



November 18, 2022

NAIC Improper Marketing Of Health Insurance Working Group  
Mr. Martin Swanson, Nebraska Department of Insurance, Co-Chair  
Mr. Frank Pyle, Delaware Department of Insurance, Co-Chair  
Greg Welker, Senior Antifraud and Producer Licensing Program Manager

Dear Members of the Improper Marketing of Health Insurance Working Group,

The Ohio Department of Insurance (“Department”) commends the working group on its mission to address deceptive marketing practices associated with the sale of health insurance. While the Department appreciates the opportunity to comment on the proposed amendments to NAIC Model Law 880, the Department would also like to take this opportunity to suggest the working group consider an alternative, more comprehensive approach to addressing improper marketing of health insurance.

The only “issue” the Department has with the proposed amendments to Model 880 is that they fail to provide any greater regulatory oversight over lead generators than most states already have. Under the proposed amendments, the sole recourse that most states will have to address lead generator deceptive marketing practices is to issue a cease-and-desist order—which does not effectively address or correct the problem.

Additionally, the working group may encounter significant difficulties in obtaining the 2/3 majority vote needed to pursue amendments to Model 880. In December 2020, NAIC membership adopted other amendments to Model 880 with an effective date in 2021. Therefore, the three-year window is still open for national adoption of those amendments and NAIC membership may be reluctant to adopt additional amendments at this time.

With these issues in mind, it is helpful to review the working group’s second charge:

*“Review existing NAIC Models and Guidelines that address the use of lead generators for sales of health insurance products and identify models and guidelines that need to be updated or developed to address current marketplace activities.”*

Consistent with this charge, and because of the inherent limitations with the proposed amendments to Model 880 along with the potential obstacles to adoption that any amendments to Model 880 may encounter from NAIC membership, the Department respectfully requests that the working group consider a more comprehensive approach to addressing improper marketing practices utilized by lead generators. In addition to, or in place of, amendments to Model 880, the Department suggests the consideration and development of amendments to the following:

- *Model 218—The Producer Licensing Model Act*
- *Model 40—Advertisements of Accident and Sickness Insurance Model Regulation*
- *Model 660—NAIC Model Rules Governing Advertisements of Medicare Supplemental Insurance With Interpretive Guidelines*

To illustrate what the Department envisions as a “comprehensive approach,” the Department, on September 26, 2022, provided the working group with suggested amendments to Model 218. To address the current lack of regulatory oversight over lead generators, the Department suggested that a possible solution may be to amend the

current definition of “Solicit” as follows:

- N. “Solicit” means the act of contacting a consumer to pre-qualify and/or gauge their interest in purchasing insurance, attempting to sell insurance or asking or urging a person to apply for a particular kind of insurance from a particular insurance company.

The result of expanding the definition would arguably require lead generators looking to pre-qualify or gauge a consumer’s interest in purchasing insurance to be licensed by the states and thereby extend regulatory oversight of lead generators to the states. Additionally, NAIC membership may be more receptive to adopting amendments to a model that was last amended in 2005 and clearly needs to be updated to address present-day deceptive marketing practices. As you can see, rather than limiting the working group’s review to just Model 880, including reviews of Models 218, 40, 660 and perhaps other model laws and guidelines, will provide a more comprehensive review consistent with the expectations of the working group’s second charge and ultimately yield greater reform of the marketing practices utilized by lead generators.

Again, the Department commends the working group on its efforts to combat deceptive marketing of health insurance practices and appreciates its consideration of the feedback provided by the Department. While the review of Model 880 is a good starting point in addressing this pervasive and ever-growing problem, it seems that true reform is more likely to occur if the working group adopts a more comprehensive approach that extends beyond Model 880.

Should the working group have any questions, please do not hesitate to contact me at 614-309-2007.

Sincerely,

Michelle Rafeld  
Assistant Director of Fraud & Enforcement  
Ohio Department of Insurance