

MARKET REGULATION AND CONSUMER AFFAIRS (D) COMMITTEE

Market Regulation and Consumer Affairs (D) Committee April 7, 2022, Minutes

2022 Proposed Revised Charges (Attachment One)

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Draft Pending Adoption

Draft: 4/13/22

Market Regulation and Consumer Affairs (D) Committee
Kansas City, Missouri
April 7, 2022

The Market Regulation and Consumer Affairs (D) Committee met in Kansas City, MO, April 7, 2022. The following Committee members participated: Jon Pike, Chair (UT); Trinidad Navarro, Vice Chair (DE); Karima M. Woods (DC); Sharon P. Clark (KY); Chlora Lindley-Myers (MO); Mike Causey represented by Tracy Biehn (NC); Jon Godfread represented by John Arnold (ND); Eric Dunning represented by Martin Swanson (NE); Russell Toal (NM); Barbara D. Richardson (NV); Michael Humphreys represented by David Buono (PA); Cassie Brown (TX); and Michael S. Pieciak represented by Karla Nuissl (VT). Also participating were: Michael Conway and Damion Hughes (CO); Doug Ommen (IA); Erica Weyhenmeyer (IL); Larry D. Deiter (SD); Katie Johnson and Rebecca Nichols (VA); and John Haworth (WA).

1. Adopted its 2021 Fall National Meeting Minutes

Superintendent Toal made a motion, seconded by Ms. Biehn, to adopt the Committee's Dec. 15, 2021, minutes (*see NAIC Proceedings – Fall 2021, Market Regulation and Consumer Affairs (D) Committee*). The motion passed unanimously.

2. Adopted its 2022 Revised Charges

Commissioner Pike said when the Committee charges were adopted at the 2021 Fall National Meeting, it was noted that the Privacy Protections (D) Working Group might move under the Innovation, Cybersecurity, and Technology (H) Committee to better align the privacy protection discussions with the NAIC members' discussions regarding the increased use of consumer data and innovations. He said the revised charges reflect this change in the reporting structure for the Working Group.

Commissioner Pike also said the Speed to Market (H) Working Group will move to the Market Regulation and Consumer Affairs (D) Committee because of the more technical efforts of the Working Group, which has been focusing on the updates to the product coding matrix (PCM) and *Product Filing Review Handbook*.

Commissioner Pike said the revised charges also include the Antifraud (D) Task Force's revised charges that disbanded the Antifraud Education Enhancement (D) Working Group and moved the charge of the Working Group to the Task Force. He said the elimination of the Working Group should allow for the continuation of the education initiatives in a more streamlined manner.

Commissioner Ommen said he consulted with the vice chair of the Advisory Organization Examination Oversight (D) Working Group, and they agreed that the name of the Working Group should be shortened to the Advisory Organization (D) Working Group. He asked for a motion to shorten the name of the Working Group. Commissioner Richardson made a motion, seconded by Director Lindley-Myers, to rename the Advisory Organization Examination Oversight (D) Working Group to the Advisory Organization (D) Working Group. The motion passed unanimously.

Superintendent Toal made a motion, seconded by Commissioner Richardson, to adopt the Committee's 2022 revised charges (Attachment One), including renaming the Advisory Organization Examination Oversight (D) Working Group. The motion passed unanimously.

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3. Adopted the Reports of its Task Forces and Working Groups

a. Market Regulation Certification (D) Working Group

Superintendent Toal said the Market Regulation Certification (D) Working Group met March 22. He said since this was the first time the Working Group has met since late 2020, the Working Group reviewed the status of the Voluntary Market Regulation Certification Program.

Superintendent Toal noted that the Working Group has three parts of the Voluntary Market Regulation Certification Program to complete this year. First, he said the certification requirements are finished, but the revisions suggested by the certification pilot states need to be adopted for inclusion in the Voluntary Market Regulation Certification Program. Second, the implementation plan for the Voluntary Market Regulation Certification Program needs to be brought up to date. Third, the Working Group needs to complete the scoring guidelines to enable jurisdictions to understand what is needed to be certified and uniformly self-evaluate themselves.

Superintendent Toal said the Working Group heard a report from the small group of state insurance regulators working on the scoring matrix for the Voluntary Market Regulation Certification Program. He said they made progress in 2020 and will have a draft of the scoring matrix to the Working Group prior to the Summer National Meeting.

b. Antifraud (D) Task Force

Commissioner Navarro said the Antifraud (D) Task Force met March 28. He said the Task Force discussed a letter received concerning racial bias and discrimination potentially taking place. The Task Force heard comments from NAIC Consumer Representative Birny Birnbaum (Center for Economic Justice—CEJ) and will continue to monitor the topic and schedule additional discussions, if warranted.

Commissioner Navarro said the Task Force adopted a recommendation to temporarily disband the Antifraud Education Enhancement (D) Working Group and move its current charge under the Task Force. As the Working Group's last official action, the Task Force received an update from the Working Group. Commissioner Navarro said updated Investigator Safety Training Webinars for the state insurance regulators and private investigators will be held this year, and specific dates will be distributed once confirmed. He said Michelle Brugh Rafeld (OH) will continue her position as the Task Force's education subject matter expert (SME) and work with the NAIC to develop additional advanced training throughout the year.

Commissioner Navarro said the Task Force received an update from the Antifraud Technology (D) Working Group. He said the Working Group requested that state insurance regulator SMEs work with NAIC staff to create a template for industry to use when creating their Antifraud Plans. The Working Group will expose the final draft of the template for comment, and the Working Group will meet to discuss the comments and potentially adopt the template. Commissioner Navarro said once the template is adopted by the Working Group, it will be presented to the Task Force for consideration at the Summer National Meeting. He said the Working Group chair has continued to work with NAIC staff to redesign the Online Fraud Reporting System (OFRS). He said the OFRS industry section is currently in beta testing, and the NAIC is accepting suggestions to finalize the redesign.

Commissioner Navarro said the Task Force received an update from the newly appointed Improper Marketing of Health Insurance (D) Working Group. He said the Working Group continues to meet monthly in regulator-to-regulator session, and it held its second open meeting April 4 at the Spring National Meeting. He said during the meeting, the Working Group discussed current issues being witnessed throughout the states, including enforcement actions taking place due to their continued efforts. He said the Working Group also heard from the

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Coalition Against Insurance Fraud (CAIF) regarding the work it has completed specific to the improper marketing of insurance. He said the Working Group discussed the collaborative document on lead generators comprising potential fraudulent entities who are improperly marketing health insurance. The collaborative document was created to assist states and federal agencies to coordinate necessary actions to fight insurance fraud.

Lastly, Commissioner Navarro said the Task Force received a report on matters of national interest to the insurance fraud bureaus from the CAIF.

c. Market Information Systems (D) Task Force

Commissioner Conway said the Market Information Systems (D) Task Force met March 25 and adopted its Dec. 3, 2021, and 2021 Fall National Meeting minutes. The Task Force met Dec. 3, 2021, to extend the Task Force charge to “develop recommendations for the incorporation of artificial intelligence (AI) abilities in the NAIC Market Information Systems.”

Commissioner Conway said the Task Force also considered the report of the Market Information Systems Research and Development (D) Working Group regarding the incorporation of artificial intelligence (AI) in the NAIC market information systems (MIS). He said the report lays out five sequential steps needed to incorporate AI into the MIS, beginning with a full analysis of the current state of the data in the MIS and the data’s usefulness for AI analysis techniques. He said after hearing comments regarding the time and resources needed to implement all five of the report’s recommendations and a proposal to limit adoption to only the first two recommendations to assess the current quality of the market information data, the Task Force decided to continue its discussions and consideration of adoption at its next meeting.

Commissioner Conway said the Task Force also received reports from the Working Group on the status of current MIS projects and its analysis of the completeness, accuracy, and timeliness of the data in the MIS. He said the Task Force adopted both reports.

d. Producer Licensing (D) Task Force

Director Deiter said the Producer Licensing (D) Task Force has not met since the 2021 Fall National Meeting, but progress has been made on several important initiatives, and a call will be scheduled in late April or early May.

Director Deiter said the Task Force has continued its development of a uniform process for considering updates to the NAIC’s Uniform Applications. He said one of the main changes to the document is language that clarifies the coordination between the NAIC, the National Insurance Producer Registry (NIPR), and NAIC member jurisdictions, including any back-office system vendors, in assessing the cost and time needed to implement adopted changes to the Uniform Licensing Applications. He said the Task Force will accept a final round of comments and plans to consider the adoption of the Uniform Application Change Process during its next call. He said the Task Force will then begin the review of suggested changes to the Uniform Producer Licensing Application within the guidelines of the adopted process.

Director Deiter said there has been additional discussions regarding how states review 1033 waiver requests. He said the Federal Violent Crime Control and Law Enforcement Act of 1994 requires producer applicants who have been convicted of crimes involving dishonesty or breach of trust to obtain written consent or approval before engaging in the business of insurance. He noted that NAIC staff have been working with industry to clarify industry’s request to simplify the 1033 waiver process and bring a proposal to the Task Force.

Director Deiter said the Task Force has faced delays appointing working group chairs due to the resignation and lack of availability of producer licensing directors to chair the working groups. He said Richard Tozer (VA) has

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agreed to chair the Uniform Education (D) Working Group, and he is working with Commissioner Clark, the vice chair of the Task Force, to identify a chair for the Producer Licensing Uniformity (D) Working Group.

Director Deiter said the Task Force will consider the formal appointment of a new Adjuster Licensing (D) Working Group during its next conference call. He said Rachel Chester (RI) agreed to move forward with leading initial discussions falling under the current Task Force charge to “monitor the state implementation of adjuster licensing reciprocity and uniformity and update, as necessary, NAIC adjuster licensing standards.”

e. Market Analysis Procedures (D) Working Group

Mr. Haworth said the Market Analysis Procedures (D) Working Group met March 23 and reviewed its charges for 2022. He said during 2022, the Working Group will focus on the MIS data to ensure it is effectively meeting the needs of market analysts and, if necessary, provide recommendations for enhancements and improvements. He also said in 2022, the Working Group will open discussions on the next line of business for the Market Conduct Annual Statement (MCAS). He encouraged all interested state insurance regulators, interested parties, and industry to provide suggestions for the Working Group to consider.

Mr. Haworth said the Working Group discussed the new standard MCAS ratios for the two newest lines of business in the MCAS; i.e., Short-Term Limited-Duration (STLD) Insurance and Travel Insurance. He said the ratios are exposed on the Working Group web page, and the Working Group will be voting on their adoption on its conference call.

