

## **ANTIFRAUD (D) TASK FORCE**

Antifraud (D) Task Force March 23, 2023, Minutes

Improper Marketing of Health Insurance (D) Working Group March 23, 2023, Minutes (Attachment One)

## Draft Pending Adoption

Draft: 4/4/23

Antifraud (D) Task Force  
Louisville, Kentucky  
March 23, 2023

The Antifraud (D) Task Force met in Louisville, KY, March 23, 2023. The following Task Force members participated: Trinidad Navarro, Chair (DE); John F. King, Vice Chair (GA); Lori K. Wing-Heier represented by Alex Romero (AK); Alan McClain represented by Crystal Phelps (AR); Barbara D. Richardson represented by Maria Ailor (AZ); Andrew N. Mais represented by Kurt Swan (CT); Doug Ommen represented by Andria Seip and Jared Kirby (IA); Dean L. Cameron represented by Randy Pipal (ID); Vicki Schmidt represented by John Eichkorn (KS); Sharon P. Clark represented by Rob Roberts (KY); Kathleen A. Birrane represented by Mary Kwei (MD); Anita G. Fox represented by Joseph Garcia (MI); Grace Arnold represented by Paul Hanson (MN); Chlora Lindley-Myers represented by Carrie Couch and Marjorie Thompson (MO); Mike Chaney represented by John Hornback (MS); Troy Downing represented by Steve Matthews (MT); Mike Causey represented by Tracy Biehn (NC); Jon Godfread represented by Dale Pittman (ND); Eric Dunning represented by Laura Arp and Martin Swanson (NE); Chris Nicolopoulos represented by Heather Silverstein (NH); Jennifer A. Catechis represented by Leatrice Geckler (NM); Judith L. French represented by Michelle Brugh Rafeld (OH); Glen Mulready represented by Rick Wagnon (OK); Andrew R. Stolfi represented by Dorothy Bean and Stephanie Noren (OR); Michael Wise (SC); Larry D. Deiter represented by Melissa Manning and Travis Jordan (SD); Jon Pike represented by Randy Overstreet, Tanji J. Northrup, and Tracy Klausmeier (UT); Scott A. White represented by Juan A. Rodriguez Jr. and Richard Tozer (VA); Kevin Gaffney (VT); and Allan L. McVey represented by Erin K. Hunter (WV).

### 1. Adopted its 2022 Fall National Meeting Minutes

Commissioner King made a motion, seconded by Mueller, to adopt the Task Force's Dec. 14, 2022, minutes (see *NAIC Proceedings – Fall 2022, Antifraud (D) Task Force*). The motion passed unanimously.

### 2. Discussed its 2023 Charges and Priorities

Commissioner Navarro said the Task Force discussed its 2023 proposed charges during the 2022 Fall National Meeting. Commissioner Navarro said those proposed charges were officially adopted by full NAIC Membership. He said the Task Force will be focusing on additional priorities, including; 1) the creation of a Producer Portal, which will be a centralized portal that would allow consumers to find licensing information on insurance producers; 2) an Antifraud Plan Repository, which will assist with streamlining the process of submitting and collecting companies' antifraud plans; and 3) the implementation of the Online Fraud Reporting System (OFRS) redesign. Commissioner Navarro said the Task Force will also be assisting the Improper Marketing of Health Insurance (D) Working Group's review of the *Unfair Trade Practices Act* (#880) for potential amendments to address current marketplace activities and the Antifraud Technology (D) Working Group's work on the implementation of an OFRS redesign and future enhancements.

### 3. Received an Update from the Improper Marketing of Health Insurance (D) Working Group

Frank Pyle, Vice Chair of the Improper Marketing of Health Insurance (D) Working Group, said the Working Group held its first regulator-to-regulator meeting of the year on Feb. 23. Pyle said the Working Group will continue to meet in regulator-to-regulator session on the fourth Thursday of the month. He said that last year, the Working Group began working on its charge to "review existing NAIC models and guidelines that address the use of lead generators for sales of health insurance products, and identify models and guidelines that need to be updated or developed to address current marketplace activities." Pyle said the Working Group started reviewing Model #880. He said the Working Group will be continuing its work on this charge and is on a path to finalizing the review of

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the model in April and May. Pyle said the Working Group will continue with its regulator-to-regulator meetings and will be adding public meetings as necessary to complete its charges and goals for 2023. The Working Group will this afternoon on March 23 following the Task Force (Attachment One).

