National Association of Insurance Commissioners (NAIC) Fall 2021 Meeting Summary

The National Association of Insurance Commissioners (NAIC) recently held its Fall National Meeting virtually and in person in San Diego, California. This summary highlights issues that various NAIC groups addressed at the recent meeting.

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What You Need to Know:

- Members at the Joint Meeting of the Executive (EX) Committee and Plenary voted to move forward forming the Innovation, Cybersecurity and Technology (H) Committee. Additionally, charges for the new committee were adopted. It is expected a Chair and Vice Chair for the H Committee will be chosen in early 2021.
- Adoption of 2022 Committee Charges
- Adoption of 2022 Budget
- Adoption of Short-Term Limited-Duration (STLD) Market Conduct Annual Statement (MCAS) Blank and Travel Insurance MCAS Blank
- Members elected 2022 officers:
    - President: Idaho Insurance Director Dean Cameron
    - President-Elect: Missouri Insurance Director Chlora Lindley-Myers
    - Vice President: Connecticut Insurance Commissioner Andrew Mais
    - Secretary-Treasurer: North Dakota Insurance Commissioner Jon Godfread

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Joint Meeting of the Executive (EX) Committee and Plenary

The Joint Meeting of Executive (EX) Committee and Plenary took place on Thursday, December 16, 2021 at the NAIC Fall National Meeting, and the agenda can be found here. Below is a summary of the meeting:

Commissioner Mark Afable (WI) made farewell comments before the meeting.

Reports from the following Committees were received:

- Life Insurance and Annuities (A) Committee
- Health Insurance and Managed Care (B) Committee
- Property and Casualty Insurance (C) Committee
- Market Regulation and Consumer Affairs (D) Committee
- Financial Condition (E) Committee
- Financial Regulation Standards and Accreditation (F) Committee
- International Insurance Relations (G) Committee

Consider Adoption of the Dec. 14 Report of the Executive (EX) Committee

Commissioner David Altmaier (FL) briefly summarized the December 14 meeting of the Executive (EX) Committee. During this meeting, the Committee adopted the reports from its Task Forces, including updates on the H Committee Charges and the work of the Long Term Care Task Force. Additionally, the Committee heard a report from the NIPR. This Report was adopted without objection.

Consider Adoption of the Innovation, Cybersecurity and Technology (H) Committee and its Charges

Commissioner Jon Godfread (ND) began by alluding to the fact that the adoption of a new NAIC letter committee does not happen often, referencing the prior presentations he has given on the topic over the course of the Fall Meeting. Commissioner Godfread explained that the process leading to this moment has been very thoughtful and deliberate, and the results reflect considerable discussion among all stakeholders. There was a successful motion to form the Innovation, Cybersecurity and Technology (H) Committee. Additionally, the H Committee Charges were adopted without objection.

Consider Adoption by Consent the Committee, Subcommittee and Task Force Minutes of the Summer National Meeting, Aug. 14–17

It was noted that Minutes were available Aug. 31 on the NAIC website, and the Synopsis was distributed to members Sept. 7. Additionally, the items noted with an asterisk (*) were considered individually. The Minutes were adopted without objection.

Consider Adoption of the NAIC 2022 Proposed Budget

Director Dean Cameron (ID) explained that this is the final step in a process that began last May. He said that the Budget includes $126.4 million in operating revenues and $136.3 million of operating expenses. The Budget also includes three fiscals, each representing an investment of about $100,000.00 supporting a major project. The proposed fiscals are aligned with the members' priorities as outlined in NAIC's strategic plan State Ahead. Given the relatively strong position of the NAIC, there are limited price changes in the budget. After inclusion of the $2.4 million investment income, the Budget reflects a reduction in net assets of 7.5. At the end of 2022, the NAIC's net asset balance is expected to be at $169 million. Based on the projected NAIC financial results and with the approval of the Budget, the liquid operating ratio will be approximately 120% at the end of 2021, and 117% at the end of 2022. These slightly higher ratios reflect the lower travel and meeting costs over the last 21 months. The Budget was adopted without objection.

Consider Adoption of the NAIC 2022 Proposed Committee Charges

Director Cameron explained that these Charges should be viewed as a living document that will evolve as issues develop or get completed throughout the year. The Charges have all been exposed for public comment, discussed in an open forum, and adopted by each of the letter committees. The amendments to the previously posted Charges are as follows: (1) The Life Insurance and Annuities (A) Committee voted to disband the Life Insurance Illustrations Working Group; (2) The Property and Casualty Insurance (C) Committee made two changes to its original Charges, adding a new charge for both the Statistical Data (C) Working Group and the Title Insurance (C) Task Force. All Committee, Task Force, and Working Group Charges were adopted without objection.

Consider Adoption of the 2022 Generally Recognized Expense Table (GRET)

Commissioner Marlene Caride (NJ) explained that, as in previous years, the Society of Actuaries (SOA) Committee submitted its GRET to the Life Actuarial (A) Task Force for the upcoming year. The SOA followed the same methodology that it was used in the development of the 2021 GRET. The 2022 GRET was adopted by the Life Insurance and Annuities (A) Committee during its December 15 meeting, The GRET was adopted without objection.

Consider Adoption of Actuarial Guideline XXV—Calculation of Minimum Reserves and Minimum Nonforfeiture Values for Policies with Guaranteed Increasing Death Benefits Based on and Index (AG 25)

Commissioner Caride explained that AG 25 pertains to specific types of life insurance products, which include small dollar policies. The revisions to AG 25 include the removal of the Guideline's fixed 4% nonforfeiture interest rate floor, resulting in the alignment of this Guideline with the Valuation Manual. AG 25 was adopted by the Life Insurance and Annuities (A) Committee during its December 15 meeting. AG 25 was adopted without objection.

Consider Adoption of the Pet Insurance Model Act

This item was pulled from the Agenda, but Commissioner David Altmaier (FL) explained that this would be revisited at a later date.

*Consider Adoption of the Travel Insurance Market Conduct Annual Statement (MCAS) Blank

Commissioner Barbara D. Richardson (NV) said that the Market Regulation and Consumer Affairs (D) Committee adopted the Travel Insurance MCAS Blank on July 27. This Blank collects underwriting, claims, and lawsuit information on the travel insurance overages of trip cancellation, trip interruption, trip delay, baggage loss or delay, emergency medical and dental, and emergency transportation. The definitions in the Blank were drawn from the NAIC Travel Insurance Model Act #632. Given the small market for travel insurance, all insurers licensed for any travel product in participating MCAS jurisdictions must report. Companies will begin reporting travel insurance data beginning in 2023, covering activity from the 2022 data year. The Travel Insurance Market Conduct Annual Statement (MCAS) Blank was adopted without objection.

*Consider Adoption of the Short-Term, Limited-Duration (STLD) MCAS Blank

Commissioner Richardson explained that Market Regulation and Consumer Affairs (D) Committee adopted the Short-Term, Limited-Duration (STLD) MCAS Blank on July 27. This is a product that was extensively worked on by stakeholders. This collects data on policy administration, prior authorizations, claims administration, consumer complaints and lawsuits, and marketing and sales. The STLD MCAS has a reporting threshold of $50,000.00 of premium within the jurisdiction, and the product is reported according to the residency of the individual insured. Companies will begin reporting data to participating MCAS states beginning 2023, covering activity from the 2022 data year. The STLD MCAS Blank was adopted without objection.

*Consider Adoption of the Regulatory Information Retrieval System (RIRS) Coding Structure

Commissioner Richardson explained that, during the Summer National Meeting of the Market Information Systems (D) Task Force and the Market Regulation and Consumer Affairs (D) Committee, the Regulatory Information Retrieval System (RIRS) Coding Structure changes were adopted. The changes address deficiencies of the current coding structure, and are designed to render greater coherency to the data structure to make RIRS more compatible with other market information systems. The changes to the RIRS Coding Structure were adopted without objection.

Consider Adoption of the Process for Evaluating Jurisdictions That Recognize and Accept the Group Capital Calculation (GCC)

Commissioner Scott A. White (VA) explained that Mutual Recognition of Jurisdictions (E) Working Group was charged by the Financial Condition (E) Committee with creating a process to determine whether other jurisdictions recognize and accept the NAIC Group Capital Calculation. This process was adopted without objection.

<u>Consider Adoption of the Reinsurance Financial Analysis (E) Working Group (REFAWG) Review Process for Passporting Certified and Reciprocal Jurisdiction Reinsurers</u>

Commissioner White said that the REFAWG Review Process for Passporting Certified and Reciprocal Jurisdiction Reinsurers was created to aid in the implementation of the 2019 revisions to the Credit for Reinsurance Model Law and Regulation. Under this process the REFAWG will assist the states in reviewing reinsurers to determine whether they have met the requirements to be recognized as either a certified reinsurer or reciprocal jurisdiction reinsurer. The REFAWG Review Process for Passporting Certified and Reciprocal Jurisdiction Reinsurers was adopted without objection.

<u>*Consider Exposure of the 2020 Revisions to the Insurance Holding Company System Regulatory Act (#440) and the Insurance Holding Company System Model Regulation with Reporting Forms and Instructions (#450) as an Update to the Accreditation Standards</u>

Superintendent Elizabeth Kelleher Dwyer (RI) explained that, at the Summer National Meeting, the Financial Regulation Standards and Accreditation (F) Committee voted to recommend for exposure a referral to include the 2020 Revisions to the Insurance Holding Company System Regulatory Act (#440) and the Insurance Holding Company System Model Regulation with Reporting Forms and Instructions (#450) as an Update to the Accreditation Standards for every state effective January 1, 2026. The Revisions implement the GCC for purposes of group solvency supervision, and a liquidity stress test for Macroprudential surveillance. The exposure includes a recommendation by the Committee for a revised approach to the GCC significant elements, which allows a Commissioner to grant exemptions to qualifying groups meeting the standards set forth in Model #450 without the filing requirement. The Committee recommends a one year public exposure period to begin on January 1, 2022. The Committee recommends that (1) all states with a group impacted by the covered agreement adopt GCC revisions to #440 and #450, and (2) all states with a group impacted by the liquidity stress test adopt the relevant revisions to #440 as soon as possible.

The Revisions were adopted, but Texas commented that it objected because not all of its raised concerns were addressed.

<u>Receive a Status Report of the State Implementation of NAIC-Adopted Model Laws and Regulations</u>

Commissioner Altmaier said that these are actively being considered in state legislatures at this time. The Report was received.

Hear the Zone Election Results

Midwest

Commissioner Glen Mulready (OK) was elected to serve as the Chair, Commissioner Doug Ommen (IA) was elected to serve as Vice Chair, and Director Anita Fox (MI) was elected to serve as the Secretary-Treasurer.

Northeast

Commissioner Gary Anderson (MA) was elected to serve as the Chair, Commissioner Kathleen Birrane (MD) was elected to serve as Vice Chair, and Commissioner Trinidad Navarro (DE) was elected to serve as the Secretary-Treasurer.

Southeast

Commissioner Scott White (VA) was elected to serve as the Chair, Commissioner Carter Lawrence (TN) was elected to serve as Vice Chair, and Commissioner Jim Donelon (LA) was elected to serve as the Secretary-Treasurer.

Western

Director Wing-Heier (AK) was elected to serve as the Chair, Commissioner Michael Conway (CO) was elected to serve as Vice Chair, and Commissioner Andrew Stolfi (OR) was elected to serve as the Secretary-Treasurer.

Conduct the 2022 Officer Nominating Process

Commissioner Altmaier gave closing comments as his year as President came to an end. Then, he briefly explained the procedures involved in the voting process. Commissioner Altmaier announced that President-Elect Director Dean L. Cameron (ID) would become the new NAIC President upon the conclusion of his term of office. Director Cameron made his remarks.

Commissioner Altmaier then invited a motion to elect Director Chlora Lindley-Myers (MO) as the President-Elect, and Commissioner Andrew Mais (CT) as the Vice President, given the uncontested nature of these positions. There was a successful motion. Both Director Lindley-Myers and Commissioner Mais made their remarks.

At that time, Commissioner Altmaier invited nominations for the position of 2022 Secretary-Treasurer. Commissioner Anderson nominated Commissioner Godfread, and Commissioner Mike Chaney (MS) nominated Commissioner Vicki Schmidt (KS). Both nominees accepted the nominations and made remarks. The public meeting then adjourned to allow for a vote.

It was later announced that Commissioner Godfread would serve as the 2022 Secretary-Treasurer.

The meeting materials can be found here.

Executive (EX) Committee

The Executive (EX) Committee met on Tuesday, December 14, 2021 at the NAIC Fall National Meeting, and the agenda can be found here. Below is a summary of the meeting:

Consider Adoption of the Dec. 12 Report of the Executive (EX) Committee and Internal Administration (EX1) Subcommittee

The Dec. 12 Report of the Executive (EX) Committee and Internal Administration (EX1) Subcommittee was adopted without objection.

Consider Adoption of its Interim Meeting Report

The Executive (EX) Committee Interim Meeting Report detailing its meetings on Dec. 7, Oct. 26, and Oct. 12, 2021 was adopted without objection.

Consider Adoption of its Task Force Reports

The following Reports were adopted without objection:

- Climate and Resiliency (EX) Task Force
- Government Relations (EX) Leadership Council
- Innovation and Technology (EX) Task Force
- Long-Term Care Insurance (EX) Task Force
- Special (EX) Committee on Race and Insurance

Consider Adoption of its 2022 Proposed Charges

Director Dean L. Cameron (ID) gave a brief summary of the proposed 2022 charges for the Executive (EX) Committee, the Climate and Resiliency (EX) Task Force, the Government Relations (EX) Leadership Council, Long-Term Care Insurance (EX) Task Force, the Special (EX) Committee on Race and Insurance, and the Internal Administration (EX1) Subcommittee. The charges for the Committee and EX1 are the same as last year, and the charges for the Task Forces involve continued work on Climate and Resiliency, Long-Term Care, and Race and Insurance. No charges are being considered for Innovation and Technology in anticipation of the adoption of the new H Committee.

All Charges were adopted without objection.

