

RHODE ISLAND COMMENTS – August 1, 2022

Draft proposal to amend model 880, the Unfair Trade Practices Act to address the jurisdictional issue of insurance lead generators.

Link to Unfair Trade Practices Act – Model #880:

https://content.naic.org/sites/default/files/inline-files/MDL-880_0.pdf

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. *

*(I debated whether to call them “lead generators” or “insurance lead generators” since our jurisdiction may be limited to insurance.)

Another proposed new definition should be -----

*. **“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 (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 **or insurance lead generator** to commit any practice defined in Section 4 of this Act if: (rest stays the same)

Commented [SP(1)]: Why only insurance lead generator?

Proposed language -----

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:

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 insurance lead generator to maintain its books, records, documents and other business records in such an order that data regarding complaints 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. Failure to do so shall constitute a violation of (INSERT STATE STATUTE).

Proposed language -----

J. 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 of by whom written, created, designed or presented 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.

Commented [SP(2)]: Why wouldn't this be an amendment to Section 4 (J) Failure to Maintain Marketing and Performance Records? See below. Plus adding in the AIG language.