Comments of the Center for Economic Justice

To the NAIC Market Analysis Procedures Working Group

Response to Industry Comments on MCAS Frequency and Addition of Travel Insurance MCAS

November 13, 2017, 2017

CEJ writes in response to oh-so-predictable industry opposition to proposals for more frequent reporting of MCAS than annually and to the proposal to add travel insurance as a MCAS line.

Addition of Travel Insurance

AIA and UStiA trot out tired and debunked industry objections to adding a new MCAS line.

AIA and UStiA argue that MCAS is not needed because "any concerns related to travel insurance are being examined through other market analysis tools." MCAS is a unique market regulation tool that provides data to regulators for market monitoring and market analysis not otherwise possible in the absence of MCAS. Even if we accept the claim that concerns about particular lines of insurance are "being examined through other market analysis tools," that fact has never been a reason not to employ MCAS. Other market analysis tools exist for all the existing MCAS lines, but MCAS is still employed to gain insights not otherwise available. In the case of travel insurance, the need for MCAS is even greater since much of the market outcome data available in the statutory annual statement is not even present for travel insurance.

AIA and UStiA argue that the current drafting of a model law for travel insurance precludes the development of a travel insurance MCAS because it would be impossible to promote uniformity. This argument makes no sense – it combines two disjointed ideas – developing MCAS for uniform reporting of market outcome data and the development of a model law focusing on issues of premium tax, disclosures and eligible groups. Neither AIA nor UStiA has offered any reason why development of a travel insurance MCAS would conflict with or be impacted by the development of the travel insurance model law. If fact, there would be no conflict because the data elements included in current MCAS blanks deal with standard market outcome measures that will be present regardless of how the model law turns out.

Stated differently, the final version of the model will not affect the need for or usefulness of data on sales, cancellations, complaints, lawsuits and claim settlement outcomes. To put a finer point on this issue, UStiA explains that the travel insurance working group is looking at "(i) definitions; (ii) premium tax reporting; (iii) competitive market provisions; (iv) rates and forms classification and filing requirements; (v) the use of bundling in the travel insurance industry; (vi) sales practices; and (vii) provisions impacting the licensing and registration process." There is nothing in this list that would prevent the development of or use of the standard data elements used across MCAS lines of business.

We would also point out that the long-term care and health insurance MCASs were developed during periods of revisions to the NAIC long-term care model regulation and changes in health insurance requirements due to the ACA, respectively. The regulatory activities do not affect or prevent MCAS development because the MCAS data elements deal with market outcomes that are always present for a particular line of insurance.

In addition, even if the MAP WG were to decide this week to develop a travel insurance MCAS, that development would occur contemporaneously with the development of the travel insurance model law. The goal for completion of the travel insurance model is before the June completion date target for the MCAS data elements and definitions.

UStiA adds another argument – market analysis is not needed for travel insurance because "it generally a short-term, non-renewable, discretionary purchase, its competitive success in the marketplace is highly dependent upon meeting the customer's expectations at a valued price." Even if this claim were true, it is not a reason to fail to monitor travel insurance markets. As shown clearly in our proposal, travel insurance is a complex amalgam of disparate insurance and non-insurance benefits affecting tens of millions of consumers.

UStiA argues against a travel insurance MCAS claiming travel insurance is a small market – despite the claims in the UStiA's own press release about a fast growing market of over 40 million consumers paying over $3 billion in premium in 2016. Putting aside the fact that the market is clearly large in terms of consumers, the usefulness and efficiency of MCAS is greater for smaller lines of insurance than for larger lines because, for smaller lines, MCAS represents the difference between efficient market monitoring and no market monitoring. In contrast, even in the absence of a personal auto or homeowners MCAS, large auto and home insurers will receive routine scrutiny by regulators. In the absence of MCAS, travel insurers will likely receive no routine monitoring of consumer outcomes.

UStiA rolls out the old chestnut that MCAS is not needed because “it is a highly discretionary purchase” and because, UStiA alleges travel insurance meets consumer expectations as evidenced by a small number of complaints. These arguments have no merit. Life insurance, annuities and long-term care are highly discretionary purchases also but are included in MCAS. The fact that a purchase is discretionary does not mean the product cannot be missold or the insurer cannot engage in unfair claims settlement practices.

Putting aside the fact that UStiA understates the number of travel insurance complaints – it cites only confirmed complaints instead of the larger number of all complaints received by insurance departments which may be indicative of deceptive sales or disclosures – it has long been settled that complaints are not an exclusive indicator of market conduct. This is even truer – complaints provide very limited information about market conduct – for travel insurance where the complaints are much more likely to go to travel retailers (airlines, cruise lines, travel agencies, web aggregators) than to insurance departments.

