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September 25, 2020

Mr. Don Beatty
Chair, NAIC Pet Insurance (C) Working Group
Virginia Department of Insurance
1300 E Main Street
Richmond, VA 23219

Dear Chair Beatty:

The North American Pet Health Insurance Association (“NAPHIA”) appreciates this opportunity to comment on Section 5 (Violations) and Section 6 (Licensing) of the Pet Insurance (C) Working Group’s (“Working Group”) draft model law (“Model Law”).¹ Along with Section 4 (Disclosures),² Sections 5 and 6 constitute the crux of the Model Law and will shape how Pet Insurance is sold throughout the United States. Our recommendations below therefore reflect NAPHIA’s top policy priorities:

- Protection of, and value for, Pet Insurance consumers;
- Clarity and uniformity in the legal landscape across states;
- Workable standards that make sense in the Pet Insurance context and do not stifle innovation in this new and growing industry; and
- Enhanced visibility for regulators, in addition to workable oversight and enforcement mechanisms to ensure ongoing compliance throughout the industry.

¹ See Pet Insurance Model Act Discussion Draft for Pet Insurance (C) Working Group, NAIC (July 2, 2020), available at https://content.naic.org/sites/default/files/call_materials/NAIC%20Pet%20Insurance%20Model%20Law%20DiscussionDraft20200702.pdf [hereinafter “Model Law”].

² NAPHIA recently submitted its comments on Section 4 under separate cover. See Letter from Kate Jensen, NAPHIA to Don Beatty, NAIC (Aug. 25, 2020), available at https://content.naic.org/sites/default/files/call_materials/NAPHIA%20-%20Letter%20to%20Pet%20Insurance%20%28C%29%20Working%20Group%20on%20Sections%203%20and%204%20%288.25.20%29-c2.pdf.

EXECUTIVE SUMMARY

Due to the length and density of our comments, we provide this executive summary of NAPHIA’s key recommendations on Sections 5 and 6 of the Model Law, along with corresponding page references for additional background and explanation on each topic.

First, the Model Law’s violations provisions, if any are included, should allow states to utilize existing authority, procedures, and penalties already in their insurance codes (pp. 3-4).

Regarding Section 6, we encourage the Working Group to adopt NAPHIA’s proposed framework and language, including key definitions (filed separately with the Working Group as Appendix A to this letter), as its base licensing structure. There is a lot of overlap between the Model Law draft and NAPHIA’s approach (e.g., availability of a limited lines license for Pet Insurance, registration of retailers with licensed entities, parameters for marketing materials, etc.), but ultimately, we believe our recommendations provide greater consumer protection and clarity for regulators and the industry.

Our key licensing principles and recommendations include:

- Adoptions of definitions that distinguish between retailers and licensed entities and clearly delineate the different entities’ roles and permissible activities (pp. 7-9);
- Only licensed Pet Insurance Producers should be permitted to sell, solicit, or negotiate Pet Insurance, but Pet Retailers should be permitted to engage in conversations with their customers to provide general information about specific Pet Insurance products, Pet Insurance Producers, and pet insurers (pp. 5-6, 13-14);
- Pet Insurance Producers should have two licensure options: a full major line license or a Limited Lines Pet Insurance Producer license for producers who only sell Pet Insurance (pp. 7-11);
- The Limited Lines Pet Insurance Producer license must require substantive, robust, and properly tailored education and examination requirements to protect consumers and promote a knowledgeable sales force for these relatively new products (pp. 10-11); and
- Pet Retailers should be registered with, receive appropriate training from, and be subject to oversight by, the Pet Insurance Producer(s) with whom they work, and should not receive any compensation or valuable consideration based on insurance product sales (pp. 12-13).

Finally, we urge the Working Group to clearly distinguish between the types of materials and disclosures that will be delivered by Pet Retailers versus Pet Insurance Producers. Pet Retailers, along with having discussions about general Pet Insurance information, deliver traditional high-level marketing materials (e.g., tri-fold brochures) to their customers. Those materials should include limited disclosures and required information about the role of Pet Retailers, contact information for licensed entities, where to find additional information on specific policies, etc. Pet Insurance Producers, on the other hand, should deliver the policy-specific disclosures covered in Section 4 of the Model Law because only they are permitted to

answer questions about specific terms in insurance contracts and because it will ensure proper and consistent delivery of these important disclosures. Neither the Pet Retailer nor the Pet Insurance Producer context necessitates written consumer acknowledgements or physical posting of these respective types of disclosures (pp. 15-17).

SECTION 5 – VIOLATIONS

I. THE MODEL LAW’S VIOLATIONS SECTION (IF ONE IS NECESSARY) SHOULD REFER TO STATES’ EXISTING ENFORCEMENT AUTHORITIES

Insurance departments across the country already have the authority to enforce their insurance laws. A separate violations section therefore is not necessary for a model law regulating a specific line of property & casualty (“P/C”) insurance, as states can simply refer to their violations and enforcement statutes used for other P/C lines. Nevertheless, if the Working Group deems a violations section necessary for this Model Law, it should be general and allow states the flexibility to utilize their existing processes and enforcement mechanisms.

