

**Transcription of Public Hearing before the
Management Committee of
The Interstate Insurance Product Regulation Commission (IIPRC)**

**Wednesday, May 16, 2007
Conference Call**

Management Committee Members Present:

Commissioner Jane Cline, Chair, West Virginia
Brian Pennington as a designated representative for Commissioner Glenn Wilson, Treasurer, Minnesota
Paul Clark as a designated Representative for Commissioner John Oxendine, Georgia
Carol Cutter as a designated representative for Commissioner Jim Atterholt, Indiana
Louis Belo as a designated representative for Commissioner Jim Long, North Carolina
Director Mary Jo Hudson, Ohio
Dalora Schafe as a designated representative for Commissioner Kim Holland
Brad Harker as a designated representative for Acting Commissioner Randy Rohrbaugh, Pennsylvania
Anna Smith-Daley as a designated representative for Commissioner Mike Geeslin, Texas
Herb Olsen as a designated representative for Commissioner Paulette Thaubault, Vermont
Don Beatty as a designated representative for Commissioner Al Gross, Virginia
Alan Hudina as a designated representative for Commissioner Mike Kreidler, Washington

Commission Members Present:

Director Julie McPeak, Kentucky
Donna Daniel, Idaho
John Rink, Nebraska
Betsy Gerome, Utah
Sandra Christiansen, Utah
Michael Ridgeway, Oklahoma
Ted Hamby, North Carolina
Commissioner Roger Sevigny, New Hampshire
Stewart Johnson, North Carolina
Shawn Hawk, Tennessee
Marlon Burch, Kansas
Carol Cutter, Indiana

Other Regulators Present:

Chris Cassidy, Florida Office of Insurance Regulation
Mary Kisinski, Arizona

IIPRC and other staff present:

Fran Arricale, IIPRC
Becky MacElduff, NAIC

Legislative Committee Present:

Kevin Horan, NCOIL

Industry Advisory Committee Members present:

Michael Lovendusky, ACLI
Miriam Krol, ACLI
Dennis Herchel, Mass Mutual
Cande Olsen, New York Life
Julie Mueller, AHIP
Amanda Matheson, AHIP
Gary Sanders, NAIFA

Interim Consumer Advisory Committee present:

Brendan Bridgeland, Center for Insurance Research
Ryan Wilson, AARP

Commissioner Cline asked IIPRC Executive Director Frances Arricale to take roll call. Commissioner Cline then asked if the Legislative Committee was present on the teleconference. Commissioner Cline asked the following to identify themselves: Other regulators, Industry Advisory Committee, Interim Consumer Advisory Committee, representatives from the media or the press.

Commissioner Cline: This is a public hearing of the Management Committee Meeting of the Interstate Insurance Product Regulation Commission (“IIPRC”). The purpose of this hearing is to receive comments on the proposed Uniform Standards issued on Jan. 24 2007, March 1, 2007 and March 14, 2007 and the Operating Procedures issued on March 15, 2007. The Commission has received written comments from: Member states of Kentucky and Vermont; from our Legislative Committee Chairman, Representative Robert Damron, from Kentucky; the Industry Advisory Committee; the Life Insurance Settlement Association; and the AARP. These comments have been posted to the web site under the respective proposed uniform standards and rules under the docket section. The public hearing noticed that those interested in providing oral comments notify the Commission in advance of the hearing. It is my understanding that we have two parties who have specifically requested an opportunity to address the Management Committee. I would ask that each person limit their comments to no more than 10 minutes. Specifically, I would note that we received in written comments on a number of formatting and technical corrections, and I would ask that comments today not focus on these corrections; but, please, be assured that these have been duly noted. Using our time efficiently by keeping to the 10 minutes for each speaker will give the Management Committee and other Commission members the opportunity to ask questions. After we have received comments from each individual, we will then ask if there are any others who wish to address the Management Committee. First, if I may ask if our two member states, Kentucky and Vermont who have submitted written comments would like the opportunity to speak on their comments at this time.

