

Draft Pending Adoption

Draft: 8/25/20

Innovation and Technology (EX) Task Force
Virtual Summer National Meeting
August 7, 2020

The Innovation and Technology (EX) Task Force met Aug. 7, 2020. The following Task Force members participated: Jon Godfread, Chair, and Chris Aufenthie (ND); Elizabeth Kelleher Dwyer, Vice Chair (RI); Lori K. Wing-Heier represented by Chris Murray (AK); Jim L. Ridling represented by Jerry Workman and Gina Hunt (AL); Alan McClain and Letty Hardee (AR); Elizabeth Perri (AS); Evan G. Daniels and Erin Klug (AZ); Ricardo Lara and Lucy Jabourian (CA); Michael Conway (CO); Andrew N. Mais (CT); Karima M. Woods (DC); David Altmaier (FL); Colin M. Hayashida (HI); Doug Ommen (IA); Dean L. Cameron (ID); Robert H. Muriel (IL); Stephen W. Robertson represented by Jerry Ehlers (IN); Vicki Schmidt represented by LeAnn Crow (KS); Sharon P. Clark (KY); James J. Donelon (LA); Gary Anderson (MA); Kathleen A. Birrane (MD); Eric A. Cioppa represented by Ben Yardley (ME); Anita G. Fox (MI); Steve Kelly represented by Tammy Lohmann, Grace Arnold and Phil Vigliaturo (MN); Chlora Lindley-Myers and Cynthia Amann (MO); Mike Chaney and Andy Case (MS); Matthew Rosendale represented by Steve Matthews and Jeannie Keller (MT); Mike Causey represented by Tracy Biehn (NC); Bruce R. Ramge (NE); Chris Nicolopoulos represented by Christian Citarella (NH); Marlene Caride represented by Mark McGill and Carl Sorenson (NJ); Barbara D. Richardson (NV); Jillian Froment (OH); Glen Mulready represented by Cuc Nguyen (OK); Andrew R. Stolfi (OR); Jessica K. Altman and Michael Humphreys (PA); Raymond G. Farmer (SC); Larry D. Deiter (SD); Hodgen Mainda (TN); Kent Sullivan represented by Doug Slape and Michael Nored (TX); Scott A. White and Rebecca Nichols (VA); Michael S. Pieciak represented by Anna Van Fleet (VT); Mike Kreidler and Molly Nollette (WA); Mark Afable (WI); and James A. Dodrill (WV). Also participating was: My Chi To (NY).

1. Adopted its July 23, 2020, and 2019 Fall National Meeting Minutes

Commissioner Altman made a motion, seconded by Ms. Biehn, to adopt the Task Force's July 23, 2020 (Attachment Five) and Dec. 6, 2019 (*see NAIC Proceedings – Fall 2019, Innovation and Technology (EX) Task Force*) minutes. The motion was unanimously adopted.

2. Adopted its Working Group Reports

Commissioner Godfread asked for reports from the Task Force's working groups.

a. Big Data (EX) Working Group

Commissioner Ommen said the Big Data (EX) Working Group met Aug. 4 and adopted its 2019 Fall National Meeting minutes and received an update from the Casualty Actuarial and Statistical (C) Task Force (CASTF). He said the CASTF is drafting a white paper, *Regulatory Review of Predictive Models*, to provide best practices for the review of predictive models and analytics filed by insurers to justify rates.

Commissioner Ommen said state insurance regulators have the responsibility to review and evaluate the advancing uses of technology, modeling techniques and the application of models in insurance and the priority question being addressed is whether state insurance regulators can determine whether predictive models, as used in rate filings, are compliant with state laws and regulations. He said the white paper includes an update on the development of the best practices for evaluating the use of variables and predictive modeling, noting the four best practices for regulatory review outlined in the white paper are to: 1) ensure compliance with state rating laws; 2) review all aspects of a model (data assumptions, adjustments, variables, inputs and outputs); 3) evaluate how a model interacts with and improves the rating plan; and 4) enable competition and innovation.

Commissioner Ommen said the white paper references the concept of "rational explanation" that refers to a plausible narrative connecting the variable and/or treatment in question with real-world circumstances or behaviors that contribute to the risk of insurance loss in a manner that is readily understandable to a consumer or other educated layperson. He said the white paper indicates that a "rational explanation" does not require strict proof of causality but should establish a sufficient degree of confidence that the variable and/or treatment selected are not obscure, irrelevant, or arbitrary.

