



September 30, 2022

Martin Swanson, Chair Improper Marketing Subgroup  
The Nebraska Department of Insurance  
PO Box 95087  
Lincoln, Nebraska 68509-5087  
Sent via email

Re: NAIC Model 880

Thank you for the opportunity to provide public comments on the proposed amendments to the Unfair Trade Practices Act, NAIC Model 880. The Health Benefits Institute is a group of agents, brokers, insurers, employers, benefit platforms and others seeking to protect the ability of consumers to make their own health care financing choices. We support policies that expand consumer choice and control, promote industry standards, educate consumers on their options and foster high quality health outcomes through transparency in health care prices, quality, and the financing mechanisms used to pay for care.

We support the Improper Marketing Committee's thoughtful work on this complicated issue. Many of the specific regulatory issues were discussed in non-public calls which was appropriate given the subject matter. While the proposed language attempts to strike a balance, we are concerned that the language is both too broad, and will continue to result in actions taken against insurers who have not engaged the lead generation service.

We also concerned that without a regulatory structure, regulators will continue to have no specific entity to take action against. This is especially true given that lead generation services may offer qualified leads to businesses in a variety of sectors outside insurance.

#### **Definition of Lead Generator**

We are concerned that the proposed language is overly broad and will make it difficult for regulators to discern the differences between advertising and lead generation. The proposed language:

- 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 proposed language would potentially include advertising, providing information on product or services at a trade show and other activities. Advertising the availability of

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the product is too low a threshold. We believe the collection of personally identifiable information – which is then provided to another entity for the purposes of a sale– should be the key. Our proposed language:

E. “Insurance Lead Generator”

1. Is any marketing-related activity on behalf of an insurer or entity that publicizes the availability of an insurance, or what purports to be, an insurance product or service, **and collects personally identifiable information which is used to generate sales in covered products.**
2. **Does not include the activities of any entity already licensed by the insurance department.**

### **Other Changes**

We generally support the other proposed changes to the model act as listed below. However, there should be strong concern about the enforceability of the proposed language without any registration of lead generation services.

#### 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)

#### 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).

### **Lead Generation Model Law**

We don't believe the proposed changes are likely sufficient to protect consumers, and for insurance departments to control lead generation. Indeed, we remain concerned that our members will be found responsible for the actions of lead generation services. We believe more guidance is necessary.

Thank you again for the opportunity to provide public comments. These issues are important, and we appreciate NAIC's efforts to balance consumer protections against undue administrative burdens. We share the same goal of protecting consumers,

Please do not hesitate to contact me if you have any further questions at [jpwieske@thehealthbenefitsinstitute.org](mailto:jpwieske@thehealthbenefitsinstitute.org) or (920) 784-4486.

Sincerely

A handwritten signature in green ink, appearing to read "JP Wieske", with a long horizontal flourish extending to the right.

JP Wieske  
Executive Director