

NAIC/CONSUMER LIAISON COMMITTEE

NAIC/Consumer Liaison Committee Dec. 3, 2020, Minutes

NAIC/American Indian and Alaska Native Liaison Committee Nov. 16, 2020, Minutes (Attachment One)

NAIC/American Indian and Alaska Native Liaison Committee Oct. 9, 2020 Minutes (Attachment One-A)

Draft Pending Adoption

Draft: 12/18/20

NAIC/Consumer Liaison Committee
Virtual 2020 Fall National Meeting
December 3, 2020

The NAIC/Consumer Liaison Committee met Dec. 3, 2020. The following Liaison Committee members participated: Michael Conway, Chair (CO); Andrew R. Stolfi, Vice Chair (OR); Lori K. Wing-Heier (AK); Jim L. Ridling (AL); Ricardo Lara (CA); Andrew N. Mais (CT); Karima M. Woods (DC); Trinidad Navarro (DE); David Altmaier (FL); John F. King (GA); Dean L. Cameron represented by Randy Pipal and Kathy McGill (ID); Shannon Whalen (IL); Stephen W. Robertson (IN); Vicki Schmidt and Brenda Johnson (KS); Sharon P. Clark (KY); James J. Donelon (LA); Kathleen A. Birrane (MD); Grace Arnold (MN); Chlora Lindley-Myers (MO); Mike Chaney (MS); Mike Causey represented by Tracy Biehn and Kathy Shortt (NC); Jon Godfread represented by John Arnold (ND); Bruce R. Ramge (NE); Russel Toal and Paige Duhamel (NM); Barbara D. Richardson (NV); Linda A. Laceywell (NY); Tynesia Dorsey (OH); Glen Mulready (OK); Jessica K. Altman (PA); Scott A. White (VA); and Mike Kreidler (WA).

1. Heard Opening Remarks

Commissioner Conway said as the chair of the NAIC Consumer Board of Trustees, he would like to mention that the Board is composed of six state insurance regulator members and six funded consumer representative members. He said Board meets in closed, confidential sessions because it administers the NAIC Consumer Participation Program, which may require discussions of a confidential nature concerning personal information. Before the end of the year, he said the full Board will meet to select NAIC consumer representatives for 2021, and the state insurance regulator members of the Board will select the consumer members of the Board for 2021. He said a total of 45 applications were received this year for 2021 consumer representative positions.

2. Heard a Presentation on the Insurability of Natural Disasters

Ken Klein (California Western School of Law) said the sheer number of natural disasters is staggering, with named hurricanes surpassing all records, wildfires running rampant in several western states leading to flooding in those areas, and tornadoes/straight-line winds throughout the country—not to mention COVID-19, the once-every-100-years pandemic. He said many people are choosing to underinsure their property for catastrophes, even though what they really want is full coverage; and they may not even know this is the choice they made. He said most consumers rely on recommendations from their insurance company or insurance agent/producer about how much coverage they should purchase on their home or auto. In turn, he said these companies and agents rely on data from the Actual Insurance Rates (AIR) Worldwide Graph and the quarterly building costs report produced by Verisk tracking. Together, this information is used to produce a protection gap; i.e., the amount of adequate coverage that also accounts for inflation.

Mr. Klein said insurance companies and producers are not at fault, but rather the estimating tools themselves are at fault, and the charts used typically estimate rebuild costs tied to Coverage A limits that are less than the actual costs needed to rebuild. Projections used by the tools are based on building a home in the dollar range of the home being protected; however, homeowner expectations are that the coverage will rebuild their exact home as it was before the loss was incurred. Mr. Klein said California rate filings include claim costs, but they provide inadequate coverage that is 20%–40% less than the actual coverage needed. He said most people think they are covered in full, but they are not—some by a little and some by a lot—and they do not even know this inadequacy exists.

