

Draft Pending Adoption

Draft: 8/16/22

Market Regulation and Consumer Affairs (D) Committee
Portland, Oregon
August 12, 2022

The Market Regulation and Consumer Affairs (D) Committee met in Portland, OR, Aug. 12, 2022. The following Committee members participated: Jon Pike, Chair (UT); Trinidad Navarro, Vice Chair (DE); Evan G. Daniels (AZ); Sharon P. Clark (KY); Chlora Lindley-Myers represented by Jo LeDuc (MO); Mike Causey represented by Tracy Biehn (NC); Jon Godfread represented by John Arnold (ND); Eric Dunning represented by Martin Swanson (NE); Russell Toal represented by Leatrice Geckler (NM); Barbara D. Richardson (NV); Michael Humphreys (PA); Cassie Brown (TX); and Kevin Gaffney represented by Karla Nuissl (VT). Also participating were: Michael Conway (CO); Erica Weyhenmeyer (IL); Rebecca Nichols (VA); and John Haworth (WA).

1. Adopted its July 15 Minutes

Commissioner Clark made a motion, seconded by Ms. Biehn, to adopt the Committee's July 15 minutes (Attachment One). The motion passed unanimously.

2. Adopted Revisions to the Handbook

Ms. Weyhenmeyer said revisions to Chapter 1—Introduction of the *Market Regulation Handbook* (Handbook) were adopted by the Market Conduct Examination Guidelines (D) Working Group during its July 14 meeting. She said discussion on the issue of coordination between market conduct state insurance regulators and state insurance financial examiners had been occurring since the drafting of Chapter 20—General Examination Standards of the Handbook. She said the purpose of adding the revision to Section B of Chapter 1 is to insert guidance into the Handbook to address the need for state insurance market conduct regulators to recognize domestic financial examiners as a resource available to them and market conduct examiners to coordinate with domestic financial regulators to obtain information relating to a company's group capital calculations (GCCs), liquidity stress test (LST) results, corporate governance, and Own Risk and Solvency Assessment (ORSA), as needed.

Ms. Weyhenmeyer said revisions to Chapter 20 of the Handbook were also adopted during the Working Group's July 14 meeting. The revisions align the Handbook with various provisions of the *Insurance Holding Company System Regulatory Act* (#440) and make several changes to Chapter 20.

Ms. Weyhenmeyer said revisions to Chapter 21—Conducting the Property and Casualty Examination of the Handbook were adopted during the Working Group's April 21 meeting. The revisions align the chapter with provisions of the *Real Property Lender-Placed Insurance Model Act* (#631).

Ms. LeDuc made a motion, seconded by Ms. Biehn, to adopt the revisions to Chapters 1 (Attachment Two), 20 (Attachment Three), and 21 (Attachment Four) of the Handbook. The motion passed unanimously.

3. Adopted the New Handbook Chapter 24B

Ms. Weyhenmeyer said the Market Conduct Examination Guidelines (D) Working Group adopted the new Chapter 24B—Conducting the Mental Health Parity Addiction Equity Act-Related Examination of the Handbook on July 14. She said the drafting of the new chapter was in response to the Nov. 3, 2021, letter to the Committee from 19 organizations in the mental health field. She said the letter indicated that the mental health parity examination chapter of the Handbook was outdated because of 2021 federal amendments to the federal Paul Wellstone and

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Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA) requirements for analyzing the parity compliance of non-quantitative treatment limitations (NQTLs).

Ms. Weyhenmeyer said a new draft of Chapter 24B entitled “Conducting the Mental Health Parity Addiction Equity Act-Related Examination” was first prepared under the guidance of the MHPAEA (B) Working Group, as its members have expertise in this subject area. She said the drafting sessions were attended by state insurance regulators and federal regulators who provided input on the updated MHPAEA chapter. She said after the Working Group reviewed the draft chapter, it was distributed to the Market Conduct Examination Guidelines (D) Working Group, interested state insurance regulators, and interested parties. Numerous comments were received on the chapter from state insurance regulators, industry representatives, and consumer representatives.

Ms. Weyhenmeyer said interested parties asked the Working Group to defer adopting the MHPAEA chapter until another federal rule is potentially issued in the fall of this year. She said those potential federal rules have not yet been drafted or presented, and the Working Group decided it was important to move forward with adoption of the chapter and then modify the chapter, as needed.

Commissioner Clark made a motion, seconded by Ms. Biehn, to adopt Chapter 24B of the Handbook (Attachment Five). The motion passed unanimously.

4. Adopted Recommendations for the Incorporation of AI in the MIS

Commissioner Conway said on June 16, the Market Information Systems (D) Task Force adopted the report of the Market Information Systems Research and Development (D) Working Group, including the “Recommendations for the Incorporation of Artificial Intelligence in the NAIC Market Information Systems.” He said the report is the final product of the Task Force’s charge to make recommendations regarding the use of artificial intelligence (AI) techniques in the NAIC Market Information Systems (MIS).

Commissioner Conway said the report was completed and adopted by the Working Group prior to the 2021 Summer National Meeting. He said the Task Force considered the report during its next three meetings and had robust discussions among regulatory, consumer, and industry stakeholders. He said the final adoption by the Task Force accepted the report with no revisions.

Commissioner Conway said the recommendations consist of five steps: 1) analyze current MIS data and identify deficiencies; 2) identify the predictive power of market analysis scoring systems, and integrate all data into a single analysis; 3) incorporate promising AI modes of analyses, as well as statistical models; 4) assess the ways AI can improve analysis and facilitate pattern recognition; and 5) systematically explore potential data sources suitable for AI techniques.

Ms. LeDuc made a motion, seconded by Director Daniels, to adopt the “Recommendations for the Incorporation of Artificial Intelligence in the NAIC Market Information Systems” (Attachment Six) The motion passed with Commissioner Brown voting against.

5. Adopted Guidelines for Amending the NAIC Uniform Applications

Commissioner Clark said the Producer Licensing (D) Task Force adopted the “Guidelines for Amending the NAIC Uniform Applications” on May 5. She said the guidelines will be used for the review and adoption of substantive changes to the NAIC’s Uniform Licensing Applications in support of the NAIC and National Insurance Producer Registry (NIPR) missions of maintaining stable and consistent NAIC Uniform Applications for producer licensing.

