

GUIDELINE ON NONADMITTED ACCIDENT AND HEALTH COVERAGES

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Section 1. Purpose

This guideline provides assistance to states updating laws and establishing procedures for allowing accident and health coverage to be procured in the nonadmitted market either independently or through surplus lines brokers. States considering any action to allow accident and health coverage placement with nonadmitted insurers should consider this guideline during a review of existing laws, regulations, and procedures, with particular attention to whether existing insurance laws, tax laws, or regulations expressly prohibit the export of accident and health coverage, contain restrictive definitions with a similar effect, or include substantive provisions that specifically refer in some manner to property and casualty insurance. Amending or interpreting some of these laws to permit placement of accident and health coverage while leaving other property and casualty-specific laws in place in their current form could result in conflicts or unintended consequences.

The types of accident and health coverage that some states are permitting in their nonadmitted market include, but are not limited to, the following: short term medical, international major medical, excess disability, high-risk disability and other similar coverages. It should be noted that comprehensive health plans, Medicare supplement insurance and standard disability insurance coverage are not suitable for the nonadmitted market.

Section 2. Background

The term “nonadmitted insurance” refers to coverage that is not found in the admitted insurance market and can lawfully be sold on a nonadmitted basis. Nonadmitted insurance coverage is typically utilized to insure against a loss that exceeds the maximum limits or benefits found in coverages available within the admitted market.

While nonadmitted insurance coverages are traditionally found within the property and casualty market, there is an increasing need to supplement the admitted market for certain types of accident and health coverages. The federal Nonadmitted and Reinsurance Reform Act of 2010 (NRRRA), passed as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act, applies only to property and casualty insurance.

Nonadmitted accident and health coverage can be utilized to fulfill the risk mitigation needs of certain potential insureds. However, as discussed in more detail in Sections 4 and 6, the greater flexibility found in the nonadmitted market involves tradeoffs with less stringent consumer protections. The following background highlights certain coverages and identifies why the coverage may not be available from admitted insurers:

- There are high-income individuals who cannot procure sufficient disability income coverage in the market as admitted carriers may only offer maximum limits that would replace a lower percentage of these individuals' income than they might require to sustain their needs in case of a disability.
- Individuals in high-risk occupations, such as sports, entertainment, and aviation, are often not eligible for adequate disability coverage in the admitted market.
- International major medical insurance is insurance coverage provided to individuals while outside of their home country. This is a specialty line that might have limited or no availability in the admitted market. Comprehensive health plans issued in the U.S. often restrict or exclude coverage for health care obtained while the covered U.S. resident is visiting another country, for a short or long duration. Also, a foreign national visiting the U.S. may not be eligible for medical coverage from U.S. insurers. In either case, an individual's medical insurance from his or her home jurisdiction may not provide coverage in other countries.
- International travel insurance is designed to provide coverage to U.S. residents traveling abroad where domestic insurers do not provide coverage. It should be noted that this insurance may be subject to coverage requirements of the laws of the jurisdiction where it is effective (i.e., destination country) that may differ from the U.S. These policies contemplate the unique risks involved in travel and can be tailored to fit a particular destination or activity: (e.g., a traveler backpacking in several European countries or a student participating in a study abroad program). In addition, this coverage may be purchased to satisfy insurance requirements for entry into a destination country or to qualify for a student visa.

States have already established laws and processes to which carriers and brokers of surplus lines insurance must adhere. There are jurisdictions that have created a list of types of coverages that may be exported to the nonadmitted market, or that specifically prohibit certain coverage types from being exported to a surplus lines insurer. Additional requirements also apply, such as the obligation to exercise due diligence before a surplus lines broker can place coverage, which may be subject to specific procedures in some states.

Section 3. Definition

Some states have enacted laws that recognize the types of insurance that are eligible for placement with nonadmitted insurers. The NAIC *Nonadmitted Insurance Model Act* (#870), states in part:

“Surplus lines insurance means any property and casualty insurance in this state on properties, risks or exposures, located or to be performed in this state, permitted to be placed through a surplus lines licensee with a nonadmitted insurer eligible to accept such insurance....”

