

NAIC/CONSUMER LIAISON COMMITTEE

NAIC Consumer Liaison Committee Aug. 12, 2024, Minutes

NAIC/American Indian and Alaska Native Liaison Committee Aug. 14, 2024, Minutes (Attachment One)

Draft Pending Adoption

Draft: 8/26/24

NAIC/Consumer Liaison Committee
Chicago, Illinois
August 12, 2024

The NAIC/Consumer Liaison Committee met in Chicago, IL, Aug. 12, 2024. The following Liaison Committee members participated: Grace Arnold, Chair (MN); Lori K. Wing-Heier (AK); Mark Fowler (AL); Alan McClain (AR); Ricardo Lara (CA); Andrew N. Mais represented by Kurt Swan (CT); Trinidad Navarro represented by Susan Jenette (DE); Dean L. Cameron represented by Shannon Hohl (ID); Vicki Schmidt (KS); Joy A. Hatchette represented by Nour Benchaaboun (MD); Anita G. Fox represented by Renee Campbell (MI); Chlora Lindley-Myers represented by Jo LeDuc (MO); Mike Chaney represented by Ryan Blakeney (MS); Mike Causey represented by Angela Hatchell (NC); Jon Godfread represented by John Arnold (ND); Eric Dunning represented by Martin Swanson (NE); Justin Zimmerman (NJ); Scott Kipper represented by Todd Rich (NV); Judith L. French represented by Jana Jarrett (OH); Glenn Mulready represented by Ashley Scott (OK); Andrew R. Stolfi represented by Cassie Soucy (OR); Cassie Brown represented by Randall Evans (TX); Jon Pike (UT); Scott A. White represented by Zuhairah Tillinghast (VA); Mike Kreidler (WA); and Nathan Houdek represented by Sarah Smith (WI).

1. Heard Opening Remarks

Brenda Cude (University of Georgia) said Karroll Kitt (University of Texas), who passed away on June 27th, was an NAIC Consumer Representatives since 1999. The Committee paused for a moment of silence to remember Kitt and her contributions as an NAIC Consumer Representative.

2. Adopted its Spring National Meeting Minutes

Commissioner Conway made a motion, seconded by Commissioner Lara, to adopt the Committee's March 15 minutes (*see NAIC Proceedings – Spring 2024 NAIC/Consumer Liaison Committee*). The motion passed unanimously.

3. Heard a Report from the Consumer Participation Board of Trustees

Commissioner Arnold said the Board of Trustees: (a) discussed the automation of the consumer representative application process for 2025; (b) adopted amendments to the Consumer Participation Plan of Operation regarding qualifications for an applicant to be appointed as a consumer representative and the process for a consumer representative changing their post-appointment status from an individual consumer representative to a consumer representative with an organization; and (c) reviewed two requests for actions from NAIC Consumer Representatives. The first request seeks additional NAIC action on readability and the second request seeks additional NAIC action on the regulation of prior authorizations.

4. Heard a Presentation on Insurance Obstacles to Mental Health and Substance Use Disorder Care

Jennifer Snow (National Alliance on Mental Illness—NAMI) said the United States is facing a mental health crisis, as indicated by rising rates of depression, suicide, and drug overdose. Federal surveys consistently show that about one-third of Americans aged 12 and older have a mental health or substance use disorder at any given time. Given its high prevalence, Snow said policymakers have been focusing on access to mental healthcare for decades. The federal Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA) requires health plans that cover mental health and substance use disorder benefits to do so no more restrictively than they cover medical and surgical benefits. Snow said quantitative barriers to mental healthcare, such as cost-sharing levels and visit limits are relatively straightforward to assess, while non-quantitative treatment limitations

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such as prior authorization, provider reimbursement rates, and formulary design, are more complex. Snow said recent federal legislation requires plans to provide comparative analysis for these non-quantitative limitations, but that enforcement is challenging.

