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**Cindy Goff**

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September 30, 2022

Mr. Martin Swanson, Nebraska Department of Insurance, co-chair, Improper Marketing of Health Insurance (D) Working Group

Mr. Frank Pyle, Delaware Department of Insurance, co-chair, Improper Marketing of Health Insurance (D) Working Group

Via email: [GWelker@naic.org](mailto:GWelker@naic.org); [martin.swanson@nebraska.gov](mailto:martin.swanson@nebraska.gov); [frank.pyle@delaware.gov](mailto:frank.pyle@delaware.gov)

**Re: Improper Marketing of Health Insurance Working Group Proposed Amendments to Model 880 Unfair Trade Practices Act**

Dear Mr. Swanson & Mr. Pyle,

The American Council of Life Insurers (ACLI) appreciates the opportunity to provide comments on the proposed amendments to NAIC Model Law 880, The Unfair Trade Practices Act. We support the utilization of the NAIC's standards for state insurance regulators to protect consumers from the improper marketing of health insurance products.

ACLI supports the Working Group holding public discussions regarding the proposed amendments to Model 880 and appreciates the opportunity to provide comments. We also encourage coordination with the Producer Licensing Task Force which has broad knowledge of the how producers will be impacted by the proposed elements of the exposure draft and may have further ideas to assure the desired regulatory authority is achieved.

We understand the Improper Marketing of Health Insurance Working Group (Working Group) was created because of concerns with activity related to the marketing of accident and sickness products. At the recent NAIC Summer National Meeting, the Working Group referenced that it was particularly focused on addressing the actions of those lead generating entities that are unlicensed from an insurance perspective and whose activities are conducted via the internet. Furthermore, we believe based on the language proposed in Model 880, your goal is to define lead generating entities, apply specific data storage and access requirements for lead generating entities, and to update Model 880 to include newer electronic communications methods not previously included.

ACLI member companies tailor their marketing and sales functions and product presentation materials to be transparent about their benefits, limitations, exclusions, and how they are not a substitute for comprehensive major medical coverage. ACLI and our member companies share the Working Group's

**American Council of Life Insurers** | 101 Constitution Ave, NW, Suite 700 | Washington, DC 20001-2133

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The American Council of Life Insurers (ACLI) is the leading trade association driving public policy and advocacy on behalf of the life insurance industry. 90 million American families rely on the life insurance industry for financial protection and retirement security. ACLI's member companies are dedicated to protecting consumers' financial wellbeing through life insurance, annuities, retirement plans, long-term care insurance, disability income insurance, reinsurance, and dental, vision and other supplemental benefits. ACLI's 280 member companies represent 94 percent of industry assets in the United States.

goal of ensuring that health insurance products, particularly health-related supplemental excepted benefits, are advertised, marketed, and sold properly. Our members are committed to ensuring agents and producers with whom they work are properly trained, managed, and vetted to prevent improper behavior. We appreciate the opportunity to work with you to find the most effective way to address the improper behavior of concern. To that end, we offer the following comments and suggestions regarding the exposure draft of Model 880 (the Unfair Trade Practices Model Act).

### **Definition of Lead Generator**

As the consumer protection concerns of the Working Group are related to the marketing and sale of specific health insurance products, we believe that formal written guidance from the Working Group regarding applicability of existing laws and regulations can address many regulatory concerns the Working Group has expressed. We also recognize a major concern of the Working Group is a belief that there is no clear definition of the entities that perform the lead generation functions. However, we note that a definition of lead generation is currently included in the NAIC's Model 40, Advertisements of Accident and Sickness Act.

We are concerned that as the Working Group moves forward with applying a definition of lead generator, the definition of "Insurance Lead Generator" proposed in this exposure draft is overly broad and will likely lead to more confusion in the industry at large. For example, under the proposed definition, any newspaper, television station or network, internet website, or other advertising platform used by an entity to publicize insurance products would be considered an insurance lead generator, and therefore, potentially subject to standards that are only appropriate for insurers, producers, and other entities engaged in the business of insurance. We also note that a non-licensee may legally make a paid referral to an insurer or insurance producer, provided that there is no discussion of specific insurance policy terms and conditions and the compensation for the referral is not contingent on the purchase of an insurance product by the referred person. We do not believe it is the work group's intention to inappropriately sweep in media platforms or disrupt long-standing appropriately executed referrals.

We offer the following suggestions to more specifically define "Insurance Lead Generator" and to facilitate accomplishing the Working Group's goals:

1. Clearly defining the type of product that is included within the definition. This will allow for exclusion of other lines of insurance such as life insurance, disability income insurance, and long-term care insurance from the definition.
2. Clearly defining the type of entity and activities by that entity that are included within the definition. This will help avoid unintended application of the definition to all types of entities who engage in advertising.
3. Including in the definition unlicensed entities that receive compensation for referring to an insurer or insurance producer a potential consumer, regardless of whether sale of insurance coverage occurs.