A state's definition of “Surplus Lines Insurance” or “Nonadmitted Insurance” will often specify the types of insurance permitted by law. A state could elect to expand these definitions to include accident and health coverages. For states that identify specific coverages within their definitions of surplus lines or nonadmitted insurance, this list could be revised to describe the types of accident and health coverage the state has chosen to permit or prohibit.

Section 4. Consumer Protection

The admitted market is closely regulated and features strong, prescriptive consumer protection measures. States should take into consideration the differences between these regulatory philosophies when deciding which types of accident and health coverages may be offered in the nonadmitted market. Steps to ensure consumer protection can be implemented at a statutory level (slowly expanding a restrictive list of allowed coverage in nonadmitted markets) or at a consumer level by requiring disclosures that the coverage is issued by a nonadmitted insurer and what that means for the consumer. These disclosures are particularly important for types of coverage that might be marketed as alternatives to comprehensive health plans, where consumers may expect a high level of consumer protection. This is the tradeoff states should address if they are considering allowing coverage such as short-term medical plans, limited-benefit medical plans, or stop-loss insurance to be offered in the nonadmitted market.

Section 5. Eligibility Criteria for Nonadmitted Insurers

States should review their laws and regulations that set forth eligibility requirements for nonadmitted insurers domiciled in United States jurisdictions to ascertain whether the state's thresholds are adequate for accident and health coverage. Although nonadmitted alien insurers may be eligible on an individual state basis, the NRRRA mandates that inclusion on the NAIC's *Quarterly Listing of Alien Insurers* provides eligibility across all jurisdictions for nonadmitted property and casualty insurance. Many states have incorporated this provision into state law. States that maintain an eligibility listing of nonadmitted insurers should consider whether these procedures should be modified to address accident and health insurers.

Section 6. Lines Open for Export; Export Lists

In some states, current law provides broad authority for the Commissioner to designate a particular type of coverage to be eligible for export without compliance with certain conditions, such as satisfying a diligent search requirement. In some states, these laws could permit accident and health coverages to be included on the export list. But other states have explicit prohibitions against exporting accident and health coverage or other provisions that might operate to limit the scope of their export list laws.

Section 7. Exemption from Filing Rates and Forms; Policy Language

Existing state laws establish a regulatory system for transacting nonadmitted insurance. Fundamental to the nature of this business is the exemption from rate and form filings for all types of nonadmitted insurance. Many states have specific provisions that are required or prohibited in some or all nonadmitted policies, but the mechanism for enforcing these requirements is not through a mandatory rate and form review procedure. Some types of accident and health insurance, by contrast, are subject to specific rate and form filing requirements, in some cases mandated by federal laws or regulations. States need to determine how to accommodate these requirements if they are considering allowing these types of coverage to be offered in the nonadmitted market.

Section 8. Licensing of Producers and Surplus Lines Brokers

States need to assess licensing requirements for producers and surplus lines brokers for placement of accident and health coverage. Existing laws might specifically require property and casualty authority as a necessary prerequisite for surplus lines authority.

Section 9. Requirements for Placement

States should review any statutory and regulatory requirements for a diligent search in the admitted market by a producer or surplus lines broker for the type of coverage the customer has requested. Some states may have further restrictions on eligibility for export, such as limitations on the amount of insurance that is procurable over the amount available from admitted insurers. Furthermore, some states do not allow export for the purpose of securing certain advantages, such as lower premium rates or more favorable terms of the insurance policy.

Section 10. Premium Taxes and Reporting Requirements

States should review their existing laws regarding nonadmitted insurance premium tax and consider applying the same tax rate for the calculation and reporting of premium taxes for all nonadmitted insurance. Otherwise, states should amend those laws with specific provisions for the calculation of premium tax for accident and health insurance.

State laws and procedures for consumer notices, reporting policy transactions, premium tax payments, filing affidavits, reports, and other required documents could be expanded to apply to accident and health coverages.

Section 11. Home State Regulation

The NRRRA enacts a federal definition of “home state” and provides that the placement of nonadmitted insurance is subject solely to the statutory and regulatory requirements of the insured’s home state. This provides for a consistent method of determining jurisdiction for the regulation of nonadmitted insurance. Many states have incorporated this framework into state law. States should consider applying it to nonadmitted accident and health coverages.

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

2019 Proc. 1st Quarter (adopted).