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Accelerated Underwriting (A) Working Group
Virtual Meeting
July 11, 2024

The Accelerated Underwriting (A) Working Group of the Life Insurance and Annuities (A) Committee met July 11, 2024. The following Working Group members participated: Nathan Houdek, Chair, and Lauren Van Buren (WI); Grace Arnold, Vice Chair, represented by Sarah Gillaspey (MN); Jason Lapham (CO); Cynthia Amann (MO); Maggie Reinert and Megan VanAusdall (NE); Daniel Bradford (OH); and Matthew Gendron (RI); and David Hippen (WA). Also participating were: Nour Benchaaboun (MD) and Tomasz Serbinowski (UT).

1. Adopted its June 13 and April 3 Minutes

The Working Group met June 13 and April 3 to discuss next steps for finalizing the regulatory guidance document and exposing it for a public comment period. Commissioner Houdek said the minutes from these two Working Group meetings were included in the meeting materials posted to the website.

Amann made a motion, seconded by Gendron, to adopt the Working Group's June 13 (Attachment) and April 3 (Attachment) minutes. The motion passed unanimously.

2. Discussed Comments Received on the June 3 Draft *Regulatory Guidance and Considerations* Document

Commissioner Houdek said that the Working Group received two comment letters on the June 3 draft *Regulatory Guidance and Considerations* document. One letter was from the American Council of Life Insurers (ACLI), and the other was signed by several NAIC-funded consumer representatives. Commissioner Houdek explained that a chart was posted to the Working Group's webpage showing the comments received next to the language in the June 3 draft *Regulatory Guidance and Considerations*. Commissioner Houdek said he was going to use the chart to facilitate the review of the comments received and that ACLI and the consumer representatives would be given the opportunity to speak to each of their comments. Commissioner Houdek said he hoped that by the end of the meeting, there would be a consensus document to expose for a final exposure period before adoption by the Working Group prior to the Summer National Meeting in Chicago.

A. Discussed Introduction

Commissioner Houdek said that the first comment to review was from the consumer representatives addressing the introduction in the June 3 draft *Regulatory Guidance and Considerations* document. Brendan Bridgeland (Center for Insurance Research—CIR) explained that this comment suggests the inclusion of a new section (C) identifying "benefits and protections on behalf of the consumer/applicant." Bridgeland said it is important for the regulatory guidance to acknowledge that protection of consumers is one of the vital goals of implementing and monitoring accelerated underwriting (AU) programs and mentioning them here ensures they do not get overlooked as the intended beneficiaries of the review. Commissioner Houdek said that the proposed language seeks to modify language that functions as a table of contents by identifying the sections addressed in the regulatory guidance, so adding this language without corresponding information in the body of the document does not work. Commissioner Houdek said the reason for having the Accelerated Underwriting (A) Working Group is consumer protection and is the entire purpose of this document.

B. Discussed Regulatory Considerations A(2)

The next comment was a proposed revision to Section A(2) suggested by the consumer representatives:

> "External data sources, Algorithms or Predictive Models are based on sound actuarial principles, including a rational explanation why a rating variable is correlated to expected loss or expense, and why that correlation is consistent with the expected direction of the relationship, and how the inclusion of inputs from multiple data sources interacts in generating an expected loss or expense."

Bridgeland said the suggested language seeks to address the situation where an AU program uses multiple different data points or sources. He said outcomes need to be evaluated to measure consumer impacts because two data points that correlate with risk may turn out to be duplicative and produce inconsistent results when applied together instead of singly. Bridgeland said that he raised this issue during the Innovation, Cybersecurity, and Technology (H) Committee meeting on June 28.

Bridgeland shared a historical example of when the use of multiple data points led to inaccurate results. Bridgeland said that many years ago, there was a weight curve in mortality tables, and people on the high end and the low end were considered high risk. When the information was reviewed later, it became clear that because heavy smokers are often on the lighter end of the weight scale, it resulted in the correlation that everyone on the lighter end of the weight scale was a smoker, and as a result, people were overcharged for years due to the confusion caused by using multiple data points without clear differentiation. Bridgeland said the inclusion of the suggested language is to ensure that regulators keep an eye on how potential data points are being used and how they are used together. Bridgeland said that there seems to be a lot of potential for overlap, especially in areas such as credit scores or mortgage payments that are used in rating. Bridgeland said these data points seem to be measuring some basic financial factors, which raises the prospect that if you have an error in one of them, they could impact the whole result, which is another reason why it is important to allow consumers a way to correct errors in their information.

Commissioner Houdek said he agreed with the comments and concerns raised by Bridgeland regarding inputs from multiple data sources and suggested that instead of using the suggested detailed language, which can be a bit confusing, to use the following:

> "External data sources, Algorithms or Predictive Models are based on sound actuarial principles, including a rational explanation why a rating variable or a combination of variables, is correlated to expected loss or expense, and why that correlation is consistent with the expected direction of the relationship."

