



Date: 12/2/21-Version 2

2021 Fall National Meeting  
San Diego, California

**NAIC/CONSUMER LIAISON COMMITTEE**

Monday, December 13, 2021

9:30 – 11:00 a.m.

San Diego Convention Center—Ballroom 20 ABC—Upper Level

**ROLL CALL**

Michael Conway, Chair	Colorado	Anita G. Fox	Michigan
Andrew R. Stolfi, Vice Chair	Oregon	Grace Arnold	Minnesota
Jim L. Ridling	Alabama	Mike Chaney	Mississippi
Lori K. Wing-Heier	Alaska	Chlora Lindley-Myers	Missouri
Peni Itula Sapini Teo	American Samoa	Eric Dunning	Nebraska
Evan G. Daniels	Arizona	Barbara D. Richardson	Nevada
Alan McClain	Arkansas	Adrienne A. Harris	New York
Ricardo Lara	California	Mike Causey	North Carolina
Andrew N. Mais	Connecticut	Jon Godfread	North Dakota
Trinidad Navarro	Delaware	Judith L. French	Ohio
Karima M. Woods	District of Columbia	Glen Mulready	Oklahoma
David Altmaier	Florida	Jessica K. Altman	Pennsylvania
John F. King	Georgia	Cassie Brown	Texas
Dean L. Cameron	Idaho	Jonathan T. Pike	Utah
Doug Ommen	Iowa	Tregenza A. Roach	Virgin Islands
Vicki Schmidt	Kansas	Scott A. White	Virginia
Sharon P. Clark	Kentucky	Mike Kreidler	Washington
James J. Donelon	Louisiana	Mark Afable	Wisconsin
Kathleen A. Birrane	Maryland		

NAIC Support Staff: Lois E. Alexander

**2021 NAIC Consumer Liaison Representatives**

Jamille Fields Allsbrook	Center for American Progress	Bonnie Burns	California Health Advocates
David Arkush	Public Citizen’s Climate Program	Tasha Carter	Florida Office of the Insurance Consumer Advocate
Amy Bach	United Policyholders (UP)	Symone N. Crawford	Massachusetts Affordable Housing Alliance (MAHA)
Birny Birnbaum	Center for Economic Justice (CEJ)	Brenda J. Cude	University of Georgia
Ashley Blackburn	Community Catalyst	Lucy Culp	The Leukemia & Lymphoma Society (LLS)
Brendan M. Bridgeland	Center for Insurance Research (CIR)		
Courtney Bullard	Utah Health Policy		



	Project (UHPP)		
Deborah Darcy	American Kidney Fund (AKF)	Natasha Kumar	Families USA
Yosha P. Dotson	Georgians for a Healthy Future (GHF)	Deborah Ojeda-Leitner	National Center for Transgender Equality (NCTE)
Eric Ellsworth	Consumers' Checkbook/Center for the Study of Services	Sarah Lueck	Center on Budget and Policy Priorities (CBPP)
Erica Eversman	Automotive Education & Policy Institute (AEPI)	Gwendolyn Roberts Majette	Center for Health Law and Policy
Justin Giovannelli	Georgetown University Center on Health Insurance Reforms (CHIR)	Dorianne Mason	National Women's Law Center (NWLC)
Ross Hammond	The Sunrise Project	Erin Miller	Colorado Children's Campaign
Marguerite Herman	Healthy Wyoming	Carl Schmid	HIV+Hepatitis Policy Institute
Anna Schwamlein Howard	American Cancer Society (ACS) Cancer Action Network (CAN)	Karen Siegel	Health Equity Solutions (HES)
Janay Johnson	American Heart Association	Matthew J. Smith	Coalition Against Insurance Fraud (CAIF)
Katie Keith	Out2Enroll	Andrew Sperling	National Alliance on Mental Illness (NAMI)
Karrol Kitt	The University of Texas at Austin	Harold M. Ting	Consumer Advocate Volunteer
Kenneth S. Klein	California Western School of Law	Wayne Turner	National Health Law Program (NHLP)
Rachel K. Klein	The AIDS Institute	Jackson Williams	Dialysis Patient Citizens (DPC)
Peter R. Kochenburger	University of Connecticut School of Law	Silvia Yee	Disability Rights Education and Defense Fund (DREDF)

**AGENDA**

1. Consider Adoption of its Summer National Meeting Minutes —*Commissioner Michael Conway (CO)* Attachment One
2. Observe Presentation of the Excellence in Consumer Advocacy Award by NAIC Consumer Representatives to Commissioner Jessica K. Altman (PA) —*Commissioner Michael Conway (CO)*
3. Hear a Federal Health Policy Update-Developments and Recommendations for States—*Deborah Darcy (American Kidney Fund—AKF) and Carl Schmid (HIV+Hepatitis Policy Institute)* Attachment Two



4. Hear a Presentation on Insurance Privacy Protection: Do the “Right” Thing-A Consumer Perspective—*Harold M. Ting (Consumer Advocate Volunteer)* Attachment Three
5. Hear a Presentation on Regulatory Failures in Credit-Related Insurance —*Birny Birnbaum (Center for Economic Justice—CEJ)* Attachment XX
6. Hear a Presentation on When Private Options Shrink for Insuring Properties-Residual Market Entities and Consumer Challenges—*Amy Bach (United Policyholders—UP)* Attachment Five
7. Hear a Presentation on the Impact on Demand Surge Post-Disaster on the Labor and Materials Costs of Reconstruction—*Kenneth S. Klein (California Western School of Law)* Attachment Six
8. Discuss Any Other Matters Brought Before the Committee —*Commissioner Michael Conway (CO)*
9. Adjournment

## Draft Pending Adoption

Draft: 9/15/21

NAIC/Consumer Liaison Committee  
Virtual 2021 Summer National Meeting  
August 14, 2021

The NAIC/Consumer Liaison Committee met Aug. 14, 2021. The following Committee members participated: Michael Conway, Chair (CO); Andrew R. Stolfi, Vice Chair (OR); Lori K. Wing-Heier represented by Sarah Bailey (AK); Alan McClain (AR); Peni Itula Sapini Teo (AS); Ricardo Lara represented by Lucy Jabourian (CA); Andrew N. Mais (CT); Trinidad Navarro represented by Susan Jennette and Frank Pyle (DE); David Altmaier (FL); John F. King (GA); Dean L. Cameron (ID); Vicki Schmidt (KS); Sharon P. Clark represented by Rob Roberts (KY); Kathleen A. Birrane (MD); Chlora Lindley-Myers (MO); Mike Causey represented by Tracy Biehn (NC); Eric Dunning (NE); Barbara D. Richardson represented by David Cassetty (NV); Judith L. French represented by Jana Jarrett (OH); Glen Mulready (OK); Jessica K. Altman (PA); Doug Slape represented by Nancy Clark and Chris Herrick (TX); Jonathan T. Pike (UT); and Scott A. White represented by Don Beatty and Katie Johnson (VA). Also participating were: Elizabeth Kelleher Dwyer (RI); Raymond G. Farmer (SC); James A. Dodrill (WV); and Jeff Rude (WY).

### 1. Announced the Continuation of an E-Vote of its Spring National Meeting Minutes

Commissioner Conway said the Committee met April 8. During this meeting, the Committee received presentations on health and non-health-related insurance issues from a consumer perspective. To save time for presentations by NAIC consumer representatives today, Commissioner Conway said an e-vote was distributed to Committee members prior to this meeting. He asked that members respond to roll call with their e-vote to Lois E. Alexander (NAIC). He also said as the chair of the Consumer Board of Trustees, he postponed the Aug. 13 Board meeting until after the Summer National Meeting, when the Board will discuss revisions to the Plan of Operation for the Consumer Participation Program suggested by NAIC consumer representatives.

### 2. Heard a Presentation on Helping Consumers Avoid Getting Burned or Blown Away by Post-Disaster Fraud

Matthew J. Smith (Coalition Against Insurance Fraud—CAIF) said there are wildfires raging across the nation, a tropical storm off the coast of Florida, and a depression forming in the Atlantic. He said the scariest part is that the official hurricane season has not yet begun. He said along with Amy Bach (United Policyholders—UP), he wants to present practical tips and solutions to state insurance regulators on how to protect their consumers from post-disaster fraud. Because disasters occur in every state, he said these are tips that every state can use to help their constituents. He said the Insurance Information Institute (III) estimated the cost of natural disaster fraud to be over \$551 billion in insured losses only from 2011 through 2020. He said statistical data produced by the Battelle Seattle Research Center indicates that conservative estimates put property/casualty (P/C) insurance fraud at 10% of all claims paid or \$55 billion every 10 years. He also said the percentage for natural disaster fraud is generally considered to be much higher at 18% or just under \$100 billion each decade.

