

HOUSE BILL NO. 6265

December 10, 2024, Introduced by Reps. McFall, Grant, McKinney and Scott and referred to the Committee on Insurance and Financial Services.

A bill to amend 1956 PA 218, entitled
"The insurance code of 1956,"
by adding chapter 4A.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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CHAPTER 4A

MARKET CONDUCT EXAMINATIONS

Sec. 481. As used in this chapter:

(a) "Complaint" means a written or oral communication that is documented that primarily expresses a grievance. As used in this subdivision, "grievance" means an expression of dissatisfaction.

(b) "Desk examination" means a targeted examination that is

1 conducted by an examiner at a location other than the insurer's
2 premises. A desk examination is usually performed at the
3 department's offices with the insurer providing, for review,
4 requested documents by hard copy, microfiche, discs, or other
5 electronic media.

6 (c) "Insurer" means that term as defined in section 106 and
7 includes a nonprofit dental care corporation operating under 1963
8 PA 125, MCL 550.351 to 550.373.

9 (d) "Market analysis" means a process through which market
10 conduct surveillance personnel collect and analyze pertinent
11 information from filed schedules, surveys, required reports, and
12 other sources in order to develop a baseline understanding of the
13 marketplace and to identify, for further review, patterns or
14 practices of insurers that deviate significantly from the norm or
15 that may pose a potential risk to insurance consumers. The director
16 shall ensure that the NAIC Market Regulation Handbook is used as 1
17 resource in performing a market analysis. For purposes of this
18 subdivision, "pertinent information" means information gathered by
19 market conduct surveillance personnel from all of the following:

- 20 (i) Data currently available to the department.
21 (ii) Surveys and information from required reports.
22 (iii) Information collected by the NAIC and other sources in the
23 public and private sectors.
24 (iv) Information from within and outside the insurance
25 industry.

26 (e) "Market conduct action" means any activities that the
27 director may initiate to assess and address the market practices of
28 insurers, including, but not limited to, a market analysis and,
29 following a market analysis, the provision of a targeted

1 examination. For the purpose of this subdivision, market conduct
2 action does not include the director's resolution of an individual
3 consumer complaint or other report of a specific instance of
4 misconduct.

5 (f) "Market conduct surveillance personnel" means those
6 individuals employed or contracted by the director to collect,
7 analyze, review, or act on information concerning the insurance
8 marketplace that identifies patterns or practices of insurers.

9 (g) "NAIC" means the National Association of Insurance
10 Commissioners.

11 (h) "NAIC Market Conduct Examiner's Handbook" means the set of
12 guidelines developed and adopted by the NAIC that documents
13 established practices to be used by market conduct surveillance
14 personnel in developing and executing an examination, or a
15 successor document.

16 (i) "NAIC Market Conduct Uniform Examination Procedures" means
17 the set of guidelines developed and adopted by the NAIC designed to
18 be used by market conduct surveillance personnel in conducting an
19 examination, or a successor document.

20 (j) "NAIC Market Regulation Handbook" means the outline of the
21 elements and objectives of market analysis developed and adopted by
22 the NAIC and the process by which states can establish and
23 implement market analysis programs, or a successor document.

24 (k) "NAIC Standard Data Request" means the set of field names
25 and descriptions developed and adopted by the NAIC for use by
26 market conduct surveillance personnel in an examination.

27 (l) "On-site examination" means a targeted examination
28 conducted at the insurer's home office or the location where the
29 records under review are stored.

1 (m) "Qualified contract examiner" means a person under
2 contract with the director who is qualified by education,
3 experience, and, where applicable, professional designations to
4 perform market conduct actions.

5 (n) "Targeted examination" means a focused exam, that may be
6 conducted by desk examination or by an on-site examination, based
7 on the results of a market analysis, that indicates a need to
8 review a specific line of business or specific business practices,
9 including, but not limited to, the following lines of business or
10 business practices:

11 (i) Underwriting and rating.

12 (ii) Marketing and sales.

13 (iii) Complaint handling operations and management.

14 (iv) Advertising materials.

15 (v) Licensing.

16 (vi) Policyholder services.

