Comments on MSA Operational Framework Exposure – May 24, 2021

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|  | **GENERAL – PILOT PROGRAM** |
|  | **Report of the Pilot Program** |
| 1 | American Academy of Actuaries | It would be helpful for future evaluation if the NAIC could release an analysis or summary of the pilot program referenced in the draft Framework.  |
|  | **By Section** |
|  | **Section I-A: Purpose — Rate Increase vs. Rate Change References Throughout Framework** |
| 2 | Alaska | Is there a reason that the rate review or rate review process is always described as an “increase”?  Concern is that the message is that the rates are always going up. |
|  | **Section I-B: State Participation in the MSA Review** |
| 3 | Task Force Call | Will states that use external consultants be able to allow the consultant access to the MSA review process and report?  |
|  | **Section I-C: General Description of the MSA Review – Compact Authority** |
| 4 | Michigan | We seek further clarification regarding the Compact’s authority to accept and maintain filings under the MSA review.  We also seek additional detail regarding how the process for requesting an MSA review is done, e.g., how insurers are advised about the process, how states are notified.  If the Compact infrastructure is being used simply to facilitate sharing and monitoring among states, we would recommend that a separate SERFF area/instance be made outside of the Compact that permits the submission of MSA filings without accidentally falling under the authority of the Compact. |
|  | **Section I-D: Benefits of Participating in the MSA Review** **– Reliance on the Recommendation** |
| 5 | Michigan | The benefit to states will only be realized if the majority of states use the process *and* rely on the MSA Review results.  If only the states that have historically approved rate requests utilize this “program”, there may be little or no change to the current situation. The benefit for insurers may be impacted by delays in ability to implement needed increases.  It appears the MSA review will take approximately 35 days after which the insurer submits their rate increase filing to each state.  Since each state has varying statutory review periods, some states may take action more quickly than other states.  Any delay in approving a rate increase, could result in the need for additional rate increases in a shorter amount of time.  **Section III-C: Certification:** The certification limits misuse of the report by the company and limits an insurer’s authority to challenge the report unless it is used by the states in their review and determination.  Please advise if states who consent to the use of the MSA report are required to accept the report as-is.  If so we would further recommend the regulator to regulator subgroup structure to allow interested/affected states to participate in the final review and to maintain the report within the standard examination process, thereby avoiding the need to have states consent to the use of the MSA Review or Advisory Report. |
| 6 | ACLI/AHIP | State and Insurer Participation in the MSA Review ProcessAn adequate level of participation from both insurers and states is central to the success of the MSA Review Process and to the Task Force achieving its charge to ensure a more consistent national approach to reviewing and approving actuarially justified rate increases on LTC blocks of business. Without sufficient state commitment and participation in the MSA Review Process, along with state reliance on the information provided to and reviewed by the MSA Team, there is no incentive for insurers to use the MSA Review Process. Increased insurer participation will result if there is a commitment by states to participate in the MSA Review Process and rely on the MSA Team recommendation. Lack of state and insurer participation could result in failure of the MSA Review Process and the Task Force charge. Failure of the Task Force charge will result in continued significant inconsistencies in state level actions on rate increases and an increased potential for future insolvencies and market disruption. We hope that there are not future insolvencies, but the need to act broadly and strategically to reduce that risk should not be ignored. Any future insolvency could have significant ramifications to state based regulation.  |
| 7 | ACLI/AHIP | Conclusion: We share your fundamental concern of ensuring that policyholders receive the benefit of their insurance policies when they need it. Maintaining a guaranteed renewable product with limited or no rate adjustment flexibility is not sustainable. Insurers want to be part of a stable and vibrant market, one where insurers are willing to stay in the market, and hopefully one where others want to return to or join the market. We recognize that the MSA Review Process is new and lessons learned over time will serve to improve and refine the overall process. We appreciate the MSRR subgroup’s hard work and analysis to identify and develop key parameters for an MSA Review Process to review and approve actuarially justified rate increases. Success of the MSA Review Process will help to ensure market stability. |