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Commissioner Clark said the guidelines set forth a five-step process to be followed on a biennial basis. She said any party requesting proposed changes to the NAIC's Uniform Licensing Applications would submit the proposed changes to NAIC staff by Feb. 1, and the proposed changes would be circulated for a 30-day public comment period. She said after the comment period, the Producer Licensing Uniformity (D) Working Group and the Task Force will have until the close of the next Summer National Meeting to adopt or reject the proposed changes. She said for proposed changes that are adopted, NAIC staff will coordinate with NIPR and the states, including any back-office system support vendors, to conduct an analysis of how long it will take to implement the proposed change and the cost to implement. She said this work is to be completed within 45 days. She said the Committee will then be presented with the proposed changes for consideration and consider adoption of the proposed changes by Oct. 15 for the Executive (EX) Committee and Plenary to consider adoption of the proposed changes at the Fall National Meeting.

Commissioner Clark said the guidelines are intended to provide structure around how proposed changes to the NAIC's Uniform Licensing Applications should be considered. She said the time periods set forth in the guidelines are not intended to be strict administrative rules that cannot be modified, as needed, to efficiently complete the review of proposed changes to the NAIC's Uniform Licensing Applications. She said if adopted, the guidelines will be used by the Working Group to review the proposed amendments to the NAIC's Uniform Licensing Applications from 2018.

Commissioner Clark made a motion, seconded by Commissioner Navarro, to adopt the "Guidelines for Amending the NAIC Uniform Applications" (Attachment Seven). The motion passed unanimously.

6. Adopted the Antifraud Plan Repository Workflow

Commissioner Navarro said in 2019, the Antifraud (D) Task Force began discussing the development of an NAIC antifraud plan submission and repository system to automate and streamline antifraud plan compliance nationwide. He said the topic was introduced to the representatives explained how cumbersome it is to stay in compliance with state antifraud plan laws. Task Force after industry

Commissioner Navarro said antifraud plan requirements differ tremendously from state to state, and insurance company representatives manually create and submit individual plans to states that have an antifraud plan requirement. He said to address the industry's concern, as well as to promote antifraud plan uniformity, the Task Force determined that it would be beneficial to create an antifraud plan system that works in the same way as the NIPR system.

Commissioner Navarro said Task Force members determined that a similar electronic system could be created, using a uniform antifraud plan template, to streamline the antifraud plan creation and submission process. He said as part of this project, the Task Force, with industry assistance, redesigned the *Antifraud Plan Guideline* (#1690) to ensure it included all the key elements that insurance companies should consider when developing an antifraud plan. He said the revisions of the guideline were adopted during the 2021 Spring National Meeting.

Commissioner Navarro said in the second phase of the project, the Antifraud Technology (D) Working Group, using the newly adopted guideline, worked with industry representatives to develop an Antifraud Plan Repository Workflow. He said in June, the Task Force adopted the workflows and business rules. He said the workflows and business rules, not only outline how the Task Force envisions the system working from a user perspective but will also serve as a resource for the NAIC's Information Technology (IT) Department as it works on the project.

Commissioner Richardson said she believes this is a good idea, but she is worried that using a template would make the creation of antifraud plans perfunctory, and she would have to vote against the proposal due to that concern.

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Commissioner Clark made a motion, seconded by Director Daniels, to adopt the Antifraud Plan Repository Workflow (Attachment Eight). The motion passed with Commissioner Richardson voting against.

7. Adopted it Task Force and Working Group Reports

a. Antifraud (D) Task Force

Commissioner Navarro said the Antifraud (D) Task Force met June 30 and finalized the Antifraud Technology (D) Working Group's charge concerning the development of an Antifraud Plan Repository.

b. Producer Licensing (D) Task Force

Commissioner Clark said the Producer Licensing (D) Task Force met May 5. She said the Task Force received a report from the NIPR Board of Directors, which highlighted that NIPR is now processing appointments and terminations for all states. She said the Task Force also discussed the 1033 waiver process and industry's request to simplify this process. She said in response to this request, NAIC staff were asked to work with a small group of state insurance regulators to develop suggested next steps for review by the Task Force. She said the Task Force discussed the potential development of best practices and a national solution on how states should address the submission of producer applications with errors or misstatements completed by authorized third-party submitters.

c. Market Analysis Procedures (D) Working Group

Mr. Haworth said the Market Analysis Procedures (D) Working Group met June 8 and July 13. He said on June 8, the Working Group adopted standard ratios for the travel insurance Market Conduct Annual Statement (MCAS) and the short-term limited-duration (STLD) MCAS. He said the standard ratios are calculated at the state level and publicly posted on the NAIC MCAS web page each year. He noted that during the July 13 meeting, the Working Group considered some additional standard ratios for travel insurance, and these are posted for comment.

Mr. Haworth said during both the June 8 and July 13 meetings, the Working Group began discussions on the next line of business to be added to the MCAS. The Working Group heard several suggestions, including pet insurance, credit life insurance, credit disability insurance, title insurance, and business owner's policy (BOP) insurance. He said the Working Group hopes to make a final recommendation before the Fall National Meeting.

Mr. Haworth said the Working Group has been considering enhancements to the Market Analysis Review System (MARS). He said the enhancements are focused on more quickly incorporating new MCAS data into the MARS and adding additional line of business options to be available to market analysts.

d. Market Regulation Certification (D) Working Group

Mr. Haworth said the Market Regulation Certification (D) Working Group met June 1 and July 13. He said the Working Group is working on three documents that make up the Voluntary Market Regulation Certification Program: 1) the Certification Program requirements and guidelines; 2) the Certification Program scoring matrix; and 3) the Certification Program implementation plan.

Mr. Haworth said during the Working Group's June and July meetings, the Working Group adopted the scoring matrix and began work on the requirements and implementation plan. He said a small group of state insurance regulators are reviewing the requirements and the revisions that were suggested by the pilot states. He said the small group will be meeting weekly or bi-weekly, as needed, and report back to the Working Group at each of its meetings.

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Mr. Haworth said the implementation plan is being re-drafted in its entirety since it has been quite some time since its original drafting and much of the material is dated. He said this work is being done at the Working Group level.

Mr. Haworth said the Working Group plans to complete its work in time for the Fall National Meeting.

e. Speed to Market (D) Working Group

Ms. Nichols said the Speed to Market (D) Working Group met April 20 and July 12. She said during the April 20 meeting, Working Group members were updated about the ongoing review and editing of the 2016 *Product Filing Review Handbook*. She said the drafters are editing outdated and obsolete information, such as referring to the Working Group as the Speed to Market (D) Task Force.

Ms. Nichols said the Working Group also heard an update from NAIC staff on the System for Electronic Rates & Forms Filing (SERFF) Modernization Project. She said attendees on the call were invited to attend the SERFF Product Steering Committee (PSC) meetings. She said Working Group meetings will include a standing agenda item to receive updates regarding the SERFF Modernization Project.

