

**PET INSURANCE MODEL ACT –
DISCUSSION DRAFT for PET INSURANCE (C) WORKING GROUP
October 17, 2019**

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Section 1 Short Title

This Act shall be known as the “Pet Insurance Model Act”

Section 2 Scope and Purpose

A. The purpose of this Act is to promote the public welfare by creating a comprehensive legal framework within which Pet Insurance may be sold in this state.

B. The requirements of this Act shall apply to Pet Insurance that covers any resident of this state, and is sold, solicited, negotiated, or offered in this state, and policies and certificates are delivered or issued for delivery in this state.

C. All other applicable provisions of this state’s insurance laws shall continue to apply to Pet Insurance except that the specific provisions of this Act shall supersede any general provisions of law that would otherwise be applicable to Pet Insurance.

Section 3 Definitions

If a pet insurer uses any of the terms in this Act in a policy of pet insurance, the insurer shall use the definition of each of those terms as set forth herein and include the definition of the term(s) in the policy. The pet insurer shall also make the definition available through a link on the main page of the insurer’s Internet Web site.

Nothing in this Act shall in any way prohibit or limit the types of exclusions pet insurers may use in their policies or require pet insurers to have any of the limitations or exclusions defined below.

As used in this Act:

A. “Chronic condition” means a condition that can be treated or managed, but not cured.

B. “Congenital anomaly or disorder” means a condition that is present from birth, whether inherited or caused by the environment, which may cause or contribute to illness or disease.

C. “Hereditary disorder” means an abnormality that is genetically transmitted from parent to offspring and may cause illness or disease.

D. “Pet insurance” means an individual or group insurance policy that provides coverage for veterinary expenses.

Commented [ZK1]: Not included in draft but should be discussed:

- A separate 4 digit code under the miscellaneous category
- Adding a supplement or separate line item to the Exhibit of Premiums and Losses (State Page) in the NAIC annual financial statement to identify premium and claim data
- Creating a data call to produce historical data from companies
- Requirement for adjusters to have veterinary experience or a background in animal science
- Pet Insurance Provider Networks
- Rewards programs for Veterinarians/Pet Hospitals
- Pet insurers rewarding vet offices for referrals

Commented [ZK2]: California is opposed to including the word “health” in the title as some suggest. Confusing as to what is meant by “health” unless defined in the Act.

As mentioned in the NAIC White Paper “The coverage options and policy details associated with pet insurance are like those found in human health insurance. However, pet insurance is regulated and reported as P/C coverage because pets are considered property under the law. Provisions for in-network providers, co-insurance or co-payment, exclusions for preexisting conditions, age limits and waiting periods are more like health insurance than P/C coverage.”

Commented [ZK3]: Needs further clarification- should “resident” be defined as the pet owner or the pet?

Commented [ZK4]: As mentioned in the NAIC White Paper “definitions of conditions are inconsistent across policies and, therefore, may have varying impacts on the consumer’s ability to receive reimbursement for claims.”

“Some complaints may be attributed to the consumer’s misunderstanding of coverage and the policy terms and conditions. Restrictions, waiting periods, fee schedules, excluded preexisting, congenial and hereditary conditions are often not obvious to the consumer until after they have a loss.”

Commented [ZK5]: The effect of this provision is that a group policy issued to a group policyholder in another state, but where a California resident is eligible to participate in the group, will be covered by California law even though the actual policy would otherwise be subject to the law of the state where the group policyholder resides.

There is also a trend of pet insurance being added as an employee benefit so we feel it is important that this model law cover those types of group policies.

Were the add-on products that Wells Fargo was illegally selling to customers group policies?

E. "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.

F. "Veterinarian" means an individual who holds a valid license to practice veterinary medicine from the Veterinary Medical Board pursuant to Chapter 11 (commencing with Section 4800) of Division 2 of the Business and Professions Code or other appropriate licensing entity in the jurisdiction in which he or she practices.

G. "Veterinary expenses" means 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.

H. "Waiting or affiliation period" means the period of time specified in a pet insurance policy that is required to transpire before some or all of the coverage in the policy can begin.