Finally, Mr. Haworth said the Working Group adopted a motion to add the disability and lender-placed insurance MCAS data to the Market Analysis Review System (MARS). The Working Group forwarded the request to the Market Information Systems Research and Development (D) Working Group for its consideration. He said during the Market Information Systems Research and Development (D) Working Group’s discussion, it asked the Market Analysis Procedures (D) Working Group for additional details, and that will be on the agenda during its next meeting.

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

Ms. Weyhenmeyer said the Market Conduct Annual Statement Blanks (D) Working Group met March 17 and received an update regarding the Life MCAS draft edits for Accelerated Underwriting. She said the Accelerated Underwriting (A) Working Group adopted its draft paper. She said the MCAS Accelerated Underwriting SMEs has a meeting scheduled on April 13 to discuss a definition for the proposed Life MCAS Accelerated Underwriting proposal.

Ms. Weyhenmeyer said the Market Conduct Annual Statement Blanks (D) Working Group received an update regarding the Other Health MCAS draft. She said the SMEs working on the Other Health draft are finalizing the draft, and it is anticipated that the draft will be exposed in time for the Working Group to consider adoption prior to the June 1 deadline for edits to the 2023 MCAS reporting.

Ms. Weyhenmeyer said the Working Group discussed the proposed lawsuit definitions and placement of lawsuit data elements for the Homeowners MCAS and Private Passenger Auto (PPA) MCAS. The SMEs working on this issue have scheduled a call on April 12 to discuss outstanding questions and concerns prior to providing a draft proposal to the Working Group for public discussion.

Ms. Weyhenmeyer said the Working Group adopted the proposal for digital claims interrogatories for the Homeowners and PPA MCAS lines of business. She said the edits will be provided to the Committee, along with

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any other MCAS edits that need to be considered prior to the Committee's Aug.1 deadline for edits to the 2023 MCAS reporting.

Finally, Ms. Weyhenmeyer said the Working Group reviewed guidance regarding the new data element asking for the "Number of Lawsuits Closed with Consideration for the Consumer" on the Homeowners and PPA MCAS Lines of business.

g. Market Conduct Examination Guidelines (D) Working Group

Mr. Hughes said the Market Conduct Examination Guidelines (D) Working Group met March 10 and reviewed its 2022 charges and established priorities for 2022. First, the Working Group will develop a new, updated Chapter 24 of the *Market Regulation Handbook* on conducting the Mental Health Parity and Addiction Equity Act (MHPAEA) examination in the *Market Regulation Handbook*. Mr. Hughes said at the end of 2021, the Working Group was asked to coordinate with the MHPAEA (B) Working Group to develop updates to the mental health parity-related chapter of the *Market Regulation Handbook* to ensure it reflects current MHPAEA parity compliance analysis requirements for non-quantitative treatment limits (NQTLs) and better align the chapter with established federal guidance related to mental health parity. He said the Market Conduct Examination Guidelines (D) Working Group's vice chair, Ms. Weyhenmeyer, is the chair of the MHPAEA (B) Working Group, and the two working groups are already collaborating to address this request. He said as a result of that coordination, an updated MHPAEA chapter is forthcoming and will be distributed after the Spring National Meeting as a new exposure draft for the Market Conduct Examination Guidelines (D) Working Group's consideration. Second, the Working Group will update Chapter 23—Conducting the Life and Annuity Examination of the *Market Regulation Handbook* to include revised guidance pertaining to the revisions to the *Suitability in Annuity Transactions Model Regulation* (#275) that were adopted by the NAIC in February 2020. Third, the Working Group will develop new travel insurance-related Standardized Data Requests (SDRs) to address in-force policies and claims.

Mr. Hughes said the Working Group will also move forward in 2022 with its charges to develop uniform market conduct procedural guidance; coordinate with the Innovation, Cybersecurity, and Technology (H) Committee; discuss the effectiveness of group supervision of market conduct risks; and discuss the role of market conduct examiners in reviewing insurers' corporate governance.

Mr. Hughes said the Working Group also discussed draft revisions to Chapter 21—Conducting the Property and Casualty Examination of the *Market Regulation Handbook* regarding provisions from the *Real Property Lender-Placed Insurance Model Act* (#631) and to Chapter 20—General Examination Standards of the *Market Regulation Handbook* regarding provisions in the *Insurance Holding Company System Regulatory Act* (#440).

h. Speed to Market (H) Working Group

Ms. Nichols said the Speed to Market (H) Working Group leadership and NAIC staff support met March 10 to discuss the Working Group's goals and plans for 2022. She said a Working Group call is scheduled for April 20 to discuss its 2022 goals. Ms. Nichols said the Working Group will: 1) hear an update on the System for Electronic Rates & Forms Filing (SERFF) Modernization Project; 2) hear a status update on edits to the *Product Filing Review Handbook*; and 3) discuss the annual review of the PCM and Uniform Transmittal Document suggestions.

i. Advisory Organization (D) Working Group

Commissioner Ommen said the Advisory Organization (D) Working Group met March 22. He noted that because the Working Group's charge is to oversee the regularly scheduled examinations of advisory organizations, the Working Group always meets in closed regulator-only session.

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Commissioner Ommen said in addition to receiving updates on exams currently in progress and the most recent company responses to their annual self-evaluations, the Working Group began consideration of advisory organizations that primarily provide telematics and other services heavily reliant in the use of big data technology to insurers. He said this is beyond the standard loss cost and actuarial type services that most advisory organizations provide for their members. He said this year, the Working Group is considering the examination standards that should be in place to effectively regulate these entities. He noted that there are currently a couple states that participate in the Working Group who are conducting examinations of these organizations, and the Working Group will be reviewing and discussing the results of these examinations as it works on examination standards.

Mr. Birnbaum asked whether the development of the standards would be on open conference calls so interested parties could participate. Commissioner Ommen said the development would initially be closed, but once a framework of standards is developed, it would likely move to the Market Conduct Examination Guidelines (D) Working Group for completion. Mr. Birnbaum also asked whether the results of advisory organization examinations could be made public. Commissioner Ommen said the decision to make examination reports public belongs to the jurisdictions participating in the examination, not the Advisory Organization (D) Working Group.

j. Privacy Protections (D) Working Group

Ms. Johnson said the Privacy Protections (D) Working Group met March 23 and March 9 in regulator-only session. She said state insurance regulator SMEs conducted their initial drafting via email and then met March 29 and April 4 following the Working Group's meeting.

Ms. Johnson said the Working Group adopted its 2021 Fall National Meeting minutes and heard updates by Jennifer McAdam (NAIC) on state privacy legislation and Brooke Stringer (NAIC) on federal privacy legislation.

Ms. Johnson said the Working Group also discussed comments received on the exposure draft of the Working Group's work plan, which was exposed March 23 for a seven-day public comment period that ended on March 30. She said the Working Group adopted the 2022 work plan during its April 4 meeting.

Superintendent Toal made a motion, seconded by Commissioner Clark, to adopt the following reports: 1) Market Regulation Certification (D) Working Group (Attachment Two); 2) Antifraud (D) Task Force; 3) Market Information Systems (D) Task Force; 4) Producer Licensing (D) Task Force; 5) Market Analysis Procedures (D) Working Group (Attachment Three); 6) Market Conduct Annual Statement Blanks (D) Working Group (Attachment Four); 7) Market Conduct Examination Guidelines (D) Working Group (Attachment Five); 8) Speed to Market (H) Working Group; 9) Advisory Organization (D) Working Group; and 10) Privacy Protections (D) Working Group (Attachment Six). The motion passed unanimously.

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

SharePoint/NAIC Support Staff Hub/Member Meetings/2022 Spring National Meeting/MARKET REGULATION AND CONSUMER AFFAIRS (D) COMMITTEE/04-D Cmte T.docx

Draft: 4/7/22

Adopted by the Executive (EX) Committee and Plenary, ____, ____, ____

Adopted by the Market Regulation and Consumer Affairs (D) Committee, April 7, 2022

2022 Proposed Revised Charges

MARKET REGULATION AND CONSUMER AFFAIRS (D) COMMITTEE

The mission of the Market Regulation and Consumer Affairs (D) Committee is to monitor all aspects of the market regulatory process for continuous improvement. This includes market analysis, regulatory interventions with companies, and multi-jurisdictional collaboration. The Committee will also review and make recommendations regarding the underwriting and market practices of insurers and producers, as those practices affect insurance consumers, including the availability and affordability of insurance.

Ongoing Support of NAIC Programs, Products or Services

1. The **Market Regulation and Consumer Affairs (D) Committee** will:
 - A. Monitor the centralized collection and storage of market conduct data, national analysis, and reporting at the NAIC, including issues regarding the public availability of data.
 - B. Monitor and assess the current process for multi-jurisdictional market conduct activities and provide appropriate recommendations for enhancement, as necessary.
 - C. Evaluate all data currently collected in the NAIC Market Information Systems (MIS) and considered confidential to determine what, if any, can be made more widely available.
 - D. Oversee the activities of the Antifraud (D) Task Force.
 - E. Oversee the activities of the Market Information Systems (D) Task Force.
 - F. Oversee the activities of the Producer Licensing (D) Task Force.
 - G. Monitor the underwriting and market practices of insurers and producers, as well as the conditions of insurance marketplaces, including urban markets, to identify specific market conduct issues of importance and concern. Hold public hearings on these issues at the NAIC national meetings, as appropriate.
 - H. In collaboration with other technical working groups, discuss and share best practices through public forums to address broad consumer concerns regarding personal insurance products.
 - I. Coordinate with the International Insurance Relations (G) Committee to develop input and submit comments to the International Association of Insurance Supervisors (IAIS) and/or other related groups on issues regarding market regulation concepts.
 - J. Coordinate with the Health Insurance and Managed Care (B) Committee to provide policy recommendations regarding uniform state enforcement of the federal Affordable Care Act (ACA).
 - K. Review the “Best Practices and Guidelines for Consumer Information Disclosures” (adopted October 2012) and update, as needed.
2. The **Advisory Organization ~~Examination Oversight~~ (D) Working Group** will:
 - A. Revise the protocols, as necessary, for the examination of national or multistate advisory organizations (including rating organizations and statistical agents) to be more comprehensive, efficient, and possibly less frequent than the current system of single-state exams. Solicit input and collaboration from other interested and affected committees and task forces.
 - B. Monitor the data reporting and data collection processes of advisory organizations (including rating organizations and statistical agents) to determine if they are implementing appropriate measures to ensure data quality. Report the results of this ongoing charge, as needed.
 - C. Actively assist with and coordinate multistate examinations of advisory organizations (including rating organizations and statistical agents).

