

# **Technological and Information Concerns Highlight NAIC Spring 2016 National Meeting: National Association of Insurance Commissioners**

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The National Association of Insurance Commissioners (NAIC) Spring 2016 National Meeting, which was held from April 3 – 6 in New Orleans, offered insight into numerous issues being considered by state commissioners nationwide. There were some notable developments in the areas of surplus lines, health care regulatory reforms, life insurance, producer licensing, and accreditation standards. However, the spring meeting will likely be remembered for highlighting technological and information concerns, including the use of big data, the sharing economy, and cybersecurity.

The NAIC's consideration and development of these issues are discussed in more detail below.

## **Sharing Economy (C) Working Group Meeting**

### **Work Plan Focusing on Small Peer-to-Peer Platforms Adopted**

The Sharing Economy Working Group adopted a work plan for 2016, and heard from ISO and AirBnB regarding the insurance coverage implications of home sharing during their morning meeting on April 3. For the remainder of 2016, the Working Group plans to focus on (i) insurance risks posed by smaller, less well-known sharing platforms, such as peer-to-peer car-sharing services (e.g., [Getaround](#) and [Turo](#)), ride-sharing services for children (e.g., [HopSkipDrive](#)), and handyman services (e.g., [Handyman on Demand](#)), all of which will be discussed at the Summer National Meeting in San Diego; and (ii) an update on Transit Network Company (TNC) issues, which will be discussed at the Fall National Meeting in Miami.

The Working Group heard a report from ISO regarding endorsements for sharing economy issues, including an update on TNC endorsements and a discussion of endorsements to the homeowners' forms for home sharing (such as AirBnB). ISO's private passenger auto endorsements, which either

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exclude or provide coverage for Phase 1 (while the driver has the TNC app open, but before a ride has been requested), have been filed in 48 states and approved by 42 states. ISO is preparing a similar set of endorsements for commercial auto policies, largely in response to the growth of web-enabled delivery services (such as [UberRUSH](#)), which it expects to file by mid-year. These endorsements would default to excluding transit network activities such as delivery services, but would allow commercial fleet owners to purchase coverage for their vehicles and drivers while in use for such services.

ISO is also preparing a set of endorsements for the standard homeowners' policy form in response to the rapid growth of home-sharing services. These endorsements would preserve coverage for many perils (such as fire and wind) and would permit homeowners to purchase enhanced protection against perils resulting from home sharing (such as theft and vandalism). The endorsements would provide new coverage for policyholders who travel and are home-sharing service customers as well.

## **Cybersecurity (EX) Task Force Meeting**

### **Model Law Development Request Adopted**

The most significant aspect of the Cybersecurity Task Force's spring meeting occurred before the Task Force actually convened in New Orleans: on Monday, the Executive (EX) Committee adopted the Task Force's Model Law Development Request for the development of the Insurance Data Security Model Law. The Executive Committee approved the request on the basis that revision of the Insurance Information and Privacy Protection Model Act and the Privacy of Consumer Financial and Health Information Regulation is no longer an adequate response to the NAIC's cybersecurity concerns. Commissioner Hamm then described a timeline for drafting and adopting the model law, which he hopes will result in its inclusion in the NAIC's 2017 package.

When the Task Force convened an hour after the Executive Committee meeting, it received brief verbal comments from industry representatives. These included:

- A concern that the draft model law will not be uniformly adopted by individual states
- A concern that the draft model law, which would make other state and federal laws regulating data security inapplicable to licensees subject to the model law, raises unworkable federal preemption issues
- Requests that the Task Force collaborate more with industry stakeholders to better understand the burdens the Model Law would impose.

## **Surplus Lines (C) Task Force-**

### **Flood Insurance Market Parity and Modernization Act Will Be Major Focus in 2016**

While the Surplus Lines Task Force did not take any notable actions at its meeting, a number of issues important to the surplus lines market are on the Task Force's radar for 2016. Perhaps most importantly, the Task Force and the NAIC are closely watching H.R. 2901, the Flood Insurance Market Parity and Modernization Act, which has been approved by a House committee. The Task Force intends to provide support to the NAIC's federal affairs team as they work with the industry to pass this important flood insurance marketplace reform.

