

## **INNOVATION AND TECHNOLOGY (EX) TASK FORCE**

Innovation and Technology (EX) Task Force Aug. 14, 2021, Minutes

Big Data and Artificial Intelligence (EX) Working Group July 9, 2021, Minutes (Attachment One)

Speed to Market (EX) Working Group June 30, 2021 and June 29, 2021, Minutes (Attachment Two)

E-Commerce (EX) Working Group June 30, 2021, Minutes (Attachment Three)

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## Draft Pending Adoption

Draft: 8/30/21

Innovation and Technology (EX) Task Force  
Columbus, Ohio  
August 14, 2021

The Innovation and Technology (EX) Task Force met in Columbus, OH, Aug. 14, 2021. The following Task Force members participated: Jon Godfread, Chair, and Chris Aufenthie (ND); Elizabeth Kelleher Dwyer, Vice Chair, and Matt Gendron (RI); Lori K. Wing-Heier represented by Sarah Bailey (AK); Jim L. Ridling (AL); Alan McClain (AR); Evan G. Daniels (AZ); Ricardo Lara represented by Lucy Jabourian (CA); Michael Conway and Peg Brown (CO); Andrew N. Mais and George Bradner (CT); Karima M. Woods (DC); Trinidad Navarro (DE); David Altmaier represented by John Reilly (FL); Colin M. Hayashida (HI); Doug Ommen and Johanna Nagel (IA); Dean L. Cameron (ID); Dana Popish Severinghaus represented by C.J. Metcalf (IL); Vicki Schmidt (KS); Sharon P. Clark represented by Rob Roberts (KY); James J. Donelon represented by Tom Travis (LA); Gary D. Anderson (MA); Kathleen A. Berrane (MD); Eric A. Cioppa (ME); Anita G. Fox represented by Chad Arnold (MI); Grace Arnold (MN); Chlora Lindley-Myers represented by Cynthia Amann (MO); Mike Chaney (MS); Troy Downing (MT); Mike Causey represented by Tracy Biehn (NC); Eric Dunning (NE); Chris Nicolopoulos represented by David Bettencourt (NH); Russell Toal (NM); Barbara D. Richardson (NV); Judith L. French (OH); Glen Mulready (OK); Andrew R. Stolfi and TK Keen (OR); Jessica K. Altman and Michael McKenney (PA); Raymond G Farmer (SC); Larry D. Deiter (SD); Carter Lawrence (TN); Doug Slape (TX); Jonathan T. Pike and Tanji J. Northrup (UT); Scott A. White represented by Eric Lowe and Rebecca Nichols (VA); Michael S. Piciak represented by Chris Rouleau (VT); Mike Kreidler and Molly Nollette (WA); Mark Afable and Nathan Houdek (WI); and James A. Dodrill represented by Joylynn Fix (WV).

### 1. Adopted its Spring National Meeting Minutes

Superintendent Toal made a motion, seconded by Ms. Biehn, to adopt the Task Force's April 9 minutes (*see NAIC Proceedings – Spring 2021, Innovation and Technology (EX) Task Force*) with one revision to add Connecticut to the list of states on page 1 participating in the artificial intelligence (AI)/machine learning (ML) survey drafting group. The motion passed unanimously.

### 2. Adopted its Working Group Reports

#### a. Big Data and Artificial Intelligence (EX) Working Group

Commissioner Ommen gave the report of the Big Data and Artificial Intelligence (EX) Working Group. He said the Working Group met July 9 and discussed a draft survey to conduct analysis on private passenger automobile (PPA) insurers' use and governance of big data, as used in an AI and ML system. He said as part of that discussion, the Working Group received comments from Working Group members and interested parties. He reviewed the components of the survey and noted that it is being conducted under the examination authority of Connecticut, Illinois, Iowa, Louisiana, Nevada, North Dakota, Pennsylvania, Rhode Island, and Wisconsin and is being sent to insurers writing PPA insurance in at least one of these nine states. He reviewed the timeline, including completing the work by the NAIC Fall National Meeting and what content is and will be available on the associated web page, and he reminded the Task Force members that the Working Group will likely expand the survey work to other lines of insurance in the future.

#### b. Speed to Market (EX) Working Group

Ms. Nichols gave the report of the Speed to Market (EX) Working Group. She said the Working Group met June 30 and June 29 and took the following action: 1) adopted its March 10 minutes; and 2) heard an update from the Information Technology Group (ITG). She said part of that update included discussion regarding the low adoption rate for changes to the Product Coding Matrix (PCM) over the last couple of years and the reason why. She said the requests for changes are more specific to a particular state, so solutions for those states are usually provided using filing labels when needed, rather than creating new categories that would not apply to most states. Ms. Nichols said the ITG update also explained that when the System for Electronic Rate and Form Filing (SERFF) redesign begins, the intent is to have one set of types of insurance (TOIs), sub-TOIs, and filing types; but submission requirements that vary for states would be reflected. She said states are encouraged to be sure to respond to any correspondence received regarding the PCM, so that a clear understanding of their needs can be documented and accounted for in the redesign. She reviewed other suggestions that the Working Group members chose not to adopt and the reasons why. The details are documented in the minutes from the meeting.

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### c. E-Commerce (EX) Working Group

Commissioner Birrane gave the report of the E-Commerce (EX) Working Group. She said the Working Group met June 30 and took the following action: 1) discussed the establishment of the Working Group and the background that led to its formation; 2) reviewed the Working Group's 2021 charges; and 3) began outlining and discussing the work to be accomplished. She said the Working Group discussed and agreed that understanding the current legal landscape and identifying any key legislation should come first, and the first step in that process is to examine the states' adoption of the Uniform Electronic Transactions Act (UETA) and review any gaps there may be or exceptions they may have in place. She said to do so, the Working Group discussed surveying the states in this regard and asking what laws, rules, regulations, and bulletins were put in place during the pandemic that temporarily suspended or waived state law by allowing for the electronic exchange of information. She said the Working Group also anticipates asking the states of those provisions that were put in place which ones remain, which ones have expired or been rescinded, and for an explanation as to why the state took the action it did.

Commissioner Birrane said the Working Group learned through this discussion that some states have already started this process on their own, and they would be willing to share their results, which will serve as a good starting point for the Working Group. She said the Working Group also discussed what type of deliverable its work will result in, and the options of both a model bulletin and a white paper were explored; however, before the Working Group can decide on how best to move forward in this regard, the Working Group is now focused on gathering this information from the states then determining how best to move forward, as well as what the timeframe for a deliverable may be. She said the Working Group intends to meet in September 2021 to continue its work.

Commissioner Godfreed asked if there were any questions regarding any of the working group reports. Hearing none, Superintendent Dwyer made a motion, seconded by Commissioner Mulready, to adopt the following reports: 1) the Big Data and Artificial Intelligence (EX) Working Group, including its July 9 minutes (Attachment One); 2) the Speed to Market (EX) Working Group, including its June 30 and June 29 minutes (Attachment Two); and 3) the E-Commerce (EX) Working Group, including its June 30 minutes (Attachment Three). The motion passed unanimously.

### 3. Received an Update on NAIC Cybersecurity Workstreams and Priority

Commissioner Godfreed said one of the charges to the Task Force is to serve as a coordinating body for workstreams related to cybersecurity. He said the workstreams currently being tracked total 12 and include work being done related to tracking the *Insurance Data Security Model Law* (#668), updating NAIC handbooks, working with industry on tabletop exercises and incident response, international work, and domestic work related to data privacy and the cybersecurity insurance market. He said Model #668 has been adopted by 18 states who have either already implemented it or are in the process of doing so, and two more states have action under consideration.

Commissioner Godfreed said tools associated with the *Financial Condition Examiners Handbook* continue to be updated, and in 2021, the Information Technology (IT) Examination (E) Working Group is developing new guidance and procedures for state insurance regulators to use in evaluating an insurer's response to vulnerabilities. The *Market Regulation Handbook*, providing guidance and checklists, was updated in 2019.

Commissioner Godfreed said while cybersecurity tabletop exercises experienced a bit of a slowdown because of COVID-19, they are getting rolling again, and Connecticut will be hosting one in November 2021. He said the Center for Insurance Policy and Research (CIPR) developed a survey related to insurer cybersecurity preparedness, and it was implemented in Connecticut and will help inform the tabletop. He said due to the rise in ransomware events, that tabletop will focus on that issue. He said through tabletops and work with the Financial and Banking Information Infrastructure Committee (FBIIC) and others, incident best practices guidelines are being developed, and NAIC staff have already collected best practices from the U.S. Securities and Exchange Commission (SEC), the Commodity Futures Trading Commission (CFTC), the FBIIC, and state insurance departments to see where updates to the *Market Regulation Handbook* and the *Financial Condition Examiners Handbook* might be helpful.

