

NATIONAL TRENDS AFFECTING PRODUCER LICENSING

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Introduction 1

Uniformity and/or reciprocity for producer licensing has long been a goal of the National Association of Insurance Commissioners and its member states. Unfortunately, it has been somewhat challenging to achieve meaningful uniformity and reciprocity in a number of areas, and much that has been achieved was only due to the threat of Federal intervention. Nonetheless, there are a number of new initiatives underway which seek greater uniformity and reciprocity. As to the likelihood of success for these various initiatives, it is simply too early to tell.

Before evaluating the various initiatives, it is helpful to understand a few key concepts with regard to producer licensing. The concept of uniformity relates to resident licensing. For example, if an individual seeks his or her initial (home state or resident) license in State X, will the licensing process be the same as if he or she lived in State Y? The NAIC has adopted 37 Uniform Resident Licensing Standards that focus on 8 broad areas, including (1) licensing qualifications; (2) pre-licensing education; (3) licensing testing; (4) integrity/background check standards; (5) license application process; (6) appointment process; (7) continuing education requirements; and (8) limited lines.

Reciprocity on the other hand addresses non-resident licensing. Once licensed in his or her home state or resident state, can the producer easily and efficiently obtain non-resident licenses in the remaining jurisdictions? The NAIC has identified four conditions that a state must satisfy in order for the state to be considered "reciprocal."²

The original push for uniformity and reciprocity came to a head in the late 1990s with the enactment of the Gramm-Leach-Bliley Act ("GLBA") and its threat to regulate producer licensing through the creation of a National Association of Registered Agents and Brokers ("NARAB") if greater state producer licensing uniformity or reciprocity was not developed. In an effort to preserve state regulation, the NAIC worked to increase licensing reciprocity through promulgation and widespread adoption of the Producer Licensing Model Act (the "PLMA") beginning in 2000. By 2002, the requisite number of jurisdictions adopted sufficient portions of the PLMA to avoid the NARAB trigger under GLBA.

In 2007, the NAIC identified producer licensing reform as one of the NAIC's key strategic issues. As a result, the NAIC conducted a national, comprehensive producer licensing assessment discussed in Section I below and issued the NAIC Producer Licensing Assessment Aggregate Report of Findings ("Report"). Following the release of the Report, the NAIC Executive Committee reconstituted the NARAB Working Group (see Section II) and the NAIC Producer Licensing Working Group, through a sub-group, began working on a Producer Licensing Handbook (see Section III). But the NAIC is not alone in these efforts. The National Conference of Insurance Legislators ("NCOIL") has also stepped into the fray (see Section IV), and the Federal Government may also become involved again (see Section V).

I. NAIC Producer Licensing Assessment Aggregate Report of Findings

On February 19, 2008, the NAIC Producer Licensing Working Group (the "PL Working Group") released its comprehensive assessment of the producer licensing laws, practices and processes throughout the United

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States. The Report focuses on the reciprocity and uniformity -- or lack thereof -- that currently exists across the fifty states, the District of Columbia, and Puerto Rico. It serves as a snapshot of the nation's producer licensing regulation, highlighting areas where uniformity and reciprocity is found and pointing out not only where uniformity or reciprocity is lacking, but also providing suggestions for overcoming roadblocks to increased interstate consistency.

The assessment team -- volunteer insurance regulators (including: commissioners, directors, superintendents, senior regulator staff, and licensing directors) visited all fifty-two jurisdictions over a short three month period. The Report serves as an independent legal review and on-site peer assessment of all U.S. producer licensing laws and practices.

The Report contains notable findings regarding the following issues:

- Gramm-Leach-Bliley Act. The Report finds that forty-three states (three more than originally believed) are compliant with the reciprocity standards established in 2002 in light of GLBA.
- Uniform Resident Licensing Standards. In order to assess the uniformity of producing licensing procedures across states, the PL Working Group evaluated the states' compliance with the thirty-seven "Uniform Resident Licensing Standards" (the "Standards"). Each state's licensing procedures were examined against those Standards. If at least thirty-five states were found to satisfy a particular Standard, the PL Working Group deemed it an area of "high compliance." Conversely, where less than thirty-five states satisfied a Standard, "low compliance" was found. The Report found high compliance in twenty-six of the Standards and low compliance in eleven. According to the Report, the most common reasons for low compliance include: the need for state legislative action; differing interpretations of uniform licensing provisions; and lack of local industry support for change.
- Secretary of State Registration. At the behest of industry representatives, the PL Working Group examined the elimination of secretary of state registration requirements. The Report addresses the source of such requirements, the impediments to elimination, and the slow-but-steady eradication of this requirement by the states.
- Business Entity Licensing. The increased streamlining of business entity licensing is another topic of industry interest that was examined by the PL Working Group. The Report contains an in-depth review of the variance of business entity licensing requirements among jurisdictions, followed by a list of recommendations for further alignment of the business entity licensing process.
- Industry-Specified Concerns. The PL Working Group evaluated each jurisdiction's laws and practices against a compilation of research performed by various national producer trade associations. The Report serves to identify and examine the impediments to reciprocity that exist in a significant number of states, as opposed to other issues identified by the trade associations that exist only in two states or less.

