

May 5, 2023

Amy Malm, Chair
NAIC Risk-Focused Surveillance Working Group
By e-mail to Bruce Jenson, NAIC, at bjenson@naic.org

Re: Risk-Focused Surveillance Working Group Exposure of NAIC Handbook Revisions for Affiliated Agreements

Dear Ms. Malm:

UnitedHealthcare (United) appreciates the opportunity to submit comments to the Risk-Focused Surveillance (E) Working Group on the exposed revisions to the NAIC's Financial Analysis Handbook and Financial Conditions Examiners Handbook (hereinafter referred to as the "Analysis Handbook" and the "Examiners Handbook," respectively, and collectively as "the Handbooks"), which update and expand on prior guidance concerning affiliate agreements.

United supports the NAIC's efforts to establish guidelines for the industry, which more closely aligns with SSAP No. 25 "*Affiliates and Other Related Parties*", and recognizes the need to balance regulatory oversight with the need for a more streamlined process given the substantial number of Form D filings that departments of insurance analysts and examiners review. To that end, United focuses its comments on those areas that it believes will best support the NAIC's efforts in establishing an appropriate framework for how the analysts and/or examiners review Form D filings, particularly those applicable to health entities.

Summary and Conclusion (pages 25 and 26 of the exposure .pdf)

In the Summary and Conclusion section of the Analysis Handbook, the NAIC proposes to expand upon the list of potential further actions an analyst could consider after reviewing the Form D filing. We appreciate the additional guidance, but are sensitive to the volume of agreements analysts have in cue. For this reason, we request that analysts also take into consideration added cost and time when making the determination that an agreement rises to the level of necessitating a third party reviewer. Delays in the review process resulting from third party review may strain analysts and adversely affect consumer's timely receipt of advanced benefits. Accordingly, we recommend that the underlined language below be added to the proposed second bullet point on page 26.

- Consider the need, while weighing both increased costs and additional review time, to engage external resources to assist in the review of complex agreements with affiliates (i.e., independent actuary or other reinsurance expert to review specific reinsurance contracts, investment expert to review investment management agreements with affiliates).

Transactions at Market Rate (pages 29 and 30 of the exposure .pdf)

The revised section of the Analysis Handbook titled Transactions at Market Rate sets out the various methods that management can use to demonstrate that the fair and reasonable standards have been met. The NAIC

acknowledges that the methods applied by Form D filers differ in a myriad of ways and proposes two “typical” methods to be included in the Analysis Handbook. United strongly recommends that the NAIC also include other “typical” methods that are more common in the health industry as support for a fair and reasonable determination, such as: (i) the acceptance and/or approval of affiliate prices as part of an employer or government bid process, (ii) meeting other related party regulatory requirements and (iii) the use of observable market factors in addition to internal or external pricing for a similar product or service. When employers or government agencies approve or accept bids, they typically review and compare the costs from entities seeking the bid. For example, in Medicare Advantage and Part D bids, there are well-developed processes to review such agreements. Aspects of these standards should be used as guidelines when an analyst reviews affiliate agreements.

We propose including the following additional methods to the Transactions at Market Rate considerations section:

- **Whether the price of the affiliate transaction was disclosed as part of the total bid amount to a government agency or other appropriate third party, such as an employer, that was accepted through a bidding process.**
- **Whether the entity providing the services in an affiliate agreement met other regulatory requirements for related party transactions or the entity receiving the services is able to provide evidence of review and approval from another regulator.**
- **Whether the entity receiving the services in an affiliate agreement utilized other observable market factors and/or entity-specific cost or margin information in addition to, or to supplement, internal or external pricing for a similar product or service.**

Including the additional methods outlined above provides helpful guidance to analysts, as well as clarity and direction to management, of acceptable evidence to support the fair and reasonableness standard. The suggested clarifications above also help align revenue recognition principles under US Generally Accepted Accounting Principles - Accounting Standards Codification Topic 606, *Revenue from Contracts with Customers*, to the guidance proposed to be provided in the Handbooks.

Regulator Considerations (pages 31 and 32 of the exposure .pdf)

The NAIC is proposing to add several new considerations for an analyst or examiner to consider when reviewing Form D filings. To align with the proposal above to add other “typical” methods for demonstrating that the fair and reasonable standard has been met, United encourages the NAIC to include the following additional considerations in this section:

- **Whether the price of the affiliate transaction was disclosed as part of the total bid amount to a government agency or other appropriate third party, such as an employer, that was accepted through a bidding process.**
- **Whether the entity providing the services in an affiliate agreement met other regulatory requirements for related party transactions or the entity receiving the services is able to provide evidence of review and approval from another regulator.**



- Whether the entity receiving the services in an affiliate agreement utilized other observable market factors and/or entity-specific cost or margin information in addition to, or to supplement, internal or external pricing for a similar product or service.

The Retention of Cost-Plus Language

The Handbooks currently contain references to cost-plus arrangements. Omission of any reference to cost-plus arrangements may be taken to imply that such arrangements are not acceptable for regulatory purposes and should not be an acceptable form of an affiliate agreement. United fully supports and encourages action by the Working Group to retain the cost-plus language currently published in the Handbooks.

We appreciate your consideration of our comments. We would welcome the opportunity to discuss them further or answer any questions you may have.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Payman Pezhman', with a stylized flourish at the end.

Payman Pezhman

SVP National Reg Affairs

UnitedHealthcare

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