

Draft: 11/21/2023

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). 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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