

To: Director Anne Melissa Dowling, NAIC Travel Insurance Working Group
From: Birny Birnbaum, Center for Economic Justice and NAIC Consumer Representative
Timothy Jost, NAIC Consumer Representative
Re: Preliminary Comments on 11/28/2016 Draft NAIC Travel Insurance Model Act
Date: December 5, 2016

We write with preliminary comments on draft NAIC Travel Insurance Model Act. Given the short time frame for review and comment right before the Fall National meeting, our comments will be high-level and not comprehensive.

Failure to Separate Insurance and Non-Insurance Products

The proposed NAIC model defines and permits the sale of “Travel Protection Plans” which include insurance products – “Travel Insurance” – and non-insurance products – “Travel Assistance Services” and “Cancellation Fee Waivers/” We strongly oppose the bundling of insurance and non-insurance products because such bundled products are inherently deceptive to a consumer.

By bundling insurance and non-insurance products, the ability of the consumer to easily identify insurance products is compromised. Such ability by the consumer to distinguish between insurance and non-insurance products is critically important because an insurance consumer has rights and protections which a travel service consumer does not have, including, but not limited to insurance consumer protections for sales and claims, oversight insurers and insurance producers by an insurance regulator, ability to file a complaint with the insurance regulators and guaranty fund protection. It is inherently confusing and deceptive to a consumer to bundle products with these consumer rights with products without such rights and protections.

The bundling of insurance and non-insurance products is found nowhere else and for good reason. Imagine the following scenarios and consider whether insurance regulators would support these bundled products:

- An auto dealer offers a “Vehicle Assistance Plan,” which includes insurance (say, required liability coverage or credit insurance) and non-insurance (say, extended warranty and vacation planning).
- A rental car counter agent sells a “Rental Car Assistance Plan,” which includes insurance (say, personal liability or personal injury protection) and non-insurance (say, damage waiver and EZPass toll reader).
- A furniture store financing a purchase sells a “Furniture Assistance Plan,” which includes insurance (say, credit life insurance) and non-insurance products (say, debt suspension for family leave and a concierge service to answer questions about cleaning and using your new couch.)

To further illustrate the deceptive nature of the bundled product, consider the following from an airline website ticket purchase: This airline website (like others) requires a decision on “Trip Insurance.” Here is the presentation on the web site page:

Trip Insurance



Washington trip protection

All these benefits for a fraction of the ticket cost

(dot indicates Required)

Add Trip Insurance? , required.



Yes, protect my \$100.10 trip for a total of **\$21.88**. ✓ **Recommended**

Includes trip cancellation, trip interruption, travel and baggage delay, emergency medical, and more.

“It's a smart idea to consider investing in travel insurance.” – U.S. News & World Report, Oct 2015
, required.



No, I understand by declining coverage I am responsible for all cancellation fees and expenses.
,required.

Terms, conditions and exclusions apply. See coverage [details\(about trip protection\)](#). [Link opens external site in new window.](#) .

Review Period: Receive a refund on your premium within 10 days of purchase, depending on your state of residence, if you decide to cancel your coverage and you have not filed a claim or departed on your trip.

This insurance is offered by a third party, Allianz Global Assistance, not American Airlines. Plans underwritten by Jefferson Insurance Company or BCS Insurance Company. Recommended by AGA Service Company, the licensed producer and administrator of this plan.

When you then click on “details,” the product is now called “Travel Protection” and bundles insurance and non-insurance products.

Trip Protection

Pricing - 6.25% of your total ticket cost and service fees*

Benefit Coverage (per person)

Trip Cancellation/Interruption Recoup your non-refundable trip costs if you have to cancel or interrupt your trip for a covered reason.?	Up to trip cost (min \$350 max \$3,000)
Emergency Medical / Dental Pays for the cost of treatment associated with a medical or dental emergency incurred while traveling.?	\$10,000
Emergency Medical Transportation Arranges medical transportation for a patient to an appropriate medical facility or to return home for care.?	\$50,000
Travel Delay Provides reimbursement for meals and accommodations when a trip is delayed.?	\$500 (max \$150/day)
Baggage Delay Provides reimbursement for clothing, toiletries and other essential items if luggage is delayed for at least 24 hours.?	\$500
24-hour Hotline Provides the traveler with a broad range of services in the event of a travel or medical emergency including: medical referral and monitoring, legal assistance, arrangement of medical evacuations or repatriations and pre-trip assistance.?	Included
Concierge Provides information about your destination before you travel and can help you select restaurants, reserve golf tee times or secure tickets to local events.?	Included

The coverages listed above are subject to [terms, conditions, exclusions](#), and our [purchase agreement](#).

* The minimum coverage per person is \$350. A trip that costs more than \$3,000 per person will qualify for only \$3,000 of coverage.

Refund Period: Receive a refund on your premium within 10 days of purchase if you decide to cancel your coverage and you have not filed a claim or departed on your trip.

