Testimony of

Superintendent Elizabeth Kelleher Dwyer

Rhode Island Department of Business Regulation, Insurance Division

On Behalf of the National Association of Insurance Commissioners

Before the

Subcommittee on Housing, Community Development, and Insurance

U.S. House Committee on Financial Services

Regarding:

Drivers of Discrimination: An Examination of Unfair Premiums, Practices, and Policies in the Auto Insurance Industry

March 4, 2020

Chairman Clay, Ranking Member Stivers, and members of the subcommittee, thank you for the invitation to testify today. My name is Elizabeth Kelleher Dwyer. I serve as the Superintendent of Insurance at the Rhode Island Department of Business Regulation and I am here on behalf of the National Association of Insurance Commissioners (NAIC).[1]

We appreciate the subcommittee's efforts to explore issues related to discrimination in auto insurance. State insurance regulators are committed to preventing unfair treatment of insurance consumers and ensuring they have access to affordable auto insurance products. Protecting policyholders and addressing any unfair treatment of insurance consumers is crucial to the work we do and a bedrock principle of the state insurance regulatory framework. States have the enforcement authority, data, expertise, and understanding of local market dynamics critical to auto insurance and are therefore in the best position to determine regulatory and legislative approaches to address any discriminatory practices. Auto insurance underwriting and rate setting is at the nexus between insurer solvency and consumer protection. We therefore oppose federal legislation that would preempt state insurance regulatory authority in these critical areas and limit a state's flexibility to regulate such practices in a manner it deems appropriate for its auto insurance market.

Auto Insurance Regulation and Consumer Protections

Insurance regulators have robust authorities to address potential instances of unfair treatment of consumers, including those related to protected classes. Specifically, insurance regulators have the ability to address discriminatory practices in underwriting and ratemaking. Insurance companies use rating factors that are correlated with the risks of the insurance policyholder in order to set actuarially sound pricing. This process involves insurance companies establishing risk classifications to differentiate insurance consumers who will experience different levels of expected loss. Most states review rate filings to ensure that insurance companies are using rate factors that correlate with the risk of loss or expenses. This regulatory oversight helps ensure policyholders are charged a reasonable rate and an insurer is taking on the appropriate amount of risk to maintain their solvency to pay policyholder claims. The more underwriting factors that are used that correlate to risk of loss, the more accurate the risk assessment and rate is to that policyholder. We strive to ensure that consumers are treated fairly and to maintain the critical balance between insurer solvency and product availability and affordability.

[1] As part of our state-based system of insurance regulation in the United States, the National Association of Insurance Commissioners (NAIC) provides expertise, data, and analysis for insurance commissioners to effectively regulate the industry and protect consumers. The U.S. standard-setting organization is governed by the chief insurance regulators from the 50 states, the District of Columbia, and five U.S. territories. Through the NAIC, state insurance regulators establish standards and best practices, conduct peer reviews, and coordinate regulatory oversight. NAIC staff supports these efforts and represents the collective views of state regulators domestically and internationally. For more information, visit www.naic.org.

Our state insurance regulatory framework recognizes that certain risk classifications, even when accurately correlated with risk and predictive of loss from a purely actuarial perspective, may be inconsistent with other public policies and also specifically provides regulators the authority to ensure that rates are not "excessive, inadequate, or unfairly discriminatory."[2] It is also worth noting that some states prohibit the use of credit scores, while almost all states mandate that credit-based insurance scores cannot be the sole or primary basis for nonrenewal or rate changes. Many states require insurers to notify applicants or insureds that adverse credit-related decisions have been taken regarding pending applications or existing coverage based on the consumer's credit score. Several states also require insurers to provide reasonable exceptions for extraordinary life events such as illness and divorce. States also have significant authority under their unfair trade practice statutes to address discriminatory practices. These statutes, based on the NAIC *Unfair Trade Practices Model Act*, prohibit insurers from refusing to insure, refusing to continue to insure, or limiting the amount of coverage available to an individual because of race, sex, marital status, religion or national origin.[3]

To help implement these statutory authorities, state insurance regulators have tools designed to identify problematic activity. With the exception of Illinois, all states have rate approval processes either through a "prior approval process" or a "file and use" process.[4] The NAIC Market Regulation Handbook also contains standards for the examination of unfair discrimination in underwriting and rating. Among other review procedures, the Handbook sets forth guidance for the review of relevant underwriting information to ensure that no unfair discrimination is occurring. The regulated entity must have underwriting guidelines that conform to state laws, must follow them consistently and must not treat protected classes of individuals unfairly. Regulators understand that inconsistent handling of rating or underwriting practices, even if not intentional, can result in unfair discrimination. According to NAIC data, from 2007 to 2019, states conducted 391 examinations pertaining to "underwriting discrimination," "rating discrimination," or "use of prohibited rating factors" relating to auto insurance. State regulators found 28 instances where 15 different companies were non-compliant and took action accordingly.[5]

