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NAIC Update Spring 2014

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- NAIC issues report on auto insurance availability and affordability
- Corporate governance of the NAIC gets attention
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- August 16-19: NAIC Summer National Meeting; Louisville, KY
- October 20-25: IAIS Annual Conference; Amsterdam, The Netherlands

Spring meeting was not a time for endings

ORLANDO, FL — Orlando is a land of mighty theme parks where trademarked and copyrighted characters dance nightly to the delighted squeals of a generation too young to be concerned about insurance. Each day of delight comes to a rousing climax with a dazzling display of fireworks so thunderous as to drown out the inevitable accompaniment of worshipful oohs and ahhs from a million bemagicked visitors each week.

There were far fewer fireworks at the National Association of Insurance Commissioners's (NAIC) Spring 2014 National Meeting in Orlando, and if there was a theme, it was the contrast between this organization's move toward increased openness and the far more closed nature of the proceedings at organizations like the International Association of Insurance Supervisors (IAIS) where work on much insurance regulation is now centered.

The first meeting with North Dakota Commissioner Adam Hamm as president seemed to find the organization almost in a holding pattern. This is not to say weighty matters were not discussed, they were, but final decisions were few.

Major items of interest included the current status of principle-based reserving for life insurers given New York's unyielding opposition, but little was publicly said. The use of affiliated captives for reinsurance purposes by life insurers was a big concern raised by regulators, including most notably New York and Federal Insurance Office (FIO) Director Michael McRaith in his report on insurance regulation. The Rector Report was supposed to provide a roadmap for the NAIC to consider as it moved ahead on the captives issue, but further discussion of the report was delayed to a subsequent conference call.

Contingent deferred annuities were another topic of interest, and it was another topic whose resolution will wait until the summer meeting in Kentucky. The availability

North Dakota Commissioner Adam Hamm led his first national meeting as President of the NAIC

Courtesy of the NAIC

and affordability of auto insurance was the subject of an NAIC study, and while consumer groups may wish this were not a final determination, it did seem as if the organization leaned towards accepting that auto insurance was both available and affordable.

In general, this was not a meeting filled with weighty pronouncements and final decisions. Progress was made on various topics, but just as the thorny issue of who will really regulate insurers as state, federal, and international authorities collide in an increasingly smaller and more connected regulatory world remains an unresolved question, so too the NAIC's work on numerous issues at this event could best be described as representing a work in progress.

So it will be on to Kentucky in August, moving from sunshine to bluegrass and perhaps to just a little more clarity for industry on the regulatory road ahead.

Consultant's report on captives stirs debate

The implementation of principle-based reserving (PBR) for life insurance companies has begun its journey through state legislatures, the Principle-Based Reserving Implementation (EX) Task Force was told. So far nine states representing 9.2% of premium volume have adopted PBR; four states have bills passed awaiting gubernatorial signatures, bringing the potential total to 13.8% of premium volume.

Another nine states have legislation pending that if passed this year would raise the percent of premium volume covered to 43.2%. Another eight states are expected to introduce legislation in 2015. If all this potential were to become actual, that would mean 30 states representing 60.3% of premium volume would have approved PBR. In order to become effective, the Valuation Manual must be approved by at least 42 states representing at least 75% of premium volume.

The majority of the meeting was taken up with a discussion of the Rector Report. The Rector Report was supposed to review certain financing transactions, in particular the use of affiliated captives by life insurer for XXX and AXXX reserves, and make recommendations to the Task Force.

The Report contained the following recommendations (as listed in the executive summary):

1. In substance, we recommend that the direct/ceding insurer only get credit for reinsurance if it retains (on a funds withheld or trust basis) "Primary Assets" in an amount approximately equal to what the statutory reserve would be under PBR.
2. The remainder of the credit for reinsurance may be supported by any assets approved by the regulators for both the direct/ceding insurer and the assuming insurer, subject to certain regulatory protections and oversight.
3. We recommend that full Risk-Based Capital ("RBC") calculations using traditional NAIC methodology be performed by at least one party to the financing transaction.
4. We recommend that key information about the use of financing transactions and assets supporting such transactions be publicly disclosed.
5. We recommend that direct/ceding insurers and their auditors annually determine compliance with the requirements.
6. All reinsurance involving XXX/AXXX reserves is within the initial scope; however, exemptions are provided for most traditional reinsurance arrangements, including for arrangements with reinsurers that follow NAIC accounting and RBC rules.
7. The concept of "financing" the reserves at the direct insurer level (without the use of reinsurance) is theoretically viable, but more work remains before recommendations can be made as to how to implement the concept.
8. The proposed effective dates for the new requirements are:
   - July 1, 2014 for newly created financing structures
   - December 31, 2014 for the new "Disclosure Requirements"
   - January 1, 2015 for business ceded to existing financing structures
   - December 31, 2014 for the new RBC rules
9. We recommend a new "XXX and AXXX Model Reinsurance Regulation" as an NAIC Accreditation Standard to "codify" the new requirements; however, the concepts can be implemented for most financing transactions without any change to law or statute.

Iowa Commissioner Nick Gerhart expressed concern that under this proposal, RBC calculations may hide the use of permitted practices that would not normally be allowed. Iowa expressed concern about the presumption of hazardous financial condition that would result if a reinsurer has a permitted practice not related to the ceding transaction.

Vermont was one state to generally support the Report with two exceptions. It felt primary assets should be restricted to admitted assets, and that the timeline was too aggressive. "We are not going agree to a moratorium on this," said Vermont Deputy Commissioner David Provost.

"What we're saying with these dates is let's get a framework in place," replied Co-Chair Commissioner Joseph Torti of Rhode Island. He said the alternative that people are asking for is that moratorium.

Mark Birdsall of Kansas said the assumption was that VM20 would accomplish a longtime goal of rightsizing reserves, but it does not. He generally supported the process, but not the actuarial segment. "The existence of captives [serves] as a reality check for all of us conservative regulators on how we're doing," he said. Suggestions he provided were to wait for VM22 or to use a simplified PBR methodology.

Other regulators disagreed, one suggesting that VM20 does have value in this case. To settle the issue, Torti suggested "a cage match or something between actuaries."

California Commissioner Dave Jones said his main concern was the aggressive timeline. He suggested that the necessary resources to implement PBR were not yet available, and accelerating this when not enough resources were there for PBR was an issue.

"It gets a standard in place where none exists now," Torti retorted. He added that the status quo is essentially nothing.

"Our recommendation is to use what's on the shelf with a couple of adjustments," consultant Neil Rector, of Rector & Associates and presenter of the Rector Report, told the group. He said selecting the actuarial method can be done quite quickly, and the only thing really needed is the work on the net premium reserve. RBC would not come into effect until December 2015 so there would be time to work on it, he said.

"I'm not arguing for the status quo," said Jones. "I think we should stop allowing these transactions." He suggested the Task Force was "not grappling with the question of should we allow these transactions."

Torti said he has had companies say that if the reserves are down properly under PBR, they would end the practice under discussion.

Executive deputy superintendent of the insurance division at DFS, Rob Easton from New York, was less convinced. "We don't have comfort with the PBR reserve," he said. "We're concerned when we see Mark Birdsall say it's not liberal enough. We're supportive of an aggressive timeframe," he said, adding that he was opposed to anchoring reserves in VM20. New York saw the presumption of a hazardous financial condition for transactions not meeting the Rector formula as a positive.

"There's a safety valve here," said Torti. "This is not a blanket reduction of reserves."

Steve Kinney, director of the Delaware Bureau of Captive and Financial Insurance, voiced his objection to the Report. He did not recommend adoption of the Rector Report because of unintended consequences and unanswered questions. He wanted the captive issues transferred to the Captive (EX) Working Group as recommended in the PBR implementation plan.

One insurance company representative suggested sun setting captives with PBR implementation. Nancy Bennett of the American Academy of Actuaries said she agreed that VM20 was a reasonable framework but did not think the modifications as proposed should be used. In particular she saw no need for the net premium reserve.

Paul Graham of the American Council of Life Insurers (ACLI) said that because of the technical and legal framework issues, perhaps the Task Force should consider an interim meeting instead of a conference call. That ACLI was concerned about the designation of presumptive hazardous financial conditions with no materiality threshold, which could lead to lots of unintended consequences. He suggested that under PBR, the need for XXX and AXXX captives would wither away, a point on which he was pointedly questioned by New York's Easton.

The Task Force scheduled a follow-up call to discuss the Report. A revised version of the Rector Report will be provided as a result of that call.

Proposed capital requirements may backfire, risk officers warn

The purpose of group regulatory capital affects how capital should be determined, the goal of the regulatory capital standard should be consumer protection, and a representative of the North American CRO Council told the meeting of the Financial Stability (EX) Task Force.

"We do have some concerns about the speed, the timetable for what we're trying to develop," the CRO Council representative said. The IAIS, at the direction of the G-20's Financial Stability Board (FSB) is seeking to develop new basic capital requirement (BCR) by late 2014, Higher Loss Absorbency requirements (HLA) by 2015, and risk-based global Insurance Capital Standards (ICS) by 2016, with full implementation of all by 2019.

Among those concerns were unintended changes and the cost to make new products. The new capital basis is going to be very costly for some insurance companies, the CRO Council representative told the Task Force. The fungibility of capital was also a concern in that if capital could be removed from one legal entity to support another, it could potentially weaken the legal entity providing the capital. The CRO Council supported the primary role of capital regulation as being at the legal entity status, and opposed any group capital requirements that could invalidate that role in any way.