Joe Feldman (Cover My Mental Health) said 9% of cancer patients and 13% of people with cardiovascular disease do not receive treatment; whereas 50% of people needing mental health treatment and 75% of people needing substance use disorder treatment do not receive treatment. Feldman said many people think insurance will not cover the costs of mental health or substance use disorder. Feldman said insurers face little accountability regarding network adequacy and that inadequate networks would not be permitted for medical and surgical treatment. Feldman said out-of-network care leads to delays, additional costs, and challenges in finding providers. Feldman said unacceptable provider reimbursement rates, troublesome insurer oversight, and the burden of joining networks drive mental healthcare providers to accept only private pay clients, which disadvantages consumers who cannot afford treatment.

Deb Steinberg (Legal Action Center—LAC) said state regulators should use the following strategies to enhance access to mental health and substance use disorder care: 1) enforce meaningful compliance with parity laws; 2) establish quantitative network adequacy standards with robust consumer protections; 3) standardize and eliminate unnecessary utilization management practices; 4) support community-based consumer assistance programs; 5) enforce network adequacy standards; 6) enforce balance billing protections; and 7) support standardized coverage criteria and patient placement tools used by plans. Steinberg said proactive enforcement of the MHPAEA is crucial since regulators have access to resources and data that consumers do not.

5. Heard a Presentation on the Impact of the Enhanced Premium Tax Credit on Uninsurance, Premiums, and State Innovation

Claire Heyison (Center for Budget and Policy Priorities—CBPP) said the expiration of enhanced premium tax credits will negatively impact states' efforts to improve health care affordability. Heyison said 19 states have reinsurance programs to lower premiums in the individual market. These programs create federal savings and generate state revenue under the enhanced tax credits.

Laura Colbert (Georgians for a Healthy Future) said 10 states provide extra state-funded premiums or cost-sharing assistance. If the tax credits expire, states may reduce these initiatives, raising costs for enrollees and potentially increasing the uninsured rate. Colbert said that if insurers have doubts about the extension of the tax credits, then premiums might rise, which will deter consumers from returning to the marketplace.

6. Heard a Presentation on Important Changes to Essential Health Benefits in the Notice of Benefit and Payment Parameters 2025

Adam Fox (Colorado Consumer Health Initiative) said the Affordable Care Act's (ACA's) essential health benefits (EHBs) aim to provide comprehensive coverage. Fox said states can define EHBs through a benchmarking process. For changes to be effective in 2027, new benchmark selections must be submitted by May 7, 2025. Wayne Turner (National Health Law Program) said a significant update allows states to incorporate adult dental services into their EHB plans. Turner said research links oral health to conditions such as diabetes, cardiovascular disease, pneumonia, Alzheimer's, and some cancers, emphasizing why separating oral from physical and mental health coverages is not beneficial. Fox said states have flexibility in how they implement this benefit. The U.S. Department of Health and Human Services (HHS) allows states to add adult dental services without monetary caps but within existing categories. Fox said other high-value services can also be added to EHBs to address health disparities and inequities.

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Turner said there are other significant changes in the benefit payment parameters rule. When prescription drugs are offered above the regulatory minimum, those additional drugs are also considered EHBs. This means cost-sharing protections apply. Fox said there have been instances where health plans tried to impose annual lifetime caps or ignored EHB cost-sharing protections by labeling certain drugs as non-EHB.

7. Heard a Presentation from LICAC on the Misuse of Indexed Life and Annuity Policy Illustrations

Richard Weber (Life Insurance Consumer Advocacy Center—LICAC) said he is handling several consumer complaints and litigation cases about the misuse of indexed life and annuity policy illustrations. The illustrations, not the policies themselves, are at issue. Weber provided an example of where actual policy credits fell short because illustrations only showed growth and failed to show the impact of debt or zero returns. Weber said such illustrations can be deceptive regardless of their intent. Weber said another case involved an arrangement with a registered representative encouraging large upfront premium financing for an employee-employer split dollar plan.

Weber said illustrations never present zero percent returns in current value projections and that values always seem to grow. Customers do not realize the effect of zero returns, an essential aspect of indexed universal life policies. Weber said there are also issues with cap or participation rates. Using stochastic analysis, Weber said he examined the likelihood that \$265,000 per year could be withdrawn for 20 years while maintaining a policy and paying off the initial premium loan. Weber said there was a 94% chance of failure within this period, mainly before reaching average life expectancy.

