The Market Regulation and Consumer Affairs (D) Committee met in Austin, TX, Dec. 9, 2019. The following Committee members participated: Chlora Lindley-Myers, Chair (MO); Allen W. Kerr, Vice Chair, and Russ Galbraith (AR); Trinidad Navarro represented by Frank Pyle (DE); John F. King represented by Martin Sullivan (GA); Colin M. Hayashida represented by Paul Yuen (HI); Stephen W. Robertson represented by Holly Williams-Lambert (IN); Vicki Schmidt (KS); Anita G. Fox represented by Michele Riddering (MI); Mike Causey represented by Tracy Biehn (NC); Barbara D. Richardson (NV); Kent Sullivan and Ignatius Wheeler (TX); Todd E. Kiser (UT); and Mike Kreidler and John Haworth (WA). Also participating were: Maria Ailor (AZ); Cynthia Amann (MO); Timothy Schott (ME); Bruce R. Ramge (NE); Jessica Altman (PA) and Larry Deiter (SD).

1. **Adopted its Oct. 1 Minutes**

The Committee met Oct. 1 and took the following action: 1) adopted its Summer National Meeting minutes; and 2) appointed the Privacy Protections (D) Working Group.

Commissioner Kerr made a motion, seconded by Mr. Haworth, to adopt the Committee’s Oct. 1 minutes (Attachment One). The motion passed unanimously.

2. **Adopted its 2020 Proposed Charges**

Director Lindley-Myers said the Committee’s 2020 proposed charges are similar to its 2019 charges, except for some revisions to the charges of the Market Conduct Annual Statement Blanks (D) Working Group. She said the first charge of Working Group was changed to reflect that the review of Market Conduct Annual Statement (MCAS) data elements should be for the lines of business in effect longer than three years, rather than for all lines. Additionally, the reference to completing work by June 1 was deleted to reflect that the Working Group’s tasks are completed as necessary and appropriate.

Commissioner Kerr made a motion, seconded by Mr. Haworth, to adopt the Committee’s 2020 proposed charges (see NAIC Proceedings – Fall 2019, Executive (EX) Committee and Plenary, Attachment Two). The motion passed unanimously.

3. **Adopted the Workers’ Compensation In-Force SDR and the Travel Insurance Examination Standards**

Director Ramge said the Market Conduct Examination Standards (D) Working Group met Aug. 29 and adopted a new workers’ compensation in-force standardized data request (SDR) that will be incorporated into the reference documents of the Market Regulation Handbook.

Director Ramge said the Working Group also met Oct. 9 and adopted new travel insurance examination standards (for inclusion in the Market Regulation Handbook). He said the examination standards were discussed during the Working Group’s May 30, June 18, July 18, Aug. 29 and Oct. 9 conference calls. He said the Working Group’s revisions to the exposure draft were drafted with input from the U.S. Travel Insurance Association (USTiA) and the American Property Casualty Insurance Association (APCIA).

Commissioner Richardson made a motion, seconded by Commissioner Schmidt, to adopt the workers’ compensation in-force SDR (Attachment Two) and the travel insurance examination standards (Attachment Three). The motion passed unanimously.

4. **Adopted Revisions to the State Licensing Handbook and the 2019 Continuing Education Reciprocity Agreement**

Director Deiter said the Producer Licensing (D) Task Force met Dec. 7 and adopted revisions to the State Licensing Handbook (Handbook), which was revised to be consistent with established NAIC policy on producer licensing. He said the Producer Licensing Uniformity (D) Working Group began its review of the Handbook in April 2019. He said the Working Group met six times from August through October and adopted the proposed revisions to the Handbook during its Oct. 30 conference call. The Producer Licensing (D) Task Force subsequently adopted the proposed revisions to the Handbook during its Dec. 7 meeting at the Fall National Meeting.
Draft Pending Adoption

Director Deiter said the more significant changes to the Handbook are as follows: 1) exact language from the Producer Licensing Model Act (#218) was added where appropriate; 2) the appendix to the Handbook will be removed from future hardcopy versions and will be posted as a separate electronic appendix on the NAIC website; 3) the Handbook was updated to provide a link to the NAIC web page where the most current information about the National Association of Registered Agents and Brokers (NARAB) is posted because of ongoing uncertainty about when NARAB will be formed; and 4) additional clarification was added to the licensing reciprocity examples in Chapter 4 of the Handbook.

Director Deiter said the Producer Licensing (D) Task Force also adopted the 2019 Continuing Education Reciprocity Agreement (CER Agreement) during its Dec. 7 meeting at the Fall National Meeting. He said the Uniform Education (D) Working Group drafted the CER Agreement throughout 2019 and adopted the agreement during its Oct. 31 conference call.

