

Draft Pending Adoption

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NAIC/Consumer Liaison Committee
Kansas City, Missouri
April 8, 2022

The NAIC/Consumer Liaison Committee met in Kansas City, MO, April 8, 2022. The following Liaison Committee members participated: Andrew R. Stolfi, Chair (OR); Grace Arnold, Vice Chair (MN); by Lori K. Wing-Heier (AK); Jim L. Ridling represented by Mark Fowler and Reyn Norman (AL); Alan McClain represented by Jennifer Bruce (AR); Peni Itula Sapini Teo (AS); Ricardo Lara (CA); Andrew N. Mais represented by Kurt Swan (CT); Karima M. Woods (DC); Trinidad Navarro represented by Frank Pyle (DE); David Altmaier represented by John Reilly (FL); Colin M. Hayashida represented by Melissa Hamada (HI); Dean L. Cameron represented by Randy Pipal (ID); Vicki Schmidt (KS); James J. Donelon (LA); Kathleen A. Birrane represented by Alexander Borkowski (MD); Anita G. Fox and Karin Gyger (MI); Chlora Lindley-Myers (MO); Mike Causey represented by Kathy Shortt (NC); Jon Godfread represented by John Arnold (ND); Eric Dunning (NE); Chris Nicolopoulos represented by David Bettencourt (NH); Barbara D. Richardson represented by David Cassetty (NV); Adrienne A. Harris represented by My Chi To (NY); Judith L. French and Jana Jarrett (OH); Michael Humphreys represented by Katie Merritt (PA); Cassie Brown (TX); Jon Pike (UT); Scott A. White represented by Don Beatty (VA); Mike Kreidler (WA); and Allan L. McVey (WV). Also participating were Michael Conway (CO); John F. King (GA); Michelle B. Santos (GU); Doug Ommen (IA); Dana Popish Severinghaus (IL); Doug Hartz (OR); and Tregenza A. Roach (VI).

1. Heard Opening Remarks

Commissioner Stolfi welcomed the 40 NAIC consumer representatives selected for 2022, indicating that their names and the organizations represented were included on the agenda following the names of the Liaison Committee members. He said as the vice chair of the NAIC Consumer Board of Trustees, he wants to report that the Board: 1) works in conjunction with the Liaison Committee; 2) comprises six state insurance regulator members and six consumer representative members; and 3) meets in closed, confidential sessions because it administers the NAIC Consumer Participation Program, which may require discussions of a confidential nature concerning personal information. He said the Board met April 7 to discuss suggested revisions to the Plan of Operation for the NAIC Consumer Participation Program and the surveys of Liaison Committee members and consumer representatives on how to enhance the level of participation during future Liaison Committee meetings.

2. Adopted its 2021 Fall National Meeting Minutes

Commissioner Stolfi said the Liaison Committee met Dec. 13, 2021.

Commissioner Arnold made a motion, seconded by Commissioner Lara, to adopt the Liaison Committee's Dec. 13, 2021, minutes (*see NAIC Proceedings – Fall 2021, NAIC/Consumer Liaison Committee*). The motion passed unanimously.

3. Heard a Presentation from the AEPI on the Demise of the Auto Insurance Appraisal Clause

Erica Eversman (Automotive Education & Policy Institute—AEPI) said the appraisal clause is vanishing from private passenger automobile (PPA) insurance policies, and this is important because it is used to determine property loss claims values that are non-binding. She said the Road Traffic Act 1988 (RTA) requires insurers to provide umpire awards exclusively for personal injury but not for property loss resolutions. She said it also allows insurers to avoid using the Inter-American Commercial Arbitration Commission (IACAC), including no penalty for bad actors; however, she said it is not in all PPA policies. She said the appraisal is \$5,500 and \$96 for an arbitration for a policy that has an appraisal clause for a claim settlement projected to be under \$10,000. She said the consumer success

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rate is extremely high at 98% when arbitration is utilized. She said recent insurer changes include insurers: 1) using their own employees or claims adjustors to serve as arbitrators; 2) rejecting most umpires suggested by consumers; and 3) refusing to pay the umpire's award. She said consumers are then forced to sue insurers to force them to pay contracts as written and approved by state insurance departments, which is contrary to standard insurance regulation. She said other changes insurers are making to appraisal clauses include removing them entirely or covering partial losses only where the clause used to cover a full or partial loss. She said many consumers have called her looking for an attorney to use but cannot find any, so insurers can pay less because small claim limits are much lower and can be moved to lower general court.