Mr. Klein said a Transparency Face Page should be required for all homeowners' coverages advertised that estimate actual building costs. He said one solution would be for the NAIC to create a new task force or charge an existing group with gathering information about this issue so it could determine the extent of such coverage inadequacy, evaluate all aspects, and recommend an attainable solution to NAIC members. He said the lack of affordable and available homeowner's coverage considering catastrophic events is nothing new, but the shape of this problem is different. He said companies raise prices or refuse to sell in certain areas, which is to be expected due to their increased risk, and this is when states come in as insurers of last resort. At fault in these instances are the low uptake rates because high take up rates are required for low rates to become available.

However, Mr. Klein said aggressive consumer information campaigns to address the issue have found to be ineffective. He said all homeowners' policies need to include flood and earthquake (all-peril) coverage, which would cover 90% of U.S. homeowners. However, he said it would not work unless states require companies to include it in all coverages. He said companies could use redistribution of cost subsidies in risk pools to accommodate this change. He said \$200,000 in home value

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would cost approximately \$1,100–\$1,600 per year; however, it would require states to restructure markets and eliminate products that do not cover all perils.

Amy Bach (United Policyholders) asked Mr. Klein how he calculates the approximate premium rate per year.

Mr. Klein said he uses Milliman's direct written premium figures and applies them to Aon's numbers for the numerator. For the denominator, he uses the number of owner-occupied homes from the 2017 census.

3. Heard a Presentation on Developments in Health Care Reform

Sarah Lueck (Center on Budget and Policy Priorities—CBPP) said there is still a lot of uncertainty surrounding health care reform due to the unresolved election results and the case currently pending a decision by the U.S. Supreme Court. However, she said there has been an increase in the number of uninsured Americans, with 21 million dealing with the harmful effects of COVID-19, such as loss of coverage through employers, lack of Medicare and Medicaid Expansion, and racial disparity. She said states do not regulate self-insured coverages, which affects lots of Americans. She said open enrollment through *healthcare.gov* is down from 2019, with only 2.4 million signed up in the marketplace even though there are lots of affordable plans available. She said two of three people can get coverage for less than \$10 per month, and three of four people can get coverage for less than \$50 per month.

Laura Colbert (Georgians for a Healthy Future) said there are opportunities for federal action in the form of paid advertising and the reinstatement of navigators' funding, which would be especially good for underserved diverse areas. She said many states could have an emergency open enrollment period, fix the family glitch with a premium subsidy based on the affordability of emergency room coverage, which uses individual versus family rates currently. She said public charge rules keeping immigrants from purchasing health care coverage in the marketplace with a citizen requirement could be reversed. She said states could also boost open enrollment and state-based plans could extend their open enrollment period by collaborating with other agencies, such as state departments of labor, etc. She said states could move forward with Medicaid expansion and increase health insurer fees to pay for it.

4. Heard a Presentation on Consumer Protection from Unethical Health Insurance Marketing and Sales Practices

Harry Ting (Healthcare Consumer Advocate) said deceitful sales practices regarding health care plans under the federal Affordable Care Act (ACA) have been well-documented with tactics that fail to explain the urgency to purchase coverage while on a first sales call. He said he personally experienced these improper sales practices while posing as a secret shopper in six states while performing research for this presentation. He said this type of misrepresentation causes consumers serious harm, resulting in post claim underwriting, unwarranted rescissions due to preexisting conditions, and loss of health care coverage.

Mr. Ting said 3 million workers a month are already losing their jobs and their health care coverage provided by their employers. He said there have been reports of coverage being retroactively cancelled due to COVID-19 being designated as preexisting. He said while posing as a secret shopper, he collected and provided lots of data from lead-generating companies. He said most of the lead generator phone operators assured him that the data he was giving to them would not fall into the wrong hands; then, they turned around and sold it to over 1,700 producers, many of whom called him insisting he buy coverage from them.

