

Draft Pending Adoption

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Innovation, Cybersecurity, and Technology (H) Committee
Kansas City, Missouri
April 5, 2022

The Innovation, Cybersecurity, and Technology (H) Committee met in Kansas City, MO, April 5, 2022. The following Committee members participated: Kathleen Birrane, Chair (MD); Evan G. Daniels, Co-Vice Chair (AZ); Dana Popish Severinghaus, Co-Vice Chair (IL); Karima M. Woods (DC); John F. King (GA); Amy L. Beard (IN); Chlora Lindley-Myers represented by Cynthia Amann (MO); Troy Downing (MT); Adrienne A. Harris represented by My Chi To (NY); Jon Godfread (ND); Judith L. French (OH); Elizabeth Kelleher Dwyer (RI); Carter Lawrence (TN); Michael S. Pieciak represented by Kevin Gaffney (VT); and Mike Kreidler represented by Michael Walker and Molly Nollette (WA). Also participating were: George Bradner (CT); and Eric Slavich (WA).

1. Adopted Proposed Revisions to the Innovation, Cybersecurity, and Technology (H) Committee Structure and its Working Group Charges

Commissioner Birrane said with the retirement of former Superintendent Eric A. Cioppa (ME), there have been some changes to the leadership and membership of the Innovation, Cybersecurity, and Technology (H) Committee (Committee). She said Director Popish-Severinghaus will replace Superintendent Cioppa as the co-vice chair, and Director Lindley-Myers will replace Maine as a member of the Committee.

Commissioner Birrane reviewed the proposed changes to the structure and the charges and proposed a new Committee working group, the Innovation in Technology and Regulation (H) Working Group. She said the structure changes propose moving the Speed to Market (H) Working Group to the Market Regulation and Consumer Affairs (D) Committee and moving the Privacy Protections (D) Working Group to this Committee. She said the proposal also includes a clarifying amendment to the Privacy Protections (D) Working Group charge.

Commissioner Birrane said the new Working Group will be the platform through which the Committee will evaluate and provide educational opportunities for state insurance regulators and others to investigate evolving and new developments on the innovation and technology front. She said this Director Daniels will serve as Working Group chair, and Director Popish Severinghaus and Director French will serve as co-vice chairs. Director Daniels said this Working Group will signal some new ways to educate and facilitate learning amongst state insurance regulators and presents an opportunity for many stakeholders be a part of that. He said he would summarize the charges in two ways. He said first, the objective is to facilitate discussion between all stakeholders—not just technology stakeholders, but also with state insurance regulators who are facilitating innovation in their states. He said many states have produced ways to talk about this area openly and that this Working Group can serve to identify issues affecting the insurance marketplace in the near future.

Mr. Bradner asked about the reasoning behind moving the Speed to Market (H) Working Group to the Market Regulation and Consumer Affairs (D) Committee. He said the charges to the Working Group appeared to include the System for Electronic Rates & Forms Filing (SERFF) Modernization Project, which might be considered something under the purview of the Committee. Commissioner Birrane acknowledged the charges speak to the SERFF Modernization Project, but she said the Working Group has been more focused on edits to the *Product Filing Review Handbook*, and the scope of that work is more granular and specific to rates and forms and not the broader NAIC. Director Daniels said the proposed move should not be considered any signal that the Committee

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is not interested in following this work, but that it is a touchpoint similar to others identified with other NAIC committees that the Committee will continue to coordinate with like the Health Innovations (B) Working Group. Commissioner Birrane said how state insurance regulators use technology will be a focus of the Committee, but that does not mean specific and more granular work will be done outside of the Committee where the subject matter expertise (SME) exists.

Commissioner Downing made a motion, seconded by Director Daniels, to adopt the proposed revisions to the Innovation, Cybersecurity, and Technology (H) Committee's structure and charges (Attachment One). The motion passed unanimously.

