COMMENTS RECEIVED ON ANTIFRAUD PLAN GUIDELINE – DRAFT 3 (8.3.20)

***Comments below were received on *NAIC Antifraud Plan Guideline - Draft 3 (8.3.20).* All comments have been separated out into each section of the guideline.**

Section 1. Application

Second Paragraph:

These guidelines are primarily intended for state fraud bureaus as a guide in the preparation of new antifraud plan legislation, revision of existing mandated antifraud plans and for insurer SIUs in the preparation of its antifraud plans. ~~The intention of this guideline is to collate the current twenty states' antifraud plan requirements into a guide for those states researching what should go into a plan.~~ Most national fraud fighting agencies believe it is a good practice for all insurers, whether it is state mandated or not, to develop an internal insurance antifraud plan. Flexibility should be allowed for each insurer to develop a plan that meets its individual needs and still meets state compliance standards.

APCIA Comment:

While we have no concerns with the text removed from this section, we suggest that the second paragraph be revised to reflect the goal of increasing uniformity of state anti-fraud plan requirements, and that most "national and state" fraud fighting agencies agree on the importance of a written anti-fraud plan.

We are often asked by our members what happens to anti-fraud plans and reports once they are submitted? In our previous comments we suggested that the guidelines the review include some reference to the importance of the fraud fighting entity sharing aggregated results or best practices with the industry without identifying individual insurers. Perhaps this section could include such a reference or recommendation as a drafting note?

Nationwide Comment:

Insert the word laws after antifraud plan and before the word and.

Section 2. Definitions ~~reserved for state specific information~~

Coalition Against Insurance Fraud Comment:

Ideal would be to standardize definitions for use in all states.

Nationwide Comment:

Please add a definition for substantive or material change. Some state anti-fraud plan laws require insurers to refile/submit plans when these types of changes occur, but the definitions do not provide any sort of direction as to what states consider to be substantive or material.

I believe that NY is the only state that provides direction on this topic and the direction provided appears in a guideline document that is not required to be followed by the corresponding anti-fraud plan laws.

Section 2.
Definitions ~~reserved for state specific information~~

B. "Insurance" means any of the lines of authority in [insert reference to appropriate section of state law].

Coalition Against Insurance Fraud Comment:

As authorized or licensed pursuant to state law.

Section 2.
Definitions ~~reserved for state specific information~~

D. "Insurer" means [insert reference to appropriate section of state law].

Coalition Against Insurance Fraud Comment:

Any insurer licensed to engage in the sale and providing of insurance services.

Nationwide Comment:

Would it be possible for NAIC to be more specific with the definition of insurer? Some states require Surplus Lines Insurers to be included in the Anti-Fraud Plan and to submit SIU Statistical Reports and others do not.

Section 2.
Definitions ~~reserved for state specific information~~

F. "Person" means an individual or a business entity.

APCIA Comment:

The definition of "person" includes an "individual or business entity". The term "person" is mentioned only five times in the document, so replacing "person" with "individual or business entity" would seem clearer.

Section 2.
Definitions ~~reserved for state specific information~~

G. "Report in a timely manner" means in accordance with [insert state statute / rule]~~within 60 days after determination is made by the insurer that the claims appears to be a fraudulent claim~~.

Coalition Against Insurance Fraud Comment:

All applicable laws or regulations of the state.

Section 2.
Definitions ~~reserved for state specific information~~

H. "Respond in a reasonable time" means to respond in accordance with [insert state statute / rule]. ~~to a request for information from an authorized agency, not to exceed 30 days from the day on which the duty arose.~~

Coalition Against Insurance Fraud Comment:

all applicable laws or regulations of the state.

Section 2.
Definitions ~~reserved for state specific information~~

J~~H~~. "Suspected Insurance Fraud" means includes any misrepresentation of fact or omission of fact pertaining to a transaction of insurance including claims, premium and application fraud. These facts may include evidence of doctoring, altering or destroying forms, prior history of the claimant, policy holder, applicant or provider, receipts, estimates, explanations of benefits (EOB), medical evaluations or billings, medical provider notes, police and/or investigative reports, relevant discrepancies in written or oral statements and examinations under oath (EUO), unusual policy activity and falsified or untruthful application for insurance. An identifiable pattern in a claim history may also suggest the possibility of suspected fraudulent claims activity. A claim may contain evidence of suspected insurance fraud regardless of the payment status.

AIG Comment:

Suggest verbiage for this definition : may include but not limited to any misrepresentation of fact....

APCIA Comment:

"Suspected Insurance Fraud", is a defined broadly as a misrepresentation or omission of facts in an insurance transaction that "may include" a lengthy list of items. We suggest that the definition be revised to read "These facts may include but are not limited to" since there certainly could be other pertinent facts that give rise to suspicions of fraud.

