MEMORANDUM

TO: Commissioners, Directors, Superintendents, and Interested Parties
FROM: Jennifer Neuerburg, Model Laws Coordinator
DATE: January 7, 2020
RE: Action on Model Laws, Guidelines, and White Papers at the 2019 Fall National Meeting

This memorandum describes NAIC action on model laws, guidelines, and white papers at the 2019 Fall National Meeting. For further information, including current drafts and staff support contacts for each item, please consult the NAIC web site (www.naic.org), Committees page.

I. Actions by Executive (EX) Committee and Plenary

A. Model Laws and Regulations Considered by the Executive (EX) Committee and Plenary

The Executive (EX) Committee and Plenary did not consider any model laws or regulations at the Fall National Meeting.

B. Guidelines Adopted by the Executive (EX) Committee and Plenary

Amendments to Guideline for Stay on Termination of Netting Agreements and Qualified Financial Contracts (#1556)

The Executive (EX) Committee and Plenary adopted revisions to the Guideline for Stay on Termination of Netting Agreements and Qualified Financial Contracts (#1556). The revisions are intended to eliminate any misalignments between federal and state laws that could impede effective recovery for U.S. insurance groups. The Financial Condition (E) Committee adopted the amendments on a conference call held on October 31, 2019.

C. Actuarial Guidelines Adopted by the Executive (EX) Committee and Plenary

New: Actuarial Guideline LII—Variable Annuity Early Adoption (AG 52)

The Executive (EX) Committee and Plenary adopted Actuarial Guideline LII—Variable Annuity Early Adoption (AG 52). Beginning in 2015, the NAIC commissioned a study of the reserve and risk-based capital (RBC) framework for variable annuity products. The study concluded that the existing requirements resulted in non-economic volatility, providing incentive for companies to engage in the use of inappropriate financial planning techniques. Updates to the reserve and RBC framework, including changes to the Valuation Manual, were made to address this issue. Changes
to the *Valuation Manual* will be effective on January 1, 2020, and will impact subsequent financial statements. *Actuarial Guideline LII—Variable Annuity Early Adoption* (AG 52) is informational only and provides that a company may elect to apply the VM-21 requirements from the 2020 *Valuation Manual* as the requirements for the valuation on December 31, 2019. The Life Insurance and Annuities (A) Committee adopted AG 52 at its meeting on November 4, 2019.

D. **Bulletins/Consumer Alerts Adopted by Executive (EX) Committee and Plenary**

**New: Post-Disaster Claims Guide**

The Executive (EX) Committee and Plenary adopted a Post-Disaster Claims Guide. The Transparency and Readability of Consumer Information (C) Working Group originally received a referral from the Catastrophe Insurance (C) Working Group to create a claims guide that state departments of insurance could provide to consumers following a disaster. The claims guide provides information to consumers on several topics, including steps to take following a disaster, reporting an insurance claim, information on additional living expenses, adjusters, calculation of payments, depreciation, fraud, and ways to limit future damage. The Property and Casualty Insurance (C) Committee adopted the Post-Disaster Claims Guide at the 2019 Summer National Meeting.

E. **White Papers Adopted by Executive (EX) Committee and Plenary**

**New: Regulatory Guide: Understanding the Market for Cannabis Insurance**

The Executive (EX) Committee and Plenary adopted a white paper titled *Regulatory Guide: Understanding the Market for Cannabis Insurance*. The Property and Casualty Insurance (C) Committee appointed the Cannabis Insurance (C) Working Group to study insurance issues related to legal cannabis business and to draft a white paper. The white paper provides an overview of regulatory issues including substantial gaps in insurance coverage for the cannabis industry. The Property and Casualty Insurance (C) Committee adopted the white paper during the 2019 Summer National Meeting.

II. **Actions by Executive (EX) Committee**

**Model Law and Regulation Requests Approved for Development by the Executive (EX) Committee**

1. **Amendments to the Insurance Holding Company System Regulatory Act (#440) and the Insurance Holding Company System Model Regulation with Reporting Forms and Instructions (#450)**

The Executive (EX) Committee approved the model law development request for amendments to the *Insurance Holding Company System Regulatory Act (#440)* and the *Insurance Holding Company System Model Regulation with Reporting Forms and Instructions (#450)*. The Group Capital Calculation (E) Working Group has been developing the group capital calculation (GCC), and while the calculation is not yet complete, testing of the calculation was recently completed by volunteer insurers. The Working Group hopes to finalize the calculation in 2020 and revise Model #440 and Model #450 so that states can adopt the GCC. The Working Group expects that Section 4 of #440 will need to be revised to require a new filing and #450 will
need to be revised to add the new filing and a related new section (Form G). The Financial Condition (E) Committee approved this request via conference call on October 31, 2019.

2. Amendments to the Unfair Trade Practices Act (#880)

The Executive (EX) Committee approved the model law development request for amendments to the Unfair Trade Practices Act (#880). The Innovation and Technology (EX) Task Force began discussing rebating issues in 2018 because of the increased interest in offering value-added products and services that are not necessarily addressed within the applicable insurance policy language. The Task Force approved this request during its October 18, 2019 meeting.

