



September 30, 2022

The Honorable Martin Swanson
Chair, National Association of Insurance Commissioners
Improper Marketing of Health Insurance (D) Working Group
Deputy Director and General Counsel, Nebraska Department of Insurance
P.O. Box 95087
Lincoln, NE 68509-5087

Dear Mr. Swanson:

I am writing on behalf of the National Association of Health Underwriters (NAHU), a professional association representing over 100,000 licensed health insurance agents, brokers, general agents, consultants, and employee benefit specialists. The members of NAHU work daily to help millions of people purchase, administer, and utilize health insurance coverage, including Medicare-eligible individuals purchasing private-market-coverage options. As such, we are grateful to be able to share our thoughts on the proposed changes to the National Association of Insurance Commissioners' Unfair Trade Practices Model Act.

Generally, NAHU supports the efforts of the Improper Marketing of Health Insurance (D) Working Group to improve state-based regulation of entities that are inappropriately marketing health insurance products to consumers. However, in doing so, we believe it is critical to accurately target the entities that are causing problems in the marketplace. It's also key to avoid inadvertently affecting already regulated entities and imposing requirements on them that are inappropriate to their business sizes and models.

The NAIC's exposure draft adds the following definition to Section Two of the Model:

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.

The draft would amend Section Three of the Model by expanding the prohibition on unfair trade practices to insurance lead generators, in addition to insurers. The proposed changes to the Model would also expand the scope of what is "false advertising" to include online advertisements, including those posted generally on the Internet and electronic-mail advertisements. Finally, "insurance lead generators" would be required to maintain their books, documents and other business records related to marketing and customer complaints for at least two years so that they will be accessible and retrievable for examination by a state's insurance commissioner.



Misleading marketing efforts directed at potential health insurance beneficiaries negatively affects enrollees and honest actors helping individuals with their coverage options, including licensed health insurance agents and brokers. That senior citizens are regularly besieged by inaccurate and disingenuous advertisements using “bait and switch” marketing techniques regarding Medicare coverage options is particularly concerning to NAHU members, thousands of whom are licensed agents certified specifically to assist vulnerable Medicare-eligible consumers. The inaccurate information comes at them through television commercials, emails, phone calls and targeted online advertisements. Entities such as lead-generation agencies, overseas call centers and other marketing firms not subject to state licensure operate under different standards than certified and licensed agents and brokers when it comes to advertisement content and overall regulation. The unregulated entities need to be held accountable for their actions.

Our members see a wide dichotomy when it comes to marketing Medicare-coverage options to beneficiaries. On the low end of the spectrum are the marketing organizations and lead generators that contact people unsolicited, often provide misleading information, and are largely unregulated when it comes to the content and quality of the information they provide. On the high end of the spectrum are licensed and certified agents and brokers, who provide beneficiaries with direct and personalized service while abiding by both federal Medicare requirements and marketing rules and state-level market conduct and licensing standards. Lead-generation and marketing companies, which are generally unlicensed, are not certified in any way by CMS and, in many instances, operate from overseas locations or IP addresses, operate on a substantially different, and lower, level.

The proposed change to the Model attempts to bring unscrupulous lead generators under the jurisdiction of state regulators by adding the definition of “insurance lead generator” to Section Two of the Model and clarifying these entities are subject to state regulation in Section Three. However, the proposed definition of a “insurance lead generator” is overly broad and may inadvertently encompass entities that are already regulated, such as state-licensed health insurance producers. As such, we suggest the following clarification:

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, **that is not a regulated entity already subject to [State Unfair Trade Practices Statute]**.

Every group that touches Medicare beneficiaries needs to be held to strict standards and regulated as to the quality and accuracy of information it provides. However, each of these entities are different in terms of the populations served and their business structures and institutional resources, so they should not all be held to identical rules. Recent federal regulatory changes group licensed and certified agents and brokers in with the lead-generation and marketing entities under the same definition and moniker of third-party marketing



organizations (TPMOs). The new federal definition is overly broad and adds an additional burden to licensed and certified agents attempting to assist Medicare beneficiaries when choosing a suitable MA plan, while it does not regulate the lead-generation and unscrupulous marketing entities effectively. To avoid replicating this issue on the state level, we urge modification to the proposed definition of “insurance lead generator” as described above.

Thank you for the opportunity to provide input about the proposed changes to the Model Act. If you have any questions about our comments or need more information, please do not hesitate to contact me at (202) 595-0639 or jtrautwein@nahu.org.

Sincerely,

Janet Stokes Trautwein
Executive Vice President and CEO
National Association of Health Underwriters

CC: Greg Welker, National Association of Insurance Commissioners