MARKET CONDUCT RECORD RETENTION AND PRODUCTION MODEL REGULATION

Table of Contents

Section 1. Authority
Section 2. Purpose
Section 3. Definitions
Section 4. Records Required for Market Conduct Purposes
Section 5. Policy Record File
Section 6. Claim File
Section 7. Licensing Records
Section 8. Complaint Records
Section 9. Format of Records
Section 10. Location of Files
Section 11. Time Limits to Provide Records and to Respond to Examiners
Section 12. Confidential Materials
Section 13. Effective Date

Section 1. Authority

This regulation is promulgated pursuant to the authority granted by [cite state law equivalent to the NAIC Unfair Trade Practices Model Act or the NAIC Unfair Claims Settlement Practices Model Act or the state examination authority statute.] Nothing herein shall be construed to create or imply a private cause of action for violation of this Act.

Section 2. Purpose

This regulation implements [cite law enacting Section 4 of the NAIC Unfair Trade Practices Model Act or the NAIC Unfair Claims Settlement Practices Model Act or the state examination authority statute] regarding the retention and maintenance of records required for market conduct purposes as contained in Section 4 of this regulation.

Drafting Note: Regarding Sections 1 and 2, a state may wish to refer to other examination or rate and form filing laws for authority and purpose. In regard to the Unfair Trade Practices and Unfair Claims Settlement Practices Model Acts, states may have combined or separate acts.

Section 3. Definitions

All definitions contained in the Unfair Trade Practices Model Act are hereby incorporated by reference. In addition, for purposes of this regulation:

A. "Application and accompanying records" means any written or electronic application form, any enrollment form, any document or record thereof, used to add coverage under any existing policy, questionnaire, telephone interview form, paramedical interview form or any other document used to question or underwrite an applicant for any policy issued by an insurer or for any declination of coverage by an insurer.

B. "Claim file and accompanying records" means the file maintained so as to show clearly the inception, handling and disposition of each claim. The claim file shall be sufficiently clear and specific so that pertinent events and dates of these events can be reconstructed.

Drafting Note: States may have a definition of "claim file" in their administrative rules under the Unfair Claims Settlement Practices Act for property/casualty or life/accident and health.

C. "Commissioner" means the Commissioner of Insurance.

Drafting Note: Insert the title of the chief insurance regulatory official wherever the term "commissioner" appears.

D. "Complaint" means a written communication primarily expressing a grievance.

E. "Declination" or "declined underwriting file" means all written or electronic records concerning coverage for which an application has been completed and submitted to the insurer or its producer but the insurer has made a determination not to issue a policy or not to add additional coverage when requested.

Drafting Note: If this is a new requirement a state may want to consider allowing a phase-in period for companies to begin tracking this information.

F. "Examiner" means a market conduct examiner or any other examiner authorized or designated by the commissioner to conduct an examination pursuant to [insert citation to examination authority].

G. "Grievance" for health insurance purposes, means a written complaint submitted by or on behalf of a covered person regarding the:

(a) Availability, delivery or quality of health services, including a complaint regarding an adverse determination made pursuant to utilization review;

(b) Claims payment, handling or reimbursement for health care services; or

(c) Matters pertaining to the contractual relationship between a covered person and a health carrier.

H. "Inquiry" means a specific question, criticism or request made in writing to an insurer by an examiner.

I. "Related entity" shall include a person authorized to act on behalf of the insurer in connection with the business of insurance.

Drafting Note: A state may wish to add definitions for purposes of this regulation, if terminology is not defined in its existing Unfair Trade Practices Act.

Section 4. Records Required for Market Conduct Purposes

A. An insurer or related entity licensed to do business in this state shall maintain its books, records and documents in a manner so that the commissioner can readily ascertain during an examination the insurer's compliance with state insurance laws and rules and with the standards outlined in the *NAIC Market Conduct Examiners Handbook*, including, but not limited to, company operations and management, policyholder service, marketing, producer licensing, underwriting, rating, complaint/grievance handling, and claims practices.

B. For a health insurer, the insurer or related entity shall maintain its books, records, and documents in a manner so that the practices of the insurer regarding network adequacy, utilization review, quality assessment and improvement and provider credentialing may be ascertained during a market conduct examination.

C. These records shall be retained for the current year plus three (3) years.

D. The producer of record shall maintain a file for each policy sold, and the file shall contain all work papers and written communications in his or her possession pertaining to the policy documented therein. These records shall be retained for the current year plus three (3) years.

Drafting Note: Regarding the retention time period, states should review their current market conduct examination laws and specify a time period that is consistent with the commissioner's market conduct examination authority. For some states this time period may be five (5) years.

Drafting Note: There may be other statutory or regulatory requirements for records to be maintained that a state may wish to reference.