Mr. Smith said what is being seen following natural disasters is contractor and repair scams requiring upfront advances, then not showing up to do the work. He said fraudsters promise to absorb insurance deductibles; however, such practices have been rendered invalid by state insurance departments in recent years, which results in contractors and repair shops cutting corners and using subpar materials to recoup those expenses. He said incomplete work, shoddy work, and work never started are also the types of fraud that tend to follow natural disasters. He said the CAIF had video evidence of contractors damaging undamaged roofing by using hammers and tearing off shingles while consumers were displaced to increase the scope and cost of the work that needed to be done. He said on the opposite side of the spectrum, fraudsters claim to be Federal Emergency Management Agency (FEMA) housing inspectors when they are not; fake offers of local or federal assistance; seek your FEMA number or other personal or financial information; pose as adjusters, contractors, or attorneys to take assignment of insurance benefits then do no work; and charge to clean items that should be discarded or cannot be cleaned. He said storm chaser claims are another problem, and the first thing fake contractors do after a natural disaster is cross state lines to steal a license plate to put on their repair trucks to convince consumers they are dealing with a trustworthy local contractor. He said the next step is to buy a cheap burner cell phone with a local area code and go to Kinko's for a magnetic sign with local naming conventions on it, such as Columbus Roofing, for the side of the truck, as well as to have business cards and billing statements printed with a local address. He said consumers are told the companies heard the storm was coming so they were waiting in a staging area for the storm to end so they could be the first on scene to help. After acquiring a down payment, he said fake contractors may show up the next day with a few materials and do a little work; however, within 72 hours following the disaster, they are long gone with a wad of consumer cash having left the license plate, magnetic sign, and fake paperwork in a dumpster. He said this happens in states that do not have a storm chaser law or storm chaser regulations in place. He said insurer actions can also lead

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to insurance fraud when insurance companies employ inexperienced adjusters without adequate training; stand firm on an Xactimate estimate when it does not match up with local pricing on materials and labor; apply excessive depreciation when calculating actual cash value (ACV); discourage policyholders from hiring professional help; pressure policyholders to use an insurer preferred contractor that does not have a good track record or references; or bulk contracts with engineering firms that are not adequate to cover thorough inspections, resulting in “cookie cutter” reports. He said unintended or claim-motivated consumer fraud is the padding of a contents inventory, dwelling repair costs, or replacement estimates in anticipation of low-ball claim offers from insurers. He said intentional consumer fraud that is spreading across the country is the creation or cause of damage, such as claiming actual living expenses (ALEs) that were not incurred by faking receipts or claiming replacement cost values (RCVs) payable at 100% by purchasing new items, submitting the receipts for claim payment, and returning the items to stores for cash. He said it is important to educate consumers to avoid such practices that can lead to cancellation of insurance coverage because of the way the fraud language is written in the insurance contract. He said it is also important to talk about the disparate impact of natural disaster fraud as persons of color, persons of age, and those with language barriers are being targeted because they are likely to be more vulnerable, not aware of what the scams are, or not aware of what their rights are. He said insurer responses also exhibit disparate impact because the big, mobile disaster vehicles tend to be parked in high income, predominantly white neighborhoods rather than in low income neighborhoods predominantly with persons of color. He said insurers said they park such vehicles in locations where the most policyholders are; however, he said such vehicles and services should be available to all policyholders.

Mr. Smith said steps departments of insurance (DOIs) can take to better protect consumers include advance planning like having disaster plans in place to address fraud, emergency approval plans for adjusters and contractors, and Contractor State Licensing Board (CSLB) coordination. He said states could also provide consumer warnings about fraudsters in advance of and post-disaster and require insurers to utilize response plans and anti-fraud plans. He said actively prosecuting disaster fraudsters is also an important action to take. He said legislative advocacy for storm chaser laws and regulations as deterrents to those contemplating fraudulent insurance activities is also very important.

### 3. Heard a Presentation on the Impact of the COVID-19 Pandemic on Consumer Credit Scores and Insurance Underwriting

Birny Birnbaum (Center for Economic Justice—CEJ) said he is speaking for the nearly 300 consumers represented by the Consumer Federation of America (CFA) in showing that the use of consumer credit scores for insurance underwriting became completely unfair and discriminatory, especially during the pandemic. He said this is important to state insurance regulators and consumers, as it highlights the use of average credit scoring by industry for historical purposes. He said average credit scoring experienced a shift due to the pandemic. He also said after hearing his presentation, state insurance regulators would agree that state laws and regulations on rating and unfair trade practices require implementation of a moratorium to pause this practice until the credit scoring environment has a chance to catch up and normalize following the pandemic. He said statutory provisions regarding fair and unfair discrimination are generally found in two parts of insurance statutes: rating and unfair trade practices. He said there are two types of unfair discrimination—i.e., actuarial and protected classes—which means distinctions among groups defined by certain characteristics (e.g., race, religion, national origin, etc.) are prohibited regardless of actuarial basis. He said it is unfair discrimination to treat consumers who are similarly situated differently. He said for rates and trade practices to be considered fair and adequate and to be part of the not excessive, not inadequate, and not unfairly discriminatory rate standard, there must be an actuarial basis for distinction among groups of consumers. He said credit-based insurance scores—CBISs are algorithms derived from individual consumer credit reports matched to the insurance outcomes of those insureds. He said a credit scoring model vendor can generate hundreds of possible data points from consumer credit reports to use as predictive factors in a scoring algorithm. He also said the vendor selects those factors that best predict the outcome and produce the greatest difference between consumers. He said outcome variables might be average claim costs per exposure (pure premium), loss ratio, likelihood of fraud, consumer lifetime value, or others. He said insurers argue that CBISs are predictive of claims and support this with data showing higher claim costs for insureds with poor scores and lower claim costs for insureds with good scores. He said CBISs are intended to help insurers group insureds by their relative claim costs (or some other outcome metric). Unlike some rating factors used for discounts, which reflect an actual reduction in claims, like an anti-theft device in the vehicle or home, he said CBISs redistribute premium from one group of consumers to another. He said stated differently, if lots of drivers suddenly installed anti-theft devices in their cars, the discounts would be paid for by a reduction in theft claims and not by an increase in premium for other drivers. He said this is not so with CBISs, where one insured’s discount is another’s surcharge.

As a result of the pandemic and starting in March 2020, Mr. Birnbaum said many businesses were forced to close and unemployment skyrocketed. He said the federal government instituted a series of actions to help individuals and businesses devastated by the pandemic, including: 1) a moratorium on foreclosures; 2) a moratorium on rental evictions; 3) a moratorium on student debt repayment; and 4) a requirement for lenders to offer “forbearance” for other than non-student loans with such forbearance being any kind of assistance to borrowers that would typically be deferring loan payments. He said these provisions

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affected millions of consumers and the information in their credit reports. He said the Coronavirus Aid, Relief, and Economic Security (CARES) Act set out specific provisions directly related to credit reporting to help consumers, and one CARES Act provision was to require credit reporting agencies to report any loan in forbearance as current. He said two similarly situated consumers took out loans in 2018 and were current until February 2020; then, the first consumer had a late payment in 2020, which showed up in their credit report because it was not eligible for forbearance. He said the second consumer also had a late payment, but it was in March, so the second consumer was eligible for and obtained forbearance. He said pre-pandemic, both consumers would have received the same credit score through 2020, but because of the CARES Act provisions, these two similarly situated consumers are now treated differently, which resulted in unfair discrimination in insurance rating. He said CBISs used from March 2020 to the present were developed with data from 2016 to 2019 or earlier, when there were stable economic conditions and a stable relationship between consumer credit information and consumer insurance outcomes. He said that actuarial relationship changed significantly as economic conditions, consumer behavior, and insurance claims changed massively from March 2020 forward. He said it is therefore logical and reasonable to conclude that the segmentation produced by the 2016 to 2019 experience no longer remains actuarially valid for the period starting in March 2020. He also said absent new evidence, which will take time for claims to develop, it is unreasonable to believe CBISs based on pre-pandemic experience remain actuarially sound in the pandemic era.

Mr. Birnbaum said the expiration of pandemic protections will unfairly affect CBISs, as millions of consumers will see loans in forbearance become delinquent, a resumption of foreclosures and evictions, and a resumption in student loan payments becoming due. He said the pandemic has also disproportionately affected communities of color, as they have experienced higher rates of COVID-19 infections and deaths; higher rates of unemployment; and less savings or wealth to withstand the financial stress. He said before the pandemic, numerous studies documented the racial bias in credit scores, generally as well as CBISs, specifically. He said the pandemic has exacerbated that racial bias. He said state insurance regulators have the statutory responsibility and authority to place a moratorium on insurers' use of consumer credit information. He said a temporary moratorium was needed to enforce unfair discrimination laws for three years following the end of pandemic protections because credit report information and CBISs will be affected for several years following the end of pandemic protections. He suggested that state insurance regulators use an approach that prohibits insurers from raising rates on policyholders due to deteriorating credit score.

#### 4. Heard a Presentation on Regulatory Possibilities for Promoting Equity Through Telehealth

Rachel Klein (The AIDS Institute) said the COVID-19 pandemic led states to rapidly increase the scope of telehealth services through public and private payers. She said initial reports suggested that telehealth services during COVID-19 did more to preserve access for existing patients than to alleviate access disparities and may even have exacerbated these disparities. She said the rapid scaling up of telehealth capabilities among providers across the country offers lessons about what more needs to be done to ensure that telehealth realizes its promise as a tool for advancing equity. She said telehealth promises include increased access to care for people: 1) in a variety of underserved communities; 2) in areas with geographic or transportation challenges; 3) in areas that lacked providers; 4) of racial and ethnic minorities; 5) that were unstably housed or homeless; and 6) with stigma-related barriers. She said flexibility is the key to promoting equity through telehealth with: 1) more flexible scheduling to accommodate people with jobs that do not offer paid leave; 2) more flexible opportunities to literally "meet people where they are"; 3) more flexible access to providers who are not nearby; 4) more flexible access to specialists; 5) more flexible means to overcome stigma-related barriers; and 6) faster connection to care. She said access has expanded rapidly during the pandemic, largely due to state insurance regulators relaxing the restrictions related to: 1) cost-sharing through parity or free services; 2) provider reimbursement; 3) coverage of audio-only telehealth; 4) origination and distant sites; and 5) pre-authorization requirements. She said the good news is telehealth capacity has increased dramatically and quickly. She said patients and providers have more experience and are more comfortable with the system. She also said evidence of lessons learned and the data to support them are still emerging, but state insurance regulators should support payors to build on these systems to help telehealth fulfill its promise.