State regulators also recently enhanced their toolkit specifically as it relates to auto insurance by collecting ZIP Code level data from statistical agents. All states now have access to the data in a tool that takes the 12 million-plus records and makes them easier to analyze. Regulators can select a region, city, or ZIP Code and look at coverage type and see the average premium, frequency, and severity of losses in that area. They can also pull in a demographic area and look at metrics like

---

[2] Section 4.A of NAIC *Property and Casualty Model Rating Law* (Prior Approval Version) and Section 5.A of NAIC *Property and Casualty Model Rating Law* (File and Use Version).
[3] Section 4.G(5) of the NAIC *Unfair Trade Practices Model Act*.
[4] Some states have a "use and file" framework. The "file and use" and "use and file" are similar in terms of regulatory oversight. Illinois is the only state that does not have a rate approval process.
[5] This is based on data voluntarily submitted by member jurisdictions to the NAIC. States maintain their own data relating to examinations, rate filing reviews, and specific enforcement actions.

average income in that ZIP, etc. If states see anomalies or reason for concern including potential instances of unfair discrimination, they can follow up and look at individual company data.

The NAIC is also completing a public report that will show maps at a ZIP Code level in every state for the same metrics. The report will show income quantiles in order to exhibit average premiums, frequency, and severity for each. This will provide additional data to regulators at a more granular level in order to understand low-income populations so they may better evaluate risk assessment by insurers.

Regulatory Oversight of Technological Development in Underwriting

While insurance regulators currently have broad authorities to address unfair treatment of consumers, we also acknowledge that insurance rating and underwriting have become increasingly more complex with the advent of complex algorithms and emerging use of artificial intelligence. Technological advancements have the propensity to more accurately price insurance products for individuals with varying risks, which can reduce costs and benefit consumers, but which can also introduce new privacy and data integrity concerns. For example, telematics allows insurers to collect real-time driver behavior data and combine it with premium and loss data to provide premium discounts. While technological developments have the potential to improve how an insurer does business and can benefit policyholders, state insurance regulators also recognize the complexity of these processes and the need to ensure they comply with state insurance laws and regulations designed to protect consumers from illegal practices. To that end, state insurance regulators, through the NAIC, have been exploring insurers' use of big data for claims, marketing, underwriting, and pricing to encourage innovation while maintaining appropriate consumer protections.

One of the current work streams is exploring options for helping regulators evaluate complex models used in support of auto and homeowner insurance rate filings. State insurance regulators are also developing a white paper on best practices to serve as a guide for their review of predictive models underlying rating plans. These best practices will be incorporated into the NAIC Product Filing Review Handbook and are designed to break down the review of complex predictive models into various considerations for further inquiry. This will provide a helpful resource for determining whether modeled rates are appropriately justified and do not reflect any unfair discrimination. The goal is to adopt the white paper this summer.

State insurance regulators are also beginning to use a new shared database to communicate about insurers' rating models and identify any areas of concerns. There have also been monthly conference calls for regulators about rate filing issues and opportunities for predictive modeling education and training.

Conclusion

State insurance regulators remain vigilant in their oversight of auto insurance underwriting and rating and the potential for discriminatory impacts on certain classes of policyholders. We enforce our state insurance laws to prohibit unfair trade practices and ensure rates are not unfairly discriminatory. The NAIC does not believe federal legislation is necessary as states are mindful of any discriminatory practices that may affect certain minority and low-income groups in their insurance markets and respond by taking remedial action through regulatory or legislative changes to address consumer protection concerns. State regulators are closer to the consumer, and state legislatures have proven they can act quickly when changes are warranted. Federal preemptive legislation would undermine the ability of state regulators to protect consumers in their respective states and tie our hands to respond to future market changes.

In conclusion, state insurance regulators appreciate the subcommittee's attention to examining discrimination in auto insurance. Preventing unfair behavior is central to regulators' core mission of consumer protection and we remain committed to continuing to address this important issue through our supervision of the insurance sector. I would also encourage every member of the subcommittee to reach out to your state's insurance commissioner for a first-hand account of these issues in your respective states – our consumers are your constituents. Thank you for the opportunity to testify today and I would be pleased to take your questions.