

## Draft Pending Adoption

Draft: 4/4/23

Big Data and Artificial Intelligence (H) Working Group  
Louisville, Kentucky  
March 22, 2023

The Big Data and Artificial Intelligence (H) Working Group of the Innovation, Cybersecurity, and Technology (H) Committee met in Louisville, KY, March 22, 2023. The following Working Group members participated: Elizabeth Kelleher Dwyer, Chair (RI); Amy L. Beard, Co-Vice Chair, represented by Victoria Hastings (IN); Doug Ommen, Co-Vice Chair (IA); Kevin Gaffney, Co-Vice Chair (VT); Sarah Bailey (AK); Mark Fowler (AL); Peg Brown and Jason Lapham (CO); George Bradner and Wanchin Chou (CT); Michelle Brewer (FL); Shannon Hohl (ID); Erica Weyhenmeyer (IL); Abigail Gall (KY); Tom Travis (LA); Jackie Horigan (MA); Kory Boone (MD); Timothy N. Schott and Sandra Darby (ME); Karen Dennis (MI); Grace Arnold (MN); Cynthia Amann (MO); Robert Croom (NC); Chris Aufenthie, John Arnold, and Colton Schulz (ND); Connie Van Slyke and Martin Swanson (NE); Christian Citarella (NH); TK Keen (OR); Shannen Logue (PA); Ryan Basnett (SC); Travis Jordan (SD); Stephanie Cope (TN); Leah Gillum (TX); Tanji J. Northrup (UT); Eric Lowe and Katie Johnson (VA); Molly Nollette (WA); Nathan Houdek and Lauren Van Buren (WI); and Erin K. Hunter (WV). Also participating were: John F. King (GA); Troy Downing (MT); and Matt Gendron (RI).

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

Commissioner Gaffney made a motion, seconded by Cope, to adopt the Working Group's Dec. 13, 2022, minutes (see *NAIC Proceedings – Fall 2022, Innovation, Cybersecurity, and Technology (H) Committee, Attachment Two*). The motion passed unanimously.

### 2. Received an Update on the AI/ML Surveys

Commissioner Gaffney said the purpose of the home survey is to gain a better understanding of the industry's use of big data, artificial intelligence (AI), and machine learning (ML), as well as what governance, risk management, and controls are being put in place in developing and managing those activities. The survey also seeks to gather information that may inform the development of guidance or a potential regulatory framework that would support the insurance industry's use of big data and AI/ML in accordance with the expectations outlined in the NAIC's AI Principles. As previously reported to the Working Group, the formal examination call letter was sent to 194 companies. Any company licensed to write home insurance in one of the 10 Requesting States that also had at least \$50 million in national home insurance premiums for 2020 was required to complete the survey.

Commissioner Gaffney said survey responses were due by Dec. 15, 2022. The Requesting States were still awaiting responses from eight companies as of March 1. A final request was sent to these companies on March 3 with a response deadline of March 24. Once the survey is closed on March 24, NAIC staff will begin working with the Requesting States to produce a public report, similar to the Private Passenger Auto (PPA) Report. As with the PPA Report, the confidentiality of individual company responses will be protected. The Requesting States will present a public report to the Working Group at the Summer National Meeting.

Commissioner Gaffney said a group of 14 states continued to develop the life insurance survey with the goal of collecting information to understand how life insurance companies are deploying AI/ML in the following operational areas: 1) pricing and underwriting; 2) marketing; and 3) loss prevention. Like the PPA survey and the

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home survey, the goal of the life insurance survey is to learn directly from the industry about what is happening in this space to get a sense of the current level of risk and exposure associated with their use of AI/ML and how the industry is managing or mitigating that risk. The following criteria were used to identify which companies should receive the survey: 1) a company with more than \$250 million in premiums on all individual policies in 2021; 2) a term writer that has issued policies on more than 10,000 lives; or 3) a specifically selected InsurTech company. Using these criteria, the 14 Requesting States, which will collect the survey information under their examination authority, will issue a formal examination call letter to a total of 192 life insurance companies.

An informational letter should be sent to the 192 companies on March 31. Coinciding with the issuance of this letter, the NAIC will go live with the AI/ML life insurance survey weblink, which will include the survey template, survey filing guidance and definitions, and a frequently asked questions (FAQ) document. Concurrently, each company will receive a survey link and can begin to input their answers into the Qualtrics survey tool even before the official call letter is sent. Commissioner Gaffney said each company scheduled to receive the survey should have designated one contact to receive the survey link, and they can forward it to anyone in their company who has the information needed for the survey. The tool allows multiple people in a company to input answers and saves the most up-to-date information input into the survey.

Commissioner Gaffney said the formal examination call letter is scheduled to be issued on May 1, and companies will have until May 31 to respond to the survey. The Requesting States hope this timeline will help accommodate those companies also filing Market Conduct Annual Statement (MCAS) data due April 30.

Superintendent Dwyer reminded everyone that the PPA public report is posted on the Working Group's web page, and she is not aware of any comments on or concerns about this report.

### 3. Discussed Draft Model and Data Regulatory Questions

Commissioner Ommen said the subject matter experts (SMEs) assembled for Workstream #2 were asked last year by the Working Group to provide recommendations for: 1) the feasibility of a library of third-party data and model vendors with AI-known applications in the business of insurance; and 2) an appropriate regulatory framework for monitoring and overseeing the industry's use of third-party data and model vendors. In accordance with the second charge of the Working Group, the state insurance regulators on Workstream #2 exposed for discussion draft questions that state insurance regulators might ask about data and models used by insurance companies, regardless of whether the data or model is developed internally or obtained from external sources. These questions were meant to be a starting point for discussion, and there needs to be further work.