Receive a Status Report on NAIC State Ahead Implementation

Commissioner David Altmaier (FL) explained that State Ahead is the NAIC's three-year strategic plan intended to further advance the products, services, and support the NAIC provides to state insurance regulators to meet the changing regulatory landscape. Commissioner Altmaier referred to the chart provided in the meeting materials, which evidences great progress.

Receive a Status Report on Model Law Development Efforts

The Status Report was received with no questions or comments.

Hear an Oral Report from the National Insurance Producer Registry (NIPR) Board of Directors

Director Larry D. Deiter (SD) gave a brief report related to the NIPR's recent activities, including its last board meeting on December 12, 2021 where the 2022 budget was approved and the board heard an update on the progress of NIPR's three-year strategic plan. Further, Director Deiter stated that NIPR celebrated its 25th anniversary this year, and in 2022, it will close its strongest revenue year in history, processing more than 42 million transactions and moving over $1.1 billion in fees to state insurance departments. Additionally, NIPR's Deputy Director, Laurie Wolf, was recently honored for her impact on the industry over the last 30 years.

Hear an Oral Report from the Interstate Insurance Product Regulation Commission (Compact)

Superintendent Elizabeth Kelleher Dwyer (RI) gave a brief report from the Interstate Insurance Product Regulation Commission (Compact). Superintendent Dwyer explained that the Commission held it annual meeting on December 12, where the election of officers was handled. Kathleen Birrane, the Maryland Insurance Commissioner, was elected to serve as Chair. Eric Dunning, the Nebraska Director of Insurance, was elected as Vice Chair. Allan McVey, the West Virginia Insurance Commissioner, was elected as Treasurer. The Management Committee for next year will include these three officers, as well as Illinois, Massachusetts, Michigan, Minnesota, New Jersey, Ohio, Pennsylvania, Rhode Island, Texas, Virginia, and Wyoming. The Commission also approved committee assignments and appointed industry and company representatives to four open seats on the Industry Advisory Committee, and appointed Anna Howard to a vacant seat on the Consumer Advisory Committee. The Commission then adopted charges to its Individual and Long-Term Care Uniform Standards.

The meeting materials can be found here.

Innovation & Technology (EX) Task Force

The Innovation & Technology (EX) Task Force met on Monday, December 13, 2021 at the NAIC Fall National Meeting, and the agenda can be found here. Below is a summary of the meeting:

The Task Force previously met on August 14, 2021, and the minutes from that meeting were adopted without objection. The minutes can be found here.

Consider Adoption of its Working Group Reports:

The Task Force heard oral updates and adopted reports from the following Working Groups:

- Big Data and Artificial Intelligence (EX) Working Group - Commissioner Doug Ommen (IA)
- Speed to Market (EX) Working Group - Rebecca Nichols (VA)
- E-Commerce (EX) Working Group - Commissioner Kathleen A. Birrane (MD)

These Reports can be found here.

Hear an Update on CO SB 21-169

Commissioner Michael Conway (CO) gave an update regarding the above legislation that is intended to restrict insurers' use of external data. He explained that the goal of the legislation is to protect Colorado consumers from insurance practices that result in unfair discrimination on the basis of a protected class, particularly with respect to use of information related to things like credit, ownership, location, and occupation. An example of this was provided as follows: A study found that a 26-year-old Chicagoan living in an underserved neighborhood with vacant lots and a high crime rate paid four times as much for auto insurance as a 34-year-old advertising executive living in a white neighborhood in Chicago, even when both drivers had similar safety records. These disparities have been seen in many lines, such as auto insurance, life insurance, and homeowners insurance.

Commissioner Conway explained that the main thought process behind this legislation is that regulators and the industry have a duty to ensure that big data is used responsibly. He further stated that the regulators want to encourage the efficiencies that can be achieved from the use of big data, while ensuring that consumers are not harmed in the process. SB21-169 requires insurers to stress test their big data systems and take corrective action to address consumer harms identified, and Commissioner Conway said that this is the core component of the legislation.

Commissioner Conway stated that the law applies broadly to insurers using external consumer data and information sources, algorithms, and predictive models including life, health, and property and casualty. The law specifically excludes title insurance, bonds executed by qualified surety companies, and commercial insurance policies, with the exception of insurers issuing business owners' or commercial general liability policies with annual premiums of $10,000 or less. Marketing, underwriting, pricing, utilization management, reimbursement methodologies, and claims management will all be subject to the new legislation.

Regulations adopted by the Division must require insurers to: (1) Provide information on the external consumer data and information source used in developing and implementing their algorithms and models; (2) Explain how the insurer uses external consumer data and information; (3) Establish and maintain a risk management framework or similar process to determine whether their big data systems result in unfair discrimination, and attest to its implementation; and (4) Provide an assessment of the results of the risk management framework or similar process. However, regulations adopted by the Division must also include provisions to establish a reasonable time frame for insurers to remedy any unfairly discriminatory impact, and allow insurers to use external data sources and algorithms or predictive models using data sources that have been previously assessed and found not to be unfairly discriminatory.

Commissioner Conway outlined the next steps for SB21-169, which involves stakeholder meetings, by line of insurance and insurance practice, that are set to begin starting in mid-January 2022. Stakeholders can monitor the status of these meetings on the Division's website.

The Task Force then heard the following presentations from Insurtech Coalitions:

J.P. Wieske and Scott Harrison, American InsurTech Council (AITC)
Scott Harrison began the presentation by sharing that AITC formally launched today, and that this presentation would be AITC's first public comments. The presentation was dedicated largely to introducing AITC and explaining its mission. Mr. Harrison explained that its mission is to serve as a dedicated, independent advocacy organization dedicated to advancing the public interest through the development of ethical, technology-driven innovation in insurance. Through its advocacy efforts, AITC advances the public policy interests of insurtechs, insurance carriers, brokers, and other stakeholders by providing policy research, education, and outreach to policymakers, with the general public, and across all lines of insurance.

AITC's leadership is comprised of former regulators and legislators, which provides the group with a unique insight into the development of regulatory policy and consumer protection issues. The group will be an organization combining stakeholders from many facets of the Insurtech realm, including legacy carriers across all lines of business, data scientists and developers, brokers, insurtechs, etc.

J.P. Wieske added that as insurance changes, the regulation of insurance must also change. He stated that the change should be made in the state environment rather than the federal environment.

Rachel Jrade-Rice, Jeremy Deitch, Melanie Irvin and Bill Latza, InsurTech Coalition
Rachel Jrade-Rice gave the presentation on behalf of the InsurTech Coalition, which is a group of property and casualty InsurTech companies including Lemonade, Hippo, Metromile, Branch, Clearcover, Boost, and Next. Ms. Jrade-Rice explained that the Coalition was formed as a result

of the population of underserved consumers in the insurance marketplace. Namely, the goal is to the bridge insurance protection gap between what customers need and what they have access to, leveraging technology.

Contrary to the myths that are commonly perpetuated about InsurTech, Ms. Jrade-Rice contended that InsurTech is truly meant to benefit the consumer because they have the opportunity to build products that are more transparent in terms of underwriting. She explained that the Coalition is interested in customer engagement, convenience, and highly tailored insurance products, and they aim to focus on modernization, collaboration, and speed to market.

Presentation from the Ad Hoc Drafting Group on Proposed Draft Charges for a New NAIC H Committee

Superintendent Elizabeth Kelleher Dwyer (RI) gave a presentation with regards to progress in approving the new Innovation, Cybersecurity, and Technology (H) Committee. The Executive Committee asked Commissioner Jon Godfread (ND), as the Chair of the Innovation and Technology Task Force, to put together a group to draft proposed charges for the new committee. That Ad Hoc Committee included representation from Rhode Island, Maryland, Arizona, California, Connecticut, Georgia, Iowa, Michigan, New Mexico, Ohio, North Dakota, Tennessee, and Wisconsin.

The first meeting was held September 27, 2021, and the Ad Hoc Committee had a straw man draft distributed beforehand as a starting point. A revised draft was distributed to the Ad Hoc Committee for review after the meeting, and after discussions and review, a new draft was circulated to the members of the Ad Hoc Committee prior to the Commissioner's conference in October. With no objection, the draft was exposed on November 19, 2021. After comments were received and reviewed, the final version was completed.

Superintendent Dwyer explained that the purpose of the H Committee is to make it easier for stakeholders to follow along with what is going on in this space, even if it is happening within another committee, and the intent of the H Committee is to provide for more consistency and collaboration to ensure coordination in related work streams. Additionally, priority and focus will be given to cybersecurity, to take the place of the former working group that was disbanded once its charges were completed. Superintendent Dwyer also clarified that no action would be taken during this meeting, but the draft would be put to a final vote on Thursday during the Joint Meeting of Executive (EX) Committee and Plenary. More decisions will be made once a chair and vice chair are named, which will occur in January upon approval by full membership.

The Proposed Charges can be found here.

Updates from Other NAIC Committees and Working Groups on Related Activities

Special (EX) Committee on Race and Insurance
Commissioner Andrew N. Mais (CT) gave a brief presentation meant to update the Task Force on related activities within the Committee on Race and Insurance. He stated that there has been discussion within the work streams about data potentially being needed to ensure that unfair discrimination is not occurring in the marketing, underwriting, or rating of insurance. One consistent theme that has been raised in Workstream 5 is that robust data collection is key to both quantify existing disparities and evaluate the effectiveness of initiatives that address disparities. At this National Meeting, the Special Committee is also hearing how race is considered in the banking sector to see what can be learned from that regulatory process. Workstream 3 is of the opinion that, with regard to Charge F, it might be necessary to draft a White Paper to define some of the terms involved.

Privacy Protections (D) Working Group
Cynthia Amann (MO) stated that she believes that much of the work done by the Privacy Protections (D) Working Group will overlap with the work of every group going forward. Ms. Amann also clarified that the use of the word "right" in the Work Group's report is meant to be interpreted as categories for further discussion rather than a guaranteed right. She then listed the nine categories of concern identified in the report.

Accelerated Underwriting (A) Working Group,
Commissioner Grace Arnold (MN) stated that complete draft of the Working Group's Educational Report is posted, but will be revised as the Working Group incorporates the comments it received. She elaborated that the final report will likely be ready prior to the Spring National Meeting.

Presentation on MIB's Algorithmic Bias Testing for Life Insurers.

Scott Kosnoff, Partner at Faegre Drinker, and Christie Corado, General Counsel of MIB Group, Inc. gave this presentation.

Scott Kosnoff identified four challenges inherent in identifying and managing racial bias in AI and algorithms:

1. Due to liability concerns, most insurers are reluctant to collect, derive, or purchase the demographic information that they need to do the testing of their systems for racial bias;

2. There is no agreed upon means of measuring racial bias in algorithms;

3. There is no consensus on what level of correlation with race is acceptable;

4. There is no consensus on how to mitigate racial bias is it exists.

Christie Corado then listed possible ways that MIB can help. First, MIB could serve as a repository for data, such as race and ethnicity data that companies may not want to collect or store. MIB may be able to provide life insurers with information about each insured using data collected for the MIB checking service and from publicly available data. Next, MIB can promote algorithmic accountability, but using actuarial analysis and data analytics to test and validate life insurers' AI, algorithms, and external data to identify potential racial bias as a starting point. To do this, MIB would need companies to provide their underwriting outcomes. If enough life insurers use this proprietary service, MIB may be able to create industry benchmarks that will allow insurers to compare their results with industry averages.

After a question was posed, Mr. Kosnoff explained that while there is not a current standard that is being used to test against, if enough companies use MIB's service, they will understand what the bell curve looks like.

<u>Presentation on the SERFF Modernization Project</u>

Joy Morrison with the NAIC discussed the demo of SERFF's new and improved capabilities. NAIC's System for Electronic Rate and Forms Filing (SERFF) is a web-based system that facilitates the electronic submission of insurance product filings by insurers and the regulatory view of such filings by insurance regulators. Used by 53 jurisdictions and 6500 companies, it processes more than 550,000 transactions a year, including plan submissions related to the Affordable Care Act (ACA) and product filings submitted to the Interstate Insurance Product Regulation Commission (IIPRC). The current system has been in place for 20 years, and NAIC plans to replace the SERFF system in a phased approach by modernizing the platform. The goals of the modernization initiative are to deliver new and enhanced capabilities to stakeholders using an iterative approach that will provide value to the regulators as soon as possible.

<u>International Initiatives Relative to Fintech</u>

This agenda item was not discussed.

<u>Any Other Matters</u>

Commissioner Jon Godfread (ND) stated that this is likely the last meeting of the Task Force.

The meeting materials can be found [here.]()

Big Data and Artificial Intelligence (EX) Working Group

The Big Data and Artificial Intelligence (EX) Working Group met on Monday, December 13, 2021, at the NAIC Fall National Meeting, and the agenda can be found here. Below is a summary of the meeting:

Presentation on Applying Cybersecurity Lessons for Artificial Intelligence Regulation
Insurance Regulatory Advisor Jillian Froment had one conversation stand out this summer—is artificial intelligence ("AI") a cybersecurity issue? There are clearly technical differences. However, from the regulatory viewpoint, there are many similarities: both impact consumers, both constantly evolve, neither is an area of expertise, and everyone wants regulators to "do something." When developing the Data Security Model, regulators acknowledged many issues. So when thinking about AI, the same changes exist.

The Data Security Model has five actionable areas: (1) proactive mitigation of risks, (2) ongoing monitoring of risks, (3) accountability for third parties, (4) compliance certification to regulators, and (5) transparency on significant events. It becomes apparent how these areas line up with the Principles of AI. For example, AI requires proactive engagement in trustworthy AI.

The working group has done incredible work. These waters are not completely uncharted, and the governance framework is the beginning of forming the foundation for regulatory oversight. Other committees could easily overlay this governance approach.

The Working Group then received presentations regarding regulatory frameworks and governance.

Perspective on a Possible AI Regulatory Path — Anthony Habayeb, CEO of Monitaur
Monitaur is an AI governance software company. The company believes in the potential of AI and how it can provide better products for consumers. The company helps carriers use AI. The group has achieved a definition of principles, and there is a survey in process to understand the current state of AI. This has allowed insurance carriers to examine how to answer these questions and where to go from here.

