

MARKET REGULATION ACCREDITATION

ASSESSMENT OF NECESSARY PROCEDURAL LAWS AND REGULATORY PRACTICES

MAY 26, 2009

This assessment of necessary procedural laws and regulatory practices focuses on whether a state has sufficient authority to regulate the market conduct practices of insurance companies operating within its jurisdictions through the collection of data, market analysis, regulatory interventions and collaboration with other states.

The assessment does recognize the need for states to maintain examination information, regulatory information and complaint data in accordance with standards set by the NAIC in order to facilitate interstate collaboration. At the same time, the assessment does not address necessary procedural laws for antifraud activities, complaint processing, producer licensing, or rates and forms review.

Part A: Procedural Laws and Regulations

The laws and regulations standards should ensure that a state has sufficient authority to regulate the market conduct practices of insurance companies operating within its jurisdictions through the collection of data, market analysis, regulatory interventions and collaboration with other states. A state should demonstrate compliance with this standard through a law or regulation.

1. Market Analysis Authority

The insurance department shall have authority to collect and analyze information from filed schedules, surveys, required reports and other sources in both the public and private sectors, and information from within and outside the insurance industry in order to develop a baseline understanding of the marketplace and to identify patterns or practices of insurers that deviate significantly from the norm or that may pose a potential risk to the insurance consumers. Such authority should also provide that state market conduct surveillance personnel shall have free and full access to all books and records, employees, officers and directors, as practicable, of the insurer during regular business hours. The provisions of the *NAIC Market Conduct Surveillance Model Act* addressing this authority or substantially similar provisions shall be part of state law.

- a. State shall have following definition of “Market analysis”: means a process whereby market conduct surveillance personnel collect and analyze information from filed schedules, surveys, required reports and other sources in order to develop a baseline understanding of the marketplace and to identify

patterns or practices of insurers that deviate significantly from the norm or that may pose a potential risk to the insurance consumer. (Market Conduct Surveillance Model Law: Section 3. C.)

- b. State shall have following definition of “Market conduct action”: means any of the full range of activities that the commissioner may initiate to assess and address the market practices of insurers, beginning with market analysis and extending to targeted examinations. The commissioner’s activities to resolve an individual consumer complaint or other report of a specific instance of misconduct are not market conduct actions for purposes of this Act. (Market Conduct Surveillance Model Law: Section 3. D.)
- c. The commissioner shall gather information from data currently available to the Insurance Department, as well as surveys and required reporting requirements, information collected by the NAIC and a variety of other sources in both the public and private sectors, and information from within and outside the insurance industry. (Market Conduct Surveillance Model Law: Section 4. A. (1))
- d. The information shall be analyzed in order to develop a baseline understanding of the marketplace and to identify for further review insurers or practices that deviate significantly from the norm or that may pose a potential risk to the insurance consumer. The commissioner shall use the NAIC *Market Regulation Handbook* as one resource in performing this analysis. (Market Conduct Surveillance Model Law: Section 4. A. (2))
- e. The commissioner shall select a market conduct action that is cost effective for the Insurance Department and the insurer, while still protecting the insurance consumer. (Market Conduct Surveillance Model Law: Section 4. B. (2))
- f. The commissioner shall take those steps reasonably necessary to eliminate duplicative inquiries and coordinate market conduct actions and findings with other states. (Market Conduct Surveillance Model Law: Section 4. C.)
- g. Except as otherwise provided by law, every insurer or person from whom information is sought, its officers, directors and agents shall provide the commissioner convenient and free access to all books, records, accounts, papers, documents and any or all computer or other recordings relating to the property, assets, business and affairs of the insurer. The officers, directors, employees, insurance producers and agents of the insurer or person shall facilitate market conduct actions and aid in market conduct actions so far as it is in their power to do so. (Market Conduct Surveillance Model Law: Section 5. E.)

- h. The department shall use the NAIC Standard Data Request, (or successor product adopted by regulation that is substantially similar to the foregoing NAIC product). (Market Conduct Surveillance Model Law: Section 6.D (4))
- i. All documents, including but not limited to working papers, third party models or products, complaint logs, and copies thereof, created, produced or obtained by or disclosed to the commissioner or any other person in the course of any market conduct actions made pursuant to this Act, or in the course of market analysis by the commissioner of the market conditions of an insurer, or obtained by the NAIC as a result of any of the provisions of this Act, shall be confidential by law and privileged, shall not be subject to subpoena and shall not be subject to discovery or admissible in evidence in any private civil action. (Portion of Market Conduct Surveillance Model Law: Section 7. A.)
- j. Upon obtaining information as a result of any market analysis inquiry, the Commissioner shall be authorized to take any lawful enforcement action, including issuance of an order to cease and desist. Any such order shall be stayed if, within 10 days of issuance of the order, any aggrieved party requests a hearing on the order. Following a hearing, the Commissioner (or designee) shall issue a final order. (Suggested Language from Maryland)

2. Examination Authority

The insurance department should have the authority to examine companies whenever it is deemed necessary. Such authority should include complete access to the company's books and records and, if necessary, the records of any affiliated company, agent, and/or managing general agent. Such authority should extend not only to inspect books and records but also to examine officers, employees and agents of the company under oath when deemed necessary with respect to transactions directly or indirectly related to the company under examination. The *NAIC Model Law on Examinations* or substantially similar provisions shall be part of state law.

