The 2014 Summer National Meeting

NAIC/Consumer, NAIC Industry and NAIC/State Government Liaison Committees

Excerpt from the Proceedings of the NAIC

Louisville, KY
August 16 – 19, 2014
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Information about statutory accounting principles and the procedures necessary for filing financial annual statements and conducting risk-based capital calculations.

Consumer Information
Important answers to common questions about auto, home, health and life insurance — as well as buyer’s guides on annuities, long-term care insurance and Medicare supplement plans.

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The NAIC/Consumer Liaison Committee met in Louisville, KY, Aug. 16, 2014. The following Committee members participated: Mike Kreidler, Chair (WA); Marguerite Salazar, Vice Chair (CO); Jim L. Ridling (AL); Lori K. Wing-Heier represented by Marty Hester (AK); Jay Bradford represented by Lenita Blasingame (AR); Dave Jones (CA); Thomas B. Leonardi represented by Kurt Swan (CT); Karen Weldon Stewart represented by Paul T. Reynolds (DE); Chester A. McPherson represented by Margaret Schruender, Sharon Shipp and Lee Backus (DC); Kevin M. McCarty represented by Rich Robleto (FL); Stephen W. Robertson (IN); Andrew Boron represented by James Stephens (IL); Sandy Praeger (KS); Therese M. Goldsmith (MD); Joseph G. Murphy represented by Matt Regan (MA); Monica J. Lindeen (MT); Wayne Goodwin (NC); Mary Taylor represented by Jana K. Jarrett and Tynesia A. Dorsey (OH); John D. Doak (OK); Laura N. Cali (OR); Michael F. Consedine represented by Peter Camacci (PA); Todd E. Kiser represented by Tanji Northrup (UT); Jacqueline K. Cunningham represented by Rebecca Nichols (VA); Michael D. Riley (WV); and Ted Nickel represented by J.P. Wieske (WI). Also participating were: Nettie Hoge, Joel Laucher and Keith Kuzmich (CA); Martin Hazen and Randy Adair (KS); Mark Einfalt (TX) and Leslie Krier (WA).

2014 Funded NAIC Consumer Representatives: Elizabeth Abbott (Health Access); Birny Birnbaum (Center for Economic Justice—CEJ); Brendan Bridgeland (Center for Insurance Research); Sarah Lueck represented by Dave Chandra (Center on Budget and Policy Priorities); Sabrina Corlette (Georgetown University Health Policy Institute); Brenda J. Cude (University of Georgia); Kathleen Gmeiner (Universal Health Care Action Network(UHCAN) of Ohio); Timothy Stoltzfus Jost (Washington and Lee University); Debra Judy (Colorado Consumer Health Initiative); Karrol Kitt (The University of Texas at Austin); Peter Kochenburger (University of Connecticut School of Law); Sonja L. Larkin-Thorne (Consumer Advocate); Adam Linker (North Carolina Justice Center); Annalise Mannix (Fair Insurance Rates in Monroe); and Andrea Routh (Missouri Health Advocacy Alliance).

2014 Unfunded NAIC Consumer Representatives: Christine Barber (Community Catalyst); Howard Goldblatt (Coalition Against Insurance Fraud); Lincoln Nehring (Voices for Utah Children); Jesse O’Brien (Oregon State Public Interest Research Group—OSPIRG); Christina Postolowski (Young Invincibles); Lynn Quincy (Consumers Union); Stuart Spielman (Autism Speaks); and Alyssa Vangeli (Health Care for All).

1. **Heard a Presentation on Issues Faced by Newly Insured Consumers**

Mr. Linker said there were concerns that still needed resolution in the federal Affordable Care Act (ACA) marketplace plans, especially with regard to consumers who are newly insured for the first time. He said consumer issues included accessing preventive services without cost-sharing. Mr. Linker said consumers, brokers, navigators, and insurance agents report that they are still seeing providers charging for preventative services. He said this may be an education issue, in that consumers do not understand that all plans do not provide for all preventative services without charge and are not sure who has the ultimate authority to resolve the problem. He said that state insurance departments could help resolve this transparency issue by convening with providers, carriers and agents to resolve such problems. Mr. Linker said that resolving inappropriate limits on habilitative and rehabilitative services is also a consumer concern. He said some states have low annual limits on the number of physical therapy, occupational therapy and speech language pathologist outpatient visits that are covered by qualified health plans (QHPs). Mr. Linker said that, while this was a trend occurring before the ACA’s enactment, the use of limits for these services has become even more widespread since the ACA has been implemented. He said co-pays and co-insurance for outpatient therapy services are also going up as issuers seek to keep premiums down. Mr. Linker said the summary of benefits and coverage form may not include clear information about this type of coverage and its limitations. He said tobacco surcharges that are pricing people out of the market are another consumer concern. Mr. Linker said that resolving tobacco surcharges are causing serious access problems in many places, especially in rural areas, with some agents reporting that surcharges are creating as many access problems as the Medicaid gap. He suggested that state insurance regulators work with carriers to limit tobacco surcharges, to push for legislation barring these surcharges and to encourage the use of smoking-cessation programs.

Ms. Gmeiner said another issue that newly insured consumers face is the need for a better understanding of bronze plan limitations. She said the limits of bronze plans prior to meeting the deductible needs to be more clearly explained on the websites and call centers of federal and state health insurance marketplaces. Ms. Gmeiner said that the U.S. Center for
Consumer Information and Insurance Oversight (CCIIO) and state insurance regulators should work with insurance companies offering bronze plans to achieve the 60/40 actuarial value required without sacrificing primary care to consumers. She said the CCIIO and state insurance regulators should work with their Web tools and call centers to help ensure that consumers considering bronze plans and whose income is below 250% of the federal poverty level (FPL) are clearly advised that cost-sharing assistance is available at the silver, but not at the bronze, level. Ms. Gmeiner said drug tiers and co-pays need to be clearer and more stable, as well. She said state insurance regulators and the CCIIO should work with insurance companies to help ensure that Web tools take the consumer directly to the drug formulary associated with the plan being considered rather than make consumers search for such information. Ms. Gmeiner said that state insurance regulators and the CCIIO should also work with insurance companies to help ensure that the particular co-pay or co-insurance that will apply to a specific drug is clearly displayed on the website’s formulary. She said that if legal authority is available in their state, that state insurance regulators should require that any withdrawal of a drug on the formulary during the plan year that restricts consumer access must be approved by the state regulator prior to its withdrawal. She said if legal authority is not currently available, it should be sought by state insurance regulators.

Commissioner Kreidler said this presentation has identified issues that Washington has been following closely at a national level, as it is confusing for people with limited experience. He added that it is a challenging educational experience, particularly for people who are newly involved in the insurance industry, so this is a timely and important issue to be raised.

Commissioner Goodwin said Mr. Linker has been a great help to North Carolina in figuring out these issues.

2. Heard a Presentation on Network Adequacy: A Preview of the Consumer Representatives’ Report

Ms. Abbott said this is a preview of the soon to be released network adequacy paper to support and amplify efforts of the NAIC and state insurance regulators. She said it is a confidential survey of states and territories on network adequacy that was sent out to all states in late May. This survey was not necessarily sent out to state insurance departments as some states do not have responsibility for the regulation of network adequacy. She encouraged the states that had not yet responded to do so in order to get a baseline at the time to make sensible presentations to the NAIC. Ms. Abbott said some of the biggest, early findings are balanced billings, where plans do not pay the provider, and then the provider turns around and bills the consumer. When their own provider is not in network, it is upsetting to consumers, who need tools to know how to proceed whenever something like this happens. The states say they are relying on complaint data, but they are finding it incomplete in dealing with immediate situations. Consumers are making choices based on which plan their provider is in; however, this is causing concerns as provider lists are incredibly difficult to keep current. Ms. Abbott said some states are already doing a great job, so the paper will try to highlight best practices of those states for other states. She said she hopes to have the tool available later this year.

Commissioner Kreidler commended consumer representatives for doing this survey as a tool. He said Washington has adopted its own network adequacy rules for 2015 and he is looking forward to seeing the paper to see if Washington got it right. He said there is a targeted examination of a carrier that is being conducted right now due to network inadequacy. He said it would be helpful and informative if the federal government would establish a floor for network adequacy as part of the ACA.

