

## EXECUTIVE SUMMARY

The Council of Insurance Agents & Brokers' Legal Counsel Working Group convened to discuss the licensing revocations and data, rebating and surplus lines, the affordability glitch fix, mental health parity, and transparency, amongst other key topics. The group also received updates on the federal legislative landscape, the NAIC, and from the Federal Insurance Office (FIO).

The meeting was staffed by the Council's Senior Vice President of Government Affairs Joel Wood, Director of Government Affairs Blaire Bartlett, Director of Health Policy and Strategy Katie Oberkircher, Associate General Counsel Gracie Gerlach, Chief Legal Officer Scott Sinder, Associate Legal Counsel Ashelen Vicuña, and Director of State Government Affairs Cari Lee.

## LICENSING SUB-GROUP MEETING – June 21

The Working Group heard from Diana Ivey and Nancy McCabe on an array of topics including New Mexico license revocations, license data & FCRA, and MI counselor licenses. The sub-group meeting concluded with an NAIC uniform application refresh from Diana Ivey and Cari Lee.

- New Mexico license revocations – System issues seem to be resolved. Members should let Diana know if they are still receiving any revocations.
- NIPR Disclosure – NIPR has included a disclosure on their reporting database indicating the information is subject to consumer disclosure requirements. Cari Lee will approach the NIPR and ask about the development at the board meeting on August 8.
- Surplus lines audit - Michigan is requiring fee documents to be signed by someone with a Michigan counselor license. There is also a similar situation in Maryland.
- NAIC revisiting the electronic uniform application - Cari Lee stated that the producer licensing group has laid out a procedure to review the application but no movement has been made. Diana Ivey will circulate the latest draft application for the group's review.

## REBATING AND SURPLUS LINES SUB-GROUP MEETING – June 21

The Working Group heard from Nancy McCabe on Lloyds consortiums, RPGs, and ECP renewal timing.

- Lloyd consortiums- Nancy McCabe will circulate the consortium list document on Lloyds policy management system to the group.
- RPGs- Issues have arisen where RPGs aren't meeting the affiliated group definition. The NAIC Surplus Lines model, or the Limited Liability Act may clarify.
- ECP renewal timing- The definition of the ECP is being revisited by the NAIC surplus lines working group. CIAB will consider collaborating on a comment letter.
- CIAB Rebating Tracker- There are five states where NAIC bills are pending. Ashelen will share a link to the tracker in Basecamp.

## HEALTH SUB-GROUP MEETING – June 21

Caroline Smith, Karen Breitnauer, and Katie Oberkircher presented on mental health parity, the affordability glitch fix, limited telehealth expansion for free coverage in HDHP plans, the national emergency, pharmacy reporting, the *Marietta Memorial Hospital Employee Benefits Health Plan*

v. *Davita Inc.* decision, potential new wellness rules from the EEOC on incentives, and broker disclosure.

- Mental health parity- The DOL is working on NQTL analysis guidance. Cari Lee shared that guidance was given at the NAIC by the American Psychiatric Association.
- Affordability glitch fix- the proposed rule won't affect how employers determine affordability for purposes of a safe harbor from 4980H penalties but would affect OE communications, and may result in changes to Form 1095-C reporting.
- Limited telehealth expansion for free coverage in HDHP plans- Blaire Bartlett said it could be added to a spending bill.
- The national emergency- May be extended through October.
- Pharmacy reporting for CY 2020 and 2021- Due December 27. discussion on new pharmacy reporting requirements under Section 204. The deadline has been extended through December 27, 2022. The group also discussed ways to obtain the requisite data from third-party vendors if they have changed companies.
- *Marietta Memorial Hospital Employee Benefits Health Plan v. Davita Inc.* decision- likely in June.
- Wellness rules- discussed potential new wellness rules from the EEOC on incentives
- Broker disclosure- discussed PEO disclosure, how it would be enforced, and whether members require their clients to execute it.

