The email that follows is a summary of some of the state government affairs events and actions occurring in relation to the COVID-19 outbreak. I have attempted to keep this brief and to the point. I apologize in advance for anything that has been overlooked, and I encourage you to contact me if you have any questions or comments about these or any related issues. We also encourage state associations to share relevant updates concerning events and developments in your jurisdictions. Thanks very much.

Application of Business Interruption Insurance and Similar Coverages

I am sure all of you are aware of the discussion about the nature of business interruption insurance and lack of coverage under such policies for losses related to COVID-19. Standard commercial policies clearly do not provide coverage for such a pandemic, but some policymakers are nevertheless questioning this fact and/or contemplating ways to require insurers to compensate businesses for events that were excluded. Other officials have been more helpful and have issued statements indicating that coverage does not exist in these scenarios. Below is a summary of recent actions:

- The most notable state action that has occurred is in New Jersey, where a bill (AB 3844) was introduced that would effectively revise existing policies and require that “every policy of insurance insuring against loss or damage to property, which includes the loss of use and occupancy and business interruption… be construed to include among the covered perils under that policy, coverage for business interruption due to global virus transmission or pandemic.” The proposal would apply to businesses with less than 100 full-time employees (i.e. those that work 25 or more hours in a normal week) and require insurers to indemnify policyholders up to the limits that exist under the policy. It would also establish a mechanism to apportion the costs of such payments among insurers writing business in the state. Some reports have suggested this bill was enacted by the legislature or is certain to become law, but the reality is that this proposal is now on hold and that the situation is very fluid. Questions have been raised about the merits, constitutionality, and other aspects of the measure, and its fate is uncertain at this point.

- Last week, the New York Department of Financial Service issued a letter requiring all insurers to provide policyholders with a “clear and concise explanation of [the] benefits” available under business interruption and related coverages. It also required companies to report their volume of business interruption coverage in terms of direct premium, policy types, and numbers of policies. Responses to the department letter were due by yesterday (March 18).

- The Maryland Insurance Administration recently issued a thoughtful bulletin noting that business interruption insurance is unlikely to apply to COVID-19 losses and explaining the reasons why this is the case. If your state is considering the possibility of a similar statement, this may be a model to consider.

- The South Carolina Department of Insurance has also addressed these issues on its website, and their insurance director is the current President of the NAIC. Most notably, the site includes the following text: “With the outbreak of the Coronavirus, some business owners may be wondering whether their insurance policies cover losses resulting from a business shut down or other losses related to the Coronavirus. Under the business income policy, there likely is no coverage as losses occurring as a result of a virus or bacteria are typically excluded … Business owners with questions about their coverage should contact their agent/broker or insurer directly and consider whether it is in their own best interest to file a claim. Please note that the South Carolina Department of Insurance does not have the authority to require insurers to extend coverage under the policy where specifically excluded or to sell this type of coverage to consumers.”

- Some members of Congress are also weighing in. Rep. Nydia Velazquez (D-NY) and several other Democrat members of the House sent a letter yesterday to the CEOs of the Big “I,” APCIA, CIAB, and NAMIC calling on the industry to compensate businesses for losses not covered by business interruption policies. That letter and the immediate response sent to Capitol Hill by IIABA and the other three groups will be discussed in greater detail in today’s News & Views.
Mandatory Closures of Nonessential Businesses

As local and state governments begin to require or encourage the closure or limited operation of certain businesses, questions will inevitably arise about how this impacts insurance agencies and whether the business of insurance is “essential” or “nonessential.” Such determinations will be made by the officials that are implementing these shutdowns, and it is important to note that these closures are typically focused on dining, entertainment, and retail establishments and are not intended to hinder the ability of agents to serve clients.

Pennsylvania was one of the first jurisdictions to order the shutdown of nonessential business activity. The governor’s order lists insurance as an essential service, and the insurance department supplemented that with the following common-sense guidance: "The Administration has strongly urged non-essential businesses to close during mitigation periods to protect employees, customers, and suppliers. While the business of insurance is essential, many roles and functions of insurance offices may be administered remotely or are otherwise non-essential. We encourage carriers and agencies to use their discretion in determining essential functions for essential employees. For example, an agency may determine it is appropriate to close to walk-in visitors, while remaining open for business, and available to consumers, through calls and e-mail."

Other jurisdictions that have issued similar orders have indicated that “banks and other financial institutions” are viewed as essential businesses, and insurance agency activities would arguably be treated as essential under such a framework. If an order of this nature has been issued or is expected in your state, you might consider reaching out to your insurance department and/or administration contacts for clarity.

Cancellation and Nonrenewal Moratoriums / Premium Payment Arrangements

Another issue that has been widely discussed is whether states should impose moratoriums on policy cancellations and nonrenewals and/or provide temporary accommodations or leniency for those who might be challenged to make premium payments. There has been little government activity with regard to this question so far, but one exemption is West Virginia. That state issued a bulletin yesterday (March 18), and, among other elements, the order states:

"Insurers and other regulated entities must not issue a cancellation notice or nonrenewal notice pertaining to any insurance policy, plan or contract if the reason for cancellation or nonrenewal is a result of circumstances stemming from the COVID-19 pandemic and the corresponding State of Emergency, Executive Order 2-20, any subsequent executive orders or other governmental actions. Insurers and other regulated entities should be flexible with respect to allowing alternative payment arrangements for the satisfaction of premiums that are due or that which may become delinquent as a result of the emergency. However, nothing herein shall be construed to exempt or excuse an insured from the obligation to pay the premiums otherwise due for insurance coverage or benefit actually provided or received."

