



Comments of the Center for Economic Justice
To the NAIC Travel Insurance Working Group
October 17, 2017

CEJ offers the following comments and suggested language for Section 7: Travel Protection Plans. During the last call, it became clear that multiple objectives were in play – specifically, information for regulators to review, for purposes of premium tax payment and market monitoring, the composition of Travel Protection Plans. Specifically, regulators indicated the need to identify the composition of Travel Insurance versus non-insurance Travel Assistance Services within Travel Protection Plan benefits and coverages and prices.

In addition, the discussion of Section 7 dealt with consumer disclosures – what information is or is not useful for consumers.

CEJ suggests that the premium tax and market monitoring purposes of regulators is best addressed separately from provisions for consumer disclosure. CEJ suggest that the premium tax and market monitoring purposes are best addressed in a Travel Insurance Experience Exhibit to the Annual Statement, modeled after the Credit Insurance Experience Exhibit. Attached to our comments is a proposal for such a Travel Insurance Experience which would easily and directly provide regulators (and the public) with information for premium tax issues and market monitoring.

CEJ also suggests that the current model be amended to more clearly separate and delineate consumer disclosures, fulfillment materials and unfair trade practices in separate sections. The current model blurs these topics into two sections. Specifically, we suggest the following:

Section 7: Travel Protection Plans: Consumer Disclosures and Free Look

Section 8: Travel Protection Plans: Fulfillment Materials

Section 9: Unfair Trade Practices

We provide our suggested edits to Section 7, below, regarding consumer disclosures and free look period. In addition to edits regarding consumer disclosures, we moved the provisions from Section 8 C 2, 3 and 4 into our Section 7: Consumer Disclosures and Free Look since these current Section 8 provisions are directed at consumer disclosure.

We have not provided suggested language for our proposed Section 8: Travel Protection Plans: Fulfillment Materials. We suggest that a definition of fulfillment materials is needed as is a clear delineation of fulfillment materials from consumer disclosures.

We have provided limited comments on proposed Section 9 -- primarily renumbering and renaming the Section from Section 8: Sales Practices to Section 9: Unfair Trade Practices and moving current sections 8 C 2, 3 and 4 into our proposed Section 7. We have concern with current Section 8 B which defines illusory coverage as “a Travel Insurance policy that could never result in payment of any claims.” Given that travel insurance covers a number of events, a Travel Protection plan for which a consumer is ineligible for 99.9% of the benefits would pass muster as actual coverage. We offer edits to current section 8E which is unartfully worded. The phrasing “it shall not be an unfair trade practice” should be revised to “It is an unfair trade practice.” The phrasing “for free” should be amended to “without separate charge to the consumer” for consistency with the definition of the Blanket Insurance and for clarity.

Our suggested edits follow:

Section 7. Travel Protection Plans: Consumer Disclosures and Free Look

Travel Protection Plans may be offered ~~for one price~~ in this state if:

- ~~A. There is no finding by the Commissioner, pursuant to Section 6 [or cross-reference to the state's other competitive market provisions], that the Travel Insurance market in the state is non-competitive or that the Travel Protection Plan restricts competition by either significantly decreasing output or efficiency in the market or that a travel insurer or Travel Retailer is exerting sufficient market power in providing Travel Insurance or Travel Protection Plans such that competition is adversely impacted or that the Travel Protection Plan would exact burdensome terms that would not exist in a competitive market;~~
- A. A prominent disclosure is provided to the consumer prior to purchase stating: You are not required to purchase Travel Protection or Travel Insurance. If you choose to purchase Travel Protection or Travel Insurance, you are not required to purchase it from us. You may purchase Travel Protection or Travel Insurance from other vendors or insurers. Travel Protection may duplicate other insurance coverages you have or may provide new and important benefits. Review the marketing materials carefully to make sure you are eligible for the coverages and benefits you want.
- B. The Travel Insurance coverages, exclusions and eligibility criteria and, Travel Assistance Services and Cancellation Fee Waivers are clearly disclosed and delineated in marketing materials, Travel Insurance policy forms and Travel Assistance Services contracts
- C. The Travel Protection Plan marketing materials and Travel Insurance policy clearly disclose and explain whether the Travel Insurance is primary or secondary to other applicable coverage.
- D. The Travel Insurance policy form and Travel Assistance Services contract are available to consumers prior to purchase.
- E. Available Travel Protection Plan options and associated prices are clearly disclosed to consumers prior to purchase. ~~the Travel Protection Plan's fulfillment materials. The fulfillment materials shall include the Travel Insurance disclosures required under state law and the contact information for persons providing Travel Assistance Services and Cancellation Fee Waivers, as applicable; and~~
- F. Policyholders or certificate holders shall have a minimum of ten (10) days from the later of the date of purchase of a Travel Protection Plan or the delivery of the Travel Protection Plan's fulfillment materials to review and cancel the policy or certificate for a full refund of the Travel Protection Plan price, unless the insured has either started the covered trip or has filed a claim under the Travel Insurance coverage. For the purposes of this section, sending

