

UNFAIR DISCRIMINATION AGAINST SUBJECTS OF ABUSE IN HEALTH BENEFIT PLANS MODEL ACT

Table of Contents

Section 1.	Purpose
Section 2.	Scope
Section 3.	Definitions
Section 4.	Unfairly Discriminatory Acts Relating to Health Benefit Plans
Section 5.	Justification of Adverse Insurance Decisions
Section 6.	Insurance Protocols for Subjects of Abuse
Section 7.	Enforcement
Section 8.	Effective Date

Introductory Note: In addition to this model act, the NAIC drafted the following model acts regarding the unfair discrimination against subjects of abuse: The Unfair Discrimination Against Subjects of Abuse in Property and Casualty Insurance Model Act, The Unfair Discrimination Against Subjects of Abuse in Life Insurance Model Act, and The Unfair Discrimination Against Subjects of Abuse in Disability Income Insurance Model Act.

Section 1. Purpose

The purpose of this Act is to prohibit unfair discrimination by health carriers and insurance professionals on the basis of abuse status. Nothing in this Act shall be construed to create or imply a private cause of action for a violation of this Act.

Drafting Note: Consideration was given to including a private cause of action for a violation of this Act. It was concluded that a private cause of action is not inconsistent with the model and that a state legislature could find that a private cause of action is appropriate for that state.

Section 2. Scope

This Act applies to all health carriers and insurance professionals involved in issuing or renewing in this state a policy or certificate of health insurance.

Section 3. Definitions

Drafting Note: Each state may wish to ensure that the definition of “abuse” for the purposes of this Act does not conflict with the terminology descriptive of abusive behavior in state civil or criminal statutes in such a way as to lead to unintended meanings.

- A. “Abuse” means the occurrence of one or more of the following acts by a current or former family member, household member, intimate partner or caretaker:
- (1) Attempting to cause or intentionally, knowingly or recklessly causing another person bodily injury, physical harm, severe emotional distress, psychological trauma, rape, sexual assault or involuntary sexual intercourse;
 - (2) Knowingly engaging in a course of conduct or repeatedly committing acts toward another person, including following the person or minor child without proper authority, under circumstances that place the person or minor child in reasonable fear of bodily injury or physical harm;
 - (3) Subjecting another person to false imprisonment; or

Unfair Discrimination Against Subjects of Abuse
in Health Benefit Plans Model Act

- (4) Attempting to cause or intentionally, knowingly, or recklessly causing damage to property so as to intimidate or attempt to control the behavior of another person.

Drafting Note: States should include appropriate corrective or clarifying language if their ordinary Statutory meaning of “person” can be construed as implying legal capacity, since many subjects of abuse are minors and other subjects of abuse may be incapacitated.

- B. “Abuse-related medical condition” means a medical condition sustained by a subject of abuse which arises in whole or part out of an act or pattern of abuse.
- C. “Abuse status” means the fact or perception that a person is, has been, or may be a subject of abuse, irrespective of whether the person has sustained abuse-related medical conditions.
- D. “Commissioner” means the insurance commissioner of this state.

Drafting Note: Where the word “commissioner” appears in this Act, the appropriate designation for the chief insurance supervisory official of the state should be substituted.

- E. “Confidential abuse information” means information about acts of abuse or abuse status of a subject of abuse, a person’s medical condition that the carrier knows or has reason to know is abuse-related, the address and telephone number (home and work) of a subject of abuse or the status of an applicant or insured as a family member, employer or associate of, or a person in a relationship with, a subject of abuse.
- F. “Health benefit plan” or “plan” means a policy, contract, certificate or agreement offered by a carrier or insurance professional to provide, deliver, arrange for, pay for or reimburse any of the costs of health care services. Health benefit plan includes accident only, credit health, dental, vision, Medicare supplement or long-term care insurance, coverage issued as a supplement to liability insurance, short-term and catastrophic health insurance policies, and a policy that pays on a cost-incurred basis. Health benefit plan does not include workers’ compensation or similar insurance.

Drafting Note: States should examine their statutes and insurance products to determine if additional exemptions, such as for blanket disability, are required depending upon how those products are classified under state insurance statutes.

- G. “Health carrier” means an entity subject to the insurance laws and regulations of this state, or subject to the jurisdiction of the commissioner, that contracts or offers to contract to provide, deliver, arrange for, pay for or reimburse any of the costs of health care services, including a sickness and accident insurance company, a health maintenance organization, a nonprofit hospital and health service corporation or any other entity providing a plan of health insurance, health benefits or health services.

Drafting Note: The intent of this subsection is to encompass all state-regulated entities in the business of providing health benefits, however those entities are defined and characterized under the laws of a particular state. Appropriate state-specific terminology should be used.