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Commissioner Ommen said the latest draft of the white paper was exposed June 12 and the CASTF is now reviewing the latest round of comments and plans to present the white paper to the Property and Casualty Insurance (C) Committee in September.

Commissioner Ommen noted that the white paper has been prepared more in the context of generalized linear models (GLMs) and similar systems that could be described as “static” models or algorithms, which are now more commonly found in insurance rate filings, although the best practices would also apply to models that also involve artificial intelligence. He said the “NAIC Principles for artificial intelligence (AI)” (AI Principles), which will be considered by the Innovation and Technology (EX) Task Force later in this meeting, more narrowly apply to a subset of developing innovative modeling that could be described as “more dynamic” due to the addition of AI to the modeling.

Commissioner Ommen said the Big Data (EX) Working Group also received an update from the Accelerated Underwriting (A) Working Group, noting that another important workstream initiated by the Big Data (EX) Working Group is the NAIC technical and nontechnical rate review trainings. These trainings started Nov. 13, 2019, and ended in June 2020. He said state insurance regulators received technical training in exploratory data analysis and statistical techniques insurers are using to develop property and casualty risk classification and rating plans and the training also covered specific advanced statistical techniques including GLMs, generalized additive models (GAMs), gradient boosted trees, random forest ensembles and decision tree models. He said that in addition to the more advanced technical training, the NAIC sponsored two non-theoretical, practical webinars, designated as “nontechnical webinars.” Moving forward, the NAIC plans to provide training targeted specifically to market conduct examiners.

Commissioner Ommen said the Big Data (EX) Working Group also received a brief update on NAIC technical services to state insurance regulators for the review of property/casualty (P/C) rate models, noting that state insurance regulators will be able to share information through a confidential model database and obtain NAIC technical assistance when reviewing a specific company’s filed P/C rate model. He said there will be no change to rate regulatory authority and autonomy of each individual state and no change to state confidentiality laws, noting that state insurance regulators will continue to abide by state laws.

b. Speed to Market (EX) Working Group

Ms. Nichols reported that the Speed to Market (EX) Working Group met July 15, June 30 and June 15 via conference call. During its June 15 conference call, the Working Group heard updates regarding the NAIC System for Electronic Rates and Forms Filing (SERFF) Advisory Board and SERFF metrics, as well as an update from the Interstate Insurance Product Regulation Commission (Compact.)

Ms. Nichols said, in addition to hearing updates, the Working Group discussed the suggestion to create a SERFF canned report for rate changes. She said that after hearing comments from Working Group members, interested regulators and interested parties, the Working Group adopted the suggestion, noting that the parameters for this report will be discussed during the Working Group’s Aug. 27 conference call. She said the last item discussed during the June 15 conference call was the SERFF State Reports document, noting that any suggested revisions or additions will be discussed during a future call.

Ms. Nichols said the Working Group discussed changes to the Life, Accident/Health, Annuity and Credit Uniform Product Coding Matrix (PCM) and Uniform Transmittal Document on its June 30 conference call, noting that two of the suggested changes were adopted. She said the first was to change the term “implementation date” to “effective date” on the Uniform Transmittal Document within the SERFF “General Information” area and on the disposition letter; the second was to add a sub-type of insurance (TOI) for “expatriate plans” under H15G and H15I, which are the TOIs used for group health and individual health plans for hospital/surgical/medical expense. She said the description for this new sub-TOI would be: “expatriate plans that are not required to comply with all state or federal mandates for health benefits,” noting that these changes will be effective Jan. 1, 2021.

Ms. Nichols said that during its July 15 call, the Working Group, interested regulators and interested parties discussed the suggestions for changes to the Uniform Property & Casualty PCM and Uniform Transmittal Document, but the Working Group did not adopt any of the suggested changes. She said the Working Group adopted its June 30 and July 15 minutes via e-vote.

