

September 3, 2020

The Honorable James Comer
Ranking Member
Committee on Oversight and Reform
2157 Rayburn House Office Building
Washington, DC 20515-6143

Re: Examination of Recent Trends in Regulation and Regulatory Reform

Dear Ranking Member Comer:

On behalf of the National Association of Insurance Commissioners (“NAIC”),¹ we write today in response to your July 23, 2020 letter requesting comment on recent trends in regulation and regulatory reform. At the outset, we note your letter seems to be directed at businesses and, in an attempt to ensure an appropriate response to the economic shock of the COVID-19 pandemic, requests insight from businesses into the impacts of regulation and regulatory reform since the financial crisis of 2008. While the NAIC’s members are not businesses but rather state insurance commissioners and part of the U.S. regulatory system, we offer a somewhat different perspective from the business community. We appreciate the opportunity to provide the insurance regulatory perspective.

The NAIC believes that the state insurance regulatory framework provides an appropriately tailored regulatory environment with the dual objective of protecting insurance consumers and ensuring competitive insurance markets. For 150 years, states have been the primary regulators of insurance. Throughout history, the insurance sector has weathered economic downturns, including the 2008 financial crisis, in large part because of the structure and nature of the state insurance regulatory framework. In exercising their authorities, state insurance regulators balance regulatory prerogatives with the need to ensure competitive and robust markets within their states. Insurance provides protection to consumers and businesses for a multitude of risks, such as the destruction or damage to a home or office building or the loss of a loved one. Therefore, the absence of a specific insurance product in a particular market can have serious, detrimental effects on local economies and citizens. It is for this reason that state insurance regulators are highly attuned to local economic conditions and incentivized to create a regulatory environment that protects consumers and facilitates competitive markets for insurance products. Moreover, insurance products are different from other financial products, particularly banking products, in that they vary widely and are designed to accommodate specific risk-mitigating needs. As a result, unlike other types of financial services regulation, insurance regulation must be flexible, local in nature, and regulators must be accessible and connected to the public they serve.

While the states are the primary regulators of the insurance sector, the NAIC acknowledges that insurance plays an important role in our national economy and believes that the federal government should have a strong interest

¹ Founded in 1871, the NAIC is the U.S. standard-setting and regulatory support organization created and governed by the chief insurance regulators from the 50 states, the District of Columbia and the five U.S. territories. Through the NAIC, state insurance regulators establish standards and best practices, conduct peer review, and coordinate their regulatory oversight. NAIC members, together with the central resources of the NAIC, form the national system of state-based insurance regulation in the U.S.

in insurance sector developments and the sector's ability to meet policyholders' needs. We also recognize that certain insurance programs are run by the federal government, including the Terrorism Risk Insurance Program and the National Flood Insurance Program, which were created to address instances where the private market was, at least initially, unable to offer certain insurance products that were critical to U.S. economic growth and development. Finally, we fully appreciate that the federal government has an interest in the insurance sector's growth internationally. Though federal government involvement and interest in the insurance sector is appropriate under these circumstances, we believe it works best when there is a collaboration between the federal government and the states, and that such involvement must be balanced with the continued delegation to the states of the regulation of insurance by the McCarran-Ferguson Act of 1945. With that, allow us to update you on some of the actions state insurance regulators have taken to enhance protections for insurance policyholders and respond to the COVID-19 pandemic, as well as the NAIC's plans for the future.

I. Enhancements to the U.S. Insurance Solvency Framework

a. Holding Company Model Act & Group Analysis

The 2008 financial crisis illustrated the need for financial regulators to see into the dark corners of a firm to ensure all risks are known and understood and that consumers that could be negatively impacted by those risks, directly or indirectly, are protected. Even if a regulator has broad powers to protect consumers by walling off their funds from risks elsewhere in a firm, as state regulators do with insurers, it is important to understand other risks that can create credit, reputational, or other problems. With this in mind, state regulators undertook a public process to make significant advances to the NAIC's Model Holding Company Act.² This model act, which is now a part of every state's insurance code, provides state insurance regulators the ability to regulate transactions and interactions between insurance companies and other entities within the wider holding company system. State insurance regulators initially revised the model law in 2010 to enshrine a "windows and walls" approach to insurance holding system regulation, whereby regulators can erect the walls necessary to protect policyholders and restrict assets from leaving the legal entity insurers, and peer through windows that allow a view into the activities, including non-insurance activities, throughout the wider group. Later, further updates were made in 2014 to provide explicit authority for the lead state commissioner to act as the group-wide supervisor of an internationally active insurance group.

