

Draft: 7/20/21

Long-Term Care Insurance Model Update (B) Subgroup
Virtual Meeting
July 15, 2021

The Long-Term Care Insurance Model Update (B) Subgroup of the Senior Issues (B) Task Force met July 15, 2021. The following Subgroup members participated: Philip Gennace, Chair (NJ); Laura Arp, Vice Chair (NE); 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); 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); Chris Herrick (TX); Mary Block (VT); Julie Walsh (WI); Dena Wildman (WV); and Mavis Earnshaw (WY).

1. Adopted its May 27 Minutes

The Subgroup met May 27 and took the following action: 1) adopted its May 6 minutes; and 2) discussed comments received on Sections 8 through 14 of the *Long-Term Care Insurance Model Act* (#640).

Ms. Kruger made a motion, seconded by Ms. Karnis, to adopt the Subgroup's May 27 minutes. The motion passed unanimously.

2. Heard Presentations on the Current LTCI Marketplace and What Products Are Being Seen, Filed and Produced in the Marketplace

Karen Schutter (Interstate Insurance Product Regulatory Commission—Compact) began with a little background about the Compact. She said the Compact was created in the early 2000s in response to the threat of federal preemption. She said what are called asset-based or retirement protection products are long-term care (LTC) products. She said regarding life annuity and disability income that compete with the federally regulated products, like banking and securities, there was a call for more efficiency in terms of speed to market and uniformity. The Compact became a solution of the states to come together and develop what is called uniform standards.

Ms. Schutter said the Compact statute ties the LTC uniform standards to NAIC model law and regulation. She said the standards shall provide "same or greater protections for consumers as but shall not provide less than" the NAIC models, including subsequent amendments. She said the uniform standards were amended in 2017 to incorporate 2016 amendments to NAIC Models #640 and the *Long-Term Care Insurance Model Regulation* (#641). She said the Compact has qualified actuaries and form reviewers, many who came from insurance departments. She said the review of a product, including LTC, come under detailed uniform standards. She said although some states have opted out in terms of LTC, those states that are participating in LTC follow the 10 standards the Compact has, and those standards were built off of the LTC model regulation.

Ms. Schutter said the scope of products reviewed include products advertised, marketed, or offered to provide benefits for one or more of the following: nursing home care, assisted living care or home health care, and adult day care. She said the LTC insurance definition follows the Model #640 definition, and the LTC insurance (LTCI) definition excludes life policies that accelerate death benefits for chronic illness or annuities with guaranteed living benefits when the guaranteed withdrawal increases for certain events. She said the standards for accelerated death benefits (ADB) do not apply to the products/riders within scope of LTC policy standards. She said the Compact follows Model #640, and when the model was updated several years ago, the Compact opened its standards and updated them at that time.

Ms. Schutter said the Compact makes sure the uniform standards apply broadly, and many states treat LTC as a health product. She said the Compact's standards are clean. She said they cover the LTC product and if a product is being advertised, marketed, and offered to provide LTC benefits, or pay for LTC services, it falls under the LTC standards. She said the uniform standards for LTC policies and rate schedules specifically cover stand-alone traditional LTC policies and rates; riders and rates to ADBs of life insurance policies or annuity contracts, defined as "dollar for dollar LTCI"; and riders and rates to extend LTC benefits after exhaustion of policy death benefits/annuity account value, defined as an extension of benefit rider.

Ms. Schutter said the Compact has approved a large number of products, with some as dollar-for-dollar riders, others under universal life products, and others attached to whole life products. She said there are some that come from annuities. She said extension of benefit riders are treated differently even though those riders go with LTC. She said in many ways, they operate as stand-alone as they have their own rate schedule. She said the Compact standards are based off the rate stability framework from Model #641. She said the Compact wants to serve as a resource and that the uniform standards are more detailed than the model regulation.