3. The **Market Actions (D) Working Group** will:
 - A. Facilitate interstate communication and coordinate collaborative state regulatory actions.
4. The **Market Analysis Procedures (D) Working Group** will:
 - A. Recommend changes to the market analysis framework based on results over the past five years, including the current set of Level 1 and Level 2 questions.
 - B. Discuss other market data collection issues and make recommendations, as necessary.
 - C. Consider recommendations for new lines of business for the Market Conduct Annual Statement (MCAS).
5. The **Market Conduct Annual Statement Blanks (D) Working Group** will:
 - A. Review the MCAS data elements and the “Data Call and Definitions” for those lines of business that have been in effect for longer than three years and update them, as necessary.
 - B. Develop an MCAS blank to be used for the collection of data for additional lines of business, where appropriate.
6. The **Market Conduct Examination Guidelines (D) Working Group** will:
 - A. Develop market conduct examination standards, as necessary, for inclusion in the *Market Regulation Handbook*.
 - B. Monitor the adoption and revision of NAIC models and develop market conduct examination standards to correspond with adopted NAIC models.
 - C. Develop updated standardized data requests, as necessary, for inclusion in the *Market Regulation Handbook*.
 - D. Develop uniform market conduct procedural guidance (e.g., a library, depository, or warehouse with market conduct examination templates, such as an exam call letter, exam exit agenda, etc.) for inclusion in, or for use in conjunction with, the *Market Regulation Handbook*.
 - E. Coordinate with the Innovation, Cybersecurity, and Technology (H) Committee to develop market conduct examiner guidance for the oversight of regulated entities’ use of insurance and non-insurance consumer data and models using algorithms and artificial intelligence (AI).
 - F. Discuss the effectiveness of group supervision of market conduct risks and develop examination procedural guidance, as necessary.
 - G. Discuss the role of market conduct examiners in reviewing insurers’ corporate governance as outlined in the NAIC’s *Corporate Governance Annual Disclosure Model Act* (#305) and *Corporate Governance Annual Disclosure Model Regulation* (#306).
7. The **Market Regulation Certification (D) Working Group** will:
 - A. Develop a formal market regulation certification proposal for consideration by the NAIC membership that provides recommendations for the following: 1) certification standards; 2) a process for the state implementation of the standards; 3) a process to measure the states’ compliance with the standards; 4) a process for future revisions to the standards; and 5) assistance for jurisdictions to achieve certification.
8. ~~The **Privacy Protections (D) Working Group** will:~~
 - ~~A. Review state insurance privacy protections regarding the collection, use and disclosure of information gathered in connection with insurance transactions and make recommended changes, as needed, to certain NAIC models, such as the *NAIC Insurance Information and Privacy Protection Model Act* (#670) and the *Privacy of Consumer Financial and Health Information Regulation* (#672).~~

8. The **Speed to Market (D) Working Group** will:

- A. Consider proposed System for Electronic Rates & Forms Filing (SERFF) features or functionality presented to the Working Group by the SERFF Advisory Board (SAB), likely originating from the SERFF Product Steering Committee (PSC). Upon approval and acquisition of any needed funding, direct the SAB to implement the project. Receive periodic reports from the SAB, as needed.
- B. Provide feedback and recommendations concerning the SERFF modernization when requested by the Executive (EX) Committee and any group assigned oversight of the SERFF modernization by the Executive (EX) Committee.
- C. Discuss and oversee the implementation and ongoing maintenance/enhancement of speed to market operational efficiencies related to product filing needs, efficiencies, and effective consumer protection. This includes the following activities:
 - i. Provide a forum to gather information from the states and the industry regarding tools, policies, and resolutions to assist with common filing issues. Provide oversight in evaluating product filing efficiency issues for state insurance regulators and the industry, particularly regarding uniformity.
 - ii. Use SERFF data to develop, refine, implement, collect, and distribute common filing metrics that provide a tool to measure the success of the speed to market modernization efforts, as measured by nationwide and individual state speed to market compliance, with an emphasis on monitoring state regulatory and insurer responsibilities for speed to market for insurance products.
 - iii. Facilitate proposed changes to the product coding matrices (PCMs) and the uniform transmittal document (UTD) on an annual basis, including the review, approval, and notification of changes. Monitor, assist with, and report on state implementation of any PCM changes.
 - iv. Facilitate the review and revision of the *Product Filing Review Handbook*, which contains an overview of all the operational efficiency tools and describes best practices for industry filers and state reviewers regarding the rate and form filing and review process. Develop and implement a communication plan to inform the states about the *Product Filing Review Handbook*.
- D. Provide direction to NAIC staff regarding SERFF functionality, implementation, development, and enhancements. Direct NAIC staff to provide individual state speed to market reports to each commissioner at each national meeting. Receive periodic reports from NAIC staff, as needed.
- E. Conduct the following activities, as desired, by the Interstate Insurance Product Regulation Commission (Compact):
 - i. Provide support to the Compact as the speed to market vehicle for asset-based insurance products, encouraging the states' participation in, and the industry's usage of, the Compact.
 - ii. Receive periodic reports from the Compact, as needed.

NAIC Support Staff: Tim Mullen/Randy Helder

D Cmte Rev Charges

Draft: 3/28/22

Adopted by the Executive (EX) Committee and Plenary, __ __, __

Adopted by the Market Regulation and Consumer Affairs (D) Committee, April 5, 2022

Adopted by the Antifraud (D) Task Force, March 28, 2022

2022 Proposed Revised Charges

ANTIFRAUD (D) TASK FORCE

The mission of the Antifraud (D) Task Force is to serve the public interest by assisting the state insurance supervisory officials, individually and collectively, through the detection, monitoring, and appropriate referral for the investigation of insurance crime, both by and against consumers. The Task Force will assist the insurance regulatory community by conducting the following activities: 1) maintaining and improving electronic databases regarding fraudulent insurance activities; 2) disseminating the results of research and analysis of insurance fraud trends, as well as case-specific analysis, to the insurance regulatory community; and 3) providing a liaison function between state insurance regulators, law enforcement (federal, state, local, and international), and other specific antifraud organizations. The Task Force will also serve as a liaison with the NAIC Information Technology Group (ITG) and other NAIC committees, task forces, and/or working groups to develop technological solutions for data collection and information sharing. The Task Force will monitor all aspects of antifraud activities by its working groups on the following charges.

Ongoing Support of NAIC Programs, Products or Services

1. The **Antifraud (D) Task Force** will:
 - A. Work with NAIC committees, task forces, and working groups (e.g., Title Insurance (C) Task Force, etc.) to review issues and concerns related to fraud activities and schemes related to insurance fraud.
 - B. Coordinate efforts to address national concerns related to agent fraud and activities of unauthorized agents related to insurance sales.
 - C. Coordinate the enforcement and investigation efforts of state and federal securities regulators with state insurance fraud bureaus.
 - D. Coordinate with state, federal, and international law enforcement agencies in addressing antifraud issues relating to the insurance industry.
 - E. Review and provide comments to the International Association of Insurance Supervisors (IAIS) on its Insurance Core Principles (ICPs) related to insurance fraud.
 - F. Coordinate activities and information from national antifraud organizations and provide information to state insurance fraud bureaus.
 - G. Coordinate activities and information with state and federal fraud divisions to determine guidelines that will assist with reciprocal involvement concerning antifraud issues resulting from natural disasters and catastrophes.
 - H. Coordinate efforts with the insurance industry to address antifraud issues and concerns.
 - I. Evaluate and recommend methods to track national fraud trends.
 - ~~I.J.~~ Develop seminars, trainings, and webinars regarding insurance fraud. Provide three webinars by the 2022 Fall National Meeting

~~2. The Antifraud Education Enhancement (D) Working Group will:~~

- ~~A. Develop seminars, trainings, and webinars regarding insurance fraud. Provide three webinars by the 2022~~

~~Fall National Meeting.~~

~~3.2.~~ The **Antifraud Technology (D) Working Group** will:

- A. Work with the NAIC to develop an Antifraud Plan Repository to be used by insurers to create and store an electronic fraud plan for distribution among the states/jurisdictions. Complete by 2022 Fall National Meeting.
- B. Evaluate sources of antifraud data and propose methods for enhancing the utilization and exchange of information among state insurance regulators, fraud investigative divisions, law enforcement officials, insurers, and antifraud organizations. Complete by the 2022 Fall National Meeting.

~~4.3.~~ The **Improper Marketing of Health Insurance (D) Working Group** will:

- A. Coordinate with state insurance 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.
- B. 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.

NAIC Support Staff: Greg Welker/Lois E. Alexander

[Antifraud TF Charges](#)

Draft: 3/30/22

Market Regulation Certification (D) Working Group
Virtual Meeting
March 22, 2022

The Market Regulation Certification (D) Working Group of the Market Regulation and Consumer Affairs (D) Committee met March 22, 2022. The following Working Group members participated: John Haworth, Vice Chair (WA); Lori K. Wing-Heier (AK); Crystal Phelps (AR); Erica Weyhenmeyer (IL); Dawna Kokosinski (MD); Chlora Lindley-Myers (MO); Tracy Biehn (NC); Edwin Pugsley (NH); Ralph Boeckman and Erin Porter (NJ); Landon Hubbard (OK); Colette Hittner (OR); Michael Bailes (SC); Julie Fairbanks (VA); Karla Nuissl (VT); Theresa Miller (WV); and Bill Cole (WY).

1. Reviewed its 2022 Charges and Current Status of the Voluntary Market Regulation Certification Program

Mr. Haworth said the Working Group did not meet in 2021 while the Market Regulation and Consumer Affairs (D) Committee considered next steps for the Voluntary Market Regulation Certification Program. He said the 2022 chair of the Committee, Commissioner Jon Pike (UT), asked Superintendent Russell Toal (NM) if he would serve as Working Group chair in 2022, and Superintendent Toal agreed to do so. Mr. Haworth said he agreed to serve as Working Group vice chair.

Mr. Haworth said there is only one charge for the Working Group and that is to develop a formal market regulation certification proposal for consideration by the NAIC membership. He said the charge has five sections.

First, Mr. Haworth said the Working Group is to develop the certification standards that it would expect a state's insurance department should meet. He said this, for the most part, has been achieved. He said there are 12 requirements in the certification program covering staffing, use of the NAIC market information systems, participation in Market Regulation and Consumer Affairs (D) Committee working groups, participation in the Market Conduct Annual Statement (MCAS), collaboration with other departments, and the ability to enforce compliance of regulated entities to market conduct laws and regulations. Mr. Haworth noted that in 2017 and 2018, the Working Group oversaw a pilot program of 18 states that worked to apply the certification standards to the market regulation divisions of their insurance departments. He said the volunteers brought the assessments and recommendations to the Working Group. In 2019 and 2020, the Working Group met to consider the recommendations and incorporated many of them in the certification program. He said these revisions can be found on the Working Group's web page.