Omitting specific violations provisions completely or referring generally to states’ existing laws is consistent with other NAIC model laws and state practice today. NAIC P/C model laws do not always contain detailed violations and enforcement provisions,³ suggesting that those provisions are unnecessary. Further, under current statutes, states – including Working Group member states – often refer to more general insurance violation and enforcement provisions, rather than detailing unique processes and penalties for any one particular P/C line of insurance.⁴

Section 5 of the Model Law, as currently drafted, appears to impose California-specific processes, procedures, and penalties on other states.⁵ While this regime works for California, it denies other states flexibility to rely on their own approaches. It also risks imposing different – and potentially more onerous – procedures and penalties on Pet Insurance vis-à-vis treatment of other P/C lines in the different states.

We therefore recommend that the Working Group, to the extent it retains a separate Violations section, revise Section 5 to read:

³ See, e.g., NAIC Travel Insurance Model Act § 10 (MDL-632) (no enforcement provision, but a general statement that the Commissioner may promulgate regulations to implement provisions of the Act).

⁴ See, e.g., VA CODE ANN. § 38.2-1889 (Virginia travel insurance; refers to the state’s general insurance Penalties and Restitution Payments statute); VA Code Ann. § 38.2-1879 (Virginia portable electronic insurance; same); 40 P.S. § 4607 (Pennsylvania travel insurance; refers to the state’s Unfair Practices Act to impose monetary penalties); RCW 48.120.025 (Washington portable electronic insurance; refers to the state’s general License Suspension and Fines statutes); RCW 48.29.190 (Washington title insurance; refers to the state’s Unfair Business Practices code); V.A.M.S. 379.1535, 379.1540 (Missouri portable electronics insurance; refers to the state’s Classification of Violations and Relief Issued by Director for Violations of State Laws statutes); V.A.M.S. 381.015, 381.045 (Missouri title insurance; refers to the state’s Classification of Violations and general Suspension, Revocation, Refusal of License statutes); V.A.M.S. 379.123 (Missouri automobile insurance; refers back to the state’s Unfair Trade Practices statutes).

⁵ See CA INS. CODE §§ 12880.3 - 12880.4; see also 2014 CA AB 2056.

- (A) *The Commissioner may conduct investigations or examinations of pet insurers, Pet Insurance Producers, and Pet Retailers to enforce the provisions of this Act.*
- (B) *The Commissioner may take action, following notice and a hearing, necessary or appropriate to enforce the provisions of this Act, Commissioner’s orders, and state statutes to protect consumers of Pet Insurance in this state, pursuant to [cite to applicable statutory provisions regarding notice/hearings/violations/penalties].*

This more general language, in addition to the benefits described above, clarifies that regulators have clear and explicit authority to oversee all entities in the Pet Insurance marketplace, including licensed Pet Insurance Producers and unlicensed Pet Retailers that are registered with licensed producers (discussed in more detail below).

Finally, if the Working Group decides to keep Section 5 as currently formulated, NAPHIA supports the recommendation made by the American Property Casualty Insurance Association (“APCIA”) that any enumerated monetary penalties be better aligned with current P/C laws across all states.⁶

SECTION 6 – LICENSING

II. OVERVIEW OF NAPHIA’S PET INSURANCE LICENSURE PRINCIPLES

The NAIC’s White Paper on Pet Insurance states that “[i]nsurance regulation is in place to ensure consumer protection.”⁷ NAPHIA agrees. Fundamental to this consumer protection objective are clear rules of the road regarding who may sell, solicit, and negotiate insurance products and recognition of how consumers interact with and access specific insurance products. While there is a good amount of overlap between the Working Group’s draft Model Act and NAPHIA’s recommended framework (e.g., registration of Pet Retailers with licensed entities, availability of limited lines licensure for Pet Insurance Producers, parameters for marketing materials, etc.), NAPHIA believes its approach ultimately is more protective of Pet Insurance consumers and more clearly delineates permitted and prohibited activities for various entities in a manner that reflects how this market operates.

For reasons set forth in the following pages, we urge the Working Group to reframe the licensure section of the Model Law and adopt NAPHIA’s recommended approach as its base licensing framework. We have submitted as Appendix A a full draft of our recommended structure for Section 6.

⁶ Letter from Lisa Brown, APCIA to Aaron Brandenburg, NAIC (Aug. 18, 2020), available at https://content.naic.org/sites/default/files/call_materials/APCIA%20Comments%20on%20NAIC%20Draft%20Pet%20Insurance%20Model%20Law%20Sec%205%20and%206%20-%202008182020.pdf.

⁷ *A Regulator’s Guide to Pet Insurance*, NAIC at 29 (2019), available at https://naic.org/prod_serv/PIN-OP-19.pdf.

- A. Pet Insurance should be sold only by Pet Insurance Producers holding a Pet Insurance limited line of authority or a major line of authority, but Pet Retailers should be permitted to share certain information with their customers about Pet Insurance.

Today, 70% of Pet Insurance sales are initiated online, and 30% are initiated through call centers.⁸ While a consumer may learn about the option of Pet Insurance from a different source (e.g., veterinary office, pet store, groomer, or shelter), the actual sale and purchase of the Pet Insurance policy takes place through a licensed producer— and usually online.