The Task Force is also entertaining a handful of suggestions from the industry, conveyed by a representative from the Property Casualty Insurers Association of America (PCIAA). These

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suggestions could, in the future, lead to a designated surplus lines contact for each state listed in the NAIC state department directory, more clear and consistent identification of “domestic surplus lines insurers” in statutory financial statements and state insurance company directories, and a more consistent definition of “home state” in state laws implementing the Nonadmitted and Reinsurance Reform Act (NRRRA).

## **Health Care Regulatory Reform Alternatives (B) Working Group**

### **Implementation of ACA Market Reforms Remains a Concern**

The Working Group discussed two significant issues that remain unresolved in the aftermath of implementing the Affordable Care Act’s market reforms: so-called “surprise billing” and the verification (or lack thereof) of consumer eligibility for special enrollment periods on the exchanges.

“Surprise billing” – where an insured is balance billed and/or pays out-of-network coinsurance/co-pay/deductible amounts for specialists (such as radiologists or anesthesiologists) even though the insured was at an in-network hospital – is widely acknowledged to be an issue for consumers, and the Working Group has been following the progress of state efforts to address surprise billing. According to testimony at the meeting, five states have passed laws intended to address it, and another five states are currently considering such laws. We expect the momentum for this type of law to build unless insurers and health care providers themselves take quick steps to address the issue.

There was also a spirited discussion of the use of special enrollment periods (SEPs) available to consumers on exchanges under the Affordable Care Act. While SEPs have long been used in the group health insurance context, they are relatively new to individual coverage, and several health insurers have expressed concern about the process for verification of eligibility for SEPs on the exchanges. Members enrolled through SEPs on the exchanges appear to have higher lapse rates and higher first-month utilization than members enrolled through open enrollment, although consumer advocates, state regulators, and the industry disputed the significance and meaning of this information. However, all of the meeting participants acknowledged that the U.S. Department of Health & Human Services (HHS) has recently strengthened the verification procedures for individuals seeking SEPs on the federally facilitated exchanges, though such verification only takes place after enrollment.

## **Life Insurance and Annuities (A) Committee**

### **Potential Changes to TPA Regulation Discussed**

The committee discussed the DOL’s new fiduciary rule and recapped the significant progress made towards better laws and regulations for contingent deferred annuities (CDAs) by the CDA Working Group before disbanding that working group. Of interest to many life insurers will be comments from the committee that they intend to consider potential changes to TPA regulation based on difficulties recently encountered with the use of third-party administrators on large blocks of transferred life insurance and annuity business.

## **Producer Licensing (EX) Taskforce**

### **Remaining NARAB Members Could Be Appointed Soon**

The Producer Licensing Working Group did not take any notable actions during its meeting; however,

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the Working Group heard a report from the National Insurance Producer Registry (NIPR) board of directors regarding several upcoming NIPR enhancements, including updating its systems for handling and collecting licensing fees. In addition, it was reported that NIPR intends to start focusing on addressing application uniformity for resident and nonresident licensing across all states.

The Working Group also heard a report regarding the Claims Advancement for Interstate Matters (CLAIM) Act. The CLAIM Act is federal legislation focused on uniform adjuster licensing standards — the National Association of Registered Agents and Brokers (NARAB) for adjusters. The CLAIM Act focuses on greater licensing reciprocity, standardized exams among states, and uniform renewal processes and continuing education requirements. The CLAIM Act has been introduced in the House of Representatives, but currently there is no corresponding Senate bill, and there are currently no House Committee meetings scheduled regarding the legislation.

The Producer Licensing Working Group also noted during the meeting that five members have now been appointed to the NARAB board. The NARAB II legislation establishes a 13-member board of directors to govern and supervise the activities of NARAB. The board will consist of eight state insurance commissioners and five members from the private sector with expertise and experience in producer licensing. The Producer Licensing Working Group noted that the remaining members could be appointed soon, which would allow the NARAB board to begin adopting bylaws and rules so that NARAB can become operational.

## **Receivership and Insolvency (E) Task Force**

### **Draft Revision to Model Act Exposed**

The Receivership and Insolvency Task Force took several actions at the Spring National Meeting, including exposing a draft revision to the Life and Health Insurance Guaranty Association Model Act to a 60-day comment period, which will end on June 3, 2016. The draft revision to the Model Act is intended to clarify the inapplicability of guaranty association coverage to factored structured settlement annuity benefits.