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c. Artificial Intelligence (EX) Working Group

Commissioner Godfread provided the report of the Artificial Intelligence (EX) Working Group. He said the Working Group met during the 2019 Fall National Meeting and discussed comments related to how to start the process for developing the AI Principles for the insurance industry. He said the decision was to use the Organisation of Economic Co-operation and Development (OECD) principles as a basis and a draft was exposed for a public comment period ending in January 2020, followed by conference calls held June 30, June 3, May 5, Feb. 19 and Feb. 4. Numerous suggestions from many different stakeholders were discussed and many incorporated into the AI Principles, where was ultimately adopted during the Working Group's June 30 conference call. He said the Task Force will be considering the AI Principles later in this meeting.

Commissioner Godfread asked if there were any questions regarding any of the Working Group reports. Hearing none, Commissioner Mais made a motion, seconded by Commissioner Conway, to adopt the following reports: 1) Big Data (EX) Working Group, including its Aug. 4 minutes (Attachment One); 2) Speed to Market (EX) Working Group, including its July 15, June 30 and June 15 minutes (Attachment Two); and 3) Artificial Intelligence (EX) Working Group, including its June 30, June 3, May 5, Feb. 19 and Feb. 4 minutes (Attachment Three). The motion passed unanimously.

3. Heard an Update on the Innovation and Technology State Contacts Group

Denise Matthews (NAIC) provided an update on the activities of the Innovation and Technology State Contacts group. She said the group has not been as active as in 2019 given other priorities, but it does continue to meet. She noted the following:

- The state contact names and contact information is posted on the NAIC website, so if a state has a change regarding that position, send the changes to Ms. Matthews so they can be updated.
- The group held three webinars in June. They were:
 - AAIS: Livraria/Kira workflow tool (June 2).
 - Verisk: Mozart workflow tool (June 4).
 - Theta Lake's Compliance AI tool (June 8).
- There will be a contacts roundtable meeting Sept. 16 during the NAIC/NIPR Insurance Summit.

Ms. Matthews said one topic the group will consider is to identify what digital or other types innovations deployed or that experienced accelerated deployment as a result of COVID-19, will likely continue and what, if any, related regulatory implications would be of interest to discuss. She said she would be reaching out to industry trade groups and other interested parties to share experiences to help further that discussion.

4. Adopted the AI Principles

Commissioner Godfread said the next agenda item is to discuss the AI Principles document, which was adopted by the Artificial Intelligence (EX) Working Group during its June 30 conference call. He said he previously provided a brief recap regarding the work of the Working Group and an overview of the process, noting that there has been a great deal of discussion since the first draft of the AI Principles was exposed in January 2020. He said there were four calls specific to the draft, as well as new drafts issued as that work progressed. He said the June 30 version of the AI Principles was exposed by the Task Force for a public comment period and those comments were discussed during the Task Force's July 23 meeting.

Commissioner Godfread thanked the stakeholders who participated throughout the process and said the issues are on the table and decisions now need to be made by the Task Force members regarding each. He said in order to expedite that process, he, working with Commissioner Afaible, Superintendent Dwyer and staff, put together a "decisions" document that was sent July 28 to Task Force members, interested regulators and interested parties. He said he would be taking this section by section and would request a vote at the end of each section discussion, but would be taking the proxy discrimination issue separately and then ending with a vote on the overall AI Principles as amended during the process.

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a. Amendments to the Introductory, Preamble Section

Commissioner Godfread began by introducing the outstanding issues related to the introductory language. He said there is a suggestion to add “data providers” to the opening paragraph, add the word “fair” after the word “secure” in the second paragraph, a request to further define “AI actors” and remove the words “from harm” in the last sentence of the third paragraph.

Commissioner Mais said he supports Commissioner Godfread’s suggestions that “data providers” and “fair” be added, “AI actors” not be further defined and “from harm” be removed.

Commissioner Godfread further clarified that he does not consider that adding “data providers” to this document implies that state insurance regulators would be regulating third-party data providers but that adding the language essentially draws their attention to this document that is intended for use within the insurance industry. He said it should put data providers on notice that these are the principles for use within the insurance industry.

Superintendent Toal made a motion, seconded by Superintendent Dwyer, to add “data providers,” “fair” and remove “from harm” from the introductory language. The motion was unanimously adopted.

b. Amendments to the Fair and Ethical Section Not Related to the Proxy Discrimination Issue

Commissioner Godfread said there is a suggestion regarding changing the word “unfair” to “unlawful” under the Fair and Ethical section. He said he would be opposed to making that change and asked for discussion.

