INNOVATION, CYBERSECURITY, AND TECHNOLOGY (H) COMMITTEE

Draft: 12/7/23

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Innovation, Cybersecurity, and Technology (H) Committee
Orlando, Florida
December 1, 2023

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The Innovation, Cybersecurity, and Technology (H) Committee met in Seattle, WA, Dec. 1, 2023. The following Committee members participated: Kathleen A. Birrane, Chair (MD); Michael Conway, Co-Vice Chair (CO); Doug Ommen, Co-Vice Chair (IA); John F. King (GA); Gordon Ito (HI); Dana Popish Severinghaus (IL); Chlora Lindley-Myers represented by Cynthia Amann (MO); Troy Downing (MT); Jon Godfread (ND); John Finston (NY); Judith L. French (OH); Carter Lawrence (TN); Kevin Gaffney and Emily Brown (VT); and Mike Kreidler (WA).

Also participating were: Lori Wing-Heier (AK); Wanchin Chou (CT); Trinidad Navarro (DE); D.J. Bettencourt and Christian Citarella (NH); Gary Jones and Jodi Frantz (PA); Alexander Adams (PR); Michael Wise (SC); Cassie Brown (TX); Jon Pike (UT); Scott White (VA); and Emily Brown (VT).

1. <u>Adopted its Nov. 16 Meeting Minutes</u>

Carter Lawrence (TN), made a motion, seconded by Jon Godfread (ND), to adopt the Committee's Nov. 16 minutes (Attachment One). The motion passed unanimously.

Before transitioning topics, Commissioner Birrane provided additional background on changes to the (H) Committee charges:
   a. In 2024, a new Task Force will be formed to focus on the development of a regulatory framework for the use of third-party data and models by regulated entities.
   b. The following adjustments will be made to the Big Data and AI Working Group work streams:
      i. Continue the AI/ML survey work;
      ii. Track the development of AI regulation internationally, and at Federal and State levels and make recommendations to address any potential gaps in the regulatory framework which could include continued discussions on consumer protections;
      iii. Track the adoption of the Bulletin by the States; and
      iv. Continue efforts to provide foundational & contextual AI education.
   c. Form two additional Collaboration Forums in 2024 to be focused on 1) the use of open-source technology to facilitate data calls and 2) enforcement of AI by regulators including discussion of enforcement tools and best practices ensuring that regulatory oversight is consistent across product lines.

2. <u>Adopted the Reports of its Working Groups</u>

Commissioner Birrane stated that in the interest of time, individual Working Group reports will not be heard, and referred Committee members to the written reports included in Attachment Two. Michael Conway (CO) made a motion, seconded by Doug Ommen (IA), to adopt and receive the reports of the Big Data and Artificial Intelligence (H) Working Group (Attachment Two), the Cybersecurity (H) Working Group (Attachment Three), the E-Commerce (H) Working Group (Attachment Four), the Innovation in Technology and Regulation (H) Working Group (Attachment Five), and the Privacy Protections (H) Working Group (Attachment Six). The motion passed unanimously.

3. <u>Consider Adoption of the Model Bulletin on the Use of Artificial Intelligence Systems by Insurers</u>

Commissioner Birrane next provided background and history on the development and drafting of the Model Bulletin. She said that the Draft Model Bulletin on the Use of Artificial Intelligence Systems by Insurers was first

discussed at the 2022 Fall National Meeting in Tampa, FL. Because AI is a methodology, it is already subject to existing regulatory standards and authority. The Bulletin is principles-based and places the obligation of compliance in the use of third-party data and models on regulated licensees. The first draft was exposed for public comment on Jul. 17, 2023, with 22 states participating in the initial drafting process. In response to comments received, revisions included focusing on outcomes, aligning the risk assessment process to the degree of risk of consumer harm, and applying greater flexibility on the use of third-party provided AI data and models while keeping the obligation of compliance with regulatory standards with insurers. As the drafting continued, feedback was given and incorporated to align the definitions with those set forth by the National Institute of Standards and Technology (NIST). The second draft was exposed for public comment on Oct. 13, 2023, and a virtual public meeting was held on Nov. 16, 2023. In response to additional comments received, the definition of "bias" was removed, along with the definitions of two other terms that were no longer used in the Bulletin.

Commissioner Birrane then invited comments by members of the Committee, interested regulators, and all other interested parties.

Director Downing suggested providing clarity in Section 4.3 by adding the performance of contractual rights regarding audits. The restated paragraph should read: "The performance of contractual rights regarding audits and/or other activities to confirm the third-party's compliance with contractual and, where applicable, regulatory requirements" which added the words "contractual rights regarding" into the bulletin's language.

Commissioner Ommen agreed that the responsibility of compliance needs to be placed on insurance companies on the use of third-party AI Systems, but further work needs to be done regarding third-party vendors.

Superintendent Dwyer (RI) stated that Rhode Island will be adopting the Bulletin.

Scott Harrison (American InsurTech Council—AITC), thanked the Committee and suggested a phase-in enforcement timeline and a pilot project to determine how to enforce the Bulletin.

Lindsey Klarkowski (National Association of Mutual Insurers—NAMIC), expressed concern about the inclusion of the non-statutory term "bias" as this introduces a new metric that is inconsistent with governing laws. As such, NAMIC suggested to remove all references to "bias" in the Bulletin.

Rachel Jrade-Rice, (Next Insurance), representing InsurTech Council, recommends: 1) preserving risk-based pricing; 2) using the terms and standards established in current law; 3) allowing operational decisions to remain with insurers, and 4) staying focused on the impacts on consumers by weighing the costs and benefits of AI technology and regulation.

Birny Birnbaum (Center for Economic Justice—CEJ), pointed out the word "bias" continues to be used in the text and needs to be replaced with the term "unfair discrimination". The CEJ is concerned that the reliance on insurers' own assessment of risk will lead to inconsistent regulation, there is a need to develop guidance on assessing and minimizing unfair discrimination on the basis of race, and if third parties are being engaged without being licensed then this could result in competitive concerns.

Peter Kochenburger (NAIC Consumer Representative), recommends to move forward with approval of the Bulletin and encouraged the development of specific recommendations for implementation.

Matt Lehman (National Council of Insurance Legislators—NCOIL), expressed the need to continue working together with the NAIC as AI continues to develop.

Commissioner Godfread motioned to remove the term "bias" and replace it with "unfair discrimination".

Commissioner Ommen expressed concern that the term "bias" is not uniformly understood and that this term should be removed from the Bulletin, rather be replaced by "unfair discrimination".

Commissioner Conway stated the term "bias" cannot just be removed, but the way it is used aligns with the term "statistical bias" which may solve the issue of including this concept.

Commissioner Godfread supported Conway's statement and amended his motion to remove the term "bias" and replace it with "statistical bias".

Commissioner Lawrence questioned if there is a change to replace the term "bias" whether this will require another round of comments. Commissioner Birrane responded the goal is to conclude discussion today. The suggestion today is to prefix the term "statistical" to the term "bias", but the Bulletin will not be exposed for another round of public comment.

Superintendent Dwyer in consultation with Commissioner Wise stated that pages 4 and 7 may be using different definitions of the term "bias" and it may not be appropriate to replace with the term "statistical bias" in both cases.

Commissioner Godfread retracted his motion and Commissioner Conway then motioned to approve the Bulletin (Attachment Seven) without addressing the feedback to replace the term "bias" but that the regulators could revisit the term and language potentially suggesting a change a the NAIC Executive/Plenary level of discussion but with the recommendation from Downing adding the language "contractual rights regarding" to item 4.3 of the Bulletin. Commissioner John F. King (GA) seconded the motion. Doug Ommen (IA) abstained. The motion passed to approve the adoption of the Bulletin.

Commissioner Birrane thanked regulators for the work to complete the Bulletin noting that the Bulletin helps assure that when licensees use AI, that they account for risk and institute responsible controls to mitigate the unique risks associated with AI.

4. <u>Heard a Presentation on Generative AI</u>

The Committee heard a presentation on Generative AI given by Professor Victor Winter, University of Nebraska – Omaha. Professor Winter remarked on the speed of change saying that we're at a time period where the speed of change is increasing making it difficult for people to understand and appreciate the significance of developments. For example, Professor Winter contrasted the relative performance improvements from ChatGPT 3.5 to ChatGPT 4 and walked through the timeline of new product launches through 2023 eventually noting that Moore's Law which explains the pace of change of technology, may now be occurring at 10-year intervals as opposed to what was initially contemplated in Moore's law at 30-year intervals to mark significant performance increases. Professor Winter also demonstrated the varying capabilities of Generative AI in terms of data analysis, text generation, and image generation showing both the capabilities and current limitations.

Having no further business, the Innovation, Cybersecurity, and Technology (H) Committee adjourned.

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Draft: 12/20/2023

Innovation, Cybersecurity, and Technology (H) Committee
Virtual Meeting
November 16, 2023

The Innovation, Cybersecurity, and Technology (H) Committee met virtually on Nov. 16, 2023. The following Committee members participated: Kathleen A. Birrane, Chair (MD); Michael Conway, Co-Vice Chair (CO); Doug Ommen, Co-Vice Chair (IA); Karima M. Woods (DC); John F. King represented by Paula Shamburger (GA); Gordon I. Ito represented by Kathleen Nakasone (HI); Dana Popish Severinghaus represented by C.J. Metcalf (IL); Adrienne A. Harris represented by John Finston (NY); Chlora Lindley-Myers represented by Cynthia Amann (MO); Troy Downing; Jon Godfread represented by John Arnold (ND); Judith L. French and Matt Walsh (OH); Carter Lawrence (TN); Kevin Gaffney (VT); and Mike Kreidler represented by Rocky Patterson (WA).

1. Adopted its Summer National Meeting Minutes

Commissioner Gaffney made a motion, seconded by Commissioner Lawrence, to adopt the Committee's Aug. 13 minutes (*see NAIC Proceedings – Summer 2023, Innovation, Cybersecurity, and Technology (H) Committee*). The motion passed unanimously.

2. Adopted the Privacy Protection (H) Working Group's Request to Extend the Deadline for Completion of its Model Law

Commissioner Ommen made a motion, seconded by Commissioner Conway, to adopt the Privacy Protection (H) Working Group's request to extend the deadline for completion of its model law. The motion passed unanimously.

3. Adopted its 2024 Proposed Charges

Commissioner Ommen made a motion, seconded by Commissioner Gaffney, to adopt the amendment to the charges proposed by the joint interested parties related to the language of the privacy protection charge. The updated language allows the Privacy Protection (H) Working Group and the Committee flexibility in deciding how to update consumer privacy protections.

The full charges, as amended and subject to the proviso that NAIC staff could thereafter make further revisions to address typographical errors, were then considered for adoption.

Conway made a motion, seconded by Gaffney to adopt the Committee's 2024 proposed charges (Attachment One-A). The motion passed unanimously.

4. Discussed Comments Received from Interested Parties on the Second Exposure Draft of the Model Bulletin

Lindsey Klarkowski (National Association of Mutual Insurance Companies—NAMIC) stated that the updates to the model bulletin are an improvement over the first draft, but the term "bias" is problematic as it is a non-statutory term; "mitigating bias" as defined in the bulletin will result in an inability to classify and differentially rate according to allowable risk characteristics and creates a standard inconsistent with governing laws. She said NAMIC recommends removing this term and all references to "bias" ("bias analysis," etc.). Klarkowski said NAMIC also stated there are issues testing for "adverse consumer outcomes" as this standard diverges from the existing laws

governing unfair discrimination. Considering there already are existing guardrails in the regulation of predictive models, the inclusion of predictive models in the bulletin will unnecessarily broaden the scope.

