

March 13, 2023

Sent via email: [GWelker@naic.org](mailto:GWelker@naic.org)

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Improper Marketing of Health Insurance (D) Working Group  
c/o Greg Welker  
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RE: Improper Marketing of Health Insurance (D) Working Group  
Exposure Draft Model 880

Thank you for the opportunity to provide feedback regarding the edits being proposed by the Improper Marketing of Health Plans Working Group to NAIC Model #880.

We understand the working group is charged with reviewing and identifying existing NAIC models and guidelines that need updating to address the use of lead generators related to the sale of health insurance products. We appreciate the working group's efforts to address this very important issue. However, we do not think amending Model #880 in isolation is the most appropriate approach to address the current marketplace problems. We instead recommend the working group explore existing language related to lead generators in other models and potential revisions to those models and guidelines, including but not limited to:

Model 40 – Advertisements of Accident And Sickness Insurance Model Regulation  
Model 660 – NAIC Model Rules Governing Advertisements of Medicare Supplemental Insurance with Interpretive Guidelines  
Model 218 – The Producer Licensing Model Act

Nevertheless, we wish to provide the following comments about the currently proposed changes as it may inform future conversations regarding proposed amendments to Model #880.

As currently drafted, we believe the proposed changes do not grant our department any additional authority to regulate “health insurance lead generators” than is already afforded under the existing model. Model #880, as written, defines “person” as “a natural or artificial entity, including but not limited to individuals, partnerships, associations, trusts, or corporations.” “Person” has long been



understood to have a broad meaning under the Unfair Trade Practices Act. An article written by David R. Anderson in the Journal of Insurance Regulation<sup>1</sup> titled State Unfair Insurance Trade Practices and Claim Laws: The NAIC Model states, in regard to persons:

'Person(s)' covered under the Act is very broad and includes virtually every individual or entity engaged in the business of insurance, including insurers, reciprocals, agents, brokers, and adjusters. State case law has interpreted the act to also include sureties, self-insurers, and defense attorneys (pg. 69).

The article further explains that,

The commissioner of insurance is authorized to examine and investigate the affairs of any person engaged in the business of insurance who has been or is engaged in anything prohibited by the Model Act when

#### Section 4 – Unfair Trade Practices Defined

Many provisions contained in Section 4 refer only to “insurers”. With the proposed extension of the application of this model to health insuran