

LIC LAWS & LEGISLATION COMMITTEE MEETING

May 5, 2023

ATTACHMENT – Updates on Legislation/Regulation/Litigation & Industry Meetings

MARKET CONDUCT ITEMS

Market Conduct Exams – Kentucky published a bulletin on February 27, 2023 announcing the Department changed the Error Tolerance Rates applied in market conduct examinations.

Example: As of July 1, 2023:

- Complaints are 0% tolerance – were 10% error tolerance percentage;
- Policyholder Service is 5% tolerance – was 10% error tolerance percentage;
- Record Retention is 0% tolerance – was 5% error tolerance percentage;
- Underwriting and Rating Practices are 5% - were 10% error tolerance percentage.

Death Master File – a Company was fined \$3M by New York Insurance Department for:

- failing to cross-check their policies against the Death Master File on a quarterly and annual basis;
- failing to commence beneficiary outreach within 90 days following the identification of matches in the Death Master File; and
- failing to escheat death benefit proceeds when the carrier could reasonably confirm the deaths of certain insureds but was unable to locate beneficiaries.

Agents, Life Annual Statements and Record Retention – The New York Department found the following violations during a market conduct exam:

1. The company failed to notify the DFFS of the termination of 11 appointments within 30 days of termination for cause and failed to send notices of the termination to the producers within 15 days of the termination.
2. Used custom enrollment forms that were not approved prior to use.
3. Failed to comply with the mailing requirements for premium due notices and subsequent lapse procedures.
4. Failed to provide whole-life policyholders with compliant annual statements.
5. Failed to comply with all record retention requirements.

The fine was not published.

Replacement, Premium Notices and Advertising - New York Department of Financial Services examined a smaller carrier and found several violations which it published in late 2022 dealing with:

Replacement:

- Failed to require with each replacement proof that the applicant received the Important Notice Regarding a Replacement and failed to retain a copy of the notice;
- Failed to obtain an accurate Disclosure Statement, did not ascertain that the Disclosure Statement was accurate and in compliance with the regulation;
- Failed to maintain the signed and completed Disclosure Statement.

Premium Notices:

- Failed to state on the premium notices that unless the payment is made on or before the due date or within the specified grace period, the policy shall terminate or lapse except as to the right to any cash surrender value or non-forfeiture benefit.

Advertising:

- Failed to identify the home office's city, town, or village.

LAWSUIT OF INTEREST

A Jackson County, Missouri Jury awarded \$28.36 million in favor of plaintiffs in a class action lawsuit alleging the insurance carrier overcharged its policyholders. The lawsuit alleged that the insurer had charged cost of insurance rates that were inconsistent with the policy language of several universal life insurance policies issued between 1982 and 2008. The company says it plans to overturn the verdict entered in December, 2022. See *David Karr v. Kansas City Life Insurance Company, 1916-CV26645*.

INDUSTRY INFORMATION

Interstate Insurance Product Regulation Commission (IIPRC)

North Dakota SB 2172 – North Dakota became the 47th state to join the Interstate Insurance Product Regulation Commission (IIPRC). It is effective on August 1, 2023. This applies to annuity, life insurance and disability income product filings beginning in mid-August. However, North Dakota did not include long term care products.

NAIC

Proposed Consumer Privacy Protection Model Law 674

NAIC published the exposure draft model law. Incorporates parts of older Model Laws 668, 670 and 672.

- Balances the need for consumer information by insurance companies with the need for fairness and protection of consumers personal information. Also applies to third-party service providers.
- Spells out the obligations in handling a consumer's personal information.
- Consumers know what personal information is collected and shared, the sources and from whom the information is collected and shared, why and how long personal information is retained, allows consumers to access information, verify or dispute its accuracy, and allows consumers to obtain the reasons for adverse underwriting transactions.
- Consumers can opt in or opt out and can restrict use of personal information.

The Privacy Protections Working Group has been having regularly scheduled calls on topics within the model law. NAIC wants everyone's opinion on the specific aspects and requirements of this law.

Timeline calls for the Model Law to be finalized in the Fall and introduced in early in 2024.

California, Colorado, Connecticut, Utah, Virginia and Iowa have passed a Consumer Data Privacy Law. Twenty states introduced bills in 2023.

Iowa SB 262 – Passed a new consumer privacy protection law that goes into effect on January 1, 2025. The Iowa Consumer Data Protection Act (ICDPA) applies to a person conducting business in the state or has consumers who are residents of the state as a target market and, during a calendar year either:

- controls or processes personal data of at least 100,000 consumers in the state, or
- controls or processes personal data of at least 25,000 Iowa consumers *and* derives 50% or more of its gross revenue from the sale of personal data.

ADOPTED LAWS AND REGULATIONS

ANNUITIES:

The Suitability in Annuity Transactions Model Law reached the majority threshold of 30 states that have adopted the Best Interest revisions to the model.

Georgia – Adopted Best Interest enhancements to the NAIC Suitability in Annuity Transactions Model Regulation. It becomes effective on July 1, 2023.