2. Adopted the Reports of its Working Groups

A. Big Data and Artificial Intelligence (H) Working Group

Superintendent Dwyer said the Big Data and Artificial Intelligence (H) Working Group met April 5 and focused on four workstreams. She said the first workstream, led by Mr. Gaffney, is to continue the survey work begun in 2021. She said the workstream will continue to look at the private passenger auto (PPA) artificial intelligence (AI)/machine learning (ML) survey results and use that experience to inform the development of a homeowners and a life insurance survey scheduled to be issued in June and August, respectively. She said the work will culminate in a white paper to be published by the Fall National Meeting. She said the second workstream, led by Commissioner Ommen, will focus on review of third parties providing data and models to determine the appropriate regulatory format for monitoring and overseeing this use. She said this work should be completed by the Fall National Meeting as well. She said the third workstream, led by Superintendent Harris, will gather and evaluate information on governance models and frameworks, software tools and resources from various sources that could assist state insurance regulators in overseeing and monitoring use of data, and AI/ML to eliminate unintended bias. She said the final workstream, led by Commissioner Beard, is focused on how to implement the expectations outlined in the NAIC AI Principles and provide suggestions on next steps, which could include regulatory guidance, such as model governance. She said the Working Group will be holding an open meeting in 45 to 60 days to receive a public update on these workstreams. Lastly, she said the Working Group received an update on the review of the PPA AI/ML survey results.

B. Cybersecurity (H) Working Group

Ms. Amann said the Cybersecurity (H) Working Group met March 23 to kick off its work for the year. She said that during this meeting, the Working Group reviewed its charges and discussed projects that may be taken on based on its charges and the needs of state insurance regulators. She said the discussion covered the following five items:

1. Consider the development of a cybersecurity response plan to assist state insurance regulators with situations where cybersecurity events take place within the insurance industry intended to leverage the strength of the U.S. system of regulation and allow state insurance regulators to share expertise and to develop a valuable resource to aid states managing complicated responses to cybersecurity events.
2. Consider the development of a cybersecurity survey to better understand cybersecurity practices by insurers and look at controls, working closely with the Center for Insurance Policy and Research (CIPR) and learn from the NAIC's experience with surveys.

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3. Develop advice and guidance related to training that would be beneficial to state insurance regulators, and put together training to be offered at the NAIC Insurance Summit.
4. Review and refine the Working Group charges and related topics.
5. Monitor state, federal, and international cybersecurity efforts.

C. E-Commerce (H) Working Group

Commissioner Downing said the E-Commerce (H) Working Group met March 30. He said the Working Group heard a presentation and summary from NAIC staff on the recent surveys sent to the states regarding their adoption and various exceptions to the federal Uniform Electronic Transactions Act (UETA), as well as the various steps and other actions taken by the states regarding e-commerce both during and because of the COVID-19 pandemic. He said 20 states responded to the survey, and their results gave the Working Group a good sense of what kinds of orders and bulletins have now either expired or been rescinded, as well as what other actions taken by the states have now become permanent either through legislation or regulation.

The NAIC also presented and summarized the various industry concerns that were received in response to the survey as well. Four industry trade associations provided responses to the survey in which they discussed various concerns and what they consider to be impediments to e-commerce. He said the trades also provided recommendations on how they would like to see state insurance regulators and legislators proceed with respect to e-commerce.

He said going into the meeting, the original intent was to assign issues to buckets and set discreet delivery dates and prioritization based on the survey results and the Working Group analysis. He said that sparked a conversation on whether that would be premature prior to spending time thoughtfully identifying themes and problem statements for each theme. He said at a high level, the industry surveys identified issues related to identifying consumer protection concerns such as opt-in/opt-out for electronic delivery of notices and other overarching themes. He said a small group of state insurance regulators volunteered to further analyze the states' survey results to identify the various overarching themes and issues contained in the survey results and to further clarify the Working Group's work plan. He said the Working Group plans to meet again in May to further discuss its work plan, as well as timelines for any deliverables that may be developed as a result of this work.

D. Speed to Market (H) Working Group

Commissioner Birrane said the Speed to Market (H) Working Group did not meet prior to the Spring National Meeting but is currently chaired by Rebecca Nichols (VA). She said the Working Group leadership and NAIC staff plan to review and discuss edits to the *Product Filing Review Handbook* and present any proposed changes to the Working Group, as needed. She said the Working Group plans to meet April 20 to continue work on its goals.

Commissioner Godfread made a motion, seconded by Director French, to adopt the reports of the Big Data and Artificial Intelligence (H) Working Group (Attachment Two), the Cybersecurity (H) Working Group (Attachment Three), the E-Commerce (H) Working Group, and the Speed to Market (H) Working Group. The motion passed unanimously.

