

ATTACHMENT ONE-A

**Benefit Triggers Working Group
of the Senior Issues (B) Task Force
Washington, D.C.
February 16, 1995**

The Benefit Triggers Working Group of the Senior Issues (B) Task Force met at 8 a.m. on Feb. 16, 1995, at the Hyatt Regency Capitol Hill in Washington, D.C. Guenther Ruch (Wis.) chaired the meeting. The following working group members or their representatives were present: Wendy Eaby (Del.); Diane Boyle-Jones (Fla.); Mary Ann Marvin (Ind.); and Noel Morgan (Ohio).

1. Discussion on H.R. 8—The Senior Citizens' Equity Act

Guenther Ruch (Wis.) discussed the components contained in a federal bill introduced as part of the Republican Contract with America. Mr. Ruch stated this bill is designed to clarify the tax treatment of long-term care (LTC) policies. Morris Melloy (NAIC/SSO) stated the bill in its present form provides certain tax classifications and/or grants favorable tax treatment for long-term care policies that meet the standards established in the bill. This bill clarifies that taxes paid by employers and individuals for long-term care insurance are tax deductible similar to health insurance, reserves established by insurers are given favorable treatment in the first year as with most health insurance policies, benefits provided by long-term care policies are tax-exempt. It contains various miscellaneous provisions relating to usage of individual retirement accounts and pension funds to pay premiums for long-term care coverage. Mr. Melloy stated the standards for the policies are very different than those currently required in most states and do not appear to be based on current practices by the insurance industry or regulatory requirements. He stated the bill lists five activities of daily living (ADL) that do not appear to be based on the Katz studies or any other similar studies based on a person's ability to perform activities of daily living. Mr. Melloy also noted that the bill would require policies to only pay for services rendered in qualified facilities except a person otherwise required to be admitted to the facility could receive favorable tax treatment for benefits received in the home.

Bonnie Burns (California Health Insurance Counseling and Assistance Program) said she is concerned that the requirements of this legislation will essentially drive the manner in which long-term care services are provided. David Brennerman (UNUM Corp.) stated it appears Congress is very interested in this legislation at this time. He stated the problem with this legislation and this working group's effort is that the legislation requires policies to trigger benefits based on two of five activities of daily living and the current NAIC effort includes six activities of daily living.

Caroline Boyer (Health Insurance Association of America—HIAA) stated the staff to the subcommittee with jurisdiction over this legislation would like to have this bill on the floor of the House for consideration by the third week of March. She stated the staff is very firm on the two of five activities of daily living benefit trigger test and that the industry has been strongly recommending the use of the Katz definitions. Ms. Boyer stated the staff is receptive to discussions on the definitions of the ADLs currently listed in the bill and anticipated that the chairman's mark would be significantly different than what had been distributed. Ms. Boyer stated HIAA would like to have the institutional requirement removed. Mary Ann Marvin (Ind.) questioned how this bill addresses life insurance policies that accelerate benefits for long-term care services. Ms. Boyer stated there are provisions relative to life insurance policies in the bill. Mr. Ruch stated the bill currently contains a \$200 maximum daily benefit limit that may be problematic for certain areas of the country. Mr. Brennerman stated this limit is included to control the cost of the legislation. David Holton (Metropolitan Life) stated many companies will pay a weekly benefit and allow the persons receiving the benefit to use that benefit as they saw fit, which may result in more than \$200 in one day but less than \$200 in another day.

Wendy Eaby (Del.) stated the NAIC should consider going on record with the efforts and progress it has made with regard to benefit triggers and many other consumer protections contained in the LTC Model Act and Regulation. Ron Kotowski (Ill.) stated the NAIC needs to present a unified approach to Congress and hopefully that unified approach would be consistent with the views of the industry and consumer groups. Mr. Ruch stated the NAIC staff should monitor this legislation and offer to assist as it progresses. Mr. Ruch stated this legislation is particularly difficult as the NAIC is attempting to set minimum standards for long-term care policies and this legislation appears to set maximum standards. Ms. Burns stated embedding these provisions in tax law may stifle the development of this growing and evolving LTC market.