The Task Force also heard a federal legislative and regulatory update from Tony Cotto, financial policy and legislation counsel for the NAIC. Mr. Cotto reported on the passage of the Policyholder Protection Act of 2015, which provides a “fix” to Dodd-Frank that clarifies the authority of state regulators to protect insurance assets from the taint of failing affiliated banks.

Mr. Cotto also addressed recent federal rules issued by the FDIC and other agencies that define what is considered a qualifying master netting agreement, but fail to acknowledge receivership laws in some states that allow a stay on termination of netting agreements and qualified financial contracts (QFC). The Task Force has been working on the adoption of the Guideline for Stay on Termination of Netting Agreements and Qualified Financial Contracts (Guidelines), and has requested that — until the NAIC resolves the failure of the federal rules to acknowledge state-based stays for QFCs — states should not consider adoption of the Guidelines.

## **Mortgage Guaranty Insurance (E) Working Group**

### **Industry Comments on Revisions to Draft Model Act**

The Mortgage Guaranty Insurance Working Group continues to make revisions to the draft Mortgage Guaranty Insurance Model Act, and progress on state review of the proposed capital model is being

made. Most of the Working Group meeting was spent addressing industry comments and revisions to the draft Model Act. The industry comments and revisions focused primarily on Section 7 of the draft Model Act, which addresses capital standards, and Section 10, which addresses reinsurance. The industry group noted that, as currently written, the Model Act prohibits released contingency reserves from being used to pay dividends. The industry group recognized that it would be inappropriate to pay dividends from contingency reserve releases in a stress-loss scenario, but also noted there are certain scenarios where the payment of such a dividend would be appropriate (e.g., insurance commissioner of the domiciliary state approves early release because contingency reserves and capital exceed the amount required to support the insurer's business).

The industry also commented on various reinsurance provisions of the Model Act. The industry comments focused on the Model Act's imposition of separate requirements for affiliate and non-affiliate reinsurance. In addition, it was noted that credit for reinsurance should be consistent with the treatment afforded other insurers under the Credit for Reinsurance Model Act and Regulation, rather than the differing standards set forth under the Model Act. The Working Group directed the chair to develop a revised draft to address comments received during the exposure period, and revisions are expected to be completed by the fall of 2016.

## **Workers' Compensation (C) Task Force**

### **Reports on Mega Deductible Study and Opt-Out Legislation Considered**

The Workers' Compensation Task Force discussed two issues of significant importance during its meeting: (1) the NAIC/International Association of Industrial Accident Boards and Commissions (IAIABC) Large/Mega Deductible Study; and (2) opt-out legislation.

The Task Force heard a progress report from the NAIC/IAIABC Joint Working Group on the Large/Mega Deductible Study. The Joint Working Group made several recommendations, including asking the Financial Condition Committee to consider:

- Whether the existing reporting framework under Annual Statement Note 31 should be enhanced by additional disclosures, or replaced with a framework that books policy reserves on a gross basis and establishes standards for credit for anticipated deductible reimbursements
- Whether the existing Royal Bank of Canada (RBC) charges associated with large deductible business need to be enhanced to properly reflect the risk associated with reserves that are unsecured or under-secured, and the risk that adverse development of reserves that are currently recognized might result in reimbursable losses that exceed collateral
- Whether retrospective rating plan programs should be subject to some or all standards that apply to large deductible programs

In addition, the Working Group reported on several legislative suggestions related to large/mega deductible programs. The Working Group suggested that states enact legislation establishing:

- Financial requirements for large deductible coverage that includes a definition of large deductible coverage that would include traditional policies subject to endorsements or side agreements that shift risk back to the employer
- Size and financial strength requirements for insurers writing large deductible policies
- Requirements for collateral, including prohibitions against commingling collateral with other assets of the insurer or pledging it for other competing purposes

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The current comment period for the study ended on April 11, 2016, and appropriate changes to the draft will be made. Following final revisions to the draft, the Task Force will formally adopt the paper and recommend adoption of the study by the NAIC “C” Committee.

