

MINUTES
SENATE COMMITTEE ON INSURANCE AND COMMERCE
HOUSE COMMITTEE ON INSURANCE AND COMMERCE
MEETING JOINTLY
MAC, Room A
Little Rock, Arkansas

Thursday, January 16, 2020

The Senate and House Interim Committees on Insurance and Commerce met jointly Thursday, January 16, 2020, at 9:00 a.m., in the Multi-Agency Complex (MAC), Room A, in Little Rock, Arkansas.

Committee members present: Senators Jason Rapert, Chairman; Cecile Bledsoe, Vice Chairman; Linda Chesterfield, Missy Irvin, and Mark Johnson. Representatives Mark Lowery, Chairman; Robin Lundstrum, Vice-Chair; Fred Allen, Joe Cloud, Bruce Coleman, Denise Ennett, Kenneth Ferguson, Roger Lynch, Aaron Pilkington, Chris Richey, Laurie Rushing, and DeAnn Vaught.

Also attending: Senators Trent Garner, Jonathan Dismang, Scott Flippo, and Greg Leding. Representatives Stan Berry, Marsh Davis, Les Eaves, Jon Eubanks, Denise Garner, Don Glover, Jack Ladyman, Tippi McCullough, Johnny Rye, Keith Slape, Jamie Scott, and Dwight Tosh.

Representative Lowery called the meeting to order and welcomed Representative Ennett to the committee. He reminded committee members about the March National Council of Insurance Legislators (NCOIL) meeting in Charlotte, North Carolina, and asked house members to let him know if interested. Senator Rapert welcomed Barry Goldwater, Jr. to the meeting.

CONSIDERATION TO APPROVE MEETING MINUTES FOR AUGUST 1, 2019, AND NOVEMBER 6, 2019 [EXHIBITS C-1 AND C-2]

Senator Bledsoe made a motion to approve the August 1, 2019, and November 6, 2019, committee meeting minutes, and Representative Lynch seconded the motion. The motion carried.

INSURANCE BUSINESS TRANSFER (IBT) [PowerPoint 1]

Mr. Russ Galbraith, Chief Deputy Insurance Commissioner, Arkansas Insurance Department (AID), introduced Robert Redpath and James Mills with Enstar. He stated the AID noticed an Oklahoma act passed two years ago enabling a book of insurance policies to be separated from one insurer and moved to another.

Mr. Robert Redpath, Senior Vice President and U.S. Legal Director, Enstar, U.S., noted Enstar is one of the largest acquirers of run-off (inactive insurance). It has \$18 billion in assets and 30 offices in 12 countries with 11 U.S. offices and 600 staff. He noted 100 transactions worldwide, meaning buying insurance companies and portfolios of business.

A national survey shows there are \$350 billion worth of run-offs, companies that no longer write active business in the U.S. and in excess of \$700 billion worldwide. He clarified by saying every company that has written insurance for a number of years has run-offs, which are blocks of business no longer collecting premiums, but there are still claims and liabilities.

Companies look to restructure in order to protect their financial solvency, and to transfer certain liabilities to people skilled in managing those liabilities. A key point is that there are old run-offs within large corporations, and there is a strong policyholder benefit in being able to transfer these blocks of business. Companies like Enstar buy blocks of business and manage them by providing better service to the policyholder.

If a run-off business is embedded in an ongoing business, there has not been an effective way to divest the run-off business until the Oklahoma legislation. There are novation mechanisms within the individual states, but for a multi-state business it does not work to transfer a block of business, this only works within a state. There are

now two states, Rhode Island and Oklahoma, that have statutes allowing transfer of blocks of business and giving companies finality, and the ability to transfer a block of insurance business from one insurance company to the other without individual policyholder consent.