Drafting Note: Each state may wish to consider the advisability of defining “insurance” or “health insurance” for purposes of this Act if the state’s present insurance code is not satisfactory in this regard. In some cases a cross reference will be sufficient.

- H. “Insurance professional” means an agent, broker, adjuster or third party administrator as defined in the insurance laws of this state.

Drafting Note: Many states license other categories of insurance professionals such as agencies, consultants and producers. Each state should review this definition for consistency with the terminology used in its licensing law.

Drafting Note: Unfairly discriminatory underwriting or claims handling practices of a company writing life insurance may be committed by insurance professionals when they refuse to process an application or a claim in violation of this act. There is no intent, however, to hold insurance professionals liable for the acts of health carriers over which they have no control.

- I. “Insured” means a party named on a health benefit plans as the person with legal rights to the benefits provided by the health benefit plan. For group plans, “insured” includes a person who is a beneficiary covered by a group health benefit plan.
- J. “Subject of abuse” means a person against whom an act of abuse has been directed; who has current or prior injuries, illnesses or disorders that resulted from abuse; or who seeks, may have sought, or had reason to seek medical or psychological treatment for abuse; or protection, court-ordered protection or shelter from abuse.

Section 4. Unfairly Discriminatory Acts Relating to Health Benefit Plans

Drafting Note: Because of the nature and consequences of the prohibited acts, this model provides that a single instance of prohibited conduct is a violation rather than defining a violation as a general business practice of prohibited conduct. States that choose to incorporate this model into their version of the Unfair Trade Practices Act (or other statute) under which those states define a violation as a general business practice should consider whether that approach provides sufficient protection to subjects of abuse.

- A. It is unfairly discriminatory to:
 - (1) Deny, refuse to issue, renew or reissue, cancel or otherwise terminate a health benefit plan, or restrict or exclude health benefit plan coverage or add a premium differential to any health benefit plan on the basis of the applicant’s or insured’s abuse status; or
 - (2) Exclude or limit coverage for losses or deny a claim incurred by an insured on the basis of the insured’s abuse status;
- B. When the health carrier or insurance professional has information in its possession that clearly indicates that the insured or applicant is a subject of abuse, the disclosure or transfer of the confidential abuse information, as defined in this Act, by a person employed by or contracting with a health carrier or insurance professional for any purpose or to any person is unfairly discriminatory, except:
 - (1) To the subject of abuse or an individual specifically designated in writing by the subject of abuse;
 - (2) To a health care provider for the direct provision of health care services;
 - (3) To a licensed physician identified and designated by the subject of abuse;
 - (4) When ordered by the commissioner or a court of competent jurisdiction or otherwise required by law; or
 - (5) When necessary for a valid business purpose to transfer information that includes confidential abuse information that cannot reasonably be segregated without undue hardship. Confidential abuse information may be disclosed only if the recipient has executed a written agreement to be bound by the prohibitions of this Act in all respects and to be subject to the enforcement of

Unfair Discrimination Against Subjects of Abuse
in Health Benefit Plans Model Act

this Act by the courts of this state for the benefit of the applicant or the insured, and only to the following persons:

- (a) A reinsurer that seeks to indemnify or indemnifies all or any part of a policy covering a subject of abuse and that cannot underwrite or satisfy its obligations under the reinsurance agreement without that disclosure;
 - (b) A party to a proposed or consummated sale, transfer, merger or consolidation of all or part of the business of the health carrier or insurance professional;
 - (c) Medical or claims personnel contracting with the health carrier or insurance professional, only where necessary to process an application or perform the health carrier's or insurance professional's duties under the policy or to protect the safety or privacy of a subject of abuse (also includes parent or affiliate companies of the health carrier or insurance professional that have service agreements with the health carrier or insurance professional); or
 - (d) With respect to address and telephone number, to entities with whom the health carrier or insurance professional transacts business when the business cannot be transacted without the address and telephone number;
- (6) To an attorney who needs the information to represent the health carrier or insurance professional effectively, provided the health carrier or insurance professional notifies the attorney of its obligations under this Act and requests that the attorney exercise due diligence to protect the confidential abuse information consistent with the attorney's obligation to represent the health carrier or insurance professional;
- (7) To the policyowner or assignee, in the course of delivery of the policy, if the policy contains information about abuse status; or
- (8) To any other entities deemed appropriate by the commissioner.
- C. It is unfairly discriminatory to request information relating to acts of abuse or an applicant's or insured's abuse status, or make use of that information, however obtained, except for the limited purposes of complying with legal obligations or verifying a person's claim to be a subject of abuse.
- D. It is unfairly discriminatory to terminate group coverage for a subject of abuse because coverage was originally issued in the name of the abuser and the abuser has divorced, separated from, or lost custody of the subject of abuse, or the abuser's coverage has terminated voluntarily or involuntarily. Nothing in this subsection prohibits the health carrier or insurance professional from requiring the subject of abuse to pay the full premium for coverage under the health plan or from requiring as a condition of coverage that the subject of abuse reside or work within its service area, if the requirements are applied to all insureds of the health carrier or insurance professional. The health carrier or insurance professional may terminate group coverage after the continuation coverage required by this subsection has been in force for eighteen (18) months, if it offers