Brian Bayerle (American Council of Life Insurers—ACLI) stated that the term "bias analysis" is not clear. He said the ACLI recommends the Committee remove this definition and such references, and simply refer to "unfair discrimination." Bayerle said the ACLI also recommends removal of the definitions of "big data," "model risk," and "generative AI" as these terms are not used in the bulletin, and clarify the terms "adverse consumer outcome," "AI systems," "machine learning," "predictive model," and "third-party" per their submitted edits. Additionally, he said the ACLI recommends the Committee include confidentiality protections in Section 4 and allow third parties to provide requested information directly to state insurance regulators on an insurer's behalf, if requested.

Bob Ridgeway (America's Health Insurance Plans—AHIP) applauded the direction taken by the bulletin as it is more aligned with the National Institute of Standards and Technology (NIST) framework. He said AHIP pointed out that the footnote to the Definitions section condones that multiple states may have different definitions and said that there is a missed opportunity to encourage states to adopt terms that are consistent, such as with the NIST, to set a standard. Ridgeway said AHIP agrees with the suggestions made by NAMIC and the ACLI about the term "bias" in that it should be replaced with "unfair discrimination." He said AHIP recommends: 1) adding the clause "and succeeding updates" to the reference to the NIST Risk Management Framework 1.0 in Section 3; 2) deleting paragraph 1.9 in Section 3 as it is no longer necessary; 3) clarifying Section 3, paragraph 2.3 c. regarding the independence of decision makers; and 4) making the same changes to Section 4, paragraph 2.2 to be parallel with the changes made to Section 3, 4.2 b. to be consistent.

Dave Snyder (American Property Casualty Insurance Association—APCIA) expressed a desire to make sure the bulletin cannot be construed as creating new regulatory standards. He said the APCIA acknowledges that although limitations on the availability of demographic data persist, but stated that the revised bulletin removed this language and replaced it with language encouraging testing, which is problematic.

Jim Hodges (National Alliance of Life Companies—NALC) expressed concern that smaller insurers may have less ability to negotiate with third-party vendors than larger insurers. He said NALC noticed that states have created their own artificial intelligence (AI) task forces and recommends the need to maintain consistency. Hodges said NALC recommends a pilot initiative to work with insurers to refine regulation efforts.

Commissioner Birrane concluded by stating that the Committee will meet Nov. 17 in regulator-to-regulator session to decide whether the bulletin is ready to be considered for adoption as is or whether it makes sense to do another exposure.

Having no further business, the Innovation, Cybersecurity, and Technology (H) Committee adjourned.

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Adopted by Executive (EX) Committee and Plenary,
Adopted by the Innovation, Cybersecurity, and Technology (H) Committee, Nov. 16, 2023

2024 Proposed Charges

INNOVATION, CYBERSECURITY, AND TECHNOLOGY (H) COMMITTEE

The mission of the Innovation, Cybersecurity, and Technology (H) Committee is to: 1) provide a forum for state insurance regulators to learn about and have discussions regarding: cybersecurity, innovation, data security and privacy protections, and emerging technology issues; 2) monitor developments in these areas that affect the state insurance regulatory framework; 3) maintain an understanding of evolving practices and use of innovation technologies by insurers and producers in respective lines of business; 4) coordinate NAIC efforts regarding innovation, cybersecurity and privacy, and technology across other committees; and 5) make recommendations and develop regulatory, statutory, or guidance updates, as appropriate.

Ongoing Support of NAIC Programs, Products, or Services

1. The **Innovation, Cybersecurity, and Technology (H) Committee** will:
    A. Provide forums, resources and materials related to developments and emerging issues in innovation, cybersecurity, data privacy, and the uses of technology in the insurance industry in order to educate state insurance regulators on these developments and how they affect consumer protection, insurer and producer oversight, marketplace dynamics, and the state-based insurance regulatory framework.
    B. Identify, track and report on developments and emerging issues related to cybersecurity, information and data security systems, including industry best practices for risk management, internal controls, and governance; and how state insurance regulators can best address cyber risks and challenges for insurance industry. Coordinate with various subject matter expert (SME) groups on insurer and producer internal cybersecurity. Consider best practices related to cybersecurity event tracking and coordination among state insurance regulators, and produce guidance related to regulatory response to cybersecurity events to promote consistent response efforts across state insurance departments. Work with the Center for Insurance Policy and Research (CIPR) to analyze cybersecurity-related information from various data sources.
    C. Monitor and advise on the cybersecurity insurance market, including rating, underwriting, claims, product development, and loss control. Report on the cyber insurance market, including data reported within the Cybersecurity Insurance and Identity Theft Coverage Supplement
    D. Identify and provide forums, resources, and materials for the discussion of innovations and emerging technologies in the insurance sector, including the collection and use of data by insurers, producers, and state insurance regulators, as well as new products, services, and distribution platforms. Educate state insurance regulators on how these developments affect consumer protection, data privacy, insurer and producer oversight, marketplace dynamics, and the state-based insurance regulatory framework.
    E. Discuss emerging technologies and innovations related to insurance and insurers, producers, state insurance regulators, licensees, or vendors, as well as the potential implications of these technologies for the state-based insurance regulatory structure—including reviewing new products and technologies affecting the insurance sector and their associated regulatory implications.

F. Consider and coordinate the development of regulatory guidance and examination standards related to innovation, cybersecurity, data privacy, the use of big data and artificial intelligence (AI) including machine learning (ML) in the business of insurance, and technology, including drafting and revising model laws, white papers, and other recommendations as appropriate.

G. Track the implementation of and issues related to all model laws pertaining to innovation, technology, data privacy, and cybersecurity, including the *Insurance Data Security Model Law* (#668), the *NAIC Insurance Information and Privacy Protection Model Act* (#670), the *Privacy of Consumer Financial and Health Information Regulation* (#672), and the *Unfair Trade Practices Act* (#880) rebating language and providing assistance to state insurance regulators as needed.

H. Coordinate and facilitate collaboration with and among other NAIC committees and task forces to promote consistency and efficiency in the development of regulatory policy, education, training, and enforcement materials and tools related to innovation; cybersecurity; data privacy; and the use of technologies, big data and artificial intelligence (AI), including machine learning (ML), in the business of insurance. Evaluate and recommend certifications, continuing education (CE), and training for regulatory staff related to technology, innovation, cybersecurity, and data privacy.

I. Follow the work of federal, state, and international governmental bodies to avoid conflicting standards and practices.

2. The **Third-Party Data and Models (H) Task Force** will:
    A. Develop and propose a framework for the regulatory oversight of third-party data and predictive models.
    B. Monitor and report on state, federal, and international activities related to governmental oversight and regulation of third-party data and model vendors and their products and services. Provide recommendations to the Innovation, Cybersecurity, and Technology (H) Committee regarding responses to such activities.

3. The **Big Data and Artificial Intelligence (H) Working Group** will:
    A. Research the use of big data and AI (including ML) in the business of insurance. Proactively communicate findings and present recommendations to the Innovation, Cybersecurity, and Technology (H) Committee.
    B. Monitor state, federal, and international activities on AI, including working with the Innovation, Cybersecurity, and Technology (H) Committee, (i) to respond to such activities, where appropriate and (ii) address potential impacts on existing state insurance laws or regulations.
    C. Oversee the completion of the work of the Collaboration Forum on Algorithmic Bias, including:
        a. Monitor and support adoption of the Model Bulletin on the use of Artificial Intelligence Systems by Insurers.
        b. Explore the creation of an independent synthetic data set to support testing of predictive models for unfair discrimination, in collaboration with the Center for Insurance Policy and Research, as appropriate.
        c. Finalize and maintain a glossary/lexicon to guide regulators as they engage in AI and technology related discussions.
    D. Facilitate and coordinate foundational and contextual educational content for regulators on topics related to the use of Big Data and Artificial Intelligence techniques, tools and systems in the insurance industry.

4. The **E-Commerce (H) Working Group** will:
    A. Examine e-commerce laws and regulations to aid in identifying updates to the E-Commerce Modernization Guide. This may include meeting with industry experts to understand industry trends that may impact laws and regulations.

5. The **Cybersecurity (H) Working Group** will:
Cybersecurity Charges
   A. Monitor cybersecurity trends such as vulnerabilities, risk management, governance practices, and breaches with the potential to affect the insurance industry.
   B. Facilitate communication across state insurance departments regarding cybersecurity risks and events.
   C. Develop and maintain a regulatory cybersecurity response guidance to assist state insurance regulators in the investigation of insurance cyber events.
   D. Monitor federal and international activities on cybersecurity engaging, in efforts to manage and evaluate cybersecurity risk.
   E. Coordinate NAIC committee cybersecurity work, including cybersecurity guidance developed by the Market Conduct Examination Guidelines (D) Working Group and the Information Technology (IT) Examination (E) Working Group.
   F. Advise on the development of cybersecurity training for state insurance regulators.
   G. Work with the CIPR to receive updates on cybersecurity research efforts, by the CIPR and others, and to analyze publicly available cybersecurity-related information.
   H. Support the states with implementation efforts related to the adoption of Model #668.

   Cyber Insurance Charges
   A. Monitor industry trends pertaining to cyber insurance, including meeting with subject matter experts and evaluating data needs of state insurance regulators. Considerations may also include the availability and affordability/pricing of Cyber insurance, disclosures, limits and sub-limits in policies, policy language and trends in requirements, underwriting practices, and the role of reinsurance in the Cyber insurance market.
   B. Coordinate with NAIC work groups addressing cyber insurance related issues, such as the Casualty and Actuarial (C) Task Force.
   C. Monitor federal and international activities related to cyber insurance and financing mechanisms for cyber risk.

6. The **Privacy Protections (H) Working Group** will:
   A. Use state insurance privacy protections regarding the collection, data ownership and use rights, and disclosure of information gathered in connection with insurance transactions to draft a new/revised Privacy Protections Model Act to replace/update NAIC models such as Model #670 and/or Model #672.
   B. Monitor state, federal, and international activities on privacy engaging in efforts to manage and evaluate privacy.

7. The **Technology, Innovation, and InsurTech (H) Working Group** will:
   A. Monitor technology and innovation trends to identify services and products of importance to state insurance regulators.
   B. Facilitate technology, innovation, and InsurTech presentations to assist state insurance regulators in understanding related trends in the insurance industry.
   C. Develop opportunities for start-ups and InsurTechs to present to and receive feedback from state insurance regulators.

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Big Data and Artificial Intelligence (H) Working Group
Orlando, Florida
December 1, 2023

The Big Data and Artificial Intelligence (H) Working Group of the Innovation, Cybersecurity, and Technology (H) Committee met in Orlando, FL, Dec. 1, 2023. The following Working Group members participated: Elizabeth Kelleher Dwyer, Chair (RI); Amy L. Beard, Co-Vice Chair (IN); Doug Ommen, Co-Vice Chair (IA); Adrienne A. Harris, Co-Vice Chair, represented by John Finston (NY); Kevin Gaffney, Co-Vice Chair (VT); Lori Wing-Heier (AK); Sheila Travis (AL); Tom Zuppan (AZ); Michael Conway, (CO); Andrew N. Mais and Wanchin Chou (CT); Karima M. Woods (DC); Rebecca Smid (FL); Weston Trexler (ID); Erica Weyhenmeyer (IL); Abigail Gall (KY); Tom Travis (LA); Rachel M. Davison (MA); Kathleen A. Birrane (MD); Timothy N. Schott and Sandra Darby (ME); Phil Vigliaturo (MN); Cynthia Amann (MO); Robert Croom (NC); Colton Schulz (ND); Christian Citarella (NH); Judith L. French (OH); Teresa Green (OK); Michael McKenney, Gary Jones, Lindsi Swartz, and Shannen Logue (PA); Michael Wise (SC); Tony Dorschner (SD); Randall Evans (TX); Tanji J. Northrup (UT); Eric Lowe (VA); Bryon Welch (WA); and Nathan Houdek and Lauren Van Buren (WI). Also participating were: Alan McClain (AR); John F. King (GA); and Matt Gendron (RI).

