

Draft Pending Adoption

Draft: 8/27/15

NAIC/State Government Liaison Committee
Chicago, IL
August 15, 2015

The NAIC/State Government Liaison Committee met in Chicago, IL, Aug. 15, 2015. The following Committee members participated: Monica J. Lindeen, Chair (MT); John M. Huff, Vice Chair (MO); Jim L. Ridling represented by Mark Fowler (AL); Lori Wing-Heier (AK); Karen Weldin Stewart represented by Hardy Drane (DE); Anne Melissa Dowling represented by Cynthia Lamar (IL); Sharon P. Clark (KY); Al Redmer Jr. (MD); Roger A. Sevigny (NH); Amy L. Parks represented by John G. Franchini (NM); Nicole Lamboley (NV); Mary Taylor represented by Andy Hardy (OH); John D. Doak (OK); Joseph Torti III (RI); Julie Mix McPeak (TN); and Ted Nickel (WI). Also participating were: Allen W. Kerr (AR); Kevin M. McCarty (FL); Tom Travis (LA); Patrick M. McPharlin (MI); Buddy Combs (OK); Kristen Erway (PA); Ángela Weyne (PR); Raymond G. Farmer (SC); David Mattax and Melissa Hamilton (TX); Todd E. Kiser (UT); Susan L. Donegan (VT); Lonnie Johns-Brown and Jim Odiorne (WA); and Tom Glause (WY).

The following state legislators and government officials participated: Sen. Mia Costello (AK); Rep. Kurt Olson (AK); Sen. Jason Rapert (AR); Sen. Travis Holdman (IN); Rep. Steve Riggs (KY); Secretary Ambrose Wilson IV (KY); Sen. Dan Morrish (LA); Rep. Vincent Pierre (LA); Sen. Delores Kelley (MD); Rep. Lana Theis (MI); Sen. David O'Connell (ND); Rep. George Keiser (ND); Sen. Jim Scheer (NE); Sen. Benny Shendo Jr. (NM); Sen. Jay Hottinger (OH); Rep. Glen Mulready (OK); Sen. John Sparks (OK); Sen. José R. Nadal-Power (PR); Rep. Brian P. Kennedy (RI); Jamey Goldin (SC); Rep. Mike Gambrell (SC); Sen. Roger Picard (RI); Rep. John Frullo (TX); Rep. Kelly Keisling (TN); Rep. Jim Dunnigan (UT); Rep. Bill Botzow (VT); Rep. Kathy Keenan (VT); Rep. Brandon Vick (WA); and Rep. Lloyd Larsen (WY).

1. Adopted its 2014 Fall National Meeting Minutes

The Committee did not meet at the Spring National Meeting. Commissioner Clark made a motion, seconded by Commissioner Huff, to adopt the Committee's Nov. 16, 2014, minutes (*see NAIC Proceedings – Fall 2014, NAIC/State Government Liaison Committee*). The motion was unanimously adopted.

2. Discussed the Credit for Reinsurance Model Act (#785)

Superintendent Torti provided an overview of the revised *Credit for Reinsurance Model Law* (#785) and the *Credit for Reinsurance Model Regulation* (#786) models adopted by the NAIC in 2011. He said 32 states have adopted Model #785, representing 66% of premium. He said five additional states are considering enacting the legislation, which would raise the premium share to 93%. Superintendent Torti noted that, although Model #785 is not currently required for accreditation by the states, it is appropriate for all states to adopt this model.

He discussed the NAIC process that has been developed for evaluating other jurisdictions' oversight of reinsurers and establishing qualified jurisdictions. He said seven foreign jurisdictions have been placed on the NAIC list of qualified jurisdictions: Bermuda, France, Germany, Ireland, Japan, Switzerland and the United Kingdom; he said the Qualified Jurisdiction (E) Working Group may also consider additional countries in 2016.

Superintendent Torti also discussed the peer review system established by the NAIC for the certification of foreign reinsurers by the states. He said this system provides foreign reinsurers the opportunity to "passport" through the U.S., whereby one state recognizes the certification of a reinsurer by another state, thereby improving uniformity amongst the states and simplifying the application process for certified reinsurers. He said 28 foreign reinsurers to date have been certified for passporting purposes under this peer review system. Superintendent Torti said that, in light of this progress, the NAIC is not convinced that a covered agreement on reinsurance collateral is necessary.

