NAMIC®
NATIONAL ASSOCIATION OF MUTUAL INSURANCE COMPANIES

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July 15, 2020

Commissioner Jon Godfread, Chair
NAIC Innovation and Technology (EX) Task Force
c/o Denise Matthews – dmatthews@naic.org
1100 Walnut Street, Suite 1500
Kansas City, MO 64106-2197

Re: NAMIC comments on the NAIC UTPA (Model #880) Amended Language Addressing Rebating

Dear Commissioner Godfread and Members of the EX Task Force,

Please accept these comments on behalf of the National Association of Mutual Insurance Companies (hereinafter "NAMIC")[1] and its member companies regarding the amendatory language addressing anti-rebating modernization in the NAIC model law #880-Unfair Trade Practices Act. NAMIC wants to sincerely thank the task force for the ability to provide comments on this important modernization effort at the NAIC.

NAMIC applauds the NAIC for taking the initiative on modernizing anti-rebating language that will allow much-needed innovation and regulatory clarification which will foster better outcomes for consumers of insurance products. More specifically, the inclusion of amendatory language that allows for the usage of innovative and cost-saving, value-added products or services for consumers and that provides for loss control, reduction in claim costs or settlement costs, education, risk ascertainment, enhancements for policyholders, and post-loss services to name a few are all very important to achieving intended contractual policy objectives and obligations for all parties.

In an effort to be constructive, we have provided, as an attachment to these comments, some brief suggestions to the draft language that might be considered by the task force. We would also continue to respectfully encourage the task force to avoid any new amendatory language which would have the practical result of implementing traditional filing requirements for the usage of value-added products.

[1]NAMIC membership includes more than 1,400 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 $268 billion in annual premiums. Our members account for 59 percent of homeowners, 46 percent of automobile, and 29 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.

In closing, NAMIC remains supportive of NAIC's efforts to modernize these outdated anti-rebating regulatory requirements and, we want to thank the task force for moving forward with these targeted and specific amendments to the UTPA. We look forward to assisting the task force as it moves forward with its objectives in this matter.

Sincerely,

Andrew Pauley, CPCU
Government Affairs Counsel
National Association of Mutual Insurance Companies (NAMIC)

Attachment

NAMIC Recommendations to NAIC Innovation and Technology Task Force – UTPA Model Law amendments

July 15, 2020

NAMIC would suggest the following points be considered in the draft language.

- Section (e)(2) - The second sentence may be unnecessary. Most of the topics identified are already covered by existing statutes and regulations. States should be able to identify whether and what additional consumer protections may be needed.
- Section (e)(3) – Consider changing being "offered in a fair and nondiscriminatory manner" to "offered or provided in a manner that is not unfairly discriminatory."
- Section (e)(5) - Given the challenges in monitoring the aggregate amount of gifts or offers, we recommend advocating that the "per person per year" restriction be replaced with "per policy per year."
- Section (f)(1) may be unnecessary given Section (e)(5), but to the extent Section (f)(1) remains, it is not clear how it is intended to interact with (e)(5). We would support broader language than "promotional or advertising items or meals."
- Again, "per person per year" should be "per policy per year."
- "Fair market value" is fluid, which can lead to compliance challenges. "Actual cost" would be preferable because it is specific and verifiable. Note "cost" is used in Section (e)(5) so this change would promote consistency.
- Restrictions on linking promotional items to purchase/renewal may inhibit consumers access to value-added services and products. At the very least, we recommend the concept of "impliedly required" be deleted from (f)(1) and (f)(3).
- Section (f)(2) - It is unclear how this section interacts with (e)(5). Additionally, further definition around the phrase "as long as the cost is reasonable in light of the relationship between the parties" would prevent wide discrepancies between regulator interpretation.
- Section (f)(3) - We recommend deleting the section. Only a minority of states have sweepstakes rules. It could possibly be added as an optional drafting inclusion in the drafting notes section.