What are potential next steps? There is a path to take the principles and to identify what risks might impact the ability to communicate and implement these practices. This is a people and process challenge, and it should be thought of as a system.

There are risks across the model development life cycle that could impact achievement of Fair & Ethical Principles. But, it is not impossible to build governance around these types of models. Innovators can establish principles for managing risks. A good control defines the risk, what the control is, and how it should be tested. This group can consider how to leverage existing risk governance and use frameworks when considering where to go with AI governing.

Monitoring and Mitigating AI Bias and Enabling Transparency — Kashyap Murali, SigmaRed
SigmaRed provides deeper risk analysis, comprehensive reporting, and remediation. It focuses on tackling problems with fairness and transparency. It is important to have uniform definitions for models. There are potential problems: (1) unfair AI leads to multiple financial and social challenges, (2) problems arise at model level and cause challenges to mitigation, and (3) different definitions lead to multiple requirements.

The working groups uses similar definitions to Harvard for AI governance. Vendor solutions include: (1) consulting and specific services, (2) single-segment solutions, (3) non-mitigative multi-segment solution, and (4) mitigative multi-segment solution. This presentation focused on the SigmaRed platform. It does multiple assessments to keep on top of problems. It then uses immediate mitigation for problems in the model to analyze how fairness metrics change. Finally, it monitors for future bias and explains any adverse decision. This provides solid foundation for any regulatory assessment and can be scaled to any model or data that a carrier holds.

SigmaRed wants to stay out of the way of the carrier. Thus, it is fully on the carrier's end: there is no place where data is going externally or a model is going externally. The input is not complicated. It only needs: (1) what data and (2) where the model is stored.

Interested Parties: Burnie Birnbaum from Center for Economic Justice spoke. He first explained that he thinks AI and cyber security are significantly difference because AI is an element of existing concern. There is no event to examine with cyber security, but AI outcomes can be examined on a regular basis. He said that both programs are also incredible but rely too much on existing principles. He explains that the best audit will not settle or recognize differences of opinion between regulators and carriers and insurers.

Commissioner Ommen responded that he does not think governance is the only answer. This is not the end of the story. This is just to start the governance conversation, and this is not the only ongoing conversation.

<u>Receive Presentation on Private Passenger Auto (PPA) AI/Machine Learning (ML) Survey Results</u>

The working group decided to survey private passenger auto carriers. Superintendent Dwyer and Commissioner Afable worked with experts for this survey. The survey was conducted under market conduct authority of nine requesting states: CT, IL, IA, LA, NV, ND, PA, RI, and WI. Companies were selected based on whether they were writing private passenger auto insurance in those nine states. To analyze date, it is important to understand questions and definitions.

The group received 192 filings. It first asked whether the carrier had contemplated using or was using AI/ML. Today, the group is waiting for follow up from some companies, so it has not been able to look too much into the data yet. It expects to get into more detailed analysis sometime after the meeting. Out of the companies, 168 reported that they are using, planning to use, or exploring the use of AI/ML.

The group wants feedback on the survey because it will continue surveying. The quality of the questions is important. It is willing to hear from anyone who received the survey with suggestions on how to better request what the group is seeking. The group included slides showing some of the survey results, which can be accessed in the meeting materials below. Over half of carriers are developing AI internally. The group is aware that this is an evolving area, but this is a good start to focus on areas of AI that companies are actually using.

Commissioner Ommen explained that this is problem scoping—identifying areas that need prioritized attention.

Working Group Comments: A member asked about what “other” refers to on the breakdown of Operational Area in the survey results. Superintendent Dwyer explained that this was a catch all to determine whether the group was missing anything.

Interested Parties: Birnbaum asked for a breakdown of carriers, but there was not an answer. He also asked about breakdown of AI/ML Operational Area graph. The large numbers in the bar reference those currently using AI for that group.

<u>Discuss the Next Line of Insurance to Survey</u>

Commissioner Ommen opened the floor for suggestions on where to look next for surveying. Specifically, he was looking for another line of insurance. There was a suggestion to stay on personal lines of insurance—maybe continue with homeowners or look at life. There was agreement to focus on personal because a consumer does not have the sophistication of a commercial buyer. There was also agreement with starting with homeowners, but there was also a plug for life insurance after property. The subject matter experts appear comfortable with moving to homeowners. If there are individuals that want to participate, Commissioner Ommen stated that they are looking for volunteers, specifically in life. Birnbaum expressed support for life.

Commissioner Ommen explained that a challenge is that the groups have not seen the fruit of what it has already done, so it is difficult to now decide. However, the data will help evaluate the paths forward. This was on the agenda to provide path forward and see if there was consensus. There was a consensus to move forward with homeowners and life insurance surveys.

<u>Discuss 2022 Work Plan Development and Next Steps</u>

The commissioner noted that any member who wants to be on the working group can do so. Commissioner Ommen explained that there will be dialogue regarding whether tasks will be reassigned within NAIC. For example, there is a lot of overlap among groups and committees, so there will be need discussion amongst the NAIC.

Any Other Matters

No other matters. Commissioner Ommen did draw attention to American Academy of Actuaries Issue Paper: Big Data and Algorithms Modeling and Consumer Impacts. It proposes framework for addressing needs in area, so Commissioner Ommen encouraged those in attendance to give this a read.

The meeting materials can be found here.

Climate & Resiliency (EX) Task Force

The Climate and Resiliency (EX) Task Force met on Tuesday, December 14, 2021 at the NAIC Fall National Meeting, and the agenda can be found here. Below is a summary of the meeting:

The Task Force previously met on August 15, 2021, and the minutes from that meeting were adopted without objection.

Recommendation from the Technology Workstream

Nicholas Lorusso (LA) provided a recommendation for the NAIC's Center for Insurance Policy and Research (CIPR) to create a Catastrophe Model Center of Excellence (COE). The full Recommendation can be found in the meeting materials.

Mr. Lorusso explained that the Technology Workstream was charged to apply technology, such as predictive modeling tools, to understand and evaluate climate and natural catastrophe risk exposures. In particular, the Technology Workstream was tasked with determining whether technical support services were needed by state insurance departments regarding the industry's use of catastrophe models. Acknowledging the benefit of having a central resource for state insurance regulators regarding catastrophe models, as well as the need for its discussed support services, the Technology Workstream issued a request for comments on a proposal for the NAIC's CIPR to create a Catastrophe Model Center of Excellence (COE) on September 21.

If adopted, the COE would: 1) facilitate insurance department access to catastrophe modeling documentation and provide assistance in distilling the technical information received; 2) provide general technical education/training materials on the mechanics of commercial models and treatment of perils and risk exposures; and 3) conduct applied research analysis using various model platforms to proactively answer the regulatory "so what" questions that may need to be addressed for regulatory resilience priorities. It was repeatedly stated that the COE would have no regulatory authority.

The Technology Workstream voted on November 22 to recommend that the NAIC's CIPR create a catastrophe modeling COE. Mr. Lorusso's presentation received nods of support, but also raised a concern that this resource might be used to circumvent FOIA or state open records laws, given that the documentation provided will be protected by the NAIC so that only regulators may access it. Prior to the conclusion of this presentation, it was clarified that there would be no vote taken at this time, as this was the first exposure of the recommendation for many in attendance. There will likely be an interim meeting, prior to the NAIC Spring Meeting, where this matter will be voted on.

Presentation Regarding the Proposed Redesigned NAIC Climate Risk Disclosure Survey

Commissioner Andrew Stolfi (OR) began his presentation by explaining that the Climate Risk Disclosure Workstream has issued a public disclosure of it proposed redesigned survey, but the comment period has been extended until January 10, 2022. Therefore, no final recommendation would being shared. However, this presentation gave a summary of the redesigned survey.

Commissioner Stolfi reiterated the Charges of the Task Force, which are to consider appropriate climate risk disclosures within the insurance sector, including evaluation of the NAIC Climate Risk Disclosure Survey, and evaluation of alignment with other sectors and international standards. The initial survey was adopted by the NAIC in 2010, as a voluntary survey for states, and it included eight questions. The eight questions are similar to the information requested in the Financial Stability Board's Task Force on Climate-related Financial Disclosures (TCFD). The TCFD has established four themes: governance, strategy, risk management, and metrics & targets. The TCFD disclosures were created in 2015, and adopted its reporting framework in 2017. The TCFD is gaining traction, domestically an internationally, as the primary reporting mechanism for companies to disclose their climate-related risks. Internationally, multiple jurisdictions have proposed or finalized laws and regulations to require disclosure aligned with TCFD recommendations. Domestically, the SEC had alluded to considering the TCFD framework for required reporting by public entities. The Financial Stability Oversight Council published a report on climate-related financial risk in October, which stated that regulators across the financial system should review existing public disclosure requirements and consider standardizing them to promote consistency. Specifically, it was recommended that the disclosure build on the four TCFD themes. For the past two years, insurers reporting to the NAIC Climate Risk Disclosure Survey have been allowed to report using the TCFD in lieu of the eight questions in the initial survey.

Commissioner Stolfi contended that it makes sense for the NAIC survey to be updated to align with the TCFD and move to a TCFD-based survey with questions specifically tailored to insurance. He then briefly touched on how the survey is written, with both closed ended and narrative questions. Commissioner Stolfi stated that the comment period will end on January 10, and there will be another open meeting in late January to discuss any comments received, make revisions, and consider the survey for adoption within the Workstream.

<u>Status Reports</u>

Solvency Workstream

Commissioner Kathleen Birrane (MD) stated that the Solvency Workstream is focused on the financial risks to U.S. insurers specific to changes in climate and weather patterns, and the prudential oversight by U.S. insurance regulators to ensure that the risks are identified, analyzed, and appropriately addressed. Commissioner Birrane said that her last report to the Task Force involved a summary of the panel presentations and discussions that the Workstream engaged in to secure information on its evaluation of how existing financial surveillance and surveillance tools should be adjusted to specifically address climate-related financial risk. After several regulator sessions, the Workstream exposed a series of questions to allow interested parties to provide input on this topic. The responses will be discussed in regulator sessions to develop a specific recommendation to be released for public comment.

Innovation Workstream

Commissioner Colin Hayashida (HI) stated that the charges for the Innovation Workstream are to discuss the use of innovative insurance products that respond to climate related risk, and explore parametric solutions designed to fill coverage gaps caused by weather-related events. The Workstream met twice since the last National Meeting. These meetings involved product presentations related to parametric policies, involving both endorsements for homeowner's policies and community-based insurance for disaster resilience. Commissioner Hayashida explained that parametric policies include low coverage with limitations, where the payout is a predetermined amount agreed to by the parties of the contract. A benefit of these products is the quick payout for short term expenses.

Pre-Disaster Mitigation Workstream

Sarah Smith (WI) stated that the Charges for the Pre-Disaster Mitigation Workstream include educating consumers about how they can prepare for risks, identifying the return on investment for mitigation efforts, and working with the insurance industry to develop best practice in rating and underwriting. In the past year, the Workstream has focused on the first charge, to collect and share information with consumers and stakeholders while working to develop best practices that will encourage consumer participation. The Workstream has identified mitigation measures that would be most effective at reducing losses from common perils such as floods, earthquakes, winter storms, tornadoes, and wildfires. The Workstream compiled a list of these mitigation measures and other resources, which was the first step in understanding common perils that consumers face, and is available to consumers on the NAIC Climate Risk webpage. The scope of the Workstream's focus has been broadened to ensure a holistic and grassroots approach that will be successful in engaging consumers in pre-disaster mitigation. Ms. Smith then summarized several presentations that the Workstream heard on the subject at its November meeting. There will be a workshop focused on wildfires to be scheduled in spring 2022.

<u>Hear an Update on Federal Activities</u>

Brooke Stringer (NAIC) gave a brief overview of federal issues in this area. She first stated that much of the work being done at the federal agency level is a result of the executive order issued by President Biden in May. This executive order mandated a range of federal studies to analyze the risk that climate change poses to the U.S. financial system to lay the groundwork for future policy changes. It also directed the Federal Insurance Office to assess climate related issues or gaps in insurance supervision, and to look for gaps in insurance coverage. The NAIC submitted a comment letter in November that underscored that state insurance regulators have long been focused on these issues.

Ms. Stringer went on to explain that the Financial Stability Oversight Council (FSOC) released its report on climate-related financial risk, and dubbed climate change an emerging threat to the financial system. The report makes several policy recommendations, including many things that the Workstreams are already looking into such as assessing climate-related risks for financial stability. FSOC is forming two new committees to help the financial regulators better understand climate-related risks to the financial system.

The SEC remains focused on climate disclosures, and is working on a mandatory climate risk disclosure proposal for the Commission's consideration by the beginning of 2022. Ms. Stringer also mentioned the Build Back Better Act, which has only been passed in the House. This Act packs in many policy priorities of the Biden Administration, dedicating over $550 billion for initiatives to combat climate change and promote clean energy. There is also a bill included that the NAIC supports, the Disaster Mitigation and Tax Parity Act. This would ensure that state-based disaster mitigation grants receive the same federal tax exemptions as federal FEMA mitigation grants.

<u>Hear an Update on International Activities</u>

Ryan Workman (NAIC) gave a brief overview of relevant international activities. First, he stated that the International Association of Insurance Supervisors (IAIS) remains focused on climate risks. The IAIS created a climate risk steering group that has held two virtual meetings over the past few weeks. The steering group has put together three workstreams, which are looking at (1) potential gaps in the IAIS's standard setting material for insurance supervision; (2) examples of good practices for developing climate scenario analysis in insurance; and (3) how to integrate climate-related financial risks in the regular annual global monitoring data collection. Climate was the subject of one of the panels for the IAIS's annual conference in November.

The Sustainable Insurance Forum (SIF) met in October to discuss its workstreams, which are looking at (1) the impact of climate-related risks on insurable assets; (2) broader sustainability issues; and (3) climate risks in actuarial processes.

The EU-U.S. Insurance Dialogue Project group had a meeting in October that focused on the progress and future priorities of the Project, and there were representatives from the NAIC in attendance. Additionally, the NAIC participated in the UN COP26 Sustainable Insurance Series.