Commissioner Conway said he would be opposed to that change, as well. He said the term “unfair discrimination” is used throughout the statutory structure and to change “unfair” to “unlawful” would cause confusion and lead to problems.

Commissioner Ommen agreed with Commissioner Conway and said the two principles of unfair discrimination are that similar risks are to be treated the same and protected class data is not to be used in the rating process. As such, if the concept of unlawfulness it introduced, it would lead to 56 jurisdiction interpretational differences.

Commissioner Mainda agreed and said changing “unfair” to “unlawful” brings about the thought of rule of law and that is not the direction of this document, which is more of a guidance document. He said he would support leaving it as “unfair.”

Commissioner Godfread said there did not seem to be support for this change, but asked if anyone would like to make a motion to adopt this change. Hearing none, he continued.

c. Suggested Language Related to the Proxy Discrimination Issue in the Fair and Ethical Section

Commissioner Godfread drew the Task Force member’s attention to the document provided and asked if the members wanted to make any changes to the proxy discrimination language in the draft. He said the discussion document outlines a summary of the language suggested to the Task Force via the comment letters. He said there three options are provided. He said the suggested language is a nod to understanding insurance is built on a cost- or risk-based foundation and he opened it up for discussion.

Commissioner Mais said he was in favor of leaving the language as-is in the draft, but the second option, including the words “Consistent with the cost-based foundation of insurance” does accomplish the intended purpose and reassures everyone that it is recognized that this is a cost-based industry, so he would support that language.

Ms. Nollette said Washington state supports the amended language and believes it is appropriate.

Commissioner Ommen said he supports the amended language but asked if it should be “cost-based” or “risk-based.” He asked if “risk-based” was discussed by the drafters, as it is typically the term he has heard used.

Commissioner Godfread said it was discussed and the intention was to use the broader term and to encompass more than ratemaking, but said he would be open to either term. He said it should be reflected in the minutes that it is intended to be the broader term that encompasses the entirety of the foundation of insurance.

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Commissioner Ommen said in part it has to do with the context, and rating systems deal with losses and expenses and traditional factors tied to risk, but part of this deals with issues associated with other aspects of insurance such as marketing, fraud detection and others. He said he would be agreeable to “cost-based,” given the more general application of AI.

Commissioner Clark asked if consideration should be given to just saying, “Consistent with the foundation of insurance.”

Commissioner Godfread said the drafters did not discuss that but would be open to discussion by the Task Force members.

Commissioner Afaible said this issue was discussed by the drafters, noting that he believes “risk-based” is the broader term, but one of the two terms should be in the AI Principles and is important to clarify the intent.

Commissioner Godfread said the minutes will reflect the intention is that it is to be applied broadly.

Mr. Keen said the Option Two language is appropriate and he generally believes “risk-based” to be the broader term.

Commissioner Anderson agreed with Mr. Keen and said it may also capture what Commissioner Clark was talking about, as well, so he would support that language.

Commissioner Conway made a motion, seconded by Commissioner Ommen, to add the proposed language and change the word “cost-based” to “risk-based,” so it would read, “Consistent with the risk-based foundation of insurance....” Superintendent Dwyer asked for clarification that the intention is for this language to include claims, as well as rating. Commissioner Godfread said that it does and, hearing no further discussion, called for the vote on the motion. The motion was unanimously adopted.

d. Amendments to the Accountable Section

Commissioner Godfread said there is a request to remove the last sentence in the Accountable section. He said it was added to provide some type of a “safe harbor” for the good actors in this space who do everything the right way and with good intentions, acknowledging there will be some grace given if mistakes are made, recognizing this is new technology and is being used in new ways which can result in unanticipated mistakes. He said that was the thinking behind adding that sentence. He said it may be a bit repetitive, as state insurance regulators consistently consider the entirety of the situation before acting.