Director Farmer noted the importance of getting Model #668 passed in each of the states. He said getting back to the tabletop exercises, he would encourage each state to consider doing a tabletop exercise, and he said the NAIC has participated with the U.S. Department of the Treasury (Treasury Department) on two tabletop exercises, including one in South Carolina in 2019 that was extremely helpful to its local industry. He said that template is now available to other states to use to host their own.

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Commissioner Godfreed asked Commissioner Mais if other states could join the Connecticut tabletop to observe. Commissioner Mais said yes, and all state insurance regulators are welcome to participate. He said that should be relatively easy to do since it will be virtual.

Commissioner Godfreed said regarding the cybersecurity insurance market, the NAIC began capturing data from insurers via the Cybersecurity Annual Statement Supplement back in 2018, and each year produces a report based on that data and includes data collected from the surplus lines market. He said that work is under the purview of the Property and Casualty Insurance (C) Committee and will be discussed during a cybersecurity “mini-series” session at the NAIC’s September Hybrid Insurance Summit: Part 2, and there will be two other cybersecurity sessions that will be part of that series.

Commissioner Godfreed said the Task Force members would hear an update later in the agenda related to the Privacy Protections (D) Working Group, and he said state insurance regulators, through the NAIC, are also tracking closely with international colleagues on cyber issues, including work with the European Union (EU), European Insurance and Occupational Pensions Authority (EIOPA), and the International Association of Insurance Supervisors (IAIS) Operational Resilience Task Force (ORTF). He said the ORTF is working on gathering existing materials that will inform a paper on how standard setters and jurisdictional supervisors are approaching risks associated with operational resilience for IT third-party outsourcing, cyber risk, and related lessons learned from the COVID-19 pandemic on business continuity planning over the long term, and that paper is scheduled for public consultation in the second quarter of 2022.

Commissioner Godfreed said the NAIC continues to stay diligent in terms of internal cybersecurity and data security, privacy and field work on the first cloud System and Organization Controls (SOC) 2 review has been completed, and follow-up work is underway. He said the NAIC maintains a security posture communication using the Shared Information Gathering (SIG) questionnaire.

#### 4. Discussed Consumer Data Ownership Issues and Potential Guidance

Superintendent Dwyer reviewed the presentations received by the Task Force during the Spring National Meeting from Daniel Demetri, the founder and chief executive officer (CEO) of Trellis Connect, and Ali Safavi, the co-founder and CEO of Vero. She said Trellis Connect helps consumers navigate insurance as they move online using apps to allow their information to be shared with the advisor app they have selected and provides consumers the ability to rely on and share data, allowing them to share their insurance information for many different purposes. She said Mr. Demetri suggested that state insurance regulators should determine what the parameters around this should be and what rights consumers should have to their insurance data in terms of who owns it and how they can access it. She said he also noted that many insurers elect to block consumer access for security or competitive purposes, and he urged state insurance regulators to consider what the data access rights are in each of our states and how they translate to the online environment.

Superintendent Dwyer said Mr. Safavi also talked about making insurance cheaper, faster, and quicker, as well as putting more focus on bringing the advice piece online, and Mr. Safavi said Vero augments the agent channel, making products more affordable with better service and better risk management through risk mitigation. Superintendent Dwyer said Mr. Safavi also noted that one of the biggest challenges to being able to do this is getting access to the consumer’s information, and enforcing insurers through regulation to give better access to consumer data could boost innovation as opposed to being a barrier.

Superintendent Dwyer noted these as examples of begging the question of how to address the questions of who owns consumer data and who owns access to consumer data. She said the Privacy Protections (D) Working Group is investigating consumer rights, so that may be where this matter should be addressed, possibly in its Privacy Policy Statement.

In addition, Superintendent Dwyer said there is the question of what rights independent agents have compared to what they consider to be data that belongs to them regarding their customer’s data and access to that data, particularly if they are to assist their customer/policyholder in determining the best and appropriate coverages or products to consider. She said these are not the only scenarios under the heading of “consumer data ownership and access,” and she asked if there truly are significant security issues with allowing a consumer to give their credentials to a third party to offer services to them and analyze information on their behalf. She asked what the other scenarios are regarding ownership and access to this data.

Superintendent Dwyer said this seems like an area that needs to be addressed, especially considering that innovative technologies being brought to bear that, with access to this information, could benefit consumers; and bottom line, this seems like an area to dig into. She said questions should be asked like whether consumers should be able to allow access to that information to a third party, who “owns” the data, and what the associated risks might be.

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Superintendent Dwyer said the question to the members of the Task Force is whether it should take this on and if so, what the best approach is. She asked if the best approach is to study it more at the Task Force level or refer it to another committee. She said it makes sense to coordinate with the Working Group, but she would like to hear what the will of the Task Force members is.

Commissioner Godfreed said when North Dakota picked up this issue, he was interested to learn that it was not so much about who owned the data as much as it was about how and what format a consumer could get it if requested. He said the consumer may ask for it digitally, but the insurer gets to decide how the data gets transmitted. He said that was a bit troubling to him. He said their work in this area was met with heavy resistance, and understandably so, as it is a new issue; and everyone is still working through it and associated security issues, but it is a solvable problem, as the banking industry seems to have done so, as there are a number of different applications that can analyze multiple accounts that include consumers giving credentials to a third party in order to see the full picture. He said some antiquated laws potentially need to be reviewed in this area, and that is the kind of thing the Task Force looks at.

Ms. Amann said this is becoming an underlying issue that the Working Group is identifying in consumer rights that it is trying to address. She said if given the direction from the Market Regulation and Consumer Affairs (D) Committee, this could be an issue that the Working Group could take on. She said the Working Group is starting to see more issues around health apps where a consumer may want to share information from multiple online sources, allowing it to analyze the data in aggregate, but there is no accountability regarding the advice given based on that data. She said the app could tell someone to do something that may not be appropriate. She said there seems to be no regulatory authority to oversee this area, but the Working Group is starting to work on recommendations regarding where states might improve their laws and regulations.

Commissioner Lawrence noted that data ownership issues are a large macro issue when considering a look across all parts of our society, and this topic is worthy of taking up for review.

Director Daniels asked for clarification regarding what the deliverable might be in addition to continuing the work that is already underway in the Working Group, asking if it would be a model law, guidance, or something else. He said it would be helpful to understand the scope of that work.

Commissioner Godfreed said he really does not know just yet, and it is a matter of looking to see where the gaps are and then seeing what the best way would be to address it. He said he does not prefer the model law approach generally, because that can be difficult to get adopted everywhere. He said with some of these issues, bringing it to light helps to sometimes start the process of getting the issue solved. He said every state should look where their laws are and where they might be causing an impediment, but at this point, everything is on the table. He said in North Dakota, antiquated laws likely need to be updated. Superintendent Dwyer said she does not think it would be good to start with a specific direction, and she suggested that the first step is to determine the status and get an overall understanding of laws that currently exist. She said they likely exist regarding the agents versus the companies, but no one has moved forward on these in a long time, so step one is to do the research, see where they stand, and then decide the best approach.

Ms. Amann said the Working Group has reviewed the *NAIC Insurance Information and Privacy Protection Model Act* (#670) and the *Privacy of Consumer Financial and Health Information Regulation* (#672), and she redlined edits to make it more technologically correct, made some other recommended changes, and did a gap analysis to the other data privacy laws in place today, such as the General Data Protection Regulation (GDPR), the Gramm-Leach-Bliley Act (GLBA), the California Consumer Privacy Act (CCPA), the Fair Credit Reporting Act (FCRA), Virginia and Colorado's laws, and others. She said after all of that they have concluded they need to either draft a new model law or go back to Model #672 and make updates to it, which would likely be a complete rewrite.

Commissioner Godfreed asked that work be distributed to the Task Force members. Commissioner Birrane noted support for this as well and pointed out that data ownership, use, and access is often one of the most complicated contract negotiations with third parties regarding consumer facing apps. She said it is important to determine what pieces of this, within what context, are being taken up at what point in time. Mr. McKenney said he would encourage whatever group that looks at this to also consider the tying of eligibility to use of a third-party app because that is a part of this conversation as well. Superintendent Toal echoed Commissioner Godfreed's comment about preferring not to take the approach of drafting a model law, and he said he believes this would be better done through regulation.

Angela Gleason (American Property Casualty Insurance Association—APCIA) said the proprietary nature of the information and the associated data security and privacy issues are critical. She said the Working Group has already started this conversation and is looking at gaps, but there are definitely issues in the privacy and cyber world, and choosing the format for transmitting

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data to a consumer can pose significant challenges for data security in terms of how to ensure systems can accommodate that and protect the data at the same time. She said these are important and complex issues.

