

Draft Pending Adoption

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Innovation and Technology (EX) Task Force
New York, New York
August 5, 2019

The Innovation and Technology (EX) Task Force met in New York, NY, Aug. 5, 2019. The following Task Force members participated: Jon Godfread, Chair (ND); Keith Schraad, Vice Chair (AZ); Lori K. Wing-Heier (AK); Jim L. Ridling represented by Steve Ostlund (AL); Allen W. Kerr represented by William Lacy (AR); Ricardo Lara represented by Lucy Jabourian (CA); Michael Conway represented by Peg Brown (CO); Andrew N. Mais and George Bradner (CT); Stephen C. Taylor (DC); Trinidad Navarro represented by Tanisha Merced and Frank Pyle (DE); Colin M. Hayashida represented by Gordon I. Ito (HI); Doug Ommen (IA); Dean L. Cameron (ID); Robert H. Muriel represented by Judy Mottar (IL); Vicki Schmidt represented by Tate Flott (KS); Nancy G. Atkins represented by John Melvin (KY); James J. Donelon represented by Rich Piazza (LA); Al Redmer Jr. represented by Robert Baron (MD); Anita G. Fox represented by Chad Arnold (MI); Steve Kelley represented by Phil Vigliaturo and Tammy Lohmann (MN); Chlora Lindley-Myers and Angela Nelson (MO); Bruce R. Ramge (NE); John Elias represented by Christie Rice (NH); Marlene Caride (NJ); John Franchini represented by Anna Krylova (NM); Barbara D. Richardson (NV); Mike Causey represented by Kathy Schott (NC); Jillian Froment (OH); Glen Mulready represented by Cuc Nguyen (OK); Andrew Stolfi and TK Keen (OR); Jessica Altman represented by Shannen Logue and Michael McKenney (PA); Elizabeth Kelleher Dwyer and Beth Vollucci (RI); Raymond G. Farmer (SC); Larry Deiter (SD); Carter Lawrence represented by Lorrie Brouse (TN); Kent Sullivan (TX); Todd E. Kiser represented by Reed Stringham (UT); Scott A. White represented by Eric Lowe (VA); Michael S. Pieciak represented by Christina Rouleau (VT); Mike Kreidler represented by Lichiou Lee and Molly Nollette (WA); Mark Afaible represented by Nathan Houdek (WI); and James A. Dodrill represented by Erin K. Hunter (WV).

1. Adopted its June 4 Minutes

The Task Force met June 4 and took the following action: 1) adopted its Spring National Meeting minutes; 2) heard a presentation on rebating from the California Department of Insurance (DOI); 3) heard presentations on anti-rebating language in the *Unfair Trade Practices Act* (#880) from the American Property Casualty Insurance Association (APCIA), the Center for Economic Justice (CEJ), the Council of Insurance Agents & Brokers (CIAB), the Independent Insurance Agents and Brokers of America (IIABA), Notion, Unum and Zurich North America; 4) heard a presentation on rebating from the Rhode Island Division of Insurance; 5) and discussed its next steps for the anti-rebating discussion.

Commissioner Godfread asked if there was any discussion regarding the Task Force's June 4 interim meeting minutes. Hearing none, Mr. Ostlund made a motion, seconded by Director Schraad, to adopt the Task Force's June 4 minutes (Attachment Four). The motion passed unanimously.

2. Adopted the Reports of its Working Groups

a. Big Data (EX) Working Group

Commissioner Ommen said the Big Data (EX) Working Group met Aug. 3. He said after the Spring National Meeting and the referral to the Life Insurance and Annuities (A) Committee to study the use of external data and data analytics in accelerated life underwriting, the Big Data (EX) Working Group has turned its attention to the use of data for fraud detection and claim settlements. During its Aug. 3 meeting, the Working Group heard presentations from the Insurance Services Office (ISO) and the National Insurance Crime Bureau (NICB) to help inform the Working Group about current market practices in the property/casualty (P/C) industry.

He said the ISO provided an overview of three of its products the insurance industry uses for fraud detection and claim settlement. These include its ClaimSearch system, used by insurance companies to identify questionable relationships or networks within a claim record, and Verisk Weather, which provides historical weather data and loss exposure analysis for companies. He said the ISO also provided an overview of ClaimXperience, which is a policyholder collaboration portal used for processing lower value property damage claims.