In completing the 53-page Report, the assessment team noted issues worthy of consideration by future multi-jurisdictional assessment endeavors. The final section of the Report contains a discussion of those issues, including a discussion of issues now ripe for attention by state insurance commissioners and superintendents.

A copy of the full Report is available at the NAIC webpage:

http://www.naic.org/Releases/2008_docs/producer_licensing_assessment_report.pdf

II. NAIC NARAB (EX) Working Group

Following the issuance of the Report, the NAIC Executive Committee reconstituted the NARAB (EX) Working Group ("NARAB Working Group"), which held its first meeting on March 31, 2008. The NARAB Working Group has been given three charges by the Executive Committee:

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1. Evaluate the reciprocity status of states that are not currently certified as reciprocal but whose producer licensing laws have been reviewed by the NAIC Legal Division as eligible for reciprocity certification;
2. Evaluate the reciprocity standards adopted in 2002 and recommend any revisions or changes to address the issues identified in the Report; and
3. Evaluate key findings and issues regarding disparate business entity licensing laws, regulations and practices identified in the Report and provide policymaking recommendations for simplifying and standardizing the business entity licensing process.

The goal is to complete charges 1 and 2 by the summer NAIC meeting, and charge 3 by the fall NAIC meeting. Whether the NARAB Working Group will be able to complete these tasks in the time recommended is uncertain. Regardless, state implementation of any recommendations relating to business entity licensing arising from charge 3 above may take years to be broadly adopted by a substantial number of states.

III. NAIC State Producer Licensing Handbook

On February 29, 2008, the NAIC issued a first draft of the NAIC State Licensing Handbook ("Handbook"). This Handbook is primarily the work of Roseanne Mead of Iowa and is intended to be adopted by the PL Working Group after comments have been received.

The Handbook is intended to be a single source of information relating to the PLMA and producer licensing in general. It will provide meaning to, and gather relevant information concerning, the PLMA and the Uniform Resident Licensing Standards. For example, the Handbook includes at pages 20-21 a table which restates the Implementation Guidelines of the PLMA dated August 27, 2000, which provide examples of licensable agent acts versus non-licensable clerical acts.

The Handbook is comprised of three main parts, Insurance Producer Licensing, Miscellaneous Licenses and a Glossary. Many of the chapters of the Handbook have "best practices" which generally show how uniformity and / or reciprocity can be improved. In that sense, it is similar in some respects to the work of the NARAB Working Group discussed in Section II above.

IV. NCOIL

The National Conference of Insurance Legislators ("NCOIL") has also weighed in on the topic of improving the producer licensing system. NCOIL is an organization of state legislators whose main area of public policy interest is insurance legislation and regulation. NCOIL oftentimes works in tandem with the NAIC on issues of importance, although on occasion, NCOIL and the NAIC have had substantive disputes on issues.

On March 1, 2008, NCOIL adopted a "Resolution in Support of the National Insurance Producer Registry" ("NIPR")³ and urged all states to fully implement NIPR services in an attempt to eliminate unnecessary hurdles in producer licensing. The resolution provides, among other items, that NCOIL:

- Embraces NIPR's efforts to create an online, one-stop licensing resource for insurance agents and brokers nationwide
- Supports the goals and objectives of NIPR and is committed to helping create a truly reciprocal licensing system that enables qualified producers to obtain and renew licenses promptly
- Urges state legislators to use their authority to ensure that state insurance departments are utilizing and offering the functionality and services that NIPR is making available.⁴

Virtually all of the producer trade associations, such as the Independent Insurance Agents and Brokers of America (IIABA), National Association of Health Underwriters (NAHU), National Association of Insurance

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and Financial Advisors (NAIFA), and the National Association of Professional Insurance Agents (PIA), supported the NIPR resolution.

The resolution was adopted a day after NCOIL met with NAIC representatives to discuss the Report (covered in Section I above).

V. All for Naught? NARAB II

Despite the widespread adoption of many of the provisions of the PLMA, there have been rumblings for some time that the hoped-for uniformity was never fully recognized. These rumblings have now been brought back to the fore, with the introduction of a national producer licensing initiative that is being dubbed "NARAB II." This new legislation was introduced in the U.S. House of Representatives on March 13, 2008 with a bipartisan proposal, H.R. 5611 (the "Bill"), sponsored by Rep. David Scott (D-Ga.) and Rep. Geoff Davis (R-Ky.).

