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October 30, 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 7 (Preexisting Conditions) and Section 8 (Reimbursement Benefits) of the Pet Insurance (C) Working Group’s (“Working Group”) draft model law (“Model Law”). For reasons set forth below, NAPHIA urges the Working Group to remove Sections 7 and 8 from the Model Law. We also encourage the Working Group to adopt NAPHIA’s proposed definition of “preexisting condition.”

I. NAPHIA Urges the Working Group to Adopt our Proposed Definition of “Preexisting Condition” and Remove Section 7 from the Draft Model Law.

- A. The Working Group should adopt NAPHIA’s suggested definition of “Preexisting Condition” to help consumers understand their coverage and for consistent administration of Pet Insurance claims.

Consumers’ understanding of what constitutes a Preexisting Condition is fundamental to their understanding of what is and is not covered under their Pet Insurance policies. It is therefore essential that the Working Group adopt a clear “Preexisting Condition” definition that is understandable by laypersons and that prompts consistent adjudication of Pet Insurance claims, including exclusions.

NAPHIA previously submitted to the Working Group our proposed definition of “preexisting condition” –

“Preexisting condition” means any condition for which any of the following are true prior to the effective date of a pet insurance policy or during any waiting period:

- i. A veterinarian provided medical advice;
- ii. The pet received previous treatment; or
- iii. The pet had clinical signs related to the stated condition.¹

The American Veterinary Medical Association (“AVMA”) has submitted a very similar proposed definition –

“Preexisting condition” means any condition for which a veterinarian provided medical advice, the pet received treatment for, or the pet displayed clinical signs related to *and contemporaneous with* the stated condition prior to the effective date of a pet insurance policy or during any waiting period. (emphasis supplied)

Though formatted differently, the proposed NAPHIA and AVMA definitions match, except for AVMA’s addition of the term “and contemporaneous with.”

NAPHIA’s Veterinary Advisory Team (“VAT”) does not believe that “contemporaneous with” is an appropriate addition to this definition because not all conditions are accompanied by consistently-displayed clinical signs. “Contemporaneous with” implies a temporal connection or relationship that does not exist in the presentation of many diseases. For example, chronic conditions like inflammatory bowel disease, skin allergies, and hypoadrenocorticism (Addison’s disease) can have a cyclical, waxing and waning presentation without any veterinary intervention.

To better reflect these medical realities, we encourage the Working Group to adopt NAPHIA’s approach requiring that Clinical Signs be “related to” the stated condition. Notably, NAPHIA’s suggested definition of “Clinical Sign” would further clarify that the sign must be an observable manifestation of a particular condition, as identified by a veterinarian, recorded in the pet’s medical history, or observed by another individual familiar with the pet (e.g., an owner, dog walker, trainer, etc.). Collectively, NAPHIA’s definitional framework provides appropriate parameters and clarity around Preexisting Conditions.

B. Section 7(A) of the Model Law should be removed to avoid unnecessary increases in Pet Insurance premiums for all consumers.

As drafted, Section 7(A) of the Model Law functionally would require pet insurers to cover all pets’ preexisting conditions – a requirement that would dramatically increase Pet Insurance premiums for everyone. The draft’s six-month look-back and forward-looking limitations on preexisting condition exclusions would allow pet owners to delay treatment of their pets’ preexisting conditions, but ultimately have them covered (today, it is common for pet owners to

¹ NAPHIA also has suggested adding a definition of “Clinical Sign” to the Model Law to provide further clarity. Our proposed definition is –

“Clinical sign” means an observable manifestation of a disease, injury, or abnormal physiological or behavioral state (as identified during a veterinarian’s examination of the pet; recorded in a pet’s medical record; or observed by any individual).

delay treatment of persistent conditions, e.g., skin masses, for longer than 12 months). It also would increase the complexity and uncertainty of administering claims. These resultant dynamics penalize the entire market in the form of higher costs, while benefiting only a segment of policyholders.

The second sentence in Section 7(A), moreover, appears to include a new definition of “Preexisting Condition.” This discrepancy between the Model Law’s definition and disclosure sections, and Section 7, will cause confusion for consumers, insurers, and regulators.

For reasons discussed above, NAPHIA encourages the Working Group to adopt our suggested definition of “Preexisting Condition” and utilize the Model Law’s robust disclosure requirements to properly inform consumers about what is and is not included in their Pet Insurance policies. Rather than mandating the depth and breadth of Pet Insurance, which has significant consequences for rates and availability of coverage, we urge the Working Group to focus on protecting consumers through sound, clear definitions and disclosures. NAPHIA further notes that our proposed “Important Things to Consider” guide would help highlight the issue of preexisting condition exclusions for consumers prior to and at the time of a policy purchase, and a free look period would give consumers further opportunity to evaluate applicability of any such exclusions.²

Ultimately, given the more effective consumer protections already included in the Model Law, Section 7(A) is unnecessary and would actually be detrimental in terms of cost of coverage and claims administration.

C. Section 7(B) also should be removed to avoid premium increases and loss of coverage for certain illnesses and conditions.

Section 7(B) appears to be drafted such that pet insurers may not have *both* preexisting condition provisions and waiting/affiliation periods. Further, to the extent an insurer opts to utilize a waiting/affiliation period, no premium may be charged during that time. NAPHIA urges the Working Group to remove this section to avoid potential unintended consequences for coverage availability and premium costs.

Currently, pet insurers use preexisting condition provisions *and* waiting periods in tandem to keep premiums low and to determine whether a particular condition is covered. The details of these provisions differ between carriers and products to offer consumer choice.

