



January 15, 2020

NAIC 2019 Fall National Meeting Report

The National Association of Insurance Commissioners (NAIC) held its 2019 Fall National Meeting in Austin, Texas from December 6-10, 2019. The following matters of interest to NAIFA and its members were discussed and/or acted upon:

Annuity Suitability/Standard of Care

After nearly two years of continuous work, the NAIC is nearing completion of its efforts to develop revisions to the NAIC's Suitability in Annuity Transactions Model Regulation that will incorporate, among other amendments, a requirement that the producers and insurers must act in the best interest of the consumer and not place the producer's/insurer's financial interests ahead of the consumer's interests when recommending an annuity product. Revisions to the Model were approved by the Suitability Working Group and forwarded on to the NAIC's Life Insurance and Annuities (A) Committee, for its consideration, during the Fall Meeting. After the completion of the meeting, the "A" Committee held a two-hour conference call meeting in late December during which it discussed and eventually approved the proposed revisions to the Model regulation. The amendments will now be considered and voted on for final approval by the full NAIC membership in early 2020.

NAIFA was an active participant in the Working Group and A Committee's deliberations—we have testified at every meeting of the Working Group/A Committee and submitted detailed comment letters, both individually and as part of an industry coalition, at numerous points in the NAIC process. NAIFA supports a "best interest" standard of care for annuity recommendations and sales so long as such a standard met certain criteria, with the key criterion being that any such standard must maintain existing business models and compensation structures and preserve the ability of middle and lower income consumers to have access to competent professional services, advice and financial products.

In requiring producers to act in the best interest of consumers when recommending annuities, the amendments provide that the agent has acted in the client's best interest if they satisfy the requirements of four obligations: the care obligation, the disclosure obligation, the conflict of interest obligation, and the documentation obligation. The specific requirements for satisfying each obligation are spelled out in the model regulation. The amendments require producers to gather certain information from the client in order to determine the client's financial situation, needs and goals, to avoid and/or manage material conflicts of interest, and to make detailed disclosures to the client about the nature of the producer/client relationship as well as what services and products the producer can offer. While the amendments require the agent to disclose the sources of and types of compensation he/she will receive, they do not require disclosure of specific



dollar amounts of compensation except upon request of the consumer, and both cash and non-cash compensation are expressly excluded from the definition of what is a material conflict of interest.

NAIFA's view is that these amendments will significantly enhance consumer protections while not unduly restricting the activities of producers and insurers, and we will support their adoption in the states.

NAIC Retirement Security Initiative

The NAIC Retirement Security Initiative was established under the supervision of the Life Insurance and Annuities (A) Committee to study ways to provide for and enhance peoples' retirement security. The Initiative will focus its efforts on the broad topics of consumer education, consumer protection, and product/service innovation. The Retirement Security (A) Working Group, chaired by Washington, D.C. Commissioner Steven Taylor, has developed a draft of a work plan detailing activities centered on these topics that will be undertaken by the Working Group and the Initiative. One possible starting point will be the drafting a white paper exploring the retirement planning challenges facing consumers. The Working Group has a conference call scheduled for January 16 to continue its discussion of these matters.

NAIC Review of Anti-Rebating Laws

The NAIC's Innovation and Technology Task Force, chaired by North Dakota Commissioner John Godfreed, is in the process of reviewing whether current interpretations of state anti-rebating laws have created regulatory barriers to insurance-related innovative products and services which are designed to help consumers and manage insurance costs and claims. The concern is that providing certain "smart" services and/or products such as wearable devices that track the insured's level of activity or monitoring devices that can detect a leaking hot water heater (which have the potential to reduce risk and losses) could run afoul of state anti-rebating laws, which are on the books in all but two states (CA and FL).

There does seem to be some agreement among Task Force members of a need to differentiate the providing of things of value to consumers that would induce the purchase of a policy (and would constitute an impermissible rebate) from products and services that will help to minimize risk and potentially lead to lower rates, and to have the latter not be considered a "rebate". There will also be some consideration of whether the dollar limits on what can be given to an insured without violating the laws should be revised upward.

At the Fall Meeting, the Task Force decided to move forward with drafting revisions to the anti-rebating sections of the NAIC's Unfair Trade Practices Model Act as the way to achieve these objectives rather than developing an NAIC model bulletin or guidelines on this issue. The NAIC will appoint a new working group to begin drafting these model act revisions and the Task Force will continue discussing these issues.



Privacy Protection

The NAIC's recently-established Privacy Protections (D) Working Group was formed to examine state issues pertaining to data privacy (which deals with how consumer data is collected and used, as distinguished from data security, which focuses on how data is stored and protected). The Working Group will review the three existing NAIC models that deal with data privacy issues—which are all almost 40 years old and no longer relate to how information is exchanged and gathered—and develop recommended revisions to update these models.

NAIC Officer Elections

At the 2019 Fall National Meeting, the NAIC elected the following persons as its officers for 2020:

- President - Ray Farmer - South Carolina Insurance Director
- President-Elect – David Altmaier—Florida Insurance Commissioner
- Vice President - Dean Cameron - Idaho Director of Insurance
- Secretary-Treasurer – Chlora Lindley—Myers—Missouri Director of Insurance

Each officer's term of office will run from January 1, 2020 through December 31, 2020.

Next Meeting

The next NAIC national meeting will be held March 20—24, 2020.

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