



NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS

Date: 7/19/21

Virtual Meeting

MARKET CONDUCT ANNUAL STATEMENT BLANKS (D) WORKING GROUP

Wednesday, July 28, 2021

2:00 – 3:00 p.m. ET / 1:00 – 2:00 p.m. CT / 12:00 – 1:00 p.m. MT / 11:00 a.m. – 12:00 p.m. PT

ROLL CALL

Rebecca Rebholz, Chair	Wisconsin	Teresa Kroll	Missouri
Tate Flott, Vice Chair	Kansas	Martin Swanson	Nebraska
Maria Ailor	Arizona	Hermoliva Abejar	Nevada
Jimmy Harris/Crystal Phelps	Arkansas	Leatrice Geckler	New Mexico
Scott Woods	Florida	Guy Self	Ohio
Sarah Crittenden	Georgia	Gary Jones/Katie Dzurec	Pennsylvania
October Nickel	Idaho	Michael Bailes/Rachel Moore	South Carolina
Erica Weyhenmeyer	Illinois	Maggie Dell	South Dakota
Lori Cunningham	Kentucky	Shelli Isiminger	Tennessee
Erica Bailey	Maryland	Shelley Wiseman	Utah
Mary Lou Moran	Massachusetts	John Haworth	Washington
Jill Huisken	Michigan	Letha Tate	West Virginia
Paul Hanson	Minnesota		

NAIC Support Staff: Teresa Cooper/Beth Bentley

AGENDA

1. Consider Adoption of its June 30 Minutes—*Rebecca Rebholz (WI)* Attachment 1
2. Receive an Update on the Draft Life Market Conduct Annual Statement (MCAS) Edits on Accelerated Underwriting—*Rebecca Rebholz (WI)*
3. Receive an Update on the Other Health Drafting Group—*Rebecca Rebholz (WI)*
4. Discuss the Lawsuit Definitions and Placement of the Lawsuit Data Elements for the Homeowner and Private Passenger Auto MCAS Lines of Business—*Rebecca Rebholz (WI)*
5. Request Submission of Suggested Edits to Existing MCAS Blanks and Data Call and Definitions
6. Discuss Any Other Matters Brought Before the Working Group—*Rebecca Rebholz (WI)*
7. Adjournment

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Draft: 7/26/21

Market Conduct Annual Statement Blanks (D) Working Group
Virtual Meeting
June 30, 2021

The Market Conduct Annual Statement Blanks (D) Working Group of the Market Regulation and Consumer Affairs (D) Committee met June 30, 2021. The following Working Group members participated: Rebecca Rebholz, Chair (WI); Tate Flott, Vice Chair (KS); Teri Ann Mecca (AR); Maria Ailor and Sarah Borunda (AZ); Scott Woods (FL); Sarah Crittenden (GA); October Nickel (ID); Erica Weyhenmeyer (IL); Lori Cunningham (KY); Mary Lou Moran (MA); Mariel Kaufman (MD); Jo LeDuc and Teresa Kroll (MO); Martin Swanson (NE); Gary Jones (PA); Glynda Daniels (SC); Tony Dorschner (SD); Shelli Isiminger (TN); Shelley Wiseman (UT); John Haworth and Ned Gaines (WA); and Letha Tate (WV).

1. Adopted its May 27 and May 26 Minutes

The Working Group met May 27 and May 26 and took the following action: 1) adopted its April 28 minutes; 2) adopted the Travel Market Conduct Annual Statement (MCAS); 3) considered the Other Health MCAS and adopted the draft as the Short-Term Limited-Duration (STLD) Insurance MCAS blank; 4) discussed digital claims MCAS edits to the Homeowners and Private Passenger Auto (PPA) MCAS lines of business; 5) discussed the draft edits to the Life MCAS to include reporting for accelerated underwriting; and 6) adopted the definition of “lawsuit.”

Mr. Flott made a motion, seconded by Mr. Haworth, to adopt the Working Group’s May 27 and May 26 minutes (Attachment). The motion passed unanimously.