Closely related to our efforts to better supervise holding companies is the way the NAIC conducts group analysis. Immediately following the financial crisis, in 2009, the NAIC adopted an NAIC Accreditation requirement³ that group analysis procedures had to be performed on all groups. This increased the consistency in the reviews performed for insurance holding company systems and the documentation of the results. Also, since the holding company analysis became an accreditation requirement, the states have adopted the Group Profile Summary, which represents a summary of the holding company analysis and includes an assessment on the risks of the group.

The NAIC also adopted the Risk Management and Own Risk and Solvency Assessment (ORSA) Model Act⁴ in 2012, which includes a filing requirement, and became effective in many states in 2015. An ORSA filing provides an enterprise-wide, detailed description of the entity's risk management system, an identification of its key risks

² Insurance Holding Company System Regulatory Model Act (NAIC Model #440, <https://www.naic.org/store/free/MDL-440.pdf>).

³ The NAIC Financial Regulation Standards and Accreditation Program is a voluntary program that serves as the backbone of the U.S. national system of state-based regulation. The Accreditation Program defines baseline standards deemed essential for effective solvency regulation in each state and provides the impetus for states to adopt in a consistent manner the NAIC model laws, regulations and requirements that make up the U.S. insurance financial solvency framework. In lieu of performing its own examination, a state may accept the examination report prepared by an insurance department that was accredited at the time of examination. This inter-state reliance ultimately saves insurance companies, and by extension consumers, millions of dollars in duplicative examination costs. https://www.naic.org/documents/cmte_legislative_liaison_brief_accreditation.pdf?32

⁴ Risk Management and Own Risk and Solvency Assessment Model Act (NAIC Model #505, <https://www.naic.org/store/free/MDL-505.pdf>).

in normal and stressed environments, an assessment of its capital adequacy for the risks in normal and stressed environments, and identification of prospective risks.

Finally, the Corporate Governance Annual Disclosure Model Act and Regulation⁵ were adopted in 2014 and require disclosure of insurers' corporate governance practices. The filing includes, among other things, the policies of the boards of directors and key committees, the frequency of meetings, and the procedures for the oversight of critical risk areas and appointment practices. Insurers must also disclose the policies and practices used by their board of directors for directing senior management on critical areas.

b. Group Capital Calculation

Critical components of insurer solvency regulation are the Risk-Based Capital requirements applicable to every insurer legal entity within a group. This legal entity approach ensures sufficient capital to meet policyholder claims, even in times of stress. However, while insurance regulators also currently have the authority to obtain information regarding the capital positions of non-insurance affiliates within a broader group, they do not have a consistent analytical framework for evaluating such information. To remedy this, in 2015, the NAIC began exploring the development of the Group Capital Calculation (GCC). The GCC was a natural extension of the work state insurance regulators had already begun, in part driven by lessons learned from the 2008 financial crisis, to better understand the risks to insurance groups and their policyholders. The GCC is designed to address this shortcoming and will serve as an additional financial metric that will assist regulators in identifying risks that may emanate from a holding company system.

The GCC and related reporting will provide more transparency to insurance group analysis and make risks more identifiable and more easily quantified. In this regard, the tool will assist regulators in holistically understanding the financial condition of non-insurance entities, how capital is distributed across an entire group, and whether and to what degree insurance companies may be subsidizing the operations of non-insurance entities, potentially undermining the insurance company's financial condition and/or placing upward pressure on premiums to the detriment of insurance policyholders. It is envisioned that this calculation will provide an additional early warning signal to regulators so they can begin working with a company to resolve any concerns in a manner that will ensure that policyholders will be protected.

