



# NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS

Date: 4/20/21

*Virtual Meeting*

## **MARKET CONDUCT ANNUAL STATEMENT BLANKS (D) WORKING GROUP**

Wednesday, April 28, 2021

2:00 – 3:00 p.m. ET / 1:00 – 2:00 p.m. CT / 12:00 – 1:00 p.m. MT / 11:00 a.m. – 12:00 p.m. PT

### **ROLL CALL**

Rebecca Rebholz, Chair	Wisconsin	Teresa Kroll	Missouri
Tate Flott, Vice Chair	Kansas	Martin Swanson	Nebraska
Maria Ailor	Arizona	Hermoliva Abejar	Nevada
Jimmy Harris/Crystal Phelps	Arkansas	Leatrice Geckler	New Mexico
Scott Woods	Florida	Guy Self	Ohio
Sarah Crittenden	Georgia	Katie Dzurec	Pennsylvania
October Nickel	Idaho	Michael Bailes/Rachel Moore	South Carolina
Erica Weyhenmeyer	Illinois	Maggie Dell	South Dakota
Lori Cunningham	Kentucky	Shelli Isiminger	Tennessee
Erica Bailey	Maryland	Shelley Wiseman	Utah
Mary Lou Moran	Massachusetts	Ned Gaines/John Haworth	Washington
Jill Huisken	Michigan	Letha Tate	West Virginia
Paul Hanson	Minnesota		

NAIC Support Staff: Teresa Cooper/Angela Hamilton

### **AGENDA**

1. Consider Adoption of its March 23 Minutes—*Rebecca Rebholz (WI)* Attachment 1
2. Receive an Update on the Travel Market Conduct Annual Statement (MCAS)  
—*Rebecca Rebholz (WI)*
3. Receive an Update on the Other Health MCAS—*Katie Dzurec (PA)*
4. Receive an Update on the Accelerated Underwriting (Life) and Digital Claims  
(Home and Auto) Subject Matter Expert (SME) Groups—*Rebecca Rebholz (WI)*
5. Consider the Placement of Complaint and Lawsuit Data Elements Within the  
Homeowners and Auto MCAS—*Rebecca Rebholz (WI)* Attachment 2
6. Discuss MCAS Lawsuit Definitions—*Rebecca Rebholz (WI)* Attachment 3
7. Discuss Any Other Matters Brought Before the Working Group  
—*Rebecca Rebholz (WI)*
8. Adjournment

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Draft: 4/5/21

Market Conduct Annual Statement Blanks (D) Working Group  
Virtual Meeting  
March 23, 2021

The Market Conduct Annual Statement Blanks (D) Working Group of the Market Regulation and Consumer Affairs (D) Committee met March 23, 2021. The following Working Group members participated: Rebecca Rebholz, Chair (WI); Tate Flott, Vice Chair (KS); Crystal Phelps (AR); Sarah Borunda (AZ); Scott Woods (FL); Sarah Crittenden (GA); Erica Weyhenmeyer (IL); Dawna Kokosinski (MD); Jill Huisken (MI); Teresa Kroll (MO); Martin Swanson (NE); Leatrice Geckler (NM); Guy Self (OH); Jeffrey Arnold (PA); Michael Bailes (SC); Maggie Dell (SD); Shelli Isiminger (TN); Tanji J. Northrup (UT); Lichiou Lee (WA); and Letha Tate (WV).

1. Adopted its Feb. 24 Minutes

The Working Group met Feb. 24 and took the following action: 1) adopted its Nov. 16, 2020, minutes; 2) heard an update on the Travel Market Conduct Annual Statement (MCAS); 3) heard an update on the Other Health MCAS; 4) discussed a new MCAS proposal submission form; 5) discussed reporting of complaint and lawsuit data elements within the Home and Auto MCAS reporting blanks; 6) discussed the MCAS lawsuit definitions; and 7) discussed the addition of Accelerated Underwriting data elements to the Life MCAS and Digital Claims data elements to the Home and Auto MCAS lines of business.

Mr. Flott made a motion, seconded by Ms. Kroll to adopt the Working Group's Feb. 24 minutes (Attachment   ). The motion passed unanimously.