Birny Birnbaum (Center for Economic Justice—CEJ) said before selecting tools, it is important to examine the values they will need to represent. He said along those lines, he would suggest characterizing this slightly different from data ownership and characterize it as defining what consumer-generated data an insurance or producer collects, for what purpose, how it is used, what access a consumer has to their data, and how a consumer can take their data from one vendor to another. He said he concurred with focusing on data ownership and several of the issues raised about existing laws, but stating what data is being collected from consumers, what it can be sued for, and how it must be made available to a consumer is a more straight forward approach as opposed to just addressing it as issues of ownership. He said that is really a proxy for all the other issues that might be better addressed more directly.

Chris Petersen (Arbor Strategies LLC), speaking on behalf of a collation of health insurers, said the group should consider state laws that have data retention requirements during which the data are not portable, as it must be kept by the insurer, as required by state law, and consider the Health Information Portability and Accountability Act of 1996 (HIPAA) that has severe restrictions on what health insurers can and cannot do. He said that law preempts state laws that have less favorable privacy protections. He said because of these other laws being in place, including the GLBA, the portability issue is different in health insurance than the tech company arena.

Following discussion of the topic, Commissioner Godfreed asked the Task Force members if it would make sense to refer this item to the Committee to consider and possibly add it to the charges of the Working Group. Hearing no objection from the Task Force members, he said it would be referred to the Committee.

### 5. Heard Updates from Other Committees and Working Groups on Related Activities

Commissioner Godfreed asked representatives from other committees whose charges involve related workstreams to those the Task Force is addressing to provide updates.

#### a. Special (EX) Committee on Race and Insurance

Commissioner Mais said there are several charges under the Special (EX) Committee on Race and Insurance that relate closely to what the Task Force is working on, and it will be paramount to communicate and engage with one another as these workstreams develop. He said the charges for the Special Committee specifically note that it should coordinate with groups such as the Big Data and Artificial Intelligence (EX) Working Group and encourage groups to continue their work on issues that affect people of color and historically underrepresented groups, particularly in predictive modeling, price algorithms, and AI. He said Charge F spreads across the lines of business and calls for continuing research and analysis of insurance, legal, and regulatory approaches to addressing unfair discrimination, disparate treatment, proxy discrimination, and disparate impact. He said a subset of Charge F, F2 is specific to Workstream Three and calls for the development of analytical and regulatory tools to assist state insurance regulators in defining, identifying, and addressing unfair discrimination in property/casualty (P/C) insurance.

Commissioner Mais said the Special Committee and its workstreams will look to define those terms, but as it turns to developing analytical and regulatory tools, ensuring that the line of business workstreams are communicating and working closely with the Task Force and groups like the Accelerated Underwriting (A) Working Group who have researched these sorts of tools already will be imperative.

Commissioner Mais said with the adoption of charges, the workstreams will look to create workplans to develop priorities and timelines and ensure continued communication with the Task Force.

#### b. Accelerated Underwriting (A) Working Group

Commissioner Arnold said she is the vice chair of the Accelerated Underwriting (A) Working Group and the chair of an informal state insurance regulator drafting group that is drafting the educational report that is the Working Group's work product. She said the drafting group is made up of state insurance regulators from approximately six states and has been meeting on a weekly basis.

Commissioner Arnold said to date, two parts of what is intended to be a five-part paper have been exposed for comment. She said the Working Group have employed an iterative process and been drafting and releasing sections of the draft for comment

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as the drafting group finishes them, and comments on the entire draft are welcome with each release of a new part. She said the drafting group intends to collect and review comments throughout the process, and it anticipates revisions to earlier sections as new sections are developed.

Commissioner Arnold highlighted some of the issues and feedback encountered so far, including:

- Receiving quite a few comments on the definition of accelerated underwriting after the release of the first part of the paper.
- Spending a lot of time on the definition and considering definitions from a number of sources, in addition to the comments.
- Concluding that the definition proposed for use in the educational paper was largely in the middle of all the options offered and deciding not to make any changes at this point.

Commissioner Arnold said the drafting group acknowledges that once the rest of the paper is drafted, there may be a need to reconsider the definition, and consideration of the issue of tone needs to be discussed. She said the drafting group tried to keep the tone of the paper neutral, but during presentations, the Working Group heard a lot about the advantages and disadvantages of accelerated underwriting. She said the drafting group tried to stay away from that in the report and stay focused on what accelerated underwriting is, what accelerated underwriting does, and what the regulatory structure is or should be in the context of current laws.

Commissioner Arnold said the matter of a glossary was also discussed, and the Working Group received several suggestions to create one but decided not to at this point for a few reasons, but largely because some terms are defined differently in different contexts and in different states.

Commissioner Arnold said another issue is ensuring the educational report builds on existing NAIC work products and the drafting group has tried to use terminology that builds on and is consistent with other NAIC documents, like the AI Principles and the Casualty Actuarial and Statistical (C) Task Force white paper. She said the drafting group specifically requests comments on the parts of the paper addressing, from a legal and practical perspective, the data used in accelerated underwriting programs and feedback on how the paper might achieve clarity describing the kinds of data being used, whether data sources or the scores that come from the sources, what those terms mean, what kinds of obligations flow from them, and what a consumer sees or should see.

Lastly, Commissioner Arnold said another area where the drafting group is requesting feedback are the sections discussing the distinctions between the types of data, including data covered under the FCRA, and what that means for state insurance regulators, companies, and consumers.

### c. Property and Casualty Insurance (C) Committee

Commissioner Schmidt said one of the main issues relevant to the Task Force that the Property and Casualty Insurance (C) Committee is working on is cybersecurity. She said the charge to study the cyberinsurance market and report on cyberinsurance data collected in the Annual Statement moved from the Task Force to the Committee this year, and the Committee will be hearing a report on the cyberinsurance data and a later update once the alien surplus lines data has been reviewed.

Commissioner Schmidt said there will be several sessions dealing with various aspects of cyber risk, security, and insurance in September at the NAIC Insurance Summit. She said another topic the Committee and the Task Force should be sure to communicate on relates to parametric insurance. She said the Climate and Resiliency (EX) Task Force has received several presentations related to parametric products and has more scheduled in the future. She said the Committee's interest in this topic goes beyond the focus of either the Climate and Resiliency (EX) Task Force, which would focus on covering specific coverage gaps, and the Innovation and Technology (EX) Task Force, which would probably be focused more on data and technology. She said it might make sense for the Committee to take a broad look at parametric insurance and produce some type of work product related to that type of innovative product.

### d. Privacy Protections (D) Working Group

Ms. Amann said the Privacy Protections (D) Working Group reviewed the 2021 NAIC member-adopted strategy for consumer data privacy protections and discussed the 2020 Fall National Meeting verbal gap analysis of consumer issues. She said it also discussed the draft of the initial privacy policy statement. She reviewed the six areas covered by the policy statement and said the Working Group requested comments in the form of parameters and examples on the initial privacy policy statement for

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discussion during the Working Group meeting. She said this issue of consumer data ownership may possibly be a seventh, but it also underlies the others. She said during the June meeting of the Working Group, it discussed the initial draft of the privacy policy statement and requested comments in the form of parameters and examples on the initial privacy policy statement. She said the Working Group is also talking about how far the reach of this will be regarding whether it will pertain to a vendor, supply chain or third parties such as third-party administrators (TPAs), adjusters, and others.

Ms. Amann said the Privacy Policy Statement template is on the Working Group's website and is being combined with comment received into a draft for exposure and accelerated review by the Working Group.

Harry Ting (Consumer Advocate Volunteer) said another privacy issue, somewhat peripheral but relevant for consumers, is research that indicates in some cases, sales of health insurance plans online involve using outside entities to collect data to market health plans and collecting private information the entity is later selling to other entities; in most cases, they are not insurance entities. He said this involves quite a bit of personal contact and health status information. He said that seems to be a privacy issue that should be addressed somewhere within the NAIC.

### 6. Received NAIC Reports on the Model Review Process and International Initiatives Relative to AI and Big Data

#### a. Received the NAIC Report on the Model Review Process

Kris DeFrain (NAIC) said the NAIC model review project officially began in April 2018 when the Executive (EX) Committee adopted the recommendation of the Big Data (EX) Working Group to direct NAIC management to "conduct research on the appropriate skills and potential number of resources for the organization to help NAIC members in coordinating their reviews of predictive models." She said NAIC senior management conducted the research and recommended gradual build-up of expertise at the NAIC to aid state insurance regulators' review of P/C rate models. She said in 2019, with existing actuarial, legal, and IT staff, the NAIC did three things:

- Drafted a contractual agreement called the Rate Review Support Services Agreement to be used so a state can gain access to the shared model database and request a rate model technical review from the NAIC.
- Developed the initial NAIC rate model technical review process with a consulting actuary.
- Created a shared model database for confidential regulatory communication.

