

January 29, 2010

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

Re: **Draft NCOIL Market Conduct Annual Statement Model Act**

Dear Susan:

The State-Federal Relations Committee call of January 14 focused, in part, on the pending proposed NCOIL Model and how it compares with Oklahoma's recently enacted law. As promised, we've enclosed a chart outlining the differences between the proposed Model and the Oklahoma approaches.

In addition, since that call, the interested parties have continued to discuss improvements to the proposed Model. Those discussions resulted in the enclosed mark-up, which proposes amendments to the Model for your consideration.

We wanted to acknowledge Commissioner Holland's leadership and accessibility on market regulation and MCAS issues. As the 2009 Chair of the NAIC Market Regulation and Consumer Affairs (D) Committee, she initiated an important project of reviewing of data integrity and data element utility. We are grateful for this work.

We appreciate the Committee's interest in enhancing procedural and substantive certainty in this evolving area of market regulation. Importantly, NCOIL's willingness to address critical questions of authority and confidentiality shows your continued leadership in this area.

Respectfully,

Catherine I. Paolino  
Senior Counsel  
American Insurance Association

Neil Alldredge  
Senior Vice President, State and Policy Affairs  
National Association of Mutual Insurance Companies

Deirdre Manna  
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JoAnne Kron  
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Enclosures

### MCAS APPROCH COMPARISON

Area	Proposed NCOIL Model	Oklahoma Law Senate Bill 1022 (2009)	Notes
<b>Discretion</b>	Enables the Commissioner to decide whether to participate in MCAS.	Requires insurers to submit MCAS data required by the NAIC, without giving the Commissioner that discretion.	<i>Given the past politics on this issue at the NAIC, and given possible NAIC expansion into lines of business that are not justified in a particular state, the regulator should be accountable as an additional check on the system.</i>
<b>Activities Covered</b>	Bifurcates the data collection and the data analysis functions. Grants the Commissioner the authority to decide whether and how to engage in these functions (for example, in-house or delegation to another on the regulator's behalf).	Deals only with submission of data to the Commissioner (which may be shared with the NAIC), but it does not seem to allow explicitly for outsourcing parts of the analysis function.	<i>We believe the NAIC voted-on plan is for the NAIC to engage in preliminary [Level One perhaps] analysis to then provide to the states. It is useful to empower an individual Commissioner to decide what fits the needs/budgets/staffing of his/her state's insurance department. While it may seem more cumbersome to have MCAS stat agents and qualified professionals (together known as designees) under the Proposed Model, giving Commissioners the choice about whether and where to do the collection and analysis better allows them to tailor market regulation program.</i>

Area	Proposed NCOIL Model	Oklahoma Law Senate Bill 1022 (2009)	Notes
<b>Route for Submission</b>	Allows flexibility for submission of data directly to the Commissioner or to a statistical agent (i.e., NAIC).	Requires information submission to the regulator, and the regulator is authorized to share this data only with the NAIC, provided the state has entered into a confidentiality agreement with the NAIC.	<i>The Oklahoma law is inconsistent with the NAIC's voted-on initiative to have MCAS information go directly to them [next year?]. The Proposed Model would allow for the info to go to the NAIC, provided that the Commissioner and the designee satisfy the conditions.</i>
<b>Context</b>	Puts MCAS into the bigger picture as part of market analysis.	Does not explicitly dovetail with the MCAS process; rather, it indicates that it assists in determining whether to call an exam.	<i>The OK approach does not seem as closely related to the trend in market regulation toward market analysis and a continuum of actions (as spelled out in the NCOIL Market Surveillance Model Act.) How does this fit in given the accreditation discussions?</i>
<b>Confidentiality</b>	Establishes detailed and workable confidentiality protections.	Protects the statements themselves, but does not specifically address analysis and review of MCAS data.	<i>Confidentiality is a main driver behind both documents. While both afford some confidentiality, the Proposed Model version is stronger. The OK law does not address several important aspects. See below.</i>
<b>Add'l Confidentiality</b>	Explicitly precludes use of these regulatory materials in a civil action. / Allows insurer to intervene to protect data release.	Silent on these issues.	<i>These data protections should be included.</i>