Importantly, the NAIC is not creating a new capital standard for insurers that would necessitate higher capital levels. Rather, the GCC will be an additional reporting requirement built off existing legal authorities. State insurance regulators already have broad authority to take action when an insurer is financially distressed, and the GCC is designed to provide regulators with further insights to allow them to make informed decisions on both the need for action and the type of action to take. Further, its methodology is generally consistent with the Federal Reserve's Building Block Approach, which the Federal Reserve has proposed for banking organizations with substantial insurance operations. The GCC's development is still ongoing and subject to the NAIC's open and transparent committee process. Interested stakeholders have had multiple opportunities to comment on various proposed iterations of the GCC and will have additional opportunities to do so as it continues to be developed. The NAIC anticipates adopting the GCC by the end of 2020.

c. Macroprudential Initiative

In addition to enhancing authorities to gain better insights of the entire insurance group, including non-insurance affiliates, regulators have also become increasingly focused on macroprudential monitoring to obtain a better understanding on how the insurance sector is impacted by, reacts to, and contributes to broader financial, economic, and other common risk exposures. Understanding these relationships is critical to maintaining strong, solvent, and competitive insurance markets. In the ensuing years since the crisis, insurers have had to contend

⁵ Corporate Governance Annual Disclosure Model Act (NAIC Model # 305, <https://www.naic.org/store/free/MDL-305.pdf>) and Corporate Governance Annual Disclosure Model Regulation (NAIC Model #306, <https://www.naic.org/store/free/MDL-306.pdf>).

with sustained low-interest rates, changing demographics, and rapid advancements in communication and technology. They have responded by offering new products, adjusting investment strategies, making structural changes, and expanding into new global markets.

The NAIC's Macroprudential Initiative (MPI) is a logical continuation of the NAIC's post-financial crisis work, should bolster the confidence of insurance consumers and investors, and further enhance the effectiveness of the state-based system of insurance regulation. The NAIC's MPI commenced in April 2017, and the goal of MPI is to consider new or improved tools to better monitor and respond to the impact of external financial and economic risks on the insurance industry and increase public awareness of NAIC/state monitoring capabilities.

Currently, the NAIC is working to construct a liquidity risk stress testing framework for large life insurers. The results of this work will strengthen macroprudential surveillance. The comprehensive stress testing framework initiative was placed on hold when the pandemic hit. In its place, a COVID-19 liquidity data call is being conducted to gauge the pandemic's impact. Another key macroprudential surveillance initiative is the development of a U.S. Sector-wide risk assessment and heat map. The objective is to assess the U.S. insurance sector's vulnerability to macroeconomic exposures and to identify potential areas of systemic risk. The comprehensive project is expected to be completed by year-end. Working in tandem, our GCC and macroprudential tools require insurers to not only have enough financial resources but an ability to effectively deploy those resources to pay policyholder claims in good times and bad.

d. Life Insurance Reserving

Another long-standing project for the NAIC is the implementation of Principle-Based Reserving (PBR) for life insurance companies. PBR is a fundamental change to the life insurance sector that is a result of years of thoughtful debate and deliberation. PBR replaces a more formulaic method for determining life insurance policy reserves with an approach that more closely reflects the risks of highly complex products. Prior to PBR, static formulas and assumptions were used to determine these reserves as prescribed by state laws and regulations. However, sometimes this rule-based approach left an insurer with excessive reserves for certain insurance products and inadequate reserves for others. The principle-based approach is designed to "right-size" reserves, reducing reserves that are too high for some products and increasing reserves that are too low for others. This new method will help reduce the incentive for company workarounds of reserve requirements. Importantly, though, this new approach does not eschew the formulaic approach entirely—it includes the guardrails of minimum reserving requirements while allowing reserving methodologies to reflect the heterogeneity of various life insurance products.

