NAIC CONSUMER LIAISON

REPRESENTATIVE RECOMMENDATION

TO THE NAIC EXECUTIVE (EX) COMMITTEE

(Please submit completed request form to Lois Alexander (NAIC) for processing)

RECOMMENDED BY: __________ Debra Judy_____________________________

DATE: __March 27, 2014________________________________

ISSUE: _____Section 1557 of the ACA prohibits discrimination in health care programs on the basis of race, color, national origin, sex, sex stereotypes, gender identity, age or disability. Section 1302 provides that the essential health benefits take into account the health care needs of diverse segments of the population. However, further guidance is needed to ensure transgender individuals are not unfairly denied coverage.

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COMMITTEE REFERRAL RECOMMENDATION:

(A)_____ (B)___X___ (C)_____ (D)_____ (E)_____ (F)_____ (G)_____

ACTION REQUESTED/CHARGE RECOMMENDED: ___I request that the B Committee be charged with drafting and circulating model guidance to carriers prohibiting the use of coverage exclusions based on gender identity or sexual orientation consistent with the nondiscrimination provisions in the ACA.

I also request that the B Committee review the Unfair Trade Practices Model Act to ensure that it conforms to the nondiscrimination provisions, including those related to sexual orientation and gender identity, in the ACA.

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NAIC ACTION:

RECOMMENDATION ACCEPTED: ________________________________

RECOMMENDATION DECLINED: ________________________________

Staff Support Feedback

Debra Judy requests that the Committee be charged with drafting and circulating model guidance to carriers prohibiting the use of coverage exclusions based on gender identity or sexual orientation.
orientation consistent with the nondiscrimination provisions in section 1557 of the ACA. In addition, she requests that the Committee review the Unfair Trade Practices Model Act to ensure that it conforms to the nondiscrimination provisions, including those related to sexual orientation and gender identity, in the ACA.

**Status Update**

For both of these requests, the Committee would most likely charge the Regulatory Framework (B) Task Force to do this work. I believe the request to draft and circulate model guidance on this issue is premature at best. Section 1557 of the ACA is very broad in that it extends to a health program or activity generally that “is receiving Federal financial assistance, including credits, subsidies, or contracts of insurance, or under any program or activity that is administered by an Executive Agency or any entity established under this title 1 or amendments.” This section has been interpreted to apply to health insurance exchanges (because it is a program or activity created under Title I of the ACA), Medicare, Medicaid, the State Children’s Health Insurance Program (SCHIP) among others. One question to consider is whether such guidance is appropriate for state insurance regulators issue given the broad scope of this ACA section. Also, it should be remembered, that, at this time, the Regulatory Framework (B) Task Force is working to finalize model regulations for the small group and individual markets to reflect ACA final regulations related health insurance reform. These drafts include similar anti-discrimination provisions as found in section 1557 of the ACA in a proposed section titled “Rules Related to Fair Marketing.” Any discussion of developing guidance related to section 1557 of the ACA should wait until these models are final and adopted by the NAIC. With respect to any review of the Unfair Trade Practices Act, such a review should wait until the Regulatory Framework (B) Task Force completes its review and possible revision of the NAIC models already identified by the former Affordable Care Act Model Review (B) Working Group as being impacted by the ACA and requiring review and revision. The Task Force is currently working on or will be working on at least four NAIC models on this list that includes about 15 NAIC models.