3. Discussed Principle-Based Reserving (PBR)

Commissioner McPeak provided an update on principle-based reserving (PBR). She said PBR is a new method for calculating life insurance policy reserves and includes two law changes and a new *Valuation Manual*. Once a supermajority of at least 42 states representing 75% of total U.S. premium enact the revisions to the *Standard Valuation Law* (#820), PBR

Draft Pending Adoption

will become operative and will then be phased in over the subsequent three years. To date, 36 states have enacted PBR legislation, representing 60.2% of total U.S. premium. Four other states, representing 9.2% of premium, have introduced, or plan to introduce, PBR legislation this year. Commissioner McPeak said legislative understanding and support is crucial to achieving the supermajority needed.

Commissioner McPeak said a regulatory review system is being developed that will work to ensure effective and consistent implementation of the PBR framework, and noted the creation of a new PBR Valuation Analysis (E) Working Group to help ensure compliance with the *Valuation Manual* and consistent industry treatment. She noted that state and NAIC resource needs are still being evaluated. She said an actuarial review process for PBR is being built, noting that the NAIC plans to conduct a PBR pilot program to help companies implement PBR, as well as conduct training courses.

Sen. Kelley suggested that representatives from the states that have not yet enacted Model #820 look up the model on the NAIC website.

Rep. Keiser stated his concern that his and other smaller states will not be able to hire adequate regulatory staff to manage this new system, and sought a guarantee that the NAIC will not allow the organizational structure it is putting together, with which states can contract for actuarial services, to become an income-producing center. Commissioner McPeak responded that the NAIC is not mandating any specific review process for the states, adding that the states have several options. Commissioner Lindeen stated that there will be no charge to the states.

4. Discussed Cyber Risk

Director Farmer gave an overview of the NAIC's efforts regarding cyber risk. He discussed the "Principles for Effective Cybersecurity: Insurance Regulatory Guidance," document that was adopted by the Executive (EX) Committee and Plenary in June. He noted the Cybersecurity and Identity Theft Coverage Supplement for the annual financial statement that was drafted by the Cybersecurity (EX) Task Force to gather financial performance information about insurers writing cyber security coverage. Director Farmer also discussed the "Consumer Bill of Rights" that has been developed for policyholders whose data has been breached. He said the document was exposed for a public comment period beginning July 23, and it will be discussed at the Cybersecurity (EX) Task Force session at this national meeting. He said the Cybersecurity (EX) Task Force will begin a review of all NAIC existing protocols, model laws and regulations regarding data security for insurers.

Director Farmer said the U.S. Congress has held numerous hearings on cyber activities and is slated to take up legislation this fall. He said any federal cybersecurity legislation should not disregard the existing state regulatory framework and should not inhibit ongoing efforts in the states to develop laws and regulations in the best interest of insurance consumers.

Commissioner Lindeen what state legislators can do to protect businesses and consumers from data breaches. Director Farmer replied that legislative partners will have a major role in looking at specific legislation that may be developed by the Cybersecurity (EX) Task Force for insurance consumers.

Sen. Kelley applauded the good work being done by the NAIC, and asked if the NAIC is communicating this to the Federal Insurance Office (FIO) and congressional offices. Commissioner Lindeen affirmed that the NAIC is doing everything it can to communicate with its federal partners on this topic. Director Farmer confirmed that the NAIC has met with the U.S. Department of the Treasury, the FIO and the Federal Deposit Insurance Corporation (FDIC) a number of times, noting that these meetings will continue.

5. Discussed International Issues

Commissioner McCarty led a discussion on international issues. He said the U.S. Congress has increased interest and scrutiny over the setting of insurance standards, particularly regarding the development of international capital standards. He noted his testimony at congressional hearings in the U.S. House of Representatives and the U.S. Senate earlier this year. He discussed NAIC participation in the International Association of Insurance Supervisors' (IAIS) midyear conference and global seminar in China, and explained the revised IAIS public consultation process. Commissioner McCarty underscored that the NAIC and its members are clearly on record strongly opposing the IAIS closing of its meetings to observers.