Mr. Ting said health care sharing ministries (HCSMs) that sold short-term limited-duration (STLD) plans provided the most misrepresentations, including: 1) use of the Blue Cross and Blue Shield or Aetna logo when neither company was being represented; 2) not responding to questions about coverage of preexisting conditions or renewal information; 3) indicating that the plans provided full coverage when the plans did not; 4) saying that the plans provided drug coverage, then providing a discount card; and 5) not telling consumers that the plans required joining an association to obtain coverage and not mentioning that the association monthly fee of \$90–\$210 would be included in the premium. He said he was told by fast-talking, high-pressure producers that an immediate decision was required because premiums could increase daily, and he could become eligible or unable to get coverage if he delayed. When he resisted and said he needed time to consider his options, the seller insulted him and said Mr. Ting was wasting his time.

Mr. Ting said state and NAIC action is needed to ensure that all coverage professed to be ACA compliant by producers should be required to comply with state regulations and the *Model Regulation to Implement the Accident and Sickness Insurance Minimum Standards Model Act* (#171). He said STLD plans should be required to increase coverage to ACA levels, and consumers should be given written advice three days prior to application in accordance with Summary of Benefits and Coverage (SBC) guidelines. He said the NAIC should collect data via the Market Conduct Annual Statement (MCAS), include enrollee surveys like those by the federal Centers for Medicare & Medicaid Services (CMS), and seek foundation funding. He said the

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states could require insurance companies to pay for these activities. He said the surveys could be used to identify companies and products for state corrective action. He said the surveys could also be consolidated for national consumer ratings to be provided on the NAIC website. He said information noted on the one-page document developed by the Health Insurance and Managed Care (B) Committee should be provided to consumers through sister agencies. He said the goal is to find, prevent and fight improper sales through misinformation via lead generating companies.

Commissioner Conway suggested that the states review House Bill 2730 to see how it addresses handling such improper marketing techniques. Commissioner Altman said it was stalled, and it has not yet been passed at this time.

Commissioner Kreidler said most states have no regulation over HCSMs, so taking action can be challenging; however, he believes it is important to get information out to consumers on these perpetrators in order to help consumers identify and avoid them.

Mr. Ting said some states are doing more than others legislatively, and they have aggressively provided the public with this information.

Lucy Culp (Leukemia and Lymphoma Society—LLS) asked if this would still be an urgent issue in 2020, once there is a COVID-19 vaccine.

Mr. Ting said this would still be an issue, as the MCAS takes two years to implement, and it is important to roll back current incidents in order to be helpful now; and other low-cost plans will still be a problem going forward.

5. Heard a Presentation on Leveraging Health Plan Capital for Affordable Housing and Community Development

Tom Callahan (Massachusetts Affordable Housing Alliance) said there are more Black and Hispanic renters of homes than there are owners of homes; therefore, the ability to recover financially following a catastrophe is easier for white communities than it is for non-white communities. In fact, he said white communities in high income areas gained in wealth by way of disaster. However, the reverse is often true in non-white communities. Mr. Callahan said Black communities in low-income areas gained \$19,000 in wealth due to a catastrophe, whereas Black communities in high income areas lost \$27,000 in wealth due to a catastrophe.

Mr. Callahan said when it comes to people living in low-income areas, paying the rent comes first, so healthy food and health care often suffer. He said fixing housing in these disparate areas will help improve health. He said a case study by The Life Initiative (TLI) is a prime example of this where the California Organized Investment Network (COIN) did a pilot program with life insurers to invest profits into safe housing projects. Insurers reluctantly complied, while indicating that it would be a lost cause and their investments would be charitable contributions rather than ways to obtain any return on investment. The life insurance companies were very surprised when the project turned out to be a great success with a return on investment to life insurance carriers being more than they had ever could have anticipated.

Ashley Blackburn (Community Catalyst) said much to the surprise of states and carriers alike, healthy profits for health care plans before COVID-19 have continued after COVID-19 according to the latest data, so she encouraged health insurance carriers to invest some of those profits in affordable housing in order to promote the public good. She said state insurance regulators could follow the example of COIN in encouraging health insurance companies to invest in housing, especially in areas with poor health care, which would in turn lead to healthier insureds with additional funds with which to purchase the companies' products.