Second, Mr. Haworth said the Working Group was tasked with developing an implementation plan for the certification program. He said this has also been finished, but because a few years have passed since it was drafted, the implementation plan is now out of date and needs to be brought back up to date. He said the Working Group will be considering the implementation plan in a meeting later in 2022 and will have it completed before the Fall National Meeting.

Third, Mr. Haworth said the Working Group will develop a process for measuring a jurisdiction's compliance to the standards. He said the Working Group was actively working on the scoring matrix for measuring the compliance to the standards. He said a current version of the scoring matrix is on the Working Group's web page.

Fourth, Mr. Haworth said the Working Group needs to create a process for future revisions to the certification standards. He said this was completed with the implementation plan and consists of a single paragraph at the end

of the implementation plan. He said when the Working Group reviews the implementation plan, it will take a look at the revision process to see if it needs improvement or if it is good as is.

Finally, Mr. Haworth said the Working Group is tasked with assisting jurisdictions in achieving certification once a certification program is approved and an implementation plan is in place.

2. Heard an Update on the Certification Program Scoring Matrix

Mr. Haworth said the Certification Program Scoring Matrix drafting group met March 9 to resume its work on a draft for a scoring matrix to enable jurisdictions to do self-assessments and provide a framework for scoring jurisdictions seeking certification under the Voluntary Market Regulation Certification Program.

Mr. Haworth said the scoring matrix classifies each part of each requirement as mandatory, primary, or secondary, and the drafting group is currently assigning point values to each part. He said a color-coded draft of the scoring matrix without the point values can be found in the exposure drafts on the Working Group's web page. He said questions coded as red are mandatory; questions coded as yellow are primary; and questions coded as green are secondary. He said a jurisdiction scoring 70% of the maximum possible points would pass the certification assessment. He noted, however, that if one of the mandatory parts is missed, the jurisdiction would not pass the certification assessment even if it scored more than 70%. Mr. Haworth said the drafting group will have the draft ready for the Working Group's consideration prior to the Summer National Meeting.

3. Discussed Other Matters Brought Before the Working Group

Mr. Haworth said the goal of the Working Group is to have the Voluntary Market Regulation Certification Program, the implementation plan, and the scoring matrix to the Market Regulation and Consumer Affairs (D) Committee by the Fall National Meeting. He asked that comments be sent to Randy Helder (NAIC) by April 15 on any portion of the certification program.

Having no further business, the Market Regulation Certification (D) Working Group adjourned.

Sharepoint/2022 National Meetings/Spring National Meeting/Committee Meetings/Market Regulation and Consumer Affairs (D) Committee/Market Reg Certification (D) WG/3-MRCWG T.docx

Draft: 3/9/22

Market Analysis Procedures (D) Working Group
Virtual Meeting
March 3, 2022

The Market Analysis Procedures (D) Working Group of the Market Regulation and Consumer Affairs (D) Committee met March 3, 2022. The following Working Group members participated: John Haworth, Chair (WA); Rebecca Rebholz, Vice Chair (WI); Crystal Phelps (AR); Sarah Borunda (AZ); Don McKinley (CA); Damion Hughes (CO); Kurt Swan (CT); Frank Pyle (DE); Scott Woods (FL); Erica Weyhenmeyer (IL); Tate Flott (KS); Sandra Stumbo (KY); Dawna Kokosinski (MD); Timothy Schott (ME); Jill Huisken (MI); Cynthia Amann, Teresa Kroll, and Jo LeDuc (MO); Paul Hanson (MN); Martin Swanson and Reva Vandevoorde (NE); Edwin Pugsley (NH); Ralph Boeckman (NJ); Guy Self (OH); Landon Hubbard (OK); Jeffrey Arnold (PA); Brett Bache (RI); Glynda Daniels (SC); Tracy Klausmeier (UT); Will Felvey (VA); Isabelle Turpin Keiser (VT); and Theresa Miller (WV).

1. Adopted its 2021 Fall National Meeting Minutes

Mr. Haworth said the Working Group met Nov. 18, 2021, and took the following action: 1) adopted its 2021 Summer National Meeting minutes; 2) discussed market analysis training; 3) discussed the proposed standard ratios for the travel insurance and short-term, limited- duration (STLD) insurance Market Conduct Annual Statement (MCAS) blanks; and 3) discussed the market analysis tools in i-Site+ that will be replaced with enhanced tools and dashboards.

Ms. Weyhenmeyer made a motion, seconded by Ms. Rebholz, to adopt the Working Group's Nov. 18, 2021, minutes (*see NAIC Proceedings – Fall 2021, Market Regulation and Consumer Affairs (D) Committee, Attachment Seven*). The motion passed unanimously.

2. Reviewed its Charges for 2022

Mr. Haworth said the Working Group's charges for 2022 have not changed. He said the charges are deliberately broad and could encompass numerous activities. He encouraged everyone to consider what tasks may be important for the Working Group to consider and address in 2022.

Mr. Haworth said the first charge is "to recommend changes to the market analysis framework based over the last five years, including the current set of Level 1 and Level 2 questions." He said the charge is the reason agenda item 4 was added to the agenda for this meeting. He said he had received a request for the Working Group to consider adding the MCAS data from lender-placed insurance and disability insurance into the Market Analysis Review System (MARS) Level 1 data set. He said he is recommending the Working Group submit a Uniform System Enhancement Request (USER) form to the Market Information Systems Research and Development (D) Working Group to prioritize the request.

Mr. Haworth said the Working Group's second charge is "to discuss market data collection issues and make recommendations, as necessary." He said the charge is the reason the Working Group schedules at least one or two discussions regarding the latest MCAS filings and any issues that analysts are encountering with them. He said the charge also covers the Complaints Database System (CDS), the Regulatory Information Retrieval System (RIRS), the Market Action Tracking System (MATS), the Market Analysis Prioritization Tool (MAPT), and other databases.

Mr. Haworth noted that the Market Information Systems Research and Development (D) Working Group annually reports on the completeness, accuracy, and timeliness of the data in the market information systems. He

suggested that when the report is ready, the Market Analysis Procedures (D) Working Group should review and provide feedback, as the market analysis experts, to the Market Information Systems Research and Development (D) Working Group and the Market Information Systems (D) Task Force on ways to address the concerns arising from the metrics report.

Mr. Haworth said the third charge is to consider recommendations for new lines of business for the MCAS. He said the most recent recommendations were in November 2019 to add other health insurance to the MCAS and in March 2020 to add travel insurance to the MCAS. He said the Working Group did not make any recommendations in 2021, and he recommended that the Working Group consider which, if any, lines of business, need to be added to the MCAS.

Mr. Haworth said any requests for agenda items relating to the Working Group charges should be sent to Randy Helder (NAIC).

3. Discussed Standard Ratios for the Travel and STLD MCAS Blanks

Mr. Haworth said the proposed standard ratios for the travel and STLD MCAS blanks were originally exposed for the Working Group's Nov. 18, 2021, meeting, and the Working Group asked for volunteers to review them, make edits and bring them back to the Working Group.

Mr. Haworth said there are five proposed ratios for travel insurance and 11 ratios for STLD. He said along with the proposed ratios, the drafting group made two suggestions for new data elements.

Mr. Haworth said the first suggestion is a new element for the travel MCAS blank of "policies in-force during the period" to assist in analyzing complaint trends from year to year and from company to company. He said the second new data element is for the STLD blank and is the "dollar amount of claims paid during the reporting period."

Mr. Haworth said the Working Group will consider the new data elements separate from the ratios.

Lisa Brown (American Property Casualty Insurers Association—APCIA) said the APCIA supports the five new ratios for the travel insurance MCAS blank and the new data elements. She said the date element of "policies in-force during the period" is a better comparison to the number of complaints. She thanked state insurance regulators that participated in the drafting of the ratios and said industry appreciated the open dialogue.

Duke de Haas (Allianz) also thanked state insurance regulators for the work put into developing the ratios. He agreed that "policies in-force" is a better denominator for the complaints ratio and is more consistent with the other lines of business.

Mr. Haworth said the proposed ratios are posted on the Working Group web page and asked that comments on the ratios and data elements be sent to Mr. Helder by April 15. He said it is important to get these adopted in time for next year's MCAS data collection.

4. Discussed Market Analysis Tools and Data Elements

Mr. Haworth said this agenda item addresses the Working Group's first charge to "recommend changes to the market analysis framework based over the last five years, including the current set of Level 1 and Level 2 questions." He said he plans to continue this agenda item throughout the year.

Mr. Haworth said he would like to make a recommendation that the Working Group submit a USER form to the Market Information Systems Research and Development (D) Working Group to incorporate the disability insurance and lender-place insurance MCAS data into the MARS Level 1 set of questions.

Ms. LeDuc made a motion, seconded by Mr. Pyle, to add the disability insurance and lender-place insurance MCAS data into the MARS. The motion passed unanimously.

5. Discussed Other Matters

Birny Birnbaum (Center for Economic Justice—CEJ) noted that the proposed standard ratios for travel insurance do not include a ratio to measure cancellations. He said this is inconsistent with the other MCAS lines of business. He said there is no purpose to have a data element capturing the number of cancellations if no ratio is developed regarding cancellations. He noted the travel insurance MCAS blank does not have the appropriate data elements to create a denominator for a good cancellation ratio. Ms. Brown noted that was why industry proposed the addition of the data element of “policies in-force during the period,” but she also noted that most cancellations are consumer initiated and that a ratio to measure cancellations would not be of much value since state insurance regulators would already know the number of cancellations. Mr. Birnbaum said a high cancellation ratio compared with other companies would tell state insurance regulators there may be marketing issues with the reporting company.

Having no further business, the Market Analysis Procedures (D) Working Group adjourned.

SharePoint/NAIC Support Staff Hub/Member Meetings/Spring 2022 National Meeting/Committee Meetings/D/MAP/3-MAP.docx

Draft Pending Adoption

Attachment Four
Market Regulation and Consumer Affairs (D) Committee
4/07/22

Draft: 4/2/22

Market Conduct Annual Statement Blanks (D) Working Group Virtual Meeting March 17, 2022

The Market Conduct Annual Statement Blanks (D) Working Group of the Market Regulation and Consumer Affairs (D) Committee met March 17, 2022. The following Working Group members participated: Erica Weyhenmeyer, Chair (IL); Rebecca Rebholz, Chair, Vice Chair (WI); Maria Ailor and Cheryl Hawley (AZ); Scott Woods (FL); Paula Shamburger (GA); Brenda Johnson (KS); Lori Cunningham (KY); Mary Lou Moran (MA); Dawna Kokosinski (MD); Jill Huisken (MI); Teresa Kroll and Jo LeDuc (MO); Martin Swanson (NE); Guy Self (OH); Jeff Arnold (PA); Michael Bailes (SC); Tony Dorschner (SD); Shelli Isiminger (TN); Shelley Wiseman (UT); Melissa Gerachis (VA); and Jason Carr (WA).