The Bill would again create a NARAB, a private, independent, nonprofit corporation existing under District of Columbia law, but this time contains no escape hatch, even if greater uniformity and/or reciprocity is attempted by state regulators. If enacted, the Bill is intended only to create true licensing reciprocity for those insurance producers who conduct business in multiple states. States would still retain authority to regulate marketplace activity and enforce consumer protection laws. Furthermore, the Bill only displaces the state licensing system outside of a producer's home state (i.e., generally the producer's resident state). As such, it generally applies only to non-resident licensing and does not affect resident licensing.

A release issued by Reps. Scott and Davis indicates that they believe that passage of the Bill would lead to increased competition among producers, and thus benefit consumers through greater consumer choice. Small businesses -- specifically, insurance brokerages and agencies -- are also expected to benefit from the streamlining of the non-resident licensing regulations.

Under the legislation, producers would become eligible to join NARAB by holding (or obtaining) a home state license. Once a member, they would obtain authority to "sell, solicit, negotiate, effect, procure, deliver, renew, continue or bind insurance" in any state for the same line or lines of insurance covered in their resident license. The only prerequisite would be that they pay non-resident licensing fees to NARAB, which would be remitted to the appropriate non-resident states. No state, except for the producer's home state, would be allowed to deny a license to any NARAB member in good standing or require a NARAB member to obtain a business entity license or membership. However, all states (both resident and non-resident) would still have authority to regulate market conduct and enforce consumer protection laws.

The Bill leaves the development of further criteria for membership to the NARAB Board. In this regard, the Board would generally have the power to establish standards regarding personal qualifications, continuing education, training and experience. In establishing the membership criteria, the Board would be authorized to draw from relevant state licensing laws regarding insurance producer qualifications and could deny membership in instances where a producer's resident license had been suspended or revoked during the preceding three years or where information obtained from a national criminal history record check indicated that membership should be denied. Finally, NARAB membership would also be conditioned upon continuing education requirements comparable to those used by a majority of the states. NARAB members would be exempt from nonresident states' continuing education requirements, and the bill contains provisions designed to prevent duplicative continuing education requirements between NARAB and a producer's home state.

Chartered as a nonprofit organization, NARAB would be overseen by a board of nine members, including four state insurance commissioners, three members appointed by insurance producer trade associations, one member appointed by property/casualty trade groups and one member appointed by life and health trade groups. NARAB would not be part of any federal agency, would not report to any federal agency, and would

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not have any federal regulatory power.

As opposed to some of the more broad-sweeping proposals regarding federalization of insurance regulation, this Bill is limited to the narrow area of uniformity in nonresident producer licensing. The Bill's narrow focus makes it one to watch, as it may have a greater likelihood of enactment when compared to broader, and therefore more controversial, nationalization efforts.

Conclusion

The challenge of greater uniformity and reciprocity for producer licensing still exists, but as can be seen here, the regulators are (1) aware of many of the issues and (2) attempting to implement changes to increase uniformity and reciprocity. Nonetheless, there remains, at least for now, the threat of possible Federal intervention on these issues.

Endnotes

1. The author would like to thank Ethan Lenz and Ben Thomas for their assistance with this article.
2. In order to be considered reciprocal for non-resident producer licensing, a state must satisfy the following four conditions: (1) Permit a producer with a resident license for selling and soliciting insurance in its home state to receive a license to sell or solicit the purchase of insurance as a non-resident to the same extent that the producer is permitted to sell or solicit insurance in its home state, if the home state also licenses reciprocally, without satisfying any additional requirements other than submitting (a) a request for licensure; (b) the application for licensure submitted to the home state; (c) proof of licensure and good standing in home state; and (d) payment of any requisite fee; (2) Acceptance of a producer's satisfaction of its home state's continuing education requirements as satisfying that state's continuing education requirements, provided that the home state recognizes continuing education satisfaction on a reciprocal basis; (3) No requirements are imposed upon any producer to be licensed or otherwise qualified to do business as a non-resident that have the effect of limiting or conditioning that producer's activities because of its residence or place of operations (excepting countersignature requirements); and (4) Each state meeting (1), (2), and (3) grants reciprocity to residents of all other states that satisfy (1), (2), and (3).
3. NIPR is a non-profit affiliate of the NAIC that administers the Producer Database (PDB) and provides for electronic appointments and terminations in an effort to bring electronic licensing efficiency to producer licensing.
4. NCOIL Press Release, March 4, 2008.