

Mitchell, Williams, Selig, Gates & Woodyard, P.L.L.C.

National Association of Insurance Commissioners (NAIC) Summer 2022 Meeting Summary

The National Association of Insurance Commissioners (NAIC) recently held its Summer National Meeting virtually and in person in Portland, Oregon. This summary highlights issues that various NAIC groups addressed at the recent meeting.

For more information, please contact Attorney Zach Steadman: (501) 688-8892, zsteadman@mwlaw.com. *Attorney Savannah Johnston assisted with drafting this summary.*

What You Need to Know:

- A Pet Insurance Model Act was adopted by the NAIC during the Joint Meeting of the Executive Committee and Plenary. The model defines regulatory structure related to pet insurance including insurance producer training, general policy requirements and limitations on insurer claim denials.
- Amendments were adopted to the 2023 Valuation Manual. In total, nine amendments were made that are largely technical in nature.
- Certain amendments and additions to the Market Conduct Annual Statement (MCAS) Blanks were adopted including a Life MCAS addition of Accelerated Underwriting (AU) data, definitions, and interrogatories
- *Regulatory Considerations Applicable (But Not Exclusive) to Private Equity (PE) Owned Insurers* was adopted.
- Work continues on the various workstreams within the Climate and Resiliency (EX) Task Force.
- The Innovation, Cybersecurity, and Technology (H) Committee adopted a Request for Model Law Development received from the Privacy Protections (H) Working Group regarding a new model law to enhance to enhance consumer protections and obligations of regulated entities to reflect updates in innovations.

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Joint Meeting of the Executive (EX) Committee and Plenary

The Joint Meeting of the Executive (EX) Committee and Plenary took place on Saturday, August 13, 2022 at the NAIC Summer National Meeting, and the agenda can be found [here](#). Below is a summary of the meeting:

Consider Adoption of the Aug. 11 Report of the Executive (EX) Committee

The August 11, 2022 Report of the Executive (EX) Committee was received and is included in the meeting materials as Attachment One.

Consider Adoption by Consent the Committee, Subcommittee, and Task Force Minutes of the Spring National Meeting, April 4–8

The Committee, Subcommittee, and Task Force Minutes of the Spring National Meeting were adopted without discussion or objection.

Reports from the following Committees were received, and summaries of the Reports are provided in the meeting materials:

- Life Insurance and Annuities (A) Committee - Attachment Two
- Health Insurance and Managed Care (B) Committee - Attachment Five
- Property and Casualty Insurance (C) Committee - Attachment Six
- Market Regulation and Consumer Affairs (D) Committee - Attachment Eight
- Financial Condition (E) Committee - Attachment Thirteen
- Financial Regulation Standards and Accreditation (F) Committee - Attachment Sixteen
- International Insurance Relations (G) Committee - Attachment Seventeen
- Innovation, Cybersecurity, and Technology (H) Committee - Attachment Eighteen

Consider Adoption of Amendments to the Valuation Manual

Director Dean L. Cameron (ID) explained that any change to the Valuation Manual ultimately requires adoption by the NAIC by an affirmative vote representing: 1) at least three-fourths of the members of the NAIC voting, but not less than a majority of the total membership; and 2) members of the NAIC representing jurisdictions totaling more than 75% of the relevant direct premiums written.

Director Judith L. French (OH) stated that there were nine amendments to the Valuation Manual up for a vote, and the amendments are included as Attachment Three. The amendments are largely technical in nature and were adopted by the Life Insurance and Annuities (A) Committee on July 20, 2022. These amendments were adopted without discussion or objection in accordance with the NAIC's special voting rules.

Consider Adoption of a New Actuarial Guideline for Asset Adequacy Testing (AG 53)

Director French stated that the new Actuarial Guideline for Asset Adequacy Testing (AG 53) included as Attachment Four, is part of a coordinated NAIC effort regarding the oversight of the increase in private equity and complex assets in the life insurance industry. AG 53 was adopted by the Life Insurance and Annuities (A) Committee on July 20, 2022. Director French said that next April, state insurance regulators will receive additional documentation and analysis related to private equity and complex assets supporting life insurance business. AG 53 was adopted without discussion or objection.

Consider Adoption of the Pet Insurance Model Act

Chief Deputy Commissioner Russ Galbraith (AR) explained that that Pet Insurance (C) Working Group was tasked with drafting a model law in August 2019, and has since held 26 meetings. The current Model Act, included as Attachment Seven, contains required definitions and disclosures, regulations for policy conditions, sales practices for wellness programs, and insurance producer training, as well as certain consumer protections. The Pet Insurance Model Act was adopted by the Property and Casualty Insurance (C) Committee on August 1, 2022. The Pet Insurance Model Act was adopted without discussion or objection.

The following Market Conduct Annual Statement (MCAS) Items were adopted without discussion or objection, and are included in the meeting materials:

- Other Health Insurance MCAS Data Call and Definitions - Attachment Nine
- Revised Homeowners MCAS Addition of Digital Claims Interrogatories and Revised Lawsuit Definition - Attachment Ten
- Revised Private Passenger Auto (PPA) MCAS Addition of Digital Claims Interrogatories and Revised Lawsuit Definition - Attachment Eleven
- Life MCAS Addition of Accelerated Underwriting (AU) Data, Definitions, and Interrogatories - Attachment Twelve

Consider Adoption of Regulatory Considerations Applicable to (But Not Exclusive to) Private Equity (PE) Insurers

Commissioner Scott A. White (VA) explained that the Macroprudential (E) Working Group developed a list of 13 considerations, which are items that may result in changes to the existing regulatory requirements. These considerations, included as Attachment Fourteen, relate to activities frequently attributed to, but not exclusive to, private equity firms. The Regulatory Considerations Applicable (But Not Exclusive) to Private Equity (PE) Owned Insurers was adopted by the Financial Condition (E) Committee, July 21, 2022. The Regulatory Considerations Applicable (But Not Exclusive) to Private Equity (PE) Owned Insurers document was adopted without discussion or objection.

Consider Adoption of the NAIC List of Jurisdictions that Recognize and Accept the Group Capital Calculation

Commissioner White explained that the NAIC adopted revisions to the Insurance Holding Company System Regulatory Act (#440) and Insurance Holding Company System Model Regulation with Reporting Forms and Instructions (#450). These revisions implemented the Group Capital Calculation (GCC) filing requirements for insurance groups as a starting point but provided methods by which groups could be exempted by the lead state. The revisions specifically exempted groups headquartered outside the U.S. if its groupwide supervisor “recognizes and accepts” the GCC for U.S. groups doing business in that jurisdiction. A list of such jurisdictions is included as Attachment Fifteen. The NAIC List of Jurisdictions that Recognize and Accept the Group Capital Calculation was adopted without discussion or objection.

Receive a Status Report of the State Implementation of NAIC-Adopted Model Laws and Regulations

The Status Report of the State Implementation of NAIC-Adopted Model Laws and Regulations was received without discussion, and it is included in the meeting materials as Attachment Nineteen.

The meeting materials can be found [here](#).

Executive (EX) Committee

The Executive (EX) Committee met on Thursday, August 11, 2022 at the NAIC Summer National Meeting, and the agenda can be found [here](#). Below is a summary of the meeting:

Consider Adoption of the Aug. 10 Report of the Executive (EX) Committee and Internal Administration (EX1) Subcommittee

The August 10, 2022 Report of the Executive (EX) Committee and Internal Administration (EX1) Subcommittee was adopted without discussion or objection.

Consider Adoption of its Interim Meeting Report

Director Dean L. Cameron (ID), Chair of the Committee, explained that the Interim Meeting Report from the Executive (EX) Committee's June 21, 2022 meeting covered several operational matters including the 2023 budget. The Interim Meeting Report was adopted without discussion or objection.

Consider Adoption of its Task Force Reports

Reports from the Climate and Resiliency (EX) Task Force, Government Relations (EX) Leadership Council, Long Term-Care Insurance (EX) Task Force, and Special (EX) Committee on Race and Insurance were adopted without discussion or objection.

Consider Adoption of Requests for NAIC Model Law Development

Amendments to the Property and Casualty Insurance Guaranty Association Model Act (#540)

Commissioner Scott A. White (VA), Chair of the Financial Condition (E) Committee, explained that, on July 21, 2022, the Financial Condition (E) Committee adopted a request for model law development to amend the Property and Casualty Insurance Guaranty Association Model Act (#540). The request is the result of discussions involving various issues related to insurance business transfers ("IBT") and corporate division ("CD") transactions, and the requested amendment to Model Act #540 seeks to address how policyholders retain guaranty fund coverage after such transactions. The request for model law development was adopted without discussion or objection.

Amendments to the NAIC Insurance Information and Privacy Protection Model Act (#670) and Privacy of Consumer Financial and Health Information Regulation (#672)

Commissioner Kathleen A. Birrane (MD), Chair of the Innovation, Cybersecurity, and Technology (H) Committee, explained that, on August 2, 2022, the Innovation, Cybersecurity, and Technology (H) Committee adopted a request for model law development to draft a new model law to replace the Privacy Protection Model Act (#670) and the Privacy of Consumer Financial and

Health Information Regulation (#672). The request for model law development was adopted without objection.

Consider Adoption of Revisions to the NAIC Consumer Participation Plan of Operation

Commissioner Michael Conway (CO) explained that the revisions made to the NAIC Consumer Participation Plan of Operation would expand the pool of potential NAIC Consumer Participation Board of Trustees (“Board”) members to include unfunded consumer representatives, lengthen the time requirement for the selection criteria for consumer Board members from one year of active service as a consumer representative to two years, and prohibit a change of the Plan of Operation to be taken by the Board without prior disclosure to and opportunity for comment by current consumer representatives of the proposed changes. The revisions of the NAIC Consumer Participation Plan of Operation was adopted without objection.

Receive a Status Report on NAIC State Ahead Implementation

Director Cameron explained that State Ahead is a three-year strategic plan intended to further advance the products, services, and support the NAIC has provided to insurance regulators in order to meet the challenging regulatory landscape. Director Cameron stated that NAIC continues to make progress on State Ahead implementation at the operational level.

Receive a Status Report on Model Law Development Efforts

Director Cameron referenced Attachment Eight of the meeting materials without further discussion.

Hear a Report from the National Insurance Producer Registry (NIPR) Board of Directors

Superintendent Elizabeth Kelleher Dwyer (RI), Secretary-Treasurer of NIPR, reported on the strong financial performance of NIPR through the first half of the year. Further, NIPR continues to implement the Contact Change Request (CCR) service for business entities, which allows industry members to update important contact information for all of the states in one place. To date, 32 state insurance departments are using this service. Last, NIPR will be participating in the September NAIC Insurance Summit and offering a producer licensing track.

Hear a Report from the Interstate Insurance Product Regulation Commission (Compact)

Commissioner Birrane explained that the Compact had a very successful year in 2021, receiving over 1,500 product filing submissions and collected and remitted over \$3.66M in state filing fees. In the first half of 2022, the filing activity has not been as robust as 2021, but this is expected to pick back up in the second half of the year. Through the end of June, the Compact received over 450 submissions and has collected and remitted \$1.5M in state filing fees. Commissioner Birrane further mentioned that the Compact held its first round table discussion on July 13, 2022 that was attended by almost 50 stakeholder attendees. Last, Commissioner Birrane stated that the

National Council of Insurance Legislators (“NCOIL”) and CSL support the Compact’s position with regard to the Colorado Supreme Court ruling questioning the scope of the Compact’s authority.

The meeting materials can be found [here](#).

Climate & Resiliency (EX) Task Force

The Climate and Resiliency (EX) Task Force met on Thursday, August 11, 2022 at the NAIC Summer National Meeting, and the agenda can be found [here](#). Below is a summary of the meeting:

The Task Force previously met on April 6, 2022, and the minutes from that meeting were adopted without objection.

Receive Reports from its Workstreams

Climate Risk Disclosure Workstream

Superintendent Elizabeth Kelleher Dwyer (RI) stated that, since the Spring National Meeting, the Workstream has been hosting events for insurers to develop a better understand of the content requested by the 15 states and territories participating in the Climate Risk Disclosure Survey. The recordings and meeting materials from those sessions are available [here](#) on the NAIC Climate Risk and Resiliency Resource Center.

Solvency Workstream

Commissioner Kathleen A. Birrane (MD) reminded the group that the Task Force was charged with evaluating financial regulatory approaches to climate risk and resiliency in coordination with other relevant committees, such as the Financial Condition (E) Committee. The Task Force designated the Solvency Workstream to explore potential enhancements to existing solvency monitoring processes in this area. The Workstream has crafted three enhancement referrals involving the NAIC's Financial Analysis Handbook, NAIC's Financial Condition Examiners Handbook, and the NAIC's ORSA Guidance Manual. The Workstream plans to forward these referrals to the Financial Condition (E) Committee so that it may decide how to implement them. The referrals are included in the [meeting materials](#).

Innovation Workstream

Commissioner David Altmaier (FL) stated that the Workstream met on May 16th and July 27th to hear presentations regarding commercial products and community-based insurance coverage. The recordings and meeting materials from those sessions are available [here](#) on the NAIC Climate Risk and Resiliency Resource Center.

Technology Workstream

Commissioner James J. Donelon (LA) stated that the Workstream met on June 9th to hear a presentation regarding early warning systems and risk communication. The recording and meeting materials from this session are available [here](#) on the NAIC Climate Risk and Resiliency Resource Center.

Pre-Disaster Mitigation Workstream

Commissioner Barbara D. Richardson (NV) stated that the Workstream met on May 17th and June 3rd to discuss wildfire prevention and hear presentations regarding vegetation management through prescribed fire, the structure of organizations and resources that support fuel reduction and prescribed fire, and how

communities can create resilient landscapes and build fire adapted communities. The recordings and meeting materials from those sessions are available [here](#) on the NAIC Climate Risk and Resiliency Resource Center.

[Hear a Panel Presentation Regarding Wildfire Mitigation](#)

Roy Wright, Insurance Institute for Business & Home Safety (IBHS)

Roy Wright, the President and CEO of IBHS, gave a presentation about “home hardening” as an effective strategy to mitigate the spread of wildfires. Mr. Wright and his team have developed a program of wildfire mitigation actions that property owners can take to reduce the risk for future losses. The Wildfire Prepared program was developed through IBHS’s extensive research and full-scale ember testing at its South Carolina facility in recognition of the fact that there is a level of personal responsibility involved in wildfire mitigation and prevention. The program provides specific steps that homeowners can take to narrow the path of wildfire damage and prevent a domino effect from consuming entire neighborhoods and communities. These steps involve specific improvements to the roof, building features, and defensible space of a home. IBHS has provided additional, optional mitigation steps that consumers can take to further reduce risk through its enhanced Wildfire Prepare Home + Plus standards. Mr. Wright explained that when there is a high density of homes that meet these standards, we will start to see the risk of wildfires shrink.

