NAIC National Association of Insurance Commissioners

Date: 10/19/2020

Webex Meeting

MARKET CONDUCT ANNUAL STATEMENT BLANKS (D) WORKING GROUP
Wednesday, October 28, 2020
2:00 p.m. ET / 1:00 p.m. CT / 12:00 p.m. MT / 11:00 a.m. PT

ROLL CALL

Rebecca Rebholz, Chair	Wisconsin	Paul Hanson	Minnesota
October Nickel, Vice Chair	Idaho	Brent Kabler/Teresa Kroll	Missouri
Maria Ailor	Arizona	Todd Oberholtzer	Ohio
Jimmy Harris/Crystal Phelps/ Russ Galbraith	Arkansas	Katie Dzurec	Pennsylvania
		Michael Bailes	South Carolina
Kurt Swan	Connecticut	Lisa Borchert/Ned Gaines/ John Haworth	Washington
Scott Woods	Florida		
Erica Weyhenmeyer	Illinois	Letha Tate	West Virginia
Lori Cunningham	Kentucky		

NAIC Support Staff: Tressa Smith/Teresa Cooper

AGENDA

1. Consider Adoption of its Sept. 30 Minutes—*Rebecca Rebholz (WI)* Attachment 1
2. Hear a Presentation on Transaction Level Data Collection—*Ginny Ewing (NAIC)*
3. Receive an Update on the Other Health Market Conduct Annual Statement (MCAS) —*Katie Dzurec (PA)*
4. Receive an Update on the Travel MCAS—*Rebecca Rebholz (WI)*
5. Discuss Clarifications to the Home and Auto MCAS Lawsuits Definitions—*Rebecca Rebholz (WI)*
6. Discuss Any Other Matters Brought Before the Working Group—*Rebecca Rebholz (WI)*
7. Adjournment

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Draft: 10/19/20

Market Conduct Annual Statement Blanks (D) Working Group
WebEx Conference Call
September 30, 2020

The Market Conduct Annual Statement Blanks (D) Working Group of the Market Regulation and Consumer Affairs (D) Committee met via WebEx conference call Sept. 30, 2020. The following Working Group members participated: Rebecca Rebholz, Chair (WI); October Nickel, Vice Chair (ID); Maria Ailor represented by Sarah Borunda (AZ); Kurt Swan represented by Steve DeAngelis (CT); Scott Woods (FL); Lori Cunningham (KY); Teresa Kroll (MO); Todd Oberholtzer and Guy Self (OH); Jeffrey Arnold (PA); Michael Bailes represented by Rachel Moore (SC); John Haworth (WA); and Letha Tate (WV). Also participating was: Sarah Crittenden (GA).

1. Adopted its Aug. 26 Minutes

The Working Group met Aug. 26 and took the following action: 1) adopted its July 31 minutes; 2) discussed the creation of the Travel Insurance Market Conduct Annual Statement (MCAS) blanks and data call and definitions; 3) adopted a clarification in the Homeowners MCAS data call and definitions related to the reporting of polices in-force by type of policy within the underwriting section; 4) considered the addition of National Producer Number (NPN) reporting within the Home, Auto, Life and Annuity MCAS and NPN reporting for managing general agents (MGAs) within the Home and Auto MCAS; 5) discussed possible placement changes for the lawsuit and complaint data elements within the Home and Auto MCAS; 6) discussed the addition of accelerated underwriting definition and data elements to the Life MCAS; and 7) discussed the addition of digital claims settlement reporting in the Home and Auto MCAS.

Mr. Haworth made a motion, seconded by Mr. Oberholtzer, to adopt the Working Group's Aug. 26 minutes (Attachment). The motion passed unanimously.

2. Discussed the Suggestion to Conduct a Pilot to Collect Transactional Level Detail on a Single MCAS Line of Business

Ms. Rebholz noted that consumer representatives have raised the idea of a transactional level pilot for a single MCAS line of business, possible short-term limited-duration (STLD) insurance. This suggestion was met with some favorable responses from state insurance regulators on the Other Health drafting group. The same proposal was also received from consumer representatives for the Travel insurance line of business. Ms. Rebholz recommended that the Working Group consider whether it wants to conduct that type of pilot with a more familiar line of business, such as Auto or Homeowners. There could be a launch of a transactional level data collection pilot on one of those lines of business. Before a decision is made on what line the Working Group would like to try a pilot on, it needs to be determined if the Working Group members support such a pilot. The Market Regulation and Consumer Affairs (D) Committee would then need to approve a transactional level pilot for an MCAS line of business.