Ms. DeFrain said as of today, there are 31 states who have a Rate Review Support Services Agreement with the NAIC, and the NAIC has worked with 10 of the 31 states to produce 60 NAIC reports. She said most of the rate models reviewed have been the most common type of model, a generalized linear model (GLM). She said the GLM reviews are aligned with the Casualty Actuarial and Statistical (C) Task Force's white paper on the Regulatory Review of Predictive Models. She said other types of models have also been reviewed, adapting the white paper recommendations to fit the different models. She said the Task Force was asked to consider reviewing the approaches on these other types of models and offer guidance regarding the technical review reports to ensure that they help state insurance regulators.

Ms. DeFrain said as the database of model reviews at the NAIC grows, it is expected that there will be an expanding number of second state requests, or requests for review of a company's model the NAIC has already reviewed for another state. She said there is a substantive amount of analysis required to compare the models between the states and track the NAIC-identified issues to objections to state approval or disapproval and sometimes to company withdrawal. She said the NAIC will assist the second and subsequent states to use the first state's NAIC technical review and determine its next steps to take with its filing, and that may mean that sometimes the second state is satisfied with the objections and answers from the first state filing, yet other times that might mean the second state wants to pursue a different course of action. She said that may increase speed to market in the second and subsequent states.

Ms. DeFrain pointed out that the group continues to abide by the principles created by the Working Group, and the NAIC does not:

- Assume any regulatory authority.
- Create objections to be sent to the company.
- Recommend acceptance or rejection of the model or any specific rating variable.
- Do separate modeling to determine any correlation with unlawful characteristics or assess disparate impact.

Ms. DeFrain said the NAIC approved the addition of two new actuaries to join the rate review team, while simultaneously eliminating the assistance of the part-time consultant.



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### b. Received an Update on International Initiatives Relative to AI and Big Data

Ryan Workman (NAIC) provided a briefing on international initiatives relative to AI and Big Data. He said these initiatives are relevant for the Task Force to track and monitor. He said the IAIS FinTech Forum is currently focusing on AI, ML, and data analytics, application programming interfaces (APIs), open data, and distributed ledger technologies (DLTs). He said at the end of 2020, the Fintech Forum set up individual subgroups to consider each of these applications, respectively, and Commissioner Godfreed represents the NAIC as a member of the Fintech Forum and the subgroup on AI and ML.

Mr. Workman also discussed the work on big data/AI of the U.S. EU Insurance Dialogue Project. He said the U.S. EU Insurance Dialogue Project started in 2012, when the NAIC, the Federal Insurance Office (FIO), the European Commission (EC), and the EIOPA agreed to participate in a deeper dialogue project with the objective of enhancing the mutual understanding and cooperation between the EU and the U.S. for the benefit of insurance consumers, business opportunity, and effective supervision. He said as part of this project and for the last few years, there has been a working group on big data and AI, which included NAIC staff and state insurance regulators from the U.S., along with federal and European counterparts. He said the Working Group has:

- Focused on aspects of the relationship between innovation, technology, and insurance, specifically: 1) the increased use of big data by insurers; and 2) the use of advanced data analytics in the insurance sector.
- Published a paper in 2018 providing the reader with a better understanding of what data is collected, how data is collected, data portability, data quality, and how data is made available and used by both insurers and third parties.
- Focused, in 2019, on regulatory oversight of insurers' use of third-party vendors, the ability of insurance supervisors to monitor new vendors operating in the insurance marketplace, disclosures to applicants and policyholders about how rating factors and third-party vendor data are being used, and insurers' use of AI models that increasingly rely on the use of big data.
- Provided a summary of this work in a February 2020 paper that is available on the NAIC website under EU-U.S. Insurance Dialogue Project.
- Worked on another published report providing a summary of the Big Data and Artificial Intelligence (EX) Working Group exchanges of supervisory experiences and regulatory environments since publication of the February 2020 paper in October 2021. He said this report will include: 1) further development of AI principles in the U.S. and EU, respectively, including ethical aspects; 2) regulatory review of predictive models, including but not limited to, assessing transparency and explainability issues arising from the use of AI, including ML algorithms; 3) industry use of big data for fraud detection and claims settlement; and 4) new developments on third-party vendors and consumer disclosure issues since the discussions in 2019.

Mr. Workman said the U.S. EU Insurance Dialogue Project will host a public virtual webinar Oct. 19 on its continued progress and future priorities, and representatives of the NAIC, including Commissioner Birrane and Commissioner Ommen; the FIO; and the EIOPA, will lead the webinar.

### 7. Discussed Other Matters

Commissioner Godfreed discussed the conversation that NAIC members have had concerning the creation of a new letter committee dedicated to Innovation, Technology, and Cybersecurity. He said based on today's meeting and the ongoing work of the Task Force and its working groups, as well as many other NAIC workstreams, the NAIC has and will continue to be involved in several workstreams regarding innovation, technology, and cybersecurity. He said coordination among these workstreams is critical and, in addition to the ongoing activities, there are any number of open questions as technology continues to advance, as cyber breaches continue to occur, and as state and federal entities continue to develop legislative and regulatory guidance to address these issues. He said the mission of the new committee will be to: 1) provide a forum for state insurance regulators to learn and have discussions regarding innovation, technology, and cybersecurity issues; 2) monitor developments in these areas that affect the state insurance regulatory framework; and 3) develop regulatory guidance, as appropriate. He said in terms of process, the Task Force will play an important role in finalizing a draft mission statement and set of charges for this new committee. He said he planned to appoint an ad hoc group to begin that work and seek input from interested parties. He said the charges will require Executive (EX) Committee and Plenary approval and an amendment to the NAIC bylaws to officially add the new committee. He said the goal is to take those actions at the Fall National Meeting in San Diego, CA, and more information about the next steps will be available via the Task Force in the coming weeks.

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

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Draft: 8/26/21

Big Data and Artificial Intelligence (EX) Working Group  
Virtual Meeting  
July 9, 2021

The Big Data and Artificial Intelligence (EX) Working Group of the Innovation and Technology (EX) Task Force met July 9, 2021. The following Working Group members participated: Doug Ommen, Chair (IA); Elizabeth Keller Dwyer, Co-Vice Chair (RI); Mark Afable, Co-Vice Chair (WI); Daniel Davis (AL); Ken Allen (CA); Mitchell Bronson (CO); Wanchin Chou and Andrew N. Mais (CT); Rebecca Smid (FL); Judy Mottar (IL); Amy L. Beard (IN); Ron Kreiter (KY); Tom Travis (LA); Ron Coleman (MD); Karen Dennis (MI); Phil Vigliaturo (MN); Cynthia Amann (MO); Chris Aufenthie (ND); Christian Citarella (NH); Randall Currier (NJ); Gennady Stolyarov (NV); Lori Barron (OH); Shannen Logue (PA); Michael Wise (SC); Rachel Cloyd (TX); Eric Lowe (VA); Christina Rouleau (VT); John Haworth (WA); and James A. Dodrill (WV).

1. Adopted its March 29 Minutes

Superintendent Dwyer made a motion, seconded by Commissioner Richardson, to adopt the Working Group's March 29 minutes (*see NAIC Proceedings – Spring 2021, Innovation and Technology (EX) Task Force, Attachment One*). The motion passed unanimously.

2. Discussed a Draft Survey and Definitions on Industry's Use of Big Data, AI, and ML

Commissioner Ommen said the Working Group is developing a survey to obtain a more accurate and objective measure of how insurers are using data variables, artificial intelligence (AI), and machine learning (ML) while also protecting the trade secrets and intellectual property of insurers. Commissioner Ommen said the work is being completed to fulfill the Working Group's charge to "research the use of big data and artificial intelligence (AI) in the business of insurance and evaluate existing regulatory frameworks for overseeing and monitoring their use. Present findings and recommend next steps, if any, to the Innovation and Technology (EX) Task Force, which may include model governance for the use of big data and AI for the insurance industry." He said the Working Group is focusing on private passenger auto (PPA) insurance. He said the Working Group is not trying to scrutinize any individual company's practices, but rather it is trying to understand broader market practices. Because of this, the survey is not designed to collect information on a state-specific basis.

Superintendent Dwyer said a small number of subject matter experts (SMEs) were asked to work with NAIC staff to create the draft survey. Iowa, Rhode Island, and Wisconsin led these discussions, and representatives from Connecticut, Illinois, Louisiana, Nevada, North Dakota, and Pennsylvania served as SMEs. Superintendent Dwyer said the SMEs met throughout April and spent a considerable amount of time to ensure the survey instrument makes sense for the stated purpose and, more specifically, the questions, terms, flow, and general content is understandable, intuitive, and will produce the information needed to get a more objective understanding of the current status of AI/ML for PPA insurance.