E. During an examination of the insurer, the insurer shall provide a copy of the written contract entered into with each third party vendor or service provider as requested by an examiner within the time frames set forth in Section 11 of this regulation.

Section 5. Policy Record File

A. A policy record file shall be maintained for each policy issued, and shall be maintained for the duration of the current policy term plus three (3) years, or for life insurance policies and annuity contracts, for the time the policy or contract is in force and three (3) years thereafter. Policy records shall be maintained so as to show clearly the policy period, basis for rating and any imposition of additional exclusions from or exceptions to coverage. If a policy is terminated, either by the insurer or the policyholder, documentation supporting the termination and account records indicating a return of premiums, if any, shall also be maintained. Policy records need not be segregated from the policy records of other states so long as the records are readily available to market conduct examiners as required under this regulation.

Drafting Note: States should review their market conduct examination laws and specify a time period that is consistent with the commissioners market conduct examination authority. For some states this time period may be five (5) years.

Drafting Note: There may be other statutory or regulatory requirements for records to be maintained that a state may wish to reference.

B. Policy records shall include the following:

(1) Any application and accompanying records for each contract. The application shall bear a clearly legible means by which an examiner can identify a producer involved in the transaction. The examiners shall be provided with information clearly identitifying the producer involved in the transaction.

(2) Any declaration pages (the initial page and any subsequent pages), the insurance contract, any certificates evidencing coverage under a group contract, any endorsements or riders associated with a policy, any termination notices, and any written or electronic correspondence to or from the insured pertaining to the coverage. If any of these records has already been filed with the commissioner, a separate copy of the record need not be maintained in the individual policy files to which the record pertains, provided it is clear from the insurer's other records or systems that the record applies to a particular policy and that any data contained in the record relating to the policy, as well as the actual policy issued to the insured, can be retrieved or recreated;

(3) Any binder; and

(4) Any guidelines, manuals or other information necessary for the reconstruction of the rating, underwriting, policy owner service and claims handling of the policy. The maintenance at the site of a market conduct examination of a single copy of each of the above shall satisfy this requirement. These types of records include, but are not limited to, the application, the policy form including any amendments or endorsements, rating manuals, underwriting rules, credit reports or scores, claims history reports, previous insurance coverage reports (e.g., MIB), questionnaires, internal reports, and underwriting and rating notes.

C. A declined underwriting file shall be maintained and shall include include an application, any documentation substantiating the decision to decline an issuance of a policy, any binder issued without the insurer issuing a policy, any documentation substantiating the decision not to add additional coverage when requested and, if required by law, any declination notification. Notes regarding requests for quotations that do not result in a completed application for coverage need not be maintained for purposes of this regulation. The insurer shall retain declined underwriting files for the current year plus three (3) years.

Section 6. Claim File

A. A claim file and accompanying records shall be maintained for the calendar year in which the claim is closed plus three (3) years. The claim file shall be maintained so as to show clearly the inception, handling and disposition of each claim. The claim files shall be sufficiently clear and specific so that pertinent events and dates of these events can be reconstructed. A claim file shall, at a minimum, include the following items:

Drafting Note: States should review their current market conduct examination laws and specify a time period that is consistent with the commissioner's market conduct examination authority. For some states this time period may be five (5) years.

Drafting Note: There may be other statutory or regulatory requirements for records to be maintained that a state may wish to reference.

(1) For property and casualty: the file or files containing the notice of claim, claim forms, proof of loss or other form of claim submission, settlement demands, accident reports, police reports, adjustors logs, claim investigation documentation, inspection reports, supporting bills, estimates and valuation worksheets, medical records, correspondence to and from insureds and claimants or their representatives, notes, contracts, declaration pages, certificates evidencing coverage under a group contract, endorsements or riders, work papers, any written communication, any documented or recorded telephone communication related to the handling of a claim, including the investigation, payment or denial of the claim, copies of claim checks or drafts, or check numbers and amounts, releases, all applicable notices, correspondence used for determining and concluding claim payments or denials, subrogation and salvage documentation, any other documentation created and maintained in a paper or electronic format, necessary to support claim handling activity, and any claim manuals or other information necessary for reviewing the claim.

(2) For life and annuity: the file or files containing the notice of claim, claim forms, proofs of loss, medical records, correspondence to and from insureds and claimants or their representatives, claim investigation documentation, claim handling logs, copies of checks or drafts, check numbers and amounts, releases, correspondence, all applicable notices, and correspondence used for determining and concluding claim payments or denials, any written communication, any documented or recorded telephone communication related to the handling of a claim, including the investigation, and any other documentation, maintained in a paper or electronic format, necessary to support claim handling activity.