Bridgeland said he liked the simplified language. Gendron said he also liked the simplified language and suggested that this concept should be considered in the context of some of the questions in the guidance referencing external data sources.

Birny Birnbaum (Center for Economic Justice—CEJ) said that the issue Bridgeland raised is two-fold: 1) multiple factors in the AU algorithm can interact with one another, and 2) the algorithm as a whole may have a discriminatory effect. Birnbaum said it is not just looking at components of the algorithm, there is a need to examine the effect of the algorithm as a whole, so the language should recommend considering the algorithm as a whole rather than suggesting parsing out specific components of it. Gillaspey pointed out that the existing language does reference the algorithm as a whole before mentioning rating variables or a combination of variables.

C. Discussed Regulatory Considerations A(5)

Comments were submitted by both the consumer representatives and the ACLI suggesting revisions to Section A(5): "Reason(s) for an Adverse Underwriting Decision are provided to the consumer along with all information upon which the insurer based its Adverse Underwriting Decision." The consumer representatives' comment letter suggested the following revisions:

> "5. Reason(s) for an Adverse Underwriting Decision are provided to the consumer - in language understandable by the typical consumer - along with all information upon which the insurer based its Adverse Underwriting Decision. This should include a sufficiently detailed description of what consumer data the insurer used in its determination, and where such data was reported, such that the consumer is able to review and request correction of any errors in their own data. Generic descriptions such as "low credit score," or "preexisting health conditions" do not meet this requirement."

Peter Kochenberger (NAIC Funded Consumer Representative) said that the consumers' suggested language is much more specific because otherwise standard disclosures provide very little information. Kochenberger said consumers are asking for data about themselves (not proprietary information involving the algorithm), and a clear standard for transparency should be established that provides sufficient information to consumers to correct erroneous information that impacts their ability to purchase insurance.

The ACLI suggested the following revisions:

> "5. Reason(s) for an Adverse Underwriting Decision are provided to the consumer. ~~along with all i~~Information ~~upon which the insurer based its~~ regarding an Adverse Underwriting Decision will be provided to the consumer consistent with applicable state insurance privacy law(s)."

Colin Masterson (ACLI) explained that the June 3 draft *Regulatory Guidance and Considerations* document contemplates an insurer providing the consumer with "all information" involved in an adverse underwriting decision. The current legal standard and industry practice is to provide the specific reason for the adverse underwriting decision and not all underlying information. In addition, some insurers using various third-party algorithms may be bound by contract to not disclose information regarding what is considered to be and promoted as "proprietary" algorithms. It is also observed that this and several following sections touch upon privacy requirements, and Masterson said that perhaps it would be sounder to point to those requirements, which may differ across jurisdictions.

Gendron said that while asking for "all information" may go too far, there needs to be sufficient information provided to a consumer to inform them of the reason for a negative decision or why they are being rated a certain way. Gendron said the reason is not only so a consumer can correct errors but also to understand that certain behaviors may increase risk (such as smoking), and the consumer may be able to modify those behaviors. Gendron said an example of where erroneous information may be used is in the case of pharmacy records. Gendron gave the example of using his pharmacy rewards card when purchasing items and medication for his parents. He asked how the insurer is able to distinguish between what may be a negative underwriting factor for him versus his parents. Gendron said that, to him, this type of transparency is not negotiable. If the insurer is prevented from providing that kind of information by claims of there being a proprietary algorithm, then that algorithm should not be allowed to be used.

Serbinowski said he did not think this information implicated confidentiality when it involved personal information about the consumer. Serbinowski said that if the insurer is rating him based on the fact that he is 5 feet, 6 inches tall, but he is actually 6 feet, 5 inches tall, the consumer should have the chance to correct it. If the insurer says the consumer is being rated a certain way because they ride a motorcycle, the consumer should be able to correct that by saying they do not. He asked how a consumer can set the record straight if the insurer will not disclose what information they are looking at and from where they obtained it.

Commissioner Houdek agreed with the sentiments expressed by Gendron and Serbinowski and suggested the following revisions based on the comments:

> "5. Reason(s) for an Adverse Underwriting Decision, ~~are provided to the consumer~~ along with ~~all~~ information upon which the insurer based its Adverse Underwriting Decision, are provided to the consumer in language understandable by the typical consumer and consistent with applicable state and federal laws and regulations."

Benchaaboun supported the suggested revision and explained that it is important for a consumer to understand what information was relied upon in reaching an adverse underwriting decision, which may involve the offering of coverage other than what was applied for. For example, a person who applied for a $100,000 whole-life policy would be told in simple language that they only qualify for a $50,000 policy because of specific information provided in the application.