In summary, it is difficult to imagine a more appropriate line of insurance to include in MCAS than travel insurance. It involves tens of millions of consumers with a complex product often sold in captive markets (e.g. cruise line, airline, travel agency) with far less market outcome information than any other line of insurance.

Frequency of MCAS Reporting

The arguments for quarterly MCAS reporting are straightforward:

1. **More timely data.** Currently MCAS data is available for analysis by regulators about 20 months after the beginning of the experience reporting period and 8 months after the end of the experience reporting period. With this type of time lag, MCAS is distant historical view of licensee market performance and consumer treatment.

2. **Improved market analysis.** Quarterly reporting of MCAS means that market analysis – for a market or individual licensees – can be performed on a timelier basis. More timely analysis means less consumer harm if problems exist and the capability for more pro-active market regulation. More timely data also means greater ability to respond to legislative or executive requests for policy and impact analysis. More granular data means greater opportunities for distinguishing data anomalies from market problems.

3. **Ease/level the workload of market regulators.** With current annual MCAS reporting, all analyses of MCAS must be done annually. With quarterly reporting, market regulators can spread various analyses relying on current MCAS data throughout the year. For example, a state employing Level 1 and Level 2 Market Analyses might analyze one-fourth of its licensees utilizing the most recent quarterly MCAS.

4. **Improved data quality.** More frequent reporting means greater opportunities for data quality review and identification of outliers that might otherwise be hidden in bigger data sets. More frequent reporting means more frequent feedback to reporting companies on data quality issues, resulting in better data.

5. **Reduced Need for Special Data Calls.** With more frequent MCAS reporting, market regulators are more likely to have timely information needed when issues arise, lessening the need for expensive and less reliable special data calls.

The ACLI's most recent (November 10, 2017) comment letter argues in opposition that collecting MCAS more frequently than annually will not improve market analysis unless "someone is going to do something with the data in a timely, value-added manner." That is the purpose of more frequent reporting, so we can check that box.

ACLI then veers off into illogical claims. ACLI argues that current reporting of MCAS requires extraction from multiple systems and compilations that lead to incomplete or inaccurate data. One of the causes of data reporting problems is the fact that the data are only reported annually – as noted above, more frequent reporting yields more accurate reporting and faster, better and more timely feedback to insurers. <u>With quarterly reporting, much of the data quality review now done by states could and would be performed by the NAIC as statistical agent – as is the case with statistical reporting across every line of insurance.</u>

ACLI argues a great burden on insurers "without a detailed articulation of how more frequent reporting will benefit and impact overall market analysis processes." This is simply a false statement. CEJ has articulated exactly what ACLI says it wants.

ACLI can't resist throwing in their objection to the proposal before the MCAS working group to break the existing four broad product aggregations for the Life and Annuity MCAS into 16 clearly-defined product categories/markets. By ACLI's logic, the justification for quarterly MCAS reporting should include four separate and distinct justifications – one for each quarter. Call this argument silly would be generous.

Finally, ACLI argues that quarterly reporting would require a four-fold increase in regulatory and industry needs. This, again, is clearly untrue. The mechanics of MCAS – or any other statistical reporting – requires start-up resources, but the on-ongoing resources drop off significantly. Consider quarterly financial statement reporting. The current resource requirement each quarter is clearly much than the initial start-up resource requirement.

The issue of regulator resources is important, but quarterly reporting creates new opportunities to ease regulatory resources. For example, just as the NAIC does with financial statement data, NAIC analysts could perform baseline analytics in addition to data quality reviews that are currently performed by state staff – freeing up state staff time for analysis. It is important for regulators to imagine different processes than current ones which are made possible with quarterly reporting, such as spreading out company reviews over the year instead of concentrated into one part of the year or referencing much more current experience when an issue arises or utilizing new and enhanced data quality and data analysis tools – all now possible with quarterly reporting. Stated differently, we ask regulators not be dissuaded from MCAS improvements by the current limitations of MCAS. The current processes are a function of the current data limitations – improved data create opportunities for faster, more efficient and improve market analysis processes.

Finally, we ask you consider that the current MCAS blanks for auto, home, life and annuity are almost the same as the original "pilot project" MCAS from 15 years ago. While it was surely reasonable to collect experience 18 months after the start of the experience period and 6 months after the end of the experience period for a pilot project, it surely makes no sense 15 years later to be relying upon such stale data for market analysis. Consider how the statutory annual statement has changed in 15 years. Consider how data collection and analysis tools have improved over 15 years. In this light, it is astonishing that significant improvements to MCAS have not happened. Moving to quarterly reporting is not a radical change, but an evolutionary change that reflects the need for and usefulness of more frequent MCAS reporting.