Amy Bach, United Policyholders

Amy Bach, NAIC Consumer Representative and Executive Director of United Policyholders, gave a presentation detailing work done by United Policyholders to reduce wildfire risks. As mentioned by Mr. Wright, Ms. Bach recognized that there is an important personal responsibility factor in wildfire mitigation. In recognition of that fact, United Policyholders launched the Wildfire Risk Reduction and Asset Protection Project (“WRAP”) project. This project involves a regular convening of public and private stakeholders, firefighting professionals, community-based risk reduction advocates, public officials, agency representatives, and fire scientists working together to come up with an agreement as to what strategies will further the goal of wildfire mitigation. United Policyholders has focused on building rewards such as premium discounts, improvement of risk scores, non-renewal protections, and guarantees for consumers that complete home hardening programs such as the Wildfire Partners Program in Colorado or the IBHS Wildfire Prepared program to incentivize homeowners to proactively reduce wildfire risk.

Mike Peterson, California Department of Insurance

Mike Peterson, Deputy Commissioner on Climate and Sustainability at the California Department of Insurance, gave a presentation detailing California interagency partnerships and solutions for policyholders involving wildfire mitigation. The Safer from Wildfires Framework is a partnership between the California Department of Insurance, Governor's Office of Emergency Services (CalOES), California Department of Forestry and Fire Protection (CAL FIRE), Governor's Office of Planning and Research, and California Public Utilities Commission. The Framework has three steps: (1) protecting the structure, which includes six key actions; (2) protecting the immediate surroundings, including a five-foot zone and defensible space; and (3) working together as a community. This Framework is meant to serve as a list of wildfire mitigation measures that are comprehensible to the public and backed by science. More information about the Safer from Wildfires Framework can be found [here](#).

Karen Collins and David Snyder, American Property Casualty Insurance Association (APCIA)

Karen Collins, Assistant Vice President of Personal Lines for APCIA, and David Snyder, Vice President, of International Policy for APCIA, gave a presentation detailing the impact that wildfire-related losses have had on the insurance industry and related constraints on the industry. Ms. Collins explained that California has seen huge losses as a result of wildfire damage, to the point that the homeowners line of business remains unprofitable in California. Challenges that insurers face include, but are not limited to, growing exposure due to WUI expansion without adequate code adoption and enforcement, climate change, increasing costs due to legislative coverage expansion and inflation, and non-renewal moratoriums that prevent insurers from limiting loss exposure following significant losses. Although many of the legislative challenges mentioned are intended to protect consumers, they are also contributing to market instability given that the timing of these actions are occurring in the aftermath of significant losses when insurers are working to recapitalize. Ms. Collins identifies leveraging the IBHS Wildfire Prepared Home program, increased state and federal resources for mitigation, and consumer outreach to increase risk awareness and provide preparedness resources as solutions that will reduce losses and ultimately translate to the improvement of affordability and availability of coverage. APCIA is also advocating at the state and federal level for things such as fuel reduction in the wildlands, adoption and enforcement of building codes and vegetation standards, and funding for mitigation efforts.

Hear a Presentation Regarding Ceres Work on Climate Risk Disclosures

Steven Rothstein, founding Managing Director of the Ceres Accelerator for Sustainable Capital Markets, gave a presentation on how Ceres is assisting insurers that will be required to report through the updated NAIC Climate Risk Disclosure Survey by November 30, 2022. Insurance companies that are required to respond to the annual NAIC Climate Risk Disclosure Survey will now need to comply with TCFD standards. Mr. Rothstein explained that Ceres intends to provide 10 hours of training opportunities and online information that will help educate insurers about the Financial Stability Board's Task Force on Climate-related Financial Disclosures (TCFD) before

they are required to complete it. The first presentation was given by Ceres and the United Nations Environment Program Finance Initiative on July 27, 2022, and the remaining sessions are planned for September and October. Mr. Rothstein explained a number of additional resources for insurers, and those are provided in the meetings materials.

Hear a Federal Update

Brooke Stringer (NAIC) provided brief updates regarding the passage of the Wildfire Insurance Coverage Study Act of 2022 in the House, and the passage of the Inflation Reduction Act in the Senate.

The meeting materials can be found [here](#).

Special (EX) Committee on Race and Insurance

The Special (EX) Committee on Race and Insurance met on Thursday, August 11, 2022 at the NAIC Summer National Meeting, and the agenda can be found [here](#). Below is a summary of the meeting:

The Committee previously met on April 6, 2022, and the [minutes](#) from that meeting were adopted without objection.

Receive a Status Report from its Workstreams

Workstream One

Commissioner Doug Ommen (IA) explained that the Workstream has been researching the level of diversity and inclusion within the insurance sector and developing recommendations on action steps state insurance regulators and companies can take. Commissioner Ommen stated that the Workstream's focus is on producing recommendations that reflect a broad consensus among its members, and its members plan to meet after the Summer National Meeting to continue the Workstream's work on completing these recommendations.

Workstream Two

Commissioner Glen Mulready (OK) explained that the Workstream distributed the zone-level best practices survey responses during the Commissioners' Mid-Year Roundtable. Workstream Two's recent work continues to be facilitated by Evelyn Boswell, NAIC Director of Diversity, Equity & Inclusion ("DE&I"), through the Member Diversity, Equity & Inclusion Forum. The best practices survey responses have been made available to Forum members as they share best practices and discuss promoting diversity in their respective insurance departments.

Evelyn Boswell gave an update regarding the Forum. Ms. Boswell stated that the member diversity leaders meet quarterly to share best practices. Further, the Forum's diversity leaders SharePoint page was launched in Q2. The regulator DE&I coursework is in its final stages of review, and will be forwarded to the NAIC Education Department to be designed. The goal is to present the coursework to Commissioner Mulready and Commissioner Sharon P. Clark (KY) for final approval in Q4 prior to releasing it to the state departments of insurance. As an example of state best practices shared in the Forum's quarterly calls, Ms. Boswell also gave a brief overview of state initiatives in the DE&I space, such as the InVest Program adopted by the Office of Consumer Advocacy & Diversity of the Louisiana Department of Insurance to bring awareness of career opportunities available in the insurance industry.

Philip Barlow (DC), Associate Commissioner for Insurance at the District of Columbia Department of Insurance, Securities and Banking, gave a brief presentation related to the DE&I initiatives of the District of Columbia including the Gallaudet University Department of Risk Management & Insurance Internship Program, the DISB Financial Services Academy, and the Mayor Marion S. Barry Summer Youth Program Insurance Cohort. Associate Commissioner Barlow's presentation can be found [here](#).

Commissioner Karima M. Woods (DC) gave a brief presentation on a project looking at the use of certain underwriting factors in private passenger automobile insurance. Commissioner Woods stated that the Department has engaged O’Neil Risk Consulting & Algorithmic Auditing (ORCAA) to assist with the project. There are four potential areas that the Department would like to review for unintentional bias, and any comments from interested parties should be submitted by August 22, 2022. More information about the project, and a recording of the public hearing held on June 9, 2022, can be found [here](#).

Workstream Three

Director Lori K. Wing-Heier (AK) stated that the Workstream has been engaged with the Collaboration Forum, addressing how bias within digital decisional systems and complex predictive models driven by artificial intelligence (“AI”) and machine learning (“ML”) can result in unfair discrimination. Director Wing-Heier explained that the Workstream plans to leverage the foundational education related to algorithmic bias in order to consider regulatory approaches to addressing unfair discrimination in the property and casualty insurance market, and will first consider potential bias within the marketing of insurance products.

Workstream Four

Commissioner Marlene Caride (NJ) stated that Workstream Four, which is focused on life insurance, continues to focus on its charge to “continue research and analysis related to insurance access and affordability issues, including the marketing, distribution, and access to life insurance products in minority communities, including the role that financial literacy plays.”

Workstream Five

Commissioner Grace Arnold (MN) explained that the Workstream has recently held two meetings in a series of four, where the members heard presentations related to provider network composition, cultural competency in provider networks, barriers to care with respect to providers, and approaches to consider health equity gaps. The upcoming two meetings in the series will be related to benefit design.

Long-Term Care Insurance (EX) Task Force

The Long-Term Care Insurance (EX) Task Force met on Friday, August 12, 2022, at the NAIC Summer National Meeting, and the agenda can be found [here](#). Below is a summary of the meeting:

Receive a Report on the Long-Term Care Insurance Multistate Rate Review Framework (LTCI MSA Framework) Implementation Plans —Commissioner Michael Conway (CO)

Over the last few months, the Task Force has focused on staff level tests that are important for making the MSA available for insurers and states to participate. NAIC staff have nearly finalized the filing instructions for insurers who are interested in using the MSA process. A website will be available in September, which will house items from the framework including the insurer certification and the information checklist. The MSA process will utilize NAIC's SERFF. Staff will be assisting in an administrative role. The Task Force is also developing procedures for the staff and a document to aid MSA team members. The subgroup and Task Force need to continue to promote the MSA process to insurers and regulators. The takeaway is to participate with the industry to have companies submit filings. The Task Force asked for guidance on how the states would be willing to participate.

Receive a Report on Long-Term Care Insurance (LTCI) Financial Solvency and Industry Trends—Fred Andersen (MN)

Fred Anderson gave a report. The Valuation Analysis (E) Working Group has an ongoing project to review actuarial guideline 51—long-term care reserve adequacy filings. Key factors they are paying attention to include: (1) impact of costs-of-care inflation, (2) attitudes towards different situses of care, (3) general morbidity such as frequency of claims and length of claims, and (4) helping ensure there is consistency between assumptions companies are making related to reserves and related to rates. Carriers got wrong the low interest rates; on average, 10 percent of assets turn over each year, so 90% of assets were purchased during low interest rates. If these trends continue, in 3 to 5 years, this will have a significant helpful impact.

Receive a Report on the Development of the Multistate Actuarial (MSA) Associate Program—Fred Andersen (MN)

The associate program was developed in recognition of the need to increase the overall expertise for financial risks on reserves and rates and also increase expertise related to the multi-state actuarial process. As MSA framework is implemented, several members of the program have offered to be in the review process. The program plans to meet and get involved in next quarter.

The associate program is an opportunity be a mentor and for more states to assist in the process. It welcomes any state that would be willing to assist the team in reviews.

Hear a Presentation on a Center for Insurance Policy and Research (CIPR) Project on Reduced Benefit Options (RBOs)—Brenda J. Cude (University of Georgia) and Bonnie Burns (California Health Advocates)

Cude and Burns are consumer representatives. The goal of the project was to increase understanding of long-term care insurance policyholders' experience with rate increase and reduced benefits options. Many long-term care policyholders have experienced significant and multiple rate increases. This relates to the charge to provide consumers with choices when policies are no longer affordable. There is often confusion about consumers' options to a rate increase. The solution is to use rate increase letters that provide clear examples of options and how a premium is impacted, to expand the scope of advisors to help consumers who receive LTCI increase notices, and to consider ways for the Department of Insurance to establish relationships and lines of communication with Senior Health Insurance Program (SHIP) agencies.

There is a key question: is there more that state insurance departments can do to increase communications on reduced benefit options? Research may be needed to increase communication in this area. We need feedback from state regulators or may need to do a survey on feedback on RBO checklist. More focused research is needed. One example is to move to experimental settings where respondents are provided information in the checklist, while others are not, and to test out how choices differ between respondents to see what is working in the checklist. At earliest, this would start next year and could take several years. The Task Force explained the first step would be for NAIC staff to give consideration as to what would be included in the survey. The two year time frame would include a series of tests. Birny Birnbaum requested to use research to find out why individuals are taking the reduced benefit option. Also, the age of the people in the survey will dramatically impact the studies. Burns asked to test whether individuals actually understand the information they are being given and how to simplify notices.

The meeting materials may be found [here](#).

Life Insurance and Annuities (A) Committee

The Life Insurance and Annuities (A) Committee met on Thursday, August 11, 2022 at the NAIC Summer National Meeting, and the agenda can be found [here](#). Below is a summary of the meeting:

The Committee previously met on July 20, 2022, and the minutes from that meeting were adopted without objection.

Hear an Update from the Accelerated Underwriting (A) Working Group

Commissioner Grace Arnold (MN) explained that the Accelerated Underwriting (A) Working Group Educational Report was adopted by the Committee in April, and as a result of the Report, the goal was to provide specific guidance for state insurance regulators with respect to accelerated underwriting in life insurance. The Working Group has identified market conduct as an area that additional guidance might be needed, and is now coordinating with other NAIC groups to determine what other work is being done. The Working Group's goal is to release guidance soon.

Consider Adoption of the Annuity Suitability (A) Working Group Report

Commissioner Doug Ommen (IA) explained that Working Group continues to work on frequently asked questions (FAQ) related to the safe harbor and comparable standards provision in the revised Suitability in Annuity Transactions Model Regulation (#275), which added a best interest standard of conduct for insurers and producers. The Annuity Suitability (A) Working Group Report was adopted without discussion or objection.

Discuss the Life Insurance Online Guide (A) Working Group

Director Judith L. French (OH), Chair of the Committee, discussed certain updates that will be made to the NAIC website related to life insurance materials. Volunteers from Texas and Kansas will be assisting in the development of a comparison chart detailing the different types of life insurance and a summary of information about common riders.

Consider Adoption of the Life Actuarial (A) Task Force Report

Pat Allison (NAIC) highlighted items 1(E) and 1(F) in the Life Actuarial (A) Task Force Report, which is included in the meeting materials. Item 1(E) identifies the adoption of amendment proposal 2020-12, which revises hedge modeling when future hedging strategies are not clearly defined. Item 1(F) identifies the adoption of amendment proposal 2022-04, which makes changes to address the VM-20 regarding the transition from LIBOR to SOFR in the calculation of swap spreads for 2023 and beyond. The remainder of 2022 must still be addressed, and Ms. Allison stated that the Task Force hopes to have three vendors in place by the end of September to start publishing SOFR swap spreads on the NAIC website.

Fred Anderson stated that, related to ongoing issues and concerns related to Indexed Universal Life (IUL) Illustrations, the Task Force is in the middle of an exposure period for four options that could be ways to address newer concerns. One option is to make a request to the Life Insurance and Annuities (A) Committee to consider a limited revision to the Life Insurance Illustrations Model Regulation (#582) which may help to eliminate the need for addressing issues through an actuarial guideline.

The Life Actuarial (A) Task Force Report was adopted without objection.

Discuss Enhanced Cash Surrender Value Products

Director French stated that the National Council of Insurance Legislators (“NCOIL”) raised the issue regarding certain enhanced cash surrender value offers being made on universal life insurance policies and the application of the standard nonforfeiture law to universal life policies. NCOIL issued a resolution during its last meeting, and the American Council of Life Insurers (“ACLI”) wrote a letter in opposition to the resolution. Director French explained that, in order to properly discuss the issue in the Committee, it must first gather adequate information. The NAIC legal team has agreed to look into the history of universal life and its application to standard nonforfeiture, and the Committee plans to survey state insurance departments to get a better understanding of the prevalence of the enhanced cash surrender value offers.

Hear an Update on Workstream Four of the Special (EX) Committee on Race and Insurance

Commissioner Marlene Caride (NJ) stated that Workstream Four, which is focused on life insurance, continues to focus on its charge to “continue research and analysis related to insurance access and affordability issues, including the marketing, distribution, and access to life insurance products in minority communities, including the role that financial literacy plays.”

The meeting materials can be found [here](#).

Health Insurance and Managed Care (B) Committee

The Health Insurance and Managed Care (B) Committee met on Thursday, August 11, 2022, at the NAIC Summer National Meeting, and the agenda can be found [here](#). Below is a summary of the meeting:

Consider Adoption of its Spring National Meeting Minutes

The Committee adopted the Spring National Meeting Minutes, which are included in the Meeting Materials [here](#).