| 8 | ACLI/AHIP | State Reliance on the MSA Team Recommendation We recognize that the MSA recommendation is that – a recommendation –and that each state retains its ability to review or approve an insurer’s rate increase filing. Yet, the process should enable insurers to understand which states are relying on the MSA recommendation and to what extent. If a state deviates from the MSA recommendation, the reason should be clearly explained to the insurer. At a minimum, this level of disclosure will provide insight into the consistencies (or inconsistencies) across states compared to the MSA recommendation, resulting in a higher level of transparency and consistency within the process. We suggest that language consistent with the following be added to Section I. Subsection F. - Governing Body and Role of the NAIC Long-Term Care Insurance (EX) Task Force:“*At least semi-annually, the Task Force will disclose a list of the rate increase filings reviewed to all stakeholders, along with the following information for each:** *Identification of the states that participated in the MSA Review Process for each filing, and*
* *A description of the general manner in which each participating state utilized the MSA Team’s review and recommendation to make decisions on an insurer’s rate increase filing, e.g., Adoption (adoption of the MSA Team’s review and recommendation); Consideration (active consideration of the MSA Team’s review and recommendation as a supplement to the state’s separate review process); Receipt Only (no reliance on MSA Team’s review and recommendation in the state’s review process).*

*At least annually, and with input from state regulators, industry, and other stakeholders, the Task Force will review the Framework document and amend it, as necessary, to refine the MSA Review Process.”*We believe that this level of transparency could serve as a first step in encouraging the participation of both states and insurers. |
|  | **Section I-D: Benefits of Participating in the MSA Review** **—State Specific Restrictions** |
| 9 | ACLI/AHIP | A primary component leading to the success of the MSA Review Process is achieving an adequate rate level for policyholders in all states. As proposed, the process also gives states the discretion to continue to apply state-specific non-actuarial restrictions and caps on rate increase amounts. Again, we recognize the independence of each state’s authority, but allowing states to impose artificial rate caps on what the MSA Team has determined to be an actuarially justified rate could perpetuate the historical discrepancies between states, which will not address cross-state inequities. It will also undermine the Task Force’s charge to develop “a consistent national approach” to achieve “actuarially appropriate increases.” To ensure the success of the MSA Review Process and ensure that the Task Force achieve its charge, the MSA Team should set forth its expectation that a state will follow the MSA recommendation and not impose artificial, state-specific rate restrictions or caps unless the state justifies those requirements as being actuarially justified and necessary, or specifically mandated by state law. It should be recognized that state restrictions or caps to actuarially justified rate increases will require future increases to be filed and will result in higher actuarially justified ultimate premium rates for insureds in that state in order to maintain equity over the life of the policy.  |
|  | **Section I-E(4): Confidentiality of the MSA Reports** |
| 10 | Michigan | Many states, including Michigan, may be unable to keep the MSA report confidential if it is relied upon in the rate determination as state confidentiality provisions often do not extend to rate review authority.  The task force will want to consider the implications of the report not being able to be held confidential. |
| 11 | ACLI/AHIP | Confidentiality of the Insurer’s Rate Increase ProposalAll materials submitted by the insurer to the MSA Team, along with communications between the insurer and the MSA Team, the MSA Team’s analysis, recommendation and Advisory Report should be maintained as confidential. Once finalized, the MSA Advisory Report and Recommendation should be submitted directly by the MSA Team to each participating state where the insurer files its rate increase request. Once submitted to each participating state, the MSA Advisory Report and Recommendation should be maintained by each state as confidential. Any materials submitted directly to the participating state by the insurer in support of its rate increase request, should be afforded the same level of confidentiality as LTC increase requests submitted to that state outside of the MSA Review Process. |
