

Draft: 3/25/24

Market Regulation and Consumer Affairs (D) Committee
Phoenix, Arizona
March 18, 2024

The Market Regulation and Consumer Affairs (D) Committee met in Phoenix, AZ, March 18, 2024. The following Committee members participated: Jon Pike, Chair (UT); Barbara D. Richardson, Co-Vice Chair (AZ); Trinidad Navarro, Co-Vice Chair (DE); Karima M. Woods (DC); Dean L. Cameron (ID); Sharon P. Clark represented by Shawn Boggs (KY); Timothy J. Temple represented by Nina Hunter and Tom Travis (LA); Robert L. Carey (ME); Chlora Lindley-Myers represented by Jo LeDuc (MO); Mike Causey represented by Jackie Obusek (NC); Jon Godfread (ND); Scott Kipper (NV); Michael Humphreys represented by David Buono (PA); and Cassie Brown represented by Matthew Tarpley (TX). Also participating were: LeAnn Crow (KS); Erica Weyhenmeyer (IL); Larry D. Deiter (SD); Rebecca Nichols (VA); and John Haworth (WA).

1. Adopted its 2023 Fall National Meeting Minutes

Commissioner Godfread made a motion, seconded by Buono, to adopt the Committee's Dec. 3, 2023, minutes (see *NAIC Proceedings – Fall 2023, Market Regulation and Consumer Affairs (D) Committee*). The motion passed unanimously.

2. Adopted the Request for NAIC Model Law Development for Model #228

Commissioner Pike said the Producer Licensing (D) Task Force, the Market Regulation and Consumer Affairs (D) Committee, and the Executive (EX) Committee and Plenary adopted the formation of the Public Adjuster Licensing (D) Working Group to review and amend the *Public Adjuster Licensing Model Act (#228)*. He said that a formal Request for NAIC Model Law Development is also needed to provide the Committee and the Executive (EX) Committee with additional information regarding the scope of the work and whether the intended work meets the established model law criteria that the model law necessitates a national standard and requires uniformity among states.

Commissioner Pike said the new Public Adjuster Licensing (D) Working Group, under the Producer Licensing (D) Task Force, intends to amend the model to strengthen regulatory standards governing the conduct of public adjusters for the following four issues: 1) individuals acting as unlicensed public adjusters; 2) contractors who are also acting as public adjusters on the same claim; 3) inappropriate assignment of benefit rights; and 4) excessive fees charged by public adjusters.

Commissioner Navarro made a motion, seconded by Obusek, to adopt the Request for NAIC Model Law Development for Model #228. The motion passed unanimously.

3. Adopted Revisions to the *Product Filing Review Handbook*

Nichols said that on Feb. 22, the Speed to Market (D) Working Group adopted revisions to the 2016 edition of the *Product Filing Review Handbook* (Attachment One).

Nichols said drafting meetings began in April 2022 and concluded in the fall of 2023. She, Maureen Motter (OH), and NAIC staff identified technical edits and style-related edits to bring the handbook up-to-date and make it more useful for state insurance regulators and non-regulators. She said the technical edits included the removal of references to working groups and speed-to-market tools that no longer exist; correcting outdated information; updating broken URLs; removing redundant information; and making changes to formatting, punctuation, and

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style to be consistent with the current NAIC House Style Guide.

Nichols said some sections had not been updated since the handbook's initial publication in 2016. The handbook was written at a time when the System for Electronic Rates & Forms Filing (SERFF) was still in its early days, and it contained historical information explaining why the publication was developed. Nichols said the handbook's perspective of "selling the idea of SERFF" to those who were not yet on board was still present in the 2016 edition. She said that type of language was removed because it was no longer needed.

Nichols said the updated handbook went before the Speed to Market (D) Working Group as an exposure draft Nov. 17, 2023. The Working Group received one set of comments from Pennsylvania, which was incorporated into the handbook and adopted by the Working Group Feb. 22, 2024. She noted that all URLs in the *Product Filing Review Handbook* will be reviewed for accuracy prior to its release.

