

Draft: 12/21/22

Market Regulation and Consumer Affairs (D) Committee
Tampa, Florida
December 15, 2022

The Market Regulation and Consumer Affairs (D) Committee met in Tampa, FL, Dec. 15, 2022. The following Committee members participated: Jon Pike, Chair (UT); Trinidad Navarro, Vice Chair (DE); John F. King (GA); Sharon P. Clark (KY); Chlora Lindley-Myers and Cynthia Amann (MO); Mike Causey represented by Tracy Biehn (NC); Eric Dunning represented by Martin Swanson (NE); Russell Toal (NM); Barbara D. Richardson (NV); Michael Humphreys (PA); Cassie Brown represented by Randall Evans (TX); and Kevin Gaffney represented by Mary Block (VT). Also participating were: Damion Hughes (CO); Erica Weyhenmeyer (IL); and Michele Brugh Rafeld (OH); Larry D. Deiter (SD); Joy Morton (VA); and John Haworth (WA).

1. Adopted its Nov. 28 and Summer National Meeting Minutes

The Committee met Nov. 28 to discuss the Request for NAIC Model Law Development to amend the *Unfair Trade Practices Act* (#880).

Commissioner Navarro made a motion, seconded by Superintendent Toal, to adopt the Committee's Nov. 28 (Attachment One) and Aug. 12 minutes (see *NAIC Proceedings – Summer 2022, Market Regulation and Consumer Affairs (D) Committee*). The motion passed unanimously.

2. Adopted its 2023 Proposed Charges

Birny Birnbaum (Center for Economic Justice—CEJ) said he submitted a request for a charge to examine the benefits and costs of public disclosure of company Market Conduct Annual Statement (MCAS) submissions. Birnbaum said MCAS submissions are confidential because they are collected under state examination authority. However, he said the data would not otherwise be considered confidential. Birnbaum provided an example of what the Australian regulatory authority makes available to the public, which allows consumers to understand how companies are operating in the marketplace. Birnbaum said consumers are encouraged to shop for insurance products on factors other than price, but consumers do not have other information to consider. Commissioner Pike said he would prefer not to consider the adoption of the charge due to the request being submitted today. Commissioner Pike requested that the Committee members review Birnbaum's recommendation.

Amann made a motion, seconded by Biehn, to adopt the 2023 proposed charges of the Market Regulation and Consumer Affairs (D) Committee, the Antifraud (D) Task Force, the Market Information Systems (D) Task Force, and the Producer Licensing (D) Task Force. The motion passed unanimously.

3. Adopted the Request for NAIC Model Law Development to Amend Model #880

Commissioner Pike said this discussion is a continuation of the Committee's discussion on Nov. 28. He said the Antifraud (D) Task Force and the Improper Marketing of Health Insurance (D) Working Group adopted a Request for NAIC Model Law Development (Attachment Two) to begin a review of Model #880. Commissioner Pike said the Request for NAIC Model Law Development is an important part of the NAIC process through which information is gathered to support the development of a new model law or amend an existing model law. Any such request must be approved by both the parent committee and the NAIC's Executive (EX) Committee prior to the development of a new model or amending an existing model.

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Commissioner Pike said there are outstanding questions and the need for additional discussion. He said that after the Committee's Nov. 28 meeting, NAIC staff circulated and posted three models that were suggested for potential review in addition to Model #880: 1) the *Producer Licensing Model Act* (#218); 2) the *Advertisements of Accident and Sickness Insurance Model Regulation* (#40); and 3) the *NAIC Model Rules Governing Advertisements of Medicare Supplement Insurance with Interpretive Guidelines* (#660).

Swanson said the Improper Marketing of Health Insurance (D) Working Group voted to adopt the Request for NAIC Model Law Development and believes this is the best path forward to prevent the improper marketing of health insurance by lead generators. Swanson said the Working Group requested assistance from the NAIC Research Library, NAIC Legal staff, and interested parties to identify NAIC models for potential revision. Martin said all agreed Model #880 was the appropriate model to review, and the Working Group began drafting revisions for review. Swanson said the Working Group will experience a delay of a year in its work if the Request for NAIC Model Law Development is not adopted and there is a need to coordinate with other NAIC committees for the potential review of other NAIC models.

Commissioner Navarro said the Improper Marketing of Health Insurance (D) Working Group has been working to fulfill its charge of reviewing 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. He said the Working Group's discussions began in September 2021, when the Working Group chair and vice chair received feedback from the NAIC Research Library on potential models for review. Commissioner Navarro said the Working Group engaged in discussions with state insurance regulators and interested parties, including during an open meeting at the Summer National Meeting.

Commissioner Navarro said the Working Group chair and vice chair created initial draft language for amendments to Model #880 in July and August. The suggested amendments were circulated to the Working Group and all interested parties on Aug. 31, with a request for comment until Sept. 30. During this time, Commissioner Navarro said the Working Group had an open meeting during the Insurance Summit in September. He said the Working Group chair and vice chair worked with NAIC staff in October to complete the Request for NAIC Model Law Development, and this was distributed to the Working Group on Nov. 3. Commissioner Navarro said the Antifraud (D) Task Force circulated the Request for NAIC Model Law Development for comment prior to its Nov. 16 meeting, and Rafeld expressed concerns with the request and suggested the models should be considered.