Fair market valuation of insurance liabilities was also a concern for the CRO Council. With insurance products tending to be longtail, the use of current value could introduce volatility and could actually be counterproductive.

Insurers tend to take orderly steps and developing capital standards may cause pressure for quick reactions, the CRO Council representative warned.

"Measuring significant changes in the value of long term insurance liabilities and related assets is only meaningful to supervisors if they signify an inability on the part of the insurer to meet its obligations to policyholders or others. Near-term changes due to volatility in market interest rates or asset values can obscure a view of an insurer's ability to meet its long-term liabilities. In order to avoid this concern, it is possible that companies will shift their emphasis from long-term liabilities to short-term liabilities, denying consumers some forms of insurance protection that are currently available to them," a CRO Council statement said.

Former Task Force Chair and Connecticut Commissioner Tom Leonardi noted the sacrosanct nature of capital at the legal entity level. Taking capital out without legal entity regulatory approval is a problem, he said, calling the IAIS's three-year timetable for new capital standards reckless.

"Basel took 14 years to develop Basel I and that wasn't good because they came up with Basel II and Basel III," Leonardi noted.

The Task Force received remarks from Deputy Commissioner Jim Armstrong (IA) regarding investment fund ownership of insurers. Armstrong stated that he is starting to see some risks arise that should be monitored. Those risks relate to: investments (e.g. increased investment in limited liability companies and commercial mortgage); fees; dividends; use of separate accounts (e.g. increased use of funding agreements); and policies issued (e.g. increase in indexed annuities). Commissioner Leonardi requested regulators to try and distinguish between issues arising from Private Equity Funds and Hedge Fund within its monitoring activities.

The Task Force also received an update on the FSB's non-bank, non-insurer designation process from Steve Junior (WI). Junior stated that comments on the FSB *Assessment Methodologies for Identifying Non-Bank Non-Insurer Global Systemically Important Financial Institutions* are due April 7. He stated he hadn't heard of many concerns from insurers, but several investment managers have responded. He also stated that "asset management" remains a controversial assessment item.

The Task Force heard remarks on international recovery and resolution from James Kennedy (TX). Kennedy stated that he is a member of the new IAIS Resolution Working Group. He continues to have concerns that state regulators do not have a position on the FSB, which developed the key attributes of effective resolution regimes for financial

Courtesy of the NAIC

institutions. Areas that need to be addressed for insurance include: insurance policyholder claimant position; debt structure of G-SIIs; early termination of derivatives; intervention; and resolution topics addressed within ComFrame and relevant ICPs.

The Task Force heard a very brief update on the Financial Stability Oversight Council (FSOC) process from Commissioner Huff (MO). Director Huff stated the FSOC had a closed meeting this week and there was little public information that could be shared. The FSOC will be working on the following areas during 2014: Annual Report; monitoring developments in Ukraine; reassessment of existing SIFIs due to annual requirement; and, a public conference on asset management that FSOC will host on May 19.

NAIC looks inside; governance review process begins

Anyone expecting fireworks at the inaugural meeting of the Governance Review (EX) Task Force most likely came away disappointed. The Task Force, established at the commissioners' meeting in February 2014 after much open discussion on NAIC governance at the the winter meeting, received broad support from regulators and interested parties like.

"I do hope we will have a good initial discussion," said Task Force Chair Director John Huff of Missouri. Explaining the NAIC's intentions, he said the organization plans on holding open meetings whenever possible. However, some matters will likely require regulator-only discussions and will by necessity be closed.

Connecticut Commissioner Tom Leonardi, whose letter to the NAIC triggered much discussion and media coverage at the last national meeting, praised Director Huff and immediate past president of the NAIC, James J. Donelon of Louisiana, for their leadership. He noted the large audience at the Task Forces inaugural meeting, and referencing his December letter, said, "Issues are still very much out there in my mind."

Director Andrew Boron of Illinois said, "We must ensure the levers of power are not in the hands of a few." He said there should be no use of the organization to benefit a few commissioners and no punishment for example, with committee assignments.

Oklahoma Commissioner John Doak said, "I don't know many organizations where past presidents continue to be involved at the level they are." He also expressed concerns about committee assignments.

Bruce Ferguson of the American Council of Life Insurers (ACLI) called for changes to standards to be subject to due process. This, he said, was because in many cases, NAIC pronouncements have the de facto force of law.

In a not too oblique dig at some international insurance standard-setting organizations, Director Huff noted that the NAIC was "affiliated with some organizations that have so little due process."

Steve Broadie of the Property Casualty Insurers Association of America (PCI) called for less duplication of information requests and regulations and a reduction in redundancy of regulatory requirements. Neil Alldredge of the National Association of Mutual Insurance Companies (NAMIC) said, "NAIC ought to be at least as transparent as the least transparent state." He called the open meeting policy change a good first step, and said that areas that substantively change state law, such as manual or statement changes, should be the most transparent. Numerous other industry representatives called for more openness and discussion in an acting these changes.

The NAIC's Kay Noonan told the group that all meetings would be posted including those in regulator-only session.

NAIC continues fight for openness, industry and consumer input in international forum

A data call has been launched by the Financial Stability Committee (FSC) of the International Association of Insurance Supervisors (IAIS) for approximately 50 companies as part of the annual Global Systemically Important Insurer (G-SII) designation exercise, New Jersey Commissioner Kenneth Kobylowski told the International Insurance Relations (G) Committee. Nine insurers, including three American companies, were designated G-SIIs by the IAIS in its first round of designations.

G-SII designations of reinsurance companies are expected in November, he continued, and the FSC is developing guidelines on liquidity and the definition of nontraditional and noninsurance activities (NTNI).

The definition of NTNI has been a concern for U.S. companies as some activities long offered by U.S. companies, such as variable annuities, and considered traditional in this country are considered nontraditional noninsurance activities by the IAIS. Beginning in 2019, G-SIIs will be forced to hold a Higher Loss Absorption (HLA) capacity for their NTNI business.

Kobylowski also said that a discussion is continuing on having direct financial holding company supervision. U.S. regulators have not traditionally had this type of supervision, focusing instead on legal entity supervision. However, the NAIC is now taking steps to bridge the gap with its international counterparts and allow for holding company supervision.

Connecticut Commissioner Tom Leonardi told the Committee that the IAIS had received 400 pages of comments on the latest ComFrame draft. A revised version will be unveiled at the June Technical Committee meeting in Québec, Canada.

Steve Broadie of the Property Casualty Insurers Association of America (PCI), echoing a common theme among industry and regulators, spoke on how the IAIS in its recent reorganization has reduced access by observers. Industry members and others can support the work of the IAIS through observer status, and previously as observers had been allowed some input into the development of new regulatory standards.

While the IAIS has laid out a broad plan for limited observer access, Broadie noted that he had been told that past June no observer role was yet set.

Broadie and others also thanked the NAIC for its work, as it sought to open the proceedings of the notoriously closed IAIS. The NAIC had also taken the unprecedented step of inviting a consumer representative to the IAIS meetings, recognizing that consumers could well be considered the ultimate stakeholders and thus most affected by IAIS decisions.

Committee Chair, Pennsylvania Commissioner Michael Consedine thanked industry representatives for their recognition of the NAIC's work in this regard: "At least on the state side, we have been a strong advocate of transparency at the IAIS."

TRIA support strong; reauthorization questions remain

The NAIC's strong support for renewal of the Terrorism Risk Insurance Act (TRIA) was repeatedly expressed at the meeting of the Terrorism Insurance Implementation (C) Working Group. Various industry associations also expressed support for prompt renewal of the act, seen as necessary for a stable and affordable terrorism insurance market.

Kevin McKechnie of the American Bankers Association noted that the majority of banks purchased terrorism insurance and without reauthorization of TRIA such insurance will become either more expensive, more difficult to find, or both.

Thomas Glassic and Robert Woody of Property Casualty Insurers Association of America (PCI) noted that Democratic Governors Association recently released a study showing that TRIA worked. PCI is working with governors to urge reauthorization of TRIA and would work with regulators or legislators in order to move the process along.

They noted that changes in TRIA, including changes to the trigger, deductible, or the co-pay, have been discussed and could reduce participation if implemented. Whereas PCI, after looking at the Boston Marathon bombing in 2013, would like to see some technical changes to TRIA. Seeing it renewed as is would be a victory in the current political reality.

Among the changes PCI would like to see would be a change in the certification process in order to make it faster and more transparent. PCI would also like to see clarity on the issue of multiple events each below the trigger being aggregated to meet the hundred million dollar threshold currently required as one measure used to determine the appropriateness of triggering TRIA. Industry has assumed that smaller events such as the Boston Marathon bombing could be aggregated, but Treasury has said this is not their view.

Insurers always knew they would provide coverage to $5 million per incident. But then Treasury certification as a terrorism act would trigger the terrorism exclusion where applicable. More clarity on the $5 million per incident and $100 million triggers would provide more certainty for insurers and insured.

Dennis Burke and Scott Williamson of the Reinsurance Association of America (RAA) discussed the possibility of treating nuclear, biological, chemical and radiological evidence, and BCR separately if TRIA is reauthorized. RAA has developed software that is available free to regulators and legislators to allow them to model the possible impact on the insurance market in their jurisdictions of events of various types and sizes.