Ms. Rebholz noted that she asked Ginny Ewing (NAIC) to join the call, in case the Working Group had any questions regarding the information technology (IT) resources that are available to do this or what resources would be needed. Ms. Rebholz asked if there is any interest in moving forward with a pilot or thoughts about this. There were no comments from Working Group members.

Birny Birnbaum (Center for Economic Justice—CEJ) recommended that if a pilot is done, it makes sense to start with a line that has fewer insurers reporting. He noted that starting with a line like Homeowners that has hundreds of insurers reporting could make a pilot more difficult. In conversations he has had with NAIC IT staff, it seemed that they welcome the market regulators moving towards more granular data collection. He noted that the feeling he got is that they want to be providing information to state insurance regulators that they need. He believes the Other Health line may be a good place to start.

Lisa Brown (American Property Casualty Insurance Association—APCIA) noted that given that no state insurance regulators are expressing thoughts on this matter, she does not know how that could translate as sharing a state insurance regulator need with NAIC IT staff. She believes there needs to be some state insurance regulator interest for the need to collect transactional data before moving forward with this suggestion. Ms. Rebholz noted that any comments and/or questions should be sent to Teresa Cooper (NAIC) no later than Oct. 23.

3. Received an Update on the Travel MCAS

Ms. Rebholz noted that the MCAS subject matter expert (SME) group will meet for the first time Oct. 21. Following today's meeting, a travel meeting invitation will be sent out to those that have indicated interest in participating in the SME group. Those that have not yet volunteered and would like to, were advised to contact Ms. Cooper to be added to the list.

Mr. Birnbaum has provided a proposal for the SME group to review, and another proposal from the industry will also be submitted.

4. Discussed Questions Regarding the Life MCAS Definition of "Lawsuits Closed During the Period with Consideration for the Customer"

Ms. Rebholz noted that the definitions used for this new data element already exist in the private flood, disability, lender-placed and long-term care (LTC) MCAS. Shelli Isiminger (TN) submitted some questions regarding the data element for "Lawsuits Closed During the Period with Consideration for the Customer," which was added to the Life MCAS for the 2021 data year. She asked how companies should report an interpleader, which is a process for a person to initiate a lawsuit, but it is not an actual lawsuit. The definition would not appear to require the reporting of interpleaders here. Ms. Isiminger also asked about the use of the term "consumer" since with a life policy, the insured (consumer) is deceased, and the interested party is the beneficiary. The MCAS definition of lawsuit states that companies should include only lawsuits brought by an applicant for insurance, a policyholder, or a beneficiary as a plaintiff against the reporting insurer or its agent as a defendant. The term consumer here can be understood to mean applicant, policyholder, or beneficiary. The last question asked was about the use of the term consideration. Per the definition, "a lawsuit closed during the reporting period in which a court order, jury verdict, or settlement resulted in payment, benefits, or other thing of value, i.e., consideration, to the applicant, policyholder, or beneficiary in an amount greater than offered by the reporting company before the lawsuit was brought.", but consideration here is referring to the payment, benefit, or other thing of value that is given to the claimant as a result of the lawsuit. It is not referring to a policy term or feature. Ms. Isiminger did not have additional comments to add here.

Ms. Rebholz noted that since this is a new topic, time will be allowed for comments and questions to be submitted for review and discussion to occur during the next Working Group call. Any comments should be sent to Ms. Cooper no later than Oct. 23.

Concerns were also raised regarding the definition of lawsuits that was approved for the reporting of "lawsuits closed during the period with consideration for the consumer" within the Home and Auto MCAS. This discussion will also take place during the next Working Group meeting. Ms. Brown was told that she would have a chance to present her concerns at that time. She added that she will also request that the collection of lawsuits closed with consideration for the consumer for private passenger auto (PPA) and homeowners be delayed a year, as there is currently not a working definition of suit or lawsuit to collect the underlying lawsuit information, let alone to try to carve out a subset for another data element. Ms. Rebholz noted that the comments to be discussed will be posted on the Working Group's web page.