Commissioner Paulette Thabault: Yes, Vermont would like to.

Commissioner Cline: If Vermont would please proceed.

Kevin Moriarty, VT: Vermont’s remarks relate to the two Operating Procedures that are pending. We have submitted our comments in writing and they are posted on the web site. The first one is really just a cover letter with suggestion on some changes in the nature of clarifying changes to the proposed Operating Procedure for Financial Assistance to the Consumer Advisory Committee. The first thing we were suggesting is that the operative rule or the operative language here taken right from the Compact and is that financial assistance be provided to the extent that it is available; but the standard also enables effective participation by the Consumer Advisory Committee. The suggestion here would be to try and include some way of determining what “effective participation” is. If that becomes an issue down the

road and rather than actually figure out the standard which would not necessarily be appropriate because of the very fact of circumstances, we thought it would be appropriate to have something to the effect that the Commission would make that determination if it became an issue based on recommendations by the Management Committee after it consults with the Executive Director; again regarding the particular facts of the circumstances of a request for financial assistance. I think that change should be made right up front. The additional clarifying language would be upfront in Section 101. The second point under "Purpose and Scope" is really just a point of clarification. As you all know, there are two separate procedures in the Compact itself, excuse me, provisions in the Compact itself dealing with financial type matters specific to the various participants. In this case the Consumer Advisory Committee, and there is one that talks specifically about an ERISA meeting expenses which is cited at the bottom of the letter to which is in Article A, Section 3. Our understanding is that this proposed procedure does not deal with that provision but rather the provision which is cited at the start of the draft rule which is a broader scope in terms of financial participation. So we thought it would be appropriate to indicate that this rule does not cover the reimbursement of expenses under Article A Section 3. I will stop here and see if anyone has questions about those two points.

Commissioner Cline: Are there any questions for Kevin?

Kevin Moriarity: Hearing none, I will go onto Section 102 which deals with the procedure for making requests. There is a provision talking about the Management Committee would explore, would forward the request to the Commission. The language in the draft rule right now is consideration of due course. Our suggestion is that there be a Rule, probably not quite as specific as it ought to be in terms of providing assurance to requesting party as the request is going to be handled as expeditiously as circumstances dictate. So we would suggest there that rather than "in consideration at due course," that the language be modified to indicate that once the referral is made by the Management Committee the request would go on the agenda of the next regularly scheduled meeting of the Commission. To be clear, there would not be a requirement to the Commission to necessarily act on it at the next meeting, but just that it be taken up at the next meeting, and would be in a situation where it may be something that the Commission feels, if appropriate, to have deliberations between the time it first accepted the request and the time it ultimately voted on it.. The suggested change to Section 103 was just to include a specific provision, again, that tracks with the Compact language that these requests for financial assistance with regard to the availability of budget funds. Finally, we're suggesting some language again in the nature of clarification which is not in the Rule, which goes to more after-the-fact-usage tracking of funds for a grant of financial assistance they are given. As you will see in the letter, we suggested that the Management Committee who picks up the option and not necessarily requires a standing requirement for a report after the funds are used, but pick up the option to request a report from the recipient that they have used the funds as described and the demonstration of that in a commitment that the funds be subject to any conditions that are set forth and there will be an accounting at the request of the Executive Director. I kind of mangled that a little. What this is an undertaking as part of getting the grant but essentially the purpose would be that we provide the Commission the means to track and understand and be able to identify to what has happened to funds that were granted. That sums up the suggestions for revisions of that Operating Procedure. Any questions?

Don Beatty, VA: With respect to accountability of the recipient for financial assistance, did you give any thought to whether or not the person should agree with the organization and agree to an audit?

Kevin Moriarity: Well I thought about that in terms of providing accounting for use of the funds. I think that would be broad enough to allow the Commission either to provide what I would normally see as an accounting for use of funds which does not necessarily require an audit. I think within that

language we could also say that we have a right to request an audit if we think it appropriate; but think it would be better to put that language in explicitly. As an option that is not a bad idea, but I think it is probably something that is not often going to be used.

