kopperud stated the timing remains contingent on how the nominations process is prioritized. In closing out the conversation, Diana Ivey brought up how regulators seem nervous about NARAB and asked for insight on the reaction of commissioners. Cari Lee responded that regulators feel they may lose authority, but those of higher professional ranking can agree that NARAB would be beneficial.

Kopperud provided brief updates on the SAFE Banking Act, noting it would be attached to the America COMPETES Act (H.R. 4521). He said Speaker of the House Nancy Pelosi (D-CA) expressed interest in getting the cannabis-related legislation passed. Kopperud continued discussing the main barriers to passing the SAFE Banking Act, or any cannabis regulation, including Representative Cory Booker's (D-NJ) criminal justice focus on cannabis policy, such as record expungement and de-scheduling. Suzanne Spradley also asked about enforcement action on cannabis and Kopperud stated that there is insurance within the sector, but also difficulty in reaching solutions.

The lack of activity on PRIA, as shared by Kopperud, can be attributed to other legislative issues, such as BBB, taking priority on the congressional schedule. Kopperud also stated that Representative Carolyn Maloney (D-NY) established a working group on pandemic risk insurance that has not yet convened due to these other outstanding legislative priorities. While awaiting further action on this legislation, Senator Kyrsten Sinema (D-AZ) reached out to CIAB on leading the initiative to get the legislation passed in the Senate. In addition, Lou brought up including COVID-19 in the National Catastrophe Insurance Program (NCIP) and the need to get this on track.

For the last section of the panel, Kopperud discussed how ransomware remains a top priority issue, as well as the growing demand for cryptocurrency transaction transparency. The working group discussed the debate on paying a ransom and Heather Steinmiller compared the two scenarios, stating that holding ransom would result in months of rebuilding an insurance network as opposed to an immediate fix if a ransom is paid, regardless of the morality issue.

## **FEDERAL LEGISLATIVE UPDATE**

---

In a combined session with the Council of Employee Benefits Executives (CEBE), The Council's Director of Health Policy & Strategy, Katie Oberkircher shared a ranked list of urgent and strategic health and benefits issues needing to be addressed this year based on survey responses from the CEBE advisory committee.

1. State public options
2. Prescription drug and PBM transparency
3. Surprise billing

4. Mental health parity
5. Telehealth
6. Individual coverage HRAs and strengthening the individual market

Kopperud then discussed key federal legislative developments, stating that BBB is essentially dead and that areas of focus for Congress will be the Supreme Court nomination process and upcoming midterm elections. A working group member asked about the congressional to-dos for the year and Kopperud listed: a possible condensed version of BBB, the SECURE Act 2.0, the Supreme Court nomination process, stopgap funding, and a continued focus on China and the COMPETES Act.

Continuing on the topic of BBB, a working group member asked about any inclusion on health insurance payfors, in which Kopperud stated that there wasn't in this bill, but there is discussion surrounding taxing plans. Another working group member inquired about the possibility of a modified BBB passing and Kopperud shared the barrier of Manchin's refusal to support the child care tax. There will also be growing pressure on the ACA and tax provisions as the end of this year approaches. Kopperud also expressed support for the Medicare price negotiations provisions to be applied to commercial markets but stated that this would not fit into reconciliation as it doesn't fall into spending or taxation.

The Government Affairs Team also provided an update regarding mental health parity and its lack of movement. CIAB will focus on this and the need to pinpoint the correct information needed to make these reports, as well as the financial penalties. The Senate Finance Committee will also continue to explore parity, especially for children, through subcommittee groups for an end-of-the-year package. During the discussion, Jennifer Chung expressed frustration for employers regarding the difficulty of non-qualitative evaluation and stated that a TPA vendor is needed to assist with analysis clarification. Another working group member expressed concern about the media picking up this issue and leading to mass unionization.

The team transitioned to the topic of telehealth, stating that there's been difficulty in keeping congressional members focused solely on the topic of telehealth, as they tend to veer off into broadband access and urban area access. Jennifer also brought up the continuation of using telehealth for doctor visits before meeting the deductible.

To end the panel, Matt Stadler and Jacque Roth provided a PAC update. Jacque shared the impressive increase in funding in the past year and Matt discussed new efforts in place to ensure that funding goals and involvement are maintained and increased in this new year.

## **INDUSTRY TRANSPARENCY**

---

Ashelen Vicuña, an associate from the Steptoe team, discussed the two big disclosure requirements: the Section 202 broker compensation disclosures and Section 204 prescription drug cost disclosures. Ashelen shared that a key challenge with broker disclosures is that brokers may not have enough information for the reports. The main issue is figuring out how to bring the PBMs into the transparency regime and have them be subject to the statutory requirements.

