



July 21, 2023

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

Martin Swanson, Chair  
Improper Marketing of Health Insurance (D) Working Group  
c/o Greg Welker  
Sr. Antifraud and Producer Licensing Program Manager  
National Association of Insurance Commissioners  
1100 Walnut St, Suite 1500  
Kansas City, MO 64106

RE: Improper Marketing of Health Insurance (D) Working Group  
Exposure Draft Model 880

Thank you for the opportunity to provide additional feedback regarding the most recent draft of proposed revision to NAIC Model #880. We offer the following comments and suggestions.

## Section 2. Definitions

The Model currently contains a definition of the term ‘customer’. Items E.1, E.2, and E.3 under the definition of ‘Heath Insurance Lead Generator’ each contain the term ‘consumer’ or ‘consumers’. Under the rules of statutory construction, a court would interpret ‘consumer’ to mean something different from the defined term, ‘customer.’ If the intent is that ‘consumer’ means something different from ‘customer’, we suggest adding a definition of the term ‘consumer’. Doing so would provide a clear understanding of how a ‘consumer’ differs from the defined term ‘customer’. If there is no difference between the two terms, we recommend that the definition of Health Insurance Lead Generator’ Model use the defined term, customer, not consumer.

The definition of ‘Heath Insurance Lead Generator’ remains very broad. As currently drafted, items E.1, E.2, and E.3 can be read independently as the listed activities are joined by the conjunction “or,” signifying that a health insurance generator can be an entity that engages in one, two, or all three of the listed activities. Furthermore, item E states, “‘Health Insurance Lead Generator’ means a[n]y entity that engages in **any** of the following activities:” (emphasis added). The plain meaning of this language is clear – a health insurance lead generator can be an entity engaged in the activities described in item E.1, E.2, E.3, or a combination of these activities.



Under the current proposal, it appears that an employer providing information about available health plan choices to its employees would be considered a “health insurance lead generator”. Routine activities of non-licensed or regulated entities such as a State Health Insurance Program (SHIP) providing Medicare information and counseling services would also be considered a “health insurance lead generator.” Furthermore, item E.3 of the definition does not appear to be limited in any way to health insurance. This lack of limitation appears to bring in a host of other potential entities under the definition of ‘Health Insurance Lead Generator’. For example, a credit union that transmits its customer list to an insurer so that the insurer can contact the customer regarding automobile insurance would be considered a ‘Health Insurance Lead Generator’.

NAIC Models 40 and 660 currently include a definition related to lead generators. Specifically, these Models contain the following definition:

*“Lead-generating device” means any communication directed to the public that, regardless of form, content, or stated purpose, is intended to result in the compilation or qualification of a list containing names and other personal information to be used to solicit residents of this State for the purchase of [accident and sickness/Medicare supplement] insurance.*

Perhaps it would be helpful for the Working Group to considering adding a definition of lead-generating device that is consistent with Models 40 and 660 to Model 880. The definition of a ‘Health Insurance Lead Generator’ could then be revised to describe the actions of a person or entity using a ‘lead generating device’ for the purpose of transmitting consumer information to insurers or producers for follow-up contact and sales activity of health insurance products or services.

### Section 3. Unfair Trade Practices Prohibited

The addition of “or any entity engaged in the business of insurance” to Section 3 significantly broadens the scope of the Model. It is our understanding the charge of the Working Group is limited to addressing the use of lead generators for sales of health insurance products. Including “any entity engaged in the business of insurance” appears go beyond the scope of the charge as the new language is not limited to health insurance.

### Section 4. Unfair Trade Practices Defined

The inclusion of the new paragraph C in Section 4, ‘Failure to Maintain Marketing and Performance Record’, specific to ‘health insurance lead generators’ is duplicative. We recommend that the new paragraph be removed and the existing provision for Failure to Maintain Marketing

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and Performance Records (Paragraph J) be revised to incorporate ‘health insurance lead generators’.

It appears that only difference between these two paragraphs is the inclusion of the new sentence in the new paragraph stating that failure to maintain marketing and performance records is a violation of state law. The purpose of Section 4 is to define Unfair Trade Practices, not to specify penalties for violations of unfair trade practices. The language is not consistent with the remainder of the section and does not align with the purpose of the section. Penalty provisions are contained elsewhere in the Model and should not be included in a definition section.

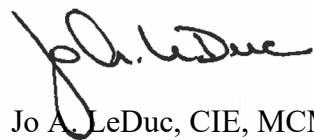
If the new paragraph C in Section 4, ‘Failure to Maintain Marketing and Performance Record’, specific to ‘health insurance lead generators’ is to remain in the proposal, Items I through P of Section 4 (starting at the bottom of page 6) will need to be re-lettered.

#### Sections 6 - 11

Sections 6 through 11 of Model 880 outline a department’s authority to take action against individuals and entities engaging in unfair trade practices as defined by the Model. To ensure departments have sufficient authority to take action against ‘health insurance lead generators’, we recommend that provisions in these sections applicable to particular entities (e.g. insurers) be revised to explicitly include ‘health insurance lead generators’.

Again, thank you for the opportunity to provide comments on this topic. We look forward to future opportunities to continue this important dialogue.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jo A. LeDuc', with a stylized flourish at the end.

Jo A. LeDuc, CIE, MCM, CPCU, FLMI, AIDA  
Director, Insurance Market Regulation Division