

PROJECT HISTORY - 2018

TRAVEL INSURANCE MODEL ACT (#632)

1. Description of the Project, Issues Addressed, etc.

The Travel Insurance (C) Working Group was formed in late 2015. The charge to the Working Group was to consider the development of a model law or guideline to establish appropriate regulatory standards for the travel and tourism insurance industry. The Working Group began addressing this charge in the Spring 2016 by presenting three potential items to address as a starting point. They were:

1: Refunds to consumers under free look periods. Consider whether free look periods should be mandatory for travel insurance products and draft a model law or guideline that will promote a consistent interpretation and treatment of that requirement.

2: Unlicensed producer activity. While the Working Group determined that current licensing laws across the country appear to be relatively clear, given the variance in state laws regarding limited lines travel insurance licensing for producers and variance in compliance with these laws, it was deemed appropriate to review the NAIC uniform producer licensing standard for limited lines travel insurance and the travel insurance limited line laws enacted in the states.

3: Self-funding certain benefits without holding a license as an insurer. The Working Group determined that it would be appropriate and necessary to provide clarity regarding whether certain products are insurance and should be written through licensed insurers only or; if other benefits are being offered, such as “cancel for any reason” coverage which may not constitute insurance, whether a license to sell and payment of premium taxes should be required. Further, the Working Group would address packaging non-insurance products and services with other benefits that do not require a license to sell. Finally, it was expected that the determination could result in clarity regarding the required payment of premium taxes.

Industry representatives indicated that a need to develop a model law based on travel insurance products not fitting into standard interpretations of current insurance laws and rules indicated that the development of a model law should proceed in order to gain more regulatory clarity in the travel insurance space. Other issues identified by the industry included: 1) the enhancement of provisions that govern the sale and marketing of travel insurance including such things as restrictions on opt-out sales, enhanced disclosures for pre-existing condition exclusions, minimum “free look” provisions, and policy disclosures; 2) cancellation fee waiver or refund programs being provided together; 3) rate and form review provisions; 4) clear definitions including proper documentation and payment of premium taxes; 5) travel administrator licensing and audit requirements; and 6) clear and targeted enforcement and penalty provisions.

In addition to the issues identified in the beginning, the Working Group sought to add to, delete, revise or confirm the language adopted by the National Council of Insurance Legislators (NCOIL) regarding amendments to its Limited Lines Travel Insurance Model Act which was later renamed the NCOIL Travel Insurance Model Act. Issues to address included:

- Defining “travel insurance.”
- Defining “bundled non-insurance products and services” as well as determining whether “bundling” should be allowed.
- Determining the issue of “competitive market” as defined in the NCOIL model.
- Determining the appropriateness of the travel line of authority being “inland marine.”
- Exploring the appropriateness of excluding terrorism coverage in travel insurance products.

- Coordinating benefits provisions needed.
- Other consumer disclosures needed.
- Related licensing issues.
- Identifying and clarifying issues related to premium tax.
- Determining the appropriateness of regulation related to opt-out.
- Identifying and clarifying issues related to authority to enforce.

2. Name of Group Responsible for Drafting the Model and States Participating

The NAIC Travel Insurance Model Act (Model Act) was drafted by the Travel Insurance (C) Working Group. The members of the Working Group were: Maryland, Chair; Virginia, Vice Chair; California; Connecticut; District of Columbia; Florida; Hawaii; Illinois; Louisiana; Missouri; New Mexico; North Carolina; Oklahoma; Pennsylvania; Rhode Island; Utah; and Washington.

3. Project Authorized by What Charge and Date First Given to the Group

The charge to the Working Group was to consider the development of a model law or guideline to establish appropriate regulatory standards for the travel and tourism insurance industry. Once the determination as made that it would be appropriate to draft a model law, the Working Group drafted and sent to its parent, the Property and Casualty Insurance (C) Committee, a model law request (MLR) in June 2017. It was approved by the Executive (EX) Committee later that month. The Working Group was given the charge to develop a travel insurance model law for 2017. That work continued into 2018.

