

**ANTIFRAUD PLAN GUIDELINE – DRAFT 3 – 8.3.20**

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**Section 1. Application**

The purpose of this guideline is to establish standards for state fraud bureaus, insurance company special investigation unit (SIU) 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. 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.

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. 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**

- A. “Individual” means a natural person.
- B. “Insurance” means any of the lines of authority in [insert reference to appropriate section of state law].
- C. “Insurance commissioner” or “commissioner” means the official in any state that is responsible for regulation of the business of insurance.
- D. “Insurer” means [insert reference to appropriate section of state law].
- E. “National Association of Insurance Commissioners” (NAIC) means the organization of insurance regulators from the fifty (50) states, the District of Columbia and the four (4) U.S. territories.
- F. “Person” means an individual or a business entity.
- G. “Report in a timely manner” means in accordance with [insert state statute / rule].
- H. “Respond in a reasonable time” means to respond in accordance with [insert state statute / rule].
- I. “Special Investigation Unit (SIU)” means an insurer’s unit or division that is established to investigate suspected insurance fraud. The SIU may be comprised of insurer employees or by contracting with other entities.
- J. “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.

**Drafting Note:** states can insert, modify or delete definitions as needed.

### Section 3. Antifraud Plan Creation / Submission

- A. An insurer, subject to [insert appropriate state code], shall create an antifraud plan which fully documents the insurer's antifraud efforts.
- 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.
- C. The Department of Insurance has the right to review an insurer's antifraud plan in order to determine compliance with appropriate state laws.
- D. An insurer shall submit their antifraud plan in accordance with [insert appropriate state code].
- 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.

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

### Section 4. Antifraud Plan Requirements

- A. An antifraud plan is a comprehensive overview of the insurer's efforts to prevent, detect and investigate suspected insurance fraud related to the different types of insurance offered by that insurer.
- B. One antifraud plan may cover several insurer entities if one SIU has the fraud investigation mission for all entities.
- 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

**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).

- (3) An acknowledgment that the insurer has established criteria that will be used for the investigation of internal fraud and suspected fraud related to the different types of insurance offered.
- (4) A statement as to whether the insurer has implemented an internal and/or external fraud awareness and/or outreach program in order to educate employees, applicants, policy holders and/or members of the general public about insurance fraud.
  - (a) A description of the insurer's external fraud awareness or outreach program(s) geared towards applicants, policy holders and members of the general public.
  - (b) A description of the insurer's internal awareness / antifraud education and training initiatives of any personnel involved in antifraud related efforts. The description shall include:

- (1) An overview of antifraud training provided to new employees.
  - (2) The internal positions the insurer offers regular education and training, such as underwriters, adjusters, claims representatives, appointed agents, attorneys, etc.
  - (3) A description of training topics covered with employees (i.e. ethics, false claims or other related issues).
  - (4) The method(s) in which training is provided.
  - (5) The frequency and number of training hours provided.
  - (6) The method(s) in which employees, policyholders and members of the general public can report suspected fraud.
- (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.
- (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].
  - (b) The insurer shall include a description of their internal fraud reporting policy.
  - (c) The insurer shall identify who, within the organization, is ultimately responsible for the investigation of internal fraud.
  - (d) A description of the insurer’s standard operating procedures (SOP) for investigating internal fraud.
  - (e) The insurer shall include a description of the reporting procedures it will follow upon a criminal and/or insurance law violation being identified as the result of an internal investigation conducted (i.e. agent misconduct, referral to Fraud Unit or law enforcement, etc.).
- (6) A description of the insurer’s corporate policies for preventing fraudulent insurance acts committed by first or third party claimants, medical or service providers, attorneys, or any other party associated with a claim.
- (a) A description of the technology and/or detection procedures the insurer has put in place to identify suspected fraud.
  - (b) The criteria used to report suspicious claims of insurance fraud for investigation to an insurer’s SIU.
- (7) A statement as to whether the insurer has established an internal SIU to investigate suspected insurance fraud.
- (a) A description as to whether the unit is part of any other department within the organization.
  - (b) A written description or chart outlining the organizational arrangement of all internal personnel responsible for the investigation and reporting of possible fraudulent insurance acts.
- 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.)
- (c) An overview of all SIU positions and the corresponding position description.

- (d) General contact information for the company's SIU as well as the name and contact information for the individual(s) responsible for overseeing the insurer's antifraud efforts.
  - (e) A description of the insurer's standard operating procedures (SOP) for investigating suspected insurance fraud.
- (8) A statement as to whether the insurer utilizes and external / third party as their SIU or for certain investigative functions.
- (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.
  - (b) The insurer shall specify the internal person(s) or position(s) responsible for maintaining contact with the external SIU Company.
  - (c) A description of the insurer's policies and procedures for overseeing third party vendors to ensure the third party unit fulfills its contractual obligations to the insurer.
- (9) [MBRI] A description of the method(s) used to document SIU referrals received and investigations conducted.
- (a) An overview of any case management system and/or computer program used to memorialize SIU referrals received and investigations conducted.
  - (b) The manner in which the insurer tracks SIU / investigative information for compliance purposes (i.e. number of SIU referrals received, number of investigations opened, outcome of investigations conducted, etc.)

**Drafting Note:** states that do not mandate fraud reporting or have other requirements should revise this section to reflect state requirements.

- 10) A description of the procedures the insurer has established to ensure suspected insurance fraud is timely reported to [agency / division name] pursuant to [insert reference to state law].
- (a) A statement as to who, within the organization, is responsible for reporting suspected fraud on the insurer's behalf.
  - (b) A description of the insurer's criteria or threshold for reporting fraud to the Commissioner.
  - (c) 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

- 11) An insurer shall incorporate within its antifraud plan the steps it will take to ensure all information they, or a contracted party possess with regard to a specific claim or incident of suspected insurance fraud is provided in a timely and complete manner when a formal written request from the [insert agency / division name] has been received. Information to be released includes, but is not limited to:
- (a) Insurance policy information;
  - (b) Applications;
  - (c) Policy premium payment records;
  - (d) History of claims;

- (e) Information relating to the carrier's investigation, including statements, proof and notice of loss;
  - (f) Claim file documents;
  - (g) Claim notes;
  - (h) Investigation files;
  - (i) Investigator notes; and
  - (j) Other information which the Fraud Division may deem relevant and important.
- (1) For the purpose of this section, the timely release of information means immediate, and no more than [insert number] calendar days after the request is received, unless otherwise agreed to by the Fraud Division.
  - (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.

#### **Section 5. Regulatory Compliance**

The Department of Insurance 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 6. 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.

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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. 1101, 114, 117, 472-477 (adopted).*