

FROM THE NAIC CONSUMER REPRESENTATIVES

To: Market Analysis Procedures (D) Working Group
Randy Helder

Date: August 23, 2019

Re: Posting of 2018 Health MCAS Scorecards and Continued Support for Adding New Lines of Business to the Health MCAS

The undersigned NAIC consumer representatives write to recommend that the Working Group: 1) publish 2018 Health MCAS scorecard ratios using one of the three public disclosure approaches discussed at the August 2019 Working Group meeting; and 2) add short-term, limited-duration insurance (STLDI) as a line of business to the Health MCAS.

A. The NAIC should publish 2018 Health MCAS scorecard ratios using one of the three public disclosure approaches discussed at the August 2019 Working Group meeting.

Citing concerns about confidentiality¹, the Working Group has determined not to publish state-specific scorecards with the results of the 2018 Health MCAS. We recognize regulators' concern that, should a state have only one health insurer writing business, public release of a state-specific scorecard would disclose company-specific information.² However, such a situation, arising in at most a small number of states, should not dictate, for all states, a blanket approach that shields aggregated scorecard data from public view.

To better balance the need to protect industry confidentiality with the need for transparency and consumer access to data, we presented at the August 2019 Working Group meeting three alternative approaches to disclosure:

- 1. Publish a nationwide scorecard.** This scorecard would reflect the nationwide aggregate values for each Health MCAS ratio. Specifically, the nationwide ratio would be calculated on the basis of nationwide totals for the relevant data elements and not as an average of state results. While aggregate information is far less useful than state-specific data, nationwide data would enable at least some understanding of industry-wide practices such as claims denials, adverse determinations, and prior authorization approvals.

¹ While we do not believe MCAS data qualify as trade secrets or are covered by other exceptions to state public information laws, we recognize that states have been collecting MCAS data through market conduct examination authority, which provides that all non-public information collected through the examination is confidential information.

² We strongly disagree with the assertion that public disclosure of state score cards is unwarranted because non-industry and non-regulator users may somehow misunderstand or "misuse" the data. As we observed during the August 2019 Working Group meeting, such arguments are fundamentally inconsistent with the purpose of public information laws. It is not the role of regulatory agencies to determine what public information citizens should be able to view.

2. **Publish all state scorecards without identifying the state.** The NAIC could publish scorecards for all states but de-identify the state and post the scorecards in a randomized order. This option would enable the public to see state-specific results while avoiding the possibility that company-specific data would be pinpointed.
3. **Publish state-specific scorecards but allow states that are concerned about confidentiality to opt out of disclosing this information.** The NAIC could make the public release of state-specific scorecards the default but allow individual states to decline to publish if there is cause to believe that disclosure would reveal company-specific data.

We continue to urge the Working Group to adopt one of these three approaches.

B. STLDI should be added as a line of business to the Health MCAS.

We greatly appreciate the significant effort and care the working group has put into the development and adoption of the STLDI data call. As you know, we and other consumer advocates are greatly concerned about the risk of fraud and abuse, insolvency, unpaid claims, and consumer confusion posed by these products.³ The recently-adopted STLDI data call will greatly assist regulators and policymakers to better understand how these products may be affecting their residents and insurance markets.

At the August 2019 Working Group meeting, Arizona proposed adding STLDI as a MCAS line of insurance. We believe this is the logical next step to build on the STLDI data call and that such an action was contemplated when the data call was proposed last year. For the reasons set forth in the July 27, 2018 submission by former Vice Chair Hooker to the Working Group Chair, we strongly support the addition of STLDI as a MCAS line of business.

Consistent with former Vice Chair Hooker's submission, we also urge the Working Group to consider adding packaged indemnity health products and health plans sold through associations as additional lines of business. The former Vice Chair's proposal underscored the fact that there is very little data collected on these products through current NAIC reporting statements, tools, and products. Even the limited data that is collected—through the Financial Annual Statements and Exhibits—does not provide regulators with sufficient information to respond to potential market conduct issues in an efficient way. The Complaint Data System and SERFF also have significant data limitations that are discussed in the proposal.

As is the case with other lines of business, MCAS data will be an invaluable tool for state regulators to understand market dynamics and to inform policy recommendations regarding regulation and oversight. Increased data collection for these lines of business also complements the efforts of the Regulatory Framework (B) Task Force to revise the Accident and Sickness Insurance Minimum Standards Model Act and Regulation (170/171), which includes a new section on STLDI and various other products.

³ See Christina Goe, *Non-ACA-Compliant Plans and the Risk of Market Segmentation*, Mar. 2018, available at: http://healthyfuturega.org/ghf_resource/non-aca-compliant-plans-risk-market-segmentation/.

Thank you in advance for your consideration of these comments, and we look forward to continuing to work closely with the Chair and members of the Working Group on these critical issues. If you have any questions about the content of this letter, please contact Birny Birnbaum (birny@cej-online.org) or Justin Giovannelli (justin.giovannelli@georgetown.edu).

Sincerely,

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