Commissioner Mais said his concern is two-fold, the first being that this is a guidance document and is intended to convey expectations regarding the need to correct or compensate for consequences when they occur and we understand there will be some that may be harmful. He said state insurance regulators have the responsibility to look at the situation and act within the context, responding accordingly; however, this document should not limit or put restrictions on the authority of state insurance regulators. He said the last sentence in the Accountable and Compliant sections both are strongly directed at state insurance regulators and they do not belong in this type of document. He said the thought behind the suggested change in the Fair and Ethical section to add “and corrects and compensates such consequences when they occur” is intended to address that. He said he strongly believes AI can be a positive force and if he thought not having this language would stunt the growth of AI, he would be opposed to removing it; however, those two “safe harbor” sentences at the end of the Accountable and Compliant sections do not need to be there.

Commissioner Godfread asked Commissioner Mais to confirm that it is his preference to remove this language and go back and address this under the Fair and Ethical section. Commissioner Mais confirmed that to be correct.

Superintendent Dwyer agreed with Commissioner Mais and said she does not like the sentence, as negligence means there is a duty and a breach of that duty, and it is unclear what this language does. She said it tries to create a “safe harbor” but she does not believe it accomplishes that, so she would agree to go back to the Fair and Ethical section and add language suggested by Director Ramge.

Commissioner Conway said if there needs to be a statement like this, it belongs in the Accountable section. He said if the concept is to say that a good actor will not be hit with penalties, it seems like it should be incorporated into the Accountable section.

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Commissioner Godfreed said he could go either way. He said he leans toward putting it in the Accountable section, but he believes it fits in either place.

Commissioner Ommen said part of the issue is this is a guidance document and this seems to be mixing in a requirement for companies and data providers to comply with the law and additional responsibility in terms of fair and ethical behaviors that may go beyond current law. He said part of the problem is negligence is not the issue, but trying to avoid an algorithm or AI that contains inherent bias or that perpetuates or makes worse bias. He said the duty is to avoid that, but there is not currently a law related to it, so he said he agrees with Commissioner Mais, as this a guidance document and not a regulation.

Commissioner Anderson said he understands the concern, but said this happens and the aim is to remediate so if that can be captured in the Fair and Ethical section, like suggested, it would be the best way to capture this.

Ms. To said she would echo those comments, adding that she supports Commissioner Mais' suggestion to delete the sentence. She said these are guiding principles and the difficult work lies ahead to implement and operationalize them. She said it will take everyone coming to the table with an open mind and a lot of trust. She said she understands the importance but does not believe this type of language is needed.

Commissioner Mais made a motion, seconded by Superintendent Dwyer, to delete the last sentence in the Accountable section and add language to the Fair and Ethical section part b, replacing the word "compensates" with "remediates" to read, "AI systems should not be designed to harm or deceive people and should be implemented in a manner that avoids harmful or unintended consequences and corrects and remediates for such consequences when they occur." The motion was unanimously adopted.

e. Amendments to the Compliant Section

Commissioner Godfreed said there is a suggestion to delete the last sentence in the Compliant section.

Superintendent Dwyer said she would propose replacing it with, "Use of AI does not create or change any existing statutory or regulatory requirements." Commissioner Mais said that is the aim of that language, so he would support the new language.

Commissioner Conway asked if this language would impact some type of regulatory structure specific to AI created after these AI Principles are adopted. Superintendent Dwyer said the intent is that nothing changes that exists today, but it is not intended to impact anything that might be passed in the future specific to AI. Commissioner Conway said he was fine with that explanation.

Superintendent Toal said he has concerns with the language, as well, as this seems to be a broad statement and it is entirely possible there will be new regulatory requirements as a result of AI.

Superintendent Dwyer said an alternative is simply to delete the last sentence. She said AI will change regulatory requirements and the intent is not to alter that.

Commissioner Conway agreed that deletion of the sentence would be preferable.

Commissioner Conway made a motion, seconded by Superintendent Toal, to delete the last sentence. Hearing no further discussion, Commissioner Godfreed called the vote. The motion was unanimously adopted.

f. Amendments to the Transparent Section

Commissioner Godfreed said there were some suggestions made by Connecticut that clean up some of the language in this section.

Commissioner Mais said the suggestions were mostly technical edits and he proposed taking out the words "including consumers," as they were the only stakeholder group identified. He said he understands wanting to be sure consumers are

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included but, on balance, the language is better without that, as consumers do not need to be called out specifically and it may cause questions or confusion to do so.

