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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”) thanks the Pet Insurance (C) Working Group (“Working Group”) for holding a call on July 16, 2020, to continue discussions on its draft model law (“Model Law”).¹ This letter contains NAPHIA’s responses to topics and questions that arose during that call, including revisions to key definitions under Section 3 and various disclosure issues under Section 4.

I. NAPHIA Urges the Working Group to Adopt its Proposed Definitions of “Preexisting Condition” and “Pet Insurance.”

NAPHIA previously submitted comments to the Working Group seeking changes to the definitions of “chronic condition,” “preexisting condition,” and “pet insurance,” and recommending inclusion of a definition of “clinical signs.”² We reiterate our recommendation that the Working Group adopt those suggested definitions. The American Veterinary Medical Association (“AVMA”) submitted similar comments.³ Indeed, the two organizations largely agree on the proposed amended/added definitions with the exception of one substantive difference between our suggested definitions of “preexisting condition” and some additional language in NAPHIA’s proposed definition of “pet insurance.”⁴ For the reasons set forth below, we urge the Working Group to incorporate NAPHIA’s definitions into the Model Law.

¹ See Pet Insurance Model Act Discussion Draft for Pet Insurance (C) Working Group, NAIC (July 2, 2020), available at https://content.naic.org/sites/default/files/call_materials/NAIC%20Pet%20Insurance%20Model%20Law%20DiscussionDraft20200702.pdf [hereinafter “Model Law”].

² See Letter from Kate Jensen, NAPHIA to Don Beatty, NAIC (July 15, 2020), available at https://content.naic.org/sites/default/files/call_materials/NAPHIA%20Letter%20to%20Pet%20Insurance%20%28C%29%20WG%20on%20Definitions%20and%20Disclosures-c2.pdf.

³ See Letter from Janet Donlin, AVMA to Don Beatty, NAIC (July 14, 2020), available at https://content.naic.org/sites/default/files/call_materials/NAIC%20Pet%20Insurance%20Model%20Act%20AVMA%20Comments%207-14-20.pdf.

⁴ The AVMA also suggested amending the definition of “veterinary expenses.” However, if the Working Group decides to use “eligible expenses” rather than “veterinary expenses” in the definition of “pet insurance” and

First, though organized differently, the proposed NAPHIA and AVMA definitions of “preexisting condition” match, except for AVMA’s addition of the term “and contemporaneous with.”

NAPHIA Definition

“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

AVMA 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.

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 not tie the definition of “preexisting condition” to a consistent clinical presentation during a particular time period.⁵

Second, NAPHIA’s suggested definition of “pet insurance” contains a clause (underlined below) that is not included in AVMA’s definition.

NAPHIA Definition

“Pet insurance” means an insurance policy that provides coverage for eligible expenses *primarily arising from (1) the covered pet’s sickness or (2) an accident involving a covered pet.*

throughout the Model Law, as both NAPHIA and AVMA have recommended, “veterinary expenses” do not need to be defined and can be removed from Section 3.

⁵ NAPHIA’s VAT is engaged in ongoing discussions with the AVMA on this point in an effort to reach a consensus recommendation to the Working Group.

Notably, both NAPHIA and the AVMA recommend using “eligible expenses” rather than “veterinary expenses” in this definition. As we have previously explained, restricting all pet insurance policies to coverage of only “veterinary expenses” would stifle innovation and significantly limit responsiveness to consumer demands for tailored and updated insurance products. Moreover, the term “veterinary expenses” also can be too broad in some circumstances and could actually be misleading (e.g., insinuating that all expenses incurred at a veterinarian’s office are covered when there could be treatments or products provided by a veterinarian that are not covered expenses under the policy).

The additional clause suggested by NAPHIA accomplishes two important things. First, it accounts for both of the major types of pet insurance products available in the market – accident only, and accident and sickness – and makes clear to consumers that coverage is triggered by these types of events. Second, inclusion of “primarily arising from” allows for flexibility in product filings in the future to include additional and/or innovative product features (e.g., dental coverage, particular check-ups, etc.). Ultimately, the expanded definition provides additional clarity and context for pet owners, and allows for future product evolution in response to market demand. We therefore encourage the Working Group to adopt NAPHIA’s more robust definition of “pet insurance.”

NAPHIA looks forward to further discussions and finalizing these fundamental definitions with the Working Group and other stakeholders.

II. Appropriately Delivered Pre-Sale Disclosures and Sample Policies are Good for Consumers.

a. Disclosures Should be Delivered by the “Insurer or the Licensed Entity Marketing the Product.”

NAPHIA supports the Working Group’s consensus position that the Section 4 disclosures are most appropriately delivered by/displayed on the website of the “insurer or the licensed entity marketing the product.”⁶ In many instances, the consumer does not find the pet insurance product via the insurer’s website. Rather, the consumer interfaces with the licensed entity marketing the underlying insurance product and would reasonably expect to find these important disclosures at that point of contact. We therefore support the addition of this clarifying language in all disclosure sections and references in the Model Law.

b. Consumers Would Value an Appropriately Detailed “Things to Consider” Guide.