(3) For health: the file or files containing the notice of claim, claim forms, medical records, bills, electronically submitted bills, proofs of loss, correspondence to and from insureds and claimants or their representatives, claim investigation documentation, health facility pre-admission certification or utilization review documentation, claim handling logs, copies of explanation of benefit statements, any written communication, any documented or recorded telephone communication related to the handling of a claim, including the investigation, copies of checks or drafts, or check numbers and amounts, releases, correspondence, all applicable notices, and correspondence used for determining and concluding claim payments or denials, and any other documentation, maintained in a paper or electronic format, necessary to support claim handling activity.

B. Where a particular document pertains to more than one file, insurers may satisfy the requirements of this section by making available, at the site of an examination, a single copy of each document.

C. Documents in a claim file received from an insured, the insured's agent, a claimant, the department or any other insurer shall bear the initial date of receipt by the insurer, date stamped in a legible form in ink, in an electronic format, or some other permanent manner. Unless the company provides the examiners with written procedures to the contrary, the earliest date indicated on a document will be considered the initial date of receipt.

D. If an insurer, as its regular business practice, places the responsibility for handling certain types of claims upon company personnel other than its claims personnel, the insurer need not duplicate its files for maintenance by claims personnel. These claims records shall be maintained as part of the records of the insurer's operations and shall be readily available to examiners.

Section 7. Licensing Records

Records to be maintained relating to the insurer's compliance with licensing requirements shall include the licensing records of each producer associated with the insurer. Licensing records shall be maintained so as to show clearly the licensing status of the producer at the time of solicitation, negotiation or procurement, as well as the dates of the appointments and terminations of each producer. A screenprint from the Producer Database (PDB) may serve to provide adequate proof only of a producer's current licensing status.

Drafting Note: States may want to amend this section to allow for the maintenance of a screen print from the state's website as meeting the requirements of this section.

Section 8. Complaint Records

The complaint records required to be maintained under Section [cite reference to Unfair Trade Practices Act; Regulation for Complaint Records; or other appropriate state statute] shall include a complaint log or register, or grievance log or register for health insurers, in addition to the actual written complaints. The complaint log or register shall show clearly the total number of complaints for the current year plus the immediately preceding three (3) years, the classification of each complaint by line of insurance and by complainant (i.e., insured, Department of Insurance, third party, etc.), the nature of each complaint, the insurer's disposition of each complaint, and the complaint number assigned by the Department of Insurance, if applicable. If the insurer maintains the file in a computer format, the reference in the complaint log or register for locating the documentation shall be an identifier such as the policy number or other code. The codes shall be provided to the examiners at the time of an examination.

Section 9. Format of Records

A. Any record required to be maintained by an insurer may be created and stored in the form of paper, photograph, magnetic, mechanical or electronic medium; or any process that accurately forms a durable reproduction of the record, so long as the record is capable of duplication to a hard copy that is as legible as the original document. Documents that are produced and sent to an insured by use of a template and an electronic mail list shall be considered to be sufficiently reproduced if the insurer can provide proof of mailing of the document and a copy of the template. Documents that require the signature of the insured or insurer's producer shall be maintained in any format listed above provided evidence of the signature is preserved in that format.

B. The maintenance of records in a computer-based format shall be archival in nature, so as to preclude the alteration of the record after the initial transfer to a computer format. Upon request of an examiner, all records shall be capable of duplication to a hard copy that is as legible as the original document. The records shall be maintained according to written procedures developed and adhered to by the insurer. The written procedures shall be made available to the commissioner during an examination.

C. Photographs, microfilms, or other image-processing reproductions of records shall be equivalent to the originals and may be certified as the same in actions or proceedings before the commissioner unless inconsistent with [insert citation to administrative procedures law].

Section 10. Location of Files

A. All records required to be maintained under this regulation shall be kept in a location that will allow the records to be produced for examination within the time period required. When, under normal circumstances, someone other than the insurer maintains a required record or type of record, the other person's responsibility to maintain the records shall be set forth in a written agreement, a copy of which shall be maintained by the insurer and shall be available to the examiners for purposes of examination.

B. If required by law or otherwise available, the insurer shall maintain disaster preparedness or disaster recovery procedures that include provisions for the maintenance or reconstruction of original or duplicate records at another location. These procedures shall be provided for review during the examination.

Section 11. Time Limits to Provide Records and to Respond to Examiners

A. Initial data requests should be submitted to a company at least thirty (30) days prior to the commencement of the on-site examination, desk audit or other form of review to provide ample time for the company to prepare the materials requested by the examining state. Subsections B and C below apply to requests for supplemental data and information not anticipated at the time of the initial request as specified in Subsection A.