Existing Medical Conditions: Please note this plan excludes coverage for existing medical conditions. Refer to [terms, conditions and exclusions](#) for more details.

It is unclear what services are or are not insurance and this product is relatively well presented. The opportunity for deceptive presentation is great. Consumers' understanding and response to the terms "insurance," "protection," and "assistance" are different.

We suggest that industry assertions that consumer demand a bundled product are self-serving. It would not be confusing or burdensome to consumers to see two products – Travel Insurance and Travel Assistance – and to choose one or both products as fits the consumers' needs.

Separation of the insurance and non-insurance products benefits all parties. It benefits consumers by clearly delineating between insurance and non-insurance products and by providing consumer choice. It benefits industry and regulators by clearly delineating the products subject to insurance regulatory oversight.

Definition of Travel Insurance

The proposed NAIC Model defines health insurance as follows:

C. "Travel Insurance" means insurance coverage for personal risks incident to planned travel, including but not limited to:

- 1. interruption or cancellation of trip or event;*
- 2. loss of baggage or personal effects;*
- 3. damages to accommodations or rental vehicles; or*
- 4. sickness, accident, disability or death occurring during travel.*

Travel insurance does not include major medical plans, which provide comprehensive medical protection for travelers with trips lasting six (6) months or longer, including for example, those working overseas as an ex-patriot or military personnel being deployed.

This is similar but not identical to a definition found in recently promulgated federal regulations at 26 C.F.R. 54.9801-2; 29 C.F.R. 2590.701-2; and 45 C.F.R. 144.103, which are effective December 31, 2016:

*Travel insurance means insurance coverage for personal risks incident to planned travel, which may include, but is not limited to, interruption or cancellation of trip or event, loss of baggage or personal effects, damages to accommodations or rental vehicles, and sickness, accident, disability, or death occurring during travel, **provided that the health benefits are not offered on a stand-alone basis and are incidental to other coverage.** For this purpose, the term travel insurance does not include major medical plans that provide comprehensive medical protection for travelers with trips lasting 6 months or longer, including, for example, those working overseas as an expatriate or military personnel being deployed.*

The bolded text represents a significant variation between the federal and NCOIL definition. This text should be added to any state laws governing travel insurance.

Product Filing and Review

There are two principal types of travel insurance markets – direct to consumer/agggregator websites and sales by third-party travel organizations, like airlines, travel agents and cruise lines. The latter is inherently non-competitive, in the same way that consumer credit insurance markets are non-competitive because of reverse competition. Consequently, we suggest the following:

- Required filing and prior approval of travel insurance policy forms. Such review and approval is essential to ensure the products are not deceptive or abusive. This is particularly important for a product like travel insurance which is an adjunct purchase to a larger purchase.
- Require filing and prior approval of travel insurance rates if sold by a third-party and require filing of rates, if sold by the insurer direct to the public (or via a web aggregator) – all subject to the not excessive, not inadequate, not unfairly discriminatory standards. The sales-by-third-party market is not a competitive market and review of rates is required. The direct-to-consumer market can be a competitive market so review of rates may not be required. The entire section “Competitive Market” should be deleted as irrelevant and unnecessary. The sections on rates describe rate standards in detail, but simply state rates must be filed before use. This section should specify the procedures for prior approval of rates for travel insurance sold through a third-party/limited lines producer (e.g. 30 to 60 days for review by the Commissioner) and procedures for file and use rates for travel insurance sold directly to the consumer (e.g., rates must be filed at least 30 days before use).
- Establish a separate line of business for travel insurance and do not lump it with inland marine. Just as a travel insurance producer requires a separate license from other types of producers, so does travel insurance require a separate line of business defined in the model and subject to the filing requirements of the model. By lumping travel insurance into inland marine, the model risks having inland marine filing requirements – typically very limited and not uniform across the states – supersede any filing requirements in the model.
- As noted above, delete the section on “Competitive Market” as well as Section 8 “Travel Protection Plans.” Section 8 allows bundled insurance and non-insurance products unless there is a finding that the market is non-competitive. The process of determining whether a market is or is not competitive pursuant to Section 6 and further findings pursuant to Section 8 are cumbersome and unnecessary. This cumbersome infrastructure is being proposed simply to accommodate industry’s desire to sell the inherently deceptive bundled insurance and non-insurance product. By separating the insurance and non-insurance products, Sections 6 and 8 are not needed and a simple, more uniform regulatory structure is possible.

Sales Practices

We support the consumer protections in Section 9.

We also ask the working group to consider the following issues. At this point, we are not recommending these actions, but want to discuss them with the working group.

- Whether requiring an affirmative decision on “travel insurance,” as is the practice on airline websites, is a reasonable practice.
- Whether certain sales – say, for low-cost trips for which some or most of the benefits would not be available or needed – should be prohibited.

We look forward to the discussion in Miami next week. Thank you for your consideration.