17 (vii) Nonforfeitures.

18 (viii) Claims handling.

19 (ix) Policy forms and filings.

20 (o) "Third-party model or product" means a model or product
21 provided by an entity separate from, and not under direct or
22 indirect corporate control of, the insurer using the model or
23 product.

24 Sec. 482. (1) The director shall, on an ongoing basis, ensure
25 that market analysis is conducted.

26 (2) Subject to subsection (4), if the director determines, as
27 a result of a market analysis, that further inquiry into a
28 particular insurer or practice is needed, the director may consider
29 the following continuum of market conduct actions before conducting

1 a targeted examination by on-site examination:

2 (a) Correspondence with the insurer.

3 (b) Insurer interviews.

4 (c) Information gathering.

5 (d) Policy and procedure reviews.

6 (e) Interrogatories.

7 (f) Review of insurer self-evaluation and compliance programs.

8 If the director is satisfied that the organization's qualification
9 process is likely to provide reasonable assurance of compliance
10 with pertinent insurance laws, the review under this subdivision
11 may include consideration of the insurer's membership in a best-
12 practices organization.

13 (g) Desk examinations.

14 (h) Examinations.

15 (3) If the director considers a continuum of market conduct
16 actions under subsection (2) and the consideration involves insurer
17 participation or response, the director shall make the action in
18 consideration known to the insurer in writing.

19 (4) If the director considers a continuum of market conduct
20 actions under subsection (2), the director shall select actions for
21 consideration that yield a consideration that is cost effective for
22 the department and the insurer and that protect insurance
23 consumers.

24 (5) The director shall take steps reasonably necessary to
25 eliminate duplicative inquiries and shall coordinate market conduct
26 actions and findings with other states.

27 Sec. 483. (1) Market conduct actions taken as a result of a
28 market analysis must focus on the general business practices and
29 compliance activities of insurers rather than identifying

1 infrequent or unintentional random errors that do not cause
2 significant consumer harm.

3 (2) Except as otherwise provided in this subsection, the
4 director may determine the frequency and timing of market conduct
5 actions. However, unless extraordinary circumstances indicate a
6 risk to consumers if immediate action is not taken, the director
7 shall take into account the specific market conduct action in
8 determining timing as described in this subsection.

9 (3) If the director has information indicating that more than
10 1 insurer is engaged in common practices that may violate statute
11 or rules, the director may schedule and coordinate multiple market
12 conduct actions simultaneously.

13 (4) The director may give an insurer reasonable opportunity to
14 resolve, to the satisfaction of the director, matters that arise as
15 a result of a market analysis before additional market conduct
16 actions are taken against the insurer.

17 (5) The director shall give notice and provide parties with an
18 opportunity for a public hearing under the administrative
19 procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, for any
20 changes made to an NAIC work product referenced in this chapter
21 that changes the way in which market conduct actions are conducted
22 in either of the following circumstances:

23 (a) A change is made that necessitates a change in statute,
24 regulation, or rule.

25 (b) The director deviates from the most recently adopted NAIC
26 work product.

27 (6) Except as otherwise provided by law, every person from
28 whom information is sought for purposes of this chapter and the
29 person's officers, directors, and agents shall provide the director

1 convenient and free access to all books, records, accounts, papers,
2 documents, and any computer or other recordings relating to the
3 property, assets, business, and affairs of the person. An officer,
4 director, employee, insurance producer, and agent of a person shall
5 facilitate market conduct actions and aid in market conduct actions
6 so far as it is in their power to do so.

7 Sec. 484. (1) If the director determines that the continuum of
8 market conduct actions identified in section 482(2) is not
9 appropriate, the director may conduct a targeted examination by on-
10 site examination in accordance with NAIC Market Conduct Uniform
11 Examination Procedures and the NAIC Market Conduct Examiner's
12 Handbook.

13 (2) In conjunction with the notification requirements under
14 subsection (8), the director shall post notification on the NAIC
15 Examination Tracking System, or a successor NAIC product, as
16 determined by the director, that a market conduct action has been
17 scheduled.