Ms. Eversman said her recommendations for state insurance regulators are to: 1) mandate full and partial evaluation of automobile property loss; 2) alert insurers to notify consumers that the RTA exists if they disagree with their claim offer; 3) require the use of independent evaluators and umpires; 4) establish a time frame for RTA completion and the maximum amount the consumer expects to be permitted; and 5) include the use of RTA use, results, and dollar value; and 6) change data elements for market conduct analysis to reflect it. She said a company told her she did not follow insurance regulations so she could not collect on her claim.

Commissioner Stolfi said Oregon implemented a consumer education process and hoped that when consumers came to it, they would understand that if the cost after the final decision is higher, the state requires companies to pay the difference. Amy Bach (United Policyholders—UP) said the UP is seeing insurers using fewer appraisals. Ms. Eversman asked companies why these changes are being made and whether companies have a good reason to do it. Commissioner Stolfi said Ms. Eversman could submit a request for NAIC action following the meeting.

4. Heard a Presentation from the CEJ on Modernizing Market Regulation Data Collection

Birny Birnbaum (Center for Economic Justice—CEJ) said there is little to no public market regulation data available for consumers or states to use, and the type of data the NAIC has today is on workers' compensation so state insurance regulators can track COVID-19-related data by state and severity. He said mortgage lending is available on a monthly and annual basis by race and geography. He said on March 10, the NAIC announced a 2.2% increase from 2018 to 2019; an anachronism in property/casualty (P/C) data collection (not workers' compensation) through the Market Conduct Annual Statement (MCAS) is highly flawed and untimely. He said most of the reporting comes from a statistical data agency system that has not been updated in 40 years. He said for workers' compensation, the National Council on Compensation Insurance (NCCI) is only one of many statistical organizations that base analysis on transactional data reported monthly. He said for personal lines, the data is outdated and used to produce industry aggregate statistics, which results in reporting that is of no use to state insurance regulators for market regulation, except for that which is COVID-19-related or racially biased.

Mr. Birnbaum said statistical agents appointed by states refuse to provide data. He said one straightforward solution would be to use their existing authority to designate one singular statistical company through a bid process for all states to use like the NAIC did for statutory reporting, and it should include individual company data. He said there was historic precedence by the Texas Department of Insurance (TDI) when it implemented Request for Information and Qualifications (RFIQ) in 1995. He said its first expectation was that the designated statutory agent is to report to the TDI as the state's agent. He said a second solution would be to use an Open Interactive Data Language (IDL) Blockchain Network for the insurance industry. He recommended that state insurance regulators move to a more timely, granular, uniform, and responsive market regulation data collection through a modernized statutory agent framework.

Commissioner Arnold asked Mr. Birnbaum if he has any concerns because workers' compensation insurance has more structure than other P/C insurance. Mr. Birnbaum said he does not have any concerns because the historical evidence was tied to rating, which is not needed today, but the underwriting and pricing attributes are needed. Mr. Cassetty asked if the bid process was used by the TDI in 1995. Mr. Birnbaum said the bid process was done

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from outside the TDI with one statutory agent designated for each major line. He said when the agent did credit scoring, data they already had was used because it had continually been collected, so there was no need for specific data calls. Commissioner Stolfi said this is intriguing to him, and he asked if anyone knows of other states that may have done this that could be contacted. Mr. Birnbaum said California, Illinois, and Pennsylvania have looked at this with special data calls from time to time because this would eliminate the need for special data calls. He suggested that the NAIC compare workers' compensation to other lines' data calls and ask statutory companies, such as the Insurance Services Office (ISO) and the American Association of Insurance Services (AAIS), what they can provide. Mr. Chou asked if, given the proactive and reactive resource constraints for most state insurance departments, the NAIC could encourage workers' compensation to get more meat in their data reporting. Mr. Birnbaum said some resources are needed up front, with less being needed later. Executive Deputy Superintendent To said the Innovation, Cybersecurity, and Technology (H) Committee would provide supervisory or regulatory technology being considered.