conversion to an equivalent individual plan. The continuation coverage required by this section shall be satisfied by coverage required under P.L. 99-272, the Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1985, provided to a subject of abuse and is not intended to be in addition to coverage provided under COBRA.

- E. Subsection B does not preclude a subject of abuse from obtaining his or her insurance records.
- F. Subsection D does not prohibit a health carrier or insurance professional from asking about a medical condition or from using medical information to underwrite or to carry out its duties under the policy, even if the medical information is related to a medical condition that the insurer or insurance professional knows or has reason to know is abuse-related, to the extent otherwise permitted under this Act and other applicable law.

Section 5. Justification of Adverse Insurance Decisions

A health carrier or insurance professional that takes an action that adversely affects an applicant or insured on the basis of a medical condition that the health carrier or insurance professional knows or has reason to know is abuse-related shall explain the reason for its action to the applicant or insured in writing and shall be able to demonstrate that its action, and any applicable plan provision:

- A. Does not have the purpose or effect of treating abuse status as a medical condition or underwriting criterion;
- B. Is not based upon any actual or perceived correlation between a medical condition and abuse;
- C. Is otherwise permissible by law and applies in the same manner and to the same extent to all applicants and insureds with a similar medical condition without regard to whether the condition or claim is abuse-related; and
- D. Except for claim actions, is based on a determination, made in conformance with sound actuarial principles and supported by reasonable statistical evidence, that there is a correlation between the medical condition and a material increase in insurance risk.

Drafting Note: It is not the intent of this Act to permit any medical underwriting not otherwise permitted by law. Subjects of abuse may currently be subject to this type of underwriting. States may wish to consider whether it is appropriate to adopt the restrictions contained within the NAIC's Small Employer Health Insurance Availability Model Act (Prospective Reinsurance With or Without an Opt-Out) or the NAIC's Small Employer and Individual Health Insurance Availability Model Act or Individual Health Insurance Portability Model Act to restrict underwriting in this market for the benefit of subjects of abuse and consumers generally.

Section 6. Insurance Protocols for Subjects of Abuse

Health carriers shall develop and adhere to written policies specifying procedures to be followed by employees and by insurance professionals they contract with, for the purpose of protecting the safety and privacy of a subject of abuse and shall otherwise implement the provisions of this Act when taking an application, investigating a claim, pursuing subrogation or taking any other action relating to a policy or claim involving a subject of abuse. Insurers shall distribute their written policies to employees and insurance professionals.

Unfair Discrimination Against Subjects of Abuse
in Health Benefit Plans Model Act

Drafting Note: States may wish to consider requiring health carriers to develop procedures in consultation with domestic violence advocacy groups.

Section 7. Enforcement

The commissioner shall conduct a reasonable investigation based on a written and signed [add any means by which the commissioner receives complaints] complaint received by the commissioner and issue a prompt determination as to whether a violation of this Act may have occurred. If the commissioner finds from the investigation that a violation of this Act may have occurred, the commissioner shall promptly begin an adjudicatory proceeding. The commissioner may address a violation through means appropriate to the nature and extent of the violation, which may include suspension or revocation of certificates of authority or licenses, imposition of civil penalties, issuance of cease and desist orders, injunctive relief, a requirement for restitution, referral to prosecutorial authorities or any combination of these. The powers and duties set forth in this section are in addition to all other authority of the commissioner.

Drafting Note: States may wish to delete this section if the substance of it already exists in state law.

Section 8. Effective Date

This Act is effective [insert date], and applies to all actions taken on or after the effective date, except where otherwise explicitly stated. Nothing in this Act shall require a health carrier or insurance professional to conduct a comprehensive search of its contract files existing on the effective date solely to determine which applicants or insureds are subjects of abuse.

