

Key Takeaways From The NAIC Summer National Meeting

By **Stephanie Duchene and Kara Baysinger** (September 13, 2021, 3:17 PM EDT)

At the 2021 summer national meeting of the National Association of Insurance Commissioners, or NAIC, held from August 14-17 in a hybrid format, with attendees participating virtually or in person in Columbus, Ohio, insurance regulators continued to tackle several significant issues affecting the insurance industry.



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Florida Insurance Commissioner and NAIC President David Altmaier opened by identifying the NAIC's top priority areas as: COVID-19; natural catastrophe and climate risk; diversity, equity and inclusion in the insurance sector; the impact of artificial intelligence and big data on insurance; consumer data privacy and the long-term care market — noting that the same issues are increasingly the focus of international insurance regulation.

Some key takeaways from the 2021 Summer National Meeting for insurance regulatory practitioners include:



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- Innovation remains at the forefront of regulators' minds, occasioning the NAIC to create a new letter committee — the H committee — formed to monitor and coordinate developments related to innovation, artificial intelligence and cybersecurity.
- Understanding climate-related risk and shoring up the industry's resiliency to climate risk continues to be a key NAIC priority.
- Efforts continue to explore ways to increase diversity and inclusion in the insurance industry, a relatively new focus for the NAIC.
- Relief may be on the horizon for long-term care insurers seeking rate increases, as the NAIC has proposed for comment a voluntary framework under which it would review rate filings and make recommendations to the states.
- Amendments to the Holding Company Act models were adopted to address the continuation of essential services by affiliates of insurers undergoing receivership, as well as the receiver's access to data and records held by affiliates.

Regulation of Innovation

The appropriate regulation of the industry's burgeoning inroads in innovation continues to be an increasing area of focus of the NAIC. During the opening session of the 2021 summer national meeting, Altmaier announced that the NAIC intends to create a new letter committee by the end of 2021.

The new committee, the formation of which should be finalized at the 2021 fall national meeting, will be charged with monitoring developments and coordinating the NAIC's work

related to innovation, AI and cybersecurity, and developing regulatory models and guidance as appropriate.

During the meeting of the Innovation and Technology task force, Rhode Island Superintendent of Insurance and task force Vice Chair Beth Dwyer solicited input on what, if any, steps the task force should take with respect to issues around consumer data ownership and access.

Regulators and interested parties raised considerations such as the potential benefits to consumers of allowing third parties to access consumer data to provide related services, and how to mitigate any resulting cybersecurity risks. Task force members agreed that this issue should be referred to the Privacy Protections working group for continued consideration.

The industry and insurance practitioners should keep a close eye on the NAIC's efforts to understand the dynamics around consumer data ownership and access, particularly as state legislatures consider data privacy laws, like Colorado S.B. 21-169, signed into law in July, which prohibits the use of external consumer data sources, algorithms or predictive models that unfairly discriminate against individuals based on protected classes and gives the insurance commissioner broad new rule-making and enforcement authority in this area.

While the Innovation and Technology task force did not hear a presentation on the bill as was expected, we anticipate that the NAIC will monitor Colorado's progress in promulgating new regulations implementing the bill and whether other states develop any similar legislation in the future.

Similarly, the NAIC continues to consider how to best regulate the industry's use of big data and AI. While the appropriate regulatory frameworks on these topics continue to be so high-level as to be a bit hazy, the Big Data and Artificial Intelligence working group is drafting a survey to assist regulators in analyzing big data use.

The survey will initially focus on private passenger automobile insurers. Five companies have already received the survey on a pilot basis, and it will next be distributed to an additional 188 companies in nine pilot states, seeking responses by the end of this month. A public report will compile the aggregated responses, maintaining the confidentiality of each participating company's data.

The working group intends to expand the survey to other lines of insurance, such as life and homeowners' insurance. The analysis will inform the work of the NAIC to develop regulatory guidance relating to big data and AI.

Cybersecurity also remains a key initiative at the NAIC, which has no fewer than 12 separate cybersecurity workstreams, including following the adoption of the Insurance Data Security Model Law — currently adopted by 18 states, with action under consideration in two additional states — and the development of cybersecurity incident best practices guidelines — through tabletop exercises and work with the U.S. Financial and Banking Information Infrastructure committee and others. The NAIC will consider whether updates should be made to the Market Regulation and Financial Examiners handbooks with respect to cybersecurity.

In addition, the NAIC is working closely with international colleagues on cybersecurity issues, including the International Association of Insurance Supervisors, or IAIS, and the European Union.

The IAIS' Operational Resilience task force is gathering information to inform a paper on how insurance supervisors are approaching cyber-related risks, which is scheduled for public consultation in the second quarter of 2022.

The IAIS' Fintech Forum is studying topics such as machine learning and data analytics. Work related to innovation and technology also continues through the EU-U.S. Insurance Dialogue Project, which includes a working group focused on big data and AI that will publish a paper in October summarizing the working group's exchanges on supervisor experiences and regulatory environments.

Tackling Climate-Related Risk

The NAIC Climate and Resiliency task force continues to facilitate discussion and engagement on climate-related risk and resiliency through its five work streams focused on the following.

