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July 10, 2019

Commissioner Bruce R. Ramage
Chair, NAIC Market Conduct Examination Standards (D) Working Group
Nebraska Department of Insurance
1135 M Street
Lincoln, NE 68508-3639

Dear Chair Ramage:

On behalf of the U.S. Travel Insurance Association (“USTiA”), I appreciate the opportunity to provide comments on the National Association of Insurance Commissioners’ (“NAIC”) Market Conduct Examination Standards (D) Working Group (“Working Group”) draft Travel Insurance Examination Standards (“Examination Standards”) dated May 22, 2019,¹ to accompany the new travel insurance model law (“Model Law”).² The USTiA aims to ensure that the Examination Standards are written in a way that tracks the Model Law’s requirements, both in scope and substance, and does not place additional burdens on the travel insurance industry not intended by the Model Law or its drafters.

To that end, the USTiA believes the draft Examination Standards provide helpful guidance to examiners, but at times stray beyond the Model Law’s requirements. Outlined below please find areas in the draft Examination Standards that the Working Group should amend to be consistent with the Model Law.

I. GENERAL COMMENTS

The Model Law was enacted by the NAIC at the end of 2018. As of this writing, seven states (Arkansas, Louisiana, Maryland, Oklahoma, Rhode Island, Texas, and Virginia) have incorporated it into their state statutes. *The USTiA requests that the Working Group provide a disclaimer with the final Examination Standards to inform states that wish to do a market*

¹ “Chapter 21A—Conducting the Property and Casualty Travel Insurance Examination,” NAIC (draft May 22, 2019), available at https://naic-cms.org/sites/default/files/inline-files/cmte_d_market_conduct_exam_standards_exposure_travel_ins_exam_standards_draft.pdf [hereinafter “Examination Standards”].

² Travel Insurance Model Act (#632), NAIC, available at <https://www.naic.org/store/free/MDL-632.pdf> [hereinafter “Model Law”].

conduct exam of a travel insurance company that they should only use the Examination Standards if their state has enacted its version of the Model Law.

Jurisdictional questions should be considered in the context of the overall Model Law and the ability of a state's insurance department to obtain needed information from an entity over which it clearly has jurisdiction (i.e., a travel insurer or Limited Lines Travel Insurance Producer)³. Section 4 of the Model Law already provides that the Limited Lines Travel Insurance Producer is responsible for the acts of the Travel Retailer⁴ and must use reasonable means to ensure compliance by the Travel Retailer with the Model Law. This provides sufficient means for a state's insurance department to ensure compliance by looking to the Limited Lines Travel Insurance Producer (or insurer, where appropriate). The UStiA requests that the Working Group amend the Examination Standards to emphasize that an examiner should seek the requested information from the travel insurer or Limited Lines Travel Insurance Producer first, and only request information from the Travel Retailer if it is unable to obtain the information from the insurer or Limited Lines Travel Insurance Producer.

II. MARKETING AND SALES

Standard 1 (All advertising and sales materials comply with applicable statutes, rules and regulations)

This standard and its review procedures and criteria should be narrowed as Sections 4(C) and 7 of the Model Law are not as broad as indicated in the draft Examination Standards. For example, the review procedures state that an examiner should “ensure the limited lines travel insurance producer, travel insurer, and travel retailer maintains, at its home or principal office, a complete file containing a specimen copy of every printed, published or prepared advertisement of its travel insurance programs and published or prepared advertisements of its individual, blanket and group travel insurance policies.”⁵ While advertising materials are required to comply with applicable law, unlike in the life and health context, there are generally no detailed requirements for Travel Insurance (or other property & casualty) advertising requiring that the advertising materials be maintained for a certain period of time. This standard also delves into the jurisdictional question of Travel Retailers discussed above. The UStiA requests that the Working Group narrow the review procedures and criteria as follows:

“Ensure the advertising and/or sales materials being utilized by the Limited Lines Travel Insurance Producer and travel insurer provide the information required by Section 4(C) of the Model Law [or state law equivalent], are consistent with the Travel Protection Plan being offered, are not deceptive or misleading, and otherwise comply with state law.”