Ms. Nichols said during the July 12 meeting, Working Group members discussed and considered suggestions for changes to the uniform transmittal documents (UTDs) and the product coding matrix (PCM). She said a change to the Life & Health UTD was unanimously adopted by the Working Group. She said the change adds “withdrawn” as a status option. She said the change will be effective Jan. 1, 2023.

Director Daniels made a motion, seconded by Mr. Arnold, to adopt the following reports: 1) Antifraud (D) Task Force; 2) Market Information Systems (D) Task Force; 3) Producer Licensing (D) Task Force; 4) Market Analysis Procedures (D) Working Group (Attachment Nine); 5) Market Conduct Annual Statement Blanks (D) Working Group (Attachment Ten); 6) Market Regulation Certification (D) Working Group (Attachment Eleven); 7) Market Conduct Examination Guidelines (D) Working Group (Attachment Twelve); and 8) Speed to Market (D) Working Group (Attachment Thirteen). The motion passed unanimously.

8. Heard a Presentation on Dark Patterns on Websites

Birny Birnbaum (Center for Economic Justice—CEJ) said dark patterns are user interface techniques that benefit an online service by leading consumers into making decisions they might not otherwise make. He said some dark patterns deceive consumers, while others exploit cognitive biases or shortcuts to manipulate or coerce them into choices that are not in their best interests. He said dark patterns are a specific type of choice architecture in website and application design that interfere with a user’s autonomy and choice. He said dark patterns modify the presentation of choices available to users or manipulate the flow of information so users make selections they would not otherwise have chosen to their own detriment and the benefit of the website or app provider.

Mr. Birnbaum provided examples of types of dark patterns utilized by website and application developers including: 1) Nagging – repeated requests to do something the firm prefers; 2) Confirm-Shaming – a choice framed in a way that makes it seem dishonorable or stupid; 3) Forced Action – requiring opt-out of optional services and the manipulative extraction of personal information and information about other users; 4) Social Proof – false/misleading notices that others are purchasing or offering testimonials; 5) Roach Motel – asymmetry between signing up and canceling; 6) Price Comparison Prevention – difficulties in understanding and comparing prices; and 7) Hidden Information/Aesthetic Manipulation – important information visually obscured. He also said a common example of a dark pattern is the ease with which websites will allow a user to accept cookies, but if a user does not want to accept cookies, many steps are necessary. He provided results of testing on dark patterns

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that indicate that the use of dark patterns is very effective in guiding user choices to the benefit of the website provider.

Mr. Birnbaum said it is important for state insurance regulators to address the use of dark patterns by insurance providers. He noted that insurance regulatory disclosures are based on and designed for paper, not digital interfaces. He said on a digital interface, requirements such as “prominently display” and font size have no meaning. He noted that there has been a rapid increase in digital interactions in place of paper or face-to-face interactions between consumers and insurers from digital claim settlements to interactions involving insurance applications.

Mr. Birnbaum urged state insurance departments and the NAIC to: 1) train analysts and examiners to recognize dark patterns and manipulative digital design; 2) compile resources on manipulative digital design; 3) review existing disclosure requirements and whether they make sense for a digital interface and protect against dark patterns; 4) update guidance in regulations identifying dark patterns as an unfair and deceptive trade practice; and 5) develop relevant methods of regulatory review and update the Handbook accordingly.

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

[D Cmte Minutes](#)

Draft: 12/12/22

Market Regulation and Consumer Affairs (D) Committee
Virtual Meeting
November 28, 2022

The Market Regulation and Consumer Affairs (D) Committee met Nov. 28, 2022. The following Committee members participated: Jon Pike, Chair (UT); Trinidad Navarro, Vice Chair (DE); John F. King represented by Martin Sullivan (GA); Sharon P. Clark (KY); Chlora Lindley-Myers (MO); Mike Causey represented by Tracy Biehn (NC); Eric Dunning represented by Martin Swanson (NE); Russell Toal represented by Leatrice Geckler (NM); Barbara Richards (NV); Michael Humphreys (PA); Cassie Brown represented by Leah Gillum (TX); and Kevin Gaffney and Karla NuiSSL (VT). Also participating were: Carrie Couch (MO); and Michele Brugh Rafeld (OH).

1. Discuss Model Law Review Request for Model #880

Commissioner Pike said the purpose of the meeting is to receive a report on the Request for NAIC Model Development from the Antifraud (D) Task Force and the Improper Marketing of Health Insurance (D) Working Group to begin a review of the *Unfair Trade Practices Act* (#880). The Request for NAIC Model Law Review is an important part of the NAIC process through which information is gathered to support the development of a new model law or amend an existing model law. Commissioner Pike said the parent committee and the Executive (EX) Committee must approve all such requests prior to the development of a new model or amending an existing model. Commissioner Pike said the discussion today will help clarify where the Task Force and Working Group are in the process and help inform the Market Regulation and Consumer Affairs (D) Committee for additional discussions at the Fall National Meeting.

Commissioner Navarro said the Improper Marketing of Health Insurance (D) Working Group has been working to fulfill its charge of reviewing existing NAIC models and guidelines that address the use of lead generators for sales of health insurance products and identify models and guidelines that need to be updated or developed to address current marketplace activities. Commissioner Navarro said the Working Group unanimously decided to review Model #880. He said the Working Group's discussions began in September 2021 when the Working Group chair and vice chair received feedback from the NAIC Research Library on potential models for review. Commissioner Navarro said the Working Group engaged in discussions with state insurance regulators and interested parties, including during an open meeting at the Summer National Meeting.

Because of the importance of addressing the improper marketing of health insurance, which is occurring across the country, the Working Group chair and vice chair created initial draft language in July and August for amendments to Model #880. These suggested amendments were circulated to the Working Group and all interested parties on Aug. 31 with a request for comments until Sept. 30. During this time, Commissioner Navarro said the Working Group also had an open meeting to discuss the topic during the Insurance Summit in September.

Commissioner Navarro said the Working Group chair and vice chair worked with NAIC staff in October to complete a Request for NAIC Model Law Review, which Commissioner Pike explained is part of the normal NAIC process. Commissioner Navarro said the request was distributed to the Working Group on Nov. 3, which it adopted.