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Commissioner Ommen said the NICB presentation primarily focused on the NICB's Geospatial Intelligence Center (GIC), which provides aerial imagery of pre- and post-catastrophe conditions of property to assess potential fraud and speed up the claim settlement process.

He said the Working Group also received a brief update from the Casualty Actuarial and Statistical (C) Task Force regarding its white paper on best practices for the regulatory review of predictive analytics, stating that the Task Force will soon issue its third draft of the white paper. He said the Working Group would like to delve deeper into the specific data elements used in fraud detection and claim settlement models beyond the traditional data collected during a claim investigation.

Director Froment made a motion, seconded by Director Wing-Heier, to adopt the report of the Big Data (EX) Working Group (Attachment One). The motion passed unanimously.

b. Speed to Market (EX) Working Group

Superintendent Franchini said the Speed to Market (EX) Working Group met June 25–26 and conducted an e-vote that concluded July 16.

During its June 25 meeting, the Working Group focused on suggestions to the Uniform Property & Casualty Product Coding Matrix and adopted four changes that are effective Jan. 1, 2020. The four changes are to: 1) update the description for the 5.0 Commercial Multi-Peril (CMP) Liability and Non-Liability Type of Insurance (TOI) to state “various property and/or liability risk exposures” in lieu of “various property and liability risk exposures”; 2) update the description for the 5.1 Commercial Multi-Peril Non-Liability portion to read: “Coverage for non-liability commercial multiple peril contracts”; 3) update the description for the 5.2 Commercial Multi-Peril Liability portion to read: “Coverage for liability commercial peril contracts”; and 4) add a sub-TOI under Workers' Compensation of “Occupational Accident Worker's Compensation.”

Superintendent Franchini said, during its June 26 meeting, the Working Group focused on suggestions to the Uniform Life, Accident & Health, Annuity and Credit Product Coding Matrix. He said the suggestions discussed involved changes and additions to existing TOIs and sub-TOIs, but the Working Group decided the suggested changes were not needed at this time due to the lack of need by most states and where needed, states can use state-specific TOIs. He said the only change adopted from the June 26 meeting was to remove the references to 2010 dates on the Medicare Supplement instructions in the product coding matrix for all TOIs and sub-TOIs and replace them with references to 2020 dates.

Superintendent Franchini made a motion, seconded by Ms. Lee, to adopt the report of the Speed to Market (EX) Working Group, including its June 25–26 (Attachment Two) and July 16 (Attachment Two-A) minutes, as well as its proposed changes to the Uniform Property & Casualty Product Coding Matrix and to the Uniform Life, Accident & Health, Annuity and Credit Product Coding Matrix (Attachment Two-A1). The motion passed unanimously.

c. Innovation and Technology State Contacts Roundtable

Commissioner Godfread asked Denise Matthews (NAIC) to provide an update regarding the meeting of the Innovation and Technology State Contacts Roundtable held on Aug. 1.

Ms. Matthews said 34 states were represented at the meeting, and 48 state insurance regulators were in attendance. She said the three volunteer leaders of the group—Jerry Workman (AL), George Bradner (CT) and Chris Aufenthie (ND)—provided opening remarks, and then the meeting was opened up to attendees to discuss experiences and observations regarding taking on the role of the named Innovation and Technology state contact. She said the group also: 1) discussed the insurance regulatory sandbox, including defining it for the benefit of future discussions; 2) heard a briefing from NAIC legal staff on legislative activity around sandbox and sandbox concepts; and 3) received an update from Mr. Melvin on Kentucky's insurance regulatory sandbox since its implementation in late June.

Ms. Matthews said the group discussed on-demand products, and Travis Grassel (IA) gave the group an update regarding take-aways from the InsurTech event he attended. She said the meeting ended with a discussion about future meetings and an introduction to the Innovator/Regulator Workshop that took place right after the meeting.