B. As a means to facilitate the examination and to aid in the examination in accordance with [statute regarding examination authority] an insurer shall provide any requested document or written response to an inquiry submitted by an examiner within five (5) working days, or such other time period as mutually agreed upon by the examiner and the insurer. When the requested document or response is not produced by the insurer within the specified time period, a violation shall be deemed to have occurred unless the insurer can demonstrate to the satisfaction of the commissioner that the requested record cannot reasonably be provided within the specified time period of the request.

Drafting Note: States may want to consider extending the time period for when a response is due if that request consists of a data run, request for statistical information, or information that cannot logistically be obtained without additional time. The time allowed for such an extension must be a mutually agreed upon time period.

C. Additional records requested by the commissioner shall be made available for the examination upon the date specified by the Examiner in Charge.

Drafting Note: States are encouraged to refer to the guidelines of the Market Regulation and Consumer Affairs (D) Committee regarding market conduct examination uniformity standards. The standards include providing notification to a company of an examination with a sufficient amount of time provided for the company to prepare the materials requested by the examining state. Compliance with the lead times recommended by the uniformity standards will facilitate a company's ability to meet the record production times included in this regulation.

Drafting Note: The current version of the Uniformity Outline encourages a state to provide a company at least thirty (30) days notice for data calls prior to the initiation of an examination. While some states may not be able to comply with this recommendation given their current statutory requirements, all states are encouraged to provide a company with as much lead time as possible.

Section 12. Confidential Materials

Original records required to be provided during a market conduct examination shall be returned to the insurer following the examination. If the records relate to an inquiry made by an examiner copies of the records shall become a part of the work papers of the examination. [insert citation for examination authority statute or other state statute that addresses the issue of access to workpapers and their confidentiality] shall govern the public access to the work papers of the examination.

Section 13. Effective Date

This regulation shall become effective [insert date or length of time following promulgation].

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

1993 Proc. 4th Quarter 16, 31, 130, 151, 154-156 (adopted).
2003 Proc. 3rd Quarter 434, 510, 514-519 (amended and reprinted, adopted by parent committee).
2003 Proc. 4th Quarter 17 (adopted by Plenary).

MARKET CONDUCT RECORD RETENTION AND PRODUCTION MODEL REGULATION

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.

MARKET CONDUCT RECORD RETENTION AND PRODUCTION MODEL REGULATION

This page is intentionally left blank

MARKET CONDUCT RECORD RETENTION AND PRODUCTION MODEL REGULATION

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	NO CURRENT ACTIVITY	
Alaska	NO CURRENT ACTIVITY	
American Samoa	NO CURRENT ACTIVITY	
Arizona	NO CURRENT ACTIVITY	
Arkansas	NO CURRENT ACTIVITY	
California	NO CURRENT ACTIVITY	
Colorado	1 COLO. CODE REGS. § 1-7 (1995/2003).	
Connecticut	NO CURRENT ACTIVITY	
Delaware	NO CURRENT ACTIVITY	
District of Columbia	NO CURRENT ACTIVITY	
Florida	NO CURRENT ACTIVITY	
Georgia	NO CURRENT ACTIVITY	
Guam	NO CURRENT ACTIVITY	

MARKET CONDUCT RECORD RETENTION AND PRODUCTION MODEL REGULATION

NAIC MEMBER	MODEL ADOPTION	RELATED STATE ACTIVITY
Hawaii	NO CURRENT ACTIVITY	
Idaho	NO CURRENT ACTIVITY	
Illinois	NO CURRENT ACTIVITY	
Indiana	NO CURRENT ACTIVITY	
Iowa	NO CURRENT ACTIVITY	
Kansas	NO CURRENT ACTIVITY	
Kentucky	NO CURRENT ACTIVITY	
Louisiana		LA. REV. STAT. AN. 22:68 (1991/2010).
Maine	NO CURRENT ACTIVITY	
Maryland	NO CURRENT ACTIVITY	
Massachusetts	NO CURRENT ACTIVITY	
Michigan	NO CURRENT ACTIVITY	
Minnesota	NO CURRENT ACTIVITY	
Mississippi	NO CURRENT ACTIVITY	
Missouri	MO. CODE REGS. ANN. tit. 20, §§ 300-2.100 to 300-2.200 (1974/2008).	
Montana	NO CURRENT ACTIVITY	
Nebraska	NO CURRENT ACTIVITY	
Nevada	NO CURRENT ACTIVITY	
New Hampshire	N.H. REV. STAT. ANN. §§ 400-B:1 to 400-B:11 (2005/2014).	

