

MARKET REGULATION AND CONSUMER AFFAIRS (D) COMMITTEE

Market Regulation and Consumer Affairs (D) Committee Dec. 15, 2022, Minutes

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Draft Pending Adoption

Draft: 12/21/22

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

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

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

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

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

2. Adopted its 2023 Proposed Charges

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4. Adopted it Task Force and Working Group Reports

a. Antifraud (D) Task Force

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

b. Market Information Systems (D) Task Force

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

c. Producer Licensing (D) Task Force

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

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

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

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

d. Market Analysis Procedures (D) Working Group

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

e. Market Conduct Annual Statement (D) Working Group

Weyhenmeyer said the Market Conduct Annual Statement Blanks (D) Working Group met Oct. 19, Sept. 15, and Aug. 24. During these meetings, the Working Group took the following action: 1) adopted a new deadline of June 30 for the health MCAS; 2) adopted a short-term, limited-duration STLD data element to clarify the dollar amount of claims paid during the reporting period; 3) removed the following language for all nine MCAS lines of authority from the MCAS lawsuit definition: "If one lawsuit seeks damages under two or more policies, count the number of policies involved as the number of lawsuits. For example, if one lawsuit seeks damages under three policies, count the action as three lawsuits"; 4) adopted a travel MCAS data element to clarify the number of policies in force during the reporting period; 5) formed a subject matter expert (SME) group to draft a pet insurance MCAS data call and definitions; 6) reviewed the process for submitting requests for edits to the MCAS data call and definitions; 7) approved a draft Frequently Asked Questions (FAQ) for the collection of digital claims information; and 8) clarified that direct written premium will be used in the STLD and other health MCAS blanks for the required-to-file threshold indicator and to change the net written premium element to direct written premium.

f. Market Conduct Examination Guidelines (D) Working Group

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

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g. Market Regulation Certification (D) Working Group

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

f. Speed to Market (D) Working Group

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

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

5. Discussed Other Matters

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

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

[SharePoint/NAIC Support Staff Hub/Committees/D Committee ...](#)

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 Nuisl (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: Nov. 16, 2022

Adopted by the Market Regulation and Consumer Affairs (D) Committee, Dec. 14, 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

Draft: 9/1/22

Market Analysis Procedures (D) Working Group
Virtual Meeting
August 22, 2022

The Market Analysis Procedures (D) Working Group of the Market Regulation and Consumer Affairs (D) Committee met Aug. 22, 2022. The following Working Group members participated: John Haworth, Chair (WA); Rebecca Rebholz, Vice Chair (WI); Crystal Phelps (AR); Maria Ailor (AZ); Don McKinley (CA); Damion Hughes and Tracy Garceau (CO); Nicholas Gill (CT); Scott Woods (FL); Erica Weyhenmeyer (IL); Shannon Lloyd (KS); Sandra Stumbo (KY); Jeff Zewe (LA); Mary Lou Moran (MA); Dawna Kokosinski (MD); Timothy N. Schott (ME); Jeff Hayden (MI); Jo LeDuc, Cynthia Amann, and Teresa Kroll (MO); David Dachs (MT); Martin Swanson and Robert McCullough (NE); Edwin Pugsley (NH); Ralph Boeckman and Erin Porter (NJ); Larry Wertel (NY); Todd Oberholtzer (OH); Shelly Scott (OK); Jeffrey Arnold (PA); Matt Gendron, Brett Bache, and Segun Daramola (RI); Rachel Moore (SC); Shelley Wiseman (UT); Melissa Gerachis (VA); Karla Nuisl and Mary Block (VT); and Theresa Miller (WV).

1. Adopted its July 13 Minutes

Randy Helder (NAIC) noted that Mr. Oberholtzer informed him of a typographical error in the second paragraph of the fourth agenda item of the Working Group's July 13 minutes. It should read "does not believe"

Acting Superintendent Schott made a motion, seconded by Mr. Pugsley, to adopt the Working Group's July 13 minutes with the noted correction (*see NAIC Proceedings – Summer 2022, Market Regulation and Consumer Affairs (D) Committee, Attachment Nine*). The motion passed unanimously.

2. Adopted Pet Insurance as the Next Line of Business in the MCAS

Mr. Haworth said the Working Group has received recommendations to consider pet insurance, title insurance, business owner policies (BOPs), credit life, and credit disability. He said his sense of the discussion is that pet insurance has the most momentum as the next line of business in the Market Conduct Annual Statement (MCAS). He noted that the Working Group received the proposal to add pet insurance from Rhode Island, along with its documentation regarding the quantitative and qualitative reasons for including pet insurance in the MCAS. He also said the North American Pet Health Insurance Association (NAPHIA) submitted its state of the pet health insurance industry, and he encouraged everyone to review it.

Mr. Gendron said state insurance regulators do not have the type of information on pet insurance that is necessary to determine who is writing in their jurisdictions. He said since pet insurance is reported as inland marine on the financial annual statement, there are no financial statements that it can be tied back to. He said when investigating complaints, it would be helpful to be able to look back at a point in time to see who is writing how much pet insurance business. He said it would be helpful to companies and state insurance regulators if a standard set of questions are answered annually rather than going through an ad hoc process of investigation.

Cari Lee (Step toe & Johnson LLP) said pet insurance is a small market compared to other MCAS lines. She said NAPHIA will be working with the NAIC members to get the recently adopted *Pet Insurance Model Act* (#633) enacted in their jurisdictions, and it is also looking forward to working with state insurance regulators to develop the pet insurance blank.

Ms. Ailor made a motion, seconded by Acting Superintendent Schott, to adopt pet insurance as the next line of business in the MCAS. The motion passed unanimously.

3. Adopted the Travel Insurance Loss Ratio to Be Included in MCAS Reports for State Insurance Regulators

Mr. Haworth said during the Working Group's last meeting, it briefly discussed additional ideas for standard ratios for the travel insurance MCAS. The ratios included: 1) the loss ratio; 2) the lawsuit frequency; 3) the direct premium written; 4) the average number of insureds; and 5) the total number of claims. He said NAIC staff assured the Working Group that they would be able to add additional travel ratios to the ratios adopted in June, but the sooner any additional ratios could be adopted, the better.

Michael Byrne (U.S. Travel Insurance Association—USTIA) said the four ratios adopted in June were developed after extensive consideration and compromise, but the five suggested ratios were only introduced a day prior to the June meeting. He said any state insurance regulator wanting to see the loss ratio for a company or the industry can do an easy calculation from the data that will be submitted. He said publicly posting an industry loss ratio would be misleading to consumers because it would not distinguish between different distribution models and other attributes unique to travel insurance.

Ms. Ailor said she only supports adding the loss ratio to the public standard MCAS ratios. She said it is necessary for travel insurance since the premium data needed to develop a loss ratio will only be collected in the MCAS. She said adding the loss ratio is not a burden to companies because they will already be required to provide both the premium and claims payment data. She acknowledged that state insurance regulators can calculate the ratio on their own with the data submitted by the companies, but she said having a loss ratio calculated and displayed for all the state insurance regulators will provide consistency. She said she does not believe confidentiality is an issue because most companies already have their loss ratios available publicly, and the MCAS standard ratios are aggregate and do not identify any companies.

Mr. Oberholtzer said he has worked on travel insurance issues since the travel insurance examinations overseen by the Market Actions (D) Working Group and the development and adoption of the *Travel Insurance Model Act* (#632). He said the travel insurance industry is a very small percentage of the insurance industry, has had a lot of focus over the last six years, and is now included in the MCAS. He said he does not believe the state insurance regulators need this detail since the travel industry issues are all known and have been dealt with. He said loss ratios in the aggregate would not be helpful for consumers and do not have the same level of value as other lines of insurance. Because of the differences in coverages, he does not believe state insurance regulators would be referencing the travel insurance loss ratios.

Mr. Gendron said a loss ratio in the aggregate is not helpful. He said Rhode Island collects loss ratio information for new product filings. If a projected loss ratio is too low for a new product, they will reject the filing and speak with the company. He said he recalled receiving a projected loss ratio of 20% on a new travel product filing. Rhode Island spoke with the company, and the product had a very low premium and high administrative costs. The low loss ratio was justifiable. Mr. Gendron said if a loss ratio is adopted, the loss ratios should be broken out at the coverage level.

Ms. LeDuc said she agrees with Ms. Ailor that one consistent loss ratio calculation is better than having all the participating MCAS jurisdictions calculating their own loss ratios. She said she also agrees with Mr. Gendron that the loss ratio is only useful on the coverage level, not in the aggregate. She said she would like to have the loss ratio provided at the coverage level. She suggested that coverage level loss ratios could be provided to the participating MCAS jurisdictions non-publicly. She said coverage level ratios are provided for other MCAS lines of business in the company-specific reports. She said she could be persuaded in either direction regarding whether

an aggregate loss ratio should be made public, but she would like to have coverage level loss ratios calculated non-publicly in the company-specific reports. She said she does not support the other four proposed ratios.

Mr. Swanson suggested re-constituting the drafting group to consider the proposed additional ratios. He said he does not feel this was a top priority. Ms. Ailor said she understands the arguments regarding priority, but since NAIC staff said the loss ratio should not be difficult to include, she said she supports a loss ratio broken down at the coverage level.

Birny Birnbaum (Center for Economic Justice—CEJ) said there were no consumer representatives on the subgroup that drafted the travel insurance ratios, and the five ratios being considered are the consumer representative contribution to the discussions. He said the standard ratios are not limited to what state insurance regulators may or may not use, but they highlight areas of regulatory concern and assist in quickly identifying and examining any such concern. He said the published ratios have value to consumers and other stakeholders in the same way that the public disclosure of financial annual statement data has value beyond the immediate need of financial regulators. He said the argument that the loss ratio may be misleading or confusing assumes that only the insurers know what to disclose to consumers, but this is routine information that is already available in other lines of business. He said all the information being requested with the proposed ratios is available publicly for lines of business that are broken out in the financial annual statement. He said it is important for state insurance regulators to be able to turn to one uniform source of data that can be compared across insurers, and that would only be available through the MCAS ratios. He said whether a ratio is already in another MCAS line does not matter if the ratio is relevant to state insurance regulators. He questioned how the frequency of lawsuits would not be relevant information. He said the fact that two of the proposals are sums rather than ratios does not disqualify them; they are data gathered from the MCAS and would be the only source of information on the number of insureds, the number of claims, and the amount of premium. He said the public data would continue to be in the aggregate, and no individual insurer data would be disclosed. He also noted that other lines of business have had market conduct examinations and model laws enacted, but this does not eliminate the need to collect the data to assist the regulators going forward.

Ms. LeDuc made a motion, seconded by Ms. Ailor, to calculate loss ratios by coverage part and not publish them publicly until evaluated for their usefulness.

Mr. Birnbaum asked why the loss ratio would not be public. Ms. LeDuc said this is because she agrees that the aggregate value does not have much value, but it would possibly be helpful on a coverage level. She said this is how ratio information is provided in the MCAS company-specific reports made available only to state insurance regulators.

The motion passed with Mr. Oberholtzer and Mr. Swanson voting against the motion.

Mr. Birnbaum withdrew his suggestions for the other four ratios since there seemed to be no support for adding them.