3. Heard a Presentation on Health Insurance Literacy: What Regulators and Others Can Do

Ms. Quincy said she would address ways in which regulators could address gaps in consumers’ health insurance literacy. She said that health insurance literacy measures the degree to which individuals have the knowledge, ability and confidence to find and evaluate information about health plans, select the best plan for their financial and health circumstances, and use the plan once enrolled. She said that promoting health insurance literacy is consistent with the NAIC’s mission statement to protect the public interest, to promote competitive markets, and to ensure the fair and equitable treatment of insurance consumers. However, Ms. Quincy said the tremendous information asymmetry in the health insurance market and high consumer search costs make this difficult to achieve. She said that health insurance literacy rates are low. In fact, a recent survey indicated that, while insured Americans feel confident about health insurance concepts, only 14% of all respondents accurately understood the four basic concepts of deductible, copay, co-insurance and out-of-pocket maximum. The survey also showed that 44% of consumer assistance programs having seen people who did not understand how to use insurance. Ms. Quincy said health insurance literate consumers need to have a basic idea of how insurance works and why high health costs create a need for coverage. She said when consumers are shopping for coverage, being aware of all of the coverage options available to them, knowing where to shop for those options and knowing how to get financial help is important. Ms. Quincy said that, when comparing plans, consumers need to know the premium and the resources that reduce premium
costs, as well as the adequacy of financial coverage such as out-of-pocket costs and covered services. Additionally, consumers need to check the adequacy of the provider network. She said consumers need to be literate about using health insurance, about identifying and using in-network providers, about reading an explanation of benefits (EOB); about a consumer’s rights of appeal; and about how and where to complain as many consumers are not aware there is a state insurance department where they can complain and get assistance.

Mr. O’Brien said insurance regulators could help health insurance consumers become more literate by: 1) identifying any gaps via the complaints state insurance regulators are seeing and by using that information to educate consumers directly; 2) outreaching via dedicated staff members; 3) reaching out to consumers through training and educational materials at “point of entry”; 4) using producers, navigators and assistors; 5) implementing insurer communications and policy changes that would simplify the market in some areas, such as making it easier to shop; 6) implementing standardized plans; and 7) limiting the number of plans available. He said Oregon is using a large insurer settlement to produce a broad-based public awareness campaign because research indicated that the majority of consumers did not know about the Oregon Insurance Division. The campaign includes consumer-friendly materials; consumer liaison staff training with producers, teachers, tribal leaders and community groups; and encouraging “standard” plans. Mr. O’Brien said the staff at the Oregon Insurance Division have indicated that calls and Web traffic are up since their campaign began, indicating that it is indeed working. He recommended that other state insurance regulators leverage any existing opportunities they could such as sharing complaints data-making resources and materials more readily available (e.g., paper copies at events and at open enrollment), developing relationships and hosting events. He said the role of the NAIC could be to avoid the duplication of effort by developing national materials and templates; to collect and promote best practices amongst insurance departments; and to develop a rubric for consumer communications.

Commissioner Cali said the Oregon Insurance Division conducted consumer testing at the outset, and, at the end of its consumer outreach campaign, it found that less than one-quarter of those contacted had any knowledge that there was an insurance department in the state to help consumers.

Commissioner Kreidler questioned whether there is confusion on filing complaints on exchanges, and raised the importance of getting complaints sooner rather than later because the system appeared to be keeping sicker people from accessing it. Mr. O’Brien said filing a complaint had been difficult for health care exchange consumers because they did not know how to determine whether the complaint should go to the federal or state government. Ms. Quincy said some consumers didn’t even know that they could complain and that there was somewhere they could go.

Commissioner Doak said consumer representatives made excellent points regarding the lack of consumer understanding about state insurance departments. He said this is an issue that the Committee needs to figure out how to address with the help of the NAIC Communications Division in order to drive home (through hotlines, billboards or any other means at their disposal) the fact that state insurance departments are available to help consumers.

Commissioner Kreidler said information on how to contact the insurance department could be included in all replacement notices, renewal notices and discontinuance of coverage notices.

4. **Heard a Presentation on Open Enrollment for 2015: Key Focus Areas for Commissioners**

Ms. Vangeli said now is the time for state insurance regulators to start planning for the 2015 open enrollment using the lessons learned during the first open enrollment, such as how critical it is to ensure consumers realize that Dec. 15 is a key deadline, especially for consumers who previously enrolled in “short year” plans. She said that, according to the Kaiser Family Foundation report on assisters, 90% of assister programs say most or nearly all clients were uninsured at the time they sought help, while 75% said most or nearly all clients had limited health insurance literacy. Ms. Vangeli said the Avalere Health report indicated that two-thirds of the individuals who enrolled in silver plans enrolled in the lowest or second-lowest plan. Initial analysis suggests that the second-lowest silver plan benchmark plan will change in many states. This means that those who stick with the benchmark plan may see premiums increase as the plan loses its benchmark status, as well as premium tax credits that will not increase due to being pegged to income and the new benchmark plan. She said the Office of the Assistant Secretary for Planning and Evaluation (ASPE) Enrollment Report for Oct. 1, 2013 – March 31, 2014, indicated that of the more than 8 million people who had selected a plan through the state-based marketplaces (SBMs) and federally funded marketplaces (FFMs) through March 31 (including additional special enrollment period (SEP) activity reported through April 19), with more than 6.7 million enrolled in Medicaid (both expansion and non-expansion states), 57% were previously uninsured, and 28% were young adults (ages 18–34). She also said that the Congressional Budget Office predicted another 5 million people would enroll in 2015.
Ms. Postolowski said that, because of the need to recognize the balance of ease of enrolling with transparency and assurances so that consumers fully understand their options (and ability to shop for new coverage), the U.S. Department of Health and Human Services (HHS) issued proposed regulations that set out alternative standards for eligibility determinations on July 1, for which the public comment period closed July 23. She said the proposed regulations also address issues related to renewal and noticing, such as: 1) automatic re-enrollment, unless the consumer terminates or switches coverage; 2) the re-enrollment hierarchy; and 3) renewal and discontinuation notices. Ms. Postolowski discussed the pros: It is easy for consumers and minimizes the gap in coverage, yet allows consumers to still shop around and change coverage. She also discussed the cons: the sticker shock if the benchmark plan changes, consumers may not realize they need to update their information if notices are unclear, and they may not realize that they can shop around for a better price and/or coverage if notices are not clear.

Ms. Judy said the role of state insurance departments is to streamline and expand noticing requirements; use insurance department websites, press releases and consumer information lines to educate their constituents about the open enrollment and re-enrollment period; and coordinate and communicate with their state’s Medicaid agency, marketplace and assisters. Ms. Judy said state insurance regulators should strive to streamline the number of notices they use; coordinate on timing and language among marketplaces and insurers; describe additional information that may be needed (current household information, a list of household changes to report, and any plan changes); use multiple communications’ tools to reach consumers (emails, calls and postal mail); and solicit input from consumers and consumer advocates on making consumer notices user-friendly and health-literate.

Ms. Postolowski said the state insurance regulators should meet regularly with the outreach or enrollment network in their states during the open enrollment period, as this would be a way to partner with them; to provide feedback about what they are hearing; and to promote data-sharing, as well as an understanding of who collects what information and why. She also said that, in a recent survey, only 18% of those in the outreach and enrollment network knew to direct consumers to state insurance departments for help with post-enrollment issues. Ms. Postolowski said state insurance regulators should give insurers options for providing more opportunities to access coverage, such as requiring insurers to offer off-marketplace coverage more frequently than the federal standard, extending the enrollment period for off-marketplace coverage, requiring greater disclosures regarding a consumer’s special enrollment rights, or identifying additional qualifying events for off-marketplace enrollment. One example she noted was that Nevada requires that individual coverage sold outside of the state’s marketplace be available year-round, subject to a 90-day waiting period to reduce the risk of adverse selection under Nev. Rev. Stat. § 687B.480.

Ms. Judy said eight jurisdictions—California, Colorado, District of Columbia, Massachusetts, Minnesota, Nevada, Oregon and Washington—have expanded consumers’ special enrollment rights already by adding qualifying events, modifying enrollment timelines or requiring greater notice of enrollment opportunities. She said state insurance regulators could also play a supportive role in passing laws that change timing of open enrollment for SBMs because holidays are a high stress time when many consumers are financially strapped and lack the “mental bandwidth” to make sound financial decisions. In addition, they may not realize the open enrollment period ends earlier than in 2014 and may have increased potential for a bigger financial penalty, so it might be better to run the open enrollment period from Feb. 15 to April 15—weeks when low-income people receive income tax refunds and earned income tax credit. Another positive aspect would be that this aligns it with tax season, when the majority of households with incomes less than $50,000 use tax-preparation firms.

Commissioner Goldsmith clarified that the suggestion that state insurance regulators coordinate with other entities, such as assistors, meant ensuring that all parties are on the same page with regard to open and re-enrollment requirements.