e. Captive Reinsurance Regulation

An area that has received significant attention since 2010 is the use of captive reinsurance by life insurers. Captive insurance companies were initially developed to allow non-insurer corporations to manage and self-insure unique risks without having to buy traditional coverage from an insurer. Because it is a form of self-insurance, the regulation of captives has differed from that of traditional insurers. For example, captives are allowed greater flexibility in the types of assets they use to back insurance reserves. Over time, life insurers began to cede insurance risks to an affiliated captive reinsurance company primarily to address perceived excessive reserve requirements for certain life insurance products. As this practice proliferated, regulators became concerned about the inconsistency across states in reserving and other regulatory requirements for such transactions and the possibility of such inconsistency distorting the competitive landscape and creating opportunities for regulatory arbitrage. To remedy these concerns, the NAIC adopted Actuarial Guideline 48, which has since been codified in the Term and Universal Life Insurance Reserve Financing Model Regulation.⁶ It established a consistent method for calculating the economic reserve even when held at a captive reinsurer.

⁶ Term and Universal Life Insurance Reserve Financing Model Regulation (NAIC Model #787, <https://www.naic.org/store/free/MDL-787.pdf>).

f. Reinsurance Collateral

Another area of significant activity for state regulators has been the measured and transparent reduction of collateral requirements for foreign reinsurance transactions. Historically, when a U.S. insurance company was ceding some of its risk to a foreign reinsurance company, state regulators required that a foreign reinsurer hold 100% collateral onshore in the U.S. to ensure rapid payment to the insurers and ultimately to policyholders. As an example, a significant portion of the hurricane risk taken on by U.S. insurers is now spread globally when those insurers purchase reinsurance. That is a good thing for the market, but it means that if a large disaster occurs, U.S. insurers need those reinsurers to transfer huge amounts of money to quickly repay policyholders. Over time, foreign reinsurers, regulators, and politicians objected to collateral requirements, arguing they trap capital and are inefficient. In response to these objections, state regulators embarked on an effort to reduce collateral if the reinsurer is in solid financial health and is overseen by an effective regulator in its home country.

The NAIC adopted revisions to the Credit for Reinsurance Model Law and Regulation⁷ in 2011, which reduced reinsurance collateral requirements for certified reinsurers licensed and domiciled in qualified jurisdictions. By reducing collateral requirements for reinsurance ceded to non-U.S. domiciled reinsurers, it encourages the geographic diversification of risk beyond U.S. borders. Currently, the NAIC has approved seven jurisdictions (representing the predominant reinsurance markets) as qualified jurisdictions for collateral reduction purposes.⁸

In June 2019, the NAIC adopted additional revisions to the Credit for Reinsurance Model Law and Regulation incorporating relevant provisions of the “Bilateral Agreement Between the United States of America and the European Union on Prudential Measures Regarding Insurance and Reinsurance” (Covered Agreement), which was signed on September 22, 2017, by the Secretary of the Treasury, the United States Trade Representative and representatives of the European Union. The Covered Agreement implements an authority granted to the Treasury Department and the USTR by the Dodd-Frank Act. It eliminates reinsurance collateral and local presence requirements for European Union (EU) reinsurers that maintain a minimum amount of funds and a solvency capital requirement. Conversely, U.S. reinsurers that maintain capital and surplus requirements would not be required to maintain a local presence to do business in the EU. On December 18, 2018, a similar Covered Agreement was signed with the United Kingdom.

II. Other Major Regulatory Initiatives

a. Annuity Transactions

In addition to their work enhancing the insurance solvency framework, insurance regulators through the NAIC have focused on other major regulatory initiatives to enhance consumer protections. Specifically, in 2019, the NAIC adopted revisions to its Suitability in Annuity Transactions Model Regulation⁹ to establish a best interest standard of conduct for producers and insurers. Fundamentally, these revisions make it clear that all annuity recommendations by producers and insurers must be in the best interest of the consumer and that producers and insurers may not place their financial interest ahead of the consumer’s interest in making a recommendation. The revisions also require producers and insurers to act with “reasonable diligence, care, and skill” in making a recommendation. The revisions enhance the protections afforded to annuity consumers and are consistent with the SEC’s Regulation Best Interest and the DOL’s recently proposed prohibited transactions exemption. Additionally, the NAIC is reviewing continuing education requirements for insurance producers to ensure knowledge of suitability requirements and prohibitions on unfair marketing practices.

