



American Insurance Association

2101 L Street NW
Suite 400
Washington, DC 20037
202-828-7100
Fax 202-293-1219
www.aiadc.org

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Susan Nolan
Executive Director, NCOIL
385 Jordan Road
Troy, NY 12180

Hon. Greg Wren
Chair, NCOIL State-Federal Relations Committee
385 Jordan Road
Troy, NY 12180

Dear Ms. Nolan and Rep. Wren:

Thank you for your work on, and consideration of, model legislation to establish an appropriate legal framework for the NAIC's Market Conduct Annual Statement initiative. In January, the property and casualty insurance trade associations jointly submitted a letter to NCOIL along with a version of the model marked with changes to address several outstanding issues. The enclosed version of the draft contains the same suggestions, but it has been formatted to remove working comments and highlights. The American Insurance Association (AIA) writes to reiterate its support for this model.

Scope and Purpose

At NCOIL's spring 2010 meeting, there was a discussion surrounding the purpose and scope of an MCAS model law. We believe the model should reflect the goals of the State-Federal Relations Committee, and should contain the kinds of protections NCOIL believes should be addressed explicitly. In general, the draft proposed model allows a regulator to collect and/or review MCAS data, or allow the regulator to delegate such functions to a third party. It then establishes general rules to govern the relationships between the regulator and any third party designee, and the status of the MCAS data.

The enclosed diagram of the draft, also shared at the meeting, is organized to show: (1) the framework concepts dealing with authorizing information collection and review activities, and (2) the operations concepts governing the details of the relationships between the regulator and a designee as well as among all parties and the data as it relates to confidentiality, information sharing, etc.

AIA respectfully urges that the NCOIL MCAS model address:

- Data Collection – Authorize a regulator to collect MCAS data, or to delegate that function;
- Analysis – Authorize a regulator to review and analyze MCAS data, or to delegate that function;
- Structure – Articulate a process for delegating to a designee, in the event the regulator decides to delegate;
- Responsibilities – Mandate designee responsibilities, in order to assure the integrity of the process and the data, and to establish compliance, confidentiality and other necessary protections; and
- Confidentiality – Provide confidential treatment for MCAS data.

Confidentiality

Several years ago there was an effort by some at the NAIC to require insurers to provide MCAS data through non-confidential channels (namely, the Financial Annual Statement Blank). AIA considered this an attempt to circumvent the confidentiality requirements of market conduct laws. Characterizing MCAS data as “financial” was disingenuous. Moreover, most state legislatures already decided the issue. Nonetheless, given the seriousness of the debate, we urge NCOIL to ensure the confidentiality of MCAS data in its model law.

There are several common sense reasons – consistent with the regulatory purpose of the data – to keep MCAS data confidential. First, the ability of a regulated entity to supply confidential data to its regulator serves the relationship well. Market analysis is a process whereby the regulator seeks out explanations for anomalies in the MCAS and other data. MCAS data is but one market analysis tool available to the regulator. This information is an early component of the market surveillance process, and is merely the start of a process along a continuum of information exchanges and regulatory actions. Second, the accuracy of the information and the maturity of the process are in their relative infancies. MCAS began as a pilot project in 2002, and became permanent two years later. In contrast, the Financial Annual Statement (FAS) has evolved over more than 170 years. While time is not necessarily the indicator data maturity, there is a long way to go before the consistency problems are ironed out. There continue to be holes in definitions as well as interpretation discrepancies (with variations by company and by state). In other words, this is not an environment where MCAS data is ripe for public comparison. Third, while some consumer advocates believe that all MCAS data should be made public because it is always better for consumers to have more information, there are very real concerns with the potential for the misuse and misinterpretation of this data. The information might be used for purposes other than those intended – litigation, uniformed public debates, anticompetitive aims, and improper comparisons. Finally, more helpful and appropriate information is already available to the public. For example, information about an insurer’s financial strength and written confirmed complaints are available to consumers today. Also, in many states the regulator has the authority to publish final market conduct exam reports and/or information about fines imposed on insurers.

Conclusion

AIA believes that the enclosed draft Model strikes the appropriate balance between (1) accommodating the NAIC's desire to move forward with its Market Conduct Annual Statement initiative, and (2) establishing an appropriate statutory framework that empowers state regulators with the flexibility to collect and review MCAS information, or to delegate these functions. In addition, the draft Model is intended to allow for more consistent state comparisons given a similar template. However, it also gives discretion to the regulator to opt out of particular filing requirements that the regulator does not consider worthwhile. So, for example, if an NAIC Working Group were to expand MCAS into commercial lines like surety, a regulator would have the flexibility to indicate that it is not worth insurer or regulator resources to collect information on that line where the business represents less than 3% of the premium volume and where it does not address a particular consumer concern.

AIA appreciates NCOIL's efforts in ensuring that the MCAS Model Act establishes the critical authority and data protection provisions surrounding the MCAS project.

Sincerely,

A handwritten signature in black ink, appearing to read "E. M. Goldberg", with a long horizontal flourish extending to the right.

Eric M. Goldberg
Associate General Counsel &
Manager, State Programs

Enclosures