Commissioner Mais made a motion, seconded by Director Ramage, to adopt the edits suggested by Connecticut, including removing the words “including consumers” and changing the second sentence to read, “AI actors must have the ability to protect confidentiality of proprietary algorithms, provided adherence to individual state law and regulations in all states where AI is deployed can be demonstrated.” The motion was unanimously adopted.

g. Other Amendments

Superintendent Dwyer said Tom Considine (National Conference of Insurance Legislators—NCOIL) sent a text message to her indicating that NCOIL would like to comment on the introductory language. She said Mr. Considine said NCOIL suggests deleting the words “emphasizing the importance of accountability, compliance, transparency, and safe, secure, fair and robust outputs” from the end of the second paragraph in the introductory language. She said NCOIL is concerned those words make this more of a “practices” as opposed to a “principles” document.

Commissioner Conway said he struggles with that concern, because it says clearly that these principles are guidance and do not carry the weight of law or impose any legal liability.

Commissioner Ommen said he would support the change because just mentioning “outputs” is narrow, and state insurance regulators are interested in the inputs, as well as the outputs. He made a motion to change the word “outputs” to “systems.”

Superintendent Dwyer asked if Commissioner Ommen would prefer to end the sentence after “transparency,” as NCOIL’s suggestion is to end it after “systems.”

Commissioner Ommen said his intent is to leave in the change previously suggested by Connecticut and adopted by the Task Force to add the word “fair” and so that would be a problem with ending the sentence after “transparency.”

Director Ramage asked if the word “outcomes” as opposed to “outputs” would work, but Commissioner Ommen said it does not. He said maybe saying “systems” again is redundant.

Commissioner Godfread said ending the sentence at “systems” does not change the intent, so he does not have a problem with doing that.

Mr. Considine said this paragraph makes clear this is a principles document that does not carry the weight of law, but despite that sentence, everything after “systems” detracts from that intent.

Ms. Jabourian recommended the sentence stay in because it is important to emphasize paying attention to the outputs, as well.

Indiana State Rep. Matt Lehman (R-Berne) said the concern is the word “however,” because that implies there is a list of things that would be more guiding issues as opposed to principles, so taking out that language does not change the document but makes the “however” not as strong.

Mr. Keen suggested removing the word “however” and leaving the sentence in. Commissioner Mais agreed with that suggestion. Commissioner Mainda agreed with Mr. Keen and Commissioner Mais.

Superintendent Dwyer said she understands the concern and agreed that Mr. Keen’s suggestion may resolve the issue.

Rep. Lehman said he was fine with that and, even though the language may be redundant, removing the “however” resolves the concern.

Superintendent Dwyer made a motion, seconded by Commissioner Altman, to remove the word “however.” The motion was unanimously adopted.

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Superintendent Toal made a motion, seconded by Commissioner Conway, to adopt the “NAIC Principles for Artificial Intelligence (AI)” (see *NAIC Proceedings – Summer 2020, Executive (EX) Committee, Attachment Two-A*) as amended during the meeting. The motion was unanimously adopted.

5. Heard an Update from the Accelerated Underwriting (A) Working Group and Presentations on Algorithmic Auditing

Commissioner Godfread asked Director Muriel to provide an update regarding what the Accelerated Underwriting (A) Working Group has been working on over the past months, noting that it ties closely to issues the AI Principles serve to inform and potentially guide. He said the AI Principles are guideposts to the industry and, while they do not carry the weight of law, they will inform other workstreams where decisions, definitions and potentially regulations may need to be developed to monitor and oversee this space. He said, therefore, it is important for the Task Force to be informed and aptly coordinating these efforts to ensure that there is consistency and the AI Principles are appropriately embedded in those work products.

a. Accelerated Underwriting (A) Working Group Update

Director Muriel reviewed the charge and the work plan of the Accelerated Underwriting (A) Working Group and the presentations that have been made to the Working Group. He said the Working Group appointed two subgroups: 1) Ad Hoc NAIC Liaison Subgroup; and 2) Ad Hoc Drafting Subgroup. He reviewed the key questions the Working Group is seeking to answer, the input data for accelerated underwriting, how behavioral data is being used and existing legislation that plays a role, such as the federal Fair Credit Reporting Act, and outlined potential consumer concerns. Director Muriel then discussed the timeline for the Working Group deliverables.

