



Lisa Tate

Vice President, Litigation & Associate General Counsel

January 29, 2010

Keri A. Kish
Antifraud Counsel
National Association of Insurance Commissioners
2301 McGee Street, Suite 800
Kansas City, MO 64108

Subject: Draft Antifraud Plan Guideline (December 2009)

Dear Ms. Kish:

On behalf of our member companies, the American Council of Life Insurers submits these comments on the most recent draft of an Antifraud Plan Guideline (December 2009). ACLI represents 300 member companies operating in the United States and accounting for over 90% of assets and premiums in the U.S. life insurance and annuity industry. ACLI strongly supports effective and cost-efficient efforts to prevent and detect insurance fraud, and we welcome the opportunity to provide input on the draft Guideline.

At the outset, ACLI would like to express our appreciation to you and the Antifraud Liaison (D) Working Group for your responsiveness to concerns addressed in our letter to you dated January 23, 2009. We believe that the December 2009 version represents a substantial improvement over the prior draft.

Nonetheless, several issues raised in our earlier letter continue to be of serious concern:

- The draft guideline contemplates two annual fraud-related filings: an antifraud plan and an annual fraud report. In order to reduce reporting costs without impairing antifraud efforts, we strongly recommend that there be a one-time filing of an antifraud plan and that subsequent material changes to the plan (either implemented or anticipated) be reported in the annual fraud report. An obligatory annual filing of an identical document already in the possession of a Department of Insurance merely consumes valuable resources better directed toward other antifraud activities.
- We urge the inclusion of an immunity provision for insurers complying with the Guideline. One of the most probable and foreseeable responses to an insurer's suspected fraud filing is a defamation claim made by the target of the filing. An immunity provision lays the groundwork for a frank and constructive antifraud partnership between the industry, regulators, and law enforcement as would a safe harbor provision permitting insurers to communicate fraud concerns with other carriers. Efforts to jointly combat fraud should be promoted, and such collaborative efforts should be without risk of liability.

In addition, requiring that a plan be developed "for restitution for victims" is inappropriate for inclusion in the Guideline. Restitution is separate and distinct from the prevention and detection of fraudulent activities. Restitution to victims is generally fact-specific and determined on a case-by-case basis. Restitution may even be under the jurisdiction of law enforcement and the courts rather than the insurer.

American Council of Life Insurers

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As a practical matter, the broad potential scope of fraud and the myriad fact patterns that may arise would conceivably result in a plan hundreds of pages in length or otherwise be written in such a manner that no meaningful guidance is provided.

Finally, many of our member life insurers are concerned that annual fraud reports may impose significant resource and logistical demands on life insurers as well as insurance departments. Uniformity of report content, format, and procedures among the states are valuable goals that can reduce inefficiencies and redundancies. Also, a number of our member companies have emphasized the need that information reported be treated as confidential so ongoing investigations and investigative techniques not be compromised.

ACLI appreciates the opportunity to submit comments on the draft Antifraud Plan Guideline. Please let me know if you have any questions or need additional information.

Sincerely,

A handwritten signature in black ink that reads "Lisa Tate". The signature is written in a cursive, slightly slanted style.

Lisa Tate