

Draft: 9/18/19

Artificial Intelligence (EX) Working Group
Conference Call
September 5, 2019

The Artificial Intelligence (EX) Working Group of the Innovation and Technology (EX) Task Force met via conference call Sept. 5, 2019. The following Working Group members participated: Jon Godfread, Chair (ND); Mark Afable, Vice Chair (WI); Lucy Jabourian (CA); Andrew N. Mais (CT); Peg Brown (CO); David Altmaier (FL); Travis Grassel and Andria Seip (IA); Robert H. Muriel (IL); Amy Beard (IN); Tom Travis and Rich Piazza (LA); Ron Coleman (MD); Cynthia Amann, Angela Nelson and Teresa Kroll (MO); Keith Briggs (NC); Christina Citarella (NH); John G. Franchini (NM); Barbara D. Richardson (NV); Mark Hamlin (OH); Shannen Logue and Michael KcKenney (PA); Rachel Jade-Rice (TN); Eric Lowe (VA); and Christina Rouleau (VT). Also participating were: Timothy Schott (ME); Karen Dennis (MI); and Grace Arnold and Phil Vigliaturo (MN).

1. Heard Introductory Remarks

Commissioner Godfread said that at the Spring National Meeting, the Innovation and Technology (EX) Task Force adopted a motion to establish this Working Group to study the development of artificial intelligence (AI), its use in the insurance sector, and its impact on consumer protection and privacy, marketplace dynamics, and the state-based insurance regulatory framework. He said the charge also stated that the Working Group will develop regulatory guidance, beginning with guiding principles, and make other recommendations to the Innovation and Technology (EX) Task Force as appropriate by the 2020 Summer National Meeting.

Commissioner Godfread said the plan is to focus on that latter part of the charge, specifically to work on guiding principles. He said that other groups outside of the NAIC are working on principles for AI, and some have even adopted them, such as the Organisation for Economic Cooperation and Development's (OECD) principles, as well as those being considered by the Australian government's Department of Industry, Innovation and Science. He said these principles were sent out as materials for this call.

Commissioner Godfread said he and Commissioner Afable discussed how to approach developing these principles for the insurance industry. He said they think it is important to discuss and establish the scope of the Working Group's work and to keep it at a high level in order to get these principles drafted. He said both he and Commissioner Afable realize it is going to be hard to keep from getting into details in terms of definitions and exactly what is meant by some regarding these terms. However, he said they would like the Working Group to stay out of the weeds and get some high, overarching principles drafted that can be used across the NAIC workstreams. He said the timeline is tight and somewhat aggressive, so he would ask the Working Group members, other state insurance regulators and interested parties to keep the timeline in mind as they prioritize this work. Commissioner Afable reiterated the importance of staying focused on high-level guiding principles and that other committees and Task Forces will determine where the specific issues are best developed once the principles have been drafted. He said he and Commissioner Godfread realize there is work going on in the space without guiding principles in place, making it important to get this work done quickly.

Commissioner Godfread said there are other organizations putting out principles and that it is important for the NAIC to get out some insurance guideposts as well with principles that are tailored to the insurance industry.

2. Heard a Presentation on AI from Faegre Baker Daniels LLP

Scott Kosnoff (Faegre Baker Daniels LLP) provided an AI overview. He began with offering common definitions for AI and its genesis. He said its growth can be attributed to the explosive amounts of data now available for use and the availability of storage that allows this data to be stored and made available, widely, as well as the amazing strengthening of processing power. He talked about the difference between "general" AI, which can think like a human in all respects, and "narrow" AI, which is focused on very specific tasks. He said while "general" AI is still a long way off, "narrow" AI is here and alive and well. Mr. Kosnoff reviewed why AI is so important and some important applications for AI, including medical research, hiring decisions, lending, insurance and more. He said insurers are interested in AI to improve marketing and customer engagement, underwriting, rating, claims decisions and fraud detection, and he talked about what is in it for consumers. Mr. Kosnoff also reviewed the concerns related to AI. He said the most frequently cited concern deals with fairness, bias/discrimination and the lack of transparency/explainability. He said these are not unique to the insurance industry related to AI but are concerns that

are agnostic to the use of AI. He also reviewed other AI challenges, including incomplete, inaccurate and outdated data, as well as having embedded bias in the data. He said there are also algorithm challenges, including unreliable accuracy and algorithms that are too complex or rely on unlawful factors such as race, gender or religion. He said this can have a widespread impact with AI. Mr. Kosnoff provided some examples where these issues became a problem. Mr. Kosnoff said there is strong consensus regarding AI's ability to offer extraordinary benefits but that reasonable and measured guardrails are needed. He said there is an important role for state insurance regulators and that it is important to get engaged as the federal government already is, as well as international standard-setters such as the OECD and the International Association of Insurance Supervisors (IAIS). He said the principles should not be overly restrictive or prescriptive, but there should be a balance between the need for consumer protections and the desire to encourage innovation.