Don Beatty: Ok, thank you.

Commissioner Cline: Are there any other questions for Kevin? If not, Kevin, do you have any other comments?

Kevin Moriarity: Not on that Operating Procedure, Commissioner. The other one goes to the Operating Procedure regarding advisory opinions. Do you want us to go through those now or would you rather wait?

Commissioner Cline: Kentucky, do you have any comments that relate?

Director Julie McPeak, KY: I want to ask Melinda Sheppard to speak on behalf of Kentucky.

Commissioner Cline: Ok, thank you.

Melinda Sheppard, KY: This actually goes to the two term standards. Commissioner, do you want us to go ahead and give our comments on the standards?

Commissioner Cline: I was asking if there were any other comments with respect to the items that Kevin just talked about.

Malinda Sheppard: No, our comments are specific to the term standards.

Commissioner Cline: Ms. Sheppard do you want to go ahead and talk about that and then we'll go back to Kevin for his comments on the other standards.

Malinda Sheppard: John McBain our actuary pointed this out. There is a difference of opinion among regulators as to how term products are handled from a nonforfeiture noncompliance perspective when there is a "return of premium" and we felt like this needed to be addressed in the standards. The best and easiest way we thought, and the most expeditious way would be to add in the Scope of the Individual Term Life Insurance Policy Standards and the Individual Joint Last to Die Survivorship Term Life Insurance Policy Standards. This wouldn't necessary for the single premium ones, an exemption of the "return of premium" so that a separate standard could be done for that later and that we could go ahead and get these others approved. If that makes sense.

Commissioner Cline: Are there any questions for Melinda? If not, Kevin why don't we go back to your comments on the proposed Operating Procedure for the Advisory Opinion.

Kevin Moriarity: Now the format we used on this one because the changes were a little more extensive. We did this in a red line format with some footnotes to explain the proposed changes rather than just in a cover letter as with the other one. I will concentrate on just the most important things, hopefully the rest are explained in the footnote. If any one has any questions I can specifically cover or not, I would be happy to respond to those. In terms of the changes we suggested here, the primary changes were really designed to be more specific, to create a more specific language to the advisory opinions and the operating procedure we currently have in place regarding the public access to Commission documents.

The provisions in here are intended to make that more detailed. The other provisions, or suggested changes, go to one, clarifying that the ability of the Commission, or Executive Director really, to decide not to issue an advisory opinion that any time during the process, it is not just a one shot chance at deciding to do that because things may develop as opinions are being drafted or because it becomes clear that it is not and its not in the best interest in the Commission to issue it. There are also more detailed provisions, in terms of the ability to request additional information from the requesting party. Then, also, we have suggested some more detailed procedures in terms of how the file opinion gets processed before it goes to the Commission for approval. Lastly, there is a provision regarding these so just to go through them in sequence quickly:

Page 1, the changes to point out there, is probably the addition of the definition of the Public Access Rule which simply refers to the existing public access rule we have and the term “public record” and tying that definition back to what is in the public access rule.

Page 2, the stricken language of Section 103 (B) is moved down to a different place, it is already covered so it is not a matter of getting rid of that entire language.

Section 104(A) is the place where we would clarify that the Executive Director would have the option of not issuing the advisory opinion anytime before the final draft to submit it to the Commission for consideration. So, however long a process takes, including if it retains legal counsel, or whoever it is that is, drafting the opinion. If any of the criteria below is set to be deficient, then we say that we are not issuing an opinion even if the draft is fairly far down the process.

A(4) is a new provision (4) just to indicate that one of the things that we thought would be important. Anyone requesting an opinion has to show they have some interest in it, in the nature of real party and interest or standing depending on how you want to look at it. That is generally the practice with other advisory opinions and other contracts that aid agencies or what other model, what the IRS says with letter of opinions regarding tax situations.

Also, again, this is fairly standard practice so it would be helpful to clarify that this should be, the requesting party really should state the opinion they are looking for so we have a clear idea of what their opinion on the issue of law, Compact operations that they are requesting. Also, we want to make sure that they have sufficient fact of circumstances for the basis of the opinion.