Commissioner Conway said he cut his teeth in the housing authority arena, and while he agrees that this is a good idea for communities, he is concerned about how state insurance regulators could possibly deal with minimum loss ratios (MLRs).

Ms. Blackburn said the companies could give the money away as an asset switch that would lower the company's capital assets so it would not be considered a medical or administrative expense.

Ms. Culp asked if there are any health care companies that have done this already.

Ms. Blackburn said the TLI had a list of life insurance companies that had participated in the pilot.

Mr. Callahan said he does not know of any health insurance companies that have done this, but he does know of hospitals that have. He said companies believed that they would lose their shirts through this type of investment, and they were happy to be proven wrong when they got a reasonable rate of return on their investment instead.

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6. Heard a Presentation on Insurers' Use of Criminal History Information

Peter Kochenburger (University of Connecticut School of Law) said consumers' criminal history records are being used by insurance companies as part of the data to determine premium rates to be charged—whether claims are to be paid—and other consumer issues. He said arrest records regarding driving while intoxicated/driving under the influence (DWI/DUI) are used for underwriting and claims (e.g., they are particularly troublesome, as they are readily available and often considered as factual, when in fact such records may be incorrect or not updated to indicate an acquittal or that the action for which the person was arrested has been decriminalized).

Mr. Kochenburger asked if such arrest records should be used by insurance companies and their data modelers at all. He asked if data modelers are removing inaccurate arrest and conviction history and if there is any subsequent premium reduction or claim reevaluation once the correction or removal is done. He asked if the use of criminal records should be suspended, because there are 294,000 people incarcerated in the U.S. today and there are disparate arrests by police, as evidenced recently in many parts of the country. He said the use of such criminal history and records needs to be transparent, and those using the data must be held accountable. He said companies in the insurance industry do not really need to use this type of information to do business, determine insurance premium rates, or decide claim payments.

Commissioner Conway said one of the critiques of such data use is that it will cause premiums to increase, and he asked if that is an accurate statement.

Mr. Kochenburger said we are subsidizing white, non-criminals already by non-white criminals by those who can least afford it.

Commissioner Conway said he agreed with Mr. Kochenburger's arguments, noting that he would add that there is a difference between causation and correlation.

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

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NAIC/American Indian and Alaska Native Liaison Committee
Virtual Meeting (*in lieu of meeting at the 2020 Fall National Meeting*)
November 16, 2020

The NAIC/American Indian and Alaska Native Liaison Committee met Nov. 16, 2020. The following Liaison Committee members participated: Lori K. Wing-Heier, Chair (AK); Michael Conway, Vice Chair (CO); Dean L. Cameron represented by Randy Pipal and Kathy McGill (ID); Matthew Rosendale represented by Bob Biskupiak (MT); Mike Causey represented by Tracy Biehn and Kathy Shortt (NC); Jon Godfread represented by John Arnold (ND); Russel Toal and Paige Duhamel (NM); Andrew R. Stolfi (OR); Larry D. Deiter (SD); Mike Kreidler (WA); and Jeff Rude (WY). Also participating was Brenda Johnson (KS).

1. Adopted its Oct. 9 Minutes

Director Wing-Heier said the Liaison Committee's Oct. 9 minutes reflect the e-vote of the Liaison Committee to adopt its Summer National Meeting minutes and to reaffirm its mission statement for 2021.

Commissioner Rude made a motion, seconded by Superintendent Toal, to adopt the Liaison Committee's Oct. 9 minutes (Attachment One-A). The motion passed unanimously.

2. Recognized November as National Native American Heritage Month

Director Wing-Heier said November is National Native American Heritage Month, so it is particularly appropriate that the Liaison Committee is meeting now. She said most members have been participating in diversity meetings via the Special (EX) Committee on Race and Insurance in one form or another since its inception. She said Lois E. Alexander (NAIC) wrote a recognition of this special month for the NAIC's Diversity, Equity and Inclusion Council (DE&I Council) made up of NAIC staff.