Ms. Schutter highlighted the differences between the Compact's standards and the model regulation. She said the benefit trigger cannot be more than two activities of daily living (ADLs); the exclusion based on mental or nervous disorders is not permitted; the exclusion due to a preexisting condition or disease is limited to loss occurring within six months; the coordination of benefit provision is not permitted; there must be a product offered with inflation protection; there must be a product offered with issue age rates; there must be a product offered with home health care benefits at 100% of nursing home benefits; and for home health care benefit options, there must be a coverage requirement of 50% of nursing home benefit minimum.

Ms. Schutter said that the Compact takes no position on changes to Model #641 to accommodate designs that have been requested by the industry, and the Compact is happy to provide reviewer and actuarial resources for technical assistance. She said the Compact publishes an annual report on Compact-approved iLTCRate Schedule Certifications, and it provides a state-specific report to each Compacting state on iLTCproducts/riders and annual rate certifications.

Ms. Ahrens asked for clarification about rate increase requests and new business schedules. Ms. Schutter said the Compact does not call it a rate increase but a refresh of new business or a new business schedule. She said the Compact does see companies that are still in the market and cannot certify the sufficiency of their rates; they will have to come in with a new business schedule. She said she does not know if the Model #641 talks about new business rate schedules as it may need to.

Ms. Ahrens said Model #640 or Model #641 states that an insurance commissioner can modify or bypass any requirement of the regulation for innovative products with a hearing, and she asked what the Compact does with a state that does that. Would the Compact recommend to the state to opt out of LTC since those provisions would be for product innovations that are not allowed in the current model? Ms. Schutter said the uniform standards are intended to put parameters around the products the Compact can review so that state insurance regulators know what products are coming in, and those innovative products are ones that the standards do not accommodate today. She said there is an action item in the strategic plan the Compact developed a couple years ago to coordinate with states to facilitate if there are innovative designs, but that would start at the state level, and the Compact would play a coordinating role. Ms. Ahrens asked about the non-duplication benefit and said that the Compact really could not help companies with that issue. Ms. Schutter said the Compact thinks this was a public policy issue and that perhaps this could be an issue for this Subgroup.

Birny Birnbaum (Center for Economic Justice—CEJ) asked if there is evidence of the use of the mix-and-match tool when the company rejects a rate filing on the policy form and asked for clarification about the new business schedule, whether there is a requirement for a new policy form, or whether a company can simply have a new schedule for an existing policy form. He said the latter would seem to be unfairly discriminatory. Ms. Schutter said the Compact does not allow for mix-and-match among the LTC component so that under a traditional product, everything would have to be filed through the Compact. She said she has not seen any anecdotal evidence or information on the rider side. She said for the new business schedule that is in the standards and allows a company to come in on the same product and get a new business, that is only for new business going forward, and it is to stabilize the rates for anybody purchasing that product after a date certain.

Jan Graeber (American Council of Life Insurers—ACLI) said she will speak to the industry perspective with respect to the evolving LTC market. She said according to the U.S. Department of Health and Human Services (HHS), more than half of Americans turning 65 today will need some type of LTC, and more than 20% will likely need care for five or more years. She said there are 10,000 Americans turning 65 every day, and the median cost for a one-year stay in a private nursing home room is more than \$100,000. She said a recent study by the Boston College Center for Retirement Research (CRR) showed that about 20% of retirees will need no support, and about 25% are likely to experience severe needs. She said in between these extremes, 22% will have low needs, and 38% will have moderate needs. She said those needs will vary by marital status, education, and health.

Ms. Graeber said there is a misconception by some that the private LTCI market has collapsed. She said millions of Americans are covered by private LTC insurance today. She said ACLI members paid out nearly \$12 billion in LTCI claims in 2019 and that consumers find private LTC coverage to be invaluable. She said there is a growing hybrid LTC market and a growing interest in state and federal LTC initiatives and programs. She said examples of the state and federal LTC initiatives and

programs include what is being done in Washington state and California, as well as the federal Well-Being Insurance for Seniors to be at Home (WISH) Act.

