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Delivered via Electronic Mail – Donald.Beatty@SCC.Virginia.Gov

Donald Beatty
Chair, Pet Insurance (C) Working Group
Virginia State Corporation Commission
1300 E. Main Street
Richmond, VA 23219

RE: NAPHIA Comments on Draft Pet Insurance Model Act

Chairman Beatty and Working Group Members;

NAPHIA offers the following comments in advance of the Pet Insurance Working Group's call on April 29, 2021. NAPHIA applauds the Working Group's significant efforts to date to craft a consumer-friendly, workable model law for pet insurance. NAPHIA remains in favor of a regulatory framework that improves industry transparency and consumer disclosures, and allows for product innovation to meet the needs of all consumers.

We continue to have concerns, however, about proposals to regulate this industry with unnecessarily prescriptive policy requirements and limitations (we also are unclear on the problems these proposals are attempting to address, given the very low rate of consumer complaints reported by NAPHIA members and the lack of any industry data to contradict those reports or demonstrate consumer dissatisfaction). Dictating terms and coverage of pet insurance policies via model legislation is not appropriate for this voluntary product, and it will curb growth and innovation in this relatively new market. Today, take-up rates for pet insurance, which are growing steadily each year, remain relatively low compared to other voluntary products; mandating and/or limiting available coverage options at this stage will price many or most pet owners out of the market and substantially limit consumer choice.

Both NAPHIA members and regulators want consumers to have options for meaningful coverage (i.e., real financial assistance in the event their pets are injured or ill) at a premium they can afford, and we want them to be happy with their purchase. Regulators should ensure that products are priced fairly and that prospective purchasers fully understand what they are buying and what is and is not covered. Accordingly, as we revisit key provisions in the Model Act, we urge the Working Group to refrain from imposing overly rigid requirements and instead, to rely

on substantive and understandable consumer disclosures, clear and consistent terminology, a properly licensed sales force, and sound regulatory oversight as the best go-forward guardrails for the industry.

For these reasons, NAPHIA urges the Working Group to:

- 1) Eliminate the “renewal” definition and related preexisting condition and waiting period restrictions that were adopted on the last call without opportunity for all Working Group members and stakeholders to evaluate the new provisions or their potential impact on the market;
- 2) Amend Section 7(B) of the Model Act to allow for continued use of waiting periods in pet insurance policies, a longstanding, ubiquitous feature of pet insurance that is vital to controlling costs for consumers; and
- 3) To the extent you deem it necessary at all, revise the drafting note proposed by the Center for Insurance Research (CIR) pertaining to the scope of “verifiable sources” within the definition of “preexisting condition.”

I. NAPHIA opposes the renewal-related language that was summarily adopted by the Working Group during its last meeting and we urge the Working Group to remove that language and rely instead on meaningful consumer disclosures regarding renewals.

During the last Working Group meeting, a new definition of “renewal” and outright bans on the use of preexisting condition exclusions and waiting periods upon renewal of pet policies were proposed in the chat function of Zoom. It was the first time the majority of the call’s participants had seen the proposed language. Consequently, there was virtually no discussion among regulators or stakeholders before the language was adopted.

NAPHIA has since had an opportunity to study the proposal and we do have serious concerns. Regulators should not foreclose insurers from offering or consumers from choosing term-limited accident and illness coverage. Notably, that option would provide more generous coverage for the policy term than accident-only policies (which currently are approved by all states and provide no coverage for illness for any period of time), but could still be offered at an affordable price that would be attractive to many consumers. Further, effectively *mandating* that insurers take on the risk of covering long-term, costly illnesses for pets’ lifetimes could drive insurers to offer products that do not cover certain or any chronic conditions in an attempt to offer more affordable choices to consumers.

For all of the reasons above, NAPHIA opposes inclusion in the Model Act of these categorical prohibitions for renewals. Instead, as the Model does for other key policy terms like preexisting condition exclusions, waiting periods, etc., the Working Group should require clear notification to consumers about how product renewals operate.

Disclosures regarding renewals should be provided to consumers before purchase of a pet insurance policy, with the policy's fulfilment materials, and with any renewal notices as prescribed by state laws – and, importantly, to regulators upon request. Contents of these disclosures could and should include, for instance, specific examples of:

- How any preexisting condition exclusion or waiting period applies upon renewal;
- Whether the policy is limited to a specific term of coverage; and
- What a term policy means for consumers who want to purchase coverage beyond that term (e.g., clear statements that “this is term coverage for one year,” “this coverage does not automatically renew,” and examples of what that means for conditions arising during the initial term for subsequent terms of coverage).

II. NAPHIA recommends redrafting Section 7(B) of the Model Act to allow continued use of waiting periods – contained in pet insurance filings for nearly 40 years – which keep policy premiums low and provide consumers choice in coverage.

As communicated previously, NAPHIA strongly opposes any efforts to:

- Impose blanket duration limits on waiting periods;
- Prohibit the use of waiting periods *and* pre-existing condition exclusions; and
- Require itemization of pet insurance policies to charge different premiums during waiting periods.

