February 13, 2020

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”) writes in response to questions posed by regulators on the National Association of Insurance Commissioners’ (“NAIC”) Pet Insurance (C) Working Group’s (“Working Group’s”) December 19, 2019 call. In particular, regulators asked (1) for additional clarification on how preexisting condition claims are considered and processed; and (2) how to differentiate pet insurance from pet wellness programs. Each of these points are more fully explained below.

I. Preexisting Condition Exclusions – Coupled with Robust Consumer Disclosures and Protections – Allow Insurance Providers to Cover Legitimate Claims while Keeping Premiums Affordable.

Pet insurance policies generally exclude from coverage claims based on preexisting conditions. There are a number of reasons for this:

- First, preexisting conditions exclusions keep premium prices affordable. Pet insurance companies price their products to pay eligible claims. If pet insurance policies cover conditions that are known at the time the policy commences, the result would be increased premium prices for all pet owners. This is simply a matter of math and solvency.

- Second, there is a fairness issue. We believe it is unfair for one part of the market (pet owners who purchase coverage for pets with no preexisting conditions) to subsidize another part of the market (pet owners who purchase coverage for pets who are already sick or injured) when the latter group is sick or injured at the time coverage is purchased. This is very different from coverage for accidents and sickness that develop after coverage is purchased because the product is priced to cover such losses, so all policyholders are paying pursuant to their risk of loss.
Third, allowing a pet owner to buy insurance to cover a pet’s existing condition – the equivalent of “buying homeowner’s insurance when your house is on fire” – transforms the product from an insurance policy to a financing mechanism to pay for a pet’s current medical condition. While this may be a legitimate desire for some pet owners, it is not insurance because there is no fortuitous event – the event has already happened.¹

Because pet insurance policies generally exclude preexisting conditions, it is essential that there be a clear understanding as to how to determine when such a condition is present. The current, common understanding as to what constitutes a preexisting condition, which has been used by the pet insurance industry for many years and has worked well in California since the state’s pet insurance law went into effect in 2015,² matches the initial draft definition of preexisting condition in the draft model under consideration by the Working Group. As originally drafted, the proposed definition, which is identical to California law, provides that a preexisting condition “means any condition for which a veterinarian provided medical advice, the pet received treatment for, or the pet displayed signs or symptoms consistent with the stated condition prior to the effective date of a pet insurance policy or during any waiting period.”³

On your December 19, 2019 conference call, questions were raised regarding whether a preexisting condition determination should be based on a pet displaying “signs or symptoms consistent with the stated condition prior to the effective date of a pet insurance policy or during any waiting period.” There was some discussion of deleting the words “signs or symptoms” and replacing them with the undefined term “clinical signs.”

We believe the initial draft of the definition, matching California law and including the words “signs and symptoms,” should be maintained. As noted above, this concept of preexisting conditions has served consumers and the industry well for many years, even before it was codified in California law five years ago. There are substantive reasons for this. Basing the determination of a preexisting condition on a veterinarian’s medical advice or treatment are excellent standards, but cannot capture all preexisting conditions for the simple reason that some pets with preexisting conditions will not have seen a veterinarian or received treatment prior to its owner securing insurance coverage. For example, at the time a pet is acquired, the animal might not have seen a veterinarian or the new owner may not have access to the pet’s past medical history. Nonetheless, the pet could have existing medical issues. A dog that is vomiting or with diarrhea, for example, could be exhibiting signs or symptoms of worms; a dog that is limping could be exhibiting signs or symptoms of an

¹ Pet insurance is not the same as health insurance for humans, which, under current law, covers preexisting conditions. Pet insurance is an optional product that covers an estimated 2% of pets in the United States. It is not a health insurance product, but rather a property and casualty line, reflecting the pet’s status as property of the policyholder. Finally, the public policy interest in covering human health is significantly different from coverage of pets.
² See CA AB 2056 (2014) (codified at CA INS CODE §§ 12880 – 2880.5).
³ CA INS CODE § 12880(e); Pet Insurance Model Act (draft Oct. 2, 2019) § 3(E). NAPHIA has proposed to add the phrase “or affiliation” after “waiting” to make it consistent with the defined term “waiting or affiliation period.” See Letter from John Fielding, NAPHIA, to Don Beatty, NAIC (Oct. 31, 2019), available at https://content.naic.org/sites/default/files/call_materials/NAPHIA%252520Letter%252520To%252520Pet%252520Insurance%25252028%252520%252520%252520Working%252520Group%25252010-31-19-c2%5B1%5D%5B1%5D.pdf [hereinafter “NAPHIA Letter”].
injured leg or paw. Moreover, there is the very real possibility that a pet owner decides to wait to purchase insurance until the pet is sick – until “the house is on fire.” This does not mean the pet owner has fraudulent intent. The owner might not understand how insurance works and might not know any better than to make a claim for a condition that existed prior to purchase of coverage. But that does not make it right or workable for insurers.