Given this market reality, and consistent with producer licensing laws across the country, NAPHIA believes that the Model Law should require a Limited Lines Pet Insurance Producer license or a full major lines producer license for anyone selling Pet Insurance. Because of the limited channels through which Pet Insurance is sold, we perceive no good administrative or policy reason to *not* send consumers to licensed producers for policy purchases (i.e., to licensees’ websites or licensed agents in a call center).

We also recognize, however, that Pet Retailers – veterinarians, pet store employees, pet groomers, and other people (as defined in the next section) – have an important role to play in educating consumers about Pet Insurance. For example, Pet Retailers should be able, without running afoul of state insurance laws, to openly communicate with consumers about Pet Insurance in general and the Pet Insurance companies with whom they have had a good experience, just like they would be able to speak to a pet owner about a particular brand of food, behavioral, or physical training options, etc. Under NAPHIA’s approach, Pet Retailers’ level of engagement with consumers is somewhere between a purely passive advertising click on any website (which, we believe, is outside the scope of this Model Law) and licensable sales-related activities. Pet Retailers are entities – like veterinarians – that have two-way interactions with customers about Pet Insurance and may express opinions about Pet Insurance products and professionals with which/whom they have experience.

Today, Pet Retailers do not have clarity around what they may and may not discuss with their customers, which is stifling the flow of helpful information to pet owners. To clarify, “general” Pet Insurance information Pet Retailers should be permitted to share and discuss with their customers would pertain to: the availability of Pet Insurance as an option; the overall benefits of Pet Insurance (e.g., help paying for pet care); and experiences with specific Pet Insurance Producers or pet insurers. Examples include:

- *You may want to consider Pet Insurance to get help paying for your pet’s care;*
- *Here is a brochure for ABC Pet Insurance – other customers have had good experiences with this company;*
- *I like ABC Pet Insurance company because I’ve had a good experience with them in the past;*
- *Pet Insurance can cover a lot of different medical problems for your pet; and*

⁸ *Id.* at 7.

- *[In response to a customer asking, “What do you think about Pet Insurance?”]: Pet Insurance may be a good idea for you; or, Here is a brochure with some information.*

This “general” information is distinguishable from “specific” policy- or contract-level discussions that should be conducted only by licensed insurance professionals (i.e., conversations that constitute the sale, solicitation, or negotiation of insurance). So, Pet Retailers would not, for instance, be permitted to:

- Discuss any specific terms in a contract for insurance, including exclusions;
- Interpret the terms of a policy or opine on the sufficiency of coverage or a customer’s risk exposure; or
- Answer questions from a customer about specific items in an insurance policy.

Pet Retailers also would be prohibited from receiving compensation or other valuable consideration based on insurance product sales.

Throughout the discussion that follows, all references to “general” or “specific” Pet Insurance information contemplate these distinctions and examples.

NAPHIA contends that Pet Retailers should not be permitted to sell Pet Insurance because:

- they lack the training and regulatory oversight applicable to licensed insurance producers;
- it is not necessary, given the manner in which Pet Insurance is and is not sold in the United States; and
- opening up sales activity to a broad non-producer sales force does not make sense from a consumer protection perspective.

For the benefit of consumers and for regulated persons and entities, NAPHIA believes it is critical to clearly demarcate the line between Pet Insurance sales and non-sales activity and the different entities that fall on either side of that line. We therefore strongly encourage the Working Group to adopt our proposed definitions (below) of Pet Insurance Producer, Limited Lines Pet Insurance Producer, and Pet Retailer, and our recommendations for permitted and prohibited activities for each of them.

- B. The Pet Insurance licensure regime should accommodate producers selling various products under major lines of authority and those selling only Pet Insurance.

In this new and growing industry still with low take-up rates, growing the base of persons knowledgeable about Pet Insurance products is a positive development for consumers and the industry. Today, the vast majority of Pet Insurance policies are sold by licensed producers who sell only Pet Insurance (i.e., relatively few sell other lines of authority). Accordingly, we strongly support the construct from the current draft Model Law providing two licensure options

for Pet Insurance Producers – a full major lines producer license *or*, for those who only sell Pet Insurance and only need expertise related to pet products, a Limited Lines Pet Insurance Producer license. Providing a limited license option for Pet Insurance will prompt more individuals to receive proper training and licensure tailored to the role they play in this marketplace.

- C. Training, oversight, and technical requirements should be properly tailored to the role a given entity plays in the marketplace, and should distinguish between licensed and non-licensed entities.

Proper training and oversight are essential for both licensed Pet Insurance Producers and Pet Retailers, and should be calibrated to reflect different entities’ policy-level engagement with consumers. For instance, producers do and should receive robust training on ethical insurance sales practices, whereas Pet Retailers – who do not engage in sales activity – also should receive training, but with more general education on the issues that apply to their role in the marketplace. NAPHIA’s proposal focuses on meaningful education for all entities and, like the draft Model Law, calls for supervision of Pet Retailers by the licensed producers with whom they work via a registration process.

Each of these topics and recommendations is discussed in further detail below.