The meeting materials can be found here, and the meeting presentation can be found here.

Special (EX) Committee on Race and Insurance

The Special (EX) Committee on Race and Insurance met on Tuesday, December 14, 2021 at the NAIC Fall National Meeting, and the agenda can be found here. Below is a summary of the meeting:

The Committee previously met on August 15, 2021, and the minutes from that meeting were adopted without objection.

Receive a Status Report from its Workstreams

Workstream One, Superintendent Eric A. Cioppa (ME) and Executive Deputy Superintendent of Insurance My Chi To (NY)
Superintendent Eric A. Cioppa (ME) stated that Charges for Workstream One are to continue research and analysis to identify issues and develop specific recommendations on action steps state insurance regulators and companies can take to improve the level of diversity and inclusion in the industry, including: (1) seeking additional engagement from stakeholders to understand the efficacy of diversity-related programs, how companies measure their progress, and what state insurance regulators can do to support these efforts; and (2) collecting input on any existing gaps in available industry diversity-related data. Since adopting its charges, the Workstream has met in regulator-only sessions three times, and held one open meeting related to diversity-related programs and efforts.

Workstream Two—Commissioner Sharon P. Clark (KY) and Commissioner Andrew R. Stolfi (OR)
Commissioner Andrew R. Stolfi (OR) stated that the Workstream continues to gather responses to the survey intended to examine best practices and initiatives that state insurance departments may consider when promoting diversity, equity, and inclusion in their departments. The Workstream will meet to discuss a method and forum for sharing diversity, equity, and inclusion best practices with regulators.

Workstream Three—Commissioner Vicki Schmidt (KS) and Commissioner Andrew N. Mais (CT)
Commissioner Vicki Schmidt (KS) stated that the Workstream met with interested parties on December 1 to discuss Charge F, dealing with continuing research and analysis of legal and regulatory approaches to address unfair discrimination, disparate treatment, proxy discrimination, and disparate impact. The Workstream is of the opinion that, with regard to Charge F, the proper first step is to draft a White Paper to define some of the terms involved. During the December 1 conference call, the Casualty Actuarial Society previewed several papers that it will be releasing in early 2022 that will define discrimination in insurance, identify potential influences of racial bias on property and casualty insurance, and provide approaches to address racial bias. The Workstream believes these papers will be a helpful tool in drafting its White Paper.

Workstream Four—Commissioner Marlene Caride (NJ) and Commissioner Mark Afable (WI)
Commissioner Mark Afable (WI) stated that the Workstream held a regulator only session in October to discuss the best way to develop a work plan. After reviewing the charges, the Workstream concluded that there is a need for data to drive discussion and advance the understanding of these issues and next steps. In conjunction with the other Workstreams, Workstream Four needs to explore how to best to move forward with identifying data that already exists and collecting data going forward. The Workstream anticipates having an open meeting in January.

Workstream Five—Commissioner Jessica K. Altman (PA) and Commissioner Ricardo Lara (CA)
Commissioner Jessica K. Altman (PA) explained that, in the five meetings that the Workstream has held since the last update, the topic of discussion has primarily been on the draft Principles for Data Collection document. This document provides high level guiding principles for the collection and treatment of data on race, ethnicity, and other demographic characteristics in the health insurance business. The document provides recommendations from stakeholders that were obtained in the Workstream's meetings. One consistent theme that has been raised is that robust data collection is key to both quantifying existing disparities and evaluating the effectiveness of initiatives that address disparities. The Workstream plans to hold one last meeting to finalize the document before the end of the year or early next year.

Commissioner Ricardo Lara (CA) stated that a prior Workstream meeting focused on areas that it wanted to obtain more information on, primarily maternal health disparities and the increased rate of uninsured children. Additionally, the Workstream moved forward with an outline of a White Paper on provider networks and directories, and cultural competency.

<u>Hear an Update on CO SB 21-169</u>

Commissioner Michael Conway (CO) gave an update regarding the above legislation that is intended to restrict insurers' use of external data. He explained that the goal of the legislation is to protect Colorado consumers from insurance practices that result in unfair discrimination on the basis of a protected class, particularly with respect to use of information related to things like credit, ownership, location, and occupation. An example of this was provided as follows: A study found that a 26-year-old Chicagoan living in an underserved neighborhood with vacant lots and a high crime rate paid four times as much for auto insurance as a 34-year-old advertising executive living in a white neighborhood in Chicago, even when both drivers had similar safety records. These disparities have been seen in many lines, such as auto insurance, life insurance, and homeowners insurance.

Commissioner Conway explained that the main thought process behind this legislation is that regulators and the industry have a duty to ensure that big data is used responsibly. He further stated that the regulators want to encourage the efficiencies that can be achieved from the use of big data, while ensuring that consumers are not harmed in the process. SB21-169 requires insurers to stress test their big data systems and take corrective action to address consumer harms identified, and Commissioner Conway said that this is the core component of the legislation.

Commissioner Conway stated that the law applies broadly to insurers using external consumer data and information sources, algorithms, and predictive models including life, health, and property and casualty. The law specifically excludes title insurance, bonds executed by qualified surety companies, and commercial insurance policies, with the exception of insurers issuing business owners' or commercial general liability policies with annual premiums of $10,000 or less. Marketing, underwriting, pricing, utilization management, reimbursement methodologies, and claims management will all be subject to the new legislation.

Regulations adopted by the Division must require insurers to: (1) Provide information on the external consumer data and information source used in developing and implementing their algorithms and models; (2) Explain how the insurer uses external consumer data and information; (3) Establish and maintain a risk management framework or similar process to determine whether their big data systems result in unfair discrimination, and attest to its implementation; and (4) Provide an assessment of the results of the risk management framework or similar process. However, regulations adopted by the Division must also include provisions to establish a reasonable time frame for insurers to remedy any unfairly discriminatory impact, and allow insurers to use external data sources and algorithms or predictive models using data sources that have been previously assessed and found not to be unfairly discriminatory.

Commissioner Conway outlined the next steps for SB21-169, which involves stakeholder meetings, by line of insurance and insurance practice, that are set to begin starting in mid-January 2022. Stakeholders can monitor the status of these meetings on the Division's website.

The Committee then heard several presentations on industry diversity efforts.

Jessica Hanson Hanna, Senior Vice President Public Affairs at American Property Casualty Insurance Association & Dr. Leroy David Nunery II, Founder and Principal of PlusUltre LLC
Jessica Hanson Hanna provided an overview of the American Property Casualty Insurance Association's (APCIA) efforts related to diversity, equity, and inclusion (DEI). APCIA, recognizing the recruitment challenges facing the industry, co-founded the Insurance Careers Movement, a global grassroots initiative that brings together insurance companies, brokers, and agents trade associations, and other industry partners to inspire more people to choose insurance as a career. A driving force of this Movement was to create a more diverse and inclusive workforce. In 2019, APCIA's board of directors adopted DEI as a strategic priority of the trade association, and the board continues to work to retain a diverse workforce through professional development events. Last year, APCIA established a board level working group on social equity and inclusion to oversee its initiatives. APCIA's DEI Catalog created in partnership with Dr. Leroy David Nunery II and Aon, was meant to be the first step in generating authentic dialogue in the area of DEI, particularly talent recruitment and retention.

The goals of the DEI Catalog are to (1) establish DEI investment and commitment among APCIA's membership; (2) understand the depth of DEI practices among APCIA member companies; (3) provide guidance and insights to members as a trusted industry repository of information; and (4) inform APCIA's advocacy and reputational positioning on DEI issues at local, regional, and national levels.

Dr. Nunery stated that the catalog voluntarily captured information from 52 organizations based on their size with respect to direct premiums written. He stated that a series of questions were asked and grouped together in terms of results. For example, questions and results fall into groups such as Adoption and Implementation of DEI Practices, Impact of Employee Voice on DEI Initiatives, DEI Training and Professional Development, Company Support and Sponsorship of External DEI Initiatives, and Roles and Responsibilities for DEI Leaders. For the remainder of the presentation, Dr. Nunery walked through many specific questions and the results of those questions in terms of DEI. All of the information can be found in the linked meeting materials.
In summary, this inaugural APCIA DEI Catalog is a significant endeavor to document the efforts of member companies to achieve their DEI goals. As a foundational document, the Catalog can have substantial impact on the entire insurance industry because it highlights areas of accomplishment and opportunity in a major segment of the industry.

Harmony Harrington, Vice President Government and Community Relations at Blue Cross Blue Shield of Illinois

Harmony Harrington began her presentation by stating that DEI is a part of the very fabric of how Blue Cross Blue Shield of Illinois (BCBSIL) was built. Employees at BCBSIL/HCSC are required to complete annual DEI education and training courses that are tailored to the employee's position in the company. A diversity speaker series is offered monthly, and it covers various topics in the DEI realm. Ms. Harrington explained that BCBSIL continues to advance its ability to collect data and report out, and works to create diverse pipelines. With respect to representation in the workforce, Ms. Harrington said that a large percentage of the workforce, and of management in particular, is represented by women. Similarly, people of color represent a growing percentage of the workforce and management. Additionally, BCBSIL uses business resource groups to get employees involved in professional development, mentoring, and cultural education.

Looking outwards, BCBSIL desires to create economic opportunities that will pave pathways to better heath. The Company joined the Morgan Park Community on the South Side of Chicago, with the opening of a 130,000 sq. ft. multi-purpose center that transformed an abandoned retail store into an employee work space coupled with a community-facing Blue Door Neighborhood Center. Over half of the 500 promised jobs have gone to individuals who live within 10 miles of the site. Additionally, BCBSIL has launched a student development program benefiting students of a nearby high school. Similar work is also underway in another Chicago neighborhood, where another center is bringing in almost 400 jobs.

In an effort to address health equity, cultural competency, and implicit bias in healthcare, Ms. Harrington says that BCBSIL founded the Institute for Physician Diversity to contribute to the systematic increase of underrepresented minority physicians. Additionally, working with its provider partners, BCBSIL developed the Hospital Quality Incentive Pilot Program that is meant to improve care and quality by reducing racial and ethnic health disparities for members who get care at participating health systems. Ms. Harrington also stated that BCBSIL's community engagement efforts are meant to provide opportunities to advance community health.

Jose Ramos, Diversity & Inclusion Consultant at Zurich
Jose Ramos begins by explaining that Zurich has an Executive Diversity and Inclusion Council, Diversity and Inclusion Councils within different business units within the Organization, a Diversity and Inclusion Office, and nine employee resource groups. The Executive Diversity and Inclusion Council is meant to provide accountability and guidance. The purpose of the Diversity and Inclusion Office is to set the strategies and priorities from a diversity and inclusion perspective, provide governance, and to connect the diversity and inclusion efforts across the Organization.

Zurich is working to evolve by strategically aligning its efforts across the Organization, embedding diversity and inclusion throughout all levels of the Organization, particularly through its Apprenticeship Program, and looking to have greater levels of accountability in its leadership and its business units. Mr. Ramos stated that Zurich is transparent about the representation of its workforce by releasing this information by gender, race, and ethnicity. The representation information in 2021 provided an additional level of transparency by revealing the representation at different levels of the Organization. Mr. Ramos stated that Zurich desires to improve its understanding of knowing the metrics, understanding the insights, and focusing on behavior that leads to meaningful change.

Any Other Matters

There was no group discussion of additional matters, but Commissioner David Altmaier (FL) pointed out that the Committee received a letter from the Center for Economic Justice that has been attached to the meeting materials. Additionally, a letter was received from the National Association of Mutual Insurance Companies (NAMIC) and it will be uploaded to the Committee's website soon.

The meeting materials can be found here.

Life Insurance and Annuities (A) Committee

The Life Insurance and Annuities (A) Committee met on Wednesday, December 15, 2021 at the NAIC Fall National Meeting, and the agenda can be found here. Below is a summary of the meeting:

The Committee previously met on August 16, 2021, and the minutes from that meeting were adopted without objection.

Consider Adoption of its Task Force and Working Group Reports

With no oral reports given, the following Reports were adopted without objection:

- Accelerated Underwriting (A) Working Group
- Life Actuarial (A) Task Force

Receive a Memorandum from the Life Actuarial (A) Task Force and the Valuation Analysis (E) Working Group on the Financial Sector Assessment Program (FSAP) Recommendation

The Memorandum from the Life Actuarial (A) Task Force and the Valuation Analysis (E) Working Group on the Financial Sector Assessment Program (FSAP) Recommendation was received, and no further action was taken. The specific recommendation is that the NAIC and state insurance regulators should significantly expand their in-house supervisory actuarial capability to supervise principle-based reserving (PBR) effectively, and consider the formation of a shared center of expertise in addition to the NAIC resources already available to the Valuation Analysis (E) Working Group.

Consider Adoption of the Life Actuarial (A) Task Force's (LATF) 2022 Proposed Charges

Mike Boerner, Chair of the NAIC Life Actuarial (A) Task Force, explained that aside from a few minor tweaks to timing for a couple of the LATF Subgroups, the 2022 LATF Charges are the same as the 2021 Charges.

There was a comment made related to Charge 4, which relates to the Indexed Universal Life (IUL) Illustration (A) Subgroup. The Charge is to monitor the results and practices of IUL illustrations following implementation of Actuarial Guideline XLIX-A—The Application of the Life Illustrations Model Regulation to Policies with Index-Based Interest to Policies Sold On or After December 14, 2020 (AG 49-A), and provide recommendations for consideration of changes to Life Insurance Illustrations Model Regulation (#582) to the Life Actuarial (A) Task Force, as needed. The comment was made to suggest that it is time to move the issue of consumer-facing disclosure away from actuaries to individuals who deal with consumer-facing issues. The Charges were ultimately adopted without objection.

Consider Adoption of Actuarial Guide XXV—Calculation of Minimum Reserves and Minimum Nonforfeiture Values for Policies With Guaranteed Increasing Death Benefits Based on an Index (AG 25)

Mr. Boerner explained that AG 25 pertains to specific types of life insurance products, which include small dollar policies. The revisions to AG 25 include the removal of the Guideline's fixed 4% nonforfeiture interest rate floor, resulting in the alignment of this Guideline with the Valuation Manual. AG 25 was adopted without objection.

