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National Council of Insurance Legislators (NCOIL)

Market Conduct Annual Statement Model Act

**Adopted by the NCOIL State-Federal Relations Committee on November 19, 2010, and Executive Committee on November 21, 2010. Readopted by the NCOIL State-Federal Relations Committee on November 13, 2015, and by the Executive Committee on November 15, 2015. Readopted by the NCOIL Joint State-Federal Relations & International Insurance Issues Committee on December 10, 2020 and by the Executive Committee on December 12, 2020.*

Section 1. Short Title

This Act shall be known as the *Market Conduct Annual Statement Act*.

Section 2. Purpose

The purpose of this Act is to enable the Commissioner to collect Market Conduct Annual Statement (“MCAS”) data for analysis purposes. The procedures set forth under this statute shall be the exclusive method for collecting and sharing MCAS information.

Drafting Note: Each state shall determine whether participating in the Market Conduct Annual Statement and providing such information under this Act is a condition precedent to accreditation by the National Association of Insurance Commissioners.

Section 3. Scope

This Act applies to admitted insurers with direct written premium exceeding \$50,000 in this state in lines of business subject to NAIC MCAS.

Section 4. Definitions

For purposes of this Act, these defined words have the following meaning:

A. “Commissioner” means [insert the title of the chief insurance regulatory official].

B. "Designee" means an entity that meets the requirements under this Act serving as an MCAS statistical agent the Commissioner designates under Subsection 5(C) or a qualified professional organization or person outside his or her department under Subsection 6(B).

C. "Insurer" means an admitted insurance company subject to the scope of Section 3 of this Act and to filing submission under Subsection 5(B).

D. "Market Analysis" means a process whereby market conduct surveillance personnel collect and analyze information from filed schedules, surveys, required reports and other sources in order to develop a baseline and to identify patterns or practices of insurers licensed to do business in this state pertaining to company operations and management, complaint handling, marketing and sales, producer licensing, policyholder services, underwriting, and claims. Such analysis may include, but is not limited to, practices that may pose a potential risk to the insurance consumer. Market Analysis does not represent standards for market behavior and does not establish compliance or non-compliance.

E. "Market Conduct Annual Statement" or "MCAS" means the Market Conduct Annual Statement as approved by the National Association of Insurance Commissioners ("NAIC") and as amended by the NAIC from time to time in accordance with the established procedures of that organization, provided that the MCAS and any changes thereto have been adopted as law in this state or have been recommended by the Commissioner and approved pursuant to the Administrative Procedures Act.

F. "MCAS Data" means the information and documents required by MCAS and filed by Insurers pursuant to this Act.

G. "MCAS Statistical Agent" means an entity or entities that have been designated by the Commissioner to collect statistics from insurers and provide reports developed from these statistics to the Commissioner for the purpose of fulfilling the MCAS obligations of those insurers.

Section 5. Submission and Collection of MCAS Information

A. The Commissioner may annually gather MCAS Data pursuant to the law of this state. In order to allow insurers time to prepare to submit the information required, the Commissioner, or his or her MCAS statistical agent, shall provide advance notice to insurers. For information the insurer presently has, the Commissioner, or his or her MCAS statistical agent, shall notify insurers before July of the preceding year of the MCAS Data to be submitted. For information that the insurer does not presently collect, the Commissioner, or his or her MCAS statistical agent, shall notify insurers before the July two years preceding the year the MCAS Data is to be submitted.

B. If the Commissioner determines that it will gather MCAS Data, every insurer shall annually file with the Commissioner, or the Commissioner's designated MCAS statistical agent, MCAS Data for each applicable line of business which it writes more than \$50,000

in direct written premium in this state. If the Commissioner determines either that he or she is not using MCAS Data or that he or she does not need to review the information each year, he or she may suspend some or all of the filing requirements or reduce the frequency of the filing requirement for a line of business or for insurers meeting a requirement specified by the Commissioner.

C. The Commissioner may approve and designate one or more MCAS statistical agent for the purpose of gathering, compiling, aggregating and reporting to the Commissioner MCAS statistical data. The Commissioner may also direct the designee to perform statistical activities related to the receipt and presentation of MCAS Data to assist the Commissioner in the review and subsequent analysis of MCAS Data. Not more than one MCAS statistical agent may be designated for each line of business that is subject to MCAS. The designation of an MCAS statistical agent by the Commissioner does not mean that admitted insurers must report to such agent any MCAS statistics other than those statistics required to be reported under this Section.

D. Such designation shall be made pursuant to written contract, and shall be subject to the provisions of this Act. The written contract which terms shall include the scope of work, including all provisions relating to compensation and costs, shall be a public record of the Commissioner.

E. A designee may not use the MCAS Data or any related analysis or other information, including any analysis or other information created or produced by the designee, for any other purpose.

Section 6. Review and Analysis of MCAS Data

A. The Commissioner may review MCAS Data for the purpose of market analysis.

B. The Commissioner may authorize a qualified professional organization or person outside his or her department to assist in the analysis and reporting of MCAS Data subject to the confidentiality and sharing provisions in this Act. Such designated entity or person may not use the information collected for any purpose other than as stated in Section 2 of this Act and as within the scope of this designation.

Section 7. Selection and Standards for Designees

A. The Commissioner shall designate in accordance with applicable state contracting procedures. In no event shall a designee charge more than reasonable and necessary costs and/or fees. The Commissioner or an insurer may request that a designee provide an accounting and/or itemized invoices.

B. Nothing in this Act shall be construed to prevent an organization or person from providing services under both Sections 5 and 6, provided the organization or person is qualified for both functions and agrees to the terms and conditions set forth in this section.