Superintendent Dwyer said the drafting group circulated the draft survey to five pilot companies in early May. During May, NAIC staff held independent calls with those companies to receive feedback and improve the survey. The SMEs then picked up their work again in early June with the work culminating in the draft survey being circulated to the Working Group, interested state insurance regulators, and interested parties on June 24. Superintendent Dwyer said the SMEs who are attorneys drafted an examination call letter during May and June, and they began working with NAIC staff on how to collect the survey responses, with assistance from the NAIC. She said the lead states collecting the survey information clearly understand the need to have a centralized method of collecting survey responses, while maintaining individual company confidentiality. She said the SMEs believe the concerns related to confidentiality protections are being addressed.

Superintendent Dwyer said the survey begins with the threshold question of whether an insurer is using AI/ML. The SMEs spent a significant amount of time refining and clarifying the scope of the survey and ultimately defined AI/ML for the purposes of the survey as, "an automated process in which a system begins recognizing patterns without being specifically programmed to achieve a pre-determined result." Superintendent Dwyer said this is different from a standard algorithm that consists of a process or set of rules executed to solve an equation or problem in a pre-determined fashion, and evolving algorithms are considered a subset of AI/ML. She said the SMEs understand there are many different interpretations regarding the meaning of AI and ML. She said she wants to be very clear the Working Group is not trying to develop a unilaterally agreed upon or standard definition beyond this survey.

Superintendent Dwyer said the survey then asks how AI/ML is being used in the following areas of rating, underwriting, claims, fraud detection, marketing, and loss prevention. For each of these operational areas, the survey seeks information on the level of deployment, the use of third-party vendors, and whether model governance is in place. In addition, Superintendent Dwyer said the survey includes questions about whether insurers have contracts with third-party vendors that might limit transparency to state insurance regulators and how insurers voluntarily provide transparency to consumers regarding data being used. She said the third aspect of the survey relates to data elements being used in AI/ML. This includes seeking information on the use of consumer “scores” that may be used. Superintendent Dwyer said the survey intentionally excludes questions about traditional and well understood uses of data, and the Working Group wants to learn more about what it does not already know.

Mr. Stolyarov said the data definitions include examples of AI/ML to clarify what insurer practices are in and out of the scope of the survey. He said the survey is not intended to collect information for general linear models, static algorithms, or table algorithms, no matter how complex. He said the survey is not intended to collect information on company practices that were used prior to 2000, and most of the practices the Working Group is trying to address began in the last decade.

Mr. Vigliaturo asked how the listing of data variables, such as education and occupation, would be viewed if the data is used, but not in AI/ML. Mr. Stolyarov said the purpose of this survey exhibit is to obtain information on data input into AI/ML, and it is not designed to obtain information on the use of data outside AI/ML.

Frank O’Brien (American Property Casualty Insurance Association—APCIA) said he appreciates the comments regarding the confidentiality concerns, and he looks forward to receiving more information on how these concerns are being addressed. He said the survey will require a significant amount of work for companies, and he urged the Working Group to provide companies sufficient time to respond to the survey.

Chris Petersen (Arbor Strategies LLC) said he understands the survey is limited to PPA insurance, but he also understands the template may be used for additional lines of insurance. He said it will be difficult for insurers to list all vendors because health insurers may have hundreds of vendors. He suggested that the survey focus on collecting the categories of vendors used. He said there is a difference between AI and ML, and there are various types of ML. He said the survey should reflect these nuances.

Birny Birnbaum (Center for Economic Justice—CEJ) said the survey asks companies to identify the areas in which AI/ML is used but does not ask what different types of data insurers use. He suggested that the survey asked whether data being used is compliant with the Fair Credit Reporting Act (FCRA), which is a broader focus than whether consumers can correct data being used. He said some of the survey questions require interpretation by insurers. Regarding the questions on model governance, he said one company may respond that it wants its model governance to be fair and ethical, while another company may be testing to verify that its model governance is fair and ethical. He said a better approach to determine insurers’ compliance with the NAIC AI Principles would be to have the insurers submit their model governance policies. Finally, he asked if the survey report would be made public.

Commissioner Ommen said the survey is informed by individual state work and will not be able to identify everything regarding how companies are adhering to the NAIC AI Principles. Superintendent Dwyer said the Working Group will issue a public report, but it will not disclose individual company information.

Superintendent Dwyer said the SMEs will consider the comments received today, and she asked interested parties to send the exact language they would propose for the survey. She said the Working Group understands the importance of having clarity in the survey questions to obtain consistent responses from insurers. She requested that all comments be submitted by July 16.

Superintendent Dwyer said the SMEs will finalize the survey and definitions and distribute a final version of the survey to the Working Group. In addition, she said an informational version of the survey will be distributed by the end of July to the insurers who will be asked to respond to the survey. She said NAIC staff will develop the survey tool, instructions, frequently asked questions (FAQ), and the web page, and they will follow the same process used for other coordinated data requests, such as those used for the COVID-19 Property/Casualty (P/C) data request.

Superintendent Dwyer said NAIC staff need three weeks to set up the survey, but they urged insurers to begin collecting their responses upon receiving the informational version of the survey at the end of July. She said the online portal for submitting the survey will be available in mid-August, and this will be communicated to insurers.

Superintendent Dwyer said the survey responses will be collected under the exam authority of Connecticut, Illinois, Iowa, Louisiana, Nevada, North Dakota, Pennsylvania, Rhode Island, and Wisconsin, and they will be collected through the NAIC's Regulatory Data Collection (RDC) system. She said the following schedule is anticipated for the remainder of 2021:

- August: Issuance of the survey to PPA insurers. The number of insurers to receive the survey is still to be determined.
- September: Companies respond to the survey via the NAIC portal.
- October: Lead states for the survey issue a draft report of its findings to the Working Group.
- December: The Working Group issues a final report on industry practices, while maintaining the confidentiality of individual company responses. Will take comments on the draft report October–December.

Superintendent Dwyer said the Working Group will focus on its long-term goals of developing guidance and recommendations to update the existing regulatory framework for the use of big data and AI, including how to monitor and oversee the industry's compliance with the NAIC's AI principles, after the Working Group has a better understanding of how insurers use big data and AI in PPA insurance. She said the results will also inform the development of governance and risk management controls over these activities. She said the survey work will also be expanded to other lines of insurance as needed, such as life insurance and homeowners insurance.

Having no further business, the Big Data and Artificial Intelligence (EX) Working Group adjourned.

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Draft: 8/26/21

Speed to Market (EX) Working Group  
Virtual Meeting  
June 30, 2021

The Speed to Market (EX) Working Group of the Innovation and Technology (EX) Task Force met June 30, 2021. The following Working Group members participated: Maureen Motter, Vice Chair (OH); Katie Hegland (AK); Jimmy Gunn (AL); Jimmy Harris (AR); Susan Buth (CO); Michele Mackenzie (ID); Marcia Kramer (KS); Tammy Lohmann (MN); LeAnn Cox (MO); Ted Hamby and Timothy Johnson (NC); Chrystal Bartuska (ND); Leatrice Geckler (NM); Cuc Nguyen (OK); Heidi Clausen, Tanji J. Northrup, and Tracy Klausmeier (UT); Elsie Andy (VA); Lichiou Lee (WA); and Barry Haney (WI).

1. Discussed and Considered Suggestions Received on the Uniform Life, Accident & Health, Annuity, and Credit PCM

Ms. Motter stated that discussions began during the June 29 call regarding the suggestion received to add two additional sub-types of insurance (TOIs) for the Medicare Supplement plans on the Life and Health side in the Uniform Life, Accident & Health, Annuity, and Credit Product Coding Matrix (PCM). She stated that what was noted in the suggestion is that there are instances where an insurer wants to report some rate information, and occasionally some form information, on Medicare Supplement plans that are not only applicable to 2010 products, but also to 2020 products. She stated that this requires the need for the company to file two separate submissions with almost identical information since there is not currently an option to select multiple sub-TOIs, which also creates additional work for the state insurance regulator reviewing the information submitted.

Ms. Motter stated that written communication was provided by Camille Anderson-Weddle (MO), as she was unable to attend the call, which stated the following: “Missouri does not have a preference with regard to the creation of MS10 and MS11 TOIs but would appreciate the ability to elect whether or not to turn these TOIs on. While Missouri currently accepts some combined rate filings where combined experience is used, it is not always appropriate, and we may request rates to be separated into two filings. Historically, carriers have used the existing TOIs including MS09-Other for such filings. In those instances where a combined filing is not appropriate, the company has not been asked to withdraw the filing in question, but to remove and revise documents where necessary and submit a second filing, as opposed to the alternative (where MS10 or 11 is used) of withdrawing an existing MS10 or 11 filing and having to submit two new filings. It should also be noted that we encourage filing rates under the same TOI as the forms, where possible. We would not expect to see forms combined and I do not believe we have.” Ms. Cox confirmed there was nothing additional to add for Missouri, and she reiterated the desire to be able to turn the new TOIs on or off if they are added.