Commissioner Ommen provided a summary of the document. The first section, titled "Main General Questions," includes a list of suggested questions to obtain a high-level understanding of a model or data being used. The second section, titled "Detailed and Technical Questions," expands on the first section by including additional questions to obtain a more in-depth understanding of the model or data. The questions are subdivided into three categories within each of these first two sections. The first category contains questions to ask a company about a model, whether the company is an insurer or a third party. The second category contains questions to ask an insurer about its implementation of a third-party model. The third category contains questions about the purchase of third-party data. Finally, the third section in the document contains definitions of key terms used throughout the document. Commissioner Ommen said he is not satisfied with the definitions, which are meant as "placeholder" definitions.

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Commissioner Ommen said the SMEs of Workstream #2 had a call on March 8 and began discussing the following policy issues raised in the comment letters: 1) the document should be principle-based; 2) the document should be more limited in scope to encourage state insurance regulator use for “higher-risk” AI models; 3) questions should be prioritized to recognize the importance of model governance; 4) there are concerns that questions contain assumptions of law that are not based in law; 5) there are concerns regarding redundancy with financial examinations; 6) there are concerns with the potential burden on smaller companies and small AI providers; and 7) clarification of the intended use of questions by state insurance regulators is needed. He said a smaller group of the Workstream SMEs will review the comments and hope to present a revised draft for public comment by the end of May.

Birny Birnbaum (Center for Economic Justice—CEJ) said insurers use data models through the insurance life cycle, including marketing, underwriting, pricing, antifraud, and claim settlements. He said state insurance regulators have a responsibility to ensure that rates are not excessive, inadequate, or unfairly discriminatory, and he said the document should identify regulatory authorities and responsibilities. He said state insurance regulators can best fulfill their responsibilities by analyzing the outcomes of data models rather than asking questions to understand how an insurer developed a data model. He said state insurance regulators do not have the resources to review and analyze insurers’ narrative responses, and state insurance regulators should collect additional data from insurers to ensure that model outcomes comply with state laws rather than focusing on an insurer’s process of model development.

David Leifer (American Council of Life Insurers—ACLI) said the scope of information to be collected is overly broad, especially regarding third-party vendors and the ability of insurers to produce proprietary information from third-party vendors. David F. Snyder (American Property Casualty Insurance Association—APCIA) also said the questions should be grounded in existing state laws. He said the definitions need to be revised. He also encouraged additional coordination of this work with other workstreams across the NAIC, such as the Accelerated Underwriting (A) Working Group and the Innovation, Cybersecurity, and Technology (H) Committee’s work on the AI model bulletin.

Andrew Pauley (National Association of Mutual Insurance Companies—NAMIC) said NAMIC has concerns with the questions not being based on state regulatory requirements. He said the definitions need to be revised, and he encouraged this work to be coordinated with other NAIC workstreams. He suggested that the state insurance regulators focus on a principle-based approach, and he questioned why all information would be requested at once. He also expressed concern regarding the protection of confidential proprietary information that might be provided.

Scott Harrison (American InsurTech Council—AITC) suggested a risk-based approach, and he voiced concern that the scope of questions would create a disproportionate burden on smaller companies. He suggested that state insurance regulators should focus on only those AI models that affect consumers or a company’s financial solvency since companies use models that do not have regulatory implications. He also expressed concerns regarding the protection of confidential information, especially the protection of proprietary information.

Snyder said the creation of a uniform set of questions is helpful, but the scope and detail of the questions are very broad. He said there are concerns with the definitions, and he suggested that state insurance regulators should consider the risk, scale, and complexity of a company when asking about its AI models. He urged that testing not be included in the document due to the complicated nature of AI model testing. He said it is not clear what

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standard is being tested and how much is too much of a relationship to a protected class. Snyder also said confidentiality protections are important, and the disclosure of propriety models of third-party vendors can be very complicated. Finally, Snyder encouraged everyone to remember that the use of AI models makes it possible for the industry to provide better services to consumers.

Bob Ridgeway (America's Health Insurance Plans—AHIP) said any use of these questions should be under examination authority to protect the confidentiality of responses. He said insurers are familiar with submitting confidential information to state insurance regulators, but third-party vendors are not comfortable with sharing proprietary information. He said third-party vendors might not have any appropriate recourse if a governmental agency is the source of propriety information being shared with the public. He said the scope of the questions would require insurers to share a voluminous amount of information, and he suggested that higher-level information be collected first. This would make it easier for companies to respond and for state insurance regulators to review the information.

Peter Kochenburger (University of Connecticut School of Law) said state insurance regulators should not look at these issues only through the application of existing state laws. State insurance regulators should be setting expectations, and if needed, they can amend existing laws and regulations to address the use of AI in the insurance industry.

Superintendent Dwyer said the Innovation, Cybersecurity, and Technology (H) Committee is coordinating the AI work across the NAIC, including the activities of Workstreams #3 and #4. Workstream #3 is charged with evaluating tools and resources for monitoring the industry's use of data and AI/ML, and Workstream #4 is focusing on the broader regulatory framework and governance.

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

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