³ Model Law at Section 3(H).

⁴ Travel retailer is defined as “a business entity that makes, arranges or offers planned travel and may offer and disseminate Travel Insurance as a service to its customers on behalf of and under the direction of a Limited Lines Travel Insurance Producer.” *Id.* at Section 3(P).

⁵ Examination Standards at 7.

The UStiA also would like clarity on bullets 3 and 4 under the “Materials should” category,⁶ as it is travel protection plans that are being sold. The UStiA requests that the Working Group use the word “clearly” instead of “prominently” in the 3rd bullet, and capture in the 4th bullet the fact that the product is a Travel Protection Plan, which generally includes both insurance and non-insurance services.⁷

Standard 2 (The disclosures regarding combinations of travel insurance and non-insurance travel assistance services are compliant with applicable statutes, rules, and regulations)

A Travel Protection Plan also could contain a Cancellation Fee Waiver.⁸ The UStiA requests that the Working Group amend the standard to read as follows: “The disclosures regarding combinations of Travel Insurance, non-insurance Travel Assistance Services, and Cancellation Fee Waivers are compliant with applicable statutes, rules, and regulations.”

Additionally, the reference to “travel retailers” in the Documents to be Reviewed section is unnecessary because it delves into the jurisdictional question of Travel Retailers discussed above. The UStiA requests that the Working Group delete “travel retailers acting under the direction of a Limited Lines Travel Insurance Producer” or amend the Examination Standards to emphasize that an examiner should seek the requested information from the travel insurer or Limited Lines Travel Insurance Producer first, and only request information from the Travel Retailer if it is unable to obtain the information from the insurer or Limited Lines Travel Insurance Producer.

Standard 3 (The Limited Lines Travel Insurance Producer has established and maintains a register of each travel retailer that offers travel insurance on the producer’s behalf)

The UStiA does not recommend any changes to this standard.

Standard 4 (The Limited Lines Travel Insurance Producer has documentation sufficient to demonstrate compliance that the travel retailers (acting under the Limited Lines Travel Insurance Producer’s license) comply with 18 U.S.C. § 1033)

The UStiA does not recommend any changes to this standard.

Standard 5 (Consumers are provided with information and an opportunity to learn more about the pre-existing condition exclusions (i) at any time prior to the purchase and (ii) in the fulfillment materials)

In many cases, travel insurers provide consumers with the opportunity to “waive” the pre-existing condition exclusion by satisfying certain conditions. Accordingly, the UStiA requests that the Working Group add the following review procedure and criteria: “Determine that any

⁶ *Id.* at 8.

⁷ Model Law at Section 3(O).

⁸ *Id.*

waivers of pre-existing condition exclusions permitted by a company are being implemented in accordance with the terms of the policy.”

With regard to the 4th review procedure and criteria, the “completeness of the pre-existing condition exclusion and definition in the contract” appears to be covered by the 3rd review procedure and criteria requiring that the policy and fulfillment materials “clearly define pre-existing conditions as intended in the exclusions.”⁹ The UStiA requests that the Working Group delete the 4th review procedure and criteria.

Standard 6 (Descriptions of the following information to be provided: (i) material or actual terms of the insurance coverage, (ii) process for filing a claim, (iii) review or cancellation process for the Travel Insurance policy, and (iv) the identity and contact information of the insurer and Limited Lines Travel Insurance Producer)

The UStiA requests that the Working Group make the standard clearer—i.e., an examiner will seek this information from the insurer or the Limited Lines Travel Insurance Producer.