Ms. Motter reminded the Working Group that another possible solution is changing the description to indicate or direct companies to use the “Other” categories to file combined data. She stated that the description could also be updated in such a way to direct companies away from using certain sub-TOIs.

Ms. Lee stated that the way Washington addresses this issue is that under MS06 Medicare Supplement – Other, it traditionally uses it for something where the action is not approved, and not for rate filings. She stated that Washington uses MS06 for the Medicare Supplement Experience Rating Refund Report, Medicare Supplement Advertisement, and those other actions filed and not approved because Medicare Supplement Forms and Rates are considered prior approvals. She stated that MS06 is used for everything above it, other than MS04 and MS05, and MS09 Medicare Supplement – Other is used for MS07 and MS08. She stated that Washington was the state that proposed the new MS10 and MS11 Medicare Supplement TOIs, because of their identical/duplicate two rate filings. She stated that Washington has never used MS06 as part of the rate filing because it wanted to separate out the prior approvals.

Ms. Nguyen stated that it would be helpful if additional explanation was provided for MS06 so that when companies file, they have a better understanding of what to choose. Ms. Motter asked if Ms. Nguyen would want to receive filings the same way Ms. Lee explained, and if they would not want companies using the “Other” category to do some of those combined rate filings. Ms. Nguyen said yes, that would be her preference. Ms. Motter asked if Ms. Nguyen would still want two filings, but just using the existing TOIs, and Ms. Nguyen confirmed that was correct.

Ms. Mackenzie made a motion, seconded by Ms. Lohmann, not to adopt the suggestion to add MS10 Individual Medicare Supplement-Standard and 2010 Standard Plans, as well as MS11 Group Medicare Supplement-Standard and 2010 Standard Plans TOIs. The motion passed unanimously.

Ms. Motter stated that there was a suggestion made on the June 29 call to edit the H13 – Short-Term Care TOI description. Currently, the description states, “[c]overage that provides medical and other services to insured’s who need constant care in their own home or in a nursing facility for periods less than one year.” The suggestion is to add the following sentence to that description, “also considered limited long-term care.”

Ms. Lee stated that Washington has never turned on the H13 TOIs because the product is illegal there. She stated that the reason it is illegal in Washington is because a plan providing health care services like that is either a health plan that is part of the H15 or H16 TOIs, or it is a long-term care (LTC) product.

Ms. Andy stated that Virginia uses the H13 TOI. She stated that LTC cannot be written if it provides coverage for less than 12 months; and in certain circumstances, policies are allowed that provide home health care unrelated to LTC, such as loss related to accident and sickness rather than mimicking LTC, and the coverage provides less than 12 months of coverage.

Ms. Clausen stated that she made this suggestion to edit the H13 description because a couple of states indicated that they are receiving filings under H13 for limited long-term products. Ms. Motter asked if it would be appropriate to add a sub-TOI instead of editing the overall H13 description. Ms. Bartuska stated that North Dakota has a law that allows for short-term care policies, in that they are basically LTC policies less than a year old, or less than a year worth of care, and North Dakota uses the H13 TOI for individual health; i.e., short-term care, utilizing the sub-TOI for Nursing Home. Ms. Lohmann stated that Minnesota is also utilizing the H13 TOI and sub-TOIs.

Ms. Motter asked if changing the suggested wording would be helpful, such as adding “where permissible” or “where applicable.” Mr. Hamby said maybe the wording could state, “[m]ay include Limited Long-Term care.” Ms. Bartuska stated that when North Dakota adopted its short-term care law, it took the language from its LTC law and just changed some of the provisions around the time frame of the contract. She stated that these types of policies are referred to as short-term care in North Dakota, and since they are technically health policies, she would be apprehensive of putting any indication of LTC in the description since it is not LTC, and not a traditional LTC policy, rather it is a short-term care nursing home product.

Ms. Lohmann made a motion, seconded by Ms. Bartuska, not to implement the suggestion to edit the H13 TOI description. The motion passed unanimously.

Having no further business, the Speed to Market (EX) Working Group adjourned.

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Draft: 8/26/21

Speed to Market (EX) Working Group  
Virtual Meeting  
June 29, 2021

The Speed to Market (EX) Working Group of the Innovation and Technology (EX) Task Force met June 29, 2021. The following Working Group members participated: Rebecca Nichols, Chair (VA); Maureen Motter, Vice Chair (OH); Katie Hegland (AK); Jimmy Gunn (AL); Jimmy Harris (AR); Susan Buth (CO); Frank Pyle (DE); Michele Mackenzie (ID); Heather Droge (KS); Tammy Lohmann (MN); Camille Anderson-Weddle (MO); Timothy Johnson (NC); Chrystal Bartuska (ND); Leatrice Geckler (NM); Cuc Nugyen (OK); Mark Worman (TX); Heidi Clausen, Tanji J. Northrup, and Tracy Klausmeier (UT); Gail Jones and Lichiou Lee (WA); and Barry Haney (WI). Also participating were: Alan Gore (NY) and Bob Grissom (VA).

1. Adopted its March 10, 2021, Minutes

The Working Group met March 10, 2021, and took the following action: 1) adopted its Nov. 10, 2020, minutes; 2) received an update from the Interstate Insurance Product Regulation Commission (Compact); 3) discussed the results of the Product Requirements Locator (PRL) tool survey and next steps; 3) received an update on the System for Electronic Rate and Form Filing (SERFF); and 4) discussed the annual review of the product coding matrix (PCM) and uniform transmittal document (UTD).

Ms. Geckler made a motion, seconded by Mr. Gunn, to adopt the Working Group's March 10, 2021, minutes (Attachment). The motion passed unanimously.

2. Received an Update from the ITG on the 2021 PCM

Alex Rogers (Information Technology Group—ITG) stated his team works to implement newly adopted changes to the PCM. He said that each year, they begin their annual outreach efforts in October into November, and then they follow up biweekly through the end of the year to get needed changes implemented by January. He stated his team continues regular follow-up throughout the first quarter of the year. Mr. Rogers advised that there has been a low adoption rate for changes to the PCM over the past two years. He stated that in 2020, one sub-type of insurance (TOI) was introduced to the PCM; there were 12 states that adopted that sub-TOI and 21 states that declined it. He stated that in 2021, 11 states implemented the new H15G and H15I TOIs, 11 states declined, and 30 states did not respond.

Joy E. Morrison (ITG) stated the reason mentioning the low adoption rate is important, is that statistics for adoption have declined in the last two years and that variations from a uniform PCM make it more difficult for industry users to create a multistate filing in the SERFF application. She asked for feedback from the Working Group in determining the best way to implement proposed changes in a consistent manner.

Ms. Motter stated she has noticed that in the last couple of years, the PCM covers nearly every product and that nearly every TOI is there, but occasionally there is something new. She stated a couple years back, for example, there was a need to address stand-alone cyber insurance policies for property/casualty (P/C). Ms. Motter advised some of the requests and suggestions received are more specific to a particular state and a state's need for granularity for reporting purposes, so there is hesitation to add products to the PCM that most states will not adopt. She explained that part of these discussions is suggesting other ways states can capture specific information they need, such as through the use of filing labels, in those instances where most states do not share the same needs.

Ms Morrison stated that insight was helpful to understanding these discussions. She stated that when the SERFF redesign begins, the intent is to have one set of TOIs, sub-TOIs, and filing types, but that submission requirements that vary for states would be reflected. She stated it would be helpful for all states to be sure they are responding to the correspondence received regarding the PCM so that a good understanding of their needs is documented.

3. Discussed and Considered Suggestions Received on the PCM and UTD

Ms. Motter stated the first suggestion to discuss was regarding the uniform P/C transmittal documents that continue to be used on paper filings. She stated they are kept updated to stay consistent between what is currently available as fields in SERFF and

also keep what is available for life and health submissions to be comparable to P/C submissions when appropriate. Ms. Motter stated that NAIC staff have noted that the document for P/C is missing some rating information, so a recommendation has been made by NAIC staff to update the rate/rule schedule to show the rate action information with all of the applicable information as shown in life and health information. She stated this would also line up with what is currently shared in SERFF when submitting a filing that way as well.

Ms. Lee stated she consulted with her P/C peers, and they do not feel this suggestion is needed for Washington because they already have a previous rate filing for each schedule item. The other reason she provided is that they already have the company rate information that shows the proposed change as whole. Ms. Motter stated this suggested change would not change SERFF but would bring it in line with SERFF to bring consistency to the paper filing document that already exists. Ms. Lee stated it looks good for life and health, but on the P/C side, this suggested change would change the rate schedule item because it would add in an item for each plan's separate rate change, which may not be consistent with the way the carrier rates. She explained they usually see the average rate change as a whole, and it does not go down to each claim's rate change.