C. The designee shall be the agent for the Commissioner and not for a reporting insurer.

Drafting Note: It is recommended that States review their existing contract laws, and consider the following procedures, for approving and/or hiring designees.

D. The Commissioner may only approve and/or hire a designee under Subsection 5(C) and Subsection 6(B) if the Commissioner takes necessary steps to ensure that such functions are conducted by qualified organizations or persons in accordance with the following procedures:

1. To be selected as a designee under this Act an applicant shall:

a. Follow the procedure the Commissioner outlines for consideration to serve as a designee, which may include licensing, a written application, or a formal request for such a designation;

b. State the applicant's qualifications, whether by education, experience, and where appropriate, professional designations, to act in the capacity for which it seeks designation;

c. State the applicant's record with respect to maintaining compliance, data security, and confidentiality;

d. State that the applicant does not have an ongoing conflict of interest;

e. Agree in writing to:

(i) comply with the all rules, technical advisories and directives issued by the Commissioner;

(ii) report statistical data or provide analysis of that data to the Commissioner in a timely manner;

(iii) submit to an audit or performance review, as required by the Commissioner;

(iv) make continuing efforts to resolve data quality and integrity issues, by working with insurance regulators and insurers on consistent definitions, ratios, interpretations, and protocols, as appropriate for the size and scope of the designation;

(v) maintain the confidentiality and any applicable privilege of all data;

(vi) enter into an agreement, consistent with this Act, with each insurer; and

(vii) implement appropriate measures to establish standards for developing and implementing administrative, technical and physical safeguards to protect the security, confidentiality and integrity of information; and

f. For selection as an MCAS statistical agent, submit a reporting plan that conforms to the MCAS reporting format approved by the NAIC, adopted by the laws of this state and approved by the Commissioner

2. A designee may collect and maintain the MCAS Data on behalf of the Commissioner but shall not own such information and shall not make such information available to any other person or entity except in accordance with this Act.

Section 8. Confidentiality of MCAS Data, Analysis and Reports

A. MCAS Data, the work papers and any analysis or other information produced by a designee, as well as the work papers and any analysis or other information produced by or received from another governmental entity or the NAIC, and the review and analysis of MCAS Data of the Commissioner, is confidential and privileged. It shall be afforded no less protection than materials provided under the Commissioner's examination and investigation authority under [insert cite] and shall not be subject to subpoena or to discovery; shall not be admissible in evidence in a private civil action; and shall be exempt from any applicable freedom of information law, public records law, public records disclosure law, or other similar statute.

B. No person or entity which receives or has access to MCAS Data, materials, or other related information shall be permitted or required to testify in a private civil action concerning such MCAS Data, materials, or other information.

C. Within three business days after receipt by a designee, or any other recipient of MCAS, MCAS Data, or related information, of a subpoena or request for discovery of MCAS Data, related analysis, or other related information submitted by or pertaining to a specific insurer, the designee shall notify the Commissioner and the Insurer of such subpoena or request for data. An Insurer shall have the right to intervene and to assert privileges under this Act and any other law, or to commence an action to:

1. prevent disclosure of any MCAS Data provided by it unless the disclosure will be made pursuant to a regulatory action to which such information is or may be relevant; and
2. recover damages for the disclosure to any person or entity not authorized to receive such information, including costs associated with an unauthorized

disclosure or security breach as well as other costs contained in an agreement under Subsection (F) of this section, unless that person or entity is the subject of a legal or regulatory action to which such information is or may be relevant.

D. No waiver of an applicable privilege or a claim of confidentiality in the documents, materials, or other information shall occur as a result of disclosure to the Commissioner or the Commissioner's designee under this Section or as a result of sharing such documents, materials or other information as provided in this Act. Nothing in this Section shall require an insurer to disclose documents, materials, or other information that is not otherwise required by law to be disclosed.

E. The making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly to be made, published, disseminated, circulated, or placed before the public, any MCAS Data provided to a designee under this Act is prohibited.

F. Consistent with this Act, a designee or other third party with whom MCAS Data is shared shall enter into an agreement with each insurer. Such agreement shall include, but is not limited to, language addressing:

1. Protections contained in this Act;
2. Data security safeguards and liability for damages due to unauthorized release of insurer data; and
3. Prohibition against release of data to any third party, unless the insurer is provided advance written notice of the identity of the third party to whom the information would be released and unless such third party agrees on the same terms outlined in this Subsection.

G. Nothing in this Section shall be construed to prohibit an insurer from making information about its operations public.

Section 9. Sharing MCAS Data and Analysis

In accordance with the purpose of this Act, as set forth in Section 2 above, the Commissioner or the Commissioner's designee, with the express consent of the Commissioner, may:

A. Share MCAS Data gathered under this statute, as well as any analysis of that information, with the following authorized recipients:

1. State, federal, and international regulatory agencies or law enforcement authorities; provided that the recipient has a reasonable need to review the information, and that the recipient agrees, and has the legal authority, to maintain the confidentiality and privileged status of the documents, materials, or other information, including any analysis of such information.

2. The NAIC, provided that the NAIC will maintain the confidentiality and privileged status of the documents, materials, or other information, including any analysis of information, as contained in written agreements with:

(a) The Commissioner, consistent with this Act; and

(b) The insurer consistent with this Act, including Subsection 8(F);

B. Receive MCAS Data and related analysis, documents, materials, or other information, including otherwise confidential and privileged analysis, documents, materials, or other information, from the NAIC, from other state and federal and international regulatory agencies, and from law enforcement authorities and shall maintain as privileged and confidential such analysis, documents, materials, or other information, and may enter into agreements governing the sharing and use of consistent with this Act.