Any question about what I've talked about so far? Now the other thing, we thought it would be helpful to include a specific provision in here sort of to put the mirror image of the Executive Director's discretion not to issue the opinion any time during the process, would be that the requesting party can withdraw their request for advisory opinion, anytime before it is finally approved and finalized. To mention this, I had a couple of conversations with West Virginia who had done the initial drafting with our participation, they were wondering if that was really a wise way to deal in terms with allowing them to withdraw, whether there was exponential precedence or harm to the Commission, which was a good question. In my experience and I think this is the way we were looking at this, the nature of this opinion is that if it is issued its only binding on the party requesting it. The Commission would have the option to craft the opinion in a way that is appropriate and that frankly may find it unnecessary in other situations that may come up. In the opinion will be such that it should not viewed as binding the Commission and if there's an unwritten note a similar issue involving other parties will help us down the line. So for all those reasons I did not think, frankly I think it is a help to participants to have advisory opinions. I also think that in the nature to make a judicially conservative stance except we only give

opinions when they are really wanted and requested that it would be appropriate for all people to withdraw the request especially if they think they're not going to get the opinion they are looking for.

Moving on to Section 105 (B), there is a new subsection B here, which details the end to the process and the end process here. The idea here is when the Executive Director thinks they've got the opinion ready to go, that it is finished. The idea is to give requesting party the opportunity to review it before it is officially sent on to the Commission for approval; for two reasons really. One is to give the requesting party a last chance to correct any facts that may have been in error or supplemented for any reason. To allow them to look at the legal reasoning that whatever is pertaining to the Compact there. Also to give that party, this is a standard procedure, the chance to offer what they think is appropriate in terms of a redacted form of opinion that will be made to the public. Bear in mind that any redacted opinion is going to have to be consistent with what the public access rule provides. It should also be the case their last chance to assert whether there are any trade secrets that would be mentioned in the advisory opinion that would be redacted and there is such the trade secrets the process that exists now the public access rule will be the one that will followed to determine whether they are there or not. Then the last action would be that the Executive Director, assuming it is still an appropriate issue, would take whatever the requesting party says about redacting and changes into account not necessarily being required to make any changes and then it gets forward on to the full Commission for an up or down vote as to whether to issue the opinion. Another thing that we have made clear, again this is consistent with the advisory opinion practice, and other context is that the decisions not to issue an advisory opinion if the Commission decides to do that or if the full Commission gets the draft opinion votes to not issue it neither of those would be an appealable decision; it would be done at that point. The last change we would suggest is something that was not the original draft which I think it would be appropriate and again in line with the practice of advisory opinions with that. The Commission could charge a fee to the requesting party to help, if not cover in full, defray the cost of getting an opinion. I think we recognize we would probably have to retain, depending on how things work out, just what legal services the Commission may have on a standing basis that may have the need to retain other legal counsel at a cost to have some input in the development of an opinion. As a provision here, with the suggestion, the suggestion also would be that once the fee is paid it does not get refunded regardless of whether the Commission decides not to issue the opinion or the request for opinion is withdrawn. That sums all of our suggested changes. I am happy to take any questions or comments.

Don Beatty: With respect to this fee, is there any possibility of authorizing the Executive Director to waive the fee in the case that the requesting party has some financial hardship or is not a 44 billion dollar insurance carrier?

Kevin Moriarty: That is a good point. I think the language says, "may charge a fee", so I think that is exactly in leading as permissive language is anticipated what you are mentioning, hardship cases.

Commissioner Cline: Any other questions or comments?

Michael Lovendusky, ACLI: Are you inviting the Industry Advisory Committee comments right now?

Commissioner Cline: I know you want to speak, I was asking if there were any Commission Members who have any comments. Kevin, or any other comments first ,and then we will move on. Hearing none, I would now like to turn back to the Industry Advisory Committee for the requested time. Michael are you going to speak for the ACLI then?