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

1996 Proc. 2nd Quarter 8, 22, 762, 763-765 (adopted).

1998 Proc. 3rd Quarter 14, 83, 88-89, 96-101 (amended and reprinted).

**UNFAIR DISCRIMINATION AGAINST SUBJECTS OF ABUSE
IN HEALTH BENEFIT PLANS MODEL ACT**

This chart is intended to provide readers with additional information to more easily access state statutes, regulations, bulletins or administrative rulings related to the NAIC model. Such guidance provides readers with a starting point from which they may review how each state has addressed the model and the topic being covered. The NAIC Legal Division has reviewed each state’s activity in this area and has determined whether the citation most appropriately fits in the Model Adoption column or Related State Activity column based on the definitions listed below. The NAIC’s interpretation may or may not be shared by the individual states or by interested readers.

This chart does not constitute a formal legal opinion by the NAIC staff on the provisions of state law and should not be relied upon as such. Nor does this state page reflect a determination as to whether a state meets any applicable accreditation standards. Every effort has been made to provide correct and accurate summaries to assist readers in locating useful information. Readers should consult state law for further details and for the most current information.

**UNFAIR DISCRIMINATION AGAINST SUBJECTS OF ABUSE
IN HEALTH BENEFIT PLANS MODEL ACT**

This page is intentionally left blank

**UNFAIR DISCRIMINATION AGAINST SUBJECTS OF ABUSE
IN HEALTH BENEFIT PLANS MODEL ACT**

KEY:

MODEL ADOPTION: States that have citations identified in this column adopted the most recent version of the NAIC model in a **substantially similar manner**. This requires states to adopt the model in its entirety but does allow for variations in style and format. States that have adopted portions of the current NAIC model will be included in this column with an explanatory note.

RELATED STATE ACTIVITY: Examples of Related State Activity include but are not limited to: older versions of the NAIC model, statutes or regulations addressing the same subject matter, or other administrative guidance such as bulletins and notices. States that have citations identified in this column **only** (and nothing listed in the Model Adoption column) have **not** adopted the most recent version of the NAIC model in a **substantially similar manner**.

NO CURRENT ACTIVITY: No state activity on the topic as of the date of the most recent update. This includes states that have repealed legislation as well as states that have never adopted legislation.

NAIC MEMBER	MODEL ADOPTION	RELATED STATE ACTIVITY
Alabama		ALA. CODE ANN. § 27-55-3 (2000).
Alaska		ALASKA STAT. § 21.36.430 (1997/2001); § 21.54.100 (1997).
American Samoa	NO CURRENT ACTIVITY	
Arizona		ARIZ. REV. STAT. ANN. § 20-448 (1996/2001).
Arkansas		ARK. CODE ANN. § 23-86-306 (1998).
California		CAL. INS. CODE § 10198.9 (1996/1998); CAL. HEALTH & SAFETY CODE § 1374.75 (1995); § 1357.503 (2015).
Colorado		COLO. REV. STAT. § 10-3-1104.8 (1998).
Connecticut		CONN. GEN. STAT. § 38a-816(18) (1995/2003).
Delaware		DEL. CODE ANN. tit. 18, § 2302(5); § 2304(24); § 2304(25) (1996).
District of Columbia		D.C. CODE § 31-2231.11 (2012); BULLETIN 09-005-IB (2009).

**UNFAIR DISCRIMINATION AGAINST SUBJECTS OF ABUSE
IN HEALTH BENEFIT PLANS MODEL ACT**

NAIC MEMBER	MODEL ADOPTION	RELATED STATE ACTIVITY
Florida		FLA. STAT. § 626.9541 (1976/2014); § 627.65625 (1997); § 641.31073 (1997).
Georgia		GA. CODE ANN. § 33-6-4 (1972/2002).
Guam	NO CURRENT ACTIVITY	
Hawaii		HAW. REV. STAT. § 431:10-217.5 (1998).
Idaho	NO CURRENT ACTIVITY	
Illinois		215 ILL. COMP. STAT. 5/155.22a (1997/2004).
Indiana		IND. CODE §§ 27-8-24.3-1 to 27-8-24.3-10 (1996).
Iowa		IOWA CODE § 507B.4 (1955/2002); § 513B.9A (1997).
Kansas	KAN. STAT. ANN. § 40-2404 (1955/2001).	
Kentucky		KY. REV. STAT. ANN. § 304.12-211 (2000); § 304.17a-155 (1998); § 304.17A-200 (2015).
Louisiana		LA. REV. STAT. ANN. § 22:1078 (2010).
Maine		ME. REV. STAT. ANN. tit. 24-A, § 2159-B (1996/2001).
Maryland		MD. CODE ANN., INS. § 27-504 (1957/1997).
Massachusetts		MASS. GEN. LAWS ch. 176A, § 3A; MASS. GEN. LAWS ch. 176B, § 5A; MASS. GEN. LAWS ch. 176G, § 19 (1996); BULLETIN NO. B-96-01 (1996).

