

ANTIFRAUD (D) TASK FORCE

Antifraud (D) Task Force Dec. 2, 2023, Minutes

Antifraud (D) Task Force Oct. 20, 2023, Minutes (Attachment One)

Draft Pending Adoption

Draft: 12/13/23

Antifraud (D) Task Force
Orlando, Florida
December 2, 2023

The Antifraud (D) Task Force met in Orlando, FL, Oct. 2, 2023. The following Task Force members participated: Trinidad Navarro, Chair (DE); John F. King, Vice Chair (GA); Lori K. Wing-Heier represented by Kayla Erickson (AK); Mark Fowler represented by Jimmy Gunn (AL); Alan McClain represented by Russ Galbraith (AR); Barbara D. Richardson represented by Maria Ailor (AZ); Ricardo Lara represented by George Mueller (CA); Andrew N. Mais represented by Kurt Swan (CT); Doug Ommen represented by Andria Seip (IA); Dean L. Cameron represented by Randy Pipal (ID); Sharon P. Clark represented by Rob Roberts (KY); Kathleen A. Birrane represented by Joe Smith (MD); Grace Arnold represented by Tony Ofstead (MN); Chlora Lindley-Myers (MO); Mike Chaney represented by Vanessa Miller (MS); Troy Downing represented by Ted Bidon (MT); Mike Causey represented by Angela Hatchell (NC); Jon Godfread represented by Colton Schulz (ND); Eric Dunning represented Martin Swanson (NE); Alice Kane represented by Leatrice Geckler and Roberta Baca (NM); Judith L. French represented by Laura Miller (OH); Glen Mulready represented by Brian Downs (OK); Andrew R. Stolfi represented by Dorothy Bean and Stephanie Noren (OR); Michael Wise represented by Joshua Underwood (SC); Jon Pike represented by Armand Glick (UT); Scott A. White represented by Juan A. Rodriguez Jr. and Richard Tozer (VA); and Kevin Gaffney represented by Mary Block (VT). Also participating were Carrie Couch (MO) and Martin Swanson (NE).

1. Adopted its October 20 Meeting Minutes

Commissioner King made a motion, seconded by Baca, to adopt the Task Force's Oct. 20 minutes (Attachment One). The motion passed unanimously.

2. Adopted Amendments to Model #880

Commissioner Navarro said the Improper Marketing of Health Insurance (D) Working Group began working on amendments to *the Unfair Trade Practices Act (#880)* to meet its charge to review existing NAIC models and guidelines that address the use of lead generators for sales of health insurance products and identity models and guidelines that need to be updated or developed to address current marketplace activities. He said that during the Summer National Meeting, the Working Group adopted the draft amendments and presented them to the Task Force for comment.

Commissioner Navarro said the Task Force met Oct. 20 to discuss comments received and review the amendments for potential adoption. He said that during its call, the Task Force made additional updates to the amendments. Those new revisions were applied to the amendments and distributed out for additional review. Commissioner Navarro said that prior to the Oct. 20 call, the list of amendments to Section 2: Definitions included the following: adding the definition of "health insurance lead generator;" adding the definition of "lead-generating device;" revising the existing definition of "person;" adding the definition of "recording;" and adding a drafting note stating "Public means all the general public and any person."

The revisions to Section 3: Unfair Practices Prohibited included: revising language to read, "It is an unfair trade practice for any insurer or health insurance lead generator, or person engaged in the business of insurance to commit any practice defined in Section 4 of this act."

Revisions to Section 4: Unfair Trade Practices Prohibited included: revising Subsection (B) to include email, internet advertisement or posting; electronic posting of any kind; and/or via the internet or other electronic means and removing Subsection (C).

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Suggested revisions to Sections 6–10 per the Missouri Department of Insurance (DOI) included changing the model language to provide explicit regulatory authority over these entities. The decision was to include “health insurance lead generators” appropriately throughout the model Sections 6–10.

Commissioner Navarro said that following the Oct. 20 meeting, the revised amendments were exposed for additional review. Commissioner Navarro said the Task Force received suggestions regarding additional amendment language from the California DOI, America’s Health Insurance Providers (AHIP), and the American Council of Life Insurers (ACLI).