⁷ Credit for Reinsurance Model Law (NAIC Model #785, <https://www.naic.org/store/free/MDL-785.pdf>) and Credit for Reinsurance Model Regulation (NAIC Model #786, <https://www.naic.org/store/free/MDL-786.pdf>).

⁸ The seven approved jurisdictions are Bermuda, France, Germany, Ireland, Japan, Switzerland and the United Kingdom.

⁹ Suitability in Annuity Transactions Model Regulation (NAIC Model #275, <https://www.naic.org/store/free/MDL-275.pdf>).

b. Data Security and Privacy

The NAIC has also taken proactive measures to upgrade safeguards to protect the security, confidentiality, and integrity of insurance consumer information through standards, the examination processes, and model laws. These actions help to ensure that insurers, agents, and brokers are adequately protecting the many kinds of highly sensitive consumer financial and health information they retain. All states have standards that comply with those set forth in the Gramm-Leach-Bliley Act. In recognition that the standards governing the protection of insurance consumer information must evolve to keep pace with cybersecurity risks, the NAIC adopted the Insurance Data Security Model Law¹⁰ in 2017 to update state insurance regulatory requirements relating to data security, the investigation of a cyber event, and the notification to state insurance commissioners of cybersecurity events at regulated entities. In 2019, the NAIC adopted insurance data security pre-breach and post-breach checklists, based on the model law, to provide guidance for market conduct examinations. The NAIC also continues to update and strengthen guidance regarding information technology systems and protocols to draw more focus on the consideration of cybersecurity during a financial exam. Further, state insurance regulators and the NAIC collaborate with the U.S. Department of Treasury to facilitate tabletop exercises with insurers to explore cybersecurity incident response and recovery across the insurance sector.

The NAIC is also focused on the importance of protecting the privacy of insurance consumers' data and has established standards for the collection, use, and disclosure of information gathered in connection with insurance transactions. The NAIC developed the Insurance Information and Privacy Protection Model Act¹¹ and the Privacy of Consumer Financial and Health Information Regulation,¹² which enables consumers to ascertain what information is being collected about them and to have access to it for verifying or disputing its accuracy. It also limits the disclosure of such information, requires that insurers notify consumers about their privacy policies, gives consumers the opportunity to prohibit the sharing of their financial information, and requires that insurers obtain affirmative consent from consumers before sharing health information with any other parties. Given the increasing growth in consumer data collection and usage and new data privacy laws, the NAIC is also currently reviewing state insurance privacy protections to determine whether additional protections are necessary.

III. Health Insurance

Health insurance deserves special attention as it is an area of significant focus for state insurance regulators in their efforts to protect insurance consumers. The last decade has seen significant growth in federal regulations related to health insurance, much of it to implement the Affordable Care Act (ACA). State insurance regulators, through NAIC and on their own behalf, have provided advice and comments to federal agencies on many regulatory efforts over the years. NAIC comments dating back more than a decade are available at https://www.naic.org/index_health_reform_section.htm.

The ACA fundamentally altered the division of responsibility between states and the federal government in regulating health insurance, so regulations under the law have been of major interest to state regulators. And the law itself calls for state regulators' participation in its implementation. The ACA required consultation with the NAIC and state regulators in 13 key areas, and this consultation has been critical to the implementation of the law. As in other areas, federal regulations implementing the ACA have been strengthened when federal agencies engaged with state regulators and listened to their feedback. Regulations on medical loss ratio, the functions and duties of health insurance exchanges, and premium rating rules all benefited from state regulator input, and state consultation is necessary whenever changes are made to them.

¹⁰ Insurance Data Security Model Law (NAIC Model #668, <https://www.naic.org/store/free/MDL-668.pdf?39>).

¹¹ Insurance Information and Privacy Protection Model Act (NAIC Model #670, <https://www.naic.org/store/free/MDL-670.pdf>).

¹² Privacy of Consumer Financial and Health Information Regulation (NAIC Model #672, <https://www.naic.org/store/free/MDL-672.pdf>).