1. Adopted its Summer National Meeting Minutes

Director Wing-Heier made a motion, seconded by Commissioner Mais, to adopt the Working Group's Aug. 13 minutes (*see NAIC Proceedings – Summer 2023, Innovation, Cybersecurity, and Technology (H) Committee, Attachment One*). The motion passed unanimously.

2. Received a Report on the Life AI/ ML Survey

Commissioner Gaffney said the life artificial intelligence (AI)/machine learning (ML) survey was conducted to accomplish three goals: 1) gain a better understanding of the insurance industry's use and governance of AI; 2) seek information that could aid in the development of guidance or potential regulatory framework to support the insurance industry's use of AI; and 3) inform state insurance regulators of companies' current and planned business practices.

Commissioner Gaffney said the survey was conducted under the market examination authorities of 14 requesting states: Colorado, Connecticut, Illinois, Iowa, Louisiana, Minnesota, Nebraska, North Dakota, Oregon, Pennsylvania, Rhode Island, Vermont, Virginia, and Wisconsin. He said it was completed by active insurers either having at least $250 million in national life insurance premium for 2021 and having covered at least 10,000 lives by issuing term insurance in 2021 or they are an identified InsurTech company.

Out of 161 companies completing the survey, Commissioner Gaffney said 94 companies currently use, plan to use, or plan to explore using AI/ML as defined for this survey. This equates to approximately 58% of reporting companies. For comparison, Commissioner Gaffney said approximately 88% of the companies responding to the private passenger auto (PPA) survey and approximately 70% of the companies responding to the home survey reported they currently use, plan to use, or plan to explore using AI/ML.

By life insurer operation, Commissioner Gaffney said companies reported implementing 36% of the total AI/ML models for marketing, 34% for underwriting, 18% for pricing, and 11% for risk management. The most common reason reported for not using, not planning to use, and not exploring the use of AI/ML was "no compelling business reason." The second and third most common reasons were "lack of resources and expertise," and "reliance on legacy systems requiring IT, data, and technology upgrades."

For marketing life insurance products, companies reported using AI/ML models mostly for target online advertising, followed by provisions of offers to existing customers, identification of recipients of mail or phone advertising, and identification of potential customer groups, among other uses. In pricing and underwriting, companies reported using AI/ML models mostly to reduce the time needed to issue policies but also reported that models were also used for automated and non-automated approval/denial decisions and assigning a risk class through underwriting. As far as the level of decision-making, in marketing, more than half of the total AI/ML models augmented human decision-making for marketing, while nearly half of the AI/ML models are used to automate decision-making for pricing and underwriting.

Regarding the sources of AI/ML models used by life insurers, Commissioner Gaffney said roughly half were developed in-house, and roughly half were developed by third parties. He said this was the case for the surveyed auto and home insurers in marketing as well, but that most auto and home insurers developed their pricing and underwriting models in-house. Commissioner Gaffney said life insurers reported demographic data as the most used data for marketing, and medical data is the most commonly used for pricing and underwriting. Demographics, driving behavior, and credit-based insurance scores are also used for pricing and underwriting.

Regarding whether information was provided to policyholders about how their data is being used other than what is required under the federal Fair Credit Reporting Act (FCRA), Commissioner Gaffney said 37% of companies reported "yes" for the data used for marketing, 41% reported "yes" for pricing and underwriting, and 23% reported "yes" for risk management. As far as providing opportunities to customers to correct their data, above what is required under the FCRA, 34% reported "yes" for the data used for marketing, 46% of companies reported "yes" for pricing and underwriting, and 26% reported "yes" for risk management.

Regarding governance programs and documented components, Commissioner Gaffney said approximately 60% of the life insurers responded to the survey section addressing governance. The responses from these insurers indicated the following: 53% reported their governance program includes documented compliance with laws and regulations; 53% have accountability for intended or unintended impacts; 60% documented the resources needed to ensure compliance; 62% provide transparency and notices to consumers about their data and methods for correction; and 57% reported they document assurance of safe, secure, and robust systems including decision traceability. Commissioner Gaffney said 47% of the Actuarial Standards Board companies responded they follow guidance from other established standards, such as the (ASB), American Academy of Actuaries (Academy), Society of Actuaries (SOA), or the National Institute of Standards and Technology (NIST).

Commissioner Gaffney said the potential next steps include exploring insurer AI/ML model usage and the level of decision-making, evaluating the regulatory framework about the use of third-party models, determining whether additional white papers on best practices would be useful on subjects in the AI/ML space, and exploring the use of AI/ML at the life insurance product level.

Superintendent Dwyer said she helped lead the development of the auto survey with Wisconsin and recognized the amount of work involved in drafting the survey questions and the ongoing refinement of questions as the AI/ML surveys have been issued. Commissioner Gaffney agreed and said the states working on the life AI/ML survey were careful in phrasing questions so that they were not too narrow or too broad in order to obtain accurate responses.

Commissioner Ommen said insurers' use of third parties reflects the significance of technology and data being supplied from third parties to insurance companies. Because of this, Commissioner Ommen said the use of third parties is an area that warrants further review.

Superintendent Dwyer asked if there were any interested parties who would like to provide any comments or ask any questions. Hearing none, Superintendent Dwyer concluded the discussion on the report of the life AI/ML survey.

3. <u>Received Updates on Federal and International Insurance Regulation of AI</u>

Shana Oppenheim (NAIC) said NIST released its AI Risk Management Framework in January. This framework is intended for voluntary use and to improve the ability to incorporate trustworthiness considerations into the design, development, use, and evaluation of AI products, services, and systems. In March, NIST launched the Trustworthy and Responsible AI Resource Center to facilitate implementation of the AI Risk Management Framework.

Oppenheim said the U.S. House of Representatives and Senate have conducted a variety of hearings on AI, including: a Senate Banking Committee hearing on AI in financial services; a Senate Homeland Security and Governmental Affairs Committee hearing on the philosophy of AI; a Senate Health Education Labor and Pensions Committee hearing on the use of AI in health care; and a Senate Agriculture Committee hearing on innovation in American agriculture.

Oppenheim said Rep. Greg Murphy (R-NC), co-chair of the GOP Doctors Caucus, called for AI in health care to be regulated at the state level first. Rep. Brittany Pettersen (D-CO) and Rep. Mike Flood (R-NE) introduced the Preventing Deep Fake Scams Act (H.R. 5808), which would establish a task force to examine AI in the financial services sector. A bipartisan federal AI bill from Sen. Mark R. Warner, chairman of the Senate Select Committee on Intelligence, and Sen. Jerry Moran (R-KS) would require federal agencies to follow the safety standards for AI that NIST developed earlier this year.

Oppenheim said that on Oct. 31, President Joe Biden issued an executive order on the safe, secure, and trustworthy development and use of AI. This executive order is a comprehensive plan to ensure the responsible innovation, development, and use of AI across the federal government and the broader economy. The order aims to set new standards for AI, emphasizing safety, security, privacy protection, equity, consumer protection, and workforce support. The order outlines eight key principles for responsible AI development and use, and it directs federal agencies to take several steps to implement these principles. The eight principles of responsible AI development and use are: 1) prioritizing safety, security, and transparency in AI systems, including measures to understand and mitigate risks; 2) promoting responsible innovation, competition, and collaboration through investments in AI education, training, and research; 3) committing to supporting American workers by adapting job training and education to AI, while ensuring fair and open marketplaces; 4) ensuring AI policies are consistent with advancing equity and civil rights, protecting against discrimination and bias in AI systems; 5) protecting consumer interests by enforcing existing consumer protection laws and principles in critical fields where AI may pose risks; 6) safeguarding privacy and civil liberties by implementing measures to secure data collection and use, including the use of privacy-enhancing technologies; 7) managing risks from the federal government's own use of AI and increasing internal capacity to regulate and govern AI responsibly; and () leading international efforts to develop a global framework for responsible AI use and engaging with allies and partners to promote common approaches to AI-related challenges.

Ryan Workman (NAIC) said the International Association of Insurance Supervisors (IAIS) has a FinTech Forum, which is a forum for insurance supervisors from around the world to exchange insights and practices relative to new and emerging fintech developments and digital innovations. The Forum met in September and received an update from its various subcommittees, which include the decentralized finance/distributed ledger technology subgroup, the application programming interface/open data subgroup, and the AI/ML subgroup. The Forum also discussed jurisdictional updates on recent FinTech developments affecting the insurance sector and insurance supervisors, including supervisory responses to the use of ChatGPT.

Workman said that in October, the IAIS, the European Insurance and Occupational Pensions Authority (EIOPA), and the Bank for International Settlement's (BIS') Financial Stability Institute (FSI) jointly organized a member-only webinar on harnessing AI's potential in insurance. The first session of the webinar focused on real-life examples of AI applications in the insurance industry, highlighting their impact on the insurance value chain and analyzing the challenges of its adoption. The second session focused on the unique risks associated with AI adoption in the insurance sector and the regulatory considerations that supervisors need to be aware of.

Workman said there is a EU/U.S. Insurance Dialogue Project, which included a public forum in June 2023 on the work of its three workstreams, which includes one on technology and innovation. In 2024, this project will focus on the following: 1) ongoing regulatory developments affecting insurers' use of big data AI/ML and the importance of developing adequate governance, risk management, and controls by insurers; 2) regulatory and supervisory initiatives to enhance the digital operational and cyber resilience of insurers; and 3) developments in open insurance.

Having no further business, the Big Data and Artificial Intelligence (H) Working Group adjourned.

SharePoint/NAIC Support Staff Hub/Committees/H CMTE/2023 Fall/WG-BDAI/Minutes-BDAIWWG120123.docx

Draft: 11/20/23

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Cybersecurity (H) Working Group
Virtual Meeting
November 16, 2023

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The Cybersecurity (H) Working Group met Nov. 16, 2023. The following Working Group members participated: Cindy Amann , Co-Chair and Kim Dobbs, Jo LeDuc, and Brad Gerling (MO); Gille Ann Rabbin, Co-Chair and Hesham El-Meligy and Joanne Berman (NY); C.J. Metcalf, Co-Vice Chair, (ND), Michael Peterson, Co-Vice Chair (VA); Julie Jette (AK); Chris Erwin (AR); George Bradner, Wanchin Chou, Anthony Francini, Qing He, Jennifer Miner, Kurt Swan, and Kenneth Roulier (CT); Tim Li (DE); Paula Shamburger and Tia Taylor (GA); Lance Hirano (HI); Daniel Mathis and Logan Thomsen (IA); Shane Mead (KS); Jackie Horigan (MA); Kathryn Callahan and Mary Kwei (MD); Jeff Hayen, Isaac Kane, Joe Keith, Jason Tippett, and Danielle Torres (MI); Troy Smith (MT); Tracy Biehn (NC); Colton Schulz (ND); Martin Swanson (NE); Don Layson and Matt Walsh (OH); Mary Block and Karla Nuissi (VT); Tarik Subbagh (WA); Also participating were: Yada Horace (AL); Philip Gates (CO); Anoush Brangaccio, Kun Chen, and Ronald Waye (FL); Victoria Hastings (IN); Jackie Horigan (MA); Daniel Lawson and Vaness Sullivan (ME); David Bettencourt (NH); Mike , Sebastian Conforto, and Jodi Franz(PA); Joseph Rapczak, Matt Gendron, and Patrick Smock (RI); Allan McVey (WV); and Lela Ladd (WY).

