

MODEL ANTIFRAUD PLAN GUIDELINE

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Section 1. Application

These Guidelines relate to the recommended application of an Antifraud Plan.

[add additional information as to the importance of an antifraud plan?]

Section 2. Definitions

[the following definitions are contained in the NAIC Insurance Fraud Prevention Model Act]

- A. “Business of insurance” means the writing of insurance or the reinsuring of risks by an insurer, including acts necessary or incidental to writing insurance or reinsuring risks and the activities of persons who act as or are officers, directors, agents or employees of insurers, or who are other persons authorized to act on their behalf.
- B. “Commissioner” means the commissioner of insurance, the commissioner’s designees or the department of insurance.

Drafting Note: Use the title of the chief insurance regulatory official wherever the term “commissioner” appears.

- C. “Fraudulent insurance act” means an act or omission committed by a person who, knowingly ~~and with intent to defraud~~, commits, or conceals any material information concerning, one or more of the following:

- (1) Presenting, causing to be presented or preparing with knowledge or belief that it will be presented to or by an insurer, a reinsurer, broker or its agent, false information as part of, in support of or concerning a fact material to one or more of the following:

- (a) An application for the issuance or renewal of an insurance policy or reinsurance contract;

- (b) The rating of an insurance policy or reinsurance contract;
 - (c) A claim for payment or benefit pursuant to an insurance policy or reinsurance contract;
 - (d) Premiums paid on an insurance policy or reinsurance contract;
 - (e) Payments made in accordance with the terms of an insurance policy or reinsurance contract;
 - (f) A document filed with the commissioner or the chief insurance regulatory official of another jurisdiction;
 - (g) The financial condition of an insurer or reinsurer;
 - (h) The formation, acquisition, merger, reconsolidation, dissolution or withdrawal from one or more lines of insurance or reinsurance in all or part of this state by an insurer or reinsurer;
 - (i) The issuance of written evidence of insurance; or
 - (j) The reinstatement of an insurance policy;
- (2) Solicitation or acceptance of new or renewal insurance risks on behalf of an **insurer, re-insurer** or other person engaged in the business of insurance by a person who knows or should know that the insurer or other person responsible for the risk is insolvent at the time of the transaction;
- (3) Removal, concealment, alteration or destruction of the assets or records of an insurer, reinsurer or other person engaged in the business of insurance;
- (4) **Willful** embezzlement, abstracting, purloining or conversion of monies, funds, premiums, credits or other property of an insurer, reinsurer or person engaged in the business of insurance;
- (5) Transaction of the business of insurance in violation of laws requiring a license, certificate of authority or other legal authority for the transaction of the business of insurance; or
- (6) Attempt to commit, aiding or abetting in the commission of, or conspiracy to commit the acts or omissions specified in this subsection.

D. "Insurance" means a contract or arrangement in which one undertakes to:

- (1) Pay or indemnify another as to loss from certain contingencies called "risks," including through reinsurance;
 - (2) Pay or grant a specified amount or determinable benefit to another in connection with ascertainable risk contingencies;
 - (3) Pay an annuity to another; or
 - (4) Act as surety.
- E. "Insurer" means a person entering into arrangements or contracts of insurance or reinsurance and who agrees to perform any of the acts set forth in Subsection D of this section. A person is an insurer regardless of whether the person is acting in violation of laws requiring a certificate of authority or regardless of whether the person denies being an insurer.

Drafting Note: A state may include other persons, such as fraternal benefit societies, medical and hospital service corporations, health maintenance organizations, certain types of self insurers, "county mutuals" or other types of insurance entities in the definition of insurer. In some cases, it may be necessary to amend other laws to bring these entities within the Act since the portions of state law applicable to these entities may provide that no other portion of the insurance code applies to these entities without a specific reference to the other provision.

- F. "NAIC" means the National Association of Insurance Commissioners.
- G. "Person" means an individual, a corporation, a partnership, an association, a joint stock company, a trust, an unincorporated organization, or any similar entity or any combination of the foregoing.
- H. "Policy" means an individual or group policy, group certificate, contract or arrangement of insurance or reinsurance affecting the rights of a resident of this state or bearing a reasonable relation to this state, regardless of whether delivered or issued for delivery in this state.
- I. "Reinsurance" means a contract, binder of coverage (including placement slip) or arrangement under which an insurer procures insurance for itself in another insurer as to all or part of an insurance risk of the originating insurer.

Section 3. Annual Reporting Requirement

[this is not a common provision]

Each insurer shall provide to the Commissioner [by _____] an annual report summarizing the fraud prevention activities conducted during the previous year, including but not limited to: fraud prevention measures; fraud investigation procedures; fraud prevention personnel and organization; fraud data; fraud statistics; any implemented or planned changes to fraud prevention plan; investigations conducted; any other information

prescribed by the Commissioner; and any other information the insurer deems appropriate for inclusion in the fraud prevention report.

Section 4. Fraud Plan Model

Within _____ days of the effective date of this act, and during each annual report filed with the Department of Insurance there after, every insurer shall submit to the [Commissioner] [Antifraud Division] a written report detailing the insurer's Antifraud Plan, which shall include at a minimum: 1) educational initiatives;; 2) internal and external fraud prevention and detection policies and procedures; 3) policies and procedures for reporting fraud to law enforcement for purposes of investigation and possible prosecution; and 4) summary of hiring practices of qualified fraud investigators.

Section 5. Fraud Warning Required

[taken from NAIC Insurance Fraud Prevention Model Act]

- A. Claim forms and applications for insurance, regardless of the form of transmission, shall contain the following statement or a substantially similar statement:

“Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or knowingly presents false information in an application for insurance is guilty of a crime and may be subject to fines and confinement in prison.”

- B. The lack of a statement as required in Subsection A of this section does not constitute a defense in any prosecution for a fraudulent insurance act.
- C. Policies issued by unauthorized insurers [use the term “unlicensed” or “nonadmitted” insurers in accordance with the terminology used in the state insurance code] shall contain a statement disclosing the status of the insurer to do business in the state where the policy is delivered or issued for delivery or the state where coverage is in force. The requirement of this subsection may be satisfied by a disclosure specifically required by [insert reference to insurance code provisions. Excess and surplus lines statutes and risk retention and purchasing group statutes are likely to be cited here in nearly every state].
- D. The requirements of this section shall not apply to reinsurance claims forms or reinsurance applications.

Section 6. Mandatory Reporting of Fraudulent Insurance Acts
[taken from NAIC Insurance Fraud Prevention Model Act]

- A. A person engaged in the business of insurance having knowledge or a reasonable belief that a fraudulent insurance act is being, **will** be or has been committed shall provide to the commissioner the information required by, and in a manner prescribed by, the commissioner.
- B. Any other person having knowledge or a reasonable belief that a fraudulent insurance act is being, will be or has been committed **may** provide to the commissioner the information required by, and in a manner prescribed by, the commissioner.

Seems the above paragraphs are in conflict, one paragraph mandates an action, the other is optional. If the second paragraph is for persons other than “a person engaged in the business of insurance”, then that person already has the ability to report and make available to the commissioner the information.

Section 7 Special Investigations Unit (SIU) Requirement

Every insurer admitted to do business in this state shall maintain a unit or division to investigate possible fraudulent claims by insureds or by persons making claims for services or repairs against policies held by insureds.

Section 8. Severability

If any provision of this Act, or the application of the provision to any person or circumstance shall be held invalid, the remainder of the Act, and the application of the provision to persons or circumstances other than those to which it is held invalid, shall not be affected.

Chronological Summary of Actions (all references are to the Proceedings of the NAIC)