For the reasons considered above, we recommend refining the definition of "Insurance Lead Generator" as follows:

*"Insurance Lead Generator" means an entity that is: a) not licensed to engage in the business of insurance or sell insurance under the laws of this state; b) that engages in health insurance-related advertising activity (excluding disability income and long term care insurance), or publicizes the availability of a health insurance product or what purports to be a health insurance product or service; and c) that is paid to recommend, endorse, and/or promote a health insurance product or service,*

*producer, and/or insurer and, in so doing, discusses specific health insurance policy terms and conditions, and (d) any part of whose compensation is contingent on the purchase of a health insurance product by a referred person.*

We would also like the opportunity to discuss sections B and new Section C with the Working Group to ensure we understand what the specific expectations would be for records and availability of data related to internet advertising. Since Model 880 is broadly applicable to all entities engaged in the business of insurance, this might be a more appropriate discussion to have in the context of Model 40, as discussed below in our comments related to guidance and best practices.

### **Rhode Island Proposal**

ACLI strongly recommends that the Rhode Island proposal to insert Third Party Marketing Organizations (TPMO) definitions and provisions be rejected. The federal TPMO rule upon which this recommendation is based was promulgated by the federal Centers for Medicare & Medicaid Services (CMS) specifically to address concerns related to how Medicare Advantage (MA) plans are being marketed and sold by third parties representing MA insurers. It imposes TPMO requirements on all agents and brokers representing Medicare Advantage business and sets forth requirements for which it will be very difficult for some types of insurance producers to comply. Imposing the requirements in this proposal on all insurers and producers subject to the Unfair Trade Practices Act [as adopted in their state] will have a wide variety of impacts depending on the type of insurance or entity and would be cost prohibitive for many of the independent and smaller organizations, agents, and brokers. It would be extremely disruptive to existing distribution channels that function well and provide consumers with legitimate and helpful information and assistance in selecting financial protection products that are highly valued.

Similar to our concerns with inserting a broad definition of “insurance lead generators” into Model 880, we worry that by adopting the TPMO regulations (which were originally developed by the federal government to address a specific type of marketing behavior for a specific product type) into the broadly applicable Unfair Trade Practices Act, regulators would be inundated with data and information at a level that will make it very difficult to identify bad actors and violations. Further, since regulators’ authority is limited to regulated entities who are engaged in the business of insurance, there would be broad disruption with very little impact on solving the problem at hand.

### **A Simpler and More Comprehensive Way**

We suggest a simpler method to assure consistent and clear state insurance regulatory authority for preventing inappropriate advertising and solicitation of health insurance products is for the Working Group to issue written guidance regarding the application of Model 40 and Model 880. We are concerned that merely adding a definition of “lead generator” to Model 880 is insufficient to assure state regulatory authority since such lead generation entities are not required to be licensed as an insurance entity and are not directly within state insurance regulatory authority. This is because lead generation entities are not licensed as any type of insurance entity, such as insurer, producer, solicitor. Therefore, for state insurance regulators to effectively have additional authority to regulate lead generation entities, it is probable that in many changes to state laws and/or regulations would be necessary.

Since re-opening Model 880 has broad implications, requires state-by-state legislative updates, and may not give states the strong tools they need to solve this difficult problem, we recommend the Working Group develop a guidance document to clarify how existing standards found in Model 880 (Unfair Trade Practices) and Model 40 (Advertisements of Accident and Sickness Insurance) apply to lead generating entities and the insurers that interact with them. The guidance should include clarification on how regulators can address violations as well as updated and more detailed guidelines for the proper use of lead generators.

We believe guidance issued from the Working Group to clarify how existing standards apply to the lead generating entities that are causing concern in the health insurance space, and the insurers that work with them would allow for a more robust discussion of the roles and responsibilities of insurers, producers, and lead generators. It would also give states clear parameters around their ability to apply the full force of both models to prevent improper or deceptive marketing of health insurance products.

We also believe issuing guidance will allow for consideration of best practices for insurers, who are clearly under the regulatory authority of the states, to exercise their role in controlling how their products are presented and how customers are appropriately brought to their products through lead generation. Additionally, guidance could allow for a fulsome discussion with federal authorities that have clear regulatory authority over the media through which lead generators work, to lay out how states, insurers, and producers can work together to assure effective identification and enforcement of standards.

Thank you again for the opportunity to offer our comments. We look forward to further discussion on this important topic and stand ready to answer any questions you may have.

Sincerely,

A handwritten signature in black ink that reads "Cindy Goff". The signature is written in a cursive, flowing style.