Birnbaum asserted that the current legal standard is inadequate because an insurer would not consider moving a consumer from AU to normal underwriting based on an adverse underwriting decision, so they would not have to provide an explanation. Second, if an insurer is using data not subject to the Fair Credit Reporting Act (FCRA), then there is no requirement that the insurer obtain permission to collect or disclose that information, so the guidance needs to specifically require the insurer to give the consumer the necessary information to dispute the outcome if the data is incorrect. Birnbaum also said that the current requirement for permission to access a consumer's data under FCRA is also inadequate because consumers do not realize all the information they are granting access to, such as credit information, medical information, motor vehicle reports, and much more. Kochenburger reiterated his concern that the proposal needs to guarantee that a consumer will receive sufficient information to be able to review its accuracy and contest any inaccuracies.

D. Discussed Regulatory Considerations A(6)

Comments were submitted by both the consumer representatives and the ACLI suggesting revisions to Section A(6). The consumer representatives suggested the following revisions:

> "6. The insurer establishes and follows written procedures to protect the consumer's privacy and the consumer's data and provides a description of these procedures to the consumer at the time of authorization."

Bridgeland explained that AU programs that utilize customer data to produce underwriting outcomes should never be subject to ad hoc administration. All AU programs should be detailed in writing.

The ACLI proposed the following revisions:

> "6. ~~The insurer establishes and follows procedures to protect the consumer's privacy and the consumer's data.~~ The insurer's existing procedures to protect consumer privacy and consumer data apply equally when accelerated underwriting is utilized."

Masterson explained that the ACLI proposal reframes this consideration in the context of existing protections that apply to data employed in AU.

Commissioner Houdek suggested including the following language in the next draft, which takes into account both proposals, and the Working Group agreed:

> "6. The insurer establishes and follows written procedures to protect the consumer's privacy and the consumer's data and provides a description of these procedures consistent with applicable state and federal laws and regulations to the consumer at the time of authorization."

E. Discussed Regulatory Considerations A(7)

Comments were submitted by both the consumer representatives and the ACLI suggesting revisions to Section A(7). The consumer representatives suggested the following revisions:

> "7. The insurer has a mechanism in place to correct mistakes if found in consumer data. This mechanism must include disclosure to the applicant of what consumer information was used, and a reasonable, accessible, and clearly described procedure for applicants to correct inaccurate information, with final responsibility to evaluate and correct errors on the insurer, and not in third party vendors or modelers."

Bridgeland said the consumer representatives' proposal states with specificity the mechanism for providing information to consumers in order for there to be a meaningful understanding of an insurer's actions and an opportunity to correct any errors, regardless of a record also being held by a third party. Bridgeland said that there should be the opportunity to correct inaccurate information with the insurer, as well as understand where the information originated to correct it elsewhere as well.

The ACLI suggested the following revisions:

> "7. The insurer has a ~~mechanism~~process in place to ~~correct mistakes if found in~~assist a consumer ~~data~~ in contacting the originator of a record that the consumer believes to be incorrect."

And could also include:

> "The insurer should also have in place a mechanism to correct undisputed mistakes confirmed by records."

Masterson said the ACLI proposed revisions reflect the position that insurers must be careful about and are often unauthorized to make changes to consumer records. For example, if a consumer believes something in their medical record is incorrect, the insurer can point the consumer to where it obtained the record, but it does not

have the ability to change the underlying record. Masterson said that, generally, under insurance privacy law, the insurer must notify the consumer as to where it obtained the disputed record.

Commissioner Houdek suggested the following proposal, which revises A(7) and adds a new A(8).

> "7. The insurer has a mechanism in place to correct mistakes confirmed by records ~~if~~ found in consumer data.
>
> 8. The insurer has a process in place to assist a consumer in contacting the originator of a record that the consumer believes to be incorrect."

Kochenberger said he was concerned that insurers are in a better position to contact third parties than consumers and a "process" to refer a consumer to a third party without any more specificity does not provide much assurance. Gendron said he liked the proposed (7) and (8) because they address two sides of the issue: 1) if the insurer has erroneous information in their records, and there is evidence of an error, they have to fix it, and 2) if they received the information from elsewhere, they have to tell the consumer where it came from so it can be corrected there as well. The Working Group agreed to include the proposed revisions in the next draft.

F. Discussed Regulatory Considerations A(9)

Comments were submitted by both the consumer representatives and the ACLI suggesting revisions to Section A(9). The consumer representatives suggested the following revisions:

> "9. The insurer has procedures in place to address the following requirements pertaining to the consumer: Notice Requirements, Opting-Out of (or Opting In to) Data Sharing, Correcting or Deleting Information, Data Portability, and Restricting the use of Data."

Bridgeland explained that this revision includes an option to opt-in because AU programs should be permitted to allow for opt-ins not just opt-outs.