Limiting preexisting condition exclusions to only conditions that were diagnosed by a veterinarian prior to coverage being placed would, essentially, require a new pet owner to delay securing coverage until the pet is examined by a veterinarian. This would impose a significant burden on pet owners in terms of time (taking the animal to the veterinarian) and money (the cost for the vet appointment), and at the very least, it would delay pet owners’ ability to obtain the coverage that they desire, resulting in their pets going uninsured and risks falling on the owners themselves. Another compounding cost of requiring pets to have veterinary examinations prior to the placement of coverage could arise if veterinarians increase the diagnostics and testing that they undertake as a precautionary measure to scan for all possible preexisting conditions – procedures that they would not necessarily have otherwise undertaken but for their concern about the need to uncover every possible preexisting condition for insurance purposes. In other words, this could lead to increased – and unnecessary – medical testing and costs. This does not make sense in this market. As the Pennsylvania Insurance Department noted in its comment letter to the Working Group, pet insurance “is an optional insurance product and if we want the market to grow, we cannot create significant financial barriers to entry.”

Thus, we believe the current definition works as a substantive matter by providing a clear line for both insurers and consumers to understand what is considered a preexisting condition. Moreover, consumers are provided significant protections in connection with preexisting conditions through: (1) the consumer disclosures and free look period provided under the Working Group’s draft model act, ensuring that consumers have the information and time to know and understand what they are purchasing; and (2) the robust and transparent claims and appeal processes that insurers have in place to address policyholder claims.

- **Disclosure/Free Look:** Under current California law, the Working Group’s draft model act, and the model act language NAPHIA has proposed, consumers are provided with information about preexisting conditions, time to fully review and understand the policy they have purchased (including preexisting condition coverage), and the right to cancel the policy for a full refund. (1) Prior to the purchase of a pet insurance policy, information as to whether the policy excludes coverage due to a preexisting condition and what the term encompasses is provided on the pet insurer’s website. (2) This information is again provided to the pet owner when the policy is delivered. (3) After purchase of the policy, the pet owner is given a 30-day free look period, during which time the policyholder may

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4 Email from Michael McKenney, Pennsylvania Insurance Department, to Aaron Brandenburg, NAIC (Oct. 30, 2019), available at https://content.naic.org/sites/default/files/call_materials/PA%252520Comments%5B1%5D%5B1%5D.pdf.

5 See CA INS CODE §§ 12880.2(a)(1)(A), (b)(1); Pet Insurance Model Act (draft Oct. 2, 2019) §§ 4(A)(1)(a), (G). The pet owner also can find out whether coverage excludes hereditary disorders, congenital anomalies or disorders, chronic conditions, or other exclusions or waiting or affiliation periods.

cancel the policy for any reason (provided a claim has not been made) for a full refund.\(^7\) Thus, a pet owner is provided with information about preexisting condition coverage prior to and at the time of placement, and given significant time to study the policy to determine if the coverage provided meets his or her needs.

- **Claims Process:** Although pet insurers process claims differently, all companies use objective measures to ensure that their claims processes are fair and effective. In general, claims are processed by teams that include medical professionals with veterinarian or veterinarian technician degrees. These individuals understand pet medical records and recognize the signs and symptoms that lead to particular illnesses. When analyzing a claim, these professionals generally review the medical record provided in the claim report, as well as information provided by the pet owner, which may include responses to questions when the policy was purchased.

- **Appeals Process:** If a claim is denied (whether because of a preexisting condition or any other reason), a robust appeals process is available to policyholders. Some companies have internal appeals processes, and others have external processes. Some NAPHIA members, for example, have a panel of third-party independent certified experts in their field whose decision on any medical issues is binding on the company, but not on the pet owner. This pet owner-friendly process guarantees that companies pay for eligible claims and that all pet owners are treated fairly.

Finally, we unfortunately do not collect and therefore are unable to provide the number of denials of claims based on preexisting conditions that were determined solely based on “signs or symptoms.” Nevertheless, based on the number of total number of policies placed, total claims made, and total claims denied based on preexisting conditions (information we do collect), we believe denials based on preexisting conditions not previously treated by a veterinarian are rare. For 2018 and 2019, claims denied where preexisting conditions were a factor made up only approximately 3.5% of all total claims, and approximately 11% of claims denials.

II. The Definition of Pet Insurance Should Clearly Indicate the Risks Covered, While Providing Flexibility for the Market to Evolve to Meet Consumer Demands.

Working Group members have raised questions as to what types of expenses are covered by pet insurance. Specifically, regulators have asked whether wellness programs would be included under the Working Group’s proposed definition of “pet insurance.”