III. DEFINING AND DELINEATING KEY ENTITIES AND ROLES IN THE PET INSURANCE MARKETPLACE

A fundamental difference between the Working Group’s draft Model Law and NAPHIA’s approach is the manner in which different entities are defined and roles are conceptualized. We strongly urge the Working Group to adopt the following foundational definitions as building blocks for a clear and effective licensure regime:

- **Pet Insurance Producer:** a person holding an accident and health or sickness, property, personal lines, or Limited Lines Pet Insurance Producer license.
- **Limited Lines Pet Insurance Producer:** a person licensed to sell, solicit, and negotiate only Pet Insurance.
- **Pet Retailer:** an entity not licensed as a Pet Insurance Producer that –
 - (1) Is registered with at least one Pet Insurance Producer;
 - (2) May make available to customers materials about specific Pet Insurance products, Pet Insurance Producers, or pet insurers; and
 - (3) May offer opinions or information to customers about preferences or support for specific Pet Insurance products, Pet Insurance Producers, or pet insurers without (i) evaluating, interpreting, or providing advice about the technical terms or conditions of an insurance policy or a prospective purchaser’s existing insurance coverage, or (ii) receiving compensation or other valuable consideration that is based on the purchase of an insurance product or the volume of insurance transacted.

Pet Retailers may not sell, solicit, or negotiate Pet Insurance, or engage in other activities requiring an insurance license under the laws of this State, unless the entity is licensed to engage in those activities.

Each recommended definition is addressed in turn below.

A. Licensed entities: “Pet Insurance Producers” and “Limited Lines Pet Insurance Producers.”

NAPHIA urges the Working Group to utilize “producer” terminology throughout its licensure definitions, rather than “agent” or “broker.” Today, “producer” is the more commonly used term by the states and it comports with the NAIC’s Producer Licensing Model Act.

As referenced above, NAPHIA’s suggested definition of “Pet Insurance Producer” captures both producers holding a major lines license *and* Limited Lines Pet Insurance Producers who are licensed to sell only Pet Insurance. This is consistent with the approach in the current Model Law draft. States that refer to the “accident and health or sickness” and “property” license types by other terms, or that do not offer a “personal lines” license type could revise this definition accordingly, so long as both licensure options (i.e., major line and limited line) are available to Pet Insurance Producers.

Allowing Pet Insurance Producers to hold a Limited Lines Pet Insurance Producer license – with its attendant Pet Insurance-specific training requirements – will expand the pool of professionals knowledgeable about Pet Insurance products and able to effectively help consumers who are interested in purchasing this voluntary product. This expansion of educated and licensed professionals is important in a growing industry like ours. And of course, as licensed entities, Pet Insurance Producers holding the limited lines license will fall squarely under the purview of insurance regulators’ oversight and enforcement authority.

We encourage the Working Group to adopt NAPHIA’s proposed definition of “Limited Lines Pet Insurance Producer,” instead of the definition of “Limited Lines Pet Insurance Agent” in the current Model Law draft. The Model’s draft definition, which references “managing general agents” and “limited lines agents of Pet Insurance,” could be confusing and interpreted in an unnecessarily limited manner. The reference to “managing general agent” (a separate category of licensure entirely) could be read to restrict the types of licensees who are eligible to sell Pet Insurance. The definition, we think, should be more general to encompass any entity that fulfills the substantive and administrative requirements to be a Limited Lines Pet Insurance Producer. The Model Law definition also is confusing because it is somewhat circular – i.e., it uses “limited lines agent of Pet Insurance” to define “limited lines Pet Insurance agent.”

Overall, the draft Model Law definition is not a clear standard with which those wishing to become Limited Lines Pet Insurance Producer license holders can comply. NAPHIA therefore recommends that the Model Law instead use our definition of Limited Lines Pet Insurance Producer.

B. Unlicensed entities: “Pet Retailers.”

NAPHIA recommends that “Pet Retailers” be defined broadly to include all registered entities that discuss general Pet Insurance information with consumers, rather than separating out individual types of businesses. NAPHIA’s more general definition would help simplify and clarify the overall licensure regime and allow different types of entities that want to discuss Pet Insurance information with their customers to participate in this market in the future. Today, common examples of Pet Retailers include veterinarian offices and pet retail stores, but because this industry is still evolving, we urge the Working Group to craft the Model Law’s core definitions in a manner that will accommodate potential new players and innovations in the future. Notably, all Pet Retailers – from vets to animal shelters to some future categories of businesses – will have to satisfy all of the requirements discussed at length below.

Moreover, NAPHIA’s proposed definition would distinguish between a registered Pet Retailer who actively engages in discussions with consumers about Pet Insurance products and professionals, and purely passive advertising arrangements (e.g., a website scenario where advertising space is purchased by an insurer, a consumer makes a single click and is taken directly to a licensed entity’s website to learn about and/or purchase an insurance product, and that is the extent of the website owner’s interaction with the consumer). These types of passive advertising arrangements with unlicensed entities are pervasive across all lines in the insurance industry. Pet Retailers, on the other hand, who actively engage with consumers about the availability and/or general benefits of particular Pet Insurance products or professionals should be registered with Pet Insurance Producers and subject to proper training and oversight.