1. Adopted its Nov. 22, 2021, Minutes

The Working Group met Nov. 22, 2021, and took the following action: 1) adopted its July 28, 2021, minutes; 2) received an update on the life Market Conduct Annual Statement (MCAS) draft edits for accelerated underwriting (AU); 3) received an update on the Other Health Drafting Group; 4) received a proposal from the subject matter expert (SME) group on lawsuit definitions and placement of the lawsuit data elements for the homeowners and private passenger auto (PPA) MCAS; and 5) received a proposal from the SME group on reporting of the digital claims interrogatory question.

Ms. Rebholz made a motion, seconded by Ms. Moran, to adopt the Working Group's Nov. 22, 2021, minutes (*see NAIC Proceedings – Fall 2021, Market Regulation and Consumer Affairs (D) Committee, Attachment Eight*). The motion passed unanimously.

2. Received an Update on the Life MCAS Draft Edits for AU

Ms. Weyhenmeyer stated that the March 4 draft of AU in the life insurance educational paper, which was drafted by the Accelerated Underwriting (A) Working Group, was exposed for a two-week public comment period ending March 18. The draft can be found on the Accelerated Underwriting (A) Working Group's web page for anyone who would like to review it.

Ms. Weyhenmeyer stated the Accelerated Underwriting (A) Working Group is meeting March 24 in lieu of the Spring National Meeting to: 1) discuss comments received; and 2) consider adoption of the educational paper. Upon adoption, the Working Group plans forward it to the Life Insurance and Annuities (A) Committee for consideration of adoption at the Spring National Meeting. She stated if the draft paper is adopted on March 24, the Market Conduct Annual Statement Blanks (D) Working Group will be reconvening the AU SME group that worked on the life MCAS updates related to AU. The SME group will be tasked with reviewing the definition of AU adopted by the Accelerated Underwriting (A) Working Group to determine if it is appropriate for use with MCAS reporting of AU. She stated if these things happen and are completed before the Market Conduct Annual Statement Blanks (D) Working Group's meeting in April, then the AU edits will again be exposed to the Working Group along with an updated definition. Then the Working Group can consider the edits during its May meeting.

3. Received an Update on the Other Health Draft Group

Draft Pending Adoption

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Randy Helder (NAIC) stated the Other Health Drafting Group is being led by Mary Kay Rodriguez (WI) and that meetings have been taking place weekly for the last few months, with about 20 people in attendance, including state insurance regulators, consumer representatives, and industry members. He stated drafts are being posted regularly on the Market Conduct Annual Statement Blanks (D) Working Group web page for review and that any questions can be forwarded to him.

Mr. Helder stated that the Drafting Group began its work by identifying the other health lines to be included in the blank. The other health lines agreed upon are: 1) Health - Accident Only; 2) Health - Accidental Death and Dismemberment; 3) Health - Specified Disease - Limited Benefit; 4) Health – Hospital/Other Indemnity; and 5) Health – Hospital/Surgical/Medical Expense. He stated each of these are divided into individual policies that are sold through associations and policies that are sold through employer groups. The drafting group used the adopted short-term, limited-duration (STLD) MCAS blank as a starting point for developing the data elements and definitions. It eliminated the non-relevant data points and added some data elements that are more appropriate for the other health products. He stated the data elements are divided into five sections: 1) interrogatories; 2) policy/certificate administration; 3) claims administration; 4) consumer complaints and lawsuits; and 5) marketing and sales.

Mr. Helder stated the data elements are close to conclusion and that another meeting will take place for a review of some additional definitions. The goal is for this to be completed by the end of April for the Working Group's review.

4. Adopted the Proposal for Digital Claims Interrogatories for the Homeowner and PPA MCAS Lines of Business

Ms. Weyhenmeyer stated the proposal for digital claims interrogatories for the homeowner and PPA MCAS lines of business is included in attachment two of the meeting materials. She stated this proposal was first presented to the Working Group last November, and that during last year's June 30, 2021, Working Group meeting, the Working Group voted to include an interrogatory within the home and auto MCAS blanks to capture third-party vendors providing third-party data and algorithms used in the digital claims process. The wording approved during the June 30 meeting included "and for each vendor, identify the vendor's specific role in the digital claim process." The SME group was tasked with reviewing this interrogatory and to make recommendations of how third-party vendor data should be reported.

Ms. Weyhenmeyer stated the proposal shows the requirement to identify vendor roles is removed, allowing single-element capture of names of third-party vendors, similar to the capture of names of managing general agents (MGAs) and third-party administrators (TPAs). A public comment period was allowed for review of this proposal, and no comments were received.

Ms. Rebholz made a motion, seconded by Ms. Gerachis, to adopt the proposal for the auto and home digital claims Interrogatories that will be included in the 2023 MCAS reporting, to be collected in 2024 (Attachment Four-A). The motion passed unanimously.

5. Discussed the Proposed Lawsuit Definitions and Placement of Lawsuit Data Elements for the Homeowners and Auto MCAS

Ms. Weyhenmeyer stated the proposal for lawsuit definitions and placement of lawsuit data elements for the homeowners and auto MCAS is included in the meeting materials. She stated this was first presented to the Working Group in November 2021 and that the materials include a description and redline version, followed by a

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clean version of the proposal. Ms. Weyhenmeyer stated the proposal simplifies the lawsuit reporting and its definition as much as possible. The SME group proposes the following for the home and PPA MCAS lawsuit reporting: 1) removal of the lawsuit data elements from the claims reporting section; 2) creation of a new reporting section for the lawsuit data elements; 3) reporting the lawsuit data elements by claims coverage type as has been done in the past; 4) adding reporting for “non-claim related lawsuits”; and 5) updating the definition of lawsuits to accommodate the new reporting structure

Ms. Weyhenmeyer stated the proposed definition is similar to the definition used for other MCAS lines of business, which was done for consistency. She stated a few of the simplifications to the definition could be made to the definition in other lines of business if the Working Group finds that it would be useful. In November, the SME group also proposed the addition of an interrogatory to capture comments for the newly added lawsuit section.

Lisa Brown (American Property Casualty Insurance Association—APCIA) submitted comments for review, which were also part of the meeting materials. Ms. Brown stated she participated in the SME group for this. She stated the proposed definition says: “include only lawsuits brought by an applicant for insurance, a policyholder or claimant as a plaintiff against the reporting insurer or its agent as a defendant.” She stated that “agent” should be defined if it is going to be used as a term in the definition because it was unclear to many of their members if that is referring to an agent as an insurance producer or a third-party that has an agency relationship based on the definition of agency. Ms. Brown stated the definition also states: “If one lawsuit seeks damages under two or more policies, count the number of policies involved as the number of lawsuits.” She stated there needs to be clarification on how these should be reported as there may be multiple policies issued by multiple insurers. Ms. Brown stated they support the language proposed for arbitration, mediation, and appraisal, but ask that it be amended to exclude appraisal matters filed in a court of law and interpleader actions filed by a company. She stated that in Michigan, there seems to be a lot of suits brought by a medical provider for payment under personal injury protection (PIP) and asked if those suits would be counted since medical provider may not fall into the category of policyholder, applicant, or claimant. She also asked if a Pennsylvania writ of summons would be considered a lawsuit under this definition.

Ms. Brown stated the APCIA recognizes the need to expand collection of lawsuit data for both claims-related and non-claims related lawsuits but asks that the coverage breakout for claims-related lawsuit data be deleted and the reasons for this request. Ms. Huiskens stated Michigan is not ready to decide on proposed language with the way it is written now. Ms. Brown stated their request would be that under what to exclude in the definition explanation, to exclude lawsuits brought directly by medical providers.

Mr. Arnold stated he did some research on the question raised regarding Pennsylvania and explained that a writ of summons allows someone to start a lawsuit without actually filing the complaint that would include the grounds on which the lawsuit is being filed, including specific allegations. He stated that the writ of summons just identifies the parties and that the details come later. He said he thinks waiting to include this as a lawsuit would be more appropriate when the actual complaint is filed and the details of the lawsuit are included.

Ms. LeDuc stated companies are already reporting lawsuits based on coverage type in the claims-related area and that there was a request to add all of the other types of non-claims related lawsuits. She stated companies would continue to report what they have been for lawsuits and then just add a single number for any non-claim related lawsuits, which would be the lawsuit total minus the claims related lawsuits. Ms. Brown stated companies would appreciate more time to get the programming in place to report this additional data element and that she will get more information from companies as to why more time is needed before this is collected. Ms. LeDuc and Ms. Huiskens stated they believe more time is needed before the proposal on lawsuit definitions and the placement of

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lawsuit data elements for the homeowners and PPA MCAS is considered. Ms. Weyhenmeyer agreed and stated the SME group will reconvene. Ms. Huiskens asked that information be shared regarding Michigan concerns, and Ms. Brown stated they would do that.

6. Received Guidance Regarding the New “Number of Lawsuits Closed with Consideration for the Consumer” Data Element for the Homeowner and PPA MCAS Lines of Business

Ms. Weyhenmeyer stated that the meeting materials include guidance for some of the questions that have been presented on the data element for “number of lawsuits closed with consideration for the consumer” data element for the homeowners and PPA MCAS lines of business. She stated this is being provided to let meeting attendees know that these will be added to the MCAS frequently asked questions (FAQ) document posted on the MCAS web page. No questions or concerns were presented.

7. Discussed Other Matters

Ms. Weyhenmeyer stated the next Working Group meeting is scheduled for April 21, 2022. She stated during that meeting, a draft for the AU proposal may be exposed, which would include a new definition and a draft for the other health MCAS reporting data call and definitions. She advised that if these items are exposed, the Working Group will consider them during its May meeting.

Having no further business, the MCAS Blanks (D) Working Group adjourned.

SharePoint/NAIC Support Staff Hub/Member Meetings/2022 Spring National Meeting/Committee Meetings/Market Regulation and Consumer Affairs (D) Committee/MCAS WG/0317 Meeting

Proposal: 11/10/2021



Homeowners (2023 - Digital Claims Single Element Explanation)

Homeowners Interrogatories

		Yes No Response	Explanation
1 ... 14 ...		----	
15	Does the company use Managing General Agents (MGAs)?		----
16	If yes, list the names of the MGAs.	----	
17	Does the company use Third Party Administrators (TPAs)?		----
18	If yes, list the names of the TPAs.	----	
19	Does the company use digital claim settlement?		----
20	If yes, list the names of the the vendors providing third-party data and algorithms used in the digital clam settlement process.	----	
21	Additional state specific Claims comments (optional):	----	
22	Additional state specific Underwriting comments (optional):	----	

During the 6/30 WG meeting it was voted to include an interrogatory to capture third-party vendors. The SME group was tasked with review and determining the details of how it would be reported. Above is the wording proposed by the SME group. This proposal applies to both the Homeowner and Private Passenger Auto MCAS lines of business.

