

Comments of the Center for Economic Justice

National Conference of Insurance Legislators State Federal Relations Committee

Proposed Market Conduct Annual Statement Model Act

November 11, 2009

The Center for Economic Justice (CEJ) is a non-profit consumer advocacy organization that has worked on insurance issues since 1996 in individual states and before the NAIC and NCOIL. We have worked with state regulators and legislators to improve market regulation of insurance – to better protect consumers from market problems while making market regulation more transparent and efficient for insurers. We were among the first to promote market analysis as the foundation for market regulation and have worked on market analysis data collection issues for over a decade.

Today, we provide comments on the proposed MCAS Model Act. **We support much of the proposed model, particularly the framework of using a designated statistical agent to collect market regulation data on behalf of the Commissioner.** This is a regulatory infrastructure that has been used successfully for statistical data collection for many decades.

It is vitally important that collection of market regulation, or MCAS, data be done through a data collection mechanism and not through market examination authority. MCAS data comes from all insurers and is used to evaluate the entire market and individual insurer performance – exactly as statistical data is used to evaluate industry-wide and individual insurer premium, exposure and claims experience. It is inappropriate to collect data from all insurers under market examination authority which is oriented around the investigation of a specific insurer. Utilizing market examination authority to collect MCAS data would be like collecting annual financial statement data under individual company financial examination authority – an illogical and inappropriate approach.

The proposed model has a few significant problems. First, and most important, it arbitrarily declares all MCAS data as confidential while making no provision to publish any insurer-specific market performance data. Second, it is too prescriptive about data collection and unreasonably limits regulator data collection activities. Third, Sections 5C and 5D provide contradictory instructions about the designation of a statistical agent.

Confidentiality of Data

Section 8A of the proposed model law provides for complete confidentiality of MCAS data – as if it were data collected through a market conduct examination. This is inappropriate and unjustified for several reasons.

First, it incorrectly equates the collection of MCAS data with a market conduct examination. As stated above, this is illogical and an inappropriate use of market conduct examination authority. MCAS data are market performance data collected from all – or nearly all – insurers to evaluate overall market performance and individual insurer market performance. Market examination authority is used to examine a specific insurer, just as financial examination authority is used to examine an individual insurer. It is as illogical to equate industry wide data collection of MCAS data with a market conduct examination as it would be to equate the collection of financial statement data with a financial examination.

Second, there is no provision for the publication of insurer market performance data which consumers need to help them evaluate insurers for purchase decisions. While it is reasonable to protect detailed data which reveal individual consumer information from public disclosure and to protect true insurer trade secrets from public disclosure, it is entirely inappropriate to declare all MCAS data confidential – when the data may not contain personal information of consumers or trade secrets of insurers. It is particularly inappropriate to have a blanket declaration of confidentiality without a corresponding provision requiring the Commissioner to publish individual insurer market performance data – such as average times for claim settlements, percentage of claims resulting in lawsuits and other indicators of insurer market performance.

Third, the current MCAS data elements clearly do not warrant confidential treatment. Attachment 1 shows the current MCAS data elements for private passenger auto and residential property insurance. The data elements include statewide counts of the number of claims opened and closed with and without payment during the year, the median days to final payment, the number of claims closed in various time frames (0 to 30 days, 31 to 60 days, etc.), number lawsuits during the period and number of policies written and canceled. This is useful and relevant information for consumers and is not remotely a trade secret of insurers. As stated above, if MCAS were changed to much more detailed information, it might, depending on the data, be reasonable to keep that information confidential. But every state already has such protection for insurers and individual with exceptions to public disclosure for personal information of consumers and trade secrets for insurers.

The confidentiality provision does terrible damage to the regulatory concept of transparency and to government accountability to the public. Section 8A should be changed to simply provide:

MCAS data are subject to the state's public records laws. In the event the public record law does not protect individual consumer personal information or insurer trade secrets, if such data are collected in the MCAS, those data are confidential and not subject to public disclosure. Analyses of MCAS data by the Commissioner or her designee are confidential and not subject to public disclosure. The Commissioner is required to produce, at least annually, a report of individual insurer market performance for the lines of insurance included in the MCAS.