Mr. James Mills, Vice President, Legal Counsel, Enstar, noted he joined Enstar in April 2019, previously he was Chief Deputy and Chief of Staff for the Oklahoma Insurance Department (OID) including the period when the Oklahoma legislature researched and passed its legislation; his perspective is more on the regulatory side. He notes that any Arkansas company receiving business would be regulated already by the AID. Commissioners regulate differently in every state, as each state has its own laws. For example, the Oklahoma commissioner (who is elected) is in a strong position to understand a company's business, and has the additional support of an examination being performed on both participating companies through the work of the independent expert. To gain the commissioner's approval, criteria may be added.

Mr. Mills noted the National Association of Insurance Commissioners (NAIC) is a good example of where commissioners have the opportunity to talk about what will impact other states.

The OID wanted to create its own independent system for older businesses so Oklahoma's IBT is all-encompassing with long term value allowing the state its independence with additional input of the insurance commissioner. Oklahoma did not have to get rid of any laws or change any laws to put this in place, and this gave companies another way to do business. Research started on this in 2016, and it passed in 2018 becoming effective in November 2018. It gained attention at the December 2018 NCOIL meeting held in Oklahoma City.

Senator Rapert summarized this is a new regulatory opportunity to achieve transactions. It does not shed or short-change consumer protections, because each state's regulatory framework is still in place to protect consumers. This is an opportunity for Enstar to assume the risks and ensure companies remain solvent. He asked if Arkansas cautiously allowed its regulatory framework to begin changes, what is the upside for Arkansas to be at the forefront of adopting legislation?

Mr. Allen Kerr, Commissioner, AID, responded Arkansas is a small state with 3 million people, and there is not a lot of premium volume to be had. He gave an example of how Vermont began writing captives many years ago, and today is the number one place where captives are domiciled. It has the advantage because it was first, and because Arkansas has up-to-date captive laws it has been able to bring captives to domicile here. Similarly, Arkansas wants to be attractive to companies that want to domicile here bringing with them revenue, tax base, and jobs. He provided the analogy of mortgages being sold as a block of business to another company. When a bank is in trouble and sold to a larger bank, there are a series of steps and regulatory procedures, and this would be no different. He noted this is a positive thing for the state, and Arkansas does not want to be the last one in, due to being over cautious. He urged Arkansas to be in the forefront and get this business here before it has a chance to go someplace else, because it will. Another state will make it easier to do business in their state.

Senator Rapert added there is a possibility NCOIL could vote on this model law in March. If that is the case, then many state legislatures will be taking up this issue.

Mr. Redpath noted Enstar is moving some business out of Rhode Island and into Oklahoma to test this legislation. The company is sending out notices going back to 1958 to last known addresses. It is a process with a final court hearing in May. Anyone affected, such as state regulators and policyholders have 60 days to raise objections. Then Enstar will have an order of the court to be able to enforce in all jurisdictions.

Senator Rapert congratulated Commissioner Kerr on his re-appointment at NAIC as chairman of the Market Regulation and Consumer Affairs (D) Committee.

**UPDATE ON PHARMACY BENEFIT MANAGERS (PBM) NEWS AND LEGISLATION
[EXHIBIT E]**

Mr. Cory Cox, Chief of Staff, Arkansas Attorney General's Office (AGO), introduced Shawn Johnson, Attorney, Consumer Protection Division, AGO, who is the lead on much of the PBM litigation. Mr. Cox noted the U.S. Supreme Court announced January 10, 2020, it will hear the Arkansas appeal on Act 900 of 2015, which are some of the controls Arkansas passed for the state to be able to regulate PBMs. It was challenged by a PBM group that did not like the state trying to regulate under ERISA what was being paid in pharmacy reimbursements. The AGO believes the legislature did a good job in passing a good law. The Attorney General thought all along that there needed to be oversight; the state needed to be able to ensure small town pharmacists could stay in business. The AGO has done everything it can to defend the act, including fighting all the way to the U.S. Supreme Court.