As we discussed in our last letter to the Working Group⁷ but, unfortunately, did not have the opportunity to raise on the July 16 Working Group call, a “Things to Consider” guide that provides information at the appropriate level of detail will help consumers evaluate and navigate policy contents. This “guide” would not include substantive disclosures beyond those contained in Section 4 of the Model Law but would, rather, highlight things to consider and focus attention on

⁶ See Model Law at CL16-19.

⁷ See Letter from Kate Jensen, *supra* note 2.

certain matters addressed in the substantive disclosures and in the policy itself. This would, we believe, help consumers evaluate the appropriateness of the policy for them and their pets.

NAPHIA recommends that such a guide be provided on the product marketer's website as a pre-sale evaluation tool and also when consumers receive their policy fulfillment materials, so they can further assess the policy during the free look period. Appendix A provides an example of what such a document might contain. We look forward to further discussing this proposal in the future.

- c. To Avoid Consumer Confusion, Any Additional Disclosures Regarding Premium Changes Should Not Single Out Certain Limited Reasons Why A Premium May Change.*

NAPHIA appreciates the Working Group's suggestion to add disclosures regarding potential future premium changes (e.g., when a policyholder moves).⁸ Notably, NAPHIA's proposed "Things to Consider" guide highlights this very issue and encourages consumers to review their policies for any and all reasons their premiums may change. We caution, however, that singling out a limited number of reasons for possible premium changes – such as age of the pet and geographic location – could be misleading or confusing for consumers, as there are other reasons why one's premium may go up *or down*.

First, there should not be a presumption in any additional disclosures that premiums will go *up* as a result of certain events or changes in circumstances. In fact, moving states may result in an individual's policy premium decreasing. Likewise, consumers sometimes request a change in coverage that reduces the premium and benefit level within the coverage.

Second, as noted above, age of the pet and geographic location are not the sole reasons for premium changes. Some premium changes are consumer-initiated, such as requests for changes in co-insurance structures. For the foregoing reasons, we urge the Working Group to refrain from requiring disclosures that may be too narrow to properly convey potential premium change triggers to consumers and from creating any presumption that all such changes would be premium *increases*.

If the Working Group wishes to add a disclosure that premiums may change due to reasons beyond an insured's claim history (Section 4(A)(4)), NAPHIA recommends something like the following be added as a new Section 4(A)(5):

(5) Whether the insurer changes premiums for other reasons (e.g., consumer-initiated coverage changes, upon renewal of the policy, or based on certain events).

⁸ See Model Law at CL15.

- d. *A Sample Policy for Each Type of Coverage Should Be Made Available on the Insurer or Marketing Entity’s Website, but Posting All Available Policies for Every State will Overwhelm the Consumer and is Not Administratively Feasible.*

NAPHIA also supports the Working Group’s suggestion to include links to sample policies on insurer or licensed marketing entity websites. NAPHIA supports making sample policies available to consumers who are considering purchasing pet insurance. To avoid overwhelming consumers with detailed state-based nuance, NAPHIA supports a requirement to post a sample policy for each type of coverage offered (e.g., accident-only coverage and accident and sickness coverage, as applicable to the insurer or licensed marketing entity).

We recommend including with those sample policies disclaimer language to inform consumers that actual policy language may differ. For instance, the sample policies could clearly and prominently state: *“Actual language in your policy may vary by state due to state-specific regulations and requirements. Please carefully review your policy documents.”*

NAPHIA does not support posting actual policies for every state. This is simply too much information for the consumer to digest and could actually cause more confusion because they likely would not understand or appreciate the reason for or value of – for instance – twelve different state endorsement pages. Additionally, posting every policy in every state would be administratively costly and burdensome, and would produce an overwhelming amount of website content. Cost and administrability concerns are especially pronounced for smaller insurers and licensed entities that operate in multiple states. Finally, this is not a requirement seen in other lines of property and casualty insurance – likely for many of the reasons cited above – and there does not appear to be a policy justification for imposing such a hefty obligation only on pet insurers and marketing entities.

We urge the Working Group to refrain from imposing an “every policy in every state” posting requirement, due to the lack of value and potential confusion for consumers, coupled with the onerousness of such a requirement on industry. Instead, we support posting sample policies with appropriate disclaimer language as the most useful tool for consumers.

III. NAPHIA Supports a 30-Day Free Look Period on Pet Insurance Policy Purchases.

Finally, NAPHIA supports a 30-day free look period⁹ for pet insurance for several reasons:

1. Because pet insurance is a relatively new product, a free look period adds real value for consumers and provides them additional comfort with an opportunity to review the details of their purchase;
2. Providing a free look period for pet insurance would be consistent with life and critical illness policies;

⁹ See Model Law at CL21.