Section 4 Disclosures

(A) An insurer transacting pet insurance shall disclose all of the following to consumers:

(1) If the policy excludes coverage due to any of the following:

- (a) A preexisting condition.
- (b) A hereditary disorder.
- (c) A congenital anomaly or disorder.
- (d) A chronic condition.

(2) If the policy includes any other exclusion, the following statement: "Other exclusions may apply. Please refer to the exclusions section of the policy for more information."

(3) Any policy provision that limits coverage through a waiting or affiliation period, a deductible, coinsurance, or an annual or lifetime policy limit.

(4) Whether the insurer reduces coverage or increases premiums based on the insured's claim history.

(C) A pet insurer shall clearly disclose a summary description of the basis or formula on which the insurer determines claim payments under a pet insurance policy within the policy and through a link on the main page of the insurer's Internet Web site.

(D) A pet insurer that uses a benefit schedule to determine claim payment under a pet insurance policy shall do both of the following:

- (1) Clearly disclose the applicable benefit schedule in the policy.
- (2) Disclose all benefit schedules used by the insurer under its pet insurance policies through a link on the main page of the insurer's Internet Web site.

(E) A pet insurer that determines claim payments under a pet insurance policy based on usual and customary fees, or any other reimbursement limitation based on prevailing veterinary service provider charges, shall do both of the following:

Commented [ZK6]: As mentioned in the NAIC White Paper

"The use of brand names is common in the industry which, without proper disclosure can cause confusion for state insurance regulators and consumers to determine the entity with a duty to indemnify."

"Some complaints may be attributed to the consumer's misunderstanding of coverage and the policy terms and conditions. Restrictions, waiting periods, fee schedules, excluded preexisting, congenial and hereditary conditions are often not obvious to the consumer until after they have a loss. Companies can serve their policyholders better by providing clear and understandable information"

"If a model act is drafted, it should address disclosure of the statutory insurance company to the consumer."

(1) Include a usual and customary fee limitation provision in the policy that clearly describes the insurer's basis for determining usual and customary fees and how that basis is applied in calculating claim payments.

(2) Disclose the insurer's basis for determining usual and customary fees through a link on the main page of the insurer's Internet Web site.

(F) The insurer shall include a summary of all policy provisions required in subdivisions (A) through (E), inclusive, in a separate document titled "Insurer Disclosure of Important Policy Provisions."

(G) The insurer shall post the "Insurer Disclosure of Important Policy Provisions" document required in subdivision (F) through a link on the main page of the insurer's Internet Web site.

(H) (1) In connection with the issuance of a new pet insurance policy, the insurer shall provide the consumer with a copy of the "Insurer Disclosure of Important Policy Provisions" document required pursuant to subdivision (F) in at least 12-point type when it delivers the policy.

(2) In addition, the pet insurance policy shall have clearly printed thereon or attached thereto a notice stating that, after receipt of the policy by the owner, the policy may be returned by the insured for cancellation "free look period") by delivering it or mailing it to the insurer or to the agent through whom it was purchased.

(a) The free look period shall be clearly stated on the notice, and shall be not less than 30 days. The insured may return the policy to the insurer or the agent through whom the policy was purchased at any time during the free look period specified in the notice.

(b) The delivery or mailing of the policy by the insured pursuant to this paragraph shall void the policy from the beginning, and the parties shall be in the same position as if a policy or contract had not been issued.

(c) All premiums paid and any policy fee paid for the policy shall be refunded to the insured within 30 days from the date that the insurer is notified of the cancellation. However, if the insurer has paid any claim, or has advised the insured in writing that a claim will be paid, the 30-day free look right pursuant to this paragraph is inapplicable and the policy provisions relating to cancellation shall apply..

(I) At the time a pet insurance policy is issued or delivered to a policyholder, the insurer shall include a written disclosure with all of the following information, printed in 12-point boldface type:

(1) The department's mailing address, toll-free telephone number and internet website address.

(2) The address and customer service telephone number of the insurer or the agent or broker of record.

(3) A statement that the department should be contacted only after discussions with the insurer, or its agent or other representative, have failed to produce a satisfactory resolution of the problem.