Consider Adoption of the 2022 Generally Recognized Expense Table (GRET)

Mr. Boerner explained that the development of an updated GRET is an annual process to provide expenses that are used by a significant percentage of life insurers in their illustrations, pursuant to Model #582. The SOA Committee on Life Insurance Company Expenses sent its GRET analysis to the LATF for the upcoming year. The 2022 GRET was adopted without objection.

Consider Adoption of its 2022 Proposed Charges

The 2022 Proposed Charges for the Life Insurance and Annuities (A) Committee were largely unchanged from the 2021 Charges.

Discuss the Life Insurance Illustration Issues (A) Working Group "Chair Report"

Commissioner Glen Mulready (OK) explained that, at the NAIC Summer National Meeting, the Committee requested that Richard Wicka, Chair of the Life Insurance Illustration Issues (A) Working Group, draft a Chair Report to inform its decision about the next steps for this Working Group. This Chair Report is included in the meeting materials.

The Chair Report concluded that it should constitute the final report of the Working Group, and that the Working Group be disbanded. There are comment letters from two NAIC Consumer Representatives, Brenda Cude and Birny Birnbaum, which encourage the Working Group to continue its efforts, partly to adopt new charges and develop a Life Insurance Policy Overview rather than disbanding.

Commentary was offered on behalf of New York, which made clear that, while the consideration that was put into disbanding the Working Group is appreciated, New York is disappointed that a consumer protection issue such at this one did not generate adequate support. In addition, Mr. Birnbaum offered comments in opposition to the motion to adopt the Chair Report as the final report of the Working Group, and to disband the Working Group. Mr. Birnbaum commented that it was concerning that there was difficulty getting consensus on the issue of providing consumers with the buyer's guide and an overview prior to purchase. Further, the idea that the NAIC would offer unfinished Working Group products that were opposed by industry concerned Mr. Birnbaum, because it invites potential disparate treatment across the states.

Notwithstanding, the motion to adopt the Chair Report as the final report of the Working Group and to disband the Working Group passed, with one objector.

Discuss the Life Insurance Online Guide (A) Working Group
Commissioner Mulready stated that this Working Group has no chair, and that there is a need for one if the membership believes it to be a priority.

The meeting materials can be found here.

Health Insurance and Managed Care (B) Committee

The Health Insurance and Managed Care (B) Committee met on Wednesday, December 15, 2021 at the NAIC Fall National Meeting, and the agenda can be found here. Below is a summary of the meeting:

The Committee previously met on August 16, 2021, and the minutes from that meeting were adopted without objection.

Consider Adoption of its Subgroup, Working Group, and Task Force Reports

Without oral reports, the following Reports were adopted without objection:

- Consumer Information (B) Subgroup
- Health Innovations (B) Working Group
- Health Actuarial (B) Task Force
- Regulatory Framework (B) Task Force
- Senior Issues (B) Task Force

Consider Adoption of its 2022 Proposed Charges

The Charges of the Health Insurance and Managed Care (B) Committee were adopted without objection.

Consider Adoption of its Task Forces' 2022 Proposed Charges

The Charges for Health Actuarial (B) Task Force, Regulatory Framework (B) Task Force, and the Senior Issues (B) Task Force were adopted without objection.

Update from the Federal Centers for Medicare & Medicaid Services' (CMS') Center for Consumer Information and Insurance Oversight (CCIIO)

Jeff Wu, Deputy Director for Policy at CCIIO, gave an update detailing CCIIO's plans to coordinate and work with the state insurance regulators to ensure provider compliance with the No Surprises Act and enforcement of the requirements.

Mr. Wu began his presentation by discussing coverage issues. He stated that they are seeing high volumes in open enrollment, and it is the first open enrollment where consumers have access to enhanced tax credits. He explained that four out of five consumers will be able to find healthcare coverage for $10 or less per month, and to leverage that, CCIIO/CMS has one of the largest open enrollment outreach campaigns to date. There has been a strong open enrollment so far, on top of the successful special enrollment period, because of their strong infrastructure. The result was that, as of September, they had 12.2 million people enrolled in the federal and state marketplaces. A coverage challenge is the upcoming unwinding process, which will mark the end of the public health emergency. In the coming months, there will be millions of consumers redetermined for Medicaid and will potentially become eligible for marketplace coverage. Mr. Wu explained that they are exploring all available options to limit coverage gaps and losses for those that are redetermined in order to make sure that there is a smooth transition for all of those consumers. He encouraged states to be as engaged as possible to help with the transition.

Mr. Wu then pivoted to a discussion on the No Surprises Act, which is a huge sea change to the commercial markets. He stated that all are aligned on wanting to implement changes as quickly as possible, but noted that the provided timeline is very accelerated. Mr. Wu explained that CCIIO/CMS has issued a number of rules to set up the regulatory apparatus, and have been building out the operations for implementing the earliest of the consumer protections in the Act. A website dedicated to providing general information has been launched. Mr. Wu stated that there is an important division of responsibilities between the federal government and state governments with regard to implementation and enforcement. There is a plan to make the regulatory jurisdictional structures public to provide stakeholders with clarity. Aside from the No Surprises Act, CCIIO is interested in enforcement in a number of areas, namely ensuring that plans are providing required coverages.

State-based exchanges and grants were discussed, as Kentucky, New Mexico, and Maine have transitioned from the federal marketplace to become full state-based marketplaces for 2022. CCIIO/CMS put out $20 million in grant funding under the ARP to state-based marketplaces this year to increase consumer access to coverage. Additionally, Mr. Wu states that the 1332 Program is still open for business. Mr. Wu also congratulated Colorado for its successful EHB-Benchmark application. This plan is intended to promote access to coverage for gender-affirming care.

<u>Discuss Committee Federal No Surprises Act (NSA) Consumer, Provider, and Insurer Outreach Materials</u>

Commissioner Jon Godfread (ND) explained that materials were created in order to provide consumers and providers with more information about the No Surprises Act. Commissioner Godfread inquired as to whether Committee needed to explore the need for an insurer-facing document similar to the ones that were created for consumers and providers, but it was ultimately decided that the consumer and provider-facing documents will be shared with insurers. No need for an insurer-specific template or document was expressed.

<u>Summary of Findings from the Kaiser Family Foundation's (KFF's) 2021 Employer Health Benefits Survey (EHBS)</u>

Gary Claxton, Senior Vice President of KFF, provided this summary. He explained that annual premium increases have settled at a point between 4-5%, and deductibles have become relatively flat over the past three years. Mr. Claxton also explained that we have also settled into a pattern where PPOs are not quite half the market. Over time, self-funding has been going up in large and small markets. There has also been an increase in small group plans that are level-funded. Mr. Claxton stated that almost 40% of employers have made some changes to their health plan since the pandemic to increase access to mental health service, and about half of employers feel that telehealth will be important in providing this care.

Commissioner Godfread explained that this summary was brought in because the Committee spent a considerable amount of time discussing the individual market and individual health plans, and it is important to understand the employer's view.

Update on the Special (EX) Committee on Race and Insurance Workstream Five's Work

Commissioner Jessica K. Altman (PA) explained that, in the five meetings that the Workstream has held since the last update, the topic of discussion has primarily been on the draft Principles for Data Collection document. This document provides high level guiding principles for the collection and treatment of data on race, ethnicity, and other demographic characteristics in the health insurance business. The document provides recommendations from stakeholders that were obtained in the Workstream's meetings. One consistent theme that has been raised is that robust data collection is key to both quantifying existing disparities and evaluating the effectiveness of initiatives that address disparities. The Workstream plans to hold one last meeting to finalize the document before the end of the year or early next year.

Commissioner Ricardo Lara (CA) stated that a prior Workstream meeting focused on areas that it wanted to obtain more information on, primarily maternal health disparities and the increased rate of uninsured children. Additionally, the Workstream moved forward with an outline of a White Paper on provider networks and directories, and cultural competency.

The meeting materials can be found here.

Pharmacy Benefit Manager Regulator Issues (B) Subgroup

The Pharmacy Benefit Manager Regulatory Issues (B) Subgroup met on Saturday, December 11, 2021 at the NAIC Fall National Meeting, and the agenda can be found here. Below is a summary of the meeting:

Hear Update of the Pharmaceutical Care Management Association (PCMA) v. *Wehbi* Ruling

Commissioner Jon Godfread (ND) provided an update regarding the *Wehbi* ruling out of the Eighth Circuit Court of Appeals. In *Wehbi*, Pharmaceutical Care Management Association ("PCMA") sued to enjoin the enforcement of several North Dakota statutory provisions that regulate pharmacy benefits managers ("PBMs"), claiming, in relevant part, that they were preempted by the Employee Retirement Income Security Act of 1974 ("ERISA").

This is the first case after the United States Supreme Court decision in *Rutledge v. Pharmaceutical Care Management Association*, and notably, Commissioner Godfread suggested that *Wehbi* greatly expands the decision in *Rutledge* by upholding the laws regulating PBMs as against ERISA preemption where the laws regulate matters of transparency, arbitrary performance metrics, and other requirements that are placed upon pharmacy providers, and preventing other anti-competitive practices by PBMs. Commissioner Godfread stated that *Rutledge* and *Wehbi* opens the door to more comprehensive regulation of PBMs and have the laws upheld as applied to ERISA plans.

The Subgroup then heard presentations from different states on implementation of Pharmacy Benefit Manager (PBM) Laws.

Representatives from Connecticut, Oklahoma, Virginia, and Wisconsin gave brief presentations regarding the implementation of PBM laws in their respective states, providing material for the Subgroup to consider in preparing the upcoming White Paper and any future Model Law.

Connecticut
Paul Lombardo (CT) gave an overview of Connecticut's PBM laws. Connecticut currently registers PBMs, pursuant to Public Act No. 18-41, codified at Conn. Gen. Stat. Ann. § 38a-479 and effective beginning January 1, 2020. A related section, Conn. Gen. Stat. Ann. § 38a-479ppp, requires that PBMs submit, in aggregate form, the rebates that they collect on fully insured business in the State for outpatient prescription drugs, and also identity the aggregate dollar amount of what they have kept from the rebates. Mr. Lombardo stated that, essentially, the total rebate less the amount retained is what they have remitted to the health insurance carriers in the State for the fully insured business. Having received its first data point at the beginning of 2021, the State will soon be receiving its second data point at the beginning of 2022, and both reports will be made public soon thereafter. Kathy Belfi (CT) added that there has been an uptick of service agreements between PBMs and health insurers. In response, the Department has been more diligent in the analysis process, and acknowledges that the cost of pharmaceuticals involves complex relationships between PBMs and health carriers, rather than just PBMs. Mr. Lombardo stated that, in an effort to learn more about the system as a whole, the Department conducted

interviews with many actors including manufacturers, pharmacies, wholesalers, etc. The Department is developing a White Paper and provided it to the Subgroup.

Oklahoma
Kelli Price (OK) identified the Patient's Right to Pharmacy Choice Act as the crux of the regulation of PBMs in the State. This Act establishes geographical requirements for pharmacy access, prohibits PBMs and benefit plans from requiring patients to use pharmacies that are directly or indirectly owned by the PBM or benefit plans, requires PBMs and plans to list all pharmacies and providers on promotional materials, if any are listed, bars PBMs or plans from charging pharmacies certain fees (for submission of a claim, etc.), bars PBMs from reimbursing independent pharmacies at a lesser amount than PBM-owned pharmacies, Bars PBMs from denying a pharmacy opportunity to participate in a pharmacy network if it is willing to follow the same rules as everyone else (any willing provider), and prohibits incentives related to mail-order, cost-sharing, co-pays, or other discounts.

After the *Rutledge* decision, the Act faced legal challenges, but ultimately became effective, with the exception of regulating promotional materials and network access when related to Medicare plans. As a result, the Department created a focused solely on PBM compliance and enforcement, hiring staff with applicable knowledge and expertise. Similarly, the Department created a process for customers to submit their complaints against PBMs on its website, and developed standard forms. Ms. Price highlighted various challenges that the State has faced with regard to enforcement of the Act, such as the language of the legislation, the lack of communication between a PBM and a pharmacy (or PSAO), and the large volume of documentation received during the complaint process. The Department has received over 135,000 alleged PBM violations.

Virginia
Don Beatty (VA) gave an overview of PBM statutes in Virginia, which are codified beginning at Va. Code Ann. § 38.2-3465 and became effective on October 1, 2020. Pursuant to these statutes, the PBMs are required to be licensed. Mr. Beatty stated that the requirements to obtain a license are outlined in the statute, and are very minimal. As long as the applicant fills out the application correctly, they are entitled to a license.

Mr. Beatty briefly walked through the statutes, listing the conduct that carriers and PBMs are prohibited from engaging in as outlined in Va. Code Ann. § 38.2-3467, and summarizing Va. Code Ann. § 38.2-3468 by stating that each carrier must place in its contract that the Commissioner may examine the books and records of the PBMs. Mr. Beatty stated that the State has 39 licensed PBMs, and has had no complaints.

Wisconsin
Nathan Houdek (WI) began his presentation by explaining that a task force was created by Executive Order in August 2019 and charged with developing recommendations to reduce the price of prescription drugs. This task force was comprised of many actors, and after many meetings and presentations, released a report proposing over 20 policy solutions centered on lowering prices and controlling costs, increasing transparency and consumer protection, and

access for vulnerable populations. These policy solutions have been introduced into the legislature as standalone bills, but have remained idle.

After years of road blocks, the Wisconsin PBM law, 2021 Wisconsin Act 9, was enacted in March 2021. Some of the key provisions of the law, with varying effective dates that stretch into January 2022, include gag clauses, several auditing requirements, annual PBM rebate reports, PBM license, various notice requirements, and limitations on a PBM's ability to retroactively deny or reduce a pharmacy's claim after adjudication.

The Department lacks capacity to properly enforce the law, and is in need of additional staff members and increased financing to update its technology. Additionally, Mr. Houdek encouraged action by the federal government in the area of prescription drug pricing.