Consider Adoption of its Subgroup, Working Group, and Task Force Reports

The Committee adopted its Subgroup, Working Group, and Task Force reports, which are included in the Meeting Materials [here](#).

Hear a Discussion on Efforts to Create State-Based Health Insurance Exchanges

J.P. Wieske (Horizon Government Affairs), Randy Pate (StatesWork), and Heather Korbulich (GetInsured) spoke about 4 major points regarding state-based exchanges: (1) the decreasing cost of technology allows states to host exchanges at a cheaper rate than the federal government; (2) states are improving upon the federal exchange system and perform better on exchange reports; (3) the availability of data from an exchange is better than the data from the federal government; (4) there are opportunities for states to take control over their markets.

Randy Pate suggested that to get started with state-based exchanges, states must look at their particular needs, such as their population, enrollment, and user fee. The user fee that is sent to the federal government offers an idea of a *target user fee* for establishing a state-based exchange. He also discussed the option of shared services exchanges, rather than regional/multi-state exchanges, in order to share costs with other states.

Hear a Discussion on Medicaid Redeterminations Following the End of the COVID-19 Public Health Emergency (PHE)

Miranda Motter (America's Health Insurance Plans—AHIP) presented an overview of the COVID-19 health authorities and waivers, the key requirements of a public health emergency (PHE), and Medicaid redeterminations. COVID-19 authorities included the Public Health Service Act, the National Emergencies Act, the Stafford Act, the Public Readiness and Emergency Preparedness Act, and the Emergency Use Authorization; as well as federal legislative changes such as the Families First Act and the CARES Act; administrative changes modifying provisions of Medicare, Medicaid, CHIP, and HIPAA; and also state emergency declarations. State PHE actions varied significantly across the U.S. and a full review of those actions is necessary to understand how the termination or non-renewal of such actions will impact other state orders, mandates, and guidance.

Key federal legislative provisions tied to the PHE included: (1) coverage for COVID-19 testing and testing-related services without cost sharing in commercial plans and Medicare; (2) coverage, without cost sharing, for nearly all Medicaid populations for the COVID-19 vaccine and administration costs; (3) coverage for testing and treatment, including treatment of a condition that may seriously complicate COVID-19 treatment for nearly all Medicaid populations; (4) an increase of 6.2 percentage points in the state's federal medical assistance percentage (FMAP) provided that certain maintenance of effort (MOE) requirements were met, including the requirement that Medicaid enrollment for certain beneficiaries was maintained through the end of the month in which the PHE ended.

Prior to the PHE, states were required to annually verify Medicaid eligibility for most members. But during the PHE, states have been required to maintain Medicaid enrollment through the end of the emergency as a condition for receiving FMAP under the Families First Act. When the PHE ends, states must resume the Medicaid redetermination processes.

Hear an Update from the Federal Centers for Medicare & Medicaid Services' (CMS) Center for Consumer Information and Insurance Oversight (CCIIO) on its Recent Activities

Dr. Ellen Montz (CCIIO) discussed the unwinding of the COVID-19 public health emergency and transitioning individuals no longer eligible for Medicaid or CHIP to eligibility for marketplace coverage. The redetermination process will test state systems given the volume of enrollees. HHS and CMS are dedicated to developing a plan with states for mitigating coverage loss. CCIIO is examining a number of improvements to the federal marketplace policies and systems to streamline consumer experience in transitioning from Medicare and CHIP to marketplace coverage, including notices to consumers with instructions for accessing healthcare.gov, eliminating additional paperwork, and flexibilities that allow more transitioning time.

Hear an Update on Federal Legislative and Regulatory Issues and on Federal No Surprises Act (NSA) Implementation

Brian R. Webb (NAIC) stated that the NAIC sent letters to Congress (1) requesting a 3-year extension on subsidies under the American Rescue Plan; (2) regarding the "family glitch"; (3) on health savings accounts and the co-pay accumulator; and (4) on returning Medicare advantage marketing authority to the states. NAIC is working with federal partners on a federal No Surprises Act. Webb noted that transparency requirements on carriers went into effect on July 1. States are the regulators of transparency requirements, but the federal government is conducting a review.

Receive an Update on the Pharmacy Benefit Manager Regulatory Issues (B) Subgroup's Work

TK Keen (OR) reported that the PBMRI Subgroup conducted panel presentations earlier in the year and is ready to draft the white paper on the discussions.

Receive an Update on the Special (EX) Committee on Race and Insurance Workstream Five's Work

Grace Arnold (MN) stated that upcoming meetings will be on benefit designs, what designs might disadvantage communities of color, and how insurance regulators can respond, as well as standardized plans and value-based insurance.

Pharmacy Benefit Manager Regulatory Issues (B) Subgroup

The Pharmacy Benefit Manager Regulatory Issues (B) Subgroup met on Tuesday, August 9, 2022, at the NAIC Summer National Meeting, and the agenda can be found [here](#). Below is a summary of the meeting:

Pharmaceutical Care Management Association (PCMA) —Peter Fjelstad (PCMA) and Lauren Rowley (PCMA)

Peter Fjelstad is the Director of State and Regulatory Affairs at Pharmaceutical Care Management Association (PCMA). Lauren Rowley is the Senior Vice President of State Affairs at PCMA; however, she was unable to make it to the presentation due to connecting flight issues. Thus, Fjelstad presented on the value of Pharmacy Benefit Managers (“PBMs”). He explained that PBMs are the only entity in the pharmaceutical supply chain that advocate for lower prescription drug costs for patients and payers. He explained that as drug prices increase, PBM cost savings should reduce costs by 20%. He also explained that PBMs save money for plan sponsors and stated that 90% of employers are satisfied with the PBM that they hire. Fjelstad walked through the entities and individuals involved in the pharmaceutical supply chain, including manufacturers, wholesalers, pharmacies, PBMs, payers, prescribers, and patients—he explained that each entity plays an important role, and he encouraged for all of these entities to be included in the white papers.

Commissioner Vicki Schmidt (KS) asked for Fjelstad to quickly discuss vertical integration of a pharmacy and a PBM. Commissioner Schmidt also noted that there was no satisfaction rating for independent pharmacies. Fjelstad acknowledged that there is often an adversarial situation between PBMs and pharmacies. Don Beatty asked what PBMs can do to alleviate tension with independent pharmacies without the heavy hand of government coming into play. Fjelstad said that events like this will help to alleviate tension.

Another regulator acknowledged that some states have taken action to eliminate spread pricing. Thus, he asked, what impact does the elimination of spread pricing have on the revenue of a PBM? Fjelstad explained that in a spread pricing model, a PBM takes risk to either lose money or gain a profit or margin. Thus, it depends on what a plan sponsor wants to do. PBM’s industry position is that states should not intrude upon this negotiation between a plan sponsor and PBM. The Connecticut regulator wanted to make sure that elimination would not add cost to the entire system.

The presentation can be found [here](#).

Presentation from the Pharmaceutical Research and Manufacturers of America (PhRMA) — Emily Donaldson (PhRMA)

Emily Donaldson is in the Policy and Research Department at the Pharmaceutical Research and Manufacturers of America. Donaldson acknowledged a lack of transparency with the PBMs. She focused on the fact that PBMs have become increasingly dominated by a small amount of companies. PBMs have the power to extract rebates from manufacturers and take in more than half of what is spent on brand medicines. This money does not find its way to patients. Further, it is payers that determine cost-sharing not manufacturers, and PBMs have tremendous bargaining power.

PBMs can also impact access because PBMs often exclude cheaper medications from their formularies. PBMs may exclude lower list prices, which means that patients may not be able to access medicines prescribed. Donaldson noted this is incredibly important for the white paper being drafted. She noted some actions to address misaligned incentives in the system include: (1) prevent vertically integrated systems from self-dealing (anti-steering policies), (2) share rebates with patients at point of sale, and (3) address lack of transparency and delink PBM compensation from medication pricing.

The presentation can be found [here](#).

Presentation from the Oregon Primary Care Association (OPCA)—Marty Carty (OPCA)

Marty Carty of OPCA discussed the 340B drug pricing program. OPCA is a membership association for Oregon's federally qualified health centers. It is both the mission and mandated under law for FQHCs to offer a full-range of health services regardless of ability to pay. Health centers and 340B providers rely on the funding to reduce drug costs and expand access for most essential patients. 340B allows these health centers to treat a high number of low income patients and purchase drugs at significantly reduced costs. All 340B participants operate under strict federal guidelines.

FQHCs are allegedly facing an unprecedented assault from PBMs and other payers. PBMs engage in discriminatory pricing for FQHCs by paying connected pharmacies in under-served areas less. PBMs impose burdensome rules on pharmacies and make it difficult to participate in 340B. This is inconsistent with the intent of the program. More than half of states have introduced legislation to help protect 340B savings for health centers. At present, these laws put enforcement in the hands of state insurance departments. NAIC has exercised considerable leadership on prescription drug issues. This is highly relevant to state insurance commissioners. Carty asked state regulators to use their resources to protect the 340B program.

Commissioner Schmidt expressed that she hopes that these issues can be discussed further and wished that PCMA could discuss the 340B issues. Carty was unaware of any states that have taken enforcement action related to its authority under the 340B statutes. The subgroup asked for

examples of discriminatory contract language, and Carty expressed he would follow up with examples.

The presentation can be found [here](#).

Discuss Any Other Matters Brought Before the Subgroup—TK Keen (OR)

Keen raised that Inflation Reduction Act just passed so he explained that the subgroup will follow up in the next meeting as to this impact on white papers and PBMs based on passing of legislation.

Health Innovations (B) Working Group

The Health Innovations (B) Working Group met on Wednesday, August 10, 2022, at the NAIC Summer National Meeting, and the agenda can be found [here](#). Below is a summary of the meeting:

Presentation on the Colorado Option Section 1332 Waiver— Commissioner Andrew Stolfi (OR); Commissioner Michael Conway (CO)

Commissioner Conway discussed the Colorado Option and the Section 1332 Waiver that supports it. The goal is to bring more affordability to the market place. The Colorado Option will be offered both on exchange and off exchange and to those who are both eligible and ineligible for subsidies through the ACA. Colorado wants to control costs. A key feature is the premium rate reduction, which leads to pass through funding. To calculate the impact, the following steps have to be taken: (1) determine the baseline (Colorado's insurance market without reinsurance and without Colorado option), (2) determine the impact of the Reinsurance program, (3) determine the impact of the Colorado Option program, and (4) determine the impact of Reinsurance + Colorado option programs.

Colorado has not seen more insurance companies in the market, but it has seen that those in Colorado are expanding. The product will provide competition to those products already in play.

The presentation can be found [here](#).

Discuss a Memo to the Special (EX) Committee on Race and Insurance— Commissioner Andrew Stolfi (OR); Kelly Edmiston, Center for Insurance Policy and Research

Edmiston is with the Center for Insurance Policy and Research. The Working Group is well aware of disparities facing marginalized groups, and the memorandum discusses this. It focuses on efficacy of telehealth—the memorandum documents sparse locations of providers in rural areas. Thus, telehealth may increase access to care. The most significant hurdle is access to the technology at home.

On alternative payment models (APMs), the report discussed behavioral responses to financial incentives, but the group recognizes that most providers consider care to be of paramount importance. Edmiston said to keep in mind that APMs and value based payments (VBPs) were designed to increase quality of care, so impact of disparities is a secondary effect. The new paper on APMs will be posted on the website. If anyone has final thoughts on telehealth or APMs, send to Joe and group will move in the next few weeks to approve memo to send to the Committee.

The memorandum can be found [here](#).

Hear Presentations from Health Plans on Programs to Improve Access— Commissioner Andrew Stolfi (OR)

To date, the Working Group has spent time evaluating mechanisms to resolve disparities improving access to care and evaluating programs to improve access to historically underserved communities. These presentations focused on evaluating programs.

Briar Ertz-Berger, MD, MPH, Permanente Medicine

Dr. Ertz-Berger—an emergency medicine physician—spoke about health equity and social health. She explained Kaiser Permanente’s social health strategy given that health is determined by more than behavior or access to health care. Kaiser has worked to connect patients to resources in the community through Connect Oregon and has worked to screen patients for needs.

The presentation can be found [here](#).

Karis Stoudamire-Phillips and Dr. Yale Popowich, Moda Health

Karis Stoudamire-Phillips is the VP of DEI and Community Initiatives at Moda Health. Moda focuses on the way to better health. It is beginning to fund non-profits that focus on underserved communities. Dr. Popowich—the Chief Medical Officer at Moda Health—went deeper into the programs implemented at Moda. One of the best is Moda360 that provides healthcare tips, advice, and other messages related to healthcare records. In addition, experience serving the Oregon Medicaid program can carry over to commercial market. For example, Flex services provide a broad range of services for a home environment.

The presentation can be found [here](#).

Erin Fair Taylor, MPH, JD, Pacific Source Community Health Solutions

Erin Fair-Taylor is the Vice President at Pacific Source. Pacific Source has community governance models with a health council to oversee Coordinate Care Organizations’ performance. A very important factor is implementing this at a local level because the social health piece of this must be local given each region’s unique needs.

The presentation can be found [here](#).

The Working Group asked all of the presenters what they need from insurance regulators. The presenters explained that regulators need to start thinking about adequate networks differently such as equity and what individuals have access to as to social care. Meaningful incentives can drive change, especially if shared broadly.

Paige Duhamel asked about diabetes management programs. Moda presenters explained that Moda uses a vendor program and the response has been phenomenal. Moda has had an uptake

as high as 20% in the use of programs. Community feedback is standardized, so the way they evaluate performance and responsiveness is easier to compare. Oregon has taken approach to integrating with community stakeholders to determine services that are needed most.

Presentation from the Centers for Medicare & Medicaid Services on Programs to Improve Access—Commissioner Andrew Stolfi (OR); Jeff Wu, CMS

Jeff Wu is the Deputy Director of Policy CCIIO. Wu provided CMS's perspective on issues of health equity. CMS has a strategically covered framework for health equity. CCIIO is focused on coverage, access, and consumer protections. One focus has been implementing provisions of the No Surprises Act. CCIIO has been busy expanding open enrollment period and has initiated a new special enrollment period for consumers at or below a certain percent of the federal poverty level. The individual market is much healthier today than it has been in the past.

CMS plans to work with carriers to make sure access is present, such as establishing new requirements for network adequacy. There is now a policy in place that essential health benefits must be allocated on clinical evidence. One of the most recent actions is that, in 2023, there will be an expansion of the collection of data in individual and small group markets. There is a requirement that CMS collect and extract five new data elements: zip code, race, ethnicity, ICRA indicator, and indicators for subsidies. The goal is for the entire industry to be collecting this data routinely.

The presentation can be found [here](#).

Any Other Matters Brought Before the Working Group—Commissioner Andrew Stolfi (OR)

There will be follow up on the charge to evaluate programs.

Employee Retirement Income Security Act (ERISA) (B) Working Group

The Employee Retirement Income Security Act (ERISA) (B) Working Group met on Wednesday, August 10, 2022, at the NAIC Summer National Meeting, and the agenda can be found [here](#). Below is a summary of the meeting:

Hear an Update from the U.S. Department of Labor (DOL)—Robert Wake (ME)

The DOL is in the thick of implementing the No Surprises Act. There have been two adverse decisions related to the interim final rules that were issued back in October. The DOL has been working on additional rule-making to fill in the vacated portions. The DOL is working on a proposed rule to discuss requirements under Consolidated Appropriations Act.