2. Received an Update on the Life MCAS Draft Edits for Accelerated Underwriting

Ms. Rebholz stated that the subject matter expert (SME) group has not met since before the May Working Group meetings, but the drafting group under the Accelerated Underwriting (A) Working Group has been meeting weekly in June to review comments received for its released “Part 1” draft. She stated that the definition it is working on is for purposes of its paper only, and since it is still releasing drafts and receiving comments, it is likely to be some time before it is ready to adopt the paper, which will include the definition. She asked if there is any interest in bringing the drafting group back together to review definition options that were discussed during the May Working Group meetings, or if the Working Group should continue to wait for the Accelerated Underwriting (A) Working Group’s final adopted definition of “accelerated underwriting.” She stated that the definition the Accelerated Underwriting (A) Working Group adopts may not be appropriate for an MCAS in defining data to be submitted. Mr. Swanson stated that he is waiting for the Accelerated Underwriting (A) Working Group to get done with its work. Mr. Haworth stated that waiting for the Accelerated Underwriting (A) Working Group to complete its definition may be best; then, the Market Conduct Annual Statement Blanks (D) Working Group can determine how to adjust and edit it for MCAS purposes.

Birny Birnbaum (Center for Economic Justice—CEJ) stated that the definition being worked on by the Accelerated Underwriting (A) Working Group is for the purposes of an educational paper and not for MCAS reporting purposes. He believes waiting for the Accelerated Underwriting (A) Working Group to adopt its definition of “accelerated underwriting” will delay the process. Ms. Rebholz stated that based on feedback from the Market Conduct Annual Statement Blanks (D) Working Group members, this topic will be discussed at future meetings and progress from the Accelerated Underwriting (A) Working Group on the “accelerated underwriting” definition will continue to be monitored and discussed.

3. Adopted Edits to the Draft Homeowners and PPA MCAS on Digital Claims and Adopted the Amended Digital Claims MCAS

Ms. Rebholz stated that the drafts for Homeowners and PPA MCAS edits on digital claims were included in attachments within the meeting materials. She stated that since the May Working Group meetings, comments related to the digital claim drafts were submitted by Missouri, which include a few additional areas for discussion.

Ms. Le Duc stated that Missouri has trouble with the interrogatory question for the listing of third-party vendors because it does not see where this information will add value or provide actionable information. She stated that Missouri’s preference would be not to include this information, as it would just be a list that provides a partial picture, and it leaves out algorithms or data sources that the company might be producing or using on an internal basis, not through a third-party vendor. She stated

that if there were indicators of problems with a company's digital claims, they would have a conversation with them and get additional information at that point as opposed to collecting it up front as part of the MCAS.

Ms. Nickel stated that she believes the purpose of asking for the listing of third-party vendors is to avoid doing additional outreach to carriers, and if a company is using third-party vendors, state insurance regulators would then be aware of that initially.

Peter Kochenburger (University of Connecticut School of Law) stated that one of the problems he sees is that there is no question for determining whether third-party vendors are being used appropriately, and the most important aspect is that insurance carriers pay the full value of the claim up to the limits. He stated that it is difficult to easily determine if there is a predictive algorithm being used that limits the policyholder's or claimant's ability or willingness to negotiate or consistently undervalues claim values whether it is by accident or not. He believes without asking a carrier how they arrived at the settlement amount each time, it would be difficult to examine the issue without having the basic information up front.

Mr. Birnbaum stated that listing the third-party vendors in the interrogatories is similar to listing third-party administrators (TPAs) and managing general agents (MGAs), which state insurance regulators have deemed useful. He stated that if the concern is that third-party vendors are not tied to uses on the digital claims process, a possible solution would be editing the interrogatory to add at the end of the sentence, "and for each vendor, identify the vendor's specific role in the digital claims process" to get the name of the vendor and their role. He stated that the fact that one interrogatory cannot address every possible concern is not a reason to eliminate it, as it can address a significant portion of regulatory and consumer concern, and he believes this interrogatory does that and should be included, with the addition of, "and for each vendor, identify the vendor's specific role in the digital claims process" at the end of the sentence.

Ms. Ailor stated that she has referred to the Financial Annual Statement in the past when wanting to know what MGAs and TPAs a company is using, and she asked if Ms. Nickel has found that helpful in the past. Ms. Nickel stated that she believes this interrogatory goes beyond what is provided in the Financial Annual Statement, and it would be more efficient to have this information provided in the MCAS.