**UNFAIR DISCRIMINATION AGAINST SUBJECTS OF ABUSE
IN HEALTH BENEFIT PLANS MODEL ACT**

NAIC MEMBER	MODEL ADOPTION	RELATED STATE ACTIVITY
Michigan		MICH. COMP. LAWS § 500.2246 (1956/1998); § 500.3406j (1956/1998); § 550.1401 (1980/2003).
Minnesota		MINN. STAT. § 72A.20 (1967/2002).
Mississippi	MISS. CODE ANN. §§ 83-71-1 to 83-71-15 (2010).	
Missouri		MO. REV. STAT. § 375.1312 (1999/2013) (group); § 376.451 (2008).
Montana		MONT. CODE ANN. § 33-18-216 (1997).
Nebraska	NEB. REV. STAT. §§ 44-7401 to 44-7410 (1998) (portions of model).	
Nevada		NEV. REV. STAT. § 689B.068 (1997); § 689A.413 (1997); § 695C.203 (1997); § 689C.196 (1997); § 689B.550 (2001); § 689C.193 (2014).
New Hampshire		N.H. REV. STAT. ANN. § 417:4 (1947/2004).
New Jersey		N.J. REV. STAT. §§ 17:29B-16 to 17:29B-19 (2003); N.J. ADMIN. CODE §§ 11:4-42.1 to 11:4-42.5 (1996/2004) (group).
New Mexico	N.M. STAT. ANN. §§ 59A-16B-1 to 59A-16B-10 (1997).	N.M. STAT. ANN. § 59A-23E-11 (1998); 13 N.M. CODE R. §§ 7.5.1 to 7.5.17 (1999) (insurers' duty regarding confidential abuse information).
New York		N.Y. INS. LAW § 2612 (1996).
North Carolina		N.C. GEN. STAT. § 58-68-35 (1997); 11 N.C. ADMIN. CODE 12.1901 (2017).

**UNFAIR DISCRIMINATION AGAINST SUBJECTS OF ABUSE
IN HEALTH BENEFIT PLANS MODEL ACT**

NAIC MEMBER	MODEL ADOPTION	RELATED STATE ACTIVITY
North Dakota	NO CURRENT ACTIVITY	
Northern Marianas	NO CURRENT ACTIVITY	
Ohio		OHIO REV. CODE ANN. § 3901.21 (1970/1999).
Oklahoma		OKLA. STAT. tit. 36, § 6060.10A (2010); tit. 36, § 4502 (2015).
Oregon		OR. REV. STAT. § 746.015 (1967/2013).
Pennsylvania		40 PA. CONS. STAT. §§ 1171.1 to 1171.15 (1974/2014).
Puerto Rico	P.R. LAWS ANN. tit. 26, §§ 10371 to 10377 (2011).	
Rhode Island	R.I. GEN. LAWS §§ 27-60-1 to 27-60-7 (1997).	
South Carolina		S.C. CODE ANN. § 38-71-860 (1997).
South Dakota		S.D. CODIFIED LAWS § 58-33-13.3 (2010); § 58-18B-27 (1995/1997); (small group).
Tennessee	TENN. CODE ANN. §§ 56-8-201 to 56-8-206 (1996).	
Texas		TEX. INS. CODE ANN. §§ 544.151 to 544.158 (2003/2005).
Utah		UTAH CODE ANN. §§ 31a-21-501 to 31a-21-506 (1997/2013).
Vermont	NO CURRENT ACTIVITY	
Virgin Islands	NO CURRENT ACTIVITY	
Virginia		VA. CODE ANN. § 38.2-508 (1986/2013).

**UNFAIR DISCRIMINATION AGAINST SUBJECTS OF ABUSE
IN HEALTH BENEFIT PLANS MODEL ACT**

NAIC MEMBER	MODEL ADOPTION	RELATED STATE ACTIVITY
Washington		WASH. REV. CODE ANN. § 48.18.550 (1998).
West Virginia		W. VA. CODE § 33-4-20 (1997).
Wisconsin		WIS. STAT. § 631.95 (2000).
Wyoming		WYO. STAT. ANN. § § 26-19-107 (1967/2006).

