

## UNFAIR DISCRIMINATION AGAINST SUBJECTS OF ABUSE HEALTH BENEFIT PLANS MODEL ACT

### Table of Contents

- Section 1. Purpose
- Section 2. Scope
- Section 3. Definitions
- Section 4. Unfairly Discriminatory Act Relating to Health Benefit Plans
- Section 5. Justification of Adverse Insurance Decisions
- Section 6. Insurance Protocols for Subjects of Abuse
- Section 7. Enforcement
- Section 8. Effective Date

Introductory Note: In addition to this model act, the NAIC drafted the following model acts regarding the unfair discrimination against subjects of abuse: T0.08 Tw Sa8>63.6 (c)246.1 (i)-2 Sa8>64( t)-16.743.664( t)-16.743.664( s)-0.6 (c)4( t)-14 (del)-7 (ubj:)-3.7 ( T0.f94 Disability Income Insurance Model Act.

### Section 1. Purpose

The purpose of this Act is to prohibit unfair discrimination by health carriers and insurance professionals on the basis of abuse status. Nothing in this Act shall be construed to create or imply a private cause of action for a violation of this Act.

Drafting Note: Consideration was given to including a private cause of action for a violation of this Act. It was concluded that a private cause of action is not inconsistent with the model and that a state legislature could find that a private cause of action is appropriate for that state.

### Section 2. Scope

This Act applies to all health carriers and insurance professionals involved in issuing or renewing in this state a policy or certificate of health insurance.

### Section 3. Definitions

Drafting Note: Each state may wish to ensure that the definition of "abuse" for the purposes of this Act does not conflict with the terminology descriptive of abusive behavior in state civil or criminal statutes in such a way as to lead to unintended meanings.

#### A.

## Unfair Discrimination Against Subjects of Abuse

Drafting Note: Unfairly discriminatory underwriting or claims handling practices of a company writing life insurance may be committed by insurance professionals when they refuse to process an application or a claim in violation of this act. There is, however, no intent, to hold insurance professionals liable for the acts of health carriers over which they have no control.

- I. "Insured" means a party named on a health benefit plans as the person with legal rights to the benefits provided by the health benefit plan. For group plans, "insured" includes a person who is a beneficiary covered by a group health benefit plan.
- J. "Subject of abuse" means a person against whom an act of abuse has been directed; who has current or prior injuries, illnesses or disorders that resulted from abuse; or who seeks, may have sought, or had reason to seek medical or psychological treatment for abuse; or protection, court ordered protection or shelter from abuse.

#### Section 4. Unfairly Discriminatory Acts Relating to Health Benefit Plans

Drafting Note: Because of the nature and consequences of the prohibited acts, this model provides that a single instance of prohibited conduct is a violation rather than defining a violation as a general business practice of prohibited conduct. States that incorporate this model into their version of the Unfair Trade Practices Act (or statute) under which those states define a violation as a general business practice should consider whether that approach provides sufficient protection to subjects of abuse.

- A. It is unfairly discriminatory to:
  - (1) Deny, refuse to issue, renew or issue, cancel or otherwise terminate a health benefit plan, or restrict or exclude health benefit plan coverage or add a premium differential to any health benefit plan on the basis of the applicant's or insured's abuse status; or
  - (2) Exclude or limit coverage for losses or deny a claim incurred by an insured on the basis of the insured's abuse status;
- B. When the health carrier or insurance professional has information in its possession that clearly indicates that the insured or applicant is a subject of abuse, the disclosure or transfer of the confidential abuse information, as defined in this Act, by a person employed by or contracting with a health carrier or insurance professional for any purpose or to any person is unfairly discriminatory, except:
  - (1) To the subject of abuse or an individual specifically designated in writing by the subject of abuse;
  - (2) To a health care provider for the direct provision of health care services;
  - (3) To a licensed physician identified and designated by the subject of abuse;
  - (4) When ordered by the commissioner or a court of competent jurisdiction or otherwise required by law; or
  - (5) When necessary for a valid business purpose to transfer information that includes confidential abuse information that cannot reasonably be segregated without undue hardship. Confidential abuse information may be disclosed only if the recipient has executed a written agreement to be bound by the prohibitions of this Act in all respects and to be subject to the enforcement of this Act by the courts of this state for the benefit of the applicant or the insured, and only to the following persons:

Unfair Discrimination Against Subjects of Abuse  
in Health Benefit Plans Model Act



## Section 7. Enforcement

The commissioner shall conduct a reasonable investigation based on a written and signed [add any means by which the commissioner receives complaints] complaint received by the commissioner and issue a prompt determination as to whether a violation of this Act may have occurred. If the commissioner finds from the investigation that a violation of this Act may have occurred, the commissioner shall promptly begin an adjudicatory proceeding. The commissioner may address a violation through means appropriate to the nature and extent of the violation, which may include suspension or revocation of certificates of authority or licenses, imposition of civil penalties, issuance of cease and desist orders, injunctive relief, a requirement for restitution, referral to prosecutorial authorities or any combination of these. The powers and duties set forth in this section are in addition to all other authority of the commissioner.

Drafting Note: States may wish to delete this section if the substance of it already exists in state law.

## Section 8. Effective Date

This Act is effective [insert date], and applies to all actions taken on or after the effective date, except where otherwise explicitly stated. Nothing in this Act shall require a health carrier or insurance professional to conduct a comprehensive search of its contract files existing on the effective date solely to determine which applicants or insureds are subjects of abuse.

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*Chronological Summary of Actions (all references are to the Proceedings of the NAIC).*

*1996 Proc. 2nd Quarter 8, 22, 762, 763-765 (adopted).*

*1998 Proc. 3<sup>rd</sup> Quarter 14, 83, 88-89, 96-101 (amended and reprinted).*