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

Sharepoint/Member Meetings/D CMTE/2022 Fall National Meeting/MAPWG/0822/08 MAPWG .docx

Draft: 10/31/22

Market Conduct Annual Statement Blanks (D) Working Group
Virtual Meeting
October 19, 2022

The Market Conduct Annual Statement Blanks (D) Working Group of the Market Regulation and Consumer Affairs (D) Committee met Oct. 19, 2022. The following Working Group members participated: Erica Weyhenmeyer, Chair (IL); Rebecca Rebholz, Vice Chair (WI); Crystal Phelps (AR); Tolanda Coker (AZ); Scott Woods (FL); Paula Shamburger (GA); Lori Cunningham (KY); Mary Lou Moran (MA); Dawna Kokosinski (MD); Jeff Hayden (MI); Jennifer Hopper (MO); Martin Swanson (NE); Guy Self (OH); August Hall and Gary Jones (PA); Tony Dorschner (SD); Shelli Isiminger (TN); Shelly Wiseman and Tracy Klausmeier (UT); Will Felvey (VA); and Letha Tate (WV). Also participating were: Brett Bache and Matt Gendron (RI); and Mary Kay Rodriguez (WI).

1. Adopted its Sept. 15 Minutes

The Working Group met Sept. 15 and took the following action: 1) adopted its Aug. 24 minutes; 2) adopted a data element addition to the travel Market Conduct Annual Statement (MCAS); 3) discussed the formation of a subject matter expert (SME) group to create the pet insurance MCAS data call and definitions; and 4) reviewed the process for submitting requests for edits to the MCAS data call and definitions.

Swanson made a motion, seconded by Rebholz, to adopt the Working Group's Sept. 15 minutes (Attachment Four-A). The motion passed unanimously.

2. Discussed the Draft FAQ for the Digital Claims MCAS

Weyhenmeyer stated questions regarding a frequently asked questions (FAQ) document for the digital claims MCAS were raised, resulting from a presentation at the Insurance Regulatory Examiners Society (IRES) Foundation School earlier this year. She stated that Randy Helder (NAIC), Jo LeDuc (MO), and herself were part of the discussion and that Helder drafted some FAQ for the Working Group to review. The draft document was part of the meeting materials as Attachment Two.

Helder stated there are six questions and answers in the FAQ document. He stated a couple of the questions concern the receipt of the claim and the offer of settlement, and whether these have any bearing on whether the claim is digital. He stated the answers advise that whether a claim is digital, hybrid, or non-digital is determined by the appraisal process, the settlement determination, and the production of the settlement offer; it is not dependent on how the claim was reported or how the offer was delivered. Helder stated there were also questions about human oversight of the claim process (e.g., a human placing photos in an evaluation tool or the insurer's fraud department reviewing every claim). He stated in all these cases, if the human oversight does not alter the appraisal, the settlement determination, or production of the settlement offer, the claim remains digital. He stated that if at any point a human decides not to include some inputs, or to intervene to deny a potentially fraudulent claim, it would be a hybrid or possibly a non-digital claim. Helder stated since this is such a new set of data elements, it is prudent to run these past the Working Group to be sure the FAQ adequately reflect the data call and definitions and the understanding of the Working Group.

Weyhenmeyer stated this is a live document so if other questions arise, they can always be added later. There were no questions or concerns raised.

3. Discussed the Premium Data Elements for the STLD and Other Health MCAS

Weyhenmeyer stated that the short-term, limited-duration (STLD) and other health MCAS data elements for premium are net written premium and earned premium for reporting year. She stated that NAIC staff raised concerns that these may cause questions for industry and will also cause some issues for NAIC staff in determining if a company was required to submit MCAS data for STLD and other health. Weyhenmeyer stated that data for net written premium is collected for some other lines of business, but in addition, data is collected for direct or gross written premium. She stated that for the health MCAS, data for earned premium is collected, and the data call and definitions clarify that it should be “total premium earned from all policies written by the insurer during the specified period.”

Teresa Cooper (NAIC) displayed a listing of premium data elements for other MCAS lines of business for review. She stated that for each MCAS line of business, a reference is identified from the financial annual statement that can be used as a premium reference to help populate required-to-file indicators. Cooper stated when insurers submit their financial data in March and April each year, this data is used to populate the required-to-file indicators within the MCAS application. She stated when an insurer submits their MCAS data, the premium threshold is compared to the premium that the company reports within their MCAS submission, which is used to determine if the company really was required to file. She stated that, for example, if a company submits homeowner’s MCAS data for a state, but their premium was only \$25,000 within the MCAS filing, then their data is not included in the ratio rankings and scorecards; only those companies that reported premium meeting the threshold are included. She stated the only exception to this rule is for long-term care (LTC) because there is no reporting threshold, and all submissions are deemed to be required.

Cooper stated that for STLD and Other health, the plan is to use direct written premium for the required-to-file threshold indicator. However, there is no data element within the filings to compare back to once the submissions are made. She stated that within the STLD MCAS data call and definitions, there is a definition for written premium that states the insurer should “provide the total annual written premium for all policies and/or certificates issued to insureds residing in the state for which reporting is being completed.” Cooper stated she believes that the earned premium data element is taken care of in the definitions, and the net written premium data element was likely intended to be direct written premium. She stated that the decision is, of course, up to the Working Group and that if the Working Group would like to change the net written premium data element, at this point the deadline for the 2022 and 2023 data years has passed. She stated that a note could be added to the blanks for these years to indicate an error or interpretation is needed.

Rodriguez stated she agrees that direct written premium would be the correct vernacular to ask for. Cooper stated if direct written premium was the intention, a note could be added to clarify and that it could be officially adopted for the 2024 data year and going forward. Rodriguez stated that she believes net written premium is also used for other health and that the intention would also be to say direct premium written for other health also. Weyhenmeyer agreed and said notes would be needed to clarify for both. Isiminger asked if this is just for STLD and the other health blanks, and Ms. Weyhenmeyer confirmed it was.

Ms. Rebholz made a motion, seconded by Ms. Isiminger, to update the MCAS blank as soon as possible to clarify that direct written premium is the data being requested for the STLD and Other health blanks and to add an asterisk in the current blank to clarify this point as well. The motion passed unanimously.

4. Heard an Update on the Pet Insurance MCAS Development

Bache stated a draft set of the initial data call and definitions and interrogatories for the pet insurance MCAS has been put together based on the travel MCAS blank template. He stated he believes the first SME group meeting will take place on Nov. 1. Cooper confirmed invites have been sent and that if anyone has not received an invite and would like to be a part of the meeting, to let her know. Weyhenmeyer stated that if the pet insurance MCAS is approved prior to the June 1, 2023, deadline, it is possible that the pet insurance MCAS data will be reported for the 2024 data year, to be submitted in 2025.

Having no further business, the Market Conduct Annual Statement Blanks (D) Working Group adjourned.

SharePoint/Market Regulation - Home/D Working Groups/MCAS Blanks WG/2022/WG Mtg 1019/MCAS Blanks WG Minutes Oct 19.docx

Draft: 10/6/22

Market Conduct Annual Statement Blanks (D) Working Group
Virtual Meeting
September 15, 2022

The Market Conduct Annual Statement Blanks (D) Working Group of the Market Regulation and Consumer Affairs (D) Committee met Sept. 15, 2022. The following Working Group members participated: Erica Weyhenmeyer, Chair (IL); Rebecca Rebholz, Vice Chair (WI); Crystal Phelps (AR); Maria Ailor (AZ); Scott Woods (FL); Shannon Lloyd (KS); Lori Cunningham (KY); Salama Karim-Camara (MD); Danielle Torres (MI); Teresa Kroll and Jennifer Hopper (MO); Martin Swanson (NE); Guy Self (OH); Jeffrey Arnold (PA); Rachel Moore (SC); Tony Dorschner (SD); Shelli Isiminger (TN); William Stimpson (UT); Melissa Gerachis (VA); and Letha Tate (WV).

1. Adopted its Aug. 24 Minutes

The Working Group met Aug. 24 and took the following action: 1) adopted its July 21 minutes; 2) adopted a new filing deadline of May 31 for the health Market Conduct Annual Statement (MCAS); 3) reviewed the travel MCAS data element addition that the Market Analysis Procedures (D) Working Group proposed; 4) adopted a change to the short-term, limited-duration insurance (STLDI) MCAS data element to add the data element for “dollar amount of claims paid during the reporting period” within the claims section of the STLDI MCAS blank; and 5) adopted a change to the MCAS lawsuit definition to delete the bullet from all nine MCAS 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.”

Mr. Swanson made a motion, seconded by Ms. Isiminger, to adopt the Working Group’s Aug. 24 minutes (Attachment Four-A1). The motion passed unanimously.

2. Adopted a Data Element Addition to the Travel MCAS

Ms. Weyhenmeyer stated the Market Analysis Procedures (D) Working Group previously proposed that a new data element be added to the underwriting activity section of reporting within the travel MCAS blank for “policies in force during the reporting period.” She stated that during the last Working Group call, questions were raised, which led to additional discussion in the travel MCAS subject matter expert (SME) group. The revised and newly proposed data element is to add “Policies/Certificates in Force During the Reporting Period” to the Underwriting reporting section of the travel MCAS. She stated if approved, the data element will be added to travel MCAS reporting for the 2024 data year reported in 2025.

Ms. Phelps made a motion, seconded by Ms. Rebholz, to adopt the data element “Policies/Certificates in Force During the Reporting Period” to the Underwriting reporting section of the travel MCAS. The motion passed unanimously.

3. Discussed Formation of an SME Group to Create the Pet Insurance MCAS Data Call and Definitions

Ms. Weyhenmeyer stated that the formation of an SME group is needed to discuss the formation of an SME group to create the pet insurance MCAS data call and definitions. She stated the Market Analysis Procedures (D) Working Group approved pet insurance as the next MCAS line of business, so now the Market Conduct Annual Statement Blanks (D) Working Group is tasked with creating the pet insurance reporting data call and definitions. Ms. Weyhenmeyer stated that Matt Gendron (RI) has agreed to lead the SME group. Ms. Kroll stated Missouri would

like to be included in the SME group. Birny Birnbaum (Center for Economic Justice—CEJ), Cari Lee (North American Pet Health Insurance Association—NAPHIA), Lisa Brown (American Property Casualty Insurance Association—APCIA), and Susanna Berna (State Farm) stated they also would like to be a part of the SME group. Brett Bache (RI) asked to confirm that he was already on the list, and Ms. Weyhenmeyer confirmed he was.

Ms. Weyhenmeyer stated anyone else interested in being included on the SME group distribution list should contact Teresa Cooper (NAIC). She stated that if the Market Conduct Annual Statement Blanks (D) Working Group approves a pet insurance data call and definitions prior to June 1, 2023, then it is possible that the pet insurance data could first be reported for the 2024 data year submitted in 2025.

4. Reviewed the Process for Submitting Requests for Edits to the MCAS Data Call and Definitions

Ms. Weyhenmeyer stated that part of the Working Group's charges is to 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. She stated if there are suggestions for new data elements, revised data elements, or the removal of data elements, the MCAS blanks proposal form can be used for these purposes. Ms. Weyhenmeyer stated the form has been updated to include travel, short-term, limited-duration (STLD), and other health MCAS lines of business. She stated the MCAS blanks proposal form can be located on the Working Group's web page in the documents area. She stated questions about the form or assistance filling it out can be sent to Ms. Cooper or Hal Marsh (NAIC).

Having no further business, the Market Conduct Annual Statement Blanks (D) Working Group adjourned.

SharePoint/Market Regulation - Home/D Working Groups/MCAS Blanks WG/2022/WG Mtg 0915/MCAS Blanks WG Minutes Sept 15.docx

Draft: 9/14/22

Market Conduct Annual Statement Blanks (D) Working Group
Virtual Meeting
August 24, 2022

The Market Conduct Annual Statement Blanks (D) Working Group of the Market Regulation and Consumer Affairs (D) Committee met Aug. 24, 2022. The following Working Group members participated: Erica Weyhenmeyer, Chair (IL); Rebecca Rebholz, Vice Chair (WI); Teri Ann Mecca (AR); Maria Ailor (AZ); Scott Woods (FL); Paula Shamburger (GA); Shannon Hohl (ID); Shannon Lloyd (KS); Lori Cunningham (KY); Mary Lou Moran (MA); Dawna Kokosinski (MD); Jeff Hayden (MI); Jennifer Hopper and Jo LeDuc (MO); Martin Swanson (NE); Hermoliva Abejar (NV); Guy Self (OH); Jeffrey Arnold (PA); Glynda Daniels and Rachel Moore (SC); Tony Dorschner (SD); Shelli Isiminger (TN); Shelley Wiseman (UT); Melissa Gerachis (VA); Jason Carr and John Haworth (WA); and Letha Tate (WV). Also participating was: Tracy Garceau (CO).