LeDuc made a motion, seconded by Hunter, to adopt the revisions to the *Product Filing Review Handbook*. The motion passed unanimously.

4. Heard a Presentation on Readability Standards in State Insurance Laws

Brenda J. Cude (University of Georgia) said 47 states, Washington, DC, and the federal government collectively have 240 readability laws applying to the insurance sector. There are four types of standards: 1) objective standards require language to be at a specified reading level using a scoring system, such as a Flesch Reading Ease score; 2) features standards require the use of or avoiding specified writing features, such as section headings and avoiding double negatives; 3) descriptive standards describe how language should be written, such as "clear and coherent" or "understandable by the average person;" and 4) a standard may be a hybrid of objective, features, or descriptive. She noted a fifth standard could be no standard at all. Descriptive, objective, and hybrid approaches are the most frequently found standards in readability laws.

Cude challenged the NAIC to evaluate readability standards in existing model laws as they are reopened and to require a maximum of an eighth-grade Flesch Reading Ease reading level. She also suggested surveying the NAIC members regarding their enforcement of plain language laws and sharing best practices. Cude also asked the NAIC Members to encourage the use of plain language and to review and enforce current readability laws in their jurisdictions.

5. Heard a Presentation on Shipping Insurance

Corinne Carr (Route Insurance) said \$1.3 trillion in e-commerce revenue was generated in 2023. This has increased the incidences of porch piracy. She said the merchant liability ends when the package is transferred to the transportation carrier, and the transportation carrier liability ends when the package is delivered. Homeowner policies may provide protection, but typical deductibles make this option less useful.

Carr said consumers have several options to financially protect against the theft of products after delivery: 1) they can buy a shipping insurance policy from a licensed provider; 2) they can buy package protection through unlicensed third-party providers and apps; or 3) they can buy protection directly from unlicensed merchants. She said the second and third options fail to comply with state licensing requirements for selling and providing insurance. However, the sellers of these products try to market themselves as warranties, tech solutions, guaranties, self-insurance, etc. Carr said they are still, however, providing insurance and are unlicensed. She noted that the Oklahoma Insurance Department has provided guidance to consumers on how to protect themselves from porch piracy losses by buying shipping insurance through licensed providers.

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Carr urged the NAIC members to provide guidance that shipping insurance is subject to the same licensing requirements applicable to other forms of insurance.

6. Adopted its Task Force and Working Group Reports

A. Antifraud Task (D) Force

Commissioner Navarro said the Antifraud (D) Task Force met March 17 and adopted its 2023 Fall National Meeting minutes. The Task Force also discussed its current charges and priorities for 2024.

Commissioner Navarro said the Task Force adopted the report from the Improper Marketing of Health Insurance (D) Working Group. He said the Working Group is continuing discussions with the federal Centers for Medicare and Medicaid Service (CMS) regarding agent transfer issues and Medicare Advantage. Additionally, the Working Group continues to hold monthly regulator-to-regulator conference calls to discuss ongoing investigations and state efforts concerning lead generators.

Commissioner Navarro said the Task Force received an update from the Antifraud Technology (D) Working Group. He said the Working Group did not meet prior to the Spring National Meeting but plans to assist with the implementation process of the new web service and will also be reviewing necessary enhancements to the Online Fraud Reporting System (OFRS).

Commissioner Navarro said the Task Force also received an update on OFRS concerning the implementation of a multi-factor authentication process for industry users, effective April 1. This will provide an extra layer of security for users, helping protect against unauthorized access.

Commissioner Navarro said the Task Force also heard reports on antifraud activity from the Coalition Against Insurance Fraud (CAIF) and the National Insurance Crime Bureau (NICB).

B. Market Information Systems (D) Task Force

LeDuc said the Market Information Systems (D) Task Force did not meet prior to the Spring National Meeting. The Task Force plans to meet after the Spring National Meeting when both the Market Information Systems Research and Development (D) Working Group and the Market Analysis Procedures (D) Working Group have had an opportunity to meet and begin work on their charges, which arose from the Task Force's adoption of the "Review of Artificial Intelligence Techniques in Market Analysis."