| 12 | American Academy of Actuaries | The Framework describes MSA Review team members maintaining confidentiality of MSA Advisory Reports and other information. However, if the MSA Advisory Report is to be included in the filing record, or filed by the insurer with Participating States, we believe the report would become public based on limited confidentiality allowed by some states.  |
|  | **Section I-F: Governing Body and Role of the Task Force** |
| 13 | Michigan | We agree the governing body for the MSA Team should be the LTC Insurance (EX) task force, but believe strongly there needs to be a regulator-to-regulator subgroup like FAWG or VAWG that oversees the process and formally approves the MSA Advisory Reports.  This subgroup could include testimony from the company and permit appeals as necessary.  It would also permit affected states to participate and better understand the MSA report’s conclusions.  The FAWG and VAWG models have gained broad approval from both regulators and industry and would seem to be the most appropriate structure for the MSA Team.  This structure would also protect the NAIC and the MSA Team from any liability arising from issuing the report, especially in the event of company insolvency. |
|  | **Section IV-B: Engagement with Insurer and Insurer Access to the Report** |
| 14 | ACLI/AHIP | Transparency and Consistency of:The Multi-state Actuarial (MSA) Review Process, and the methodology for determining actuarially appropriate rate increases that achieve and preserve equity among policyholders in all states;Insurers best protect their policyholders when they can fulfill the obligations they made to these policyholders. This is accomplished when insurers have some level of predictability in their ability to effectively manage their LTC business over time. At its core, this level of predictability can only be achieved through transparency and consistency within the MSA Review Process. We encourage the MSRR subgroup to include elements for achieving greater transparency and predictability within the Framework document. We have identified the following elements that will enhance transparency and predictability within the MSA Review Process*:*Insurer Receipt of the MSA Advisory Report and Recommendation. The MSA Review Process will present significant challenges if the insurer does not receive the MSA Advisory Report. Without receipt of the recommendation and report, there will be an inequality in the parties’ knowledge about the actuarial analysis used and, therefore, potentially, confidence in the recommended rate table. Without understanding the actuarial analysis underlying the MSA Team recommendation, insurers will be unable to engage in a meaningful, productive dialogue with the MSA Team and participating states about the application of that analysis to the insurer’s particular block of business. Insurer and MSA Team Engagement Insurers are in the best position to provide insights and information about their blocks of business. We encourage the MSRR subgroup to include an opportunity for insurers to review the recommendation and interact with the MSA Team recommendation before it is final. Without this step, if an insurer disagrees with the MSA Team recommendation, it will be necessary for the insurer to appeal to each individual state. This will add a significant amount of time to the entire process and reduce efficiency. In addition, including industry in the webinars with other participating states will enable questions to be addressed in a consistent and efficient manner. We suggest language consistent with the language below, be added to Section IV, Subsection B – Completion of the MSA Review Process.*“Information Sharing Between the MSA Team and the Insurer* *Throughout the MSA Team review, the MSA Team will communicate with the insurer and address any questions from the insurer about the MSA Team’s analysis and review. Prior to finalizing the MSA Advisory Report and Recommendation, the insurer will be given an opportunity to review the report and recommendation. If the MSA Team recommendation differs from the rate proposal submitted by the insurer, the insurer will be given the opportunity to provide additional feedback and support of its proposal.”*  |
| 15 | American Academy of Actuaries | The Framework implies that insurers will have access to the final results of the MSA Review, which will be outlined in an MSA Advisory Report. It does not appear that insurers will have access to the draft report. Prior to the final report being provided to the insurer, the draft report will be shared with Participating States. We believe it is important that insurers have an opportunity to review the draft results of the MSA Review in order to provide clarifications, correct any misunderstandings, or dispute the recommendation of the MSA Review. The subcommittee believes it would be beneficial for the process for the Framework to include discussion of an appeal process that would be available to insurers to dispute the findings of the MSA Review. Insurers would retain the right to withdraw a filing from the MSA Review process, without prejudice to a rate filing in any individual state.  |