1. Adopted its July 21 Minutes

The Working Group met July 21 and took the following action: 1) adopted its May 26 minutes; 2) heard a presentation from Samantha Burns (America's Health Insurance Plans—AHIP) and Joseph E. Zolecki (Blue Cross Blue Shield Association—BCBSA) on a filing deadline proposal for the health Market Conduct Annual Statement (MCAS); 3) reviewed the travel MCAS data element addition proposed by the Market Analysis Procedures (D) Working Group; and 4) reviewed the short-term, limited duration insurance (STLDI) MCAS data element addition proposed by the Market Analysis Procedures (D) Working Group.

Mr. Haworth made a motion, seconded by Mr. Swanson, to adopt the Working Group's July 21 minutes (*see NAIC Proceedings – Summer 2022, Market Regulation and Consumer Affairs (D) Committee, Attachment Nine*). The motion passed unanimously.

2. Adopted a New Deadline for the Health MCAS

Ms. Weyhenmeyer stated that on the last Working Group call, Ms. Burns and Mr. Zolecki proposed a permanent health MCAS filing deadline of June 30. She stated that comment letters have been received from the Health Industry Interested Parties (HIIP) group and Regence BlueCross BlueShield.

Ms. Burns stated that she and Mr. Zolecki are representing the HIIP group. She stated that she wants to connect on a couple of points from the presentation they made last month, and the letters provided. She stated that they share the goal to deliver the health MCAS as a reliable tool for regulatory oversight. She stated that they believe a uniform MCAS deadline should not outweigh the need for ensuring that the health MCAS is carefully compiled and validated, and the results are accurate and complete. She stated that they propose that June 30 be the permanent health MCAS deadline because the health insurance data is significantly larger than other lines of business. She stated that the amount of data for health compared with life and property/casualty (P/C) is disproportionate, and the extra time would be beneficial for state insurance regulators and health carriers. She stated that because of this volume, reconciliation of health data is more complex, and the mandatory state and federal reporting requirements enhances the challenge of imposing an April 30 deadline. She stated that health data is also not as automated as other lines of business.

Birny Birnbaum (Center for Economic Justice—CEJ) stated that the CEJ opposes this proposal. He stated that the premise behind the June 30 deadline for the health MCAS was to give companies extra time for new data

submission requirements. He stated that every insurer for every line of business starts with massive databases of information and then writes a program to extract and compile the data categories set out in the MCAS, annual financial statement, or other reporting requirements they must adhere to. He stated that once the programming is produced and the report is done, it does not matter how many records and data categories are there, as the effort is in the programming, which is done for the initial report and is the rationale for the initial time extension. He stated that insurers may have to start earlier in the year or apply more resources, but there is no technical reason that reporting by April 30 versus June 30 would produce erroneous data. He stated that he urges market regulators to take MCAS data collection as seriously as the financial regulators take annual and quarterly statement data collection. He stated that state insurance regulators need to be able to perform market analysis in a timely fashion to identify practices that may have consumer protection concerns that need to be addressed, and he urged rejection of the June 30 deadline proposal.

Mr. Swanson stated that he spoke with the person who does this work in his department, and they take the data seriously and would like it to be more accurate. He stated that they have had to grant extensions in the past because health data is more complicated, and he would prefer to proceed with a health MCAS deadline of June 30.

Mr. Haworth stated that there are other reports due on April 1, such as the Supplemental Health Care Exhibit (SHCE), and May 15 is typically the date of the first quarter filings; therefore, from a financial side, having MCAS data for year-end come in after the first quarter financial filing seems out of order. He stated that it seems better to align the date with the supplemental health care filings. and he explained that carriers already have the claims data when they complete the Schedule T form, which is completed by April 1. He stated that companies can ask for extensions when needed, but for the purposes of national market analysis, a June 30 deadline is challenging.

Ms. Hopper stated that Missouri understands the complicated nature health insurers face getting information together, and it also takes collecting this data seriously. She stated that state insurance regulators would also like additional time to review the data provided and therefore would like to have the data earlier than June. She asked if it was possible to compromise and do a deadline of May 31.

Ms. Ailor stated that she agrees with Missouri's proposal. She stated that she understands that the volume for health data is larger than other lines of business; for that reason, it also takes state insurance regulators a longer time to review that data. She stated that having a June 30 deadline hinders their processes with national analysis efforts, which health MCAS data is a part of; for that reason, she agrees that May 31 is a good compromise.

Mr. Zolecki stated that he wants to re-emphasize the commitment and dedication of carriers on the HIIP group to the MCAS process and filings and the collaborative efforts they have had over the last several years with the Working Group. He stated that he believes a very credible relationship has been built, and he wants it to be clear that they too take this filing very seriously. He stated that work is being done on the financial side to address redundancy and financial reporting efficiency, and subject matter experts (SMEs) on the market conduct and financial side have been consulted to look for the most efficiencies possible in the regulatory process. He stated that there are two other MCAS lines of business that will be reported on in the next several years, and he asked if keeping June 30 for health, and those new lines, would be considered and if this Working Group and the HIIP group could work together during that time to come up with a permanent health MCAS filing date that is feasible for state insurance regulators and carriers.

Mr. Birnbaum stated that the fact that there is more data for health should not matter because it must be programmed to produce the data.

Mr. Swanson made a motion, seconded by Ms. Gerachis, to keep June 30 as the health MCAS deadline. The motion did not pass unanimously, so a roll call vote was taken. Arkansas, Florida, Idaho, Kentucky, Nebraska, Ohio, Pennsylvania, South Dakota, and Virginia voted in favor of the motion. Arizona, Georgia, Maryland, Michigan, Missouri, Nevada, Washington, West Virginia, and Wisconsin voted against the motion. Kansas, Massachusetts, South Carolina, Tennessee, and Utah abstained. Ms. Daniels asked if someone could make a motion for May 31 to be the health MCAS deadline if this motion was voted down. Ms. Weyhenmeyer said that would be an option. South Carolina changed its vote to no from abstaining. The motion failed 10 to 9.

Ms. Hopper made a motion, seconded by Mr. Swanson, to change the health MCAS deadline to May 31. The motion passed unanimously.

3. Reviewed the Travel Data Element Addition Proposed by the Market Analysis Procedures (D) Working Group

Ms. Weyhenmeyer stated that the Market Analysis Procedures (D) Working Group proposed that a new data element be added to the underwriting activity section of reporting within the travel MCAS blank for “policies in force during the reporting period.” She stated that if approved, the data element will be added to travel MCAS reporting for the 2024 data year reported in 2025. She stated that no comments had been received.

Mr. Birnbaum stated that the data element refers to policies, and in the travel underwriting section, there are references to individual, group, and blanket policies. He asked for clarification on what the definition of policies is for this new data element. Randy Helder (NAIC) stated that the request with this data element is for the total number of insureds, including individual policies and individuals on group policies. Mr. Birnbaum stated that he supports adding this data element, but he believes there needs to be some clarification added here given the different types of policies. He stated that he believes what is being asked for is the number of covered lives in force during the reporting period on the number of policies. Mr. Helder stated that he would like to defer to the travel MCAS SME group for additional discussion on this, and Teresa Cooper (NAIC) agreed. Ms. Weyhenmeyer stated that this would be discussed further at a future call.

4. Reviewed the STLDI Data Element Addition Proposed by the Market Analysis Procedures (D) Working Group

Ms. Weyhenmeyer stated that the Market Analysis Procedures (D) Working Group proposed the addition of a data element for “dollar amount of claims paid during the reporting period” within the claims section of the STLDI MCAS blank.

Ms. Weyhenmeyer stated that this data element would be added to the STLDI MCAS reporting in the 2024 data year reported in 2025 if adopted. She stated that no comments were received on this. Mr. Birnbaum stated that the CEJ supports adding this data element.

Ms. Daniels made a motion, seconded by Mr. Haworth, to add the data element for “dollar amount of claims paid during the reporting period” within the claims section of the STLDI MCAS blank. This motion passed unanimously.

5. Discussed the MCAS Lawsuit Definition

Ms. Weyhenmeyer stated that Attachment Four within the meeting materials contains information relevant to this discussion. She stated that earlier this year, the Working Group adopted the expansion of Homeowners and Private Passenger Auto (PPA) MCAS lawsuit reporting to include lawsuits that are not claims related. As part of that approval, the lawsuit definition for the Home and Auto MCAS was reviewed and updated, and for consistency, the Working Group started with the lawsuit definition adopted for other MCAS lines of business. Ms. Weyhenmeyer stated that questions were raised regarding one of the bullet points within the common lawsuit

definition. The bullet in question states: “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.” Ms. Weyhenmeyer stated that the Working Group asked for some research to be done related to the adoption of this specific bullet point and its intent. The definition containing this bullet point was originally adopted in 2012 for the Long-Term Care (LTC) MCAS that was first reported for the 2014 data year. NAIC staff could not find any information related to the conversations that led to the adoption of this bullet; however, it exists within the lawsuit definition for nine MCAS lines of business.

Ms. Weyhenmeyer stated that the Working Group needs to determine if the bullet point is appropriate for lines of business other than Home and PPA or if it should be removed from other lines of business. She stated that this work could be done a few different ways: 1) an SME for each line of business could be assigned to do some research and put some thought into the appropriateness of the bullet for their line of business and report back to the Working Group; 2) the Working Group could ask for comments regarding the appropriateness of the bullet in the various MCAS lines of business and have discussions at the working group level; or 3) an SME group could be created to have discussions and bring their findings back to the Working Group.

Mr. Swanson suggested that time for comments on this be given. Mr. Birnbaum asked if it was even possible to have one lawsuit that covers two or more policies within that line of business. He stated that the bullet point conflicts with the carefully crafted treatment of class action lawsuits, and the reason one lawsuit might be covering multiple policies is because it is a class action. He stated that this is confusing, conflicts with the treatment of class action lawsuits, and inflates the number of lawsuits. He stated that this may be unique to the LTC MCAS blank, where there may be multiple LTC policies with the same insured, but he suggests deleting the bullet for any other line of business.

Lisa Brown (American Property Casualty Insurance Association—APCIA) stated that she agrees with Mr. Birnbaum, and the language in the bullet is contradictory and inflates the number of lawsuits. She stated that she cannot think of a situation on the P/C side where there is not a single lawsuit by one policyholder that touches multiple policies.

Mr. Swanson made a motion, seconded by Ms. Ailor, to delete the bullet from all nine MCAS 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.” The motion passed unanimously.

Ms. Weyhenmeyer stated that the next Working Group meeting would take place on Sept. 15.

Having no further business, the Market Conduct Annual Statement Blanks (D) Working Group adjourned.