5. Heard an Update on NAIC Consumer Involvement at the IAIS Meeting

Mr. Kochenburger thanked the NAIC for its support of the NAIC consumer observer group to the International Association of Insurance Supervisors (IAIS) and said the hope was that it would incentivize other countries to encourage consumer participation both from their country, but also on a much broader basis from all of the other countries at IAIS meetings. He said the input from such a variety of experiences was sadly missing from these meetings, with NAIC consumer observers being the only exception to date. He also wanted to note that NAIC staff support for the IAIS had been extremely helpful in providing a level of understanding with regard to the international issues discussed at IAIS meetings. Mr. Kochenburger said there was one major issue of concern with regard to the Aug. 4 memorandum presented at the IAIS Meeting in Quebec City, Canada, regarding the changes to the observer program in that the fees being contemplated would preclude participation by NAIC consumer observers as they are quite hefty. He said another concern is with regard to how much involvement the consumer observers or any other outside stakeholders might be allowed to have in IAIS meetings going forward, especially
with regard to the development of the IAIS principles, models and standards. Mr. Kochenburger said that, essentially, stakeholders would be invited to provide input or comment only at certain times during the process, specifically at the beginning of the process and again at the end, where vetting might be done on a limited basis. He said it highlights again the differences in transparency between the U.S. and other countries.

Sonja Larkin-Thorne (Consumer Advocate) expressed concern that an organization like the IAIS, which the NAIC has supported and helped to develop, would then turn its back on an organization like the NAIC that has worked hard to open itself up to invite consumer voices in to hear what the people have to say and to be open and inclusive, especially when it comes to those individuals who are most affected by the work that the NAIC does. She said that consumer representatives will continue to voice their opposition to this proposal. She was surprised that at the IAIS meeting in Quebec City, the IAIS was focused on promoting its cooperation with the supervisory colleges because supervisory colleges are based on inclusion and participation of the home country’s supervisory organization, as well as inviting in all of the stakeholders involved in these issues. So, she said consumer observers are struggling to understand this new direction that the IAIS is taking with regard to consumer participation of some of its international or global standards in the way finances and business are handled. With concern for that, Ms. Larkin-Thorne said that Mr. Bridgeland, Mr. Birnbaum and she have been working with National Conference of Insurance Legislators’ (NCOIL) International Issues Task Force, which recently issued a memorandum of support of state-based insurance regulation. She thanked state insurance regulators for being transparent and inclusive of consumer representatives and for hearing the voices of the constituents with regard to setting insurance regulatory models and standards.

Mr. Birnbaum said one of the many issues he follows at the IAIS is the Market Conduct Subcommittee, which has produced an application paper on the conduct of business. He said the NAIC hasn’t commented on it, but it is a wonderful compendium of ideas and resources for how different jurisdictions around the globe think about market regulation, take steps to protect consumers and ensure fair treatment of consumers. He said the NAIC would benefit from looking at the final product. Mr. Birnbaum said he also wanted to talk about the main thing that the IAIS is doing, which is basic financial requirements and global capital standards for internationally active insurance companies. He said the reason the IAIS is doing this at the behest of the Financial Stability Board is that it thinks that global capital standards will promote financial stability and that this solution of global capital standards implies that the problem causing the financial collapse was inadequate capital. Mr. Birnbaum said that while this certainly was the case for some in the banking industry engaging in risky financial activity, the principle causes of the financial collapse were defective and destructive products that collectively created systemic failure of the financial system and control fraud by company executives engaging their companies in the fraudulent sales of defective products for short-term gain at the long-term expense of their companies in the national and international system. He said to quickly illustrate these points, consider what companies have been designated as systemically important in 2006: Bank of America, Chase Bank, Wells Fargo and Citibank. However, none of the top 30 subprime lenders selling the products that brought down the financial system would have been so designated, yet none of them survived today. Or, consider the failure of private mortgage insurers; half of the private mortgage insurers failed. He asked whether an increase in capital would have prevented the collapse of these mortgage insurers, given that the failures were due to antiquated regulatory structures and nonexistent risk management by insurers because of their quest to secure business by providing ever-greater considerations or kickbacks to mortgage originators. The take-away from this is that not only should the IAIS respond to the problems imposed by the IAIS process, but also the NAIC can demonstrate that the proper response to a need for addressing systemic risk involves looking at risky products, including all of the life insurance products that guaranteed market returns and that together pose systemic risk, as well as figuring out ways to stop fraud before it happens.

6. Heard a Presentation on the FIO – Request for Comments on Metrics and Data for Monitoring Availability and Affordability of Auto Insurance

Birny Birnbaum (CEJ) said his comments to the Federal Insurance Office (FIO) in the handout on this topic. He said his main point is that the FIO came out with its statutory mandate to monitor the availability and affordability of insurance in traditional underserved areas, which could be an opportunity for the NAIC to demonstrate the vitality of state-based regulation. Or, it could be an invitation for the FIO to get into areas of state-based regulation because of inactivity on the part of state insurance regulators. He said he sees this as a challenge and an opportunity to the state insurance departments. The challenge is that the question before state insurance regulators is the availability and affordability of insurance in traditionally underserved communities, meaning low-income or minority communities, which clearly implies who is selling in those communities, at what price and on what terms, as well as who is able to buy at the prices and terms that are offered. The response from the insurance industry, both at the NAIC and at the FIO, is to say, on average, automobile insurance does not take a big portion of a person’s disposable income, and even for those who are, say, in the 20th percentile, they spend more on tobacco products than they do on automobile insurance, so their view is that that does not answer the question. It changes the
question to: What’s happening, on average, with automobile insurance? It does not ask: Are consumers who live in low-income and minority communities offered insurance on the same terms and prices as consumers in more affluent communities? Are they offered the same monthly premium payment plans, or do they have to use premium finance? Are they disproportionately affected by the new socioeconomic rating factors that companies are using, such as credit scoring, employment, occupation and price optimization? He said that, when thinking about the answers to these questions, it quickly becomes clear that state insurance regulators are not able to answer the kinds of questions that even federal regulators have been able to answer about home mortgage lending, so when questions were posed about the financial crisis, federal regulators, academics and fair-lending groups were able to look at home mortgage disclosure act data, in which mortgage lenders provide information on every mortgage application and the disposition of it. By looking at that data, all parties were able to see that subprime loans with abusive lending features were targeted at low-income or minority communities and sold to people who were qualified the better, prime-level loans. Also, using the data, they were able to determine that the foreclosure crisis was concentrated in low-income and minority communities because of these destructive, exploding loans. Additionally, the most effective response through the federal Dodd-Frank Wall Street Reform and Consumer Protection Act was not new powers or risk and in avoiding the problems and debates associated with credit scoring or with other fields. But, he said, there are at least three basic issues to consider before getting to that conclusion. One is the increased ability to individualize risk; i.e., to understand how the risks of individuals or small groups of people differ. This allows one to price the risk or the risk to premium limits the risk pool, which is also about risk spreading. There is far less spreading when the risks are individualized. He said it is important to care if it is done properly, because some people are going to be paying a lot more for insurance, and it may be because of risk or it may be due to other factors. But, when the ability to drive often means the ability to work, or the ability to own a home means the ability to afford insurance, regulators care about affordability. To use credit insurance as an example, regardless of the merits of credit scoring, the premium volume overall did not go down, so while the majority of people paid less in premium with credit scoring, a minority of people were paying a lot more, and these are people who, presumably, want to be able to drive and want to be able to own homes and other things. So, it is up to the regulators, not the private insurers or the industry, in regard to what extent they are going to allow that and how much risk-spreading or risk-sharing they will allow, because it is a fundamental question for affordability. The other two issues are: 1) do regulators have sufficient access to fully evaluate and obtain the information necessary; and 2) do regulators have the expertise to evaluate these models. He said he was struck by a statement made by the California Department of Insurance a few years ago that they needed to bring in an outside expert—a computer scientist—to evaluate one of the models. Mr. Kochenburger said that the risk classifications are only going to get more complicated, which means the need to evaluate them in order to determine if they are, in fact, accurate—and this is going to require more expertise. He asked if it would be a good idea for the NAIC to develop this in-house expertise or if the states should retain outside experts and pass that cost along to the insurers that bring that risk classification to the department for review. He asked that the risk classifications be reviewed to see if they are appropriate, given the current level of risk classifications of big data, telemetrics and price optimization. The existing models, with their principles against unfair discrimination, remain sound, but how regulators apply it is now different, so he would urge the NAIC to modernize the models.