Standard 7 (The Limited Lines Travel Insurance Producer has a program and procedures in place to instruct or train each employee and authorized representative of any travel retailer whose duties include offering and disseminating travel insurance under the Limited Lines Travel Insurance Producer’s license)

Standard 8 (The Limited Lines Insurance Producer has product-specific training standards and materials designed to provide travel retailers with adequate knowledge of the travel insurance products recommended prior to travel retailers offering or disseminating the sale of travel insurance products)

Standard 9 (The travel insurer has procedures in place to require its producers to comply with applicable travel retailer training requirements)

Standards 7, 8, and 9 are mostly duplicative and could be combined into one standard. Moreover, Standard 8 does not specify that the standard applies just to a Limited Lines Travel Insurance Producer, rather than to all limited lines producers. The UStiA requests the Working Group combine the standards into one as follows:

“Standard 7: The Limited Lines Travel Insurance Producer has an adequate training program in place, containing instructions on the types of insurance offered, ethical sales practices, and required consumer disclosures, that is required of each employee and authorized representative of the Travel Retailer whose duties include offering and disseminating travel insurance.”

This language reflects the language within the Model Law. It also avoids any confusion that would arise from the language in the current draft that suggests that every insurer come up with narrowly tailored training for each and every product that is sold. A travel insurance

⁹ Examination Standards at 12.

training module that provides instruction as to the type of insurance offered (travel), ethical sales practices, and required disclosures are intended to educate consumers as stated. Specific details about specific products are not normally included because of the retailer's limited role relative to that of the Limited Lines Travel Insurance Producer.¹⁰ The UStiA requests that the Working Group delete the phrase "and training, including product-specific training that is appropriate to the specific product(s) being sold for each insurer" and replace it with the phrase "on the types of insurance offered."

In addition, the 3rd paragraph of the review procedures and criteria for Standard 7 goes beyond the provisions of the Model Law. To the extent that misleading or deceptive sales are occurring, those can be reviewed when complaints (or marketing materials) are reviewed. There is no reason to review complaints as part of a review of whether an adequate training program is in place and such training is being provided, which is all that is required under this provision of the Model Law. Additionally, while insurers should keep records of such complaints, the UStiA is not aware of a requirement that a producer (much less a Travel Retailer) keep a copy of all complaints received. The UStiA requests that the Working Group strike the 3rd paragraph of Standard 7's review procedures and criteria.

Standard 10 (The Limited Lines Travel Insurance Producer has designated a "Designated Responsible Producer")

The UStiA does not recommend any changes to this standard.

Standard 11 (Sales practices do not include "negative option or opt out.")

While the UStiA agrees with the content of this standard, there do not appear to be any parameters clarifying what is to be reviewed and under what conditions it is to be reviewed. Accordingly, the UStiA requests that the Working Group add review procedures and criteria, such as "review a sampling of marketing materials and policies to confirm that customers were not offered or sold a policy through negative option or opt out."

Standard 12 (Blanket coverage is not marketed or described as "free" coverage.)

The UStiA is not aware of the basis for the requirement that the identity of the payor must be prominently disclosed. There does not appear to be any legal support for this requirement in the Model Law nor does it appear to substantially enhance consumer protection. The UStiA requests that the Working Group remove this requirement from the review procedures and criteria.

Standard 13 (If aggregator's website provides a short summary of the coverage, determine that the consumer has access to the full provisions of the policy by electronic means)

¹⁰ The UStiA also notes that Travel Retailers, while permitted to offer and disseminate products, are not permitted to provide advice about insurance, so providing the Travel Retailer with general information about the product, ethical sales practices, etc. is also preferable to avoid implying that Travel Retailers can engage in acts only permitted for Limited Lines Travel Insurance Producers.

The UStiA does not recommend any changes to this standard.