2. Heard an Update on the Travel MCAS

Ms. Rebholz noted that the Travel MCAS subject matter expert (SME) group met March 3 and March 15. She stated that during those calls, Birny Birnbaum (Center for Economic Justice—CEJ) presented a draft blank for the SME group's review. Discussions continued regarding the appropriate reporting granularity, and decisions were made on the granularity of specific data elements. The SME group is making good progress, and it will move to the definitions work in the next few sessions. Discussions will continue during the next Travel SME call, which is scheduled for March 29. Members of the SME group were advised to review the drafts posted to the Working Group's web page in preparation for the call.

3. Heard an Update on the Other Health MCAS

Randy Helder (NAIC) stated that the Other Health SME group is meeting on a weekly basis through the month of April and concentrating on short-term limited-duration (STLD) insurance products. He stated that the intention of the drafting group is to complete an STLD insurance blank and definitions before the end of April to allow for at least 30 days of exposure prior to a vote on the blank before June 1. He stated that as soon as the group completes the STLD insurance blanks and definitions, it will begin work on the remaining Other Health products. Currently, the group is on iteration 5.2, which is very close to what the final product will look like. This version and two prior versions are on the Working Group's web page in the "Current MCAS Blanks Discussions" box. Mr. Helder stated that the drafting group's next meeting would address producer commissions and the blank definitions.

4. Heard an Update on the Accelerated Underwriting and Digital Claims Discussions

Ms. Rebholz stated that volunteers have agreed to participate in the Accelerated Underwriting and Digital Claims discussion groups. She stated that the first Accelerated Underwriting call is scheduled for March 24, and the first Digital Claims call is scheduled for April 1. Working Group members, interested state insurance regulators, and interested parties that would like to participate in these SME groups were asked to contact Teresa Cooper (NAIC). Leaders for these SME groups are also still needed, and they should contact Ms. Cooper if interested in leading these groups.

5. Discussed the Placement of Complaint and Lawsuit Data Elements within the Home and Auto MCAS Reporting Blanks

Ms. Rebholz noted that Attachment Two in the meeting materials was also provided for the Feb. 24 meeting; it is a grid that summarizes the placement of the complaint and lawsuit data elements within each MCAS blank and whether the complaint and lawsuit data is reported at the line of business coverage level. She stated that the Home and Auto complaint data elements are

currently reported within the underwriting section of the blank, and they are reported in total only. During its Feb. 24 call, the Working Group was asked to consider if this level of reporting is what state insurance regulators need to perform market analysis or if complaint data by coverage type is needed. Ms. Rebholz stated that all other MCAS lines of business that contain complaint data elements require reporting at the coverage type level. Mr. Birnbaum noted in February that separate coverage reporting of complaints makes sense for the Homeowners line of business, but it may be more difficult for the Private Passenger Auto line. Ms. Rebholz noted that the goal for this meeting is to get a couple of options for the Working Group to consider and then make a final decision during the April meeting. Mr. Self stated that he has not found the need to look for a higher level of detail than what is currently available in this complaint area; therefore, he suggested no change here. Ms. Rebholz stated that in the April Working Group meeting, no change here will be considered, but if anyone has additional thoughts on this matter, she suggested that they share them on the next call.

Ms. Rebholz stated that the lawsuit data elements for Home and Auto are reported by coverage type; using the current lawsuit definitions for the Home and Auto lines of business only captures lawsuit data for claim-related suits in the Home and Auto lines of business. During the February meeting, Peter Kochenburger (University of Connecticut School of Law) and Mr. Birnbaum encouraged the collection of data for lawsuits that are not related to claims. Mr. Birnbaum also encouraged consistency in the reporting of lawsuits within the MCAS lines of business. However, as with complaints, he noted that the reporting of lawsuit groups for auto coverage types may not make sense. Ms. Rebholz noted that there are similar issues to review regarding the Lender-Placed Insurance (LPI) Auto and Home line of business; LPI lawsuits are currently reported in the claims section, but the lawsuit definition for LPI is the same as for those MCAS lines where reporting is done in a separate reporting section. She noted that she would like to have some lawsuit reporting options that can be considered during the April meeting. The question for the Working Group to consider is whether only claims-related lawsuit data for the Home and Auto MCAS lines of business is needed or if lawsuit data should include suits not related to claims.

Ms. Rebholz stated that it appears the options are: 1) no change, which means data will continue being collected for only claims-related lawsuits; or 2) collecting data for lawsuits not just related to claims but also related to more broad categories for the insurance product, such as the application and sales processes. Mr. Flott stated that he supports option one, as the reviews he has done have not warranted a change here, but he also has no objections to option two if that information is necessary for others. Ms. Rebholz noted that a draft of these options will be written for consideration on the next Working Group call.