7. **Heard a Presentation about Using Consumer Information as a Regulatory Tool in Title Insurance.**

Ms. Cude said the University of Georgia’s presentation relates to using consumer information as a regulatory tool. She said the specific example to which it would be applied is title insurance. She said the NAIC has done important work in the last several years and has made great strides in communicating with consumers, so she would like to remind the NAIC of what has been done in this area. She said all of us have limited resources, so we want to think about the fact that the regulatory purpose of information should be that there is a market problem and that giving consumers information, education or disclosures will empower consumers to participate in addressing the market problem. Ms. Cude said her definition of information would be giving a list of companies that sell a product in a state; education would be communicating in some way with consumers about what that product is, what it does, what features might be important, what decisions need to be
made; and disclosure would be specific to the product for the consumer and some aspect of the buying process. She said there is some overlap and, in fact, it is important to include in a disclosure some consumer education; e.g., definitions of key terms. She said one of the most important things the NAIC has learned about crafting insurance disclosures is determining the desired outcome. That is, what would consumers be able to do if they were to receive this information, education or disclosure? The answer to that question helps determine what the key messages are. She noted that consumers make psychological commitments to things. Providing consumers with information, a disclosure or an educational tool is needed before consumers make that commitment, and consumers often make that commitment before they sign the legal paperwork.

Mr. Birnbaum said Ms. Cude has done incredible work in this area over the past several years that is appreciated by consumer representatives and the NAIC. He said that there has recently been a reverse competition in title insurance markets; title insurance is not marketed to consumers, but rather it is marketed to mortgage lenders, banks, attorneys and real-estate professionals who can refer that consumer to title insurance companies, who essentially give a kickback to them for the referral. So, in May, the CFPB took enforcement action against TitleSouth, which is an affiliate of RealtySouth. He said that RealtySouth’s preprinted purchase contract explicitly directed consumers to use TitleSouth’s title and closing services and that this form violated the Real Estate Settlement and Procedures Act (RESPA), which requires clear disclosure that consumers have the right to shop around and prohibits requiring use of an affiliated title company. Mr. Birnbaum said another example is a June 2014 CFPB enforcement action, whereby Stonebridge Title paid a referral fee of 40% of the title premium to law firms for steering title business its way from 2008 through 2013. He said the entities referring this business to Stonebridge Title performed no services for the consumers who bought the title insurance, which was determined to be a violation of the RESPA. Mr. Birnbaum said the way to empower consumers in a market like this to refer it to the Title Consumer Shopping Tools (C) Working Group, which is in the process of developing a buyer’s guide for title insurance. He said that to get this into the hands of consumers at a time that makes a difference is the hard part. A simple message or disclosure should be given to a consumer at the right time with the right information about how to buy insurance. At closing is not going to work because they are in a situation where they can be pressured by saying if you choose a different title company, it could delay closing on your home, so one option is a one-page disclosure given to the consumer at the moment that a title insurance professional is in a position to make a referral to a title business. They have included a sample of this disclosure in the meeting materials for regulators. This would help provide the insights that Ms. Cude has helped bring to the forefront and that folks have gleaned, which is you need a simple message delivered at the right time in the right medium, and here the message is you have the right to shop around given to the consumer at the point when they can make a decision to shop around and to alert the consumer to the type of high-pressure sales tactics that might occur. The key messages are that consumers have the right to shop for and choose their provider of title insurance and settlement services; that a professional who recommends a title insurer, title agent or closing agent to consumers may make money to do this; and that the person making the recommendation must tell consumers if they will. This is called “an affiliated business arrangement,” and consumers should receive a separate notice about it. If consumers are told any of these things or if consumers feel they are not being treated fairly, they should contact their state insurance department and the CFPB. Mr. Birnbaum said in order for consumers to understand title insurance, the basic information necessary in a disclosure would include definitions of title insurance, settlement services, title search, examination, closing, and escrow. Such a disclosure would include where the consumer could obtain a buyer’s guide to title insurance.

Ms. Cude said what state insurance regulators can do is to revise the NAIC title agent and title insurer models to require a one-page disclosure; review the states’ title insurance information/education/disclosures (I/E/Ds) and evaluate their use and effectiveness; collaborate with the CFPB and other agencies responsible for I/E/Ds for mortgage lending, closing and settlement services; and treat I/E/Ds with the same rigor as other regulatory tools by, for example, using the NAIC Best Practices and Guidelines for Consumer Information Disclosures in their design and implementation.

Having no further business, the NAIC/Consumer Liaison Committee adjourned.
NAIC/American Indian and Alaska Native Liaison Committee  
Louisville, Kentucky  
August 18, 2014

The NAIC/American Indian and Alaska Native Liaison Committee of the NAIC/Consumer Liaison Committee met in Louisville, KY, Aug. 18, 2014. The following Committee members participated: John D. Doak, Chair, and Buddy Combs and Tyler Laughlin (OK); Lori K. Wing-Heier, Vice Chair, represented by Marty Hester (AK); Dave Jones represented by Geoff Margolis (CA); Marguerite Salazar (CO); Andrew Boron represented by Amanda Kimble and Anne Marie Skallerup (IL); Sandy Praeger represented by Randy Adair (KS); Scott J. Kipper represented by Glenn Shippey (NV); John G. Franchini (NM); Wayne Goodwin and Carol Obiol (NC); Laura N. Cali (OR); Mike Kreidler represented by Jason Siems (WA); and Ted Nickel and J.P. Wieske (WI).

1. Heard Opening Remarks

Commissioner Doak said the mission of the NAIC/American Indian and Alaska Native Liaison Committee is to provide a forum for ongoing dialogue between NAIC members and the American Indian and Alaska Native communities concerning insurance issues of common interest. Specifically, the Committee will provide a forum for an exchange of information and views on issues surrounding the availability of insurance for American Indian and Alaska Native consumers and tribal interests, an opportunity for American Indian and Alaska Native groups to bring insurance consumer protection issues to the attention of NAIC members, and a dialogue on best practices for dealing with insurance issues unique to sovereign tribal nations.

2. Heard a Presentation on Wisconsin Tribal Relations

Commissioner Nickel said Wisconsin Gov. Jim Doyle had requested all agencies make a special effort to reach out to tribal leaders to see what their needs are and if there is any way to help meet those needs. He was pleased to report that many needs had been identified and that they were in the process of being met. He also said they had learned a lot about tribal relations and best practices for ways of building relationships and working with tribal leaders on their concerns, which he was happy to share with this committee. Commissioner Nickel said there are 12 American Indian tribes in Wisconsin, most of which are in the northern part of the state, 11 of which are federally recognized and one that is not. He said that, as he drove from one tribe to another, he discovered that most of the communities were just like any other in the state, with people who have insurance needs and questions just like everywhere else and that the insurance department is there to help them. Commissioner Nickel said he was reminded of several key issues to consider: federal recognition, which is the legal relationship with the U.S.; tribal sovereignty, which is the inherent right to govern themselves; citizenship of duel capacity, both tribal and American; reservations and trust lands (in Wisconsin, 10 tribes have a reservation and one does not); employers (many tribes are the largest employer in their respective counties and include medical facilities, schools, fisheries, and convenience stores); community partners (tribes enter into agreements with local governments for health and protective services through memorandums of understanding (MOUs)); and consumer of insurance products. He said these are difficult issues to deal with; however, it is their duty as commissioners to sort through difficult issues in order to help and protect consumers, so that is what they did.

Commissioner Nickel said there are two main supporting organizations for tribes: the Great Lakes Inter-Tribal Council, Inc. (GLITC) and the Midwest Alliance of Sovereign Tribes (MAST). GLITC is a 501(c)(3) non-profit consortium of tribes that discusses and resolves issues requiring intertribal unity and attention. MAST represents 35 sovereign tribal nations of approximately 134,000 American Indian people in Iowa, Michigan, Minnesota and Wisconsin. Commissioner Nickel said MAST addresses key issues to protect and improve the economic opportunity, education and well-being of tribal people throughout the Midwest. He said it is governed by a board of directors comprised of the tribal chairperson, chief president or chief executive of each member tribe and that four officers (president, vice-president, secretary and treasurer) are elected from among this board.
Commissioner Nickel said Wisconsin Executive Order #39 was an affirmation of the government-to-government relationship between the Wisconsin and tribal governments, thereby creating the Wisconsin Division of Intergovernmental Relations. He said the order established state agency consultation policies and protocols, including a designated tribal liaison to foster relationships, mitigate conflicts and encourage communication. The Special Committee on State-Tribal Relations is a permanent committee of the Wisconsin State Legislature’s Legislative Council and was directed by statute to study issues related to American Indian tribes and bands in Wisconsin, and to develop specific recommendations and legislative proposals relating to those issues. Membership in this committee is composed of members of the Wisconsin State Senate, members of the Wisconsin State Assembly and six to 11 tribal members (ideally, one from each federally recognized tribe).