Additionally, NAPHIA’s definition of “Pet Retailer” clarifies that these unlicensed entities should not receive compensation or any other valuable consideration based on the sale of an insurance product or the volume of insurance transacted. This, we believe, helps draw a clear line between Pet Retailers’ role in the market and the role of licensed entities that conduct sales activity.

Throughout the following discussion, references to “Pet Insurance Producers,” “Limited Lines Pet Insurance Producers,” and “Pet Retailers” incorporate NAPHIA’s definitions of those terms (above).

IV. PROVISIONS AND REQUIREMENTS FOR LICENSED PET INSURANCE PRODUCERS

Again, NAPHIA’s position is that only licensed Pet Insurance Producers – licensed under either a major line of authority or a limited lines Pet Insurance license – should be permitted to sell Pet Insurance. This approach, we believe, is best for consumers and is workable in an industry in which virtually all sales are conducted online or through call centers. Our detailed recommendations on obligations and qualifications for licensed Pet Insurance Producers follow and our specific suggested language for each provision is included in Appendix A.

A. There should be a limited lines licensure option for Pet Insurance Producers.

NAPHIA encourages the Working Group to retain a limited lines license option for Pet Insurance Producers in the Model Law, but to adopt our proposed requirements for those limited lines licensees. This approach will benefit consumers via focused training for producers who sell only Pet Insurance products.

As a general matter, producers licensed under a major line of authority undergo substantial education (at least 20 hours under the NAIC’s Uniform Licensing Standards)⁹ and fulfill several requirements before becoming eligible for a license, and then they are subject to continuing education requirements. The NAIC’s Producer Licensing Model Act – adopted in some form in every state – requires a thorough examination testing applicants’ knowledge of the line(s) of authority for which s/he is applying, and the duties and laws/regulations pertaining to insurance producers. State insurance regulators develop these examinations and approve pre-licensing courses of study, where applicable.

There is no dispute that these major-line producers are qualified to sell Pet Insurance, along with other lines of insurance covered by their particular license. Consequently, NAPHIA’s suggested Section 6 does not contain any additional licensure qualifications for these individuals.

For individuals who intend to sell only Pet Insurance, however, a less onerous and more targeted licensure path than the major lines option should be available. As discussed further in section (B), this licensure option would be tailored to Pet Insurance and would include robust education and examination requirements. Under NAPHIA’s framework, the difference between holding a major lines license and a Limited Lines Pet Insurance Producer license is the focus on Pet Insurance products, rather than *all* P/C or accident and sickness products.

Retaining a limited lines licensure option in the Model Law with robust education and examination requirements will promote greater knowledge about these relatively new products among the producers who actually sell the lions’ share of the product. Because multiple states already offer a limited lines licensing path for Pet Insurance, keeping the limited lines option in the Model Law also will generate clarity and uniformity in the market, and avoid complicated licensing reciprocity issues going forward.¹⁰

B. Limited Lines Pet Insurance Producers, like all producers, should receive robust training on the insurance products they sell, consumer protections, and ethical insurance sales practices.

To adequately protect consumers, the limited lines licensure path must include appropriate and meaningful education and examination components. NAPHIA therefore recommends the following requirements for Limited Lines Pet Insurance Producers:

⁹ *Revisions and Clarifications to the Uniform Licensing Standards*, NAIC (2011).

¹⁰ See NAIC Producer Licensing Model Act §§ 8 and 16 (addressing reciprocity in scope of authority for nonresident producers who receive limited lines producer licenses in their home states).

- Completion of a pre-licensing training course that devotes multiple hours of instruction – within an overall 10-hour training – to each of the following topics:
 - consumer protection;
 - Pet Insurance products, including required consumer disclosures (Section 4);
 - ethical sales practices; and
 - duties applicable to insurance producers; and
- Passage of a substantive, regulator-approved, examination that specifically tests applicants’ knowledge of each of the topics covered in the training course.

Our suggested language clarifies that these requirements are in lieu of the qualifications and requirements required for major lines producers – the goal being to hone this licensure option specifically for Pet Insurance. Today, Pet Insurance is not a focus of the major lines’ license training or examination, so our proposed requirements for Limited Lines Pet Insurance Producers actually would *increase* the level of knowledge among producers about these products. Also, consistent with the Producer Licensing Model Act, and to ensure that the training course and examination are substantive and meaningful, both would be developed under rules prescribed by the insurance departments.

The draft Model Law, on the other hand, does not contain explicit education or examination requirements for limited lines licensees. Instead, the Model Law requires and relies on insurer certifications as to the trustworthiness and competence of their limited lines appointees. We urge the Working Group to adopt NAPHIA’s approach, which contains clearer standards and will better ensure that individuals selling Pet Insurance are in fact knowledgeable about those products and insurance laws.

The Model Law’s insurer certification requirement is unnecessary and less clear to implement than a blanket education and examination requirement for Limited Lines Pet Insurance Producers. First, insurance licensees already are subject to 18 U.S.C. § 1033, which generally bars from participation in the business of insurance individuals convicted of crimes of moral turpitude. In practice, insurers and/or brokerage firms conduct background checks on individual licensees to make sure they are not running afoul of this law. A separate certification as to “trustworthiness” – a term susceptible to varying subjective interpretations – is therefore unnecessary and arguably less effective than the mechanism already in place.

