

Draft: 10/15/21

Long-Term Care Insurance Model Update (B) Subgroup
Virtual Meeting
October 13, 2021

The Long-Term Care Insurance Model Update (B) Subgroup of the Senior Issues (B) Task Force met Oct. 13, 2021. The following Subgroup members participated: Philip Gennace, Chair (NJ); Mayumi Gabor (AK); Tyler McKinney (CA); Roni Karnis (NH); Jill Kruger (SD); Tomasz Serbinowski (UT); and Elsie Andy (VA). Also participating were: William Rodgers (AL); Carroll Astin (AR); Erin Klug (AZ); Emily Smith (CA); Shirley Taylor (CO); Jared Kosky (CT); Susan Jennette (DE); Benjamin Ben (FL); Teresa Winer (GA); Jason Asaeda (HI); Andria Seip (IA); Kathy McGill (ID); Eric Anderson (IL); Scott Shover (IN); Craig VanAalst (KS); Ron Kreiter (KY); Fern Thomas (MD); Sherry Ingalls (ME); Karen Dennis (MI); Fred Andersen (MN); Amy Hoyt (MO); Bob Williams (MS); Ashley Perez (MT); Ted Hamby (NC); Yuri Venjohn (ND); Bogdanka Kurahovic (NM); Sean Becker (NY); Tynesia Dorsey (OH); Cuc Nguyen (OK); Jim Laverty (PA); Andrew Dvorine (SC); Vickie Trice (TN); Barbara Snyder (TX); Mary Block (VT); Julie Walsh (WI); Dena Wildman (WV); and Mavis Earnshaw (WY).

1. Adopted its July 15 Minutes

The Subgroup met July 15 and heard presentations on the current long-term care insurance (LTCI) marketplace and what products are being seen, filed, and produced in the marketplace.

Ms. Kruger made a motion, seconded by Ms. Karnis, to adopt the Subgroup's July 15 minutes. The motion passed unanimously.

2. Discussed Comments Received on Sections 1–6 of Model #641

Mr. Gennace asked Jan Graeber (American Council of Life Insurers—ACLI) to discuss the ACLI's comments on Sections 1–6 of the *Long-Term Care Insurance Model Regulation* (#641). Ms. Graeber said the ACLI believes the language currently contained in Sections 1–6 remains flexible and compatible with the current LTCI marketplace, and new language is unnecessary. She said as the Subgroup continues its review of the remaining sections of Model #641, the ACLI recognizes that changes needed to those sections could result in a need to reconsider their position regarding the opening of Sections 1–6.

Birny Birnbaum (Center for Economic Justice—CEJ) said Ms. Graeber should show evidence that Model #641 works and Sections 1–6 remain flexible and compatible with the current LTCI marketplace. Ms. Graeber said she has not seen anything in the marketplace being stifled by Sections 1–6. Mr. Serbinowski said it is difficult to prove a negative, and Sections 1–6 are mostly definitions.

Mr. Gennace asked if someone from California cares to explain their comment to Section 3. Ms. Smith said this section singles out one type of other product that may come within the scope of Model #641—disability income insurance with a benefit triggered by activities of daily living (ADLs)—but it does not address other types of products in the marketplace today that have triggers based on ADLs or confinement in a facility. She said inclusion or exclusion of these other products within the scope of Model #641 should be considered. Mr. Serbinowski said it would be helpful if the Subgroup could look at or see examples of these products that skate on the edge of being LTCI. Ms. Smith said she is unable to give specific examples at this time, but she could provide generic examples.

Mr. Gennace asked Bonnie Burns (California Health Advocates—CHA) to explain the NAIC Consumer Representatives' comment on Section 3. Ms. Burns said it is like California's comment in that this section should be reviewed to determine if any part of it should apply to newer products that trigger benefits on ADLs and cognitive impairment, not just DI. Ms. Graeber said it would be helpful to see what these products are so products that are not really LTCI are not pulled in. Mr. Gennace said should Model #641 be opened for editing, the Subgroup can take a deeper look into these products.

Mr. Gennace asked Ms. Burns if the NAIC Consumer Representatives' comment on Section 4 is like the previous section. Ms. Burns said it is similar, and she believes this section should be reviewed to determine if it covers newer products that provide benefits for long-term care (LTC) expenses.