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3. Received an Update on the Casualty Actuarial and Statistical (C) Task Force Predictive Model Review Process

Commissioner Birrane said that consistent with the Committee's efforts to coordinate and ensure collaboration with other related NAIC workstreams, Mr. Slavich, the current the chair of the Casualty Actuarial Statistical (C) Task Force, would provide an update on its Predictive Model Review Process.

Mr. Slavich said the Task Force has been concentrating on predictive modeling activities for the past few years. He provided a description of those activities and charges. Mr. Slavich then provided an update about the NAIC rate model review team's activities. He said first, states are approving rates filed and the rate models are used in support of those rates; therefore, this group is not actually approving the models themselves, as the states are approving the rates. He said second, the rate models evaluated today are for risk classification and not the overall rate levels, so the company determines its overall rate needs, determines changes to rating variables not included in the modeling process, and then uses the model as the main support of allocation of the remaining overall rate needed for individual classes.

Mr. Slavich said the Task Force completed its first predictive modeling product in 2020 with its adoption of the NAIC white paper titled *Regulatory Review of Predictive Models*; meets in regulator-to-regulator session to discuss rate filing issues; and facilitates training and the sharing of expertise through predictive analytics webinars, which is referred to as the Book Club. He said the Task Force received a new charge this year to: "Review the completed work on artificial intelligence (AI) from other Committee groups and to coordinate with the Innovation, Cybersecurity, and Technology (H) Committee on the tracking of new uses of AI, auditing algorithms, product development, and other emerging regulatory issues, in as far as these issues contain a Task Force component."

Mr. Slavich said Task Force members have also been working closely with the NAIC staff hired to form the NAIC rate model review team, including Dorothy L. Andrews (NAIC), a senior behavioral data scientist and actuary, and Sam Kloese (NAIC) and Roberto Perez (NAIC), who are property/casualty (P/C) rate model actuaries. He said this team of experts is led by Kris DeFrain (NAIC), Director of Research and Actuarial Services, and has made considerable progress over the last few years. He said the team has reviewed 54 rate models and produced 127 reports to assist state insurance regulators with their reviews of these models. Mr. Slavich said these reports are stored in a P/C rate model database designed by Task Force regulators and NAIC staff and accessible by the 31 states that have signed the Rate Review Support Services Agreement with the NAIC.

4. Received an Update on the Privacy Protections (D) Working Group 2022 Work Plan

Ms. Johnson provided the report of the Privacy Protections (D) Working Group. She said the Working Group met April 4 and adopted its minutes from previous meetings. She said the Working Group adopted the final exposure draft of the report on consumer data privacy protections and detailed the changes. She said during its meeting, the Working Group heard updates from Jennifer McAdam (NAIC) and Brooke Stringer (NAIC) on federal privacy legislation and received comments from the American Council of Life Insurers (ACLI) and the Health Coalition on the exposure draft of the Working Group's work plan, which was adopted by the Working Group.

5. Discussed the Coordination of Related Workstream Activity in Other NAIC Committees

Commissioner Birrane said one of the highest priority charges to the Committee is to facilitate appropriate levels of coordination and collaboration among NAIC working groups with respect to topics that relate to innovation, technology, cybersecurity, and privacy in the insurance sector. She said the charge was a foundational element in

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the decision to form the Committee—the goal being to assure, to the extent appropriate, that the NAIC’s activities in these areas are identified, coordinated, and transparent. She said the first task was to operationalize that charge and determine what coordination and collaboration means along a continuum that ranges from awareness and monitoring the activities of a particular working group, to the absorption of that working group under the Committee and determine what the appropriate level of interface is between that NAIC working group and the Committee. She said the first step was to identify the working groups within the NAIC that include within their current charges or work focus topics that overlap with the work of the Committee referred to as “related groups.” She said that effort was undertaken by NAIC Committee staff, working across all the NAIC committees, and then the leadership of the Committee met with the leadership of each of the other committees to discuss coordination and collaboration in general and with respect to specific related groups. She said this led to an operational approach and framework that depends on the related group and the ongoing and iterative discussions. She said at a high level the categories are:

- Awareness and monitoring of work focus – This approach applies to groups whose work has no obvious overlap with the Committee but whose work can inform the Committee.
- Overlapping representation – This approach applies to groups whose work is more directly related and where each should be aware of the work of the other.
- Joint products/projects – This approach applies to circumstances in which the related group is working on a project that very clearly overlaps with the Committee, and it makes sense for the groups to share the work product.
- Absorption into the Committee – The only example of this currently is the Privacy Protections (D) Working Group.