The ACLI suggested the following revisions:

> "9. The insurer has procedures in place to address ~~the following requirements pertaining to the~~ consumer issues, ~~:~~ including ~~N~~notice ~~R~~requirements~~, Opting-Out of~~ and use/restrictions on ~~Data Sharing, Correcting or Deleting Information, Data Portability, and Restricting the use of D~~data consistent with applicable insurance privacy and other existing laws."

Masterson said that the ACLI suggests using more general language and referencing applicable privacy laws rather than including references that may not apply to life insurance, such as references to deleting information.

Commissioner Houdek suggested the following revisions:

> "9. The insurer has procedures in place ~~to address the following requirements~~ pertaining to ~~the~~ consumer ~~: N~~notice ~~R~~requirements~~, Opting-Out of~~ and use/restrictions on ~~Data Sharing, Correcting or Deleting Information, Data Portability, and Restricting the use of D~~consumer data, consistent with applicable state and federal laws and regulations."

Commissioner Houdek explained that the proposed revisions use more general language to encompass all applicable notice requirements, consistent with applicable state and federal laws. This approach avoids being too narrow and inadvertently eliminating something like an opt-in requirement. The Working Group agreed to include the revisions in the next draft.

G. Discussed Strategies for Review B(6)

Consumer representatives suggested adding a new Strategy for review B(6):

> "6. Confirm a life insurer has a mechanism in place to correct mistakes if found in consumer data – and a mechanism by which the consumer can inform the insurer of a perceived mistake and obtain specific and direct corroboration of the insurer's receipt and action on the notice of mistaken data."

Bridgeland explained that the consumer representatives suggested adding a new strategy for review, and its importance was discussed previously. The consumers believe that the critical nature of having a mechanism in place to correct errors warrants the inclusion of a mechanism to identify and correct errors as a strategy for review. Commissioner Houdek agreed with the need for a process as was discussed and incorporated into a revised A(7) and the new A(8).

H. Discussed Requests for Information C(3) and C(7)

Comments were submitted by ACLI suggesting revisions to Sections C(3) and C(7):

> "3. Explain ~~in detail~~ how the company's ~~discloses to applicants~~ authorization for life insurance ~~what external~~ includes information ~~is used in its Accelerated Underwriting program and how this external information actually is~~that may be used in an~~the~~ Accelerated Underwriting program.
>
> 7. How is external data or information about life applicants ~~utilized, stored, and destroyed after the completion of the underwriting process~~managed consistent with applicable privacy and other related laws and regulations?"

Masterson explained that the proposed revisions recommend more general language, rather than specific language that could be interpreted as requiring more detail than is customary or practical. Masterson said that existing practice ensures authorizations describe the information to be gathered and the purposes and uses of that information, which would be the same in connection with AU. Masterson said that while companies follow data minimization procedures, some information must be retained for legal and regulatory compliance purposes. The way the question currently reads, there appears to be a presumption that data or information is "destroyed" after the underwriting process, which is not the case.

Commissioner Houdek explained that these requests for information are intentionally broad to empower regulators to ask more open-ended questions, and regulators can tailor these questions to their specific laws. Gendron said that destroying information would be in contravention of record retention laws. He said that he certainly hopes companies do not do this and said that companies should know their own record retention policies and that insurers should know how long they need to keep information after issuing a policy, and if a policy is never issued, information must be destroyed after a certain number of years. This is the kind of information a regulator may want to ask about. Gendron asked whether there was a better way to word the question.

Birnbaum said the question is how is information about life applicants utilized, stored, and destroyed after the need for the data no longer exists. An insurer is going to maintain underwriting data for as long as the policy is in force to make sure there is no fraud. The question should be rephrased to key into how long information is retained once it is no longer required for the purposes of serving the consumer. Birnbaum also suggested that the question should ask the insurer to document the process that they use. Commissioner Houdek agreed with the comments raised by Gendron and Birnbaum. Gillaspey suggested the following revisions:

> "3. Explain and document in detail how the company discloses to applicants for life insurance what external information is used in its Accelerated Underwriting program and how this external information actually is used in the Accelerated Underwriting program.
> 7. How is external data or information about life applicants utilized, stored~~, and destroyed~~ after the completion of the underwriting process, and ultimately destroyed?"

The Working Group agreed to include these revisions in the next draft. Commissioner Houdek explained that a revised draft will be exposed for a two-week public comment period ending on July 26. Comments should be sent via email to Jennifer Cook (NAIC) at jcook@naic.org. He asked Working Group members, interested regulators, and interested parties to review the draft closely for any errors or mistakes of fact. The goal is to have the Working Group adopt the draft guidance and the market conduct referral during its next meeting in early August.

Having no further business, the Accelerated Underwriting (A) Working Group adjourned.

SharePoint/NAIC Support Staff Hub/Member Meetings/A Cmte /AUWG/AUWG min 7-11-24 draft