Mr. Gennace asked Mr. Serbinowski to discuss his comment to Section 4B(1). Mr. Serbinowski said of the definition of the “exceptional increase,” it incorporates requirements that go beyond defining the term, and Utah would move the requirements outside of the section that defines the term. He said he merely is making an observation and has no real concern.

Mr. Gennace asked Mr. Serbinowski to discuss his comment to Section 4F. Mr. Serbinowski asked if there is a reason to require membership in a specific organization rather than maybe an actuary that is subject to the American Academy of Actuaries’ (Academy’s) “Qualification Standards.” He said the Academy does not recognize a status of “in good standing.” Ms. Snyder said a qualified actuary could be defined as an actuary and is a member of the Academy and qualified under its qualification standards. She said the Academy has a particular document that defines the standards to be met. Mr. Serbinowski said it might be more useful to have alternative language, and that could be addressed should Model #641 be opened.

Mr. Gennace asked Ms. Burns to discuss the comment received on Section 5. Ms. Burns said the section should be reviewed to consider definitions for reduced benefit options (RBOs). She said the phrase is used often in NAIC discussions, but there is no definition, and a definition should be included if it is being used in Model #641 and elsewhere. Mr. Serbinowski said RBOs is not the exact term used. He said the language requires that a policy offers the option to reduce benefits. He said RBOs may be used by the NAIC, but it is not in Model #641. Ms. Burns said if the term is being used, it should have a definition, and she suggested the definition used by J.P. Wieske (Horizon Government Affairs). Mr. Serbinowski said it is hard to determine whether a definition is needed just based on Sections 1–6 and how it relates to any parts of Model #641 with respect to the options to reduce benefits. He said while the term RBOs is not used in Model #641, should it be opened, a determination of whether a definition is needed can be decided.

Mr. Gennace asked Ms. Burns to discuss the comment on Section 5E. Ms. Burns said this section should be reviewed to consider changing the wording “safety awareness” to a more specific definition. She said it seems to be a very outdated term, and there must be a better way to describe it, so the definition should be revised. Ms. Karnis asked how changing the term safety awareness or using a different term would foster increased flexibility, as the goal of the Subgroup is to determine whether the language in Model #641 no longer remains flexible and compatible with the current LTCI marketplace. Ms. Burns said she did not know what “safety awareness” means. She said that terminology is more like a risk to oneself or others, but it does not make sense. Mr. Gennace said it seems like the issue is a matter of perhaps tightening up or increasing the clarity of the language, but he asked whether it is also a matter of just modernizing or if there is a need to address that as an improvement. Ms. Andy asked if this term could be a federally defined term, and if so, if it could even be adjusted. Ms. Burns said she is pretty sure it is not a federally defined term. Mr. Gennace asked Mr. Torian if he could find some history on the term “safety awareness.”

Mr. Gennace said the Subgroup will look at Section 6, and he asked the NAIC Consumer Representatives to discuss their comment on Section 6A(4). Ms. Burns said the section refers to a “class” regarding rate increases, and there should be a definition of a class for the purpose of imposing a premium increase. Mr. Serbinowski said the Subgroup is not opposed to examining this, but defining class could be a very tricky issue. Mr. Gennace asked whether this has been an issue, there have been problems, or if it is inadequate in some way. He said he could see why it may need to be defined, but he asked if there have been issues or concerns from it not being defined. Mr. Birnbaum said this issue has been a source of litigation.

Ms. Burns said her comment may not have been totally clear, and she has concerns about guaranteed renewable even though the section in question states the use of a class basis. She said on the front page of all policies is a visible guaranteed renewable section, but the right to raise premiums is buried in the section. She said policyholders do not see that and do not know it is there from her experience in counseling consumers. She said there should be two separate paragraphs that pertain to the right to raise premiums and the guaranteed renewability. Ms. Graeber said this is the standard definition of guaranteed renewable, and it starts to get problematic once defining class. She said the class concept would be covered under a state’s anti-discrimination statutes because any kind of class that is developed must have an actuarial support for it. Ms. Burns said there are three entirely different issues at play. She said there is the language on guaranteed renewability; the language on the right to raise premiums, which is not clear to policyholders; and the language on what constitutes a class for the purposes of premium increases.