Draft Pending Adoption

Commissioner McCarty spoke about regulatory efforts on group capital and the development of the Common Framework for the Supervision of Internationally Active Insurance Groups (ComFrame) and a global insurance capital standard (ICS). He said the NAIC, partnering with the Federal Reserve and the FIO, has been successful at slowing down the timetable for developing an ICS. Commissioner McCarty also discussed the NAIC's concerns over the Financial Stability Board (FSB) and the Financial Stability Oversight Council (FSOC) "too big to fail" designations of systemically important financial institutions (SIFIs) and the lack of a clear exit strategy. He also noted the NAIC's efforts on trade and work with the Office of the United States Trade Representative (USTR).

Rep. Kennedy thanked the NAIC for remaining steadfast on encouraging open meetings at the IAIS. He stated that the National Conference of Insurance Legislators (NCOIL) has been working closely with the NAIC on this issue. He noted that NCOIL's International Issues Task Force has developed an international "toolbox" that is available on NCOIL's website.

Rep. Keiser stated that the discussion on lack of transparency at the international level reminded him of comments he had made previously on a lack of transparency at the NAIC. He said sometimes there is good justification for closing certain meetings, such as when regulators discuss specific companies. He asked if there are any similar justifications for closed meetings at the IAIS. Commissioner McCarty responded that the NAIC is always looking for ways to increase transparency, and recognizes the importance of having good justification for closing a meeting to the public. He stated that the concept of open proceedings is counter-cultural at the IAIS, and that the NAIC will continue to promote an open process.

Sen. Rapert commented that the NAIC, NCOIL and state legislators in general have a common goal to ensure the continued state-based regulation of insurance in the U.S. He stated that the NAIC has the ability to garner the support and cooperation of a large "army" of state legislators who can help articulate the issues, handle the policies and engage with the federal government to halt or reverse federal encroachment.

Sen. Kelley stated her concern regarding the lack of transparency on the international level, and noted that this is a situation where the U.S. Congress could be helpful. Commissioner McCarty responded that it is important to point out in every venue possible that the IAIS can set what standards they want, but the Federal Reserve and U.S. state legislatures will ultimately be responsible for enacting standards in the U.S.

Rep. Kennedy asked if the NAIC has considered passing a resolution that state legislators could introduce in their states calling for more openness at the international level. He suggested that, once the states enact it, it could be passed up to the federal level. Commissioner Lindeen agreed to take the idea to the Executive (EX) Committee for consideration.

6. Discussed Health Reform Issues

Commissioner Sevigny, who chairs of the Health Insurance and Managed Care (B) Committee, provided a brief overview of health reform issues. He said the third open enrollment period for the federal Affordable Care Act (ACA) is coming up in November. He added that carriers must submit applications to sell on the health insurance exchanges by Aug. 25, and state insurance regulators are currently reviewing rates and forms to ensure compliance with state laws and regulations. He noted that the Network Adequacy Model Review (B) Subgroup is continuing to discuss possible amendments to the *Managed Care Plan Network Adequacy Model Act* (#74). The ERISA (B) Working Group has finished drafting a white paper, *Stop Loss Insurance, Self-Funding and the ACA*, on the potential impact of small group self-insurance on the reformed marketplace, which will be considered for adoption by the Executive (EX) Committee and Plenary at this national meeting. Commissioner Sevigny added that the Consumer Information (B) Subgroup has drafted proposed changes to the Summary of Benefits and Coverage (SBC) template for use in 2017. The NAIC is funding consumer testing on these changes to ensure regulator access to results. Once the testing is completed, the Consumer Information (B) Subgroup will be convened to improve the proposal before sending it to the U.S. Department of Health and Human Services (HHS).

Commissioner Sevigny added that the Senior Issues (B) Task Force continues to work on ways to improve long-term care insurance, including better disclosures for consumers and improved rating methods and information. He said the Health Insurance and Managed Care (B) Committee will discuss air ambulance costs, balanced billing, formularies and the cost of insurance and health care.

Having no further business, the NAIC/State Government Liaison Committee adjourned.

Draft Pending Adoption

W:/National Meetings/2015/Summer/Cmte/State Gov/StateGovernment.docx

2017 Mission Statement

NAIC/STATE GOVERNMENT LIAISON COMMITTEE

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

W:\National Meetings\2016\Fall\Cmte\State\2017_Mission.docx