The Task Force also heard reports from states where workers’ compensation opt-out legislation has been adopted or has been introduced. The reports focused primarily on the current state of various legislation introduced across the country. The first report focused on Oklahoma’s “option” to workers’ compensation, which took effect in 2014, and allows certain employers to develop internal benefit plans to cover occupational injuries and illness. Similar legislation was proposed in Tennessee and South Carolina, and there are reports of similar legislation being introduced in Georgia. There appeared to be quite a bit of interest in the opt-out issue, which suggests that this topic will be a focus at future meetings.

## **Executive (EX) Committee and Governance Review (EX) Task Force Meetings**

### **Cooling Off Period Proposal for NAIC CEO Eligibility Fails to Pass**

In addition to adopting a model law development request for an Insurance Data Security Model Law, and receiving status reports on other model law development efforts, the Executive (EX) Committee entertained another unexpected matter before it adjourned. Louisiana Commissioner James J. Donelon, proposed an amendment to the NAIC’s bylaws prohibiting the NAIC from hiring any person who had been an NAIC member (i.e., an insurance commissioner) within the previous two years. Commissioner Donelon said the proposal arose from two issues of concern with the NAIC’s ongoing CEO selection process: (i) the application of a current or recently departed member of the NAIC for the CEO position could result in conflicts of interest in the selection process; and (ii) the eligibility of current or recently departed commissioners could create the impression among other applicants that the CEO selection process is not truly open to all applicants (i.e., the NAIC could be looking to hire an insider). The committee requested that Commissioner Donelon prepare specific language to be reviewed the following day at the Governance Review Task Force meeting.

The next day, after discussing possible improvements for committee, task force, and working group selection, and methods for assessing the effectiveness of committees, the Governance Review (EX) Task Force heard Commissioner Donelon’s proposal. Multiple commissioners on the Task Force stated that they would not support such a proposal, and that the current selection guidelines were adequate. Commissioner Donelon responded with additional concerns that the NAIC was increasingly being viewed as a fraternal organization rather than a public policy organization. Despite this proposition, Commissioner Donelon’s motion to consider a bylaw change failed for lack of a second, and the meeting was adjourned.

## **Financial Regulation Standards and Accreditation (F) Committee**

### **Implementing Decision to Make Certified Reinsurer Rules Mandatory for State Accreditation**

The Financial Regulation Standards and Accreditation (F) Committee implemented the “agreement in principle” it reached at the 2015 Fall National Meeting to make the current Reinsurance Ceded to Certified Reinsurers provisions within the Credit for Reinsurance Model Law (#785) and Credit for Reinsurance Model Regulation (#786) part of the required and uniform accreditation standard applicable to all NAIC accredited jurisdictions.

Previously, in 2013, the NAIC determined that the “certified reinsurer” provisions of the foregoing

models (which were added to the models via revisions adopted in 2011) were an “optional” accreditation standard. This meant that states were not required to adopt the certified reinsurer provisions of these models in order to remain accredited; but if a state chose to reduce its reinsurance collateral requirements, it had to do so in a manner that rendered its respective state laws and regulations “substantially similar” to the key elements of the certified reinsurer provisions.

At the 2015 Fall National Meeting, the NAIC reversed course and agreed in principle to adopt the certified reinsurer provisions as a uniform accreditation standard, noting that state regulators had seen the benefits of these provisions over the course of several years, and it is the committee’s opinion that the certified reinsurer provisions result in more effective solvency regulation than the 100 percent collateralization standards that would otherwise operate. The committee then directed NAIC staff to draft specific revisions to the current accreditation guidance to implement this “agreement in principal.”

At the 2016 Spring National Meeting, the committee adopted revisions to the current accreditation guidance, which were proposed by the NAIC staff in this regard (with one minor revision) and made those changes effective January 1, 2019. In so doing, the committee specifically discussed and decided that the certified reinsurer provisions dealing with (i) notification requirements with respect to reinsurance concentration risk, (ii) deferral periods for certified reinsurers to post security applicable to catastrophe recoverables, and (iii) passporting rights and processes, would each be critical and mandatory elements of the uniform accreditation standard that goes into effect on January 1, 2019.

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National Law Review, Volume VI, Number 109

Source URL: <https://natlawreview.com/article/technological-and-information-concerns-highlight-naic-spring-2016-national-meeting>