Michael Lovendusky: Perhaps preliminarily. I believe Julie Miller is on the call and she is the coordinator of the comments submitted by the Industry Advisory Committee in February. I would mention to the Commission that the comments submitted by Vermont has just come to our attention, the members of the Industry Advisory Committee may not have had a chance to review them thoroughly. I have just two questions of Vermont with regard to them which perhaps would be helpful.

First, under Section 105, subsection A-1, I gather the deletion of the opportunity for the Advisory Committee and the Legislative Committee to submit comments or to cooperate with the Executive Director with the submission of comments is intentional?

Kevin Moriarty: Yes it is. I am glad that you brought that up. I did not mean to gloss over that. I think that our suggestion there is that again, this goes in terms of what would be regarded to normal opinion practice, advisory opinions, or administrative agency opinions, reconsideration of that original language our think was that these budget opinions are going to be legal opinions. The facts are going to be what they are, as presented by the requesting party. So in terms of a matter of process, frankly I did not see a lot of value in getting input out of essentially what would be legal interpretations from these various committees or others. It might not be appropriate to limit it to, when I say members of the commission or other representatives of the Compacting States, frankly if any of the states had a question and what to weigh in and they had their own staff, whoever it may be legal counsel there looking at it we thought that would be appropriate. Frankly even that, arguably is more than what is done in other contracts, but I think opening this up to requiring input from or leaving the options open to get input from others I think is not entirely appropriate in the nature of these opinions as primarily legal interpretations.

Michael Lovendusky: I think the ACLI leads with different perspective especially in as much as this text is intended to be permissive to the Executive Director. "The Executive Director may request comments from various members of the Commission..." The ACLI supports the ability for the Director to request such comments from advisory committees and the legislative committee in his or her discretion. One of the questions then would the proponents for these amendments accept the confirming amendments under the Section 109 (C) proposal that the Committee may charge, include the word reasonable, "a reasonable fee to the requesting party?"

Kevin Moriarty: In principle, I do not think we have a problem. I do not know procedurally whether this thing is being offered, what we found is really common in I do not know if it's officially offered as amendments. I do not know if friendly amendment is appropriate, but be that as it may, including the term reasonable, we would not have any objection to that when it comes down to whatever process it takes to get this replaced in the current draft.

Micahel Lovendusky: Thank you. ACLI would encourage the Members of the Commission to offer that as a friendly amendment at the appropriate time. Those are my two particular questions and observations about these proposed amendments to the Operating Procedure but if the Chair would indulge the other colleagues of the Industry Advisory Committee perhaps they have other comments or questions.

Commissioner Cline: From a procedural standpoint, I believe the appropriate time, this is a public hearing and if there are going to be proposed amendments those would be handled at the June 1st Management Committee Meeting and then to the full Commission meeting during the June 1st meeting in San Francisco. Are there other industry questions or comments?

Julie Miller, AHIP: Michael had stated the proposed changes have only recently come to our knowledge. I would reiterate the point that Michael raised about the need to qualify the fee to be charged as being

reasonable. I guess I would think about whether or not that fee needs to be set forth in a fee schedule so that it is knowable before the requesting of an opinion. I do not know what my colleagues think of that.

Commissioner Cline: Again, this is the Public Hearing to have discussion and if you have suggestions, you could put those forward. Are there any other comments with respect to the discussion from Kentucky and Vermont?

Brendan Bridgeland, Center for Insurance Research: I think it is a good idea to be able to track where a grant goes if it is non-profit organization. In our work at the foundation, we have to send reports at the end of the period to show how funds are used in the like. I think that is only wise as a follow up. But I want to make it absolutely clear for any consumer organization, as whether it would be required to submit to say a general audit instead of a project audit at the request of the Commission because that would have to be pretty clearly disclosed because it can make a big difference for particularly small organizations that would have to be very much aware of that if that is really what is to be considered. That is all that I would point out. Thank you.

Commissioner Cline: Thank you. Do we want to move on? I know that industry had asked for time to comment. I don't know if you want to comment specifically about your written comments?

