

NCOIL Fall 2019 Meeting Report – NAIFA testified in favor of NCOIL model legislation on short-term limited duration health insurance. Legislators are also considering substantial changes to state anti-rebating laws.

NCOIL Fall 2019 Meeting Report

The National Conference of Insurance Legislators (NCOIL) Fall 2019 meeting took place December 11-13th in Austin, Texas. Approximately 350 people attended the meeting. The following issues discussed are of interest to NAIFA.

Annuity Suitability/Best Interest/Standard of Care

Idaho Department of Insurance Director Dean Cameron briefed NCOIL members on the National Association of Insurance Commissioners' (NAIC) work to incorporate a best interest standard into the NAIC Suitability in Annuity Transactions Model Regulation. Director Cameron stated that the NAIC will soon approve a new standard for annuity sales which would require that insurance producers and carriers disclose to the client any conflicts of interest and document the recommendations made and why the client chose a certain policy. It is likely that the NAIC will approve the new standard early next year. The NAIC is also developing a form that advisors and carriers can use to disclose to the client the products the advisor is permitted to sell. Director Cameron, a former financial advisor and NAIFA member, emphasized that many advisors already act in the best interests of their clients.

Some state legislators, who are also financial advisors, expressed concern that advisors are not renewing their Series 7 securities license due to excessive regulation. NCOIL did not take a position on the NAIC's proposed best interest standard. NAIFA supports the NAIC draft model along with other industry associations such as the American Council of Life Insurers, the Indexed Annuity Leadership Council, the Association for Advanced Life Underwriting, the Committee of Annuity Insurers, the Insured Retirement Institute, the Financial Services Institute, and the National Association for Fixed Annuities.

On a related matter, the U.S. Department of Labor (DOL) may consider a proposed regulation to complement the NAIC's new requirements for annuity sales and the Securities and Exchange Commissions' Regulation Best Interest. The NAIC is engaged in discussions with the DOL to ensure that there are not conflicting definitions of the term "best interest."

Health Insurance

Short-Term Limited Duration Insurance (STLDI): NCOIL is considering model legislation to regulate STLDI policies. The proposed NCOIL model would follow federal regulation by allowing STLDI plans to have a duration of up to one year with renewals for up to a maximum of 36 months. However, unlike federal regulation, the NCOIL model would require STLDI policies to include access to a provider network and cover certain medical services and health care benefits. NAIFA testified in support of the model legislation stating that STLDI policies

provide critical temporary coverage and may serve as an affordable alternative to costly individual market plans.

Some NCOIL members support requiring STLDI plans to cover more benefits and limit out-of-pocket costs for the policyholder. NCOIL intends to amend its STLDI model and further discuss it during the NCOIL Spring 2020 meeting.

ACA Litigation: NCOIL heard a presentation from academics, industry associations and consumer groups regarding ongoing litigation challenging the Affordable Care Act (ACA). In the case of *Texas v. United States*, plaintiffs – led by a group of state Attorney Generals – have filed a legal challenge to the ACA arguing that with the elimination of the law’s individual mandate tax penalty that the entire statute should be invalidated as the ACA’s provisions rely upon the existence of the mandate. The Federal District Court for Northern Texas ruled in favor of the plaintiffs in September but placed a stay on the decision pending an appeal and ruling by The Fifth Circuit Court of Appeals. The Fifth Circuit is expected to issue a decision soon. Legal experts testifying before NCOIL commented that the Fifth Circuit decision will likely be appealed to the United States Supreme Court where a final decision could take another year or longer. Industry associations and consumer groups have expressed concern about the potential adverse effects on the health insurance markets should the law ultimately be determined to be unconstitutional.

NAIFA has not taken a position on the challenge to the ACA and is rather [urging legislators to enact health insurance policy reforms to improve access to quality, affordable coverage](#)

Rebating Reform

NCOIL is proposing model legislation to modernize state anti-rebating laws. The draft NCOIL model would permit insurance carriers to give policyholders certain electronic devices that can mitigate risk, such as wearable “Fit Bit” type units to accompany life and health insurance policies or sensors to detect potential failure of household HVAC units in connection with a property and casualty policy. The model also proposes to allow for carriers and agents to offer permissible gifts and prizes that do not exceed a value of \$500. Speaking on behalf of the NAIC, Director Cameron informed conference attendees that the NAIC is also working on model legislation to reform state rebating laws. Both legislators and regulators noted that among the states the rebating laws vary considerably and uniformity in this area is greatly needed.

Representatives from property and casualty insurance trade associations testified that current anti-rebating laws stifle policy innovation and inhibit the carrier from providing services that can assist the policyholder in managing risk, and they argued that risk mitigation devices should be permitted. Although life insurance carriers support reforming anti-rebating laws, they argued that the allowable dollar amount for raffles and prizes should vary among segments of the industry as there may be instances where the yearly premiums of some life insurance policies may be not much greater than the value of an item in a raffle.

A representative from the Center for Economic Justice, a consumer advocate organization, urged NCOIL to coordinate efforts with the NAIC rather than move quickly to approve its own model.

NCOIL intends to amend the draft model and continue to hear input from stakeholders at subsequent meetings. NAIFA supports reasonable changes to current anti-rebating laws that increase the dollar amount for raffles and prizes and allow for carriers and agents to deliver risk mitigation devices and services to the policyholder.

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