CDAs still face lively debate

Contingent deferred annuities (CDAs) have been a bone of contention at NAIC meetings over the past few years. Originally, some regulators and some insurance companies were not in favor of the sale of CDAs, but the NAIC has ruled that CDAs are annuities and the Contingent Deferred Annuities (A) Working Group continued its effort at the Spring National Meeting to review current CDAs regulation and suggest modifications and improvements where necessary.

Consumer groups continued expressing their concern. Birny Birnbaum of the Center for Economic Justice raised questions about the lack of a non-forfeiture benefit. Regulators agreed the standard non-forfeiture law does not apply, he said, but have not created a replacement framework.

Birnbaum said the product was being sold without any kind of non-forfeiture protection. Regulators told Birnbaum this meeting was not the proper forum at which to discuss the issue to which Birnbaum replied that he had been shuffled around from group to group, and that Julie Mix McPeak, Chair of the Parent A Committee had told him this was the group to handle it.

Birnbaum repeated his call for the Working Group to direct the Life Actuarial Task Force to review and recommend the appropriate non-forfeiture benefit.

Seeking to close debate, Committee Chair Ted Nickel of Wisconsin said, "Right now, let's stay on track and move on." Nickel said that while the differing views were probably not that far apart, another time could be better for a presentation and discussion.

Discussing draft revisions to various model regulations, the NAIC's Jennifer Cook told the Working Group the annuity suitability model had been rewritten to make clear CDAs are included in the scope of the model. Utah regulator Tomasz Serbinowski asked about the possibility of changes to the disclosure model to reflect appropriate CDAs-specific illustrations. While the disclosure model has not yet been widely adopted by states, nonetheless in the model, the illustrations are optional.

Industry representatives told the Working Group that CDAs are registered securities. Traditionally, the NAIC has deferred to the U.S. Securities and Exchange Commission (SEC) and Financial Industry Regulatory Authority (FINRA) for securities regulation. The NAIC model has always intended to exempt registered securities which have consumer protection from SEC and FINRA, industry representatives said. CDAs should be treated similarly and excluded from suitability and supervision requirements, they argued.

One regulator said that CDAs could be covered by the NAIC model in certain circumstances. Birnbaum said if CDAs could fall under the NAIC model in certain circumstances, there should be CDAs-specific requirements in the model given the nature of the product. Again citing the need to move on in the interest of time, Nickel and the Working Group closed debate and opened a comment period for discussion of the draft revisions. The Working Group will have a conference call to discuss the issue.

Both the The American Council of Life Insurers (ACLI) and the Insured Retirement Institute (IRI) gave presentations to the Working Group responding to concerns previously raised by consumer groups. One point noted in the presentation was that according to research conducted by LIMRA Secure Retirement Institute, only 3% of variable annuity purchasers have a low level of understanding of the product after purchase. The presenters argued that it would be reasonable to expect the level of understanding of CDAs purchasers to be even higher given the less complicated nature of product.

This discussion will continue at the summer national meeting with a presentation by Birnbaum, among others.

On housekeeping items, the NAIC's Cook told the Working Group that all NAIC groups with CDAs-related Working Group charges from the Life Insurance and Annuities (A) Committee would complete their work by the summer national meeting.

National Organization of Life and Health Insurance Guaranty Associations (NOHLGA) was looking at guaranty models to see if any changes would be necessary, Cook said. A conference call in May or June will be held to discuss the issue.

Cook also told the Working Group that so far 33 states had adopted CDAs-related changes to SERFF, the System for Electronic Rate and Form Filing. Thirteen states would not implement SERFF changes, and the NAIC plans to follow up with them.

Revised R3 credit risk charge proposal exposed for comment

The Property and Casualty Risk-Based Capital (E) Working Group voted to expose for 45 days a proposal by the Reinsurance Association of America (RAA) to revise the R3 credit risk charge for reinsurance recoverables. The RAA had proposed reallocating the 10% charge on reinsurance recoverables so it would be more risk based, reflecting the credit strength of the reinsurer.

Among the items included in the proposal was a suggestion to stress the total recoverable balance, and then subtract from that the funds held in order to account for potential estimation errors or rating agency concerns. The RAA said this stressing should provide an extra cushion of conservatism to the balance before applying the historical default factors.

NAIC staff expressed some concerns about the possibly similar treatment of highly rated reinsurers without collateral and poorly rated reinsurers with collateral under these proposals. The RAA said the aim of its proposal was to recognize that the risk associated with non-rated and lower rated reinsurers would be reduced by collateral, while not incentivizing collateral from highly rated, well-regulated reinsurers.

Another major concern expressed related to the need for two ratings under the RAA proposal. The RAA proposed utilizing the matrix for equivalent reinsurer rating agency financial strength ratings adopted under NAIC's Revised Credit for Reinsurance model. Under this approach, a reinsurer had to have a rating from least two rating agencies in order to be assigned a Secure 1 to 5 equivalent rating. The concern expressed related to domestics with only a single rating. Previously, no collateral would have been required from the domestic, but now either collateral or a second rating would be necessary.

Also noted was that the proposal could affect other RBC charges. The RAA asked the NAIC to perform impact analysis with respect to adopting the charge for R6 and R7 (hurricane and earthquake components) by applying the proposed charge to the Cat RBC filing and attestation.

Cat Risk reporting to be tweaked

The Catastrophe Risk (E) Subgroup reviewed results of the 2013 catastrophe risk ("cat risk") reporting. This information-only reporting is a prelude to the eventual inclusion of a catastrophe risk charge in the risk-based capital calculation.

Interim Subgroup Chair David Altmaier of Florida noted that the R0 component of the charge may be impacted by the catastrophe risk charge if companies have R6 or R7 charges in their formulas under certain circumstances. In the results reported, the NAIC adjusted 207 companies for the R0 issue.

Approximately 2,478 companies reported with an average Risk-Based Capital (RBC) ratio without cat risk charges of 8,374%. With the cat risk charge included, the average RBC ratio dropped to 8,241%. 614 companies filed an earthquake (R6) charge with an average charge prior to covariance of $38.8 million. 792 companies filed a hurricane (R7) charge with an average charge prior to covariance of $58.9 million.

Eight hundred and fifty companies filed with either an R6 or R7 charge. The aggregate cat risk charge was about 19% of the aggregate RBC prior to covariance.

There were few changes in action level as a result of this reporting. Sixteen companies changed action levels with two actually bumping up a level. Six started between 200 and 400% and dropped into an action level, while the rest (8) had fairly large starting ratios and dropped into an action level.

One thousand nine hundred and fifteen companies had a negligible change (less than 5% either way) in their RBC ratio with 1,218 of those having no change at all in their RBC ratio. The average RBC ratio there was 15,568%. Six hundred and ninety-six companies saw their RBC ratio increase with an average percentage increase of 4.27%. Five hundred and forty-seven companies saw their RBC ratio decrease on average by 17.6%.

Altmaier noted that the data posed two questions. One was if at the data collected was consistent across all companies, with the second being that now that regulators had the data, what should they do with it.

A representative of the Reinsurance Association of America (RAA) noted that the data seemed counterintuitive in some ways, and smaller companies could be skewing the reporting summary. Regulators agreed the data would be tweaked as necessary.

A representative of the National Association of Mutual Insurance Companies (NAMIC) raised questions on the timing and confidentiality of the attestation for the 2013 reporting. Altmaier noted that the subgroup has already contacted and requested information from relevant state regulators on this topic.

Regulators confirmed that the plan is to continue to do an informational filing for year-end 2014.

The Subgroup also voted to expose the PR025 RBC instruction on catastrophe risk. The revised instruction would make explicit that only the worst year in 100 will be used in calculation of the catastrophe risk charge. The catastrophe risk charge will be for earthquake (R6) and hurricane (R7) risk only.

New group looks at ComFrame

The ComFrame Development and Analysis (G) Working Group was created to provide ongoing review, technical and expedited strategic input on the International Association of Insurance Supervisors (IAIS) Common Framework for the Supervision of Internationally Active Insurance Groups (ComFrame) and international group capital developments; facilitate the input and participation of U.S. insurance regulators in the IAIS field testing processes; and assist in communicating on ComFrame and capital developments related matters with other parties, including the Federal Reserve Board and the Treasury Department, as appropriate. The Working Group used its first meeting to discuss the development of the ComFrame and the field testing process. Specifically, the Working Group heard a presentation from Paolo Cadoni, Chair of the Field Testing Task Force (United Kingdom PRA) and Peter Windsor (IAIS Secretariat) regarding the ComFrame field testing process and Basic Capital Requirement (BCR). The presentation addressed the project phases, quantitative and qualitative questionnaires, and anticipated dates of completion.

Module 1 of ComFrame supported field testing identification of IAIGs which was performed in October 2013. The quantitative exercise was launched on March 21 with the first field testing workshop on March 28. Related BCR consultation began in December 2013.

