

July 16, 2022

The Honorable Bart Rowland – Chair, Property-Casualty Committee
The Honorable Matt Lehman – NCOIL Immediate Past President
National Council of Insurance Legislators
c/o Will Melofchik, General Counsel, wmelofchik@ncoil.org
2317 Route 34 S. Suite 2B
Manasquan, NJ, 08736

Re: Exposure Draft – Insurance Underwriting Transparency Model Act

Dear Chairman Rowland, Representative Lehman, and Committee Members:

On behalf of the National Association of Mutual Insurance Companies (NAMIC),¹ thank you for the opportunity to provide comments on the draft Insurance Underwriting Transparency Model Act. NAMIC is committed to collaborating with policymakers to make sure that consumers have information that helps them understand their coverage, options, and costs in a useful format. To that end, NAMIC offered its own proposed set of requirements that we believe would both help expand transparency while balancing other competing concerns. We applaud the efforts of the sponsor, Rep. Lehman, appreciate the intent of the exposed draft, and look forward to continued engagement on this Model act.

NAMIC members appreciate the vital role that accurate, transparent communication plays in providing policyholders with the power and knowledge to make smart choices in the insurance marketplace. Insurers are committed to providing reliable, accurate, and helpful information to consumers. While it is always worthwhile to consider how information can be improved or made clearer, we caution that some suggested requirements in this arena may have negative consequences such as inundating policyholders with too much information, increased

¹ NAMIC membership includes more than 1,500 member companies. The association supports regional and local mutual insurance companies on main streets across America and many of the country's largest national insurers. NAMIC member companies write \$357 billion in annual premiums. Our members account for 69 percent of homeowners, 56 percent of automobile, and 31 percent of the business insurance markets. Through our advocacy programs we promote public policy solutions that benefit NAMIC member companies and the policyholders they serve and foster greater understanding and recognition of the unique alignment of interests between management and policyholders of mutual companies.



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compliance costs, expanded litigation risk, and the potential exposure of proprietary information. We know none of these outcomes are intended in this model and are committed to working toward a model that can avoid these results.

With that foundation, there are general comments and concerns we wish to raise for consideration, after which we will address the specific questions raised by the June 14, 2022 Memo requesting feedback on the latest draft Model:

General Comments

- As a result of the highly competitive and innovative marketplace, insurers have developed complex, multivariate rating plans, which are subject to thorough review and approval by regulators. These plans enable competition and improve the accuracy of risk-based pricing. An increase in the complexity of pricing driven by an insurer's competitive pressure to improve pricing accuracy is a positive outcome for the insurance market and for policyholders. Disclosing specific lists of factors as contemplated by the draft model raises concerns about exposing proprietary information. Requiring such disclosures may actually have the opposite effect of what is intended by *reducing* both the policyholders' capacity to process and focus on relevant information and the sophistication of insurance products. This is particularly the case with the current model, which can be read in Section 3(a) to allow any "consumer" to request information about "all primary factors" used to calculate a premium.
- For even the most technologically sophisticated insurers, the degree of systematic programming changes necessary to attempt to provide the detailed rating information contemplated in the current draft will be difficult to operationalize and involve significant investments of time and resources. The cost of such efforts are ultimately borne by policyholders.
- Many companies already offer extensive information within the policy's declarations or on coverage change forms that show examples of considerations that impact rates and eligibility. Mandating additional detailed notices tailored to each policyholder may not be helpful to consumers and could both create confusion and obscure other valuable notices. A requirement to illustrate or explain "primary factors" that most heavily weighed into a premium increase would be open to interpretation, difficult for carriers to execute, and provide minimal benefit. Companies will struggle to arrive at a consistent procedure that satisfies policymaker expectations and provides genuine benefits to consumers. Also of note, certain factors/characteristics, such as those in Credit-based Insurance Scores (CBIS), are often already required to be disclosed to the policyholder under existing state law.



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- The NAIC's Transparency and Readability of Consumer Information (C) Working Group recently exposed a draft "Examples of Reasons a Premium Might Increase" document.² While NAMIC has many other serious concerns with the NAIC's draft "Best Practices for Insurance Rate Disclosures" suite of documents, and believes legislative guidance on this issue is generally more appropriate than new regulatory requirements not specifically authorized by statute, certain elements of that draft may be useful here, and we believe a notice based on the "Examples" document could be valuable to both consumers and agents. We continue to urge NCOIL to consider such a general informational approach rather than an individualized disclosure.
- As noted above, we believe Section 3(a) of the current model draft is far too broad in that it does not clearly delineate who is entitled to request the required information. Since it is not expressly part of the questions below, we would offer that the best course would be to require whatever notice is required under Section 3(b) to be provided at least on request, but that insurers also be allowed to simply provide the notice without a request. There is precedent for such an approach in the NAIC model regulation regarding notices of declinations, nonrenewals, and cancellations, as discussed further below.

Responses to Specific Feedback Inquiries from June 14, 2022 Memorandum

1.) Should the Model apply to renewals only or also to denials and cancellations?

A: We recommend that the model apply to renewals only. Such an adjustment could make compliance significantly more feasible, particularly because cancellations and denials are separate processes that already involve extensive regulation and complex disclosure requirements, including when they are based on information obtained from third party vendors. Existing NAIC model regulations that have been adopted in many states already require notices regarding reasons for denials and cancellations.³ Additionally, we recommend that the model clarify that a notice shall not be required when the premium increase is due to statewide filed rate changes or consumer-initiated changes, such as a lowered deductible, the addition of coverage, an additional driver, etc. In these cases, there should be little need for additional transparency given that the reason for the increase is either evident or policyholder-initiated.