## NAIC HEALTHCARE UPDATE – JUNE 22

Brian Webb, Assistant Director of Life & Health Policy at the NAIC, shared that ten states have made initial rates public. He also shared the NAIC's current uncertainties, which included:

- The ongoing public health emergency
- Medicaid unwinding and telehealth
- The American Rescue Plan subsidies extension
- The No Surprises Act IDR decisions and their impact on costs moving forward

## NAIC UPDATE – JUNE 22

Cari Lee reported all meeting summaries are on the CIAB website. She reminded the group to let her know if a specific issue should be covered at an NAIC meeting and that state trackers are updated monthly as NAIC models are passed.

She shared three topics of focus that aren't health-related:

- Privacy work – the NAIC may open up model laws and do a white paper.
- Update on the Non-Admitted Insurance Model Act – the CIAB and WSIA will be submitting a comment letter on unaffiliated groups and declinations to the Surplus Lines Task Force.
- Climate risk – the NAIC climate risk disclosure survey was adopted and is required in 16 states, which will help better monitor solvency.
- California Wildfires – A new rule is likely this summer that creates a fire risk score.

## SEC CLIMATE RISK DISCLOSURE RULE – JUNE 22

The group briefly discussed the SEC climate risk disclosure proposed rule, what each scope encompasses, and how the proposed rule would impact the insurance industry. Scott Sinder

expects changes to Scope 3 since it has generated widespread controversy and confusion. In addition, once the rule is completed, litigation will soon follow.

## FEDERAL INSURANCE OFFICE UPDATE – JUNE 22

Steven Seitz, Director of FIO, shared FIO's top priorities, which include:

- Climate – FIO is assessing the state supervisory system for gaps relating to regulating and adapting to climate risk. They will issue a report by the end of this year on climate issues and best practices.
- Terrorism Risk Insurance Program-FIO is issuing their annual data collection and working with stakeholders, looking at issues relating to cyber and how the Russia-Ukraine cyberwar could morph into cyber-terrorism. They will issue a [report](#) on the cyber market with national statistics on ransomware payouts and how it affects the incidents and severity of those events.
- NARAB – They are educating the Administration on the importance of NARAB
- They will also focus on diversity, equity, and inclusion data in personal auto insurance
- Macroprudential work – FIO is looking at NAIC activities on liquidity, business offshoring, long-term alignment between ownership structure and policyholders, etc.

## FEDERAL LEGISLATIVE UPDATE – JUNE 22

The Working Group heard from Joel Wood and Scott Sinder on the Safe Banking Act, the Dobbs decision, the Senate gun bill, January 6, insights on Trump running again in 2024, the midterm elections, privacy bills, cyber and state primaries.

- The Dobbs decision- Scott Sinder shared how issues of federal vs. state laws, the power of Congress, and insurance coverage may arise. There are ways to provide protection such as through the Pregnancy Protection Act and providing travel benefits. Steptoe will draft a brief further detailing the decision's implications on employers and potential coverage options.
- Privacy- Scott Sinder stated that technology-targeted privacy bills in the House aren't limited only to technology and may affect other industries.
- BBB- Joel Wood and Blaire Bartlett have doubts about BB passing.
- Cyber- Scott Sinder shared that the CIAB Board and the APCIA approved the cyber questionnaire and will share a joint release and scheduling of a working group meeting.

A council member asked about active shooter coverage. Cari Lee will see if this is discussed in the states and if regulators are looking at these policies.

The CIAB Government Affairs team discussed the CFPB inquiry on employer-driven debt and doubts on where it would lead. The team also shared a PAC update.

## OTHER BUSINESS – JUNE 22

Scott Sinder shared that there is a two-page document on client health plans to ask PBMs and TPAs for transparency information. This has been circulated and CIAB is working with employer groups on this.

Blaire Bartlett informed the group of a survey on third-party data usage and asked for feedback on data usage agreements, carriers sharing data and how it's applied in the underwriting process, and how to correct wrong data.

## SEE YOU SOON

We anticipate the next meeting will take place on October 25<sup>th</sup> and 26<sup>th</sup> at Steptoe & Johnson LLP. If you have any questions in the meantime, please email Blaire Bartlett at [blaire.bartlett@ciab.com](mailto:blaire.bartlett@ciab.com).