Commissioner Godfread reiterated that while data issues and algorithmic challenges exist, it is not the charge of this Working Group to solve those issues or develop details of what that means as that will likely be the purview of another group. However, he said setting up the guardrails needs to be done and that time is of the essence. He said with the availability of 5G networks, data issues will only continue to grow and will create more privacy issues. However, he said the details will be handled elsewhere and that this Working Group will address areas of focus for the broader industry.

Ms. Jabourian said there need to be guidelines that emphasize the importance of transparency and explainability of the algorithms versus being told it is the AI and that it cannot necessarily be explained. She said as state insurance regulators, we need to be able to understand how the AI came to its conclusions. Commissioner Godfread agreed. He said the principles need to lay out what is required, but not necessarily provide all the details of how that will be done just now.

3. Discussed the Adopted OECD AI Principles and Australia's Ethics Framework Discussion Paper

Mr. Kosnoff provided an overview of the OECD principles. He said several workstreams to develop AI principles are in progress or have been completed, most limited to a specific country. He said the OECD AI principles, however, are the first and only set of inter-government policy guidelines adopted by multiple countries. He said 42 countries, including the U.S., have adopted the OECD AI principles. He said they are for general application and are not targeted at the insurance sector. Mr. Kosnoff pointed out portions of the principles that might have application for the insurance industry, including:

1. Inclusive growth, sustainable development and well-being
 - Advancing inclusion of underrepresented populations.
 - Reducing economic, social, gender and other inequalities.
2. Human-centered values and fairness
 - Respect of the rule of law, human rights and democratic values throughout the AI system lifecycle.
 - Privacy and data protection.
 - Non-discrimination and equality.
 - Fairness.
 - Mechanisms and safeguards, such as human determination.
3. Transparency and explainability
 - Provide meaningful information to stakeholders so that they know when they are interacting with AI.
 - Stakeholders affected by an AI system should be able to understand the outcome.
 - Stakeholders adversely affected by an AI system should be provided information so that they can challenge the outcome and the logic that served as the basis for the decision.
4. Robustness, security and safety
 - Should be robust, secure and safe throughout their entire lifecycle.
 - Should ensure traceability to enable analysis of outcomes.
 - Systematic risk management approach to each phase of the AI system lifecycle on a continuous basis.
5. Accountability
 - All organizations that deploy or operate an AI system should be accountable for the proper functioning of the system and for the respect of the above principles.

Mr. Kosnoff said the OECD principles appear to be a good place to start for the Working Group. He said the Australian draft principles are also very interesting and may be more reader-friendly than the OECD principles, but they are just a proposal out for comment and have not been adopted anywhere.

4. Discussed the Process for Development of AI Principles for Insurance and Next Steps

Commissioner Godfread asked the Working Group members how they would like to move forward in drafting AI principles for the insurance industry. He asked if the Working Group would like to use the OECD principles or some other entity's principles as a starting point and accept comments on how to tailor it to the individual insurance industry as a whole. Commissioner Richardson said it would be good to start with something already based in reality. Commissioner Mais agreed and said there is no reason to reinvent the wheel. He said the OECD principles provide a good basis for creating a set of principles uniquely tailored to the insurance industry. Commissioner Afable said NAIC staff had been asked to look at other standards out there and that research came back to the ones being discussed. He asked Mr. Kosnoff if he sees any significant difference between the OECD AI principles and the Australian draft. Mr. Kosnoff said he does not think there is any meaningful difference and if an exhaustive study of all workstreams were done, it would likely reveal far more commonality among the different versions than differences. He said there may be differences in emphasis and the way they are expressed but still more commonality than differences. Mr. Logue said there should be a constant reminder to creators of AI systems that unfair trade practice laws must always be kept in mind.

Commissioner Godfread asked if interested parties had any comments. Hearing none, he said there is a clear direction to work with the OECD AI principles as a starting point. He said NAIC staff will publish a pared down version of the OECD AI principles and expose them for a public comment period.

Having no further business, the Artificial Intelligence (EX) Working Group adjourned.

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