5. Considered the Addition of NPN Reporting for TPAs within the Home, Auto, Life and Annuity MCAS and NPN Reporting for MGAs within the Home and Auto MCAS

Ms. Rebholz noted that the Working Group previously approved the suggestions to require the identification of third-party administrators (TPAs) and their functions within the Life and Annuity MCAS and the identification of TPAs and MGAs within the Home and Auto MCAS. The current discussion is whether reporting should also include the TPA and MGA NPN. During the August Working Group meeting, it was established that not all TPAs and MGAs will have an NPN; however, some Working Group members felt that it would be useful to have the NPN to verify if the TPA or MGA is licensed and to be able to better identify the entities if they are using a "doing business as" (DBA) name. Ms. Rebholz noted that one option would be to require the reporting of NPNs when available and allow the insurer to indicate "not applicable" if there is no NPN assigned to the entity. No additional comments were received on this matter since that last discussion.

Ms. Crittenden believes this is a great idea, and she noted that the more information available to identify a TPA or MGA in cases where names are similar, or a DBA is being used is welcome.

Mr. Haworth made a motion, seconded by Ms. Kroll, that TPAs and MGAs be required to report their NPN when available and indicate "not applicable" if no NPN is assigned to the entity. The motion passed unanimously.

6. Discussed the Addition of "Accelerated Underwriting" Definition and Data Elements to the Life MCAS

Ms. Rebholz noted that the reporting suggestion from the CEJ is included in the meeting materials. The suggestion was discussed during the past few meetings, and there has been interest in this reporting, but there are also questions about the timing and the appropriateness of currently proposed definitions. If the Working Group approves the reporting of accelerated underwriting data elements, they would be in effect for the 2022 data year at the earliest. Ms. Rebholz asked if there was a motion from the Working Group to move forward with reviewing the proposed definition and data elements with the intent to implement reporting.

Mr. Haworth made a motion, seconded by Ms. Nickel, to move forward with reviewing the proposed definitions with the intent to implement reporting. The motion passed unanimously. Any comments and suggestions regarding the CEJ proposed definition and data elements are to be sent to Ms. Cooper.

7. Discussed the Addition of Digital Claims Settlement Reporting in the Homeowners and PPA MCAS

Ms. Rebholz noted that the proposal for the addition of digital claims settlement reporting in the Homeowners and PPA MCAS is in the meeting materials. There was good discussion on this topic during the last Working Group meeting. Ms. Rebholz asked if Working Group members had time to think about this topic and whether separating out claims settled using a digital process from those settled using the traditional process would be useful for market analysis.

Mr. Haworth noted that he sees merit to this, especially since it appears that claim adjusting may be going more in this direction. Ms. Nickel noted that she believes this is a very good idea as well, and she believes moving forward with collecting this data is inevitable.

Mr. Birnbaum noted that if the Working Group wants to proceed on this, he welcomes it and is interested in collaborating with industry representatives to clear up any concerns they have with definitions and data elements.

Richard L. Bates (State Farm Insurance) noted that he is not clear on how the method of claim settlement relates to the issue of a claim being settled in a timely manner. He believes this data may be nice to have, but it does not seem necessary. Ms. Nickel noted that the framework of an unfair claims practice is not just based on timing. It is also based on whether those claims were paid appropriately, whether the damage was assessed correctly, and whether everything was taken into consideration. Ms. Nickel noted that market regulation seeks to ensure that that the consumer is made whole again. She noted that it is important to determine that any platform that a carrier uses is resulting in appropriate claim settlements and communications. Mr. Bates noted that he does not know if carriers have an ability to differentiate these different types of claims settlements, and he expressed how he does not believe collecting this data is necessary.

