

Date: 6/15/20

Conference Call

LONG-TERM CARE INSURANCE (EX) TASK FORCE

Thursday, July 2, 2020

4:00 p.m. – 5:00 p.m. ET

ROLL CALL

Scott A. White, Chair	Virginia	Mike Chaney	Mississippi
Michael Conway, Vice Chair	Colorado	Chlora Lindley-Myers	Missouri
Jim L. Ridling	Alabama	Matthew Rosendale	Montana
Lori K. Wing-Heier	Alaska	Bruce R. Ramge	Nebraska
Christina Corieri	Arizona	Barbara D. Richardson	Nevada
Alan McClain	Arkansas	Marlene Caride	New Jersey
Ricardo Lara	California	Russell Toal	New Mexico
Trinidad Navarro	Delaware	Mike Causey	North Carolina
Karima M. Woods	District of Columbia	Jon Godfread	North Dakota
David Altmaier	Florida	Glen Mulready	Oklahoma
Colin M. Hayashida	Hawaii	Andrew R. Stolfi	Oregon
Dean L. Cameron	Idaho	Jessica K. Altman	Pennsylvania
Robert H. Muriel	Illinois	Elizabeth Kelleher Dwyer	Rhode Island
Stephen W. Robertson	Indiana	Raymond G. Farmer	South Carolina
Doug Ommen	Iowa	Larry D. Deiter	South Dakota
Vicki Schmidt	Kansas	Hodgen Mainda	Tennessee
Sharon P. Clark	Kentucky	Kent Sullivan	Texas
James J. Donelon	Louisiana	Todd E. Kiser	Utah
Eric A. Cioppa	Maine	Michael S. Pieciak	Vermont
Gary Anderson	Massachusetts	Mike Kreidler	Washington
Anita G. Fox	Michigan	James A. Dodrill	West Virginia
Steve Kelley	Minnesota	Mark Afable	Wisconsin
		Jeff Rude	Wyoming

NAIC Support Staff: Jeffrey C. Johnston

AGENDA

1. Consider Adoption of its 2019 Fall National Meeting Minutes Attachment One
—*Commissioner Scott A. White (VA)*
2. Receive Status Reports and Consider Action on the Current Activity of the Task Force’s Workstreams
 - a. Multistate Rate Review Practices—*Commissioner Michael Conway (CO)*
 - b. Non-Actuarial Variance Among the States—*Commissioner Mike Kreidler (WA)*
 - c. Restructuring Techniques—*Doug Slape (TX)*
 - d. Reduced Benefit Options and Consumer Notices: Consider Exposure of Draft Principles Document—*Commissioner Jessica K. Altman (PA)* Attachment Two
 - e. Valuation of Long-Term Care Insurance (LTCI) Reserves—*Fred Andersen (MN)*
 - f. Data Call Design and Oversight—*Doug Stolte (VA)*
3. Consider Formation of Subgroups and Exposure of Charges—*Commissioner Scott A. White (VA)* Attachment Three
4. Discuss Any Other Matters Brought Before the Task Force—*Commissioner Scott A. White (VA)*
5. Adjournment

Draft Pending Adoption

Draft: 12/16/19

Long-Term Care Insurance (EX) Task Force
Austin, Texas
December 9, 2019

The Long-Term Care Insurance (EX) Task Force met in Austin, TX, Dec. 9, 2019. The following Task Force members participated: Scott A. White, Chair, and Doug Stolte (VA); Michael Conway, Vice Chair, represented by Eric Unger (CO); Lori K. Wing-Heier (AK); Allen W. Kerr represented by William Lacy (AR); Stephen C. Taylor (DC); Trinidad Navarro (DE); David Altmaier (FL); Colin M. Hayashida (HI); Doug Ommen (IA); Dean L. Cameron (ID); Robert H. Muriel (IL); Stephen W. Robertson represented by Amy Beard and Karl Knable (IN); Nancy G. Atkins (KY); James J. Donelon represented by Rich Piazza (LA); Gary Anderson (MA); Eric A. Cioppa (ME); Anita G. Fox represented by Karen Dennis (MI); Steve Kelley, Grace Arnold and Fred Anderson (MN); Bruce R. Ramage and Rhonda Ahrens (NE); Marlene Caride (NJ); John G. Franchini represented by Anna Krylova (NM); Barbara D. Richardson represented by Stephanie McGee (NV); Glen Mulready represented by Ron Kreiter (OK); Andrew Stolfi (OR); Jessica Altman (PA); Elizabeth Kelleher Dwyer (RI); Raymond G. Farmer (SC); Larry Deiter (SD); Hodgen Mainda (TN); Kent Sullivan and Doug Slape (TX); Todd E. Kiser represented by Tanji Northrop (UT); Michael S. Pieciak represented by Anna Van Fleet (VT); Mike Kreidler (WA); Mark Afable (WI); and James A. Dodrill (WV).