Discuss Work Plan for Completing White Paper Charge

This item was deferred to the next Subgroup call.

The meeting materials can be found here.

Health Innovation (B) Working Group

The Health Innovations (B) Working Group met on Saturday, December 11, 2021 at the NAIC Fall National Meeting, and the agenda can be found here. Below is a summary of the meeting:

The Working Group heard several presentations on Health Plan efforts to address health disparities.

Dr. John Lumpkin, BlueCross BlueShield of North Carolina
Dr. Lumpkin gave a presentation on BlueCross BlueShield of North Carolina's (BCBSNC) health care equity index prototype. He stated that no community can be healthy until racism no longer exists, and highlighted BCBSNC's commitment to diversity, equity, and inclusion. Notably, Dr. Lumpkin distinguished equality from equity, explaining that extra effort and resources are needed in some communities that disproportionately suffer at a higher rate. Equality would provide every person with the same tools, but equity provides every person with the tools that they need given the situation they find themselves in. Given the unique history of North Carolinians, the prototype takes into account the areas of economic distress within the state as a way to identify communities in need.

Dr. Lumpkin said that the goal of the prototype is, with collaboration and additional input, to develop it from a BCBSNC healthcare equity index into a North Carolina healthcare equity index. Among the prototype index measures are improving maternal and women's care, increasing behavioral health access, increasing immunizations and wellness visits, and increasing health outcomes, etc. The measures used in this index cover all aspects of an individual's interactions with the healthcare system, including access to care, outcomes, process, affordability, experience and internal race, ethnicity and language data quality. For disparities, Dr. Lumpkin explained that they looked at white vs. non-white, in addition to economic disparities according to the North Carolina Department of Commerce county development tiers. The prototype evaluates the index measures by disparity to produce a disparity ratio, providing a baseline to measure progress over time and develop company goal to address these disparities.

Dr. Lumpkin's presentation can be found here.

Dr. Darrell Gray II, Anthem
Dr. Gray gave a presentation on Anthem's whole health strategy to achieve health equity. This strategy focuses on improving health equity, where individuals have fair and just opportunities to be healthy. Additionally, it creates a strong health leadership platform, where Anthem is vocal about its purpose and impact and leads by example on a national stage. The strategy emphasizes whole health beyond healthcare, considering individuals' physical, social, pharmacy, and behavioral health needs. It also optimizes associate and consumer health, and connects individual health to community health.

Like Dr. Lumpkin, Dr. Gray distinguished between equality and equity, citing equity as one of the main goals of the whole health strategy employed by Anthem. The other goal is to address health related social needs such as unstable housing, food insecurity, and lack of reliable transportation.

These are factors that Anthem has identified as having the potential to exacerbate poor health and quality of life outcomes. The guiding principles used to achieve these goals are accountability, authenticity and empathy, data driven, and inclusion and reciprocity.

Anthem's approach is a plan for ensuring individuals have a fair and just opportunity to be as healthy as possible. The first step is to identify an individual's social needs and then stratifying the population based on those needs. The next step is social care coordination, which is accomplished by helping members find local resources to address these needs and meeting with the member and their family to establish a plan. Last, social interventions are created based on trends identified by social data.

Dr. Gray's presentation can be found here.

The Working Group then heard a presentation on the health disparities impacts of telehealth and alternative payment models.

Kelly Edmiston, Ph.D., NAIC Center for Insurance Policy and Research

To begin his presentation, Kelly Edmiston explained a Charge to the Health Innovations (B) Working Group from the Special (EX) Committee on Race and Insurance. That Charge instructs the Working Group to evaluate mechanisms to resolve disparities through improving access to care, including the efficacy of telehealth as a mechanism for addressing access issues; the use of alternative payment models and value-based payments and their impact on exacerbating or ameliorating disparities and social determinants of health; and programs to improve access to historically underserved communities.

Mr. Edmiston stated that the overarching takeaway as it relates to both telehealth and value-based payment systems is that both have significant potential to improve health outcomes for the underserved and reduce socioeconomic and demographic disparities in health and healthcare, but they must continue to evolve for that potential to be fully realized. With regard to telehealth specifically, Mr. Edmiston pointed out that the NAIC Center for Insurance Policy and Research (CIPR) published a report entitled *An Overview of Telehealth and Its Implications for Health Disparities* in November 2021. That report can be found here. Among the key takeaways from his discussion about telehealth were: Lack of access to healthcare invariably leads to worse health outcomes; Disadvantaged and marginalized populations are more likely to be physically isolated from healthcare providers and to have limited transportation options; Telehealth has great potential to enhance access to healthcare in these cases, as well as provide culturally competent care that is not otherwise available; and Increased telehealth utilization will increase access to care for some underserved individuals.

With regard to alternative payment models, the NAIC CIPR is working on a similar report entitled *Issue Brief: Alternative Payment Models and Health Disparities* that is forthcoming. Among the key takeaways from Mr. Edmiston's discussion about alternative payment models (APMs) were: Traditional Fee-for-Service (FFS) payment models incentivize overtreatment and disincentivize care for vulnerable populations; Common APMs also are largely volume-based. In the absence of specific promotion of high-quality, cost-efficient care, they have their own set of perverse incentives; Value-Based Payment (VBP) Models, which ostensibly promote high-quality, cost-efficient care by incentivizing value, are the primary subject of interest; and With optimal contract designs, VBP Models hold much promise for better serving the health needs of the traditionally underserved.

Kelly Edmiston's full presentation can be found here.

Property and Casualty Insurance (C) Committee

The Property and Casualty Insurance (C) Committee met on Wednesday, December 15, 2021 at the NAIC Fall National Meeting, and the agenda can be found here. Below is a summary of the meeting:

The Committee previously met on November 10, 2021, and the minutes from that meeting were adopted without objection.

The Committee then heard several presentations related to auto insurance refunds.

Doug Heller, Consumer Federation of America (CFA)

Doug Heller began his presentation by saying that, as a result of the excess premiums charged in 2020, there is a duty to get more refunds to drivers and it is not too late to account for this need and return premiums to policyholders.

Mr. Heller explained that, when COVID struck, insurance commissioners and their offices went to extraordinary lengths to ensure that the insurance market could function effectively. Rather quickly, consumers were granted premium payment extensions and cancellation moratoria, carriers granted new means by which consumers could comply with a variety of statutory and regulatory requirements, and departments figured out how to regulate from home. However, Mr. Heller stated that CFA and the Center for Economic Justice (CEJ) repeatedly called upon departments to act to create a mandatory mechanism for insurers to return the excess premium that they were sure to collect as a result of the pandemic. When companies did finally return premium, CFA applauded, but warned that it was not enough and would need to be ongoing in conjunction with the pandemic's path.

Mr. Heller contended that the industry, including state regulators, did not do enough to prevent the excessive rates that NAIC data now highlights. CFA sent letters with proposed frameworks that were meant to assist in assessing the pandemic's impact on driving as well as how to calculate a fair refund to policyholders. Mr. Heller said that, although rate making is prospective and the industry will say that it cannot be done based upon an aberrant week or month, the pandemic has not been an aberrant week or month. The pandemic was a sudden, extended change that conflicted with the key historical data used to create the rates being charged during the pandemic. Mr. Heller said that the rates became excessive overnight, and either consumers would receive refunds in such a historical time, or insurers could hold onto the unearned windfall. Mr. Heller's goal is that regulators will revisit the question of pandemic premium refunds for the drivers in their state, and develop a plan for a systematic response should we again face empty highways as during the pandemic.

Mr. Heller stated that premiums grew steadily through 2020, while the losses incurred dropped over ten percentage points. During 2020, concerns raised regarding the disconnect between the premiums and the risk were met with responses from insurers contending that the higher severity of automobile accidents was the reason not to act. Even after accounting for premium refunds, the drop in auto claims led to a historically low industry wide loss ratio for 2020, where insurers paid out billions less than normal. Mr. Heller stated that no matter the refunds or rate decreases that insurers allowed throughout the pandemic, they did not come close to offsetting the excessive prices that consumers were being charged. Given that no one could have foretold the effect of the pandemic, CFA had been calling for monthly refunds rather than rate changes. According to AM Best's reporting, insurers returned nearly $13 billion in premiums as a result of the pandemic, but CFA believes this amount was insufficient by almost $30 billion. Mr. Heller noted that, rather returning premiums to customers, many insurance companies used the unearned funds to provide executive bonuses, acquire other insurance companies, and pay dividends to investors.

As insurance companies are beginning to implement rate hikes and discount the events of 2020 in future rate making, Mr. Heller claimed that regulators must make adjustments so that a fair result can be achieved for consumers who purchased coverage during this challenging time. CFA, in conjunction with CEJ, have proposed a methodology to ensure that companies do not get to ignore the windfalls from 2020. Mr. Heller urged regulators to investigate and issue a data call, and call upon insurers to return the excess premiums that the pandemic provided.

Rich Gibson, American Academy of Actuaries

Rich Gibson gave a brief presentation to discuss relevant actuarial considerations, declining to weigh in on the need for additional premium refunds. Mr. Gibson explained that rates are set on a prospective basis, and that expected loss ratios are frequently estimated using historical accident period results. Even in normal times, evaluating insurance data comes with inherent uncertainties, and when insurance carriers underestimate the rate, there is generally no recourse to recoup the shortfalls. Actuaries have practices and procedures for making these future cost estimates that have developed over time. Mr. Gibson referenced a paper published by the Auto Committee of the American Academy of Actuaries that addresses considerations for auto insurance data in the context of COVID-19. That paper can be found here.

Mr. Gibson explained that it is common practice among actuaries to use accident period data when assessing the economic profitability of an insurance line of business. It is also common practice to use multiple years when making these assessments. Mr. Gibson notes several conclusions with regard to the accident year historical data. First, 2020 was the best year for loss ratios in the ten-year time frame. The data provided was not adjusted, but as reported by the industry, so Mr. Gibson assumed that the premium refunds were included. However, it would not does not include the investment income earned by the industry for this line of business. Mr. Gibson said that industry aggregate data and averages therefrom may not be the best way to judge the appropriateness of refunds provided to date. To conclude, he suggested that any potential need for refunds should be measured and considered at the company and state levels. This analysis needs to be done thoroughly with the proper depth, using more than one year of results, and in consideration of all sources of income. Mr. Gibson pointed out that the proper management of any insurance product requires continued monitoring with updates over time.

David F. Snyder, American Property Casualty Insurance Association (APCIA)

David Snyder began his presentation by praising regulators and industry for adapting to remote regulation, and for offering flexibility to insurers who, in turn, offered flexibility to customers in areas such as grace periods for late payments and waiving delivery exclusions. Additionally, Mr. Snyder pointed out that insurers provided over $14 billion in premium relief in recognition of the downturn in activity. As the pandemic continued, Mr. Snyder explained that the APCIA warned the industry against mandating additional premium actions after seeing reports of increasing traffic speeds, more accidents, and more miles driven. The APCIA recently released a comprehensive report that makes the following findings: auto loss costs are surging as driving levels rebound; higher severity and rising claims frequency are pushing auto insurance costs up to levels not seen since 2017; the cost to repair or replace vehicles is increasing; and the deterioration in highway safety is a looming concern because of an increase in fatalities.

Mr. Snyder expressed that a long term view will be critical in maintaining the stability of the insurance market, particularly because the APCIA expects loss ratios to climb. Rising insured losses are being driven by the intersection of more dangerous driving behavior, return of mileage and rapid inflation impacting the cost of products and services covered by auto insurance. Mr. Snyder then stated that long term losses incurred between 2020 continuing for the foreseeable future have offset the short term gains that were seen in the early quarters of 2020. He stated that insurers should not be mandated to provide mid-term premium reductions based on short-term fluctuations in losses, but rather, urged regulators to continue to lean on the time tested approach rather than being pressured into driving down rates based on a short term analysis. He urged regulators to avoid the temptation to grant short term relief that has the potential to lead to instability and solvency issues.

Tony Cotto, National Association of Mutual Insurance Companies (NAMIC)

To begin his presentation, Mr. Cotto expressed that letters and press releases that have allegedly attacked regulators in the industry have asked us to ignore how dangerous the roads have been for the last 20 months. Mr. Cotto echoed the fact that rates are prospective, but also explained that the rate making process is a complex, sophisticated, time-consuming exercise that aims to use credible data to correlate prices as closely as possible to the likely cost of claims. He said that rates are scrutinized and approved in one of the most competitive markets on the planet. Further, Mr. Cotto emphasized the fact that auto insurance rates respond to systemic changes and behavioral patterns over periods of years, not weeks or months.

Mr. Cotto said that, contrary to some perceptions, the world did not stop in 2020. People continued to drive and accidents continued to occur. Mr. Cotto claimed that consumer assistance actions were taken voluntarily while insurers continued to provide routine protection and claims management to minimize disruption for policyholders. These actions were taken despite the fact that at no point was any covered policyholder unable to get in their vehicle and drive, which creates risk exposure on the roads.

Mr. Cotto stated that NAMIC believes the more important discussion relates to the realities we faced prior to, during, and moving forward from the pandemic. To introduce these realities, he invoked the theme "more, more, and more." Mr. Cotto stated that more speeding crashes, deaths, distracted driving, impaired driving, expensive cars, parts and repairs, expensive medical care, extreme weather, theft, and fraud are the issues that require regulator and industry attention. According to Mr. Cotto, these external forces, outside the control of auto insurers, are responsible for the increased costs of providing auto insurance. NAMIC recently released an in-depth issue analysis on these auto insurance cost drivers, and this paper can be found here.

Birny Birnbaum, Center for Economic Justice (CEJ)

Birny Birnbaum first stated that the bulk of the industry arguments that have been made are an extreme effort to distract from the basic fact that the pandemic led to such reduced driving that auto insurance claims and claim payments declined by 20% from expected levels, and that rates became excessive by $40 billion, before insurer relief, in 2020. Mr. Birnbaum contended that the rest of the industry arguments are fabrications, and that insurers padded their reserves and the actual amount of claim reduction was greater than reported. Next, Mr. Birnbaum said that it was completely foreseeable that insurers would realize windfall profits absent regulatory guidance. Additionally, he stated that it was clear that traditional actuarial rate making methods and traditional regulatory rate filling approaches were not suited to the problem. Mr. Birnbaum contended that the CFA-CEJ analyses earlier discussed are consistent with the principles discussed during Mr. Gibson's presentation. In addition to attempting to recoup some of the windfall profits for consumers, Mr. Birnbaum urged regulators to address limitations in regulatory resources and authority to address a similar situation in the future.