SharePoint/Market Regulation - Home/D Working Groups/MCAS Blanks WG/2022/WG Mtg 0824/MCAS Blanks WG Minutes Aug 24

Draft: 11/29/22

Market Conduct Examination Guidelines (D) Working Group
Virtual Meeting
October 20, 2022

The Market Conduct Examination Guidelines (D) Working Group of the Market Regulation and Consumer Affairs (D) Committee met Oct. 20, 2022. The following Working Group members participated: Damion Hughes, Chair, Eleanor Coe, and Dennis Newman (CO); Erica Weyhenmeyer, Vice Chair (IL); Chris Erwin, Teri Ann Mecca, and Crystal Phelps (AR); Tolanda Coker and Katherine Jessen (AZ); Steve DeAngelis (CT); Susan Jennette and Frank Pyle (DE); Elizabeth Nunes, Paula Shamburger, and Heidi Walker (GA); Jared Kirby (IA); Lori Cunningham and Ron Kreiter (KY); Mary Lou Moran (MA); Airic Boyce, Jeff Hayden, and Danielle Torres (MI); Cynthia Amann, Jennifer Hopper, Teresa Kroll, and Jo LeDuc (MO); Tracy Biehn and Teresa Knowles (NC); Maureen Belanger and Edwin Pugsley (NH); Ralph Boeckman and Erin Porter (NJ); Leatrice Geckler and Myra L. Morris (NM); Hermoliva Abejar (NV); Rodney Beetch (OH); Kevin Foor, Landon Hubbard, and Shelly Scott (OK); Sandra Emanuel (OR); Paul Towsen (PA); Brett Bache, Segun Daramola, Matt Gendron, and Brian Werbeloff (RI); Stacie Parker (TX); Andrea Baytop and Bryan Wachter (VA); Isabelle Turpin Keiser, Nick Marineau, and Marcia Violette (VT); and Rebecca Rebholz and Mary Kay Rodriguez (WI).

1. Adopted its Sept. 8 Minutes

The Working Group met Sept. 8 and took the following action: 1) discussed revisions to the Aug. 22 draft Chapter 23—Conducting the Life and Annuity Examination of the *Market Regulation Handbook* (Handbook); and 2) discussed the new Aug. 17 draft travel insurance-related in-force policy standardized data request (SDR) and a new Aug. 17 travel claims SDR.

Shamburger made a motion, seconded by Weyhenmeyer, to adopt the Working Group's Sept. 8 minutes (Attachment Five-A). The motion passed unanimously.

2. Discussed Revisions to the Aug. 22 Draft Chapter 23 of the Handbook

Hughes said the draft Chapter 23 of the Handbook was first circulated on April 19, and the Working Group began discussing the draft at its April 21 meeting. He said the subject matter experts (SMEs) who prepared the April 19 initial draft of Chapter 23 reviewed the comments that were received on the chapter in late May from Missouri, Virginia, and the Insured Retirement Institute (IRI). Based on those comments, the SMEs created a revised draft, circulated on Aug. 22, which the Working Group discussed at its Sept. 8 meeting. The comments due date on the Aug. 22 draft was subsequently extended from Sept. 2 to Sept. 16, and since that time, additional comments were received on the draft from the IRI and the Center for Economic Justice (CEJ), and joint comments were received from the CEJ and the Independent Insurance Agents & Brokers of America (IIABA).

Wes Bissett (IIABA) said the joint comments with the CEJ are about the proposed revisions to marketing and sales examination standards 9 and 10 regarding the safe harbor provision in the revised *Suitability in Annuity Transactions Model Regulation* (#275). He said he has concerns with how the exam standards apply the provisions of the safe harbor to broker-dealers and registered representatives, who sell annuities that are not securities. He said the language in the exam standards suggests that broker-dealers and registered representatives who sell any type of annuity, including a fixed rate annuity, can opt out of their obligations under Model #275 and evade its requirements by complying with the U.S. Securities and Exchange Commission's (SEC's) Regulation Best Interest (Reg BI). However, he said the safe harbor provision can only be relied upon in certain circumstances (e.g., the

safe harbor provision does not apply and is not available to broker-dealers and registered representatives who sell annuities that are not securities). He said Model #275 only provides a safe harbor if a sale or recommendation is made in compliance with comparable standards; there is no comparable standard that applies when individuals sell annuities that are not securities.

Bissett said the safe harbor provision also requires any person seeking to rely on the safe harbor to comply with the comparable standard in question, and this would be unachievable for a broker-dealer or registered representative selling an annuity that is not a security. The safe harbor is available to financial professionals that satisfy a comparable standard, and there is no comparable standard for those who sell annuities that are not securities. Bissett said while many of the proposed revisions in the draft track with Model #275, he suggested that the Working Group delete the references to “the sale and recommendation of a fixed annuities” in Chapter 23. He said if the language is not removed from the chapter, it will lead to market conduct examiners’ questions about fixed annuity disclosure, documentation, training, enforcement, and record keeping, which are all provisions of Model #275. Birny Birnbaum (CEJ), who was the co-author of the joint comments, agreed and asked how a market conduct examiner would handle an instance where a registered representative selling a fixed annuity claims the safe harbor, given: 1) there is no federal oversight; and 2) there is no comparable standard for the sale of that product.

Birnbaum said in his standalone comments, he provided suggested edits to the introduction section of marketing and sales examination standard 1. He also proposed a new marketing and sales examination standard to provide examiner guidance to address the best interest obligation provision set forth in Model #275 (Section 6A), where a producer shall not place the producer’s or insurer’s financial interest ahead of the consumer’s interest. He said Model #275 defines “producer” to include an insurer where no producer is involved, and this financial interest obligation is in addition to the other four requirements of care, disclosure, conflict of interest, and obligation.

Birnbaum said in marketing and sales examination standard 5, there is: 1) no reference to a specific Financial Industry Regulatory Authority (FINRA) document to be reviewed; 2) no guidance regarding what constitutes compliance with FINRA requirements; and 3) no FINRA guidance regarding the sale of annuities that are not securities, as described in the joint IABA/CEJ comments.

Birnbaum said in August 2022, the SEC issued a staff bulletin regarding conflict of interest under Reg BI. Model #275 declares that cash and non-cash compensation is not a conflict of interest, while in the SEC August 2022 staff bulletin, cash and non-cash compensation are listed, among many other examples, as a conflict of interest. Birnbaum said producers and insurers relying on compliance with FINRA/SEC requirements would therefore face a higher standard concerning conflict of interest.

Sarah E. Wood (IRI) said where there is a reference to annuity replacement in the draft Chapter 23, “36 months” should be replaced by “60 months.” She suggested that in Supplemental Checklist K for marketing and sales examination standard 10, the language “delegating” should be removed from the checklist and replaced by the previously stricken language “contracting for” so the language is consistent with Model #275. She said in the instances where the Supplemental Checklists throughout the draft chapter use the phrase “the insurer’s and applicable producer’s system of annuity suitability supervision,” the phrase should be replaced by “the insurer’s system of annuity suitability supervision,” as the provisions of Model #275 only pertain to insurers. She proposed that a new four-hour training course, or an additional one-time one-credit training course, be added to the bulleted list of required producer training items in Supplemental Checklist L for marketing and sales examination standard 12 to better align Checklist L with the provisions of the revised Model #275. She suggested that the Working Group adapt any language regarding fixed annuities in the chapter to match any frequently asked questions (FAQ) guidance that is ultimately adopted by the Annuity Suitability (A) Working Group. Jason Berkowitz

(IRI) urged the Working Group to refrain from adopting the chapter until such time when the Annuity Suitability (A) Working Group has completed its FAQ guidance pertaining to safe harbor.

Gendron recommended that the Working Group either adopt Chapter 23, except for examination standards 5, 9, and 10, or not adopt Chapter 23 at all. He said he is fine with many of the changes proposed, including changing 36 months to 60 months, using the phrase “contracting for” instead of “delegating,” and using “the insurer’s system of annuity suitability supervision” instead of “the insurer’s and applicable producer’s system of annuity suitability supervision.” Bache said he agrees with Birnbaum’s revisions to marketing and sales examination standard 1, and he added that objective audit procedures would need to be incorporated into the new examination standard Birnbaum proposes. In response to Bache’s question regarding updating the number of states that have adopted the revised Model #275, Petra Wallace (NAIC) said when the draft is adopted, she will update the chapter with the correct number of states that have adopted Model #275 at the time of the release of the Handbook each year.

Hughes said the CEJ/IIABA, CEJ, and IRI comments will be provided to the state insurance regulator SMEs, as well as the minutes of the Oct. 20 meeting. He asked the SMEs to make additional edits and expose a revised draft, considering any decisions the Annuity Suitability (A) Working Group will be making on the issue of broker-dealers/safe harbor provisions in its FAQ document.

3. Discussed the Aug. 17 Draft Travel Insurance-Related In-Force and Claims SDRs

Hughes said the travel insurance-related SDRs were developed in 2021 by SMEs—Gendron and Cunningham. The draft SDRs were distributed to the Working Group members, interested state insurance regulators, and interested parties on Aug. 17, and they were briefly discussed at the Working Group’s Sept. 8 meeting, since the comment due date on the SDRs was Sept. 16. Comments were received on Sept. 16 from Kroll and Birnbaum.

Kroll suggested minor edits and requested further clarification to the travel insurance in-force SDR fields—InsFein, PolSrfNo, CovType, CvgLmt, CanTerRs, CanTerDt, PremAloc, InceptDt, GrpIntNo, GrpStID, GrpNPN, GrpCmsn, TrvlTyp, and DtReturn. Birnbaum said the travel insurance policy in-force SDR uses terms that are neither referenced nor found in the *Travel Insurance Model Act* (#632). He asked that the SDRs track the model more closely by using terms that are defined in Model #632; he proposed that the SDRs use fields to correspond with a simplified listing he provided in his comment letter, of entities cited and defined in Model #632. He also requested clarification of the PmtCvg field and suggested adding a field for individual policy or group certificate in the travel insurance claim SDR.

Gendron said he agrees with the suggested edits proposed by Kroll, and he said the questions she posed requesting clarification on various fields were helpful. He said a comparison of Birnbaum’s proposed fields and the fields used in the SDRs would be necessary. Hughes suggested that the SMEs meet to review Kroll’s and Birnbaum’s comments, make revisions, and re-expose the draft travel insurance SDRs at a future Working Group call.

4. Discussed Other Matters

Hughes asked the Working Group to think about charges 4, 6, and 7, which are, respectively, to “develop uniform market conduct procedural guidance ...,” “discuss the effectiveness of group supervision of market conduct risks ...,” and “discuss the role of market conduct examiners in reviewing insurers’ corporate governance” He asked the Working Group to decide if charge 4 is an appropriate charge to pursue, and if so, what type of uniform market conduct procedural guidance may be necessary. He said charges 6 and 7 are discussion items and do not pertain to developing a work product, and he asked the Working Group to review charge 6 and think about whether there

is a need for group supervision in market conduct. Regarding charge 7, he asked the Working Group what type of role it believes market conduct examiners play, if any, in corporate governance.

Rebholz suggested that the Working Group develop SDRs for short-term limited-duration (STLD) in-force policies and STLD claims. Hughes said this is an issue that is worthwhile for the Working Group to pursue in 2023.

Hughes said a notice of the day and time of the next Working Group meeting will be sent as soon as it is available.

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

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Draft: 9/19/22

Market Conduct Examination Guidelines (D) Working Group
Virtual Meeting
September 8, 2022

The Market Conduct Examination Guidelines (D) Working Group of the Market Regulation and Consumer Affairs (D) Committee met Sept. 8, 2022. The following Working Group members participated: Damion Hughes, Chair, Eleanor Coe, and Dennis Newman (CO); Erica Weyhenmeyer, Vice Chair (IL); Chris Erwin, Teri Ann Mecca, and Crystal Phelps (AR); Tolanda Coker and Katherine Jessen (AZ); Steve DeAngelis (CT); Susan Jennette and Frank Pyle (DE); Paula Shamburger and Heidi Walker (GA); Jared Kirby (IA); Abigail Gall (KY); Mary Lou Moran (MA); Airic Boyce, Jeff Hayden, and Danielle Torres (MI); Cynthia Amann, Teresa Kroll, Jo LeDuc, and Win Nickens (MO); Tracy Biehn and Teresa Knowles (NC); Maureen Belanger and Edwin Pugsley (NH); Ralph Boeckman and Erin Porter (NJ); Patrick Zeller (NM); Hermoliva Abejar (NV); Sylvia Lawson (NY); Rodney Beetch (OH); Kevin Foor, Landon Hubbard, and Shelly Scott (OK); Brian Fordham and Ana K. Pace (OR); Paul Towsen (PA); Brett Bache, Segun Daramola, Matt Gendron, and Brian Werbeloff (RI); Kelly Christensen and Tracy Klausmeier (UT); Andrea Baytop, Julie Fairbanks, and Bryan Wachter (VA); Mary Block, Isabelle Turpin Keiser, and Marcia Violette (VT); Jeanette Plitt (WA); and Barbara Belling, Diane Dambach, Mark Prodoehl; Rebecca Rebholz, and Mary Kay Rodriguez.