Cindy Goff  
Vice President, Supplemental Products & Group Insurance  
American Council of Life Insurers

Cc: Martin Swanson, Nebraska Department of Insurance  
Frank Pyle, Delaware Department of Insurance  
David Leifer, ACLI  
Ian Trepanier, ACLI



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September 30, 2022

Mr. Martin Swanson, Chair  
Mr. Frank Pyle, Vice Chair  
Improper Marketing of Health Insurance (D) Working Group  
National Association of Insurance Commissioners  
444 North Capitol Street NW, Suite 700  
Washington, D.C. 20001-1512

*Submitted via email to [gwelker@naic.org](mailto:gwelker@naic.org)*

Dear Mr. Swanson and Mr. Pyle:

AHIP appreciates the opportunity to provide feedback on the NAIC Improper Marketing of Health Insurance (D) Working Group's proposed amendments to Model #880, the Unfair Trade Practices Act (UTPA).

AHIP's members are committed to ensuring consumers can find and purchase a health insurance plan that fits their needs at a price they can afford. Our members offer plans that provide robust benefits for individuals and families at every stage of life, including plans that offer supplemental benefits that are structured to enhance – but not replace – major medical coverage. The products offered by our members have been thoroughly vetted and approved for sale by states' Departments of Insurance. These products serve a good purpose in the market and have satisfactorily met the needs of consumers for decades.

Recent federal actions, as well as federal studies and private reports, have exposed bad actors who are preying on consumers, providing misleading or outright false information about the insurance plan, coverage, and benefits being purchased. AHIP and our members condemn this fraudulent behavior, and we reiterate our commitment to continuing to work in partnership with the Working Group and regulators across the country as you consider potential solutions to ensure consumer protection in the insurance market.

AHIP is providing comments on the proposed UTPA amendments from the Working Group, as well as the amendment proposed by the Rhode Island Insurance Division. For ease of reading, proposals from the Working Group are in **red** and proposals from Rhode Island are in **blue**.

## **AHIP Comments on the Working Group's Proposed Amendments to Model #880**

### **1. Add the definition of Insurance Lead Generator to Section 2. Definitions**

E. "Insurance Lead Generator" means a[n]y marketing-related activity or entity that publicizes the availability of an insurance, or what purports to be, an insurance product or service.

AHIP supports the addition of this definition to the Unfair Trade Practices Act. However, we are concerned that the definition is too broad and would inappropriately encompass entities and activities that have not been identified by the Working Group as problematic. AHIP recommends the following alternate definition:

E. "Insurance Lead Generator" means any entity that engages in any of the following activities:

1. publicizes the availability of what is, or what purports to be, an insurance product or service that the entity is not licensed to sell directly to consumers;
2. identifies consumers who may want to learn more about an insurance product;
- or
3. sells or transmits consumer information to insurers or producers for follow-up contact and sales activity.

AHIP recommends this alternative that identifies more clearly the activities Insurance Lead Generators undertake, particularly those activities that are of concern to the Working Group, and prevents unrelated entities being unintentionally swept into an over-broad definition.

The Rhode Island Insurance Division proposed to add the following definition of a third party marketing organization (TPMO):

"Third Party Marketing Organization" (TPMO) means organizations and individuals, including independent agents and brokers, who are compensated to perform lead generation, marketing, sales, and enrollment related functions as a part of the chain of enrollment (the steps taken by an individual from becoming aware of an insurance plan or plans to making an enrollment decision). TPMOs may be a first tier, downstream or related entity (FDRs) but may also be entities that are not FDRs but provide services to an insurance plan or an insurance plan's FDR.

AHIP opposes the inclusion of this definition in the UTPA, because it is duplicative of other sections in the law. The UTPA already addresses the activities of insurers and producers, and AHIP believes that our proposed alternate definition of an insurance lead generator addresses the entities and scope of activities that the Working Group has identified as problematic.

## **2. Add Insurance Lead Generators to Section 3. Unfair Trade Practices Prohibited**

It is an unfair trade practice for any insurer **or insurance lead generator** to commit any practice defined in Section 4 of this Act if: *[rest of the section stays the same]*

AHIP supports the inclusion of Insurance Lead Generators in Section 3 of the UTPA.

Rhode Island proposed further amendments to Section 3:

It is an unfair trade practice for any insurer, **insurance lead generator, third party marketing organization or any entity engaged in the business of insurance** to commit any practice defined in Section 4 of this Act if:

As noted previously, AHIP opposes the inclusion of TPMOs in Section 3, as the term is duplicative. However, we support the inclusion of “any entity engaged in the business of insurance”, a term that appropriately encompasses entities that may currently or in the future defy categorization as either insurers or insurance lead generators.