Ms. Moran made a motion, seconded by Ms. Nickel, to keep the interrogatory as it stands and add, "and for each vendor, identify the vendor's specific role in the digital claims process" at the end of the sentence. Ms. LeDuc stated that she would then recommend that the question be restructured differently so that there would be one line per vendor rather than one large amount of information all together. Teresa Cooper (NAIC) asked for clarification on how the Working Group would like that to look. Ms. Nickel stated that including each vendor line by line would be helpful and she would support that. Ms. LeDuc stated that having each vendor on a separate line in the database with the vendor's name and additional information would be helpful. Ms. Cooper stated that there is not a way to continue to add a line if there are more vendors to add, but it would be possible to add five lines for each vendor to be added on a separate line, but there is not a way to have a variable record count. Ms. Nickel suggested adding 20 lines and an additional line for carriers to write in if the 20 lines were insufficient so that it could be revised for the following data year. Ms. Moran stated that she would be willing to amend her motion to include adding 20 lines for vendor information to be entered separately. Ms. Cooper stated that if that many lines were needed, it may be better to add a separate schedule for the list of vendors. Mr. Birnbaum stated that the motion could still be voted on regarding the information to be reported, and then the NAIC could determine the details of how that would look. Ms. Cooper stated that this would work if the motion reflected that. Ms. Moran restated the motion, seconded by Ms. Nickel, to keep the interrogatory as it stands; add, "and for each vendor, identify the vendor's specific role in the digital claims process" at the end of the sentence; and discuss how the details of the data will be reported at a later date. The motion passed unanimously.

Ms. LeDuc stated that she had a suggestion that was related more to appearance. She stated that the paragraph that listed what should or should not be reported regarding digital claims appeared cumbersome, and a table format seems like it would be clearer. Mr. Birnbaum stated that the suggestion makes it appear that only certain coverages are to be reported at the digital claims handling process level of detail, which could be confusing. He stated that he believes the current language is clearer. Ms. LeDuc stated that her understanding is that only dwelling and personal property coverages would be reported at the digital claims level, and perhaps there needs to be a rewording to reflect that those coverages would also need to be reported at the digital claims level. Ms. Nickel asked if the hybrid and traditional claims would still be broken out separately regarding dwelling and personal property. Ms. LeDuc stated that she has no intention of changing the level of detail being collected, and she is just trying to make it easier to read, as she found the description of other breakouts confusing. She asked whether it would be clearer if the phrase above the Xs was removed and replaced with "other breakouts" and what constitutes a digital claim was defined elsewhere. She stated that she does not see the need to report it in the portion of other breakouts.

Ms. LeDuc made a motion, seconded by Ms. Nickel, to implement the suggestion for a table format and add the word “also” so the table description reads, “reported also at the Digital Claim Handling Process Level of Detail.” The motion passed unanimously.

Ms. Rebholz stated that the next item to review relates to the reporting of the Median Days data element. She stated that this edit was discussed and already adopted during the May Working Group meetings. The suggested solution to the concerns raised is to add the sentence, “Additionally, an ‘All’ breakout will be included for the reporting of Median Days to Final Payment.” Ms. Nickel stated that she believes there was already a median day’s breakout for those particular lines. Ms. LeDuc stated that unlike when a claim is reported and you can add all the claims reported in each of the breakout buckets, with median days, you cannot add the median days and get an overall median day because mathematically it does not work. She stated that she is looking for the overall median days for all three digital buckets together. There were no concerns raised with this sentence being added.

Ms. Rebholz stated that the final suggestion to discuss is edits to the digital claims-related definitions submitted for review. Ms. LeDuc stated that she is just trying to simplify the definition based on previous discussions, so the definition stood on its own and was easily understood. Ms. Nickel stated that she would not be opposed to removing the examples and placing them in a separate clarifying document to be used as a guidance tool. Ms. Ailor stated that rather than create another document, maybe it could be worked into the frequently asked questions (FAQ) document that already exists. Mr. Birnbaum suggested that this type of editing and discussion take place in the SME group as opposed to on a Working Group call. He stated that the reason examples were provided was to address issues raised by industry stakeholders that participated in the Digital Claims MCAS SME group discussions. Lisa Brown (American Property Casualty Insurance Association—APCIA) stated that she gets frequent questions for clarification on specific scenarios from members, and she suggests keeping the information in the one Data Call and Definitions document, as she believes it is the best way to ensure the MCAS blanks are completed properly, as opposed to having people refer to more than one document when questions arise. Ms. Nickel stated that she believes examples would be better in an FAQ document, and questions that are not addressed in the Data Call and Definitions and FAQ documents will be handled by the NAIC.

Ms. Nickel made a motion, seconded by Ms. LeDuc, to accept the digital claims edits for the Data Call and Definitions document suggested by Ms. LeDuc and create an FAQ document for digital claims. The motion passed unanimously.