The DOL also provided update on contraception coverage, and the DOL recently put out related guidance and frequently asked questions. There is a proposed rule concerning religious and moral exemptions, which is forthcoming.

Discuss Updating the NAIC Chart on Multiple Employer Welfare Arrangement (MEWA)/Multiple Employer Trust (MET) and Association Plans—Robert Wake (ME)

There is no specific update, but the Working Group agreed to update the NAIC chart to make sure it is up-to-date. New regulation on MEWA would need to be added to the chart. It is important to get a good handle on state practices and work toward a compendium of options.

Consider Whether the Health and Welfare Plans Under the Employee Retirement Income Security Act: Guidelines for State and Federal Regulation (ERISA Handbook) Needs to Be Reviewed for Outdated Information—Robert Wake (ME)

The last comprehensive revision of the ERISA Handbook did not catch all of the points in the handbook in light of *Rutledge v. PCMA*. Thus, the question was posed as to whether it is time to start preparing an update and a timeline for seeking comments. Ohio expressed concern that the group might not be ready for this, so it might be more productive to see if there are new changes in the ERISA case law before moving forward with an update. Pathway 2 has not been replaced either, so it might not be ready for final replacement. The group decided this is something to think about in near future, but the group is not ready to take action yet.

The meeting materials can be found [here](#).

Regulatory Framework (B) Task Force

The Regulatory Framework (B) Task Force met on Wednesday, August 10, 2022 at the NAIC Summer National Meeting, and the agenda can be found [here](#). Below is a summary of the meeting:

The Task Force previously met on March 23, 2022, and the minutes from that meeting were adopted without objection.

Consider Adoption of Subgroup and Working Group Reports

The following Subgroup and Working Group reports were adopted without objection, and can be found in the [meeting materials](#):

- Accident and Sickness Insurance Minimum Standards (B) Subgroup
- Employee Retirement Income Security Act (ERISA) (B) Working Group
- Mental Health Parity and Addiction Equity Act (MHPAEA) (B) Working Group
- Pharmacy Benefit Manager Regulatory Issues (B) Subgroup

Laura Arp (NE) shared that the Accident and Sickness Insurance Minimum Standards (B) Subgroup plans to finish its review of the Model Regulation to Implement the Accident and Sickness Insurance Minimum Standards Model Act (#171) by the end of the year. Robert Wake (ME) shared that the Employee Retirement Income Security Act (ERISA) (B) Working Group decided that there is no urgent need to revise the ERISA Handbook at this time, but that task will be in the Working Group's Work Plan going forward. Erica Weyhenmeyer (IL) shared that the Mental Health Parity and Addiction Equity Act (MHPAEA) (B) Working Group is considering parity compliance from many perspectives including rate filings, market conduct, consumer and provider education, and consumer advocacy. TK Keen (OR) shared that the goal of the Pharmacy Benefit Manager Regulatory Issues (B) Subgroup is to have a complete draft of its white paper by the end of the year.

Hear an Update on the Center on Health Insurance Reforms' (CHIR's) Work

Maanasa Kona, Assistant Research Professor at the Georgetown Center on Health Insurance Reforms (CHIR), provided an update regarding CHIR's recent publications and upcoming work involving health insurance regulation and market trends. Ms. Kona spoke about CHIR's research on various topics within the areas of public option plans, enrollment, public health emergency ("PHE") unwinding, abortion and contraceptive coverage, health equity, and the implementation of the No Surprises Act. Ms. Kona also mentioned recent research involving challenges to the ACA that threaten the availability of free preventive services, and comparisons between federal and state network adequacy standards governing Medicaid and marketplace plans in six (6) states. CHIR's upcoming research will examine topics such as state efforts to enforce the Mental Health Parity and Addiction Equity Act (MHPAEA) and medical debt consumer protections across all 50 states. All CHIR publications can be found on its [website](#), as well as on the CHIR [blog](#).

Hear a Discussion on the Usage of the Term “Interchangeable Biosimilar Product” in the Health Carrier Prescription Drug Benefit Management Model Act (#22) and its Effect on Prescription Drug Substitutions

Craig Burton, Senior Vice President of Policy and Strategic Alliances for the Association for Accessible Medicines and Executive Director of the Biosimilars Council, began by providing a brief overview of the impact of biosimilar products on the prescription drug market. Mr. Burton emphasized that, through the introduction of biosimilars into the market, we have seen the prices of all drugs, including brand names, going down. According to Mr. Burton, even when patients do not use biosimilars, they are still benefiting from the overall savings resulting from the biosimilar competition in the market. Additionally, there has been a consistent increase in patient treatment access in connection with the introduction of biosimilars in the market.

Mr. Burton stated that legislation that will ultimately serve to block patient access to lower cost biosimilars is beginning to develop in a handful of states. Many of those pieces of legislation, as well as the NAIC Health Carrier Prescription Drug Benefit Management Model Act (#22), include “interchangeable biosimilar products” but not “biosimilars.” Mr. Burton emphasized that interchangeable biosimilar products are subsets of biosimilars, and the only meaningful distinction for regulatory purposes is that, unlike interchangeable biosimilar products, biosimilars are administered by physicians rather than pharmacists. Mr. Burton encouraged the Task Force to consider including biosimilars to the Model Act in order to encourage the use of an equally effective, lower cost product. The Task Force plans to convene a small group for further discussion on this topic in hopes of making a recommendation to the full Task Force prior to the December National Meeting.

Hear an Update on the Implementation of the Federal Network Adequacy Standards for Qualified Health Plans (QHPs) in the Federally Facilitated Health Insurance Exchanges

Brian R. Webb (NAIC) explained that the Notice of Benefit and Payment Parameters for 2023 include time and distance standards and appointment wait time standards required in order to maintain an adequate network. Time and distance standards will be implemented for plan year (“PY”) 2023, and the appointment wait time standards will be implemented for PY 2024. The rule has an allowance for states that have rules as stringent as the federal rule. If states cover all of the individual and facility specialties listed in the Notice of Benefit and Payment Parameters for 2023, have at least the minimum standards for time and distance, and have a stringent review process, that state in the Federally-facilitated Exchange (“FFE”) can be the one to implement and conduct reviews. So far, Michigan, New Hampshire, South Dakota, and West Virginia are doing plan management in an FFE and have standards as stringent as the federal standards. For all other FFEs, HHS will conduct network adequacy reviews. For more information, the Notice of Benefit and Payment Parameters for 2023 can be found [here](#).

The meeting materials can be found [here](#).

Senior Issues (B) Task Force

The Senior Issues (B) Task Force met on Wednesday, August 10, 2022 at the NAIC Summer National Meeting, and the agenda can be found [here](#). Below is a summary of the meeting:

The Task Force previously met on June 7, 2022, May 11, 2022, and at the Spring National Meeting, and the minutes from those meetings were adopted without objection.

Discuss Medicare Part D Insurers and Auto Enrollment of Medicare Beneficiaries

Dr. Harry M. Ting, NAIC Consumer Representative, provided an update on the issue of Medicare Part D enrollees being “crosswalked”, or automatically enrolled, into other, more costly Medicare Prescription Drug Plans (“PDPs”) when an insurer discontinues one of its PDPs. Currently, the only notice that an enrollee receives with regard to his or her new plan enrollment is the mailing of an Annual Notice of Change (“ANOC”) in September each year. Dr. Ting explained that, notwithstanding the ANOCs, many enrollees have unknowingly been subjected to significantly higher premiums and deductibles without any choice in the matter. This is because ANOCs can easily be confused with junk mail, the same ANOC templates are sent every year to all Part D enrollees, the choices presented are confusing, and proper guidance is not provided to enrollees.

Dr. Ting asked for the support of the NAIC in encouraging CMS to do the following three things in order to resolve these issues: (1) Notify “crosswalked” Part D enrollees directly prior to the ANOC mailing from insurers; (2) Modify the CMS ANOC template to fully inform enrollees as to what resources are available to them, such as help line telephone numbers and website information; and (3) Provide the same open enrollment period that Medicare Advantage Enrollees have, allowing “crosswalked” Part D plan enrollees to switch Part D plans during January-March each year. The Task Force plans to work with Dr. Ting on drafting a letter to CMS to raise awareness of these issues.

Discuss Medigap Consolidated Omnibus Budget Reconciliation Act of 1986 (COBRA) Special Enrollment Period (SEP) Notice and Medicare/COBRA

There has been an ongoing issue where individuals are finding themselves stuck between Medicare and COBRA, because prior to COVID-19, more seniors were working past the age of 65 than they had in the past 55 years. Bonnie Burns, California Health Advocates Consultant, provided an update related to a new proposed CMS rule drafted to address issues involving Medicare and COBRA. According to Ms. Burns, the problem is that federal health benefit payment rules that apply while a person is working and eligible for Medicare change after the person stops working and is eligible for Medicare and COBRA at the same time. Further, if a person is eligible for Medicare and signs up for COBRA, the COBRA benefits are intended to be paid after Medicare pays. Due to a lack of awareness regarding the relationship between Medicare and COBRA, as well as the disconnect between the age of eligibility for Social Security and Medicare, individuals who are on COBRA while at the same time being eligible for Medicare can encounter late

enrollment penalties and can be required to repay benefits that COBRA mistakenly covered in Medicare's stead.

The proposed CMS rule includes a special enrollment period that provides relief in instances where an individual can demonstrate in writing that their employer or health plan materially misrepresented information related to enrolling in Medicare on time. According to Ms. Burns, this evidentiary standard is too high, and should therefore be revised, because most conversations about COBRA benefits are verbal. Ms. Burns also stated that the NAIC Coordination of Benefits Model Regulation (#120) is discriminatory against Medicare beneficiaries and those who are eligible, as it does not allow a person with any other type of health benefits to have those benefits reduced for secondary payment unless they are eligible for Medicare. The Task Force plans to hold a single-issue meeting dedicated to this topic to further educate stakeholders, gather information, and discuss whether the Model Regulation should be amended.

Discuss the Status of Long-Term Care Insurance Model Update (B) Subgroup

The Long-Term Care Insurance Model Update (B) Subgroup is currently without a chairperson, and there has been a general lack of interest in moving forward with the Subgroup. Ultimately, a motion to disband the Long-Term Care Insurance Model Update (B) Subgroup passed.

Any Other Matters

Commissioner Marlene Caride (NJ), Chair of the Task Force, announced that CMS responded to the Task Force's March 17, 2022 letter related to the treatment of nonparticipating durable medical equipment (DME) suppliers under Medicare's "Limitation on Beneficiary Liability." A copy of the letter can be found [here](#).

The meeting materials can be found [here](#).

Property and Casualty Insurance (C) Committee

The Property and Casualty Insurance (C) Committee met on Friday, August 12, 2022, at the NAIC Summer National Meeting, and the agenda can be found [here](#). Below is a summary of the meeting:

Consider Adoption of its Task Force and Working Group Reports

The following Task Force and Working Group Reports were adopted:

- Casualty Actuarial and Statistical (C) Task Force
- Surplus Lines (C) Task Force
- Title Insurance (C) Task Force
- Workers' Compensation (C) Task Force
- Cannabis Insurance (C) Working Group
- Catastrophe Insurance (C) Working Group
- Pet Insurance (C) Working Group
- Terrorism Insurance Implementation (C) Working Group
- Transparency and Readability of Consumer Information (C) Working Group

Commissioner James J. Donelon (LA) gave a verbal report for the Surplus Lines (C) Task Force. The Task Force heard an update from the 870 drafting group, which has addressed 40 comments on the model language. The Task Force formally exposed Model 870 for comments that ended on July 21. The Task Force will meet to discuss comments received and then the Model will be re-exposed one more time.

The Transparency and Readability of Consumer Information (C) Working Group exposed its draft on the best practices for insurance rate disclosure documents for comments, and comments were received on June 24. There were several documents received regarding readability, and the NAIC staff is working to make changes to the document. The rate filing checklist is based on the checklist that has been used in Kansas, and there were very few comments on the document. Comments received regarding the rate and rate capping disclosure notice have been reviewed and posted. Washington has released the second draft of its proposed rule and comments are due in November. The language matches the disclosure language of the NAIC draft. If all goes well, the documents will be adopted by the Working Group and forwarded to the Property and Casualty Insurance (C) Committee for the Fall National Meeting. Dave Snyder from the American Property Casualty Insurance Association asked about readability of consumer information and the Washington proposed rule. The Working Group looked at other disclosures, but those disclosures did not get to the level that the group wanted. Snyder has significant feasibility concerns about being able to comply.

Hear a Federal Update—Brooke Stringer (NAIC)

Today, the House is on track to pass the Inflation Reduction Act. The NFIP expires September 30. The NAIC anticipates another short-term extension. Senators from LA, FL, and MS have introduced a bill to authorize NFIP for one year. This spring, FEMA sent Congress a list of 17 legislative proposals for NFIP related to the financial framework and technical and operational enhancements for NFIP. One good inclusion was a proposal that if you go to the private flood insurance market, you can return to NFIP. Wildfire insurance is another focus. Finally, last month the SAFE Act passed in the House related to the cannabis safe harbor legislation.

Hear a Presentation on Cyber Insurance Data —Aaron Brandenburg (NAIC)

The Committee has a charge to report on the cyber insurance market, including data reported within the Cybersecurity Insurance and Identity Theft Coverage Supplement. The report focused on data not in the Supplement, and an additional written report will be produced in the coming days. There is a large increase in direct written premiums; however, there was a decline of policies in force. The data gives us a feel for the market. There are a couple of potential changes for the Supplement. The identity theft coverage has been put into existing policies, so this data does not provide much and may need to be removed. There also continues to be confusion of definitions of package policies, so there is a needed revision for the definitions and Brandenburg proposed making that change. Brandenburg will distribute the proposed changes to committee members.

Receive an Update on the Collaboration Forum on Algorithmic Bias —Commissioner Kathleen A. Birrane (MD)

Commissioner Birrane presented on the Collaboration Forum of working groups that discuss innovation, technology, and cyber security. The forum focuses on communication and education from neutral parties and advocates. At the same time, it is building out some public education and information. The Forum is also working to develop a common vocabulary and has identified about 160 different words that it will be working on definitions for. This is not meant to slow down or undermine individual working groups.

Hear an Overview of a Member Visit to the Insurance Institute for Business & Home Safety (IBHS)—Commissioner Barbara D. Richardson (NV)

The Committee co-hosted a trip to visit IBHS in South Carolina. The Committee discussed fraud and misconceptions in property insurance, which drive a lot of the complaints following catastrophic events. Mitigation actions can help reduce property damage threats. IBHS research and messaging is available for use by all state departments of insurance.

Discuss its Charge Related to Parametric Insurance Products —Aaron Brandenburg (NAIC)

The Committee has a charge related to parametric insurance, and Brandenburg provided an overview of that charge. The charge is to provide a forum for discussing issues related to parametric insurance and to consider the development of regulatory guidance. There has been good work going on related to parametric insurance at the NAIC. A lot of the traction with these products has been due to obtaining benefits in a faster, near automatic claims approval. The product typically pays a smaller amount, so it could lead to consumer confusion. The Committee can get additional insurers to talk about the products and how they may fit into the typical regulatory scheme. The NAIC can also put together an outline of information if the Committee desires.