Micahel Lovendusky: Again this part is required by Julie Miller, I believe the written comments were self contained. I would defer to Julie.

Commissioner Cline: Julie would you like to speak further.

Julie Miller: No, I think the written comments were pretty straight forward.

Commissioner Cline, the other person who had requested time to speak was Josh May from the Life Insurance Settlement Association (LISA).

Josh May, LISA: I think that my comments will be very brief and combine them with the letter that LISA submitted that was posted earlier today on the Web site. There are two clarifications that we are looking for. First, these amendments will apply to the adjustable life policy standards that were already promulgated by the Commission in December as well as the policy standards issued by the Management Committee on January 24, March 1, March 14, and March 15. So if someone could just confirm that. My other point of clarification is really to confirm exactly what language were talking about and considering especially with regard to the assignment beneficiary ownership provision. The Industry Committee said in its comments that it expects the changes that were adopted on April 21 by the Management Committee will try the standards that are being discussed today and LISA's letter raised those out. I believe we're talking about the revised language where restrictions on assignment and changes of owner such as right of first refusal are put into a drafting note and other restrictions are limited to satisfying applicable laws or regulations.

Commissioner Cline: I would like Becky from the NAIC to provide a comment in response to your question.

Becky McElduff, NAIC Staff: Josh, I was not quite following the second part of your comment. But in general, it is accurate to say that the changes that you refer to in terms of assignment as beneficiary and ownership and those were forwarded to the Management Committee from the Product Standards Committee in conjunction with sets of standards that were earlier in process than the ones we're talking

about today. All those changes were recommended as conforming amendments so it would be consistent to make those changes to these policies determine the whole that we're talking about today.

Josh May: The recommendations by the Product Standards Committee contain in this letter of April 20th that's the language that we are all talking about?

Becky McElduff: Right.

Commissioner Cline: Are there any other interested parties who have submitted written comments who may wish to speak during the public hearing?

Ryan Wilson, AARP: We had submitted written comments on policy standards and we had restricted our comments to the guidelines regarding arbitration clauses. Restricting those comments again, comments posted on the web site, we wish clarity in a couple of the provision where the guidelines may be inconsistent with the American Arbitration Association rules that the guidelines clarify that the guidelines do control. We think that is implicit but clarity is always good. The other thing that we had asked for clarity on, again we thought this might be implicit but explicit clarity is always good that cost include all upfront cost as well as back cost when a consumer is having a dispute with an insurer over a provision in a contract.

Commissioner Cline: are there any other comments or questions with respect to AARP's submitted comments? Hearing none, Brendan did you have any further comments?

Brendan Bridgeland: No, I don't have any further comments. I will say I haven't had much time to look things over quickly but I did agree with the points with AARP I will say that.

Commissioner Cline: Are there any other interested parties that would like to speak? Are there any other regulators that would like to provide comments? If not, I would like to thank all of the participants and attendees for today's Public Hearing for your time and input. It is anticipated that the proposed standards and rules commented upon today will be taken up by the Management Committee and the full Commission during our June 1st meeting in San Francisco. Prior to this date we could provide red-lined copies of the proposed changes for individuals to review, that would be the time any amendments would be made.

Frances Arricale, IIPRC Executive Director: From a standpoint of I heard a couple of comments that folks were looking for where the comments are posted. If I could just remind everyone that they are on our web site as soon as they are received. They are posted under the respective uniform standards and proposed rules. So if I could direct all of our members and interested parties, whoever is looking for comments, they are on our web site, please click on the plus sign and you will find the comments for each of the respective standards and rules.

Michael Lovendusky: Fran when you post a comment that is applicable to multiple standards, is there any particular standards that you attach them to?

Frances Arricale: They go to each one to which they address.

Commissioner Cline: I would just like to remind everybody that the Management Committee will meet on May 21, that's Monday via conference call, the agendas have already been forwarded and are

available on our web site. We look forward to your attendance on Monday and again I would like to say thank you for your participation today.