III. PRODUCER LICENSING

Standard 1 (Determine that the activities of a travel retailer, acting within the Limited Lines Travel Insurance Producer’s license, comply with applicable state statutes, rules and regulations pertaining to the oversight of property and casualty travel insurance)

The section of the Model Law referenced in this standard (i.e., Section 4(B)) provides that either the Limited Lines Travel Insurance Producer or Travel Retailer may provide the required information to the customer. Moreover, the Model Law provides that the Limited Lines Travel Insurance Producer is responsible for the acts of the Travel Retailer.¹¹ Accordingly, to avoid jurisdictional questions pertaining to the Travel Retailer discussed above, the UStiA requests that the Working Group revise the standard to provide that examiners must request proof from the insurer or Limited Lines Travel Insurance Producer that the actual information was provided/made available. If neither the insurer nor Limited Lines Travel Insurance Producer is able to make such a showing, then the regulator may request proof from the Travel Retailer.

However, determining “that the activities of a travel retailer . . . comply with applicable state statutes”¹² is too broad for what is actually sought for this standard. The UStiA requests that the Working Group modify the standard to read as follows: “Determine that the travel insurer or Limited Lines Travel Insurance Producer provided the information required in Section 4(B)(1) of the Model Law to purchasers of travel insurance.”

IV. POLICYHOLDER SERVICE

Standard 1 (The content and delivery of fulfillment materials and policy documentation comply with applicable state statutes, rules and regulations pertaining to the oversight of property and casualty travel insurance)

This standard appears to be aimed at examining two things: (i) whether the fulfillment materials and information required in Section 4(B)(1)(a)-(d) of the Model Law were provided “as soon as practicable” following the purchase of a travel protection plan; and (ii) whether the company disclosed in the policy documentation whether the travel insurance is primary or secondary to other coverage. If these are the two specific items to be examined, the UStiA requests that the Working Group amend the standard to focus on these specific items; otherwise, an examiner may not be certain what is to be addressed by this standard.

Additionally, if Producer Licensing Standard 1 is amended as recommended above, then the UStiA requests that the Working Group amend this standard as follows: “Determine that the fulfillment materials were provided to the policyholder or certificate holder as soon as

¹¹ Model Law at Section 4(B).

¹² Examination Standards at 23.

practicable and that the insurer disclosed to the policyholder or certificate holder in the policy documents whether the travel insurance was primary or secondary to other coverage.”

Finally, because states’ laws may vary as to when the delivery of fulfillment materials satisfies the “as soon as practicable” standard, the UStiA requests that the Working Group use the “as soon as practicable” language for this standard.

V. UNDERWRITING AND RATING

Standard 1 (Minimum data collection standards to ensure proper allocation for payment of premium tax have been established)

The UStiA does not recommend any changes to this standard.

Standard 2 (The insurer’s travel insurance products are classified as inland marine insurance)

The UStiA agrees with the suggestion from the drafting note here—i.e., this standard is unnecessary. Section 9(A) of the Model Law was included to establish uniformity in the filing of travel insurance rates and forms. It was not written to provide an enforcement mechanism if an insurer files its travel insurance as other than inland marine. Some states might continue to permit (or require) travel insurance to be filed as other than inland marine even after enactment of the Model Law, and there should be no penalty associated with a company filing its products as required or permitted by a particular state. The UStiA requests that the Working Group delete this standard.

VI. CLAIMS

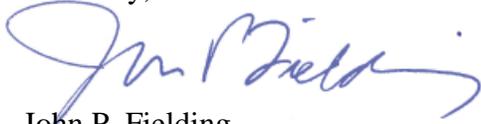
Standard 1 (Verify through the claims records that there is no evidence of “illusory coverage.”)

Since providing illusory coverage is a difficult proposition to prove, the UStiA requests that the Working Group amend this standard to confine an examination to: (i) reviewing a sample set of policies to confirm that benefits are being offered under the policies issued and a payment for a claim could have been made; and (ii) reviewing a sampling of denied claims to confirm that denial was appropriate based on the policy language.

* * *

The UStiA hopes the information provided herein is helpful, and aids in the Working Group's deliberations. The UStiA looks forward to the opportunity to further discuss these comments with you on the next Working Group call. In the meantime, please contact me if you have any questions.

Sincerely,



John P. Fielding
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cc: Market Conduct Examination Standards (D) Working Group Members