Commissioner Nickel said one need that the insurance department found was for financial literacy, so an educational presentation promoting financial security was created to be given at schools and to the elderly, in addition to being used for outreach to tribal groups, as well as to specific tribes. As part of the state’s Regional Enrollment Network, another area of outreach addresses tribes’ struggle with the federal Affordable Care Act (ACA), because tribal members were singled out or carved out and treated differently with regard to help with their healthcare, as their health care is provided through Indian Health Services (IHS), which is an agency within the U.S. Department of Health and Human Services (HHS), and includes a presentation to tribal health directors and training for navigators and consumer assistance counselors. Other outreach includes participation in GLITC, community visits, annual formal consultation, benefit fairs and collaboration between local, tribal, and federal officials. He said the results of these outreach efforts were evident in that issues were being raised before they got to the level of being complaints, so the number of complaints being reported went down. Commissioner Nickel said Wisconsin’s designated tribal liaison and outreach specialist, Ashley Natysin, spends hundreds of hours attending tribal meetings, tailoring educational programs to each tribe’s needs and sharing information about what the insurance department is, what it does and how it can help them as insurance consumers. He said Wisconsin is continuing its outreach to tribes and that he has an annual consultation meeting with tribal leaders in September.

Commissioner Salazar asked if Wisconsin’s consultations are generic to all tribes or if they are specific to each tribe’s needs. Commissioner Nickel said the consultations are set up in an intergovernmental way, so there will be a specific day of dealing with their banking commissioner with maybe insurance being on a different day with several hours to talk about insurance issues and then all other agencies, such a travel, at different times or days.

Commissioner Doak asked if Wisconsin would be willing to share its financial literacy presentation with other states. He said Oklahoma would like to give a similar type of presentation at the next meeting and asked if any other states would like to do an overview of activities in their state, as well. Mr. Hester said Alaska’s structure of natives is much different than that of the other states, but that it would be good for others to see the differences, as well as any similarities.

Commissioner Nickel said he would be happy to share what information he could and would send the materials to Lois Alexander for distribution to all Committee members.

2. Heard a Presentation on Tribal Liaison Development

Mr. Combs said Charles C. Caldwell (Midlands Management Corporation), who was scheduled to present on this agenda item, would be unable to present at this time due to flight issues. Mr. Combs said Oklahoma House Bill 1343 (H.B. 1343), which became effective Nov. 1, 2013, specifically allows tribes to obtain a certificate of authority to allow for ownership of insurance companies. Mr. Combs said tribes are becoming sophisticated in banking and other business ventures, with insurance potentially being the next step for tribes in Oklahoma. He said Oklahoma has been happy with the progress that has been made so far and that tribal leaders have deliberately chosen to move rather slowly due to a perceived need to learn about the insurance industry before they make any further steps into this business. Mr. Combs said he hopes Mr. Caldwell will be able to provide more details about his successful work with various attorneys and tribes in this regard, perhaps at the Fall National Meeting.

Commissioner Doak introduced Matt Chesnut (Chickasaw Nation) and asked him to give an impromptu presentation. Mr. Chesnut said he is a recent Harvard Business School graduate and works for the Chickasaw Nation Department of Commerce in Ada, OK, for the tribe of 55,000. He said the Department of Commerce oversees all government contracts and noted that the tribe is interested in diversifying its business portfolio, with $400 million to $500 million of income per annum,
away from gaming and into other for-profit businesses. Mr. Chesnut said the Chickasaw Nation’s ambassador at large is Neal McCaleb, and former U.S. Rep. Daniel David “Dan” Boren (D-OK) leads the Chickasaw Nation’s diversification efforts. He said the Chickasaw Nation is interested in learning from other tribes, as well.

Commissioner Nickel said Wisconsin is seeing the same type of activity, with tribes being interested in diversifying in order to get a well-rounded business portfolio away from gaming, so they can be self-sufficient without relying on gaming.

3. Discussed and Considered Comments Received on Tribal Contact Survey

Commissioner Doak said he had asked Ms. Alexander to expose for comment the survey results received from the states about tribal entities and contacts that this Committee might liaison with at future meetings. He said that, because scheduling did not permit meeting via conference call in the interim, the comments received during the exposure period would be discussed during this meeting. Commissioner Doak said a few updates and several new survey entries were received. He said the question for the Committee is how to proceed. He asked whether all of the entries should be posted on the Committee’s Web page in the format each was submitted, or should all of the entries be combined into one Excel spreadsheet before the posting it. He said another option might be to create two separate contact lists: one with the insurance department liaison contacts and one with the tribal liaison contacts. Commissioner Doak suggested that all of the information be compiled by state so it is easy to review, then it can be cross-referenced at some point in the future.

Commissioner Salazar agreed with that approach and said she would submit information on Colorado’s two tribes. Commissioner Nickel concurred with the approach, stating that it would promote uniformity and ease of use.

Commissioner Doak said he was just made aware that some of the states had not received the survey request, so he asked Ms. Alexander to list all of the survey information received by state into the format of the initial survey; to distribute the tribal contact survey to all states again; and to copy all commissioners on the distribution.

4. Discussed Next Steps

Commissioner Doak said he has a couple of ideas on next steps, but asked for suggestions from the Committee regarding its meeting at the Fall National Meeting. Mr. Combs suggested getting a representative from the U.S. Center for Consumer Information and Insurance Oversight (CCIIO) to present; getting, rescheduling Mr. Caldwell to present and having Oklahoma and Alaska present information about the tribes in their respective states. Commissioner Doak said one of the biggest obstacles Oklahoma ran into during its outreach was that the tribes did not know what the NAIC was; what the NAIC does; how the NAIC could help them; and why should they be interested in learning about insurance regulation.

Commissioner Doak said the Committee has compiled a rather lengthy and impressive list of contacts and suggested that the NAIC have a meeting at one of the next two national meetings, preferably the Fall National Meeting, where the ambassadors from every tribe would be invited to participate in the discussions of this Committee. He said the Committee could charge NAIC staff with finding a cultural center or someplace in Washington, DC, where we could have the meeting so we could introduce ourselves and give, perhaps a 45-minute to one-hour presentation to let the tribes know who the NAIC is and what the NAIC does, because it is important for tribal leaders to understand why they should be interested in the work of the state insurance departments and the NAIC.

Commissioner Nickel said such a meeting with the tribal leaders is a great idea and, in a perfect world, having one leader from each state represent all of the tribes in that state would be optimal. Having worked with intertribal relationships in Wisconsin, he said it is nearly impossible to determine which one person that would be for just the 11 tribes there. So, in order to get the word out to the tribes about who the NAIC is would require a presentation to a tribal leader, possibly one recommended by GLITC. Commissioner Nickel suggested Ms. Alexander would be in charge of extending the invitations, but it would be best to have a tribal leader or two from each state to see what the NAIC does rather than having lobbyists or the XYZ tribe attend on behalf of all the tribes. Commissioner Nickel said the Committee needs to communicate directly with tribal leadership that is as close to the ground level as possible.
Commissioner Goodwin noted that the Tribal Technical Advisory Group (TTAG) meeting is Nov. 19–20 in Washington, DC, which is adjacent to the Fall National Meeting. He said there might be some synergy in trying to set up the joint meeting at that time, so that tribal leaders attending the TTAG meeting who might also be interested in participating in a meeting with this Committee would be able to attend. He said the Committee should try to find out who is attending the TTAG meeting to see if they might be interested in attending a joint meeting with the Committee.

Commissioner Doak said he and the Alaska representative were talking about the idea that, if a meeting with tribal leaders were possible at the Fall National Meeting, it might be an opportune time to invite the tribal representatives to attend one or more of the other meetings on the NAIC agenda. He agreed with Commissioner Nickel that, if the Committee could obtain the list and somehow invite those representatives to attend, then either he or NAIC CEO Senator Ben Nelson would extend an invitation to tribal leaders from the other states not already represented, as this would encompass all of the states.

Commissioner Nickel said the difficult part would be deciding which tribal contact would be the most appropriate person with whom to liaise. That is, would it be the health person, the technical person, the financial person or perhaps someone with a much broader view of tribal needs than the health, technical or business person alone.

Commissioner Salazar said there is another technical advisory group, which is the HHS Secretary’s Tribal Advisory Committee, several of whom are the tribal leaders that represent the entire country. She suggested that the Committee also invite the member of this group, noting that they may also be part of the group mentioned by Commissioner Goodwin. She said tribal communication is a critical issue for Colorado, because there is such a disparity in the health care services for tribal members because of low funding for Indian health care services. Commissioner Salazar said there is a lot of money left on the table, because tribal members do not understand how to use the health insurance that is available to them. She also suggested that IHS Director Yvette Roubideaux be invited to participate in the meeting. The Committee can inform her on insurance issues, so she can then present the information to tribes as she makes her way around the country. This is another way the NAIC can help make progress in improving health care for tribal members.