Director Deiter said the CER Agreement supports the use of the Uniform Continuing Education Reciprocity Course Filing Form (CER Form). He said continuing education (CE) providers may use the CER Form to streamline the course-approval process in multiple states. He noted that through the reciprocal approval process, the CE provider's home state conducts a substantive review of the CE course; therefore, non-resident states do not need to perform a similar review for a course previously approved by the home state.

Commissioner Schmidt made a motion, seconded by Commissioner Kerr, to adopt the proposed revisions to the State Licensing Handbook (Attachment Four) and the 2019 CER Agreement (Attachment Five). The motion passed unanimously.

5. Adopted its Task Force and Working Group Reports

Director Lindley-Myers said the reports of the Committee’s task forces and working groups were circulated for this meeting. She said the Market Actions (D) Working Group met Dec. 7 in regulator-to-regulator session, pursuant to paragraph 3 (specific companies, entities or individuals) of the NAIC Policy Statement on Open Meetings. She asked if any of the chairs of the task forces or working groups, committee members, or interested parties would like to make any comments on the reports.

a. Advisory Organization Examination Oversight (D) Working Group

Mr. Schott said the Advisory Organization Examination Oversight (D) Working Group issued a survey to collaborative action designees (CADs), market analysis chiefs (MACs) and market chief examiners (MCEs) concerning whether to add three new advisory organizations to be overseen by the Working Group for regularly scheduled examinations. The Working Group meets in regulator-to-regulator session pursuant to paragraph 3 (specific companies, entities or individuals) of the NAIC Policy Statement on Open Meetings. He encouraged any state that has not yet responded to do so.

b. Market Analysis Procedures (D) Working Group

Mr. Haworth said the Market Analysis Procedures (D) Working Group met Dec. 8 and adopted its Nov. 21 minutes. He said that during the Nov. 21 conference call, the Working Group: 1) agreed to not include fraternals in the MCAS until a formal proposal is received for their inclusion; 2) adopted “other health” as a line of business in the MCAS; and 3) discussed a uniform process for addressing MCAS extension requests.

Mr. Haworth said that during the Working Group’s Dec. 8 meeting, it continued its discussion of adding “other health” to the MCAS and assured all interested parties that the development of the blank will be done by the Market Conduct Annual Statement Blanks (D) Working Group, and it will include state insurance regulators, carriers and consumer representatives. The goal, as always, will be to develop a blank with all the parameters and data elements fully and clearly defined.

Mr. Haworth said the Working Group also heard an update on the short-term limited duration (STLD) data call. He said a reminder letter was sent to all companies Dec. 5 reminding them of the Dec. 13 due date. He said only one filing has been received as of Dec. 7. He said the Working Group encouraged companies to complete their filings or notify NAIC staff that they do not write STLD.

Mr. Haworth said the Working Group also began work revising the MCAS Best Practices Guide and other MCAS materials in order to build consistency in how the states handle extension and waiver requests.

Finally, Mr. Haworth said the Working Group discussed its plans for meeting its 2020 proposed charges.
Samantha Burns (America’s Health Insurance Plans—AHIP) said the development of the “other health” MCAS blank will be a significant undertaking. She said AHIP has concerns about the scope of the blank and the definitions. She said even though the Market Conduct Annual Statement Blanks (D) Working Group is charged with developing the blank, it is the purview of the Market Analysis Procedures (D) Working Group to adopt the line of business before it is created. She said the Working Group should better define what is expected to be included as “other health.” By not being specific, the Working Group is setting a bad precedent.

Ms. Burns said the discussion about the other health line of business was tabled in 2018 and the Working Group focused on STLD. When discussions were renewed in November, the line of business was adopted without any discussion about what products are included in “other health.” Ms. Burns noted that packaged indemnity products were mentioned as being included in other health, but they are not packaged or sold at the carrier level. She said the MCAS would not be the best avenue for obtaining data on packaged indemnity plans. Ms. Burns said more discussion is needed, and she asked the Committee to not adopt other health as the next line of business and instruct the Working Group to continue its discussions about what is included in the line of business.

Chuck Piacentini (American Council of Life Insurers—ACLI) agreed with Ms. Burns. He said “other health” is not a common term, and if the intent is to obtain information on plans other than major medical plans, the Working Group should be more specific. There may be better methods for getting data for different types of products.