(4) If the policy was issued or delivered by an agent or broker, a statement advising the policyholder to contact the broker or agent for assistance.

(J) The disclosures required in this section shall be in addition to any other disclosure requirements required by law or regulation.

Section 5 Violations

(A) A person who violates a provision of this part is liable to the state for a civil penalty to be determined by the commissioner, not to exceed five thousand dollars (\$5,000) for each violation, or, if the violation

Commented [ZK7]: Needs further clarification- this paragraph is confusing re who is the owner and who is the insured.

Commented [ZK8]: Time period needs further discussion

Commented [ZK9]: Unclear of the purpose of (3)

was willful, a civil penalty not to exceed ten thousand dollars (\$10,000) for each violation. The commissioner shall establish the acts that constitute a distinct violation for purposes of this section. However, when the issuance, amendment, or servicing of a policy or endorsement is inadvertent, all of those acts constitute a single violation for purposes of this section.

(B) The penalty imposed by this section shall be imposed by and determined by the commissioner. The penalty imposed by this section is appealable by means of any remedy.

(C) Whenever the commissioner shall have reason to believe that a person has engaged or is engaging in this state in a violation of this part, and that a proceeding by the commissioner in respect thereto would be to the interest of the public, he or she shall issue and serve upon that person an order to show cause containing a statement of the charges, a statement of that person's potential liability, and a notice of hearing to be held at a time and place fixed therein, which shall not be less than 30 days after the service, for the purpose of determining whether the commissioner should issue an order to that person to pay the penalty imposed above and to cease and desist those methods, acts, or practices, or any of them, that violate this part.

(D) If the charges or any of them are found to be justified, the commissioner shall issue and cause to be served upon that person an order requiring that person to pay the penalty above and to cease and desist from engaging in those methods, acts, or practices found to be in violation of this part.

(E) The hearing shall be conducted in accordance with the Administrative Procedure Act, except that the hearings may be conducted by an administrative law judge in the administrative law bureau when the proceedings involve a common question of law or fact with another proceeding arising under other Insurance Code sections that may be conducted by administrative law bureau administrative law judges. The commissioner and the appointed administrative law judge shall have all the powers granted under the Administrative Procedure Act.

(F) The person is entitled to have the proceedings and the order reviewed by means of any remedy provided by the Administrative Procedure Act.

Section 6 Licensing

(A) No person shall sell or solicit any form of pet insurance in this state unless that person is licensed as an insurance agent or broker or has complied with the requirements of this article and has been issued a license by the commissioner as provided in this article.

(B) As used in this article, the following terms have the following meanings:

(1) "Limited lines pet insurance agent" means an insurer designee, such as a managing general agent or limited lines agent of pet insurance.

(2) "Transact" means, for the purposes of this article, the following activities when engaged in by a veterinarian or pet retailer:

(a) Offering and disseminating information to a prospective or current policyholder on behalf of a limited lines pet insurance agent, including brochures, buyer guides, descriptions of coverage, and price.

(b) Referring specific questions regarding coverage features and benefits from a prospective or current policyholder to a limited lines pet insurance agent.

(c) Disseminating and processing applications for coverage, coverage selection forms, or other similar forms in response to a request from a prospective or current policyholder.

(d) Collecting premiums from a prospective or current policyholder on behalf of a limited lines pet insurance agent.

(e) Receiving and recording information from a policyholder to share with a limited lines pet insurance agent.

(3) "Pet insurance" means an individual or group insurance policy that provides coverage for veterinary expenses.

(4) "Veterinarian" means an individual who holds a valid license to practice veterinary medicine from the Veterinary Medical Board.

(5) "Veterinary expenses" means 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.

"Pet retailer" means a business organization that sells different kinds of animals, pet food, pet medicine, and pet accessories in addition to offering both hygienic care (such as pet cleaning) and esthetic services (such as cat and dog grooming). Pet retailers may also offer and disseminate pet insurance as a service to its customers on behalf of and under the direction of a limited lines pet insurance agent.