4. A General Description of the Drafting Process (e.g., drafted by a subgroup, interested parties, the full group, etc.). Include any parties outside the members that participated

Prior to the 2016 Fall National Meeting, the Working Group became aware of the work being done by the NCOIL to draft amendments to its Limited Lines Travel Insurance Model Act that would expand beyond just the licensing issues and provide broader coverage for travel insurance in general. That work was shared with the Working Group. The Working Group members felt it could serve as a potential framework or basis for its work going forward. The Working Group then began going through the NCOIL model section by section, including detailed discussions regarding the definitions. Comments were submitted by all stakeholders and all were considered throughout the process.

Parties who regularly participated in the process outside of the members include: the Center for Economic Justice (CEJ), the U.S. Travel Insurance Association (USTIA), the Independent Insurance Agents and Brokers of America (IIABA), the Tourism & Travel Industry Consumer Coalition (TTICC), the United States Fire Insurance Company (US Fire), the American Insurance Association (AIA) and UnitedHealth Group.

5. A General Description of the Due Process (e.g., exposure periods, public hearings, or any other means by which widespread input from industry, consumers and legislators was solicited)

Once the MLR was approved by the Executive (EX) Committee, the Working Group began the process of going through the NCOIL model section by section, including detailed discussions regarding the definitions. The Working Group held 14 conference calls and meetings in 2017 and nine in 2018, ending with the adoption of the proposed Model Act during its June 13 call. It was presented to the Property and Casualty Insurance (C) Committee with one amendment at the Summer National Meeting in Boston, MA and was adopted unanimously.

During this process, all meetings were held in an open session and posted prior, including materials that summarized all submitted comments and letters for both model definitions and the non-definition sections. As

the Working Group moved through discussions of each section, the associated definitions as well as the section content was discussed including submitted comments. Each new version of the Model Act, with the revisions approved during the previous conference call or meeting, was published to the Travel Insurance (C) Working Group' webpage. As comments were submitted, they were added to the spreadsheet which contained comments by section or by definition, and these comments were posted for public access as well.

6. A Discussion of the Significant Issues (items of some controversy raised during the due process and the group's response)

There was a broad range of perspectives presented on many of the issues, definitions and language throughout the process of reviewing the Model Act. All were considered and debated, and ultimately a decision was made regarding the will of the Working Group. There was considerable debate over the definitions including "travel insurance," "limited lines travel insurance producer," "eligible groups," "blanket travel insurance" (which references "eligible groups") and "cancellation fee waiver." The appropriateness of allowing for the bundling of non-insurance and insurance products into the travel protection plan was thoroughly discussed. Issues related to licensing and permissible activities of travel retailers, administrators and producers were also discussed along with the related regulatory issues around "authority to enforce." A great deal of time was spent on the Sales Practices section as well. Consideration was also given to the wording around "free look" periods related to the provision of fulfillment materials. Specifically, consideration was given to whether it be delivered via postal mail or other means such as electronically.

The appropriateness of classifying the travel insurance product as "inland marine" also received attention. During the Working Group's deliberations, there were differing opinions presented; however, a majority of the Working Group members agreed with that classification. After adoption of the Model Act by the Property and Casualty Insurance (C) Committee, Washington and Utah submitted letters proposing that the determination be referred to the Health Insurance Managed Care (B) Committee for review, based on concerns related to whether the inclusion of accident and health coverages fits within the NAIC model *Nationwide Inland Marine Definition* (#701).

7. Any Other Important Information (e.g., amending an accreditation standard)

The following amendment to the Model Act adopted by the Working Group was proposed during the Property and Casualty Insurance (C) Committee's meeting:

Section 9. Policy

A. Notwithstanding any other provision of the [insurance code], Travel Insurance shall be classified and filed for purposes of rates and forms under an inland marine line of insurance, provided however, that Travel Insurance that provides coverage for SICKNESS, ACCIDENT, DISABILITY OR DEATH OCCURRING DURING TRAVEL, either exclusively, or in conjunction with related coverages of emergency evacuation or repatriation of remains may be filed under either an accident and health line of insurance or an inland marine line of insurance.

Drafting Note: For consistency, states may wish to update their statutory definition of inland marine to include Travel Insurance as defined in this Act. This provision contemplates that Travel Insurance will be subject to the same state laws and regulations as any other inland marine insurance.

The proposed Model Act was adopted as amended.