Mr. Birnbaum noted that the purpose of the MCAS is not just to ask if carriers comply with fair trade practices or the *Unfair Claims Settlement Practices Act* (#900). The reason for MCAS breakouts is to enable state insurance regulators to identify differences based on how a product is sold, what the differences in the products are, or how the claims are handled. Mr. Birnbaum noted that the issue here is that a digital only claim settlement is qualitatively different than claims that have human interaction, and if you look at the proposed definition, it explicitly says only a digital interaction. If there is any human interaction, it is no longer identified as a digital claim settlement. Mr. Birnbaum noted that some consumer issues have been raised from digital claim settlements, particularly with auto insurance. Mr. Bates responded that he thinks more discussion on this topic is needed. Ms. Nickel agreed that further discussion should occur. Ms. Rebholz noted that today the decision that needs to be made is just whether the addition of digital claims settlement reporting in the Homeowners and PPA MCAS is of interest and if it would be valuable to state insurance regulators, not necessarily the details of what exactly it will look like. The details and how it would look would take place in a later discussion.

Ms. Nickel made a motion, seconded by Mr. Haworth, to move forward with reviewing the CEJ proposed definition and data elements with the intent to implement reporting. The motion passed unanimously. Any comments and suggestions regarding the CEJ proposed definition and data elements are to be sent to Ms. Cooper.

8. Discussed Other Matters

Ms. Rebholz noted that the Other Health SME group will meet Oct. 8.

Ms. Rebholz also noted that the approved reporting for claims closed without payment because the claim amount was below the deductible for the Auto MCAS will be in effect in the 2021 data year, to be reported in 2022. This reporting was approved through the Market Regulation and Consumer Affairs (D) Committee, and it is now part of the MCAS blank. Mr. Rebholz noted that Mr. Bates provided comments on this matter during the Summer National Meeting, and comments were also received from the National Association of Mutual Insurance Companies (NAMIC) and the APCIA noting their concerns that the data may not be uniformly captured by insurers.

Ms. Brown noted that many companies have a genuine concern that this is not information they capture. It is not just a question of a programming change within their system, but an entire process change, because companies do not always know why a consumer files a claim and do not follow through and drop the claim. Ms. Brown would like more clarification on how companies are expected to capture this information. Ms. Rebholz asked if companies can compare the policy deductible amount with the claim amount and whether the claim goes into claim closed without payment if the amount claimed is less than the deductible when the claim is closed. Ms. Brown noted that she believes it would be challenging because when a claim is opened, sometimes the insured realizes they will not meet the deductible and then does not provide a claim amount for comparison, and the claim is closed as a claim closed without payment.

Ms. Nickel asked if there was any differentiating by companies between a claim that was just not pursued by the insured and one that had a claimed amount that fell below the deductible, so the claim is manually closed as a result. She noted that there must be some way to differentiate these types of claims that makes the information meaningful, such as a letter to the insured that is sent alerting them that the claim is being closed because the claim is below the deductible, or some kind of similar trigger. Ms. Brown noted that she would go to the APCIA's members and see how various companies handle that, as she does not know if there is a single answer to that.

Mr. Birnbaum noted that if clarification is provided, he does not see any difficulty in reporting this. He noted that it seems straightforward to say the amount offered by the company is less than the deductible and therefore the claim was closed without payment, and this is something companies should be able to program.

Mr. Bates noted that one of State Farm's main concerns is that there may be instances where they can report claims closed because the claimed amount is below the deductible, but it will not include everything because they do not track this information. Mr. Birnbaum noted that MCAS data collection is a forward-thinking tool, and the reason companies get a year and a half to prepare for this is in case companies need to make changes to start collecting certain data. Ms. Brown noted that there is a year and a half between the adoption of a data element and the reporting of that data element, but not a year and a half from when the data collection must start. She noted that companies essentially only have four months to re-program their system. She noted that when it is a complete processing change, this can take companies more than four months to prepare. After further discussion on this matter, Ms. Rebholz noted that a frequently asked questions (FAQ) document can be created, and the definition of a claim closed without payment because the claim amount was below the deductible can also be modified to address some of the concerns raised.

David Leifer (American Council of Life Insurers—ACLI) asked if the details regarding the accelerated underwriting collection would be worked out in a future call. Ms. Rebholz noted that it would be discussed on another call, and it may also be discussed further in an SME group and then brought back to the Working Group. She noted that input on this subject is welcome, and any comments and suggestions arising from topics discussed on this call should be submitted to Ms. Cooper by Oct. 23 in time for the next Working Group call. The next Working Group meeting will be held Oct. 28.

Having no further business, the Market Conduct Annual Statement Blanks (D) Working Group adjourned.

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