2. Discussion of Draft Amendments Incorporating Benefit Triggers Standards

Mr. Ruch stated the working group has made significant progress in establishing a regulatory framework for the use of activities of daily living as a benefit trigger. Mr. Holton stated that bladder control is an important aspect of continence. Allen Shaw (Del.) questioned if this is not a performance measure that should go in Section 23 of the Long-Term Care Model Act rather than the definition. Dr. Ball stated the question here is personal hygiene, not necessarily about bladder control. She stated continence is not control, it is the ability to effectively manage bowel and bladder movements. Dr. Ball also stated continence is a person's ability to manage the process of elimination and that personal hygiene may be covered in the definition of toileting.

Mr. Ruch stated the word "appropriate" in the definition of dressing can only lead to regulatory problems and suggested that the working group consider removing it. Diane Boyle-Jones (Fla.) questioned the current definition of bathing and questioned whether it was tied to the person's ability to get in or out of the tub. Mr. Ruch stated this was not the intent and the definition was modified to clarify that it is including the task of getting in and out of the tub or shower.

Mr. Ruch stated several persons have commented and suggested that the working group consider deletion of the definition of mobility. Howard Bedlin (American Association of Retired Persons—AARP) questioned whether this deletion of the term mobility would exclude people by removing it or would include too many people by keeping it. Mr. Ruch stated the problem with mobility is that it is very difficult to define and it is not included in previous studies performed on ADLs such as those performed by Dr. Katz. Upon a motion duly made and seconded, the working group voted to delete the ADL mobility definition, recognizing that it may need to come back and revisit the number of activities of daily living in the model used to trigger benefits.

Ms. Marvin suggested the deletion of the measurement tool in the definition of cognitive impairment and deal with measurement in Section 23. Mr. Holton stated it is important to keep the measurement tool in the draft. Ms. Marvin stated the goal was to keep definitions simple and concise and have the measurement of deficiency in one section. Susan Cornell (HIAA) stated the HIAA suggested the definition be revised to read, " 'Cognitive impairment' means the insured must have a deterioration or loss of intellectual capacity that requires the insured to need continual supervision or verbal cueing for the protection of the insured or others." Dr. Ball stated that just because a person is deficient in their cognitive functioning does not necessarily mean they are unable to care for themselves. She suggested leaving the current definition and add to this judgment and safety awareness.

Mr. Ruch questioned whether there is a clinical aspect to a person's judgment, reasoning and awareness. Dr. Ball responded yes, most definitely. Ms. Marvin suggested the definition be revised to read, " 'Cognitive impairment' means a deficiency in a person's short- or long-term memory, orientation as to person, place and time, deductive or abstract reasoning, or judgment as it relates to safety awareness." Upon a motion duly made and seconded, the definition was revised.

Mr. Bedlin stated using ADLs and a cognitive measurement test for long-term care benefits may exclude some persons who need assistance. Mr. Bedlin stated a March 1994 article referencing a Connecticut study found that 72% of the participants had no ADL limitation. He said that the study reflects that 83% of the individuals are deficient in one or less ADL. Mr. Bedlin stated additional work in the Pace studies also has shown significant numbers of persons needing care, but not necessarily being deficient in ADLs. Mr. Bedlin stated the working group should address this but was not necessarily comfortable with the best way to accomplish his concerns. Greg Gurlich (Time) stated some studies on this show that the issue is covering acute care conditions rather than a person's traditionally considered long-term care needs. Mr. Brennerman stated long-term care insurance is designed to cover certain items and not necessarily all needs, such as assistance with medication management. Bob Glowacki (AEGON) stated medical necessity is very difficult to price and very hard to predict as far utilization goes. He stated medical necessity in a nursing home may be an adequate measure to determine benefits, but when you are dealing with home health care it becomes rather difficult. Mr. Ruch stated he would like the interested parties to bring additional information relative to medical necessity, cognitive impairment and the measurement tools for discussion at its next meeting in conjunction with the March meeting of the NAIC.

Having no further business, the working group adjourned at 12:20 p.m.

ATTACHMENT ONE-B

LONG-TERM CARE INSURANCE MODEL REGULATION

Draft: 3/11/95
Benefit Triggers

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