Even long before the ACA, federal law recognized the states' primary role in the regulation of insurance. The McCarran-Ferguson Act clarified states to be the primary regulators of health insurance; federal regulations, whether under the ACA or other statutory authority, must remain consistent with this principle. Federal regulations should not preempt state regulation, but follow the standards outlined in the Health Insurance Portability and Accountability Act of 1996 that allow states to enforce federal requirements and go beyond them when the state deems necessary. This framework of laws has allowed states to take the lead in enforcing health insurance consumer protections and reviewing premium rates, among other areas.

While states, in many cases, have the authority to go beyond federal requirements, additional flexibility is often beneficial. States can innovate and design regulatory structures that meet the needs of their unique markets when federal law and regulations do not stand in the way. Statutory provisions like Section 1332 of the ACA that allow waiver of certain federal requirements and regulatory approaches such as state selection of essential health benefits can help foster state innovation. Federal lawmakers and regulators should seek approaches that give states the space to regulate in the best interests of their consumers and markets.

One area of welcome flexibility in response to the Covid-19 pandemic has been relaxed Medicare rules related to telehealth services. Greater flexibility around the privacy standards, originating and distant sites, and providers who may deliver telehealth have helped many Americans access needed services while limiting risk for disease transmission. State regulators have applied similar flexibility to commercial payers. More flexible standards for telehealth should be maintained through the public health emergency and, with appropriate adjustments, should become permanent once it ends.

While flexibility is key, so is reasonable consistency in regulatory approaches. Because states take the lead in enforcement and share regulatory authority, they must know the rules of the road in advance and have time to adjust state processes, regulations, and, when necessary, laws to fulfill their responsibilities. For this reason, excessive year-to-year changes in federal regulations are challenging for states, particularly when they are made with limited notice. The Department of Health and Human Services should work to provide greater notice of changes to health insurance regulations. It should work to release its annual proposed Notice of Benefit and Payment Parameters earlier than in recent years, provide more time for comment, and finalize it earlier to give regulators, industry, and consumer assisters more time to adapt to changes.

As always, regulations must flow from their enabling statutory language. Both the Obama and Trump administrations promulgated regulations under the ACA that were later found to exceed the authority granted by statute. We urge any regulatory reform effort to reinforce the principle that regulations should implement existing statutes rather than create new laws.

IV. NAIC and State Insurance Regulatory Response to the COVID-19 Pandemic

Like other sectors of the economy, the insurance sector has been impacted by the COVID-19 pandemic. The NAIC's 2020 regulatory and operational priorities were founded on the assumption that we would be operating under normal market conditions. Clearly, this is no longer the case. As of March 2020, NAIC made supporting the efforts of U.S. insurance regulators in managing the impact of the COVID-19 pandemic its "Priority One." Our efforts focused on protecting the health and safety of consumers and ensuring the ongoing stability and operation of our nation's insurance sector. A brief non-exhaustive description of actions the NAIC has taken can be found below, and a more in-depth description can be found in the NAIC's recently released report entitled "A Report of the NAIC on the State Insurance Regulatory Response to COVID-19"¹³.

¹³ See, https://content.naic.org/sites/default/files/inline-files/notice_200622_0.pdf.

a. Financial Solvency

State insurance regulators have taken multiple steps in the area of solvency monitoring for COVID-19. Most notably, they worked together, through the NAIC, to develop a national information request template that gathered initial data from insurers on their exposure to potential COVID-19 claims and the impact of the related economic downturn on their assets. State regulators through the NAIC are also gathering data from life insurers to evaluate the impact of the economic stresses associated with COVID-19 on their liquidity, among other potential regulatory issues specific to that sector. The states have also worked together on additional data requests for Property & Casualty insurers that write business interruption coverage that could be impacted by COVID-19 and are tracking ongoing claim reporting in that area to monitor developments.¹⁴

The NAIC has also been working with states to identify and evaluate individual company exposure. The NAIC has been monitoring the capital markets and researching the impact of the economic downturn on insurance company assets to provide reports for state use in identifying and addressing concerns.¹⁵ In addition, the NAIC continues to identify potential companies most at risk of solvency issues related to COVID-19 and corresponds with the domestic state responsible for solvency oversight to track their progress in solvency monitoring. Similarly, the NAIC is involved in work to identify variable annuity writers and other life insurers that may experience solvency issues as a result of the interest rate cuts and market downturn.