1. Adopted its Summer National Meeting Minutes

Schultz made a motion, seconded by Mead, to adopt the Working Group's March 7 minutes. (*see NAIC Proceedings – Spring 2023, Innovation, Cybersecurity, and Technology (H) Committee, Attachment Two*). The motion passed unanimously.

2. Discussed the Comments Received and Heard an Update on the Cybersecurity Event Response Plan (CERP) Drafting Group

Amann said the comments received have been taken into consideration and drafted into the draft document being reviewed today.

The Working Group welcomes comments, either written comments or verbal comments during this call. Amann asked Miguel Romero (NAIC), to walk through the draft and provide high-level comments on what has changed. Text was added to the end of the Introduction section of the document to remind state insurance regulators of other reporting requirements in a state, for example, the state's Attorney General (AG) or other overlapping laws. A sentence was added at the end of the section to support and encourage using the Lead State concept, where possible and appropriate.

Based on the comments received, a sentence was added to the end of the first paragraph in the "Forming a Team and Communicating with Consumers" section to address the need for communication to be coordinated and consistent with the messaging provided by the affected licensee prior to any consumer communication so that the consumer will receive the correct information.

An "Overview of Lead State Concept" section was added to the CERP document. This section introduces the lead state concept, as well as some reference resources included in the text from the *NAIC's Financial Condition Examiners Handbook* and the *NAIC's Market Regulation Handbook*. This section does not provide the state using the CERP a mandate, but it might be beneficial to DOIs.

At the end of the "Understanding and Receiving Notifications" section, language was added to make it clear that licensees have the responsibility of updating and supplementing previous notifications about material changes to previously provided information to the extent possible. A sentence addressing events that originated with a vendor.

A new section, "Data Minimization," was added to the CERP. This section explains data minimization and adds confidentiality language in response to comments from interested parties. The comments reflected that confidentiality is not just about trade secrets but includes other confidential information that must be protected. The section also addresses that DOIs should limit the collection of information to that which is adequate and directly relevant, as well as necessary to accomplish a specific purpose.

Amann stressed that this document is meant to provide sufficient information to state insurance regulators, whether they are well-versed regarding cybersecurity or those who are new to cybersecurity oversight. While there are still details to be addressed in the current draft of the CERP, the Working Group has incorporated industry comments received to date. The plan is to have a couple of states pilot using the CERP and provide feedback. In 2024 the Working Group will hear from experts and other bodies to discuss their role in responding to security events. NAIC staff are to talk to some of the NAIC Working Groups for their input regarding how the lead state concept might best be added to this document.

Cate Paolino (National Association of Mutual Insurance Companies—NAMIC) stressed that the lead state concept is important because it helps to increase consistency. Romero asked Paolino and other interested parties to provide input regarding the lead state concept and to provide any thoughts as to whether there is any inconsistency in the use of the lead state concept.

Kristen Wolfford (American Council of Life Insurers—ACLI) said ACLI encourages additional language stating that the DOIs should speak through the licensee's head contact. Additionally, ACLI believes there should be consideration of adding language that indicates that the most accurate information is provided by establishing a clear avenue and making sure that the DOIs are not providing forms directly to outside counsel or third-party mitigation firms. Information could still be conveyed to the outside counsel but should occur through the licensee to be sure privilege is being preserved while everyone is abreast of what is transpiring.

Shelby Schoensee (American Property Casualty Insurance Association—APCIA) said that APCIA is supportive of the lead state concept.

Bob Ridgeway (America's Health Insurance Plans—AHIP) said it is important for state insurance regulators to consider that there are other state law requirements where licensees may need to do further reporting. Most, if not all, states have an attorney general's law that calls for a breach to be reported to the attorney general. Some licensees may also have to respond to the Gramm Leach Bliley Act (GLBA) requirements. Health insurers have at least three layers of reporting which include 1) HIPAA; 2) the Critical Infrastructure Act of 2022; and 3) the Federal Trade Commission's (FTC) recent health breach notification rule.

Ridgeway said some of AHIP's members are concerned they would be penalized if they did not get all the reporting to the DOI in full. He reminded his members that the *NAIC Insurance Data Security Model Law* (#668), as well as the amended versions in various states, partial reports are expected because state insurance regulators acknowledge that a licensee will not have all the information when providing the initial notification.

AHIP is also concerned that the confidentiality provided in Model #668 may not give full protection to information that a state insurance regulator shares with a third-party consultant. AHIP has requested some additional language to be added to the CERP to emphasize state insurance regulators are conscious that providing information to third-party consultants will not increase confidentiality risks.

Peterson said there are efforts at the NAIC level, as well as the U.S. and international level, among financial regulators to solve the problem of the one-to-many relationship between states and insurers when it comes to investigating breaches. The most prominent effort existing among the Financial Stability Board (FSB) is the Format for Incident Reporting Exchange (FIRE) concept.
Peterson said the lead state concepts come from group examinations, which come from threats to enterprise risk insolvency. He said the Working Group is going to work on solving these problems in the CERP's guidance.

Amann said the Working Group welcomes further comments. She said the important thing for state insurance regulators to remember is that the first step for a licensee following a breach is to identify and mitigate the issue.

NAIC staff is to clarify and provide more language around communication between private law firms and state insurance regulators.

3.   Heard a Presentation on the NIST Cybersecurity Framework

John Boyens (National Institute of Science and Technology—NIST) said NIST's mission is to promote U.S. innovation and industrial competitiveness by advancing measurement science, standards, and technology in ways that enhance economic security and improve our quality of life.

NIST has over 3,400 federal employees and about 3,500 guest researchers from around the world.

Both the congressional and executive branches of the government depend on NIST for their technical excellence. The National Security Agency (NSA) uses NIST standards and guidelines as their foundation and then adds more rigorous controls beyond NIST.

Around 2013, there was an executive order that charged NIST with developing a framework for cybersecurity for critical infrastructure. NIST hosted five or six workshops around the country and sent two requests for information (RFI). They collected a lot of information and worked with the private sector industry and academia to build the cybersecurity framework.

NIST's biggest challenge when building the cybersecurity framework was to build it at a level that was not so high-level that it was useless while not being so prescriptive that it would not work across all of the critical infrastructure sectors.

NIST started working on the second phase of the cybersecurity framework, CSF 2.0, in February 2022 and has held three workshops to date. NIST has also had multiple concept papers or drafts of some of the content. The latest version of CSF 2.0 was exposed for a comment period ending Nov. 4. NIST is still getting comments submitted to them. NIST is organizing those comments and has not started the adjudication process but hopes to do so soon.

The financial sector created its own profile, which contains a "Govern" function. A category inside the "Govern" function addresses the internal mechanisms of the supply chain. CSF 2.0 is technology neutral. Many categories were taken out of the "Identify" function and put into the "Govern" function.

Boyens said there are no implementation examples or informative references in the framework core. These two aspects are being moved online, as NIST wants the community to be able to add to the informative references.

Many of the "Govern" sub-categories are things that organizations must do internally before they start pushing their supply chain risk management requirements down their supply chain.

Boyens said NIST is hoping to release the final draft sometime in 2024. Amann encouraged the Working Group members to read the submitted comments. She said these comments provide an idea of how quickly cybersecurity is infiltrating all aspects of business.

A question in the chat asked if NIST works with the Federal Risk and Authorization Management Program (FedRAMP), and if so, what is the involvement. Boyens said NIST helped stand up FedRAMP from their standards. NIST set up the first instance of what the requirements would be for FedRAMP and got their accreditation program set up. Currently, NIST is working on the controls that go into FedRAMP since they are processing, storing, and using federal government data. FedRAMP is required to meet standards and guidelines that NIST produces, so those controls that go into FedRAMP come from NIST.

4.   Heard an Update on Federal Activities Related to Cybersecurity

Shana Oppenheim (NAIC) said Senator John Hickenlooper (D-CO) and Senator Shelley Moore Capito (R-WV) have introduced the Insure Cybersecurity Act of 2023. This bill is aimed at helping to better insure small businesses against cyberattacks. The Act would direct the National Telecommunications and Information Administration (NTIA) to create a dedicated working group to develop recommendations for insurers, agents, brokers, and customers to improve communications regarding cybersecurity insurance coverage. It would also direct the publications of easily understandable resources on cybersecurity insurance. The bill was supposed to be marked up this week but was indefinitely postponed.

The executive office of the president's office of the National Cyber Director issued a request for information on cyber regulation harmonization in July. The Office of National Cyber Director (ONCD) is seeking input from stakeholders to understand any existing challenges with regulatory overlap and inconsistencies to explore a framework for reciprocal recognition by regulators of compliance with common baseline cybersecurity requirements. This effort may be intended to harmonize state and federal requirements on examination guidance.

The U.S. Securities and Exchange Commission (SEC) proposed a cybersecurity regulation in July. A final rule was adopted, requiring publicly listed companies to comply with numerous incident reporting requirements and government disclosure requirements. The rules require registrants to disclose material cybersecurity incidents that they experience and to disclose material information about their cybersecurity, risk management, and governance annually. The commission has also adopted rules requiring foreign private issuers to make comparable disclosures.

The Government Accountability Office (GAO) released a cybersecurity program audit guide in September. This guide provides auditors with methodologies, techniques, and audit procedures needed to evaluate the components of an agency's cybersecurity program and system. The guide also includes risk management and incident response.

The GAO issued a critical infrastructure protection national security strategy in September addressing the protection of critical infrastructures, such as water and electricity, from cyberattacks as a national priority. They recommended monitoring federal cyber initiatives and assessing the agency's current information-sharing methodologies to help address cybersecurity challenges.

Having no further business, the Cybersecurity (H) Working Group adjourned.

SharePoint/NAIC Support Staff Hub/Committees/H CMTE/2023 Fall/WG-Cybersecurity/2023 1116Interim Meeting/Minutes-CybersecurityWG111623.docx

Draft: 11/29/23

E-Commerce (H) Working Group
Virtual Meeting
November 20, 2023

The E-Commerce (H) Working Group of the Innovation, Cybersecurity, and Technology (H) Committee met November 20, 2023. The following Working Group members participated: Judith L. French, Co-Chair (OH); Troy Downing, Co-Chair (MT); Michael Humphreys, Vice-Chair (PA); Jully Pae (CA), George Bradner (CT), Johanna Nagel (IA); Cathy Abbott (KS); Tom Travis (LA); Cynthia Amann (MO); Matt Fischer (ND); Elizabeth Kelleher Dwyer (RI); and Charles Malone (WA).

1. <u>Considered Adoption of Its Sept. 7 Minutes</u>

Amann made a motion, seconded by Malone to adopt the Working Group's Sept. 7, 2023, meeting minutes (Attachment Four-A). The motion passed unanimously.

