

RECAP

The Legal Counsel Working Group met in Washington, DC on February 5, 2024.

WHO

The meeting was staffed by Council President Joel Wood, Senior Vice President of Government Affairs Joel Kopperud, Vice President of Government and Political Affairs Blaire Bartlett, Chief Legal Officer Scott Sinder, Associate Nick Sutter, and Director of State Government Affairs Cari Lee.

KEY TAKEAWAYS

The Legal Counsel Working Group (the Working Group) convened to discuss political and legislative updates, National Association of Insurance Commissioners (NAIC) and National Conference of Insurance Legislators (NCOIL) activity, surplus lines, and cancellation notices. The group also heard updates from the health, rebating, licensing, and small department legal operations subgroups.

SPEAKERS

Political Update - CIAB Government Affairs Team & Steptoe

The Working Group heard from Joel Kopperud and Blaire Bartlett on the status of government funding, debt ceiling, the November election, pharmacy benefit manager (PBM) transparency legislation, and cannabis legislation.

- Government funding – the House and Senate passed a third continuing resolution (CR) for fiscal year (FY) 2024, avoiding another government shutdown. The laddered measure extends four appropriations bills through March 1, and the remaining bills through March 8.
- Debt ceiling – Congress will need to reauthorize the debt ceiling next January, which could be tricky in a new Congress.
- November election – Trump only needs to flip three swing states to win the election. No Labels and other organizations are working on ballot access for a third-party candidate. Polling suggests that a third-party candidate is more likely to pull from the Biden voter base than the Trump voter base, which could propel Trump to the presidency.
- PBM legislation – The Council is hoping the bipartisan PBM reform bill can be attached to an end-of-year package.
- Cannabis – There is little optimism about the SAFE Banking Act legislation moving this year.

A group member asked about the demographics of the far right. Joel Kopperud noted that the demographics of the parties are changing across the board as the Hispanic and African American vote is moving towards the GOP. However, the business community is moving towards the left because of the right's anti-corporate sentiment.

A group member asked if there has been conversation about employer-sponsored insurance with several of the Trump-era Tax Cuts and Jobs Act (TCJA) provisions set to expire in 2025. Joel Kopperud stated that there is still an effort to remove the current tax exclusion for employer and employee-paid premiums from federal income and payroll taxes. He noted that it is unlikely the TCJA will be cleanly reauthorized due to its high cost of over \$6 trillion.

A group member asked about the status of the Farm Bill. Blaire Bartlett shared that it was temporarily reauthorized and extended until the end of September. There is question about Senator Debbie Stabenow's (D-MI) nutrition programs, but she is retiring and wants to pass a long-term Farm Bill reauthorization. The House is waiting for clearance from Speaker Mike

Johnson (R-LA) on when the House will consider the Farm Bill. The Council signed a coalition letter asking for level funding for crop insurance programs in 2025.

NAIC and NCOIL Update - Cari Lee, Steptoe

Cari Lee reported on the NAIC's privacy model, Nevada liability coverage bill, artificial intelligence (AI) bulletin, health lead generators bill, homeowners insurance data call, PBM white paper, and climate resilience report.

- The most recent NAIC report is on The Council's website.
- The privacy model legislation draft will impact all members if it is passed in the states due to burdensome requirements. The Council submitted redline comments and held meetings with the NAIC to express concerns and differences from the personal lines sector. Commissioners will put a pause on this and return to redrafting. A new draft is expected in the near future.
- CIAB requested guidance from the Nevada Commissioner regarding the liability coverage bill. CIAB testified and submitted numerous letters. The final rule makes it clear that insurers who are not authorized to provide certain coverage will not be subject to this regulation.
- The NAIC adopted its AI bulletin, which reiterates the Unfair Trade Practices Act. This does not hold the force of law.
 - Joel Kopperud discussed the possibility of AI legislation at the federal level and the lack of understanding of the issue in Congress.
 - Cari Lee and group members discussed the ability of AI to pull data quickly with little effort and how fast technology is evolving.
 - Scott Sinder said generative AI will be difficult within the insurance industry, especially in life and auto insurance.
 - Cari Lee also discussed the New York proposed circular on AI.
- The NAIC will adopt the addition to the Unfair Trade Practices Act on health lead generators during the Spring meeting.
- The NAIC is conducting a zip-code-level homeowners insurance data call mirroring FIO's work.
- The PBM white paper was adopted. Cari Lee doubts there will be a model law.
- The climate resilience report was adopted and received heavy pushback due to being closed to comments.

The Working Group also received several NCOIL updates, including on HSAs and drug coupons, independent procurement tax requirements, e-delivery of plan documents, dental loss ratio, its public adjuster model, disaster savings, and ERISA.

- NCOIL adopted a resolution protecting HSAs from tax consequences related to benefit mandates.
- A resolution was adopted to clarify independent procurement tax requirements by asking for tax reporting uniformity.
- NCOIL adopted a model on the e-delivery of plan documents through employers, which more states may adopt. There is an opt-out opportunity for employees who desire physical documents.
- NCOIL adopted the dental loss ratio model, which allows an insurance Commissioner to set a dental loss ratio if a plan is an outlier for more than two years.
- NCOIL will adopt its public adjuster model in April with a fee cap and it will only apply to those who adjust claims. States are expecting to consider the model in future sessions.
- NCOIL is discussing creating a model for tax-advantaged disaster savings accounts to help consumers prepare for these events and augment their insurance.
- NCOIL continues to push Congress to allow State ERISA plan oversight.