Mr. Birnbaum claimed that any increase in claim severity during the pandemic was dwarfed by the reduction in claim frequency. Further, he stated that APCIA's assertion that insurers were losing money from 2020-2021 as a result of an increase in claim severity is refuted by its own charts. Mr. Birnbaum said that the actions of insurers show why regulatory action is needed. His recommendation was that, going forward, regulators should require premium relief if a pandemic, or other event, causes a radical and sudden change to expected claim activity. Additional comments can be found here.

Erica Eversman, Automotive Education & Policy Institute (AEPI)

Erica Eversman began her presentation by asserting that, if there is no regulator requirement, insurers believe that they are entitled to act as they see fit. However, it is Ms. Eversman's belief that the lack of regulation in a particular area does not mean that certain behavior is appropriate. She stated that regulators need to be clearer with insurers regarding what conduct is acceptable.

Ms. Eversman was critical of the data related to increased auto-related fatalities, and of APCIA and NAMIC's use of this data to justify increased rates. She stated that the data provided by the Department of Transportation and the National Highway Traffic Safety Administration (NHTSA) lacks the appropriate information necessary to determine what causes vehicle fatalities. This data only reports the number of deaths that occur on the highways, not why vehicles were involved in a crash. The NHTSA does not collect prior claims information from auto insurers about whether a vehicle has been damaged and repaired. Ms. Eversman urged insurers to voluntarily provide loss data to NHTSA.

Consider Adoption of its Task Force and Working Group Reports

The Committee heard oral updates, and the following Reports were adopted without objection:

- Casualty Actuarial and Statistical (C) Task Force, Commissioner Grace Arnold (MN)
- Surplus Lines (C) Task Force, Commissioner James J. Donelon (LA)
- Title Insurance (C) Task Force, Michelle Brugh Rafeld (OH)
- Cannabis Insurance (C) Working Group, Commissioner Ricardo Lara (CA)
- Joint Session of the Catastrophe Insurance (C) Working Group and the NAIC/FEMA (C) Advisory Group, Commissioner Mike Chaney (MS)
- Pet Insurance (C) Working Group, Don Beatty (VA)
- Transparency and Readability of Consumer Information (C) Working Group, Joy Hatchette (MD)

With respect to the Report of the Pet Insurance (C) Working Group, there has been discussion of adding a drafting note on Section 7 to ensure that it is consistent with the statutory designation of the line of coverage. There were no objections to this, therefore, there will be a drafting note prior to Joint Meeting of Executive (EX) Committee and Plenary.

There was no report for the Workers' Compensation (C) Task Force or the Terrorism Insurance Implementation (C) Working Group.

Consider Adoption of its 2022 Proposed Charges

Prior to the adoption of the 2022 Proposed Charges, two amendments to the Charges were listed. First, the Charges of the Title Insurance (C) Task Force will now include an additional Charge, to review current rate regulation practices. Additionally, the Statistical Data (C) Working Group would have an additional Charge, to implement the expedited reporting and publication of average auto and average homeowners premium portions of the annual Auto Insurance Database and Owner-Occupied, and Homeowners Tenant and Condominium/Cooperative Unit Owner's Insurance.

The Charges for the Property and Casualty Insurance (C) Committee, the Casualty Actuarial and Statistical (C) Task Force, the Surplus Lines (C) Task Force, the Title Insurance (C) Task Force, and the Workers' Compensation (C) Task Force were adopted without objection.

Hear a Federal Update

Brooke Stringer (NAIC) gave a brief overview of federal issues in this area. First, she stated that the Infrastructure Bill was signed into law last month, and includes a significant amount of funding included. For example, there is over $5 billion for FEMA flood mitigation assistance and pre-disaster hazard mitigation grants, over $3 billion for wildfire management activities, the Bill establishes wild land fire mitigation management commission, and includes a provision that requires automobile manufacturers to install impaired driving technology in vehicles. Further, Congress has been focused on the Reconciliation Bill that has passed the House. There are a number of relevant items included, including the forgiveness of the National Flood Insurance Program's (NFIP) $20 billion debt, money for FEMA for updating hazard resistant building codes and standards, and general language with regard to Workers' Compensation Programs. Ms. Stringer also explained that there have been 18 short term extensions for the NFIP, the latest of which will continue until February 18. There are a number of reauthorization bills that are being monitored. Additionally, Congresswoman Maloney from New York has reintroduced her Pandemic Risk Insurance Act (PRIA), which would establish a federal backstop for pandemic risk. It would also require insurers to make available coverage for insured losses due to covered public health emergencies in all P&C insurance policies. Congress has also been focused on the issue of cannabis safe harbors in the SAFE Banking Act, which is endorsed by the NAIC. This issue will likely have momentum in the New Year.

A new issue, which the NAIC has received a Congressional inquiry about, involved a military family in California who had a renter's insurance policy claim denied because their rented home was through a Public Private Venture and was not government-controlled as the policy required. Ms. Stringer expressed that some of the Congressional offices want to pursue a federal legislative solution, but the NAIC would prefer it to be handled by the members.

The meeting materials can be found here.

Market Regulation and Consumer Affairs (D) Committee

The Market Regulation and Consumer Affairs (D) Committee met on Wednesday, December 15, 2021 at the NAIC Fall National Meeting, and the agenda can be found here. Below is a summary of the meeting:

The Committee previously met on August 16, 2021, and the minutes from that meeting were adopted without objection.

Consider Adoption of its 2022 Proposed Charges

The Charges for the Market Regulation and Consumer Affairs (D) Committee, the Antifraud (D) Task Force, the Market Information Systems (D) Task Force, and the Producer Licensing (D) Task Force were adopted without objection.

It was noted that the completion date given to the Market Information Systems (D) Task Force for its Charge related to its recommendation regarding the incorporation of artificial intelligence was changed so that it must now be completed by the 2022 Summer National Meeting.

Consider Adoption of New Title In Force and Title Claims Standardized Data Requests (SDRs)

Commissioner Barbara D. Richardson (NV) requested that the Committee consolidate the next three agenda items – adoption of the New Title in Force and Title Claims Standardized Data Requests (SDRs), Revised Chapter 24 Conducting the Health Exam, and Revised Chapter 25 Conducting the Medicare – into one motion. There were no objections to this request, and all three items were adopted without objection.

Consider Adoption of its Task Force and Working Group Reports

The Committee heard oral updates, and the following Reports were adopted without objection:

- Antifraud (D) Task Force, Commissioner Trinidad Navarro (DE)
- Market Information Systems (D) Task Force, Commissioner Mike Kreidler (WA)
- Producer Licensing (D) Task Force, Director Larry D. Deiter (SD)
- Market Conduct Examination Guidelines (D) Working Group, Damion Hughes (CO)
- Market Analysis Procedures (D) Working Group, John Haworth (WA)
- Market Conduct Annual Statement Blanks (D) Working Group, Rebecca Rebholz (WI)

The Report of the Privacy Protections (D) Working Group, as discussed by Cynthia Amann (MO), was received, but not adopted, by the Committee. The Market Actions (D) Working Group and the Advisory Organization Examination Oversight (D) Working Group are held in regulator-only sessions, so there were no reports.

Any Other Matters

Birny Birnbaum proposed the additional charges of exploring the use of manipulative and deceptive practices in digital insurance interfaces, including application and disclosures, and recommending any changes needed in training or regulatory guidance, and to explore benefits and costs of public access to individual company MCAS submissions and methods of MCAS data collection that would permit public access.

The meeting materials can be found here.

Privacy Protections (D) Working Group

The Privacy Protections (D) Working Group met on Saturday, December 11, 2021 at the NAIC Fall National Meeting, and the agenda can be found here. Below is a summary of the meeting:

The Working Group previously met on October 11, 2021, October 25, 2021, and November 22, 2021, and the minutes from those prior meetings were adopted without objection.

Receive Comments on the Final Exposure Draft of the Privacy Protections (D) Working Group Report on Consumer Data Privacy Protections (the "Report")

Cynthia Amann (MO), Chair of the Privacy Protections Working Group, spoke about the Group's report on Consumer Data Privacy Protections that was exposed for a two-week comment period on November 18, 2021. Ms. Amann explained that the Report is the product of the Working Group's efforts between March 2021 and November 2021, and embodies recommendation that the current NAIC Model Laws related to consumer data privacy and ownership, specifically NAIC Insurance Information and Privacy Protection Model Act (Model #670), Health Information Privacy Model Act (Model #55), and Privacy of Consumer Financial & Health Information Regulation (Model #672), be revised to account for developing issues and the modernization of technology within the insurance industry today.

Notably, the Report proposes nine "rights" of consumers, or topics of consideration, to receive consideration in conjunction with any discussion of an existing or future Model. Those consumer rights are as follows: (1) the right to opt out of data sharing, (2) the right to limit data sharing unless the consumer opts in, (3) the right to correct information, (4) the right to delete information, (5) the right of data portability, (6) the right to restrict the use of data, (7) the right of data ownership, (8) the right of notice, and (9) the right of nondiscrimination / non-retaliation.

Ms. Amann explained that during the two-week comment period, the Working Group received comments from the American Council of Life Insurers (ACLI), America's Health Insurance Plans (AHIP), American Property Casualty Insurance Association (APCIA), BlueCross BlueShield Association (BCBSA), the Coalition of Health Insurers, the National Association of Mutual Insurance Companies (NAMIC), the Independent Insurance Agents and Brokers of America (IIABA), the Medical Professional Liability Association (MPL), and NAIC consumer representatives Birny Birnbaum, Brenda Cude, Karrol Kitt, and Harry Ting.

Prior to opening the floor for comments and questions, Ms. Amann clarified that the purpose of this meeting is to receive commentary from working group members and consumer representatives in order to properly make a recommendation to the Market Regulation and Consumer Affairs (D) Committee that would allow the Working Group to revise outdated NAIC Models to accommodate modern technology and issues. The Working Group has been charged with evaluating the interplay between federal legislation and outdated NAIC Model laws, but it is unclear whether it will remain under the umbrella of the Market Regulation and Consumer Affairs (D) Committee in 2022. Regardless, the Working Group's charge will remain data privacy and protection.

During the meeting, there were many calls for the Working Group to only consider Privacy of Consumer Financial & Health Information Regulation (Model #672) for revision, rather than the Insurance Information and Privacy Protection Model Act (Model #670) and the Health Information Privacy Model Act (Model #55). Proponents of this view believe that Model #672 is more universal among the states, more contemporary, and most appropriate for consideration overall. To this call, Ms. Amann suggested that Model #672 is the Model Law that will likely be revised. However, it was also stated that Model #672 was ahead of its time, and it was recommended that the Working Group keep that in mind going forward. Additionally, there were concerns raised regarding the opt-in discussion in the Report, namely that it does not provide exceptions for disclosures that are authorized by law. By other commentators, the idea that opt-in language was preferable to opt-out by consumers, thus consumers should have ownership over their data and insurers should be responsible for guarding that data, was raised. Ms. Amann assured the commentators that the Report needed to be further fleshed out, and that these issues merited more discussion.

Consider Adoption of the Final Exposure Draft

Ms. Amann called for the Report to be adopted, i.e., sent to the Market Regulation and Consumer Affairs (D) Committee as what the Working Group did in 2021, along with the nine rights of consumers that were identified as areas that will become discussion items as the Working Group revaluates Model #672.

The Report was adopted out of the Working Report without objection.

The meeting materials can be found here.

Improper Marketing of Health Insurance (D) Working Group

The Improper Marketing of Health Insurance (D) Working Group held its inaugural public meeting on Sunday, December 12, 2021 at the NAIC Fall National Meeting. Below is a summary of the meeting:

Opening Comments and Introduction of Working Group

Martin Swanson (NE), Chair of the Improper Marketing of Health Insurance (D) Working Group, provided opening comments related to the genesis of the Working Group. He stated that the purpose of the Working Group's formation centered on a proliferation of improper market activity, including telephone calls, also referred to in the meeting as "robo calls", social media marketing, etc. Namely, bad actors are attempting, more and more frequently, to sell health plans and market health insurance using misleading, fraudulent tactics. Of particularly great concern, these improper marketing tactics that are being used today disproportionately target senior citizens with illegitimate health plans.

Mr. Swanson emphasized that no one wants producers marketing or selling their plans improperly because it hurts the industry as a whole. The need for a clean insurance marketplace necessitated this Working Group.

Discuss 2021 and 2022 Charges

The current Charges that the Working Group will carry over into 2022 are:

1. Coordinate with regulators, both on a state and federal level, to provide assistance and guidance monitoring the improper marketing of health plans, and coordinate appropriate enforcement actions, as needed, with other NAIC Committees, task forces, and working groups.

2. Review existing NAIC Models and Guidelines that address the use of lead generators for sales of health insurance products, and identify models and guidelines that need to be updated or developed to address current marketplace activities.

Mr. Swanson explained that the Working Group wants to address these issues by revising old Model Laws or creating new Model Laws. Frank Pyle (DE), Vice Chair of the Improper Marketing of Health Insurance (D) Working Group, added that there are three open cases with federal partners; one in Pennsylvania, one in Florida, and one in Texas. Mr. Pyle stated that the Working Group wants to work in conjunction with states and also their federal partners in order to make a real impact on these issues.

The Working Group then heard three presentations concerning improper marketing.

Katie Keith, NAIC Consumer Rep

Katie Keith began her presentation by discussing certain improper techniques that have been the source of "consumer horror stories." She pointed out that bad actors operating within the insurance marketplace are sending fraudulent advertisements and engaging in predatory telephone call scams that target consumers. According to Ms. Keith, a study from Georgetown University has indicated that there has been an uptick in these improper marketing techniques as a result of the COVID-19 pandemic, a time when consumers are perhaps most vulnerable. Additionally, Ms. Keith suggested that there are certain equity considerations that are implicated. As an example, she revealed that many of these scams involve products that are being marketed in Spanish, which targets many underserved communities. Additionally, Ms. Keith said that there are many consumer privacy considerations involved as well, given that consumers are providing their information to bad actors that later sell that information.