This proposal removes the requirement to identify vendor roles.

Draft: 4/4/22

Market Conduct Examination Guidelines (D) Working Group
Virtual Meeting
March 10, 2022

The Market Conduct Examination Guidelines (D) Working Group of the Market Regulation and Consumer Affairs (D) Committee met March 10, 2022. The following Working Group members participated: Damion Hughes, Chair (CO); Erica Weyhenmeyer, Vice Chair, Susan Berry, and Patrick Tallman (IL); Jeff Cordell, Teri Ann Mecca, and Crystal Phelps (AR); Sarah Borunda (AZ); Kurt Swan (CT); Patrice Garnette (DC); Susan Jennette and Frank Pyle (DE); Paula Shamburger (GA); Daniel Mathis (IA); Ron Kreiter (KY); Mary Lou Moran (MA); Airic Boyce and Jill Huiskens (MI); Teresa Fischer (MN); Cynthia Amann, Jennifer Hopper, Teresa Kroll, Jo LeDuc, and Win Nickens (MO); Tracy Biehn (NC); Edwin Pugsley (NH); Ralph Boeckman and Erin Porter (NJ); Leatrice Geckler (NM); Hermoliva Abejar and Barbara D. Richardson (NV); Sylvia Lawson (NY); Rodney Beetch (OH); Landon Hubbard and Shelly Scott (OK); Brian Fordham, Ana K. Pace, and Tashia Sizemore (OR); David Buono and Paul Towsen (PA); Brett Bache, Segun Daramola, Matt Gendron, and Brian Werbeloff (RI); Kelly Christensen and Shelley Wiseman (UT); Andrea Baytop, Julie Fairbanks, Joy Morton, and Bryan Wachter (VA); Mary Block, Isabelle Turpin Keiser, and Karla Nuisel (VT); Jeanette Plitt (WA); and Barbara Belling, Diane Dambach, Darcy Paskey, Rebecca Rebholz, Mary Kay Rodriguez, and Jody Ullman (WI).

1. Heard Opening Remarks

Mr. Hughes welcomed returning Working Group members and a new member state, Utah, to the Working Group, represented by Ms. Northrup and Ms. Wiseman. He also welcomed new member representatives Ms. Mecca, Ms. Shamburger, Ms. LeDuc, and Mr. Towsen.

2. Discussed its Potential 2022 Tasks

Mr. Hughes said the charges of the Working Group, as adopted by the Market Regulation and Consumer Affairs (D) Committee, are to:

- Develop market conduct examination standards, as necessary, for inclusion in the *Market Regulation Handbook*.
- Monitor the adoption and revision of NAIC models and develop market conduct examination standards to correspond with adopted NAIC models.
- Develop updated standardized data requests (SDRs), as necessary, for inclusion in the *Market Regulation Handbook*.
- Develop uniform market conduct procedural guidance (e.g., a library, depository or warehouse with market conduct examination templates, such as an exam call letter, exam exit agenda, etc.) for inclusion in, or for use in conjunction with, the *Market Regulation Handbook*.
- Coordinate with the Innovation, Cybersecurity, and Technology (H) Committee to develop market conduct examiner guidance for the oversight of regulated entities' use of insurance and non-insurance consumer data and models using algorithms and artificial intelligence (AI).
- Discuss the effectiveness of group supervision of market conduct risks and develop examination procedural guidance, as necessary.
- Discuss the role of market conduct examiners in reviewing insurers' corporate governance as outlined in the *Corporate Governance Annual Disclosure Model Act* (#305) and the *Corporate Governance Annual Disclosure Model Regulation* (#306).

The Working Group will not meet at NAIC national meetings; it will accomplish its assigned tasks via regularly scheduled conference calls, to occur approximately every four to six weeks.

3. Discussed Draft Revisions to the Oct. 27, 2021, Draft Chapter 21 of the *Market Regulation Handbook*

Mr. Hughes said the Working Group began discussing the draft Chapter 21—Conducting the Property and Casualty Examination, initially circulated on Oct. 27, 2021, at its Nov. 4, 2021, meeting. He said Sharon Shipp (DC) reviewed the *Real Property Lender-Placed Insurance Model Act* (#631) and recommended revisions to various areas of the chapter for the Working Group's consideration. Since the Nov. 4, 2021, meeting, which was the last meeting of the Working Group, comments were received on the draft from the industry trade associations (comments dated Nov. 11, 2021, sent to the NAIC on Nov. 23, 2021) and Examination Resources LLC (comments dated Dec. 17, 2021). These comments were circulated to the Working Group, interested state insurance regulators and interested parties on Dec. 2, 2021, and Dec. 20, 2021, respectively.

Chrys Lemon (McIntyre & Lemon PLLC) presented the trade associations' comments, which he submitted on behalf of the Consumer Credit Industry Association (CCIA), the American Property Casualty Insurance Association (APCIA), the American Bankers Association (ABA), the National Association of Mutual Insurance Companies (NAMIC), and the Council of Insurance Agents & Brokers (CIAB). He proposed the following:

- 1) Marketing and Sales Standard 1 – Adding “such certificates will only be requested for lender-placed insurance policies” to the Documents to be Reviewed section to the item, “New business policy forms and certificate of insurance” so it would then read, “New business policy forms and certificate of insurance (such certificates will only be requested for lender-placed insurance policies).”
- 2) Underwriting and Rating Standard 4 – Adding “For lender placed insurance” before “Documentation showing regulated entity's separate rates for mortgage servicer obtained lender-placed insurance versus voluntary insurance on real estate owned property” to the Documents to be Reviewed section so it would then read, “For lender placed insurance, documentation showing regulated entity's separate rates for mortgage servicer obtained lender-placed insurance versus voluntary insurance on real estate owned property.”
- 3) Underwriting and Rating Standard 6:
 - a) Adding “and lender placed insurance examinations, as applicable” to the Apply to section so the section would then read, “All workers' compensation examinations and lender-placed insurance examinations, as applicable.”
 - b) Adding “except with respect to lender-placed flood insurance” to the item in the Documents to be Reviewed section, “Applicable reports filed with the commissioner (e.g., required reporting for insurers with at least \$100,000 in direct written premium for lender-placed insurance, required rate filing for insurers with an annual loss ratio of less than 35% in any lender-placed program for two consecutive years)” so it would then read, “Applicable reports filed with the commissioner (e.g., required reporting for insurers with at least \$100,000 in direct written premium for lender-placed insurance, required rate filing for insurers with an annual loss ratio of less than 35% in any lender-placed program, except with respect to lender-placed flood insurance, for two consecutive years).”
 - c) Adding “and, with respect to losses under lender-placed insurance policies” to the first paragraph of the Review Procedures and Criteria section so the paragraph would then read, “Losses under each policy should be clearly and accurately maintained at the regulated entity, so that paid amounts, reserves, deductibles, and, with respect to losses under lender-placed insurance policies, any excess amounts paid to the mortgagor can be easily reviewed. The sample data should be compared to the unit statistical reports to verify accuracy of reporting of the following items.”

- 4) Underwriting and Rating Standard 13 – Adding “For lender placed insurers” to two items in the Documents to be Reviewed section so the items would then read, “For lender-placed insurers, books and records containing compensation, contingent commissions, profit sharing, and other payments dependent on profitability or loss ratios” and “For lender-placed insurers, third-party agreements for outsourced services.”

Ms. Garnette indicated that the proposed language of the trade associations to Marketing and Sales Standard 1 and Underwriting and Rating Standards 4, 6, and 13 would be acceptable changes to the draft chapter.

Craig Leonard (Examination Resources LLC) presented his comments of Dec. 17, 2021, in which he said: 1) the language proposed by Ms. Shipp modifying Marketing and Sales Standard 8 in Chapter 21, “before the effective date of the insurance” would cause confusion among examiners/regulated entities; and 2) the meaning of the phrase, “near the expiration of a claim” is unclear.

Ms. Garnette indicated that Marketing and Sales Standard 8 of the chapter could be rewritten as follows to address Mr. Leonard’s comments, “Underwriting, rating and classification are based on adequate information developed at or near inception of the coverage rather than before the effective date of the insurance, near the expiration of coverage, or following a claim.” Mr. Leonard said the meaning of Ms. Garnette’s suggested change remains unclear, and he would still have some of the same concerns, specifically regarding what the difference is between “developed at or near inception of the coverage” rather than “before the effective date of insurance.” Mr. Gendron asked whether the proposed change would be made to the Conducting the Property Casualty Examination chapter or if the chapter is specific to lender-placed insurance. Mr. Hughes said the change is being made to the Conducting the Property Casualty Examination chapter. Ms. Abejar said the phrase, “near inception” is redundant with the phrase, “before effective date,” and she asked for additional time to review the revisions before consideration of adoption. Birny Birnbaum (Center for Economic Justice—CEJ) agreed and suggested that more time is needed to review the Chapter 21 exposure draft. Ms. Garnette said a better way to address the comments arising during the meeting might be to revise the Review Procedures and Criteria section of Marketing and Sales Standard 8, instead of revising the language of Standard 8 itself. Mr. Hughes said the comment due date will be extended on the exposure draft.

4. Discussed Draft Revisions to the Oct. 27, 2021, Draft Chapter 20 of the *Market Regulation Handbook*

Mr. Hughes said the draft Chapter 20—General Examination Standards, which was circulated on Oct. 27, 2021, had been provided by Mr. Kreiter for the Working Group’s consideration. Mr. Hughes said Mr. Kreiter reviewed the *Insurance Holding Company System Regulatory Act* (#440) in 2021 and recommended corresponding revisions to the chapter. Since the Nov. 4, 2021, meeting, which was the last meeting of the Working Group, comments were received on the draft from State Farm on Nov. 24, 2021, and the American Council of Life Insurers (ACLI) on Dec. 17, 2021. These comments were circulated to the Working Group, interested state insurance regulators, and interested parties on Dec. 2, 2021, and Dec. 20, 2021, respectively.