Mr. Birnbaum said an increase in premiums is based on class, and there should be some definition of class but also some requirement that the policy states what one’s class is. Mr. Serbinowski asked, supposing that there is one class and then there is an increase for some people by 0.5% and some others by 200%, if the definition would prevent that. He also asked, supposing that the class are policyholders who are males, age 57, lifetime benefits, 3% inflation, 90-day elimination period, preferred underwriting, and there are 17 persons at that moment in that class, if that is what is being sought. Mr. Birnbaum said what the insurance company has used to determine the rate is the class the consumer is in. He said the insurance company must identify

some rating class to issue a policy, so it should be made clear to the consumer what their class is. Mr. Serbinowski said the purpose of the term is to offer protection so a class cannot be people named Tomasz who speak Polish, because the narrower the class, the less protection exists.

Mr. Gennace asked Ms. Burns to discuss her comment on Section 6A(4) and level premium. Ms. Burns said level premium and the other terms discussed are confusing for consumers. She said consumers do not understand the terms and many times are unaware of what these terms mean for them. She said the term level premium needs more definition in the policy. She said all state insurance regulators encourage consumers to read their policies, but the main reason people do not read their policies is they do not understand what these terms mean.

Mr. Gennace summarized Mr. Serbinowski's comment on Section 6B(2). Mr. Gennace said the section allows exclusions or limitations based on "mental or nervous disorders," and it specifically disallows exclusion based on Alzheimer's disease. He said Mr. Serbinowski asked if there is a better definition since if someone Googles "nervous disorder," the search comes up with "nervous system disorders" that include things like Parkinson's or stroke. Mr. Gennace said the term may be problematic and not exactly clear, and should Model #641 be opened, the Subgroup may want to redefine this section. Ms. Burns said the section does not include other dementias, and this definition needs work.

Mr. Gennace asked Ms. Burns to discuss the comment on Section 6B(4)(c). Ms. Burns said the section allows for an exclusion for conditions related to military service and discriminates against members of the military who may have been exposed to conditions that cause a disabling condition later in life. She said it is long past time to remove this discriminatory exclusion.

Mr. Gennace asked Ms. Burns to discuss the comment on Section 6B(8). Ms. Burns said the drafting note contains language that is specific and should be added to Section 6B(8). She said the specific language in the drafting note is "...if the claim would be approved but for the licensing issue, the claim must be approved." Mr. Gennace said Mr. Serbinowski had a comment on Section 6B(8)(a) that the language "the state of policy issued" in the third line should be "the state of policy issue." Mr. Gennace asked Ms. Burns to discuss the comment on Section 6B(9). Ms. Burns said it was merely to point out that if there are changes made to the Long-Term Care Insurance Model Act (#640) regarding extraterritoriality, then changes must be made to the Model #641.

Mr. Sundberg spoke on behalf of Mr. Serbinowski's comment on Section 6D. He said the Subgroup should probably look at this section, as in practice, most group LTC policies do not have any formal "conversion" provision. He said the coverage under the same certificate continues when the person leaves the group or the group terminates as if the certificate was an individual policy, and the section should probably reflect what is happening in practice.

Ms. Graeber asked Mr. Sundberg if he means the conversion provision does not allow for a company to convert to an individual policy. Mr. Sundberg said if a person purchased a policy through their company and then retires, that person maintains the same policy. He said there is no real conversion from group to individual. He said they just maintain coverage with that same group. Ms. Graeber said some companies do that, and there may be instances where a conversion to an individual policy happens, but she asked if the current language would allow for both. Ray Nelson (TriPlus Services Inc.) said the language allows for either a conversion or a continuation. Ms. Graeber said she is not sure what sort of change is being envisioned for the language. She said there is not a lot of true group policies in the marketplace, but conversions exist. Mr. Sundberg said if there are conversions happening, then leaving the language as it is would not be an issue, but he said Mr. Serbinowski can clarify his comments at the next meeting.

Ms. Karnis said with an eye toward thinking about whether more flexibility is needed in Model #641 and whether adding something about portability in this section would be helpful. She said she does not know if that is practical, but perhaps getting some input from industry might be helpful. She said it may not be necessary if the majority of consumers remain on their former employers group policy, but it may be something to think about in terms of flexibility. Mr. Gennace said it could be helpful if Ms. Graeber or someone else from industry cares to provide some insight at the next meeting.

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

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