18 (3) Instead of market conduct action against an insurer
19 licensed in this state, the director may accept an examination
20 report from another state provided that the state has a market
21 surveillance system the director deems comparable to the market
22 surveillance system set forth under this chapter. The director's
23 determination under this subsection is discretionary and is not
24 subject to appeal.

25 (4) Before a targeted examination by on-site examination,
26 market conduct surveillance personnel must prepare a work plan
27 consisting of all of the following:

- 28 (a) The name and address of the insurer being examined.
29 (b) The name and contact information of the examiner-in-

1 charge.

2 (c) The justification for the targeted examination by on-site
3 examination.

4 (d) The scope of the targeted examination by on-site
5 examination.

6 (e) The date the on-site examination is scheduled to begin.

7 (f) Notice of any non-insurance department personnel who will
8 assist in the examination.

9 (g) A time estimate for the targeted examination by on-site
10 examination.

11 (h) A budget for the targeted examination by on-site
12 examination, if the cost of the examination is billed to the
13 insurer.

14 (i) An identification of factors that will be included in the
15 billing if the cost of the examination is billed to the insurer.

16 (5) Market conduct action must, to the extent feasible, be
17 conducted by desk examination, and data requests must be utilized
18 before a targeted examination by on-site examination is utilized.

19 (6) Market conduct action must be conducted in accordance with
20 the provisions set forth in the NAIC Market Conduct Examiner's
21 Handbook and the NAIC Market Conduct Uniform Examinations
22 Procedures.

23 (7) The department shall use the NAIC Standard Data Request or
24 a successor product to request data or information during an on-
25 site examination.

26 (8) The director shall make an announcement of market conduct
27 action by sending it to the insurer and posting on the NAIC's
28 Examination Tracking System, or a successor product, as determined
29 by the director, as soon as possible, but, except when the action

1 is conducted in response to an extraordinary circumstance described
2 in section 483(2), if a targeted examination is by on-site
3 examination, by not later than 60 days before the estimated
4 commencement of the targeted examination by on-site examination.
5 The announcement described in this subsection must contain both of
6 the following, as applicable:

7 (a) An examination work plan.

8 (b) A request for the insurer to name its examination
9 coordinator.

10 (9) Not later than 30 days before the commencement of market
11 conduct action, the director shall conduct a pre-examination
12 conference with the insurer examination coordinator and key
13 personnel to clarify expectations.

14 (10) Before the conclusion of a targeted examination by on-
15 site examination, a person among the market conduct surveillance
16 personnel who is designated as the examiner-in-charge shall
17 schedule an exit conference with the insurer.

18 (11) Unless a mutual agreement is reached with the insurer to
19 modify the timeline, the director shall adhere to the following
20 timeline:

21 (a) The director must deliver a draft report to the insurer
22 not later than 60 days after the completion of market conduct
23 action. Completion of the market conduct action is the date the
24 director is considered to confirm, in writing, that the market
25 conduct action is completed.

26 (b) The insurer must respond with written comments not later
27 than 30 days after receipt of the draft report described in
28 subdivision (a).

29 (c) Unless a mutual agreement is reached between the director

1 and the insurer to extend the deadline, the department shall make a
2 good-faith effort to resolve issues informally and prepare a final
3 report not later than 30 days after receipt of the insurer's
4 written comments as described in subdivision (b). The director may
5 make corrections and other changes to the final report as
6 appropriate.

7 (d) The insurer must, not later than 30 days after issuance of
8 the final report, accept the final report and accept the findings
9 of the report or request a hearing. If agreed upon by the director
10 and the insurer, not more than 30 days may be added to the 30-day
11 deadline described in this subsection. A hearing request described
12 in this subdivision must comply with the requirements of the
13 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
14 24.328.

15 (12) The director shall include the insurer's response
16 described under subsection (11) in the final report described under
17 subsection (11). The insurer's response may be included as an
18 appendix or in the text of the examination report. This chapter
19 does not require an insurer to submit a response. Individuals
20 involved in the examination must not be named in either the report
21 or the response, except to acknowledge their involvement.