Weber presented a flexible premium fixed index deferred annuity model illustration, which reflected impractical crediting rates and a \$250,000 deposit growing to nearly \$7 million in 25 years—a 14.25% annual compound return.

Weber said the problem is with the illustrations, not the product. A new illustration paradigm is needed because consumers view the most favorable illustrated results as future projections.

8. Heard a Presentation on Readability Standards in State Insurance Laws

Cude said readability laws mandate consumer documents to meet certain readability standards. Referencing a recent article by Professor Blasie, Cude said 47 states, Washington, D.C., and the federal government had 240 readability laws for insurance in 2023. Professor Blasie categorized these laws into five types: 1) score-based (syllables, words, sentences); 2) feature standards (frequent headings, no double negatives); 3) general plain language use; 4) hybrid standards combining objective scores and features; and 5) subjective readability left to state agency discretion.

Cude said roughly 200 scores exist, typically calculated similarly by counting words, syllables, and sentences. Cude said scores often translate to grade levels. The Flesch-Kincaid score is common and denotes eighth grade as easy understanding, and kindergarten level as simple understanding. Superior readability scores should aim for a 60-70 Flesch-Kincaid score.

Cude recommended the NAIC review and revise its models for readability standards; use Flesch-Kincaid scores for clarity and simplicity, collect data on existing state laws and enforcement practices, and encourage widespread adoption of plainly written consumer-facing documents.

Silvia Yee (Disability Rights Education & Defense Fund—DREDF) recommended the NAIC reference plain/easy English resources from the Centre for Inclusive Design. Yee said supportive decision-making allows adults with

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cognitive disabilities to maintain decision-making capacity with plain language documents aiding their autonomy. Yee offered to provide additional background materials upon request for any Committee members.

In response to Eric Ellsworth's (Consumers' Checkbook) question regarding clarity of language used on websites and mobile device applications, Cude said some mobile device applications diagnose readability issues without resolving them while some do both. Cude said some websites offer various readability formulas that provide diagnostic insights into where issues may lie. In response to a question about whether state readability laws apply to policy documents or consumer disclosures, Cude said state laws generally pertain specifically to either policies or disclosures.

9. Heard a Presentation on Whether Plaintiff's Attorneys Are the Cause of Rising Premiums

Kenneth S. Klein (California Western School of Law) said the insurance industry attributes the rise in insurance premiums to a lawsuit crisis driven by plaintiffs' lawyers. Klein said his research shows there is no litigation crisis.

Klein said insurance defense attorneys often have inherent advantages in civil litigation due to time and resources and that a plaintiff attorney bringing numerous frivolous lawsuits will not be successful. Klein said that even if more lawsuits are being brought and won, this does not signify a failing system unless there is proof the cases lack merit. Klein said regulating by lawsuits makes it harder to file or win benefits from insurance companies for those who pay premiums without suffering harm, but disadvantages victims whose cases might be dismissed.

Klein reviewed 28 years of data on federal civil case filings and, according to the Administrative Office of the U.S. federal Courts (AO), tort and personal injury filings show a slight rise, except during 2020. Klein said long periods of flat or declining filings have not correlated with steady or reduced premiums, which suggests there is no direct relationship between filings and insurance premiums. Klein said he examined case outcomes to track average federal civil case verdicts from 1996-2023. Klein said the data reflects long-term stability with recent increases, but median data smooths out anomalies, confirming that recent spikes reflect specific outlier cases.

Klein said his review of state court data focused on Florida, which is often cited as epicenter of the alleged lawsuit crisis. Data from the National Center for State Courts (NCSC) reveals that overall civil case filings in Florida (2012-2022) have decreased, with tort filings showing a minor, steady rise. In Florida, Klein said most outliers involve punitive damages in commercial trucking cases, unaffected by damage caps and irrelevant to insurers' obligations.

