

## Draft Pending Adoption

Attachment One  
Antifraud (D) Task Force  
x/xx/xx

Draft: 8/21/24

Improper Marketing of Health Insurance (D) Working Group  
Chicago, Illinois  
August 14, 2024

The Improper Marketing of Health Insurance (D) Working Group of the Antifraud (D) Task Force met in Chicago, IL, Aug. 14, 2024. The following Working Group members participated: Martin Swanson, Chair (NE); David Buono, Vice Chair (PA); Maria Ailor (AZ); Kurt Swan (CT); Susan Jennette (DE); Andria Seip (IA); Erica Weyhenmeyer (IL); Craig VanAalst (KS); Joseph Garcia (MI); T.J. Patton (MN); Patrick Smock (RI); Jill Kruger and Travis Jordan (SD); Matthew Tarpley (TX); John Haworth (WA); and Bryan Stevens (WY).

1. Adopted its Spring National Meeting Minutes

Haworth made a motion, seconded by Weyhenmeyer, to adopt the Working Group's March 17 minutes (*see NAIC Proceedings – Spring 2024, Antifraud (D) Task Force*). The motion passed unanimously.

2. Discussed Unauthorized Agent Transfer Issues

Swanson said the Working Group began discussing unauthorized agent transfer issues during the 2023 Fall National Meeting. For today's meeting, the Working Group asked America's Health Insurance Plans (AHIP) and the federal Centers for Medicare & Medicaid Services (CMS) to address current actions taking place to protect consumers from these issues.

Kelley Schultz (AHIP) said AHIP started hearing about unauthorized agent transfer issues from its members during the fall of 2023, and in 2024, this issue was firmly brought to AHIP. According to CMS, there were 90,000 enrolled as of May 2024. Schultz said there were 6,000 complaint cases in 2023 of unauthorized agent transfer issues and 9,000 cases at the beginning of 2024, which has caused a huge burden for consumers. She said these issues have caused tax implications for some people when they did not qualify for tax breaks due to switching policies. Schultz said this has generated the need for its members to utilize a variety of tactics to fight against known authorized transfer issues.

Schultz said AHIP has discussed solutions to assist with transferring policies, including a possible system verification that enables two-factor authentication and a State Based System (SBS) that balances protecting consumers while not creating other issues that could potentially block their path to enrollment. She said AHIP will continue to work with its members, regulators, and the Senate Finance Committee to identify unauthorized agent transfer trends and fight against these bad actors.

Swanson said in Nebraska, they have encountered companies that have sent termination for cause notices to the department of insurance (DOI) when they find out that someone has transferred a policy. He said that this has been very helpful for the state.

Jeff Grant (CMS) said CMS continues to investigate unauthorized agent transfer issues, and it is coordinating with state departments of insurance to move these efforts along. Gina Zdanowicz (CMS) is working on a plan management effort and is leading the agent broker consumer quality initiative, which started in January.

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Grant said the issues with unauthorized agent and broker transfers have become a prominent focus for CMS. He said the good news is that enrollment grew this past year due to good acting agents and brokers. While there are bad actors out there in the marketplace that have contributed to these policy switches, it is a small percentage over a large denominator. Out of 90,000 enrolled, only a small percentage is causing these issues. He said in order to stop these bad actors, CMS started with a two-pronged approach, which was upping its enforcement with the increase in agents and brokers and focusing on quality. CMS is challenged to hit the correct metrics for consumer protection, and the goal is to provide a value-added service and not move enrollment numbers through as fast as possible. He said there are also a lot of data-matching issues that sometimes overlap with other issues, and these issues did assist with identifying unauthorized transfers, which provided CMS with the tools to be proactive and stop these unethical agents and brokers. The goal is to continue being proactive and monitor for any signs of fraudulent activity.

Zdanowicz said CMS has improved its agreements with states so that it can share information on suspicious claims. She said there is more to do, and CMS knows that, but with continued collaboration, they have made good progress and hit many of the points that the states have requested. Zdanowicz said they are also working with carriers and are already sharing terminations of cause. The termination notifications assist with the process, as some of these bad actors will be allowed to prove their good standing and come back.

Grant said there will be ongoing minor technical fixes that will be made to the process for a more enhanced direct enrollment, and CMS expects these to continue.

Swanson said that he and Buono have participated in several calls with CMS to analyze the data on these unauthorized transfers and assist with removing unethical agents and brokers. He said some specific things are delaying this process, including what is necessary at minimum for law enforcement purposes, and states are working to figure this out. Swanson said states have many of the same standards for fraud enforcement; however, each can be different, and some states may not have a fraud unit.

Stevens said that CMS mentioned the bad actors who have been removed have the ability to come back. He asked CMS if they could explain why they are allowed back.

Grant said it does suspend unethical agents and brokers, and if they do not respond to the suspension, then they are terminated. If they are terminated, they must wait five years before they can fill out paperwork with the Office of Inspector General (OIG) and work as an agent or broker again; however, there is no lifetime ban.

Buono said that the conversation surrounding these unauthorized transfers was not good two meetings ago, and then the next meeting was not much better. However, he noted that Grant came fully prepared for this meeting, and he thanked him on behalf of the Working Group for assisting with this serious issue and taking the opportunity to discuss it. He asked Grant if there would be any data that could be analyzed during the next meeting to utilize the momentum that was created during this meeting. Grant said by March 2025, CMS will have 12 months' worth of data that it could bring to the Working Group to review, with approval from CMS. Buono said the Working Group has seen the great progress made on this serious issue, but it wants to ensure that this progress continues, so reviewing the data in March will give it a good idea of what progress is being made.

### 3. Heard an Update on Congressional Activity

Brain Webb (NAIC) said the focus has been on improper marketing within the Affordable Care Act (ACA) and unauthorized agent transfers. He said that even though these have been the focus, if there are other issues states

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are seeing, please reach out to the NAIC. Webb said that with open enrollment coming up on Nov. 1, it will be a busy time, and more issues will surface.

Webb said there are two areas of Congressional movement pertinent to the industry. The first is Medicare Advantage, and the NAIC is continuing to work with Congress to create a greater role for states in enforcing federal rules under Medicare Advantage, especially in marketing. He said it is possible that an end-of-year package will be available after the presidential and state elections.

Webb said the other area is that the Senate Finance Committee is working on a specific bill for the ACA that would greatly enhance penalties on agents, brokers, and anyone selling or part of the process who provides misinformation or files applications without proper documentation. He said this would explicitly give CMS authority over field marketing organizations and third-party marketing organizations, and any entities that are in the chain of enrollment would go through an ACA plan that is enrolled through the federal exchange.

Having no further business, the Improper Marketing of Health Insurance (D) Working Group adjourned.

<https://naiconline.sharepoint.com/sites/NAICSupportStaffHub/Member%20Meetings/D%20CMTE/2024%20Fall/AFTF/Improper%20Mktg%20WG/National%20Meeting/IMHIWG%208.14.24%20Minutes.pdf>