### 4. Discussed the NAIC OFRS

Greg Welker (NAIC) said that during the 2022 Fall National Meeting, the Task Force briefly discussed the completion of the OFRS redesign. Welker said that notifications have been sent out. However, he wanted to follow up during the Task Force meeting to announce to those who have not heard that the OFRS redesign is completed and live. Welker said if they have not already, he encourages state insurance regulators to review the redesign. He said the purpose behind the redesign was to update an out-of-date system being used, provide the necessary cyber security required, and add specific enhancements like attachments. Welker said that at this time, an individual submitting a potential fraud referral has the ability to submit attachments directly to the OFRS. He also said that, at this time, the attachment enhancement feature is not set up with the National Insurance Crime Bureau (NICB), the National Health Care Anti-Fraud Association (NHCAA), or state vendors. The NAIC will need to work with each to implement the attachment enhancement. Welker said the NAIC is currently working with the NICB and the NHCAA. The next step will be to work with individual states. Welker said the Antifraud Technology (D) Working Group, chaired by Armand Glick (UT), will be taking back its responsibility to review requested enhancements for OFRS. Welker said the Working Group will meet after the Spring National Meeting to specifically discuss the OFRS and the next steps to fully integrate the redesigned system for everyone.

Glick said he has had discussions with Welker and others at the NAIC. Prior to the redesign project, the Working Group was responsible for reviewing all suggested enhancements and approving them before taking them to NAIC staff to update OFRS. Glick said the Working Group will be taking that responsibility again and will also be involved in the implementation of the redesign. Glick said he will work with Welker to schedule a meeting for April.

### 5. Heard Reports from Interested Parties

#### A. Coalition Against Insurance Fraud

Matthew Smith (Coalition Against Insurance Fraud) said this will be the Coalition's 30-year anniversary. Smith said if there are states that are not familiar with the Coalition or its services available, he would encourage them to reach out. The Coalition distributes its Fraud News Weekly report, which provides comments on what is being seen from different geographic locations. Smith said that this is a free newsletter and that those not already subscribed could enroll on the Coalition's web page.

Smith said that with the continued growth of the Coalition, it is adding staff. He said the Coalition hired Tracy Thompson, former New Jersey state insurance fraud prosecutor, and Brady Bell as a second full-time communications staff member. The Coalition is also interviewing for a full-time government affairs position that will be announced at the end of April.

Smith said the Coalition has continued to work on its research studies, which assist the states in fighting against insurance fraud. He said it has completed a data ethics study that provides a detailed view of the good and bad taking place in insurance fraud. Smith said the data from this study shows that 85% of consumers support the appropriate use of data to fight insurance fraud. He said another study is being completed in partnership with Verisk. Smith said this study will be a psychology fraud study. The analysis will show consumers' perceptions of insurance fraud. Smith said the last study will be with PricewaterhouseCoopers (PWC) on the keys to unlocking special investigation unit (SIU) success.

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Smith said the Coalition's legislative advocacy program has been busy, with 165 legislative bills being introduced. He said a new bill is being introduced that provides an incentive for reporting insurance fraud. Smith said the bill states that anyone who reports potential fraud that leads to an investigation in which there is a conviction and money recovered will receive 40% of the recovered amount.

Smith said other items to announce on behalf of the Coalition include its efforts to work with Glick for the Utah Insurance Department to host the 2023 Annual Fraud Directors Meeting and its plans to host a webinar in April on litigation finances. The Coalition's midyear meeting will be June 5–6, and the year-end meeting will be held in December.