1. Adopted its Oct. 31 and Summer National Meeting Minutes

The Task Force conducted an e-vote that concluded Oct. 31 to adopt its 2020 proposed charges.

Commissioner Kreidler made a motion, seconded by Commissioner Altman, to adopt the Task Force's Oct. 31 (Attachment One) and Aug. 4 (*see NAIC Proceedings – Summer 2019, Receivership and Insolvency (E) Task Force*) minutes. The motion passed unanimously.

Commissioner White said the Task Force also met Oct 16 in regulator-to-regulator session pursuant to paragraph 8 (consideration of strategic planning issues) of the NAIC Policy Statement on Open Meetings to discuss workstream planning.

2. Received a Progress Report on Activities of the Task Force

Commissioner White said the goals of the Task Force were divided into six workstreams, each of which has work underway or planned. Commissioner White said a public summary report on each of the workstreams was posted to the Task Force's web page and was distributed to all interested state insurance regulators and interested parties on Oct. 25.

a. Multistate Rate Review Practice

Ms. Ahrens said the workstream met Nov. 13 to discuss base questions and criteria for selecting a recommended long-term care insurance (LTCI) rate increase review methodology to use in a multistate review. Next, several actuaries were asked to refine the base questions and criteria, which will be discussed during a conference call in December.

b. Restructuring Techniques

Mr. Slape said the workstream was organized to consider if any restructuring techniques could be used to protect policyholders as opposed to receivership. The group has met to develop a set of guiding principles and a scope of work. He said a conference call is scheduled for next week to review the scope of work and consider next steps for analysis.

c. Reduced Benefit Options and Consumer Notices

Commissioner Altman said the workstream has met several times and is focused on information gathering from state insurance regulators on states' practices for the review of reduced benefit options and consumer notices sent by companies, sample of notices and decisions states have made related to reduced benefit options. The group plans to continue information gathering by hearing from states that have robust review processes, discuss specific types of reduced benefit options and then shift to consumer disclosures.

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Bonnie Burns (California Health Advocates—CHA) asked how reduced benefit options are regulated by states since they are not included in NAIC models and there is inconsistency between states. Commissioner Altman said the workstream has found that states have different review processes. One of the goals of the workstream is to reach a high level of consistency, keeping in mind the concerns affecting policyholders.

Ms. Burns asked when the workstream meetings would be open to interested parties. Commissioner White said the Task Force wants to be transparent and get input from stakeholders. Therefore, at the appropriate time, more information will be made available and more feedback will be requested from interested stakeholders. Commissioner Altman said with respect to this workstream, the input from consumer representatives and industry is necessary. It is just a matter of reaching the right point in the process to involve interested parties.

d. Valuation of LTCI Reserves

Mr. Andersen said the workstream's primary charge regarding coordination and communication of LTCI reserving issues is being accomplished under the Valuation Analysis (E) Working Group and its review of companies' *Actuarial Guideline LI—The Application of Asset Adequacy Testing to Long-Term Care Insurance Reserves* (AG 51) filings and meeting with companies. In 2019, the Working Group's focus was on morbidity improvement, rate increase and investment return assumptions. In 2020, the focus has been on morbidity, including cost of care projections, effect of underwriting and what happens with older age policies. The workstream is also looking at ways to assist states in understanding the commonality between drivers of rate increases and reserving. The workstream conducted a survey on states' interdepartmental coordination and communication between rate review actuaries and valuation actuaries and found that with few exceptions, states' actuaries do communicate with each other.

Ms. Burns asked what happens to policyholder reserves when benefits are reduced. Mr. Andersen said companies are required to project out all cash flows, including premium, claims and investment income. When there are rate increases, the premium cash-flow projection for premium is changed for the new premium rate. When there are benefit changes, the cash-flow projections for benefits would be changed. That is something the workstream will focus on but does not have any data yet.

Birny Birnbaum (Center for Economic Justice—CEJ) asked which workstream will be looking at if the reduced benefit options offered to consumers are fair and equitable. Commissioner Altman, Mr. Andersen and Ms. Ahrens confirmed that the prospective review of reduced benefit options is within the scope of the reduced benefit option and consumer notice workstream and the multistate rate review practice workstream, while the historical review falls within the scope of the valuation of LTCI reserves workstream.

e. Non-Actuarial Variations

Commissioner Kreidler said the workstream is focused on evaluating the variances between states' use of non-actuarial factors and review considerations in reviewing rate increase requests and develop best practices.

