

Draft: 6/4/21

Long-Term Care Insurance Model Update (B) Subgroup
Virtual Meeting
May 27, 2021

The Long-Term Care Insurance Model Update (B) Subgroup of the Senior Issues (B) Task Force met May 27, 2021. The following Subgroup members participated: Philip Gennace, Chair (NJ); Laura Arp, Vice Chair (NE); Sarah Bailey (AK); Tyler McKinney (CA); Roni Karnis (NH); Jill Kruger (SD); Tomasz Serbinowski (UT); and Elsie Andy (VA). Also participating were: Dusty Smith (AL); Andrew Greenhalgh (CT); Susan Jennette (DE); Martha Im (HI); Andria Seip (IA); Kathy McGill (ID); Christina Roy (IL); Alex Peck (IN); Craig VanAalst (KS); Ron Kreiter (KY); Jamie St. Clair (MD); Sherry Ingalls (ME); Renee Campbell (MI); Fred Andersen (MN); Carrie Couch (MO); Bob Williams (MS); Ashley Perez (MT); David Yetter (NC); Yuri Venjohn (ND); Jennifer Catechis (NM); Martin Wojcik (NY); Shannen Logue (PA); Mei Feng (TX); Mary Block (VT); Julie Walsh (WI); Joylynn Fix (WV); and Mavis Earnshaw (WY).

1. Adopted its May 6 Minutes

The Subgroup met May 6 and took the following action: 1) adopted its April 22 minutes; and 2) discussed comments received on Sections 1 through 7 of the *Long-Term Care Insurance Model Regulation* (#641).

Mr. McKinney made a motion, seconded by Ms. Kruger, to adopt the Subgroup's May 6 minutes. The motion passed unanimously.

2. Discussed Comments Received on Sections 8 Through 14 of Model #640

Mr. Gennace said before beginning on the latter sections, he would like to hear from Mr. Serbinowski on whether he has more to comment on the issues of extraterritoriality. Mr. Serbinowski said if the current language is sufficient to address the certificates of group policies and rate increases, then the language should remain.

Birny Birnbaum (Center for Economic Justice—CEJ) said the language is not sufficient, and he cited the example he raised at the previous meeting. He said there needs to be clarification. Jan M. Graeber (American Council of Life Insurers—ACLI) said there are different types of products that are classified as group, such as true group. She said the model may not be specific, but the language is clear, and the states have the flexibility. Mr. Serbinowski said it may be useful to look at the question of why group long-term care (LTC) policies are still needed. Ms. Andy said language is still needed for group policies in existence today. Bonnie Burns (California Health Advocates—CHA) said group policies are used for marketing. She said employees believe the group policies are something different than what is out in the private sector. Ms. Logue said the reason why group sales come in with low benefits is to avoid anti-selection issues and offer a modified guaranteed issue product.

Mr. Gennace asked for comments on the consumer representatives' comment on Section 8 of Model #641 on nonforfeiture benefits. Ms. Burns said the language ties the size of the premium increase to the age of the policyholder over time. She said it unfairly penalizes policyholders who are unable to continue funding an ever-increasing premium (e.g., a widow left with diminished income after their spouse's death). She said she has not seen a lot of non-forfeiture, but no one should have to give up a policy that is paid for, and there should be options for policyholders should there be an income change. Mr. Serbinowski said the Subgroup may want to consider requiring that the non-forfeiture benefit be equal to the greater of premiums paid, and 30 days of benefits should be built (required, not optional) in every policy. He said it should not cost too much, because this is a fairly low benefit and lapse rates are very low anyway. Ms. Graeber asked Ms. Burns if she is looking for the ability to reduce coverage or terminate and pay the non-forfeiture and whether Section 22 of Model #641 would be of help. Ms. Burns said the language is vague, and Section 22 does not address the contingent benefit upon lapse.

Mr. Gennace asked if anyone wished to discuss the consumer representatives' comments on Section 9 of the *Long-Term Care Insurance Model Act* (#640). Ms. Burns said producers do not believe they need training or additional training since they are not selling long-term care insurance (LTCI). She asked if the term includes benefits in life and annuity products, and she said knowing and being able to explain the difference between free standing products for LTC and life and annuity-based products should be included for agents and brokers selling life or annuity-based products.

Mr. Gennace asked if anyone wished to discuss the consumer representatives' comments on Section 13 of Model #640. Ms. Burns said the penalties are rather low and pointed out that some life and annuity commissions are above the current penalty level.

Mr. Gennace said he would inform the Subgroup of the next steps in terms of reviewing Model #641, and he asked if anyone had any further comments. Ms. Karnis informed the Subgroup of a New Hampshire Supreme Court decision in February that analyzed New Hampshire's LTC rulemaking authority statute, which follows Section 10 in Model #640. She said the Court invalidated a New Hampshire rate cap administrative rule, which was not based on Model #640, but the rulemaking authority statute for LTC has the same language as the current Model #640 language. She said given the court case, the Model #640 language may continue to create questions in other states that are trying to provide consumer protection for policyholders before a large rate increase is implemented, and updating those terms or clarifying the balance of how they work together would be recommended based on New Hampshire's experience.

Ms. Karnis said it would be helpful to see what is currently out in the marketplace and what has evolved over time in relation to Model #640 and Model #641.

Having no further business, the Long-Term Care Insurance Model Update (B) Subgroup adjourned.

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