Commissioner Navarro said consumers are being harmed and that state insurance regulators need to address this issue. Commissioner King said he supports the review of Model #880. Rafeld said there has not been a comprehensive review of all the issues and options, which could include the development of an NAIC bulletin, amending a different NAIC model, or drafting a new NAIC model. Rafeld said these options should be considered and said she does not think amending Model #880 will address the issues in the marketplace. Commissioner Navarro said the issue has been discussed for a year and half and said he thinks amending Model #880 is the most appropriate direction now. Director Wing-Heier said there will be time for discussing proposed amendments, and the Working Group can change directions if better options are identified during the discussion of the proposed amendments.

Sylvia Yee (Disability Rights Education and Defense Fund—DREDF), speaking on behalf of Bonnie Burns (California Health Advocates—CHA), said Model #880 does not include a definition of lead generator but that it provides jurisdiction over unfair and deceptive acts. Yee said that there is no need to review another model act and that she thinks the discussions about whether to amend Model #880 have been very deliberate.

Meghan Stringer (America's Health Insurance Plans—AHIP) said AHIP supports amending Model #880 and believes the amendments will enable state insurance departments to conduct investigations and administer fines against lead generators operating in the health insurance marketplace. She said AHIP is opposed to amending

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Model #660 because state insurance regulators have regulatory oversight of Medigap plans and the Improper Marketing of Health Insurance (D) Working Group has not heard concerns regarding the marketing of Medigap plans.

Amann said Missouri agrees with several of the concerns Ohio has raised and agrees other NAIC models should be considered for amendment.

Superintendent Toal made a motion, seconded by Commissioner King, to adopt the Request for NAIC Model Law Development. Commissioner Clark asked for a clarification that Model #880 is being opened only to address the activities of lead generators in the health insurance market. Superintendent Toal and Commissioner King agreed this is the motion's intent. The motion passed, with Texas, Missouri, and Vermont opposed. There were no abstentions.

4. Adopted it Task Force and Working Group Reports

a. Antifraud (D) Task Force

Commissioner Navarro said the Antifraud (D) Task Force met Dec. 14. During this meeting, the Task Force adopted its Oct. 30 and Sept. 6 meeting minutes. The Task force discussed a proposal for the creation of an NAIC Producer Portal. The goal of the proposal is to create a centralized portal that would allow consumers to find licensing information on insurance producers. The Task Force discussed a 1033 waiver request that was brought to its attention from the Producer Licensing (D) Task Force because the Antifraud (D) Task Force was responsible for the development of the NAIC's *Guidelines for State Insurance Regulators to the Violent Crime Control and Law Enforcement Act of 1994*. The Task Force discussed its educational and training efforts in 2022 and priorities for 2023. In 2022, the Task Force was involved with the Insurance Summit, the Annual Fraud Directors Conference, and a new fraud training that was presented to the Northeast Zone in October. The Task Force encourages the remaining zones to schedule antifraud training when appropriate. The Task Force received a report from the Improper Marketing of Health Insurance (D) Working Group. The Working Group has continued meeting monthly in regulator-to-regulator session in addition to open meetings, as necessary, to discuss lead generators. The Task Force received reports on matters of national interest from the Coalition Against Insurance Fraud (CAIF), Healthcare Fraud Prevention Partnership (HFPP), and the National Insurance Crime Bureau (NICB).

b. Market Information Systems (D) Task Force

Weyhenmeyer said the Market Information Systems (D) Task Force conducted two e-votes. On Dec. 1, the Task Force concluded an e-vote to adopt its Oct. 28 and Summer National Meeting minutes. Weyhenmeyer said the Task Force adopted two new charges for 2023 to begin work on the recommendations of the *Review of Artificial Intelligence Techniques in Market Analysis*. This first new charge is for the Market Information Systems Research and Development (D) Working Group to analyze the data in the market information systems and recommend methods to ensure better data quality. The second new charge is to work in conjunction with the Market Analysis Procedures (D) Working Group to identify needed improvements in the effectiveness of the data for market analysis and the predictive abilities of the market scoring systems using the data.

c. Producer Licensing (D) Task Force

Director Deiter said the Producer Licensing (D) Task Force met Oct. 28. During this meeting, the Task Force discussed a draft template for the 1033 process. Director Deiter said federal law prohibits a person who has been convicted of a felony involving dishonesty or breach of trust from engaging in the business of insurance unless the person receives written consent or approval from the appropriate state insurance commissioner. Director Deiter

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said NAIC staff will be circulating the draft template to the Antifraud (D) Task Force, the Producer Licensing (D) Task Force, and all interested state insurance regulators and interested parties for comment through January.