**UNFAIR DISCRIMINATION AGAINST SUBJECTS OF ABUSE
IN HEALTH BENEFIT PLANS MODEL ACT**

This page is intentionally left blank

UNFAIR DISCRIMINATION AGAINST SUBJECTS OF ABUSE IN HEALTH BENEFIT PLANS MODEL ACT

Proceedings Citations

Cited to the Proceedings of the NAIC

In July 1994 the NAIC Executive Committee reviewed a resolution that had recently been adopted by the National Association of Attorneys General (NAAG). The chair suggested that members of the NAIC evaluate in their respective states whether victims of domestic violence were subject to exclusions for the costs of treatment under applicable insurance policies so that the NAIC can determine appropriate action. **1994 Proc. 3rd Quarter 52-53.**

At the next NAIC meeting a commissioner described the practices of eight large insurers that were underwriting health, life and mortgage disability policies on the basis of medical records that revealed domestic violence experiences in the history of the applicants. After this fact was pointed out in a press conference, most of the insurers cited announced that they would no longer underwrite on the basis of a domestic violence history. The commissioner said a review of the extent of the practice in her own state showed that such practices by insurers were subtle, and were arguably allowed by state law. She suggested it would be appropriate for the NAIC to endorse the “sense” of the NAAG resolution and to develop a model act addressing unfair insurance practices and domestic violence. She suggested that the NAIC should take a leadership role to stop such unfair insurance practices. **1994 Proc. 3rd Quarter 10-11.**

Another commissioner expressed reluctance to support the NAAG resolution, citing a number of problems with it. A third commissioner agreed with that assessment, but did encourage the NAIC to take whatever action was appropriate to address unfair insurance practices against victims of domestic violence. **1994 Proc. 3rd Quarter 11.**

The chair of the Accident and Health Insurance Committee suggested referring this issue to that committee with a charge to develop a model law. The Plenary voted to follow that recommendation; although a member pointed out that this issue was broader than health insurance. **1994 Proc. 3rd Quarter 11-12.**

A working group was appointed by the Accident and Health Insurance Committee to study the issue of policy declination based on an applicant’s history of being a victim of domestic violence. **1994 Proc. 3rd Quarter 578.**

The first drafting effort attached to the minutes included three alternative proposals: A draft model act, a draft model regulation, and a draft of amendments to the Unfair Trade Practices Act. **1994 Proc. 4th Quarter 699-705.**

When reviewing a first draft, the members of the working group decided to draft several alternative provisions so that the states could elect to suggest legislation for enactment into law or to promulgate regulations pursuant to statutory authority already granted to the insurance commissioner. **1994 Proc. 4th Quarter 706.**

One working group member reported that her state was considering amendments to its Unfair Trade Practices Act to address discriminatory practices against victims of domestic violence. She suggested that the working group proceed in that manner or that a drafting note be added to the model act to indicate that language accomplishing the same substantive treatment could be included in a state’s unfair trade practices law. **1995 Proc. 2nd Quarter 575-576.**

UNFAIR DISCRIMINATION AGAINST SUBJECTS OF ABUSE IN HEALTH BENEFIT PLANS MODEL ACT

Proceedings Citations

Cited to the Proceedings of the NAIC

Early in 1995 a hearing was held to solicit further information on domestic violence. The public hearing provided valuable information and background on the incidence and frequency of such unfair discrimination. **1995 Proc. 1st Quarter 509.**

Several federal legislators indicated an interest in developing a federal prohibition of discrimination by insurers against insureds who were victims of domestic violence. Their drafts also included a private cause of action for consumers as well as federal preemptive language. **1995 Proc. 2nd Quarter 574.**

One insurance department surveyed insurers and found that 28% of the companies responding to the survey considered domestic violence as an underwriting criterion. The survey also revealed that life insurers used this criterion significantly more than accident and health insurance companies. **1995 Proc. 2nd Quarter 575-579.**

A funded consumer representative noted that 13 states had domestic violence legislation pending; states were acting independently without a model law as a guide. She said the legislation proposed differs from state to state in covered lines of insurance and definitional language. She urged the working group to complete a model law as soon as possible. **1995 Proc. 2nd Quarter 575.**

To clarify that unfair discrimination by insurers is at issue, the working group agreed to add the word “unfair” before the word “discrimination” in the model. **1995 Proc 3rd Quarter 726.**

In August 1995 the working group, which reported to the Accident and Health Insurance Committee, discussed whether to break out health, disability, life and property/casualty separately. The working group agreed to do initial drafts of a life and a property/casualty model and get input from the Market Conduct and Consumer Affairs Subcommittee on how to proceed. **1995 Proc. 3rd Quarter 726.**

When the model was presented to the Executive Committee for adoption, a number of technical changes were proposed to bring the model into conformity with drafting standards adopted by the NAIC. One commissioner questioned whether the model had been discussed sufficiently so that it should be adopted by the Executive Committee. He said he had no objection to the concept and purpose of the model, but wanted it to be drafted properly. **1995 Proc. 4th Quarter 34.**