5. Heard a Presentation by the NCTE, the DREDF, and the HIV + Hepatitis Policy Institute on the Role of State Insurance Regulators in Addressing Discriminatory Benefit Design

Carl Schmid (HIV + Hepatitis Policy Institute) said the proposed 2023 Notice of Benefit Payment Parameters (NBPP) Rule on Benefit Design, Section 156.125 Prohibition on discrimination would "... explicitly prohibit discrimination on the basis of sexual orientation and gender identity, as had been the case prior to 2020." He said the Center for Consumer Information and Insurance Oversight (CCIIO) recently proposed adding clinically based, relevant, peer reviewed medical journal guidelines in six areas where presumptive discrimination exists: 1) the limitation on hearing aid coverage based on age; 2) Autism spectrum disorder (ASD) coverage limits based on age; 3) age limits for infertility treatment coverage when treatment is clinically effective for the age group; 4) limitation on foot care coverage based on diagnosis, whether diabetes or another underlying medical condition; 5) coverage of Essential Health Benefits (EHB) for gender-affirming care; and 6) access to prescription drugs for chronic health conditions through adverse tiering. He said there should be no adverse tiering, and tiering should not rely on cost alone. He said it must be clinically based and balanced, as well as allow reasonable medical management. He said there are other practices that also constitute discrimination, so attention to enforcement is needed in accordance with Qualified Health Plan (QHP) certification for prescriptions that is available online now with additional tools coming soon, many of which have zero cost sharing.

D. Ojeda (National Center for Transgender Equality—NCTE), who uses the pronoun they, said there are high levels of unmet health care needs among the transgender community. They said providers and plans need to mitigate harmful health care encounters and damaged trust. They said gender-affirming care is medically necessary and saves lives by improving mental health and quality of life overall. They said providers and plans found that in 2015, one in four experience a problem with being denied health care insurance coverage. They said there is a need to mitigate harmful health care encounters, such as the fear of being mistreated and that they could not afford the care needed, especially those that are higher within the ranks of people of color. They said state insurance regulators could provide clear guidance on nondiscriminatory coverage and outreach. They said states that have already provided explicit guidance include Colorado, Montana, Nevada, and Virginia. They encouraged all state insurance regulators to take the lead in this area of need.

Silvia Yee (Disability Rights Education and Defense Fund—DREDF) said discriminatory benefit design also exists within the proposed 2023 rule regarding rehabilitation and habilitation services and devices. She said there are critical medical needs for people with chronic conditions, such as medically needed therapies for pain management that are not fixes or cures, but rather slow progressive symptoms and restore functional capacity (e.g., long COVID); therapies needed for children and adults to achieve functions for the first time; mental health services and therapy that include in-patient and out-patient care; and durable medical equipment. She said some people need a wheelchair elevator, which for them is not a luxury item due to their debilitating condition, but rather, it is a medical necessity. However, she said insurers would not be covering it or certain contraception

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services due to benefit design discrimination. She said they need help from state insurance regulators and recommended that they issue clear examples of discriminatory benefit design, explain what this type of discrimination means, and rotate a deep dive review of key benefit categories.

Commissioner Arnold said Workstream Five under the Special (EX) Committee on Race and Insurance would be a good place to give this presentation as well, and it might include how policies are affected. Ms. Merritt asked if the draft QHP template would have any federal definition of gender-affirming care. D. Ojeda said the template had a definition as well as standards.

6. Heard a Presentation from the NWLC and Georgetown University CHIR on the Urgency of Now: Mental Health Parity and an Ongoing Pandemic

Dorianne Mason (National Women’s Law Center—NWLC) said the federal Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA) referred to a covered condition, not a mandate. She said forty-three state parity laws were in effect in 2008, and the MHPAEA contains no state preemption. She said the MHPAEA did not affect existing state mandates to offer or cover behavioral health benefits, and legislative activity at the state level continues to focus on compliance and enforcement. Since the pandemic began, she said 106,000 Americans have died of overdoses, with 36.8% per 100,000 of those reporting as black and 41.4% reporting as Indian. She said every two years, the Employee Benefits Security Administration (EBSA) and the federal Centers for Medicare & Medicaid Services (CMS) issue an MHPAEA Report to the U.S. Congress (Congress). She said the 2022 report indicated that none of the plans were found to be sufficient, and compliance assistance was not enough, but what was needed was more active enforcement by states using their full authority. She said the report also indicated that the pandemic had a negative impact and increased mental health needs, especially in women due to the lack of childcare, the isolation of remote work, and required home schooling. She said one in seven women and 12.3% of men reported feeling overwhelmed.