Commissioner Goodwin asked about the availability of any NAIC funds (grants or other funding) for tribal attendance from any particular state at the meeting to make sure actual tribal leaders, not lobbyists, make it to the meeting. Commissioner Doak said that was an excellent idea and suggested the Committee make a specific request to the Executive (EX) Committee for funding.

Commissioner Nickel said that, as long as the special request from this Committee is well thought out and complete, indicating that the additional funding for the Fall National meeting would be the first step for this Committee and would be used to cover registration and travel for one tribal leader from each state, for a total of no more than 50, and if that special request were to be made to the Executive (EX) Committee, his opinion was that the Executive (EX) Committee might look at it favorably.

Commissioner Doak asked Ms. Alexander to assist with preparing the special request for additional funding that will be reviewed by this Committee prior to its presentation to the Executive (EX) Committee.

Stephanie Mohl (American Heart Association) said she used to be a staffer for the U.S. Senate Committee on Indian Affairs and recommended that the Committee contact the National Congress of American Indians (NCAI), which is the umbrella organization for federally-recognized tribes across the country. She said the NCAI’s leadership structure is similar to the NAIC’s structure, where tribal chairmen are the members of the NCAI. She said it would be a great organization to help the Committee when extending offers to tribal leaders and/or figuring out the best way to extend invitations. She also said that, rather than have the this Committee report to the NAIC/Consumer Liaison Committee, the time may have come for the this Committee to be on its own as a free-standing NAIC group with its own separate budget for tribal liaison representatives, much like the consumer liaison representatives.

Having no further business, the NAIC/American Indian and Alaska Native Liaison Committee adjourned.
The NAIC/Industry Liaison Committee met in Louisville, KY, Aug. 17, 2014. The following Committee members participated: Michael F. Consedine, Chair (PA); John M. Huff, Vice Chair (MO); Dave Jones (CA); Sharon P. Clark (KY); James J. Donelon represented by Craig Gardner (LA); Monica J. Lindeen (MT); Bruce R. Ramge represented by Robert Bell (NE); Scott J. Kipper (NV); John D. Doak (OK); Todd E. Kiser represented by Tanji Northrup (UT); Jacqueline K. Cunningham represented by Don Beatty (VA); Michael D. Riley (WV); and Tom C. Hirsig (WY). Also participating were: Lee Backus (DC); and Joseph R. Torti III (RI).

1. Discussed Ride-Sharing Issues

Commissioner Jones provided an overview of the Aug. 16 event on ride-sharing hosted by the Center for Insurance Policy and Research (CIPR). He explained the differences between car-sharing and ride-sharing. He said it appears that, by and large, car-sharing companies have commercial insurance to cover commercial liability and personal auto insurance does not apply when a car is being used in car-sharing mode. He added that some states have passed laws to require car-sharing facilitators to provide coverage. Where ride-sharing is concerned, he said there is disagreement regarding the applicability of the livery and for-hire exclusions that exist in personal auto insurance policies. He explained that ride-sharing has three separate time periods. The first time period begins when a ride-sharing driver turns the application on (i.e., the “app on” period). The second time period begins when a match has been made and a driver is proceeding to meet a passenger. The third time period begins when a passenger enters a vehicle and is transported to his or her destination. Commissioner Jones raised questions regarding whether commercial coverage should be primary or excess, and who should be responsible for the coverage. He reported that, in California, he has concluded that the so-called transportation network companies (TNCs) are the centerpiece of the economic activity in question, so he has recommended to the legislature that it require TNCs to carry $1 million in coverage for each of the three time periods. He said a recommendation from the CIPR event would be made to the NAIC leadership to continue considering ride-sharing issues through a working group that could put together a model consumer alert, consider insurance coverage gaps and consider new products that might emerge to serve the ride-sharing market.

Dave Snyder (Property Casualty Insurers Association of America—PCI) said that regulators, companies and consumers must establish the right balance between supporting innovation in the ride-sharing economy and protecting insurance product certainty in the highly competitive and effective system for personal auto insurance policies. He requested that policymakers provide bright-line rules defining when ride-sharing services are being provided, and require coverage for that period. He requested that regulators preserve the ability of insurers to take underwriting action. Finally, he requested that regulators establish proper notices and disclosures so people know when and where coverage is so that litigation costs can be minimized. He concluded by stating that, from a consumer perspective, premiums should not go up due to exposure caused by money-making TNC ventures.

Gus Fuldner (Uber) introduced Uber as a technology company that connects drivers and passengers to provide rides when they want where they want. He said that Uber operates in more than 160 cities and 34 countries, covers 45% of America and provides consumer benefits to both drivers and riders. He described Uber as a lead generator for drivers that helps them find economic opportunities, and as a way of helping consumers get around safely. He stated that many persons drink and drive not because they are unable to afford a cab, but because they are unable to find one that is convenient and reliable. Wanting to address misperceptions about the industry, he mentioned that Uber does not recommend a mandate for insurers, instead Uber fully supports insurers being able to amend policies to include or exclude activities in any way they like. He said Uber is working with insurers to develop innovative coverage solutions to expand options available to ride-sharing drivers. He said Uber is reducing drunk driving, which is one of the largest severity costs for auto insurance. Responding to the argument that taxis do the same thing, he suggested that taxis are only available in limited areas and their availability is not reliable or predictable. He added that many consumers are foregoing auto ownership because insurance rates are not based on usage. He said the notion that ride-sharing is a new and unique risk is misplaced and, based on SERFF data, every state on this Committee (except for the two that do not require the filing of commercial auto policies) have approved policies that provide excess coverage to people carrying others for a fee, thereby showing that insuring for ride-sharing is not unprecedented.
David Mack (Lyft) spoke about the origins of ride-sharing, and the new opportunities created by smart phones. Started in 2013 in San Francisco, Lyft is now in more than 70 markets across the country, providing tens of millions of rides. He said consumers’ positive reactions indicate they like and want ride-sharing to be available. He stated that ride-sharing is only one of many opportunities for insurers to find innovative and smart ways to let consumers use their own personal property the way they want to. He described Lyft as an information technology company, stressing that it does not own vehicles or employ drivers. He said ride-sharing is good for consumers and drivers, in part because its rating system removes anonymity from the equation. He said ride-sharing provides for the most effective use of vehicles and infrastructure and helps reduce a large number of challenge drivers. He spoke about Lyft’s partnerships with Mothers Against Drunk Driving and similar organizations. He concluded his remarks by saying that ride-sharing is just one part of broader revolution, and provided examples (Airbnb, tool-sharing and a trend toward cooking dinner in other people’s homes) of this innovative new type of consumer-to-consumer (C2C) transaction model.

Robert Detlefsen (National Association of Mutual Insurance Companies—NAGIC) spoke about the first time period laid out by Commissioner Jones. He addressed policy exclusions when a vehicle is available for commercial use. He predicted that if it is not already present in most policies, insurers will start adding such exclusionary language, because when insurers encounter unanticipated risks of losses that were not paid for, they move to exclude that risk. As an example, he cited terrorism insurance prior to the attacks of Sept. 11, 2001, which was seen as a negligible risk. Following the attacks, insurers all moved to exclude terrorism risk from commercial policies. He said that if the exclusions are written into policies, TNCs will have no alternative but to accommodate themselves to realities of the marketplace.

Eric Goldberg (American Insurance Association—AIA) said insurers adjust to technology all the time and pointed to telematics devices as an example. He said that more accurate, more granular information improves underwriting and rating. He added that regardless of how insurers gather data, they still have to comply with existing state laws about privacy, underwriting and ratings. He said ride-sharing is just a new way of doing an old thing: driving somebody for money, which is inherently more risky than personal use of automobile. Regardless of whether a driver is summoned by a dispatch, an app or a street hail, he or she is still driving somebody for money. Mr. Goldberg suggested that legislators and regulators make sure appropriate commercial coverage is in place to protect drivers, passengers, other cars and pedestrians. He said regulators should not allow for “gray areas” or cost-shifting to private passenger auto insurance.

Director Huff asked about mixing technology with driving; i.e., whether the companies provide best practices for the use of the handheld device or whether they have restrictions on the use of the device while driving.

Mr. Fuldner said Uber provides drivers with a clip to attach the phone to the dashboard. The Uber app for drivers is designed to not require manual interaction during a trip; it is a map resembling a commercial global positioning system. He said the app is designed to minimize potential distractions to drivers.