1. Discussed Revisions to the Aug. 22 Draft Chapter 23 of the Handbook

Mr. Hughes said the draft Chapter 23—Conducting the Life and Annuity Examination of the *Market Regulation Handbook* (Handbook) was first circulated on April 19, and the Working Group began discussing the draft at its April 21 meeting. He said the revisions in the April 19 draft Chapter 23, which relate to the February 2020 revisions adopted by the NAIC to the *Suitability in Annuity Transactions Model Regulation* (#275), were proposed by state insurance regulator subject matter experts (SMEs) from the Connecticut, Delaware, and Rhode Island departments of insurance (DOIs). Comments were received on the April 19 draft in late May 2022 from Missouri, Virginia, and the Insured Retirement Institute (IRI). The Working Group continued discussion of the April 19 draft at its June 9 meeting, where representatives of Missouri, Virginia, and the IRI presented their respective comments and provided suggested language edits to the Working Group regarding various sections of Chapter 23.

Mr. Hughes said the SMEs met after the June 9 meeting to review Missouri, Virginia, and the IRI's comments, and they made changes to Chapter 23 in consideration of some of the comments received. The Aug. 22 draft document contains the SMEs' suggested changes, and it was distributed on Aug. 22 to the Working Group members, interested state insurance regulators, and interested parties for review. The revisions incorporated by the SMEs are shown in yellow highlight in the document to differentiate them from the April 19 revisions to the draft. Mr. Hughes said the comment period on the draft ended Sept. 2.

Mr. Bache presented the SMEs' revisions to the draft Chapter 23. He said for the most part, Missouri and Virginia's comments/edits to the chapter were incorporated; the suggested edits received from the IRI, specifically those regarding comparable standards in Marketing and Sales Examination Standards 9 and 10, were revised and then included in the chapter.

Jason Berkowitz (IRI) said the Aug. 22 revisions made by the SMEs make Chapter 23 better align with the safe harbor provisions of Model #275. Birny Birnbaum (Center for Economic Justice—CEJ) said there are no comparable standards listed in the SMEs' Aug. 22 edits that apply to: 1) broker dealers selling security-related products; and 2) insurance companies. He asked that the Working Group consider the Annuity Suitability (A)

Working Group's current work on its frequently asked questions (FAQ) draft document, which addresses the issue of broker dealers and the safe harbor provisions of Model #275, before adopting the draft Chapter 23.

Mr. Birnbaum said Model #275 sets forth several best interest requirements. He asked that the Marketing and Sales section of Chapter 23 be revised to include all applicable best interest standards that are defined by Model #275, not only the best interest standard referenced in Marketing and Sales Examination Standard 16.

Mr. Gendron said the Annuity Suitability (A) Working Group held a May 26 meeting to discuss a draft safe harbor FAQ document drafted by the chair of the Working Group. The Working Group met July 26 to continue discussion of the chair's draft safe harbor FAQ document. Mr. Gendron said considering the number of comments received on the FAQ document, he anticipates that there will be several months' discussion and Working Group meetings yet to occur before the Annuity Suitability (A) Working Group can formally adopt the FAQ document. He said the Market Conduct Examination Guidelines (D) Working Group might want to refrain from adopting the Aug. 22 draft Chapter 23 until the Annuity Suitability (A) Working Group adopts the FAQ document. Mr. Berkowitz suggested that the Working Group not adopt the Aug. 22 draft Chapter 23 until the work of the Annuity Suitability (A) Working Group has concluded on the safe harbor FAQ document. Mr. Birnbaum asked that the Working Group adopt the revisions to Chapter 23, with the exception of the safe harbor language in Marketing and Sales Examination Standards 9 and 10.

Kim O'Brien (Federation of Americans for Consumer Choice—FACC) said in Marketing and Sales Standard 2, 36 months should be changed to 60 months regarding the exchange or replacement of an annuity.

Mr. Hughes asked Mr. Birnbaum and Ms. O'Brien to submit formal written comments regarding the issues they raised during the meeting. He extended the comments due date on the Aug. 22 draft Chapter 23 to Sept. 16; he asked that all comments be submitted by that date.

2. Discussed the Aug. 17 Draft Travel Insurance-Related In Force and Claims SDRs

Mr. Hughes said the Travel insurance-related standardized data requests (SDRs) were developed in 2021 by SMEs Mr. Gendron, Lori Cunningham (KY), and Reva Vandevoorde (NE). The draft SDRs were distributed to the Working Group members, interested state insurance regulators, and interested parties on Aug. 17 for review and discussion at the Sept. 8 Working Group meeting.

Mr. Gendron said the SMEs met as a drafting group seven times during 2021 to develop the draft SDRs. Where possible, fields, naming conventions of the fields, and the definitions of the fields in the SDRs were developed to be consistent with other NAIC SDRs that are already adopted. Mr. Gendron said most of the time spent in developing the new Travel in force and Travel claims SDRs was devoted to the creation of fields unique to travel insurance in-force policies and claims. The drafting group SMEs focused not only on the development of fields and their corresponding descriptions but also on the order in which the fields occur in each SDR.

Mr. Birnbaum said the SDRs refer to entities (e.g., travel agency, wholesaler, tour operator, and travel supplier) that are not defined in the *Travel Insurance Model Act* (#632). He asked if the SDRs could be revised to address only the categories of entities defined in Model #632; i.e., producer, travel retailer, and travel administrator. He asked that a field be added to the Travel in force SDR to indicate whether the policy is a group policy or an individual policy. Mr. Hughes asked Mr. Birnbaum to submit formal written comments to the Working Group. The comments due date on the Travel insurance SDRs is Sept. 16.

3. Discussed Other Matters

Mr. Hughes said the Working Group will continue to work on its assigned charges in 2022, in addition to reviewing the current exposure drafts before the Working Group. He said the Working Group's charges regarding developing uniform market procedural guidance, the effectiveness of group supervision of market conduct risks, and the role of market examiners in reviewing insurers' corporate governance are all charges that will be general discussion items in forthcoming Working Group meetings. He asked the Working Group to provide feedback regarding these three charges, as well as the remainder of the Working Group's charges and their priority. He also asked the Working Group to identify and provide input regarding areas/chapters the Working Group should consider updating in the Handbook.

Mr. Hughes said NAIC staff will send out a notice of the next Working Group meeting, which is scheduled for Oct. 20.

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

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Draft Pending Adoption

Attachment Six
Market Regulation and Consumer Affairs (D) Committee
12/15/22

Draft: 12/1/22

Market Regulation Certification (D) Working Group
Virtual Meeting (*in lieu of meeting at the 2022 Fall National Meeting*)
November 28, 2022

The Market Regulation Certification (D) Working Group of the Market Regulation and Consumer Affairs (D) Committee met Nov. 28, 2022. The following Working Group members participated: Russell Toal, Chair (NM); John Haworth, Vice Chair (WA); Lori K. Wing-Heier represented by Sarah Bailey (AK); Alan McClain represented by Crystal Phelps (AR); Erica Weyhenmeyer (IL); Kathleen A. Birrane represented by Mary Kwei (MD); Chlora Lindley-Myers and Jo LeDuc (MO); Mike Causey represented by Tracy Biehn (NC); Martin Swanson (NE); Marlene Caride represented by Erin Porter (NJ); Judith L. French represented by Rodney Beetch (OH); Glen Mulready represented by Landon Hubbart and Shelly Scott (OK); Andrew R. Stolfi represented by Colette Hittner (OR); Michael Humphreys represented by David Buono and Gary Jones (PA); Tanji J. Northrup (UT); Don Beatty, Katie Johnson, and Julie Fairbanks (VA); Kevin Gaffney represented by Karla Nuissl (VT); and Bill Cole (WY).

1. Adopted its Oct. 27 Minutes

Superintendent Toal said the Working Group met Oct. 27 and took the following action: 1) heard an update on the revisions to the Market Regulation Certification Program requirements; and 2) discussed revisions to the implementation plan.

Haworth made a motion, seconded by Northrup, to adopt the Working Group's Oct. 27 minutes (Attachment Six-A). The motion passed unanimously.

2. Reviewed the Pilot Program Suggested Revisions to the Market Regulation Certification Program

Haworth said the drafting group met three times since the last Working Group meeting. He said the drafting group has completed going through the requirements. During its last meeting on Nov. 21, it completed the review of the scoring matrix to ensure it aligns with the requirements' guidelines, measurements, and checklists. Haworth said the drafting group will meet one more time on Dec. 5 to finish its work.

Haworth said the revisions were primarily in line with recommendations received by the jurisdictions that piloted the Market Regulation Certification Program. However, the drafting group also came up with some revisions it felt were important.

Haworth said among the revisions and suggestions are:

- 1) The drafting group added an "Objective" and a "Measurement" section to each requirement. Much of the redline is simply cutting paragraphs from the "Guidelines" section to the new sections.
- 2) On requirements 3 and 4, the drafting group clarified that requirement 3 measures staffing resources, and requirement 4 measures staffing qualifications.
- 3) Recognizing that employees often have multiple responsibilities, the drafting group changed "full-time employee" to "full-time equivalent employee."

Draft Pending Adoption

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- 4) The drafting group believes the requirement 4 measurements of “unqualified pass” and “provisional pass” create confusion. The drafting group will be asking the Working Group to decide whether those measurements should be replaced with a simple description of what is required to pass.
- 5) The drafting group will also be proposing to the Working Group that requirements 6 and 11 should be merged. Requirement 6 concerns collaboration, and requirement 11 concerns the Market Actions (D) Working Group’s national analysis process. Because national analysis is a collaborative process, the drafting group believes it should be included with requirement 6. Also, because the national analysis process itself changes frequently, as the Working Group tries to make it more effective, it should not be its own requirement within the Market Regulation Certification Program.
- 6) For requirement 7 regarding the Market Conduct Annual Statement (MCAS), the drafting group removed question 7c about requiring companies to file using a format acceptable to the NAIC. There are really no alternatives.
- 7) Requirement 8 concerns electronic data entry with the NAIC. The drafting group will be asking the Market Regulation Certification (D) Working Group to consider simplifying the requirement to only the actual submission of Complaints Database System (CDS), Regulatory Information Retrieval System (RIRS), and Market Actions Tracking System (MATS) data to the NAIC. The drafting group will be suggesting that the timeliness of the submissions be moved from the requirement itself to the checklist and measurement sections of the requirement.
- 8) For requirement 8, the drafting group will be asking the Working Group to consider building in tolerances (e.g., a jurisdiction could fulfill the requirement if it submits data in a timely manner 75% of the time).
- 9) In requirement 10 regarding Collaborative Action Designees (CADs), the drafting group will be asking that the Working Group alter the language of the requirement slightly to make it clear that the CAD needs to attend only 50% of the Market Actions (D) Working Group meetings they are eligible to attend, because there are Working Group meetings that are only open to the Working Group members.
- 10) On the scoring matrix, the drafting group inserted the revised checklist questions and changed some of the red, yellow, and green scoring to match the language in the requirements.