III. Actions by Other Committees, Task Forces and Working Groups

A. Life Insurance and Annuities (A) Committee

1. Amendments to Annuity Disclosure Model Regulation (#245)

The Life Insurance and Annuities (A) Committee granted a request for extension of time to the Annuity Disclosure (A) Working Group to continue drafting amendments to the Annuity Disclosure Model Regulation (#245). The Working Group met via conference call September 19, 2019, to discuss two remaining issues: (1) whether to allow indices made up of only other indices, or to allow the illustration of indices made up of indices or “other financial instruments;” and (2) whether the algorithm should be made available to the consumer for inspection. The Working Group is revising its draft and will make it available for comments. The Executive (EX) Committee approved the model law development request for these amendments at the 2017 Summer National Meeting.

2. Amendments to Suitability in Annuity Transactions Model Regulation (#275)

The Life Insurance and Annuities (A) Committee met via conference call on December 30, 2019 and adopted revisions to the Suitability in Annuity Transactions Model Regulation (#275). The Annuity Suitability (A) Working Group developed draft revisions incorporating a best interest standard that requires producers and insurers to satisfy requirements outlined in a care obligation, disclosure obligation, conflict of interest obligation and a documentation obligation. The Working Group forwarded its draft to the Life Insurance and Annuities (A) Committee for its consideration on November 5, 2019. The Committee exposed the draft for a public comment period ending November 26, 2019, and considered those comments during the Fall National Meeting. The revisions were drafted for consistency with federal law and, therefore, the Working Group did not require approval of a request for model law development by the Executive (EX) Committee.
3. **Amendments to Life Insurance Disclosure Model Regulation (#580)**

The Life Insurance and Annuities (A) Committee granted a request for extension of time to the Life Insurance Illustration Issues (A) Working Group to continue drafting amendments to the *Life Insurance Disclosure Model Regulation (#580)*. The Working Group plans to ask the Life Insurance and Annuities (A) Committee for guidance on the issue of timing for delivery of the policy overview and will post a revised draft of the amendments for comments. The Executive (EX) Committee approved the request for model law development to amend the model at the 2017 Summer National Meeting.

B. **Health Insurance and Managed Care (B) Committee**

1. **Amendments to Model Regulation to Implement the Accident and Sickness Insurance Minimum Standards Act (#171)**

   The Accident and Sickness Insurance Minimum Standards (B) Subgroup has been meeting via conference calls to consider revisions to the *Model Regulation to Implement the Accident and Sickness Insurance Minimum Standards Model Act (#171)* for consistency with the revised *Supplementary and Short-Term Health Insurance Minimum Standards Model Act (#170)*. The Subgroup plans to meet via conference call after the Fall National Meeting to complete its review of comments on Sections 1 to 5 and to establish a public comment period. Amendments to Model #171 are required for consistency with the federal Affordable Care Act (ACA) and, therefore, did not require approval of a request for model law development by the Executive (EX) Committee.

2. **Amendments to Health Maintenance Organization Model Act (#430)**

   The HMO Issues (B) Subgroup of the Regulatory Framework (B) Task Force met via conference call November 21, 2019, to discuss amendments to the *Health Maintenance Organization Model Act (#430)* for consistency with the revised *Life and Health Insurance Guaranty Association Model Act (#520)*. The Subgroup agreed that revisions to the text of #430 should conform to the current version of Model #520, and include drafting notes detailing what states should do if they choose to retain the prior version. The Subgroup will hold its next conference call after the Fall National Meeting to review an initial draft of amendments to Model #430.

C. **Property and Casualty Insurance (C) Committee**

1. **New: Real Property Lender-Placed Insurance Model Act**

   The Property and Casualty Insurance (C) Committee granted an extension of time to continue drafting the new Real Property Lender-Placed Insurance Model Act until the Spring 2020 National Meeting. The Lender-Placed Insurance Model Act (C) Working Group is drafting the model to address lender-placed insurance related to mortgage loans. The Executive (EX) Committee approved the model law development request for this Act at the 2017 Summer National Meeting.
D. Market Regulation and Consumer Affairs (D) Committee

The Market Regulation and Consumer Affairs (D) Committee did not take action on any model laws at the 2019 Fall National Meeting.

E. Financial Condition (E) Committee

Amendments to the Mortgage Guaranty Insurance Model Act (#630)

The Mortgage Guaranty Insurance (E) Working Group continues to draft and discuss substantial changes to the Mortgage Guaranty Insurance Model Act (#630). The Working Group’s goal is to construct a counter-cyclical model similar to risk-based capital. At the 2019 Summer Meeting, the Working Group was granted an extension until the 2020 Spring National Meeting. At the 2019 Fall National Meeting, the Working Group agreed to expose Model #630 for a 45-day public comment period.