Karen Siegel (Health Equity Solutions—HES) discussed evaluating utilization data, assessing barriers to telehealth, preserving consumer choice, and safeguarding against unnecessary requirements or cost barriers for in-person care. She said telehealth services have the potential to reduce avoidable emergency department utilization (EDU) and create access for people who lack transportation or dependent care or who face stigma in their communities. She said these benefits will be limited if telehealth services only reach populations who already had access to in-person care. She said what is still needed is access to affordable broadband, unlimited data and minutes, access to the necessary devices, and on the ground training for tech literacy. She said other barriers to consumer access include insurance illiteracy and the inability to connect to providers. She said one issue still to be addressed is cultural or situational appropriateness and the consumer's right to opt out. She said this right is necessary due to cultural concerns over privacy, safety, language barriers, and personal comfort.

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### 5. Heard a Presentation on the Implementation of the NSA and Implications for Consumer Protections

Natasha Kumar (Families USA) provided an overview of the long-standing abusive practice of surprise medical billing and the protections passed into law through the federal No Surprises Act (NSA) in December 2020. As the release of the first of three interim final rules (IFRs) came out in July, she said consumer representatives wanted to present ways in which insurance commissioners could be sure consumers have the tools they need to ensure comprehensive protections when this law takes effect in January 2022. She said surprise billing occurs when a consumer is unknowingly, and through no fault of their own, charged an out-of-network fee for medical services obtained, such as emergency services, non-emergency services, ambulatory care, or air ambulance. She said almost 20% of emergency department (ED) visits result in a surprise bill; an average surprise bill is \$600, but bills can exceed \$100,000; and 10% of health plan spending can be attributed to surprise medical bills. She said 17 states have no balance billing protection; 16 states have partial balance billing protection; and 18 states have comprehensive balance billing protection. She said under the NSA, consumers are held harmless in surprise billing situations by cost-sharing at in-network rates; they are protected in emergency situations for ancillary services; and in certain non-emergency situations are required to be given notice and consent for certain out-of-network care. She said the initial payment is negotiated by the insurer and provider or facility. Otherwise, the insurer pays the qualifying payment amount (QPA). She said if the provider and payer do not agree on payment, they can initiate Independent Dispute Resolution (IDR), whereby the arbiter assesses each case based on certain criteria and awards a “win” to either the insurer and the plan or the provider and the facility. She said under IFR 1, the definition of facilities includes hospital, hospital outpatient department, critical access hospital, or an ambulatory surgical center; and consumers are seeking comment on urgent care facilities and retail clinics to be included and procedural considerations as to when the notice and consent are being provided to consumers. She said the payment mechanism indicates that the initial payment to the provider is the “recognized amount,” which gives deference to state payment rates. She said if state rates are not applicable, payment is the greater of billed charges or QPA, which is determined by the median of in-network contracted rates for the service in the geographical area. However, she said there are concerns that this may result in inflation associated with highly concentrated markets. She said geographic region, as defined by the NAIC, is taken to mean a metropolitan statistical area (MSA), but the air ambulance “geographic region” is considered to be all MSAs in a state.

Ms. Kumar said recommendations for insurance commissioners would include consumer education through an “About” section on websites and ensuring this is available to all linguistic groups; helping consumers obtain and understand advance notices of their potential liability; proactively reaching out to consumers, especially those in Black, Indigenous, and People of Color (BIPOC) communities, on new consumer protections. She said recommendations would also include a complaints process that would provide phone assistance, including referrals to other agencies that are enforcing this law; helping uninsured consumers open an arbitration case for a medical bill; helping consumers challenge and take enforcement action to address bills that consumers did not consent to and that should have been covered under the NSA. She also said recommendations would ensure that notice and consent forms reflect the correct set of protections that apply to the specific case of the patient, as state preemption applies in most cases, and in conjunction with other agencies, monitor the provision of consumer notices and consent forms.

### 6. Heard Survey Results from the Consumer Representatives Survey

In Spring 2021, consumer representatives commissioned a survey of state and local grassroots consumer organizations to broaden their perspective on insurance issues represented at the NAIC. This presentation described the survey’s goal, methodology, and preliminary results with the aim to bring the expertise, perspectives, and stories from these organizations to state insurance regulators and other NAIC stakeholders. Brenda J. Cude (University of Georgia—UGA) said the Disparities in Insurance Access online survey fielded May 17 to June 16 was funded by the Robert Wood Johnson Foundation (RWJF). She said the objective of the survey was to: 1) inform the work of state insurance regulators and the NAIC, especially the Special (EX) Committee on Race and Insurance; 2) focus on disparities and inequities in intersectional and overlapping systems of oppression; 3) assess common themes and patterns across demographic groups; and 4) assess the familiarity of community organizations with state DOIs.

Yosha Dotson (Georgians for a Healthy Future—GHF) said the survey sample consisted of 72 unique respondents who are leaders or senior employees of consumer organizations, primarily at the state, local, and regional level who were identified via grassroots sampling, seeking leaders or senior employees of nonprofit and community consumer organizations. She said collectively, the sample represented a mix of focus areas across different lines of insurance, geographic diversity, population focus diversity, as well as robust state and local contact lists. She said the organizational profile was primarily statewide health Black or African American and Latino or Hispanic in low income racial or ethnic groups. She said the challenges that were most commonly identified were around insurance affordability and literacy. She said the source of discrimination and bias was income, race, and ethnicity, as demonstrated by discriminatory or biased algorithms in rating. She said recommendations to

## **Draft Pending Adoption**

state insurance regulators were to develop more expansive partnership networks with community organizations in areas that represent diverse populations and embrace active, ongoing engagement with community partners. She said recommendations to the NAIC were to: 1) identify, promote, and replicate best practices across states; 2) create minimum community engagement standards; 3) collect more data to better assess and address systemic inequities; 4) examine current industry practices and public policies that disproportionately and negatively affect certain groups; 5) prioritize enhanced data collection and reporting of demographic data; and 6) conduct a deeper review of the algorithms used to set rates.

Having no further business, the NAIC/Consumer Liaison Committee adjourned.

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# FEDERAL HEALTH REFORM DEVELOPMENTS AND RECOMMENDATIONS FOR STATES

Presented By:

Deborah Darcy, American Kidney Fund

Carl Schmid, HIV+HEP Policy Institute

# Agenda

- Results of two health provisions in the American Rescue Plan
  - Expansion of APTCs and CSRs (through 2022)
  - Enhanced incentives for Medicaid expansion
- Build Back Better Act (passed in US House in Nov 2021)
  - APTC Expansions (through 2025)
  - Coverage for those in Medicaid “coverage gap”
  - Drug Pricing Policy
- No Surprises Act implementation
- Copay Accumulator

# Results of APTC Expansion in ARP

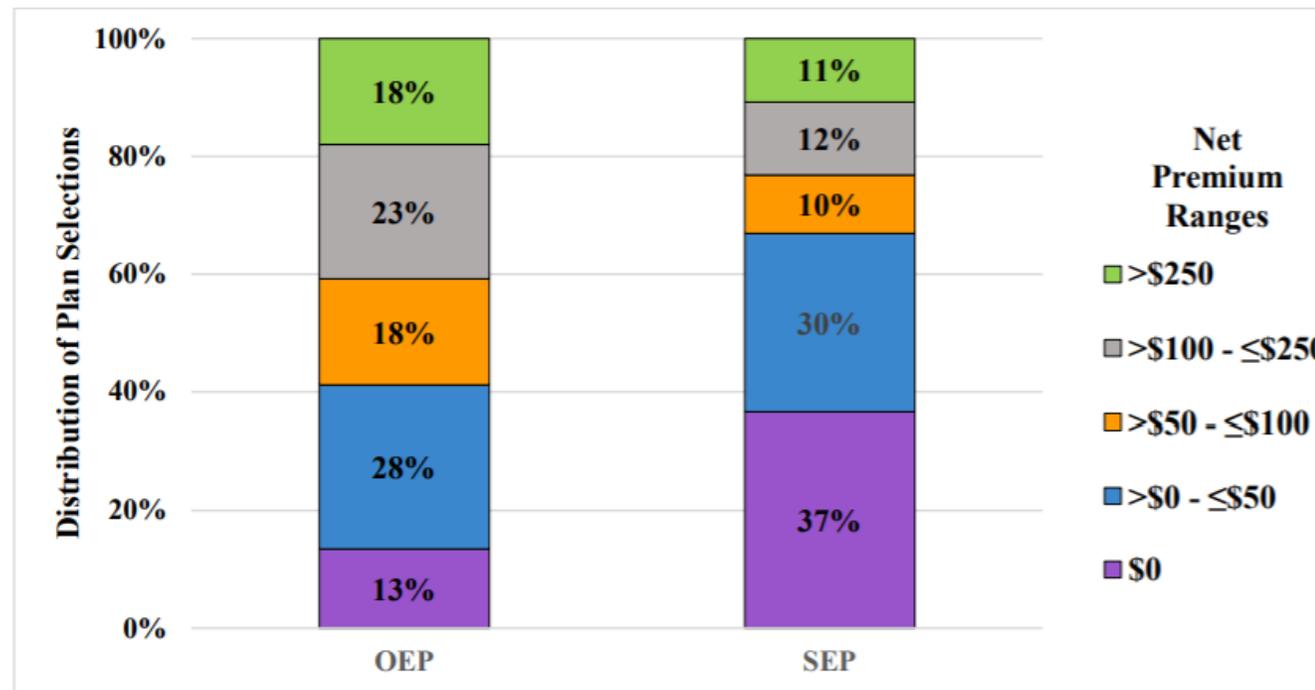
- The American Rescue Plan
  - Provided APTCs for those whose income is 400%+ FPL
  - Enhanced APTCs for those whose income is 100 to 400% FPL
  - Enhanced cost-sharing reductions
  - Coupled with the COVID-19 special enrollment period
- Result<sup>1</sup>
  - 2.8 million Americans enrolled in marketplace coverage