|  | **Section II-A: Qualifications of MSA Team Member** |
| 16 | Virginia | Along with the qualifications listed, I recommend that the list includes membership in the American Academy of Actuaries. |
| 17 | American Academy of Actuaries | The subcommittee recognizes the potential benefit to state insurance regulators of the MSA Review process in developing and expanding specific LTCI actuarial expertise among the regulatory community. Having one or more suitably experienced and qualified actuaries participate in and supervise the work of the MSA Team will be important to the current and future viability of the process, providing opportunities for additional actuaries to meet the requirements of the U.S. Qualification Standards applicable to members of the American Academy of Actuaries and other U.S. actuarial organizations as they relate to LTCI. We recommend that at least one of the qualified actuaries signing off on an MSA Review be a member of the American Academy of Actuaries, in addition to the requirements currently proposed in the Framework for membership on the MSA Team. Qualified actuaries will be able to assure that the work of the MSA Team complies with appropriate actuarial standards of practice (ASOPs). We believe it will be important for the MSA Team’s report to discuss the reasonableness of actuarial projections and to disclose the impacts of any non-actuarial factors that were considered. |
|  | **Section III-A: Scope and Eligibility of a Rate Proposal for MSA Review** |
| 18 | Michigan | We assume the second bullet point requires 5,000 policyholders nationwide.  We would suggest adding “nationwide” at the end of the bullet for clarity. |
| 19 | American Academy of Actuaries | The Framework defines states as either “impacted” or “participating.” The Framework allows states to choose to be a Participating State in the MSA Review. Further, states that choose to participate can choose whether to follow the recommendation of the MSA Review. This maintains the states’ authority over rate filings. However, it means that the MSA Review does not create finality in the filing process. The Framework may not encourage insurers to use the MSA Review process if it is believed to add an **a**dditional layer of filing review without shortening the approval process on a state-by-state basis. Several criteria are provided for a rate proposal to be eligible for an MSA Review. It is unclear whether insurers would be allowed to pool the experience of similar policy forms within or across legal entities when submitting a filing for an LTCI product. The subcommittee suggests that pooling be allowed where there is adequate homogeneity across the pooled policies. This approach would be consistent with current approaches taken by most state regulators and would allow for blocks with prior rate increases to be pooled in a similar manner as the prior filings. It is unclear whether rate increases on group LTCI blocks would be reviewed under the MSA Review. The subcommittee believes that this should be clarified. Adjustments to the definitions of Impacted State and Participating State may be needed because group certificates can be issued in a state where the state does not have jurisdiction over the rates. |
|  | **Section III-B: Process for Requesting an MSA Review** |
| 20 | Michigan | We seek more detail on the fee schedule proposed for the MSA Review, in particular whether the payment is made by the insurer or the state and whether the NAIC or the respective MSA Team receive the payment.  Whether it is a reimbursement for fees incurred during the course of an examination or fees paid by the insurer for receipt and use of the report has contractual implications.  If the authority to issue the report is derived from the task force or subgroup, the fees appear to be more like fee reimbursement for an examination. |
| 21 | Michigan | We seek to clarify that the rate filing include the SERFF tracking number for the associated/impacted *form* filing(s).   |
|  | **Section III-B: Timeliness & Streamlined Process** |
| 22 | American Academy of Actuaries | One of the stated goals of the MSA Review is to provide timely rate decisions. To the extent that there are any duplicative or redundant steps in the process, we recommend that they be removed or combined. For example, if several Participating States require a certain piece of information that the MSA Review team believes is valuable, that information should be added to the list of information required for an MSA Review. Additionally, if Participating States agree that the listing of information for an MSA Review (as outlined in Appendix B) is exhaustive and no further requests for information are needed as part of the state review, the filing process could be streamlined.  |
|  | **Section III-C: Certification** |