3. A free look period is already mandated in California (the country's largest pet insurance market), so industry is already providing the free look opportunity to consumers there; and
4. The cost of providing the free look to consumers (particularly in this industry where virtually all policies are issued electronically) is de minimis and has a negligible impact on premiums; in other words, the consumer benefit far outweighs the cost in this instance.

As we explained in our March 3, 2020, letter to the Working Group,¹⁰ pet insurance policyholders should have the right, following careful examination of their purchase, to return their policy for a full refund. Instead of trying to digest disclosures prior to purchase, consumers appear to value having the flexibility to review the details of their policy on their own time. From the data we have been able to gather from NAPHIA members, approximately 7.9% of all new pet insurance policies in 2019 were cancelled within 30 days of purchase. A 30-day free look period is, we believe, a meaningful length of time for purchasers to review and digest their policy terms.¹¹

This consumer-friendly option gives pet owners extra time to review their policy documentation and ensure that what they purchased is best for them and their pet. Unlike home or auto insurance, pet insurance is not mandatory, varies across insurers, and is currently a very low-penetrated market. As a result, many policyholders are first-time purchasers of pet insurance. Even with clear and effective disclosures provided in advance of enrollment, typical consumer behavior and purchase practices indicate that consumers may not take the time to thoughtfully process the information in advance of a purchase. Through a combination of appropriate pre-enrollment disclosures and a post-enrollment free look, consumers will have maximum education about the product.

We also would like to allay concerns expressed by some Working Group members that a free look period constitutes “free insurance” for policyholders who return their policies for full refunds, to the detriment of policyholders who do not return their policies. First, as noted above, the cost to policyholders generally of providing the free look is de minimis. Further, 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 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.

¹⁰ See Letter from John Fielding, NAPHIA to Don Beatty, NAIC (Mar. 3, 2020), *available at* https://content.naic.org/sites/default/files/call_materials/NAPHIA%20Letter%20to%20Pet%20Insurance%20WG%20Following%202.19.20%20Call-c2.DOCX.

¹¹ While NAPHIA supports a 30-day free look period, we understand that some members of the Working Group may prefer a shorter free look period. Varying lengths of free look periods across the country would be very difficult to administer, so we encourage the Working Group to arrive at a consensus timeframe.

NAPHIA therefore recommends that Section 4(G)(2)(c) be amended to read as follows:¹²

(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 insured has filed a claim under the policy, the 30-day free look right pursuant to this paragraph is inapplicable and the policy provisions relating to cancellation shall apply.

* * *

Thank you for your consideration of NAPHIA's views. We look forward to continued discussion on the next Working Group call. We also will be submitting a separate letter commenting on Sections 5 and 6 of the Model Law. 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 American Pet Health Insurance Association

¹² NAPHIA previously recommended to the Working Group that the free look period end prior to the 30-day timeframe "if the insurer has notified the insured of the approval of any claim or a portion thereof." See Letter from John Fielding, NAPHIA to Don Beatty, NAIC at 7 (Oct. 31, 2019), available at https://content.naic.org/sites/default/files/call_materials/NAPHIA%252520Letter%252520To%252520Pet%252520Insurance%252520%28C%29%252520Working%252520Group%25252010-31-19-c2%5B1%5D%5B1%5D.pdf. However, in response to regulator concerns about insurers incurring expenses when processing an insured's claim(s) during the insured's free look period, we think the above cut-off event – i.e., when an insured has filed a claim – is a better approach.

APPENDIX A

UNDERSTANDING YOUR PET INSURANCE POLICY: IMPORTANT THINGS TO CONSIDER

This document provides a list of important things you may want to consider when considering or reviewing a pet insurance policy.

While this document is not a part of your insurance policy, it provides a list of considerations to help you evaluate the policy for you and your pet. No coverage is provided in this list, nor does it replace any provisions in your policy. You should read your policy carefully and review your Declarations Page(s) for complete coverage information. If there are any discrepancies between the policy and this page, **THE PROVISIONS OF THE POLICY GOVERN.**

As you examine your policy, you may wish to pay particular attention to these issues, including how specific terms are defined:

- Coverage limitations for “preexisting conditions;”
- Coverage for annual visits and preventive care;
- The policy’s treatment of “chronic conditions,” “congenital conditions,” and “hereditary conditions;”
- Any annual, lifetime, per incident, or other reimbursement limits;
- Any “waiting periods” and how they work;
- Reasons your coverage or premium may change in the future;
- How and when you will be notified of any premium changes;
- The basis for claims payments (e.g., percent of invoice, usual and customary charges, benefit schedule, or other); and
- Differences in coverage for treatment at different veterinary hospitals.