2. <u>Discussed the Draft E-Commerce Modernization Guide and its Adoption</u>

Director French reminded the Working Group that the draft document was exposed for a 30-day public comment period that ended on Oct. 9. She stated that after receiving comments, the Working Group chairs and NAIC staff worked together to create the draft document included in this meeting's materials. Director French explained that the draft document is now called the *E-Commerce Modernization Guide* (Guide). She further stated that in the interest of giving Working Group members, interested regulators, and interested parties a chance to review the document, the Working Group has decided to consider adopting the Guide early next year, once the Working Group has reformed and has had the chance to review the draft.

Olivea Myers (NAIC) provided the Working Group with a brief overview of what has changed in the Guide since the comment period ended. Myers noted that the document's name had changed from a framework to the *E-Commerce Modernization Guide* to better fit with the purpose of the Guide. She further explained that the document was then called a framework which tends to be a bit more descriptive of the system of regulation, something this document did not do. Myers stated that the document further evolved into the *E-Commerce Modernization Guide* because its main purpose is to enumerate different modernization tools and to provide guidance regarding e-commerce topics for states that may consider updating applicable laws and regulations within their state. Myers explained that the Working Group received comments from the American Council of Life Insurers (ACLI), the Insured Retirement Institute (IRI), and Northwestern Mutual. She explained that these changes are incorporated within the document. Myers stated that a bullet format was used to incorporate the comments received. Finally, Myers stated due to feedback that was received at the Sept. 7 meeting, NAIC staff removed the use of artificial intelligence (AI), advertising approval, and use of telematics from the document as other committees and task forces are addressing these topics at the NAIC.

Amann mentioned that the Working Group should be mindful of overlap between the work of the Privacy Protections (H) Working Group and the E-Commerce (H) Working Group. Amann explained that she will keep up with what both groups are working on so that there is unified guidance in the Guide and the *Insurance Consumer Privacy Protection Model Law #674.* Director French asked Amann if she saw any inconsistencies between the Guide and the model law. Amann responded that there were none.

Dave Leifer (ACLI) stated that the document has improved and that the new title was a positive change. He stated that there does not seem to be a lot of mention of the state insurance regulator or company experience in the document. Leifer provided examples such as producer licensing exams being administered online and online company filings that have been allowed to be completed electronically due to the COVID-19 pandemic. Leifer explained that the ACLI's view on opt-in/opt-out of electronic communication, including e-signatures or e-delivery, is that there should not be one that is preferential over the other. He explained that every consumer should have the right to choose which one they prefer.

Sarah Wood (IRI) stated that she appreciates the work the Working Group has completed thus far and that the current Guide and its new name are helpful. Wood stated that this work is crucial to develop uniform and meaningful guidance. Wood stated that the members of the IRI would still like the Working Group to develop a model bulletin or guidance to address the issues enumerated in the Guide further. Wood stated that the IRI is working on identifying specific recommendations she can share with the Working Group, including issues regarding annuity replacement disclosures.

3. Discussed Its Next Steps

Director French explained the next steps for the Working Group. She explained that the current plan is to have another meeting early next year to consider adoption of the Guide. Director French explained that some steps for the Working Group to consider are to possibly receive presentations from industry experts related to commercial line specific modernization ideas, receive presentations from states identifying future areas to add to the publication, and create a reference library of language that states have used in adopting modernization.

4. Discussed Other Matters

Commissioner Downing asked the Working Group to see if anyone had any sense of urgency to consider adoption of the Guide this year. Director French stated that the Working Group did not want to go too long into next year to adopt the Guide, and the plan is to consider adoption of the Guide early next year.

Having no further business, the E-Commerce (H) Working Group adjourned.

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Draft: 9/26/2023

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E-Commerce (H) Working Group
Virtual Meeting
September 7, 2023

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The E-Commerce (H) Working Group of the Innovation, Cybersecurity, and Technology (H) Committee met Sept. 7, 2023. The following Working Group members participated: Judith L. French, Co-Chair (OH); Troy Downing, Co-Chair (MT); Michael Humphreys, Vice Chair (PA); Jully Pae (CA); Dana Sheppard (DC); Johanna Nagel (IA); Craig VanAalst (KS); Jo LeDuc (MO); Martin Swanson (NE); Colton Schulz (ND); Matt Gendron (RI); Amy Ondell (SD); and Charles Malone (WA).

1. <u>Discussed the Updated Framework</u>

Director French briefly went over what the Working Group has accomplished thus far. She explained that in 2021, the Working Group issued a survey asking what laws were implemented during the COVID-19 pandemic that allowed electronic commerce, transactions, and communication to take place when in-person methods were not possible. She stated that the Working Group also sent a survey to insurers and stakeholders asking them to identify technologies or any other forms of electronic commerce that may have impeded their ability to conduct business electronically. Director French explained that an initial document was created, called a framework, and exposed for a public comment period that ended March 23. She stated that Working Group leadership worked with NAIC staff to create the current draft framework that was included in the materials for this meeting. She stated that the document is a summary of the input the Working Group received and does not take a position on whether a state should amend its regulatory requirements, as that will remain a decision for each state to make. Instead, Director French stated that this framework will be a resource for states to consider when reviewing their rules or regulations. She explained that the Working Group's intent is to adopt the framework by the end of the year and that the Working will expose the updated framework for further comment.

Commissioner Downing agreed that the framework is nonprescriptive in nature and that it lays out what issues there might be regarding electronic commerce. He also agreed that the exposure of the document is a good next step.

Sarah Wood (Insured Retirement Institute—IRI) stated that she appreciated the work on the updated framework and that it is helpful. She asked if a work plan was being developed to produce guidance or a bulletin after the framework is adopted. Director French stated that right now, there is no plan for further guidance once the framework has been adopted, but she did state that she did not want to completely foreclose that possibility. Director French further stated that the thought of the Working Group is that the framework is to serve as guidance to the states. Commissioner Downing agreed with Director French's statements regarding the Working Group's plan to solely produce the framework at this time. Director French told Wood that if she sees the need for something additional later on, she should express that need to the Working Group.

Wood stated that members of the IRI would like to see something more explicit about what is acceptable when it comes to modernization but that she would be happy to provide more details on that. Director Frech said that Wood's perspective was helpful and that she is looking forward to receiving comments on the draft framework from the IRI. Miguel Romero (NAIC) stated that he could see a possibility that the framework could be adopted this year and then have possible updates next year or the year after, especially after industry and the public get a chance to understand what this publication is.

Birny Birnbaum (Center for Economic Justice—CEJ) stated that the document is more of a brainstorming document than a framework. Birnbaum believes that this is a good start, but the document needs to be winnowed down to the things that state insurance regulators think are relevant. He also stated that the document needs to provide guidance for state insurance regulators to address those issues. Birnbaum stated that there are items in the framework that do not need to remain on the list. He stated that the use of artificial intelligence (AI) does not need to be on the list because it is being addressed elsewhere in the NAIC. Birnbaum also suggested that the items that are useful to state insurance regulators should be prioritized and expanded upon in this framework.

Schulz responded to Birnbaum's point about prioritization, stating that there is prioritization built and considered in the framework. Birnbaum responded by stating that it is not clear to him that the current framework represents a prioritization as he reads through the document; rather, it seems to list a set of issues. Birnbaum further stated that if the intent is to prioritize certain items, it would be good to state explicitly that those are "priority items" and the other ones are not. Schulz stated that the items in the framework are numbered, and that provides proper prioritization guidance. Birnbaum stated that he reads the document as a list of items and not necessarily a hierarchy of items. Director French stated that the Working Group will consider that in determining what the final document will look like. Romero stated that the benefit of the comment period could allow the Working Group to consider what is in and out of scope for the framework and what the document needs in order to be a useful resource for state insurance regulators.

Director French thanked everyone for their input. Commissioner Downing stated that he appreciates the input received during the meeting, and he looks forward to completing the framework.

Having no further business, the E-Commerce (H) Working Group adjourned.

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Draft: 9/19/23

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Innovation in Technology and Regulation (H) Working Group
Virtual Meeting
August 29, 2023

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The Innovation in Technology and Regulation (H) Working Group of the Innovation, Cybersecurity, and Technology (H) Committee met August 29, 2023. The following Working Group members participated: Jason Lapham, Chair (CO); Dana Popish Severinghaus and C.J. Metcalf, Co-Vice Chairs (IL); Matt Walsh, Co-Vice Chair (OH); Sarah Bailey (AK); Erick Wright (AL); Letty Hardee (AR); Lucy Jabourian (CA); Anthony Francini (CT); Dana Sheppard (DC); Tim Li (DE); Travis Grassel (IA); Weston Trexler (ID); Rachel M. Davison (MA); Sandra Darby (ME); Chad Arnold (MI); Cynthia Amann (MO); Colton Schulz (ND); Connie Van Slyke (NE); Cass Brulotte (NM); Brian Fjeldheim (OR); Eric Lowe (VA); Ned Gaines (WA); Rebecca Rebholz and Timothy Cornelius (WI); and Juanita Wimmer (WV).

1. Adopted its April 27 Meeting Minutes

Gaines made a motion, seconded by Grassel, to adopt the Working Group's April 27 minutes (*see NAIC Proceedings – Summer 2023, Innovation, Cybersecurity, and Technology (H) Committee, Attachment Two*). The motion passed unanimously.

2. Heard Updates from Global Insurance Accelerator and InsurTech NY

Lapham opened the next agenda item first discussing the initial intention of the working group. He said that the working group initially intended to launch an InsurTech Forum at the NAIC's Insurance Summit. The working group commissioned a volunteer group to design the program which was later opened to InsurTech companies. However, the program did not receive enough interest to proceed as planned. Instead, the working group decided to pivot meeting with InsurTech groups to learn about what they are doing and with the working group later revisiting its own programming ideas.

Lapham next thanked the volunteers who helped design the initial forum idea which were: Matt Walsh of Ohio, CJ Metcalf of Illinois, Shannen Louge of Pennsylvania, Chad Arnold of Michigan, Kory Boone of Maryland, Chris Aufenthie formerly of North Dakota, Gary Sullivan of the American Property Casualty Insurance Association, Chanda Brady formerly of the American Council of Life Insurers.

Lapham next welcomed the speakers for the call, Dan Israel of the Global Insurance Accelerator (GIA) and David Gritz of InsurTech NY (ITNY). Israel and Gritz started by introducing themselves and discussing the programming that each organization offered with both running programs that assist startups in the process of working through the business life cycle from concept to connecting with expert resources and sources of capital.

Lapham asked Israel and Gritz about trends among InsurTechs with Gritz talked about life insurance companies increasingly providing wellness programs and running into issues regarding the rules limiting factors that can be considered related to life insurance policies. Gritz said that startups occasionally struggle to propose or explain their ideas given their lack of experience working with regulators. Gritz said that proactive engagement with InsurTechs can help InsurTechs understand regulatory expectations. Israel discussed the diligent search requirement needed for surplus line writers to offer certain coverages which can be challenging for InsurTechs to complete in a way that meets regulator expectations. Regulators setting clear expectations for InsurTechs could be beneficial to aid in addressing that difficulty.

Lapham next asked about roadblocks with Israel pointing to the lack of access to data to allow InsurTechs to prove their ideas given that many carriers are reluctant to share their data. Gritz agreed that access to data was a challenge and specifically addressed claims data can make it difficult to determine the profitability of new products or ideas. Both Gritz and Israel discussed access to capital being a new challenge with Israel noting that reinsurers have grown conservative in the current business cycle.