The definition appears to contain a typographical error ("means includes").

Coalition Against Insurance Fraud Comment:

"includes but is not limited to"

Section 3. ~~Creation Of~~ Antifraud Plan Creation / Submission

A. An insurer, ~~if required by a Department of Insurance,~~ subject to [insert appropriate state code], shall create an antifraud plan which fully documents ~~outlining~~ the insurer's antifraud efforts.

AIG Comment:

delete the word, "fully" . Agree with APCIA

APCIA Comment:

The draft requires a plan that "fully documents" the insurers anti-fraud efforts. The term "fully" is vague, simply requiring that the plan "documents" the insurers effort provides clarity.

Section 3. ~~Creation Of~~ Antifraud Plan Creation / Submission

B. An insurer shall develop a written plan within [insert number of days based upon state law] days after obtaining its license to transact business within this state or within [insert number of days] days after beginning to engage in the business of insurance.

Coalition Against Insurance Fraud Comment:

Suggest using a standard or recommended number of days rather than open ended.

Section 3. ~~Creation Of~~ Antifraud Plan Creation / Submission

D. An insurer shall submit their antifraud plan in accordance with [insert appropriate state code].

AIG Comment:

Some states don't require that Plans be submitted; but kept on site and available if requested.

Coalition Against Insurance Fraud Comment:

Suggest in the model using generic language such as "all state laws, regulations or requirements".

Section 3. ~~Creation Of~~ Antifraud Plan C reation / Submission

E. If an insurer amends the manner in which they detect, investigate and/or report suspected insurance fraud, or there is a change in the person(s) responsible for the insurer's antifraud efforts, the insurer will be required to amend [and submit] their antifraud plan within [insert number of days] of the change(s) being made.

AIG Comment:

Same thought here- not all states require filing.

APCIA Comment:

The draft removes the current requirement that the plan be submitted every 5 years, a positive change. However, the new language requires the plan to be submitted in accordance with state law and refiled within a specified number of days if the insurer "amends" its practices. It is not unusual for an insurer to make minor adjustments without making a material changes to the plan. We suggest that the "amends" be replaced with "makes a material change".

Nationwide Comment:

This appears to speak to my earlier comment regarding what states consider to be material or substantive changes.

Does the NAIC suggest that insurers inform the DOI of all staffing changes made to Investigative Staff, or just when there are changes in leadership? I ask, because some states (FL & SC) have Designated Employee Lists and other states require insurers to list Investigative Staff (CA - Annual Report) and provide bios (NY) as part of the anti-fraud plan submission. Several states, require insurers to file an anti-fraud contact document (WV, NE and KY come to mind). It might make more sense to have contacts listed separate and apart from an anti-fraud plan, as to not have insurers refile due to staffing changes.

Section 4. Antifraud Plan Requirements

~~The following information should be included in the submitted antifraud plan to satisfy this Section. The plan~~ An antifraud plan is a comprehensive overview of the insurer's efforts to prevent, detect and investigate suspected insurance fraud ~~an acknowledgment that the insurer and its SIU has established criteria that will be used to detect suspicious or fraudulent insurance activity~~ relate~~d~~ing to the different types of insurance offered by that insurer. ~~All antifraud plans submitted shall be subject to review by the Commissioner.~~

APCIA Comment:

This section defines the plan as a "comprehensive" overview of the insurers anti-fraud efforts. Consistent with our earlier comment on the use of the term "fully", we would suggest that the preamble to this section read that "An anti-fraud plan documents the insurers efforts to…"

The document retains the provision that a plan may cover multiple insurer entities if the insurer has "the same SIU mission" for all the ensures entities that share the same mission. This is an important provision that avoids duplication of effort by insurers and the fraud fighting entities reviewing the plans.

Coalition Against Insurance Fraud Comment:

Fraud plans must address all aspects of insurance fraud including first and third party claims, contractors, vendors, attorneys, service providers and internal anti-fraud programs as detailed herein.

Section 4. Antifraud Plan Requirements

C. The following information should be included in the submitted antifraud plan to satisfy this Section:

(1) The insurer's name and NAIC individual and group code numbers;

(2) A description of the insurer's:
(a) Approved lines of authority
(b) Approximate annual premium volume
(c) Approximate annual claim volume

APCIA Comment:

(2)(b) and (c) require an insurer to provide annual premium and claim volume, data points that not only change from year to year but that are reported in other required reports. We suggest that both sections be deleted to avoid duplicative reporting.

CEJ Comment:

With this background, CEJ suggests the following revisions to the August 3, 2020 exposure draft of the Antifraud Plan Guideline by adding a new section a new part to Section 4 or by incorporating these provisions into existing parts of Section 4.