Haworth said the drafting group plans to have the finalized redline version of the Market Regulation Certification Program requirements completed and exposed prior to the next Market Regulation Certification (D) Working Group meeting. He said the scoring matrix will have to be re-considered for adoption since the drafting group is recommending several changes to it based on the review of the requirements.

Superintendent Toal thanked Haworth and the members of the drafting group for all their hard work.

3. Reviewed the Market Regulation Certification Program Implementation Plan

Superintendent Toal said the current redline version of the implementation plan includes the changes to the three-year self-certification period that the Working Group adopted in September. He thanked Haworth for leading the discussion in October on the implementation of the full Market Regulation Certification Program.

Superintendent Toal said the Working Group received two sets of comments from LeDuc and Andrea Baytop (VA).

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LeDuc said she was not involved in the original drafting of the Market Regulation Certification Program in 2016, and it is not her intention to rehash anything for which a conscious decision was made when originally drafted. She said some of her comments are made to make the implementation plan more enduring and not outdated after the first few years of the Market Regulation Certification Program.

LeDuc recommended that references to “three-year” periods be removed since the intention is for the Market Regulation Certification Program to last longer than three years, and self-certification is an option available even after the Market Regulation Certification Program is fully implemented. She said some states may decide to only be provisionally certified even when full certification becomes available. She said specific years should not be referenced in the document, and they should perhaps be replaced with more generic language such as, “in the year following adoption”

LeDuc noted that in the second bullet point of the self-certification period, the responsibility to assess the self-certifications is placed on the Market Regulation and Consumer Affairs (D) Committee, but in other places, the Committee is allowed to delegate. She said the ability to delegate should be noted wherever the Committee’s responsibilities are referenced.

LeDuc said in the implementation plan, seasoned state insurance regulators are required to have market conduct examination experience. She recommended that market analysis experience also be included. She also said the document says either NAIC staff or a review team will do the verification of full certifications. She said it should be clarified who will do the verification of full certification applications.

LeDuc said the implementation plan only allows for full certifications to begin after the first three years. She said states should be able to apply for full certification as soon as the certification committee and review team is set up. Superintendent Toal agreed that full certifications should begin as soon as possible after adoption.

Fairbanks said she would speak for Baytop on Virginia’s comments. She said most of the comments are questions for clarification. She said her first suggestion supports LeDuc’s suggestion to make the dates in the document more generic.

Fairbanks said the implementation plan should define what provisional certification means and its importance on a jurisdiction’s certification status. Randy Helder (NAIC) said provisional was the descriptor used in the plan to indicate that the certification is not the same as full certification because jurisdiction can self-certify at any time, and because self-certification is not audited by a review team, full certification would carry more weight.

Fairbanks asked if a jurisdiction would have to submit self-certification every year during the initial three-year period, even if it would already qualify for full certification. Helder said it would per bullet point 2. He said full certification would not be available until a certification committee and review team are set up. Fairbanks said a jurisdiction should be able to apply for full certification prior to the third year since there is no clear benefit of doing self-certification three times if the jurisdiction already appears to be fully certified.

Fairbanks noted that the implementation plan does not provide a timeline for the Committee to finish assessing self-certifications. Helder said the Committee would accept the jurisdiction’s word if the jurisdiction says it meets the certification requirements and decides to self-certify. Fairbanks said there should be more clarity on how the Committee will treat full certifications and provisional certifications.

Draft Pending Adoption

Attachment Six
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12/15/22

Fairbanks said the implementation plan does not state if and how results of the reviews would be communicated to the jurisdictions. She recommended that jurisdictions receive feedback from the Committee review before the full certification is due two weeks before Spring National Meeting. She said this allows jurisdictions to determine if they should apply for full certification or continue with self-certification. She asked if there would be a list of provisionally and fully certified jurisdictions. Helder said there would likely be a list, and it would probably be public.

Fairbanks said in year one, the implementation plan says the self-certifications are submitted to NAIC staff; however, in years two and three, the self-certification is submitted to the Committee. Helder said this was inadvertent; it is likely that all self-certifications would come through NAIC staff on behalf of the Committee.

Fairbanks recommended that changes to the implementation plan should be included in the feedback that jurisdictions can provide to the Working Group.

Fairbanks noted that jurisdictions would submit full certification applications prior to the Spring National Meeting, while self-certifications are submitted two weeks prior to the Fall National Meeting. She asked if this is to allow jurisdictions that fail full certification to still apply for self-certification. Helder said it was written this way because it is expected that full-certification reviews will take considerably longer than self-certifications, but the ability to self-certify is also a benefit of the timing.

Fairbanks asked if it is the intent that full certification uses the same self-certification criteria as the three-year self-certification program. Helder said they both rely on the same set of requirements and measurements.

Fairbanks asked if the application for full certification and the self-assessment audit have been drafted. Helder said the full-certification application has not been drafted, but the annual self-assessment audit would be the checklist and scoring matrix.

Fairbanks recommended that the self-assessment be completed every two years after full certification is achieved, instead of every year, or the submission of a self-assessment halfway through the five-year period, similar to financial accreditation.

Fairbanks noted that it may take more than five years for all initial full-certification applications to be reviewed, depending on when the jurisdictions start to apply, and it is not clear what part of the process from the three-year self-certification would apply to full-certification. She recommended that because no more than 12 reviews are conducted each year, all jurisdictions that apply for full certification should be provisionally certified by the Committee until their application for full certification is reviewed and a decision on the application is made by the Committee.

Superintendent Toal asked LeDuc, Fairbanks, Baytop, and Haworth to work together to coordinate their suggested revisions and prepare a redlined implementation plan by Dec. 5. He said the revised implementation plan will be circulated to the Working Group to conduct an e-vote prior to the Fall National Meeting on whether to adopt it.

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

SharePoint/NAIC Support Staff Hub/Member Meetings/D Cmte/2022 Fall National Meeting/MRCWG/1128/11 MRCWG T

Draft: 11/8/22

Market Regulation Certification (D) Working Group
Virtual Meeting
October 27, 2022

The Market Regulation Certification (D) Working Group of the Market Regulation and Consumer Affairs (D) Committee met Oct. 27, 2022. The following Working Group members participated: John Haworth, Vice Chair (WA); Jeanne Murray (AK); Crystal Phelps (AR); Erica Weyhenmeyer (IL); Jo LeDuc (MO); Tracy Biehn (NC); Martin Swanson and Robert McCullough (NE); Maureen Belanger and Edwin Pugsley (NH); Erin Porter (NJ); Don Layson (OH); Gary Jones (PA); Glynda Daniels (SC); Kelly Christensen (UT); Julie Fairbanks and Andrea Baytop (VA); Karla Nuissl (VT); Theresa Miller (WV); and Bill Cole (WY).

1. Adopted its Sept. 15 Minutes

The Working Group met Sept. 15 and took the following action: 1) reviewed the pilot states' revisions to the Voluntary Market Regulation Certification Program requirements, guidelines, and checklist; and 2) reviewed the implementation plan for the certification program.

Cole made a motion, seconded by Daniels, to adopt the Working Group's Sept. 15 minutes (Attachment Six-A1). The motion passed unanimously.

2. Reviewed the Pilot Program Revisions to the Market Regulation Certification Program

Haworth said the subgroup for reviewing the pilot suggestions and incorporating changes in the certification requirements met three times since the last Working Group meeting. He said the subgroup has been through the first nine requirements and expects to get through the remaining three requirements during its next meeting.

Haworth said because of the review, the drafting group will make some recommendations to the Working Group for consideration because they change the actual requirement. He said the drafting group will ask the Working Group to expand requirement 7 from just the collection of the Market Conduct Annual Statement (MCAS) to the collection and analysis of MCAS data. The drafting group will also recommend streamlining requirement 8 concerning electronic data submissions to the NAIC to eliminate references to how quickly the data should be submitted. The drafting group believes the timeliness of submissions should be addressed in the measurements and checklists. Additionally, the drafting group will ask the Working Group to address error tolerances for failure to meet the timeliness standards of requirement 8.

Haworth said when the drafting group completes the review of the 12 requirements, it will compare the requirements to the scoring matrix to ensure the two documents are in sync. Superintendent Toal said he was able to participate in some of the meetings, and he thanked the drafting group for the earnestness and intensity with which it is going through the requirements.

LeDuc noted that much of the redline in the current copy of the certification requirements is from restructuring the arrangement of the wording in the requirements, and it affects the actual content.

3. Reviewed the Market Regulation Certification Implementation Plan

Haworth said during the Working Group's last meeting, several revisions to the three-year self-certification period were made, and during this call, the Working Group will consider the implementation plan for the full certification

program, which will follow the three-year self-certification period. He said the full-certification period implementation plan describes: 1) how and by whom the certifications will be performed; 2) how often a jurisdiction would need to be certified; and 3) how annual assessments will be done. Also, because the certification program is voluntary, the implementation plans allow for jurisdictions to continue to self-certify, but a self-certification would not be considered fully certified.

Haworth said the first bullet point calls for the formation of a Market Regulation Standards and Certification Committee that will oversee the certification process and audits. He asked if the Working Group wants to continue with that plan or be more specific regarding who would be eligible for the audit team; i.e., more specific about who would be eligible to be on the review team. LeDuc said it would be appropriate to have a Standards Committee and a review team. She said the composition of the review team is not needed for the overall implementation plan. She said that could be decided after the adoption.

Haworth said the second bullet point describes the timeline for applications to be fully certified and how a jurisdiction would be fully certified. If a state wishes to be fully certified, it would submit its self-certification audit to the Standard and Certification Committee for review and verification of the information, which could include on-site visits and interviews. This would be done on a five-year cycle. Haworth said this creates a staggered approach, which manages the workload of reviewing and approving certification applications.

Haworth said the third bullet point spells out that only 12 full certification applications will be done per year. The review team would make its recommendations on certification and the five-year re-assessments prior to the Fall National Meeting, and the Standards and Certification Committee would make its decisions by the end of the calendar year. LeDuc noted that the workload for reviewing could quickly add up as each year, in addition to 12 new applications, the annual re-assessments will be 12, then 24, 36, and 48 after four years.

Haworth said the fourth bullet point says in the first five years, all jurisdictions seeking full certification will be provisionally certified by the Market Regulation and Consumer Affairs (D) Committee until their application is reviewed and a decision is made by the Market Regulation Standards and Certification Committee.

Haworth said the fifth bullet point requires an annual assessment to be completed by the certified jurisdiction and submitted to the Standard and Certification Committee two weeks prior to the Summer National Meeting.

Haworth said the sixth bullet point allows any jurisdiction to withdraw from the certification program at any time. He said this is in line with the program being voluntary.

Birny Birnbaum (Center for Economic Justice—CEJ) asked why the program is voluntary. He said if only 10 states are certified and 40 states decided not to try to be certified, the implication would be that those states did not think they could pass, and that would reflect badly on state-based regulation. He said if a state department of insurance (DOI) attempted to pass certification and failed, that could be useful for the DOI, which could use the results in asking the legislature for resources to improve. He said even the financial accreditation program is voluntary, but there is a downside to not being accredited, as other states do not have to accept your financial analysis of your domestics. He said no such incentive exists in market regulation since no state will defer the necessity of market regulation of all entities operating in their jurisdiction.

Haworth said the last bullet point provides possible financial incentives for fully certified jurisdictions, but this would be subject to Executive (EX) Committee approval. He said it involves funding for attendance at national meetings, the Insurance Summit, and other events, but he is not sure.

LeDuc suggested that when the certification program is adopted and ready to go, any jurisdiction that wishes to be fully certified should be provided that option.

Haworth asked for any comments to be sent to Randy Helder (NAIC) by Nov. 18.