California suggested that the term “entity” is not defined in Section 2: Definitions. The term “entity” is amended throughout Model #880 to state “person;” however, the amendment to Subsection (E) adds “Health Insurance Lead Generator,” which includes the term “entity.” California suggests this be changed to “person.” The second suggestion from California concerns Section 4: Unfair Trade Practices Prohibited. The Task Force originally agreed to delete Subsection (B). The suggestion is that the removal of this language weakens the record retention requirement for lead generators and requests that it be added back into the model.

Megan Stringer (AHIP) suggested revising the Section 2 definition of “recording” by deleting “all” from sales and virtual technology calls. Stringer said the second suggestion concerns Section 4: Unfair Trade Practices Prohibited, by adding the language “when applicable” following “including any recordings.”

The Task Force discussed the suggestions and agreed to make changes.

Couch made a motion, seconded by Commissioner King, to adopt the amendments to Model #880 with the additional changes to Section 2 and Section 4 (Attachment). The motion passed unanimously.

3. Adopted the Report of the Improper Marketing of Health Insurance (D) Working Group

Greg Welker (NAIC) said the Working Group met Dec. 2. The Working Group adopted its Summer National Meeting minutes and heard a presentation from the federal Centers for Medicare & Medicaid Services (CMS) on the 2025 Medicare Advantage and Part D proposed rule. The Working Group discussed the new proposed rule and notified interested parties that the comment period for this new proposed rule would end Jan. 5, 2024. The Working Group also heard a presentation from John Doak (Insurance Care Direct) and Heather Widler (Insurance Care Direct) on agent transfer issues that all jurisdictions are experiencing. The Working Group discussed with industry representatives and CMS the current issues that consumers are experiencing with continued agent transfers of policy. The Working Group discussed the importance of conducting regulator-to-regulator meetings with CMS concerning this issue and a public forum to discuss with industry representatives to better protect consumers.

Couch made a motion, seconded by King, to adopt the minutes of the Improper Marketing of Health Insurance (D) Working Group (Attachment Two). The motion passed unanimously.

4. Heard an Update from the Antifraud Technology (D) Working Group

Glick said as chair of the Working Group, he attended the Global Insurance Summit in October. Glick said the conference was a working conference of fraud-fighting associations from around the world. He said the Utah DOI hosted the annual Fraud Directors Conference in October with a record number of attendees. Glick said during the conference, the discussion amongst fraud directors was the need for an investigator certification program. He said in 2024, these discussions will continue with efforts to work with the NAIC on building a more detailed education program. Glick said the 2024 Annual Fraud Directors Conference will take place in Pennsylvania, Sept.

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23–26. Glick said the Working Group will be discussing ongoing projects with the NAIC, including the completion of the Online Fraud Reporting System’s (OFRS’) new web service and the Antifraud Plan Repository.

5. Heard Reports from Interested Parties

A. NICB

Eric DeCampos (National Insurance Crime Bureau—NICB) said the NICB has been assisting states concerning a rise in auto insurance glass fraud issues. DeCampos said unscrupulous glass shops sign consumers up to file glass claims by advertising no glass deductible incentives, soliciting consumers in public spaces, inducing consumers with case, gift cards, or material gifts, and assigning benefits or other contractual mechanisms. He said claims are inflated despite little or no damage. DeCampos said fraudsters allege work completed on advanced driver assistance systems, further increasing the cost. He said insurance companies challenged the bad actors concerning these glass claims, who would quickly file lawsuits against the insurance carriers. He said over a 10-year period, there was a 4,000% increase.

DeCampos said that in Florida, a “Fix the Cracks” coalition was formed by the insurance industry and consumer protection groups. The coalition provides public deduction to warn consumers about fraudulent business practices by glass shops. An advocacy campaign was used to close loopholes in the statutes that eliminated assignment benefits, prohibited inducement, and required glass shop notifications for advanced driver assistance systems. DeCampos said because of this new law, fraudsters have been moving to other no-deductible states, including Arizona, Connecticut, Kentucky, Massachusetts, New York, and South Carolina. He said fraudsters are using the same tactic of inducements and submitting inflated claims. He advised the Task Force on policy considerations when reviewing their current statutes. The considerations include prohibiting inducements, requiring an explanation of advanced driver assistance systems, requiring an insurance claim or a written statement from the policyholder declining coverage before work is initiated, fees and rate transparency, and assignment of benefits (AOB) guardrails to eliminate AOB and permit insurers to include a non-assignment clause in the policy.