MARKET CONDUCT RECORD RETENTION AND PRODUCTION MODEL REGULATION

NAIC MEMBER	MODEL ADOPTION	RELATED STATE ACTIVITY
New Jersey	NO CURRENT ACTIVITY	
New Mexico	NO CURRENT ACTIVITY	
New York	NO CURRENT ACTIVITY	
North Carolina		11 N.C. ADMIN. CODE §§ 19.0101 to 19.0107 (1993/2008).
North Dakota	NO CURRENT ACTIVITY	
Northern Marianas	NO CURRENT ACTIVITY	
Ohio		BULLETIN 94-3 (1994) (Records regarding agents).
Oklahoma	NO CURRENT ACTIVITY	
Oregon	NO CURRENT ACTIVITY	
Pennsylvania	NO CURRENT ACTIVITY	
Puerto Rico	NO CURRENT ACTIVITY	
Rhode Island	R.I.CODE R. § 67 (2007).	
South Carolina	NO CURRENT ACTIVITY	
South Dakota	NO CURRENT ACTIVITY	
Tennessee	NO CURRENT ACTIVITY	
Texas	NO CURRENT ACTIVITY	
Utah	NO CURRENT ACTIVITY	
Vermont	NO CURRENT ACTIVITY	
Virgin Islands	NO CURRENT ACTIVITY	
Virginia	NO CURRENT ACTIVITY	

MARKET CONDUCT RECORD RETENTION AND PRODUCTION MODEL REGULATION

NAIC MEMBER	MODEL ADOPTION	RELATED STATE ACTIVITY
Washington	NO CURRENT ACTIVITY	
West Virginia	NO CURRENT ACTIVITY	
Wisconsin	NO CURRENT ACTIVITY	
Wyoming	NO CURRENT ACTIVITY	

MARKET CONDUCT RECORD RETENTION AND PRODUCTION MODEL REGULATION

Proceeding Citations
Cited to the Proceedings of the NAIC

Section 1. Authority

A regulator suggested that the group review the purpose of the draft model and how it related to the Unfair Trade Practices Act. A section titled "Authority" was added to the draft referencing the authority granted by either the Unfair Trade Practices Act or Unfair Claims Settlement Act. **1993 Proc. 2nd Quarter 219.**

An insurer asked the working group to consider the addition of language stating that this regulation was not intending to provide for a private cause of action against companies. The following language was added: "Nothing herein shall be construed to create or imply a private cause of action for violation of this Act" to be consistent with the language of the NAIC Unfair Trade Practices Act. **2003 1st Quarter 325**.

Section 2. Purpose

The chair stated the purpose of the model was to set guidelines on maintaining records necessary for market conduct examinations and the general enforcement of the Unfair Trade Practices Act and Unfair Claims Settlement Practices Act when investigating consumer complaints. The model set forth guidelines on what records to keep and how long to keep them. In addition, the model provided guidelines to companies on the duration for keeping records to facilitate policyholder service. **1993 Proc. Vol. IA 264.**

An insurer stated that the NAIC Unfair Trade Practices Act defined "failure to maintain marketing and performance records" as an unfair trade practice. The chair added that some states might have examination or rating laws which would serve as the basis for authority or purpose in adopting this model regulation. In light of these two sources as a basis for authority and purpose, the working group agreed to change language in Section 2 to read, "This rule implements [cite law enacting Section 4 of the NAIC Model Unfair Trade Practices Act or the NAIC Model Unfair Claims Settlement Practices Act] regarding the retention and maintenance of records for market conduct purposes as contained in Section 4 of this regulation." **1993 Proc. 2nd Quarter 217.**

When revisions were drafted in 2003, the model was revised to address the electronic retention of records along with methods for retention using a variety of media forms. Since the model included some standards related to the time frames to produce records, the term "production" was added to the title of the regulation. **2003 Proc. 3rd Quarter 508.**

Section 3. Definitions

A. A trade association recommended that the definition of "application" be modified. It explained that the documents listed in this definition included more items than a company normally considers as an "application." A regulator suggested changing the defined phrase to "application and accompanying records." **2002 Proc. 1st Quarter 457.**

A trade association said the revised definition of application did not appear to adequately address the concerns raised by its members. The concern was that the definition implied that companies should maintain extensive documentation about any type of policy change (e.g. address change). This requirement would be burdensome and not beneficial to companies or regulators. **2002 Proc. 2nd Quarter 449.**

At another meeting the working group was again asked to modify the definition of "application." A trade association explained the concern with reference to "any document used to add used to add coverage under an existing policy." The trade association said companies might routinely discard some documents that could be required for retention under this broad definition. **2002 Proc. 2nd Quarter 451.**

An attorney suggested that the references to "written or electronic" were not necessary in the definitions since federal law provided for electronic records. In addition, the attorney said the inclusion of "or electronic" may create redundancy when interpreting other NAIC models. A regulator said he recalled discussion about the need to retain records in a variety of ways. This model, he suggested, was an attempt to reflect the working group's intention that maintaining either written or electronic records was acceptable. A trade association stated that it might become concerned if the reference were to be deleted and opined that the definition of "record" would need to be added if reference to electronic records was deleted**. 2002 Proc. 4th Quarter 814.**

MARKET CONDUCT RECORD RETENTION AND PRODUCTION MODEL REGULATION

Proceeding Citations
Cited to the Proceedings of the NAIC

Section 3A (cont.)