Illinois - Insurance Department adopted the best interest modifications to 50 Ill Adm Code 3120 to create the Suitability in Annuity Transactions regulation. The Department published Bulletin 2023-04 to give guidance on the effective dates. Carriers are expected to comply with the final regulation by August 1, 2023

Massachusetts – Adopted revisions to the state’s Suitability in Annuity Transactions regulation. It applies to any sale or recommendation of an annuity made on or after June 1, 2023

Tennessee – Issued Bulletin 23-02 dated April 6, 2023 to clarify, primarily for producers, certain provisions of Rule Chapter 0780-01-86 - Suitability in Annuity Transactions. The Bulletin goes over five detailed points regarding specific elements of the regulation. This Bulletin replaces any previous “duplicative” guidance on this regulation.

Washington – HB 1120 – enacted the best interest standard for annuities. Effective January 1, 2024.

West Virginia – The Insurance Commissioner revised its annuity regulation, Title 114, Series 11B to comply with Suitability in Annuity Transaction requirements effective 6/8/23. There is a sunset provision of August 1, 2028.

Wyoming - Department of Insurance recently promulgated Regulation Chapter 64 Governing Suitability in Annuity Transactions. This regulation aligns with the NAIC model regulation and is effective July 5, 2023. The Department issued a Memorandum dated April 7 regarding the changes. Under Section 6 of Chapter 64, the deadline for completion of the annuity-specific continuing education is January 5, 2024.

ANNUITY NONFORFEITURE

The NAIC adopted an amendment in late 2020 to its Standard Nonforfeiture Law for Individual Deferred Annuities to better align the model with changing market conditions. The law lowered the minimum nonforfeiture rate from 1% to .15%. 31 states enacted the change in 2021 and 2022. Momentum slowed when interest rates began to rise.

Massachusetts, Nevada, and New York have proposed bills.

UNFAIR DISCRIMINATION/ALGORITHM AND PREDICTIVE MODELING

NAIC Big Data and Artificial Intelligence (H) Working Group –

- Last meeting was at the Spring National Meeting on March 22, 2023.
- Survey will be issued by 14 states (CO, CT, IL IA, LA, MN, NE, ND, OR, PA, RI, VT, WI) to 192 life insurance companies:
 1. with more than \$250M in premiums on all individual policies in 2021;
 2. term writers that have issued policies on more than 10,000 lives,
 3. or a specifically selected insurtech company.
- Purpose of survey is to gain better understanding of how life insurance companies are deploying Artificial Intelligence (AI) and Machine Learning (ML) technologies in pricing and underwriting, marketing, and claims. To also understand the minimum and maximum face amount thresholds at which AI/ML is used.
- Informational letter regarding the survey to be distributed by end of March. Formal examination call letter will be issued at the end of April, and survey responses will be due back by the end of May.
- Working on model law to be circulated by the end of May.

Colorado – In 2021 passed SB 21-169 restricting an insurer’s use of external consumer data to protect consumers from unfair discrimination on the basis of race, color, national or ethnic origin, religion, sex, sexual orientation disability, gender identity, or gender expression.

- The Department hired Cathy O’Neil of O’Neil Risk Consulting & Algorithmic Auditing (ORCAA), a consulting firm that helps companies identify and manage algorithmic risks, to assist them in the implementation of the law.
- The Department is proposing a new regulation to protect consumers from potential discriminatory treatment that may occur due to the use of life insurance algorithms and automated underwriting.
- The Department has held 6 Stakeholder Meetings regarding Life Insurance Underwriting, the most recent one on February 7, 2023. <https://doi.colorado.gov/for-consumers/sb21-169-protecting-consumers-from-unfair-discrimination-in-insurance-practices>

Highlights of Colorado’s proposed Governance and Risk Management Framework Requirements for Life Insurance Carriers’ Use of External Consumer Data and Information Sources, Algorithms, and Predictive Models are:

- If a carrier uses External Consumer Data and Information Source (ECDIS) to supplement or replace traditional underwriting factors or to establish lifestyle indicators that are used in insurance practices, the carrier must determine whether the ECDIS is credible and their use does not result in unfair discrimination.
- External Consumer Data and Information Source (ECDIS) includes credit scores, social media habits, purchasing habits, home ownership, educational attainment, licensures, civil judgments, court records, occupation that does not have a direct relationship to mortality, morbidity or longevity risk, and any insurance risk scores derived by the insurer or a third-party, or similar data or information sources.
- Written policies and processes for design, development, testing, deployment, use and ongoing monitoring must be established.
- Must maintain a process for addressing consumer complaints and inquiries. It must provide sufficiently clear information to enable consumers to take meaningful action in response to adverse decisions.
- Board of Directors and senior management are responsible and accountable for strategy and use of External Consumer Data and Information Sources (ECDIS) and the algorithms and predictive models using ECDIS.
- Traditional Underwriting Factors means:
 1. Medical information, family history, occupational, disability, or behavioral information related to a specific individual, which information, based on sound actuarial principles, has a direct relationship to mortality, morbidity, or longevity risk;
 2. Income, assets, or other elements of a specific person’s financial profile that a life insurer may use to determine insurable interest, suitability or eligibility for coverage; or
 3. Digitized or other electronic forms of the information listed above, such as electronic medical and prescription drug records.