22 (13) Except as otherwise provided in subsection (14), upon
23 acceptance of the final report under subsection (11), the director
24 shall continue to hold the content of the report as private and
25 confidential for a period of not less than 30 days. After the 30-
26 day period described in this subsection, unless a court of
27 competent jurisdiction has stayed its publication, the director
28 shall open the report for public inspection.

29 (14) This chapter does not prevent the director from

1 disclosing the content of any of the following to a department of
2 this state, a department of any other state, or a federal agency,
3 at any time, that agrees to hold the content as confidential in a
4 manner that is consistent with this chapter:

5 (a) A final report described under subsection (11).

6 (b) A preliminary examination report or results.

7 (c) Any matter relating to the items described in subdivisions
8 (a) and (b).

9 (15) If reasonable and necessary costs of a market conduct
10 action are assessed against an insurer that is subject to the
11 action, the fees must be consistent with fees otherwise authorized
12 under law. The fees described in this subsection must be itemized,
13 and bills must be provided to the insurer on a monthly basis for
14 review before submission for payment.

15 (16) The director shall maintain active management and
16 oversight of examination costs for examinations described in this
17 chapter, including costs associated with the director's own
18 examiners and with retaining qualified contract examiners necessary
19 to perform an on-site examination. To the extent the director
20 retains outside assistance in administering the requirements under
21 this chapter, the director shall have, in writing, protocols that
22 do all of the following:

23 (a) Clearly identify the types of functions to be subject to
24 outsourcing.

25 (b) Provide specific timelines for completion of the
26 outsourced review.

27 (c) Require disclosure of contract examiners' recommendations.

28 (d) Establish and utilize a dispute resolution or arbitration
29 mechanism to resolve conflicts with insurers regarding examination

1 fees.

2 (e) Require disclosure of the terms of the contracts with the
3 outside consultants that will be used, specifically the fees and
4 hourly rates that can be charged.

5 (17) The director shall review and affirmatively endorse
6 detailed billings from a qualified contract examiner before the
7 detailed billings are sent to the insurer.

8 Sec. 485. (1) Except as otherwise provided by law and subject
9 to subsection (4), during market conduct action, market conduct
10 surveillance personnel must have as free, convenient, and full
11 access, as practicable, to all books and records, employees,
12 officers, and directors of the insurer subject to the market
13 conduct action. An insurer that uses a third-party model or product
14 for any of the activities subject to action shall, on the request
15 of market conduct surveillance personnel, ensure that the details
16 of the models or products are made available to the market conduct
17 surveillance personnel. All documents, including, but not limited
18 to, working papers, third-party models or products, complaint logs,
19 and copies of those items, that are created, produced, obtained by,
20 or disclosed to any of the following persons as follows are
21 confidential and privileged, are not subject to subpoena, and are
22 not subject to discovery or admissible as evidence in any private
23 civil action:

24 (a) The director or any other person in the course of any
25 market conduct actions made under this chapter.

26 (b) The director in the course of a market analysis by the
27 director of the market conditions of an insurer.

28 (c) The NAIC as a result of any provision of this chapter.

29 (2) A disclosure to the director under this section does not

1 waive any applicable privilege or claim of confidentiality as
2 created under subsection (1).

3 (3) If an action is ordered by the director under section 222,
4 market conduct surveillance personnel may issue subpoenas and
5 examine insurance company personnel under oath.

6 (4) In performing duties under this chapter, the director may
7 do all of the following:

8 (a) Share documents, materials, or other information,
9 including confidential and privileged documents, materials, or
10 information described in subsection (1), with other state, federal,
11 and international regulatory agencies, law enforcement authorities,
12 and the NAIC and its affiliates and subsidiaries, if the recipient
13 agrees to, and has the legal authority to, maintain the
14 confidential and privileged status of the document, material, or
15 information.

16 (b) Receive documents, materials, or information, including
17 otherwise confidential and privileged documents, materials, or
18 information, from the NAIC and its affiliates or subsidiaries and
19 regulatory and law enforcement officials of other foreign or
20 domestic jurisdictions. The director shall maintain as confidential
21 or privileged any document, material, or information described in
22 this subdivision that is received with notice or the understanding
23 that it is confidential or privileged under the laws of the
24 jurisdiction that is the source of the document, material, or
25 information.