- a. Authority to examine companies whenever deemed necessary.*
- b. Authority to have complete access to company's books and records.*
- c. Access to records of affiliated companies and agents and/or MGAs.*
- d. Authority to examine under oath officers, employees, and agents.*
- e. Examine all domestic insurers no less frequently than every five years.*
- f. Require examiners to observe those guidelines and procedures set forth in the *NAIC Market Regulation Handbook* supplemented with such other guidelines or procedures as deemed appropriate.*
- g. Authority to retain attorneys, appraisers, independent actuaries, independent CPAs or other professionals and specialists, the cost of which shall be borne by the insurer.*
- h. Authority to use and, if appropriate, make public any final or preliminary examination report, any examination workpapers or other documents, or any other information discovered or developed during the course of any examination in the furtherance of any legal or regulatory action which the Commissioner may deem appropriate.*
- i. Establish guidelines for the timing of report filing and adoption to ensure reports are timely similar to Section 5 of the NAIC Model Exam Law.*
- j. The commissioner shall post notification on the NAIC *Examination Tracking System*, or successor NAIC product as determined by the commissioner, that a market conduct examination has been scheduled. (Market Conduct Surveillance Model Law: Section 6. B.)

(* This requirement is similar to a requirement of the NAIC's Financial Regulation Standards and Accreditation Program.)

3. Information Sharing Authority

In order to assist in the performance of the commissioner's duties, the commissioner should have the authority to *share* documents, materials or other information, including the confidential and privileged documents, materials or information with other state, federal and international regulatory agencies, with the National Association of Insurance Commissioners and its affiliates and subsidiaries, and with state, federal and international law enforcement authorities, provided that the recipient agrees to maintain the confidentiality and privileged status of the document, material, communication or other information. In addition, the insurance commissioner should have the authority to *receive* documents, materials, communications or information, including otherwise confidential and privileged documents, materials or information, from the National Association of Insurance Commissioners and its affiliates and subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or information. The *NAIC Model Law on Examinations* or substantially similar provisions shall be part of state law.

- a. Authority for the Commissioner to disclose the content of any preliminary or final market analysis, market conduct actions and examinations, or any matter relating thereto, to the insurance department of any state or country, or to law enforcement officials of any state or country or agency of the federal government at any time, so long as such agency or office receiving the information agrees in writing to hold it confidential.*
- b. Authority to share documents, materials or other information, including the confidential and privileged documents, materials or information with other state, federal and international regulatory agencies and law enforcement authorities and the NAIC and its affiliates and subsidiaries, provided that the recipient agrees to and has the legal authority to maintain the confidentiality and privileged status of the document, material, communication or other information; (Market Conduct Surveillance Model Law: Section 7. D. (1))
- c. Authority to receive documents, materials, communications or information, including otherwise confidential and privileged documents, materials or information, from the NAIC and its affiliates or subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or information; and (Market Conduct Surveillance Model Law: Section 7. D. (2))

- d. The commissioner shall collect and report market data to the NAIC's market information systems, including the Complaint Database System, the Examination Tracking System, and the Regulatory Information Retrieval System, Market Initiatives Tracking System, Market Analysis Review System or other successor NAIC products as determined by the commissioner. (Based on Market Conduct Surveillance Model Law: Section 11. A.)
- e. The commissioner shall share information and coordinate the Insurance Department's market analysis and examination efforts with other states through the NAIC. (Market Conduct Surveillance Model Law: Section 12.)

(* This requirement is similar to a requirement of the NAIC's Financial Regulation Standards and Accreditation Program.)

Part B: Substantive Laws

1. Authority to Regulate Unfair Trade Practices Act

The insurance department should have the authority to regulate trade practices of by defining practices that constitute unfair methods of competition or unfair or deceptive acts or practices and by prohibiting the trade practices so defined or determined. Such authority should extend the power to the commissioner to examine and investigate the affairs of insurance companies and insurance producers in order to determine whether such insurer or person has been or is engaged in any prohibited unfair trade practices. The *NAIC Unfair Trade Practices Act* or substantially similar provisions shall be part of state law.

2. Authority to Regulate Prompt Payment of Claims

The insurance department shall have the authority to regulate the prompt payment of claims by requiring insurers to pay or deny claims within a certain period of time and have appropriate remedies for claims that are not paid or denied within the required time frames.

Part B: Substantive laws

Unfair Trade Practices Model Act

Unfair Claims Settlement Practices Model Act

Insurance Information and Privacy Protection Model Act

Unauthorized Insurers False Advertising Process Model Act

Producer Licensing Model Act

Insurance Fraud Prevention Model Act

Prompt Payment of Claims