## **3. Include Digital Media Advertising in Section 4. Unfair Trade Practices Defined**

B. False Information and Advertising Generally. Making, publishing, disseminating, circulating or placing before the public, or causing, directly or indirectly to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, **electronic mail, internet advertisement or posting**, or other publication, or in the form of a notice, circular, pamphlet, letter, **electronic posting of any kind**, or over any radio or television station **or via the internet or other electronic means**, an advertisement, announcement, or statement containing any assertion, representation or statement with respect to the business of insurance or with respect to any insurer in the conduct of its insurance business, which is untrue, deceptive or misleading.

AHIP supports this update to modernize the UTPA.

## **4. Add New Requirements for Insurance Lead Generators to Maintain Records to Section 4. Unfair Trade Practices Defined**

**[NEW LETTER]. Failure to Maintain Marketing and Performance Records. Failure of an insurance lead generator to maintain its books, records, documents and other business records in such an order that data regarding complaints and marketing are accessible and retrievable for examination by the insurance commissioner. Data for at least the current calendar year and the two (2) preceding years shall be maintained. Failure to do so shall constitute a violation of [INSERT STATE STATUTE].**

AHIP supports the inclusion of a records maintenance requirement for Insurance Lead Generators in the UTPA. This requirement will provide regulators with the documentation to identify the entities sharing incorrect plan information with consumers and may deter many of the current fraudulent practices that the Working Group has identified.

Rhode Island also proposed new records maintenance requirements, but expanded and incorporated them into current subsection J:

J. Failure to Maintain Marketing and Performance Records. Failure of an insurer, insurance lead generator, third party marketing organization or any entity engaged in the business of insurance to maintain its books, records, documents and other business records in such an order that data regarding complaints, claims, rating, underwriting and marketing are accessible and retrievable for examination by the insurance commissioner. Data for at least the current calendar year and the two (2) preceding years shall be maintained.

1. Every insurer shall establish and at all times maintain a system of control over the content, form and method of dissemination of advertisements of its plan or plans. All such advertisements, without regard of by whom written, created, designed or presented shall be the responsibility of the insurer whose plan or plans are advertised.
2. When an insurer relies on another entity to fulfill its obligations for maintaining marketing and performance records, the insurer is ultimately responsible for compliance with applicable laws and regulations.

AHIP opposes the incorporation of the new requirements into current subsection J and strongly opposes the two new subsections that would make an insurer responsible for advertisements and claims created and disseminated without their knowledge or consent, including those created by entities that have no relationship with the insurer. As drafted, the language could hold an insurer responsible for advertisements using its logos, brands, or other trademarks to sell unrelated products. This practice has been identified by the Working Group as a common tactic used to sell plans to consumers so it would be inappropriate for an insurer to be held responsible for this activity. As AHIP shared with the Working Group, our member plans maintain ethical standards for producers, who must agree to sell an insurer's product in detailed and specific ways. These representations and standards are enforced through the contract between the insurer and the producer. Insurers log, investigate, and respond to complaints made by consumers and by states' Departments of Insurance, including complaints related to producers' actions or illicit use of the company's trademarked logos and marketing materials. If any of these investigations finds wrongdoing by the producer, insurers may respond with measures ranging from education, corrective action requirements, or contract termination. Insurers' controls and contracting policies strongly deter false statements by producers, and these proposed changes will not address the entities or problems identified by the Working Group.



### **Additional AHIP Comments**

In AHIP's testimony to the Working Group in December 2021, we urged the Working Group to consider narrowly tailored solutions that would not hinder the reasonable, ethical, and legitimate marketing and sales of approved health insurance products offered by our members. We noted that targeted changes, combined with robust consumer protections and appropriate enforcement authorities, would provide states the tools needed to prevent fraudulent marketing and punish bad actors.

AHIP supports the Working Group's proposed amendments, and we believe that the Working Group's proposal is appropriately tailored to address the fraudulent behavior of lead generators and other bad actors who are misleading consumers into purchasing products that fit neither their needs nor their expectations. However, we are concerned that the proposed amendments may not grant states sufficient enforcement authorities to stop bad actors or to seek out remedies for those harmed by their actions. While we understand that standing up new licensure regimes in each state could be a costly and complicated process, we want to ensure that any new authorities provide states with the necessary power to address these problems.

AHIP appreciates the efforts of the Working Group to engage stakeholders in this process and commits to continuing to partner with you as this important work continues.

Sincerely,



Meghan Stringer  
Senior Policy Advisor  
Product and Commercial Policy

AHIP is the national association whose members provide health care coverage, services, and solutions to hundreds of millions of Americans every day. We are committed to market-based solutions and public-private partnerships that make health care better and coverage more affordable and accessible for everyone. Visit [www.ahip.org](http://www.ahip.org) to learn how working together, we are Guiding Greater Health.