Ms. Graeber said Washington state passed the first public operated LTC program in 2019. She said the program is funded by a payroll tax, and in January 2022, all W-2 employees in the state will be assessed at 0.58% premium assessment based on their wages. Employers must cover this premium assessment through a payroll deduction. She said the proceeds are put into a state trust account, which is the WA Cares Fund, and that is going to be used to pay for people who need LTC in the future. She said self-employed and federal employees are exempt from the mandate. She said when an individual triggers the eligibility for benefits under the Washington state plan, the fund will then pay out a maximum of \$36,500. The plan will require an inability to perform three out of 10 ADLs in order to receive a benefit. She said if an employee leaves the state, he or she will not receive any LTC benefits, and the taxes that were taken from his or her income will not be returned.

Ms. Graeber said under the federal WISH Act, workers and their employers must each contribute 0.3% of wages, and these contributions will fund a new LTCI trust fund that will provide catastrophic LTC benefits. She said the WISH Act also contains educational provisions to help seniors and their families understand the likelihood of requiring LTC, the costs of that, and the options for paying for it. She said these proposals and initiatives are well intentioned, but they provide limited benefits. Ms. Graeber said it is critical that any new government-run program coordinate and build upon the existing foundation of the private LTCI market. She said one priority is to ensure that state or federal plans are compatible with existing private market, eligibility rules and benefit periods, and it may be useful to explore public and private partnerships where states could design an LTC program that syncs up with the private LTC plans, and then that provides a seamless transition of care that really would leave no gap and coverage.

Ms. Graeber said looking at the current model, there are several issues or areas to focus on that could determine the model's flexibility and ability to remain compatible. She said the inclusion of a non-duplication of benefit provision would be helpful in getting people to start purchasing coverage at age 40 instead of age 60. She said a non-duplication of benefit provision would allow a carrier to sell or issue new or secondary coverage, maybe every five years, in order to allow the consumers to build their plan over time. The secondary coverage would have, instead of the 90-day or 180-day elimination period, maybe a two- or three-year elimination period. She highlighted other opportunities, such as: inflation protection requirements; flexibility in pricing and benefit structure; the ability to provide a cash value in stand-alone LTC; opportunities to age-in-place; and reviewing some consumer protections in light of the changing market, such as agent education and training.

Mr. Birnbaum said he opposed many of the proposals the ACLI mentioned and strongly believes consumer protections in the slides should not have been presented with quotation marks around the word "protections." He said these protections are not fake but are real consumer protections. He said the solution to inadequate producer training for universal life is not to lower the standards but to improve the training. He said it is critical to consumer protection to make the inflation offer an opt-out, not an opt-in. He also said the non-duplication of benefits and flexible premiums are already an extraordinarily complex product, and the ACLI proposals would take an extraordinarily complex product and make it even more complex and difficult to understand. He said the goal is not to create more complexity and more opportunities for the consumer to misunderstand; rather, it is to simplify the product so that it is easier for the consumer to understand.

Ms. Ahrens said she has a document with bullet points she will share with the Subgroup. She said she was going to break down the product innovations that she has seen, and those comments would be general. She said she would next address management that companies are allowed to do on enforced rate increases and reduced benefit options (RBOs). She said she would address the life stage product in Minnesota. She said it is a Minnesota project with input from the Society of Actuaries (SOA), and surveys were conducted of Minnesota residents and citizens asking if they could buy LTC, what would it look like and what would their primary considerations be. She said one of the biggest goals for the development of the project was to find a way to reach more of a middle market since stand-alone LTC can be expensive. She said through that inquiry process, a concept was developed called a life stage project. She said that it is a concept and not a public program. She said since it is a term product that converts to LTC at age 65, it would not meet the approval standards under the Compact. However, she said that the state is examining language that could make it approvable. Minnesota sees the concept filling a need to serve more of the market and gives people an opportunity to have a valid life insurance product while pre-funding LTC before it is needed.