Chuck Feinen (State Farm) presented his comments dated Nov. 24, 2021, on the Chapter 20 exposure draft. He said market conduct examinations involve surveillance of market practices (e.g., marketing and sales, underwriting and rating, claims practices); therefore, the addition of review procedures and criteria relating to solvency—i.e., liquidity stress testing (LST) and group capital calculation (GCC)—in Chapter 20 should not be included within the scope of market conduct examinations. He said such procedures/financial solvency filings are made by regulated entities with domestic or lead state financial regulators, so these areas should not be a focus of market conduct examinations. He said the revisions in Chapter 20 regarding LST and GCC should be removed from the exposure draft, as it is his opinion that these do not need to be addressed in a market conduct exam,

and a market conduct examiner should instead give deference to the lead state or the domestic financial regulator in these matters, especially since the GCC has an evaluation tool for solvency, and the lead state or domestic financial regulator has the ability to exempt various entities from making that type of solvency filing.

Gabrielle Griffith (ACLI) presented the ACLI Dec. 17, 2021, comments on the Chapter 20 exposure draft. She indicated that the issue of state insurance regulators' review of LST and GCC is adequately addressed by state insurance department financial regulators, and market conduct examiners, therefore, need not review a regulated entity for compliance with the solvency provisions of Model #440. She expressed concern with the inclusion of LST and GCC guidance in the Chapter 20 draft since these are to be filed with a state insurance commissioner in the context of an acquisition or a merger, and the lead state or domestic regulator retains the authority and responsibility of the review of regulated entity compliance with these tools, not market conduct examiners.

Mr. Kreiter said market conduct examiners are not limited to reviewing only market conduct compliance issues; he quoted from Chapter 1—Introduction of the *Market Regulation Handbook*, " ... market conduct compliance issues can have a significant effect on legal and compliance issues, which in turn can create material solvency issues. Coordination with the financial function is an important area for market conduct examiners" He recommended removing the text that was added within the Review Procedures and Criteria sections of both Operations/Management Standard 1 and Marketing and Sales Standard 1, while retaining the references to Model #440 within the NAIC model references of both of the examination standards, which will allow each jurisdiction to use the provisions of Model #440 as they deem appropriate.

Mr. Feinen said while market conduct examiners may discover during the course of an examination that underwriting practices might be creating a solvency issue for a regulated entity, market conduct examiners may not have the expertise needed for a review of the solvency tools mentioned in Chapter 20, and while the removal of the Model #440 guidance from the Review Procedures and Criteria sections would address his concerns to some extent, the main issue that remains is that the reference to Model #440 within the NAIC model references of the examination standards broadens a market conduct exam to areas that are generally handled by a lead state or domestic regulator, which would lead to the duplication of efforts.

Ms. Abejar said when there are issues found by market conduct examiners relating to marketing strategy, etc., her jurisdiction contacts the domestic (domiciliary) state's financial analysis staff to ascertain if the regulated entity has any problem with any liquidity issues or if that state has performed a recent LST or Own Risk and Solvency Assessment (ORSA) report on the regulated entity. She said her jurisdiction would not perform that review themselves; her jurisdiction would instead rely on the lead state's (domiciliary state) financial analysis staff for that information, as well as their opinions on the financial reports that have been submitted by the regulated entity. She said regarding newly hired examiners, it is beneficial to have guidance in the *Market Regulation Handbook* that indicates that there are other information/reference sources available that they can review; therefore, she suggested retaining Mr. Kreiter's revisions to the Review Procedures and Criteria sections relating to Model #440 in the exposure draft.

Ms. Amann said the language in the Review Procedures and Criteria sections of the two revised examination standards could be changed from "Determine ... " to "Discuss with the domestic ... " or "In consultation with the domestic regulatory" Incorporating this language would provide guidance to a newly hired examiner that there is additional information they can review. Ms. Amann indicated that the remainder of the language Mr. Kreiter developed should remain in the chapter, as it would prompt an examiner to initiate some kind of consultation with the domestic state.

Ms. Plitt said market conduct examiners in Washington, upon opening a new examination, begin inquiries with its own financial division to ascertain if there are any current or pending issues Washington financial analysts have seen with a particular entity that market conduct examiners should be aware of. She said Washington market conduct examiners would not perform LST themselves; they are instead seeking information from the domestic state, or Washington's own financial analysis division, to obtain support/confirmation that there is (or is not) a problem related to the solvency of a specific regulated entity.

Ms. Weyhenmeyer agreed, saying that qualifying language should be inserted within the Review Procedures and Criteria sections of both examination standards, prompting the examiner to inquire with the domiciliary state regarding solvency issues. Mr. Gendron said if the intent of ORSA is that of a regulated entity identifying its own risk, then a regulated entity should be aware that market conduct examiners would consider that an appropriate topic of consideration. He said Rhode Island's market conduct examiners do not perform stress tests themselves; however, they want to be able to discuss the results of stress tests with domestic financial examiners.

Ms. Berry, who is a financial solvency regulator, said when a regulated entity identifies a risk in its ORSA report, it does not mean it is a risk; it means it has the potential to be a risk, and how that risk is mitigated, as well as what controls are in place, are what is important when analyzing the probability that an identified risk might occur. If a financial regulator feels that an identified risk is not adequately mitigated or inadequate controls are not in place, the financial regulator should then notify the market conduct area in his/her jurisdiction that there may be a potential issue with the regulated entity that could be addressed in a market conduct examination.

Ms. Abejar said the references inserted within the exposure draft to Model #440 should remain so examiners know that certain information is available to them, and direction should be provided in the exposure draft to prompt the examiner to reach out to the domiciliary state to ascertain if financial analysis is being conducted already on that regulated entity or if there are any issues of financial concern that the domiciliary state financial analysis staff has identified; that information is valuable to assist a market examiner in performing a more thorough market conduct examination. She said the word "coordination" could be used instead of "determination" in the exposure draft to direct the examiner to the domiciliary state for further information on solvency issues.

Mr. Feinen said his main concern remains, with the exposure draft as currently written, that market conduct examiners would make LST and GCC determinations; however, he does not have any concerns with examiners looking to a lead state or domestic regulator for further information on solvency topics.

Jeff Martin (UnitedHealthcare) said he would provide the Working Group with language from the *Financial Analysis Handbook* that might better address the coordination of market conduct examiners and financial solvency analysts in the Chapter 20 exposure draft.

Lisa Brown (APCIA) agreed with Mr. Feinen's and Mr. Martin's comments, and Mr. Martin added that this issue ties into the Working Group's charge to "Discuss the role of market conduct examiners in reviewing insurers' corporate governance"

Mr. Hughes said the comment due date on Chapter 20 will be extended to allow for further comments and revisions to the exposure draft.

5. Discussed Other Matters

Mr. Hughes said he and Ms. Weyhenmeyer have been collaborating with the Mental Health Parity and Addiction Equity Act (MHPAEA) (B) Working Group; there is a draft chapter that has been developed by the MHPAEA (B)

Working Group that will be distributed to the Market Conduct Examination Guidelines (D) Working Group after the Spring National Meeting. He said the draft, which is designed to replace the current Chapter 24B—Conducting the MHPAEA-Related Examination in the *Market Regulation Handbook*, has been updated to align with federal guidance more closely on the issue of compliance analysis requirements for non-quantitative treatment limitations (NQTLs).

Mr. Hughes said Mr. Werbeloff, Mr. Swan, Mr. Pyle, and other state insurance regulators on their respective teams collaborated to create a revised Chapter 23—Conducting the Life and Annuity Examination, which they updated to correspond with revisions to the *Suitability in Annuity Transaction Model Regulation* (#275), which was adopted by the NAIC in February 2020. Mr. Hughes said that draft would be distributed to the Working Group prior to the next meeting.

Mr. Hughes said a regulator-only subject matter expert (SME) group worked in 2021 on creating new travel-insurance related SDRs to address in-force policies and claims. He said those draft SDRs are now ready for the Working Group’s review and consideration, and they will be circulated to the Working Group soon.

Mr. Hughes asked the Working Group members to participate in as many Working Group meetings as possible this year so the Working Group can accomplish the tasks that are planned in 2022. He said NAIC staff will provide advance email notice of the next Working Group meeting, which is anticipated to occur in April.

Having no further business, the Market Conduct Examination Guidelines (D) Working Group adjourned.

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Privacy Protections (D) Working Group Kansas City, Missouri April 6, 2022

The Privacy Protections (D) Working Group of the Market Regulation and Consumer Affairs (D) Committee met in Kansas City, MO, April 6, 2022. The following Working Group members participated: Katie Johnson, Chair (VA); Cynthia Amann, Co-Vice Chair (MO); Chris Aufenthie, Co-Vice Chair (ND); Sarah Bailey (AK); Damon Diederich (CA); George Bradner (CT); Erica Weyhenmeyer (IL); LeAnn Crow (KS); Ron Kreiter (KY); Robert Wake (ME); T.J. Patton (MN); Martin Swanson (NE); Teresa Green (OK); Raven Collins (OR); Gary Jones and David Buono (PA); Frank Marnell (SD); Carole Cearley (TX); Todd Dixon (WA); and Rachel Cissne Carabell (WI). Also participating were Trinidad Navarro and Frank Pyle (DE); Kathleen A. Birrane and Alexander Borkowski (MD); Chlora Lindley-Myers and Carrie Couch (MO); Tracy Biehn (NC); Eric Dunning (NE); and Don Beatty (VA).

1. Heard Opening Comments

Ms. Johnson said as this Working Group has an aggressive work plan, it is still accepting Working Group members who are committed to volunteering to work on specific sections as noted in the work plan. She asked those interested to contact Lois E. Alexander (NAIC) to become a Working Group member or to join one of the distribution lists for interested state insurance regulators and interested parties.

2. Adopted its 2021 Fall National Meeting Minutes

Ms. Johnson said the Working Group met Dec. 11, 2021.

She also said the Working Group met March 23, 2022, and March 9, 2022, in regulator-to-regulator session, pursuant to paragraph 8 (consideration of strategic planning issues) of the NAIC Policy Statement on Open Meetings, to draft its work plan. Ms. Johnson said a group of subject matter experts (SMEs) also met to draft revisions to the Preamble and the first three sections of the *NAIC Insurance Information and Privacy Protection Model Act* (#670) for the Working Group's consideration.

Ms. Amann made a motion, seconded by Mr. Patton, to adopt the Working Group's Dec. 11, 2021, minutes (*see NAIC Proceedings – Fall 2021, Privacy Protections (D) Working Group*). The motion passed unanimously.