(C) Transaction of pet insurance under the license of an organization holding a limited lines pet insurance agent license shall be subject to the following conditions:

(1) A limited lines pet insurance agent may authorize a veterinarian or pet retailer to transact pet insurance on behalf of and under its authority under the following conditions:

(a) The limited lines pet insurance agent is clearly identified on marketing materials and fulfillment packages distributed by the veterinarian and pet retailers to customers. The marketing materials and fulfillment packages shall include the agent's name, business address, email address, telephone number, license number and the availability of the department's toll-free consumer hotline.

(b) The limited lines pet insurance agent, at the time of licensure and thereafter, maintains a register noting each veterinarian and pet retailer that transacts pet insurance on the licensee's behalf. The register shall be maintained and updated annually by the licensee in a form prescribed by, or format acceptable to, the commissioner and shall include the name and contact information of the veterinarian or pet retailer and an officer or person who directs or controls the veterinarian or pet retailer's operations, and the veterinarian or pet retailer's federal employer identification number (FEIN). The limited lines pet insurance agent shall also certify that the registered veterinarian or pet retailer complies with Section 1033 of Title 18 of the United States Code. The licensee shall submit the register for review and inspection upon request by the department.

(c) The limited lines pet insurance agent has designated one of its employees to be responsible for its compliance with the insurance laws, rules, and regulations of the state. The limited lines pet insurance agent and its designated responsible employee shall hold a property and casualty license.

(d) The employee designated by the limited lines pet insurance agent, pursuant to paragraph (3), and any of the organization's partners, members, controlling persons, officers, directors, and managers comply with the background check requirements as required by the commissioner.

(e) The limited lines pet insurance agent has paid all applicable licensing fees required under California law.

(f) The limited lines pet insurance agent uses all reasonable means at its disposal to ensure compliance by the veterinarian and pet retailer and its employees with their

obligations under this article. This includes requiring each employee of the veterinarian and pet retailer whose duties include transacting pet insurance to receive training. Training shall be required whenever there is a material change that requires a modification to the training materials, but in no event less frequently than every three years. Training materials used by or on behalf of the limited lines pet insurance agent to train the employees of a veterinarian and pet retailer shall be submitted to the department at the time the pet insurance agent applies for a license under this article, and whenever modified thereafter. The training materials, at a minimum, should contain instruction on the types of insurance offered, ethical sales practices, and disclosures to be given to prospective insurance customers pursuant to Section 2. Any changes to previously submitted training materials shall be submitted to the department, with the changes highlighted, 30 days prior to their use by the limited lines pet insurance agent. Training materials and changes to those materials shall be deemed approved by the department for use unless notified by the department to the contrary. Failure by a limited lines pet insurance agent to submit training materials or changes for departmental review or use of unapproved or disapproved training materials shall constitute grounds for denial of an application for a license, nonrenewal of a license, suspension of a license, or other action as deemed appropriate by the commissioner.

(g) The limited lines pet insurance agent or veterinarian or pet retailer provides disclosure to the consumer, in either the marketing materials or fulfillment packages, of the disclosure requirements in Section 2 which shall be acknowledged in writing by the purchaser or displayed by clear and conspicuous signs posted at every location where contracts are executed.

(h) In addition to providing the disclosure requirements in Section 2 to the prospective insured, the limited lines pet insurance agent or veterinarian or pet retailer shall make the following disclosures, which shall be acknowledged in writing by the purchaser or displayed by clear and conspicuous signs posted at every location where contracts are executed, including, but not limited to, the counter where the purchaser signs the service agreement, or provided in writing to the purchaser:

(1) That purchasing pet insurance is not required in order to purchase any other product or service offered by the veterinarian or pet retailer.

(2) If not individually licensed, that the veterinarian or pet retailer's employee is not qualified or authorized to:

(a) Answer technical questions about the benefits, exclusions, and conditions of any of the insurance offered by the veterinarian or pet retailer.

(b) Evaluate the adequacy of the prospective insured's existing insurance coverage.

(2) A veterinarian or pet retailer that meets the requirements set forth in this section and whose activities are limited to offering and selling pet insurance on behalf of a licensed limited lines pet insurance agent is authorized to receive compensation.