Frequency of Data Collection

Section 5A provides that the Commissioner may collect MCAS information **annually**. **This is unnecessarily restrictive. A state may reasonably want to collect data on a quarterly basis to monitor trends in particular markets.** For example, the Texas Department of Insurance utilizes a quarterly report for insurers on auto insurance at the ZIP Code level of detail, a quarterly report from insurers for most property casualty lines at the state-wide level and monthly reports of detailed residential property data. The NAIC collects quarterly financial data from insurers in addition to the annual financial statement. Quarterly reporting of data is not more onerous on insurers than annual reporting **as long as the data reporting requirements are routine and clearly set out in a promulgated statistical plan, which is the type of infrastructure envisioned in the proposed model law.** In addition, there may be urgent policy issues for which expedited data needs to be collected. We suggest revising Section 5A as follows:

The Commissioner shall gather MCAS data as frequently as necessary to perform market analysis. The Commissioner shall provide insurers with sufficient notice of data to be reported and changes in data to be reported to allow insurers reasonable opportunity to develop or modify data reporting systems to comply with the Commissioner's request. In determining how long a period of notice prior to reporting of data, the Commissioner shall consider the nature of the data to be reported, whether insurers currently collect or maintain the data in existing systems and any other relevant factors.~~may annually gather MCAS information. In order to allow insurers time to prepare to submit the data required, the Commissioner, or his or her statistical agent, shall provide advance notice to insurers. For data the insurer presently has, the Commissioner, or his or her statistical agent, shall notify insurers before July of the preceding year of the MCAS data to be submitted. For data that the insurer does not presently collect, the Commissioner, or his or her statistical agent, shall notify insurers before the July two years preceding the year the MCAS data is to be submitted.~~

Single of Multiple Statistical Agents

Sections 5C and 5D provide for designation of statistical agents:

- C. The Commissioner may approve and designate one or more statistical agent for the purpose of gathering, compiling, aggregating and reporting to the Commissioner MCAS statistical data. Not more than one statistical agent may be designated for each line of business that is subject to MCAS. The designation of a statistical agent by the Commissioner does not mean that admitted insurers must report to such agent any statistics other than those statistics required to be reported under this Section.

- D. In the event that the Commissioner designates more than one statistical agent, each insurer shall choose one of the designated statistical agents to report to.

These two provisions contradict one another. Section 5C states that only one statistical agent may be designated for each line of business. This means that all insurers must report to the same statistical agent for that line of business. But Section 5D states, “in the event the Commissioner designated more than one statistical agent, each insurer shall choose one of the designated statistical agents to report to.” Since Section 5C requires the designation of one statistical agent per line of business, Section 5D is contradictory and should be deleted.

Attachment 1

Current MCAS Private Passenger Auto and Homeowners Data Elements

1	Number of Claims open at the beginning of the period
2	Number of Claims opened during the period
3	Number of Claims closed during the period, with payment
4	Number of Claims closed during the period, without payment
5	Median days to final payment
6	Number of claims settled within 0-30 days
7	Number of claims settled within 31-60 days
8	Number of claims settled within 61-90 days
9	Number of claims settled within 91-180 days
10	Number of claims settled within 181-365 days
11	Number of claims settled beyond 365 days
12	Median days to date of report
13	Number of Suits open at beginning of the period
14	Number of Suits closed during the period
15	Number of Suits open at end of period
16	Number of autos which have policies in-force at the end of the period
17	Number of policies in-force at the end of the period
18	Number of new business policies written during the period
19	Dollar amount of direct premium written during the period
20	Number of non-renewals during the period
21	Number of cancellations that occur 60 days or more after effective date, excluding those for either non-pay or at the insured's request
22	Number of cancellations that occur in the first 59 days after effective date, excluding those for either non-pay or at insured's request