G. A regulator asked the working group to revise the definition of "grievance" to include the phrase, "which subject matter may include, but not be limited to, the following… ." A trade association said expressed concern about broadening the definition of grievance. The chair indicated she would review the *Market Conduct Examiners Handbook* and would use the definition in the handbook. **2002 Proc. 2nd Quarter 451.**

Language changes were made to distinguish the use of "grievance" in health insurance and "complaint" to address industry concerns about potential confusion in the interchange of their use. **2002 Proc. 3rd Quarter 425.**

Section 4. Records Required for Market Conduct Purposes

A. New language was added during the 2003 drafting effort to reference the *Market Conduct Examiners Handbook* and to list standards for which an insurer should expect to retain related records. Trade association representatives expressed agreement that the language change was sufficient. **2002 Proc. 3rd Quarter 425.**

C. To address trade association concerns that the regulation was lacking an initiation point for record keeping, revisions were made to establish a minimum time limit for record retention as "the current policy year plus three years." This language replaced previous language regarding a retention limit that appears elsewhere in the regulation. **2002 Proc. 3rd Quarter 425.**

D. A regulator noted that, although state law would prevail in most situations, in the event a state law requires a shorter record retention time or did not specify a time period, and to the extent that no other state law required otherwise, the minimum time in the regulation should be considered the minimum time for record keeping for market conduct examination purposes. Although some members noted a general deviation disclaimer would apply, they decided to add a drafting note to this section to emphasize this intent. **2002 Proc. 3rd Quarterly 425.**

E. The members discussed ways that records collected by contracted third parties, on behalf of insurers, were treated in examinations by different states and how the model regulation should address this issue. Industry members stated concerns that the language required companies to perform audits of these entities and that such a requirement was inappropriately placed in a model regulation on record retention. Members stated that the intent of the language was to emphasize that records created by third parties were subject to examinations and could be requested, and that audits would be the prudent way for an insurer to assure that they were accurate. They proposed modifying the language so that a requirement to audit third party service providers is not required, but encouraged. **2002 Proc. 3rd Quarterly 425.**

A trade association expressed concerns over language regarding "monitoring of third party vendors." The trade association stated that this might present a problem for some of its members. The trade association stated that requiring actual oversight was quite different from having a record or reports available regarding oversight that an examiner may review. **2002 Proc. 3rd Quarter 424.**

Section 5. Policy Record File

A. An insurer stated its opposition to a requirement to retain market-related records for a five-year period because of the significant cost burden it will place on insurers and their policyholders. The insurer added that the "diminished relevance" of claim and policy documents older than two years was an argument against retaining records that would reveal little about an insurer's market performance. It contended that flagrant abuses in market practices would be obvious by examining two years' worth of records. The insurer also pointed out that adopting a two-year requirement would be more consistent with the NAIC Model Unfair Practices Act. Another insurer indicated that it had received comments from other parties supporting the argument against a five-year retention requirement due to excessive costs for storage of records. **1993 Proc. 2nd Quarter 218.**

MARKET CONDUCT RECORD RETENTION AND PRODUCTION MODEL REGULATION

Proceeding Citations
Cited to the Proceedings of the NAIC

Section 5A (cont.)

Staff pointed out that one of the reasons behind consideration of a five-year retention period for claims and policy records was an examination schedule of at least once ever five years as defined in the NAIC Accreditation Standards. A regulator added that sampling records from a five-year period provided a better basis for identifying when flagrant problems have occurred. Another regulator stated that five years' worth of records would also be beneficial for market conduct purposes other than examination. For example, upon discovering problems with a company's policy rebate practices, a commissioner might require that a company go back five years in making refunds. **1993 Proc. 2nd Quarter 218.**

An insurer stated that it understood that market conduct examiners needed timely information. The insurer said that longer retention periods might impose significant costs on companies to retain records for extended periods of time. Anther insurer indicated that it believed the retention requirements should not be tied to the examination authorities in the states. The chair responded that a drafting note was needed so states that adopt the model regulation did not inadvertently adopt a provision that was contrary to the provision in their examination laws. **1993 Proc. 4th Quarter 151.**

When the model was being revised, a regulator recommended the time frame referenced in this section be the same as the one used in 4A, which was three years. The working group discussed the retention terms and agreed the reference should be the current policy term plus three years. **2002 Proc. 2nd Quarter 452.**