# Results of APTC Expansion in ARP

- Savings for consumers
- Premium: After ARP implementation, nearly half of HealthCare.gov consumers who selected a new plan during the SEP had a monthly premium of \$10 or less, compared to 25% during the same period in 2020.
- Cost-Sharing: The median deductible for new consumers selecting plans through HealthCare.gov between February 15 and August 15, 2021, decreased by more than 90%, from \$750 in 2020 and 2019 to \$50 in 2021.
- <https://www.hhs.gov/sites/default/files/2021-sep-final-enrollment-report.pdf>

# Results of APTC Expansion in ARP and SEP

- 2021 OEP & SEP Monthly Premium Distribution in HealthCare.gov States



# Results of APTC Expansion in ARP

- The 2021 SEP resulted in enrollment gains among people of color compared to prior years.
  - Among consumers who attested to a race or ethnicity:
    - 15 percent identified as African American/Black, compared to 9 percent and 11 percent in 2019 and 2020, respectively.
    - 19 percent self-reported as Hispanic/Latino, compared to 16 percent in 2019 and 2020.
  - <https://www.hhs.gov/sites/default/files/2021-sep-final-enrollment-report.pdf>

# Results of Medicaid Changes in ARP

- The American Rescue Plan
  - It provided enhanced federal matching funds available for the Medicaid expansion population for two years for the states who did not yet expand Medicaid.
  - It provided a new option to extend Medicaid coverage for post-partum women from the current 60 days to a full year.
  - Other provisions.
- Results
  - No new states expanded Medicaid based on the increase in federal matching funds. Oklahoma and Missouri, which had already planned to expand Medicaid, are eligible for the funds.

# Medicaid Coverage Gap

- 2.2 million people fall into the Medicaid “coverage gap:” they don’t qualify for Medicaid or ACA premium tax credits.<sup>7</sup>
- Over three-quarters of people in the coverage gap live in just 4 states: Florida, Georgia, North Carolina, and Texas.<sup>8</sup>
- 58% of those in the Medicaid coverage gap are racial and ethnic minorities: 28% African American/Black, 28% Hispanic/Latino, 1% American Indian or Alaska Native, 1% Asian or Pacific Islander.<sup>9</sup>
- 550,000 are essential workers.<sup>9</sup>
- These individuals need health insurance.

# Expansion of Medicaid on Chronic Illnesses

- Control measures for blood pressure and glucose (diabetes) have improved in expansion states compared with non-expansion states. The improvements in blood pressure and glucose control are greatest for African American/Black and Hispanic/Latino residents.<sup>10</sup>
- Compared to states that did not expand Medicaid, people living in states that expanded the program had lower mortality rates after going on dialysis and more patients were preemptively placed on the transplant list so they could be on dialysis for a shorter time.<sup>11, 12</sup>

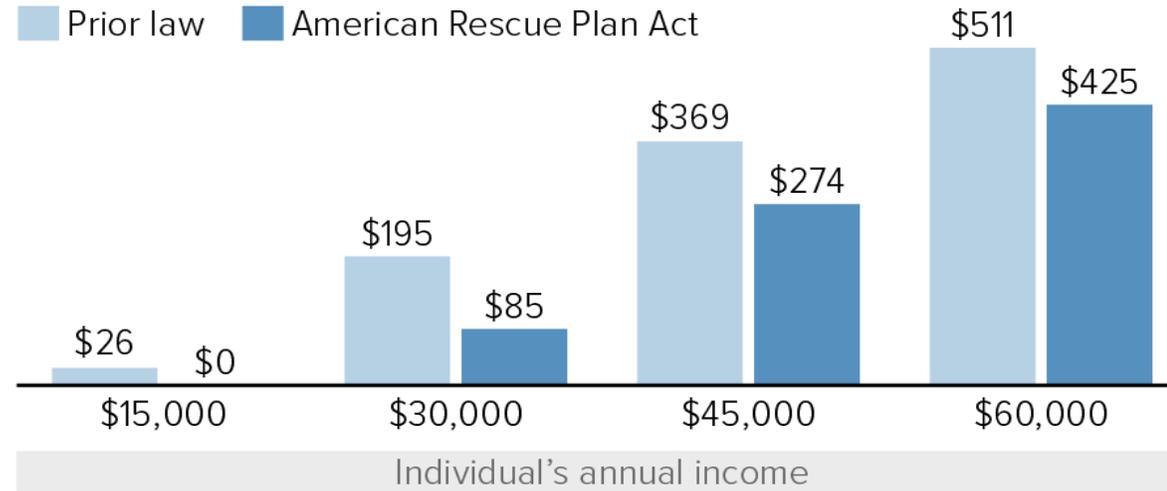
# Build Back Better Act

- Passed in the U.S. House of Representatives on November 19, 2021
  - ARP ACA enhanced premium tax credits would be extended through 2025.
  - ACA tax credits expanded to those who make below 100% of FPL to close the Medicaid coverage gap through 2025.
  - Insulin drug price: private health plans could charge a price of no higher than \$35 a month.
  - HHS would implement a “Drug Pricing Negotiation Program” for Medicare Part B and D.
  - Medicare Part D annual out-of-pocket cost and “smoothing” provision.

# Build Back Better Act

## Build Back Better Would Extend Rescue Plan Affordability Provision

Monthly premium for benchmark marketplace coverage for a 45-year-old, based on national average premium, 2021



Note: These premiums are applicable in all states except for those with different poverty level standards than the national standard (Alaska and Hawai'i) and those states that subsidize marketplace premiums beyond the federal subsidy (California, Massachusetts, New York, and Vermont).

Source: CBPP calculations based on American Rescue Plan Act

# **No Surprises Act**

- Holding the consumer harmless
- Independent dispute resolution – federal / state
- Notice of right to external review
- Education campaign

# Drug Transparency

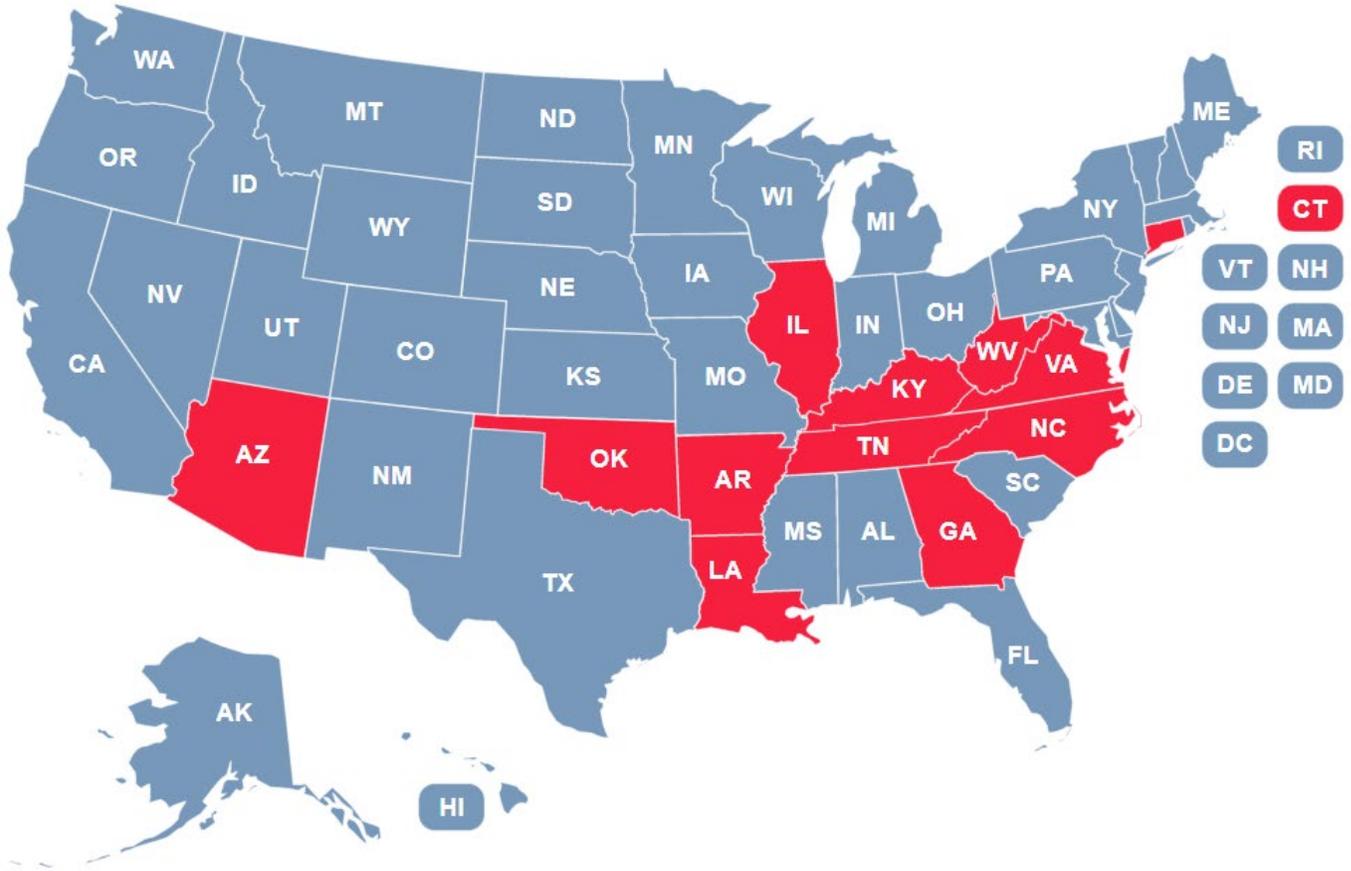
- Interim Final Rule Released November 17, 2021
  - Comments due January 24, 2022
- Plans must report on:
  - Total health care spending, broken down by type of cost including Rx's;
  - The 50 most frequently dispensed brand Rx's;
  - The 50 costliest Rx's by total annual spending;
  - The 50 Rx's w/ greatest increase in plan or coverage expenditures;
  - Rebates, fees, & other remuneration paid by drug manufacturers to the plan or issuer in each therapeutic class of drugs, as well as for each of the 25 Rx's that yielded the highest amount of rebates; and
  - The impact of rebates, fees, and other remuneration on premiums and out-of-pocket costs.
- First Annual Filing due December 27, 2022.

