

**ANTIFRAUD PLAN GUIDELINE – COMMENTS INCLUDED 3.12.20**

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**Section 1. Application**

The purpose of this guideline is to establish standards for state fraud bureaus, insurance company SIUs and any other interested parties regarding the preparation of an Antifraud Plan that meets the mandated requirements for submitting a plan with a state Department of Insurance. Currently, twenty states require that fraud plans be prepared for inspection by the state Departments of Insurance. The concept of mandating the submission of an insurer fraud plan was developed to encourage those insurers with direct written premiums to fight insurance fraud proactively by drafting a plan to fight fraud. This plan, along with audits, inspections, or in conjunction with a market conduct examinations, ensure the insurer is following its submitted antifraud plan.

**Commented [WG1]:** [Coalition Against Insurance Fraud](#)  
Check for accuracy. This may need to be updated.

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.

This guideline does not preempt other state laws. This guideline is not intended to preempt or amend any guidance previously published by the NAIC Antifraud Task Force or in the NAIC Fraud Prevention Law Model Act. This document is intended to provide a road map for state fraud bureaus, insurers' SIUs or contracted SIU vendors for preparation of an antifraud plan.

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

**Commented [WG2]:** [NAMIC](#) - Consistency, consider whether including uniform definitions in the guideline could promote consistency.

**Section 3. Antifraud Plan Submission Requirement**

An insurer, if required by a Department of Insurance, subject to [insert appropriate state code], shall submit to the Commissioner [or Fraud Bureau] a detailed description of the company's antifraud plan. All antifraud plans submitted shall be subject to review by the Commissioner.

**Section 4. Antifraud Plan Requirements**

The following information should be included in the submitted antifraud plan to satisfy this Section. The plan is an acknowledgment that the insurer and its SIU has established criteria that will be used to detect suspicious or fraudulent insurance activity relating to the different types of insurance offered by that insurer. All antifraud plans submitted shall be subject to review by the Commissioner.

One SIU antifraud plan may cover several insurer entities if one SIU has the fraud investigation mission for all entities.

The plan should include:

A. General Requirements

- (1) An acknowledgment that the SIU has established criteria that will be used for the investigation of acts of suspected insurance fraud relating to the different types of insurance offered by that insurer.

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- (2) An acknowledgement that the insurer or SIU shall record the date that suspected fraudulent activity is detected, and shall record the date that reports of such suspected insurance fraud were sent directly to the Fraud Bureau/Department within a specific time frame.
- (3) A provision stating whether the SIU is an internal unit or an external or third party unit.
- (4) If the SIU is an internal unit, provide a description of whether the unit is part of the insurer's claims or underwriting departments, or whether it is separate from such departments.
- (5) A written description or chart outlining the organizational arrangement of the insurer's antifraud positions responsible for the investigation and reporting of possible fraudulent insurance acts.
  - (a) If SIU is an internal unit, the insurer shall provide general contact information for the company's SIU.
  - (b) If SIU is an external unit, 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. The insurer shall specify the person or position at the insurer responsible for maintaining contact with the external SIU Company.
  - (c) If an external SIU is employed for purposes of surveillance, the insurer shall include a description of the policies and procedures implemented.
- (6) A provision where the insurer provides the NAIC individual and group code numbers;
- (7) A statement as to whether the insurer has implemented a fraud awareness or outreach program. If insurer has an awareness or outreach program, a brief description of the program shall be included.
- (8) If the SIU is a third party unit, a description of the insurer's policies and procedures for ensuring that the third party unit fulfills its contractual obligations to the insurer and a copy of the contract with the third party vendor.

**Drafting Note:** states that do not mandate fraud reporting should revise or remove inapplicable requirements from this section.

B. Prevention, Detection and Investigation of Fraud

- (1) A description of the insurer's corporate policies for preventing fraudulent insurance acts by its policy holders.
- (2) A description of the insurer's established fraud detection procedures (I.E. technology and other detection procedures).
- (3) A description of the internal referral criteria used in reporting suspicious claims of insurance fraud for investigation by SIU
- (4) A description of SIU investigation program (IE by business line, external form claims adjustment, venter management SOPs)
- (5) A description of the insurer's policies and procedures for referring suspicious or fraudulent activity from the claims or underwriting departments to the SIU.

C. Reporting of Fraud

- (1) A description of the insurer's reporting procedures for the mandatory reporting of possible fraudulent insurance acts to the Commissioner/Bureau/Division pursuant to Section [Insert applicable State code].
- (2) A description of the insurer's criteria or threshold for reporting fraud to the Commissioner.