### B. NICB

Patrick Martin (National Insurance Crime Bureau—NICB) said he is filling in for Rich DiZinno, who could not attend due to weather. Martin said that the NICB fully supports the OFRS redesign, which provides an avenue to report fraud to the states. The NICB has a similar reporting system, and they complement each other. As the NAIC implements the redesign, the NICB will be 100% behind the implementation. The NICB and NAIC are working together with quarterly calls to help with any implementation issues.

### 6. Discussed Other Matters

Glick said the Utah Insurance Department has the privilege of hosting the Annual Fraud Directors Conference in October. Glick said this will be the largest gathering of state fraud directors. The NAIC will be assisting with the contracts and funding in addition to the Coalition and NICB. Glick said the conference will take place Oct. 3–5 in St. George, UT.

Having no further business, the Antifraud (D) Task Force adjourned.

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Improper Marketing of Health Insurance (D) Working Group  
Louisville, Kentucky  
March 23, 2023

The Improper Marketing of Health Insurance (D) Working Group of the Antifraud (D) Task Force met in Louisville, KY, March 23, 2023. The following Working Group members participated: Martin Swanson, Chair (NE); Frank Pyle, Vice Chair, and Susan Jennette (DE); Maria Ailor (AZ); Kurt Swan (CT); Andria Seip (IA); Michele Riddering (MI); Paul Hanson (MN); Carrie Couch and Teresa Kroll (MO); Michael Fissel (PA); Travis Jordan (SD); Matthew Tarpley (TX); and John Haworth (WA). Also participating were: Robert Wake (ME); Michelle Brugh Rafeld (OH); and Patrick Smock (RI).

### 1. Discussed Model #880

Swanson said the Working Group has two charges that will carry over into 2023: 1) coordinate with regulators, both on a state and federal level, to provide assistance and guidance monitoring the improper marketing of health plans, and coordinate appropriate enforcement actions, as needed, with other NAIC committees, task forces, and working groups; and 2) review existing NAIC models and guidelines that address the use of lead generators for the sale of health insurance products, and identity models and guidelines that need to be updated or developed to address current marketplace activities.

Swanson said in 2022, the Working Group began to work on its second charge to review NAIC models. He said to begin, it wanted to provide a brief overview of the status concerning this charge. He said on Aug. 31, 2022, an initial draft amendment for the *Unfair Trade Practices Act* (#880) was sent out to the Working Group for comments. He said the Working Group met to discuss comments received, and it updated the draft, as appropriate. He said on Nov. 3, 2022, the second draft was distributed soliciting for comments through Nov. 18, 2022. He said during this review period, the Working Group shifted its focus to follow the NAIC procedures by completing a Model Law Review Form for Model #880. He said the intent of the form is to gather information that would support the development of a new model law or amendments to an existing model law. He said this Model Law Review Form specific to Model #880 was adopted by the Market Regulation and Consumer Affairs (D) Committee during the 2022 Fall National Meeting. The form will be presented to the Executive (EX) Committee during the Spring National Meeting. Swanson said once adopted by the NAIC membership, the Working Group will continue with finalizing the potential amendments.

Swanson said since the Model Law Review Form is going before the Executive (EX) Committee, he wanted to continue with the discussion concerning these amendments. For the purposes of this meeting, the goal will be to go through the comments received to date and allow everyone an opportunity to comment.

Swanson said the first comment to discuss was received from Maine. Wake said he would propose a few proofreading suggestions; however, the subtenant portion is dealing with all the emails, robocalls, and even junk mail that is being received by consumers. Wake said he would suggest that the Working Group be mindful of the language used to describe the lead generators. He said he would suggest getting away from specifically stating "health insurance" and broadening to a product or service that would encompass the necessary language to go after these entities. He said the communication directly being used is too narrow and therefore would not include "publicizes." He said simple advertisements would not fall into the same group. He said he would suggest working

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on eliminating as much confusion as possible by narrowing down the scope. He said he would also suggest broadening the definition of “solicitation.”