C. Producer Licensing (D) Task Force

Director Deiter said the Producer Licensing (D) Task Force has not met this year.

Director Deiter said the Task Force will have four Working Groups in 2024; 1) the Adjuster Licensing (D) Working Group, to be chaired by Rachel Chester (RI); 2) the Producer Licensing (D) Uniformity Working Group, to be chaired by Courtney Khodabakhsh (OK); 3) the new Public Adjuster (D) Licensing Working Group, to be chaired by Commissioner Navarro; and 4) the Uniform Education (D) Working Group, to be chaired by Richard Tozer (VA).

Director Deiter said the Adjuster Licensing (D) Working Group will review the use of Designated Home State. The Producer Licensing (D) Uniformity Working Group will review the 2018 proposed changes to the NAIC Uniform Producer Licensing Applications and make a recommendation to the Task Force on whether these changes are still needed. The Working Group will also review the *State Licensing Handbook* for potential updates. The Uniform Education (D) Working Group will look at virtual Super Continuing Education (CE) Courses, which are marketed as

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providing larger amounts of state CE credits and CE credits for professional designations. The Public Adjuster Licensing (D) Working Group will review and make recommended amendments to Model #228.

Director Deiter said that the development of a draft template for the 1033 waiver process will remain with the Task Force.

Director Deiter said there will be a lot of Working Group activity through the end of March and into early April. As the Working Group discussions progress, the Task Force will plan a call for late April or May to receive an update on the Working Groups' efforts and discuss the next draft of the template for the 1033 waiver process.

D. Market Analysis Procedures (D) Working Group

LeDuc said the Market Analysis Procedures (D) Working Group met Feb. 26 and discussed its charges for 2024. She said the Working Group will continue its work on assessing NAIC Market Information Systems (MIS) tools and scoring mechanisms for effectiveness.

LeDuc said that after discussion with Market Regulation and Consumer Affairs (D) Committee leadership, the Working Group will not be recommending a new line of business for the Market Conduct Annual Statement (MCAS) this year. She said two new lines of business have been added in the last two years, and numerous changes have also been adopted to other MCAS lines of business. LeDuc said market analysts are working to validate the integrity of the data and incorporate it into their analyses.

LeDuc said the Working Group also received the final draft version of standard ratios for the pet insurance MCAS line of business. She said the draft ratios are posted on the Working Group's web page, and the Working Group will consider adoption in advance of the Summer National Meeting.

E. Market Conduct Annual Statement Blanks (D) Working Group

Crow said the Market Conduct Annual Statement Blanks (D) Working Group will hold its first meeting after the Spring National Meeting.

Crow said the Working Group will use 2024 as a maintenance year to clarify definitions and assess the effectiveness of the data calls and definitions used in existing MCAS lines of business. She said that while there is a very technical focus for 2024, a charge of the Working Group is to ensure consistent reporting of data across the industry and from year to year.

F. Market Conduct Examination Guidelines (D) Working Group

Tarpley said the Market Conduct Examination Guidelines (D) Working Group met March 5 to review its 2024 charges and establish priorities for the year.

Tarpley said the Working Group will develop a new chapter on conducting the pet insurance examination in the *Market Regulation Handbook*; develop new pet insurance-related standardized data requests (SDRs) to address in-force policies and claims; update the *Market Regulation Handbook's* Chapter 19—Conducting the Life and Annuity Examination to include revised guidance pertaining to the revisions to *Actuarial Guideline XLIX-A—The Application of the Life Illustrations Model Regulation to Policies with Index-Based Interest to Policies Sold on or After December 14, 2020* (AG 49-A), which were adopted in March 2023; update the *Market Regulation Handbook's* Chapter 21A—Conducting the Property and Casualty Travel Examination to incorporate the new review procedures and criteria found in the marketing and sales examination standards 3, 4, 8 and 11 and the underwriting and rating standard 1; and discuss the development of a regulator-only collaborative space where

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tools can be shared by market regulators.

