

MEMORANDUM

TO: Commissioners, Directors, Superintendents, and Interested Parties
FROM: Jennifer McAdam, Legal Counsel
DATE: April 13, 2018
RE: Action on Model Laws, Guidelines, and White Papers at the 2018 Spring National Meeting

This memorandum describes NAIC action on model laws, guidelines, and white papers at the 2018 Spring National Meeting. For further information, including current drafts and staff support contacts for each item, please consult the NAIC web site (www.naic.org), Committees page.

I. Actions by Executive (EX) Committee and Plenary

A. Model Laws and Regulations Adopted by the Executive (EX) Committee and Plenary

Amendments to Health Carrier Prescription Drug Benefit Management Model Act (#22)

The Executive (EX) Committee and Plenary adopted amendments to the *Health Carrier Prescription Drug Benefit Management Model Act (#22)*. The Regulatory Framework (B) Task Force drafted revisions to Model #22 to address issues related to: (1) transparency, accuracy and disclosure regarding prescription drug formularies and formulary changes during a policy year; (2) accessibility of prescription drug benefits using a variety of pharmacy options; and (3) tiered prescription drug formularies and discriminatory benefit design. Amendments to Model #22 are required for consistency with the federal Affordable Care Act (ACA) and, therefore, did not require approval of a request for model law development by the Executive (EX) Committee. The Health Insurance and Managed Care (B) Committee adopted the amendments at the 2017 Fall National Meeting.

B. Guidelines Adopted by the Executive (EX) Committee and Plenary

The Executive (EX) Committee and Plenary did not adopt any Guidelines at the Spring National Meeting.

C. Actuarial Guidelines Adopted by the Executive (EX) Committee and Plenary

The Executive (EX) Committee and Plenary did not adopt any Actuarial Guidelines at the Spring National Meeting.

D. Bulletins/Consumer Alerts Adopted by Executive (EX) Committee and Plenary

The Executive (EX) Committee and Plenary did not adopt any Bulletins or Consumer Alerts at the Spring National Meeting.

E. White Papers Adopted by Executive (EX) Committee and Plenary

The Executive (EX) Committee and Plenary did not adopt any White Papers at the Spring National Meeting.

II. Actions by Executive (EX) Committee

Model Law and Regulation Requests Approved for Development by the Executive (EX) Committee

The Executive Committee (EX) Committee did not approve any requests for model law development at the Spring National Meeting.

III. Actions by Other Committees, Task Forces and Working Groups

A. Life Insurance and Annuities (A) Committee

1. Amendments to *Suitability in Annuity Transactions Model Regulation* (#275)

The Annuity Suitability (A) Working Group discussed proposed amendments to the *Suitability in Annuity Transactions Model Regulation* (#275) and how this work would be affected by a recent court ruling by the U.S. Court of Appeals for The Fifth Circuit that vacated the U.S. Department of Labor's Fiduciary Rule. The proposed amendments would add a "best interest" standard of conduct requirement for insurers and producers offering annuity products. The Working Group received feedback from Working Group members, interested state insurance regulators and interested parties and set a new 30-day public comment period ending April 27, using the current provisions of Model #275 as a basis for the comments. The Working Group plans to hold an in-person meeting sometime in May to review and discuss any comments received. The revisions are being drafted for consistency with federal law and, therefore, the Working Group did not require approval of a request for model law development by the Executive (EX) Committee.

2. Amendments to *Annuity Disclosure Model Regulation* (#245)

On a conference call held on March 2, the Annuity Disclosure (A) Working Group voted to adopt the draft revisions to the *Annuity Disclosure Model Regulation* (#245), addressing participating income annuities. The Working Group will continue to work on addressing other issues that may result in additional revisions to Model #245. These additional issues include illustrating indexes less than 10 years old and illustrating deferred income annuities. The Working Group believed that the Life Insurance and Annuities (A) Committee will likely want to hold the participating income annuity revisions in order to adopt all of the revisions to Model #245 coming from the Working Group in one package. The Executive

(EX) Committee approved the model law development request for these amendments at the 2017 Summer National Meeting.

B. Health Insurance and Managed Care (B) Committee

1. New: Limited Long-Term Care Insurance Model Act and Limited Long-Term Care Insurance Model Regulation

The Senior Issues (B) Task Force exposed the proposed new models for a public comment period ending May 4. The Short Duration Long-Term Care Policies (B) Subgroup, under the Senior Issues (B) Task Force, is drafting the new model act and model regulation to address long-term care products of short duration (typically less than one year) that are excluded from the *Long-Term Care Insurance Model Act* (#640) and the *Long-Term Care Insurance Model Regulation* (#641), but also do not fit into policies included in the *Accident and Sickness Insurance Minimum Standards Model Act* (#170) and the *Accident and Sickness Insurance Minimum Standards Model Regulation* (#171). The Executive (EX) Committee approved the request for model law development to amend the model at the 2017 Spring National Meeting.

2. Amendments to *Health Insurance Reserves Model Regulation* (#10)

On a conference call held on January 26, the Health Actuarial (B) Task Force discussed a proposal to amend mortality table requirements in the *Health Insurance Reserves Model Regulation* (#10). The Task Force's proposal was referred back to the Health Reserves (B) Subgroup. The Health Insurance and Managed Care (B) Committee will vote on the Task Force's request for an extension of time on the development of amendments to the *Health Insurance Reserves Model Regulation* (#10) on a conference call to be held on April 19. The Task Force is revising the model to reflect appropriate long-term care insurance (LTCI) reserving standards. The Executive (EX) Committee approved the request for model law development to amend the model at the 2014 Summer National Meeting.