Kroll said the Missouri Department of Commerce and Insurance (DCI) would like to extend its appreciation for working on this task. She said the DCI does not believe amending Model #880 would solve the current problem. She suggests reviewing the *Advertisements of Accident And Sickness Insurance Model Regulation (#40)*, the *NAIC Model Rules Governing Advertisements of Medicare Supplement Insurance with Interpretive Guidelines (#660)*, and the *Producer Licensing Model Act (#218)*.

Kroll said the DCI’s concern with the proposed changes is that they do not grant any additional authority to regulate health insurance lead generators that is not already afforded under the existing models. She said the definition of “person” is defined as a nature or artificial entity, including but not limited to, individuals, partnerships, associations, trusts, or corporations. She said “person” has long been understood to have a broad meaning, and the DCI would like to cite an article by David R. Anderson in the *Journal of Insurance Regulation (JIR)*, which was titled, *State Unfair Insurance Trade Practices and Claim Laws: The NAIC Model*. Regarding persons, the article states, “‘Person(s)’ covered under the Act is very broad and includes virtually every individual or entity engaged in the business of insurance, including insurers, reciprocals, agents, brokers, and adjusters. State case law has interpreted the act to also include sureties, self-insurers, and defense attorneys.” Kroll said the article further explains, “The commissioner of insurance is authorized to examine and investigate the affairs of any person engaged in the business of insurance who has been or is engaged in anything prohibited by the Model Act whenever there is reason to believe that a person has or is engaged in prohibited conduct, whether defined or undefined.”

Kroll said this aligns with Section 6 of the existing model law. Furthermore, the Proceeding Citations of the circulated draft of the model also note, “Section 6 was substantially revised in 2001 by the addition of the last two sentences. To broaden its scope, references to persons were added wherever insurers were noted.”

Given the broad applicability of the term “persons,” it seems unnecessary to add an additional definition for one such type of “person” when all other such persons remain undefined. Furthermore, the proposal to add “or health insurance lead generators” to Section 3 is inappropriate since other defined terms such as “person” and “producer” are also not in the existing model language.

Kroll said there are other sections that Missouri believes should be reviewed, including Section 2: Definitions. Regarding the current definition of “health insurance lead generator” on the proposal, Missouri recommends adding “consumers” or “consumer.” The current definition is too broad and may include entities that would not be expected. Kroll said next is Section 4. Many provisions contained in Section 4 refer only to “insurers.” Kroll said Missouri’s concern is that with the proposed extension of the application of this model to health insurance lead generators, the language in Section 4 may need to be updated.

Kroll said the next item concerns Sections 6–11. She said these sections give state departments the authority to take action. If “person” encompasses a “health insurance lead generator,” then these sections are appropriate as currently drafted. However, if “health insurance lead generator” is specifically called out as a separately defined term, statutory interpretation instructs us that the specific definition is there for a reason; therefore, if “person” does not encompass “health insurance lead generator,” then “health insurance lead generator” also is not included in the references to “person” in Sections 6–11. Kroll said Missouri is questioning whether “health insurance lead generator” should be specifically included in these sections.

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Rafeld said Ohio has already submitted its comments letters, but it would like to echo Wake's comment to review the definition of "solicitation."

Smock said the discussions that have been taking place since Rhode Island submitted its comments in 2022 have been educational. Smock said he would only suggest the Working Group continue their work to remain comprehensive as possible as they finalize these amendments.

Cindy Goff (American Council of Life Insurers—ACLI) said the ACLI is appreciative of this work being completed by the Working Group. She said the ACLI understands that the goal is to define the lead generator and put requirements on the lead generators to be able to identify what they are doing in their practices. She said there is a lot of lead generator activity, and the focus of this group pertains to health insurance. However, if the scope is broadened, then it needs to encompass other areas. Goff said the ACLI's recommendation is to stay on defining the health side. Lastly, she said as the Working Group moves closer to finalizing the amendments, the ACLI and its members want further information with the expectation from them once the amendments have been adopted.