Timeline

2014 – BCR design approval will be sought at the November G20 meeting. (Insurance capital standard [ICS] and HLA higher loss absorbency [HLA] consultation is scheduled to be issued in December 2014)
2015 – HLA completed
2016 – ICS completed
2018 – Adoption of ComFrame

Field Testing further information:

- Quantitative Field testing begun March to end May 2014 (first iteration)
- 2nd Quarter 2015 through 2018 there will be subsequent iterations. Field testing will be performed on a best endeavors basis, using proxies and expert judgment.
- There are likely to be up to 50 IAIG's.
- 30 IAIG's are taking part in the field test and this number can be split roughly 1/3 North America, 1/3 Asia and 1/3 Europe (and includes mutual, composites, life and non-life).
- Concerning ICP 23, the NAIC will potentially have to reopen and revise the model holding company act.

Auto study group adopts report

Montana Commissioner Monica Lindeen, left, President-elect of the NAIC, joined NAIC President Adam Hamm in discussion

Courtesy of the NAIC

As it has throughout its existence, the Auto Insurance (C/D) Study Group attracted conflicting opinions from consumer groups and industry as it continued its work reviewing the availability and affordability of auto insurance.

Committee Chair Commissioner Joseph G. Murphy of Massachusetts introduced the report created by the study group. The report, then called "*Policy Options Regarding the Availability and Affordability of Auto Insurance,*" was meant as a policy study to serve as a resource for states, Murphy said.

Consumer representative Birny Birnbaum of the Center for Economic Justice immediately objected to the planned adoption of the report. Birnbaum said the report had only just been released, and it was too soon to adopt it. Birnbaum also rejected the report on substantive grounds, saying it was less a policy statement than a compilation of data.

One regulator agreed at least in part that the report was a compendium of studies rather than a policy paper. Dave Snyder of the Property Casualty Insurers Association of America (PCI) disagreed that it was too soon for the Study Group to adopt the report, saying the issues had been discussed and the information had been made available. The report was then adopted by majority vote, but with a new name as a result of a friendly amendment: *Compendium of Reports on the Pricing of Personal Automobile Insurance.*

The study group also reviewed data on insurance issues surrounding ride sharing and car sharing plans, and discussed the issuance of risk classification surveys and other data requests by states as they seek to continue work reviewing auto insurance availability and affordability.

PBR review group hears VAWG procedure will look like FAWG's

The Principle-Based Reserving (PBR) Review Working Group received the PBR Blanks Reporting (EX) Subgroup Report from Kaj Samsom (VT) and adopted the PBR Blanks Reporting (EX) Subgroup's March 11 minutes. Mike Boerner (TX) then summarized some of the proposed blanks changes, including key changes on: Exhibit 5 – Aggregate Reserve for Life Contracts; Five Year Historical Data; Options 1 and 2 for Interest Sensitive Life Insurance Products Report – Analysis of Increase in Reserves During Year; and PBR Supplement for Life Insurance Reserves Calculated Under VM20. The Reinsurance Association of America (RAA) noted that Part 5 – PBR Interrogatories of the PRB VM20 Supplement outlines reporting to Board of Directors, as well as disclosure of Board responsibilities pursuant to Section 2 of VM-G.

The Working Group received the PBR Review Procedures (EX) Subgroup report from Pete Weber (OH). Weber stated the Subgroup's status has not changed given regulators have been focused on developing changes to the statutory annual statement blank. However, Weber briefly summarized draft revisions to the Examination Repository – Reserves (Life) related to PBR.

The Working Group received a status update on PBR Company Outreach from Andrew Rarus (CT). Rarus stated the group meets every other week, but as the group is not an official NAIC subgroup, it does not keep minutes. Rarus stated the group and the Society of Actuaries are developing a company survey to determine what companies are, or will be, doing to prepare for PBR implementation. The Group hopes to release the survey in May or June.

Mike Boerner (TX) summarized the procedures for the Valuation Analysis (E) Working Group (VAWG). He stated that the VAWG's procedures will substantially resemble the Financial Analysis Working Group's (FAWG) procedures, however, as FAWG's procedures are not public he would need to verify with NAIC Staff regarding what information could be shared. He said VAWG will be conducted in closed session and will help ensure that the PBR valuation process is being implemented across all states in a consistent manner. VAWG will also be responsible for developing industry experience data benchmarks for each Statistical Plan to help determine if any company assumptions or margins are outliers.

Larry Bruning provided a status update on the Experience Reporting Process. He stated currently, New York and Kansas collect data covers approximately 75% of industry experience. Consideration should be given to expand this scope to cover at least 80% of industry experience, and to continue the pilot program until the operative date of Valuation Manual (VM). He recommended a new working group be developed to handle the governance of the experience data collection process.

Additionally, under the New York/Kansas pilot program, only those insurance companies submitting experience data are paying for the expenses, so the life industry would like to better spread the costs. Bruning stated that NAIC would like to warehouse industry experience data tables from the statistical agents, formulate industry experience benchmarks, and collect PBR Actuarial Reports, in order to allow the PBR VAWG to ensure companies are complying with the new PBR reserving requirements.

Lastly, the Working Group discussed the possibility of establishing a project to streamline the actuarial reports, certifications, and related financial reporting, as currently some companies file seven to eight different types of actuarial related reports to various states.

Cyber, privacy risks growing, conference told

Attendees at the Insuring Cyber Liability Risk Spring Event of the Center for Insurance Policy and Research were brought up to speed on the various and evolving threats posed by cyber criminals and terrorists. As the reach and influence of the Internet have evolved in the daily lives of both individuals and companies, so too has the danger posed by those who would misuse it.

Brian Peretti, acting director of the U.S. Department of the Treasury Office of Critical Infrastructure Protection and Compliance Policy told the audience there were various types of attacks now in vogue. These included social engineering, commonly known as spearphishing, regular phishing, social media (click a link on a social media site, for example a friend request, and be infected), password attacks with brute force guessing attempts, browser and website exploitations, Distributed Denial of Service (DDoS), network probes and scans which happen daily, insider threats, regular malware, and mobile devices for which a full set of new malware is being deployed.

The resulting impact included, Peretti said, a challenge to the confidentiality of systems and information, compromised integrity, and possible system failure. For organizations, including insurers, this may have a major reputational impact. The motivation for such attacks can be as varied as the attackers, Peretti said. Drivers could include simple revenge, notoriety, personal power, or ideological for financial gain.

Kenn Kern, Deputy Chief of Cyber Crime with the Office of the New York District Attorney said that 37% of all felony complaints drafted in his office related to cyber crime or identity theft. He said there were more than 1.29 DDoS attacks every two minutes, with dissent and "hacktivism" the top perceived motivations. Kern noted there had been substantial growth in the size of the attacks, with some as large as 309 gigabits per second.

The Senior Vice President and National Technology, Network Risk and Telecommunications Practice Leader for the FINPRO unit of a leading insurance broker and risk adviser told attendees that any company that uses technology in its operations or handles, collects, or stores confidential information does have cyber risk, and traditional insurance may not respond to all cyber liability.

For example, courts have traditionally held that data isn't property, so the direct physical loss requirement of a policy is not satisfied in the event of the data loss. Kidnap and ransom insurance, for example, may not provide coverage unless there is a specific amendment for cyber extortion.

He advised that best practices with regard to cyber and privacy risk should combine elements of assessment, remediation, prevention, education, and risk transfer. Insurance, he said is never a valid alternative to good risk management, but technology also is not a silver bullet that will defend against all risks.

Noting the patchwork of state and federal laws governing privacy and data regulation, a representative of a leading law firm said that the legal environment for action related to cyber and privacy risk may be becoming less comforting for defendants as legal theories evolved. He noted one case, for example, in which the plaintiffs claimed that their premium payments were made partially in exchange for keeping their information secure. Here, plaintiffs asked that the defendant not be permitted to retain those payments because it had failed to protect plaintiffs' information. That claim has been permitted
to proceed.

Professor Lance Hoffman at George Washington University discussed the issues surrounding cyber insurance and setting premiums for that product. He said that more than 17 million personal records had been breached in 2012 with the average financial impact of a cyber attack being $9.4 million. Businesses store massive amounts of data electronically, often outsourcing them to or using third-party software, he said. But many companies still exhibit an unwillingness or inability to invest in adequate IT security.

Hoffman said the arguments for cyber insurance included the fact that would transfer risk, allow insurers to incentivize investments in cyber security, and help spread best practices across the economy.

Courtesy of the NAIC

Arguments against included the concern that the risks are not currently quantifiable and thus not insurable and, echoing the previous speaker, that cyber insurance may be an easy out that did not fix the security flaws in the system. In addition to the difficulty setting premiums, Hoffman said conceptual issues and the legal framework surrounding cyber insurance and privacy concerns were also challenges facing offering insurance for cyber attacks.

Noting new risk-based methods adopted by the Department of Defense, Hoffman suggested that group workshops, including the insurance industry, government, and academia, would be one way to figure out the best approach for a data-driven way to define prices for cyber insurance premiums. Both actuarial and predictive approaches are currently difficult, he said, and the workshop would be a tested, low-cost solution that may allow the development of new ideas.

As the Internet of things now expands, he suggested such a consortium could begin to set standards instead of having unreasonable or unworkable standards built-in. In the absence of industry leadership or involvement, tech firms could build their own devices with little or no privacy, security, or audit logging built in. He suggested such a consortium could move toward the establishment of a research agenda that would examine policy management and technology questions, including the potential of a global cyber loss database with proper privacy controls in a business model that would make such a database viable and sustainable.