Mr. Mack said that, with a passenger in vehicle and the Lyft app on, drivers are much less likely to engage in other bad behavior with smartphones because they are not able to call, text or check scores while the app is on and vehicle is moving. He said the app actually makes operating the vehicle safer. He added that the app has a rating feature for consumers to hold drivers accountable.

Mr. Snyder said that, for most people, the most dangerous thing they do on a typical day is drive, and that this activity is not like lending someone a hammer or sharing a house. Drivers and riders are engaging with a stranger in the highest risk-exposure activity. He explained that is why PCI believes it is essential that the coverage be clear, be provided by those making money from the service, that it trigger upon when the vehicle becomes available and that the coverage be significant, primary and exclusive.

Commissioner Consedine asked the Uber and Lyft representatives what they communicate to drivers regarding insurance requirements and gaps. Mr. Mack said Lyf’s insurance coverage information is available on its website, and said the company encourages drivers to contact their insurers to make sure their policies work with TNC service. Mr. Fuldner said Uber has an explicit disclosure in its contract with drivers that the driver’s personal auto insurance policy may contain liability exclusions. He said Uber’s blog contains frequently asked questions for drivers and the full text of its California policy is provided online. Additionally, he said Uber makes it clear to drivers that it will not contact the driver’s personal auto insurance carrier about any incidents that take place during period two or period three.

Commissioner Jones asked the Uber and Lyft representatives whether their companies send communications to drivers during the first “app on” period advising them where to go to pick up riders, or otherwise give the drivers advice while the
app is on. Mr. Fuldner said Uber sends drivers information frequently; for instance, advising drivers in Louisville that the NAIC would be in town, so it might be a good weekend to drive and earn money. He said that, within the app, there are indicators for drivers to determine whether making themselves available is a good use of their time.

Commissioner Jones asked about data regarding whether drivers are “on the move” during period one. Mr. Fuldner said Uber does not try to interrupt drivers on a regular basis.

Mr. Mack pointed out that because of the way Lyft’s app works, they are always sending drivers some sort of information if the app is open. However, as independent contractors, they are not required to do anything in response to that information, and Lyft does not have data regarding what a driver is doing during the first “app on” period because there is no defined behavior.

Commissioner Jones raised the question of whether TNCs should be responsible during period one, and stated his view that because it is part of the same economic activity, he believes there ought to be coverage.

Sonja Larkin-Thorne (Consumer Advocate) discussed the content of insurance policy exclusions. She said that the one consistent exclusion in insurance policies, written in English so it can be understood by consumers, is the exclusion regarding liability or damages arising out of ownership maintenance or use of a vehicle while it is rented or leased to others by an insured. She said it is consistent in every major insurance policy she has read during her 40 years in the insurance business. She recommended the ride-sharing representatives hire someone to read their drivers’ policies so they can properly educate drivers about their exposure.

2. Discussed New IRS Rules Regarding Tax Treatment of Longevity Annuities in 401(k) Plans

Jason Berkowitz (Insured Retirement Institute—IRI) said that, historically, the use of longevity annuities in 401(k)s or other retirement accounts was impeded by tax rules that required minimum distributions starting at age 70½. On July 1, the U.S. Department of the Treasury announced that it had finalized a new qualifying longevity annuities contract (QLAC) rule, under which the value of annuities up to specified limits will be excluded from account balances for purposes of calculating required minimum distributions.

Mr. Berkowitz said the public reaction to the technical tax rule change has been astonishing, by and large lauding the Treasury for making a product that helps plan for retirement more readily and broadly available. He said his focus in presenting to the Committee is to help commissioners “connect the dots” and understand why a tax rule issued by the Treasury is important for consumers in their states. Longevity annuities allow consumers to transfer risk; in fact, they are insurance for the single largest risk facing millions of Americans: the risk they will outlive their assets. For a couple who are both 65 years of age, there is a 60% chance one of them will live to age 90, and a 35% chance one of them will live to age 95. As people move out of the workforce, they have to figure out how to draw down their assets while maintaining the lifestyle they want.

Mr. Berkowitz said insurance regulators are likely to see new product filings and new language in existing contracts; however, he does not anticipate a huge spike right away, as companies will first need to evaluate and try to figure out how to get into the business and how to understand consumer demand.

Commissioner Consedine said he would circulate a list of questions among the Committee to get back to the IRI in preparation for the next Committee meeting.

3. Reaffirmed its Mission Statement for 2015

Director Huff made a motion, seconded by Commissioner Clark, to reaffirm the Committee’s mission statement for 2015 (Attachment One). The motion was unanimously adopted.

Having no further business, the NAIC/Industry Liaison Committee adjourned.
NAIC/INDUSTRY LIAISON COMMITTEE

2015 Mission Statement

The mission of the NAIC/Industry Liaison Committee is to meet at least twice a year to discuss issues of common interest to regulators and insurance industry representatives.

NAIC Support Staff: Mark Sagat and Chara Bradstreet
NAIC/STATE GOVERNMENT LIAISON COMMITTEE

2015 Mission Statement (Attachment One)................................................................................................................................. 15-5
The NAIC/State Government Liaison Committee met in Louisville, KY, Aug. 16, 2014. The following Committee members participated: Adam Hamm, Chair (ND); Monica J. Lindeen, Vice Chair (MT); Jim L. Ridling (AL); Jay Bradford represented by William Lacy (AR); Dave Jones (CA); Andrew Boron represented by Lysa Saran (IL); Sandy Praeger (KS); Sharon P. Clark (KY); Joseph G. Murphy (MA); Scott J. Kipper (NV); Roger A. Sevigny (NH); Mary Taylor represented by Joseph Garber (OH); John D. Doak represented by Buddy Combs (OK); Joseph Torti III (RI); Julie Mix McPeak represented by Tony Greer (TN); and Ted Nickel represented by J.P. Wieske (WI). Also participating were: Kevin M. McCarty (FL); Warren Byrd (LA); Jacqueline K. Cunningham (VA); and Tom C. Hirsig (WY).

The following state legislators were present: Sen. Travis Holdman (IN); Sen. Dan Morrish (LA); Sen. Delores Kelley (MD); Sen. Neil Breslin (NY); and Rep. George Keiser (ND).

1. Heard an Update on Health Insurance Issues

Commissioner Praeger provided an update on health insurance issues. She remarked that while the federal Affordable Care Act (ACA) implementation has encountered some problems, it has led to the positive development of more people having insurance coverage. She conveyed the importance of the federal government relying on state insurance regulators’ expertise given the current lack of state regulatory experience at the U.S. Department of Health and Human Services (HHS) and the Center for Consumer Information and Insurance Oversight (CCIIO). Commissioner Praeger noted the federal government setting network adequacy standards for federal exchanges as an area of concern and remarked that federal standards are not in the consumers’ best interest. She said state insurance regulators have raised questions about a lack of coverage for services outside consumers’ home states, exclusion of teaching hospitals or specialty hospitals from networks, and narrower networks for some qualified health plans (QHPs). Commissioner Praeger underscored that states are best equipped to balance access, cost and geographic variables, and are working on ensuring consumers understand their plans’ network features. She noted that the NAIC is reviewing and updating its Managed Care Network Adequacy Model Act (#74). With regard to the upcoming 2015 open enrollment period, she said state insurance regulators have identified several areas for improvement, including: 1) access to accurate plan information; 2) the back-end enrollment process; and 3) avoiding last-minute rule changes. She also noted concerns about regulations requiring fixed indemnity plans to be supplemental to comprehensive plans. Commissioner Praeger expressed concerns about navigator and assister regulations and their preemption of state oversight laws. She also noted concerns about regulations requiring fixed indemnity plans to be supplemental to comprehensive plans. She said that while the final regulation provides flexibility for states to define the attestation that carriers must secure from enrollees and the timing, states will need to work together to reduce administrative burdens on carriers. Commissioner Praeger expressed concerns about navigator and assister regulations and their preemption of state oversight laws. She also noted concerns about regulations requiring fixed indemnity plans to be supplemental to comprehensive plans. She also said states and the federal government must work together to reduce administrative burdens on carriers. Commissioner Praeger discussed the importance of state insurance regulators and carriers knowing what the standards for essential health benefits (EHB) benchmark plans will be for 2016 and beyond. She also emphasized that states will need guidance on how they can implement innovation waivers in 2017, and noted the Health Care Reform Regulatory Alternatives (B) Working Group’s work to review potential options for states.

Sen. Holdman asked about the effect the court rulings regarding federal exchange subsidies will have on ACA implementation. Commissioner Praeger noted that there are conflicting court rulings, and this could ultimately be decided at the U.S. Supreme Court level, but it would be problematic for ACA implementation if consumers in federal exchanges cannot receive subsidies.

