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Regulatory Response to Insurance Innovation

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As the insurance industry seeks to implement new technology, several NAIC groups and states are addressing the regulatory landscape to evolve with the changes.

Sandboxes

The Innovation and Technology Task Force (IT Task Force) heard presentations on the United Kingdom Financial Conduct Authority's sandbox and proposals for the creation of regulatory sandboxes. States have taken differing approaches. Some believe sandboxes are not necessary, or their legislature would not allow for sandboxes. Others, including Connecticut, Illinois, and Wisconsin, believe their current regulatory environment allows them to provide guidance to innovators without the need for a sandbox. States that have enacted legislation or regulations to establish sandboxes include:

- Arizona enacted a Regulatory Sandbox "to enable a person to obtain limited access to the market in [Arizona] to test innovative financial products or services without obtaining a license or other authorization that otherwise might be required."

- Utah enacted a Regulatory Sandbox Program, "which allows a participant to temporarily test innovative financial products or services on a limited basis without otherwise being licensed or authorized to act under the laws of [Utah]."

- Vermont enacted an Insurance Regulatory Sandbox, which allows the commissioner to grant a variance or waiver "with respect to the specific requirements of any insurance law, regulation, or bulletin," if certain conditions are met.

- Wyoming enacted a Financial Technology Sandbox "for the testing of financial products and services in Wyoming."

Rebating

The IT Task Force identified anti-rebating laws as one of three perceived and real obstacles to innovation in insurance. It formed a small group to examine anti-rebating laws and discovered that while there was no consistency in state law, the Unfair Trade Practices Act (#880) generally restricts any rebate of premium, any special favors, or providing any valuable consideration not specified in the policy. The NAIC Legal Division found that state guidance focuses on limiting the promotional or advertising materials as well as limiting the types of "value-added services" that may be offered. The IT Task Force held a June 4 meeting to discuss the anti-rebating laws and what changes are needed to foster innovation. All agreed that the anti-rebating law was needed, but should be revised to incorporate flexibility. The IT Task Force is considering the following proposed three-part test:

- Does the value-added service or product harm an insurer's solvency?
- Does the value-added service or product directly relate to the insurance policy?
- Is the value-added service or product offered on a nondiscriminatory basis?

If all questions could be answered in the affirmative, there would be no rebate. In addition, it was suggested that the anti-rebating laws include an exception for services or products that "educate, assess, monitor, or control risk of loss."

Questions arose as to:

- Whether merely including policy language that allowed for value-added services or products, such as those for risk mitigation, would be a solution. Some commented that the lag time and no stated standard for policy approval are impediments. Also, this solution may not address situations in which the producer or broker provides the service or product.
- Whether anti-rebating laws should apply only to consumer, and not commercial, purchasers of insurance.
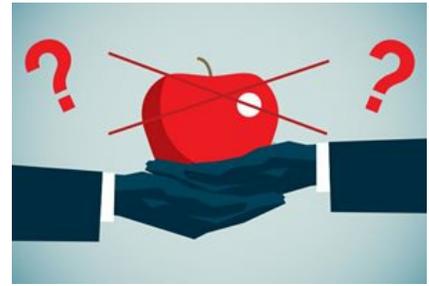
Chatbots

Following presentations the IT Task Force heard from innovators on the use of chatbots to provide information to consumers, the Producer Licensing Task Force was charged to "[d]raft a white paper on the role of chatbots and artificial intelligence in the distribution of insurance and the regulatory supervision of these technologies." The Producer Licensing Task Force is seeking comments before it begins creating an outline and initial draft. No deadline has been set for the receipt of comments.

Review of Big Data and Algorithms

The NAIC's review of the life insurers and property and casualty insurers' use of algorithms continues. The Casualty Actuarial and Statistical Task Force is developing a white paper addressing sources of data, company selection of data, predictive models, and final rate filings with the states. The Big Data WG asked the Life Insurance and Annuities Committee in collaboration with the Experience Reporting Subgroup to study the use of external data and data analytics in accelerated life underwriting, and draft and propose appropriate state guidance or best practices. The Big Data WG is also studying the use of big data in insurer claim practices such as claim valuation and anti-fraud efforts.

Regulation of Data Points

As states become aware that new data is being funneled for use in marketing, rating, underwriting, fraud, and claims handling by insurers, more states have enacted or introduced legislation or regulations limiting the use of specific data.

Examples include:

- New York banned motor vehicle insurers from discriminating based on education or occupation.
- Maryland introduced private passenger motor vehicle legislation prohibiting underwriting, canceling, refusing to renew, rating a risk, or increasing a renewal premium based, in whole or in part, on the occupation of, or on the education level attained by, the insured or applicant.
- Maryland also introduced homeowners insurance legislation prohibiting premium increases based solely on the insured's change in marital status due to a spouse's death.
- Florida introduced legislation prohibiting life insurers, long-term care insurers, and disability income insurers from using genetic information or genetic testing of applicants.

While many measures were not approved, their introduction reflects states' growing concerns as to the use of certain data. In addition, the Big Data WG passed a motion to request that the Life Insurance and Annuities Committee study the use of external data and data analytics in life underwriting, and draft and propose guidance and best practices for this use.