The workstream began with a limited scope survey of 14 workstream members about their departments' policies, practices and authority to modify rate increase determinations of LTC rate filings based on non-actuarial factors. Nearly all states responding indicated they have authority to consider non-actuarial factors in the rate approval process. The top three factors were phase-in periods, caps (or limits) on the amount of allowed rate increases, and waiting periods between rate increase approvals and subsequent requests. The workstream also found that the length of phase-in and waiting periods and the threshold for caps varied from state to state. The workstream noted other factors included such things as the size of the block of policyholders, prior rate increase approvals, the size of the rate increase and its impact on consumers.

The workstream thinks the results of the survey are a representative sample of states' practices, and it intends to use the results to develop recommendations for possible best practices. Over the next few weeks, the workstream will first be working on gathering additional information to better understand how the states determined these factors and established thresholds. Following that, the workstream will begin to develop possible best practices for the use of non-actuarial practices in the rate determination process that the Task Force can consider at a future date.

f. Data Call Design and Oversight

Draft Pending Adoption

Mr. Stolte said the workstream was organized to perform two functions: 1) define a scope of work data call for certain long-term care (LTC) insurers in order to accumulate and analyze the current level of potential LTCI rate inequity among states' policyholders; and 2) review the work of a consultant performing such a data call for communication to the Task Force.

Mr. Stolte said the workstream held preliminary discussions in July to brainstorm the type of data that may be needed to achieve the objective, and then in August, the actuaries began designing the data call. In September, testing and proposed improvements were made mostly from an instructional perspective. Ultimately, the workstream drafted a proposed scope of work for a consultant to complete such work. On Nov. 11, the NAIC released a Request for Proposal (RFP), which is posted to the NAIC website. Some key dates in the RFP are as follows:

- On Nov. 19, notification of intent to bid and submission of questions from bidders was due. Ten firms responded with their intent to bid, and on Nov. 22, responses to questions were provided.
- Bids are due Dec. 11.
- Firm selection is expected to be made in mid-February 2020.

Commissioner Stolfi said one data point that he is interested in receiving is how carriers have distributed dividends, whether currently available in annual financial reporting or through the data call.

3. Received Comments from Consumer and Industry Representatives

Patrick Cantilo (Cantilo & Bennett LLP) said the problem with LTCI rates is that pricing was originally based on modeling like life and annuities. The assumptions for lapse rates, termination rates, morbidity and mortality were misjudged. Investment yield assumptions have changed due to economic changes. For policies sold in the 1970s and 1980s, the premium was found to be grossly underpriced. It is not uncommon today for a company to have policies for a single product with rates that vary as much as sevenfold to tenfold between states. State insurance regulators have had a variety of valid concerns regarding companies' rate increase requests. He said he has two observations:

- Policyholders had little input in the setting of premium rates and were often led to believe the rates would not change over time.
- Policyholders were inadvertently receiving a bargain, which was not a sustainable model.

Mr. Cantilo said there are three options for legacy blocks of LTCI:

- Market solutions are like the work being evaluated by the restructuring workstream group. Some in industry are developing creative solutions that have not been tested. Criteria should be observed with those solutions, including that the solutions be nondiscriminatory and treat policyholders fairly, and that the solutions must be effective and workable.
- Rehabilitation gives the domiciliary regulator broad authority to restructure the company and an opportunity to provide a better outcome for policyholders than market solutions or liquidation.
- Liquidation adds the value of guaranty association safety net but comes with benefit limitations.

Charles Piacentini (American Council of Life Insurers—ACLI) said the first message to convey is that the ACLI is committed to providing resources to answer questions and provide information. He said that all the workstreams are important and that the multistate rate review workstream is the cornerstone of all the workstreams. Industry has coalesced around the prospective present value (PPV) methodology, also known as the Texas Approach, as it achieves the objectives identified by state insurance regulators and concerns expressed by consumers. Stabilization and addressing legacy blocks are important to having coverage in the future and providing solutions to protect the financial security for consumers. He said coming up with a standard methodology will also enable streamlining of the information provided to each state. Applying a common methodology addresses the concerns across jurisdictions to treat similarly situated policyholders equitably.

Jan Graeber (ACLI) said she encourages the Task Force to leverage the work completed by the Long-Term Care Pricing (B) Subgroup. She said the ACLI is committed to devoting resources to demonstrate how the PPV address state insurance regulators' concerns. The PPV requires carriers to share in the cost by absorbing the losses that have occurred in the past. The PPV addresses the inequity between states that have approved different rate increases. Internally, the ACLI is developing a high-level demonstration to show how the PPV addresses these concerns. Carriers need a level of predictability to price and manage their business.

Mr. Knable said that while Indiana is fine with a consistent approach to reviewing rates, he emphasized the need to maintain a state-based approach to applying rate increases to policyholders that considers actuarial factors and policyholder expectations.

Draft Pending Adoption

Having no further business, the Long-Term Care Insurance (EX) Task Force adjourned.