Brandy Woltkamp (NAIC) clarified that the intent of this suggestion was to update both SERFF and the uniform transmittal paper document, but she stated it could be changed to diverge between the two if preferred. Ms. Motter asked which fields would be new. Ms. Woltkamp stated that in SERFF, currently for P/C, it is that very first item which is the rate action and then the field for "previous state filing number." The suggestion is to change the field for "previous state filing number" to "rate action information" and then move the previous state filing number or the tracking number down into it, in a second column. Ms. Motter asked if these fields could be updated via post submission update. Ms. Woltkamp stated these items would be under change schedule items, so they would come in via amendment or response letters. Ms. Motter stated she could see how adding more fields could cause confusion to the user as to what information is wanted in those fields, such as understanding the difference between a previous filing number and the previous filing that had a rate action and what a rate action is. Ms. Lee stated she believes adding more fields would make things more confusing and that companies and state insurance regulators would be spending more time trying to make sure the right fields were filled in with the right information.

Ms. Lee made a motion, seconded by Mr. Johnson, not to adopt the suggestion to update the rate/rule schedule in the uniform P/C transmittal document to show rate action information with all applicable information as shown on life and health information.

Ms. Motter stated the next suggestion to discuss is related to the uniform life, accident and health (A&H), annuity, and credit PCM. The suggestion is to create two additional sub-TOIs under Medicare Supplement plans of MS10I and MS10G—one for individual plans and one for group plans—with a description for a package filing containing Medicare standard plans issued before June 1, 2010, and 2010 Medicare standard plans issued June 1, 2010, and later. The reason provided for this suggestion stated: "Plans issued before June 1, 2020 (1990 plans) have similar benefits to those plans with the same letter issued after June 1, 2020 (2010 plans). Therefore, it makes sense for companies to pool some or all of the experience for the 1990 and 2010 plans. If a company submits rates and supporting documentation for both 1990 and 2010 plans, the existing TOIs and sub-TOIs do not account for this. If a company does not pool the 1990 and 2010 plans, they can still use the existing TOIs and sub-TOIs".

Ms. Motter stated that currently, Medicare Supplement plans end at MS09 in the PCM. She stated occasionally, there are filings received that may combine the experience of older and newer plans, and that right now it seems to be very bifurcated that you use certain TOIs for the older plans and other sub-TOIs for the newer plans. She stated the suggestion is that additional TOIs are needed for when there is information coming in about both plans together. Ms. Motter asked if filing submissions are being received, or should be being received, that combine older plans in the newer plans. Ms. Lee stated that Washington considers the 1990 and 2010 plans similar from a rating standpoint, but that because of the current TOI requirement, they have the carriers submit two identical filings. She explained if a carrier filed for an individual 1990 and 2010 plan, for example, they would need to submit one rate filing under MS05I and one under MS08I, which creates a lot of work as two filings must then be reviewed. Ms. Motter stated one thought to consider is that there is a TOI for MS06 labeled as "Medicare Supplement – Other," so it is possible that states could do combined filings under MS06. Currently, the description states, "Not specifically described above," so this may need to be changed to: "Not specifically described," as it was created before additional TOIs existed.

Mr. Grissom stated Virginia does use the "Other" TOI because they require companies to combine the experience of the 2010 and 1990 plans when filing Medicare Supplement rates, so in a sense they cannot use multiple TOIs. He stated this suggestion would be helpful for Virginia filers.

Ms. Jones asked if MS06 is used with the understanding that it is related to Medicare Supplement – Standard Plans and if MS09 is used with the understanding that it is related to Medicare Select 2020. Ms. Woltkamp stated that MS09 is basically the same



thing as MS06 and is for Medicare Supplement— Other, but it is for those 2010 plans that went into place Jan. 1, 2010, so it would be the offsetting “other” TOI/sub-TOI for MS07 through MS08.

Ms. Motter asked if Working Group members would like to reach out to their staff and discuss this further during tomorrow’s scheduled Working Group meeting. Ms. Mackenzie and Ms. Nguyen stated they would like the option to resume this discussion tomorrow after getting additional input. Ms. Motter asked that everyone look at: 1) how they are currently accepting these types of filings; 2) if the way the filings are currently received is working well; and 3) if they think the suggestion would be helpful or if maybe changing the current descriptions to be clearer would be a good option.

Ms. Clausen stated she would like to suggest an edit to the H13 TOI. Ms. Motter stated she could provide that suggestion to be discussed during the June 30 Working Group meeting.

Having no further business, the Speed to Market (EX) Working Group adjourned.

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Draft: 8/26/21

E-Commerce (EX) Working Group  
Virtual Meeting  
June 30, 2021

The E-Commerce (EX) Working Group of the Innovation and Technology (EX) Task Force met June 30, 2021. The following Working Group members participated: Kathleen A. Birrane and Robert Baron, Chairs (MD); Jully Pae (CA); Heather Droge (KS); Tom Travis (LA); Cynthia Amann (MO); Martin Swanson (NE); Chris Aufenthie (ND); Lori Barron (OH); John Lacey (PA); Elizabeth Kelleher Dwyer (RI); and Bryce Carlen (WA).

1. Heard an Introduction to the Working Group, Establishment, and Background

Commissioner Birrane stated that the first item on the agenda is to provide an introduction to the Working Group, explain what led up to the establishment of the Working Group, and explain some additional background information. She then called on Denise Matthews (NAIC) to provide background information.

Ms. Matthews recalled that the Innovation and Technology (EX) Task Force in 2020 set a request for information to interested parties asking for information related to specific regulatory relief or accommodations offered by the states because of the COVID-19 pandemic that interested parties would recommend being made permanent as they relate to innovation and technology. She stated that this request is consistent with the Task Force's charge of monitoring technology developments to develop regulatory guidance, as appropriate, to ensure that regulation does not impede or create obstacles to necessary and beneficial consumer innovations. The request also asked if there is some type of regulatory relief or accommodation offered, or if there continue to be laws, regulatory guidance, or established practices in place that prohibit or limit insurers or producers from implementing or using newer technologies. The request further asked if there are also data methods or processes that are now necessary to continue to serve customers and maintain operations, especially in this remote work environment and social distancing situation.

Ms. Matthews explained that those responses were compiled into a summary document, which was presented to the Task Force at the 2020 Fall National Meeting and was included in the materials for this meeting. Nine responses were received, and the comments were grouped into four categories, including: 1) electronic commerce; 2) regulatory capabilities; 3) claims facilitation; and 4) surplus lines. Included among these responses was a recommendation and draft bulletin provided by the American Council on Life Insurers (ACLI). After reviewing these responses and finalizing the Working Group's 2021 charges, it was decided that more information was needed for the Working Group to take specific action.

Ms. Matthews said a second request for information was sent to those who responded to the initial request, and a summary of those responses was prepared as well. A consumer representative also provided a comment, and more specific information was requested regarding whether the issues identified are more interpretive or signal a lack of uniform interpretation versus an actual legislative issue where the legislative language needs to be reviewed. The request also went on to request suggestions regarding the prioritization of these issues, and the summary of these responses were also included as materials for this meeting.

Ms. Matthews explained that the second request responses indicated a preference to prioritize e-commerce and digitalization in general, including allowing for e-signatures, e-delivery of documentation, and information regarding e-notarization. The responses also included discussions of changing the paradigm from what is mostly an opt-in scenario for consumers to an opt-out where exchanging information digitally or electronically would become the default, with consumers having the ability to opt-out of that option.

Regarding specific action items, Ms. Matthews said the ACLI and the American Property Casualty Insurance Association (ACPIA) suggested forming a working group to survey states about Uniform Electronic Transactions Act (UETA) exceptions, and to begin work on laws and regulations that might need to be changed to accommodate e-commerce or digitalization, as well as interpretive guidance where legislative changes are not needed.

Ms. Matthews said the second category of survey responses represents regulatory capabilities and covers the list of items related to allowing online education and training for continuing education (CE) for producers, allowing electronic filings for regulatory filings, and eliminating wet signature requirements. There were no specific action suggestions for this category, and the Task Force agreed to defer the education and training item to the Producer Licensing (D) Task Force.

Claims facilitation was a category of responses from the first request for information, and Ms. Matthews explained that Commissioner Godfreed had noted that this was not included in the responses to the second request for information. He also noted that it was not clear if this was just an oversight since not all of those who responded to the first request for information responded to the second, or if it means this category does not seem to command prioritization at this time. Ms. Matthews said there may not be obstacles related to this area at this time, but it might still be something for the Working Group to consider.