## FROM THE NAIC CONSUMER REPRESENTATIVES

To: Improper Marketing of Health Insurance (D) Working Group  
Greg Welker

Date: September 30, 2022

### Re: Suggested Amendments to Model 880 – Unfair Trade Practices Act

The undersigned consumer representatives applaud your efforts to address the use of lead generators for the sales of health insurance products. We support the suggestions offered by Rhode Island and urge you to go further to protect consumers by adopting the additional edits in the track changes below.

Our primary recommendation is that insurers be held responsible for understanding how their plans are marketed and sold and ensuring that the entities that sell their products (and pay commissions to) are providing timely, accurate information to consumers. When consumers are defrauded and duped into purchasing plans that do not meet their needs, often the lead generator who perpetrated the improper marketing is long gone, and consumers are left to try to navigate their care directly with the carrier. It is in the best interest of both consumers and carriers that plans not contract with bad actors.

A minimum way to better ensure that carriers do not contract with bad actors is to hold companies responsible for the activities and violations of their delegated and downstream entities. This includes any producers and entities that provide administrative services (such as marketing, enrollment, or customer service). These standards are not new and already exist under federal rules for qualified health plans and Medicare Advantage plans.<sup>1</sup>

Please note: the below in-line edits incorporate the committee chair's original draft (underlined), suggestions from Rhode Island (purple), and suggestions from the consumer representatives (red).

#### Section 2. Definitions

E. “Insurance Lead Generator” means any marketing-related activity or entity that publicizes the availability of an insurance, or what purports to be, an insurance product or service.\*

NEW LETTER. “Third Party Marketing Organization” (TPMO) means organizations and individuals, including independent agents and brokers, who are compensated to perform lead generation, marketing, sales, and enrollment related functions as a part of the chain of enrollment (the steps taken by an individual from becoming aware of an insurance plan or plans to making an enrollment decision). TPMOs may be a first tier, downstream or related entity

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<sup>1</sup> See, e.g., 45 C.F.R. § 156.340; Medicare Managed Care Manual, Ch. 11 § 110.

(FDRs) but may also be entities that are not FDRs but provide services to an insurance plan or an insurance plan's FDR.

### Section 3. Unfair Trade Practices Prohibited

It is an unfair trade practice for any insurer, insurance lead generator, third party marketing organization or any entity engaged in the business of insurance to commit any practice defined in Section 4 of this Act if:

- A. It is committed flagrantly and in conscious disregard of this Act or of any rules promulgated hereunder; or
- B. It has been committed with such frequency to indicate a general business practice to engage in that type of conduct.

An insurer maintains responsibility for its compliance and the compliance of any of its delegated or downstream entities with the prohibition of all unfair trade practices as defined in this Act.

### Section 4. Unfair Trade Practices Defined

B. False Information and Advertising Generally. Making, publishing, disseminating, circulating or placing before the public, or causing, directly or indirectly to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, electronic mail, internet advertisement or posting, or other publication, or in the form of a notice, circular, pamphlet, letter, electronic posting of any kind, or over any radio or television station or via the internet or other electronic means, an advertisement, announcement, or statement containing any assertion, representation or statement with respect to the business of insurance or with respect to any insurer in the conduct of its insurance business, which is untrue, deceptive or misleading.

NEW LETTER. Failure to Maintain Marketing and Performance Records. Failure of an insurer, insurance lead generator, third party marketing organization or any entity engaged in the business of insurance to maintain its books, records, documents and other business records in such an order that data regarding complaints, claims, rating, underwriting and marketing are accessible and retrievable for examination by the insurance commissioner. Data for at least the current calendar year and the two (2) preceding years shall be maintained.

- (1) Every insurer shall establish and at all times maintain a system of control over the content, form and method of dissemination of advertisements of its plan or plans. All such advertisements, without regard as to ~~of by whom~~ written, created, designed, or

presented [them](#), shall be the responsibility of the insurer whose plan or plans are advertised.

(2) When an insurer relies on another entity to fulfill [its](#) obligations for maintaining marketing and performance records, the insurer is ultimately responsible for compliance with applicable laws and regulations.

Thank you in advance for your consideration. If you have any questions about the content of this letter, please contact Lucy Culp ([Lucy.Culp@lls.org](mailto:Lucy.Culp@lls.org)) or Harry Ting ([harry@tingnet.com](mailto:harry@tingnet.com)), or Katie Keith ([katie@out2enroll.org](mailto:katie@out2enroll.org)).