Moreover, insurers’ certification as to individuals’ “competence” to serve as Limited Lines Pet Insurance Producers is less reliable and far less consistent in application than a standardized education and examination requirement. NAPHIA believes its approach will better protect consumers by ensuring that a standardized training and testing process is in place.

We therefore urge the Working Group to omit the insurer certification requirement and incorporate NAPHIA’s suggested qualifications into the limited lines licensure framework.

C. Pet Insurance Producers should provide sufficient training and compliance oversight for Pet Retailers with whom they work.

Another key component of insurance licensure regimes is proper oversight. It is essential for consumer protection. NAPHIA’s suggested language, like the draft Model Law, contains a registration mechanism by which licensed Pet Insurance Producers assume responsibility for compliance with the provisions of the Model Law by the Pet Retailers with whom they work. Coupled with NAPHIA’s suggested language for Section 5 (Violations), which clarifies insurance regulators’ direct authority over Pet Retailers, this registration mechanism also would put affirmative oversight obligations on Pet Insurance Producers (also directly regulated) that could be monitored and enforced by insurance regulators.

Both the NAPHIA construct and the Model Law draft require Pet Insurance Producers with whom Pet Retailers are registered to:

- Ensure that Pet Retailers comply with 18 U.S.C. § 1033;
- Designate a licensed employee responsible for ensuring compliance by Pet Retailers with insurance laws, and for completing fingerprinting and background check requirements;
- Provide training for registered Pet Retailers’ employees on general types of Pet Insurance products offered and relevant disclosures that Pet Retailers will be obligated to make (discussed below); and
- Use reasonable means at their disposal to ensure compliance by Pet Retailers with provisions in the Model Law.

We strongly support retention of all of these provisions with a few modifications discussed below.

On a technical note, the draft Model Law requires registration of Pet Retailers with the limited lines licensee. Based on the entity definitions and classifications laid out above, we urge the Working Group to require registration of Pet Retailers with a Pet Insurance Producer, which would incorporate producers licensed under either the major lines or limited lines option.

The draft Model Law and NAPHIA approaches both require Pet Retailer training by the producers with whom they are registered. The Model Law draft, however, contains more onerous requirements for Pet Retailer training materials than for *producer* training materials (e.g., mandatory filing upon a producer license application and whenever material changes occur). To better align with current practice and calibrate these requirements for Pet Retailers’ non-sales role in the marketplace, we recommend that Pet Retailer training materials – like Pet Insurance Producer training materials – be subject to any regulations promulgated in the state with respect to such materials, and be provided to regulators upon request.

Finally, the draft Model Law would require the designated supervisory employee/ Designated Responsible Producer to hold a full P/C license. If the Working Group adopts NAPHIA’s approach with respect to Limited Lines Pet Insurance Producer licensure qualifications (e.g., thorough Pet Insurance-specific education and examination), we believe the

designated employee should be any Pet Insurance Producer, regardless of whether s/he holds a major lines or limited lines license. For reasons covered at length above, all Pet Insurance Producers will be properly equipped and sufficiently knowledgeable to help ensure compliance with the Model Law by registered Pet Retailers.

V. PROVISIONS AND REQUIREMENTS FOR UNLICENSED PET RETAILERS

Under the NAPHIA construct, like the Model Law draft, Pet Retailers must:

- Be registered with a licensed producer;
- Comply with 18 U.S.C. § 1033;
- Ensure that their employees complete proper training requirements regarding Pet Insurance products (with materials and trainings provided by the Pet Insurance Producer with whom they are registered); and
- Generally, comply with all of the terms and restrictions in the Model Law.

Because these items are addressed above with respect to Pet Insurance Producers’ oversight obligations, we omit further discussion here regarding our support for these requirements and our suggested modifications to the Model Law language.

A. Permitted and prohibited activities for unlicensed Pet Retailers should be clearly enumerated and ensure that Pet Retailers are not engaging in licensable activities.

1. *Prohibited Pet Retailer Activities*

Again, NAPHIA does not believe that Pet Retailers should sell, solicit, or negotiate Pet Insurance – activities reserved under the NAIC’s Producer Licensing Model Act for licensed producers. NAPHIA further contends that unlicensed individuals working for Pet Retailers should not engage in activities that would suggest to consumers that they are licensed or that they have a level of insurance expertise that they do not.

To maintain a very clear line between licensed producers’ role and unlicensed Pet Retailers’ role related to engagement with Pet Insurance consumers, NAPHIA recommends generally precluding Pet Retailers from participating in any activities directly related to a specific insurance policy, including enrollment, delivery of fulfillment materials, claims administration, premium collection, etc. This also would entail a prohibition on Pet Retailers receiving compensation or other valuable consideration based on the ultimate purchase of an insurance product. NAPHIA contends that elimination of this variable remuneration will diminish any incentive for Pet Retailers to stray into activities and conversations that should be conducted by licensed entities (e.g., sales-type conversations).