## **THE MARK CUBAN COST PLUS DRUG CO.**

---

Scott Sinder began the discussion by urging for greater transparency in the PBM space and introducing Dr. Oshmyansky and his company.

Alex Oshmyansky, CEO/Founder of The Mark Cuban Cost Plus Drug Co., presented potential problem areas to new PBM reporting requirements, including rebate aggregators. He discussed how major rebate aggregators, such as Zinc, Ascent, and Emisar, touch the rebate dollars first, smaller PBM reliance on rebate aggregators, and the lack of contract visibility. Alex also stated that the way his company can distribute pharmaceutical products for a lower cost while circumventing pharmacies' optional cooperation was to create an entire parallel supply chain, which he continued by sharing his four key company goals as followed:

1. Register as a fiduciary
2. Pass through all revenue
3. Own their own contracts with pharmaceutical companies

#### 4. Provide transparent pricing to end consumers

During the questioning portion of the panel, Jennifer Chung asked how the company will make a profit if it passes through all revenue. Alex responded by stating that the company would charge a flat per-transaction fee based on the number of heads per month and assured that all company numbers would be made transparent. A working group member inquired about company communication with medical vendor TPAs and Alex stated that the company will adjudicate through the PBM. Another working group member asked about the drug manufacturer sector's reaction to the company, in which Alex stated that they want new patients and are supportive.

When asked about the general goal timeline for the company, Alex shared key goals, such as becoming fully operational in October or November of this year and the target 2024 launch date of the full-service PBM. Alex closed his remarks by sharing the company's backstory and urging the formation of a larger coalition to attack the transparency issues and create a new system.

To close out the panel, Scott Sinder shared a three-prong strategy to push the DOL to have TPAs and PBMs subjected to Section 202 broker and consultant transparency, make sure that plan fiduciaries don't need anything from DOL to satisfy their 204 requirements, and efforts brokers can take to encourage their clients to require this information from PBMs and TPAs. A working group member asked about the possibility to create a standard document for PBMs on what information needs to be disclosed. Scott stated that it's doable, but it has to come from the plan fiduciaries to the PBMs and it may be difficult to get them on board.

### **NAIC UPDATE**

The rest of the meeting consisted of LCWG members only. It began with Brooke Stringer, Assistant Director of Financial Policy and Legislation at NAIC, who shared the NAIC is focused on improving collaboration with other organizations and consumer groups to limit barriers to access and increase education of products that are being regulated. Brooke also shared NAIC's four priorities are climate and resiliency, cybersecurity, race and insurance, and long-term care insurance. She went into greater detail on each priority, discussing key workstreams and NAIC initiatives.

The workstreams falling under the climate and resiliency focus are on financial solvency tools enhancement, climate risk disclosure, pre-disaster mitigation, innovation, and technology. Brooke shared the NAIC is observing what federal agencies and other countries are doing regarding each of these workstream focuses. She concluded that NAIC supports long-term NFIP re-authorization and the reconfiguration of the private flood market, as well as previewing that a fire report from the NAIC would be coming soon.

Brooke discussed that the NAIC created a new "H" committee, adding cyber to their previous work on innovation and technology, to address issues of ransomware targeting. Cari asked if there was a focus on state insurance departments and cyber risk, as well as whether state governments could securely share information. Brooke responded by stating that the NAIC conducted internal table tops on information storage for states and that this would be a part of the general issue focus.

For the race and insurance priority, Brooke shared the workstreams would be on research and analytics of diversity and inclusion within the industry, state insurance departments, and NAIC; barriers in the insurance sector; diversity in health insurance; and increasing financial literacy.

Regarding long-term care insurance, Brooke shared that key workstreams are being finalized to create a multi-state framework on greater state coordination and consistency for rate filings.

Brooke also shared two key bills the NAIC supports, specifically on addressing voting representation for the NAIC Commissioner and the State Insurance Receivership Priority Act. The NAIC is also working with the DOL, House Financial Services Committee, and members in the Senate to introduce a bill in both chambers this year on amending the federal priority legislation to set a deadline for the federal government to assert claims with an insurer.

In the Q&A portion of the panel, Cari asked about why the new NAIC leadership scaled back the number of working groups. Brooke stated the number of working groups continues to fluctuate due to the tendency for materials to pile up and the workload, and the association has been working to find a better way to streamline the process. A work-

ing group member also inquired about the NAIC's position on the DOL being sued, in which Brooke shared that the association conducted meetings with the department to address past concerns from industry groups regarding areas of overlap. The NAIC also submitted a comment letter on this, stating the overlap in regulation may harm the market and limit access to insurance products.