Commissioner Fox expressed that it is important to digest the current literature and also try to find out what state insurance departments are looking for related to this topic. Birny Birnbaum voiced that parametric insurance is more similar to the lottery than actual insurance. He asked the Committee to identify applications that would be of benefit. Commissioner Lara also expressed a need to look at the actual payouts of parametric insurance.

The meeting materials can be found [here](#).

Casualty Actuarial and Statistical (C) Task Force

The Casualty Actuarial and Statistical (C) Task Force met on Wednesday, August 10, 2022, at the NAIC Summer National Meeting, and the agenda can be found [here](#). Below is a summary of the meeting:

Consider Adoption of its July 12, June 14, and Spring National Meeting Minutes

The Task Force adopted its July 12, June 14, and Spring National Meeting Minutes, which are included in the Meeting Materials [here](#).

Consider Adoption of its Working Group Reports

Actuarial Opinion (C) Working Group

Anna Krylova (NM) reported for the Actuarial Opinion (C) Working Group, which met 3 times since her last report at the Spring National Meeting. They discussed SAO reviews and potential changes to the qualification documentation requirements. Most regulators agree that the requirement to provide qualification documentation to the Board on an annual basis is disproportionately burdensome with respect to the benefit it provides. Qualification documentation is not going to change much for most appointed actuaries, so the group has agreed to change the provision to require documentation every 5 years after the initial appointment, or when there are significant changes to the actuary's qualifications or the company's operations.

The group also discussed a referral from the Financial Analysis (E) Working Group asking them to consider developing additional guidance for regulators that review predictive models used in reserving. The group began drafting a list of questions that financial analysts or examiners can reference when reviewing a reserving model.

The CAS Task Force voted to adopt the AO Working Group report and minutes, which are included in the Meeting Materials [here](#).

Statistical Data (C) Working Group

Sandra Darby (ME) reported for the Statistical Data (C) Working Group. The group met on April 14, May 18, June 15, July 20, and on August 4 for an e-vote, and the materials from those meetings are included in the Meeting Materials [here](#). The group adopted an accelerated timeline for the submission of auto insurance premiums and exposure data. Statistical agents will now provide that data by December 1.

The CAS Task Force voted to adopt the SD Working Group report and minutes included in the Meeting Materials [here](#).

Expose Loss Cost Multiplier (LCM) Form and Instructions

Eric Slavich (WA) discussed the initiative to develop an Expose Loss Cost Multiplier (LCM) Form and Instructions that were introduced at the Spring National meeting. Thereafter, Larry Steinert (IN) formed a subgroup to update and combine NAIC's numerous LCM forms. The initial proposal was exposed for comments, due February 7. The subgroup produced a revised form and presented it at the July 12 virtual meeting. No changes were suggested, however, it was decided to delay adoption until the LCM instructions could be prepared for adoption at the same time. The form and instructions were not prepared by the time of the meeting, but Slavich proposed exposing the LCM memo for a 45-day comment period as a package including the form and instructions, or just the instructions alone, and the task force voted to expose both form and instructions as a package for 45-days. The documents are included in the Meeting Materials [here](#).

Consider Adoption of a Tree-Based Model Appendix to the Regulatory Review of Predictive Analytics White Paper

At the Spring National Meeting, the Task Force adopted the appendix for the random forest model as regulatory guidance with the expectation to combine all similar appendices together for consideration of attachment to the Regulatory Review of Predictive Analytics White Paper. At the July 14 meeting, Sam Kloese (NAIC) proposed removing the random forest guidance and replacing it with guidance for all tree-based models, with a short exposure period through August 5 and no comment letters were received. The Task Force voted to remove the random forest guidance and replace it with guidance for all tree-based models. The adopted materials are included in the Meeting Materials [here](#).

Sam Kloese discussed another emerging model in rate filings called generalized additive models (GAM). He suggested considering another appendix highlighting GAMs. In addition to having linear terms associated with beta coefficients, GAMs also have smooth functions, and he believes it would be good to focus on how to assess smooth functions. Kloese wants to put together a rough draft of a GAM appendix by October 14 to share with the CAS Task Force, and then to be exposed for comment thereafter.

Receive a Report on the NAIC Algorithmic Bias Training

Dorothy L. Andrews (NAIC) gave a brief report on algorithmic bias training. She helped develop the program used for the algorithmic bias forum held in Kansas City July 18 and 19. The objectives of the forum were to (1) provide an educational foundation to working group members on algorithmic bias; (2) leverage the foundational education to develop a common vocabulary for algorithmic bias related concepts to be used by NAIC working groups; (3) identify and address other foundational issues that apply to the regulation of processes that can lead to algorithmic bias in insurance, and that are appropriately part of a common regulatory framework. Three categories of bias were discussed using the National Institute of Standards and Technology Iceberg Model: statistical, human, and systemic. The meeting included a legal primer on algorithmic bias and unfair discrimination to address Artificial Intelligence biases that result in

discrimination practices prohibited by state laws. Forum members also discussed the role of a governance framework in mitigating algorithmic bias, the necessary elements of an effective governance framework, and the limits of such frameworks. These methods offer great potential to help regulators perform testing on the outcomes of algorithms in alignment with regulatory goals. And finally, regulators at the July meeting discussed what data is needed to perform the bias-detection analyses and potential approaches to acquiring such data.

Hear a Presentation on the openIDL Initiative

Jefferson Braswell (openIDL.org) presented on the openIDL Initiative, which is coordinating the development of a collaborative open network of insurance carriers, analytical services, and state insurance commissioners to enable more efficient and timely access to insurance industry data on the part of commissioners. The initiative was taken up by the Linux Foundation. OpenIDL is a permissioned insurance blockchain network harmonized data store. The platform is a collaborative network with private channels of communication. Carriers supply the data, and do not have to divulge any of their information to a central source. OpenIDL is for carriers, regulators, and the industry at large. The initiative seeks to improve the timeliness and availability of insurance industry data for regulators; reduce costs and improve security of regulatory reporting by carriers; enable transparent and constructive collaboration of regulators, agencies, and carriers; and provide a standardized, federated insurance data repository and an extensible network community. The openIDL presentation is included in the Meeting Materials [here](#).

Hear from Professional Actuarial Organizations

American Academy of Actuaries (Academy): Committee on Property and Liability Reporting (COPLFR) and Casualty Practice Council (CPC)

Rich Gibson (MAAA, FCAS) provided an update on the CPC. The CPC provided comment letters to the Federal Insurance Office on the Terrorism Risk Insurance Program, and to the D.C. Department of Insurance, Securities, and Banking unintentional bias in private passenger automobile insurance. He mentioned the cyber toolkit produced by the cyber-risk task force, which provides background materials on cyber-risk. A link to the cyber toolkit is [here](#).

CPC has a racial equity task force as one of their volunteer groups that has produced recent papers, including issue briefs on correlation-causation and sourcing protected class information in P&C insurance and an upcoming paper on identifying bias. CPC's extreme events committee has provided comment letters to the House and Senate on the National Flood Insurance Program Reauthorization, as well as an issue paper on insurance-linked securities. Finally, an issue brief on workers' comp and telehealth was recently published.

COPLFR is working on a comment letter regarding Schedule P, as well as a risk transfer practice note. The 2022 Seminar on Effective P/C Loss Reserve Opinions: Tools for the Appointed Actuary is scheduled to take place in early December. Also, the 2022 Practice Note on SAOs and P/C Loss

Reserves is a COPLFR product that along with the P/C Loss Reserve Law Manual is due in December.

Lisa Slotsnik (Academy) provided updates on the Academy's Committee of Qualifications (COQ). Late in 2021, the COQ issued a final amended U.S. qualifications standard. The U.S.Q.S. specifies qualifications for issuing statement of actuarial opinions. In addition to updating the standard, the COQ updated the FAQ document on the Academy's website. In 2022, the COQ has received 9 questions.

Changes to the U.S.Q.S. include language that if an actuary was qualified under a prior U.S.Q.S., the qualification remains, but for upcoming actuaries, the qualification is based on completion of the actuarial credential rather than current membership in an organization. Additional changes include a requirement for 1 hour of bias continuing education annually. The Academy plans to offer webinars to fulfill the bias continuing education requirement.

The presentation is included in the Meeting Materials [here](#).

Actuarial Board for Counseling and Discipline (ABCD)

The next speaker addressed a general Actuarial Standard of Practice (ASOP) on actuarial communications, which should be exposed for comment in the next few weeks, and ABCD will offer a webinar towards the end of September explaining that information. ABCD is working on a second general ASOP on risk classification, which is under increased scrutiny, but is still necessary. ASOP 20 on claim estimates is out for exposure with a comment deadline of September 30. The exposure graph comment period has ended for ASOP 29 on expense provisions. A task force is currently working on revisions to ASOP 30 on treatment of profit contingency provisions. ASOP 36 was just released for exposure, and a task force is beginning to work on revisions to ASOP 39 on the treatment of catastrophe losses.

Another speaker noted that although ABCD's operations are essentially confidential, ABCD puts out an annual report on their website (www.ABCDBoard.org) that provides a high-level summary of the average violations and topics ABCD is addressing pursuant to Requests for Guidance (RFG). ABCD members encourage actuaries to approach them for guidance.

Casualty Actuarial Society (CAS)

Ken Williams was not available to speak on behalf of CAS.

Society of Actuaries (SOA)

Dale Hall spoke for SOA Research Institute and noted the group's continuing research on climate extremes, such as tropical storm Alex, the U.S. heatwave, heavy precipitation in Missouri and Kentucky.

Market Regulation and Consumer Affairs (D) Committee Meeting

The Market Regulation and Consumer Affairs (D) Committee Meeting met on Friday, August 12, 2022, at the NAIC Summer National Meeting, and the agenda can be found [here](#). Below is a summary of the meeting:

Consider Adoption of its July 15 Meeting Minutes

The Committee adopted the July 15 Meeting Minutes, which are included in the Meeting Materials found [here](#).

Consider Adoption of Revisions to the Market Regulation Handbook

Erica Weyhenmeyer (IL) presented several revisions to the Market Regulation Handbook recently adopted, specifically:

- Chapter 1—Section B. Resources Within State Insurance Departments
- Chapter 20—Marketing and Sales Standard 1
- Chapter 21—Conducting the Property and Casualty Examination
- The revisions are included in the Meeting Materials found [here](#).

The Committee adopted the revisions.

Consider Adoption of New Chapter 24B—Mental Health Parity

Erica Weyhenmeyer (IL) described another agenda item pursuant to a November 3, 2021 letter from 19 mental health organizations to the (D) Committee stating that mental health parity related examination chapter in the NAIC Market Regulation Handbook was outdated due to federal requirements for non-quantitative treatment limitations amended at the federal level last year. The chapter in question and related revisions are included in the Meeting Materials found [here](#). The Committee adopted the revisions.

Consider Adoption of Recommendations for the Incorporation of Artificial Intelligence (AI) in the NAIC Market Information Systems (MIS)

Commissioner Michael Conway (CO) stated that the Market Information Systems (D) Task Force adopted the Report of the MIS Research & Development Working Group on incorporating AI techniques in the NAIC's market information systems at its June 16 meeting. The Report is included in the Meeting Materials found [here](#). The Committee adopted the Report.

Consider Adoption of Guidelines for Amending the NAIC Uniform Applications

Commissioner Sharon P. Clark (KY) noted that the Producer Licensing (D) Task Force adopted the Guidelines for Amending the NAIC Uniform Applications at its May 5 meeting. The Guidelines document is included in the Meeting Materials found [here](#). The Committee adopted the document.

Consider Adoption of Antifraud Plan Repository Workflow

Commissioner Trinidad Navarro (DE) explained that the Antifraud (D) Task Force, at its meeting in May, adopted the Antifraud Plan Repository Workflow, which is the second phase of the adopted NAIC Antifraud Plan Guideline 2021. The Workflow document is included in the Meeting Materials found [here](#). The Committee adopted the document.

Consider Adoption of its Task Force and Working Group Reports

Antifraud (D) Task Force

Commissioner Trinidad Navarro (DE) stated that the Task Force met on June 30 and adopted the Antifraud Plan Repository Workflow, and the Task Force will be holding a full public meeting on September 6.

Market Information Systems (D) Task Force

Commissioner Michael Conway (CO) offered no additions to his prior report.

Producer Licensing (D) Task Force

Commissioner Sharon P. Clark (KY) mentioned that on July 15 the Task Force adopted the appointment of a new Adjuster Licensing Working Group to monitor state implementation of adjuster licensing and reciprocity, and also to update the NAIC Adjustor Licensing Standards as necessary.

Market Analysis Procedures (D) Working Group

John Haworth (WA) stated that the Working Group adopted standard ratios for the travel insurance Market Conduct Annual Statement (MCAS) and the short-term duration MCAS. The Working Group is also considering enhancements to the Market Analysis Review System (MARS) that are focused on incorporating more MCAS data.

Market Conduct Annual Statement Blanks (D) Working Group

Erica Weyhenmeyer (IL) had nothing further to add to her prior Report.

Market Conduct Examination Guidelines (D) Working Group

Erica Weyhenmeyer (IL) had nothing further to add to her prior Report.

Market Regulation Certification (D) Working Group

John Haworth (WA) presented that the Working Group is working on 3 documents that comprise the Voluntary Market Regulation Certification Program: (1) the Certification Program Requirements and Guidelines; (2) the Certification Program Scoring Matrix; (3) the Certification Implementation Plan. The Working Group adopted the Certification Program Scoring Matrix and began work on the other two documents.

Speed to Market (D) Working Group

Rebecca Nichols (VA) reported that the Working Group, at their April 20 meeting, were updated on the ongoing review and editing of outdated and obsolete information from the 2016 Product Filing Review Handbook. The group also received an update on the NAIC SERFF Modernization Project, and discussed the annual review of the Uniform Transmittal Documents (UTD) and Product Coding Matrix (PCM). At their July 12 meeting, the Working Group adopted a change to the UTD to add “withdrawn” as a status option, but adopted no changes to the PCM.

Advisory Organization (D) Working Group

Commissioner Doug Ommen (IA) did not report.

The Committee adopted the Reports of the Working Groups.

Hear Presentation on Dark Patterns on Websites

Birny Birnbaum (Center for Economic Justice) presented on dark patterns on websites. Dark patterns are user interface techniques that benefit an online service by leading consumers into making decisions they might not otherwise make. The patterns may be deceptive, coercive, and exploit cognitive biases. Dark pattern techniques include nagging (repeated requests to do something the firm prefers), confirmshaming (choice framed in a way that makes it seem dishonorable or stupid), forced action (requiring opt-out of optional services, manipulative extraction of personal information and information about other users), social proof (false-misleading notice that other are purchasing or offering testimonials), the roach motel (asymmetry between signing up and canceling), price comparison prevention (difficulty understanding and comparing prices), and hidden information (obscuring important information).