Ms. Keith urged the Working Group to withstand the urge to try and "consumer-educate" or "disclose" its way out of improper marketing. She claimed that there is only so much consumer education that can be conducted, and even that will not prevent these scams from occurring. Similarly, she claims that it would be a missed opportunity to focus much of the Working Group's time on disclosures, as many consumers never receive any documentation at all. All in all, Ms. Keith recommended that the Working Group think of improper marketing techniques as a national issue.

Nancy Atkins and Randy Pate, Alliance of Healthcare Sharing Ministries

Nancy Atkins and Randy Pate gave a joint presentation on behalf of the Alliance of Healthcare Sharing Ministries (AHCSM). The AHCSM is a nonprofit, nonpartisan, coordinating body that represents the majority of the large healthcare sharing ministries that are ACA-defined ministries. Ms. Atkins and Mr. Pate explained many times that the AHCSM is not insurance, but rather, it is comprised of groups of faith-based communities that wish to share medical expenses in accordance with their religious beliefs. As such, members are exempt from the ACA. Ms. Atkins and Mr. Pate contend that a balance must be stricken between the members' religious liberties and consumer protection. Mr. Pate suggested that, from a regulatory perspective, it is important to maximize the use of our existing enforcement and oversight mechanisms, "settled approaches", rather than imposing new restrictions that have the potential to restrict choice and infringe on a member's religious exercise. Further, Mr. Pate said that all healthcare sharing ministries participating in the AHCSM engage in a set of best practices to promote transparency and fairness. The presentation also addressed the AHCSM's plan to conduct outreach to non-member ministries to gauge their interest in AHCSM membership, as well as a developing accreditation process that will provide standards of transparency and best practices and require an independent audit of ministries seeking membership.

In response to this presentation, concerns were raised with respect to the AHCSM's alleged lack of responsiveness when contacted by regulators seeking information. It was also recommended to the Working Group that State Insurance Departments should begin disclosing that ministries are not insurance, therefore not regulated by the Insurance Department, on their websites. One commentator also urged State oversight and guidance because there is allegedly no consumer fraud protection in many of the ministries.

Meghan Stringer, America's Health Insurance Plans (AHIP)
Meghan Stringer's presentation was largely aimed at expressing AHIP's desire to partner with this Working Group going forward to work to develop solutions to these issues, because AHIP strongly condemns the improper marketing tactics being discussed. As the speakers before her, Ms. Stringer stated that she has reviewed reports that shed light on bad actors preying on consumers by providing misleading or false information about health plan coverage, and assured that AHIP does not want its plans sold illicitly.

Ms. Stringer requested that the Working Group develop and release a clear statement that outlines and describes the issues that its members seek to address, along with activities and behavior that its members have identified as problematic and fraudulent. Furthermore, Ms. Stringer urged the Working Group to consider narrowly tailored solutions that will not hinder ethical marketing practices. It is AHIP's position that robust consumer protection in conjunction with targeted solutions is the proper way to address these improper marketing practices.

<u>Discuss Working Group Progress for 2021</u>

Mr. Swanson announced that the next public meeting would likely be early next year, perhaps during the third week of January.

<u>Discuss the Lead Generator Database</u>

This agenda item was not discussed.

Financial Condition (E) Committee

The Financial Condition (E) Committee met on Monday, December 13, 2021 at the NAIC Fall National Meeting, and the agenda can be found here. Below is a summary of the meeting:

The Committee previously met on November 19, 2021, and at the NAIC Summer National Meeting on August 14, 2021, and the minutes from those meetings were adopted without objection.

Consider Adoption of Task Force and Working Group Reports

Commissioner Scott A. White (VA) explained that these reports are technical and of a routine nature, therefore, no oral reports were given. Therefore, with no objections or comments, all of the following reports were adopted:

- Accounting Practices and Procedures (E) Task Force
- Capital Adequacy (E) Task Force
- Examination Oversight (E) Task Force
- Financial Stability (E) Task Force
- Receivership and Insolvency (E) Task Force
- Reinsurance (E) Task Force
- Risk Retention Group (E) Task Force
- Valuation of Securities (E) Task Force
- Group Capital Calculation (E) Working Group
- Group Solvency Issues (E) Working Group
- Mutual Recognition of Jurisdictions (E) Working Group
- NAIC/American Institute of Certified Public Accountants (AICPA)Working Group
- National Treatment and Coordination (E) Working Group
- Restructuring Mechanisms (E) Working Group
- Risk-Focused Surveillance (E) Working Group

The technical items within the reports are to be sent to the NAIC members for review as part of the E Committee Technical Changes Report. The members will have 10 days to comment, and if none are received, the changes will become effective immediately. Commissioner White also noted that the Financial Analysis (E) Working Group met in regulator-only sessions on October 13, November 3, and December 11, and the Valuation Analysis (E) Working Group met in regulator-only sessions on July 26, September 27, November 10, and November 30.

Consider Adoption of the Process for Evaluating Jurisdictions that Recognize and Accept the Group Capital Calculation - Robert Wake (ME)

The Process for Evaluating Jurisdictions that Recognize and Accept the Group Capital Calculation was adopted without objection.

Consider Adoption of the ReFAWG Review Process for Passporting Certified and Reciprocal Jurisdiction Reinsurers - John Rehagen (MO)

The ReFAWG Review Process for Passporting Certified and Reciprocal Jurisdiction Reinsurers was adopted without objection.

Any Other Matters

Commissioner White brought up two additional matters prior to the close of the meeting.

First, he explained that the Committee received a letter from the Center for Economic Justice that recommends an additional charge for 2022. Specifically, the letter suggests that the Committee engage on race and insurance. Commissioner White commented that, while this letter was only recently received and he is not making a final determination, he does not believe that the charge would be properly taken by the Committee given that its purpose is financial solvency protection. Further, Commissioner White suggested that it would be more appropriate if the Committee on Race and Insurance referred it to the Financial Condition (E) Committee. Many other members of the Committee agreed with these opinions, stating that the issue of race was not ripe for this particular Committee.

Next, Commissioner White expressed that he would like for the Committee to consider moving forward on phase two of the project related to the life risk-based capital (RBC) bond factors, where the factors went from six NAIC designations to twenty levels within those six designations. The American Academy of Actuaries was engaged to do most of the work on the initial project, but Moody's did a parallel analysis that made those changes that were ultimately adopted. The work by Moody's on the bond factors was characterized as phase one, and the second phase would address the need to differentiate capital charges for asset classes. There was support for Commissioner White's proposal for the Committee to examine whether the investment risk charges for insurance investment concentrations are appropriately calibrated to safeguard insurers against losses in these types of investments. This will likely involve hiring a consultant, and ideally, much of the funding will come from the industry.

The meeting materials can be found here.

NAIC Consumer Liaison Committee

The NAIC/Consumer Liaison Committee met on Monday, December 13, 2021 at the NAIC Fall National Meeting, and the agenda can be found here. Below is a summary of the meeting:

The Committee previously met at the NAIC Summer National Meeting on August 14, 2021, and the minutes from that meeting were adopted without objection.

Commissioner Jessica K. Altman (PA) was then awarded the Excellence in Consumer Advocacy Award by NAIC Consumer Representatives.

Federal Health Policy Update - Developments and Recommendations for States

Deborah Darcy, American Kidney Fund (AKF), & Carl Schmid, HIV+Hepatitis Policy Institute
Deborah Darcy discussed the results of the expansion of premium tax credits and enhanced incentives for Medicaid expansion in the American Rescue Plan, several health provisions in the Build Back Better Act, including further extending premium tax credits from the American Rescue Plan and providing coverage to individuals in the Medicaid coverage gap, and the implementation of the No Surprises Act.

Given that a number of states are working on transparency issues, Carl Schmid then discussed issues related to patient affordability of prescription drugs. Following a law passed in the Appropriations Act, the federal government produced an interim final rule that was released in November 2021. Every insurer at the state market level must now report on total health care spending broken down by the type of cost, including prescription drugs, the 50 most frequently dispensed brands of prescription drugs, the 50 costliest prescription drugs, by total annual spending, the 50 prescription drugs with the greatest increase in plan or coverage expenditures, rebates, fees, and other remuneration paid by drug manufacturers to the plan or issuer in each therapeutic class of drugs and the impact thereof. The first annual filing is due December 2022, but must include calendar years 2020 and 2021.

The Committee then heard four presentations, but of particular importance, the Committee heard the following:

Insurance Privacy Protection: Do the "Right" Thing - A Consumer Perspective — Harold M. Ting, Consumer Advocate Volunteer
Harold M. Ting began his presentation by summarizing the NAIC Privacy Protection (D) Working Group Charges for 2021, which included the discussion of a list of "rights" that consumers should have. These rights include the right to opt out of data sharing, the right to opt in to data sharing, the right to correct information, the right to delete information, the right of data portability, and the right to restrict use and limit the collection of data. Mr. Ting contended that, although the Working Group Chair clearly stated that these are not what most would consider to be "fundamental rights", the NAIC should view the rights as fundamental.

Mr. Ting suggested that new and increasingly invasive modes of technology necessitate the revision of the principles that guide privacy protection, particularly because the NAIC Model Laws are outdated, and the federal laws that they were based on are even older. Additionally, although some state that current privacy laws and regulations provide consumers with adequate privacy protection, that is not so. Mr. Ting stated that corporate privacy policies are too complex and confusing for consumers, therefore, provide minimal protection. Another problem that contributes to privacy protection issues is the fact that companies, by default, tend to collect excessive data, which may facilitate the use of hidden algorithms that may harm certain populations unintentionally or illegally. As an example of excessive data collection, Mr. Ting claimed that most life insurance companies utilize social media in the underwriting process. Mr. Ting continued by explaining that personal data is poorly protected on the Internet, and data breaches are inevitable.

Mr. Ting identified nine “Fair Insurance Industry Information Principles” that consumers deserve, including notice of the purpose of data collection and the consumer’s rights at the time of collection, openness regarding the privacy policies and practices, data minimization, data quality, use limitation, the ability to obtain information in consumer-friendly formats, the right to correct or delete information, data security, and accountability of those collecting the data from consumers.

In summary, Mr. Ting’s presentation emphasized that privacy protection should focus on consumers, and those protections should be based on values and ethics. He proposed that the NAIC should agree upon fair information principles for the insurance industry, and provided State Farm’s privacy principles as a guidepost.

Regulatory Failures in Credit-Related Insurance — Birny Birnbaum, Center for Economic Justice (CEJ)

Birny Birnbaum began his presentation by clarifying that credit-related insurance is insurance that is sold in connection with a loan transaction, and includes a number of different lines of insurance and products. Examples of credit-related insurance include consumer credit insurance and title insurance. These related markets suffer from reverse competition, and have the common characteristic of very low loss ratios. Relevant to the presentation, this means that lenders, rather than consumers, get the bulk of the benefit.

Specifically, for consumer credit insurance, the nationwide loss ratio for credit life, for a ten-year period ending in 2020, was 46%. The most recent three-year average was 46%. Although these ratios might not seem alarming, Mr. Birnbaum explained that these ratios are the best for all products by a considerable amount. The ten-year credit disability loss ratio was 35%, and the most recent three-year average is 31% nationwide.

Mr. Birnbaum contended that nationwide ratios do not properly highlight the difference in consumer outcomes by state. For the most recent three-year averages in credit life, he said that the state loss ratios ranged from the high 20’s to the low 30’s in the worst states for credit life, up to 60-70% in Indiana, Georgia, New York, Pennsylvania, and Maine. For credit disability, the three-year state loss ratios averaged 17-23% in the worst states, and 52-84% in Ohio, Vermont, Pennsylvania, Maine, New Jersey, and Rhode Island. Further, Mr. Birnbaum revealed that the loss ratios for credit unemployment have been in the single digits and teens, while the loss ratios for credit family leave has been zero. For title insurance, the loss ratios are 4-5%. For lender placed insurance, the loss ratios have typically been half, or less, of the voluntary market loss ratios for broader coverage.

The root cause of this problem, according to Mr. Birnbaum, is reverse competition. The NAIC has defined reverse competition as follows: "competition among insurers that regularly takes the form of insurers vying with each other for the favor of persons who control, or may control, the placement of the insurance with insurers. Reverse competition tends to increase insurance premiums or prevent the lowering of premiums in order that greater compensation may be paid to persons for such business as a means of obtaining the placement of business. In these situations, the competitive pressure to obtain business by paying higher compensation to these persons overwhelms any downward pressures consumers may exert on the price of insurance, thus causing prices to rise or remain higher than they would otherwise." Mr. Birnbaum suggested that most regulators have the authority to establish reasonable minimum loss ratio standards and associated rates, and in particular, it is important that regulators protect consumers in the LPI market because the consumers are being force placed.

Mr. Birnbaum then proposed two Charges specifically with regard to title insurance looking forward to 2022:

1. Review the effectiveness of current rate regulation practices to protect title insurance consumers from excessive rates and charges;

2. Develop a Model Bulletin prohibiting the inclusion of pre-dispute mandatory arbitration provisions in the title insurance policy.

When Private Options Shrink for Insuring Properties-Residual Market Entities and Consumer Challenges — Amy Bach, United Policyholders (UP)

Amy Bach presented different approaches that states have taken to create public entities such as FAIR Plans, making the point that, as climate change reduces private appetite for insuring existing homes, public options can and should provide essential and affordable protection.

The Impact on Demand Surge Post-Disaster on the Labor and Materials Costs of Reconstruction — Kenneth S. Klein, California Western School of Law

In his presentation, Kenneth Klein explored the idea of "demand surge" as it relates to the issue of underinsurance. While he concluded that demand surge is likely not a dominant factor is underinsurance, he provided a list of questions that regulators can ask in order to gather more insight on this issue.

The meeting materials can be found here.