Consistent with the Working Group's approach to Section 7(A) of the Model Act – and based on the same rationale – NAPHIA recommends replacing the current text of 7(B) with the following sentence:

Pet insurers may issue policies that apply waiting periods with appropriate disclosure to consumers. Waiting period lengths may vary by condition.

If the Working Group members feel that consumers would benefit from more detailed disclosures regarding waiting periods, NAPHIA suggests the following additional language for waiting period disclosures already included in section 4(A)(3):

Any policy provision that limits coverage through a waiting or affiliation period, a deductible, coinsurance, or an annual or lifetime policy limit. *If a policy applies waiting periods, details regarding the waiting period(s) shall be clearly disclosed to the consumer, including waiting period duration(s) and how coverage is impacted during and following the waiting period(s).*

Since the earliest products entered this market (almost 40 years ago), pet insurers have used preexisting condition exclusions *and* waiting periods in tandem to guard against adverse selection, keep premiums low for all policyholders, and give consumers a variety of coverage options. Waiting periods have always been included in rate filings with Insurance Departments and subject to regulator review.

Restricting the use of waiting periods will result in higher premiums. They are designed to limit the adverse selection that can occur when pet owners purchase insurance for conditions that existed prior to the policy purchase. Without waiting periods, for instance, an owner could notice a dog starting to limp in the morning, buy insurance online in the afternoon, and then seek care for that limp the next day (pet lovers generally will not wait for the duration of a waiting period to seek care for an injured or sick pet). Ultimately, waiting periods protect both insurers and consumers from the high costs of adverse selection by providing a reasonable opportunity to investigate and determine legitimate coverage claims.

Today, waiting periods vary by type of condition and between carriers and products. Orthopedic condition coverage, for instance, commonly has a waiting period of up to twelve months because that is often how long it takes for symptoms to show. On the other hand, more common illnesses and accidents typically have much shorter waiting periods (e.g., a couple of days to two weeks) because symptoms are likely to show sooner.

Waiting periods' impact on claims experience is built into insurers' base loss assumptions and ultimately, as time goes on, is reflected in premium levels. In other words, today's premium levels depend on the longstanding and widespread use of waiting periods in pet insurance products. Removing waiting periods would result in a significant increase in coverage for conditions and illnesses that pre-date the insurance purchase and cause premiums to go up.

Currently, during applicable waiting periods, policyholders pay the full premium amount (i.e., the orthopedic and illness coverages are not separated out from the entire premium during their respective waiting periods). If the Working Group were to require such itemization of premiums during waiting periods, pet insurers may opt – for sake of simplicity and administrative efficiency – to not cover some types of conditions at all for the life of the policy.

Use of waiting periods in conjunction with some type of preexisting condition exclusion is not unique to pet insurance. In the P&C space, flood insurance is another example. Flood insurance policies, including policies offered through the National Flood Insurance Program, typically have a 30-day waiting period and they exclude coverage for damage not caused by a covered flood event (e.g., mold or moisture damage that predated the flood). Dental and critical care policies also employ these provisions in tandem to minimize adverse selection and keep costs low. Dental insurance, for instance, commonly carries three- to twelve-month waiting periods for basic to orthodontic care and does not cover preexisting issues (e.g., teeth that already are missing before you get your policy). Similarly, coverage for critical illnesses often carry waiting periods and require diagnosis sometime after your policy purchase (i.e., does not cover any pre-policy diagnoses).

Here, again, clear definitions and meaningful disclosures offer a better way to protect consumers *and* minimize negative market effects. According to NAPHIA members, there is a very low incidence of consumer complaints related to waiting periods and we have not heard any contrary data from regulators. Existing processes and disclosures (including those required in California, by far the largest pet insurance market) are working well and there is no need to take a more prescriptive approach in the Model Act.

III. Any drafting note added to clarify the “preexisting condition” definition should not unduly limit insurers’ ability to use *all* verifiable sources to satisfy their burden of proving that an exclusion applies.

CIR has proposed a drafting note on “verifiable sources” to accompany the definition of “preexisting condition.” The proposed drafting note is so limited, however, that it would not even include as a “verifiable source” a pet owner’s own application for insurance or any other statements recorded in an insurer’s records (for instance, statements recorded by a call center when someone applies for or later enquires about the coverage). Additionally, “verifiable” means “able to be checked or demonstrated to be true, accurate, or justified.” So, CIR’s proposed language regarding use of social media posts with questionable authenticity is unnecessary.

NAPHIA therefore proposes – if the Working Group determines a drafting note is necessary at all given the “verifiable” guardrail already in place – to revise the drafting note to read:

The definition of “Preexisting Condition” includes a reference to “verifiable sources.” “Verifiable sources” is not defined in the model, but the Pet Insurance (C) Working Group recommends that adopting states and industry members subject to the model treat the following as examples of “verifiable sources”:

- *Veterinary records;*
- *Shelter records;*
- *Police or animal control incident reports;*
- *Prior insurance claims; and*
- *Any other written or electronic records generated by pet care providers (e.g., kennels, daycare or play facilities, private care providers), pet owners, pet insurers, or insurers’ producers, affiliates, or vendors.*

We appreciate your consideration of our positions and look forward to discussing these issues further with the Working Group.

Sincerely,



Kate Jensen
Counsel, North American Pet Health Insurance Association