

UNFAIR DISCRIMINATION AGAINST SUBJECTS OF ABUSE IN DISABILITY INCOME INSURANCE MODEL ACT

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Introductory Note: In addition to this model act, the NAIC drafted the following model acts regarding the unfair discrimination against subjects of abuse: The Unfair Discrimination Against Subjects of Abuse in Property and Casualty Insurance Model Act, The Unfair Discrimination Against Subjects of Abuse in Life Insurance Model Act, and The Unfair Discrimination Against Subjects of Abuse in Health Insurance Model Act.

Section 1. Purpose

The purpose of this Act is to prohibit unfair discrimination by disability income insurers and insurance professionals on the basis of abuse status. Nothing in this Act shall be construed to create or imply a private cause of action for a violation of this Act.

Drafting Note: Consideration was given to including a private cause of action for a violation of this Act. It was concluded that a private cause of action is not inconsistent with the model and that a state legislature could find that a private cause of action is appropriate for that state.

Section 2. Scope

This Act applies to all disability income insurers and insurance professionals involved in issuing or renewing in this state a policy or certificate of disability income insurance.

Section 3. Definitions

Drafting Note: Each state may wish to ensure that the definition of “abuse” for the purposes of this Act does not conflict with the terminology descriptive of abusive behavior in state civil or criminal statutes in such a way as to lead to unintended meanings.

- A. “Abuse” means the occurrence of one or more of the following acts by a current or former family member, household member, intimate partner, or caretaker:
- (1) Attempting to cause or intentionally, knowingly or recklessly causing another person bodily injury, physical harm, severe emotional distress, psychological trauma, rape, sexual assault or involuntary sexual intercourse;
 - (2) Knowingly engaging in a course of conduct or repeatedly committing acts toward another person including following the person without proper authority, under circumstances that place the person in reasonable fear of bodily injury or physical harm;
 - (3) Subjecting another person to false imprisonment; or
 - (4) Attempting to cause or intentionally, knowingly, or recklessly causing damage to property so as to intimidate or attempt to control the behavior of another person.

Drafting Note: States should include appropriate corrective or clarifying language if their ordinary statutory meaning of “person” can be construed as implying legal capacity, since many subjects of abuse are minors and other subjects of abuse may be incapacitated.

- B. “Abuse-related medical condition” means a medical condition sustained by a subject of abuse which arises in whole or part out of an act or pattern of abuse.

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- C. “Abuse status” means the fact or perception that a person is, has been, or may be a subject of abuse, irrespective of whether the person has sustained abuse-related medical conditions.
- D. “Commissioner” means the insurance commissioner of this state.

Drafting Note: Where the word “commissioner” appears in this Act, the appropriate designation for the chief insurance supervisory official of the state should be substituted.

- E. “Confidential abuse information” means information about acts of abuse or abuse status of a subject of abuse, the address and telephone number (home and work) of a subject of abuse, or the status of an applicant or insured as a family member, employer or associate of, or a person, in a relationship with, a subject of abuse.
- F. “Insurance professional” means an agent, broker, adjuster or third party administrator as defined in the insurance laws of this state.

Drafting Note: Many states license other categories of insurance professionals such as agencies, consultants and producers. Each state should review this definition for consistency with the terminology used in its licensing law.

Drafting Note: Unfairly discriminatory underwriting or claims handling practices of a company writing disability income insurance may be committed by insurance professionals when they refuse to process an application or a claim in violation of this act. There is no intent, however, to hold insurance professionals liable for the acts of insurers over which they have no control.

- G. “Insured” means a party named on a disability income policy or certificate as the person with legal rights to the benefits provided by the policy or certificate. For group insurance, “insured” includes a person who is a beneficiary covered by a group policy or certificate.
- H. “Insurer” means a person or other legal entity engaged in the business of disability income insurance in this state.

Drafting Note: States may wish to consider whether residual market mechanisms should be included in the definition of insurer.

Drafting Note: Each state may wish to consider the advisability of defining “insurance” or “disability income insurance” for purposes of this Act if the state’s present insurance code is not satisfactory in this regard. In some cases a cross reference will be sufficient.

- I. “Policy” or “certificate” means a contract of insurance or indemnity, including endorsements, riders or binders issued, proposed for issuance, or intended for issuance by an insurer or insurance professional.
- J. “Subject of abuse” means a person against whom an act of abuse has been directed; who has current or prior injuries, illnesses or disorders that resulted from abuse; or who seeks, may have sought, or had reason to seek medical or psychological treatment for abuse; or protection, court-ordered protection or shelter from abuse.

Section 4. Unfairly Discriminatory Acts Relating to Disability Income Insurance

Drafting Note: Because of the nature and consequences of the prohibited acts, this model provides that a single instance of prohibited conduct is a violation rather than defining a violation as a general business practice of prohibited conduct. States that choose to incorporate this model into their version of the Unfair Trade Practices Act (or other statute) under which those states define a violation as a general business practice should consider whether that approach provides sufficient protection to subjects of abuse.

- A. It is unfairly discriminatory to:
 - (1) Deny, refuse to issue or renew, cancel or otherwise terminate, restrict or exclude insurance coverage on or add a premium differential to any disability income insurance policy on the basis of the applicant’s or insured’s abuse status; or
 - (2) Exclude or limit coverage for losses or denying a claim under a disability income insurance policy on the basis of an insured’s abuse status.