# Copay Accumulator

## Patients Continue to Have Issues

- 18 million Americans report not being able to afford their prescription drugs.<sup>13</sup>
- Many people with complex, chronic, or rare diseases need specialty or high-costs drugs.
- Manufacturers offer copay assistance, which help pay for their drugs.
- Growing number of insurers deny the assistance from counting towards deductible & cost-sharing obligations.
- 12 states & PR have passed laws requiring copay assistance to count.
- NBPP
- “Help Ensure Lower Patient (HELP) Copays Act” (H.R. 5801).

# State Enacted Laws



Source: Aimed Alliance

# Stats on Diseases and Illnesses in the US

People in the United States need access to health insurance. Illnesses need to be caught early. The uninsured rate is about 9.7% of the population 13.9% of nonelderly adults.<sup>14</sup>

- 34.2 million people of all ages—or 10.5% of the US population—had diabetes.<sup>3</sup>
- 108 million people have hypertension.<sup>10</sup>
- Someone in the United States will have a heart attack every 39 seconds.<sup>4</sup>
- The rate of new cases of cancer is 442.4 per 100,000 men and women per year (based on 2013–2017 cases).<sup>5</sup>
- There are 37 million Americans with kidney disease and 556,000 people on dialysis.<sup>6</sup>

# Recommendations for State Regulators

- Increase marketing and outreach to consumers so they are educated about:
  - ACA enhanced tax credits.
  - No Surprises Act
- Partner with organizations that work with underserved communities to reach these individuals.
- Prohibit insurers from denying a copay card to be used against a consumer's deductible through regulation or working with the legislature.
- Expand state Medicaid programs.

# Resources

**1 2021 FINAL MARKETPLACE SPECIAL ENROLLMENT PERIOD REPORT:**

<https://www.hhs.gov/sites/default/files/2021-sep-final-enrollment-report.pdf>

**2 Marketplaces Poised for Further Gains as Open Enrollment Begins**

<https://www.cbpp.org/sites/default/files/10-29-21health.pdf>

**3 The National Diabetes Statistics Report**

<https://www.cdc.gov/diabetes/pdfs/data/statistics/national-diabetes-statistics-report.pdf>

**4 Heart Disease and Stroke Statistics—2021 Update**

<https://www.ahajournals.org/doi/10.1161/CIR.0000000000000950>

**5 National Cancer Institute, Understanding Cancer, Cancer Statistics**

<https://www.cancer.gov/about-cancer/understanding/statistics>

**6 Kidney Disease Statistics for the United States, Fast Facts on Kidney Disease**

<https://www.niddk.nih.gov/health-information/health-statistics/kidney-disease>

**7. Filling the Coverage Gap: Policy Options and Considerations**

<https://www.kff.org/medicaid/issue-brief/filling-the-coverage-gap-policy-options-and-considerations/>

**8 The Inequity of the Medicaid Coverage Gap and Why It Is Hard to Fix It**

<https://jamanetwork.com/journals/jama-health-forum/fullarticle/2785323>

**9 Closing Medicaid Coverage Gap Would Help Diverse Group and Narrow Racial Disparities**

<https://www.cbpp.org/research/health/closing-medicaid-coverage-gap-would-help-diverse-group-and-narrow-racial>

**10 Medicaid expansion improves hypertension and diabetes control** <https://www.medicalnewstoday.com/articles/medicaid-expansion-improves-hypertension-and-diabetes-control>

**11 Association of Medicaid Expansion With 1-Year Mortality Among Patients With End-Stage Renal Disease**

<https://jamanetwork.com/journals/jama/fullarticle/2710505>

**12 Addressing Kidney Transplant Waiting List Disparities Through Medicaid Expansion**

<https://ldi.upenn.edu/our-work/research-updates/addressing-kidney-transplant-waiting-list-disparities-through-medicaid-expansion/>

**13. 18 Million Americans Can't Pay for Needed Meds**

<https://www.usnews.com/news/health-news/articles/2021-09-22/18-million-americans-cant-pay-for-needed-meds>

**14. Health Insurance Coverage: Early Release of Estimates From the National Health Interview Survey, 2020**

<https://www.cdc.gov/nchs/data/nhis/earlyrelease/insur202108-508.pdf>

# Questions



# Insurance Privacy Protection: Do the “Right” Thing

## A Consumer Perspective

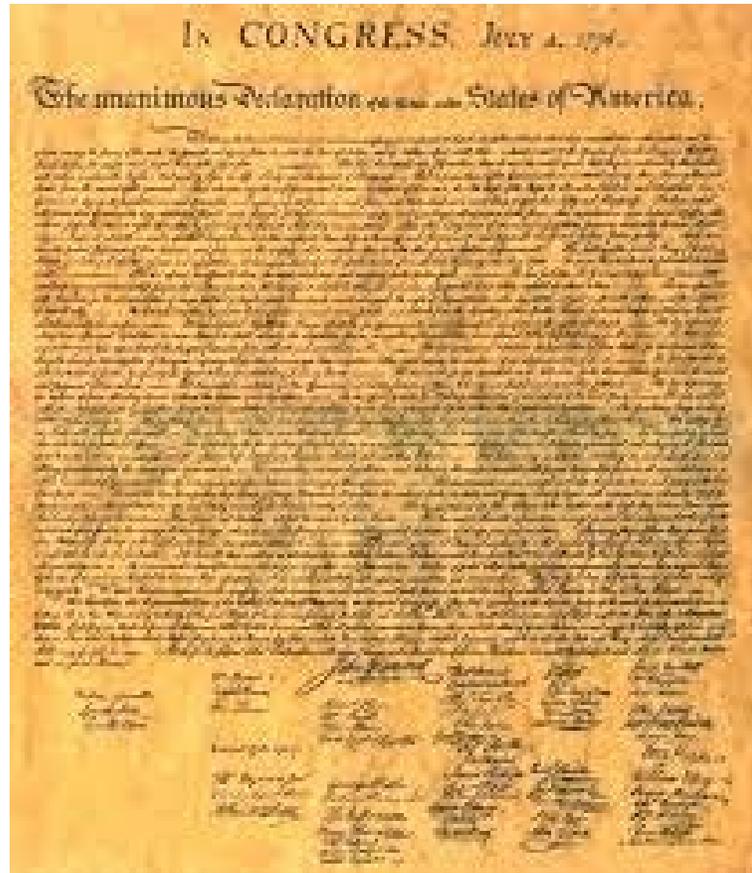
Presented to the NAIC Consumer Liaison Committee  
December 13, 2021

Harold M. Ting, PhD  
NAIC Consumer Representative

# Privacy Protection (D) WG 2021 Charges

- What “rights” should consumers have
  - *Opt out of data sharing*
  - *Opt in of data sharing*
  - Correct information
  - Delete information
  - Data portability
  - *Restrict use & collection of data*

# Fundamental “Rights”



*“We hold these Truths to be self evident, that all Men are created equal, that they are endowed by their Creator with **certain unalienable Rights**, that among these are Life, Liberty, and the Pursuit of Happiness....”*

*Declaration of Independence*

# Fundamental Consumer Rights

- *Consumer rights* should be defined by ethical principles
- *Fair Information Principles* that protect the privacy rights of consumers <sup>1</sup>
- NAIC needs its Fair Information Principles *for the insurance industry* as the basis for revising its model acts & regulations

# Code of Fair Information Practices, 1973 <sup>2</sup>

1. **Openness** - *personal data record-keeping should not be hidden*
2. **Access** - *people should be able to find out what info is collected & its use*
3. **Secondary Use** - *people should be able to prevent use of their info obtained for one purpose from being used or made available for other purposes without the person's consent.*
4. **Correction** – *people should be able to correct or amend an inaccurate record about them*
5. **Security** - *Organizations must assure the reliability of the data for their intended use & take precautions to prevent its misuse.*

# Regulators Have Had to Update Principles

- Changes in technology & data practices
  - New & increasingly invasive technologies
  - Collection of personal data beyond what is needed
  - Uses of AI that can have unwanted consequences
  - Significant security breaches posing serious fraud risks
- Increasing consumer concerns about privacy

# NAIC Models Are Outdated

- NAIC model laws & regulations
  - **1980**: Insurance Information & Privacy Protection Model Act (#670)
  - **1998**: Health Information Privacy Model Act (#55)
  - **2000**: Privacy of Consumer Financial & Health Information Regulation (#672)
- Based on Fair Credit Reporting Act (1970), Federal Privacy Act (1974), HIPAA (1996)