The NAIC has also worked on new accounting and reporting guidance for COVID-19 (*e.g.* treatment of overdue mortgages, due dates of quarterly filings, accounting for return of premium, etc.). This provides some relief and guidance for insurers, which will make it easier for them to address COVID-19 issues and provide urgent responses to their regulators as needed.

b. Market Conduct

States have taken numerous general market conduct actions in response to COVID-19. These steps include prohibiting carriers from terminating insurance contracts due to non-payment and waiving late-fees. Some states have also instructed carriers to adjust claims as expeditiously as possible and to use remote adjustment options whenever possible. States have also issued warnings to consumers about potential COVID-19 related scams, such as robocalls and text messages advertising bogus miracle cures, free at-home test kits, home cleaning that scammers claim will reduce the risk of getting COVID-19, and assistance with obtaining federal government stimulus checks. A majority of states have also postponed or canceled planned insurance licensing exams and adjusted deadlines for continuing education and NAIC is working to develop recommended best practices for temporary licenses and a template bulletin for states considering the issue of temporary licenses.

i. Health

State insurance regulators have made extensive orders and requests to health insurers they regulate in response to the COVID-19 pandemic. Nearly all states acted initially to remove consumer cost sharing for COVID-19 testing. Some have gone further to disallow cost sharing for COVID-19 treatment or for an eventual vaccine. Most states acted to clarify that insurers must cover early prescription drug refills and take other steps to facilitate access to needed drugs during the outbreak. States have also worked to expand access to telehealth services, in some cases lifting restrictions on methods of communication, reducing cost sharing, and/or requiring coverage at parity with in-person services. Further, many state regulators have requested or required insurers to offer enrollees extended premium due dates, suspend cancellations, or offer greater flexibility for small business coverage. Several states have worked with insurers to adjust premiums or provide early medical loss ratio rebates given lower than

¹⁴ See, COVID-19 Property & Casualty Insurance Business Interruption Data Call Report Part 1: Premiums and Policy Information June 2020 at <https://content.naic.org/sites/default/files/inline-files/COVID-19%20BI%20Nat%27I%20Aggregates.pdf> and Part 2: Claim and Loss Information July 2020 at <https://content.naic.org/sites/default/files/inline-files/Claims2.pdf>.

¹⁵ The NAIC has also issued public special reports on certain COVID-19 related capital markets issues. See, *e.g.*, Capital Market Special Reports at https://www.naic.org/capital_markets_archive_index.htm.

expected medical spending in 2020. Some regulators have also called on insurers to verify the adequacy of their provider networks, modify utilization review, inform enrollees of benefits, or adjust provider credentialing.

ii. Life Insurance

As with other lines of insurance, several states have required life insurers to defer premium payments and suspend cancellations and non-renewals. In some circumstances, consumers have up to a year to pay back any deferred payments. In some states, life insurers have also been instructed to waive late fees and penalties, and allow payment plans for premium payments to otherwise avoid a lapse in coverage.

iii. Auto Insurance

Many states have mandated or encouraged auto insurance companies to institute paybacks to drivers, who have greatly reduced miles driven during the COVID-19 pandemic. The announced refunds, discounts, dividends, and credits are estimated by industry to total more than \$10 billion.

iv. Business Interruption

The COVID-19 pandemic has caused massive disruptions to businesses. The NAIC has been clear from the outset that it is the expectation of state insurance regulators that insurance companies honor their commitments and pay claims that are covered by insurance policies. However, commercial insurance policies can differ considerably to account for the unique risks and needs of policyholders, and the specific terms and conditions of the policy need to be reviewed.

State insurance departments have issued guidance regarding coverage for coronavirus in a standard business interruption policy. The guidance has alerted business owners that many (83%) policies have exclusions for virus, bacteria, and pandemics, and most (98%) require a physical loss. It also encourages consumers to read their policy to determine if coverage exists.

