

Comments on Proposed Amendments to the Unfair Trade Practices Act

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Lead generators are elusive, and unfortunately, so is the effort to define and regulate their activities. One recurring question is where to draw the line between “solicitation” of insurance, which requires a license, and merely providing support and assistance to licensed producers and insurance carriers. That, of course, is outside the scope of Model 880, but when was the last time the Producer Licensing Task Force looked into the issue? Is it worth considering a referral?

My only substantive concern with latest draft of the proposed amendment is the phrase “Publicizes the availability of ... what purports to be [a] health insurance product or service.” Some of our biggest problems are products that are in fact insurance but purport **not** to be insurance. And sometimes, the **communication** purports to be publicizing the availability of a product but the lead generator isn’t really offering any product at all, whether or not it purports to be health insurance, at the time the consumer responds. I’ve suggested a redraft below that might help with this concern.

One additional issue that might draw concerns is that we impose substantive obligations on lead generators, including detailed recordkeeping requirements and examination authority, without any requirement for license or registration. I could imagine lead generators objecting to being cited for recordkeeping violations on the ground that they did not know they were engaged in a regulated line of business.

My only other suggested edits are for style, grammar, or consistency with the rest of the Model. I deleted the placeholder reference to the statute noncompliant lead generators were violating because we already said what they were violating was UTPA Section 3. If that is intended to address the point I raised earlier that we don’t license lead generators, it doesn’t work. Jurisdiction isn’t the problem – under our language, the Legislature is expressly giving us that jurisdiction. If there’s a problem (and I’m not sure there is), the problem is notice. Note also that current Subsections I through P of Section 4, beginning at the bottom of Page 6, also need to be marked for renumbering:

E. “Health Insurance Lead Generator” means a[n]y entity that engages in any of the following activities:-

- (1) ~~Publicizes~~Communicating directly with consumers to publicize, or in a manner that a consumer is likely to understand as publicizing, the availability of ~~what is, or what purports to be, an~~a health insurance product or service that the entity is not licensed to sell ~~directly to consumers,~~ or a product or service that substitutes for health insurance;
- (2) ~~Identify~~iesng ~~consumers~~s who may want to learn more about ~~an~~a health insurance product; or
- (3) ~~Sell~~sing or ~~transmits~~sting consumer information to health insurers or producers for follow-up contact and sales activity.

C. Failure to Maintain Marketing and Performance Records. Failure of ~~an~~a health insurance lead generator to maintain its books, records, documents and other business records, ~~Data for at least the current calendar year and the two (2) preceding years, shall be maintained.~~ in such an order that all 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).~~