3. Amendments to *Accident and Sickness Insurance Minimum Standards Model Act* (#170) and *Accident and Sickness Insurance Minimum Standards Model Regulation* (#171)

The Regulatory Framework (B) Task Force discussed whether the short-term, limited duration insurance coverage provisions in the *Accident and Sickness Insurance Minimum Standards Model Act* (#170) and the *Accident and Sickness Insurance Minimum Standards Model Regulation* (#171), should be removed and incorporated into a new NAIC model. The issue was initiated on a March 1 call and comments received were split. The Task Force decided to retain the provisions in the models and made a commitment to have the Working Group expedite its discussion of potential revisions to Model #170 concerning short-term, limited duration insurance coverage and complete the revisions by the end of the year.

4. Review of Model Laws Affected by the ACA

During a March 1 conference call, the Regulatory Framework (B) Task Force reviewed the list of NAIC model laws and regulations affected by the federal Affordable Care Act (ACA), which the former Affordable Care Act Model Law Review (B) Subgroup reviewed and made recommendations for potential revisions. One additional model was added to the list, the

Discount Medical Plan Organization Model Act (#98), because of its disclosure provisions, which seemed similar to the potential disclosure provisions in the *Accident and Sickness Insurance Minimum Standards Model Regulation* (#171). After the Task Force completes its work on the *Accident and Sickness Insurance Minimum Standards Model Act* (#170) and the *Accident and Sickness Insurance Minimum Standards Model Regulation* (#171), it will consider which model or models the Task Force will next review and consider revising. The Task Force agreed to defer discussion and making a decision until the Summer National Meeting.

C. Property and Casualty Insurance (C) Committee

1. New: Real Property Lender-Placed Insurance Model Act

On a conference call held on March 13, the Lender-Placed Insurance Model Act (C) Working Group exposed the draft for a new Real Property Lender-Placed Insurance Model Act for a 45-day public comment period ending April 30, 2018. The Working Group is drafting a new model that would focus only on lender-placed insurance related to mortgage loans. The Executive (EX) Committee approved the model law development request for the new Real Property Lender-Placed Insurance Model Act at the 2017 Summer National Meeting.

2. New: Travel Insurance Model Act

The Travel Insurance (C) Working Group approved a number of draft provisions in Sections 7 and 8 for a new Travel Insurance Model Act. The Working Group will discuss comments related to Section 9 on its next call planned for April 30. The Working Group is drafting a model law to define a regulatory structure related to travel insurance covering market regulation, premium tax, rate regulation and enforcement. The Executive (EX) Committee approved the model law development request for the new model law on a call prior to the 2017 Summer National Meeting.

D. Market Regulation and Consumer Affairs (D) Committee

The Market Regulation and Consumer Affairs (D) Committee did not take action on any model laws at the Spring National Meeting.

E. Financial Condition (E) Committee

1. Amendments to *Credit for Reinsurance Model Law* (#785) and *Credit for Reinsurance Model Regulation* (#786)

The Financial Condition (E) Committee approved a request for model law development to amend the *Credit for Reinsurance Model Law* (#785) and the *Credit for Reinsurance Model Regulation* (#786) to conform to the reinsurance collateral provisions of the “Bilateral Agreement Between the United States of America and the European Union on Prudential Measures Regarding Insurance and Reinsurance” (Covered Agreement) that was signed on Sept. 22, 2017. The amendments will provide reinsurers domiciled in NAIC qualified jurisdictions other than within the European Union (EU) with similar reinsurance collateral reductions, but only if such jurisdictions agree to the states’ approach to group supervision, group capital, information sharing, and enforcement.

2. Amendments to *Mortgage Guaranty Insurance Model Act (#630)*

The Mortgage Guaranty Insurance (E) Working Group heard an update on progress of the Mortgage Guaranty Capital Model (Capital Model), which is intended to be adopted, implemented, and relied upon by all states as part of the *Mortgage Guaranty Insurance Model Act (#630)*. The NAIC retained a consultant to conduct rigorous actuarial testing and review of the proposed new Capital Model for mortgage guaranty insurers. This work will need to be completed before drafting can resume. The Working Group still needs to revise Model #630 to address: 1) reinsurance; 2) when and how restrictions on dividends would be imposed; and 3) reporting changes in underwriting guidelines. Additionally, the Working Group needs to modify the mortgage guaranty section on schedule P to be on a book year basis and include more years. Further, the Working Group needs to develop a mortgage guaranty supplemental reporting form that would include analytically useful information, such as insurance in force and risk in force by state. The Working Group is drafting amendments to Capital Requirements, Investment Limitations, Reinsurance and other areas of the model to address areas highlighted for change as a result of the recent mortgage crisis. The Executive (EX) Committee granted approval for development of the model at the 2013 Summer National Meeting. On a conference call held prior to the 2017 Fall National Meeting, the Financial Condition (E) Committee granted the Mortgage Guaranty Insurance (E) Working Group's request for an extension of time on the development of amendments to Model #630.