² Free look periods provide consumers with additional comfort and an opportunity to review the details of their purchase. It is not “free insurance” because (1) the cost of providing the free look is de minimis; and (2) unlike trial periods, where initial premiums may not have been collected but where the policyholder can nonetheless file claims and receive claims payments, the free look period contemplated by NAPHIA *would* involve consumers paying premiums up front (i.e., an outlay of cash by the consumer at the time of sale) and would expire when a consumer demonstrates an intent to use the purchased policy – i.e., when a claim is filed under the policy. No coverage is provided during the free look period and there is therefore no cross-subsidization by the insurer. If a consumer does cancel the policy after s/he files a claim, s/he would pay the pro rata share of annual premium for the time s/he held the policy.

As discussed above, mandates to cover preexisting conditions will significantly increase premiums for all policyholders. Restricting the use of waiting periods, likewise, will result in increased premiums. Waiting periods are designed to limit the exposure of insurance companies to the adverse selection that can occur when an owner's knowledge of his or her pet's health is not necessarily documented in the pet's medical records. For instance, without waiting periods, an owner could notice a dog starting to limp in the morning, buy insurance online in the afternoon, and then get care for that limp the next day. Waiting periods protect both insurers and consumers from the high costs associated with this type of behavior by providing a reasonable opportunity to investigate and determine legitimate coverage claims.

Further, waiting periods' impact on claims experience generally is built into insurers' base loss assumptions and ultimately, as time goes on, is reflected in premium levels. 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.

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., two weeks) because symptoms are likely to show sooner.

Differing waiting periods between Pet Insurance products offer consumers choice regarding the level of coverage for which they are willing to pay. For example, some pet owners might be very willing to accept a six-month waiting period for hip dysplasia knowing that, though they will not get coverage for that condition in the first six months, the premium for the overall product will be lower because of this waiting period. Also, notably, waiting periods already are included in rate filings reviewed by state regulators. If a state believes a certain waiting period for a particular condition is too long, it would be appropriate for the regulator to raise this with the insurer during the rate review process.

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.

We therefore urge the Working Group to avoid imposing overly prescriptive rules or restrictions related to waiting periods, which would diminish this consumer choice and potentially raise the cost of coverage for everyone. Here, again, NAPHIA believes that clear definitions and meaningful disclosures offer a better way to protect consumers *and* minimize negative market effects. The Model Law's Section 4 disclosures and NAPHIA's proposed "Important Things to Consider" guide also highlight waiting periods and how they operate as important provisions on which consumers should focus as they evaluate their coverage.

For these reasons, we urge the Working Group to rely on the tools already included in the Model Law and remove Section 7(B).

II. Section 8 Should be Removed From the Draft Model Law to Avoid Inconsistencies Within the Model Law and Overly Prescriptive Limitations on Permissible Claim Payment/Reimbursement Methods.

Section 8(A) would require reimbursement of covered expenses³ “without limitation,” except for applicable coinsurance. This provision ignores other factors that may limit reimbursements, such as deductibles, policy pay-out limits, etc., none of which are prohibited provisions or practices. In fact, Section 4 of the Model Law specifically contemplates use of: deductibles, coinsurance, annual and lifetime policy limits, and various methods to determine claim payments/reimbursements. All of these are important tools to keep premiums low for Pet Insurance consumers.

Second, Section 8(A) appears to be inconsistent with Section 8(B), which recognizes reimbursements limited by coinsurance *and* payment formulas based on “reasonable and customary charges” or benefit schedules. We therefore recommend removing section 8(A) to avoid unnecessary confusion.

Section 8(B), in turn, appears to duplicate disclosures already required under Section 4 of the Model Law. Specifically, subsections 4(B)-(D) require disclosure of:

- A summary description of the basis or formula on which the insurer determines claim payments under the policy;
- If an insurer uses a benefit schedule, the applicable benefit schedule in the policy; and
- If an insurer determines payments based on “usual and customary” or “reasonable and necessary” fees, a clear description of the insurer’s basis for determining those fees.

These disclosures, combined with what is already included in the insurance contract, provide sufficient protection for consumers. Additionally, NAPHIA’s proposed “Important Things to Consider” guide includes both reimbursement limits and bases for claims payments as items for further consideration by Pet Insurance buyers.

The framework already included in Section 4 of the Model Law is preferable to the language in Section 8(B) for multiple reasons. Sections (8)(B)(1) and (B)(2), for example, reference reasonable and customary charges by geographic area or metropolitan status. NAPHIA members report, however, that there is no single data source by geographic area (or otherwise) on reasonable and customary charges; rather, insurers base such charges on a variety of sources, including surveys, internal data, industry publications, AVMA pricing lists, etc. These bases must be reported under Section 4 of the Model Law and are included in policy contracts, which helps ensure consistency in insurers’ approach to determining these fees.

Further, the requirement in Section 8(B)(2) that insurers provide a side-by-side comparison of benefits schedules and reasonable and customary fees/charges conflates two separate approaches

³ NAPHIA has previously commented to the Working Group on the need to reference “eligible expenses” under the policy, rather than “veterinary expenses” to avoid misleading consumers about what is covered (“veterinary expenses” being too broad in cases where coverage does not extend to all costs incurred at a vet’s office, and too narrow when coverage includes costs incurred outside of a vet’s office).

to determining claim payments, and is inconsistent with the requirements in Sections 4(C) and (D) (requiring disclosure of certain information based on the type of reimbursement model elected by the insurer, not for other methods not used by the insurer). Sections 8(B)(1) and (B)(2) are overly prescriptive, confusing, and unnecessary, given other requirements already in the Model Law. We therefore encourage the Working Group to remove all of Section 8.

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

Sincerely,



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