Licensing and Related Issues

IIABA has received many inquiries concerning the impact of COVID-19 on the state licensing process, and agents and state associations have asked if disruptions and special accommodations are expected and whether members will be able to satisfy their licensing obligations. There will undoubtedly be complications as a result of insurance department staffs working remotely, the cancellation of in-person education classes, and other factors, but regulators are hoping that problems will be kept to a minimum. The good news is that the renewal and maintaining of licenses is largely an administrative function that can be completed online, and regulators are working to address any barriers and unique complications that may be arising. Here are some items to consider:
• Agents that need to renew licenses in the near future are able to do so online, and regulators are encouraging producers with looming renewal dates to do so now. Most license renewal transactions (and especially those for nonresident licenses) should be processed very quickly, and NIPR’s help desk and call center are fully operational and available to those that need assistance.

• Most states (40+) allow a producer to renew a license at least 90 days in advance of its scheduled expiration, and this means most agents with licenses scheduled to expire in March, April, and even May are able to extend them now. States with shorter windows – such as the District of Columbia, Hawaii, Massachusetts, Minnesota, Pennsylvania, Tennessee, and Wisconsin – still allow agents to renew licenses 45 or 60 days prior to expiration. Again, regulators are encouraging agents to renew without delay.

• Over 80% of agents with licenses that expire in March have already renewed them, and a high percentage of those with April expiration dates have done so as well.

• While most states are hoping that there is no need to provide special accommodations, a number of jurisdictions are providing extra time for agents to satisfy their licensing obligations. Those that are doing so – including Maryland, South Carolina, and Wisconsin so far – are pushing back renewal dates by a certain amount of time (e.g. 60 days). Other states are expected to consider something similar.

• In order to renew a home state license, agents normally need to have satisfied their continuing education requirement. Nearly every state already allows continuing education classes to be completed online, and we are seeing states that do not or that impose other limitations begin to waive those restrictions. Regulators are optimistic that CE requirements will not act as a barrier to licensing renewals in the weeks and months to come, but IIABA would especially welcome your feedback and suggestions concerning these issues and any problems that might arise.

• There will be greater disruption for those who are new to the insurance business and are seeking their initial licenses, and COVID-19 will make it challenging (and perhaps impossible) for first-time applicants to take their exams and satisfy any pre-licensing education and fingerprinting requirements that exist. Regulators are focused at the moment on ensuring that existing agents can maintain their licenses, but these other issues will receive greater attention with time. Some states are already waiving testing and fingerprinting requirements and allowing new applicants to obtain temporary licenses.

• IIABA is working closely with the NAIC and NIPR on these and other issues. We encourage state associations to contact us if they encounter problems or see issues that require special attention and consideration. The regulators are looking to us to provide guidance and feedback, and the input we receive from members and state associations is incredibly helpful in identifying problems and solutions.

Other Items

• The NAIC will hold a public meeting tomorrow (Friday) on COVID-19 via Webex. The session is scheduled to run from 11:00 AM ET to 1:40 PM ET and will include presentations from representatives in government and the private sector on a range of topics. The public meeting will be followed by a closed discussion among regulators. The agenda for the open session can be found here, and registration information is available here.

• Many restaurants that have closed to the public are attempting to stay afloat by offering drive-up and delivery service, and some employees that typically do not deliver food will temporarily be doing so while using their personal vehicles. Personal automobile policies typically do not provide coverage for vehicles used for commercial purposes (such as food delivery), and at least
one state (Colorado) is considering the issuance of a bulletin that would temporarily make coverage available for these delivery persons. The draft bulletin would apply only apply to those delivering food for businesses impacted by the mandated restaurant shutdown and prohibit the denial of a claim under a personal auto policy solely because a person was engaged in such a delivery.

- The West Virginia bulletin noted above also addressed workers’ compensation issues. Specifically, it notes the following: "Workers’ compensation insurers shall consider the impact on rates of any idling of workers by employer insureds, and insurers shall, if requested by the employer insured, conduct an audit in order to determine whether the insured is entitled to any adjustment in premium due to the idling, furloughing, laying off or other dismissal of workers." No other state that we are aware of has issued a bulletin of this nature so far, but more are likely and we are working closely and coordinating information with NCCI and others.

- The National Governors Association has created a special webpage that is monitoring and providing updates on state actions taken in response to COVID-19 (including links to executive orders, declarations, guidance, and related information). The site also has information on actions taken by the federal government and a wide range of other material and helpful links. It is a great resource.

- Many insurance departments are in the process of transitioning staff so that they are able to work from home. In addition, legislatures across the country are ending, suspending, or postponing their sessions, and information concerning the status of each state’s legislature can be found here.