B. CAIF

Matthew Smith (Coalition Against Insurance Fraud—CAIF) said the CAIF membership is stronger than ever, with 302 members as of this year. He said the Global Insurance Fraud Summit took place in Edinburgh, Scotland, this year, with 27 nations attending. He said 2019 was the first year of the Global Insurance Summit, and former Superintendent of New Mexico, John Franchini, represented the NAIC. Smith said Franchini made a comment during his presentation that it is difficult for everyone to come together to fight insurance fraud when there is no uniform agreement on defining insurance fraud. Smith said Franchini’s comment resonated across the nation and that he is pleased to announce that during this year’s summit, which is a working summit and not a conference, the following worldwide definition of insurance fraud was developed: “The intentional wrongful attempt to obtain or withhold benefits involving an insurance transaction.” Smith said the CAIF continued to provide tools and resources, including infographics on life insurance fraud and disability. He said next week is the 30th anniversary of the CAIF, which will be hosting its end-of-year meeting. Smith said the CAIF will be releasing its latest research study regarding keys to unlocking special investigations units’ future success. He said the CAIF has 93 American insurance companies participating in this study, and the final data will be distributed six months in advance. Smith said 99% of all insurance companies have special investigations unit departments; however, the units’ structures are vastly different. Regardless, only 3% of claims are referred to states. Smith said in this era of electronics and artificial intelligence (AI), the vast majority of referrals are still coming in manually with human identification.

Smith said the CAIF has also finalized its new study on workers’ compensation, which shows premium evasion and how to fight injury and premium evasion. He said 2.1 million construction workers are fraudulently misclassified. The cost of premium evasion is estimated to be \$5-10 billion every year. Smith said that in 2024, two new studies,

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which are recurring, will be completed: the benchmark study for insurers and the state of insurance fraud technology study. He said that during the annual end-of-year meeting, the CAIF will release its hall of shame, which includes the worst of the worst for insurance fraud. Smith said the CAIF will be honoring Prosecutor of the Year Devin Chapman from the New Mexico DOI. He said the CAIF will be continuing its Amicus Program, which is the only antifraud organization that files briefs with federal and state supreme courts on key insurance fraud issues. Smith said the CAIF assisted with a major case in California focusing on the trial court, stating that an entity engaged in the corporate practice of medicine was outlawed, and the decision was reversed. Lastly, at the end of the year, the CAIF will have new leadership. Michele Rafeld will become Executive Director, and Brent Walker will become the new director of government relations. This will be discussed at the CAIF Annual Meeting taking place Dec. 7–8 in Washington, DC.

6. Announced a Resolution Honoring the Retirement of Matthew Smith

Commissioner Navarro said the NAIC has created a resolution honoring the retirement of Matthew Smith as executive director of the CAIF. The resolution states “Matthew J. Smith, Esq., has served as Executive Director of the CAIF since 2020 and, prior to that, served as the organization's Government Relations Director; and President of the Insurance Law Services, Inc. Prior to the Coalition Matthew founded one of the nation’s leading law firms specializing in handling of insurance fraud and bad faith cases; Matthew has been a longtime friend and supporter of the NAIC, working with Insurance Commissioners, and NAIC Task Forces and Working Groups on a host of issues relating to fighting insurance fraud and consumer protection; Matthew has worked tirelessly to protect consumers and insurance companies from insurance fraud and to support the state-based insurance regulatory system, including by speaking and testifying on insurance matters before a number of state legislatures, Congress, state legislators, courts, the NAIC, and the International Association of Insurance Supervisors; Matthew has been supportive and instrumental in State Fraud Directors meeting on an annual basis, the NAIC Insurance Summit and work within the Antifraud (D) Task Force and its Working Group’s; Matthew's dedication to fighting fraud has taken him around the world, opened up the lines of communication amongst fraud fighters worldwide and resulted in the establishment of the Global Insurance Fraud Summit; and therefore, be it resolved that the NAIC wishes to express its heartfelt gratitude to Matthew J. Smith, on the occasion of his retirement as Executive Director of CAIF, and for more than four decades of service to state insurance regulators and the consumers they protect.”