2. Discussed International Issues

Commissioner McCarty provided an update on international activities. He said the collaboration between the NAIC and the National Conference of Insurance Legislators (NCOIL) on international issues has been a positive development and underscored the importance on focusing on international capital standards development. Commissioner McCarty stated that the NAIC remains engaged in international discussions regarding financial stability and insurance group supervision and emphasizes that any potential application of group capital standards should be compatible with current U.S. standards. He discussed the International Association of Insurance Supervisors’ (IAIS) initiatives driven by the Financial Stability Board (FSB) designation last year of global systemically important insurers (GSIs). Commissioner McCarty noted that the IAIS is...
moving rapidly to develop international standards for basic capital requirements (BCR) and higher loss absorbency (HLA) capital buffers to apply to GSIs. He also noted the IAIS’s work to develop a risk-based global insurance capital standard (ICS) for internationally active insurance groups, with the goal of implementation by 2019. Commissioner McCarty cautioned that many regulatory questions need answers before the U.S. can embrace a global capital standard. He stated that the IAIS is also field testing its ComFrame project, which seeks to provide a common framework for supervisory coordination for internationally active insurance groups. The IAIS is aiming for adoption in October 2018, with implementation following in 2019. He articulated that while the NAIC has been supportive of the overarching ComFrame goals, it should not be rigid in its guidance for supervisors or suggest unwarranted new burdens on insurers simply because they operate internationally. Commissioner McCarty also highlighted state insurance regulators’ work to enhance supervision of globally active insurance entities through better coordination, particularly through supervisory colleges. He discussed recent updates on the U.S.-European Union (EU) Dialogue Project, with its current primary areas of focus on professional secrecy, group supervision and reinsurance collateral. He said the NAIC’s continued engagement in this project is reflected in the Way Forward plan, which was updated recently to reflect new developments and progress achieved to advance mutual understanding and recognition. Commissioner McCarty said the NAIC met with representatives of the U.S. Trade Representative (USTR) and the U.S. Department of Treasury in July 2014 to discuss the concept of a covered agreement. He noted that although several important U.S. priorities were discussed, many unanswered questions remain, and further discussions are necessary regarding the timing, scope and degree of state insurance regulator involvement in pursuing such an agreement. Commissioner McCarty emphasized that the international insurance agenda is moving at an accelerated pace, and it is critical for state insurance regulators to collaborate with state legislators to be involved in the development of these initiatives.

3. Discussed PBR

Superintendent Torti provided an update on principle-based reserving (PBR). He said the NAIC adopted a revised Standard Valuation Law (#820) in 2009, thus introducing a new method for calculating life insurance policy reserves to more easily adapt reserving requirements for changing products. Superintendent Torti said PBR would replace the current formulaic approach to determining policy reserves with an approach that more closely reflects the risks of today’s highly complex products. He said PBR seeks to address, among other things, the perceived reserving redundancies that have precipitated the use of captives for reserving purposes. He said PBR includes two law changes and a new Valuation Manual. The NAIC adopted, in addition to the revised Model #820, a revised Standard Nonforfeiture Law for Life Insurance (#808) and a Valuation Manual in 2012. He noted that once at least 42 states (a supermajority), representing 75% of the total U.S. premium, adopt the revisions to Model #820, PBR will become operative and be phased in over the following three years. He said 18 states have enacted legislation to implement PBR, and Texas has enacted amendments to its legislation for Model #808. Superintendent Torti noted that five additional states have introduced, or are expected to introduce, legislation in 2014: Alaska, Illinois, Missouri, New Jersey and Pennsylvania. This would be 23 states and 44.3% of the premium trigger for the current year. He noted that while Missouri has introduced legislation, it does not expect to bring it to a vote until 2015. Superintendent Torti emphasized that legislative understanding and support will be crucial to achieving a supermajority adoption by state legislatures in order to enable the Valuation Manual and PBR. He said the NAIC is currently developing a regulatory review system that works to ensure effective and consistent implementation of the PBR framework. Superintendent Torti said that once the regulatory review process is built, a PBR pilot will be conducted, much like what was done with the Own Risk and Solvency Assessment (ORSA). He said training courses and programs will also be developed for regulators. Superintendent Torti said the Principle-Based Reserving Implementation (EX) Task Force is discussing PBR exemptions for small companies, and the Task Force expects the exemptions to be risk-sensitive and to look at products written by the company, as well as the company’s solvency position or RBC.

Sen. Kelley commented that states may not be aware of PBR legislative developments and requested that the NAIC post on its website the various states’ enacted legislation and provide educational information. She also encouraged communication with state legislatures. Superintendent Torti responded that the two model laws and a legislative brief are available on the NAIC’s website and said the NAIC will provide a list of states that have enacted PBR legislation and the statutory citations on its website. He agreed with Sen. Kelley’s suggestion that a general mailing to state legislatures would be beneficial. Commissioner Hamm also noted that NAIC staff will work with individual states to ensure that legislation is appropriately tailored to that state’s specific needs.

4. Discussed Ride-Sharing Issues

Commissioner Jones discussed the upcoming NAIC event to examine emerging insurance regulatory issues related to ride-sharing. He noted that this is an area of keen interest for state insurance regulators and that California has held investigative
hearings on these issues. He said that while the operation of ride-sharing companies is not primarily about insurance, there are some insurance issues surfacing. Commissioner Jones stated that the goal of the NAIC event is to provide a forum for a productive dialogue between state insurance regulators, consumers, insurers and ride-sharing companies to discuss specific insurance matters, such as risk and liabilities, exploring whether or not there are insurance coverage gaps with personal and commercial auto insurance policies, and discussing particular actions states have taken in response to these evolving issues. He noted that some state insurance regulators have issued consumer alerts concerning ride-sharing and noted this may be a course of action the NAIC could pursue, among other initiatives such as collecting data from states. Commissioner Jones said he hoped the forum would generate suggestions for the NAIC and state insurance regulators on a path forward to address emerging insurance regulatory matters.

Rep. Keiser asked if state insurance regulators plan to examine the interplay of state workers’ compensation laws with regard to ride-sharing as part of its analysis and cited North Dakota’s exclusive remedy clause as an example of an insurance legal issue that could arise. Commissioner Jones responded that this is an important matter to explore and committed to including this topic as part of the NAIC’s discussions.

Sen. Kelley noted that there has been substantial action in Maryland regarding the regulation of ride-sharing companies and stated that the NAIC and state insurance regulators may want to look at these developments as they comprehensively explore these issues.

5. Discussed the FIO Auto Insurance Affordability Study

Commissioner Murphy informed the committee that the Federal Insurance Office (FIO) has begun undertaking a study of the availability and affordability of auto insurance. He said the NAIC submitted a comment letter in June 2014 emphasizing state insurance regulators’ commitment to policyholder protection while also facilitating a competitive and stable marketplace for insurance products. He said state insurance regulators strive to maintain a critical balance between insurer solvency and reasonable rates, which can be challenging in certain areas or for certain policyholders that insurers view as presenting a greater risk of loss. The letter also acknowledged that understanding and improving availability and affordability for auto insurance may require holistic solutions that extend beyond insurance and insurance regulation. Commissioner Murphy noted that the Auto Insurance (C/D) Study Group has been reviewing issues related to low-income households and the auto insurance marketplace, and has worked to compile a report about auto insurance availability and affordability. The report addresses the competitiveness of auto insurance markets, uninsured motorists, insurer initiatives, and state laws and regulations, as well as describes particular actions states have taken related to availability and affordability initiatives. He said the report’s intent is to serve as a resource for state insurance regulators as they continually evaluate these issues. Commissioner Murphy also noted that the Study Group continues to consider the possibility of collecting data from insurers and study other emerging issues that could affect low-income consumers, such as the use of price optimization by auto insurers.

6. Reaffirmed its Mission Statement for 2015

Upon a motion by Commissioner Lindeen, seconded by Commissioner McCarty, the Committee reaffirmed its mission statement for 2015 (Attachment One).

7. Discussed the Long-Term Care Partnership Program

Rep. Keiser expressed concerns about budgetary pressures facing states due to increased health and human services costs and suggested that NCOIL, the NAIC and other state legislative organizations consider revisiting the Long-Term Care Partnership Program and exploring alternative solutions. Commissioner Kipper responded that the Senior Issues (B) Task Force plans to discuss this issue at its upcoming meeting, as well as strategies for encouraging the federal government to reengage in issues surrounding this program.

Having no further business, the NAIC/State Government Liaison Committee adjourned.
NAIC/STATE GOVERNMENT LIAISON COMMITTEE

2015 Mission Statement

The mission of the NAIC/State Government Liaison Committee is to discuss issues of common interest to regulators and state officials.

NAIC Support Staff: Mark Sagat and Chara Bradstreet