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REDUCED BENEFIT OPTIONS ASSOCIATED WITH LONG-TERM CARE INSURANCE (LTCI) RATE INCREASES
- REQUEST FOR PUBLIC COMMENT -

Drafted by the Reduced Benefit Options Workstream (#3) of the Long-Term Care Insurance (EX) Task Force

INTRODUCTION

The Reduced Benefit Options (RBO) Workstream is composed of regulators from 17 state insurance departments. It has been tasked with assisting the Long-Term Care Insurance (EX) Task Force in completing the following charge:

Identify options to provide consumers with choices regarding modifications to long-term care insurance (LTCI) contract benefits where policies are no longer affordable due to rate increases.

The Workstream regulators have developed a list of RBO principles in order to provide guidance for evaluating RBO offerings.

PRINCIPLES AND ISSUES, INCLUDING THOSE WITH PARTICULAR NEED FOR STAKEHOLDER INPUT, INCLUDE:

1. Related to fairness and equity for policyholders that elect an RBO:

- Are all policyholders facing a rate increase being offered an RBO?
- Do the RBOs provide reasonable value?

2. Related to fairness and equity for policyholders that choose to accept rate increases and continue LTCI coverage at their current benefit level:

- To what extent could anti-selection take place, placing the financial stability of the remaining block of business at further risk?

3. Related to clarity of communication with policyholders eligible for an RBO:

- What are recommendations for ensuring policyholders have maximized opportunity to make decisions in their best interest?
- Should regulators, in some cases, encourage a company to offer fewer options in order to reduce the complication in decisions policyholders will face?

4. Related to consideration of encouragement or requirement for a company to offer certain RBOs:

- Evaluate legal constraints, impact on remaining policyholders and company finances, and impact on Medicaid budgets if regulators are driving reduced LTCI benefits.

5. Related to exploration of innovation, particularly where an outcome of improved health and lower claim costs are possible:

- Identify pros and cons of rate increases being tied into insurers offering, e.g., hand railings for fall prevention in high-risk homes.

WIDELY ESTABLISHED RBOs IN LIEU OF RATE INCREASES

- a. Reduce inflation protection going forward, while preserving accumulated inflation protection
- b. Reduce Daily Benefit
- c. Decrease Benefit Period/Maximum Benefit Pool
- d. Increase Elimination Period
- e. Contingent Nonforfeiture
 - i. Claim amount can be sum of past premiums paid
 - ii. Only receive that benefit if the policyholder qualifies for a claim

LESS COMMON RBOs FOR POTENTIAL DISCUSSION

- a. Cash buyout
- b. Co-pay percentage on benefits

Proposed Charges:

The **LTCI Multistate Rate Review (EX) Subgroup** will:

Develop a consistent national approach for reviewing LTCI rates that results in actuarially appropriate increases being granted by the states in a timely manner and eliminates cross-state rate subsidization. The Subgroup should complete its charges by the 2021 Summer National Meeting.

- *Chair: Commissioner Michael Conway (CO)*
- *Consolidation of workstream 1—Multi-state Rate Review Practices and workstream 5— Non-Actuarial Variance Among the States*
- *Open Sessions or Regulator Only Sessions, pursuant to open meetings policy #3 – discussion of companies, entities or individuals*

The **LTCI Reduced Benefit Options (EX) Subgroup** will:

Identify options and develop recommendations for the rate review approach that provides consumers with choices regarding modifications to LTCI contract benefits where policies are no longer affordable due to rate increases. The Subgroup should complete its charges by the 2021 Summer National Meeting.

- *Chair: Commissioner Jessica K. Altman (PA)*
- *Former workstream 3—Reduced Benefit Options and Consumer Notices*
- *Open Sessions*

The **LTCI Financial Solvency (EX) Subgroup** will:

- a. Explore restructuring options and techniques to address potential inequities between policyholders in different states; and techniques to mitigate policyholders' risk to state guaranty fund benefit limits including states' pre-rehabilitation planning options. Evaluate the work of the consultant and report on the work to the Task Force
- b. Evaluate the results of consultants' work on the completion of a data call and report on the work to the Task Force
- c. Monitor work performed by other NAIC solvency working groups and assist in the timely multi-state coordination/communication of the review of the financial condition of LTC insurers

The Subgroup should complete its charges by the 2021 Summer National Meeting.

- *Co-Chairs: Doug Slape (TX) and Fred Andersen (MN)*
- *Consolidation of workstream 2—Restructuring Techniques, workstream 4—Valuation of Long-Term Care Insurance (LTCI) Reserves and workstream 6—Data Call Design and Oversight*
- *Regulator Only Sessions, pursuant to open meetings policy #3 – discussion of companies, entities or individuals*