26 (c) Enter into agreements governing the sharing and use of
27 information consistent with this subsection.

28 Sec. 486. (1) Market conduct surveillance personnel must be
29 qualified by education, experience, and, where applicable,

1 professional designations. If the director determines that the
2 assistance is necessary, the director may supplement in-house
3 market conduct surveillance staff with qualified outside
4 professional assistance.

5 (2) Market conduct surveillance personnel have a conflict of
6 interest, either directly or indirectly, if they are affiliated
7 with the management of, have been employed by, or own a pecuniary
8 interest in the insurer that is subject to any examination under
9 this chapter. This section does not automatically preclude any of
10 the following individuals from serving as market conduct
11 surveillance personnel:

12 (a) A policyholder or claimant under an insurance policy.

13 (b) A grantee of a mortgage or similar instrument on the
14 individual's residence from a regulated entity if done under
15 customary terms and in the ordinary course of business.

16 (c) An investment owner in shares of regulated diversified
17 investment companies.

18 (d) A settlor or beneficiary of a blind trust into which any
19 otherwise permissible holdings have been placed.

20 Sec. 487. (1) A person shall not file a civil action against
21 the director, the director's authorized representative, or an
22 examiner appointed by the director, and the director, the
23 director's authorized representatives, or an examiner appointed by
24 the director is not liable, for any statements made or conduct
25 performed in good faith while carrying out this chapter.

26 (2) A person shall not file a civil action against any person,
27 and a person is not liable, for communicating or delivering
28 information or data to the director, the director's authorized
29 representative, or an examiner pursuant to an examination made

1 under this chapter, if the communication or delivery was performed
2 in good faith and without fraudulent intent or an intent to
3 deceive.

4 (3) The director, the director's authorized representative, or
5 an examiner appointed by the director is entitled to an award of
6 attorney fees and costs if the director, the director's authorized
7 representative, or an examiner appointed by the director is the
8 prevailing party in a civil action for libel, slander, or any other
9 relevant tort arising out of activities in carrying out this
10 chapter, and the person bringing the action was not substantially
11 justified in bringing the action. As used in this subsection,
12 "substantially justified" means the action had a reasonable basis
13 in law or fact at the time that it was initiated.

14 (4) This section does not abrogate or modify any applicable
15 common law or statutory privilege or immunity.

16 Sec. 488. (1) Fines and penalties applied to an insurer under
17 this act applied as a result of market conduct action must be
18 consistent, reasonable, and justified.

19 (2) In determining the appropriate fines to apply as described
20 under subsection (1), the director shall consider both of the
21 following factors:

22 (a) Actions taken by insurers to maintain membership in, and
23 comply with the standards of, best-practices organizations that
24 promote high ethical standards of conduct in the marketplace.

25 (b) The extent to which insurers maintain regulatory
26 compliance programs to self-assess, self-report, and remediate
27 problems detected.

28 Sec. 489. (1) The director shall collect and report market
29 data to the NAIC's market information systems, including the NAIC

1 Complaint Database System, the NAIC Examination Tracking System,
2 and the NAIC Regulatory Information Retrieval System, or other
3 successor NAIC products, as determined by the director.

4 (2) The department shall compile information it collects and
5 maintains in a manner that meets the requirements of the NAIC.

6 Sec. 490. The director shall share information and coordinate
7 the department's market analysis and examination efforts with other
8 states through the NAIC.

9 Sec. 491. (1) The director shall, at least annually, make
10 available, in an appropriate manner, information on new laws and
11 regulations, enforcement actions, and other information the
12 director determines is pertinent to ensure compliance with market
13 conduct requirements to persons subject to this chapter.

14 (2) The director must designate a specific person or persons
15 within the department whose responsibilities must include the
16 receipt of information from employees of insurers and licensed
17 entities concerning violations of laws, rules, or regulations by
18 employers, as defined in this chapter. The director shall provide
19 the person or persons described in this subsection with proper
20 training on the handling of the information that is considered
21 confidential communication for the purposes of this chapter.

22 Enacting section 1. This amendatory act takes effect January
23 1, 2025.