7. Discussed Other Matters.

Welker said the creation of the NAIC Producer Portal is currently being designed by NAIC staff. He said the NAIC is working to finalize this project so that it can go into beta testing. Welker said notification through email will be distributed once finalized. The Insurance Summit will take place Sept. 11–14, 2024. He said the Insurance Summit will cover a wide range of insurance topics.

Having no further business, the Antifraud (D) Task Force adjourned.

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Antifraud (D) Task Force
Virtual Meeting
October 20, 2023

The Antifraud (D) Task Force met Oct. 20, 2023. The following Task Force members participated: Trinidad Navarro, Chair (DE); John F. King, Vice Chair, Paula Shamburger and Teresa Winer (GA); Lori K. Wing-Heier represented by Alex Romero and Kayla Erickson (AK); Alan McClain represented by Jake Windley and Teri Ann Mecca (AR); Barbara D. Richardson represented by Shane Foster (AZ); Ricardo Lara represented by Charlene Ferguson and George Mueller (CA); Andrew N. Mais represented by Kurt Swan (CT); Karima M. Woods represented by Brian Bressman and Tina Ching (DC); Dean L. Cameron represented by Kyle Cammack, Shannon Hohl, and Randy Pipal (ID); Doug Ommen represented by Andria Seip, David Sullivan, and Paula Wallin (IA); Vicki Schmidt represented by Jamie Nickoley and LeAnn Crow (KS); Sharon P. Clark represented by Daniel McIlwain and Juan Garrett (KY); Kathleen A. Birrane represented by Joe Smith and Jason Little (MD); Grace Arnold represented by Tony Ofstead (MN); Mike Chaney represented by John Hornback (MS); Troy Downing represented by David Dachs, Ted Bidon, and Troy Smith (MT); Mike Causey represented by Angela Hatchell, Joe Wall, Kevin Robertson, Melinda Munden, and Tracy Biehn (NC); Jon Godfread represented by Dale Pittman (ND); D.J. Bettencourt represented by Brendhan Harris (NH); Justin Zimmerman represented by Richard Besser (NJ); Alice T. Kane represented by Cass Brulotte, Melissa Robertson, Paige Duhamel, and Roberta Baca (NM); Scott Kipper, David Cassetty, and Dave Long (NV); Judith L. French represented by Alana Neff, David Barney, Lee Washburn, and Tynesia Dorsey (OH); Glen Mulready represented by Rick Wagon (OK); Andrew R. Stolfi represented by Dorothy Bean, Kirsten Anderson, and Stephanie Noren (OR); Michael Humphreys represented by Deb Lee and Michael Fissel (PA); Elizabeth Kelleher Dwyer and Matt Gendron (RI); Michael Wise represented by Joshua Underwood (SC); Larry D. Deiter represented by Amanda Feist and Travis Jordan (SD); Cassie Brown represented by Christopher Davis, Leah Gillum, Matthew Tarpley, and Thomas Morgan (TX); Jon Pike, Carrie Backus, Kelly Christensen, Shelley Wiseman, Tanji J. Northrup, and Tracy Klausmeier (UT); Scott A. White represented by Andrea Baytop, Katie Johnson, Melissa Gerachis, and Richard Tozer (VA); Kevin Gaffney, Karla Nuissl, and Mary Block (VT); and Allan L. McVey represented by Greg Elam (WV). Also participating were: Simon Blank (FL); Amy Hoyt, Carrie Couch, Jo LeDuc, and Teresa Kroll (MO); and Laura Arp and Martin Swanson (NE).

1. Adopted its Oct. 20 Meeting Minutes

Commissioner King made a motion, seconded by Ofstead, to adopt the Task Force's Aug. 14 minutes (*see NAIC Proceedings – Fall 2023, Antifraud (D) Task Force*). The motion passed unanimously.

2. Discussed Model #880

Commissioner Navarro said the Improper Marketing of Health Insurance (D) Working Group has been working on amendments to the *Unfair Trade Practices Act* (#880) for the purposes of its charge to review existing NAIC models and guidelines that address the use of lead generators for sales of health insurance products and identify models and guidelines that need to be updated or developed to address current marketplace activities.