Tarpley said the Working Group will coordinate with the Innovation, Cybersecurity, and Technology (H) Committee to develop market conduct examiner guidance for the oversight of regulated entities' use of insurance and non-insurance consumer data and models using algorithms and artificial intelligence (AI).

G. Market Regulation Certification (D) Working Group

Haworth said the Market Regulation Certification (D) Working Group met Feb. 26. He said that since the NAIC membership has adopted the Voluntary Market Regulation Certification program, the Working Group will begin its work on implementing the program. He said that during its meeting, the Working Group reviewed the four parts of the implementation plan.

Haworth said that the implementation plan includes an initial period of self-certification. The Working Group invited jurisdictions to submit self-certification reports. He said that each jurisdiction that submits its self-certification report will be provisionally certified. Second, the Working Group will begin creating a process to begin fully certifying jurisdictions. He said this includes determining the composition of a review team; establishing the timeline for responding to requests for full certification; and creating a process for annual self-certifications and five-year renewals of full certification. Third, The Working Group needs to determine how to provide peer review and guidance to jurisdictions requiring such assistance. Finally, the Working Group will develop methods for making and reviewing suggestions to improve the certification program.

Haworth said the Working Group has requested at least one in-person meeting at a national meeting in 2024 because it would be helpful to have in-person interaction while working on the implementation and new processes.

H. Market Actions (D) Working Group

Weyhenmeyer said the Market Actions (D) Working Group met three times since the Fall National Meeting, including at the Spring National Meeting. She said the Working Group meets in regulator-to-regulator session.

Weyhenmeyer said the Working Group adopted revisions to the Working Group's Policies and Procedures Manual. She said these changes covered membership qualifications and responsibilities, as well as multi-state examination processes.

Commissioner Navarro made a motion, seconded by LeDuc, to adopt the following reports: 1) the Antifraud (D) Task Force; 2) the Market Information Systems (D) Task Force; 3) the Producer Licensing (D) Task Force; 4) the Market Analysis Procedures (D) Working Group (Attachment Two); 5) the Market Conduct Annual Statement Blanks (D) Working Group; 6) the Market Conduct Examination Guidelines (D) Working Group (Attachment Three); 7) the Market Regulation Certification (D) Working Group (Attachment Four); 8) the Speed to Market (D) Working Group (Attachment Five); and 9) the Market Actions (D) Working Group. The motion passed unanimously.

Having no further business, the Market Regulation and Consumer Affairs (D) Committee adjourned.

Sharepoint/Member Meetings/D CMTE/2024 Spring/National Meeting Materials/3 D Cmte.docx

Draft date: 7/9/24

Attachment B

Adopted by the Executive (EX) Committee/Plenary, XX, 2024

Adopted by the Market Regulation and Consumer Affairs (D) Committee, XX, 2024

Adopted by the Market Actions (D) Working Group, July 2, 2024

Revision marks reflect proposed amendments to the 2024 charges.

The **Market Actions (D) Working Group** will:

A. Facilitate interstate communication and coordinate collaborative state regulatory actions.

B. Facilitate interstate communication and coordinate collaborative state regulatory activities involving non-traditional market actions through the Coordinated Market Investigations Subgroup.

**NAIC MARKET CONDUCT ANNUAL STATEMENT BLANKS (D) WORKING GROUP
Changes/Additions to Approved Blanks and Data Call and Definitions
Proposal Submission Form**