The NAIC also released a statement and submitted a letter to the House Small Business Committee detailing their concerns and opposition to any federal proposals relating to the retroactive application of Business Interruption insurance in cases where viral pandemics have been clearly excluded from the policy.¹⁶

c. Consumer Resources

The NAIC has created a Coronavirus Resource Center to help consumers, the business community, and insurance professionals understand and manage the risks of the COVID-19 pandemic. This resource center includes information regarding insurance policy types that could be triggered as a result of COVID-19, consumer information, as well a database of state bulletins and alerts, which is updated twice a week, to help the public keep track of state insurance regulatory actions taken across the country to protect consumers and ensure market solvency. These actions can be sorted by state, type of action, and/or line of insurance. Downloadable spreadsheets list actions by state for Life and Health, Property and Casualty, and Emergency Declarations/Shelter in Place Orders. The NAIC updates the database on a rolling basis as state regulators declare new actions.

The Coronavirus Resource Center is available https://content.naic.org/naic_coronavirus_info.htm.

¹⁶ The full statement can be found at https://content.naic.org/article/statement_naic_statement_congressional_action_relating_covid_19.htm. The letter can be found at https://www.naic.org/documents/government_relations_200521.pdf?30.

V. Looking Forward: State Ahead

At the same time that state insurance regulators, through the NAIC, have been focused on post financial crisis regulatory reforms and, more recently, the COVID-19 response, the NAIC made a commitment to its members to support state insurance departments and drive efforts to improve and enhance the regulatory framework. Our system of regulation must keep pace with a rapidly evolving marketplace fueled by seismic shifts in consumer behavior, huge technological advances, and a dynamic policy and regulatory environment. Our state-based system of insurance regulation has faced change before, but never on the scale we are currently experiencing. To better position all state regulators to succeed in this ever-changing environment, the NAIC created State Ahead, an in-depth strategic plan for the NAIC to drive its efforts, resources, and attention to meet these challenges.

State Ahead is organized by three overarching themes: *Theme I* is to create a safe, solvent and stable market by providing insurance regulators with the data, training, and tools required to support a collaborative regulatory environment that fosters stable financial markets and reliable and affordable insurance products; *Theme II* is to ensure consumer protection and education by ensuring that consumer protection keeps pace with changes in the marketplace and consumers have information and education needed for informed decision-making; *Theme III* is to provide superior member services and resources by providing optimal services to support state insurance departments and equip them with the necessary talent and resources.

NAIC has realized significant progress toward achieving the objectives laid out in its State Ahead strategic plan. The initial plan included a total of 91 projects. Of these, 50 have been completed, 27 projects are ongoing, and 14 are scheduled to begin by 2021. 2020 represents the third year of State Ahead, and we are already beginning the planning process for our next iteration of the plan to guide future efforts. NAIC is focused on achieving its objectives and building a solid foundation to continue our transformation. The complete State Ahead strategic plan can be found at https://content.naic.org/sites/default/files/inline-files/state_ahead_strategic_plan.pdf.

Conclusion

Over the past several years, there has been considerable activity by state insurance regulators to enhance the state insurance solvency framework, provide additional protections to insurance consumers, respond to the ongoing COVID-19 pandemic, and to improve regulation in the best interests of the U.S. insurance industry and consumers now and for the future. The overview we have provided looks back over what we have accomplished, but we have much more to do, from assessing the impact of climate risk and resiliency on insurance markets, to addressing discrimination and the intersection of race and insurance, to ensuring that policyholders reap the benefits of artificial intelligence and big data and are protected from the pitfalls. State regulation has a strong track record of evolving to meet the challenges posed by dynamic markets, and we continue to believe that well-regulated markets make for well-protected policyholders and a stronger economy. Thank you again for the opportunity to provide information in response to your inquiry. Should you have any questions, do not hesitate to contact Ethan Sonnichsen, Managing Director of Government Relations, at esonnichsen@naic.org, Mark Sagat, Assistant Director Financial Policy and Legislation, at msagat@naic.org or Michael McDonald, Financial Policy and Legislative Counsel, at mmcdonald1@naic.org, or (202) 471-3990.

Sincerely,



Michael F. Consedine
Chief Executive Officer
National Association of Insurance Commissioners