

2021 Proposed Charges

SPECIAL (EX) COMMITTEE ON RACE AND INSURANCE

The Special (EX) Committee on Race and Insurance will:

A. Serve as the NAIC's coordinating body on identifying issues and potential solutions related to:

1. ~~(i)~~ race, diversity and inclusion within the insurance sector;
2. ~~(ii)~~ race, diversity, and inclusion in access to the insurance sector and insurance products; and
3. ~~(iii)~~ practices within the insurance sector that harm potentially disadvantage people of color and/or historically underrepresented groups.

B. Coordinate with existing groups such as the Big Data and Artificial Intelligence (EX) Working Group and the Casualty Actuarial and Statistical (C) Task Force on any efforts to determine whether and encourage those groups to continue their work in predictive modeling, price algorithms and artificial intelligence (AI) unfairly discriminate on the basis of, with a particular focus on how race and/or membership in a historically underrepresented group is impacted.

C. (Workstream One) Continue research and analysis to identify issues and develop specific recommendations on action steps that state insurance regulators and companies can take to improve the level of diversity and inclusion in the industry, including:

1. Seek additional engagement from stakeholders and states to understand the efficacy of diversity-related programs, how companies measure their progress and what state insurance regulators can do to support or amplify these efforts.
2. Collect input from stakeholders and states regarding whether there are on-existing gaps in available industry diversity-related data.

D. (Workstream Two) In coordination with the Executive (EX) Committee, receive reports on NAIC and state regulator diversity, equity and inclusion (DE&I) efforts. Serve as the coordinating body for state requests for assistance from the NAIC related to DE&I efforts.

E. (Workstream Two) Research statistics and best practices among state insurance departments on DE&I efforts and develop public forums for sharing data and findings across relevant information among states.

F. Continue research and analysis of insurance, legal and regulatory approaches to determining whether addressing unfair discrimination is present, specifically defining "proxy discrimination," "race," and "historically underrepresented group" and disparate impact, by defining the terms and determining whether additional appropriate steps are appropriate to address, including:

1. (Workstream Four) The impact of traditional life insurance underwriting on minority populations, considering the relationship between mortality risk and disparate impact.
2. (Workstream Three) Developing a process for analysis analytical and regulatory tools to assist the industry and state insurance regulators in determining whether unfair discrimination exists including issues related to:

**Commented [TC1]:** Issues to be addressed should be identified.

**Commented [TC2]:** For consistency of wording.

**Commented [TC3]:** Duplicative of 1.

**Commented [TC4]:** Removing potential provides clarity

**Commented [TC5]:** Appropriate for the committees to work together on the threshold questions of identification of problems

**Commented [TC6]:** Impact is ill-defined here. Language added to provide more clarity

**Commented [TC7]:** Issues to be addressed should be identified.

**Commented [TC8]:** There have been states who have issued regulations and reporting requirements in this space – we recommend gathering their perspectives as well on how those efforts are working

**Commented [TC9]:** We believe this would be a constructive role for regulators to play

**Commented [TC10]:** Specifying who will provide data helps for clarity here, as well as the first step being identification of issues

**Commented [TC11]:** There has been an indicated desire expressed to look at this area as well

**Commented [TC12]:** Additions we believe will improve the process

**Commented [TC13]:** Issues to be addressed should be identified first.

**Commented [TC14]:** These definitions will be critical to future discussions.

**Commented [TC15]:** Some commenters to date have indicated a desire to expand the understanding of race due to some of the complications mentioned in the preceding comment – the addition and definition of historically underrepresented group could get at the committee's stated goals if done correctly.

**Commented [TC16]:** Disparate impact is an already defined legal term that has been addressed by the US Supreme Court – creating an insurance code specific definition and treatment is unnecessary.

**Commented [TC17]:** We recommend a process and analysis rather than specific tools.

- a. The use of incomesocioeconomic variables.
- b. The intentional use of identifying proxy variables for race.
- c. Correlation vs. causation.
- d. Disparate impact considerations.
- ec. Use of third-party data.
- fd. Appropriateness of data such as criminal convictionshistory.

G. (Workstreams Three, Four and Five) Consider enhanced data reporting and record-keeping requirements across product lines to identify race and other sociodemographic factors of insureds. Consider a data call to identify resources and products sold in specific ZIP codes to identify potential geographic barriers to access.