NAIC USE ONLY

Proposal Submission Date: 2/28/2024	
Proposed Effective Data Year for Reporting: 2025 Data Year	
Proposed <input checked="" type="checkbox"/> Substantive Change <input type="checkbox"/> Non-Substantive Change/Clarification	
Proposal Number	2024.7
Proposal Status	<u>All Submissions</u> <input checked="" type="checkbox"/> Received – Date 3/25/2024 <input checked="" type="checkbox"/> Accepted <input type="checkbox"/> Rejected by MCAS Blanks WG Chair <input checked="" type="checkbox"/> Posted to Web Page for Public Exposure/Comment – Date 4/3/2024 <input type="checkbox"/> Referred to Another NAIC Group – Date Click or tap to enter a date. – Name of Group Click or tap here to enter text. <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Modified <input type="checkbox"/> Rejected <input type="checkbox"/> Deferred by WG – Date 5/1/2024 <u>Substantive Revisions</u> <input type="checkbox"/> Adopted <input type="checkbox"/> Rejected by D Committee – Date Click or tap to enter a date. <input type="checkbox"/> Adopted <input type="checkbox"/> Rejected by EX/Plenary – Date Click or tap to enter a date. <input type="checkbox"/> Other – Date Click or tap to enter a date. Specify Click or tap here to enter text.
NAIC Staff Input	Click or tap here to enter text.

Proposal Contact Information

Name of Contact Person	Brett Bache
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Email Address	Brett.bache@dbr.ri.gov
Phone Number	401-462-9612
Affiliation Type	<input checked="" type="checkbox"/> State Regulator <input type="checkbox"/> NAIC Staff <input type="checkbox"/> Other Regulator <input type="checkbox"/> Reporting Company <input type="checkbox"/> Industry Trade Association <input type="checkbox"/> Consumer Representative <input type="checkbox"/> Other

PROPOSAL IS FOR: Data Element Data Definitions Data Validation

APPLICABLE LINE(S) OF BUSINESS:

- | | | |
|---|--|---|
| <input checked="" type="checkbox"/> Annuity | <input type="checkbox"/> Lender Placed Auto and Home | <input type="checkbox"/> Private Flood |
| <input type="checkbox"/> Disability Income | <input checked="" type="checkbox"/> Life | <input type="checkbox"/> Private Passenger Auto |
| <input type="checkbox"/> Health | <input type="checkbox"/> Long-Term Care | <input type="checkbox"/> Travel |
| <input type="checkbox"/> Homeowners | <input type="checkbox"/> Other Health | <input type="checkbox"/> STLD |

PROVIDE A CONCISE STATEMENT OF THE PROPOSED CHANGE:

Under the [Life Insurance and Annuities Replacement Model regulation \[content.naic.org\]](https://content.naic.org), the incontestability provision in Section 5. B states: “In transactions where the replacing insurer and the existing insurer are the same or subsidiaries or affiliates under common ownership or control, allow credit for the period of time that has elapsed under the replaced policy’s or contract’s incontestability and suicide period up to the face amount of the existing policy or contract.” The interpretation is that the model regulation is calling replacements within the same holding company “internal replacements.” However, the Life and Annuity MCAS Blanks appears to categorize these intra-holding company replacements as an external replacement, as the definition for an “External Replacement of Affiliated Company Policies” states: “An external replacement of an affiliated company policy is when

NAIC MARKET CONDUCT ANNUAL STATEMENT BLANKS (D) WORKING GROUP
Changes/Additions to Approved Blanks and Data Call and Definitions
Proposal Submission Form

the policy and/or annuity to be replaced was issued by a company affiliated to the MCAS reporting company.” If it is determined that a change is needed, then the definition of an “External Replacement of Affiliated Company Policies” would need to be revised and the corresponding data element as well.

Current Definition

External Replacement of Affiliated Company Policies – An external replacement of an affiliated company policy is when the policy and/or annuity to be replaced was issued by a company affiliated to the MCAS reporting company.

Proposed Definition

Internal Replacement of Affiliated Company Policies – An **internal** replacement of an affiliated company policy is when the policy and/or annuity to be replaced was issued by a company affiliated to the MCAS reporting company.

PROVIDE THE REASON FOR THE CHANGE:

To ensure that the Life and Annuity data call reflects the language used in the Life Insurance and Annuities Replacement Model Regulation.

IF ADDITIONAL DOCUMENTS CONTAIN DEFINITIONS, BLANK MOCK-UPS, ETC, PROVIDE A LISTING OF THESE DOCUMENTS BELOW. SEND THE LISTED DOCUMENTS TO NAIC STAFF ALONG WITH THE COMPLETED FORM:

Click or tap here to enter text.