

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

(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 delegator 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 asto ~~of by whom~~ wrote ~~it~~ it, 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.o) or Harry Ting (harry@tingnet.com), or Katie Keith (katie@out2enroll.org)

Sincerely,

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