A description of the insurers' policies and practices regarding use and protection of consumer data and antifraud predictive models and artificial intelligence, including

(a) Proactive efforts to avoid proxy discrimination against protected classes including training for personnel in the auditing and detection of unfair bias in data, algorithms and antifraud personnel;

(b) Analyzing data and algorithms for the presence of systemic racism and inherent bias against protected classes and minimizing these effects consistent with the sound antifraud practices;

(c) Consumer data protections consistent with the protections of the Fair Credit Reporting Act, including disclosure, adverse action notice, access to contested data, ability to correct erroneous data and reconsideration based on corrected data;

(d) Protection of personal consumer data;

(e) Transparency and explainability of algorithms and algorithmic decisions to stakeholders.

Nationwide Comment:

We would suggest that the annual premium and volume of claims be omitted from the model. This is data that changes from year to year. States that want to collect data, typically have a separate statistical reporting requirement. When data requirements are infused into anti-fraud plans, it truly muddies the

water, as to how to define the required submission. Is it an anti-fraud plan, annual report or statistical submission?

Section 4. Antifraud Plan Requirements

Drafting Note: (Upon exploring the creation of an electronic fraud plan submission system, the working group will explore the possibility of the above noted information auto-populating based upon NAIC carrier data maintained by individual / group codes).

Nationwide Comment:

If this ends up being the case, I'd urge the working group to review the data some states require to be submitted on the annual SIU statistical filings. I think the overarching data that most states require is PIF, DWP, Claims, Number of Suspected Fraudulent Referrals Received by the SIU, Number of Cases Opened by the SIU, Number of Referrals Sent to the Fraud Bureau/Law Enforcement/DOI, etc.. If you have any questions about this, please feel free to reach out to me for more information.

Section 4. Antifraud Plan Requirements

4C(4)(b)(3)

(3) A description of training topics covered with employees (i.e. ethics, false claims or other related issues).

Coalition Against Insurance Fraud Comment:

Anti-bias and avoidance of systemic discriminatory practices

Section 4. Antifraud Plan Requirements

4C(4)(b)(5)

(5) The frequency and number of training hours provided.

APCIA Comment:

(4)(b)(5) requires the “frequency and number” of training hours provided. This may vary based on the needs of the individual; therefore, we suggest that this be revised to require the “frequency and minimum number” of training hours provided.

Nationwide Comment:

States tend to vary on number of hours required for SI's as well as integral anti-fraud personnel (IAFP). It would be nice, if the NAIC could provide states with some guidance to help to level-set on this issue.

Section 4. Antifraud Plan Requirements

4C(4)(b)(6)

(6) The method(s) in which employees, policyholders and members of the general public can report suspected fraud.

AIG Comment:

(4)(b)(6) requires a description of methods for employees, policyholders, and the public to report suspected fraud. This seems misplaced in this section and would be more appropriately included in (6) that references reporting procedures for suspected fraud.

Section 4. Antifraud Plan Requirements

4C(5)

(5) A description of the insurer's corporate policies for preventing, detecting and investigating internal fraud committed by company employees, consultants or others, such as underwriters, claims representatives, appointed agents, etc.

APCIA Comment:
(5) references procedures to investigate when internal fraud is suspected. We suggest that references in this section be clarified that they apply to "suspected internal fraud".

Section 4. Antifraud Plan Requirements

4C(5)(a)

(a) The insurer shall include a description of its policies and procedures for ensuring compliance with 18 USC 1033 & 1034 [insert applicable State code if appropriate].

Nationwide Comment:

The NAIC may want to consider omitting this from the guideline. We believe that NH might be the only state to have incorporated this into its anti-fraud plan requirements.

Section 4. Antifraud Plan Requirements

4C(6)(b)

(b) The criteria used to report suspicious claims of insurance fraud for investigation to an insurer's SIU.

Coalition Against Insurance Fraud Comment:

(c) A description of the insurer's policies and efforts to ensure systemic bias and discriminatory practices are not occurring in the identification and investigation of potential fraud.

Section 4. Antifraud Plan Requirements

(7) A statement as to whether the insurer has established an internal SIU to investigate suspected insurance fraud.

APCIA Comment:

(7) requires a "written description or chart outlining the organizational arrangement of all internal personnel responsible for the investigation and reporting of possible fraudulent insurance acts". This could be interpreted as requiring submission of a new plan when ever there is any change in personnel. We do not believe that is the drafters' intent, so we suggest revising this requirement to a "written description".

Section 4. Antifraud Plan Requirements

4C(7) – Drafting Note

Drafting Note: (Upon exploring the creation of an electronic fraud plan submission system, the working group will explore the possibility insurers having the ability to upload an organization chart / list of SIU employees.)

Nationwide Comment:

If insurers are able to provide a list of SIU employees, could this list be cross referenced by both FL and SC, so it might serve as the Designated Employee lists required by those states?