Birny Birnbaum (Center for Economic Justice—CEJ) said there was an extended discussion during the Working Group’s Dec. 8 meeting about the process for developing an MCAS blank. He said the Market Analysis Procedures (D) Working Group is charged with identifying the need for a new MCAS line of business. The Working Group did that. He said the Market Conduct Annual Statement Blanks (D) Working Group will then consider the coverages and data that will be collected in the MCAS blank. He said if the Market Conduct Annual Statement Blanks (D) Working Group decides that packaged indemnity products should not be collected in an MCAS blank, it can decide not to include them. As an example, he said the Market Conduct Annual Statement Blanks (D) Working Group eliminated coverages from both the flood insurance and lender-placed insurance MCAS blanks. He said the industry is encouraged to take part in the development of the MCAS blanks.

Commissioner Kerr agreed with Mr. Birnbaum. He said state insurance regulators need to know what is being sold in the marketplace.

Commissioner Altman also agreed and said the Working Groups should move forward with the creation of the “other health” MCAS blank.

Commissioner Richardson made a motion, seconded by Commissioner Kerr, to adopt the report of the Market Analysis Procedures (D) Working Group (Attachment Six), including the adoption of “other health” as the next line of business in the MCAS. The motion passed unanimously.

c. Market Conduct Annual Statement Blanks (D) Working Group

Ms. Ailor said the Market Conduct Annual Statement Blanks (D) Working Group did not meet at the Fall National Meeting. She said the Working Group met Oct. 23 and Nov. 21 via conference call.

Ms. Ailor said that during its Oct. 23 conference call, the Working Group heard an update on the Life and Annuity MCAS Data Element Review Project, and it decided to issue a survey to the states to determine if any data elements need to be added, deleted or revised for the homeowners and auto lines of business in the MCAS.

Ms. Ailor said that during its Nov. 21 conference call, the Working Group made two changes to due dates. She said the first change involves situations where the MCAS due date occurs on a weekend or federal holiday. She said that in that instance, the Working Group agreed that the due date will be moved to the next business day.

Ms. Ailor said the second change is to the due date for the health MCAS. She said the Working Group extended the health MCAS filing due date to June 30 for data to be reported in 2020, 2021 and 2022. She said that after three years, the due date will automatically revert to April 30 unless health companies request a re-evaluation. She said that because this is an extension of the April 30 due date, the Working Group received assurances from industry that companies would not request extensions beyond the June 30 due date except for extraordinary circumstances.
Joe Zolecki (Blue Cross Blue Shield Association—BCBSA) thanked Ms. Ailor, Ms. Dingus and the Working Group for overseeing a collaborative process to address issues raised by the health insurance industry regarding its MCAS filings.

d. Privacy Protections (D) Working Group

Ms. Amann said the Privacy Protections (D) Working Group met Dec. 8. She said the Working Group was appointed Oct. 1, noting that she is chair Ron Kreiter (OK) is vice chair. She said the Working Group is in the process of building the membership, as well as the distribution lists for interested state insurance regulators and interested parties. She the Working Group will work closely with the other working groups in this arena, such as the Artificial Intelligence (EX) Working Group and the Accelerated Underwriting (A) Working Group. She noted that each of these working groups has its unique set of issues that, nevertheless, require coordination.

Ms. Amann said that during its Dec. 8 meeting, the Working Group discussed its proposed workplan to meet every six weeks via conference call to keep on track so it can accomplish its charges by the deadline established. She said the Working Group also heard a presentation by Jennifer McAdam (NAIC) in which she reviewed: 1) the NAIC Insurance Information and Privacy Protection Model Act (#670); 2) the Privacy of Consumer Financial and Health Information Regulation (#672); 3) the European Union’s General Data Protection Regulation (GDPR); 4) the California Consumer Privacy Act (CCPA); and 5) the states’ data privacy legislation.

Ms. Amann said the Working Group also received an update from Kendall Cotton (MT) on current legislative activities in Montana. Additionally, the Working Group discussed comments received from the CEJ, the National Association of Mutual Insurance Companies (NAMIC) and the APCIA.

David Snyder (APCIA) said the Antifraud (D) Task Force summary report in the Committee materials references a Buzzfeed article bringing awareness to a potential threat claiming that an alliance between insurers and law enforcement is working against innocent consumers. He said the report says the Task Force decided to review and provide an additional update at the 2020 Spring National Meeting. He said the APCIA challenges the validity of the article and asked to participate in the review of the allegations in the article. He noted that the insurer antifraud efforts and law enforcement have cooperated to effectively protect consumers, not harm them.

Mr. Pyle said he is a member of the Antifraud (D) Task Force, and although he cannot speak for the chair, he is certain the APCIA’s participation would be welcomed by the Task Force.