Sincerely,

Lucy Culp  
Harry Ting  
Katie Keith  
Brenda Cude  
Wayne Turner  
Colin Reusch  
Carl Schmid  
Bonnie Burns  
Maanasa Kona  
Deborah Darcy  
Karen Siegel  
Matthew Smith  
Anna Schwamlein Howard  
Rachel Klein  
Silvia Yee  
Kelly Headrick  
Natasha Kumar  
Marguerite Herman



September 30, 2022

Martin Swanson, Chair Improper Marketing Subgroup  
The Nebraska Department of Insurance  
PO Box 95087  
Lincoln, Nebraska 68509-5087  
Sent via email

Re: NAIC Model 880

Thank you for the opportunity to provide public comments on the proposed amendments to the Unfair Trade Practices Act, NAIC Model 880. The Health Benefits Institute is a group of agents, brokers, insurers, employers, benefit platforms and others seeking to protect the ability of consumers to make their own health care financing choices. We support policies that expand consumer choice and control, promote industry standards, educate consumers on their options and foster high quality health outcomes through transparency in health care prices, quality, and the financing mechanisms used to pay for care.

We support the Improper Marketing Committee's thoughtful work on this complicated issue. Many of the specific regulatory issues were discussed in non-public calls which was appropriate given the subject matter. While the proposed language attempts to strike a balance, we are concerned that the language is both too broad, and will continue to result in actions taken against insurers who have not engaged the lead generation service.

We also concerned that without a regulatory structure, regulators will continue to have no specific entity to take action against. This is especially true given that lead generation services may offer qualified leads to businesses in a variety of sectors outside insurance.

#### **Definition of Lead Generator**

We are concerned that the proposed language is overly broad and will make it difficult for regulators to discern the differences between advertising and lead generation. The proposed language:

- E. "Insurance Lead Generator" means any marketing-related activity or entity that publicizes the availability of an insurance, or what purports to be, an insurance product or service.

The proposed language would potentially include advertising, providing information on product or services at a trade show and other activities. Advertising the availability of

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the product is too low a threshold. We believe the collection of personally identifiable information – which is then provided to another entity for the purposes of a sale– should be the key. Our proposed language:

E. “Insurance Lead Generator”

1. Is any marketing-related activity on behalf of an insurer or entity that publicizes the availability of an insurance, or what purports to be, an insurance product or service, **and collects personally identifiable information which is used to generate sales in covered products.**
2. **Does not include the activities of any entity already licensed by the insurance department.**

### **Other Changes**

We generally support the other proposed changes to the model act as listed below. However, there should be strong concern about the enforceability of the proposed language without any registration of lead generation services.

#### Section 3. Unfair Trade Practices Prohibited

It is an unfair trade practice for any insurer or insurance lead generator to commit any practice defined in Section 4 of this Act if: (rest stays the same)

#### Section 4. Unfair Trade Practices Defined

B. False Information and Advertising Generally. Making, publishing, disseminating, circulating or placing before the public, or causing, directly or indirectly to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, electronic mail, internet advertisement or posting, or other publication, or in the form of a notice, circular, pamphlet, letter, electronic posting of any kind, or over any radio or television station or via the internet or other electronic means, an advertisement, announcement, or statement containing any assertion, representation or statement with respect to the business of insurance or with respect to any insurer in the conduct of its insurance business, which is untrue, deceptive or misleading.

NEW LETTER. Failure to Maintain Marketing and Performance Records. Failure of an insurance lead generator to maintain its books, records, documents and other business records in such an order that data regarding complaints and marketing are accessible and retrievable for examination by the insurance commissioner. Data for at least the current calendar year and the two (2) preceding years shall be maintained. Failure to do so shall constitute a violation of (INSERT STATE STATUTE).

### **Lead Generation Model Law**

We don't believe the proposed changes are likely sufficient to protect consumers, and for insurance departments to control lead generation. Indeed, we remain concerned that our members will be found responsible for the actions of lead generation services. We believe more guidance is necessary.

Thank you again for the opportunity to provide public comments. These issues are important, and we appreciate NAIC's efforts to balance consumer protections against undue administrative burdens. We share the same goal of protecting consumers,

Please do not hesitate to contact me if you have any further questions at [jpwieske@thehealthbenefitsinstitute.org](mailto:jpwieske@thehealthbenefitsinstitute.org) or (920) 784-4486.

Sincerely

A handwritten signature in green ink, appearing to read "JP Wieske", with a long horizontal flourish extending to the right.

JP Wieske  
Executive Director



September 30, 2022

The Honorable Martin Swanson  
Chair, National Association of Insurance Commissioners  
Improper Marketing of Health Insurance (D) Working Group  
Deputy Director and General Counsel, Nebraska Department of Insurance  
P.O. Box 95087  
Lincoln, NE 68509-5087

Dear Mr. Swanson:

I am writing on behalf of the National Association of Health Underwriters (NAHU), a professional association representing over 100,000 licensed health insurance agents, brokers, general agents, consultants, and employee benefit specialists. The members of NAHU work daily to help millions of people purchase, administer, and utilize health insurance coverage, including Medicare-eligible individuals purchasing private-market-coverage options. As such, we are grateful to be able to share our thoughts on the proposed changes to the National Association of Insurance Commissioners' Unfair Trade Practices Model Act.