Data shows that mild dark patterns yield a 11% acceptance rate, and aggressive dark patterns yield a 42% acceptance rate. Both the Federal Trade Commission and the Consumer Financial Protection Bureau are taking action against dark patterns. Regulators, (D) Committee, and NAIC can address dark patterns by training analysts to recognize dark patterns, compiling resources on manipulative digital design, reviewing existing disclosure requirements, updating guidance in regulations, and developing relevant methods of regulatory review.

The Dark Patterns presentation can be found [here](#).

A slideshow of the meeting can be found [here](#).

Improper Marketing of Health Insurance (D) Working Group

The Improper Marketing of Health Insurance (D) Working Group met on Thursday, August 11, 2022, at the NAIC Summer National Meeting, and the agenda can be found [here](#). Below is a summary of the meeting:

Discuss Working Group Charge to Review Existing NAIC Models and Guidelines

Chair, Martin Swanson (NE) explained that the Working Group was charged with reviewing NAIC models and guidelines to address the use of lead generators for sales of health insurance products, and identify models and guidelines that we need to update or develop to address the current market activities. The Working Group exposed draft amendments to the *Unfair Trade Practices Act* (#880) that can be viewed [here](#) and [here](#).

A Rhode Island speaker mentioned that during the review process, CMS came out with their own final rules regarding third-party marketing organizations, and so the speaker suggested that this language and an additional definition should be added to the rule. The speaker also suggested adding insurance lead generator and third-party marketing organization language to section 3 on unfair trade practices. A document showing those comments can be viewed [here](#).

A virtual attendee also noted that many lead generators are not licensed, so there are limited resources for taking action against their deceptive trade practices. Harry Tang (NAIC), a consumer representative, noted that Pennsylvania considered legislation requiring that insurance companies use contractual language to limit the behaviors of lead generators.

Discuss Collaboration with Trade Associations

Wes Bissett (Independent Insurance Agents & Brokers of America) praised the efforts of the Working Group and expressed interest in helping to eliminate the deceptive practices of lead generators by disseminating information and staying on alert for fraudulent activities.

Discuss Medicare Advantage

Janey Troutwein (National Association of Health Underwriters) discussed problematic behavior with the Third-Party Marketing Organizations (TPMOs) providing inaccurate information in the Medicare marketplace. She noted that the definition of TPMO has been revised to include agents and brokers, which she believes is a bad idea because they will now be subject to recording requirements under the CMS. She believes these requirements will hurt small insurance businesses who will not have the resources to ensure compliance. NAHU has requested the CMS delay the rule and redefine it so as not to include independent agents and brokers.

Other Regulator Actions

The chair discussed an array of regulator actions, including a Federal Trade Commission action against Benefit Technologies, an effort by the National Association of Attorney Generals to restrict robo-calls, and cease and desist actions against Salvasen Health.

Roundtable Discussion

Rob Moore (Receivership Management) discussed the Medova Lifestyle Health Plan and pending litigation between Medova and the U.S. Department of Labor, and an administrative action in the state of Washington.

Financial Condition (E) Committee

The Financial Condition (E) Committee met on Friday, August 12, 2022, at the NAIC Summer National Meeting, and the agenda can be found [here](#). Below is a summary of the meeting:

Consider adoption of Related Party Changes include Statutory Accounting Principles (E) Working Group 2021-21 & Blanks (E) Working Group 2021- 22BWG—Dale Bruggeman (OH)

The working groups both adopted the Related Party Changes unanimously, and so did the Accounting Practices and Procedures (E) Task Force. These changes are separated out from the other reports because the item impacts individual companies and all insurance-reporting entities. The changes were adopted in conjunction with recommendations from the Macroprudential (E) Working Group regarding risks of certain affiliated investments and related parties. It made sense to make sure everyone is aware of this and acknowledge that it is coming up for vote. The Related Party Changes were adopted.

2021-21: Related Party Reporting, with an effective date of December 31, incorporates new reporting requirements for investment transactions with related parties and includes clarifications to Statement of Statutory Accounting Principles (SSAP) No. 25—Affiliates and Related Parties and SSAP No. 43R—Loan-Backed and Structured Securities to make clear that the existing affiliate definition applies to all types of entities, including securitizations.

2021-22BWG, with an effective date of December 31, adds a new reporting requirement in the investment schedules for investment transactions with related parties. For all investments, except those on Schedule A—Real Estate, reporting entities will report a code to identify the type of related party involvement. Investments that do not have any related party involvement will also be identified with a specific code

Consider Adoption of its Task Force and Working Group Reports — Commissioner Scott A. White (VA)

The reports include items that are technical, non-controversial, or of a routine nature. All reports were considered for adoption in the same vote. Technical items will be sent to NAIC members for review. Members will have 10 days to comment. The following reports were adopted.

- Accounting Practices and Procedures (E) Task Force
- Capital Adequacy (E) Task Force
- Examination Oversight (E) Task Force
- Financial Stability (E) Task Force
- Group Capital Calculation (E) Working Group
- Group Solvency Issues (E) Working Group
- Mutual Recognition of Jurisdictions (E) Working Group
- National Treatment and Coordination (E) Working Group
- Receivership & Insolvency (E) Task Force

- Reinsurance (E) Task Force
- Valuation of Securities (E) Task Force

Hear a Presentation from Federal Reserve on their Supervisory Framework—Thomas Sullivan & Matt Walker (Federal Reserve)

On January 28, the Federal Reserve released proposed guidance on a framework for the supervision of certain insurance organizations overseen by the Federal Reserve. Matt Walker explained that the Federal Reserve has a very limited role in insurance supervision. Currently, there are six insurance organizations engaging banking. The Federal Reserve is relatively new to regulating insurers. The proposed framework describes the Federal Reserve’s proposed approach to supervising companies engaged in insurance activities. The proposal lays out two categories of supervised insurance organizations, where a supervisory team is dedicated to the complex organizations. Ratings are also very important for oversight. The Federal Reserve wants to work with other supervisory teams such as state insurance regulators. The framework also describes how to coordinate with state insurance regulators.

The meeting materials can be found [here](#).

Group Solvency Issues (E) Working Group

The Group Solvency Issues (E) Working Group met on Thursday, August 11, 2022, at the NAIC Summer National Meeting. The agenda can be found [here](#). Below is a summary of the meeting:

Consider Adoption of Interim Meeting Minutes

The Working Group adopted the minutes from the last meeting, which can be found in the Meeting Materials [here](#).

Discuss Comments Received on Proposed Revisions to Own Risk and Solvency Assessment (ORSA) Guidance Manual

Justin Schrader (NE) noted that the Working Group had discussed comments received on the proposed revisions to the ORSA guidance manual from the American Council of Life Insurers, the American Property Casualty Insurance Association, the National Association of Mutual Insurance Companies, and Travelers. Copies of the comment letters, responses from the ORSA drafting group, and a revised manual incorporating the comments can be found in the Meeting Materials [here](#).

Mike Shanahan (CT) offered an overview of the comments received and the drafting group's responses. He stated that the proposed changes were regarding 4 areas, namely, IAIG ORSA filings, liquidity risk, centralized versus decentralized ERM, and recovery plans. Additionally, Connecticut proposed an amendment to the ORSA Guidance Manual, on page 5, in the section discussing ORSAs from foreign jurisdictions and compliance with principals in ICP 16. Their concern was that in the event that the ICP 16 was amended, the ORSA Guidance Manual would incorporate those amendments by reference without the opportunity for review.

Robert Neill (ACLI) thanked the Working Group for accepting comments, and suggested continuing a working relationship with the group.

Discuss Comments Received on Proposed Revisions to the Financial Condition Examiners Handbook (FCEH)

Justin Schrader (NE) explained that comments were received for the FCEH from the same commenters as the ORSA Guidance Manual, and their comments can be found in the Meeting Materials [here](#). A drafting group met to discuss the comments that were received and made revisions.

Susan Bernard (CA) discussed the comments and responses. The comments fell into 3 categories, which are exam repository risks, consistency with other NAIC publications, and the independence of internal audit functions.

Steve Broadie (APCIA) thanked the drafting group, but also expressed concern that there are places in the Examiners Handbook where examiners, analysts, etc. are still encouraged to look to timeframe or ICP guidance that allows reference to documents that are not authoritative. The Working Group identified a reference on page 67, and made a proposal to change the language to accommodate the concern.

Discuss Comments Received on Proposed Revisions to the Financial Analysis Handbook (FAH)

Justin Schrader (NE) stated that the Working Group received comments pursuant to the FAH, and those comments were addressed by a drafting group. The comments and revisions are included in the Meeting Materials [here](#).

Bruce Jenson (NAIC) discussed the comments and responses. The drafting group reaffirmed their decision from last Fall to leave some reference to the ICS in the Handbook. The group accepted a revision by Travelers regarding edits to the head of the IAIG role, replacing the word “supervision” with “management/control.” A few other edits were made for consistency purposes.

Consider Adoption of ORSA Guidance Manual and Referral of FAH and FCEH Revisions to Respective NAIC Groups

The Working Group adopted the revisions to the ORSA Guidance Manual for 2023 publication, including the friendly amendment proposed by Connecticut. The group then referred the Financial Condition Examiners Handbook and the Financial Analysis Handbook to the Financial Examiners Handbook (E) Technical Group and the Financial Analysis Solvency Tools (E) Working Group to consider for adoption.

Any Other Matters

Schrader mentioned that the Working Group received a referral from the Macroprudential (E) Working Group related to private equity (PE) issue that it plans to address moving forward.

Joint Meeting of the Financial Stability (E) Task Force and the Macroprudential (E) Working Group

The Joint Meeting of the Financial Stability (E) Task Force and the Macroprudential (E) Working Group met on Friday, August 12, 2022, at the NAIC Summer National Meeting. The agenda can be found [here](#). Below is a summary of the meeting:

Consider Adoption of the Task Force’s June 27 and Spring National Meeting Minutes and the Working Group’s April 22 Minutes

The Task Force and Working Group adopted their Spring National Meeting Minutes included in the Meeting Materials [here](#).

Hear an Update on Financial Stability Oversight Council (FSOC) Developments

Vice Chair Elizabeth Kelleher Dwyer (RI) provided a brief update on FSOC actions, including its report summoning member agency action on climate risk and considerations of crypto currencies and digital assets and potential shocks to the financial market.

Receive a Working Group Update

Justin Schrader (NE) discussed Private Equity (PE) and noted that the FSTF and the MWG previously adopted (1) a final document listing the MWG’s PE considerations; (2) summaries of regular and interested party discussions; and (3) a recommended disposition of each of the considerations. Following adoption, NAIC developed the MWG plan into several proposals. The Financial Condition (E) Committee adopted the MWG plan at its July 21 Interim Meeting, and the plan included multiple referrals to other NAIC committee groups. MWG will continue to monitor work and offer advisement on its considerations in other committee groups. The referrals are included in the Meeting Materials [here](#).

Next, Schrader discussed Liquidity Stress Tests (LST). NAIC staff received and performed initial reviews on 2021 LST filings from 21 groups. The 2021 LST included 5 stress scenarios: (1) a baseline scenario; an adverse scenario; an adverse/what-if scenario; an interest rate hike scenario; and a worst case scenario. The data indicate that most of the assumptions for the 5 scenarios are consistent with the 2020 assumptions, and results continue to show that the amount of asset sales from the U.S. life insurance industry during these stress events would not be significant to the broader financial markets. The majority of the sales were from treasuries and agency bonds along with some investment-grade public/corporate bonds. A public summary of the results is planned for September.

Hear an International Update

Tim Nauheimer (NAIC) stated that the International Association of Insurance Supervisors (IAIS) has completed numerous data collection efforts and analysis as part of the Global Monitoring

Exercise (GME). Key components of the GME are the Individual Insurer Monitoring (IIM) and the Sector-wide Monitoring (SWM), which now includes separate data collections for climate and cyber data. The IAIS is now in the process of comparing IIM data with SWM data to identify any risk themes. The IAIS will complete a Global Insurance Market Report from data submissions. The Report this year will include a section on climate risk from collaborations between the Macroprudential (E) Working Group and IAIS Climate Risk Steering Group.

The IAIS Liquidity Workstream meets at the end of August to analyze data received from the GME to develop a liquidity metric that utilizes a company's cash flow projections that aligns with IAIS's adopted domestic approach to assessing liquidity risk. IAIS plans a publication called *Liquidity Metrics as an Ancillary Indicator* as a guidance document for liquidity monitoring within the GME.

Valuation of Securities (E) Task Force

The Valuation of Securities (E) Task Force met on Thursday, August 11, 2022, at the NAIC Summer National Meeting, and the agenda can be found [here](#). Below is a summary of the meeting:

Consider for Adoption:

Consider Adoption of its June 9 and Spring National Meeting Minutes

The Task Force adopted the minutes from the Spring National Meeting, which are included in the Meeting Materials found [here](#).

Discuss Comments and Consider for Adoption:

Discuss Comments Received and Consider Adoption of a Proposed Amendment to the Purposes and Procedures Manual of the NAIC Investment Analysis Office (P&P Manual) to Clarify the Role of the Securities Valuation Office (SVO) Regarding Interpreting Accounting and Reporting

Marc Perlman (NAIC) discussed the historical role of the SVO in working with statutory accounting colleagues to make accounting and reporting determinations, and noted that this role is subject to conflicting interpretations under the P&P Manual in Paragraph 32, 33, and 34 of Part One, compared to Paragraph 40, Part One. The Task Force adopted a Proposed Amendment to Paragraph 40. The Task Force received a joint comment letter from ACLI, PPIA, and NASVA supporting the amendment, as well as a letter from Anderson Insights recommending the Task Force not adopt the proposal at this time. The comment letters and the Proposed Amendment are included in the Meeting Materials found [here](#). The Task Force voted to adopt the Proposed Amendment.

Discuss Comments Received and Consider Adoption of a Proposed Amendment to the P&P Manual to Update Part Four for NAIC Designation Category and Additional Price Points

Charles A. Therriault (NAIC) briefed the Task Force on the need for technical updates to the P&P Manual to update consistent reference to NAIC designation category and additional price points. The Task Force received a joint comment letter from the ACLI, PPIA, and NASVA supporting the proposed changes. The comment letter and the Proposed Amendment are included in the Meeting Materials found [here](#). The Task Force voted to adopt the Proposed Amendment.

Discuss Comments Received and Consider Adoption of a Proposed Amendment to the P&P Manual to Update the Definition of Principal Protected Securities (PPS)

Marc Perlman (NAIC) explained a Proposed Amendment to the P&P Manual to update the definition of Principal Protected Securities due to new transactions called Synthetic PPS that do not fit the current definition, but that pose similar risks as PPS transactions. The Proposed Amendment seeks to capture these securities under a revised definition. The Task Force received

a joint comment letter from the ACLI, PPIA, and NASVA supporting the proposed changes. The comment letter and the Proposed Amendment are included in the Meeting Materials found [here](#). The Task Force voted to adopt the Proposed Amendment.

Receive and Discuss Referral:

Receive and Discuss a Referral from the Statutory Accounting Principles (E) Working Group of the Related Party Reporting Agenda Item

Carrie Mears (IA) cited a referral notifying the Task Force that on May 24, 2022, the Statutory Accounting Principles (E) Working Group adopted agenda item *2021-21: Related Party Reporting* recommending that the Task Force assess whether edits are need to the P&P Manual regarding comments on filing exemption for affiliated structured securities with unaffiliated underlying credit exposure. The notification required no immediate action from the Task Force. The referral is included in the Meeting Materials found [here](#).