Mr. Birnbaum said the CEJ is responsible for forwarding the article to the Task Force and the Market Regulation and Consumer Affairs (D) Committee chairs to illustrate the need to review the algorithms being used in antifraud efforts to be sure that they are not biased in some way. He said it was not meant to cast any aspersion of the work of antifraud entities.

Commissioner Kerr made a motion, seconded by Commissioner Kreidler, to adopt the reports of the Committee’s task forces and working groups: the Antifraud (D) Task Force, the Market Information Systems (D) Task Force; the Producer Licensing (D) Task Force; the Advisory Organization Examination Oversight (D) Working Group; the Market Actions (D) Working Group; the Market Analysis Procedures (D) Working Group; the Market Conduct Annual Statement Blanks (D) Working Group (Attachment Seven); the Market Conduct Examination Standards (D) Working Group (Attachment Eight); the Market Regulation Certification (D) Working Group (Attachment Nine); and the Privacy Protections (D) Working Group (Attachment Ten). The motion passed unanimously.

6. Discussed Updates to Best Practices and Guidelines for Consumer Information Disclosures

Director Lindley-Myers said the review of the Best Practices and Guidelines for Consumer Information Disclosures is in response to a request from the NAIC funded consumer representatives for the NAIC membership to consider best practices for consumer information disclosures. She said that in response to requests for comments prior to the Summer National Meeting and again in October, the Committee received extensive, suggested revisions from the NAIC funded consumer representatives. She said no state insurance regulators or other interested parties submitted comments.

Mr. Birnbaum said the consumer representatives provided proposed revisions to the Best Practices and Guidelines for Consumer Information Disclosures to incorporate new information on how consumers learn to make consumers disclosures more effective. He said it also highlights the work of state insurance regulators to get consumer engagement, notably Commissioner Sullivan and the Texas Department of Insurance. He said the consumer representative asks that the proposed revisions be exposed for another comment period to add additional information.
7. **Heard a Presentation on Mental Health Parity Examinations**

Joel Ario (Manatt Health), Daniel Blaney-Koen (American Medical Association—AMA) and Tim Clement (American Psychiatric Association—APA) gave a presentation to the Committee on the urgency of the state insurance departments to use their mental health and substance use disorder (MH/SUD) parity oversight authority to address the opioid epidemic in the U.S.

Mr. Blaney-Koen provided recommendations including: 1) removing prior authorization regulations for medication-assisted treatment (MAT); 2) increased oversight and enforcement of MH/SUD parity laws; 3) ensuring network adequacy for those needing treatment for opioid use disorder; 4) enhancing access to comprehensive, multi-disciplinary multimodal pain care; 5) expanding access to naloxone; and 6) evaluating the results to identify what is working, and building on the most successful efforts.

Mr. Clement said when conducting a market conduct examination regarding MH/SUD parity, examiners should not assume that a company is necessarily complying with the easiest parts of the federal Mental Health Parity and Addiction Equity Act (MHPAEA), such as defining MH/SUD, classifying benefits, or using quantitative treatment limitations and financial requirements. He said many carriers are setting non-quantitative treatment limitations, such as requiring prior authorizations on all formulations of naloxone, all inpatient MH/SUD benefits, and blanket exclusions on benefits. He also said examiners should look to see if the carrier has more stringent written processes, evidentiary standards, and triggers for utilization review. Finally, he encouraged examiners to look closely at claims to see if the company’s utilization review approvals for MH/SUD are more limited, whether MH/SUD requests are more often sent for peer review, and whether the peer reviewers are adhering to medical necessity criteria and level of care guidelines.

Commissioner Kreidler asked whether the use of blanket prior authorizations is more of an issue when a consumer changes carriers or plans, rather than when a consumer has a continuity of coverage.

Mr. Blaney-Koen said it is more common when switching plans, but it occurs in both instances.

Commissioner Kreidler also recommended that a review of the thorough study being conducted by the Washington State Office of the Insurance Commissioner to evaluate consumer access to services for MH/SUD in state-regulated individual, small group, and large group health insurance plans.

Commissioner Sullivan asked if there are tools available to consumers to help them inquire of a company about their MH/SUD parity and compare companies.

Mr. Clement said there are some resources, but they are written at too high a level. He asked Commissioner Sullivan and other members of the Committee to contact him for more information on consumer tools that are available.

Mr. Ario said some of the state insurance department websites contain useful consumer assistance.

Having no further business, the Market Regulation and Consumer Affairs (D) Committee adjourned.