DISCRIMINATION/RISK CLASSIFICATION

1. Sexual Orientation:

Michigan – Insurance Director issued Bulletin 2023-07-BT/CF/CU/INS to inform carriers of the impact of amendments to the Elliott-Larsen Civil Rights Act (ELCRA). This law prohibits discrimination in the insurance and financial services industries on the basis of sexual orientation and gender identity or expression. Carriers cannot deny access, limit benefits, impose additional cost-sharing, or engage in discriminatory marketing practices based on an individual's sex, sexual orientation, gender identity, or gender expression.

2. Living Organ Donor:

Wyoming – HB 165 Living Organ Donor. Effective July 1, 2023 a carrier cannot discriminate against a person in individual or group life or long term care insurance who has donated an organ. Carrier cannot deny or cancel coverage, deny eligibility or continued eligibility, reduce or limit coverage or benefits, or increase premiums solely on the basis of the person's status as a living organ donor without any additional separate actuarial risk involved.

3. Genetic Testing:

Overall, 15 states (26 bills) are considering some version of genetic testing restriction. However, 14 of these bills contain primarily direct-to-consumer privacy protections.

Tennessee – SB 1294 effective July 1, 2023. Prohibits a life carrier from: 1) canceling coverage based solely on the individual's or family member's genetic information; 2) requesting or requiring an insured or applicant to take a genetic test as a precondition of insurability; or 3) requiring a complete genome sequencing of an individual's DNA. However, a carrier can use genetic information contained in an individual's medical record.

Virginia – SB 1087 is a genetic data privacy law effective July 1, 2023. It establishes requirements for direct-to-consumer genetic testing companies. Requires express consent of consumer for storage, use and sharing of genetic data. It also requires HIPAA privacy compliance and certain marketing requirements. This applies to insurance only if the consumer is discriminated against in any way as a result of the information.

4. Death with Dignity:

14 bills introduced in 2023.

Nevada - Proposed SB 239 – Death with Dignity

- Existing law authorizes a patient diagnosed with a terminal condition to refuse life sustaining treatment in certain circumstances. New law allows a patient to self-administer a medication to end the patient's life if the patient has been diagnosed with a terminal condition by at least two practitioners, and meets certain requirements.
- Prohibits insurers from denying a claim or canceling a life insurance or annuity policy, or imposing an additional charge on a policyholder or beneficiary solely because the insured requested medication designed to end the insured's life.
- Any provision in the policy to the contrary is void and unenforceable. Death resulting from self-administered medication that is designed to end the life of the patient, when done in accordance with this law, is not mercy killing, euthanasia, assisted suicide, suicide or homicide.
- The death certificate must specify the terminal condition and not list suicide as the cause of death or mention the patient self-administered medication to end his/her life.

PRODUCERS

Nebraska Notice dated 12/2/22 – Nebraska developed an Apprentice Insurance Producer License in which those individuals who want to enter the insurance industry as a producer can start with a temporary license and a mentor.

California Notice dated 3/29/23 – Reminds licensees and applicants to report changes in background information to the California Department of Insurance within 30 days after the licensee or applicant learns of the change in background information. Applies also to a unlicensed officer, director, partner, member or controlling person, or any other natural person named under a business entity license or application.

California - Starting January 1, 2023, resident and non-resident insurance producers must include their license numbers on all emails that involve an activity for which a license is required. Examples: advertise a specific policy or producer's business in general, premium quotes, premium payment, or reference to a provision in a past, present or future policy. SB 1242, Cal Ins. Code Section 1725.5 (c).

MISC. LAWS

Idaho - SB 1092 adopted the Uniform Electronic Wills Act that legally recognizes electronic signatures on a will.

Minnesota - HF 244 adopted the Uniform Electronic Wills Act effective August 1, 2023.

Michigan - Department of Insurance issued Bulletin 2023-04-INS. The maximum amount of cemetery or funeral predeath assignments when an insurer writes a life insurance policy or annuity contract subject to MCL 500.2080 increased from \$11,760 to \$12,720. The increased amount is in effect from June 1, 2023 through May 31, 2024.

CATASTROPHE RESPONSE PLAN

Louisiana Bulletin 07-01 (Revised and Reissued on 12/19/22) – Requires all insurers, including Third-Party Administrators, to maintain a catastrophe response plan that explains how they will respond to a catastrophe that affects its policyholders in the state. A catastrophe would be a significant event declared by the Governor or determined by the Insurance Commissioner that causes widespread property damage or loss. These Catastrophe Response Plans must be submitted to the Louisiana Department of Insurance by June 1, 2023. Prior law required only Accident and Health, Property & Casualty insurers, and Third-Party Administrators to file a catastrophe response plan.