#### 6. Discussed the MCAS Lawsuit Definitions

Ms. Rebholz stated that the Working Group needs to make determinations on the level of lawsuit reporting for Home, Auto and LPI before addressing the lawsuit definitions for those lines of business. However, at this time, the Working Group needs to review the lawsuit definition used for Life, Annuity, Disability Income, Private Flood and Long-Term Care (LTC) to determine if any revisions are needed. The definition was provided in Attachment Three of the meeting materials. Ms. Isiminger stated that in reading the definition of lawsuit and the second bullet listed, it states, “an action brought in a court of law in which one party, the plaintiff, claims to have incurred a loss as a result of the action of another party, the defendant. For purposes of reporting lawsuits for (MCAS Line of Business) products: include all lawsuits, whether or not a hearing or proceeding before the court occurred.” She asked if this means any kind of filing whether it is the company doing it or the consumer. Lisa Brown (American Property Casualty Insurance Association—APCIA) stated that the first bullet states, “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,” and the way the first and second bullets are stated seems unclear. Ms. Rebholz stated that this would be a good time to review this information and add clarity where needed. Ms. Cooper stated that she will take notes on these comments so that edits to these bullets can be discussed further during the next Working Group meeting.

Mr. Kochenburger asked why information on arbitrations is not included, as bullet number three in the lawsuit definition states, “do not include arbitrations of any sort.” He stated that he understands that the results are confidential, but he believes knowing the number of arbitrations would be useful information for state insurance regulators. Ms. Brown stated that arbitration data is collected on the Auto and Homeowners lines of business. Richard L. Bates (State Farm Insurance) asked what the intent of including “agent as a defendant” in the first bullet discussed earlier is. He explained that it is possible that the insurance company may not be a party to the lawsuit or even know about it. Ms. Isiminger stated that she understands the term agent to mean a conservator or power of attorney. Ms. Brown stated that clarifying that producers are excluded could be helpful in this area. Ms. Rebholz stated that she would like to further review the use of the word “complainants” in bullet five versus potentially using the word “plaintiffs.” Mr. Bates asked for additional clarity on the last bullet, which states, “include an explanatory note with your submission stating the number of class action lawsuits included in the data and the general cause of action.” Ms. Isiminger suggested that the court case information could be cited here.

Mr. Bates stated that when looking at the lawsuit ratios that were developed for Auto and Homeowners, it compares it against claims closed without payment. He stated that if non-claims lawsuits are added in the aggregate, it could cause misrepresentation of information; he stated that the ratio could become less valuable. He asked that this be considered in the decisions going forward on whether to add lawsuits not related to claims. Ms. Rebholz stated that this would be considered if there were to be a change made on lawsuit data collected. There were no other concerns raised on the other bullet points in the lawsuit definition, and she stated that the concerns raised will be noted and discussed in further detail on the next call.

#### 7. Discussed Other Matters

Ms. Rebholz stated that during the February meeting, a new MCAS proposal form was introduced to be used anytime a new change is proposed for an MCAS blank or data call and definitions. After introducing it, comments were received, and an updated version was posted to the Working Group's web page. Any comments or questions regarding the new form should be sent to Ms. Rebholz, Mr. Flott or Ms. Cooper.

Ms. Rebholz stated that regarding the Disability Income MCAS, a question has come up that NAIC staff need guidance on. The issue is with the Schedule 3 reporting within the Disability Income blank. Schedule 3 is titled "Disability Income Claims Decisions Processed." This title seems to indicate that all claim decisions, regardless of paid or declined, would be included in the schedule. However, the median day data elements 29 and 34 specifically say to include processing time for claims resulting in payment. Ms. Rebholz noted that Schedule 4 is titled "Disability Income Resulting in Closed Without Payment"; so, it includes only those decisions resulting in closed without payment. The question for the Working Group to consider is whether Schedule 3 should include all claim decisions or only those that result in payment.

Dianne Evans (UnitedHealthcare) stated that UnitedHealthcare uses Schedule 3 to report only claims that were paid. Ms. Rebholz stated that the solution could be adding a note or clarification within the data call and definitions on the blank itself, stating that Schedule 3 is intended to capture data only for claims processing times for those claims decisions that resulted in payment.