Generally, NAHU supports the efforts of the Improper Marketing of Health Insurance (D) Working Group to improve state-based regulation of entities that are inappropriately marketing health insurance products to consumers. However, in doing so, we believe it is critical to accurately target the entities that are causing problems in the marketplace. It's also key to avoid inadvertently affecting already regulated entities and imposing requirements on them that are inappropriate to their business sizes and models.

The NAIC's exposure draft adds the following definition to Section Two of the Model:

E. "Insurance Lead Generator" means any marketing-related activity or entity that publicizes the availability of an insurance, or what purports to be an insurance product or service.

The draft would amend Section Three of the Model by expanding the prohibition on unfair trade practices to insurance lead generators, in addition to insurers. The proposed changes to the Model would also expand the scope of what is "false advertising" to include online advertisements, including those posted generally on the Internet and electronic-mail advertisements. Finally, "insurance lead generators" would be required to maintain their books, documents and other business records related to marketing and customer complaints for at least two years so that they will be accessible and retrievable for examination by a state's insurance commissioner.





Misleading marketing efforts directed at potential health insurance beneficiaries negatively affects enrollees and honest actors helping individuals with their coverage options, including licensed health insurance agents and brokers. That senior citizens are regularly besieged by inaccurate and disingenuous advertisements using “bait and switch” marketing techniques regarding Medicare coverage options is particularly concerning to NAHU members, thousands of whom are licensed agents certified specifically to assist vulnerable Medicare-eligible consumers. The inaccurate information comes at them through television commercials, emails, phone calls and targeted online advertisements. Entities such as lead-generation agencies, overseas call centers and other marketing firms not subject to state licensure operate under different standards than certified and licensed agents and brokers when it comes to advertisement content and overall regulation. The unregulated entities need to be held accountable for their actions.

Our members see a wide dichotomy when it comes to marketing Medicare-coverage options to beneficiaries. On the low end of the spectrum are the marketing organizations and lead generators that contact people unsolicited, often provide misleading information, and are largely unregulated when it comes to the content and quality of the information they provide. On the high end of the spectrum are licensed and certified agents and brokers, who provide beneficiaries with direct and personalized service while abiding by both federal Medicare requirements and marketing rules and state-level market conduct and licensing standards. Lead-generation and marketing companies, which are generally unlicensed, are not certified in any way by CMS and, in many instances, operate from overseas locations or IP addresses, operate on a substantially different, and lower, level.

The proposed change to the Model attempts to bring unscrupulous lead generators under the jurisdiction of state regulators by adding the definition of “insurance lead generator” to Section Two of the Model and clarifying these entities are subject to state regulation in Section Three. However, the proposed definition of a “insurance lead generator” is overly broad and may inadvertently encompass entities that are already regulated, such as state-licensed health insurance producers. As such, we suggest the following clarification:

E. “Insurance Lead Generator” means any marketing-related activity or entity that publicizes the availability of an insurance, or what purports to be an insurance product or service, **that is not a regulated entity already subject to [State Unfair Trade Practices Statute]**.

Every group that touches Medicare beneficiaries needs to be held to strict standards and regulated as to the quality and accuracy of information it provides. However, each of these entities are different in terms of the populations served and their business structures and institutional resources, so they should not all be held to identical rules. Recent federal regulatory changes group licensed and certified agents and brokers in with the lead-generation and marketing entities under the same definition and moniker of third-party marketing



organizations (TPMOs). The new federal definition is overly broad and adds an additional burden to licensed and certified agents attempting to assist Medicare beneficiaries when choosing a suitable MA plan, while it does not regulate the lead-generation and unscrupulous marketing entities effectively. To avoid replicating this issue on the state level, we urge modification to the proposed definition of “insurance lead generator” as described above.

Thank you for the opportunity to provide input about the proposed changes to the Model Act. If you have any questions about our comments or need more information, please do not hesitate to contact me at (202) 595-0639 or [jtrautwein@nahu.org](mailto:jtrautwein@nahu.org).

Sincerely,

A handwritten signature in black ink, which appears to read "Janet Stokes Trautwein".