The working group again addressed the reference to the duration of record retention. A regulator suggested that all references be to a three-year period. A regulator said that time period might not be adequate for some lines of insurance. He recommended a five-year reference. Another regulator suggested that the working group recommend a five-year term to encourage uniform retention periods in all states. A trade association opined companies would have an easier time complying with the requirements if there was a uniform retention period. The chair said the next draft of the model would reference three years, however, she encouraged the working group members to consider whether the period should be changed to five years. Another trade association encouraged working group members to leave the reference at three years since the cost for maintenance and storage of records for a five-year period could be significantly higher. **2002 Proc. 2nd Quarter 452.**

B. An insurer asked the working group to delete a reference in Paragraph (1) regarding application signature. It explained there was not a requirement in many states to obtain a signature on the application. A trade association representative agreed with the insurer. He said several of his member companies were concerned that additional requirements would be created if this language remained in the model. The working group agreed to change the paragraph. **2002 Proc. 2nd Quarter 452.**

In response to insurer concerns that the declaration pages were not usually retained in records, but that the information on the declaration pages could usually be retrieved in some format, members discussed whether recreated information would be sufficient. One regulator said his state would want recreated declarations page information to be in the same format as the original. The model was drafted to say that recreated declarations page information should be retained and state law could determine the acceptable format. **2002 Proc. 3rd Quarter 425.**

Insurers questioned the extent to which any oral comments made in the underwriting process had to be retained. Members suggested that oral comments made in the process of rating, underwriting or claim handling should be retained in some format. A regulator questioned whether the language in the section was broad enough to require third party vendors to produce documents, such as motor vehicle records or source documents used to create vendor data if the data was material to the complaint. A regulator said that the language was broad enough to cover the situation. **2002 Proc. 3rd Quarter 425.**

C. A trade association representative asked the working group to reconsider the requirement to retain declined underwriting files. He explained that companies often did not keep declined applications but if they did, the applications were not maintained in an organized fashion. The chair said her state looked for unfair discrimination practices and other issues by reviewing declined applications. The trade association said that if companies were required to maintain this information retroactively, it would create a significant burden for the companies to organize this information. The trade association asked the working group to consider adding a clarification that the declined applications should be maintained.

MARKET CONDUCT RECORD RETENTION AND PRODUCTION MODEL REGULATION

Proceeding Citations
Cited to the Proceedings of the NAIC

Section 6. Claim File

C. The chair said a trade association had submitted comments regarding the need for a date stamp. She suggested ink or electronic date stamping was acceptable. A regulator said his department allowed records to be maintained without a date stamp if the company logged receipt of all claims. Another regulator said that electronically submitted claims were a more accurate record for date tracking. She said the examiners must be able to determine when the claim was received, not when the claim was entered into the system. Yet another regulator said the received date must not be able to be manipulated. **2002 Proc. 1st Quarter 458.**

A regulator suggested a log would be cumbersome. Another regulator agreed but suggested the companies be allowed to determine their preference. The chair agreed to draft clarifying language for this section. **2002 Proc. 1st Quarter 458.**

Section 7. Licensing Records

An insurer questioned whether the section required keeping hard copies of the application for licensing as well as the renewal information. A regulator clarified that the intent was for an insurer to keep a record of the agent history with any information that might reflect on licensure status including appointments, terminations, etc., that could prove licensure at the time a policy was written. **2002 Proc. 3rd Quarter 425.**

An insurer asked if the language in this section intended to require license verification at the time every application was received by the company. The chair indicated this section would be revised to remove the implication that a license verification must be completed each time an application was received. Another regulator stated that the company needed to be able to verify that an agent's license was still active and not expired. **2002 Proc. 4th Quarter 815.**

A trade association asked the working group to reference a state's web site as adequate evidence of compliance with this section of the model. She explained several states retained producer licensing information on their web site. The chair indicated a drafting note would be included in this section to reference the availability of licensing information via a state's web site if appropriate. **2003 Proc. 1st Quarter 324.**

A regulator asked the group to consider whether it was necessary to maintain a hard copy of the producer's license on file since licensing information is maintained in the Producer Database (PDB). Another regulator said the PDB did not retain historical information and therefore, he was not comfortable relying on current information to determine compliance in a prior examination period. A regulator asked if examiners would rely on their own records at the department for licensing. Another regulator stated that, if they were unable to validate appropriate licensing at the state, the company should provide support for its response to any licensing concerns. A regulator suggested the company will have the option to maintain records for its protection but opined it should not be a requirement. Another regulator suggested the state record was the primary resource and if a company could not refute any disputed information, the company should be cited for a violation. The chair said she would add recognition of the PDB while stating that examiners should not rely solely on PDB during examinations. **2002 Proc. 1st Quarter 458.**

Section 8. Complaint Records

A regulator recommended the phrase "if applicable" be added after "Department of Insurance." She explained this change would clarify that some complaints were being directly sent to the company and did not originate at the insurance department. **2002 Proc. 2nd Quarter 452.**