When the Executive Committee considered the issue again in June 1996, the chair of the Accident and Health Insurance Committee reported that language had been eliminated that raised issues as to whether the model applied to kinds of insurance other than health benefit plans. Technical amendments were made to improve the drafting. **1996 Proc. 2nd Quarter 762-765.**

The chair of the group that drafted the model stated that adoption of the model sends a clear and important message that unfair discrimination against victims of domestic violence will not be tolerated. **1996 Proc. 2nd Quarter 22.**

UNFAIR DISCRIMINATION AGAINST SUBJECTS OF ABUSE IN HEALTH BENEFIT PLANS MODEL ACT

Proceedings Citations

Cited to the Proceedings of the NAIC

Section 1. Purpose

When a working group was assigned to consider modifications to create consistency between the four models on domestic violence, one of the first recommendations was to add the purpose section found in the property and casualty model to the other three models. **1998 Proc. 1st Quarter 179.**

An industry representative suggested changing Section 1 to refer to "... the basis of abuse *status*" because the purpose of the model acts was to prohibit discrimination on the basis of abuse status, rather than on the mental or physical condition that was a result of the abuse. A regulator commented that the purpose of the models is to prohibit discrimination against subjects of abuse and she saw the change as substantive. The working group decided to make the change. **1998 Proc. 2nd Quarter I 117-118.**

Following Section 1 is a note referring to a private cause of action. An early draft contained an alternative provision providing for a private right of action. **1995 Proc. 2nd Quarter 575, 583.**

After discussing issues related to the private cause of action option for the states, it was agreed that a statement would be drafted clarifying that, at the discretion of the legislature, states might want to consider this remedy. **1995 Proc. 3rd Quarter 726.**

When the working group was considering its charge to create consistency between the four models on discrimination, an early discussion centered on the differing treatment of the issue of a private cause of action. The property and casualty model was drafted to prohibit a private cause of action, but the other three were not. An insurer representative said the drafting note suggesting a state's consideration of including a private cause of action had been left in the property and casualty model inadvertently and should be deleted. A consumer advocate responded that the inclusion of the drafting note was not an oversight and that the prohibition against a private cause of action should not be incorporated into the other three models. **1998 Proc. 2nd Quarter I 117.**

The working group concluded that a private cause of action was not inconsistent with the model and that a state legislature could find a private cause of action appropriate for that state. The working group decided to include the language and the drafting note in all four models. The model act clearly did not provide for a private cause of action, but the drafting note clarified that including a private cause of action would not necessarily conflict with the model. **1998 Proc. 2nd Quarter I 117.**

Section 2. Scope

This section was added to the model when the four models were reviewed for consistency. **1998 Proc. 3rd Quarter 97.**

Section 3. Definitions

A. An early change to the draft was to delete any reference to family relationship in the definition of abuse. **1994 Proc. 4th Quarter 699.** It was reinserted in the 1998 amendments. **1998 Proc. 3rd Quarter 97.**

UNFAIR DISCRIMINATION AGAINST SUBJECTS OF ABUSE IN HEALTH BENEFIT PLANS MODEL ACT

Proceedings Citations

Cited to the Proceedings of the NAIC

Section 3 (cont.)

B. The working group discussed the need to create definitions of abuse status and abuse-related medical conditions. Working group members discussed the issue of whether all underwriting and limitations based on abuse-related medical conditions should be prohibited or whether the model should attempt to prohibit only underwriting that is based on abuse status, and that all medical conditions should be treated equally under state law. It was suggested that, for the model to clarify that all medical conditions would be treated the same, the burden of proof should be on the insurer to demonstrate compliance. **1995 Proc. 3rd Quarter 726.**

E. The definition of confidential abuse information was added in 1998 during the effort to create more consistency between the models. It was copied from the property and casualty model. **1998 Proc. 3rd Quarter 97.**

H. The working group creating consistency between the four discrimination models considered the inclusion of producers in the definition of insurer. A regulator suggested deleting agents, brokers, producers and adjusters from the definition of insurer and include a new definition of licensee to incorporate them back into the model. **1998 Proc. 2nd Quarter I 118.**

Section 4. Unfairly Discriminatory Acts Related to Health Benefit Plans

Discussion took place on how to clarify that individual acts should be considered to be violations of the Unfair Trade Practices Act in this area, as opposed to the policy generally to consider patterns of practice as violations. Working group members discussed the importance of trying to build up some type of exception for violations in this area so that acts alone constituted violations. **1995 Proc. 3rd Quarter 726.**