Ms. Alexander said she was asked to draft a brief article about the history of National Native American Heritage Month by the DE&I Council. She said the article noted how this month of celebrating Native American's heritage and contributions began in 1995. She said she wants to bring to the DE&I Council information about the Liaison Committee, its mission, and its importance in bringing insurance issues specific to this indigenous group to the table for discussion. Knowing how the Liaison Committee members share this passion, she said she also wants to bring the DE&I Council to the attention of the Liaison Committee.

Director Wing-Heier said when she looks at the diversity and inclusion and what we are all going through right now, she said it seems to her like this is one of the NAIC's first attempts to address diversity, inclusion and racism in the Liaison Committee. She said she is thankful for it, particularly with the large Alaska Native population Alaska has, and she knows members on the Committee have a large American Indian population.

3. Discussed Current Messaging Activities in Collaboration with Tribal Leaders and Articles by Individual Tribal Members Surrounding the Issue of the COVID-19 Pandemic and Upcoming Distribution of the Soon-to-be-Available Vaccine

Director Wing-Heier said before entering into a discussion of this agenda item, she would like those on the call who may not be following this issue closely to have an understanding of the position of the American Indian and Alaska Native communities with respect to the COVID-19 pandemic and the introduction of the upcoming vaccines. She said herself, Ms. Alexander and Commissioner Conway stumbled upon recent articles in the last few weeks dealing with the perception of the vaccine in the native community and their possible reluctance to accept the vaccine or participate in the trials. One of these articles is by a woman who she would like to have come to speak to the Liaison Committee at some point to discuss her growing up on a reservation and why she chose to participate in the vaccine trials.

Director Wing-Heier said her hope in sharing these stories with the Liaison Committee is to give members an idea of what some of their residents—their American Indian and Alaska Native populations—are going through with their discomfort and sense of fear, along with some trailing stories of their ancestors from the 1918 Spanish Flu epidemic, during which they were

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used as guinea pigs, and there is still a reluctance from some of the elders to accept the vaccine. However, she said there is no doubt that the U.S. has made great strides since then with regard to its vaccines, and the states can help them overcome this fear because American Indians and Alaska Native have been, more than any population, in the higher level of demographics who have been hurt by this pandemic. She said she would like to open this up for the discussion of what Liaison Committee members are seeing in their states and whether states are doing any outreach because she believes Liaison Committee members could all learn from each other on this.

Superintendent Toal said New Mexico has a large portion of the Navajo Nation, and he does not need to tell anyone how blinded that population has been. He said this nation is in another shut down period now because of a renewed spike, and his department along with others have done lots of outreach and some onsite work to make sure they are aware of the open enrollment period. He said the New Mexico Office of Superintendent of Insurance tried to do it earlier in the year because there is no special enrollment in the exchanges for Native Americans; they can join at any time. He said the Navajo Nation was so overwhelmed early by COVID-19 that this was not on anybody's priority list. He said New Mexico is now trying to get Native Americans enrolled. However, he said Indian Health Services (IHS) for the Navajo Nation in the Shiprock, NM, area are just completely overwhelmed, so they have been working with insurance companies and health care providers to ensure that the Navajo who have COVID-19 can get care at the appropriate place.

Director Wing-Heier said she could appreciate that, as Alaska is going through the same thing, except Alaska does not have any reservations. She said what Alaska does have is small rural villages where access to health care is challenging and the health care that is there is certainly not sufficient to address COVID-19, particularly those who have beyond mild symptoms. She said because of the way these small villages operate in their family interaction, they are seeing COVID-19 spreading like wildfire. She said the code diagrams that have been drawn up look like a spider, starting with three members of a family of five being infected with COVID-19. They might go berry-picking with someone else, then seven members of a family of nine are infected; and it goes on and on like that until the whole village is infected. Director Wing-Heier said, in Alaska, patients with COVID-19 must be evacuated out of the villages to Anchorage or Fairbanks, because the facilities in rural Alaska cannot accommodate a ventilator nor provide the care needed. She said it is unfortunate that we, or somebody, took it into the village in the first place.