**Commented [WG3]: Coalition Against Insurance Fraud**  
Or combined? Many SIU today's are a "blended" system of internal staffing and outside vendors.

**Commented [WG4]: Coalition Against Insurance Fraud**  
Or other? This is probably sufficient, but you may want to consider simply asking if SIU is a separate department or is a part of any other department in the company.

**Commented [WG5]: NAMIC**  
Clarify that the intention is to internal fraud awareness or outreach rather than external efforts. Currently this may be interpreted that insurers are required to have an external outreach program.

**Commented [WG6]: Coalition Against Insurance Fraud**  
This seems far too limited. Why only by policyholders? This should be expanded to include, first or third party claimants, medical or service providers, legal counsel, or any form of agent or internal fraud.

**Commented [WG7]: NAMIC**  
Duplication, requiring insurers to describe their investigation program by each line of business may prove to provide DOI's with duplicative information when insurers have many product offerings. May consider deleting text in parenthesis and consider a more efficient alternative for insurers. Maybe allow insurer to provide duplicative materials upon request)

**Commented [WG8]: MN DOI (Michael Marben)**  
Requirement that insurer must cooperate with the prosecution of insurance fraud cases.

- (3) A description of insurer's means of submission of suspected fraud reports to the Commissioner (e.g. NAIC OFRS, NICB, NHCAA, electronic state system, or other)

**Drafting Note:** States that do not mandate fraud reporting should revise or remove inapplicable requirements from this section.

**Drafting Note:** if a state has a mandatory reporting method, this section should be adjusted to reflect an acknowledgment of the reporting method

#### D. Education and Training

- (1) If applicable, a description of the insurer's plan for antifraud education and training initiatives of any personnel involved in antifraud related efforts. This description shall include:
  - (a) The internal positions the insurer offers regular education and training, such as underwriters, adjusters, claims representatives, appointment agents, attorneys, etc.
  - (b) If the training will be internal and/or external.
  - (c) Number of hours expected per year.
  - (d) If training includes ethics, false claims or other legal-related issues.

**Commented [WG9]:** Coalition Against Insurance Fraud  
Why make this optional? Educational programs on fraud detection and prevention should be a mandatory part of any SIU plan and program.

**Commented [WG10]:** Coalition Against Insurance Fraud  
Do not make optional. (See above comment).

#### E. Internal Fraud Detection and Prevention

- (1) A description of insurer's internal fraud detection policy for employees, consultants or others, such as underwriters, claims representatives, appointed agents, etc.
- (2) A description of insurer's internal fraud reporting system.

### Section 5. 18 USC 1033 & 1034 Compliance

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

**Commented [WG11]:** NAMIC  
This is a broad based insurance carrier requirement and is likely duplicative for larger carriers, if included within the antifraud plan requirements (Section 4) guidelines regulatory framework as well.

### Section 6. Regulatory Compliance

A Department of Insurance has the right to review insurer antifraud plans in order to determine compliance with appropriate state laws. A Department further has the right, in accordance with Section [insert specific state code] to take appropriate administrative action against an insurer if it fails to comply with the mandated requirements and/or state laws.

### Section 7. Confidentiality of Antifraud Plan

The submission of required information is not intended to constitute a waiver of an insurer's privilege, trade secret, confidentiality or any proprietary interest in its antifraud plan or its antifraud related policies and procedures. The Commissioner shall maintain the antifraud plan as confidential. Submitted plans shall not be subject to the Freedom of Information Act if submitted properly under the state statutes or regulations which would afford protection of these materials [insert applicable state code].

**Drafting Note:** State will need to cite state specific privacy and protection authority.

### Section 8. Required Antifraud Plan Submission

An insurer, if required by a Department of Insurance, shall submit its antifraud plan within ninety days of receiving a certificate of authority. Plans shall be submitted every 5 years thereafter. An insurer shall submit revisions to its plans within thirty days of a material change being made.

**Drafting Note:** states without mandatory submission requirements should adjust this section appropriately.

**Commented [WG12]:** NAMIC  
Materiality: consider adding parameters/definition around what qualifies as "material" or substantive change. Currently, there is no consistency from state to state.  
Timing – Sending a plan every 5 years may be unnecessarily burdensome, if material changes to the plan have to be submitted within 30 days of material changes being made. (Again, please note the importance of a uniform definition of materiality)  
Method – Consider the benefits of achieving consistent electronic submission across states.

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*Chronological Summary of Action (all references are to the Proceedings of the NAIC)*

*2011 Proc. 1<sup>st</sup> Quarter, Vol. 1 101, 114, 117, 472-477 (adopted).*