NEW YORK STATE OF OPPORTUNITY. Department of Financial Services

ANDREW M. CUOMO
Governor

LINDA A. LACEWELL
Superintendent

Via email to dmatthews@naic.org

July 22, 2020

Denise Matthews
Director, Data Coordination and Statistical Analysis
National Association of Insurance Commissioners
1100 Walnut Street
Suite 1500
Kansas City, MO 64106-2197

Re: Proposed Amendments to the NAIC's Unfair Trade Practices Act

Dear Ms. Matthews,

I write to provide comments on the proposed amendments to the NAIC's Unfair Trade Practices Act (the "Act").

I. Section H(2)(e) of the Act – Value-Added Products or Services and Gifts

New subsection H(2)(e)(1) of the Act permits insurers and producers, by or through employees, affiliates, or third-party representatives, to offer and provide certain value-added products or services at no or reduced costs when such products or services are not specified in the policy of insurance, provided that the products or services relate to the insurance coverage and are intended to satisfy one or more of eight defined purposes. By contrast, new subsection (e)(5) states that "gifts or offers of gifts in connection with marketing for the sale or retention of contracts of insurance is considered de minimus [sic] and not in violation of this statute as long as the cost does not exceed [two hundred and fifty dollars] per person per year." It is unclear how a gift differs from a value-added product or service as typically both are offered to induce the sale of insurance or the retention of current clients. As a result, it is unclear whether new (e)(1) is subject to the cap amount set forth in (e)(5) and what happens if the cost of these value-added products or services exceed that cap amount. If a gift is intended to be something other than a value-added product or service, then it should be set forth in a separate subsection.

The cap amount set forth in subsection (e)(5) should be tied to the market value of the relevant item when accessed by the general public and not to a special rate that the insurer, insurance producer, or other person may negotiate for the item on behalf of the insurer or producer. Moreover, it is unclear what is meant by the cost of the gift not exceeding "[two hundred and fifty dollars] per person per year." New York suggests revising the language to state that the de minimis

limitation applies to all gifts in total provided during any policy term, especially since not all policies, such as life insurance policies, renew every year.

Under subsection H(2)(e)(1)(b), the value-added products or services must be "primarily intended to satisfy" one or more of the purposes listed in that section. It is unclear how this uncertain standard can be measured or enforced. Also, the listed purposes are very broad. It is unclear what types of products or services would and would not be covered under these categories. There is the potential for abusive practices to occur under the guise of these categories. For example, there is potential for vulnerable life insurance beneficiaries who have just received a large death benefit to be targeted for abusive sales practices under the guise of providing "financial wellness" or "post-loss" products or services. New York suggests revising the language of subsection H(2)(e)(2) to specifically state that the Commissioner may adopt regulations to define the benefits that fall within the scope of subsection H(2)(e)(1)(b).

II. Section H(2)(f) of the Act – Promotional or Advertising Items, Charitable Donations, Meals, Raffles, and Drawings

New subsection (H)(2)(f)(1) of the Act provides that an insurer or producer may "offer or give promotional or advertising items or meals or charitable donations on behalf of to [sic] a personal lines policyholder or potential policyholder, as long as the total fair market value of the promotion or advertising items and/or meals does not exceed an amount set in regulation by the Commissioner per calendar year per person and no purchase or renewal of an insurance policy is either expressly or impliedly required." It is unclear what is meant by "promotional or advertising materials." If this term means a small item with the name of the insurer or producer conspicuously stamped on the item, such as a pen or frisbee, then the language should so state. In addition, the amount specified in a regulation by the Commissioner should apply to all items in total provided during any policy term and it also should apply to charitable donations, which currently do not seem to be subject to a limitation.

It also is unclear what is meant by "as long as…no purchase or renewal of an insurance policy is…impliedly required." Either the purchase or renewal of insurance is required, or it is not required. If what is meant by "impliedly required" is that the relevant item serves as an inducement to purchase or renew insurance, it is unlikely that an insurer or producer could avoid violating this standard, since promotional and advertising items (other than small items like pens and frisbees), meals, and charitable donations are typically offered or provided to induce a person to purchase insurance or remain a client.