Maanasa Kona (Georgetown University Center on Health Insurance Reforms—CHIR) said questions state insurance regulators could ask as they move forward with plans to improve MHPAEA compliance by insurers are: 1) what type of information the state needs to collect; 2) whether the state has the authority to collect this information; and 3) what format the state should use in requesting and collecting this information. She said the MHPAEA requires plans to document and report internal as well as external practices. She said under the Consolidated Appropriations Act enacted on Feb. 10, 2021, plans must make comparative analyses of design and application of non-quantitative treatment limitations (NQTLs) available to state departments of insurance (DOIs) upon request. She said state legislation as of the Legal Action Center (LAC) Report of July 2020 included: 1) 15 states and Washington, DC required plans to submit compliance reports and/or quantitative data to DOIs; 2) nine states and Washington, DC required plans to conduct parity compliance analysis modeled after the Kennedy Forum’s six-step analysis and report findings to DOIs; and 3) Washington, DC required health plans to report on quantitative data needed for an “in operation” analysis of parity compliance.

Ms. Kona said Pennsylvania developed its own quantitative treatment limitations (QTLs) compliance tool for assessing QTLs that included time limits, the need for granularity, and use of the tool by insurers during future product development. She said assessing NQTLs included finding the right tool; issues with NQTL compliance due to the large amount of data and consistency across carriers; recommendations that included reaching out to providers, which New Mexico did via provider survey and Nebraska did via presentations for providers; and using claims review. She said looking forward, state insurance regulators could: 1) require submission of compliance reports and quantitative data to monitor MHPAEA compliance by leveraging federal law; 2) adopt or develop the right tool for QTL and NQTL compliance data submission; 3) ensure high quality submissions by carriers; and 4) identify issues in submitted information. She concluded by saying that Georgetown University will be doing its own MHPAEA survey and report.

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Commissioner Stolfi said Oregon passed some of these laws recently and acknowledged that putting such legislation together takes a lot of work by a state insurance department.

7. Heard a Presentation from the LLS and the Colorado Children’s Campaign on Standard Plan Design: Federal Developments and Lessons Learned in States

Erin Miller (Colorado Children’s Campaign) said there has been a lot of interest in being able to compare health care plans to help consumers choose the right plan for their personal needs. One way to improve a consumer’s ability to select would be to clarify the choices so the plans could be compared on an “apples to apples” basis. She said standardized plans would meet this challenge while improving health equity and providing other health coverage improvements. She said it would also provide the potential for cost-reduction strategies by targeting rate setting. She said states that already require standardized individual market health plans are on both coasts and in Colorado. She said Colorado required extensive stakeholder involvement in the process, including those from the health care industry and communities that are diverse regarding race, ethnicity, immigration status, age, ability, sexual orientation, gender identity, or geographic regions of the state and are affected by higher rates of health disparities and inequities. She said the standardized plans are designed to improve racial health equity and decrease racial health disparities through a variety of means, which are identified collaboratively with consumer stakeholders, such as improving prenatal health care, and through a culturally responsive network.

Lucy Culp (The Leukemia & Lymphoma Society—LLS) said recommendations for state insurance regulators include: 1) improving regulatory tools that would improve health equity through plan design, limit the number of plans offered, provide meaningful difference standards, and improve naming display; 2) additional consumer education with an emphasis on the benefits of standard plans, explanations of how to compare standard and non-standard plans, and education about new plans at re-enrollment; and 3) monitoring the marketplace as to the trends in consumer choices and consumer satisfaction.

Commissioner Arnold asked how requiring standardized plans affected the value of health care plans. Ms. Culp said most states see standard plans affected mostly in the way plans are named and referred to. She said this is where consumer education is needed the most. Ms. Miller said plan display comes in handy, especially in the early years.

Commissioner Stolfi said Oregon has had standard plans since the federal Affordable Care Act (ACA) was enacted.

8. Discussed Other Matters

Commissioner Stolfi said these presentations are very valuable, and the discussions following each were even more so. He said it is possible that changes may be determined for future meetings based on the results of the state insurance regulator and consumer surveys completed just prior to this meeting. He said a full discussion of all will follow to find good solutions for enhancing presentations and discussions going forward.

Michael DeLong (Consumer Federation of America—CFA) asked that consumer representatives be encouraged to help at the state level, and he asked what the NAIC is doing to ensure that the letter from the CFA on antifraud is being addressed. Commissioner Stolfi said he believes this issue is being addressed by another committee.

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

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