Area	Proposed NCOIL Model	Oklahoma Law Senate Bill 1022 (2009)	Notes
	/ Explicitly prohibits directly or indirectly making MCAS data public.		
<b>Confidential Route</b>	Using the designee approach, the statistical agent or qualified professional is engaging in the state's activity, at the state's request.	Directly mentions the NAIC.	<i>The proposed Model specifically authorizes the regulator to designate these discrete functions to support the idea that the regulator's confidentiality protection should follow the data.</i>
<b>Sharing</b>	Considers a variety of entities with whom such information may be shared, provided confidentiality protections are in place.	Considers sharing only with the NAIC, if a confidentiality agreement is signed.	<i>The OK version does not seem to contemplate that states may want to share MCAS data with one another. State regulators appear to be moving toward communicated, and perhaps coordinated, review and action.</i>
<b>Scope</b>	Allows Commissioner to choose among the NAIC's currently approved lines of business, and others if the regulator determines it is necessary to protect individual insurance consumers.	Mandates following the NAIC-approved lines of business and allows Commissioner to add lines.	<i>As a default, both versions work toward the general goal of countrywide data element uniformity (although there are still serious data integrity concerns). Both point to the activities of the NAIC as guiding the data that the state would receive. The Proposed Model gives an important qualifier "to protect individual insurance consumers." The NAIC's MAPs group has talked about</i>

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			<i>adding lines of business that do not best use regulator resources. For example, the group discussed adding surety (a commercial line accounting for around 3% premium volume). Again, it is helpful to have additional legislative and regulatory checks on the system.</i>
<b>Use of Data</b>	Limits a designee's information use to the purpose/scope for which it was provided by the Commissioner, consistent with the Proposed Model.	Silent as to the purpose/scope of the NAIC's use.	<i>Given that the information is for regulatory use only, it should be clear that it is not intended for other uses, etc.</i>
<b>Threshold</b>	Explicitly provides for a \$100,000 premium threshold for each k 	Silent on threshold; perhaps would follow the NAIC Instructions in this regard.	<i>Data is more likely to be credible and baselines are more likely to be meaningful when a threshold is used. Compliance is an undue burden for an insurer with a de minimis market share in a particular line - consider a commercial lines insurer writing personal lines as a courtesy to their employees or who are handling old run off business but do not actively market. When such a company has a claim, it's ratios may look like an outlier.</i>

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<b>Selection and Standards</b>	Spells out affirmative steps a Commissioner must take to delegate the collection and/or analysis functions (to NAIC or to others). This includes (a) having a procedure for selecting a vendor, (b) being informed of qualifications, (c) agreeing that: (1) the Commissioner's rules will be followed, (2) data will be provided in a timely fashion, (3) the Commissioner may audit, (4) continuing efforts will be made to resolve data integrity concerns, (5) it will maintain confidentiality, (6) it will implement data security safeguards, and (7) it will use a reporting plan created by the NAIC and approved by the Commissioner.	Includes a written confidentiality agreement with the NAIC for sharing; does not explicitly have the NAIC engaging in collection or analysis or providing such information to other states. [What is the NAIC doing with it? May be subject to separate agreements.]	<i>A vendor holding itself out as a data specialist (here likely the NAIC) should be required to follow certain basic protocols like ensuring the security and confidentiality of such data. It should be willing to grant the Commissioner the ability to audit and to require timely work product.</i>
<b>Fees</b>	Limits designee fees/costs to no more than "reasonable and necessary," requires the designee to engage in practices that are cost effective, and follows applicable state contracting procedures.	Requires the payment of "applicable" fees required by the NAIC, plus a \$200 filing fee to OK.	<i>As the NCOIL Market Surveillance Model Act puts reasonable conditions on payments for outsourced activities, so should this Model.</i>

<b>Area</b>	<b>Proposed NCOIL Model</b>	<b>Oklahoma Law Senate Bill 1022 (2009)</b>	<b>Notes</b>
<b>Timing</b>	Allows Commissioner to require annual data submission. Includes staggered implementation dates for newly required data.	Requires annual filing before the last day in June for prior year's data. Commissioner may extend time for good cause.	<i>Insurers may have difficulty providing information that has never been required to be filed before. For example, their systems may not collect it or they may not report it in a consistent format.</i>