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November 18, 2022

Mr. Martin Swanson, Chair
Mr. Frank Pyle, Vice Chair
Improper Marketing of Health Insurance (D) Working Group
National Association of Insurance Commissioners
444 North Capitol Street NW, Suite 700
Washington, D.C. 20001-1512

Submitted via email to gwelker@naic.org

Dear Mr. Swanson and Mr. Pyle:

AHIP appreciates the opportunity to provide feedback on the NAIC Improper Marketing of Health Insurance (D) Working Group's second draft of proposed amendments to Model #880, the Unfair Trade Practices Act (UTPA). We reiterate our commitment to continuing to work in partnership with the Working Group and regulators across the country as you consider potential solutions to ensure consumer protection in the insurance market.

AHIP appreciates the Working Group's adoption of our proposed definition of a Health Insurance Lead Generator. We believe this definition focuses on the activities identified as common to lead generation and appropriately distinguishes these entities as separate from insurers and producers. However, we concur with other stakeholders' concerns that this definition could include advertising outlets, such as television and radio stations, newspapers, and other advertising outlets.

The Working Group proposes to extend Section 3 to include Health Insurance Lead Generators, prohibiting practices as outlined in Section 4, including 4(B), which states that "Making, publishing, disseminating, circulating or placing before the public, or causing, directly or indirectly to be made, published, disseminated, circulated, or placed before the public, [...] an advertisement, announcement, or statement containing any assertion, representation or statement with respect to the business of insurance or with respect to any insurer in the conduct of its insurance business, which is untrue, deceptive or misleading."

By our reading, if an outlet were to run an advertisement that would meet the standard of being "untrue, deceptive or misleading" AND the outlet fits the definition of a lead generator to which the law applies, then the outlet could be held responsible for "circulating or placing before the public" the problematic advertisement. **AHIP recommends that the current definition be amended to exclude advertising outlets from the definition of a Health Insurance Lead Generator.**

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Additionally, AHIP members have shared concerns about the phrasing of the Working Group's addition of new record-keeping requirements for Health Insurance Lead Generators in Section 4(C):

C. Failure to Maintain Marketing and Performance Records. Failure of an insurance lead generator to maintain its books, records, documents and other business records in such an order that data regarding complaints and marketing are accessible and retrievable for examination by the insurance commissioner. Data for at least the current calendar year and the two (2) preceding years shall be maintained. Failure to do so shall constitute a violation of *[INSERT STATE STATUTE]*.

AHIP supports the inclusion of a records maintenance requirement for Health Insurance Lead Generators in the UTPA. This requirement will provide regulators with the documentation to identify the entities sharing incorrect plan information with consumers and may deter many of the current fraudulent practices that the Working Group has identified. However, our members have expressed uncertainty with the meaning of "performance records" and recommend that phrase be removed for clarity. The text of Section 4(C) goes on to explain the types of records that must be maintained, which should be sufficient to meet the requirement.

AHIP appreciates the efforts of the Working Group to engage stakeholders in this process and commits to continuing to partner with you as this important work continues. Please contact me with any questions or concerns at mstringer@ahip.org.

Sincerely,



Meghan Stringer
Senior Policy Advisor
Product and Commercial Policy

AHIP is the national association whose members provide health care coverage, services, and solutions to hundreds of millions of Americans every day. We are committed to market-based solutions and public-private partnerships that make health care better and coverage more affordable and accessible for everyone. Visit www.ahip.org to learn how working together, we are Guiding Greater Health.