The Task Force received a report from the National Insurance Producer Registry (NIPR) Board of Directors. NIPR announced the release of the License Update Information (LUI) project with Connecticut as a pilot state. The first phase of this project will allow licensees to submit a primary name change directly with states through NIPR and allow producers to submit name changes outside of the application/renewal process. The project will be rolled out in phases over the next several months.

Director Deiter said the Adjuster Licensing (D) Working Group and the Uniform Education (D) Working Group have each met twice since the Summer National Meeting. The Adjuster (D) Licensing Working Group is continuing to discuss uniformity and state collaboration of adjuster licensing, and the Uniform Education (D) Working Group adopted “CE Instructor Approval Guidelines” during its Nov. 30 meeting. Director Deiter said the Guidelines will be presented to the Market Regulation and Consumer Affairs (D) Committee for consideration during the first quarter of 2023. Director Deiter said the Task Force adopted the reports of these Working Groups through an e-vote on Dec. 8.

d. Market Analysis Procedures (D) Working Group

Haworth said the Market Analysis Procedures (D) Working Group met Aug. 22 to adopt pet insurance as the next line of business for the Market Conduct Annual Statement. Mr. Haworth said pet insurance is a rapidly growing line of business but there is very little market conduct information available to state insurance regulators and the financial information cannot be broken out from the inland marine line where most pet insurance is reported on the financial annual statement. Mr. Haworth said the Market Analysis Procedures (D) Working Group referred its adoption to the Market Conduct Annual Statement (D) Working Group which is currently drafting the pet insurance blank.

e. Market Conduct Annual Statement (D) Working Group

Weyhenmeyer said the Market Conduct Annual Statement Blanks (D) Working Group met Oct. 19, Sept. 15, and Aug. 24. During these meetings, the Working Group took the following action: 1) adopted a new deadline of May 31 for the health MCAS; 2) adopted a short-term, limited-duration STLD data element to clarify the dollar amount of claims paid during the reporting period; 3) removed the following language for all nine MCAS lines of authority from the MCAS lawsuit definition: “If one lawsuit seeks damages under two or more policies, count the number of policies involved as the number of lawsuits. For example, if one lawsuit seeks damages under three policies, count the action as three lawsuits”; 4) adopted a travel MCAS data element to clarify the number of policies in force during the reporting period; 5) formed a subject matter expert (SME) group to draft a pet insurance MCAS data call and definitions; 6) reviewed the process for submitting requests for edits to the MCAS data call and definitions; 7) approved a draft Frequently Asked Questions (FAQ) for the collection of digital claims information; and 8) clarified that direct written premium will be used in the STLD and other health MCAS blanks for the required-to-file threshold indicator and to change the net written premium element to direct written premium.

f. Market Conduct Examination Guidelines (D) Working Group

Hughes said the Market Conduct Examination Guidelines (D) Working Group met Oct. 20 and Sept. 8 to discuss revisions to the life and annuity examination standards. These standards are being revised due to the NAIC Members adopting revisions to the *Suitability in Annuity Transactions Model Regulation* (#275). Hughes said the Working Group discussed new travel insurance standardized data requests (SDRs).

g. Market Regulation Certification (D) Working Group

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Superintendent Toal said the Market Regulation Certification (D) Working Group met Nov. 28 to receive an update on the revisions to the Voluntary Market Regulation Certification Program requirements and discuss potential revisions to the certification program implementation plan. The Working Group has completed its suggested revisions to the Program and the scoring matrix for the Program. Superintendent Toal said the Working Group completed an e-vote on Dec. 9 to adopt suggested revision to the implementation plan. Superintendent Toal said the Working Group will present all components of the Voluntary Market Regulation Certification Program to the Market Regulation and Consumer Affairs (D) Committee by the 2023 Spring National Meeting.

f. Speed to Market (D) Working Group

Morton said the Speed to Market (D) Working Group met Nov. 10 to receive an update on edits to the *Product Filing Review Handbook*. The Working Group anticipates the revised Handbook will be completed early next year. Morton said the Working Group received an update from NAIC on the Systems for Electronic Rates & Forms Filing (SERFF) modernization project and the Product Steering Committee (PSC), which has six new members. Morton said the modernization project includes search improvements and document comparison capabilities, the introduction of Tableau dashboards, and a new user interface.

Commissioner Navarro made a motion, seconded by Amann, to adopt the following reports: 1) the Antifraud (D) Task Force; 2) the Market Information Systems (D) Task Force; 3) the Producer Licensing (D) Task Force; 4) the Market Analysis Procedures (D) Working Group (Attachment Three); 5) the Market Conduct Annual Statement Blanks (D) Working Group (Attachment Four); the Market Conduct Examination Guidelines (D) Working Group (Attachment Five); 6) the Market Regulation Certification (D) Working Group (Attachment Six); and 7) the Speed to Market (D) Working Group (Attachment Seven). The motion passed unanimously.

5. Discussed Other Matters

Amann encouraged members of the Market Regulation and Consumer Affairs (D) Committee to review the draft of a new model to be circulated in early 2023 by the Privacy Protections (H) Working Group.

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

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