H. Continue research and analysis related to insurance access and affordability issues, including:

1. (Workstream Four) The marketing, distribution and access to life insurance products in minority communities, including the role that financial literacy plays.
2. (Workstream Four) Disparities in the number of cancellations/rescissions among minority policyholders.
3. (Workstream Five) Measures to advance equity through lowering the cost of health care and promoting access to care and coverage, with specific focus on measures to remedy impacts on people of color, low income and rural populations, and historically marginalized groups, such as the LGBTQ+ community, individuals with disabilities, and Alaska Native and other Native and Indigenous people.
4. (Workstream Five) Examination of the use of network adequacy and provider directory measures (such as provider diversity, language and cultural competence) to promote equitable access to culturally competent care.
5. (Workstream Five) Conduct additional outreach to educate consumers and collect information on health and health care complaints related to discrimination and inequities in accessing care.
6. (Workstream Three) Steps that can Whether steps need to be taken to mitigate the impact of residual markets, premium financing and nonstandard markets on historically underrepresented disadvantaged groups.
7. Make referrals for the development of consumer education and outreach materials as appropriate.

I. Direct NAIC and Center for Insurance Policy and Research (CIPR) staff to conduct necessary research and analysis, including:

1. (Workstream Three) The status of studies concerning the affordability of auto and homeowner's insurance, including a gap analysis of what has not been studied.

**Commented [TC18]:** Tried to provide a term that is a more measurable quantity.

**Commented [TC19]:** We recommend these changes in line with the definition of proxy discrimination

**Commented [TC20]:** All rating variables are correlative, not causal. A causality requirement is an impossible threshold for any rating variable and should not be part of this or any insurance regulatory discussion.

**Commented [TC21]:** Disparate impact is an already defined legal term that has been addressed by the US Supreme Court – creating an insurance code specific definition and treatment is unnecessary.

**Commented [TC22]:** This is an area ripe for excellent discussions; it is important to note that insurers have no input into criminal history data; they are end-users of information provided by the government.

**Commented [TC23]:** This sort of data collection will be extremely difficult and wildly unpopular with consumers

**Commented [TC24]:** We believe these changes would help clarify and ultimately provide the most useful framework

**Commented [TC25]:** We recommend the identification of problems to begin the process

**Commented [TC26]:** Historically underrepresented is preferable to "disadvantaged"

2. (Workstream Three) The availability of producer licensing exams in foreign languages, **steps exam vendors have taken to mitigate cultural bias**, and the number and locations of producers by company compared to **population demographics in the same area**.

3. (Workstream Five) Aggregation of existing research on health care disparities and collection of insurance responses to the COVID-19 pandemic and its impact across demographic populations.

**Commented [TC27]:** Insurance codes that producers are tested on are laws and regulations – is the more appropriate question here whether the laws and regulations have a cultural bias?

**Commented [TC28]:** The access question is likely better studied using population data, not demographic data

#### **LIFE INSURANCE AND ANNUITIES (A) COMMITTEE – NEW CHARGES**

The **Accelerated Underwriting (A) Working Group**, as part of its ongoing work to consider the use of external data and data analytics in accelerated life underwriting, will include an assessment of and recommendations, as necessary, regarding the impact of accelerated underwriting on minority populations.

#### **HEALTH INSURANCE AND MANAGED CARE (B) COMMITTEE – NEW CHARGES**

The **Health Insurance and Managed Care (B) Committee** will:

A. Respond to inquiries from the U.S. Congress (Congress), the White House and federal agencies; analyze policy implications and the effect on the states of proposed and enacted federal legislation and regulations, including, where appropriate, an emphasis on equity considerations and the differential impact on underserved populations; and communicate the NAIC's position through letters and testimony, when requested.

The **Mental Health Parity and Addition Equity Act (MHPAEA) (B) Working Group** of the Regulatory Framework (B) Task Force will develop model educational material for state departments of insurance (DOIs) and research disparities in and interplay between mental health parity and access to culturally competent care for people of color and other underrepresented groups.

The **Health Innovations (B) Working Group** will evaluate mechanisms to resolve disparities through improving access to care, including the efficacy of telehealth as a mechanism for addressing access issues; the use of alternative payment models and value-based payments and their impact on exacerbating or ameliorating disparities and social determinants of health; and programs to improve access to historically underserved communities.

#### **MARKET REGULATION AND CONSUMER AFFAIRS (D) COMMITTEE – NEW CHARGES**

The **Producer Licensing (D) Task Force** will receive a report from on the availability of producer licensing exams in foreign languages, the steps exam vendors have taken to mitigate cultural bias, and the number and location of producers by company compared to demographics in the area.