As discussed in detail above, we also suggest that Pet Retailers be prohibited from discussing or advising on specific insurance topics for which they are not properly trained. To help clarify this line between “general” and “specific” information, prohibited Pet Retailer activities under NAPHIA’s framework would include:

- Evaluating or interpreting the technical terms, benefits, and conditions of the Pet Insurance coverage, including analyzing or opining on coverage for any specific pet condition;
- Evaluating or providing advice concerning a prospective purchaser's existing insurance coverage; and
- Holding himself or itself out as a licensed insurer, licensed producer, or insurance expert.

2. *Permitted Pet Retailer Activities*

NAPHIA believes that Pet Retailers' role should be limited to discussing general information – as outlined above – about Pet Insurance. This would include, though, providing general information and opinions about specific Pet Insurance products and experiences with specific pet insurers and Pet Insurance Producers. Our objective here is to strike an appropriate balance so that Pet Retailers do not have to provide information about *every* Pet Insurance product, Pet Insurance Producer, or pet insurer in the marketplace, but could, for instance, discuss and offer materials on one or more products with which they have had a good experience.

Pet Retailers do have a valid interest in educating their customers about the availability of Pet Insurance and about Pet Insurance Producers with whom they have worked. As previously noted, these conversations should be allowed – for example – in a vet's office in the same manner in which a particular brand of diet pet food or an exercise or behavioral training program would be discussed. Because of the general nature of these communications, however, a producer license should not be required for Pet Retailers. Instead, the proper division of roles is for Pet Retailers who engage directly with prospective Pet Insurance policyholders to generally educate (as described in detail throughout this letter) and for licensed entities to address technical insurance questions and complete the sale of insurance policies online or via a call center.

Restricting Pet Retailers' role to providing general information also cuts down on compliance risk and resources required for effective regulatory oversight. There are legions of current and potential Pet Retailers in the United States. From regulators' perspective, allowing these entities to engage in insurance sales activity could present a massive oversight and consumer protection challenge. By limiting licensable activities to Pet Insurance Producers, direct oversight could be focused on that pool of licensees (and, as discussed in detail above, they in turn will ensure that the Pet Retailers with whom they work are operating within the Model Law's parameters). As referenced above regarding Section 5, however, NAPHIA believes regulators should have sufficient scope of authority to "reach" Pet Retailers who are not complying with the law if they so choose.

VI. THE MODEL LAW SHOULD CLEARLY DISTINGUISH BETWEEN GENERAL INFORMATIONAL MATERIALS DISTRIBUTED BY PET RETAILERS AND POLICY-SPECIFIC DISCLOSURES PROVIDED BY LICENSED PET INSURANCE PRODUCERS.

A. Section 4 Disclosures and other Policy- or Contract-Specific Information Should be Distributed by Pet Insurance Producers, not Pet Retailers.

Another major difference between the Working Group’s current Model Law and NAPHIA’s approach is the type of information and disclosures that should be delivered to consumers by Pet Retailers versus licensed insurance entities. We encourage the Working Group to clearly distinguish between traditional, short, easy-to-read marketing materials with limited disclosures (delivered by Pet Retailers) and lengthier, detailed policy-specific disclosures required under Section 4 of the Model Law (delivered by Pet Insurance Producers).

The Model Law, in current form, requires Pet Retailer materials to include:

- Identity, contact information, and license number of the licensed selling entity;
- Department of Insurance consumer hotline number;
- A statement that the purchase of Pet Insurance is not required; and
- Explanation that the Pet Retailer may not answer technical questions about insurance products or evaluate a consumer’s existing coverage.

NAPHIA’s framework contains similar disclosure and information requirements for Pet Retailer materials (with slight wording modifications to reflect our recommended terminology). We agree that this information is helpful for consumers and that these disclosures can reasonably be included in general marketing materials for Pet Insurance products (e.g., traditional tri-fold brochures with basic information about a product). We generally caution, however, against mandating state-specific information in brochures that are designed for nationwide or multi-state distribution.

Moreover, the explanation regarding what Pet Retailers may and may *not* discuss with respect to insurance products is consistent with NAPHIA’s recommendation that Pet Retailers should only provide general information and should not have any role in the negotiation, sale, solicitation, or administration of Pet Insurance policies. We therefore encourage the Working Group to retain these provisions related to Pet Retailer materials.

We also support providing in Pet Retailers’ marketing materials a generic statement about where to find more specific disclosures and information about Pet Insurance policies. For instance, a brochure could state: “For additional disclosures and information related to a specific Pet Insurance product, please visit [Pet Insurance Producer’s] website at [insert website] or call [insert Pet Insurance Producer phone number].”

The Model Law goes much further, however, and requires delivery of Section 4 disclosures by *either* the Pet Retailer or a licensed entity selling the insurance product, and also would permit delivery of fulfillment materials by Pet Retailers. NAPHIA urges the Working

Group to require delivery of these policy-level, sales-related materials by licensed Pet Insurance Producers, not Pet Retailers.