Lapham next asked about what regulators can do to support InsurTechs noting that there is a learning curve to have the proper discussions. Israel noted that the GIA has a really great relationship with the Iowa Insurance Division who meet with the founders involved in the GIA's programs and help the founders receive questions they may not have otherwise considered. Israel said that regulators need to show up and provide a good message letting InsurTechs know they want to see their products but that they want those products to be brought in a way that preserves the protection of policyholders. ITNY tries to facilitate panels to allow founders to hear from regulators. Israel and Gritz encouraged regulators to get involved and learn about what the InsurTech community can offer and to learn about how technology is being used in other industries to understand the potential for value in the insurance industry.

Lapham next asked if there were any aspects of InsurTechs that were often misunderstood. Israel noted that many InsurTech founders don't come from the insurance industry and therefore at times struggle to bring good ideas to life. Therefore the GIA tries to help the InsurTech community understand the highly regulated space they are entering. Gritz noted that time matters more to InsurTechs. Waiting an extra month can be a really significant event to InsurTechs that could result in a founder not taking a salary for a month. Additionally, many InsurTechs are not risk bearing entities with many wanting to play a role as a producer or underwriter. He also suggested that regulators take a wholistic view of InsurTechs including consideration of their reinsurance stack as opposed to narrowly focusing on their capital at the legal entity level.

Lapham next asked about success stories as well as examples of InsurTechs that were unsuccessful. Gritz talked about InsurTechs who have written policies for less than a year that could be adjusted as the # of employees in a company fluctuates but that run into difficulties where such a product is prohibited. At times, InsurTechs have been able to engage with regulators to articulate why rules should be changed and have had some success. One other idea that hasn't succeeded has been related to direct to consumer life insurance sales where some companies have found that although it is possible to innovate, there remains an important need for people to be involved in helping consumers navigate their choices. Israel talked about InsurTechs being successful in cyber insurance helping companies understand their cyber risk exposure leading to customized cyber insurance coverage. Another unsuccessful idea was the use of telematics which are still used but hasn't solved enough of a problem for consumers to lead to meaningful adoption.

Lapham closed the discussion with a question about examples of InsurTechs and regulators working together. Israel and Gritz talked about positive experiences with state and international regulators. Grassel noted that the Iowa Insurance Division continues to learn from its engagement with regulators and noted the importance of relations to help drive InsurTechs forward. Lapham agreed that conversations are important and can help regulators appreciate the constraints InsurTechs operate under.

Brulotte asked how regulators and InsurTechs can balance competing objectives with regulators trying to protect consumers and InsurTechs trying to derive profit. Israel noted that mentoring groups such as his try to bring in mentors that represent all aspects of the insurance life cycle. If InsurTechs reduce expenses for carriers that can likely lead to benefit for consumers. He noted that InsurTechs can also help improve the service provided. Gritz noted that InsurTechs may help find areas where new products are needed to help address underserved markets and can help innovate leading to beneficial pricing changes.

Having no further business, the Innovation in Technology and Regulation (H) Working Group adjourned.

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Draft: 12/14/23

Privacy Protections (H) Working Group
Orlando, Florida
December 1, 2023

The Privacy Protections (H) Working Group met in Orlando, FL, Dec. 1, 2023. The following Working Group members participated: Katie C. Johnson, Chair (VA); Cindy Amann, Vice Chair (MO); Chelsy Maller (AK); Catherine O'Neil (AZ); Damon Diederich (CA); George Bradner and Kristin Fabian (CT); C.J. Metcalf and Erica Weyhenmeyer (IL); Victoria Hastings (IN); LeAnn Crow (KS); Ron Kreiter (KY); Robert Wake and Sandra Darby (ME); Van Dorsey (MD); Jeff Hayden (MI); T.J. Patton (MN); Molly Plummer (MT); Santana Edison (ND); Martin Swanson (NE); Teresa Green (OK); Raven Collins (OR); Richard Hendrickson and Gary Jones (PA); Patrick Smock (RI); Frank Marnell (SD); Todd Dixon (WA); and Lauren Van Buren and Timothy Cornelius (WI). Also participating was Angela Hatchell (NC).

1. Adopted its Summer National Meeting Minutes

Johnson said the Working Group met Nov. 30 in regulator-to-regulator session, pursuant to paragraph 3 (specific companies, entities, or individuals) and paragraph 8 (consideration of strategic planning issues) of the NAIC Policy Statement on Open Meetings, to continue work on its goals.

Amann made a motion, seconded by Diederich, to adopt the Working Group's Aug. 12 (*see NAIC Proceedings – Summer 2023, Innovation, Cybersecurity, and Technology (H) Committee, Attachment Three*) minutes with one edit that clarified the input from one of the interested parties about the gap that results when federal flood coverage is not adequate. The motion passed unanimously.

2. Heard an Update on State Privacy Legislation and Federal Privacy Activities

Jennifer Neuerburg (NAIC) said that in the continuing absence of congressional action on a comprehensive U.S. federal privacy law, many states have enacted state data privacy laws or are considering legislative action.

Neuerburg said since the Summer National Meeting, the Delaware Personal Data Privacy Act (H.B. 154) was signed by Gov. John Carney and goes into effect Jan. 1, 2025. She said 13 states have enacted comprehensive data privacy laws to date, with eight of those laws enacted in 2023. She said at least 12 states have introduced privacy legislation in 2023 that is either comprehensive in nature or that addresses a range of data privacy issues.

Neuerburg said the NAIC has charts tracking state legislation on the NAIC's Privacy Protections (H) Working Group's web page if anyone wants to read more about these bills. She also said that the NAIC will continue to follow state data privacy legislation and provide an update during the next Working Group meeting.

Shana Oppenheim (NAIC) said that on Feb. 27, 2023, the chairman of the House Financial Services Committee, Rep. Patrick McHenry (R-NC) introduced the Data Privacy Act of 2023, a federal bill that would amend the Gramm-Leach-Bliley Act (GLBA) to "modernize financial data privacy laws and give consumers more control over how their personal information is collected and used." She said Rep. McHenry appears to be using his political capital from his interim speakership to pass his crypto legislation and not his data privacy legislation. Oppenheim said the NAIC will continue to monitor and update this Committee regarding federal privacy activities.

Oppenheim also noted that President Joe Biden issued an executive order Oct. 31, 2023, on the safe, secure, and trustworthy development and use of artificial intelligence (AI). This is a comprehensive plan to ensure the responsible innovation, development, and use of AI across the federal government and the broader economy in a way that is safe, secure, and trustworthy, and that AI aligns with American values and civil liberties. The order aims to set new standards for AI, emphasizing safety, security, privacy protection, equity, consumer protection, and workforce support. The order outlines eight key principles for responsible AI development and use. It also directs federal agencies to take steps to implement these principles. One of those steps has a privacy component to safeguard privacy and civil liberties by implementing measures to secure data collection and use, including the use of privacy-enhancing technologies.

3. Discussed Next Steps in the Working Group's Process for Moving Forward with Drafting the New Model

Johnson said the next steps the Working Group plans to take for moving forward with drafting the new *Insurance Consumer Privacy Protections Model Law* (#674) (Attachment Six-A) could also be found on the Working Group's web page. She said the volunteers in the drafting group are continuing to meet with companies that request it to discuss issues of special concern to that company to help them understand how drafting choices could affect different companies. Johnson said the drafting group has completed several sections of the new model and will have a new exposure draft (Version 2.0) ready to expose early in 2024. She said the plan calls for a regulator comment period that is to be followed by a public comment period. She also said there would be plenty of time for review and several opportunities to provide comments, as well as to discuss areas of concern noted by all stakeholders.

Some Working Group members asked about the process for joining drafting group meetings going forward. Johnson said Working Group members are welcome to join the drafting group at any time and that she would be happy to share or walk through her notes on any of the discussions from meetings with companies. She said invitations to any future meetings would be sent to members of the Working Group. Johnson said her notes on these meetings are available to Working Group members and interested regulators on the Model #674 SharePoint site albeit without naming the specific companies as the notes are by Company A, Company B, etc.

4. Discussed a Referral from the Risk Retention Group (E) Task Force

Johnson said the Working Group had received a referral from the Risk Retention Group (E) Task Force about risk retention groups (RRGs) and privacy requirements. She said this would be included in the discussions by the drafting group and discussed by the Working Group during a future open meeting.

5. Heard Part of a Presentation from Consumer's Checkbook on Access to Data, Costs, and Inherent Privacy Risks in Legacy Systems vs. Non-Legacy Systems

Eric Ellsworth (Consumers' Checkbook/Center for the Study of Services) began his presentation on access to data, costs, and inherent privacy risks in legacy systems versus non-legacy systems. He described the cost of maintaining data in both systems prior to WebEx connectivity outages becoming so frequent that the presentation had to be stopped and everyone participating virtually released from the WebEx connection. The Working Group will ask the speaker to continue this presentation in its entirety during a future meeting.

Having no further business, the Privacy Protections (H) Working Group adjourned.

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NOVEMBER 11/7/23 UPDATE ON THE NAIC DRAFT
CONSUMER PRIVACY PROTECTION MODEL LAW #674

- **Background:** Following two years of dedicated research, presentations, and open discussions by the Privacy Protections Working Group, NAIC members changed the Working Group's charges for 2023 from reviewing *NAIC Insurance Information and Privacy Protection Model Act* (#670) and *Privacy of Consumer Financial and Health Information Regulation* (#672), to revising them. Upon review of the models, The Working Group determined the models needed modernizing and to expand consumer rights.

- **Role of State Legislators and Insurance Regulators:** Widespread legislative and regulatory support of an insurance-specific law on consumer data privacy protections is more important than ever as innovations in technology take center stage in our daily lives and data is collected on every aspect of it. The insurance industry needs a certain amount of data to conduct the business of insurance, but the amount of consumer data being collected has increased greatly and guardrails on the use, sharing, and selling of data are needed. *Insurance Consumer Protection Model Law* (#674) focuses on data minimization, including requiring insurance professionals to gather only the data necessary to do business; deleting data when it is no longer needed; ensuring that consumers know what data is collected, shared, and used; and providing consumers a choice in whether their personal information may be used in connection with non-insurance products.

- *On February 1, the NAIC Privacy Protections (H) Working Group exposed the first version of the draft Insurance Consumer Privacy Protection Model Law (#674) with an April 3 deadline. Industry groups voiced concerns with aspects of the model they viewed as overly burdensome to insurers, including the opt-in framework, requirements around enhanced third-party oversight, content and frequency of consumer notices/disclosures, the timeline for deletion of consumers' personal information, and the optional private cause of action.*

- Since February, the **Privacy Protections (H) Working Group** has exposed for comment two drafts (one full and one partial) of the *Insurance Consumer Privacy Protection Model Law*.

- During this process, the Working Group has received significant feedback from industry, industry representatives, consumer advocates, and other interested parties and has provided ample opportunities for discussion via public calls and one-on-one meetings.

- In June, the Working Group held a two-day, in-person meeting in Kansas City for stakeholders to discuss topics of particular interest/concern, including oversight of third-party service providers, the definitions of "insurance transaction" and other

permitted transactions, marketing, joint-marketing agreements (JMAs), marketing consent (opt-in vs. opt-out), and consumer notices.

- On July 11, the Working Group exposed for comment the second "work in progress" version ("Version 1.2") of the draft model that had revisions in response to some, but not all, of the comments received.

  o In this version, the Working Group eliminated the optional private cause of action and prohibition on cross-border sharing of personal information, based on industry's suggestions.

  o The comment deadline was extended from July 28 to August 12 to coincide with the start of the NAIC Summer National Meeting.