3. Heard Updates on State Privacy Legislation and on Federal Privacy

Jennifer McAdam (NAIC) said the Working Group outlined in its report to the Market Regulation and Consumer Affairs (D) Committee at 2021 Fall National Meeting the state privacy legislation at that time, including the California Consumer Privacy Act (CCPA) and the California Data Privacy Act (CDPA), which amended the CCPA; the Colorado Privacy Act (CPA); and the Virginia Consumer Data Protection Act (VCDPA). Since that time, she said just one other state has adopted a similar data privacy law, and that is the Utah Consumer Privacy Act (UCPA). She said other states have proposed privacy legislation, but none of the bills have been signed into law yet. However, she said many of those state legislatures are still in session or will have carryovers until next year. She said there are currently more than 20 bills pending across the country and that she will continue to monitor those. Ms. McAdam said the NAIC Legal team tracks the legislation and has created two different charts listing the bills. She said the charts will be posted to the Working Group's web page soon. She said the charts list the business obligations posed to the consumer rights provided by the manner of enforcement by the attorney generals or by

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private right of action and any federal Gramm-Leach-Bliley Act (GLBA) or federal Health Insurance Portability and Accountability Act of 1996 (HIPAA) exemptions that might be found in those laws or bills. She said it is important for the Working Group to follow these laws because of the consumer rights and obligations that are being established, as well as to be aware of the carve-outs that are applicable to the insurance industry.

Ms. McAdam said California was the first U.S. state to adopt an omnibus privacy law that would impose its broad obligations on businesses that would provide consumers with transparency and control of their personal data. She said California's law does not go as far as the General Data Privacy Regulation (GDPR), but it is certainly the most comprehensive of the other three existing state data privacy laws. As a refresher, she said many of the consumer rights that are found in the CCPA and GDPR can be traced back to the rights found in the federal Fair Credit Reporting Act (FCRA), which looks remarkably like Model #670. She said two updated charts on state privacy legislation will be posted to the Working Group's web page soon. She said the charts include GLBA carve-outs and HIPAA exemptions. Ms. McAdam said California had adopted the first omnibus bill, and while it did not go as far as the GDPR, it went further than any other bill proposed by states and could be traced back to the FCRA. She said of the state privacy laws, California's law could be categorized as being the most stringent and Utah's as probably the most opposite of that continuum, with Colorado and Virginia in the middle. She said that Colorado may be closer to California and that Virginia may be slightly closer to Utah.

Ms. McAdam said for those tracking the GLBA and HIPAA preemptions found in these laws:

- California has a data level exemption for the GLBA and an entity level exemption for HIPAA.
- Virginia has an entity level exemption for the GLBA and HIPAA.
- Colorado has a data level exemption for the GLBA and HIPAA.
- Utah has a data level exemption for HIPAA and an entity level exemption for the GLBA, which is the opposite of California.

She said that current laws run the gamut and that the NAIC Legal team will continue to follow state privacy legislation for the states that remain in session this year.

Brooke Stringer (NAIC) said there have been reports in the media that U.S. Rep. Frank Pallone (D-WI), chair of the U.S. House Committee on Energy and Commerce, is going to be convening a meeting with staff for Sen. Maria Cantwell (D-WA), chair of the U.S. Senate Committee on Commerce, Science and Transportation; and Sen. Roger Wicker (R-MS), ranking member of the U.S. Senate Committee on Commerce, Science and Transportation. Ms. Stringer said their respective staff are going to be meeting to form a bipartisan agreement on comprehensive privacy legislation. She said these two committees have the primary jurisdiction over data privacy, as well as some of the financial services committees. She said it will be an elusive goal at the federal level, so what remains to be seen is what is going to come of this. She mentioned that over the past few years, there have been some key points of contention that can come up in these congressional discussions: 1) whether it attempts to preempt state laws; and 2) whether there is a private right of action at the state level. So, she said these negotiations will certainly evolve around certain trade-offs regarding the extent of the preemption, the private right of action, and the stringency of the privacy standards.

Ms. Stringer said bills that have been introduced or reintroduced by this Congress all recognize consumer rights to control their information; they all require companies to take steps to protect those rights; and they create enforcement procedures for those requirements. She said Sen. Wicker's Safe Data Act (SDA) has been reintroduced with lofty standards for data privacy and security that would preempt all state data privacy and security laws. She said it has a GLBA carve-out, which may protect some state consumer data privacy laws, but it

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also has some instructions for the Federal Trade Commissioner (FTC) to develop privacy standards. Ms. Stringer said it is particularly important to watch due to Sen. Wicker's position on that committee. She said that last year, Sen. Cantwell had introduced legislation that had strict standards, but it would have established a preemptive privacy floor and it would have provided for a private right of action. However, it would not have prevented laws with much greater levels of protection. She said that in November 2021, the House Committee on Energy and Commerce Republicans released a draft bill of the Control Our Data Act (CODA), which would have created a national preemptive privacy standard. Ms. Stringer said Sen. Jerry Moran (R-KS) had reintroduced the Commerce Data Privacy and Security Act, which would preempt state data privacy and security authority with certain exceptions so it would not supersede laws that address financial institutions held by organizations held by Title V of the GLBA.

On the House of Representatives side, Ms. Stringer said Rep. Suzan DelBene (D-WA) reintroduced the Information Transparency and Personal Data Control Act, which is another bill that would create a national database of privacy standards and preempt state control if there are conflicting state laws. Ms. Stringer said it would allow users to opt out before companies can use their most sensitive personal information. She said all of this is to say that there are many flavors and approaches to federal data privacy bills, and Congress has struggled to reach any sort of compromise on the issue. However, she said that could change at any time. She said when momentum is growing at the state level to enact data privacy laws, the pressure ramps up at the federal level to act. In addition to Congress, it is also worth noting that the FTC is expected to provide data privacy regulations. Ms. Stringer said the NAIC continues to engage with Congress to oppose preemptive federal legislative proposals and to inform Congress of the Working Group's efforts to update its models. She said the NAIC makes the point to Congress that states have proven the ability to act quickly to address technological changes that affect data privacy and data security. She also said that the NAIC underscores the importance of not undermining the existing state regulatory framework or inhibiting ongoing efforts in the states to develop data privacy laws and regulations so that state insurance regulators can continue working in the best interests of insurance consumers.

Mr. Patton asked about the difference between data versus entity-level exemptions. Ms. McAdam said the various laws treat the GLBA and HIPAA differently. She said that entity-level exemptions use the phrase "this law does not apply to entities covered by or controlled under GLBA or HIPAA covered entities" and that data-level exemptions use the phrase "data or information collected pursuant to GLBA or HIPAA." Ms. McAdam said it would be up to the Working Group to determine whether only certain data is carved out or if any data collected by the entire entity is carved out. Mr. Wake said the Working Group should not even consider an entity-level exemption under the GLBA because it would mean excluding the financial sector, which would be fine if it could be said that the GLBA covers the financial sector, and the Working Group wants to cover the Facebooks of the world that are not financial institutions. However, he said since the Working Group consists of state insurance regulators drafting a state insurance privacy law, it is using its delegated functional regulatory authority under the GLBA to regulate. So, the Working Group cannot carve GLBA out because that would carve out everything that the Working Group wants to do. Mr. Wake said California's data-level exemption for the GLBA means the data collected is not being regulated, but insurers might be regulated in other ways. It leaves everything up to state insurance regulators except the private right of action, which applies only to the attaching of the data to the regulation.

Chris Petersen (Arbor Strategies), speaking on behalf of the Coalition of Health Insurers, said there should be a HIPAA safe harbor like Model #670, under which there is no exemption from the law unless insurance companies comply with the Privacy of Consumer Financial and Health Information Regulation (#672). He said if insurance companies comply with HIPAA, they do not need to comply with any other lessor standard. Mr. Petersen said Model #672 is an insurance-only model, so he said the Working Group's work plan should start with Model #672, not Model #670 as part of it is obsolete. Mr. Wake said the Working Group already had these discussions in

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regulator-to-regulator meetings prior to coming to the decision noted in the work plan. Ms. Johnson said the Working Group has determined that it would be looking at Model #670 and Model #672 and drafting a white paper on consumer data ownership.

4. Adopted its Work Plan

Ms. Johnson said the exposure draft of the Working Group's work plan was drafted in two regulator-to-regulator meetings on March 23 and March 9, and that the draft was exposed for comment on March 23 for a seven-day public comment period ending March 30. She said written comments had been received from the American Council of Life Insurers (ACLI) and the Coalition of Healthcare Providers. Ms. Johnson asked if there were any comments from Working Group members, interested state insurance regulators, or interested parties. Birny Birnbaum (Center for Economic Justice—CEJ) said the work plan, while ambitious, showed a depth of understanding of the issue, so he agreed with it as a sound plan. However, he said the Working Group may need to revise or tweak it as it proceeds through it.

Robert Ridgeway (Coalition of Healthcare Providers) said he agrees with what Mr. Petersen had written in his comments on behalf of the Coalition of Healthcare Providers and that he also wanted to highlight two of the points made in that letter. One was that the Working Group should focus on Model #672 by starting its work with it, and the other was that a gap analysis should be done prior to any revisions being suggested. Mr. Ridgeway said the difficult timeline given would require all stakeholders to work together on drafting of any revisions, especially on wordsmithing.

Kristin Abbott (ACLI) said the comment period was too short and that future comment periods should be at least 30 days to give trade associations like hers enough time to distribute the drafts to their members and then compile all comments received prior to responding to the Working Group. She said the Working Group should be mindful to avoid holidays. Ms. Abbott also asked the Working Group for more detail about the white paper, particularly about its design and purpose.

Wes Bissett (Independent Insurance Agents and Brokers of America—IIABA) asked how the white paper would fit into the Working Group's work plan. He asked what type of issues the white paper would address and if it would include any recommendations from the Working Group. Mr. Bissett also asked if the white paper would be looking into any private contracts. Ms. Johnson said the issues noted in the comments submitted would be considered by the Working Group as it moved through its work plan in 2022.

Ms. Amann made a motion, seconded by Mr. Aufenthie, to adopt the Working Group's work plan for 2022. The motion passed unanimously.

5. Discussed Other Matters

Ms. Johnson said Mr. Aufenthie had volunteered to lead the workstream team on drafting the white paper on data ownership and use rights. Mr. Aufenthie said the team's goal was to identify where the gaps are in Model #670 and Model #672 about who owns consumer data; where it comes from; who has control over it; for how long; and under what circumstances. He said the team would solicit questions from Working Group members, interested state insurance regulators, and interested parties (including NAIC consumer representatives) for a survey that would be exposed to seek other questions that could first be tied back to the six consumer data rights identified by NAIC Members over the last two years.

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Ms. Johnson reminded the Working Group that the survey questions are scheduled to be exposed for a brief comment by May 11, with the final survey scheduled to be distributed in July.

Having no further business, the Privacy Protections (D) Working Group adjourned.

SharePoint/NAIC Support Staff Hub/Member Meetings/2022 Spring National Meeting/Minutes/PPWG_04min