Superintendent Toal said it is interesting to note that in some of the more self-contained pueblos, the tribes can isolate themselves and do a really good job of controlling the spread of the virus. He said it is when there is a larger tribe or pueblo that is spread out over a wide area that more problems arise.

Ms. Duhamel said she wants to talk about the original topic of messaging regarding vaccines, which she believes is a really good idea. She said she likes the idea of speaking with the woman from the tribe in the article because it is important for the states to know what type of messaging she is giving to her own tribe, as the states need to be conscious of us "helicoptering" in saying, "We are the government and we are here to help," when there is even more recent history of medical experimentation on Native Americans. She said her assistant's mother was sterilized in the 1970s as an experiment, and there is a movie titled "Auma" about this event that she recommends everyone see, which seems to be making a difference on distribution. However, she said if the states do help with messaging, it behooves the states to put Native Americans themselves at the forefront of this discussion with Native American communities. She said it is important to be cognizant of the history of this type of activity because it is so close; and the same is probably very true of lots of African American communities, as well.

Director Wing-Heier said she does not disagree that the states certainly need to work with the American Indian and Alaska Native populations, particularly regarding messaging. She said they do not want it to be people who are unfamiliar with their customs or their traditions or have someone from outside, so to speak, to come in and tell them what to do. However, she said somehow, when the vaccine is available, it needs to be "all hands on deck" and working with them so that tribal members can take advantage of the vaccine, if they so choose. She said Alaska had heard rumors, originally out of Florida, that one of the populations who would be the most reluctant to take the vaccine is going to be Native Americans.

Commissioner Conway said, from Colorado's perspective, the Colorado Department of Public Health & Environment has been working on all things related to COVID-19 from the beginning, but a big part of its work lately, along with the lieutenant governor, has been to engage actively with the Native American population to try and help with the messaging; so, Colorado has the relationships already built with this population. Commissioner Conway said Colorado is hoping that this will work, as he is sure a lot of the other states are all doing the exact same work.

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4. Discussed the Work of the Special (EX) Committee on Race and Insurance as it Relates to American Indians and Alaska Natives

Director Wing-Heier said she encourages all Liaison Committee members to become engaged in discussions via the five workstreams currently underway as part of the Special (EX) Committee on Race and Insurance. She said Liaison Committee members should listen to the recordings of any meetings they may have missed, as there is some important work being done with and on behalf of Native Americans during these meetings.

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

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Draft: 12/18/20

NAIC/American Indian and Alaska Native Liaison Committee
E-Vote
October 9, 2020

The NAIC/American Indian and Alaska Native Liaison Committee conducted an e-vote that concluded Oct. 9, 2020. The following Liaison Committee members participated: Lori K. Wing-Heier, Chair (AK); Michael Conway, Vice Chair (CO); Trinidad Navarro (DE); Steve Kelley (MN); Matthew Rosendale (MT); Mike Causey (NC); Jon Godfread (ND); Russel Toal (NM); Andrew R. Stolfi (OR); Larry D. Deiter (SD); Mike Kreidler (WA); and Jeff Rude (WY).

1. Adopted its Summer National Meeting Minutes

The Liaison Committee considered adoption of its Summer National Meeting minutes. A majority of the Liaison Committee members voted in favor of adopting the Aug. 3 minutes (see *NAIC Proceedings – Summer 2020, NAIC/Consumer Liaison Committee, Attachment Two*). The motion passed.

2. Reaffirmed its Mission Statement for 2021

The Liaison Committee considered adoption of reaffirming its mission statement for 2021, which remains unchanged from 2020:

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

A majority of the Liaison Committee members voted in favor of reaffirming the mission statement. The motion passed.

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

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