Commissioner Navarro said that during the Summer National Meeting, the Working Group met and adopted the draft amendments. He said the Task Force exposed the draft amendments for comment. The Task Force received three comments from Missouri, Virginia, and the Coalition Against Insurance Fraud (CAIF)/NAIC Consumer Representatives.

LeDuc said Missouri reviewed the amendment draft and submitted suggestions concerning Section 2—Definitions, Section 4—Unfair Trade Practices Defined, and Sections 6-10. She said that Section 2, Missouri suggests that “Health Insurance Lead Generator” is too broad and inadvertently encompasses several persons not acting as lead generators. LeDuc said Missouri suggests deleting the phrase “engages in any of the following activities” and replacing it with “utilizes a lead-generating device.”

LeDuc said the next suggestion was concerning Section 4. Missouri suggests part “C” is redundant and recommends removing “C” and changing language within “J” to encompass necessary language. LeDuc said the suggested language would be to add “health insurance lead generator” following insurer and to add “Failure to do shall constitute a violation of (INSERT STATE STATUTE).”

LeDuc said the third suggestion was concerning Sections 6–10. She said that, as currently drafted, Missouri does not believe the model provides states with sufficient authority to regulate health insurance lead generators effectively. While the revisions define what constitutes a health insurance lead generator and impose regulatory requirements on these entities, the sections of the model granting states authority over entities covered by the model have not been extended to include health insurance lead generators. LeDuc said Missouri believes Sections 6–11 of the model should be revised to provide explicit regulatory authority over these entities. Suggestions on how these sections could be revised to include “health insurance lead generators” are included in the attached document.

Johnson said Virginia reviewed the draft amendments and, per the discussions from Missouri comments, it looks to be resolved; however, Virginia has concerns with the current language in Section 3. Johnson said the current language may bring the definition of “person” into doubt. It should mean “everyone,” and by naming entities, it questions the meaning of “person.”

Brent Walker (Coalition Against Insurance Fraud—CAIF) said in coordination with the NAIC Consumer Representatives, the CAIF has submitted a suggestion in line with Virginia’s comment on the definition of “person.” Walker said the suggestion the CAIF has made is to add language at the end of the definition to read: For purposes of this act, “person” includes a health insurance lead generator operating as any such natural or artificial entity.

The Task Force discussed the suggestions submitted and agreed to include the changes in the draft.

Gendron said he would like to inquire about the change in language concerning the failure to maintain marketing and performance records. The Working Group discussed the changes. Megan Stringer (America’s Health Insurance Plans—AHIP) said the purpose behind the change was due to the language of the original record duplicating what is in Section 4 J, which already requires insurers to keep all those business records. Gendron said that he agrees it does include some of the same language; however, it is narrowed down and does not fully cover what is necessary. Gendron said he would discuss with Patrick Smock (Rhode Island Deputy Chief of Legal Services) to provide alternative language. The Task Force discussed and agreed.

Wake said he would agree to the changes suggested and that the Task Force should review the model language so that the language and terminology used throughout the model would flow the same as other NAIC models. The Task Force discussed the model language and agreed.

Pipal said Idaho has concerns about pulling lead generators from the definition of “persons” and redefining it entirely. The second concern is the definition of a “lead generating device.” It is not found anywhere else in the model, though. Commissioner Navarro said he has some concerns as well and said the Task Force may need to review this area.

The Task Force discussed the current language amendments to the model and its limitations, which are specific to health. Swanson said the charge given to the Working Group was to focus on “health” lead generators.

The Task Force reviewed and agreed to include the suggested changes, except Rhode Island’s suggested language on Failure to Maintain Marketing and Performance Records.

Commissioner Navarro said he will work with NAIC staff to include all these changes and redistribute them for review. He said the plan moving forward will be to either try and work in a conference call prior to the Fall National Meeting or, if timing permits, they will adopt it at the Fall National Meeting and send it on to the Market Regulation and Consumer Affairs (D) Committee for adoption.

3. Discussed Other Matters

Commissioner Navarro reminded the Task Force about its 2024 proposed charges and the e-vote to consider adoption of the charges. He asked the Task Force members to provide Greg Welker (NAIC) with their response.

Having no further business, the Antifraud (D) Task Force adjourned.

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