| 23 | American Academy of Actuaries | Section III.C of the Framework describes a required certification by an officer of the insurer requesting an MSA Review to abide by certain conditions. The subcommittee suggests that the second sentence of the first paragraph be deleted. |
|  | **Section IV.E – Feedback to the MSA Team** |
| 24 | American Academy of Actuaries | In particular, what criteria have been or will be used to evaluate the success of the MSA Review process? If an MSA Review process is adopted, will there be future provision for feedback from industry participants, consumers, and other stakeholders, in addition to regulators? |
|  | **Appendix A: MSA Advisory Report Format for Regulators**  |
| 25 | Michigan | The MSA Report appears to be an actuarial communication.  We would encourage the MSA Team to review the applicable actuarial standards of practice to ensure appropriate disclosures are made within the reports, including references to how the report complies with the standards.  We would also encourage the purpose and use to be separated from the Disclaimers section for clarity. |
|  | **Appendix B: Information Checklist** |
| 26 | Michigan | We seek clarification regarding if the checklist is confidential or can individual states incorporate it into their respective filing requirements.  This would ensure additional consistency across LTC rate filings, whether or not submitted to the MSA Team. |

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|  | **Actuarial Analysis in the Framework Document** |
| 27 | American Academy of Actuaries | We would first like to emphasize the importance of actuarial input from the beginning of any process involving the consideration, design, and evaluation of a potential long-term care (LTC) policy approach. Actuaries are uniquely qualified according to their professional standards and play a crucial role in the financing and design of LTC financing systems—from private long-term care insurance (LTCI) to public programs that provide LTC benefits. Actuaries have specialized expertise in managing the risk of adverse selection in insurance coverages, the ability to recognize and incorporate uncertainty into cost projections and premiums, and experience in evaluating the long-term solvency and sustainability of public and private insurance programs. An actuarial perspective can provide a basis for exploration of new and innovative review frameworks. We would refer the task force to two specific publications for examples of such perspective. One is an October 2018 Academy issue brief on considerations for treatment of past losses in rate increase requests for long-term care insurance. The second is a June 2016 Academy issue brief to enhance understanding of what is leading to significant rate increases, examine how the need for a rate increase is determined, discuss the effects of increases on various stakeholders, and explore alternatives to premium rate increases. |
| 28 | American Academy of Actuaries | The Long-Term Care Reform Subcommittee appreciates the NAIC’s objective of “developing a consistent national approach for reviewing current LTCI rates that results in actuarially appropriate increases being granted by the states in a timely manner.” The multi-state actuarial LTCI rate review (“MSA Review”) proposed in the Framework has the potential to create a robust actuarial review, independent of state-specific considerations, to advance the stated objective. However, it will be critical to consider detailed proposals for Actuarial Review, Reduced Benefit Options, and Non-Actuarial Considerations, which appear only as “placeholders” in the draft Framework. The subcommittee is reserving comment on Appendix B of the draft until its information requirements can be considered in context with exposure drafts of the placeholder sections. We suggest that the Framework include a description of the Minnesota and Texas approaches applied by the MSA Review team, or a citation to specific documents.  |
| 29 | ACLI/AHIP | Methodology Used in the MSA Team Recommendation The Framework states that the MSA Team’s review of rate proposals will resemble a state-specific rate review process utilizing consistent actuarial standards and methodologies. In addition, the MSA Team will apply the Minnesota (Blended If-Knew/Make-Up) and Texas (Prospective Present Value) approaches, as described in the 2018 NAIC LTC Pricing Subgroup’s paper – “Long-term Care Insurance Approaches to Reviewing Premium Rate Increases”, to calculate recommended, approvable rate increases. We suggest that the Actuarial Section of the final Framework document outline specific reasons for use of one method over another. In addition, the methodology used by the MSA Team in determining its recommendation must be actuarially sound and acknowledge an insurer’s ability to achieve and preserve equity among policyholders in all states over the lifetime of the policy. Transparency in this piece of the process will result in greater consistency and confidence in outcomes, which is key to the Task Force achieving its charge.  |