Meghan Stringer (America's Health Insurance Plans—AHIP) said AHIP has expressed the importance of addressing this issue. She said the ACLI comments highlight the concerns that the definition of "lead generator" is too broad, which might encompass advertisements. She said the ACLI would like to see changes to the definition to address those types of situations. She said AHIP is happy to work with the Working Group to define these clear definitions. She said there are entities outside of insurer or producer that would need to be included. She recommended reviewing Model #660 as has been suggested.

Lucy Culp (Leukemia & Lymphoma Society—LLS) said numerous studies show that misleading consumers is a legitimate issue that needs to be addressed. She said studies have shown concerns with the level of misleading information, which will end in defrauding consumers. She said the primary recommendations are that carriers be held responsible for the activities and violations of these entities. She said the Working Group is doing a great job beginning with Model #880; however, it would recommend that if it does not happen within this model, the necessary amendments are applied to one of the other models discussed today in order for additional protection for consumers.

Jessica Waltman (National Association of Benefits and Insurance Professionals—NABIP) said NABIP is supportive of the Working Groups progress with these issues. She said NABIP's members are often cleaning up the messes that are created by these bad lead generators. She said NABIP's one concern is that the definition is too broad, and it may cause confusion with other entities. She said NABIP suggests adding a line to the end that it does not apply to an already regulated entity or individual subject to a model act or subject to save their regulation license.

Bonnie Burns (California Health Advocates—CHA) said she wanted to remind the states that if not already, having a State Health Insurance Assistance Program (SHIP) housed in an agency is a good resource. She said SHIPs have direct contract Medicare beneficiaries, and each state could benefit from their assistance.

Swanson said with no further comments from the Working Group, the discussion today will be taken back, and the current draft will be reviewed. The changes will be applied, and they will be sent out for further review. Swanson said the Working Group will be provided with the updated draft to review, and the Working Group will hold an open conference call to finalize and potentially adopt the amendments.

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### 2. Discussed Topics Concerning Improper Marketing

Swanson said he has been getting health calls in Nebraska for Medicare Advantage specifically, and now he is getting offshore calls from India, which makes it harder to enforce. He said the federal Centers for Medicare & Medicaid Services (CMS) is aware and looking to hold a call with state insurance regulators to discuss enforcement.

Pyle said Delaware has been working with the CMS to fight against these issues. He said Delaware has encountered calls from other countries as well, and the states will need help to fight against these entities.

Terri LaCroix (CMS Office of Program Operations and Local Engagement—OPOLE) said the CMS is collaborating and partnering with state insurance departments to fight against these entities. She said there are times that the CMS state representatives are not hearing much, which may be because the right people are at the table. She said the CMS encourages state insurance regulators to communicate with the CMS to assist with its efforts to fight against these bad lead generators. Working on a memorandum of understanding to exchange data, the CMS ran into some hurdles, and it is working on an exchange agreement for the states.

Seip said Iowa is seeing Medicaid issues. She said an individual is using the governor's face to market a fraudulent junk plan. She said Iowa will be continuing its work on fighting these entities, and other states, if not already aware, should be ready since it is still continuing to be an issue.

Matthew Smith (Coalition Against Insurance Fraud—CAIF) said the CAIF supports these efforts. He said the CAIF is seeing a lot of these issues offshore, and that the Global Insurance Fraud Summit has been focusing on these issues as well. He said a regulator or insurance fraud in India, Europe, or another country may not have the means to get in contact with these offshore regulators. He said with the CAIF's involvement in the Global Insurance Fraud Summit, the Working Group has contacts in 30–40 countries, and the CAIF would be happy to assist with coordination.

Burns said one of the reasons for this meeting is the struggles with authority on Medicare issues. She said it is a difficult process to fight against, and some of this falls with the education of consumers. There is a widespread marketing problem, and not only consumers are lacking the education. This also includes agents that do not have the proper training to help their insurers.

Having no further business, the Improper Marketing of Health Insurance (D) Working Group adjourned.

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