Would the NAIC have the expectation that this list is "evergreen," i.e. updated on a regular basis to reflect investigative staff, or could be be updated on a less frequent basis like once per quarter or twice per year?

If these lists were to be utilized by the states, immunity laws will come into play, so I believe this list would need to be updated in real-time to reflect new-hires and departures from the unit.

Section 4. Antifraud Plan Requirements

4C(7)(c)

(c) An overview of all SIU positions and the corresponding position description.

Nationwide Comment:

An overview would be fine, but I do not think that states would want to have the job descriptions added to the plans. I would suggest that this be omitted from the guidelines. I believe our company has over 20 job descriptions and when printed, I believe they are 4 pages in length, which would add 80 pages to an anti-fraud plan. The NAIC might want to focus on the job descriptions for investigative staff, specifically the education and training, so that states know they have qualified individuals investigating insurance fraud. We'd also ask the NAIC to recommend that states work together to adopt consistent requirements for Investigators from state to state.

Section 4. Antifraud Plan Requirements

4C(8)

(8) A statement as to whether the insurer utilizes and external / third party as their SIU or for certain investigative functions.

Nationwide Comment:

In light of the recent revisions made to California's anti-fraud regulations, we would urge the NAIC to be very specific as to what third parties are considered to be in-scope.

Section 4. Antifraud Plan Requirements

4C(8)(a)

(a) If an external / third party is used, the insurer shall provide (1) the name of the company or companies used; (2) contact information for the company; and (3) a company organizational chart.

APCIA Comment:

(8)(a) references external/third parties used for investigative functions. The intent of this section appears to be addressing situations where an insurer uses a third party to substantially perform the SIU function, rather than vendors used for individual investigative tasks. We suggest that this section be revised to reflect the intended distinction.

Section 4. Antifraud Plan Requirements

4C(10)(a)

(a) ~~(2)~~ A statement as to who, within the organization, is responsible for reporting suspected fraud on the insurer's behalf.

AIG Comment:
Instead of "who, within the organization" is responsible for filing", should it read which group within the company is responsible for filing? Many companies have an entire organization (like the SIU; investigator assigned).

APCIA Comment:

(10)(a) requires a statement identifying "who" is responsible for reporting suspected fraud on the insurer's behalf. We suggest that this be revised to "the individuals or group within the organization…" so that a single change in personnel does not trigger an obligation to file a new report.

Section 4. Antifraud Plan Requirements

4C(11)

APCIA Comment:

(11) requires insurers to incorporate a plan to provide information to the fraud agency in a timely manner, going on to provide an extensive list of materials. The intent of the section appears to be ensuring that the insurer has a plan for timely responses to requests for information, rather than specifying what materials be requested. We suggest the list of materials be removed for clarity.

Section 4. Antifraud Plan Requirements

4C(11)(j)

(j) ~~(10)~~ Other information which the Fraud Division ~~or an Authorized Governmental Agency~~ may deem relevant and important.

Coalition Against Insurance Fraud Comment:

Add a new (j)
All information maintained evidencing any analysis of policies in force, claims, fraud referrals, investigations and coverage decisions based on racial, ethnic, gender or other similar classifications.

Section 4. Antifraud Plan Requirements

4C(11)(1)

(1) ~~(c)~~ For the purpose of this section, the timely release of information means immediate, ~~but~~ and no more than [insert number] calendar days after the request is received, ~~or, in the event of a request relating to workers' compensation insurance fraud, sixty (60) calendar days after the request,~~ ~~u~~unless otherwise agreed to by the Fraud Division ~~or by the other authorized governmental agency making the request~~.

APCIA Comment:

(11) (1) defines timely release of information requested by the fraud agency as "immediate" then defines that as a specific number of days. The use of the term immediate is vague, consistent with our earlier comments, we recommend that the guidelines specify 30, 60 or 90 days.

Section 4. Antifraud Plan Requirements

4C(11)(2) and (3)

(2) When responding to a request for information, an insurer must not redact or purposefully withhold any information that has specifically been requested.

(3) If an insurer is unable to provide specific information upon request, an insurer will be required to provide, in writing, a description of any information being withheld, and a reason as to why such information is not being provided as required.

APCIA Comment:

(11)(2) and (3) appear to be in conflict, forbidding an insurer from reacting or withholding information, then explaining why it has done so? We suggest that these sections be combined to require an insurers response to be complete but provide a description of and reason for withholding any information not provided as requested.

Not every state provides statutory immunity from criminal or civil liability for an insurer that is reporting suspected fraud or providing information in response to the requests referenced by this section. To address such cases, we suggest a drafting note be added that the insurer should have the option of requesting the information be requested by subpoena or if the carrier is an NICB member company request transmission of the documentation via the National Insurance Crime Bureau (NICB).