Predisaster Mitigation

The goal of this work stream is to mitigate losses from common perils. The work stream consults with industry and community stakeholders to understand how to incentivize resilience through mitigation and assists with related consumer education and outreach. As the federal government shifts its focus away from reactionary disaster spending to research-supported protective investments, the work stream is exploring ways to secure federal funding for mitigation and resiliency efforts.

Climate Risk Disclosure

The work stream is modifying the NAIC Climate Risk Disclosure survey, adopted by the NAIC in 2010, to provide regulators with information about risks posed to insurers by climate change. The work stream has encouraged states to participate in the NAIC Climate Risk Disclosure survey, noting that 15 states have volunteered so far.

Solvency

The work stream is focused on potential enhancements to existing financial surveillance and reporting tools, such as the NAIC Own Risk and Solvency Assessment guidance manual, and seeks to apply what it has learned during recent sessions on financial climate risk surveillance.

Innovation

The work stream is exploring parametric insurance products designed to close coverage gaps for specific weather-related events.

Technology

The work stream is drafting revisions to the NAIC's Catastrophe Computer Modeling handbook, which will include a compendium of state laws.

Race and Insurance

The NAIC's Special Committee on Race and Insurance, charged with coordinating issues across the NAIC relating to race, diversity and inclusion, has five work streams gathering

and analyzing data in order to be able to make recommendations on increasing diversity and inclusion within insurance.

Two work streams are researching and analyzing information on current diversity and inclusion efforts, one focused on the industry and one on state insurance departments. A survey was emailed to state insurance commissioners in August regarding state and department level diversity and inclusion best practices for consideration by the entire NAIC membership.

Three work streams are focused on examining the insurance industry to determine what practices create barriers that disadvantage people of color or historically underrepresented groups. Each work stream is focused on a different type of insurance — property and casualty, life and annuities, and health.

These three work streams plan to make a joint referral to the Market Regulation and Consumer Affairs committee requesting a report on the availability of producer licensing exams in foreign languages, steps examination vendors have taken to mitigate cultural bias, and the number and location of producers by company compared to demographics in the area.

As the Special Committee on Race and Insurance continues we can expect it to coordinate with existing groups such as the Big Data and Artificial Intelligence working group to encourage those groups to continue their work with a particular focus on how predictive modeling, price algorithms and AI impact people of color or those historically disadvantaged or underrepresented.

Stabilizing the Long-Term Care Insurance Market

The Long-Term Care Insurance, or LTCI, task force, charged with addressing the challenges in the current long-term care insurance market due to historically underpriced policies, has developed a national approach to reviewing long-term care insurance rates in an effort to ensure actuarially appropriate rate increases are granted by the states in a timely manner.

The LTCI Multistate Rate Review subgroup has proposed for comment an operational and actuarial framework under which the NAIC would review rate filings and make recommendations to the states. Task force Chair and Virginia Insurance Commissioner Scott White noted that states will not be forced to accept such recommendations, but participation by states will be critical to the success of the framework. A revised draft of the framework is expected to be released in mid-September.

In addition, the LTCI Reduced Benefit Options subgroup is creating a checklist for state regulators for consumer notices regarding reduced benefit options, which is intended to establish a consistent approach to drafting and reviewing such notices.

New Requirements Related to Affiliated Transactions for Insurers in Receivership

At the summer national meeting, all the U.S. state insurance commissioners in plenary session along with the NAIC's executive committee adopted amendments to the NAIC Insurance Holding Company System Model Act and the Insurance Holding Company System Model Regulation with reporting forms that the Receivership Law working group developed to address the continuation of essential services by affiliates of insurers undergoing receivership, as well as the receiver's access to data and records held by affiliates but belonging to the insurer.

The amendments, among other things, add certain standards for affiliate transactions of an insurer that is deemed to be in hazardous financial condition or subject to a supervision, conservation or delinquency proceeding, including that such transactions must:

- Allow the commissioner to require a deposit or bond for the protection of the insurer in connection with affiliated transactions;
- Require that all records and data of the insurer held by the affiliate are and remain the property of the insurer; and
- Specify that premiums or other funds belonging to the insurer but collected or held by an affiliate are the exclusive property and subject to the control of the insurer.

The amendments permit the commissioner to require that certain affiliate agreements specify that the affiliate consents to the jurisdiction of the supervision, seizure, conservatorship or receivership proceedings.

The amendments also bolster the minimum required provisions that must be included in agreements for cost-sharing services and management services, including to specify that the affiliate will provide essential services for a specified period after termination of the affiliate agreement if the insurer is placed into supervision, seizure, conservatorship or receivership.

The NAIC is proposing that the states enact these amendments to their holding company laws at the same time they enact the amendments to the Holding Company Act models that the Executive and Plenary committees adopted in December 2020, and will work with states that have already adopted such amendments to integrate these latest revisions.

Whether it is tackling issues that affect the larger community, like climate change and inclusion and diversity, or important issues to specific lines of insurance, like rate increases for long term care insurance, the NAIC has remained active and diligent despite the challenges posed by COVID-19 to collaborative multistate work.[1]

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[1] More issues than those discussed here were addressed at the meeting and during interim conference calls leading up to the meeting, a full report of which can be found here: [https://communications.willkie.com/103/1457/uploads-\(icalendars-pdf-documents\)/naic-report-2021-summer-national-meeting.pdf](https://communications.willkie.com/103/1457/uploads-(icalendars-pdf-documents)/naic-report-2021-summer-national-meeting.pdf).