Mr. Flott made a motion, seconded by Mr. Self, to add a note in the Disability Income blank clarifying that Schedule 3 is designed to only collect claims information about claims that have payment. The motion passed unanimously.

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

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**Agenda Item 5 - Consider the Placement of Complaint and Lawsuit Data Elements Within the Homeowners and Auto MCAS**

**Complaints (Homeowner and Private Passenger Auto):**

Question: Do state insurance regulators need complaint data by coverage type to perform market analysis? Or are total complaint counts sufficient for analysis purposes?

**Option 1: No change – Total complaint counts are sufficient for market analysis purposes**

Home and Auto complaints will continue to be reported in total within the Underwriting section of the blank.

**Option 2: Report complaints by coverage – Complaint data by coverage type is needed to perform market analysis** (option aligns with reporting used in other MCAS lines)

Move the Home and Auto complaints data element to another section (either claims section or a new section) where reporting is done by coverage type.

**Lawsuits (Homeowner and Private Passenger Auto):**

Question: Do state insurance regulators need lawsuit counts that include non-claims related lawsuits to perform market analysis? Or is it sufficient to collect only lawsuit counts that are claims related?

**Option 1: No change – Only claim-related lawsuits counts are needed for market analysis purposes**

Home and Auto lawsuits will continue to be reported by coverage type within the Claims section of the blank and will capture lawsuit data for claim-related suits only.

**Option 2: Include non-claim related suits – Lawsuit counts should include non-claims related lawsuits for market analysis purposes.** (option aligns with reporting used in other MCAS lines)

Move Home and Auto lawsuit reporting out of the claims section

If lawsuit reporting is expanded to include more than claims related suits, then

- Must determine if the expanded reporting will be in total or by coverage type
- standard ratios will need to be reviewed for relevance.
- draft lawsuit definitions will be provided for consideration during the May meeting.

Question: Should Lender-Placed Home and Auto use the same reporting approved for Homeowner and Private Passenger Auto?

## Agenda Item 6 - Discuss MCAS Lawsuit Definitions

### Life and Annuity, Disability Income, Private Flood, Lender Placed Home and Auto, and Long-Term Care Definitions:

**Lawsuit**—An action brought in a court of law in which one party, the plaintiff, claims to have incurred a loss as a result of the action of another party, the defendant. For purposes of reporting lawsuits for (MCAS Line of Business) products:

- 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;
- Include all lawsuits, whether or not a hearing or proceeding before the court occurred;
- Do not include arbitrations of any sort;
- If one lawsuit seeks damages under two or more policies or contracts, count the number of policies or contracts involved as the number of lawsuits. For example, if one lawsuit seeks damages under three policies or contracts, count the action as three lawsuits;
- If one lawsuit has two or more complainants, report the number of complainants as the number of lawsuits. For example, if one lawsuit has two complainants, report two lawsuits. If the lawsuit is a class action, see instructions for treatment of class action lawsuits;
- Report a lawsuit in the jurisdiction in which the policy or contract was issued with the exception of class action lawsuits;
- Treatment of class action lawsuits: Report the opening and closing of a class action lawsuit once in each state in which a potential class member resides.
- Include an explanatory note with your submission stating the number of class action lawsuits included in the data and the general cause of action.

### Homeowner and Auto Definitions:

**Lawsuit** – A court proceeding to recover a right to a claim, including lawsuits for arbitration cases.

Exclude:

- Subrogation claims where lawsuit is filed by the company against the tortfeasor.
- Non-lawsuit legal activity or litigation filed by an insurer, including, but not limited to: request to compel an independent medical examination, an examination under oath, and declaratory judgment actions filed by an insurer.

Calculation Clarification:

- Lawsuits should be reported on the same basis as claims. One lawsuit should be reported for each / claimant / coverage combination, regardless of the number of actual suits filed.
- One lawsuit with two claimants would be reported as two lawsuits as any awards/payments made would be made to the claimants individually.
- One lawsuit filed seeking damages for multiple coverages should be reported as one lawsuit for each applicable coverage.
- Lawsuits should be reported in the state in which the claim was reported on this statement.
- Treatment of class action lawsuits: Report the opening and closing of a class action lawsuit once in each state in which a potential class member resides. Include an explanatory note with your submission state the number of class action lawsuits included in the data and the general cause of the action.