First, Pet Retailers' dissemination of policy documents and detailed disclosures about Pet Insurance products is inconsistent with the required disclosure above that Pet Retailers are *not* permitted to discuss technical questions about insurance policies. Section 4 disclosures are those specific to a particular Pet Insurance product being bought by a consumer. It seems incongruous to allow Pet Retailers to provide these materials, while also prohibiting them from discussing them in any detail or answering questions about them.

Second, while Pet Retailers will receive some training by Pet Insurance Producers in order to disseminate general information about these products, they will not be trained to the same degree as Pet Insurance Producers. The robust and relatively detailed Section 4 disclosures suggest a level of knowledge and insurance expertise that Pet Retailers likely will not possess, and delivery of these disclosures by Pet Retailers may actually mislead consumers to believe that they are fully trained and licensed entities.

Finally, because of the importance of the Section 4 disclosures for consumers, it is equally important to ensure that they are consistently provided. The best way to safeguard that these disclosures are reliably delivered, we think, is to put the delivery obligation on the licensed Pet Insurance Producer (i.e., the selling entity). That way, there is no confusion about the "who-what-when" of these disclosures and regulators will be assured that Pet Insurance purchasers receive them with *every* policy sold.

B. Written consumer acknowledgements and/or posting of disclosure signs in physical locations are not appropriate or necessary in the Pet Retailer or Pet Insurance Producer contexts.

NAPHIA strongly urges the Working Group to refrain from imposing onerous acknowledgment and/or posting requirements for disclosures in the Pet Retailer or Pet Insurance Producer context. As explained above, conceptually, Pet Retailers will provide short, simple materials that do not contain policy-specific information (with the limited marketing-type disclosures discussed above) to their customers; licensed Pet Insurance Producers will provide the lengthier, policy-specific disclosures required by the Model Law to Pet Insurance purchasers. For reasons explained below, neither of these scenarios warrant written acknowledgements by consumers or posting signs in physical locations.

First, due to the nature of the materials provided by Pet Retailers (e.g., tri-fold marketing brochures), written acknowledgments and/or posting signs at every location where insurance contracts are executed does not make practical sense. Under NAPHIA's construct, for instance, insurance sales would not occur in any Pet Retailer location. This approach is not workable and it does not provide any meaningful benefit to consumers. Instead, in the Pet Retailer context, the limited disclosures contained *in* the marketing materials (listed above) provide an appropriate level of information for consumers who are, at that point, potentially considering purchasing Pet Insurance.

The Model Law’s acknowledgement/posting requirements also are unwarranted and unsuitable in the Pet Insurance Producer context with respect to Section 4 disclosures. Foremost, these requirements are not imposed in other P/C insurance lines (e.g., home or auto) that have much larger markets, are legally mandated coverages, and have starkly different liability and property exposures than Pet Insurance. We perceive no policy justification for singling out a voluntary product like Pet Insurance for such burdensome obligations.

Administratively, these types of requirements would be difficult and costly for Pet Insurance Producers to implement. Posting signs in physical locations where contracts are executed is simply inconsistent with how Pet Insurance is sold (online and through call centers). Written consumer acknowledgements online and over the phone also present logistical difficulties. We know from consumers’ general purchasing behavior, for instance, that additional requirements and “clicks” on online platforms prompt consumers to abandon purchases. In a new, low-penetration market like ours, unnecessary barriers to purchases will only stifle growth and result in fewer pets being protected.

Further, it is not clear that on-the-spot acknowledgements or postings are meaningful or particularly helpful for consumers, particularly when compared to a mechanism like a free look period that gives consumers a period of time to study and understand the product they have purchased. Even with clear and effective disclosures provided in advance of enrollment, typical consumer behavior and purchase practices indicate that consumers may not take the time to thoughtfully process the information in a point-of-sale context. We therefore believe that if the policy objective of a written acknowledgement/posting requirement is to ensure that consumers stop and consider the disclosures and product they are being presented, a free look period would be a more effective means to that end.

Finally, NAPHIA’s proffered “Things to Consider Guide” would help consumers identify important issues to consider as they review the disclosures and the policy. This guidance would be provided on the insurer’s website as a pre-sale evaluation tool and also when consumers receive their policy fulfillment materials so they can further assess the policy during the free look period. Again, we think this is a more effective approach to raising consumer awareness about important policy information.

For the foregoing reasons, we strongly urge the Working Group to refrain from imposing any written acknowledgement or physical posting/signage requirements related to Pet Retailer or Pet Insurance Producer disclosures, and instead, to consider offering consumers a free look period and a “Things to Consider Guide” to help them conduct a meaningful review of the Model Law’s disclosures and their policies.

* * *

On a related topic, but slightly outside the scope of this comment letter, NAPHIA recommends that the Working Group take this opportunity to provide industry-wide clarity and uniformity regarding licensed Pet Insurance adjusters in the Model Law. We plan to submit separate comments on a proposed framework for licensed adjusters, including recommended language for a new section in the Model Law.

Thank you for your consideration of NAPHIA's views and recommendations. We look forward to continued discussions with the Working Group and other stakeholders. In the meantime, I would be happy to provide additional information or answer any questions you might have.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kate L. Jensen', with a long horizontal flourish extending to the right.

Kate L. Jensen
Counsel, North American Pet Health Insurance Association