Klein said homeowners' affordability indices across jurisdictions indicate no direct correlation between litigation rates and insurance costs. In Florida and Louisiana, Klein said affordability seemed linked to both claim frequency and litigation costs. When isolating states, Klein said affordability strongly correlated with catastrophe experience rather than litigation. In Louisiana, despite similar lawsuits numbers as neighboring states, Klein said higher bodily injury rates might explain high auto insurance premiums. For homeowners' insurance, Klein said hurricane impacts complicate comparisons. Klein said data does not support a litigation crisis that is impacting premiums.

10. Heard a Presentation on Combatting Post-Disaster Fraud

Amy Bach (United Policyholders—UP) said roof coverage curtailment conflicts with Fannie Mae's replacement value requirements, which creates a risk of broader economic implications. Bach said the use of artificial intelligence (AI) could help insurers better detect fraud. Bach said states should consider rejecting policies that only provide roof coverage for actual cash value (ACV) and should require insurers to clearly state deductibles in dollar amounts at the point of sale. If ACV-only roof provisions are permitted, Bach said policyholders should receive a premium discount for ACV-only policies.

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Brent Walker (Coalition Against Insurance Fraud—CAIF) said predatory contractors often exploit vulnerable homeowners after disasters, leading to financial loss and poor-quality repairs. Walker said there is a need for effective information dissemination and offered to maintain ongoing collaboration with state insurance regulators to create educational toolkits to protect consumers from fraud after a catastrophe.

11. Heard a Presentation on the Progress and Challenges in U.S. Insurance Sector Disclosures in Navigating Climate Risks

Jaclyn de Medicci Bruneau (Ceres Accelerator for Sustainable Capital Markets) discussed integrating climate risk into insurance and highlighted efforts to encourage industry-wide financial disclosures through initiatives such as the task force on climate-related disclosures (TFCD) created by the Financial Stability Board (FSB). Bruneau said her organization, in collaboration with the California Department of Insurance, released its second annual report based on the latest cycle of the climate risk disclosure survey. Bruneau said the results included 516 insurance groups and that her organization made the results available to regulators, insurers, and stakeholders through an interactive dashboard sortable by state, carrier, line of business, company size, and TFCD recommendation.

Bruneau said transparency and disclosure are key to addressing climate risk but must be supplemented by ensuring information is digestible for informed decision-making. Bruneau said the results showed carriers strongest in risk management reporting, followed by strategy and governance. Bruneau said climate risk is immediate, and the industry must accelerate efforts to integrate it into business strategies. Bruneau said all carriers, regardless of size or business line, must address climate risk and said regulators should strengthen reporting and enforcement, develop best practices, support metric and target development, facilitate industry-wide collaboration, and advance stress testing for climate scenarios.

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

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NAIC/American Indian and Alaska Native Liaison Committee
Chicago, Illinois
August 14, 2024

The NAIC/American Indian and Alaska Native Liaison Committee met in Chicago, IL, Aug. 14, 2024. The following Liaison Committee members participated: Glen Mulready, Chair (OK); Lori K. Wing-Heier (AK); Barbara D. Richardson (AZ); Dean L. Cameron represented by Shannon Hohl (ID); Grace Arnold represented by Peter Brickwedde (MN); Chlora Lindley-Myers represented by Jo LeDuc (MO); Scott Kipper represented by Nick Stosic (NV); Mike Causey represented by Angela Hatchell (NC); Jon Godfread represented by John Arnold (ND); Andrew R. Stolfi represented by Alex Cheng (OR); Larry D. Deiter represented by Frank Marnell and Tony Dorschner (SD); Jon Pike represented by Ryan Jubber (UT); Mike Kreidler represented by Todd Dixon (WA); Nathan Houdek represented by Andrea Davenport (WI); and Jeff Rude (WY).

1. Adopted its Spring National Meeting Minutes

Cabinet Executive Officer Richardson made a motion, seconded by Commissioner Rude, to adopt the Liaison Committee's March 17 minutes (*see NAIC Proceedings – Spring 2024, American Indian and Alaska Native Liaison Committee*). The motion passed unanimously.