Commissioner Navarro said the Antifraud (D) Task Force circulated the Request for NAIC Model Law Development for comment prior to its Nov. 16 meeting. He said Rafeld expressed concerns over moving forward with the request without first considering additional models. The Task Force adopted the request with 12 votes supporting the request, five votes opposing the request, and 28 abstentions. Commissioner Navarro said the adoption of the request and the decision to amend Model #880 was not a rushed decision without opportunity for input by state insurance regulators and interested parties. At the same time, Commissioner Navarro said he understands there

are some outstanding questions and said he hopes some of the questions can be addressed today so that a final decision can be made during the Market Regulation and Consumer Affairs (D) Committee's meeting during the Fall National Meeting.

Swanson said the consideration of what model to review has been a long process, and he said believes Model #880 is the best model to amend in order to protect consumers from the improper activities of lead generators. Swanson said the discussions to amend Model #880 included communications with the Health Insurance and Managed Care (B) Committee, NAIC staff for the Committee, and the Senior Issues (B) Task Force. Swanson said other models might be considered, but the other models would need to be reviewed by other NAIC committees and working groups.

Commissioner Clark recognized there has been a lot of good work completed and questioned if the review of Model #880 would preclude the review of other models. Commissioner Navarro said Rafeld believes other models should be reviewed. He said that is OK, but he suggested the best place to start is with a review of Model #880.

Commissioner Pike said Rafeld has suggested a review of the *Producer Licensing Model Act* (#218); *Advertisements of Accident and Sickness Insurance Model Regulation* (#40); and *NAIC Model Rules Governing Advertisements of Medicare Supplement Insurance with Interpretive Guidelines* (#660). Commissioner Clark said she wants to ensure that state insurance regulators have access to all necessary tools to address the improper marketing of health insurance and that all possibilities be explored. Swanson said the Improper Marketing of Health Insurance (D) Working Group is open to these discussions but said that some of these models, such as Model #218, might need to be reviewed by the Producer Licensing (D) Task Force rather than the Working Group.

Nuissl said she is concerned that amending Model #880 will not provide the necessary jurisdiction over lead generators. Commissioner Navarro said approval of the Request for NAIC Model Law Review and discussions about the suggested revisions will provide an opportunity to discuss and resolve these questions. Swanson said he believes amending Model #880 will provide states the necessary regulatory oversight of lead generators and agreed that further amendments to the model can be addressed once it is opened for review.

Couch said there has been a lot of good work completed. However, she said she shares the concerns of Kentucky and Vermont and suggested other models should also be considered. Director Lindley-Myers said a definition of lead generators would be helpful, but she said looking at additional models would be more appropriate than limiting work to amending Model #880.

Commissioner Navarro requested those individuals suggesting other models for review to provide additional information on why these models should be amended and how they might be amended during the Market Regulation and Consumer Affairs (D) Committee's discussion during the Fall National Meeting. Commissioner Navarro said it is important to understand other options and move forward with a decision to protect consumers.

Rafeld said she appreciates the work that has been completed but thinks a more comprehensive approach beyond amending Model #880 is a better plan. Rafeld said state insurance regulators also need to understand marketplace practices to determine if an existing model or models should be amended or a new model drafted.

Bonnie Burns (California Health Advocates) said she is concerned with delays in moving forward with a solution and that she understands the importance of making sure state insurance regulators have the necessary jurisdiction over lead generators. She urged state insurance regulators to move forward quickly due to the ongoing abuses occurring across the country. Commissioner Navarro said he agrees and supports state insurance regulators having more enforcement authority over the marketing of Medicare Advantage plans. Burns said action by the NAIC will help create pressure for action at the federal level.

Tim Mullen (NAIC) said if there are other models to be reviewed, it would be appropriate and helpful for individuals to submit a Request for NAIC Model Law Review. He said this would help the Committee understand the various perspectives and options. Mullen offered his assistance to any state insurance regulator wanting to submit a request.

Commissioner Pike requested NAIC staff circulate the three other models referenced for potential review and for everyone to review these models prior to the Committee's meeting at the Fall National Meeting.

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

<https://naiconline.sharepoint.com/sites/NAICSupportStaffHub/Member%20Meetings/D%20CMTE/2022%20Fall%20National%20Meeting/Nov%2028%20Call/D%20Min%2011.28.22.docx>

Draft: 11/11/22

Adopted by the Executive (EX) Committee and Plenary, XX, 2022

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

2023 Proposed 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).
2. The **Advisory Organization (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).

MARKET REGULATION AND CONSUMER AFFAIRS (D) COMMITTEE *(Continued)*

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. In accordance with the second recommendation of the adopted *Review of Artificial Intelligence Techniques in Market Analysis*, assess currently available market analysis data to identify needed improvements in the effectiveness of the data for market analysis and the predictive abilities of the market scoring systems utilizing the data.
 - C. Discuss other market data collection issues and make recommendations, as necessary.
 - D. 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. Discuss the development of 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.

MARKET REGULATION AND CONSUMER AFFAIRS (D) COMMITTEE *(Continued)***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 Product Steering Committee (PSC). Receive periodic reports from the PSC, 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. 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

Draft: 10/25/22

Adopted by the Executive (EX) Committee and Plenary, XXX XX, XXXX

Adopted by the Market Regulation and Consumer Affairs (D) Committee, XXX, XX, XXXX

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

2023 Proposed 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—i.e., 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.
- J. Develop seminars, trainings, and webinars regarding insurance fraud. Provide three webinars by the 2023 Fall National Meeting.

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 the 2023 Fall National Meeting.

ANTIFRAUD (D) TASK FORCE (*continued*)

- 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 2023 Fall National Meeting.
- 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

AFTF Proposed Charges 10.28.22

Draft: 10/11/22

Adopted by the Executive (EX) Committee and Plenary, XXX. XX, XXXX

Adopted by the Market Regulation and Consumer Affairs (D) Committee, XXX. XX, XXXX

Adopted by the Market Information Systems (D) Task Force, Oct. 31, 2022

2023 Proposed Charges

MARKET INFORMATION SYSTEMS (D) TASK FORCE

The mission of the Market Information Systems (D) Task Force is to provide business expertise regarding the desired functionality of the NAIC Market Information Systems (MIS) and the prioritization of regulatory requests for the development and enhancement of the MIS.