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3. Discussed Options for Addressing the Anti-Rebating Issues

Commissioner Godfread introduced the anti-rebating topic with a review of the background and activity to date. He said startups and incumbent insurers doing InsurTech have found that anti-rebating law interpretation and practices across states create challenges in terms of compliance due, in part, to the inconsistencies in this area. He said in short, the Model #880 was introduced more than 100 years ago, after agents' use of rebates threatened the solvency of life insurance companies and raised questions around unfair discriminatory practices, and likely needs to be re-visited. He said during the Task Force meeting at the NAIC/NIPR Insurance Summit, it received presentations from stakeholders on this topic, where opinions varied from just leaving it alone, drafting model law changes and proposing to repeal it for commercial lines. He said clearly there was a sentiment expressed by all that the situation could be and probably should be improved through a more consistent interpretation and implementation of the statute related to anti-rebating. He said the APCIA proposed language to add to, as an amendment, the current model law language, and others provided thoughts on possibly developing guidance that might move states toward a more consistent set of criteria for evaluating value-added products and services in order to avoid conflicts with the language.

Commissioner Godfread presented a draft North Dakota guideline based on the feedback from that meeting (Attachment Three). He said it is presented as a starting point for discussion should the Task Force agree that it would be appropriate and helpful to work on a guideline. Before the Task Force members discussed the draft, he asked Ms. Matthews to provide an overview of the NAIC model law process.

Ms. Matthews provided an overview of the process. Commissioner Godfread also asked Ms. Matthews to provide an overview of the discussion regarding anti-rebating that took place at the National Conference of Insurance Legislators (NCOIL) in Newport, CA, prior to the NAIC Summer National Meeting. She said NCOIL is also looking at rebate reforms as part of an effort to develop model "insurance modernization" legislation aimed at helping the insurance industry move past what some view as antiquated processes. She said legislators have identified three issues as ripe for development of model legislation: 1) rebate reform initiatives; 2) optional electronic delivery and posting of insurance information; and 3) the electronic issuance of salvage titles. She said as part of the rebate reform discussions at their recent summer meeting, NCOIL legislators discussed reforms in Maine and the draft language proposed by the APCIA. She said legislators voiced the need to strike a balance with repealing old, outdated statutes while not completely repealing anti-rebating laws and that legislators will continue their work at the NCOIL annual meeting in December.

Commissioner Godfread also said the APCIA had asked to address the Task Force as well regarding the NCOIL meeting. David Kodama (APCIA) provided that update. He said there was quite a bit of support for moving forward on this issue at the NCOIL meeting. He emphasized the APCIA's approach regarding the model language revisions it proposed during the Task Force meeting at the Insurance Summit on June 4 and noted NCOIL indicated it would like to have language ready to vote on by its meeting in December that follows the NAIC Fall National Meeting.

Commissioner Godfread asked the Task Force members for their thoughts on how best to move forward given the information presented. Director Range said the North Dakota draft guideline is very helpful but said considering the differing interpretations of the existing language, it might be beneficial to work on the model language. Commissioner Ommen agreed but did not think the work could be completed by the end of the year. Director Wing-Heier agreed that working on model language may be the best approach. Superintendent Franchini said defining the processes and services would be helpful, and Ms. Brouse suggested pursuing a guideline while working on model language would be a good approach. Commissioner Godfread said he would support that to keep the discussion going and provide something to states that want to act in the short term.

Mr. Kodama said Ohio has provided guidance that differs from the North Dakota draft in that it does not require the product or service to be specified in the policy contract. He said the APCIA believes having to specify it in the contract hinders innovation.

Birny Birnbaum (CEJ) said the CEJ strongly opposes opening up the model and the APCIA proposed language. He said the CEJ does not oppose providing consideration to consumers but opposes doing it on an ad hoc basis. He said if it is specifically stated in the policy, it is not a rebate.

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John Fielding (CIAB) encouraged the Task Force members to amend the model but also consider repealing the anti-rebating provisions completely for commercial lines. He also said brokers differ from carriers in that they do not control the policy language, so requiring it to be specified in the policy does not work well and does not allow the brokers and commercial lines purchasers to negotiate the contract.

Commissioner Stolfi said Internet of Things (IoT) devices collect a lot of data and that should be a consideration when looking at this issue.

Director Wing-Heier said she agrees with Ms. Brouse regarding continuing work on a guideline while pursuing the model language development.