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

Sharepoint/NAICSupportStaffHub/Member Meetings/D CMTE/2022 Fall National Meeting/MRCWG/1027/10 MRCWG T.docx

Draft: 10/6/22

Market Regulation Certification (D) Working Group
Virtual Meeting
September 15, 2022

The Market Regulation Certification (D) Working Group met Sept. 15, 2022. The following Working Group members participated: Russell Toal, Chair (NM); John Haworth, Vice Chair (WA); Chelsey Maller (AK); Crystal Phelps (AR); Erica Weyhenmeyer (IL); Jo LeDuc (MO); Tracy Biehn (NC); Martin Swanson and Robert McCullough (NE); Edwin Pugsley (NH); Ralph Boeckman (NJ); Don Layson (OH); David Buono (PA); Tracy Klausmeier and William Stimpson (UT); Don Beatty, Julie Fairbanks, and Andrea Baytop (VA); Isabelle Keiser (VT); Theresa Miller (WV); and Bill Cole (WY).

1. Adopted its July 13 Minutes

The Working Group met July 13 and took the following action: 1) reviewed the pilot states' revisions to the Voluntary Market Regulation Certification Program requirements, guidelines, and checklist; and 2) reviewed the implementation plan for the certification program.

Mr. Haworth made a motion, seconded by Ms. Biehn, to adopt the Working Group's July 13 minutes (*see NAIC Proceedings – Summer 2022, Market Regulation and Consumer Affairs (D) Committee, Attachment Eleven*). The motion passed unanimously.

2. Reviewed the Pilot Program Revisions to the Market Regulation Certification Program

Superintendent Toal asked Mr. Haworth to provide a report on the progress of reviewing and incorporating the revisions that the pilot program participants suggested.

Mr. Haworth said the drafting group for reviewing the pilot suggestions and incorporating changes in the certification requirements met three times. He said the drafting group includes state insurance regulators who were active in the pilot program or were involved in the discussions for the last few years. He said the drafting group includes: Superintendent Toal; Sarah Bailey (AK); Ms. Baytop; Ms. Biehn; Mr. Cole; Damion Hughes (CO); Ms. LeDuc; Ms. Maller and Pam O'Connell (CA).

Mr. Haworth said the drafting group has reviewed the first four requirements, and the pace should increase as the drafting group gets to the later requirements, which have fewer suggestions for changes. Mr. Haworth some of the recommendations to date are: 1) using consistent language throughout the document, such as always referring to "jurisdiction" instead of "state"; 2) recommending that in addition to the "Guidelines" and "Checklist" for each requirement, that two additional sections be added to describe the objective of the requirement and another to focus on the measurements for the requirement; 3) regarding the second requirement in the *Market Regulation Handbook* (Handbook), allowing for the use of earlier versions of the Handbook if it makes sense for a particular examination; and 4) recommending the use of "full-time equivalent" measures instead of "full-time employee" since any one employee may have more than just market regulation responsibilities. Additionally, for the third and fourth requirements, which both cover staffing, the drafting group went through both to be sure they were distinct and were not asking questions about qualifications in the third requirement and staffing resources in the fourth requirement.

Mr. Haworth said that when the drafting group completes the review of the 12 requirements, it will compare the requirements to the scoring matrix to ensure the two documents are in sync. Superintendent Toal said he was

able to participate in some of the meetings and thanked the drafting group for the earnestness and intensity with which it is going through the requirements.

3. Reviewed the Market Regulation Certification Implementation Plan

Superintendent Toal said the current implementation plan, as drafted, covers an initial three-year self-certification period after the adoption of the certification program, followed by the full implementation when jurisdictions can be fully certified. The implementation plan also describes how and by whom the full certifications will be performed. He said the implementation plan prescribes how often a jurisdiction would need to be certified and how annual assessments will be done. He said that because the certification program is voluntary, once it is fully implemented, jurisdictions can decide not to participate or continue to only self-certify. He said any jurisdiction that self-certified would not be considered fully certified. He said the implementation plan also describes the process for revising the certification program.

Superintendent Toal said the Working Group would first address the three-year self-certification period. He said the self-certification period is meant to introduce all the NAIC jurisdictions to the certification requirements and provide some time for making any needed adjustments to the certification program. He noted that the Working Group will need to adjust the dates as it is well past 2018 and 2019, years that were contemplated in the original plan.

Mr. Haworth said the self-certification period of the implementation plan refers to the ability of jurisdictions to request peer reviews by “seasoned regulators.” He said there should be clarification on what a seasoned regulator is. He asked if it meant having a background in market conduct, a certain number of years working in a department of insurance (DOI), or certain designations, or experience conducting market conduct examinations. He also suggested there should be a pool of four or five regulators to pull from, and they should have skills in training.

Ms. LeDuc asked if the financial accreditation program has qualification for regulators who conduct accreditation reviews and peer reviews. She suggested the Working Group could build off of those qualifications. Mr. Haworth said financial accreditation reviews use contractors and that he is not sure contractors should be used on market certification reviews. Ms. LeDuc said many of the contractors used are retired state insurance regulators. She said it seems the financial accreditation program has benchmarks for who they use. Mr. Cole suggested having minimum qualifications. Mr. Haworth said that may limit the pool of regulators to only a few of the states with more experienced staff with designations. Randy Helder (NAIC) said he would speak to the financial accreditation staff.

Lisa Brown (American Property Casualty Insurance Association—APCIA) cautioned against watering down the definition of a seasoned regulator too much as that might reduce the impact of the certification program. She said industry and the financial regulators are facing the same challenges of staffing as more and more seasoned staff are retiring and not being readily replaced. She asked Mr. Helder to also ask the financial accreditation staff how states have been dealing with this as they come up for re-accreditation.

Superintendent Toal asked if there were any objections to qualifying “seasoned regulator” as a regulator with examination experience. He said the plan should not be overly prescriptive. He said it should be up to the jurisdiction to decide the level of experience needed. There were no objections.

Superintendent Toal noted that the implementation plan refers to the requirements as “first tier” requirements. He said that term is no longer being used and suggested the term “first-tier” be replaced simply with market regulation certification requirements.

Superintendent Toal said the third bullet-point of the self-certification period addresses a regular review of feedback from jurisdictions regarding the requirements. He suggested the Working Group could develop a template for the submission of suggestions that would identify the issue, the requirements that are impacted, and the justification for the suggestion.

Superintendent Toal asked that comments on the second section of the implementation plan regarding full certifications be sent to Mr. Helder by Oct. 14.

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

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Draft: 11/28/22

Speed to Market (D) Working Group
Virtual Meeting
November 10, 2022

The Speed to Market (D) Working Group of the Market Regulation and Consumer Affairs (D) Committee met Nov. 10, 2022. The following Working Group members participated: Rebecca Nichols, Chair (VA); Maureen Motter, Vice Chair (OH); Sian Ng-Ashcraft (AK); Erick Wright (AL); Jessica Luff and Frank Pyle (DE); Julie Rachford (IL); Tammy Lohmann (MN); Camille Anderson-Weddle and Jo LeDuc (MO); Garlinda Taylor (NC); Melissa Robertson (NM); Cuc Nguyen (OK); Tashia Sizemore (OR); Marianne Baker (TX); Kelly Christensen (UT); Lichiou Lee and Gail Jones (WA); Allan L. McVey (WV); and Barry Haney and Mary Kay Rodriguez (WI).

1. Adopted its July 12 Minutes

The Working Group met July 12 and took the following action: 1) adopted its April 20 minutes; and 2) discussed and considered suggestions received on the product coding matrix (PCM) and uniform transmittal document (UTD).

McVey made a motion, seconded by Lohmann, to adopt the Working Group's July 12 minutes (Attachment Seven-A). The motion passed unanimously.

2. Received an Update on Edits to the Handbook

Motter stated work continues with bringing the *Product Filing Review Handbook* (Handbook) up to date. She stated edits to Chapter 3 were passed down from the Casualty Actuarial and Statistical (C) Task Force with respect to information updating the modeling techniques of insurance companies and their filing submissions. She stated the ongoing updates include formatting and style updates, bringing outdated information current, and review by members of the System for Electronic Rates & Forms Filing (SERFF) team with respect to the speed to market tools. Motter stated that Chapters 1–3 have been reviewed and that Chapter 4 and Chapter 5 would be reviewed later this month. She stated the Handbook updates will be shared with everyone once complete and will be reviewed annually to keep the Handbook as current as possible. Motter stated if anyone would like to join the discussions on the Handbook updates, let her know.

3. Received an Update on SERFF and the PSC

Bridget Kieras (NAIC) stated there are six new Product Steering Committee (PSC) members that are replacing members rolling off the committee. The new members were selected based on their participation in various forums, such as the PSC interested parties group, focus groups, and other opportunities to give input into SERFF. She stated they also looked for states that had not participated in the PSC for a while and also included one industry member as part of the new members. Kieras stated the full PSC includes 10 industry and 10 state members, and that the Interstate Insurance Product Regulation Commission (Compact) holds two permanent seats on the state side. She stated these are balanced across property and life and health, and they try to stagger their terms to have some consistency from year to year. She stated updates were previously reported to the SERFF Advisory Board, but now updates will be reported to this Working Group to have some transparency.

Kieras stated the SERFF Modernization Project has three phases that are running concurrently right now. She stated the first phase focuses on search improvements and document capabilities in the legacy system. She stated

these are improvements directly to the legacy platform that are used today, but they also provide foundational components for the future system. Kieras stated they are working on the OpenSearch index, which is a cloud technology that is primed for searching both data and attachments. She stated that over the past months, they have moved all the data from the SERFF legacy database, and those historical attachments are being processed and loaded to this new OpenSearch index.

She stated they went to production just a week or two ago with the second big release as part of this, and that is where they are starting to build the index. Kieras stated there are more than 30 million portable document format (PDF) files that have already been processed, which includes reading through the PDFs and parsing out all the text so the data is searchable. She stated there are about 40 million total documents that will be processed in this phase. This includes some of the scanned PDFs, which is something they were not able to do before. She stated there is a special tool now that reads those scanned PDFs and turns them into text that can go into the index, which can be searchable. Kieras stated there is a document search feature in SERFF, but it is limited and slow. She stated the new tool has significantly improved response times, and there is a pilot group that is working on the testing. She stated the target time frame for all users to use the new document search is the end of Jan. 2023.

Kieras stated part of this phase includes a document comparison feature, which should be available to all users in early December 2023. She stated currently users must download and save documents to run comparisons in a separate tool, but this tool will be built into the platform and allow side-by-side comparisons in the SERFF interface.

Kieras stated the second phase started recently, which is the introduction of Tableau dashboards. She stated 25 years of data is being moved over, starting with the initial fields that are key to the dashboards being built. She stated five dashboards will be introduced for states and two additional dashboards for industry, which are a starting point. Then feedback will be sought to refine and further build upon those dashboards as needed. She stated there is also a pilot group for this piece of the project and that testing is planned to begin in January 2023.

Kieras stated that phase 3.1 is the third and largest of the in-progress phases. She stated this phase is the first part of the build-out of the user interface that filers and reviewers log in to every day, and that there are multiple phases for this, beginning with the Compact. Kieras stated after the Compact goes into production, the other business types will be added. She stated a user management module will be added to this phase because the Help Desk volume for SERFF user management requests is so significant. She stated the majority of user management will be turned to self-service, so anyone authorized to make a request via the form that is built in legacy SERFF will have a similar form, but when they click submit, the changes will be automatic. She stated this will allow manager users to manage their roles without going through the Help Desk. Kieras stated there probably will not be 100% self-service in this release because of some of the complexity around certain user segments, but it will be a lot, and the rest will be delivered in subsequent phases. She stated this phase will also include a better implementation of the PCM. Kieras stated this phase will also include a business rule configuration for filing fees and field rules at a state-specific level. She stated multiple types of insurance (TOIs) and sub-TOIs have been implemented, and they are working through what happens when use cases are edited on a filing. She stated most of the licensing verification has been worked out on the Compact filings, and they are leveraging the NAIC's state producer license database.