As we noted in our comment letter to the Working Group dated October 31, 2019, we believe the Working Group’s proposed definition of “pet insurance,” reflecting California law, is a good start, but must be revised to adequately describe the risks covered currently by pet insurance.

\(^7\) See CA INS CODE § 12880.2(h)(2); Pet Insurance Model Act (draft Oct. 2, 2019) § 4(H)(2). NAPHIA has proposed some minor changes to the free look section of the Working Group’s draft model law. See NAPHIA Letter, supra note 3. NAPHIA also looks forward to discussing Section 7 of the Working Group’s draft model law, which appears to be based on draft legislative language from a bill that was ultimately not made into law in California in 2010 for many of the reasons we have cited in this letter. See 2010 CA AB 2411.
and to allow for the product to evolve and insurers to innovate in the future.\(^8\) Clearly defining what constitutes pet insurance will provide clarity to consumers, as well create a clear framework for regulators and industry to assess whether a product – such as a wellness program or other product – is or is not insurance.

As we recommended in our October letter, the definition of “pet insurance” should be revised to refer to “eligible expenses” as opposed to “veterinary expenses,” and the separate definition of “veterinary expenses” should be deleted.\(^9\)

“Veterinary expenses” is defined in the draft model act as “the costs associated with medical advice, diagnosis, care, or treatment provided by a veterinarian, including, but not limited to, the cost of drugs prescribed by a veterinarian.”\(^10\) Limiting pet insurance coverage to these costs is both too broad and too narrow. It is too narrow because not all covered expenses are “provided by a veterinarian.” For example, today, pet behavioral therapy may be conducted by a certified animal behavior specialist, not a veterinarian. Moreover, pet insurance, like other lines of insurance, evolves as the marketplace evolves. In the future, there may be other types of losses that pet insurers are able to cover and that pet owners want covered. Having a statutory definition that limits what is possible stifles the ability to innovate and meet consumer needs, and forces insurers to provide cookie-cutter policies. Product differentiation is essential for a robust and competitive market. A “one size fits all” approach will restrict market competition and it is not in consumers’ best interest.

The proposed draft’s definitions of “pet insurance” and “veterinary expenses” also are too broad, and could lead consumers to believe that some expenses are covered by pet insurance – or should be covered by pet insurance – when they are not. As noted above, the definition of “veterinary expenses” includes “the costs associated with . . . care, or treatment provided by a veterinarian.” “Care” and “treatment” are not defined and might be thought to include any number of expenses that are not related to an accident or sickness affecting a pet’s health. For example, a veterinarian’s office might sell or recommend a certain kind of dog bed, specialized cat food, or pet massages. These types of expenses are not covered by insurance, but consumers might believe they are because they relate to the “care…provided by a veterinarian” for their pets.

There is a better way to define pet health insurance that ensures consumers understand what is covered by a pet insurance policy, and that enables industry and regulators to delineate pet insurance from non-insurance services that might be provided by a veterinarian or other service provider. We recommend that “pet insurance” be defined as follows:

“Pet Insurance” means an individual or group insurance policy that primarily provides coverage for eligible medical expenses arising from (1) the covered pet’s sickness or (2) an accident involving the covered pet.

This definition works for the following reasons:

\(^8\) See NAPHIA Letter, \textit{supra} note 3.

\(^9\) \textit{Id.}

• It clarifies what is covered: medical expenses that arise out of the pet’s sickness or injury from an accident. These must be “eligible” expenses: excluded expenses, which are not provided for in the policy and which are disclosed to the consumer, would not be covered.

• It is not limited to expenses associated with a veterinarian; rather, the definition could encompass other medical costs arising out of accident or sickness. This allows for coverage of current medical expenses that might not be “provided by a veterinarian” (such as behavioral therapy provided by a certified animal behavioral specialist, as discussed above).

• It allows for other expenses to be covered.Although covered expenses are primarily for medical expenses arising from accident or sickness, pet insurance could cover other expenses, as provided for in the policy. For example, in addition to accident and sickness, a policy might cover check-ups, vaccinations, micro-chips, or other treatments that are related to a pet’s health, but are not contingent upon the pet being sick or injured. Such coverages could be included in the filed policy when offered as part of the policy form or as an endorsement by an insurance company.

• It is neither too broad, nor too narrow. The definition ensures that regulators, consumers, and industry know generally what is covered by pet insurance (medical expenses that arise out of the pet’s sickness or injury from an accident) without mandating coverage (all charges from a veterinarian, for example). Moreover, it provides flexibility to allow for an evolving market that meets consumer demands, while clearly characterizing the types of expenses to be covered and providing a bright line to distinguish pet insurance from non-insurance services.

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Thank you for your consideration of NAPHIA’s views. We look forward to continued discussion on the next Working Group call. In the meantime, I would be happy to provide additional information or answer any questions that you might have.

Sincerely,

John P. Fielding
Counsel, North America Pet Health Insurance Association