(3) (1) If the commissioner determines that a veterinarian or pet retailer, or a veterinarian or pet retailer's employee, has violated any provision of this article or any other provision of this code, the commissioner may:

(a) Direct the limited lines pet insurance agent to implement a corrective action plan with the veterinarian or pet retailer.

(b) Direct the limited lines pet insurance agent to revoke the authorization of the veterinarian or pet retailer to transact pet insurance on its behalf and under its license and to remove the veterinarian or pet retailer's name from its register.

(2) If the commissioner determines that a veterinarian or pet retailer, or a veterinarian or pet retailer's employee, has violated any provision in this article or any other provision of this code, the commissioner, after notice and hearing, may:

(a) Suspend or revoke the license of the limited lines pet insurance agent as authorized under this code.

(b) Impose a monetary fine on the limited lines pet insurance agent.

(3) A limited lines pet insurance agent who aids and abets a veterinarian or pet retailer in the transaction of pet insurance, as defined in this code, or aids and abets a veterinarian or pet retailer in any activity concerning pet insurance after being directed to revoke the veterinarian or pet retailer's authorization, in addition to any other action authorized under this code, shall be subject to a monetary penalty pursuant to Section 3.

(4) The conduct of employees of the veterinarian and pet retailer who have been designated to transact pet insurance on behalf of the licensed limited lines pet insurance agent shall be deemed the conduct of the licensed limited lines pet insurance agent for purposes of this article.

(D) (1) An applicant for a limited lines pet insurance agent license under this article shall submit the following documents to the commissioner:

(a) A written application for licensure, signed by the applicant or an officer of the applicant, in the form prescribed by the commissioner.

(b) A certificate by the insurer that is to be named in the limited lines pet insurance agent license, stating that the insurer has satisfied itself that the named applicant is trustworthy and competent to act as its limited lines pet insurance agent and that the insurer will appoint the applicant to act as its agent if the pet insurance agent license applied for is issued by the commissioner. The certification shall be subscribed by an officer or managing agent of the insurer on a form prescribed by the commissioner.

(c) An application fee, and, for each license period thereafter, a renewal fee, in an amount or amounts determined by the commissioner as sufficient to defray the reasonable costs incurred by the department in implementing the provisions of this Act.

(2) Notwithstanding any other provisions of law to the contrary, the provisions set forth in Sections _____ apply to any application for or issuance of a license pursuant to this article.

(3) Costs and penalties associated with any enforcement action shall be paid for by the person or organization licensed pursuant to this article.

(E) The provisions of this part relating to the appointment and termination of an insurance agent by an insurer or its authorized representative are applicable to licenses issued pursuant to this article.

Section 7 Preexisting Conditions

(A) A pet insurer shall not exclude coverage on the basis of a preexisting condition provision for a period beyond six months following the insured's effective date of coverage. A preexisting condition provision contained in a pet insurance policy may only relate to conditions for which medical advice, diagnosis, care, or treatment, including, but not limited to, use of prescription drugs, was recommended or received from a veterinarian during the six months immediately preceding the effective date of coverage.

(B) A pet insurer that does not utilize a preexisting condition provision may impose a waiting or affiliation period not to exceed 30 days before the coverage subject to this part shall become effective. During the waiting or affiliation period, the insurer is not required to provide coverage for veterinary expenses and no premium shall be charged to the policyholder or insured.

Section 8 Reimbursement Benefits

A pet insurer shall do one of the following:

(A) Provide reimbursement for the covered veterinary expenses incurred by the insured without limitation, except for any applicable coinsurance.

(B) Provide reimbursement for the covered veterinary expenses incurred by the insured, limited by any applicable coinsurance and one of the following:

(1) The reasonable and customary charges for the veterinary expenses incurred by the insured, as established in the geographic area or metropolitan status where the expenses were incurred. The insurer shall clearly disclose the source of those reasonable and customary charges.

(2) The insurer's benefit schedule which, if used, must include a side-by-side comparison between that schedule and the reasonable and customary charges for the veterinary expenses incurred by the insured, as established in the geographic area or metropolitan status where the expenses were incurred. The insurer shall clearly disclose the source of the reasonable and customary charges.

Section 9 Regulations

The commissioner may adopt reasonable rules and regulations, as are necessary to administer this part.