Kieras stated there is still a lot of work to do since SERFF is such a large application, but many new features are being added in the first phase. She stated they are leaning on the PSC and have monthly meetings and are also making use of focus groups. She stated anyone interested in participating and providing user input should reach out and let her know.

Nichols stated the next Working Group meeting will take place after the Fall National Meeting and that meeting details will be shared once a date is confirmed.

Having no further business, the Speed to Market (D) Working Group adjourned.

SharePoint/NAIC Support Staff Hub/Committees/D Committee/2022 Fall National Meeting/S2M WG/S2M WG Minutes NOV 10.docx

Draft: 7/27/22

Speed to Market (D) Working Group
Virtual Meeting
July 12, 2022

The Speed to Market (D) Working Group of the Market Regulation and Consumer Affairs (D) Committee met July 12, 2022. The following Working Group members participated: Rebecca Nichols, Chair (VA); Maureen Motter, Vice Chair (OH); Sian Ng-Ashcraft (AK); Erick Wright (AL); Jimmy Harris (AR); Frank Pyle (DE); Julie Rachford (IL); Brenda Johnson and Craig VanAalst (KS); Tammy Lohmann (MN); Camille Anderson-Weddle and Jo LeDuc (MO); Ted Hamby, Tracy Biehn, and Timothy Johnson (NC); Chris Aufenthie (ND); Cuc Nguyen (OK); Sharalyn Taylor (TX); Tracy Klausmeier (UT); Gail Jones (WA); and Barry Haney and Mary Kay Rodriguez (WI). Also participating was: Danie Capps (WY).

1. Adopted its April 20 Minutes

The Working Group met April 20 and took the following action: 1) adopted its Nov. 16, 2021, minutes; 2) received an update on the status of the System for Electronic Rates & Forms Filing (SERFF) Modernization Project; 3) received an update on edits to the *Product Filing Review Handbook* (Handbook); and 4) discussed the annual review of the product coding matrix (PCM) and uniform transmittal document (UTD) suggestions.

Ms. Rachford made a motion, seconded by Mr. Wright, to adopt the Working Group's April 20 minutes (*see NAIC Proceedings – Summer 2022, Market Regulation and Consumer Affairs (D) Committee, Attachment Twelve*). The motion passed unanimously.

2. Discussed and Considered Suggestions Received on the PCM and UTD

Ms. Motter stated that the first suggestion to discuss is regarding the property/casualty (P/C) PCM. She stated that a suggestion was received to add a sub-type of insurance (TOI) under the inland marine TOI to allow for the filing of personal lines cyber insurance. The reason for this suggestion is that this is a new product, and customers have been asking about it. Ms. Motter stated that when these suggestions are being evaluated, ideas and thoughts are brought to everyone's attention for consideration. She stated that there was recently a sub-TOI for cyber liability products added that is lined up with the annual statement instructions, where it advises companies to put any standalone comprehensive cyber liability coverages under TOI 17, but if it is an endorsement attached to the policy, there is a note similar to the lines of business in the annual statement to report those premiums and losses. For example, she stated that if a cyber liability endorsement was being added to an existing homeowners product, the endorsement would be filed with the homeowners product. She stated that a consideration to keep in mind is how many states would implement this suggested change, as it is not helpful from a speed to market standpoint to add additional TOIs that will not be adopted by a majority of jurisdictions. She asked if anyone on the call has been filing personal lines standalone cyber insurance products, and there were no responses. She asked that if anyone has an issue with following the annual statement instructions and the current PCM, they should place such products if they come into existence under TOI 17 for now and reevaluate them in the future if needed.

Theresa Boyce (ACE Group) stated that she believes TOI 17 would only be used for standalone, and if it is just an endorsement to another line of business, then the ACE Group would not need to use TOI 17. Ms. Motter confirmed that as correct and stated that she has not heard anyone express concerns about getting any personal lines standalone products filed. She stated that cyber coverage on a personal basis thus far has been an endorsement and gone under the proper TOI to the policy it is attached to. She stated that if state insurance regulators and

industry representatives are not seeing standalone personal lines cyber insurance products at this time, creating a TOI for it may not be helpful, as it may not be utilized. Ms. Rachford asked if it would be possible to get more information from the person that made this suggestion. Ms. Motter stated that if the need arises, this suggestion could be brought up again, but this consideration is time sensitive, as it would have to be decided on prior to the national meeting in order to receive filings for it next year.

Ms. Rachford made a motion, seconded by Ms. Klausmeier, to not consider the creation of an additional TOI to the P/C PCM for personal lines cyber and to table it for future discussion as needed. The motion passed unanimously.

Ms. Motter stated that the next suggestion to discuss is regarding the life and health UTD. A suggestion was made to update the form actions list on the form schedule to include “withdrawn” in addition to initial, revised, and other. She stated that this would bring it in line with what is already present on the P/C side, where a form can be indicated as new, revised, withdrawn, or other, which includes a freeform text box. This suggestion also included a request to have a date of when this will take over or be inactivated. Ms. Motter stated that on the P/C side, when new, withdrawn, or replaced, the date trigger is the requested effective date that is indicated on the entire filing submission. She stated that it is unclear in the suggestion if the requester is expecting to have a different date other than the requested effective date, and a possible solution would be asking filers to use the other box to enter that different date in the text field box. She asked that if the requester is on the call, and they are not. She asked if anyone has concerns with aligning the life and health UTD with the P/C document and allowing the choice of withdrawn in addition to initial, revised, and other. No concerns were expressed. Ms. Motter asked if anyone has concerns with the suggestion that if the requester is expecting the ability to indicate a date other than the requested effective date, that it be provided in the other text field box. No concerns were expressed.

Mr. VanAalst made a motion, seconded by Ms. Lohmann, to amend the life and health UTD to include an option for withdrawn, without an additional date field. The motion passed unanimously.

Ms. Motter stated that the next suggestion to discuss is adding a TOI for multi-line health other in the life and health PCM. She stated that her understanding is this is unique to just a few jurisdictions, as only a few states have a separate instance for health and a separate instance for life filing submissions. She stated that because of this, these states can only use a multi-line health other in their health instance, and they do not have that available in their life instance. The reason provided for the suggestion is that the TOI would be used for health insurance coverages that are considered excepted benefits, such as hospital indemnity, accident only, etc. and would assist with such SERFF filing searches. The other reason given is that the addition of this TOI would be for states that have life and health as separate instances because TOI ML02 cannot be used for both. Ms. Motter stated that the additional thoughts provided for consideration are that this concern will be resolved with the SERFF modernization, and it only affects a handful of jurisdictions. She stated that the recommendation is to continue use of the H21 TOI health other until the SERFF modernization is in place. She stated that perhaps using additional benefit fields, labels, and filing descriptions might help locate these types of filings in the interim. Ms. Jones stated that if this will be resolved in the SERFF modernization, a new TOI does not seem necessary at this time.

Ms. Nguyen made a motion, seconded by Ms. Lohmann, to not add a TOI for multi-line health other. The motion passed unanimously.

Ms. Motter stated that the next suggestion to discuss is adding a sub-TOI in the life and health PCM under TOI NA01 network access provider contract for a provider contract incentive-based program with the description, “A written contract between a carrier, accountable care organization (or similar entity), provider, or group of providers that establishes an incentive-based program.” A reason was not provided for this suggestion. Ms. Motter asked if these are currently accepted under NA01.004 other and if a filing label could be utilized to differentiate

these types of filings. Ms. Jones stated that Washington's network oversight person, Jennifer Kreidler, recommended not accepting this suggestion because: 1) incentive-based programs are not a unique type of provider contract, but a type of reimbursement that is already captured in sub-TOIs that have been previously adopted, including NA01.000 and NA01.003; and 2) accountable care organizations, per the description request, are federally regulated programs, and states have no jurisdiction over such programs; therefore, Washington does not require submission of them unless incorporated into a commercial marketplace or Medicaid plan. She stated that if adopted, Washington would not turn on this code.

Ms. Lohmann made a motion, seconded by Mr. Wright, to not implement the suggestion to add a sub-TOI for provider contract incentive-based programs. The motion passed unanimously.

Ms. Motter stated that the next suggestion to discuss is adding sub-TOIs in the life and health PCM for long term care (LTC) to account for limited long-term care insurance (LTCI) filings to align with the *Limited Long-Term Care Insurance Model Act* (#642) and the *Limited Long-Term Care Insurance Model Regulation* (#643). The reason provided for this suggestion is that it would accurately identify the appropriate TOI reflective of the coverage. The requester noted that some jurisdictions have allowed these filings under H13, and a request was made to consider adding or referencing limited LTC in this description, but it was decided that this could cause confusion, as the product is a type of LTC and should be within that TOI description. Ms. Motter stated that questions to consider are how many states would implement these sub-TOIs, where filings for this are currently being received, how many policies are being filed as a standalone product, and how this is different from those items filed under H13 short-term care group and individual. She stated that potentially adding another sub-TOI to H13 for other or implementing additional benefit flags for the sub-TOI may be better than adding another sub-TOI under LTC. She stated that her recollection when this was previously discussed is that because there is a difference between LTC and short-term care, the desire is not to include sub-TOIs for short-term care under the LTC and to leave them under H13. Ms. Jones stated that this was discussed in Washington, and it does not see the need to add a new sub-TOI, as these products appear to meet the definition of short-term care. She stated that Washington would support the addition of a sub-TOI under H13, and she added that limited LTC is not allowed under Washington's current regulations. Ms. Motter asked if adding 13.004 for short-term care other under TOI H13G would be a possible solution. Ms. Jones confirmed this since that would not fall under LTC. Mr. VanAalst stated that Kansas would not adopt this since it made changes to its Long-Term Care Partnership Program to account for these types of filings, but if a change were made, Kansas agrees with Washington that it would make the most sense to add a sub-TOI under H13. Ms. Motter stated that under H13, there are sub-TOIs for home health care, which could incorporate the first suggestion and sub-TOIs for nursing home and adult day care. She stated that there is not a sub-TOI for other for short-term care, and she asked if there is an interest in adding a sub-TOI to H13G and H13I of 13.004 other to incorporate additional filings. Ms. Jones asked if the request is to add sub-TOIs under LTC, and Ms. Motter confirmed this but said this would be a possible alternative solution if needed. Ms. Motter stated that adding these sub-TOIs under H13 for other should only be considered if the Working Group feels the need. No comments were expressed indicating a need to add these additional sub-TOIs under H13G and H13I.

Mr. VanAalst made a motion, seconded by Ms. Lohmann, to not amend the life and health PCM to include additional sub-TOIs for LTC. The motion passed unanimously.

Ms. Motter summarized that effective Jan. 1, 2023, the Working Group has decided that the only change from the suggestions made this year is to amend the life and health UTD to include an option for withdrawn as a status option and that no changes to the PCM would be implemented.

3. Discussed Other Matters

Ms. Jones asked if the requesters for these suggestions are invited to these calls so they can participate in these discussions and answer questions. Ms. Motter stated that NAIC staff have historically reached out to them with the call information. Brandy Woltkamp (NAIC) confirmed this and stated that a couple of the requesters are Working Group members and are aware of this call.

Ms. Nichols stated that details for the next call would be shared once it has been scheduled.

Having no further business, the Speed to Market (D) Working Group adjourned.

SharePoint/NAIC Support Staff Hub/Member Meetings/2022 Summer National Meeting/S2M WG/July 12 Call/S2M WG Minutes July 12