In brief

New cat data collection template adopted

The Catastrophe Insurance (C) Working Group adopted a modified data collection template that was based on the data call used for SuperStorm Sandy. The modified template now includes reporting lines for nonresidential commercial property, private flood insurance, and workers compensation. The goal of the template is to be used as an addendum to provide timely, relevant data in the event of similar catastrophes.

Reinsurance receivership group reviews interest payment guidelines

The Receivership Reinsurance Recoverables (E) Working Group reviewed comments received on its proposed Model Guideline for Payment of Interest to Receiver on Overdue Reinsurance Recoverables. The guideline is designed to be a tool for receivers to address the issue of overdue reinsurance in receivership estates. Many comments raised the question on whether further detail was needed to further define the operation of the interest penalty provision – particularly as to the definition of a "valid claim." Interested parties agreed that the current draft had the value of simplicity as well as consistency by tying the definition of valid claim to a state's existing receivership law. The Chair asked the Reinsurance Association of America (RAA) to draft additional language for the guideline's drafting note to more clearly explain the intent of the guideline. Once drafted, the note will be exposed for comments and the Working Group hopes to adopt the guideline at the Summer National Meeting in August and then present it to the Receivership and Insolvency Task Force.

The Working Group also discussed the reporting of overdue reinsurance recoverable in receivership in the Global Receivership Information Database (GRID). The Working Group is reviewing the merits of adding a materiality benchmark to the reporting. A recommendation will be presented at the Summer National Meeting in August.

Mortgage guaranty model act, federal efforts get scrutiny

The Mortgage Guaranty Insurance (E) Working Group discussed comments received on the exposure of revisions to the Mortgage Guaranty Insurance Model Act. Based on the comments received, NAIC staff will undertake a line-by-line review of the regulator draft and circulate a revised version for discussion. Controversial items included whether and how to modify the contingency reserve given the proposed Risk-Based Capital (RBC). Steve Johnson (PA) felt strongly about the need for additional reserves, but was willing to let interested parties attempt to prove the proposed RBC could have resolved issues during the financial crisis by applying it retrospectively to prior year financial statements. The regulator draft and draft submitted by the mortgage guaranty insurance industry contain two alternative approaches addressing reinsurance issues. In addition, the Working Group received a report on the status of efforts to introduce mortgage-related reform at the federal level.

Accreditation committee looks at life captives

The Financial Regulation Standards and Accreditation (F) Committee met to discuss revisions to several models and examination requirements. The definition of "Multi-State Insurer" for accreditation purposes was the most controversial agenda item. The discussion of the definition has direct ramification for the life insurance industry, as it includes those reinsurers reinsuring business in accordance with Regulation XXX and AG 38. Additionally, although it appears clear that pure captives are not included, it is unclear whether other types of captives are excluded (e.g. rent-a-captives; association captives; industrial captives; etc.). The Committee exposed the definition for a 45-day comment period.

Actuarial Update

Life Actuarial Task Force (LATF)

Amendments to the Principle-Based Reserving (PBR) Valuation Manual (VM) continue, while progress on adoption of the new Standard Valuation Law (SVL) are progressing, however, as indicated previously in this update, a maximum 30 states with 60% of the premium inforce can potentially adopt the new SVL based on the current 2014 and 2015 legislative agendas, which would be short of the 42 states and 75% of premium inforce needed for a 1/1/2016 effective date for the Valuation Manual. Other activities include further work on new Life tables, principles based annuity reserving standards, and expansion of mandatory experience reporting to new products and categories. Following are highlights from Life Actuarial Task Force (LATF) from the Fall 2013 NAIC Meeting:

New Mortality Tables

The American Academy of Actuaries (AAA) gave another update of the mortality work being performed by the Society of Actuaries (SOA) and AAA toward developing the 2014 VBT/CSO mortality tables and tables for PreNeed and Simplified Issue products.

Regarding the 2014 VBT (industry experience) tables, final adjustments are being implemented (primarily to older age mortality) with the expectation that a draft of the smoker/non-smoker tables will be available by the end of April 2014. Work on the 2014 CSO table continues – the AAA is requesting direction from LATF regarding margins that should be applied to VBT Tables to develop the CSO Tables, and for guidance on PBR margins to be used for VM-20. LATF will discuss the topics of margins on future conference calls. Preliminary analysis indicates has been significant mortality improvement over the 2008 VBT, with much of the improvement showing at older ages and higher face amounts.

Life PBR (VM-20)

Work continues on refinements to the Life portion of the Valuation Manual from LATF members, the AAA and industry interested parties (such as the The American Council of Life Insurers [ACLI]).

Proposed amendments to VM-20 included the following:

- The ACLI proposed changes to exempt small companies from PBR. LATF voted to expose the changes for comments for 45 days. Following that, comments will be discussed on LATF conference calls.
- An amendment to exclude industrial insurance from PBR was adopted.
- An amendment was adopted to provide for an alternative, but mathematically equivalent method for calculation of the deterministic reserve (the Direct Iteration Method).
- A proposal to simplify the approach to calculate the interest maintenance reserve was discussed, and will be considered for adoption on a future LATF conference call.
- A proposal to implement a PBR Smoothing Mechanism was discussed. This would address potential volatility in reserves from short term changes in economic assumptions. Initial discussion is to smooth such changes over the liability duration.
- The ACLI gave an update on work regarding Commercial Mortgage default costs for VM-20. The ACLI anticipates this work will be completed by Spring 2015.

General Account Annuity PBR (VM-22) Subgroup

The VM-22 Subgroup provided an update on the field test by the Kansas department. The field test is a project testing proposed general account annuity PBR reserving methods for sample products with two Kansas domiciled companies. The two companies provided data on four actual products plus a "hypothetical" product. The field test compares various reserving approaches, including the current Commissioners' Annuity Reserve Valuation Method (CARVM) approaches under AG-33, as well as PBR approaches proposed in VM-22. The Kansas Department

Courtesy of the NAIC

Chief Actuary, Mark Birdsall, discussed preliminary results and noted patterns in PBR reserves by product and relative to CARVM reserves. Next steps are to continue analysis and sensitivity testing, and to roll-forward test results to subsequent valuation dates for the sample in force policy. Updates will be discussed at the Summer 2014 meeting.

PBR Experience Reporting (VM-50/51):
The experience reporting (VM50/51) subgroup gave an update on mandated experience reporting in New York and Kansas. Beginning this, year experience will be collected for lapses on universal life with secondary guarantees (ULSG) and term lapses. In addition, expense data will be collected for the first time. Tom Rhodes of MIB (the statistical agent for New York and Kansas) gave an update on the expense reporting format. The ACLI expressed concern with the proposed process for collection of expense data at the policy level. The PBR Experience Reporting subgroup will continue discussions of expense data collection on interim conference calls prior to the Summer 2014 meeting.

The actuarial update was prepared by Russell Menze. For your comments and suggestions please contact the author – rmenze@deloitte.com.

Health Care Update

Health Insurance And Managed Care (B) Committee

A meeting of the Health Insurance and Managed Care Committee (Committee) was held on March 30, 2014. Highlights of the meeting are outlined below:

- A representative from the National Association of Health Underwriters (NAHU) spoke about the role of agents/brokers and the need to identify trends and resolve issues. They are currently being told by Health and Human Services (HHS) staff to work through the carrier offering the specific plan but that may not be feasible if the consumer has not yet selected a plan. Several issues relating to problems of consumers that agents/brokers are trying to resolve have been outstanding since last fall. Consideration should be given to establishing a new process for resolving issues in a timely manner. There is also an issue with adding relevant agent/broker data to transmissions. Data on the agent/broker who is assisting a particular consumer may not be captured or may be incomplete. Web technology for agent/broker portals also needs to be updated and expanded to include smaller agent/broker firms.
- Another representative indicated that agents/brokers are ready to assist consumers but there continues to be challenges with the enrollment process. Unless the consumer qualifies for a subsidy, consumers do not appear interested in enrolling in the Marketplace. It is also unclear why this continues to be a challenging area as part of the overall enrollment process. It would be helpful if Consumer Information and Insurance Oversight (CCIIO) could provide insight as to how the enrollment process can include agents/brokers.
- Consumer representatives provided a presentation on "Lessons Learned from North Carolina, California and Ohio" relating to Marketplace activities reviewed for those states. These include the following recommendations:
  - Standardize formats, naming conventions and coding across health plans
  - Streamline application process as some applications contain more than 20 pages
  - Strengthen training for agents/brokers and Navigators on public programs
  - Collaborate with consumer advocacy group, health plans and providers to identify problems early
  - Establish a "problem resolution" hotline on websites for DOIs to respond to questions from consumers
  - Track consumer complaints by issue and plan to identify trends
  - Address issues relating to "special enrollment period" beginning April 1, 2014
  - Prepare for questions from enrollees moving from enrollment to access to care
  - Perform an assessment of "lessons learned" to prepare for 2015 open enrollment
- Update on the Center for Health Insurance Reforms' work related to the Affordable Care Act (ACA)—*Sara Dash and Sally McCarty (Center for Health Insurance Reforms, Georgetown Health Policy Institute)*

Dash and McCarty provided an overview of their current work streams. They are monitoring the health insurance Marketplaces and how the ACA is being implemented within the Marketplaces. The resources of the Center are available to the public.