A regulator expressed concern that the draft model mandates a level of protection for abused individuals that is not provided for others, particularly in the individual market. Another regulator expressed concern about language prohibiting a coverage decision based on an abuse-related medical condition. **1995 Proc. 4th Quarter 816.**

Before adoption of the health benefits model, the chair asked for comments. One association representative opined that her organization supported prohibitions of underwriting based on abuse status, but still would like the discretion to underwrite based upon medical conditions. In the trade association's view, the distinction made in the draft between individual and group coverage created an entitlement. **1995 Proc. 4th Quarter 804.**

A consumer advocate expressed opposition to the provisions that allow medical underwriting for individual products. She noted this model could remove persons entirely from being able to be insured. **1995 Proc. 4th Quarter 804.**

The working group discussed whether to allow medical underwriting beyond the individual market. One regulator noted that NAIC had several ongoing efforts to draft model laws restricting the use of medical underwriting with the hope of encouraging a level standard in the marketplace. He did state that the model should not allow for special treatment of victims of abuse, as opposed to others with the same medical condition. **1995 Proc. 4th Quarter 805.**

UNFAIR DISCRIMINATION AGAINST SUBJECTS OF ABUSE IN HEALTH BENEFIT PLANS MODEL ACT

Proceedings Citations

Cited to the Proceedings of the NAIC

Section 4 (cont.)

The chair said that, in her view, the model did not create a “special class” or an “entitlement” and observed that victims of domestic abuse would doubtfully view their situation in that light. She saw an important public policy issue. **1995 Proc. 4th Quarter 805.**

The chair reported to the parent that the model now allowed underwriting of abuse-related medical conditions, in that the model was silent on the issue. **1995 Proc. 4th Quarter 793.**

When the entire NAIC membership considered the model, the working group chair said that an issue had been raised as to whether the prohibition against adverse underwriting based on the perception that a person is a subject of abuse is appropriate. She said this provision makes it clear that underwriting based on health conditions is permissible while underwriting based solely on abuse status is prohibited. Another regulator commented that the provision granting favorable treatment to persons who perceived themselves as abused may lead to persons having a right to guaranteed issue of a health insurance policy. Another regulator stated the model says that underwriting based on health conditions is permissible, but underwriting decisions based solely on abuse status are prohibited. Another regulator questioned the subjectivity of the term “perception.” He said the model was unclear as to whose perception was involved. **1996 Proc. 2nd Quarter 8.**

B. Early in the development of the model, the need for a confidentiality provision was recognized. The one contained in the June 1995 draft was a separate section defining discriminatory practices relative to domestic violence. The purpose of the section was to control access by insurers to medical information such that domestic violence information is not released. A regulator noted that the section was too narrow and would be redrafted to incorporate a voluntary waiver provision so that an applicant or an insured could waive confidentiality and make the information available to insurers. **1995 Proc. 2nd Quarter 575, 580-581.**

When the four models were being revised to make them more consistent, a regulator pointed out that the health model varied quite a bit from the other three when addressing the disclosure of confidential information. The working group decided to change the health model to conform to the other three acts. **1998 Proc. 2nd Quarter I 118.**

Section 5. Justification of Adverse Insurance Decisions

When reviewing the first drafting efforts, one state regulator commented that many states allow insurance policies to preclude coverage for injury, damages or harm resulting from intentional acts, where the injury, damages or harm is expected or intended by the insured. He suggested that the intent of the model drafts appeared to reverse the effect of that policy language. **1994 Proc. 4th Quarter 699.**

An insurance trade association expressed concern about Section 4, which shifts the burden to the insurer. **1995 Proc. 4th Quarter 804.**

**UNFAIR DISCRIMINATION AGAINST SUBJECTS OF ABUSE
IN HEALTH BENEFIT PLANS MODEL ACT**

Proceedings Citations
Cited to the Proceedings of the NAIC

Section 6. Insurance Protocols for Subjects of Abuse

An early draft of the model contained a section prohibiting subrogation of claims resulting from abuse. **1995 Proc. 2nd Quarter 575, 581.**

A consumer advocate commended the drafters for including a provision requiring insurer protocols and asked that there be a section added to require insurers to consult with domestic violence advocacy groups. She expressed opposition to the removal of a provision on subrogation that was in an earlier draft. **1995 Proc. 4th Quarter 804-805.**

The text of Section 6 was extensively revised in 1998 when a working group was appointed to make the four models consistent. The group expressed the intent not to make substantive changes. **1998 Proc. 3rd Quarter 100.**

Section 7. Enforcement

Section 8. Effective Date

Chronological Summary of Action

June 1996: Adopted model on discrimination in health benefit plans.

December 1998: Model amended to achieve consistency between four models on discrimination against victims of abuse.