Director Wing-Heier made a motion, seconded by Director Farmer, to proceed with a Request for NAIC Model Law Development and continuing work on a draft guideline. The motion passed unanimously.

4. Heard an Update on Cybersecurity Initiatives and the Implementation of Model #668

Director Farmer provided an update on cybersecurity initiatives. He said the group just concluded the After-Action Report call with the U.S. Department of the Treasury (Treasury Department) regarding the cybersecurity tabletop exercise held in South Carolina on July 22, and companies have addressed a number of issues identified during that exercise.

Director Farmer said adoption of the *Insurance Data Security Model Law* (#668) remains a high priority. He said six states have adopted it to date, and it has cleared the legislature in two additional states. He said the Treasury Department endorsed it and recommended its prompt adoption by the states to avoid congressional action.

Director Farmer said a kick-off call for the upcoming joint Kansas and Missouri ransomware cyber tabletop exercise was held, and 42 individuals from the state insurance and information technology (IT) departments, 12 companies, financial examiners from several states, of the Treasury Department and law enforcement are expected to participate. He said the cyber tabletop exercise will take place on Sept. 5 in Kansas City, MO, and will be the final event done in cooperation with Treasury Department. He said the NAIC will conduct two cyber tabletop exercises in 2020, tentatively planned for early second quarter and late third quarter.

Ethan Sonnichsen (NAIC) provided an update on federal activities related to cybersecurity and data privacy. He said NAIC staff have been in a number of meetings about data privacy; data security and big data; being mindful of the differences between cybersecurity and data privacy issues; data privacy being related to once you have the data, how do you use it; what consent is provided for that use; and other related issues. He said there are a lot of moving parts to this area of policy. He said there is recognition regarding the significant amounts of data available and that is creating motivation, on the part of the federal government, to understand and want to define the framework around that, and some prefer a federal solution that might preempt the state's oversight. He said nothing has been released to date, but NAIC staff in the Washington, DC, office are watching it closely, including legislation focused on increased transparency and disclosure to consumers.

Jennifer McAdam (NAIC) provided a briefing on work the NAIC Legal staffs have done in the area of cybersecurity and data privacy. She said the NAIC has three model laws governing data privacy: 1) the *Health Information Privacy Model Act* (#55); 2) the *NAIC Insurance Information and Privacy Protection Model Act* (#670); and 3) the *Privacy of Consumer Financial and Health Information Regulation* (#672).

Ms. McAdam provided background and context around the drafting of these laws and talked about what they cover. She said 17 states have adopted Model #670. She said the NAIC adopted Model #672 and Model #673 following the federal Health Insurance Portability and Accountability Act (HIPAA) of 1996 and the federal Gramm-Leach-Bliley Act (GLBA) in 1999. She said the two are often conflated, but the focus of the regulations is different. One is focused on data security regulations on how the information that a business collects is protected from unauthorized access once it is in the possession of the business, and the other is focused on consumers' rights to privacy and how companies are allowed to collect and then disclose the personal information of a consumer. She said today's focus is only about consumer privacy and not data security. She said every state has a version of Model #55, although 19 states have only adopted the provision regarding financial information and not the one regarding health information. She said data privacy has started to get more attention with the passing of the European Union's

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(EU) General Data Protection Regulation (GDPR) and the California Consumer Privacy Act (CCPA). She reviewed the provisions of both at a high level.

Ms. McAdam said a number of states have considered introducing data privacy legislation, but only three have enacted laws. She covered those three states: Illinois, Maine and Nevada. She said a bill is pending in New York, and five states passed bills establishing task forces to study the issue of data privacy. She said others have legislation still pending that will carry over to 2020.

Commissioner Godfread said that based on the information provided, it would be appropriate for an NAIC committee to pursue further investigation into state insurance privacy protections to evaluate where there may be gaps or omissions that may require some type of additional work to ensure appropriate protections are in place in regard to data privacy related to insurance transactions. He said given this is a consumer issue, he suggests referring a charge to the NAIC's Market Regulation and Consumer Affairs (D) Committee to take this on with a charge to: "Review state insurance privacy protections regarding the collection, use and disclosure of information gathered in connection with insurance transactions and make recommended changes, as needed, to certain NAIC models, such as the *NAIC Insurance Information and Privacy Protection Model Act* (#670) and the *Privacy of Consumer Financial and Health Information Model Regulation* (#672) by the 2020 Summer National Meeting." Director Lindley-Myers said as the chair of the Market Regulation and Consumer Affairs (D) Committee, it accepts the referral of the charge.