Some highlights of the presentation:

- Two papers were recently published, one reviewing benefit designs for plans on the Marketplace and the other being status of states' actions to establish Small Business Health Options Program (SHOP) Marketplaces.
- Some issues for 2014-2015 to be reviewed include Marketplace model transitions, consumer experience with health reform and quality/delivery system reform.
- A tool is being developed to guide network adequacy program planning which will include ten different categories for consideration with available regulatory options. The tool will be updated as issues change or are updated at the state level.
- A checklist and certification process for is being developed for Mental Health Parity and Addiction Equity Act for use by issuers.
- An Essential Health Benefits (EHB) "crosswalk" is being developed to identify and verify that EHB requirements are met by issuers which can be utilized by form reviewers.
- All of the tools can be used by regulators and adapted to state specific requirements as necessary.
- Further information is available at www.state.network.org.

Update on ACA Enrollment in Health Insurance Marketplaces

A representative from America's Health Insurance Plans provided an update of enrollment in the Marketplaces. A six month open enrollment period in 2014 resulted in 83% of consumers having to determine eligibility for subsidies. Issuers need to have the transmission of correct data so the premium billing can be effected which will continue to be a challenge after the open enrollment period ends on March 31, 2014 in light of the additional extension. To the extent that any of this process becomes manual, the chance of errors will increase. Assistance to enrollees from brokers and issuers was not fully implemented for an adequate amount of time.

A representative from a leading health insurer provided an update on Affordable Care Act (ACA) implementation. The three points of concerns include:

- Some individuals were involved in the enrollment process who had little or no experience in insurance or state regulation; collaboration was requested from issuers but it was late in the process and tended to involve only addressing problems.
- A comprehensive roadmap needs to be developed to plan for the future and prioritize issues.
- State regulators need to continue to encourage HHS to continue to maintain their primary role to regulate their markets, specifically in the area of small group size and SHOP Marketplaces.

The Committee did vote to forward a letter developed by Wisconsin to CCIIO to be sent to the NAIC Government Relations Leadership Council for approval, which emphasizes the need of maintaining state level oversight and regulation of network adequacy and the need for state flexibility.

Update from the Center for Consumer Information and Insurance Oversight (CCIIO) on ACA Activities—(Mandy Cohen, Interim Director, CCIIO)

Cohen provided an update on CCIIO activities as it relates to implementing the ACA. She will be assuming her new role at CCIIO on a permanent basis on March 31, 2014. Enrollment in the Marketplace has hit $6 million and record volume is continuing with 1 million calls to the call center on March 29, 2014. The enrollment trend in February showed 25% of enrollment being young adults and 64% of all enrollees selecting a silver plan.

Regulations related to Market Standards and Final Payment Notice will be issued shortly. The certification of Qualified Health Plans (QHP) process will commence soon and improvements in timelines will be addressed. Certification timelines will be from May 27 – June 27 and new procedures will be implemented.

For the 2015 open enrollment, it will commence in November 2014 and end in February 2015.

CCIIO will continue to work collaboratively with the NAIC on fraud related issues. The Committee expressed the need for issues relating to consumer protection to be referred to state Departments of Insurance.

Cohen, in response to a question from the Committee relating to whether states can prevent Navigators from providing advice to consumers, responded by indicating that their training specifies they cannot steer consumers to certain plans.

Another issue raised was the problems relating to implementation of the ACA by territories and the Committee is hopeful that CCIIO will address the problem. Cohen indicated they have been working on the issues and are "sympathetic" to the problems the territories are experiencing with implementation of the ACA.

Discuss Coverage of Smoking Cessation Programs

There was a study of smoking cessation programs completed in November 2012. The study showed that counseling and medication were most effective when used together. It also needs to be at a zero cost sharing. Two main recommendations coming out of the study were that CMS needs to clarify whether the benefits in the ACA cover both counseling and U.S. Food and Drug Administration (FDA) approved medications. Also, information relating to the provision of these two services should be included in information provided to consumers.

The following agenda items were deferred and will be addressed in a future conference call of the Committee:

- Consider Appointment of Model Law Review (B) Working Group.
- Discuss Unified Rate Review Template.

Senior issues (B) task force

NOTE: At the B Committee meeting, the B Committee adopted the report of the Task Force from this March 29, 2014 meeting but it did not include adoption of the rate stability standards. The Committee will hold a conference call in the future to further discuss this issue.

The Senior Issues Task Force (Task Force) met on March 29, 2014 to primarily adopt revisions to the rate sustainability standards contained in the Long-Term Care Insurance Model Regulation (Model #641). The Task Force had received initial recommendations in the fall of 2013 from the Long-Term Care Pricing Subgroup of the Health Actuarial Task Force relating to improving rate stability standards.

These initial recommendations were exposed by the Health Actuarial Task Force in January 2014 and adopted to be forwarded to the Task Force for adoption at this meeting. The one issue included in the initial recommendations that did not receive the full support of industry, consumer representatives and regulators was the proposal to change the loss ratio requirement at the time of rate increase from 85% to 92%.

There was significant discussion about this particular issue, including a motion at the meeting to change the proposed loss ratio requirement from 92% to 85% which failed to pass. However, the motion to adopt the loss ratio requirement of 92% was adopted by the Task Force.

Regulatory framework task force

The Regulatory Framework Task Force (Task Force) met on March 29, 2014 to discuss the following issues:

1. Changes made to the updated drafts of the Individual Market Health Insurance Coverage Model Regulation (Individual Regulation) and the Small Group Market Health Insurance Coverage Model Regulation (Small Group Regulation) were discussed. Comment period on the exposure drafts ends on May 14, 2014. Changes to these regulations are due to the following:
   - The reasons for revisions in the Individual Regulation are to update for the changes in requirements as a result of the ACA. Primary areas of the Individual Regulation warranting revisions in light of the ACA include:
     - Premium rate restrictions such as tobacco use and age bands
     - Guaranteed renewability of individual coverage through associations
     - Prohibitions on discrimination
     - Provision of summary of benefits and coverage
     - Certification and disclosure of prior creditable coverage
   - The reasons for revisions in the Small Group Regulation are also to update for the changes in requirement as a result of the ACA. Primary areas of the Small Group Regulation warranting revisions in light of the ACA include:
     - Premium rate restrictions such as tobacco use and age bands
     - Guaranteed availability and renewability of small group coverage
     - Prohibitions on discrimination
     - Prohibitions on waiting periods exceeding 90 days
     - Provision of summary of benefits and coverage
     - Parity in mental health and substance use disorder benefits
     - Certification and disclosure of prior creditable coverage
2. The Task Force identified the *Accident and Sickness Insurance Minimum Standards Model Act* (#170), the *Model Regulation to Implement the Accident and Sickness Insurance Minimum Standards Model Act* (#171) and the *Group Health Insurance Standards Model Act* (#100) as the next regulations prioritized for revisions. There was some discussion about the network Adequacy Model but it was pulled from the list of priorities due to the perceived length of time necessary to make revisions. Revisions relating to the Model Act and Regulation on Minimum Standards are delayed until U.S. Department of Health and Human Services (HHS) has issued their regulations expected in May 2014.

3. The Task Force adopted the Employee Retirement Income Security Act (ERISA) Working Group report indicating that they are planning to develop a white paper which will outline and discuss the issues relating to the impact of small group self- insurance on the small group market.

Health Care Reform Regulatory Alternatives (B) Working Group

A meeting of the Health Care Reform Regulatory Alternatives Working Group (Working Group) was held at the National NAIC meeting on March 30, 2014.

A summary of highlights of the discussion is outlined below:

A discussion of the ACA open enrollment process and the related problems experienced by their state's consumers was held by Working Group members. Ted Nickel, Commissioner from Wisconsin, indicated that there were significant issues with the rollout of the ACA, including but not limited to the website, but his primary concern was CCIIO's approach to how they are addressing issues of consumers relating to consumer protections. The issue of consumer protection should be paramount in the process but it may have not been fully addressed in light of the enormity of the technology issues.

Also, there was some discussion that since plan designs need to be similar for both on and off the Marketplace, it is difficult to now develop innovative products for consumers.

Moving forward, the Working Group will begin developing guidance for states seeking waivers.

Presentation on the State Innovations Waiver Program

Tarren Bragdon, *Foundation for Government Accountability* provided some insight into the state innovations waiver program.

The ACA framework had originally intended to have state driven programs within the commercial and Medicaid markets but it has changed into a more federal-driven framework in light of the "opt out" of states in several areas of the ACA.

Smaller businesses are moving to self-insurance and it is expected to increase over time. Consumers will continue to retain the "noncompliant plans" such as limited benefit products.

From a state waivers perspective, a state should focus on offering more unsubsidized alternatives for consumers rather than focusing on the products with subsidies. However, there is minimal guidance from CCIIO as to waiver options available to states. Therefore, this may need to be a long term goal in 2017 and beyond.

Michael Miller, M.D., *National Governor Association's Center* for Best Practices provided comments on identifying ways to assist states with users of significant health services dealing with chronic health issues. The highlights of a discussion for developing state health leadership retreats included the following components:

- Multi stakeholder engagement of state, providers, employers and issuers through sharing of information for health insurance including Medicaid.
- Create a common vision for stakeholders.
- Address quality and costs.
- Sharing best practices for wellness/fitness programs.
- Need to bend the cost curve.
- Alignment incentives across payers.
- Increased focus on "team based" care.
- Review national data and experiences.
- Importance of data and related analytics.
- Follow up on discussion at periodic points in the future.