- B. When the insurer or insurance professional has information in its possession that clearly indicates that the insured or applicant is a subject of abuse, the disclosure or transfer of confidential abuse information, as defined in this Act, for any purpose or to any person is unfairly discriminatory, except:
- (1) To the subject of abuse or an individual specifically designated in writing by the subject of abuse;
 - (2) To a health care provider for the direct provision of health care services;
 - (3) To a licensed physician identified and designated by the subject of abuse;
 - (4) When ordered by the commissioner or a court of competent jurisdiction or otherwise required by law;
 - (5) When necessary for a valid business purpose to transfer information that includes confidential abuse information that cannot reasonably be segregated without undue hardship, confidential abuse information may be disclosed only if the recipient has executed a written agreement to be bound by the prohibitions of this Act in all respects and to be subject to the enforcement of this Act by the courts of this state for the benefit of the applicant or insured, and only to the following persons:
 - (a) A reinsurer that seeks to indemnify or indemnifies all or any part of a policy covering a subject of abuse and that cannot underwrite or satisfy its obligations under the reinsurance agreement without that disclosure;
 - (b) A party to a proposed or consummated sale, transfer, merger or consolidation of all or part of the business of the insurer or insurance professional;
 - (c) Medical or claims personnel contracting with the insurer, only where necessary to process an application or perform the insurer's or insurance professional's duties under the policy or to protect the safety or privacy of a subject of abuse (also includes parent or affiliate companies of the insurer that have service agreements with the insurer or insurance professional); or
 - (d) With respect to address and telephone number, to entities with whom the insurer or insurance professional transacts business when the business cannot be transacted without the address and telephone number;
 - (6) To an attorney who needs the information to represent the insurer or insurance professional effectively, provided the insurer or insurance professional notifies the attorney of its obligations under this Act and requests that the attorney exercise due diligence to protect the confidential abuse information consistent with the attorney's obligation to represent the insurer or insurance professional;
 - (7) To the policyowner or assignee, in the course of delivery of the policy, if the policy contains information about the abuse status; or
 - (8) To any other entities deemed appropriate by the commissioner.
- C. It is unfairly discriminatory to request information about acts of abuse or abuse status, or make use of that information, however obtained.
- D. Subsection B does not preclude a subject of abuse from obtaining his or her insurance records.
- E. Subsection D does not prohibit a disability income insurer or insurance professional from asking about a medical condition or from using medical information to underwrite or to carry out its duties under the policy, even if the medical information is related to a medical condition that the insurer knows or has reason to know is abuse-related, to the extent otherwise permitted under this Act and other applicable law.

- F. A disability income insurer or insurance professional shall not be held civilly or criminally liable for the death of or injury to an insured resulting from an action taken in a good faith effort to comply with the requirements of this Act. However, this subsection does not prevent an action to investigate or enforce a violation of this Act or to assert any other claims authorized by law.

Section 5. Justification of Adverse Insurance Decisions

An insurer or insurance professional that takes an action that adversely affects an applicant or insured on the basis of a medical condition that the insurer or insurance professional knows or has reason to know is abuse-related shall explain the reason for its action to the applicant or insured in writing and shall be able to demonstrate that its action, and any applicable policy provision:

- A. Does not have the purpose or effect of treating abuse status as a medical condition or underwriting criterion;
- B. Is not based upon any actual or perceived correlation between a medical condition and abuse;
- C. Is otherwise permissible by law and applies in the same manner and to the same extent to all applicants and insureds with a similar medical condition or disability without regard to whether the condition is abuse-related; and
- D. Except for claims actions, is based on a determination, made in conformance with sound actuarial principles and otherwise supported by actual or reasonably anticipated experience, that there is a correlation between the medical condition and a material increase in insurance risk.

Section 6. Insurance Protocols for Subjects of Abuse

Insurers shall develop and adhere to written policies specifying procedures to be followed by employees and by insurance professionals they contract with, for the purpose of protecting the safety and privacy of a subject of abuse and shall otherwise implement the provisions of this Act when taking an application, investigating a claim, pursuing subrogation or taking any other action relating to a policy or claim involving a subject of abuse. Insurers shall distribute their written policies to employees and insurance professionals.

Drafting Note: States may wish to consider requiring insurers to develop procedures in consultation with domestic violence advocacy groups.

Drafting Note: States are advised that these policies and procedures should be subject to review as part of a market conduct examination or otherwise at the request of the commissioner.

Section 7. Enforcement

The commissioner shall conduct a reasonable investigation based on a written and signed [add any means by which the commissioner receives complaints] complaint received by the commissioner and issue a prompt determination as to whether a violation of this Act may have occurred. If the commissioner finds from the investigation that a violation of this Act may have occurred, the commissioner shall promptly begin an adjudicatory proceeding. The commissioner may address a violation through means appropriate to the nature and extent of the violation, which may include suspension or revocation of certificates of authority or licenses, imposition of civil penalties, issuance of cease and desist orders, injunctive relief, a requirement for restitution, referral to prosecutorial authorities or any combination of these. The powers and duties set forth in this section are in addition to all other authority of the commissioner.

Drafting Note: States may wish to delete this section if the substance of it already exists in state law.

Section 8. Effective Date

This Act is effective [insert date], and applies to all actions taken on or after the effective date, except where otherwise explicitly stated. Nothing in this Act shall require an insurer to conduct a comprehensive search of its contract files existing on the effective date solely to determine which applicants or insureds are subjects of abuse.

Chronological Summary of Actions (all references are to the Proceedings of the NAIC).

1996 Proc. 4th Quarter 9, 44, 281, 309-312 (adopted).

1998 Proc. 3rd Quarter 14, 83, 88-89, 101-104 (amended and reprinted).