# **Fair Information Principles Must Be Real-World Based**

# Corporate Privacy Policies Are Too Complex

- Pew Research Center survey of 4,272 adults in 2019 <sup>3</sup>
  - Adults don't understand company privacy policies
    - Only 9% of adults always read the privacy policy
    - When they read the policies, only 22% read them completely, before agreeing to their terms
  - 79% are concerned how companies use their information, especially data they do not wish to share
- Ipsos 2018 Global Advisor survey of over 1,000 U.S. adults <sup>4</sup>
  - 75% said they should be able to refuse to let companies collect their data
  - 66% would be more comfortable if their data were not shared or sold
  - 53% did not trust financial services companies to use their data "in the right way"

# Companies Collect Excessive Data

- “Data collection has been the default habit for engineers & database architects for the past few decades....engineers tend to collect more data because they don’t know if an AI model could potentially benefit from it in the future.”  
**Bessemer Venture Partners** <sup>5</sup>
- A survey by **Lewis & Ellis Actuaries and Consultants** found that most insurance companies surveyed check social media sites during their underwriting process. Most use Google, and some check LinkedIn, Facebook, Instagram or Twitter. <sup>6</sup>
- Collecting data not needed for intended transactions facilitates use of hidden algorithms that may harm certain populations unintentionally or illegally. <sup>7</sup>

# Personal Data Is Poorly Protected on the Internet

## 1. Many Privacy Policies Don't Protect

- *“We may use cookies & other technologies such as web beacons and pixels to collect information about your online activities over time & across third-party websites or online services which may allow a third party to track your online activities over time & across different sites when you use the Websites.”*
- *“The Websites may not respond to Do Not Track requests or headers from some or all browsers.”*

# Personal Data Is Poorly Protected on the Internet

## 2. "Dark Pattern" interfaces subvert user intent <sup>8</sup>

- *"Facebook & Google have privacy intrusive defaults, where users who want the privacy friendly option have to go through a significantly longer process. They even obscure some of these settings so that the user cannot know that the more privacy intrusive option was preselected."*
- *"The popups from Facebook, Google & Windows 10 have design, symbols & wording that nudge users away from the privacy friendly choices. Choices are worded to compel users to make certain choices, while key information is omitted or downplayed. None of them lets the user freely postpone decisions. Also, Facebook & Google threaten users with loss of functionality or deletion of the user account if the user does not choose the privacy intrusive option."*

# Personal Data Is Poorly Protected on the Internet

## 3. Internet of Things (IoT) Data Collection

- “U.S. patients may have little access to their raw data collected & held by device manufacturers in the United States under the HIPAA Privacy Rules.”<sup>9</sup>
- FTC policy statement, 9/15/21: the 2009 Health Breach Notification Rule covers personal health info collected by digital apps & wearable devices.<sup>10</sup>

# Data Breaches Are Inevitable

- Data breaches occur, no matter how diligent organizations are about data security
- Identity Theft Research Ctr statement to Senate Commerce Committee <sup>11</sup>
  - Publicly reported breaches through Sept 2021 (1,291) exceeded 2020 total by 17%
  - 160 million people affected In Q3 2021

# Privacy Enforcement Capability is Poor <sup>12</sup>

- “Our current privacy laws are woefully out of date and fail to provide the necessary protections for our modern age. We also now face threats from foreign adversaries that target the personal data stored in U.S. companies and U.S. government agencies.”
- “The FTC only has authority to bring enforcement actions against unfair and deceptive practices in the marketplace, and it lacks the ability to create prospective rules for data security.”
- “The Consumer Financial Protection Bureau similarly lacks data protection authority and only has jurisdiction over financial institutions. Neither of these agencies possess the resources needed to address data security.”

# Fair Insurance Industry Information Principles: What I Deserve as a Consumer

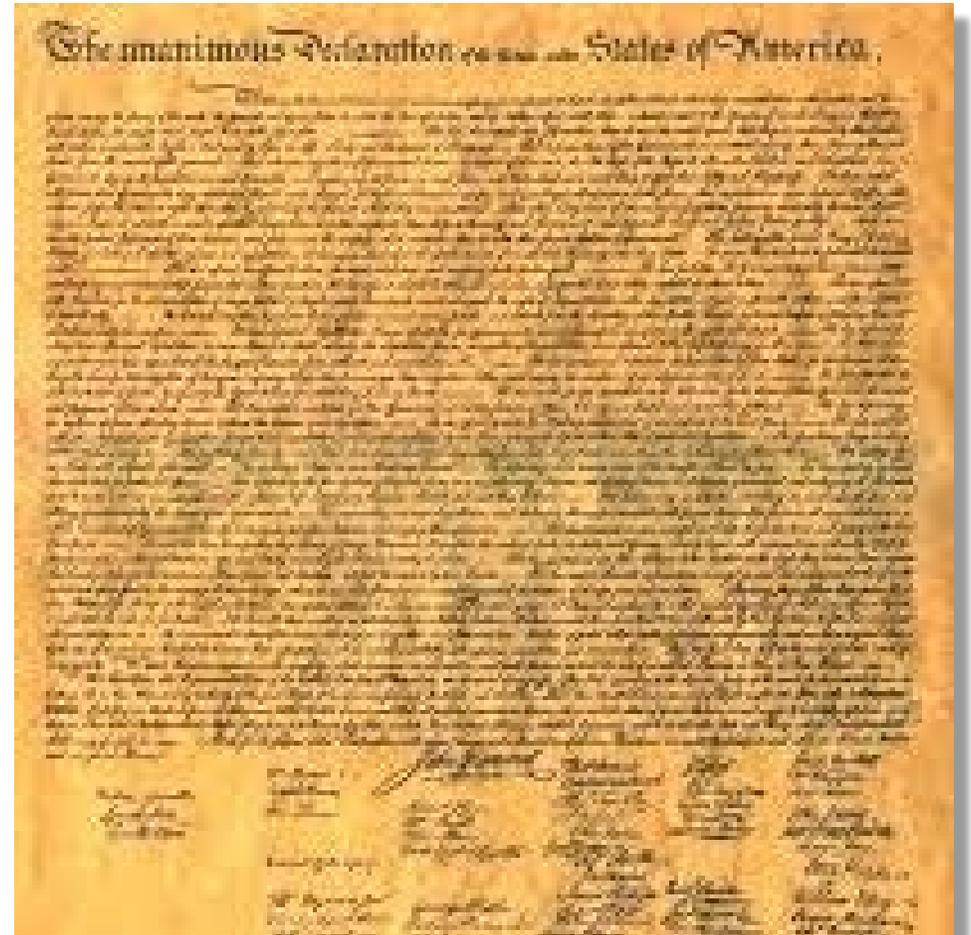
1. **Notice** - *of purpose and rights at time of collection*
2. **Openness** - *clear & periodic notice of privacy policies & practices, reasons for any adverse actions*
3. **Collection** - *data minimization (only data needed for transaction)*
4. **Data quality** - *keep relevant, accurate, up-to-date as long as used*
5. **Use limitation** - *only as needed for provision of insurance, except as permitted or required by law*
  - *ability to opt-out of sharing with affiliates, where not requested*
  - *Sharing with unrelated third parties prohibited unless consent given for specific parties*

## Insurance Fair Information Principles (cont.)

6. **Access** - ability to obtain information in consumer-friendly formats & sources of data in reasonable time frames
7. **Correction** - *right to correct, amend, delete or add information where accuracy is legally disputed*
8. **Data security** - *protect all information linked to consumer through reasonable safeguards; delete or de-identify when no longer used*
9. **Accountability** - *appropriate penalties to incent compliance.*

# In Summary

- Privacy protection should focus on protecting **consumers**
- Protections should be based on **values & ethics**
- NAIC needs to agree upon **Fair Information Principles** for the **insurance industry**
- Then apply those principles to revise its model laws & regulations



# Endnotes

1. Robert Gellman, “Fair Information Practices: A Basic History”, Version 2.21, September 3, 2021, pp 44 45 at [https://www.bobgellman.com/rq\\_docs/rq\\_FIPShistory.pdf](https://www.bobgellman.com/rq_docs/rq_FIPShistory.pdf)
2. Electronic Privacy Information Center, “The Code of Fair Information Practices”, at <https://epic.org/fair-information-practices/>
3. Pew Research Center, “Americans and Privacy: Concerned, Confused And Feeling Lack of Control Over Their Personal Information”, November 15, 2019.
4. Ipsos, “Global Citizens & Data Privacy”, World Economic Forum, Davos 2019 at <https://www.ipsos.com/sites/default/files/global-citizens-data-privacy.pdf>
5. A. Ferrara, J. Schwerin and M. D’Onofrio, “How Data Privacy Engineering Will Prevent Future Data Oil Spills”, Bessemer Venture Partners, Sept 2019.