b. Algorithm Auditing in Life

Chris Stehno (Deloitte) provided an update on algorithm auditing considerations in life insurance underwriting. He said using historical decision data to build an algorithm will teach it to make similar decisions in the future, and if past decisions included bias, then the algorithm will reproduce that bias. Mr. Stehno said disproportional representation of protected groups in available data can be equally harmful for protected classes, noting that model performance in the real world is never identical to performance on an initial training set. He said algorithms need to be comprehensively audited for fairness, explainability and robustness, noting that automated code checks and comprehensive methodology should be used to detect and correct hidden risks.

c. Accelerated Underwriting and Evaluating the Risks

Patricia Matson (Risk and Regulatory Consulting—RRC) discussed traditional methods for life underwriting and the features of accelerated underwriting. She talked about the data elements used in accelerated underwriting now and what they would be in 10 years, as well as inherent risks related to accelerated underwriting. Ms. Matson provided an overview of how a company can test for these risks.

6. Discussed Anti-Rebating Amendments to Model #880

Commissioner Godfread asked Superintendent Dwyer to review the status of the work on Section 4H of the *Unfair Trade Practices Act* (#880) amendments related to anti-rebating.

Superintendent Dwyer said 21 comment letters were received on the language exposed by the drafting group. She said based on those comments, several changes were made to the draft (Attachment Four) to hopefully accommodate issues that appeared to be something the group would want to change. She provided an overview of some of the changes made, as well as some requested changes that were not included in the most recent draft.

Superintendent Dwyer said comments were received saying the words “value-added” introduced lack of clarity, so they were removed throughout the revised language, and the word “non-cash” was substituted, as it was recognized that nowhere in the document did it indicate that giving cash would not be allowed. She said it was suggested the word “specified” be changed to “provided,” noting that she would be interested in feedback on that suggestion. She said some changes were requested that were not made, including one related to unregulated third parties, keeping the insurer responsible, redrafting the section so the subsections are part of Section 1, and a suggestion that the word “related” was not specific enough, as there was no better

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suggested language provided. She said she is open to discussion related to these items. She said no change was made to require the product be added within the policy terms.

Superintendent Dwyer said there were comments related to the use of the words “primarily intended,” but the drafting group discussed that at length and when Rep. Lehman said NCOIL had discussed that at length and preferred “primarily intended,” that was chosen for the draft but she said, again, that she is open to alternative language.

Superintendent Dwyer said “loss mitigation” was added to Section 4H(2)(e)(1)(b)(1) and Section 4H(2)(e)(1)(b)(8) was rewritten. She said there were suggestions that Section 4H(2)(e)(1) through Section 4H(2)(e)(8) be limited to certain lines of insurance, but a line of insurance can mean different things in different states, so it may not be appropriate to do that; however, she said she is willing to discuss additional comments on that. She said the term “group” was requested in several of the comment letters, but it was not included in the most recent draft because of concerns in regard to abuses seen in the lender-placed and title insurance space, and the group did not want to create a situation like that again. She said Section 4H(2)(e)(3), Section 4H(2)(e)(4) and Section 4H(2)(e)(5) were written in an attempt to accommodate many of the comment letter suggestions, so she would ask the Task Force members to take a look at those, as well. She said there were comments related to using the term “policyholders,” so it was replaced with “clients” and that term is defined in the new draft language. She said she would welcome comments on that change. She said the new draft does not include a safe harbor for health insurers, as that did not seem warranted.

Superintendent Dwyer said Section 4H(2)(f)(1) was also rewritten and a drafting note added, as suggesting what the limits might be in terms of a static number appears problematic. She said it was suggested that charitable donations be put in a separate section, but no language was provided, so that has not yet been done. She said a subsection relating to things offered for “free” was added and there was agreement that offering insurance in connection with another policy would not be appropriate.

Superintendent Dwyer said this draft will be exposed for a public comment period ending Aug. 28 and then discussed during a future Task Force meeting.

7. Discussed the Privacy Protections (D) Working Group

Commissioner Godfread said the planned update from the Privacy Protections (D) Working Group would be provided during the next meeting of the Task Force.

Having no further business, the Innovation and Technology (EX) Task Force adjourned.

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