Ms. Ahrens said both the Washington state program and the WISH Act are limited in benefits, pointing out that the Washington state program goes into effect next year and the WISH Act was just introduced in Congress and is not going to be law any time soon. She said the Washington state program is a \$100 per day, one-year benefit plan. Checking prices and rates in Lincoln, NE, and Omaha, NE, the nursing care rate is about \$250 per day and, if comparable to Washington state, the person would pay half the costs. She said the WISH Act is catastrophic care and pays only after certain triggers have been met. She said there

would be limitations on industry on a stand-alone LTC product because there cannot be an elimination period longer than one year. So, if Washington state covers a year, then there is a stand-alone product issue where there cannot be duplication of benefits because companies have to cover benefits before a year has expired.

Ms. Ahrens said the question for the Subgroup is whether to open the model now and whether the work would be done on the model as long as there are states that have these public programs. She asked if the model would have to be opened again or wait until these programs are approved and have had some time to move forward in the event there are reasons to edit the model that have not been thought of prior to these public programs. She said it is important to be aware that there are companies that will pull out of the market and that she is aware of two that have pulled out of Washington state, at least temporarily, as Washington state has an opt-out provision from the payroll tax if one has his or her own LTC.

Ms. Ahrens said she would discuss the RBO and said Section 27 of Model #641 requires companies to allow an insured to reduce their benefits. She said those reductions have to be fair and reasonable, but there is nothing in Model #641 that says there cannot be different benefit reductions than what exists in the original rate schedule. She said she does not think it is necessary to open Model #641 to deal with the RBO, but if the model is to be opened, then everything should be looked at.

Ms. Ahrens said when companies innovate, they say they have a guaranteed renewable rate, rates are changed in the future, that is one of the management tools available. She said if the companies do not know how states are going to review their rates and they do not know if there is going to be uniformity, then the companies cannot make a decision on whether to enter the market or stay in the market. She said that is one of the reasons why there have been fewer companies willing to issue new business. She said if there is to be new business issued, there has to be thought about how to coordinate and add uniformity across states. She said if there is a way to do that within the LTC models, that can be explored. but if there is anything related to rates, there has to be no exacerbation of the lack of uniformity.

Ms. Ahrens said companies have always offered RBOs so that if a policy has, for example, eight years in lifetime benefits, the policyholder could reduce his or her benefit in any year and not have to wait for a rate increase, and the company would have to allow it. She said recently, in the past five to seven years, companies started to reason there may not be enough choices, and there may be more ways to offer the policyholders to manage their risk and the companies started to innovate RBOs, such as riders to policies that, upon a rate increase, allow for more options. She said an example is where a company uses the inflation rate and determines where the inflation would land so that a policyholder's premium does not go up. She said the policyholder's premium rate does go up because he or she is paying a higher rate for a lower benefit but that the policyholder is paying the same number of dollars. She said another example is a shared care concept where the benefit is, for example, at \$100 per day; the policyholder would pay 20%, and the company would pay 80%. She said these options have been found to be approvable under Model #641. She said she thinks more options are better than no options.

Bonnie Burns (California Health Advocates—CHA) said she would like to make comments to some of the points that Ms. Graeber raised in her presentation, but due to lack of time, she will discuss what she has seen from the consumer perspective. She said there are many consumers who have many questions about what is happening to them in this LTC marketplace. She said there is no dispute that LTC is a vexing problem, it is not clear how to finance it, and everyone is struggling with these issues. She said consumers are struggling with the options given as part of rate increase. She said there are class action lawsuits and settlements that complicate matters for consumers as they navigate through the options. She said most of the questions from consumers are having to do with the options issue, the options that are presented to them, and having trouble understanding those options. She said another problem is consumers who have complicated financial products that they either were told to buy or have bought and how LTC works within that complicated financial product. She said these consumers are looking for information or advice or confirmation that they did the right thing buying such a product.