In addition, new (H)(2)(f)(2) permits an insurer or producer to "offer or give gifts or value added services to commercial or institutional insureds in connection with marketing for the sale or retention of contracts of insurance, as long as the cost is reasonable in light of the relationship between the parties." It is unclear what the difference is between a "commercial" insured and an "institutional" insured; why the exception is limited to value-added services and does not include value-added products; and what is meant by "reasonable in light of the relationship between the parties." The language should be clarified, including an explanation of how a regulator would determine whether the gifts or value-added services are reasonable in light of the relationship between the parties.

New (H)(2)(f)(3) allows an insurer or producer to "conduct raffles or drawings to the extent permitted by state law, as long as there is no participation cost to entrants, the drawing or raffle does not expressly or impliedly obligate participants to purchase insurance and the prizes are not valued in excess of five hundred dollars." As with new subsection (f)(1), it is unclear what is meant by "as long as…the drawing or raffle does not…impliedly obligate participants to purchase insurance," because a raffles or drawings are typically offered or provided to induce a person to purchase insurance or remain a client. New York suggests that this language be amended to permit a raffle or drawing if the raffle or drawing is open to the public (and not just current clients) and is not tied to the sale or solicitation of insurance, including obtaining an insurance quote. See, e.g., New York State Department of Financial Services ("NYS DFS"), Office of General Counsel ("OGC") Opinion No. 06-12-05 (Dec. 13, 2006), which is available at https://www.dfs.ny.gov/insurance/ogco2006/rg061205.htm, and OGC Opinion No. 05-05-33 (May 31, 2005), which is available at https://www.dfs.ny.gov/insurance/ogco2005/rg050533.htm. If those conditions are met, then there is no reason to limit the amount of the raffle or drawing prize.

With that said, it is unclear why the items set forth in new subsection (f) are being treated differently from gifts and value-added products and services as set forth in subsection (e)(1) and (5) and why they are not subject to the same fair and non-discriminatory requirement set forth in subsection (e). For example, regarding the new language in subsection (f)(2), many commercial insureds are small businesses and non-profit institutions and it is unclear why it would be permissible to discriminate against these entities or treat them unfairly.

III. General Comments – More Than One Insured, Group Policies, and Free Insurance

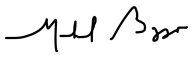
The new language in subsections (e) and (f) does not address the situation in which an insurance policy has more than one named insured or additional insureds. In such a situation, New York recommends that any de minimis limitations apply to all named insureds and additional insureds under the policy in total and not to each insured individually.

The new language also does not address the situation in which there is a group insurance policy. New York suggests that the NAIC revise the language to state that if premiums or contributions are derived wholly from the group policyholder's funds, then the insurer, insurance producer, or representative thereof may not pay or offer to pay, or give or offer to give, each certificate holder under the group policy a gift, value-added service or product, or other item as described in the new language in subsections (e) and (f). However, if all or part of the premium or contributions are derived from funds contributed by the certificate holders, then the insurer, insurance producer, or representative thereof may pay or offer to pay, or give or offer to give, a gift, value-added service or product, or other items as described in the new language in subsections (e) and (f), but may not pay or offer to pay, or give or offer to give, an amount that equals or exceeds the certificate holder's premium or contribution.

New York further recommends that the new language in subsections (e) and (f) make clear that an insurer, insurance producer, or representative thereof may not offer or provide insurance as an inducement to or interdependent with the purchase of another policy or give or offer to give

"free" insurance. See, e.g., NYS DFS, OGC Opinion No. 08-05-15 (May 30, 2008), which is available at https://www.dfs.ny.gov/insurance/ogco2008/rg080515.htm.

Sincerely,



Marshal Bozzo
Deputy General Counsel for Insurance