## Endnotes (cont.)

6. Cameron Huddleston, “How Life Insurance Companies Get Intel on You”, *Forbes Advisor* updated on Mar 26, 2021 at <https://www.forbes.com/advisor/life-insurance/personal-data/>.
7. Erin McCormick, “What happened when a ‘wildly irrational’ algorithm made crucial healthcare decisions”, *The Guardian*, July 2, 2021, at <https://www.theguardian.com/us-news/2021/jul/02/algorithm-crucial-healthcare-decisions>
8. “Deceived by Design: How Tech Companies Use Dark Patterns to Discourage Us from Exercising Our Rights to Privacy”, NORWEGIAN CONSUMER COUNCIL (Jun. 27, 2018) at <https://fil.forbrukerradet.no/wp-content/uploads/2018/06/2018-06-27-deceived-by-design-final.pdf>

## Endnotes (cont.)

9. G. Cohen, S. Gerke, D.B. Kramer, “Ethical & Legal Implications of Remote Monitoring of Medical Devices”, [The Milbank Quarterly](#), Oct. 2020.
10. M. Bellamoroso, ed. by A. Pyrinis, “FTC Signals Move Towards Tighter Data Privacy for Healthcare Apps”, Harvard Journal of Law & Technology Digest, Nov 6, 2021 at [http://jolt.law.harvard.edu/digest/ftc signals move towards tighter data privacy for healthcare apps](http://jolt.law.harvard.edu/digest/ftc%20signals%20move%20towards%20tighter%20data%20privacy%20for%20healthcare%20apps)
11. Identity Theft Research Center, Identity Theft Resource Center to Share Latest Data Breach Analysis With U.S. Senate Commerce Committee, Oct 6,2021 at [https://www.idtheftcenter.org/identity theft resource center to share latest data breach analysis with u s senate commerce committee number of data breaches in 2021 surpasses all of 2020/](https://www.idtheftcenter.org/identity%20theft%20resource%20center%20to%20share%20latest%20data%20breach%20analysis%20with%20u%20s%20senate%20commerce%20committee%20number%20of%20data%20breaches%20in%202021%20surpasses%20all%20of%202020/)

## Endnotes (cont.)

12. Electronic Privacy Information Center, "Enforcement of Privacy Laws" at <https://epic.org/issues/data-protection/enforcement-of-privacy-laws/>

# Related Information

# Proposed Consumer Bill of Rights, Developed by US Department of Commerce 2012

1. **INDIVIDUAL CONTROL** *Consumers have a right to exercise control over what personal data companies collect from them & how they use it.*
2. **TRANSPARENCY** *Consumers have a right to easily understandable & accessible information about privacy & security practices.*
3. **RESPECT FOR CONTEXT** *Consumers have a right to expect companies will collect, use, & disclose personal data in ways that are consistent with the context in which consumers provide the data.*
4. **SECURITY** *Consumers have a right to secure & responsible handling of personal data.*
5. **ACCESS & ACCURACY** *Consumers have a right to access & correct personal data in usable formats.*
6. **FOCUSED COLLECTION** *Consumers have a right to reasonable limits on personal data companies collect & retain. Companies should securely dispose of or de-identify personal data once they no longer need it, unless they have a legal obligation to do otherwise.*
7. **ACCOUNTABILITY** *Consumers have a right to have personal data handled by companies with appropriate measures in place to assure they adhere to these principles.*

# Federal Code: HIPAA Minimum Necessary Standard

- The minimum necessary standard, a key protection of the HIPAA Privacy Rule, is derived from confidentiality codes and practices in common use today. It is based on sound current practice that protected health information should not be used or disclosed when it is not necessary to satisfy a particular purpose or carry out a function.

[45 CFR 164.502(b), 164.514(d)]

# State Farm's Privacy Principles

- We do not sell customer information.
- We do not allow those who are doing business on our behalf to use our customer information for their own marketing purposes. We contractually require any person or organization providing products or services on our behalf to protect State Farm customer information.
- We do not share customer medical information within the State Farm family of companies unless:
  - you expressly authorize it; or
  - it is permitted or required by law; or
  - your insurance policy contract with us permits us to do so.
- We may share customer information and permit others to use that information if you give us your consent, it is necessary to complete a transaction you request, or it is otherwise permitted by law.
- We handle information about former and prospective customers the same as existing customers.



NATIONAL  
MEETING  
FALL  
2021

Attachment Five  
Consumer Liaison Committee  
12/13/21



## When private options shrink for insuring property ...

Residual market entities and  
consumer challenges

**Amy Bach, United Policyholders**

December 13, 2021

## Insurance Provided By FAIR Plans By State, Fiscal Year 2020 (1)

State	Number of policies			Exposure (2) (\$000)	Direct premiums written (\$000)
	Habitational	Commercial	Total		
California	198,206	4,690	202,896	\$118,203,282	\$308,640
Connecticut	1,461	43	1,504	272,264	2,034
Delaware	1,272	54	1,326	224,842	490
D.C.	128	14	142	51,095	143
Florida (3)	568,051	5,376	573,427	144,799,737	1,182,125
Georgia	12,508	364	12,872	1,780,475	15,826
Illinois	2,427	38	2,465	313,000	3,417
Indiana	1,041	25	1,066	988,600	1,058
Iowa	1,120	16	1,136	67,606	823
Kansas	13,476	169	13,645	851,530	7,576
Kentucky	6,849	304	7,153	340,815	3,765
Louisiana (3)	39,671	1,471	41,142	6,658,437	59,195
Maryland	925	43	968	314,977	729
Massachusetts	209,342	192	209,534	86,249,126	299,350
Michigan	15,334	233	15,567	2,278,644	10,996
Minnesota	4,399	52	4,451	421,493	3,107
Mississippi (4)	4,309	0	4,309	216,999	2,651
Missouri	2,088	82	2,170	153,986	1,588
New Jersey	9,418	236	9,654	1,351,405	6,281
New Mexico	9,168	145	9,313	86,821	4,885
New York	27,756	1,869	29,625	8,152,000	28,444
North Carolina	193,723	5,104	198,827	24,677,084	111,968

## Insurance Provided By Beach And Windstorm Plans, Fiscal Year 2020 (1)

State	Number of policies			Exposure (2) (\$000)	Direct premiums written (\$000)
	Habitational	Commercial	Total		
Alabama	16,288	33	16,321	\$4,819,371	\$22,032
Mississippi	14,397	250	14,647	2,406,870	26,155
North Carolina	201,178	9,557	210,735	78,198,588	348,265
South Carolina	16,498	250	16,748	5,193,668	32,829
Texas	187,529	7,924	195,453	55,009,638	369,601
<b>Total</b>	<b>435,890</b>	<b>18,014</b>	<b>453,904</b>	<b>\$145,628,135</b>	<b>\$798,882</b>

**California:** 202,896  
**Florida:** 573,427  
**Louisiana:** 41, 142  
**Massachusetts:** 209,534  
**North Carolina:** 198,827/210,735  
**South Carolina:** 198,827/16,748  
**Texas:** 79,575/195,453



## Tension points:

- “Take All Comers”/ Adverse risk pool
- Rates/Caps/Subsidies
- Adequacy of coverage: Max dwelling limits, HO-3 or named perils
- Post Loss Assessments
- Reinsurance. ILS, Cat Bonds, Fl Hurricane CAT Fund
- Prevailing view that private options should be superior
- Legislative engagement



## Consider:

As climate change reduces private appetite for insuring existing homes, public options can and should provide essential, affordable protection

[HO-3, dwelling RCV, loss of use coverage, code upgrade, debris removal, liability]

Logic suggests there be different standards for the pricing and quality of policies on *newly constructed homes in regions vulnerable to climate change*

Coming to the risk vs. Risk increased during ownership of home



# California Fair Plan Basics:

Established by statute (California Insurance Code sections 10091 et seq.) in August, 1968. All licensed property/casualty insurers that write basic property insurance required by Insurance Code sections 10091(a) and 10095(a) are members of the FAIR Plan. The FAIR Plan issues policies on behalf of its member companies. Each member company participates in the profits, losses and expenses of the Plan in direct proportion to its market share of business written in the state.

- Basic policy *does not match an HO-3*. Fire, Lightning, Internal Explosion, Smoke
- Limited loss of use coverage
- Coverage for vandalism is optional
- Max dwelling limit increased from \$1.5 M to \$3M in 2021
- Some options for replacement cost coverage, deductible levels



## Notable CA developments:

- CFP is a critical financial lifeline for CA property owners
- Requirement of 3 turn downs to get a CFP policy no longer enforced
- CDI and CFP are in litigation over HO-3 mandate
- Legislature gave CDI non-renewal moratorium authority which is significantly helping maintain stability in the private market and prevent drastic overpopulation of CFP



## “Opposite land”

(CA Fair Plan President Annelise) “Jivan urged lawmakers to make other insurers also write more policies in fire-prone areas so that fewer people are having to turn to the FAIR Plan.

”I jokingly say pretty regularly, ‘I work in (an) opposite world,’” she said. “I probably run the only company that, really, success is measured by a shrinking portfolio and a shrinking customer base, because that is actually a sign of a very healthy voluntary or private market. At the moment, that's not the case.”



Source: CBS8 San Diego, April 5, 2021

# Florida Citizens:

Citizens was created by the Florida Legislature in August 2002 as a not-for-profit, tax-exempt, government entity to provide property insurance to eligible Florida property owners unable to find insurance coverage in the private market. Citizens is funded by policyholder premiums; however, Florida law also requires that Citizens levy assessments on most Florida policyholders if it experiences a deficit in the wake of a particularly devastating storm or series of storms.

Citizens operates according to statutory requirements established by the Florida Legislature and is governed by a Board of Governors. The board administers a [Plan of Operation](#) approved by the Florida Financial Services Commission, an oversight panel made up of the Governor, Chief Financial Officer, Attorney General and Commissioner of Agriculture.



# FL Citizens basics

- Basic policy matches an HO-3 form
- Max available dwelling limits are county-specific (\$700k, \$1M)
- Options include code upgrade coverage, sinkhole coverage, replacement cost on contents



# Depopulation efforts:

Florida law requires that Citizens create programs to help return Citizens policies to the private market and reduce the risk of assessments for all Floridians. These programs are subject to the approval of the Office of Insurance Regulation (OIR).

The Depopulation program works with private-market insurance companies interested in offering coverage to Citizens policyholders. Participating companies must be approved by the OIR. Approved takeout companies can offer to take over your Citizens policy at any time during your policy period.

The Depopulation Unit works directly with active and prospective Florida insurers and representatives to facilitate the transfer of policies.