Ms. Burns said in other instances, consumers are coming with questions about claims, such as a family member asking about how to file a claim or a claim has been filed, but there are problems and lots of paperwork they do not understand. She said the challenge for consumer representatives is how to unwind LTC benefits from these complicated financial products in order to help the consumer understand how those benefits will work when they need them or if they need them now. She said these products are complex, based upon so many different life insurance platforms, that it is extremely hard for consumers to understand them. Ms. Burns said a year after they may have bought such a financial product, they will have forgotten the information someone had told them about the product. She said these products are mostly being sold to higher net worth clients because they are not feasible for a middle-income person looking for a way to finance this kind of care, and many of them are combining life insurance with investment and LTC benefits. She said it is a complicated process, and these products are poorly understood.

Ms. Burns said consumers do not understand that there are internal costs applied to the policy itself and will be applied to the benefit before it is actually paid. She said the only thing consumers really know about these financial products with the LTC benefit in them is that someone is going to get money either when one dies or when they need LTC. She said there is a multiplicity of life platforms now. She said a universal life policy can be an indexed policy, it can be a variable life policy, or it can be an indexed variable life policy. She said there are so many different ways that companies are combining these various benefits, and then they put LTC into them, which makes them even more complicated. She said these policies are not adequately addressed in the LTC models, and they compete with other ways of funding LTC because people are selling life settlements and reverse mortgages to pay for LTC.

Ms. Burns said the structure of these policies varies considerably, from accelerated death benefits and critical care policies to riders that may extend a LTC benefit one way or another. She said these are hard for consumers to understand. She said all of the pieces of these are complicated in and of themselves. She said the benefits payments vary from a reimbursement model that requires LTC services and payment and uses LTC triggers to indemnity payments, where there is no use of services required, but they may use the same triggers. Ms. Burns said it is hard for people to understand the difference between these products. She said these are not adequately addressed in Model #641, either in the definitions or in the performance standards sections of the model. She said consumers need to know the type of insurance platform that the LTC benefit is included in in order to understand how the policy works. She said consumers need to understand there are internal fees within the policy and that some are guaranteed, while some are not. She said consumers need to understand whether there are separate pools of money or whether all of the benefits for everything in that policy is combined in one pool of benefits. She said consumers need to understand if they have an annuity and a LTC benefit in that annuity or if that annuity payment changes when they need LTC and start drawing down on that benefit. She said consumers need to understand cash value and surrender charges and added that consumers do not understand the implications of those surrender charges.

Ms. Burns said making these policies more complex is not the answer. She said these products need to be simplified so the average person can understand what they are buying, how it works, and how they can use it in the future. She said they do not need the complexity of knowing or not knowing how rates are going to change in the future when they are going to actually need those benefits. Ms. Burns said these consumers are at a distinct disadvantage in making a decision about these complex financial products they bought to pay for LTC benefits. She said the complexity of the design and benefits, the reams of illustrations, and disclosures are not helpful to consumers for making decisions about purchasing coverage or using those benefits when they need them.

Ms. Arp asked Ms. Ahrens about how the Subgroup can get better educated addressing the changes in the market and whether the LTC models, as they stand now, still give what is needed and are broad enough to allow the flexibility to approve innovative options. Ms. Ahrens said she thinks there is the ability to approve innovative options for benefit reductions. She said there are the tools to work with the balance to the obligation of the company and the consumer and the risks that may be shared between them. She said she thinks state insurance regulators have the ability within the model to be open to what companies have tried, but it also may be that companies are only trying things that seem feasible through the model. She said, however, that on the innovation side of things, there is definitely room to expand.

Mr. Birnbaum said the flip side of states viewing the model as giving them the flexibility to address all sorts of innovations and approaches seems inconsistent with the other efforts of the NAIC, which is to develop more consistency and uniformity in LTC regulation among the states. He said to the extent that the model is flexible enough that states can interpret it differently and approve products in a different fashion is not useful and is inconsistent with the NAIC's stated goals.

Ms. Ahrens said that is why she is an advocate for the multi-state review process in trying to create a platform for coordination or rate reviews, which includes benefit reduction reviews, and that platform would help apply the regulation consistently.

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

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