This is unique in that the State of Arkansas has never been granted a Cert (Certiorari) to appear before the U.S. Supreme Court to defend a statute. The AGO has gone before the Supreme Court for death penalty cases and legislation being challenged, but cannot find any place where a sitting Arkansas Attorney General fought all the way to the U.S. Supreme Court by filing a Writ of Certiorari and being granted Cert. It is to be heard the week of April 20.

Mr. Ryan James, Public Information Officer and Government Relations, AID, noted AID enforcement of the PBM Licensure Act (PBM LA), which passed in 2018, and is different than the law just discussed but important to the PBM LA, because the 2018 law incorporated the 2015 law into the act and gave AID concurrent jurisdiction. It became effective January 1, 2019, and AID received 171 complaints from pharmacists for issues within PBM LA, and 112 have been closed for the following reasons:

- 70 were closed immediately because they involved ERISA plans and currently AID has no jurisdiction over those plans.
- 6 were closed due to Medicare Part-D prescription drug benefit, and AID has no jurisdiction.
- 36 were closed due to lack of further action by the complainant; a pharmacist must file a complaint and provide follow-up if requested.
- 57 were closed by AID with a recovery total of \$202,928 on behalf of pharmacists who complained.

In 2019 AID also issued a fine against Express Scripts, and immediately received a \$50 thousand fine payment for violation of the National Average Drug Acquisition Cost requirement, and the money goes to general revenue.

Currently, AID has 17 PBMs licensed in Arkansas and are in the renewal process of their year-to-year license. There are two additional companies that have filed for licensure under the PBM LA. AID has been working with NAIC regarding PBM licensure and Arkansas law will serve as the foundation for NAIC's model, to be very close to the NCOIL model, which also used the Arkansas law as its foundation.

**“STARTING EFFECTUATED ENROLLMENT” FOR THE ARKANSAS MARKETPLACE FOR
PLAN YEAR 2020 [EXHIBIT G]**

Commissioner Kerr noted the Arkansas Health Insurance Marketplace (AHIM) effectuated enrollment January 1, 2020, of 63,460 to start its plan year. Comparatively, there were 62,610 enrolled at the start of 2019, reflecting an increase of year-to-year enrollment of 850. AHIM moved to AID which kept the status quo and enrollees increased with a fraction of the budget.

REPORT RECEIVED [EXHIBIT H]

Commissioner Kerr stated the 2019 Workers Compensation Insurance Market in Arkansas Report is good. Last year there was a 15% decrease in the workers compensation premium. There have been consistent decreases

over the last two decades because of work employers are doing in managing their risks on employees and workers compensation.

PANS/PANDAS ADVISORY COUNCIL UPDATE [HANDOUT 1]

Representative Joe Cloud, Vice Chair, PANS PANDAS Advisory Council, noted PANS PANDAS, pediatric autoimmune neuropsychiatric disorder associated with streptococcal infections, is a poorly understood disease in Arkansas and nationwide. The name is a misnomer implying it just affects the pediatric population, and adults can get this too; it is called an autoimmune encephalopathy.

The council met January 2, 2020, and was developed because the condition is underdiagnosed. The malady has a tremendous effect on an afflicted person's family as the patient suddenly takes a 180 degree turn in their mentation, personality, and behavior. It is misdiagnosed, also slowly diagnosed, and then not treated properly. Insurance companies will affect this diagnosis differently, and the council will be dealing with this issue.

Dr. Veerapandiyan and Dr. Raney, state experts on this condition, spoke at the first council meeting. The council is dividing into two subcommittees to help educate health care providers and develop standard practice guidelines. Paul and Patricia Ryan from Arizona have established the PACE Foundation dealing with this condition, and this is a tremendous resource as much ground work has already been accomplished through their foundation. There is a multi-disciplinary clinic now open at Arkansas Children's Hospital and seeing patients.

OTHER BUSINESS

With no further business, the meeting adjourned at 10:50 a.m.