A trade association asked how companies should record complaints that could not be classified by line of insurance. The chair suggested the company should be able to track the complaint to some line of coverage. Another trade association said the NAIC model regarding complaints also required reference to the line of insurance so it should remain in this model. **2002 Proc. 2nd Quarter 453.**

A trade association asked what was meant by the terms "disposition" and "the location of." The chair explained the term "disposition" meant the company's disposition of the complaint and said the section would be modified accordingly. The chair agreed that the reference to the location of the file might need to be clarified. **2002 Proc. 2nd Quarter 453.**

MARKET CONDUCT RECORD RETENTION AND PRODUCTION MODEL REGULATION

Proceeding Citations
Cited to the Proceedings of the NAIC

Section 8 (cont.)

A regulator asked if the time frame reference in Section 8 was appropriate and consistent with the rest of the model. He suggested it refer to the current calendar year plus the preceding three-year period as was done in the other sections of the model. Another regulator asked if the three-year period had been thoroughly discussed and stated that he would prefer to have a five-year period included in the model. The chair said that some states would need to modify that period to five years. A drafting note in Section 4 advised states that they might wish to modify the period to five years. **2002 Proc. 2nd Quarter 450**

The heading was revised from complaint "file" to complaint "record" in response to an industry suggestion that the complaint log was the subject of the section and not the contents of a complaint file. The clarification of the term "grievance" rather than "complaint" as pertaining to health insurance was also made. **2002 Proc. 3rd Quarter 425**

Section 9. Format of Records

This section was added during the development of amendments in 2003. **2003 Proc. 3rd Quarter 518.**

Section 10. Location of Files

A trade association cited a concern that the language required hard copies of all individual letters sent. The chair stated she would revise the language to clarify it was not necessary to maintain each individual letter, but rather the company could provide a copy of the letter template. **2002 Proc. 1st Quarter 458.**

B. A trade association representative stated that the requirement for written record retention procedures was inappropriate for this model. He suggested companies should produce a record if necessary. In response to concerns expressed by the trade association, the chair stated that "legible as the original document" meant the records could be read with accurate information from the original document. **2002 Proc. 1st Quarter 459.**

Section 11. Time Limits to Provide Records and to Respond to Examiners

Acknowledging that regulators probably had good cause to encourage quicker response times to requests for records than was currently practiced, insurers expressed concern that the five-day requirement to provide records was unreasonably strict and that many would need to request extensions. Members decided to retain the language but recognized that state laws may require a longer response period. **2002 Proc. 3rd Quarter 425.**

A trade association asked that the time period for the production of records be increased to ten days. The chair stated that the working group had previously discussed this request and states could modify the number of days in accordance with their state requirements. She added that market regulators had been criticized for the length and cost of examinations so the time period allowed for record production should be limited. **2002 Proc. 4th Quarter 815.**

An insurer asked the task force replace the five-day production standard in this model with a minimum 10-day production standard. The insurer explained that it was difficult for large companies to comply with this requirement since they may need to retrieve records from an off-site location. The insurer added that it was concerned that this model would lead to additional violations for a company. The vice-chair said the extension of the time frame would lead to longer and more costly examinations. This issue, he explained, has been a source of the industry's concern for several years. The insurer stated that it had incentive to provide records as quickly as possible to expedite the examination process, but it did not want to incur violations if there were circumstances that prevented compliance with the five-day standard. The vice-chair responded that the company should request an extension if it does not believe records could be provided in the allotted time period. He added that the model provided for such requests. A regulator said the five-day period should be adequate for companies and was the standard applied during a recent multi-state examination. He said allowing additional days for record production would lengthen examinations. **2003 Proc. 1st Quarter 321.**

MARKET CONDUCT RECORD RETENTION AND PRODUCTION MODEL REGULATION

Proceeding Citations
Cited to the Proceedings of the NAIC

Section 11 (cont.)

The most significant issues raised and discussed by the working group and interested parties included the time frame for the production of documents. The time frame was not increased because of criticism that market conduct examinations were too lengthy and too costly. Increasing the time frame for production of documents would impact on the cost and length of examinations. The uniformity guidelines developed by the NAIC promoted a minimum of 60 days advance notice to a company of the examination and the records required for the examiners. The working group believed the advance notice was sufficient to allow companies the ability to provide records within five days. If a company would be unable to produce the records in the allotted time frame, an extension could be requested by the company. **2003 Proc. 3rd Quarter 508.**

Section 12. Confidential Materials

This section was added during the development of amendments in 2003. **2003 Proc. 3rd Quarter 519.**

Section 13. Effective Date

Chronological Summary of Actions

March 1994: Model adopted.
March 2004: Model extensively amended and title changed.