- Those comments can be viewed by registrants of the Summer National Meeting by using the confirmation code they received. Comments were part of the August 13, 2023, meeting materials.

- On August 13 at the NAIC Summer National Meeting, **the Working Group announced that the timeline for the model's adoption would be extended–to thoroughly review the significant feedback it received from stakeholders and to ensure all commenters have an opportunity to meet privately with the Working Group chairs and NAIC support staff.**

- Following the Summer National Meeting, the Working Group has shifted focus to clarifying definitions; streamlining the sections on collection, use and sharing of data and data minimization; and harmonizing the need to protect consumers while enhancing the ability of insurance industry professionals to provide necessary services and products to insurance consumers. resulting in the removal of redundant and overlapping sections that were no longer relevant.

- The original goal was for the model to be considered for adoption by the **Innovation, Cybersecurity, and Technology (H) Committee** at the NAIC Fall National Meeting (end of November-beginning of December).

- The decision for an extension was well received by industry, who had been critical of the timeline set in place by the Working Group in its workplan, believing it too short to address the complexities of the model and calling for a pause in work to reassess direction and timing.

Next Steps:

- The Working Group has drafted a new process document in lieu of the previous workplan to outline next steps.

- The Working Group continues to review the 32 comment letters and redlined versions of the model it received during the last comment period and is making significant changes in response to those comments.

- During the Summer National Meeting, the Working Group made clear that the third exposure of the model will be redlined to include submitted comments, and interested parties will have four to six weeks to review and provide feedback on that exposure.

- The Working Group will post the new process document and request an extension of time to draft Model #674 **prior to the Fall National Meeting in Orlando.**

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Adopted by the Innovation, Cybersecurity, and Technology (H) Committee, Dec. 1, 2023

NAIC MODEL BULLETIN:

USE OF ARTIFICIAL INTELLIGENCE SYSTEMS BY INSURERS

TO: All Insurers Licensed to Do Business In (*Insert Name of Jurisdiction*) ("Insurers")

FROM: [Department/Commissioner]

DATE: [Insert]

RE: The Use of Artificial Intelligence Systems in Insurance

This bulletin is issued by the [] (Department) to remind all Insurers that hold certificates of authority to do business in the state that decisions or actions impacting consumers that are made or supported by advanced analytical and computational technologies, including Artificial Intelligence (AI) Systems (as defined below), must comply with all applicable insurance laws and regulations. This includes those laws that address unfair trade practices and unfair discrimination. This bulletin sets forth the Department's expectations as to how Insurers will govern the development/acquisition and use of certain AI technologies, including the AI Systems described herein. This bulletin also advises Insurers of the type of information and documentation that the Department may request during an investigation or examination of any Insurer regarding its use of such technologies and AI Systems.

SECTION 1: INTRODUCTION, BACKGROUND, AND LEGISLATIVE AUTHORITY

Background

AI is transforming the insurance industry. AI techniques are deployed across all stages of the insurance life cycle, including product development, marketing, sales and distribution, underwriting and pricing, policy servicing, claim management, and fraud detection.

AI may facilitate the development of innovative products, improve consumer interface and service, simplify and automate processes, and promote efficiency and accuracy. However, AI, including AI Systems, can present unique risks to consumers, including the potential for inaccuracy, unfair discrimination, data vulnerability, and lack of transparency and explainability. Insurers should take actions to minimize these risks.

The Department encourages the development and use of innovation and AI Systems that contribute to safe and stable insurance markets. However, the Department expects that decisions made and actions taken by Insurers using AI Systems will comply with all applicable federal and state laws and regulations.

The Department recognizes the *Principles of Artificial Intelligence* that the NAIC adopted in 2020 as an appropriate source of guidance for Insurers as they develop and use AI systems. Those principles emphasize the importance of the fairness and ethical use of AI; accountability; compliance with state laws and regulations; transparency; and a safe, secure, fair, and robust system. These fundamental principles should guide Insurers in their development and use of AI Systems and underlie the expectations set forth in this bulletin.

Legislative Authority

The regulatory expectations and oversight considerations set forth in Section 3 and Section 4 of this bulletin rely on the following laws and regulations:

- ***Unfair Trade Practices Model Act* (#880)**: The *Unfair Trade Practices Act* [*insert citation to state statute or regulation corresponding to Model #880]* (UTPA)*,* regulates trade practices in insurance by: 1) defining practices that constitute unfair methods of competition or unfair or deceptive acts and practices; and 2) prohibiting the trade practices so defined or determined.

- ***Unfair Claims Settlement Practices Model Act* (#900)**: The *Unfair Claims Settlement Practices Act*, [*insert citation to state statute or regulation corresponding to Model #900*] (UCSPA)*,* sets forth standards for the investigation and disposition of claims arising under policies or certificates of insurance issued to residents of [insert state].

Actions taken by Insurers in the state must not violate the UTPA or the UCSPA, regardless of the methods the Insurer used to determine or support its actions. As discussed below, Insurers are expected to adopt practices, including governance frameworks and risk management protocols, that are designed to ensure that the use of AI Systems does not result in: 1) unfair trade practices, as defined in []; or 2) unfair claims settlement practices, as defined in [].

- ***Corporate Governance Annual Disclosure Model Act* (#305)**: The *Corporate Governance Annual Disclosure Act* [*insert citation to state statute or regulation corresponding to Model #305*] (CGAD), requires Insurers to report on governance practices and to provide a summary of the Insurer's corporate governance structure, policies, and practices. The content, form, and filing requirements for CGAD information are set forth in the *Corporate Governance Annual Disclosure Model Regulation* (#306) [*insert citation to state statute or regulation corresponding to Model #306])* (CGAD-R).

The requirements of CGAD and CGAD-R apply to elements of the Insurer's corporate governance framework that address the Insurer's use of AI Systems to support actions and decisions that impact consumers.

- ***Property and Casualty Model Rating Law* (#1780)**: The *Property and Casualty Model Rating Law*, [*insert citation to state statute or regulation corresponding to the Model #1780]*, requires that property/casualty (P/C) insurance rates not be excessive, inadequate, or unfairly discriminatory.

The requirements of [] apply regardless of the methodology that the Insurer used to develop rates, rating rules, and rating plans subject to those provisions. That means that an Insurer is responsible for assuring that rates, rating rules, and rating plans that are developed using AI techniques and Predictive Models that rely on data and Machine Learning do not result in excessive, inadequate, or unfairly discriminatory insurance rates with respect to all forms of casualty insurance—including fidelity, surety, and guaranty bond—and to all forms of property insurance—including fire, marine, and inland marine insurance, and any combination of any of the foregoing.

- ***Market Conduct Surveillance Model Law* (#693)**: The *Market Conduct Surveillance Model Law* [*insert citation to state statute or regulation corresponding to Model #693*] establishes the framework pursuant to which the Department conducts market conduct actions. These are comprised of the full range of activities that the Department may initiate to assess and address the market practices of Insurers, beginning with market analysis and extending to targeted examinations. Market conduct actions are separate from, but may result from, individual complaints made by consumers asserting illegal practices by Insurers.

An Insurer's conduct in the state, including its use of AI Systems to make or support actions and decisions that impact consumers, is subject to investigation, including market conduct actions. Section 4 of this bulletin provides guidance on the kinds of information and documents that the Department may request in the context of an AI-focused investigation, including a market conduct action.

SECTION 2: DEFINITIONS

For the purposes of this bulletin the following terms are defined[1]:

"Adverse Consumer Outcome" refers to a decision by an Insurer that is subject to insurance regulatory standards enforced by the Department that adversely impacts the consumer in a manner that violates those standards.

"Algorithm" means a clearly specified mathematical process for computation; a set of rules that, if followed, will give a prescribed result.

"AI System" is a machine-based system that can, for a given set of objectives, generate outputs such as predictions, recommendations, content (such as text, images, videos, or sounds), or other output influencing decisions made in real or virtual environments. AI Systems are designed to operate with varying levels of autonomy.

"Artificial Intelligence (AI)" refers to a branch of computer science that uses data processing systems that perform functions normally associated with human intelligence, such as reasoning, learning, and self-improvement, or the capability of a device to perform functions that are normally associated with human intelligence such as reasoning, learning, and self-improvement. This definition considers machine learning to be a subset of artificial intelligence.

"Degree of Potential Harm to Consumers" refers to the severity of adverse economic impact that a consumer might experience as a result of an Adverse Consumer Outcome.

"Generative Artificial Intelligence (Generative AI)" refers to a class of AI Systems that generate content in the form of data, text, images, sounds, or video, that is similar to, but not a direct copy of, pre-existing data or content.

"Machine Learning (ML)" Refers to a field within artificial intelligence that focuses on the ability of computers to learn from provided data without being explicitly programmed.

"Model Drift" refers to the decay of a model's performance over time arising from underlying changes such as the definitions, distributions, and/or statistical properties between the data used to train the model and the data on which it is deployed.

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[1] Drafting note: Individual states may have adopted definitions for terms that are included in the model bulletin that may be different from the definitions set forth herein.

"Predictive Model" refers to the mining of historic data using algorithms and/or machine learning to identify patterns and predict outcomes that can be used to make or support the making of decisions.

"Third Party" for purposes of this bulletin means an organization other than the Insurer that provides services, data, or other resources related to AI.

SECTION 3: REGULATORY GUIDANCE AND EXPECTATIONS

Decisions subject to regulatory oversight that are made by Insurers using AI Systems must comply with the legal and regulatory standards that apply to those decisions, including unfair trade practice laws. These standards require, at a minimum, that decisions made by Insurers are not inaccurate, arbitrary, capricious, or unfairly discriminatory. Compliance with these standards is required regardless of the tools and methods Insurers use to make such decisions. However, because, in the absence of proper controls, AI has the potential to increase the risk of inaccurate, arbitrary, capricious, or unfairly discriminatory outcomes for consumers, it is important that Insurers adopt and implement controls specifically related to their use of AI that are designed to mitigate the risk of Adverse Consumer Outcomes.

Consistent therewith, all Insurers authorized to do business in this state are expected to develop, implement, and maintain a written program (an "AIS Program") for the responsible use of AI Systems that make, or support decisions related to regulated insurance practices. The AIS Program should be designed to mitigate the risk of Adverse Consumer Outcomes, including, at a minimum, the statutory provisions set forth in Section 1 of this bulletin.

The Department recognizes that robust governance, risk management controls, and internal audit functions play a core role in mitigating the risk that decisions driven by AI Systems will violate unfair trade practice laws and other applicable existing legal standards. The Department also encourages the development and use of verification and testing methods to identify errors and bias in Predictive Models and AI Systems, as well as the potential for unfair discrimination in the decisions and outcomes resulting from the use of Predictive Models and AI Systems.

The controls and processes that an Insurer adopts and implements as part of its AIS Program should be reflective of, and commensurate with, the Insurer's own assessment of the degree and nature of risk posed to consumers by the AI Systems that it uses, considering: (i) the nature of the decisions being made, informed, or supported using the AI System; (ii) the type and Degree of Potential Harm to Consumers resulting from the use of AI Systems; (iii) the extent to which humans are involved in the final decision-making process; (iv) the transparency and explainability of outcomes to the impacted consumer; and (v) the extent and scope of the insurer's use or reliance on data, Predictive Models, and AI Systems from third parties. Similarly, controls and processes should be commensurate with both the risk of Adverse Consumer Outcomes and the Degree of Potential Harm to Consumers.