Receive and Discuss a Referral from the Macroprudential (E) Working Group on its Plan for the List of MWG Considerations

Carrie Mears (IA) discussed a referral from the Macroprudential (E) Working Group, which is charged with coordinating various NAIC activities related to private equity owned insurance, and the group developed a list of 13 regulatory considerations, including 3 items specific to the VOS Task Force: (1) the Risk-Focused Surveillance (E) Working Group is considering the material terms of the investment management agreements and whether they are arm's length or include conflicts of interest; (2) material increases in privately-structured securities; (3) the level of reliance on rating agency ratings and their appropriateness for regulatory purposes. The Task Force formed a small ad hoc group to begin the steps of assessing rating agency reviews. This will be a multi-year project that will include input from rating agencies. Regulators will monitor the ad hoc group. The referral is included in the Meeting Materials found [here](#), and required no immediate action from the Task Force.

Discuss, Receive Comments and Consider for Exposure or Referral:

Discuss and Consider Exposure of the Task Force's 2023 Proposed Charges

Carrie Mears (IA) stated that most of the proposed Task Force charges for 2023 are unchanged from 2022, with the exception of two additional charges: (1) implement additional and alternative ways to measure and report investment risk; (2) establish criteria to permit staff's discretion over the assignment of NAIC designations for securities subject to the filing exempt process (the use of credit rating provider ratings to determine an NAIC designation) to ensure greater consistency, uniformity and appropriateness to achieve the NAIC's financial solvency objectives. The proposed charges are included in the Meeting Materials found [here](#). The proposed charges will be exposed for 30 days and discussed at an upcoming meeting.

Discuss and Consider Exposure of a Staff Memorandum on Alternatives to Add Fixed Income Analytical Risk Measures to Investments Reported on Schedule D, Part One

Carrie Mears (IA) spoke about the next steps on the Task Force's proposal to add fixed income analytical measures for investments reported on Schedule D, Part One. The proposals support the SVO's analytical processes and also align with the regulatory initiatives of the Capital Adequacy (E) Task Force, like actuarial test scores, and concerns expressed by the Financial Stability (E) Task Force and its Macroprudential (E) Working Group. Concerns were raised in comment letters regarding the operational burden of collecting this data and explanations as to the reasons why some investments may have a higher yield spread versus a U.S. Treasury that may not be related to credit risk. Given those concerns, the Task Force wants to look at alternative ways to collect this information, and prepared a Memorandum to that effect included in the Meeting Materials found [here](#). The discussion required no immediate action from the Task Force and the Memorandum was directed for 30-days exposure.

Chris Anderson (Anderson Insights) questioned whether it was the appropriate time to decide which data was needed to meet the Memorandum's objectives, and whether it was appropriate to use anything other than rating agency metrics to judge a rating agency.

Discuss and Consider Exposure of a Revised Proposed Amendment to the P&P Manual to Update the Definition of Other Non-Payment Risk Assigned a Subscript "S"

Marc Perlman (NAIC) detailed the Revised Proposed Amendment to the P&P Manual included in the Meeting Materials found [here](#). The SVO met with ACLI, PPIA, and NASVA on three occasions to discuss the proposed amendment, and the groups disagreed on 3 primary issues: (1) maturities equal to or exceeding 40 years; (2) certain deferred principal payment features; (3) certain deferred interest payment features. The SVO recommends exposing the definition updates and deferring the instructions to remove securities with other non-payment risks from filing exemption. Staff was directed to expose the amendment for comment for 30 days.

Receive Comments on IAO Issue Paper on the Risk Assessment of Structured Securities – CLOs

The NAIC Structured Securities Group (SSG) made two recommendations to the Task Force: (1) the Task Force should direct modeling of Collateralized Loan Obligations (CLOs) by the NAIC and (2) referrals to the Capital Adequacy (E) Task Force and Risk-Based Capital Investment Risk and Evaluation (E) Working Group requesting that those groups consider breaking out the 6 designations into 3 designation categories (6.A, 6.B, and 6.C). The Task Force exposed a Memorandum and received comments, which are included in the Meeting Materials found [here](#). SSG grouped the response concerns into 4 categories: (1) timeline concerns; (2) policy arguments regarding the importance of CLOs to the U.S. capital markets; (3) transparency; and (4) methodology. Staff recommends that the Task Force proceed with the proposal and refer the risk-based capital issue to the Risk-Based Capital Investment Risk and Evaluation (E) Working Group, and also direct staff to draft P&P language for exposure and work with interested parties. The presentation on this issue will be exposed for 30 days along with the existing methodology

paper. Staff was directed to propose a P&P Manual amendment assigning responsibility for assigning NAIC designations for CLOs to the SSG to be discussed at a future meeting and publicly exposed for comment.

Hear or Receive Staff Reports:

Receive a Report on the Projects of the Statutory Accounting Principles (E) Working Group

Julie Gann (NAIC) reported that the principles bond project is exposed.

Receive an Update on the Ad Hoc Credit Rating Provider (CRP) Study Group

Carrie Mears (IA) reported that the group continues to meet, but has no deliverables currently.

Receive an Update from the Structured Securities Group (SSG) on Modeling and Scenarios

Charles A. Therriault (NAIC) reported on the macroeconomics scenarios and assignment of probabilities for CMBS and RMBS. The summary is included in the Meeting Materials found [here](#). The summary will be exposed for 30 days for comment.

Innovation, Cybersecurity and Technology (H) Committee

The Innovation, Cybersecurity, and Technology (H) Committee met on Wednesday, August 10, 2022, at the NAIC Summer National Meeting, and the agenda can be found [here](#). Below is a summary of the meeting:

Consider Adoption of its Spring National Meeting Minutes

The Committee voted to adopt the Spring National Meeting Minutes found [here](#).

Consider Adoption of a Request for NAIC Model Law Development from the Privacy Protections (H) Working Group

Katie Johnson (VA) reported that the Privacy Protections Working Group adopted the request for the NAIC model law development, replacing model #670 and model #672, with one new model during the August 2 meeting, with Nebraska objecting due to concerns voiced by the healthcare coalition about a private right of action being included in the new model, and a safe harbor for HIPAA not being included, but the Working Group has addressed those concerns. The ICT (H) Committee voted to adopt the NAIC Model Law Development found [here](#).

Consider Adoption of its Working Group Reports

Big Data and Artificial Intelligence (H) Working Group

Elizabeth Kelleher Dwyer (RI) briefed the ICT Committee on the Big Data and AI (H) Working Group meeting earlier in the day on algorithmic bias.

Cybersecurity (H) Working Group

Cynthia Amann (MO) noted that the Cybersecurity Working Group's last meeting was July 14, and the group provided a Work Plan from leadership. The Working Group also launched a volunteer group that is drafting a regulator survey, and it should be ready to roll out to the states after everyone returns from the meeting. The group received an update from NAIC legal on the implementation of the Insurance Data Security Model, and 21 states have adopted the model. The group hopes to develop a chart to track changes and proposed changes necessary to pass the model through state legislatures in an effort to offer advise to other states that have not adopted the model.

The Financial and Banking Information Infrastructure Committee (FBIIC) has been looking to improve communication and enhance resilience in the financial sector. FBIIC launched an effort to better understand cybersecurity cloud concentration risk. Treasury will be publishing a report that summarizes their research.

A Cyber Incident Reporting for Critical Infrastructure Act was signed into law requiring that owners and operators of critical infrastructure report cybersecurity incidents to the U.S. Department of Homeland Security (DHS) as well as to the Cybersecurity Infrastructure Security Agency (CISA). The Working Group is reaching out to CISA to better understand the implications of this Act, and on general cybersecurity insights.

NAIC will be reaching out to Maryland this year, and Ohio next year to launch the next generation of table top exercises. These exercises simulate a cybersecurity event utilizing F.B.I., law enforcement, insurers, and regulators.

The group received an update on state insurance regulators cybersecurity tools that are codified in the group's handbook and the related model laws that will be used as an orientation tool for regulators new to the Working Group.

E-Commerce (H) Working Group

Troy Downing (MT) reported that the group has met in a regulator-only session twice since the Spring National Meeting. The purpose of those meetings was to discuss internal matters while also planning steps to adopt its 2022 goals. The Working Group has been addressing the issues identified in the 2022 e-commerce surveys from the states. The surveys focused on exceptions to state laws and regulations that were implemented in response to the pandemic to allow for e-commerce and electronic communications in lieu of in-person methods, and whether any exceptions had expired or been permanently implemented. The surveys also sought information on any exceptions that may impede the ability to conduct e-commerce.

Innovation in Technology and Regulation (H) Working Group

Co-Vice Chair Evan G. Daniels (AZ) reported that the ITR Working Group had their first 2022 meeting on May 25, where it outlined its plan for the year. The meeting was focused on state approaches to innovation. The group plans to meet two more times this year.

Privacy Protections (H) Working Group

Katie Johnson (VA) reported that the PP Working Group met 3 times in regulator-only sessions to review draft revisions of sections 1-12 of model 670. The group adopted its 2022 spring National meeting minutes, heard updates on state and federal privacy legislation, and discussed comments it received on revisions to sections 1-3 of model 670. America's Health Insurance Plan supported the Working Group starting with model 670 and suggested the group consider combining models 670 and 672. The American Counsel of Life Insurers said they would like common definitions and a framework of one uniform model rather than a cluster of state insurance privacy laws. The group decided to replace models 670 and 672 with one model.

At the August 9 meeting, the Working Group discussed next steps for the consumer data ownership and use white paper drafting efforts, next steps for drafting the new model, and the Working Group's final work plan.

The ICT (H) Committee then voted to adopt the Working Groups reports, which can be found [here](#).

Receive an Update on Innovation, Cybersecurity, and Technology (H) Committee Projects

ICT-Hub Concepts and Progress

Scott Morris (NAIC) provided an update on the ICT-Hub initiative to connect the various Committees together. The (H) Committee gathered information and provided it to the communications department, who then built a demo that was shared with the (H) Committee last month. NAIC did pre-work in implementing a new website with a content management platform that will allow for a smarter, more streamlined approach that will benefit the committees. One feature will allow content to be tagged and pulled together to the same area. (H) Committee received good feedback from the demo.

Collaboration Forum on Algorithmic Bias Program and Kansas City Fly-In

Chair Kathleen A. Birrane (MD) discussed the reasoning behind using a Collaboration Forum to address important items that cut across several fields of interest in the insurance sector. Recently, it has become clear that the work NAIC is doing on unfair bias, algorithms, machine learning, and illegal discrimination pertains to a variety of Working Groups and should be the first topic for a Collaboration Forum. Early on, the forum established 3 areas of focus on this subject:

1. Identify groups working on algorithmic bias.
2. Provide foundational education to commissioners and senior regulators on this topic.
3. Collaborate to identify common and foundational elements of our regulatory oversight of AI use in insurance, including the development of a common vocabulary and the identification of regulatory tools.

The agenda for the Collaboration Forum on Algorithmic Bias Fly-In can be found [here](#).

Collaboration Forum on Algorithmic Bias Panel: Approaches Companies Are or Can Implement to Manage and Mitigate the Risk of Unintended Bias and Illegal Discrimination When Developing and Using AI/ML

Dale Hall (Managing Director of Research, Society of Actuaries) (SOA) described SOA's role in educating actuaries and offering certificate programs, but also more recently, the SOA released last summer a focus on ethical and responsible use of data and predictive models.

A data ethics framework should (1) be based on a set of principles that are applied in practices; (2) provide ways to organize data processes and analyze a given situation; (3) facilitate the ability

to have checkpoints and ask important questions; and (4) have the same core intentions despite different framework approaches.

Principles should include fairness, safety, transparency, and accountability. Implementing these principles entails following applicable regulations related to fair use and privacy; avoiding biases in data collection, such as selection bias, measurement bias, feature selection, and omitted variable bias; avoiding biases that may influence model development; and understanding how various modeling approaches relate to the framework.

The need for model fairness requires the avoidance of disparate impact and disparate treatment, which raises considerations of unawareness, demographic parity, positive predictive value, individual fairness, and counterfactual fairness. Methods for avoiding unintended discrimination include utilizing pre-approved variables, expanding the information used, collecting protected data to ensure against model discrimination, and requiring a direct causal relationship.

Additionally, model safety and governance plays a crucial role and must be a part of AI/ML education. Properly applying an ethical framework requires (1) a full understanding of the problem, the data, and the algorithm; (2) assurance that the model meets the intended purpose; (3) avoiding potential misuse or misinterpretation; (4) ensuring proper business operations through model development, formal control, implementation, and development; (5) incorporation into standard risk management and audit functions; and (6) accountability as to who owns the processes, what the processes are, and an explanation as to why certain decisions were made. To this last point, a model explanation is important for transparency, however, models can be difficult to explain. As such, there are several technical approaches/explanations, such as feature importance measures, partial dependence plots, global surrogate models, and local surrogate models (e.g., LIME, Shapley values). Conversely, a strong and simple explanation is just as important.

When you build a model, you cannot just “set it and forget it.” Feedback and control considerations are crucial for implementation so that models are continuously evaluated against the framework at each step after deployment. These measures are a normal extension of the actuarial control cycle.

Tulsee Doshi (Advisor, Lemonade Insurance Company) spoke about current approaches to algorithmic bias. Humans have a history of making product design decisions that are not always in-line with the needs of everyone. For instance, female drivers were 47% more likely to be severely injured in an auto accident because the industry failed to model crash test dummies for females. Also, cameras failed to calibrate to skin tones until the 1990s because the calibration cards only accounted for one skin color.

Human bias can enter into each stage of Machine Learning (ML), from collecting data; labeling data; training according to chosen metrics and objectives; filtering, ranking, and aggregating user data; observing effects; and collecting more data. Because ML uses and users are so diverse, ML fairness concerns can take many different forms.

Fairness in model development entails (1) establishing the problem with diverse users in mind; (2) collecting data across the user base; (3) defining fairness opportunities and testing repeatedly; (4) mitigating and monitoring design approaches; and (5) developing an inclusive workforce with diverse perspectives. Model evaluation generally includes 3 stages. The first stage—Model Features—aims at understanding what features may be strong proxies, and how they affect model performance. The second stage—Model Outputs—evaluates the performance of the model compared to how the model’s claim frequency differs from what is in the data. And the third stage looks to track how loss ratios differ across communities over time to understand whether there are systemic gaps across models.

Doshi last spoke about transparency and the use of *model cards* to ensure standardized, consistent documentation for models, similar to nutrition labels for food. The cards would denote high-level structures about how the model was designed and developed, and would be comparable to one another due to their consistent framework.

Lastly, Daniel Schwarcz (Professor, University of Minnesota Law School) spoke about insurance discrimination. His talk addressed the risk of biased AI generally, the risk of biased A.I. in insurance, how to limit the risk of biased AI by testing for disparate impact, and how failing to limit risks may result in unfair biases with unequal results across protected groups.

Machine Learning AIs are programmed to maximize a “target variable” by inductively developing algorithms based on massive amounts of data, and they can create the risk of bias against statutorily protected groups even though they do not have direct data that includes membership in protected groups. This occurs when training data is itself biased, membership in protected groups is directly predictive of a target variable, and the target variable is a poor proxy for the actual measure of interest.