Director Lindley-Myers made a motion, seconded by Ms. Brouse, to refer a charge to the Market Regulation and Consumer Affairs (D) Committee to review state insurance privacy protections regarding the collection, use and disclosure of information gathered in connection with insurance transactions and make recommended changes, as needed, to certain NAIC models, such as Model #670 and Model #672, by the 2020 Summer National Meeting. Mr. Birnbaum asked if the Task Force would consider expanding the charge beyond just considering the two current models as he said the consumer protections the committee may consider may not fit within the chassis of those two models. Ms. Brouse said the charge appears to be broad enough to address that concern. The motion passed unanimously.

5. Heard a Presentation from Theta Lake on its Platform That Leverages Detections to Power a Visual and AI-Assisted Workflow to Ease the Compliance Reporting and Review Process

Commissioner Godfread asked Marc Gilman (Theta Lake) to present to the Task Force. Mr. Gilman introduced himself and his company, including information on its executive team, financial backers and leading partners and customers. He said Theta Lake provides last mile compliance artificial intelligence (AI) using natural language processing and machine learning to detect risks in voice, visual, video, chat and documents. He said it can scan the content to find out, for example, if a suitability conversation has taken place. Mr. Gilman said the platform leverages detections to power a visual and AI-assisted workflow to ease the compliance review and reporting. He said it improves efficacy, efficiency and consistency, and it scales to meet modern compliance needs through digital compliance. He said this is very important from the perspective of there being more and more regulatory requirements, changing regulations for privacy and security require more proactivity, and personal accountability regimes reinforce proactivity.

6. Appointed a Working Group on AI

Commissioner Godfread said it is no surprise that the topic of AI is top of mind these days given the availability of "big data" and everything being written on the topic, including information and statistics that show the insurance industry is aware and extremely interested in it from a competitive and cost savings perspective. He said that the EU has been doing a lot of work in this area and that the Organisation for Economic Cooperation and Development (OECD) has published AI Principles adopted by 42 countries. Commissioner Godfread said it seems appropriate for the Task Force to consider formally taking on a charge to look at this topic and recommended the Task Force create an Artificial Intelligence (EX) Working Group to work on it. He suggested the Working Group should be formed with the charge to: "Study the development of artificial intelligence, its use in the insurance sector, and its impact on consumer protection and privacy, marketplace dynamics, and the state-based insurance regulatory framework. The Working Group will develop regulatory guidance, beginning with guiding principles, and make other recommendations to the Innovation and Technology (EX) Task Force as appropriate by the 2020 Summer National Meeting."

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Mr. Birnbaum asked if this Working Group and charge might be overlapping with the Big Data (EX) Working Group's activities. Commissioner Godfread said the work product of the Artificial Intelligence (EX) Working Group would be broad-based and at a higher level, serving as umbrella, over-arching principles. He said it would be intended to take work already done and see what makes sense for the insurance industry. He said the Big Data (EX) Working Group is taking a much deeper dive regarding the inputs, outputs and algorithms being used and for what specific purposes.

Director Schraad made a motion, seconded by Director Wing-Heier, to appoint the Artificial Intelligence (EX) Working Group under the Innovation and Technology (EX) Task Force with the charge to study the development of AI, its use in the insurance sector, and its impact on consumer protection and privacy, marketplace dynamics, and the state-based insurance regulatory framework, as well as develop regulatory guidance and make other recommendations. The motion passed unanimously.

Commissioner Godfread offered to chair the Working Group and asked Commissioner Afable to serve as vice chair. Hearing no objections, he asked members of the Task Force wishing to serve as a member of the Working Group to send those requests to NAIC staff by Aug. 23.

7. Heard a Consumer Representative Request for an InsurTech Bulletin

Mr. Birnbaum suggested he present his request for an InsurTech bulletin on a future Task Force call due to time limitations. Commissioner Godfread agreed to move this agenda item to the Task Force's next meeting.

Having no further business, the Innovation and Technology (EX) Task Force adjourned.

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