As discussed in Section 4, the decisions made as a result of an Insurer's use of AI Systems are subject to the Department's examination to determine that the reliance on AI Systems are compliant with all applicable existing legal standards governing the conduct of the Insurer.

AIS Program Guidelines

1.0   General Guidelines

1.1   The AIS Program should be designed to mitigate the risk that the Insurer's use of an AI System will result in Adverse Consumer Outcomes.

1.2   The AIS Program should address governance, risk management controls, and internal audit functions.

1.3   The AIS Program should vest responsibility for the development, implementation, monitoring, and oversight of the AIS Program and for setting the Insurer's strategy for AI Systems with senior management accountable to the board or an appropriate committee of the board.

1.4   The AIS Program should be tailored to and proportionate with the Insurer's use and reliance on AI and AI Systems. Controls and procedures should be focused on the mitigation of Adverse Consumer Outcomes and the scope of the controls and procedures applicable to a given AI System use case should reflect and align with the Degree of Potential Harm to Consumers with respect to that use case.

1.5   The AIS Program may be independent of or part of the Insurer's existing Enterprise Risk Management (ERM) program. The AIS Program may adopt, incorporate, or rely upon, in whole or in part, a framework or standards developed by an official third-party standard organization, such as the National Institute of Standards and Technology (NIST) Artificial Intelligence Risk Management Framework, Version 1.0.

1.6   The AIS Program should address the use of AI Systems across the insurance life cycle, including areas such as product development and design, marketing, use, underwriting, rating and pricing, case management, claim administration and payment, and fraud detection.

1.7   The AIS Program should address all phases of an AI System's life cycle, including design, development, validation, implementation (both systems and business), use, on-going monitoring, updating and retirement.

1.8   The AIS Program should address the AI Systems used with respect to regulated insurance practices whether developed by the Insurer or a third-party vendor.

1.9   The AIS Program should include processes and procedures providing notice to impacted consumers that AI Systems are in use and provide access to appropriate levels of information based on the phase of the insurance life cycle in which the AI Systems are being used.

2.0   Governance

The AIS Program should include a governance framework for the oversight of AI Systems used by the Insurer. Governance should prioritize transparency, fairness, and accountability in the design and implementation of the AI Systems, recognizing that proprietary and trade secret information must be protected. An Insurer may consider adopting new internal governance structures or rely on the Insurer's existing governance structures; however, in developing its governance framework, the Insurer should consider addressing the following items:

2.1   The policies, processes, and procedures, including risk management and internal controls, to be followed at each stage of an AI System life cycle, from proposed development to retirement.

2.2   The requirements adopted by the Insurer to document compliance with the AIS Program policies, processes, procedures, and standards. Documentation requirements should be developed with Section 4 in mind.

2.3   The Insurer's internal AI System governance accountability structure, such as:

a) The formation of centralized, federated, or otherwise constituted committees comprised of representatives from appropriate disciplines and units within the Insurer, such as business units, product specialists, actuarial, data science and analytics, underwriting, claims, compliance, and legal.

b) Scope of responsibility and authority, chains of command, and decisional hierarchies.

c) The independence of decision-makers and lines of defense at successive stages of the AI System life cycle.

d) Monitoring, auditing, escalation, and reporting protocols and requirements.

e) Development and implementation of ongoing training and supervision of personnel.

2.4   Specifically with respect to Predictive Models: the Insurer's processes and procedures for designing, developing, verifying, deploying, using, updating, and monitoring Predictive Models, including a description of methods used to detect and address errors, performance issues, outliers, or unfair discrimination in the insurance practices resulting from the use of the Predictive Model.

3.0   Risk Management and Internal Controls

The AIS Program should document the Insurer's risk identification, mitigation, and management framework and internal controls for AI Systems generally and at each stage of the AI System life cycle. Risk management and internal controls should address the following items:

3.1   The oversight and approval process for the development, adoption, or acquisition of AI Systems, as well as the identification of constraints and controls on automation and design to align and balance function with risk.

3.2   Data practices and accountability procedures, including data currency, lineage, quality, integrity, bias analysis and minimization, and suitability.

3.3   Management and oversight of Predictive Models (including algorithms used therein), including:

a) Inventories and descriptions of the Predictive Models.

b) Detailed documentation of the development and use of the Predictive Models.

    c) Assessments such as interpretability, repeatability, robustness, regular tuning, reproducibility, traceability, model drift, and the auditability of these measurements where appropriate.

3.4   Validating, testing, and retesting as necessary to assess the generalization of AI System outputs upon implementation, including the suitability of the data used to develop, train, validate and audit the model. Validation can take the form of comparing model performance on unseen data available at the time of model development to the performance observed on data post-implementation, measuring performance against expert review, or other methods.

3.5   The protection of non-public information, particularly consumer information, including unauthorized access to the Predictive Models themselves.

3.6   Data and record retention.

3.7   Specifically with respect to Predictive Models: a narrative description of the model's intended goals and objectives and how the model is developed and validated to ensure that the AI Systems that rely on such models correctly and efficiently predict or implement those goals and objectives.

4.0   Third-Party AI Systems and Data

Each AIS Program should address the Insurer's process for acquiring, using, or relying on (i) third-party data to develop AI Systems; and (ii) AI Systems developed by a third party, which may include, as appropriate, the establishment of standards, policies, procedures, and protocols relating to the following considerations:

4.1   Due diligence and the methods employed by the Insurer to assess the third party and its data or AI Systems acquired from the third party to ensure that decisions made or supported from such AI Systems that could lead to Adverse Consumer Outcomes will meet the legal standards imposed on the Insurer itself.

4.2   Where appropriate and available, the inclusion of terms in contracts with third parties that:

    a) Provide audit rights and/or entitle the Insurer to receive audit reports by qualified auditing entities.

    b) Require the third party to cooperate with the Insurer with regard to regulatory inquiries and investigations related to the Insurer's use of the third-party's product or services.

4.3   The performance of contractual rights regarding audits and/or other activities to confirm the third-party's compliance with contractual and, where applicable, regulatory requirements.

SECTION 4: REGULATORY OVERSIGHT AND EXAMINATION CONSIDERATIONS

The Department's regulatory oversight of Insurers includes oversight of an Insurer's conduct in the state, including its use of AI Systems to make or support decisions that impact consumers. Regardless of the existence or scope of a written AIS Program, in the context of an investigation or market conduct action, an Insurer can expect to be asked about its development, deployment, and use of AI Systems, or any specific Predictive Model, AI System or application and its outcomes (including Adverse Consumer Outcomes) from the use of those AI Systems, as well as any other information or documentation deemed relevant by the Department.

Insurers should expect those inquiries to include (but not be limited to) the Insurer's governance framework, risk management, and internal controls (including the considerations identified in Section 3). In addition to conducting a review of any of the items listed in this Bulletin, a regulator may also ask questions regarding any specific model, AI System, or its application, including requests for the following types of information and/or documentation:

1. **Information and Documentation Relating to AI System Governance, Risk Management, and Use Protocols**

    1.1.   Information and documentation related to or evidencing the Insurer's AIS Program, including:

    a) The written AIS Program.

    b) Information and documentation relating to or evidencing the adoption of the AIS Program.

    c) The scope of the Insurer's AIS Program, including any AI Systems and technologies not included in or addressed by the AIS Program.

    d) How the AIS Program is tailored to and proportionate with the Insurer's use and reliance on AI Systems, the risk of Adverse Consumer Outcomes, and the Degree of Potential Harm to Consumers.

    e) The policies, procedures, guidance, training materials, and other information relating to the adoption, implementation, maintenance, monitoring, and oversight of the Insurer's AIS Program, including:

    i. Processes and procedures for the development, adoption, or acquisition of AI Systems, such as:

    (1) Identification of constraints and controls on automation and design.

    (2) Data governance and controls, any practices related to data lineage, quality, integrity, bias analysis and minimization, suitability, and Data Currency.

    ii. Processes and procedures related to the management and oversight of Predictive Models, including measurements, standards, or thresholds adopted or used by the Insurer in the development, validation, and oversight of models and AI Systems.

    iii. Protection of non-public information, particularly consumer information, including unauthorized access to Predictive Models themselves.

    1.2.   Information and documentation relating to the Insurer's pre-acquisition/pre-use diligence, monitoring, oversight, and auditing of data or AI Systems developed by a third party.

1.3.   Information and documentation relating to or evidencing the Insurer's implementation and compliance with its AIS Program, including documents relating to the Insurer's monitoring and audit activities respecting compliance, such as:

a) Documentation relating to or evidencing the formation and ongoing operation of the Insurer's coordinating bodies for the development, use, and oversight of AI Systems.

b) Documentation related to data practices and accountability procedures, including data lineage, quality, integrity, bias analysis and minimization, suitability, and Data Currency.

c) Management and oversight of Predictive Models and AI Systems, including:

i. The Insurer's inventories and descriptions of Predictive Models, and AI Systems used by the Insurer to make or support decisions that can result in Adverse Consumer Outcomes.

ii. As to any specific Predictive Model or AI System that is the subject of investigation or examination:

(1) Documentation of compliance with all applicable AI Program policies, protocols, and procedures in the development, use, and oversight of Predictive Models and AI Systems deployed by the Insurer.

(2) Information about data used in the development and oversight of the specific model or AI System, including the data source, provenance, data lineage, quality, integrity, bias analysis and minimization, suitability, and Data Currency.

(3) Information related to the techniques, measurements, thresholds, and similar controls used by the Insurer.

d) Documentation related to validation, testing, and auditing, including evaluation of Model Drift to assess the reliability of outputs that influence the decisions made based on Predictive Models. Note that the nature of validation, testing, and auditing should be reflective of the underlying components of the AI System, whether based on Predictive Models or Generative AI.

2.   Third-Party AI Systems and Data

In addition, if the investigation or examination concerns data, Predictive Models, or AI Systems collected or developed in whole or in part by third parties, the Insurer should also expect the Department to request the following additional types of information and documentation.

2.1   Due diligence conducted on third parties and their data, models, or AI Systems.

2.2   Contracts with third-party AI System, model, or data vendors, including terms relating to representations, warranties, data security and privacy, data sourcing, intellectual property rights, confidentiality and disclosures, and/or cooperation with regulators.

2.3   Audits and/or confirmation processes performed regarding third-party compliance with contractual and, where applicable, regulatory obligations.

2.4   Documentation pertaining to validation, testing, and auditing, including evaluation of Model Drift.

The Department recognizes that Insurers may demonstrate their compliance with the laws that regulate their conduct in the state in their use of AI Systems through alternative means, including through practices that differ from those described in this bulletin. The goal of the bulletin is not to prescribe specific practices or to prescribe specific documentation requirements. Rather, the goal is to ensure that Insurers in the state are aware of the Department's expectations as to how AI Systems will be governed and managed and of the kinds of information and documents about an Insurer's AI Systems that the department expects an Insurer to produce when requested.

As in all cases, investigations and market conduct actions may be performed using procedures that vary in nature, extent, and timing in accordance with regulatory judgment. Work performed may include inquiry, examination of company documentation, or any of the continuum of market actions described in the NAIC's *Market Regulation Handbook*. These activities may involve the use of contracted specialists with relevant subject matter expertise. Nothing in this bulletin limits the authority of the Department to conduct any regulatory investigation, examination, or enforcement action relative to any act or omission of any Insurer that the Department is authorized to perform.

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