



601 Pennsylvania Avenue, NW T 202.778.3200
South Building, Suite 500 F 202.331.7487
Washington, D.C. 20004 ahip.org

September 30, 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 proposed amendments to Model #880, the Unfair Trade Practices Act (UTPA).

AHIP's members are committed to ensuring consumers can find and purchase a health insurance plan that fits their needs at a price they can afford. Our members offer plans that provide robust benefits for individuals and families at every stage of life, including plans that offer supplemental benefits that are structured to enhance – but not replace – major medical coverage. The products offered by our members have been thoroughly vetted and approved for sale by states' Departments of Insurance. These products serve a good purpose in the market and have satisfactorily met the needs of consumers for decades.

Recent federal actions, as well as federal studies and private reports, have exposed bad actors who are preying on consumers, providing misleading or outright false information about the insurance plan, coverage, and benefits being purchased. AHIP and our members condemn this fraudulent behavior, and 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 is providing comments on the proposed UTPA amendments from the Working Group, as well as the amendment proposed by the Rhode Island Insurance Division. For ease of reading, proposals from the Working Group are in **red** and proposals from Rhode Island are in **blue**.

AHIP Comments on the Working Group's Proposed Amendments to Model #880

1. Add the definition of Insurance Lead Generator to Section 2. Definitions

E. "Insurance Lead Generator" means a[n]y marketing-related activity or entity that publicizes the availability of an insurance, or what purports to be, an insurance product or service.

AHIP supports the addition of this definition to the Unfair Trade Practices Act. However, we are concerned that the definition is too broad and would inappropriately encompass entities and activities that have not been identified by the Working Group as problematic. AHIP recommends the following alternate definition:

E. "Insurance Lead Generator" means any entity that engages in any of the following activities:

1. publicizes the availability of what is, or what purports to be, an insurance product or service that the entity is not licensed to sell directly to consumers;
2. identifies consumers who may want to learn more about an insurance product;
- or
3. sells or transmits consumer information to insurers or producers for follow-up contact and sales activity.

AHIP recommends this alternative that identifies more clearly the activities Insurance Lead Generators undertake, particularly those activities that are of concern to the Working Group, and prevents unrelated entities being unintentionally swept into an over-broad definition.

The Rhode Island Insurance Division proposed to add the following definition of a third party marketing organization (TPMO):

"Third Party Marketing Organization" (TPMO) means organizations and individuals, including independent agents and brokers, who are compensated to perform lead generation, marketing, sales, and enrollment related functions as a part of the chain of enrollment (the steps taken by an individual from becoming aware of an insurance plan or plans to making an enrollment decision). TPMOs may be a first tier, downstream or related entity (FDRs) but may also be entities that are not FDRs but provide services to an insurance plan or an insurance plan's FDR.

AHIP opposes the inclusion of this definition in the UTPA, because it is duplicative of other sections in the law. The UTPA already addresses the activities of insurers and producers, and AHIP believes that our proposed alternate definition of an insurance lead generator addresses the entities and scope of activities that the Working Group has identified as problematic.

2. Add Insurance Lead Generators to Section 3. Unfair Trade Practices Prohibited

It is an unfair trade practice for any insurer or insurance lead generator to commit any practice defined in Section 4 of this Act if: *[rest of the section stays the same]*

AHIP supports the inclusion of Insurance Lead Generators in Section 3 of the UTPA.

Rhode Island proposed further amendments to Section 3:

It is an unfair trade practice for any insurer, insurance lead generator, third party marketing organization or any entity engaged in the business of insurance to commit any practice defined in Section 4 of this Act if:

As noted previously, AHIP opposes the inclusion of TPMOs in Section 3, as the term is duplicative. However, we support the inclusion of “any entity engaged in the business of insurance”, a term that appropriately encompasses entities that may currently or in the future defy categorization as either insurers or insurance lead generators.

3. Include Digital Media Advertising in Section 4. Unfair Trade Practices Defined

B. False Information and Advertising Generally. 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, in a newspaper, magazine, electronic mail, internet advertisement or posting, or other publication, or in the form of a notice, circular, pamphlet, letter, electronic posting of any kind, or over any radio or television station or via the internet or other electronic means, 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.

AHIP supports this update to modernize the UTPA.

4. Add New Requirements for Insurance Lead Generators to Maintain Records to Section 4. Unfair Trade Practices Defined

[NEW LETTER]. 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 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.

Rhode Island also proposed new records maintenance requirements, but expanded and incorporated them into current subsection J:

J. Failure to Maintain Marketing and Performance Records. Failure of an insurer, insurance lead generator, third party marketing organization or any entity engaged in the business of insurance to maintain its books, records, documents and other business records in such an order that data regarding complaints, claims, rating, underwriting 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.

1. Every insurer shall establish and at all times maintain a system of control over the content, form and method of dissemination of advertisements of its plan or plans. All such advertisements, without regard of by whom written, created, designed or presented shall be the responsibility of the insurer whose plan or plans are advertised.
2. When an insurer relies on another entity to fulfill its obligations for maintaining marketing and performance records, the insurer is ultimately responsible for compliance with applicable laws and regulations.

AHIP opposes the incorporation of the new requirements into current subsection J and strongly opposes the two new subsections that would make an insurer responsible for advertisements and claims created and disseminated without their knowledge or consent, including those created by entities that have no relationship with the insurer. As drafted, the language could hold an insurer responsible for advertisements using its logos, brands, or other trademarks to sell unrelated products. This practice has been identified by the Working Group as a common tactic used to sell plans to consumers so it would be inappropriate for an insurer to be held responsible for this activity. As AHIP shared with the Working Group, our member plans maintain ethical standards for producers, who must agree to sell an insurer's product in detailed and specific ways. These representations and standards are enforced through the contract between the insurer and the producer. Insurers log, investigate, and respond to complaints made by consumers and by states' Departments of Insurance, including complaints related to producers' actions or illicit use of the company's trademarked logos and marketing materials. If any of these investigations finds wrongdoing by the producer, insurers may respond with measures ranging from education, corrective action requirements, or contract termination. Insurers' controls and contracting policies strongly deter false statements by producers, and these proposed changes will not address the entities or problems identified by the Working Group.

Additional AHIP Comments

In AHIP's testimony to the Working Group in December 2021, we urged the Working Group to consider narrowly tailored solutions that would not hinder the reasonable, ethical, and legitimate marketing and sales of approved health insurance products offered by our members. We noted that targeted changes, combined with robust consumer protections and appropriate enforcement authorities, would provide states the tools needed to prevent fraudulent marketing and punish bad actors.

AHIP supports the Working Group's proposed amendments, and we believe that the Working Group's proposal is appropriately tailored to address the fraudulent behavior of lead generators and other bad actors who are misleading consumers into purchasing products that fit neither their needs nor their expectations. However, we are concerned that the proposed amendments may not grant states sufficient enforcement authorities to stop bad actors or to seek out remedies for those harmed by their actions. While we understand that standing up new licensure regimes in each state could be a costly and complicated process, we want to ensure that any new authorities provide states with the necessary power to address these problems.

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.

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.