Citizens' policy count had swelled in 2012 to 1.5 million...Depopulation efforts whittled the count to a low of 419,475 in October 2019.



## Current FL snapshot:

Citizens is now on-course to see its policy count surpass 1 million in 2022, rising further by the end of the year... One driver of an accelerating rate of policies to Citizens has been reinsurance costs, which have risen considerably for some Florida carriers.

Source: <https://www.artemis.bm/news/florida-citizens-growth-could-near-previous-highs-depopulation-in-focus/>

Residents can purchase Citizens insurance if they cannot find private insurance or if a private insurer's policy is priced 15% above a comparable Citizens' offering. State law precludes Citizens from raising renewal rates more than 10%.

Source: [fernandinaobserver.com/general/state-subsidized-insurer-adds-100000-policies-as-florida-property-insurance-rates-surge](https://fernandinaobserver.com/general/state-subsidized-insurer-adds-100000-policies-as-florida-property-insurance-rates-surge)



## Notable in FL:

Florida Market Assistance Plan (FMAP) - Free referral service that helps consumers find personal residential insurance with authorized private-market insurance companies

Florida Hurricane Catastrophe Fund (FHCF) - a tax exempt state trust fund that provides reimbursement to residential property insurers for a portion of their Florida catastrophic hurricane losses. It is intended to be self-supporting, with funding primarily from actuarially-determined premiums paid by residential property insurance companies, and, in some circumstances, revenue bonds backed by emergency assessments on a variety of property and casualty insurance premiums.



# Louisiana Citizens

- Established: Created by the Louisiana legislature in 2006 ([RS 22:1430.2](#)) as a nonprofit organization created to provide insurance products for residential and commercial property applicants who are in good faith entitled, but unable, to procure insurance through the voluntary insurance marketplace.
- Coverage Basics: LA Citizens offers an HO-3 and other options
- Louisiana Citizens developed a process in 2008 to “depopulate.” New or existing private insurance companies are encouraged to assume policies currently covered by Louisiana Citizens from policies approved for depopulation in accordance with LSA-R.S 22:2314. Through this process, Louisiana Citizens can transfer selected policies back to the private insurance market in accordance with LSA-R.S. 22: 2314.



1/18/21

Citizens, which covers properties that the private insurance industry won't, is now in its 14th round of depopulation... Meanwhile, despite three hurricanes and two tropical storms hitting Louisiana during the 2020 season, Citizens reports no uptick in home or business owners seeking coverage, a sign of health in the local insurance market.

“By enacting a proactive reinsurance strategy and using modeling to select policies for depopulation, Citizens is in a strong financial position and providing stability to the homeowners market during a turbulent time,” said Donelon. “Despite the multiple hurricanes that hit the Louisiana coast last year, Citizens is in a great place to weather these financial storms and continue to support private sector competition in the property insurance marketplace.” Source: [www.bizneworleans.com/insurer-of-last-resort-sees-continued-drop-in-policy-count/](http://www.bizneworleans.com/insurer-of-last-resort-sees-continued-drop-in-policy-count/)

11/17/21

At present, it is responsible for over 38,600 policies in Louisiana and 0.28% of the state's homeowner's market, but expects to increase its policy count by around 5,000 next year, while at the same time depopulating roughly 100 policies.

Source: <https://www.reinsurancene.ws/reinsurers-to-absorb-most-of-louisiana-citizens-461m-ida-loss/>



## Notable in LA:

Louisiana: Citizens expanded its commercial limits to \$10 million on an individual building, \$3.2 million for contents and \$20 million in the aggregate, versus previous limits of \$5.5 million, \$2.2 million and \$11 million, respectively.

Board members noted that the increase would better enable Citizens to accommodate policyholders seeking coverage when they already have an open claim with an insurer during renewals.



# Thank you...Questions?

Contact info: [amy.bach@uphelp.org](mailto:amy.bach@uphelp.org)

## Resources:

- Dropped by your insurer, where to go for help ([www.uphelp.org](http://www.uphelp.org))  
[CA, WA, NY, NJ, CO]
- The lowdown from UP on the CA Fair Plan ([www.uphelp.org](http://www.uphelp.org))





# Demand Surge

NAIC 2021 Fall National Meeting  
Consumer Liaison Presentations  
Ken Klein

# Who am I?

- Consumer Rep since 2019.
- Law Professor researching how natural disasters expose and exacerbate issues of insurance affordability, insurance availability, and underinsurance.

# Primary Factors Arguably Causing Significant Post-Catastrophe Underinsurance:

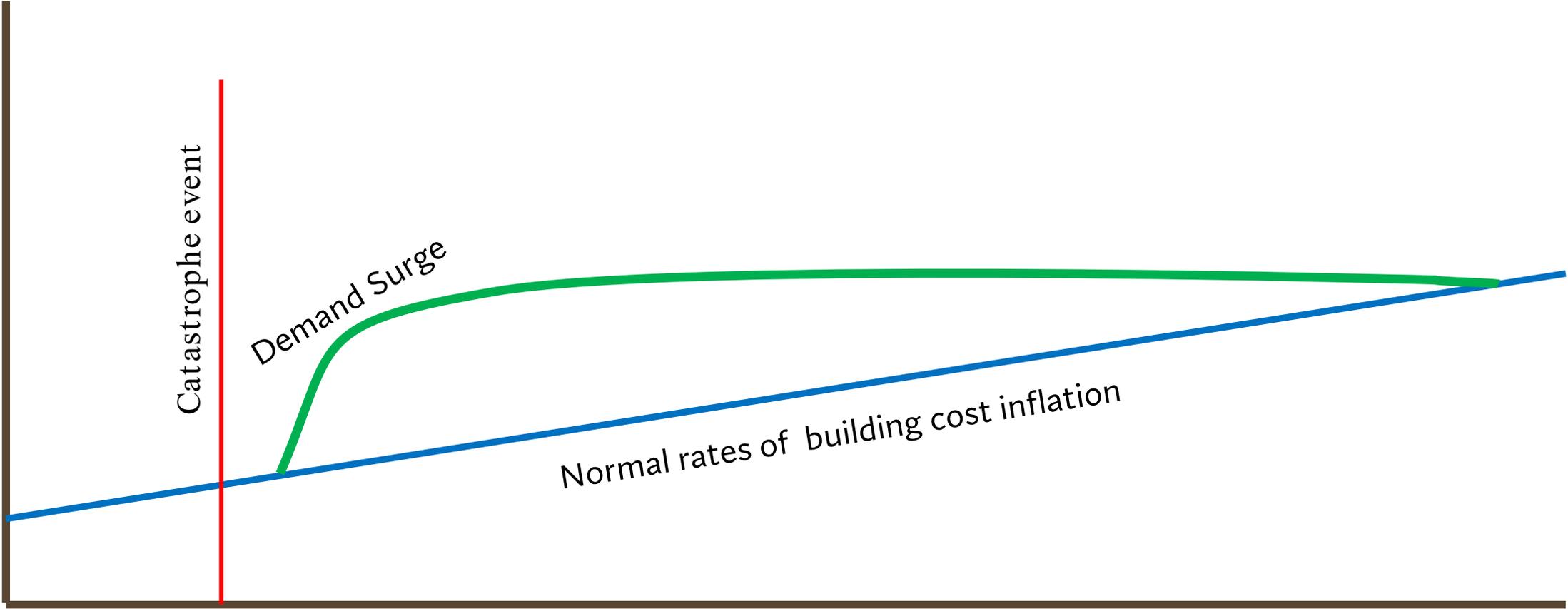
## *Before the Catastrophe:*

- Insurer inaccurately estimates reconstruction cost
- Homeowner accepts insurer's quote of Coverage A

## *After the Catastrophe:*

- Demand surge

# Demand “Surge”



# Demand Surge by the Numbers

- 15% - 30% increase in reconstruction cost post-disaster (primary variable is neighborhood)
- Begins ~6 months after disaster
- Peaks ~6 months after that
- May take several years to reabsorb

# Where Demand Surge may be covered in a policy:

- Coverage A limits in an RCV policy.
- Optional over-insurance in an NFIP policy.
- ERC Endorsement in a hazard policy.

# Demand Surge probably is not a dominant factor in underinsurance:

- In California's 2008 wildfires, of insureds who had full RCV and had ERC, 59% still were underinsured.
- A study of one insurer after the 2017 Wine Country fires found 94% of homeowners who had full RCV and 50% ERC still were underinsured by 10% or more.

# Information Regulators could gather for more insight:

- Does (or Should) Coverage A Anticipate Demand Surge: Comparison of (1) percentage of insured homes with a prediction of Demand Surge included in the estimated reconstruction costs (for purposes of quoting coverage), to (2) the percentage total losses that are a result of a catastrophe event.
- How Much Demand Surge Does a Home Actually Experience: Comparison of (1) early post-disaster reconstruction estimates on a home, to (2) a second estimate months later (where the only variable between the estimates is the date the estimate was done).
- How Well Does Coverage A Predict Demand Surge: Comparison of (1) demand surge experienced by a home, to (2) the demand surge predictions in the estimate of cost of reconstruction of that home.

# Possible Action items:

- Require inclusion of Demand Surge in RCV estimates.
- Require disclosure to the regulator of how Demand Surge calculations are made.
- Require disclosure (to regulators and to insureds) of what percentage of Demand Surge is in RCV estimates.
- Toll time period limits on policyholder benefits if Demand Surge delays reconstruction (see, for example, Colorado DOI Bulletin No. B-5.42).
- Reform Coverage A limits if Coverage A estimates either do not include Demand Surge or materially underestimate Demand Surge as measured by historical percentages.