Territories Subgroup

A meeting of the Territories Subgroup was held at the National NAIC meeting on March 30, 2014.

Representatives of this subgroup, with the exception of Puerto Rico, are requesting that the NAIC continue to provide assistance in trying to exempt the territories from the "minimum essential coverage" mandates of the ACA in light of problems associated with implementing the ACA in their respective territories.

A brief overview of the current status of the healthcare market in the territories is noted below. There has been no substantial change in the problems the territories are facing since the last national NAIC meeting.

Virgin Islands

The individual market is suffering and the uninsured comprise 30% of population. One carrier is in discussions to offer business and they are contemplating a single payer system as well.

Guam

Insurers are looking at increasing fees to cover costs. Guam is not receiving the subsidies to assist in standing up the health care market. They are trying to work with Internal Revenue Service (IRS) and HHS to determine if the health insurer fee should be applicable to Guam. IRS has the authority to collect the fees from territories even though there is no benefit.

Puerto Rico

The uninsured population is 7.7% as they have a very robust insurance market despite not having a mandate or subsidies. The health insurer fee will cost them approximately $128 million but won't receive any benefit which is a concern for Puerto Rico. They would like to have that money sent back to Puerto Rico to use to help cover the remaining uninsured population and are exploring their options for doing. They have no Marketplace and the fee will be used to supplement U.S. health care.

Northern Mariana Islands

In 2013, they requested an extension and HHS responded by indicating that the law is applicable to territories. HHS also indicated that if the territory indicates they are unable to enforce the ACA, HHS will assist them in doing so. They are still trying to pursue an extension of enforcing the ACA.

The territory is meeting with insurance companies to try to determine how their insurance market can move forward. They are also connected to SERFF so they can receive filings from issuers. Since there are no safety nets available to the territory, they are having difficulty implementing the ACA. They also have an active consumer outreach function.

NAIC/Consumer Liaison Subcommittee (Subcommittee)

The mission of this subcommittee, as described on the NAIC website, is as follows:

Mission

The mission of the NAIC/Consumer Liaison Committee is to assist the NAIC in its mission to support state insurance regulation by providing consumer views on insurance regulatory issues. The Consumer Liaison Committee provides a forum for ongoing dialogue between NAIC Members and Consumer Representatives. The Consumer Liaison Committee's activities in 2014 will be closely aligned with the NAIC Consumer Board of Trustees' priorities.

This Subcommittee met at the national NAIC meeting to provide a forum for various presentations on insurance regulatory issues.

- **Presentation on Limited Benefit Plans – Timothy Stoltzfus Jost (Virginia Organizing)**

  Jost provided a presentation entitled, State Regulation and ACA Noncompliant Health Plans. The ACA does not provide guidance on health products that fall into the category of either short-term limited duration policies or policies with either fixed dollar indemnity or specific disease benefits. These types of products do not fall within the definition of "minimum essential coverage" as defined in the ACA but are regulated by the state Departments of Insurance. As a result of this, consumers who purchase these policies should be advised that they will still bear the responsibility of paying the tax associated with not having insurance coverage through disclosures within the contract since these coverages do not meet the definition of "minimum essential coverage" under the ACA.

  There are also similar issues associated with products such as health care sharing ministries and self-funded student health plans even though they are generally not regulated by state Departments of Insurance.

- **Presentation on Consumer Perspectives on Health Care Costs and Rate Review – Kathleen Gmeiner (UHCAN) and Lynn Quincy (Consumers Union)**

  Gmeiner and Quincy provided a presentation on issues relating to high health care costs. Health care costs are rising but there is a component of those costs which are due to waste and providing unnecessary services. The NAIC should study these issues more either through rate review process as well as allow consumer input for transparency. New criteria for rate review should create more transparency around how quality is addressed and how costs are addressed.

  Another recommendation discussed during the presentation was to address using the payer claims dataset to evaluate premiums over time and identify unwarranted increases. This would also provide consumers with more information as well.

  Another recommendation was to make the market work better for consumers in the area of network adequacy. There is no information currently available to consumers as to whether the network for a health plan is narrow or broad. A provider list would provide more insight into this area.

- Presentation about Consumer Perspectives on Network Adequacy—Elizabeth Abbott (Health Access California) and Stephanie Mohl (American Heart Association)

  Abbott and Mohl provided a presentation on network adequacy. They support updating the NAIC Model Law in this area since it hasn't been updated since 1996. The focus of their presentation was on provider directories which helps the consumer make a choice with respect to their health plan.

  The provider directory on the California Exchange has been recently taken down from the website due to complaints. A survey was conducted in February 2014 and the survey found that more than 300 providers listed on directory actually practiced outside of the state. Also, a significant number of providers were either retired or deceased. Some physicians used different names in the directories which also created confusion for the consumer.

  The state of Washington provides a searchable provider directory and there may be challenges in keeping it up to date. It does at least provide a resource for consumers to ensure their doctors are part of a health plan's network.

  Some other states provided a link to the issuer's website which may be somewhat helpful but it may not provide good alignment to the plan the consumer is selecting.

  State departments of insurance should take steps to improve the information available to consumers on provider networks such as prescribing common systems coding, using identifiers and mandating timeliness of updates to provider directories.

- **Presentation on the Intersection of Medicare and Individual Insurance – Bonnie Burns (California Health Advocates) and Andrea Callow (The Center for Medicare Advocacy)**

  Burns and Callow made a presentation on the issues relating to transitioning to Medicare from individual insurance. Approximately 10,000 "Baby Boomers" a day are moving into the Medicare market. This results in the need for consumers to understand the issues relating to this transition as a result of the ACA.

  One of the questions which needs to be addressed is which qualifies as primary coverage in the individual market in light of changes brought about by the ACA. State regulators need to provide guidance in this area and need to ensure that consumers obtain the information they need. Issuers should provide notices to those consumers who will be eligible soon for Medicare coverage on the penalties for not enrolling on time as well as information on subsidies and other related issues.

- **Presentation on Nondiscrimination Requirements in the ACA – Debra Judy (Colorado Consumer Health Initiative)**

  Judy made a presentation on nondiscrimination as it relates to transgender individuals. Approximately one in five trans genders said they had been refused medical care or stated they postponed care. The ACA prohibits gender discrimination and some states have issued guidance in

this area. CO, CA, VT, OR, MD, CT and DC have issued bulletins on this issue. States should review their anti-discrimination laws to ensure they are consistent with the nondiscrimination standards in the ACA.

- **Presentation on Locating Missing Life Insurance for Policyholders – Brendan Bridgeland (Center for Insurance Research)**

  Bridgeland made a presentation on how to find an insurer going back to 1920 in light of mergers and name changes of insurers to assist consumers in locating the insurer responsible for providing the life insurance benefits. There is a free service available to consumers which will be launching soon. The NAIC should consider including this link on their website.

- **Presentation on Uniformity in Market Conduct Regulation – Birny Birnbaum (CEJ)**

  Birnbaum made a presentation on issuers that try to limit the number of people who try to compare policies. Issuers can raise rates based on how likely consumers are to compare rates and it is called "price optimization" in the industry. Approximately 45% of companies with more than a billion in premium use this strategy and it is designed to not be considered a rating factor. When the issuer calls it a "Tier placement factor" and it involves management discretion, the issuer concludes it does not need to be filed with state regulators.

  In California, the Commissioner has to approve any rating factors so there is no opportunity to use this approach in that state.

  Regulators should consider the extent to which this approach is used by insurers in their states and stop this strategy. Issuers should have to file all information relating to rate increases without regard to the description of the issue causing the rate increase.

- **Presentation on Flood Insurance: Independent Testing of Catastrophic Models – Amy Bach (United Policyholders) and Annalise Mannix (Fair Insurance Rates in Monroe)**

  Bach and Mannix made a presentation on the need for stability and consistency in homeowners' coverage and pricing while maintaining a competitive marketplace. In some states, due to certain risks, there are concerns around the role of a catastrophe model to develop right-sizing rates for wind and flood coverage.

  Catastrophe models are heavily influencing pricing for these risks. Data used in these models need to look long term rather than using localized rates. One of the goals should be to try to encourage more issuers to participate in the market.

  Therefore, there is a need to assess why rates within a similar rating area vary significantly. There are also issues relating to the impact of flood damage on modeling the rates for wind coverage which need to be evaluated.

  Regulators should develop more procedures to evaluate rate modeling to ensure there is an understanding of the inputs used for rating.