In an insurance setting, underwriting/rating AIs will inevitably discriminate based on proxies for protected status when protected status is actuarially predictive of claims (proxy discrimination). In fraud detection, any bias contained in the training data regarding when policyholder fraud is suspected or can be proven will be reproduced by the AI. And in marketing, AIs that are trained based on target variable of profit expectations across all lines of business will drive marketing to relatively wealthy areas where there is more cross-selling potential and total property value to insure.

In all well-known cases of model bias, the problem was discovered by examining outcomes with respect to protected groups. Furthermore, subjecting AIs to risk management tools that do not test for disparate impact only minimally limits the risk of bias because bias can manifest in surprising ways. Currently, insurers do not have systematic data about policyholders’ membership to protected classes. So, insurers should be explicitly permitted, and even required, to collect that information.

If testing shows disparate impact, then unfair bias may be present, depending on the results. Disparate impact alone may not be a legal or regulatory problem, depending on the state and line of coverage. But disparate impact results prompt hard questions for determining the presence of unfair bias. In underwriting/rating, it is crucial to ask whether disparate impact exists just for premiums, or also for loss ratios; or also whether disparate impact reflects differences across protected classes that are unrelated to an individual's membership in a protected class. In a fraud context, one should ask if the training data includes unfounded biases, or if the rate of false-positives is higher among protected groups than unprotected groups due to AI. And in a marketing context, it is important to ask whether individual firms' marketing techniques result in segmented markets where protected groups are served by smaller subsets of insurers that have relatively favorable loss ratios.

The meeting materials can be found [here](#).

Big Data and Artificial Intelligence (H) Working Group

The Big Data and Artificial Intelligence (H) Working Group met on Wednesday, August 10, 2022, at the NAIC Summer National Meeting. The agenda can be found [here](#). Below is a summary of the meeting:

Consider Adoption of its July 14 Minutes

The Working Group adopted its July 14 Minutes, which can be found [here](#).

Collaboration Forum on Algorithmic Bias Panel: Discuss AI Risk Management, Governance and Bias Detection

Chair Elizabeth Kelleher Dwyer (RI) noted that one of the highest priorities of the (H) Committee is to facilitate working groups, appropriate levels of coordination, and collaboration among working groups with respect to innovation, technology, cybersecurity, and privacy in the insurance sector. A Collaboration Forum was formulated to achieve these goals and the forum's first project is algorithmic bias, and specifically how bias in algorithmic decision-making systems and complex predictive models can result in unfair discrimination. With the Collaboration Forum, the Working Group is providing a public platform for education, following up on the discussion session in Kansas City in July.

Perspectives on AI Risk Management and Governance

Scott M. Kosnoff (Faegre Drinker Biddle & Reath law firm) presented on how insurers using Artificial Intelligence (AI) or Algorithmic Decision-Making (ADM) can mitigate their exposure to regulatory litigation and reputational risk. AI/ADM are desirable insurance tools because they facilitate better marketing and customer engagement, underwriting decisions, ratings, claims decisions, utilization management, and fraud detection. Some insurers view these tools as imperative to maintaining a competitive edge. However, potential hazards with AI/ADM tools include concerns about fairness, unintended bias and discrimination against protected classes, lack of transparency and explainability, and privacy.

Insurers can manage their exposure by maintaining a risk management framework based on the most current regulatory standards, although state legislatures may pose a challenge to these efforts by prohibiting unintentional discrimination against protected classes. This raises questions as to how bias should be identified and evaluated, and what level of correlation with a protected class is acceptable, and under what circumstances.

Until regulatory bodies achieve a uniform standard for algorithmic models, organizations using AI/ADM should develop and adopt a "good story" that addresses and takes seriously the concerns associated with ADM, and that shows the organization is taking reasonable steps to identify, manage, and mitigate the risk of negative outcomes. The AI/ADM risk management framework should be an extension of the organization's risk management and compliance programs stated

in written policies and procedures that are consistently used, monitored, and documented, and that assign responsibility and accountability, communicated to respective individuals that are trained and supervised.

The key elements of AI/ADM risk management policies and procedures include an inventory of the organization's algorithms, an understanding of each algorithm's objectives and use, the potential risks of each algorithm, an assessment of potential risks and their likeliness to occur, safeguards for each risk, and testing for biases. Also, organizations need a multidisciplinary and diverse AI/ADM team, subject to board oversight, and with clearly assigned roles. One of the challenges for the risk management team should be to determine how many tests are necessary for detecting bias.

Bias Detection Methods and Tools

Eric Krafcheck (Milliman) discussed methods for bias detection. The process for evaluating bias in models includes identifying the scope of analysis, selecting fairness measures, collecting necessary data, conducting tests to detect bias, and mitigating applicable biases.

Tools for detecting bias vary based on the detection model. Different models have different applications and address different questions. A *control variable test* presents a model as a proxy for a protected class to establish a predictive effect within the class based on its correlation with other variables. An *interactive test* utilizes protected class variables as interaction terms to indicate the consistency of predictive effects across protected classes. A *nonparametric matching test* can be used to address whether the inclusion of a variable disproportionately impacts otherwise similar risks between two different protected classes. And finally, a *double lift chart* may be used to compare effects between different protected classes.

Multiple methods are preferable for evaluating biases but results may be limited by available data.

Receive Reports from its Workstreams

Artificial Intelligence (AI)/Machine Learning (ML) Survey Work

Co-Vice Chair Kevin Gaffney (VT) gave an update on the AI/ML survey work in multiple states for private passenger auto, home, and life insurance. The private passenger auto survey was conducted last year and a report was produced for the SME group on June 30. The home survey was produced for comment and has reached the final phase of implementation. The life insurance survey is in the development phase and will be produced for exposure soon.

Third-Party Data and Model Vendors

Co-Vice Chair Doug Ommen (IA) discussed the AI/ML private passenger auto survey and potential enhanced regulatory oversight of third-party vendors and models, including certification from contacting insurance companies that their models comply with AI standards. Another regulatory option includes a requirement that state insurance regulators create a library of third-party vendors.

The meeting materials can be found [here](#).

Privacy Protections (H) Working Group

The Privacy Protections (H) Working Group met on Tuesday, August 9, 2022 at the NAIC Summer National Meeting, and the agenda can be found [here](#). Below is a summary of the meeting:

The Working Group previously met on August 2, 2022, and the [minutes](#) from that meeting were adopted without objection.

Hear an Update on State and Federal Privacy Legislation

Jennifer McAdam (NAIC) provided an update regarding the progress of certain state privacy legislation. Ms. McAdam explained that five (5) states have now formally adopted comprehensive data privacy laws, including California, Colorado, Connecticut, Utah, and Virginia. Further, although the bills are still in the committees of origin, six (6) more jurisdictions have introduced legislation geared toward addressing data privacy issues. Those states with relevant pending legislation include the District of Columbia, Massachusetts, Michigan, New Jersey, Ohio, and Pennsylvania. For more information, an abbreviated data privacy legislation chart can be found [here](#), and a state privacy law comparison chart can be found [here](#).

Brooke Stringer (NAIC) then provided a federal law update, primarily to discuss the status of the American Data Privacy and Protection Act (ADPPA). According to Ms. Stringer, this bill is being viewed as a breakthrough compromise on preemption and private right of action. In July, the House Energy and Commerce Committee approved the ADPPA. The ADPPA is the first comprehensive privacy legislation that has advanced out of its committee. This bill would preempt most state privacy laws, and it provides a private right of action that would allow consumers to file actions against companies in federal court. This private right of action would not take effect until two (2) years after the law is enacted. The NAIC will continue to track the progress of the bill, particularly to watch whether language clearly exempting insurers, brokers, and agents from the scope of the bill will be introduced.

Discuss Next Steps for Consumer Data Ownership and Use Survey

Katie Johnson (VA), Chair of the Working Group, noted that the due date to submit completed Surveys was July 28, 2022, but the Working Group is still accepting completed surveys at this time. The Working Group is in the process of reviewing and compiling the responses that have been received, and these responses will be summarized and used in the discussion and drafting of the white paper on Consumer Data Ownership and Use.

The white paper will present current and historical work being completed at the NAIC concerning data, data usage, and data protection, review a brief history of state, federal, and NAIC laws concerning data, data usage, and data protection, explore the different types of data, discuss how consumer's personal data is collected, used, and processed in connection with an insurance transaction, contain a discussion of the legal and economic construct of data and how data differs from other types of property, and provide recommendations on who is the owner of data in an

insurance transaction, and recommendations for the appropriate expectations that should be implemented around data usage and data protections.

The white paper will be exposed to the public in early December for a two-month open comment period.

Discuss Next Steps for the Drafting of the Model and the Updated Work Plan

Katie Johnson explained that, during the Working Group's prior meeting, a model law request was adopted. This request was the result of comments from Working Group members, interested regulators, and consumer representatives, and it will be to create one new NAIC Privacy Model Law that would replace the existing privacy models, the Privacy Protection Model Act (#670) and the Privacy of Consumer Financial and Health Information Regulation (#672).

Additionally, the Working Group's Work Plan and its schedule has been revised to address the needs of the Working Group to meet its charges and timeline. The revised Work Plan can be found [here](#). The Working Group continues to meet with the Innovation Cybersecurity and Technology (H) Committee and its other working groups, as well as working groups from other committees, such as the Accelerated Underwriting (A) Working Group, on a monthly basis.

NAIC/Consumer Liaison Committee

The NAIC/Consumer Liaison Committee met on Friday, August 12, 2022 at the NAIC Summer National Meeting, and the agenda can be found [here](#). Below is a summary of the meeting:

Discuss Recommendations for the Enhancement of Liaison Committee and Consumer Liaison Engagement in NAIC Activities — Commissioner Andrew R. Stolfi (OR) and Commissioner Grace Arnold (MN)

The Commissioners expressed the importance of this Committee and sought out feedback to enhance its voice throughout the NAIC. There were three common themes in the survey: (1) broaden perspectives shared by consumer representatives, (2) reiterate the importance of commissioners being informed of the role of consumer representatives, and (3) desire to see more active and visible consumer representation outside of this Committee. Ken Klein expressed that it would be important to the program for commissioners to call subject meetings for issues that are more sensitive. Birny Birnbaum made two points on consumer participation: (1) consumer representatives are here to represent consumers and work on areas of expertise and (2) the national meetings are an incredibly important opportunity for consumer representatives to share viewpoints with NAIC and commissioners—lately there has been an explosion of regulator-only meetings, which makes it more difficult for stakeholders to participate and comment. Bonnie Burns expressed a need for more interaction between departments and consumer representatives. Amy Bach expressed that panels with consumer, industry, academic, and regulator viewpoints helped to show a full circle view of the issue.

The Committee stated that it has the following goals: to maximize values of these meetings, further encourage representatives to participate in all NAIC events, and provide opportunities for meaningful interaction between representatives and insurance departments. The Commissioner proposed a one-page document in advance of meetings to prepare for presentations and then a follow-up with all materials. Birny Birnbaum proposed splitting into two one-hour sessions, but the Commissioner expressed this may be logistically difficult. The Commissioner also suggested adding issue-specific meetings in more small settings. Others supported the idea of a moderated panel discussion. Another suggestion was to post resources for consumers on the NAIC website. There was solid support to take the ideas forward. The memorandum discussing the recommendations can be found [here](#).

Updates on Section 1557 and the Role of State Insurance Regulators—Silvia Yee (DREDF), Kellan Baker (Whitman-Walker Institute), and Yosha Dotson (GHF)

Yee, Baker, and Dotson presented on Section 1557. The proposed rule seeks to reinstate Section 1557 to include all health and human services programs. The rule explicitly recognizes compound discrimination and can include requirements that bring greater equity into healthcare. The 2022 rule re-establishes gender identity non-discrimination. Another big change is the data collection and clinical algorithms. Other key provisions are requiring procedures on language access and reaffirming reasonable modifications for those with disabilities, such as accessible equipment.

Dotson explained that regulators can support access during the comment period, including language, accessibility, diversity, and providers. This includes actually having space for new clients. Dotson urged improved feedback for consumers.

See presentation [here](#).

Hear a Presentation on Unpacking the Impact of Recent Federal Court Decisions on Consumers—Dorianne Mason (NWLC), Katie Keith (Out2Enroll), and Jackson Williams (DPC)

Dorianne Mason is the Director of Health Equity at the National Women’s Law Center. Mason focused on the recent abortion decision—*Dobbs v. Jackson Women’s Health*. She emphasized that this decision will disproportionately harm those who already struggle with equal access to care. It is apparent that there has been an increase in requests for sterilization. Regulators should ensure that carriers are in compliance with existing laws and regulations, and should also remove regulations that may be inhibiting access to reproductive health care. Regulators should encourage state policymakers to provide Medicaid funding for reproductive health care.

Jackson Williams with Dialysis Patients Citizens discussed *Marietta Memorial Hospital v. DaVita*. The Supreme Court ruled that the need for maintenance dialysis was not the same as End Stage Renal Disease care; thus, the plan’s carve out of dialysis was permissible. The Supreme Court decision only applies to group health plans, and under ACA, this is illegal.

See presentation [here](#).

Katie Keith at Out2Enroll previewed the decision related to Section 2713 of the Preventative Services Act, which includes more than 100 preventive services. *Kelley v. Becerra* argues that Section 2713 is unconstitutional. We are awaiting a decision. If it is unconstitutional, plans would be allowed to determine what preventive services they want to cover. The district court appears inclined to rule in favor of Plaintiffs. Ahead of the decision, it is worth looking at state laws to protect preventative services or to find ways to preserve coverage until this is appealed.

Minnesota asked if there were thoughts on advice for a couple of things on which to focus. Baker explained one recommendation is to require plans to include a variety of provider types and to provide access to providers such as federal qualified health centers. Regulators should make sure providers are included in networks.

Hear a Presentation on Unpacking Social Inflation —Kenneth S. Klein (California Western School of Law)

Ken Klein is a law school professor and focuses his research and writing on the topic of insurance. He presented on plaintiff’s attorneys and the allegation that they create a litigation crisis, resulting in a rise in premiums and loss ratios. Thus far, there is no compelling evidence of an increase in frivolous insurance litigation or that it is the fault of plaintiff’s attorneys. Harvard

Business School found that third-party litigation financing does not increase frivolous litigation, but it does appear to decrease bullying by defendants. It may be time for the industry to look inward, especially when litigation is typically the only way to recover when issues arise. It is important to not permit premium increases or approve rate filings without confirming the assumptions, premises, and data being presented.

Florida asked Klein to also look at regulator positions because Florida's data shows that there is data showing increase in litigation without first exploring alternative dispute resolutions, especially in property insurance area.

See presentation [here](#).

[Hear a Presentation on a Holistic Approach to Confronting Structural Racism in Insurance—Birny Birnbaum \(CEJ\)](#)

Mr. Birnbaum's presentation was skipped for time.

[Hear a Short Update on the New Rules for Disaster Claims in California, Colorado, and Oklahoma—Amy Bach \(UP\)](#)

United Policyholders collaborated with different parties for rules on disaster claims. The goal is that when the disaster is the result of mother nature and there is no question of fault, insurers should get their benefits as quickly as possible. United Policyholders would like to see all wildfire states update with similar laws for disaster claims.

See update [here](#).