Janet Stokes Trautwein  
Executive Vice President and CEO  
National Association of Health Underwriters

CC: Greg Welker, National Association of Insurance Commissioners

**Oklahoma Insurance Department Comments to Suggested Amendments to Model 880 Unfair Trade Practices Act – September 30, 2022**

Section 4. Unfair Trade Practices Defined

B. False Information and Advertising Generally. Making, publishing, disseminating, circulating or placing before the public [in any physical or electronic format](#), or causing, directly or indirectly to be made, published, disseminated, circulated, or placed before the public [in any physical or electronic format](#), in a newspaper, magazine, [electronic mail](#), [internet advertisement or posting](#), or other publication, or in the form of a notice, circular, pamphlet, letter, [electronic posting of any kind](#), or over any radio or television station [or via the internet or other electronic means](#), an advertisement, announcement, or statement containing any assertion, representation or statement with respect to the business of insurance or with respect to any insurer in the conduct of its insurance business, which is untrue, deceptive or misleading.

**Commented [A1]:** Propose adding this, or similar, broader language and striking through “electronic” and “internet” to ensure language captures all of these types of publications in physical and electronic format. Concern with current changes is whether an opposing party could argue that language only shows intent to capture electronic format of mail and internet ads/posts and not electronic newspapers or magazines.

**Commented [A2]:** Same as above.

**Commented [A3]:** Propose Striking.

**Commented [A4]:** Propose striking.

**RHODE ISLAND COMMENTS – August 1, 2022**

**Draft proposal to amend model 880, the Unfair Trade Practices Act to address the jurisdictional issue of insurance lead generators.**

**Link to Unfair Trade Practices Act – Model #880:**

[https://content.naic.org/sites/default/files/inline-files/MDL-880\\_0.pdf](https://content.naic.org/sites/default/files/inline-files/MDL-880_0.pdf)

Section 2. Definitions

E. “Insurance Lead Generator” means any marketing-related activity or entity that publicizes the availability of an insurance, or what purports to be, an insurance product or service. \*

\*(I debated whether to call them “lead generators” or “insurance lead generators” since our jurisdiction may be limited to insurance. )

**Another proposed new definition should be -----**

\*. **“Third Party Marketing Organization” (TPMO) means organizations and individuals, including independent agents and brokers, who are compensated to perform lead generation, marketing, sales, and enrollment related functions as a part of the chain of enrollment (the steps taken by an individual from becoming aware of an insurance plan or plans to making an enrollment decision). TPMOs may be a first tier, downstream or related entity (FDRs) but may also be entities that are not FDRs but provide services to an insurance plan or an insurance plan’s FDR.**

Section 3. Unfair Trade Practices Prohibited

It is an unfair trade practice for any insurer **or insurance lead generator** to commit any practice defined in Section 4 of this Act if: (rest stays the same)

**Commented [SP(1)]:** Why only insurance lead generator?

**Proposed language -----**

**It is an unfair trade practice for any insurer, insurance lead generator, third party marketing organization or any entity engaged in the business of insurance to commit any practice defined in Section 4 of this Act if:**

Section 4. Unfair Trade Practices Defined

B. False Information and Advertising Generally. Making, publishing, disseminating, circulating or placing before the public, or causing, directly or indirectly to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, electronic mail, internet advertisement or posting, or other publication, or in the form of a notice, circular, pamphlet, letter, electronic posting of any kind, or over any radio or television station or via the internet or other electronic means, an advertisement, announcement, or statement containing any assertion, representation or statement with respect to the business of insurance or with respect to any insurer in the conduct of its insurance business, which is untrue, deceptive or misleading.

NEW LETTER. Failure to Maintain Marketing and Performance Records. Failure of an insurance lead generator to maintain its books, records, documents and other business records in such an order that data regarding complaints and marketing are accessible and retrievable for examination by the insurance commissioner. Data for at least the current calendar year and the two (2) preceding years shall be maintained. Failure to do so shall constitute a violation of (INSERT STATE STATUTE).

Proposed language -----

**J. Failure to Maintain Marketing and Performance Records. Failure of an insurer, insurance lead generator, third party marketing organization or any entity engaged in the business of insurance to maintain its books, records, documents and other business records in such an order that data regarding complaints, claims, rating, underwriting and marketing are accessible and retrievable for examination by the insurance commissioner. Data for at least the current calendar year and the two (2) preceding years shall be maintained.**

**(1) Every insurer shall establish and at all times maintain a system of control over the content, form and method of dissemination of advertisements of its plan or plans. All such advertisements, without regard of by whom written, created, designed or presented shall be the responsibility of the insurer whose plan or plans are advertised.**

**(2) When an insurer relies on another entity to fulfill its obligations for maintaining marketing and performance records, the insurer is ultimately responsible for compliance with applicable laws and regulations.**

**Commented [SP(2)]:** Why wouldn't this be an amendment to Section 4 (J) Failure to Maintain Marketing and Performance Records? See below. Plus adding in the AIG language.