2. Heard a Presentation on the AIMES Alliance

Robert M. Dorrell (Blue Cross Blue Shield of Oklahoma—BCBSOK) introduced Spencer Davis (Leavitt Partners) and noted that the American Indian Medical Education Strategies (AIMES) Alliance is a new program being developed in conjunction with BCBSOK and the Health Care Service Corporation (HCSC). Davis said this program is collaboratively advancing federal and Tribal solutions that expand graduate medical education (GME) opportunities in Indian Country through communications, outreach, and policy development to reduce physician shortages in Tribal medical facilities. He said the goal is to keep up to date on the latest policies, activities, and developments focused on reducing physician shortages and expanding GME in Tribal medical facilities by joining the AIMES Alliance community.

Davis said the diversity of the AIMES Alliance membership is its strength. He said AIMES Alliance members include those from Tribal nations, urban and rural Tribal organizations, medical institutions that grant Doctors of Medicine (MDs) and Doctors of Osteopathic Medicine (DOs), teaching hospitals, residency programs, and physician and workforce advocates. He said the Alliance brings together voices from all sectors to collaboratively drive solutions forward that will bring GME to Tribal communities.

Davis said that despite the billions of dollars put toward training physicians, hardly any money goes to Tribal medical facilities even though they could benefit the most from improved staffing. He said American Indians and Alaska Natives (AI/ANs) suffer from some of the highest rates of avoidable deaths from preventable and treatable causes. For example, from 2020–2021, the U.S. rate of deaths before age 75 from preventable causes per 100,000 population was 231.9. For AI/AN individuals, however, that rate was more than double the national rate, at 478.9. In one state, the rate of preventable deaths was more than 4.5 times the national rate, at 1,394 deaths from preventable causes per 100,000 population. He also said the mission of the AIMES Alliance is to advance AI/AN access to care, reduce physician shortages, and expand opportunities for training physicians to benefit communities by collaboratively advancing federal and Tribal solutions that expand GME in Tribal communities. The AIMES Alliance is working to accomplish its mission through communications, outreach, and policy development. Davis said the AIMES Alliance envisions an environment where urban and rural Tribal members benefit from access to fully staffed medical facilities filled with physicians who provide high-quality and culturally

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appropriate care and invest in the communities they serve. He said the Alliance also envisions a medical education and training environment where allopathic and osteopathic physicians have extensive opportunities to benefit communities and further their education and training in urban and rural Indian Health Service (IHS), Tribal-administered, and other Indigenous clinics and facilities.

Davis said Dr. Donald Warne leads the AIMES Alliance as its convener and is currently serving as co-director of the Johns Hopkins Center for Indigenous Health. Davis said Warne is an acclaimed physician, one of the world's preeminent scholars in Indigenous health, health education, policy, and equity, as well as a member of the Oglala Lakota Tribe from Pine Ridge, South Dakota. He said Warne will also serve as Johns Hopkins University's new Provost Fellow for Indigenous Health Policy. Davis said that because Warne comes from a long line of traditional healers and medicine men and is a celebrated researcher of chronic health inequities, he is also an educational leader. Warne created the first Indigenous health-focused Master of Public Health (MPH) and Doctor of Philosophy (PhD) programs in the U.S. or Canada at North Dakota State University and the University of North Dakota, respectively. He said Warne previously served at the University of North Dakota as a professor of Family and Community Medicine and associate dean of diversity, equity, and inclusion (DE&I), as well as director of the Indians into Medicine and Public Health programs at the University of North Dakota School of Medicine and Health Sciences.

Davis said Dr. Michael Toedt serves as the AIMES Alliance's senior advisor and is the founder and chief executive officer (CEO) of Toedt Health Solutions. He said Toedt is a North Carolina-licensed and board-certified family physician and the former chief medical officer (CMO) of the IHS, as well as their chief medical informatics officer (CMIO). Davis said Toedt is a retired rear admiral with over 30 years of experience as a physician executive, public health expert, health information and technology expert, and flag officer in the U.S. Public Health Service Commissioned Corps. Davis said that Toedt, as a Uniformed Services University of the Health Sciences graduate, has first-hand experience serving in IHS, Tribal, U.S. Department of Defense (DoD), and U.S. Department of Veterans Affairs (VA) health care facilities. He has served on numerous U.S. Department of Health and Human Services (HHS) committees. He said Toedt has extensive experience working with local, regional, Tribal, state, and federal governments, emphasizing eliminating health inequity and improving health outcomes for vulnerable and underserved populations.