Ongoing Support of NAIC Programs, Products, or Services

1. The **Market Information Systems (D) Task Force** will:
 - A. Ensure that the MIS support the strategic direction set forth by the Market Regulation and Consumer Affairs (D) Committee.
 - B. Analyze the data in the MIS. In accordance with the first recommendation of the adopted *Review of Artificial Intelligence Techniques in Market Analysis*, recommend methods to ensure better data quality.
 - C. In conjunction with the Market Analysis Procedures (D) Working Group and in accordance with the second recommendation of the adopted *Review of Artificial Intelligence Techniques in Market Analysis*, assess currently available market analysis data to identify needed improvements in the effectiveness of the data for market analysis and the predictive abilities of the market scoring systems utilizing the data.
 - D. Provide guidance on the appropriate use of the MIS and the data entered in them.
 - i. Complaints Database System (CDS).
 - ii. Electronic Forums.
 - iii. Market Actions Tracking System (MATS).
 - iv. Market Analysis Profile.
 - v. Market Analysis Prioritization Tool (MAPT).
 - vi. Market Analysis Review System (MARS).
 - vii. Market Conduct Annual Statement (MCAS).
 - viii. Regulatory Information Retrieval System (RIRS).
 - ix. 1033 State Decision Repository (SDR1033) (in conjunction with the Antifraud (D) Task Force).
2. The **Market Information Systems Research and Development (D) Working Group** will:
 - A. Serve as the business partner to review and prioritize submitted Uniform System Enhancement Request (USER) forms to ensure an efficient use of available NAIC staffing and resources.
 - B. Assist the Task Force with tasks as assigned, such as:
 - i. Analyze MIS data.
 - ii. Provide state users with query access to MIS data.
 - iii. Provide guidance on the appropriate use of the MIS.

NAIC Support Staff: Randy Helder

NAIC Support Staff Hub/Member Meetings/D CMTE/2022 Fall National Meeting/MISTF/2023 Charges/MISTF-clean T.docx

Draft: 10/6/22

Adopted by the Executive (EX) Committee and Plenary, Dec. __, 2022

Adopted by the Market Regulation and Consumer Affairs (D) Committee, Dec. __, 2022

Adopted by the Producer Licensing (D) Task Force, Oct. 28, 2022

2023 Proposed Charges

PRODUCER LICENSING (D) TASK FORCE

The mission of the Producer Licensing (D) Task Force is to: 1) develop and implement uniform standards, interpretations, and treatment of producer and adjuster licensees and licensing terminology; 2) monitor and respond to developments related to licensing reciprocity; 3) coordinate with industry and consumer groups regarding priorities for licensing reforms; and 4) provide direction based on NAIC membership initiatives to the National Insurance Producer Registry (NIPR) Board of Directors regarding the development and implementation of uniform producer licensing initiatives, with a primary emphasis on encouraging the use of electronic technology.

Ongoing Support of NAIC Programs, Products, or Services

1. The **Producer Licensing (D) Task Force** will:

- A. Work closely with NIPR to encourage the full utilization of NIPR products and services by all the states and producers, and encourage accurate and timely reporting of state administrative actions to the NAIC's Regulatory Information Retrieval System (RIRS) to ensure that this data is properly reflected in the State Producer Licensing Database (SPLD) and the Producer Database (PDB).
- B. Facilitate roundtable discussions, as needed, with the state producer licensing directors for the exchange of views, opinions, and ideas on producer licensing activities in the states and at the NAIC.
- C. Discuss, as necessary, state perspectives regarding the regulation and benefit of the activities of the federal Affordable Care Act (ACA), established enrollment assisters (including navigators and non-navigator assisters and certified application counselors), and the activities of producers in assisting individuals and businesses purchasing in the health insurance marketplaces. Coordinate with the Health Insurance and Managed Care (B) Committee and the Antifraud (D) Task Force, as necessary.
- D. Monitor the activities of the National Association of Registered Agents and Brokers (NARAB) in the development and enforcement of the NARAB membership rules, including the criteria for successfully passing a background check.
- E. Coordinate through NAIC staff to provide guidance to NIPR on producer licensing-related electronic initiatives. Hear a report from NIPR at each national meeting.
- F. Coordinate with the Market Information Systems (D) Task Force and the Antifraud (D) Task Force to evaluate and make recommendations regarding the entry, retention, and use of data in the NAIC's Market Information Systems (MIS).
- G. Coordinate with the Special (EX) Committee on Race and Insurance on referrals affecting insurance producers.
- H. Discuss how criminal convictions may affect producer licensing applicants, and review the NAIC's *Guidelines for State Insurance Regulators to the Violent Crime Control and Law Enforcement Act of 1994* to create a more simplified and consistent approach in how states review 1033 waiver requests.

2. The **Adjuster Licensing (D) Working Group** will:

- A. Monitor state implementation of adjuster licensing and reciprocity; update, as necessary, the NAIC adjuster licensing standards.

3. The **Producer Licensing Uniformity (D) Working Group** will:
 - A. Work closely with state producer licensing directors and exam vendors to ensure that: 1) the states achieve full compliance with the standards in order to achieve greater uniformity; and 2) the exams test the qualifications for an entry-level position as a producer.
 - B. Provide oversight and ongoing updates, as needed, to the *State Licensing Handbook*.
 - C. Monitor and assess the state implementation of the Uniform Licensing Standards (ULS), and update the standards, as needed.
 - D. Review and update, as needed, the NAIC's uniform producer licensing applications and uniform appointment form. Provide any recommended updates to the Producer Licensing (D) Task Force by the NAIC Summer National Meeting.
4. The **Uniform Education (D) Working Group** will:
 - A. Update, as needed, the reciprocity guidelines, the uniform application forms for continuing education (CE) providers, and the process for state review and approval of instructors and courses. Provide any recommended updates to the Producer Licensing (D) Task Force by the 2023 Fall National Meeting.
 - B. Coordinate with NAIC parent committees, task forces, and/or working groups to review and provide recommendations, as necessary, on prelicensing education and CE requirements that are included in NAIC model acts, regulations, and/or standards.

NAIC Support Staff: Tim Mullen/Greg Welker

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NATIONAL MEETING FALL 2022

2022 Fall National Meeting
Tampa, Florida

ANTIFRAUD (D) TASK FORCE

Wednesday, December 14, 2022

8:30 – 9:30 a.m. ET

Meeting Summary Report

The Antifraud (D) Task Force met Dec. 14, 2022. During this meeting, the Task Force:

1. Adopted its Oct. 30 and Sept. 6 minutes, which included the following action:
 - A. Adopted its 2023 proposed charges.
 - B. Discussed the review of the *Unfair Trade Practices Act* (#880).
 - C. Received updates from the National Insurance Crime Bureau (NICB), the Coalition Against Insurance Fraud (CAIF), and the Healthcare Fraud Prevention Partnership (HFPP).
2. Discussed its 2023 proposed charges and priorities. The Task Force will continue with its charges from 2022.
3. Discussed a proposal for the creation of an NAIC Producer Portal. The goal of the proposal is to create a centralized portal that would allow consumers to find licensing information on insurance producers.
4. Discussed a 1033 waiver request. The Task Force was made aware of discussions taking place within the Producer Licensing (D) Task Force concerning 1033 waiver requests. The Antifraud (D) Task Force was responsible for the development of the NAIC's *Guidelines for State Insurance Regulators to the Violent Crime Control and Law Enforcement Act of 1994*. Due to the life insurance industry's recent efforts on racial equity, including a focus on second-change hiring within the insurance industry, a draft template will be distributed to the Task Force for comment through January.
5. Discussed its educational and training in efforts. The Task Force was involved with the NAIC Insurance Summit, the Annual Fraud Directors Conference, and a new fraud training that was presented to the Northeast Zone in October. The Task Force encourages the remaining zones to schedule this training when appropriate.
6. Received an update from the Improper Marketing of Health Insurance (D) Working Group. The Working Group has continued with monthly regulator-to-regulator conference calls in addition to open conference calls as necessary to work on its charge to, "Review existing NAIC Models and Guidelines that address the use of lead generators for sales of health insurance products, and identify models and guidelines that need to be updated or developed to address current marketplace activities." The Working Group will continue this review following direction from the Market Regulation and Consumer Affairs (D) Committee.
7. Heard reports on antifraud activity from the CAIF, the HFPP, and the NICB.



NATIONAL MEETING FALL 2022

Virtual Meeting

(in lieu of meeting at the 2022 Fall National Meeting)

MARKET INFORMATION SYSTEMS (D) TASK FORCE

Thursday, December 1, 2022

Meeting Summary Report

The Market Information Systems (D) Task Force conducted an e-vote that concluded Dec. 1, 2022. The Task Force:

1. Adopted its Oct. 28 minutes, which included the following action:
 - A. Adopted its 2023 proposed charges.
2. Adopted its Summer National Meeting minutes.

NAIC NATIONAL MEETING FALL 2022

Virtual Meeting

(in lieu of meeting at the 2022 Fall National Meeting)

PRODUCER LICENSING (D) TASK FORCE

Thursday, December 8, 2022

Meeting Summary Report

The Producer Licensing (D) Task Force conducted an e-vote that concluded Dec. 8, 2022. The Task Force:

1. Adopted its Oct. 28 minutes, which included the following action:
 - A. Adopted its 2023 proposed charges.
 - B. Adopted the reports of the Adjuster Licensing (D) Working Group and the Uniform Education (D) Working Group.
 - C. Received a report from the National Insurance Producer Registry (NIPR) Board of Directors.
2. Adopted the report of the Adjuster Licensing (D) Working Group, which met Nov. 2 and took the following action:
 - A. Discussed the uniformity and collaboration of adjuster licensing.
3. Adopted the report of the Uniform Education (D) Working Group, which met Nov. 30 and took the following action:
 - A. Adopted the NAIC Continuing Education (CE) Instructor Approval Guidelines.
 - B. Discussed the CE course subject matter. The Working Group discussed the course subject areas related to insurance that are permissible for CE credit within each state. The Working Group will discuss this further to confirm a uniform approach to these types of CE courses.
 - C. Discussed the 2019 Continuing Education Reciprocity (CER) Agreement. To date, 47 of 52 signatures have been collected. The Working Group will continue to work with the remaining states to obtain signatures to reach 100% compliance with the new agreement.
 - D. Discussed exam pass rates. NAIC staff will work with testing vendors of Prometric, PSI, and Pearson VUE to establish a reoccurring report, which will be posted on the NAIC website.

*Virtual Meeting***MARKET ANALYSIS PROCEDURES (D) WORKING GROUP**

August 22, 2022

Summary Report

The Market Analysis Procedures (D) Working Group met Aug. 22, 2022. During this meeting, the Working Group:

1. Adopted its July 13 minutes, which included the following action:
 - A. Adopted its June 8 minutes.
 - B. Considered additional ratios for the travel insurance Market Conduct Annual Statement (MCAS) and the short-term, limited-duration (STLD) MCAS.
 - C. Considered new lines of business for MCAS.
 - D. Considered additional lines of business options in the Market Analysis Review System (MARS).
2. Adopted pet insurance as the next line of business in the MCAS.



Virtual Meetings

MARKET CONDUCT ANNUAL STATEMENT BLANKS (D) WORKING GROUP

October 19, 2022 / September 15, 2022 / August 24, 2022 / July 21, 2022

Summary Report

The Market Conduct Annual Statement Blanks (D) Working Group met Oct. 19, Sept. 15, Aug 24, and July 21, 2022.

1. During its Oct. 19 meeting, the Working Group:
 - A. Adopted its Sept. 15 minutes.
 - B. Discussed the draft frequently asked question (FAQ) answers for digital claims data collected in the Market Conduct Annual Statement (MCAS).
 - C. Adopted a clarification that the short-term, limited-duration (STLD) and other health MCAS blanks are intended to collect data on direct written premium.
 - D. Heard an update on the drafting of the pet insurance MCAS blank.
2. During its Sept. 15 meeting, the Working Group:
 - A. Adopted its Aug. 24 minutes.
 - B. Adopted the data element of “policies in force during the reporting period” in the travel insurance MCAS.
 - C. Formed a drafting group to prepare a draft of a pet insurance MCAS blank for the Working Group’s consideration.
 - D. Discussed the MCAS blanks proposal for suggestions to edit current MCAS blanks.
3. During its Aug. 24 meeting, the Working Group:
 - A. Adopted its July 21 minutes.
 - B. Adopted a new deadline of May 31 for the health insurance MCAS.
 - C. Agreed to the removal of a portion of the definition of “lawsuit” in all lines of business that reads, “If one lawsuit seeks damages under two or more policies, count the number of policies involved as the number of lawsuits. For example, if one lawsuit seeks damages under three policies, count the action as three lawsuits.”
 - D. Adopted the data element “dollar amount of claims paid during the reporting period” for the STLD MCAS.
4. During its July 21 meeting, the Working Group:
 - A. Adopted its May 26 minutes.
 - B. Heard a presentation regarding moving the health insurance MCAS deadline to June 30, annually.
 - C. Discussed a new data element for the travel insurance MCAS of “policies in force during the reporting period.”
 - D. Discussed a new data element for the STLD MCAS of “dollar amount of claims paid during the reporting period.”

*Virtual Meetings***MARKET CONDUCT EXAMINATION GUIDELINES (D) WORKING GROUP**

October 20, 2022 / September 8, 2022

Summary Report

The Market Conduct Examination Guidelines (D) Working Group met Oct. 20 and Sept. 8.