documentation confirming the purchase and providing the Travel Protection Plan's coverage and assistance details, as applicable, to an ~~physical or~~ electronic mail address provided by the purchaser of a Travel Protection Plan shall constitute delivery of the Travel Protection Plan's fulfillment materials.

~~C. The Travel Protection Plan clearly discloses to the consumer at or prior to the time of purchase and fulfillment that it includes Travel Insurance, Travel Assistance Services and Cancellation Fee Waivers, as applicable, and provides an opportunity for the consumer to obtain additional information regarding the features and pricing of each.~~

Section 8: Travel Protection Plan: Fulfillment Materials

[Define Fulfillment Materials and Add Relevant Requirements]

Section 98. Unfair Trade Practices~~Sales Practices~~

- A. All persons offering Travel Insurance to residents of this state are subject to the Unfair Trade Practices Act at [*insert reference to state UTPA law*], except as otherwise provided in this Section. In the event of a conflict between this Act and other provisions of the [*insurance code*] regarding the sale and marketing of Travel Insurance and Travel Protection Plans, the provisions of this Act shall control.
- B. Illusory Travel Insurance. Offering or selling a Travel Insurance policy that could never result in payment of any claims for any insured under the policy is an unfair trade practice under [*insert reference to state UTPA law*].
- C. Marketing.
 1. All documents provided to consumers prior to the purchase of Travel Insurance, including but not limited to sales materials, advertising materials, and marketing materials, shall be consistent with all Travel Insurance policy documents, including but not limited to, forms, endorsements, policies, rate filings and certificates of insurance.
 2. Travel Insurance policies or certificates that contain pre-existing condition exclusions must clearly disclose the exclusion in the coverage's fulfillment materials.
 3. ~~Policyholders or certificate holders shall have a minimum of ten (10) days from the later of the date of purchase of a Travel Protection Plan or the delivery of the Travel Protection Plan's fulfillment materials to review and cancel the policy or certificate for a full refund of the Travel Protection Plan price, unless the insured has either started the covered trip or has filed a claim under the Travel Insurance coverage. For the purposes of this section, sending documentation confirming the~~

~~purchase and providing the Travel Protection Plan's coverage and assistance details, as applicable, to a physical or electronic mail address provided by the purchaser of a Travel Protection Plan shall constitute delivery of the Travel Protection Plan's fulfillment materials.~~

~~NOTE: This was an amendment added by NCOIL communicated to the Working Group on its July 17, 2017 conference call.~~

~~4. The company shall disclose in the policy fulfillment and documentation whether the Travel Insurance is primary or secondary to other applicable coverage.~~

5. Where Travel Insurance is marketed directly to a consumer through an insurer's website or by others through an Aggregator Site, it shall not be an unfair trade practice or other violation of law where an accurate summary or short description of coverage is provided on the web page, so long as the consumer has access to the full provisions of the policy through electronic means.

D. Opt out. Unless otherwise permitted by state or federal law, no person offering Travel Insurance or Travel Protection Plans on an individual or Group basis may do so using negative option or opt-out, which would require a consumer to take an affirmative action to deselect coverage such as unchecking a box on an electronic form when they purchase a trip.

E. It ~~is shall not be~~ an unfair trade practice to include Blanket Travel Insurance coverage with the purchase of a trip with a separate charge to the consumer for such coverage., ~~provided the coverage is not marketed as free.~~