

**Comments of the Center for Insurance Research and
the Center for Economic Justice to the**

NAIC Pet Insurance Working Group

July 28, 2021

As the Working Group addresses a few major remaining issues in the development of the model law, we wish to thank the regulator members and all the interested parties for the time and effort put into this workstream. Pet insurance sales have grown by leaps and bounds in recent years and establishing guidelines for these products are vital given the potential for consumer confusing arising from the difference between pet coverage and health insurance.

We wish to offer a few further thoughts on the remaining outstanding issues.

Consumer Protection vs. Memorializing Current Industry Practices

We are troubled by NAPHIA's threat to regulators during the last call if regulators don't comply with industry wishes and memorialize (or worsen)¹ current anti-consumer waiting period provisions. NAPHIA's comments make clear that NAPHIA seeks regulation to protect and memorialize current pet insurance sales practices and not to protect consumers. NAPHIA's comments also reveal their belief that they have veto power over regulator actions they don't agree with and, having failed to win their argument on the merits, NAPHIA's members will attempt to use their financial and political muscle to cow regulators to NAPHIA's will. We remind regulators that CIR and CEJ represent not two organizations, but hundreds of consumer organizations and millions of consumers within our coalition. Needless to say, bowing to industry threats would not be a good look for state insurance regulators.

Waiting Periods

We believe that Section 6(B) should be deleted from the draft as no credible rationale has been provided for issuing policies with both a pre-existing condition clause and waiting periods that delay coverage.

The industry has argued that waiting periods will weed out fraud and adverse selection, but this is precisely what pre-existing condition exclusions do already. As noted during the meeting of the working group last week, a veterinary exam (which would be required to waive the waiting period) would provide no indication that a pet would or would not be the victim of an accident within the next 14 days. NAPHIA suggested an examination could show whether a pet had been previously injured by an accident, but even if that were true, it would fall under the pre-existing condition exclusion already. And since the waiting period does not start until the policy

¹ In reviewing recent pet insurance form filings, we see, for example, Lemonade has a 2 day waiting period for accidents versus NAPHIA's 14-day "line in the sand" proposal and 14 days for illnesses versus NAPHIA's "line in the sand" 30 days.

is issued, it is in no way relevant to an accident that occurred prior to the issuance of a policy anyway. There is simply no need for duplicative provisions that will only mislead consumers about their coverage status.

The broad and extensive waiting periods advocated for by industry will lead to consumer confusion and harm. Purchasers who buy pet insurance will expect to receive insurance coverage that begins when they pay the insurer and sign the policy contract. However, under NAPHIA's proposal, consumer could actually purchase policies that provide no coverage until a future date, even though the insurer has already taken their premium dollars. The potential harm far outweighs any anti-fraud benefit that would be gained from instituting these broad waiting periods, particularly when the pre-existing condition exclusion already offers the exact same protection.

The rationales offered by industry in support of these extended and all-consuming waiting period exclusions are simply unfounded:

1. **Adverse Selection** - a 14-day exclusion on coverage for accidents is particularly problematic, as there is no conceivable risk of adverse selection in the case of an accident. A waiting period for accidents would merely mislead consumers into believing they had purchased coverage, when in fact they are not protected. It is also contrary to the basic tenets of insurance and risk as well as fundamental fairness to collect premiums without providing any coverage, particularly if an insurer is charging for 365 days of coverage but only providing 351 days.
2. **Reducing Costs** – as noted in our prior comment letter, any provisions that deny coverage will reduce claims expenses but consumers purchasing a policy seek (and assume) they are purchasing coverage to protect them rather than hollowed out policies that provide negligible benefits. The model law must ensure that a pet insurance policy provides meaningful benefits to consumers in relation to the premium charged and that coverage meets consumer expectations.

But industry has already contradicted itself on the “lower-cost” claim. Industry explains that with waiting periods, they won't provide coverage during the waiting period – even if early treatment would be the most efficient and effective approach. Rather, industry explains they will cover those same injuries after the waiting period ends – even though the cost of late treatment may far exceed the cost of timely treatment. These industry admissions further contradict industry claims that waiting periods reduce pet insurance costs.

- 3. Consumer Choice** – offering consumers a pet insurance policy that provides them with no coverage for an extended period is not a matter of “choice.” Neither is making consumer pay for illusory protections. Permitting insurers to laden pet insurance policies with a multitude of overlapping coverage exclusions will create confusion, making the policies unnecessarily complex and at odds with consumer expectations. Rightly or wrongly, consumer will analogize pet insurance to their own health insurance – contracts that do not include a complex web of exclusions for various illnesses or injuries. And simply adding disclosures will not transform an unnecessarily complex product into a simple product that a consumer can easily understand.

In sum, the arguments offered by industry for waiting periods are illogical and without any empirical support. CIR and CEJ have conclusively refuted the rationales provided by industry for waiting periods and demonstrated that waiting periods will harm pet insurance consumers while failing to address allegations of adverse selection. It is precisely issues like the proposed waiting periods where regulators demonstrate your commitment to consumer protection.

Further, prohibiting waiting periods does not prevent an insurer from offering pet insurance. While such a prohibition may change current industry practices, there is no reason why pet insurers cannot adapt to such a prohibition. In fact, that is the purpose of a model law or actual state law – to stop unfair and deceptive practices and create a competitive market in which both consumers and insurers have market power.

Wellness Plans

We understand the working group is considering the creation of a subsequent white paper to address the distinction between pet insurance and wellness plans. While we appreciate the complexity of the subject and difficulty of crafting a definitive classification for to separate the two products, we oppose this approach and urge the working group to take the time needed to produce a complete and coherent pet insurance model law. Finalizing a model while failing to address a critical issue – and leaving that issue to a white paper for some time in the future – is not only inefficient, but fails the consumer protection test for a model law.

As noted in our earlier comments, we believe the working group can quickly and efficiently address wellness program issues by adding a straight-forward definition of “pet insurance” to the model. Our recommended definition is:

Pet insurance should be defined as coverage for any services to heal injured or ill pets, to maintain the health of the pet or to prevent pet illness or injury.

By better defining pet insurance to include those aspects of a wellness program related to prevention and health maintenance, the working group can avoid the lengthy process of defining wellness programs and associated guidelines.

We share the concerns members of the working group and regulators have expressed over “linked” pet insurance and wellness plans designed to operate in a symbiotic manner. We believe the best way to address these concerns is to clearly define which products should be treated as pet insurance. By clearly defining pet insurance, the ability of any potentially bad actors to engage in regulatory arbitrage is limited and the model makes clear that insurance regulators have oversight and authority over all insurance products – no matter what name they are given.

Thank you for your consideration of our comments.