From: Jackson Williams <jwilliams@dialysispatients.org>
Sent: Wednesday, March 24, 2021 9:31 AM
To: Helder, Randy <RHelder@naic.org>
Cc: Dzurec, Katie <kdzurec@pa.gov>; Katie Keith <Katie.Keith@georgetown.edu>; Culp, Lucy (National Office) <lucy.culp@lls.org>
Subject: RE: NAIC NOTICE: Other Health Drafting Group

Ms. Dzurec:

I want to express my concerns about the role of "associations" in short-term health products and suggest some avenues to explore.

As best as I can tell, the "associations" attached to these products are shams or shells. I've spent most of my career working for associations, and before that was a volunteer leader in several. Bona fide associations are an avenue for Americans to exercise their right of assembly and right to petition, and are at the heart of civil society. So it is frustrating for me to see these questionable entities when I look at marketing materials for insurance products.

Lawyers and consumer advocates are always concerned by the presence of extraneous entities in transactions, because they are often deployed to buffer principals from accountability. For that reason, corporation law recognizes the concept of the "alter ego" entity that has no real existence other than to shield a principal from liability, and permits the disregard of that entity in the eyes of the law. I believe one salient inquiry for regulators is whether an association has a tangible existence outside the transaction. Incidents of a bona fide association include a board, by-laws, volunteer committee structure, material benefits such as publications, purposive benefits such as an advocacy program, and solidary benefits such as conferences and other network opportunities. A true association bargains at arm's length with partners to get a good deal for members—I can attest to this first-hand, because I was involved in the process when I worked at AARP. When these activities are absent, the association should be viewed by regulators as an alter-ego of the insurer, and any question of the regulator's authority over the "association," or question of whether the association is collecting for the insurer or vice versa, should be moot. I urge adding an interrogatory to inquire into these matters. I am concerned, given yesterday's discussion, that regulators have been too willing to take these purported entities at face value.

My impression is that insurers are exploiting nominal associations for two purposes: Regulatory arbitrage and "junk fees." It is apparent that insurers see an advantage to selling in the group market. If the association is a sham and the products are being sold to individuals, then rules governing the individual market should be enforced.

Junk fees have become ubiquitous in real estate and travel transactions and are now migrating to health care. Regulators should hold the line in keeping junk fees out of insurance transactions. Junk fees are a tactic for a seller to increase prices beyond those advertised (or, in health care, beyond the amount a provider agreed to accept from an insurer), and to obfuscate and confuse consumers to extract more money, often after the consumer has committed to the transaction. Sellers prefer to make junk fees

appear payable to a third party, so that they can claim they have no leeway to waive them. I presume in this context, fees charged by an "association" may be used to circumvent reporting, rate filing, or other regulations as well. I would add this about "dues": there is no requirement that an association to charge dues—the one I work for does not, and AARP charges very low dues relative to the benefits it offers. I would urge strict scrutiny of any money ostensibly charged by an "association," with a rebuttable presumption that the money is a premium or commission.

Thank you for your consideration of my views. I have a previously scheduled vacation next week and can't be on Monday's call.

Jackson Williams
Vice President, Public Policy
Dialysis Patient Citizens
1001 Connecticut Avenue NW, Suite #1230
Washington, DC 20036
Phone: 202 768 4506