1. During its Oct. 20 meeting, the Working Group:
 - A. Adopted its Sept. 8 minutes.
 - B. Discussed draft revisions and heard joint comments from the Center for Economic Justice (CEJ) and the Independent Insurance Agents & Brokers of America (IIABA), stand-alone comments from the CEJ, and comments from the Insured Retirement Institute (IRI) on the revised exposure draft of Chapter 23—Conducting the Life and Annuity Examination, which was updated Aug. 22 to incorporate suggested language edits received from Missouri, Virginia, and the IRI in May. The revisions to Chapter 23 relate to the provisions from the *Suitability in Annuity Transactions Model Regulation* (#275), which the NAIC adopted in February 2020.
 - C. Discussed and heard comments from Missouri and from the CEJ on a new travel insurance policy in-force standardized data request (SDR) and a travel insurance claims SDR, which the Working Group began discussing during its Sept. 8 meeting.
2. During its Sept. 8 meeting, the Working Group:
 - A. Discussed a revised exposure draft of Chapter 23—Conducting the Life and Annuity Examination.
 - B. Discussed a new travel insurance-related policy in-force SDR and a travel insurance-related claims SDR.



NATIONAL MEETING FALL 2022

Virtual Meeting

(in lieu of meeting at the 2022 Fall National Meeting)

MARKET REGULATION CERTIFICATION (D) WORKING GROUP

Monday, November 28, 2022

5:00 – 6:00 p.m. ET / 4:00 – 5:00 p.m. CT / 3:00 – 4:00 p.m. MT / 2:00 – 3:00 p.m. PT

Meeting Summary Report

The Market Regulation Certification (D) Working Group met Nov. 28, 2022. During this meeting, the Working Group:

1. Adopted its Oct. 27 minutes, which included the following action:
 - A. Received an update on the revisions to the Voluntary Market Regulation Certification Program requirements, checklist, and guidelines.
 - B. Discussed potential revisions to the certification program implementation plan.
2. Received an update on the revisions to the Voluntary Market Regulation Certification Program requirements, checklist, guidelines, and scoring matrix, which included: 1) adding “Objective” and “Measurement” sections to each requirement; 2) clarifying that requirement 3 measures staffing resources, and requirement 4 measures staffing qualifications; 3) combining requirements 6 and 11 since they both concern collaboration; 4) revising requirement 8 by moving the time requirements to the checklist; and 5) updating the scoring matrix to be consistent with the revised requirements and checklist.
3. Heard comments from two states on the certification program implementation plan. The suggested comments will be combined and incorporated into the implementation plan. An e-vote will be conducted the week of Dec. 5 to Dec. 9 to adopt the implementation plan.

*Virtual Meeting***SPEED TO MARKET (D) WORKING GROUP**

November 10, 2022

Summary Report

The Speed to Market (D) Working Group met Nov. 10, 2022. During this meeting, the Working Group:

1. Adopted its July 12 minutes, which included the following action:
 - A. Adopted its April 20 minutes.
 - B. Discussed and considered suggestions received during the annual review of the product coding matrix (PCM) and uniform transmittal document (UTD). No changes to the PCM were adopted. One suggestion to the UTD was adopted; i.e., to amend the life and health UTD to include an option for withdrawn as a status option. This change will be effective Jan. 1, 2023.
2. Received an update on edits to the *Product Filing Review Handbook*. The non-substantive edits, such as formatting edits and updating current uniform resource locators (URLs), will not be brought before the Working Group, but any substantive changes will be brought to the Working Group for review and consideration.
3. Received an update on the Product Steering Committee (PSC) and the System for Electronic Rates & Forms Filing (SERFF) Modernization Project by NAIC staff. Six new PSC members are replacing members rolling off the PSC. They were selected based on their participation in various forums, such as the PSC interested parties group, focus groups, and other opportunities to give input to SERFF. The SERFF Modernization Project has three phases running concurrently right now, which focus on the following: a) search improvements and document comparison capabilities; b) the introduction of Tableau dashboards; and c) the build-out of the user interface. The target time frame for the new document search and testing of the Tableau dashboards is the end of January 2023.

Draft: Nov. 16, 2022

Adopted by the Antifraud (D) Task Force, Nov. 16, 2022

REQUEST FOR NAIC MODEL LAW DEVELOPMENT

This form is intended to gather information to support the development of a new model law or amendment to an existing model law. Prior to development of a new or amended model law, approval of the respective Parent Committee and the NAIC's Executive Committee is required. The NAIC's Executive Committee will consider whether the request fits the criteria for model law development. Please complete all questions and provide as much detail as necessary to help in this determination.

Please check whether this is: ☐ **New Model Law** or ☒ **Amendment to Existing Model**

1. Name of group to be responsible for drafting the model:

Market Regulation Consumer Affairs (D) Committee/Antifraud (D) Task Force/Improper Marketing of Health Insurance (D) Working Group

2. NAIC staff support contact information:

Market Regulation and Consumer Affairs (D) Committee – Tim Mullen
Antifraud (D) Task Force – Greg Welker
Improper Marketing of Health Insurance (D) Working Group – Greg Welker

3. Please provide a brief description of the proposed new model or the amendment(s) to the existing model. If you are proposing a new model, please also provide a proposed title. If an existing model law, please provide the title, attach a current version to this form and reference the section(s) proposed to be amended.

Proposed are amendments to the *Unfair Trade Practices Act* (#880):

Section 2: Definitions

Section 3: Unfair Trades Practices Prohibited

Section 4: Unfair Trade Practices Defined

The Improper Marketing of Health Insurance (D) Working Group is charged to (1) coordinate with regulators, both on a state and federal level, to provide assistance monitoring the improper marketing of health plans and coordinate appropriate enforcement actions, as needed, with other NAIC Committees, Task Forces, and Working Groups; and (2) review existing NAIC Models and Guidelines that address the use of lead generators for sales of health insurance products and to identify models and guidelines that need to be updated or developed to address current marketplace activities.

In order to achieve this goal and provide regulation over lead generators, the Working Group is requesting the review the above-mentioned Model #880, Sections 2, 3, and 4.

Section 2: There is currently no definition for Health Insurance Lead Generator. This section will be amended to include a definition of Health Insurance Lead Generator.

Section 3: This section will be amended to prohibit a Health Insurance Lead Generator, as defined in Section 2, from engaging in an unfair trade practice.

Section 4: This section will be amended to define what marketing-related activity of Health Insurance Lead Generators are unfair trade practices. These amendments will provide states the means to regulate lead generators and gain a level of consumer protection that is not currently in place.