Commissioner Birrane said that is the outline of how the Committee intends to interface with related groups. In addition, however, there are topics that cut across many related groups and that are of broad significance, such as the detection of unfair bias in AI/ML decisional systems or complex predictive models. She said that is an example of something that many working groups are addressing and for topics such as these, the Committee is establishing a Collaboration Forum that will serve as the platform for multiple NAIC working groups to come together to identify and address foundational issues and develop a common framework that, when adopted, can inform the area specific work of those groups.

Commissioner Birrane said that when such a topic is identified, there will be a meeting of the working groups involved and, if consensus exists, a project within the Collaboration Forum will be created. She said that project will be undertaken by a group consisting of each of the related working groups and any other state that wishes to participate, and each will have its own chair and vice chairs, determine the common issues to be addressed, and establish a work plan, deliverables, and time frames. She said the objective of each project within the Collaboration Forum will be to create the common framework and foundational elements of important regulatory issues that are of broad concern and impact to assure that those issues are fully discussed and vetted with the involvement of many disciplines and areas of expertise and focus, moving forward from a firm foundation built on consensus. She said the first project of the Collaboration Forum will be the algorithmic bias project.

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Commissioner Birrane said one additional way in which the Committee will facilitate coordination and collaboration is to facilitate awareness and communication around what related groups are working on supported by the launch of the Innovations, Cybersecurity and Technology (ICT) Hub, which will:

- Provide a “portal” or library of resources related to innovation, cybersecurity, data privacy and consumer privacy, and technology, where the user can easily identify various workstreams and work products developed or being developed by different committees and groups at the NAIC.
- Primarily be led by NAIC staff but with significant input from committee members around the look and feel and the practicality of it.
- List related groups with links to their work and allow users to query and identify working groups and work product from a topic driven perspective.

Commissioner Birrane asked if any Committee members, interested state insurance regulators or interested parties wanted to comment. David Snyder (American Property and Casualty Insurance Association—APCIA) asked what the opportunities would be for stakeholder input on these large-scale projects like algorithmic bias. Commissioner Birrane said the group may meet in regulator-to-regulator session for organizational purposes but would then have public meetings to develop a common understanding and to identify appropriate tools for identifying algorithmic bias within certain AI/ML models. She said the objective would be to listen to SMEs and that the work product of the Collaboration Forum would be open for comment. Scott Harris (American InsurTech Council—AITC) said he applauds the efforts being made. He said finding the right balance between appropriate oversight and encouraging innovation, while keeping up with the pace of innovation, is challenging and that the AITC welcomes the opportunity to comment.

6. Discussed Other Committee-Level Projects

Director Daniels said that while the new Innovation in Technology and Regulation (H) Working Group is more outward-focused on what is happening in the marketplace, the Committee will also take on an inward focus as well to look at how state insurance regulators are using innovation and technology to do their jobs. He said there will be a forum for state insurance regulators to discuss concerns or share information about specific technologies or use cases, as well as what might be available in the future, or what SupTech and state insurance regulators will leverage or are leveraging to do their jobs better and more efficiently. Commissioner Birrane said this may have a similar look to what the Casualty Actuarial and Statistical (C) Task Force group is currently doing with its Book Club.

7. Discussed Other Matters

Commissioner Birrane asked Denise Matthews (NAIC) to provide an update on innovation, cybersecurity, and technology-related model law implementation. Ms. Matthews said 19 jurisdictions have passed the *Insurance Data Security Model Law* (#668), and it is pending in six jurisdictions with one state, New York, having passed related legislation. Commissioner Birrane noted that this legislation is close to being passed in Maryland, which will bring the number to 20. Ms. Matthews also said that two states have passed legislation related to the rebating revisions in the *Unfair Trade Practices Act* (#880), and legislation is pending in seven.

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Birny Birnbaum (Center for Economic Justice—CEJ) asked if it would be possible for states to report the types of rebates they are finding companies are using and whether they are finding any issues with those rebates. He also said that while states are considering Model #880, some states took action by bulletin such as Maine, and he asked if the NAIC could track those.

Having no further business, the Innovation, Cybersecurity, and Technology (H) Committee adjourned.

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