

FROM THE NAIC CONSUMER REPRESENTATIVES

To: Improper Marketing of Health Insurance (D) Working Group
Greg Welker

Date: September 30, 2022

Re: Suggested Amendments to Model 880 – Unfair Trade Practices Act

The undersigned consumer representatives applaud your efforts to address the use of lead generators for the sales of health insurance products. We support the suggestions offered by Rhode Island and urge you to go further to protect consumers by adopting the additional edits in the track changes below.

Our primary recommendation is that insurers be held responsible for understanding how their plans are marketed and sold and ensuring that the entities that sell their products (and pay commissions to) are providing timely, accurate information to consumers. When consumers are defrauded and duped into purchasing plans that do not meet their needs, often the lead generator who perpetrated the improper marketing is long gone, and consumers are left to try to navigate their care directly with the carrier. It is in the best interest of both consumers and carriers that plans not contract with bad actors.

A minimum way to better ensure that carriers do not contract with bad actors is to hold companies responsible for the activities and violations of their delegated and downstream entities. This includes any producers and entities that provide administrative services (such as marketing, enrollment, or customer service). These standards are not new and already exist under federal rules for qualified health plans and Medicare Advantage plans.¹

Please note: the below in-line edits incorporate the committee chair's original draft (underlined), suggestions from Rhode Island (purple), and suggestions from the consumer representatives (red).

Section 2. Definitions

E. “Insurance Lead Generator” means any marketing-related activity or entity that publicizes the availability of an insurance, or what purports to be, an insurance product or service.*

NEW LETTER. “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

¹ See, e.g., 45 C.F.R. § 156.340; Medicare Managed Care Manual, Ch. 11 § 110.

(FDRs) but may also be entities that are not FDRs but provide services to an insurance plan or an insurance plan's FDR.

Section 3. Unfair Trade Practices Prohibited

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:

- A. It is committed flagrantly and in conscious disregard of this Act or of any rules promulgated hereunder; or
- B. It has been committed with such frequency to indicate a general business practice to engage in that type of conduct.

An insurer maintains responsibility for its compliance and the compliance of any of its delegated or downstream entities with the prohibition of all unfair trade practices as defined in this Act.

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.

NEW LETTER. 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 as to of by whom written, created, designed, or

presented [them](#), 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.

Thank you in advance for your consideration. If you have any questions about the content of this letter, please contact Lucy Culp (Lucy.Culp@lls.org) or Harry Ting (harry@tingnet.com), or Katie Keith (katie@out2enroll.org).

Sincerely,

Lucy Culp
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