## **NEW YORK'S COMPREHENSIVE INSURANCE DISCLOSURE ACT**

Nancy McCabe discussed the red-lined version of the bill, stating clients have been calling for information retrieval due to the volume of information needing to be disclosed. When receiving feedback on the legislation, a working group member stated claim information will no longer need to be given in the new version of the bill. In addition, irrelevant information will be able to be redacted.

## **SURPLUS LINES**

During this panel, Nancy McCabe provided an update regarding risk purchasing groups and state allocation. A working group member stated that a mix within various states on allocation could lead to conflict, expressing a need to push for regulations that would minimize the need for every state having to allocate premium tax. Cari Lee followed by discussing CIAB's involvement in the NAIC Surplus Lines working group and the CIAB's efforts to influence regulators to not require premium tax filings in every state. CIAB will continue to advocate on this issue.

During the discussion portion, Nancy shared the differing declination requirements in the states, stating it would be beneficial for more states to have a simplified approach. A working group member asked about how commissioners feel about declinations. Cari stated all states interpret these rules differently and it's further complicated by the frequency of staff turnover and commissioner replacement.

Robert Lloyd brought up how a small mom-and-pop shop could lose an account to a member of the council, and as a result, report them to a regulator for not completing their declinations. Cari stated placing more regulation in the market could lead to this kind of tattle-tale behavior and the regulators recognize these kinds of situations. When asked by a working group member how to resolve this issue, Cari stated these conversations need to be brought to the attention of the NAIC Surplus Lines Task Force from an educational perspective. In concluding the discussion, stated that going towards full disclosure for exempted lines, like in Florida, would provide a simpler and more clear process. Cari stated the Council will discuss this issue with NAIC commissioners.

## **LICENSING**

Diana Ivey discussed how carriers have different interpretations on who should be appointed and how this has become a worrisome process for brokers. She stated there shouldn't be a requirement for affiliation appointments since affiliations serve no purpose and don't provide added consumer protection since the consumer is already licensed.

During this panel, quite a few working member groups expressed how appointments and affiliations are nonsensical and merely exhaust money and resources. Nancy McCabe stated the problem with removing both is that they serve as a revenue source for the states. Other methods would require replacing the revenue for the states and the carrier being willing to pay an additional premium tax percentage.

Cari stated the council has looked at this issue very closely over the years. She mentioned efforts at NCOIL in 2018 by the AIA (now the APCIA) to encourage legislators to eliminate appointment requirements, but they were met with strong resistance by NAIC commissioners. Cari said the Council will continue to evaluate options to move the needle on appointments but stressed any ideas will need to be revenue-neutral and will need industry-wide support.

Other topics of discussion regarding appointments and affiliations included the negative impact of credit checks on credit, if done incorrectly, as well as the cyber risk of obtaining social security numbers.

Nancy concluded the panel by discussing reinsurance licensing and the entitlement to reciprocity if the state the office resides in and the home state have the same laws.

## **CERTIFICATES OF INSURANCE AND MEMORANDA OF INSURANCE**

---

Nancy McCabe stated clients are asking brokers to draft memorandums of insurance. States have rules on whether they need to be filed and some states required them to be filed by the carrier through the SERFF system.

During the discussion portion, Penelope Hopper advised the working group to push back as brokers shouldn't be required to attest to a random outside contract. Jennifer Chung expressed concern with the speed to get to-do items done, which would lead to certificates being expedited. Robert Lloyd stated people in the tech industry are trying to come up with solutions, and that there should be one certificate of insurance issued at the same time the certificate of liability is issued.

## **OTHER MATTERS**

---

Ashelen Vicuña shared with working group members several CIAB resources available on the CIAB website such as the 50-state survey charts that cover various topics such as balance billing and data breaches. A working group member suggested adding a certificate of insurance survey.

Frank Alerte brought up the agent in charge requirement to be in the office, asking if it was common for the agent in charge to be in every branch office in a given state. Nancy McCabe stated that this was not common.

To conclude the panel, Cari inquired about member interest on an ACLI request to the NAIC Producer Licensing Task Force, to push states to remove pre-licensing requirements (20 states still require pre-licensing). She asked if CIAB members would support this. Nancy stated that if CIAB were to have employees not yet licensed, she would want them to take the class as soon as possible to obtain the license to do work. However, she doesn't have a desire for it to be mandated. Robert Lloyd also stated that setting the pre-licensing requirement creates a barrier for less advantaged groups, such as those without advanced degrees, from practicing.

## **SEE YOU SOON (VIRTUALLY)!**

---

Our next meeting will take place on June 21-22, 2022 here in Washington, D.C. If you have any questions in the meantime, please email Gracie Gerlach at [gracie.gerlach@ciab.com](mailto:gracie.gerlach@ciab.com).