NAIC Accounting Update

This section of the NAIC Update focuses on accounting and reporting changes discussed, adopted and exposed during the 2014 Spring Meeting

Statutory Accounting Principles Working Group

Current Developments: The SAPWG adopted the following amendments as final during the 2014 Spring Meeting:

Reference	Title	Sector	Amendments adopted as final	Financial statement impact	Disclosure	Effective date
2013-28	**SSAP No. 35R – Guaranty Fund and Other Assessments**	P&C Life Health	**Nonsubstantive Change** – Risk Sharing Provisions of the Affordable Care Act (ACA) – Adopted new quarterly and annual disclosures for each of the three ACA risk-sharing provisions (ACA Permanent Risk Adjustment, ACA Transitional Reinsurance Program and ACA Temporary Risk Corridors Program) beginning with Q1 2014. The NAIC also provided a sample table of the new disclosure, which include assets, liabilities and revenues from the ACA programs, including premium adjustments, claims unpaid and payable, reinsurance recoverable, accrued retrospective premium, reserves for rate credits or policy experience rating refund and other ACA related balances).	N	Y	2014
2013-29	**SSAP Nos. 3 and 68 – Acct. for Changes, Errors and Business Combinations**	P&C Life Health	**Nonsubstantive Change** – Adopted revisions to clarify that the disclosure exemption for "shell" entities does not change that January 1 of the prior year is used to determine a cumulative effect in accounting principle.	N	N	2014
2013-31	**SSAP No. 97 – Investments in Sub, Controlling and Affiliated Entities**	P&C Life Health	**Nonsubstantive Change** – Adopted revisions to the flowchart in Appendix B, *Determining the Valuation Method Under SSAP No. 97*, which reference the downstream holding company guidance (the sum of all SCAs are calculated as the investment in the downstream holding company).	N	N	2014
2013-32	**SSAP No. 86 – Accounting for Derivative Instruments, Hedging, etc.**	P&C Life Health	**Nonsubstantive Change** – Adopted revisions to adopt ASU 2013-10, *Derivatives and Hedging – Inclusion of the Fed Funds Effective Swap Rate as a Benchmark Interest Rate for Hedge Accounting Purposes*. The amendment incorporates the GAAP definition of a benchmark interest rate and deleted the prior guidance requiring the same benchmark interest rate for similar hedges.	Y	N	2014
2013-34 2013-35	**Rejected GAAP Pronouncements**	P&C Life Health	Rejected the following GAAP Pronouncements as not applicable: • *ASU 2012-04: Technical Corrections and Improvements,* and • *AICPA SOP 09-1: Performing Agreed-Upon Procedures Engagements That Address the Completeness, Accuracy of XBRL-Tagged Data*.	N/A	N/A	2014
2013-37	**SSAP No. 92/102 – Acct. for Postretirement and Pensions**	P&C Life Health	**Nonsubstantive Change** – Adopted ASU 2011-09: *Compensation–Retirement Benefits–Multiemployer Plans: Disclosures about an Employer's Participation in a Multiemployer* Plan and incorporated limited disclosures about an employer's participation in a multiemployer pension plan.	N	Y	2014

The SAPWG exposed the following items for written comments (due by May 8, 2014) by interested parties – one proposal is substantive (see Ref # 2014-01 below) and all other proposals are categorized as *nonsubstantive*:

Reference	Title	Sector	Amendments Exposed	Financial statement impact	Disclosure	Effective date
2013-28	**SSAP No. 35R – Guaranty Fund and Other Assessments**	P&C Life Health	**Nonsubstantive Change –** Risk Sharing Provisions of the Affordable Care Act (ACA) – Exposed additional roll-forward disclosures of the risk sharing provisions of the ACA programs (risk adjustment, reinsurance and risk corridors) as described above in Ref# 2013-28. NAIC staff was also directed to submit a proposal to the Blanks Working Group to allow for 2014 annual data capture. .	N	Y	2014
2014-01	**New SSAP – No. 10X and Issue Paper No. 108**	P&C Life Health	**Substantive Change** – *ACA Fee*: Exposed revisions to move the ACA Section 9010 fee guidance from SSAP No. 35R into a new SSAP.	Y	Y	2014
2014-02	**SSAP No. 26 – Bonds and SSAP No. 43R — Loan-Backed and Structured Securities**	P&C Life Health	**Nonsubstantive Change** – Exposed revisions incorporate a new structured note disclosure in SSAP No. 26 and revisions to SSAP No. 43R to clarify that guidance pertains to "structured securities" and not "structured notes" (i.e., issuer obligations without a trust as the guidance is focused on securities which are acquired together to achieve a single result). An annual statement blanks proposal will allow for 2014 data-capturing of the disclosure information.	N	Y	2014
2014-03 2014-09	**Rejected GAAP Pronouncements**	P&C Life Health	**Rejected** the following GAAP Pronouncements as not applicable: • ASU 2013-12: Definition of a Public Business Entity, An Addition to the Master Glossary, and • ASU 2014-03: Derivatives and Hedging – Accounting for Receive-Variable, Pay-Fixed Interest Rate Swaps – Simplified Hedge Accounting Approach	N/A	N/A	N/A
2014-04	**SSAP No. 16R – EDP Equipment and Accounting for Software**	P&C Life Health	**Nonsubstantive Change** – Exposed revisions to propose to make the capitalization policy disclosure consistent with other SSAPs.	N	Y	2014
2014-05	**SSAP No. 19 – Furniture, Fixtures and Equipment and SSAP No. 22 – Leases**	P&C Life Health	**Nonsubstantive Change** – Exposed revisions to adopt with modification *ASU 2014-05, Service Concession Arrangements* to clarify that service concession arrangements are not within the scope of SSAP No. 22 and shall not be recognized as property, plant or equipment in SSAP No. 19. Comments are requested on the prevalence of these arrangements.	N	Y	2014
2014-06	**SSAP No. 57 – Title Insurance**	P&C	**Nonsubstantive Change** – Exposed revisions to change premium disclosure categories with five activity codes and expand the definitions of "type of rate" to coincide with previous changes to the title blank.	N	Y	2014
2014-07	**SSAP No. 11 – Postemployment Benefits and Compensated Absences**	P&C Life Health	**Nonsubstantive Change** – Exposed revisions relate to the adoption of paragraphs 6A and 7 of *Accounting Principles Board Opinion (APB) 12, Omnibus Opinion – 1967* and to add guidance to reflect previously adopted GAAP guidance. Comments are requested on existing disclosures.	N	Y	2014

Reference	Title	Sector	Amendments Exposed	Financial statement impact	Disclosure	Effective date
2014-08	**Various Issue Papers**	P&C Life Health	**Nonsubstantive Change –** Exposed revisions to add reference to the original SSAP that corresponds with the issue paper, as well as the current authoritative SSAP guidance for the related topic. .	N	N	2014

The SAPWG discussed, or received an update, on the following outstanding agenda items:

Reference	Title	Amendments Exposed
2013-17	**SSAP No. 40 – Real Estate Investments**	**Single-Member and Single-Asset Limited Liability Corporations (LLCs) –** Underlying Asset is Real Estate: Received notice that the Capital Adequacy Task Force is discussing this issue and anticipates sending comments to the Working Group.
2013-36	**Various SSAPs related to investments**	**Investment Classification Review:** Received comments from interested parties and directed NAIC staff to begin developing an issue paper for this project. Directed NAIC staff to send referrals to the Valuation of Securities Task Force, the Capital Adequacy Task Force and the Blanks Working Group to request collaboration.
N/A	**ACA Risk-Sharing Provisions**	**ACA Risk-Sharing Provisions:** Received a referral from the Emerging Accounting Issues Working Group to consider accounting guidance for the ACA risk-sharing provisions, including potential nonadmittance, in an issue paper and SSAP as soon as possible. An interim SAPWG conference call to discuss the risk-sharing provisions of the ACA is currently scheduled for May 7, 2014 and materials will be distributed prior to the call.

Emerging Accounting Issues Working Group

During the meeting, the Emerging Accounting Issues Working Group

- Adopted *INT 13-04, Risk-Sharing Provisions of the Affordable Care Act* to prescribe the statutory accounting treatment for the risk adjustment, reinsurance and risk corridor sections of the ACA with minor modifications previously discussed. In addition, the Working Group submitted a referral to the Statutory Accounting Principles Working Group of the additional proposed changes pertaining to nonadmission and other changes. This referral requests consideration of an IP and SSAP to address accounting guidance for the ACA risk-sharing provisions as a priority item.

This summary was prepared by Bjorn Borgen, Lynn Friedrichs, and Ed Wilkins. For your comments and suggestions please contact the authors – bborgen@deloitte.com, lfriedrichs@deloitte.com or ewilkins@deloitte.com.

Contacts

For more information, please contact

Gary Shaw
Vice Chairman
U.S. Insurance Leader
Deloitte LLP
+1 973 602 6659
gashaw@deloitte.com

Steve Foster
Director
Deloitte & Touche LLP
+1 804 697 1811
sfoster@deloitte.com

Ed Wilkins
Partner
U.S. Insurance Audit Leader
Deloitte & Touche LLP
+1 402 444 1810
ewilkins@deloitte.com

Howard Mills
Director & Chief Advisor
Insurance Industry Group
Deloitte LLP
+1 212 436 6752
howmills@deloitte.com

Rick Sojkowski
Partner
Risk Manager & Quality Control
Deloitte & Touche LLP
+1 860 725 3094
rsojkowski@deloitte.com

Contributors

Bjorn Borgen
Partner
Deloitte & Touche LLP
+1 312 486 5052
bborgen@deloitte.com

Russell B. Menze
Specialist Leader
Deloitte Consulting LLP
+1 860 725 3303
rmenze@deloitte.com

David Sherwood
Senior Manager
Deloitte & Touche LLP
+1 203 423 4390
dsherwood@deloitte.com

Lynn Friedrichs
Partner
Deloitte & Touche LLP
+1 813 273 8342
lfriedrichs@deloitte.com

David Vacca
Senior Advisor
Deloitte & Touche LLP
+1 913 486 2295
dvacca@deloitte.com

Senior editor

Andrew N. Mais
Senior Manager
Deloitte Services LP
+1 203 761 3649
amais@deloitte.com