Ms. Nickel made a motion, seconded by Mr. Gaines, to adopt the Digital Claims MCAS with the amendments adopted during this Working Group call. Ms. Brown asked if the adoption of the Digital Claims MCAS would be for the collection of 2023 data to be reported in 2024 since it was not passed by the June 1 deadline. Ms. Rebholz stated that this would be moved to the Market Regulation and Consumer Affairs (D) Committee for approval and determining the data year for reporting. Ms. Cooper stated that the Committee would be made aware that it was not adopted by the June 1 deadline when this information is presented, and the data year was removed from the template and exposed draft, so it would be passed on for its consideration without a data year indicated. The motion passed unanimously.

4. Considered the Lawsuit Definitions and Placement of the Lawsuit Data Elements for the Homeowner and PPA MCAS

Ms. Rebholz stated that there is a situation with the Home and Auto lawsuit definitions and placement, and during the April Working Group meeting, the Working Group approved the expansion of MCAS lawsuit reporting for Home and Auto to include non-claims-related lawsuits. However, the Working Group did not have time to discuss the actual placement and definitions for this expanded reporting prior to the June 1 deadline, and it now needs to determine if there is a way to provide guidance for the already approved expanded reporting for the 2022 data year to be reported in 2023. She stated that an attachment within the meeting materials shows a proposed draft that was distributed for review on June 3, and the intent of the exposed draft was only to accommodate for the already approved, expanded reporting. Comments were received related to the draft from the APCIA, the CEJ, and Missouri.

Ms. Brown stated that based on the written procedures for the MCAS data element revision process, she does not believe the updates are just clarifying and providing guidance to industry. She believes the updates are new data elements, and based on NAIC procedures, they would have needed to be approved by June 1 to be effective for the next data reporting year for collection in 2023. She stated that she has concerns with how arbitrations are addressed in the definition of “lawsuit.” She stated that she believes they are not actions brought before a court of law and therefore should not be included, but if they are to be included, she suggests that the calculation clarification specifically exclude intercompany arbitrations, mutually agreed upon arbitrations, appraisals, and mediations. Mr. Birnbaum stated that arbitrations are not an action brought in a court of law, which is what the definition of “lawsuit” says. He stated that there are different types of arbitrations, and most of them are

mutually agreed upon, which is qualitatively different from a what a lawsuit is. He suggested that the reference to arbitrations either be deleted, or if it is included, that language be added stating, “include arbitrations demanded by the insurer or claimant pursuant to pre-dispute mandatory arbitration provisions in the insurance contract. Do not include mutually-agreed upon arbitrations, appraisals or mediations.” He stated that he believes the model bulletin adopted by the Market Regulation and Consumer Affairs (D) Committee in August 2018, specifically related to arbitration clauses, supports the CEJ and APCIA’s positions on this matter. Ms. Rebholz stated that one of the options available is to hold the approval of expanding the lawsuit reporting to non-claims-related suits until the 2023 data year reported in 2024, without updating the claims-related lawsuit definition for the 2022 data year. Ms. LeDuc stated that the proposal she suggested is more of a layout proposal to create a separate schedule so all the information would be contained in a single space and not in two different sections. She stated that it would be easier to work with and provide the whole picture related to all lawsuits in a single location, as opposed to splitting it across the underwriting and the claims schedule. She stated that it would just be the lawsuit data elements with the six buckets, five for the claims-related lawsuits and one for the non-claims-related lawsuits. Mr. Birnbaum stated that the CEJ made this suggestion a few months back, and it was rejected by the Working Group. He also asked the Working Group to consider whether it wants to collect the lawsuit data broken out by coverage as opposed to just claims-related and non-claims-related data. He stated that it is unclear how an insurer reports lawsuits if it involves multiple coverages and how that data would be interpreted. Ms. LeDuc stated that lawsuit data is currently collected by line of business for the claims. She stated that she looked at suggesting claims versus non-claims-related lawsuit buckets, and that would have been acceptable for Missouri; but in looking at the volume of lawsuits in other jurisdictions, she recognized that other states may continue to find value in the lawsuits broken down by coverage type, so it was kept in the proposal. Ms. Nickel stated that she believes having arbitration data would be valuable to have, whether it is separate of lawsuits or not. Ms. Cooper stated that another option is to discuss this further and then adopt for the following data year if the Working Group does not want to expand the definition, as was previously voted on for the 2022 data year.

Ms. Nickel made a motion, seconded by Ms. LeDuc, to hold on the approval of expanding the lawsuit reporting to non-claims-related lawsuits until the 2023 data year reported in 2024, without updating the claims-related lawsuit definition for 2022, and revert to the prior lawsuit definitions and continue this discussion further. The motion passed unanimously.

Having no further business, the Market Conduct Annual Statement Blanks (D) Working Group adjourned.

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