Subgroup Updates

Health - Caroline Smith, Patriot Growth

Proposed Rescission of the Association Health Plan Rule

Scott Sinder noted that the Department of Labor's (DOL) proposed rescission of the Trump-era Association Health Plan (AHP) rule. He stated this proposed rule to rescind the AHP will likely be finalized, but it could be delayed or undone under a new President.

Florida Drug Reimportation Plan

Scott Sinder has heard that the Florida Drug Reimportation plan process is onerous and is unlikely any drug will qualify. A group member has had clients in the past who sourced drugs through Europe and stated that if they can be indemnified for tracing, it could take off. A group member stated that several PBMs promote this strategy aggressively now. Scott Sinder noted that this strategy may violate FDA requirements. A group member noted that anyone in the supply chain, including brokers, may be liable under the Florida plan.

Transparency Requirements

Scott Sinder criticized the drafting of the gag clause provision and noted there is language in the House version of the bill that would fix this.

Mental Health Parity

Cari Lee stated that there was going to be an NCOIL Model on mental health parity that allows for one visit without co-payment, but the representative who introduced it is stepping down. She noted that DOL is aware of the criticism of their proposed rule and the final rule is expected to be different.

Section 125 Programs

The indemnity rule from the Internal Revenue Service ("IRS") will be finalized sometime this year. This rule would disallow indemnity plans that are offered in conjunction with other benefits.

Active and Proposed State PBM Legislation

There is conflicting guidance from the IRS on cost-sharing amounts to reach compliance. The IRS is releasing another FAQ that states there will be a pause on enforcement actions until further guidance is issued.

ERISA RFI

Scott Sinder noted that the House Education and Workforce Committee is considering ERISA reforms and released a request for information and legislative proposals on this topic. A group member stated that The Council should provide support for strengthening ERISA's state law preemption.

Rebating – Suzanne Spradley, NFP

There continues to be movement in states to align with the model act. North Carolina, New York, Oklahoma, and Massachusetts are all considering pending legislation on this issue. There is a provision in some states that increases the \$15 gift to quote someone to \$100.

Licensing – Diana Ivey, Marsh McLennan

Diana Ivey discussed the issue of non-uniformity with more states including non-uniform questions on a uniform application. A list of fifteen examples of non-uniform questions is posted to Basecamp. She spoke about how the industry is witnessing these changes without receiving notice or the opportunity to voice their concerns. She also spoke about Oregon wanting resident licenses to match the state you live in and the NAIC potentially not being aware of this issue as states aren't engaging on this.

The Council intends to send a letter on this issue to the NAIC Producer Licensing Task Force. Members should send examples of their experiences to Diana Ivey and Cari Lee.

Cari Lee stated the National Insurance Producer Registry (NIPR) is aware of this issue but has no authority to act. A group member stated NIPR could create statistics to show the magnitude of the issue. Cari Lee will engage with NIPR to see if this is possible.

Surplus Lines – Nancy McCabe, WTW

Nancy McCabe stated that the NAIC is likely to look into surplus lines compliance, leading to market conduct examinations.

Scott Sinder discussed legislation in Florida that would establish a cancellation moratorium in the wake of hurricanes with flood provisions. WSIA is opposed to the bill and is seeking The Council's assistance to condemn it. The main concern is the non-payment issue and that this bill could create capacity issues. The Council will seek insight from group members. This will be discussed with the Board to decide on the next steps. A group member discussed how surplus lines carriers would not be able to underwrite as damaged property cannot be renewed for repair for a while and if you extend the policy, the pricing or terms cannot be changed.

Small Department Legal Operations – Brad Barron, Conner Strong & Buckelew

Brad Barron stated the top three topics from the survey responses were workflow, compliance, and Department of Insurance issues. The Small Department Legal Operations working group will hold another virtual call to explore these issues and hear from group members on their experiences to develop the most efficient strategy.

Additional Items of Discussion

Cancellation Notices

Blaire Bartlett discussed standard practices of cancellation notices and asked if group members forward notices or rely on the carrier. Group members discussed their company's practices.

Update on Operations & Working Groups Forum in November 2024

Blaire Bartlett reported that the next meeting will be at Steptoe and the Fall meeting will be in New Orleans. Julia Ruiz, Vice President of Strategy & Leadership Resources, discussed the general schedule of the New Orleans meeting.

New York Cyber Regulations

A group member discussed the ransomware notification requirement in New York and another groupmember asked about enforcement. Group members discussed best practices and recommendations, the New York notification website, and the requirement to complete an annual certification of compliance by April 15.

SEE YOU SOON

The next meeting will take place on June 25-26 in Washington, DC with registration available in mid-March. The fall meeting will be November 6-8 in New Orleans, LA. If you have any questions in the meantime, please email Blaire Bartlett at blaire.bartlett@ciab.com.