² https://content.naic.org/cmte_c_trans_read_wg.htm

³ See NAIC MDL-720 and NAIC MDL-725.



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2.) How can the definition of “external consumer data” be clarified so that it achieves the Model’s goal of fairness and transparency but is not overly restrictive?

A: The definition of external consumer data would benefit from additional specificity, such as clarification of what qualifies as an “external source” and what would be considered “traditional underwriting.” For instance, records of neighborhood auto crime rates can be obtained from an external source, but that information is unrelated to a specific consumer – would such data be exempt from the model? Credit-based insurance scores have been broadly used across the industry and approved by legislators and regulators for decades – would that suffice to put them on the “traditional” side of the underwriting line? How are insurers to treat records generated by state agencies, such as police accident reports? Any additional detail and certainty the definitions can provide would be helpful as we continue to evaluate future iterations of the proposed model. It should be clarified that any data provided to a company by an insured or applicant is not included in this concept – including information on an application or dynamic information the consumer has agreed to provide their insurer, such as telematics or smart home data. Relatedly, we believe the inclusion of the qualification that only elements that are “not inherently part of the risk” in the definition of “adverse action,” while a well-intended limitation, will only introduce additional confusion and complexity into the model. We think the preferable course would be to limit the elements included through the other means discussed above.

3.) Should language be included in Section 3(a) to differentiate between “underwriting” and “rating risks?”

A: We recommend the removal of “underwrite and.” A model appropriately limited to renewals (see response to question #1) should also be limited to the rating of risks; questions of denials and cancellations are separate issues with existing disclosure requirements to consumers that need not be duplicated by this model.

4.) In Section 3(a) how many “primary factors” should be subject to the disclosure requirement?

A: To the extent individualized notices are required and clarification is offered around the determination of what constitutes a “primary” factor, providing accurate and timely lists of ten (10) factors will create a significant burden.

Providing 10 factors driving a rate change is not only impractical, but also operationally extremely difficult if not impossible in some instances. Particularly in a complex, multivariate, multiplicative plan (which most insurers use), assigning specific primacy to each rating characteristic when multiple things change at renewal can be confusing at best. For instance, simply changing the order in which factors are applied can affect the amount of change caused by each while still resulting in *the same premium for the consumer*. For instance, in a scenario



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with all else being equal, two rating characteristics are applied in a different order of operations at renewal, those characteristics' individual effect on premiums will necessarily be different because they were calculated in a different sequence, and therefore started with different numerical values, even when all other calculations remain the same. This could cause their rank order in a "primacy" analysis to change, as well.

Rating is a multivariate analysis where many variables and characteristics interact with and temper other rating variables and characteristics and nothing happens in a vacuum; separating out dedicated rating variables for a consumer disclosure is premised on theoretical rating, not the reality of the actual multivariate products filed with and approved by Departments of Insurance. NAMIC's proposed approach to this issue would require insurers to explain the reasons for a premium increase above a certain threshold and to provide sufficiently clear and specific language so that the policyholder is able to identify up to five factors that influenced the increase. We continue to believe that approach best balances the many different systems and approaches insurers have in place for assessing risks posed by consumers while also improving policyholder understanding of the reasons for premium increases.

5.) Should the terms "primary factors" and/or "primary influences" used in Section 3 be defined? Should other terms replace "primary factors" and/or "primary influences?"

A: We do not recommend defining or replacing the term "primary influences" unless it is solely to clarify consistency with the use of the term in the context of the NCOIL Credit Based Insurance Scoring model.

Determining what qualifies as "primary factors" is challenging, particularly because many rating models are multiplicative, not additive, as is noted above. In those models, the order of operations can change primacy. This is why we continue to recommend replacing the dynamic, individualized disclosure with robust example disclosures, which we believe provide greater benefits to more consumers.

6.) Should the term "written notice" as used in Section 3 be further clarified?

A: We do not see a need for additional clarification regarding the term "written notice."

7.) In Section 3, should a request by the consumer's insurance agent trigger the disclosure requirements? If so, should language be included in the Model to make that clear?

A: NAMIC does not object to a written request by the affected policyholder's agent triggering the disclosure requirement.



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8.) Should the model include the level of penalty or should the specific citation in the penalties section of the Model be left blank and therefore provide states the recommended option of determining the level of penalties as they deem proper?

A: If the model includes a penalty provision – which we would note is absent in the NCOIL credit-based insurance score model – the provision should be left blank and provide states the recommended option of determining the level of penalties as they deem proper. We would also recommend a specific addition that nothing in the Model creates a private cause of action. In the alternative, the provision could be improved by noting that if data used for rating a consumer was inaccurate, companies could be required to correct at the next renewal and refund the difference in premium – that approach would be preferable to a fine or a penalty.

9.) Should the effective date of the Model: stay at 6 months; be longer than 6 months; or be left blank so that states can decide as they deem proper?

A: We recommend an effective date of at least one year beyond passage. At a minimum, model compliance would likely require one year for carriers to prepare, test, and implement necessary infrastructure and programmatic modifications.

Conclusion

We believe strongly that the entire insurance marketplace is better off when policyholders have a better understanding of their policies and coverages. Mutual insurers are built on the foundations of community and financial education – the mutual model has a long and proud history of service to member policyholders, and we remain committed to providing the most useful information possible to explain and improve comprehension of insurance products. Thank you again for the opportunity to follow the development of the draft Model and to provide these formal comments. We look forward to continued discussions with policymakers and NCOIL staff on these matters, which are essential to the continued success and credibility of our industry.

Sincerely,

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