Ms. Matthews said the last category of responses was specific to surplus lines, and some of the respondents noted that the Surplus Lines (C) Task Force is currently working to amend the *Nonadmitted Insurance Model Act* (#870), so it may be appropriate to defer this item to the Task Force, which has in fact occurred. She noted that the Task Force requested a modification to any Request for NAIC Model Law Development that previously focused solely on Model #870, and that request was approved to address broader amendments to the model that would include additional references to the other modernization amendments. She said these particular issues summarized in the request for information documents will be handled in that workstream under the Task Force.

Ms. Matthews said other comment letters provided examples of specific states, where either the interpretation or the law prohibits doing business digitally, and three respondents, including the ACLI, the ACPIA, and the National Association of Professional Insurance Agents (PIA) indicated support for drafting a model bulletin to cover some of the non-legislative issues.

Following the review and summary of the request for information responses, Ms. Matthews said the Innovation and Technology (EX) Task Force discussed them during the Spring National Meeting, agreed to the referrals previously discussed, and stated that it would turn its focus to the other identified issues. The Task Force also decided to form this new Working Group to develop a workplan and determine appropriate deliverables to address these issues. Ms. Matthews then asked Superintendent Dwyer for her comments.

Superintendent Dwyer said there is low hanging fruit here that drives industry crazy, costs money that does not need to be spent and is not there for consumer protection. She said if the Working Group can identify those issues and assist in getting the states on the same page, it can reduce the costs for everybody and pave the way for innovation, so that is what the Working Group is looking at doing. She noted that when getting down to a statute, it gets very difficult, as Working Group members all must individually go to their legislators, which does not mean those issues are off the table, it is just that the issues that are not statutory are easier. She said the Working Group needs continuous input from the people who are doing this and trying to comply with the states in order to understand where it should go, so she asked for that input from people who are in the know by letting the Working Group know where it should focus.

Commissioner Birrane agreed with Superintendent Dwyer's comments, and she said the focus of this work is infinite practicality. She also said what we are really dealing with here are the things that drive companies and others who are trying to work in this space crazy because they do not make any sense and they serve no valuable regulatory or consumer protection purpose, but instead slow things down, impede business for everybody, and are often harmful to consumers. She also discussed antiquated paper processes and delivery processes and stated that while individuals were at home, they were often unable to get to their office to get their mail because it had to be sent via mail. Then, when people were able to get things electronically, mail was sent both ways because that is what must be done statutorily, so we must find ways to innovate.

## 2. Discussed its Charges

Commissioner Birrane then introduced the Working Group's charges and asked for input from members of the Working Group and other interested state insurance regulators. No comments were received.

Commissioner Birrane then asked for comments from interested parties. Birny Birnbaum from the Center for Economic Justice (CEJ) said digitalization is not simply converting paper to digital bytes, and visualization can facilitate transactions, consumer understanding, and consumer empowerment while also potentially accomplishing the opposite. Mr. Birnbaum said while the Working Group considers facilitating e-commerce transactions, it should keep in mind a specific consumer protection issue called "dark patterns." He explained that Colorado law defines "dark patterns" as a user interface designed or manipulated with the substantial effect, severity or impairing user autonomy, decision making, or choice. He stated that "dark patterns" tend to discourage deliberate decision making for users. He said while there are things that can be done with digital disclosures in terms of manipulation that simply cannot be done with paper disclosure, the CEJ is not saying that digital transformation should not occur, but the issue of "dark patterns" be kept in mind as the Working Group approaches a task.

### 3. Discussed its Workplan and Efforts Moving Forward

Commissioner Birrane said the Working Group's first step is to understand the legal landscape and identify key legislation, so the Working Group is focused primarily on the UETA. She said Maryland is a good example of a state that has additional legislation in its code specific to property/casualty (P/C) insurance that addresses electronic communications with regard to certain matters. She said some states have adopted the UETA while others have not, and there are various other laws out there as well. Therefore, she said the Working Group believes the most appropriate thing to do is to understand the framework and have a really solid understand. Commissioner Birrane said while the NAIC has done some amount of survey work, it has not done anything to that extent, and she asked what the most efficient way to move this forward is. She also stated that the Working Group has to think about time frames, what it would be able to survey from its individual states, what the states would be able to tell the Working Group, and what the time frames are. She asked if the NAIC should draft a survey for each of the states asking them to identify the relevant laws as a starting point while also keeping in mind interpretation and application. She then asked for comments from members of the Working Group.

Mr. Swanson stated that Nebraska is actually going through this exercise right now internally. He stated that Director Eric Dunning (NE) decided to look back at what Nebraska did during the emergency order when it was declared by its governor, including suspending certain requirements, certain signatures, wet signatures, and things like that. Mr. Swanson said Nebraska has gone through its statutory scheme, noting that it can waive certain things. He noted that some states have passed electronic notary laws, which is less of a burden for some filers. He suggested that one step the Working Group may consider is to ask the states through a survey what they learned through the emergency declarations and what they can apply now in addition to whatever laws they may have.

Ms. Amann said Missouri did something similar government wide and within its department of insurance (DOI), and she said Missouri would be glad to share its results.

Mr. Aufenthie said the NAIC had a list of bulletins that were issued because of the pandemic, and he suggested going back to the states and asking whether they still have those bulletins in effect. He said when the Working Group asks a state if they did or did not keep a bulletin to explain why, as that would give the Working Group good insight into what it is trying to accomplish.

Commissioner Birrane then asked for comments from other interested state insurance regulators. No comments were received.

Commissioner Birrane then asked for comments from interested parties. Patrick C. Reeder (ACLI) stated that ACLI members have spent a lot of time thinking about the UETA, and not just the state implications, as there are also federal implications with the e-sign legislation and how those two pieces of legislation interact. He said one thing the ACLI could do is to put together a briefing explaining what the UETA is, what states have adopted it, what e-sign is, and how it all intersects. He suggested that this may assist the NAIC in framing up some potential survey questions. He also said some ACLI members may be able to share some information and its experiences in this touchless society, noting that the regulatory community made some amazing and very fast accommodations that were critical for its members to stay in this touchless society. He stated that ACLI members want them to be a resource for the Working Group.

Jason Berkowitz (Insured Retirement Institute—IRI) said this is a very important effort for its members. He explained that the IRI operates primarily in the annuity space, and the IRI membership includes all of the major insurance companies that manufacture those products, as well as the distribution arms, including broker dealers and other distributors and asset managers that work behind the scenes on some of these products. He also said the IRI has a very robust internal operations and technology group, and the IRI would be happy to be available to share some of the operations and technology challenges it has been encountering.

Angela Gleason (APCIA) offered that this is very important to its members, and they are willing to assist the Working Group.

Mr. Birnbaum said the CEJ is often part of a coalition with other organizations whose work focuses on consumer's digital rights and privacy and electronic issues. He suggested that the NAIC contact the Electronic Frontier Foundation and the Center for Digital Democracy (CDD), both of which have worked on these issues and can provide insight that the Working Group may not get from industry.

Following the comments, Commissioner Birrane said this gives the Working Group enough to begin putting together a draft of its initial approach in terms of data, and she should circulate to the Working Group the takeaways from the meeting, as well as a timeframe.

Commissioner Birrane then said the Working Group should begin thinking about what its deliverable will look like. She said in this context, the deliverable may not need to be a model, but the Working Group could discuss something along the lines of a bulletin or a white paper.

Superintendent Dwyer suggested a white paper might possibly be a good deliverable, but a bulletin might be even better. She said in her experience, the states do not really realize they are doing it. As an example, she said hard copy jurat pages come into her office, and she sees the hard copies and wonders why they are getting all of them. She said short of seeing these documents, one might even know it is happening. Therefore, a bulletin might be something that informs the entire department or a part of the department that knows they are getting paper documents or requiring something. She also said as the Working Group goes along, there may be other deliverables as well.

Mr. Swanson said one of his immediate thoughts when thinking about these issues is to draft a white paper, but when the Working Group digs into this issue more and get results back from all of the information it gathers, whether it drafts a bulletin or white paper, there should be recommendations to the letter committees saying the Working Group found some places where it can do better through electronic methods.

Commissioner Birrane said it is too early to ask members to subscribe to a drafting group because the Working Group needs to get further along in terms of where it is going to end up. She said the most important thing for the Working Group to focus on is what the query process is, how the Working Group is going to gather the categories of information that have been discussed, and what form and format the Working Group wants it in.

#### 4. Discussed Other Matters

Commissioner Birrane asked whether the Working Group would like to meet virtually in conjunction with the Summer National Meeting. She said holding a meeting might be helpful because by that time, her hope is that the Working Group would have had the opportunity to put some of the query frameworks together, circulate them, and have a brief discussion. There were no objections to holding another meeting, so she said she would work to get that scheduled.

Having no further business, the E-Commerce (EX) Working Group adjourned.

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