Davis said GME is the period of training performed after medical school where physicians gain specific skills and experiences in a particular medical specialty (residency) or subspecialty (fellowship). He said GME is primarily funded by four federal programs and agencies (Medicare, the Health Resources and Services Administration (HRSA), the VA, and the DoD) and one joint federal-state program (Medicaid). Davis said GME residents and fellows in Tribal medical facilities create an ecosystem of sustainable, high-quality care locally, reducing the need for travel, long waits, and paying for high-cost locum tenens positions (a locum, or locum tenens, is a person who temporarily fulfills the duties of another; the term is especially used for physicians. For example, a locum tenens physician is a physician who works in the place of the regular physician). He said physicians invested in the community are more likely to provide consistent, accessible, and culturally appropriate care to Tribal members. Davis said that while IHS-operated medical facilities are frequently viewed by non-Tribal individuals as the most visible medical care provider in Indian Country, IHS is only part of the greater system that provides medical care to AI/ANs. This system is referred to as the I/T/U in reference to the three categories of participating facilities: IHS, Tribal-operated, and Urban Indian Organizations (UIOs).

Director Wing-Heier asked what the AIMES Alliance is doing in Alaska. Davis said it reached out to several programs in Alaska but was told that due to funding restrictions, the organizations were not able to participate. Director Wing-Heier asked Davis to call her so she could help arrange a meeting, as funding is not the problem currently. She said the Alaska Division of Insurance (DOI) would be a better resource for AIMES at this time. Marnell asked Davis if the AIMES Alliance was able to utilize student loan forgiveness to attract new physicians. Davis said he had heard nothing about expanding in this area. Cabinet Executive Officer Richardson said Arizona has many

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Tribes, but the AIMES Alliance map had none listed in Arizona. Davis said the map listed the organizations' headquarters locations, so they reached out to Arizona through their home office in Minnesota and had good conversations with the University of Arizona. Commissioner Mulready said Oklahoma was a notable example of the launch phase and asked where the AIMES Alliance is heading next. Davis said it was investigating how to use this program to benefit Tribal organizations. He said that historically, Oklahoma had incredible leaders in this space and that they meet monthly about how to take all these ideas forward. He said they are now in implementation mode for four major categories and plan to accelerate over the coming year.

Commissioner Mulready introduced Bill Snyder (Leavitt Partners) and asked about funding, specifically, what meaningful contributions from non-Tribal organizations meant. Davis said the AIMES Alliance has no set dues but encourages participation. He said the Bush Foundation has a focused Commonwealth Fund with listening sessions regarding funding. He also said the AIMES Alliance did not want to place any undue burden of funding on membership entry. Commissioner Mulready said there was a lack of physicians; and that U.S. Representative Tom Cole (R-OK) is the Chair of Appropriations and is a tribal member who could be very helpful in securing funding. He also asked why the AIMES Alliance was not pursuing physician assistants (PAs). Davis said that the AIMES Alliance is trying to be as specific as possible to get the biggest bang for its buck. It is not saying no to PAs but not saying yes yet.

3. Heard Updates from States on Native Community Outreach

Director Wing-Heier said health care accessibility is a huge challenge in Anchorage and other rural areas, as the cost is excessive, and the governor is working with HHS and the DOI on potential solutions.

Dixon said Washington is publishing a 12-page document that provides insurers with a handbook to meet the requirements of federal Tribal rules about networks, care, medical practice, etc. He suggested it might be a good topic for a future NAIC meeting.

Commissioner Mulready said members have not heard from agents/producers who are actively engaged in the tribal communities at this Liaison Committee but would like to in the future.

Having no further business, the NAIC/American Indian and Alaska Native Liaison Committee adjourned.

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