4. Does the model law meet the Model Law Criteria? ☒ Yes or ☐ No (Check one)

(If answering no to any of these questions, please reevaluate charge and proceed accordingly to address issues).

- a. Does the subject of the model law necessitate a national standard and require uniformity amongst all states? ☒ Yes or ☐ No (Check one)

If yes, please explain why: One of the initial efforts at developing state legislation in response to the McCarran-Ferguson Act of 1945 was the development of trade practices legislation and the adoption of the NAIC's Unfair Trade Practices Act in 1947. Health Insurance Lead Generators impact consumers in every jurisdiction. Insurance regulatory authority over Health Insurance Lead Generators and defining prohibited practices of Health Insurance Lead Generators need to be clarified.

- b. Does Committee believe NAIC members should devote significant regulator and Association resources to educate, communicate and support this model law?

☒ Yes or ☐ No (Check one)

5. What is the likelihood that your committee will be able to draft and adopt the model law within one year from the date of Executive Committee approval?

☒ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 (Check one)

High Likelihood

Low Likelihood

Explanation, if necessary:

6. What is the likelihood that a minimum two-thirds majority of NAIC members would ultimately vote to adopt the proposed model law?

☒ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 (Check one)

High Likelihood

Low Likelihood

Explanation, if necessary:

7. What is the likelihood that state legislatures will adopt the model law in a uniform manner within three years of adoption by the NAIC?

☒ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 (Check one)

High Likelihood

Low Likelihood

Explanation, if necessary:

8. Is this model law referenced in the NAIC Accreditation Standards? If so, does the standard require the model law to be adopted in a substantially similar manner?

No

9. Is this model law in response to or impacted by federal laws or regulations? If yes, please explain.

No

PO Box 12030 | Austin, TX 78711 | 800-578-4677 | tdi.texas.gov

December 6, 2022

Tim Mullen
NAIC D Committee Members

Email: tmullen@naic.org

Re: Texas comments regarding model law reviews

Mr. Mullen:

Texas would like to make a few comments related to model law reviews in advance of D Committee's meeting in Tampa. First, Texas believes that the work being done to expose the trade practices of some health insurance lead generators is important and we fully support that effort. The draft request to review Model Law 880 for potential changes that was presented at the November 28 call, however, is not something that Texas can support as-is. That request, as drafted, already contains amendment language which Texas and other states believe do not provide state insurance departments or other state governmental entities with any additional regulatory authority over health insurance lead generators. Indeed, these edits could be seen as a limiting factor on the reach of this law to other entities that do not fall within the proposed definition, such as P&C lead generators or life lead generators.

The Texas Department of Insurance does not license and has traditionally not exercised regulatory authority over pure lead generation entities. TDI recognizes that some entities engaged in these practices regularly blur the lines between license-required conduct and conduct that does not require an insurance license. Regardless, the State of Texas does have jurisdiction over health insurance lead generators through Texas' version of Model 880. This enforcement is through the Texas Attorney General's office which can enforce insurance-related DTPA laws against any person who violates them.

Texas recognizes that perhaps this legal structure for enforcement of insurance-related DTPA laws like Model 880 does not exist in all states. If a state department of insurance 1) is the sole entity allowed to enforce laws like Model 880 and 2) might not otherwise regulate lead generators, then perhaps adding specific definitions and jurisdiction to that particular state's law certainly could enhance that particular state's regulatory authority. Texas is not clear how many NAIC jurisdictions may fall within this single-enforcement-entity paradigm versus a multiple-enforcement-entities paradigm.

Instead of a wholesale change to Model 880, Texas would encourage the development of guidelines to review whether a state should consider revising its own version of Model 880. Sample language could be developed for states in a single-enforcement paradigm to look

to and enact. There may be appropriate language for a multiple-enforcement state to review as well. A guideline-centered approach could consider edits to all models and not just focus on one model.

Additionally, Texas understands that the goal of this effort surrounding improper marketing of health products is to ultimately protect consumers. As we all know, an educated consumer is a protected consumer. The NAIC or specific states could work to have more consumer-friendly education about shopping for health insurance and just what can happen to consumers' personal information when entered into a website about health insurance. Targeted, understandable educational efforts can reduce the number of bad actors and prevent consumer harm in perhaps a more effective way than statutory changes.

Texas looks forward to engaging in discussions of this matter at the Tampa meeting and continuing the work to protect and educate all consumers.

Sincerely,

Leah Gillum
Deputy Commissioner
Fraud and Enforcement Division
Texas Department of Insurance
State Bar No. 24043693
Direct: (512) 676-6357
leah.gillum@tdi.texas.gov



December 13, 2022

NAIC Market Regulation And Consumer Affairs (D) Committee
Commissioner Jon Pike, Utah Department of Insurance, Chair
Commissioner Trinidad Navarro, Delaware Department of Insurance, Vice-Chair
Tim Mullen, Director, Market Regulation

Dear Commissioner Pike & Commissioner Navarro,

The Ohio Department of Insurance would like to thank the Market Regulation And Consumer Affairs (D) Committee (herein referred to as D Committee) for the opportunity to provide additional comments on the Model Law Review Request submitted by the Improper Marketing Of Health Insurance Working Group, as well as feedback as to how the working group should proceed.

As the proposed amendments to Model 880 fail to provide state departments of insurance with greater regulatory oversight than what states already have, and the working group may encounter significant difficulties obtaining the 2/3 majority vote needed to pursue further amendments to the model at this time, the Department would like to ask the D Committee to vote against the adoption of the form and instead, ask the working group to take a more comprehensive approach that extends beyond Model 800.

The Department recommends a “comprehensive approach” include coordination and collaboration with NAIC working groups such as the B Committee, Senior Issues Task Force and/or the Producer Licensing Working Group, so in-depth discussions can take place with regard to marketplace issues that include, but may not be limited to:

- Deceptive sales practices utilized by lead generators
- Insurer use of lead generators
- Illegal use of insurer logos
- Marketing guidelines differing with regard to the sale of Medicare Supplemental Insurance vs. Medicare Part D and Advantage products
- License holder misconduct associated with the marketing or sale of Medicare products
- License holder misconduct associated with the marketing or enrollment of exchange products

It's the Department's belief a collaborative approach will enable the appropriate NAIC groups to collectively reach a consensus regarding recommendations that will result in a majority of state regulators dedicating legislative resources towards the adoption of model regulations that will effectively address and eliminate the issues of concern.

Sincerely,

Michelle Rafeld
Assistant Director of Fraud & Enforcement
Ohio Department of Insurance