SENIOR ISSUES (B) TASK FORCE

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Senior Issues (B) Task Force
Virtual Meeting (*in lieu of meeting at the 2021 Summer National Meeting*)
July 29, 2021

The Senior Issues (B) Task Force met July 29, 2021. The following Task Force members participated: Marlene Caride, Chair (NJ); Lori K. Wing-Heier, Vice Chair, represented by Sarah Bailey (AK); Jim L. Ridling represented by Anthony L. Williams (AL); Evan G. Daniels represented by Steve Fekety (AZ); Ricardo Lara represented by Tyler McKinney (CA); Michael Conway represented by Peg Brown (CO); Andrew N. Mais represented by Paul Lombardo (CT); Karima M. Woods represented by Howard Liebers (DC); Trinidad Navarro represented by Susan Jennette (DE); David Altmaier represented by Chris Struk (FL); Colin M. Hayashida represented by Kathleen Nakasone (HI); Doug Ommen represented by Andria Seip (IA); Dean L. Cameron represented by Weston Trexler (ID); Amy L. Beard represented by Rebecca Vaughan (IN); Vicki Schmidt (KS); Sharon P. Clark (KY); James J. Donelon represented by Ron Henderson (LA); Gary D. Anderson represented by Kevin Beagan (MA); Kathleen A. Birrane represented by Joy Hatchette (MD); Eric A. Cioppa represented by Sherry Ingalls (ME); Anita G. Fox represented by Renee Campbell (MI); Grace Arnold represented by Jan Ludwigson (MN); Chlora Lindley-Myers (MO); Troy Downing represented by Ashley Perez (MT); Mike Causey represented by Tracy Biehn (NC); Jon Godfread represented by Yuri Venjohn (ND); Eric Dunning represented by Martin Swanson (NE); Chris Nicolopoulos represented by Roni Karnis (NH); Judith L. French represented by Tynesia Dorsey (OH); Glen Mulready represented by Mike Rhoads (OK); Andrew R. Stolfi represented by Gayle Woods (OR); Jessica K. Altman (PA); Larry D. Deiter represented by Jill Kruger (SD); Carter Lawrence represented by Vickie Trice (TN); Doug Slape (TX); Jonathan T. Pike represented by Tanji J. Northrup (UT); Scott A. White represented by James Young (VA); Mike Kreidler (WA); Mark Afable represented by Jennifer Stegall (WI); and James A. Dodrill (WV). Also participating were: Eric Anderson (IL); Bob Williams (MS); Bogdanka Kurahovic (NM); Martin Wojcik (NY); Andrew Dvorine (SC); Brenda R. Clark (VT); and Mavis Earnshaw (WY).

1. Adopted its June 8 Minutes

The Task Force met June 8 and took the following action: 1) adopted its Feb. 23, 2021, and Oct. 20, 2020, minutes; and 2) discussed an article on bundling Medicare Supplement and Short-Term Care.

Ms. Kruger made a motion, seconded by Ms. Biehn, to adopt the Task Force's June 8 minutes (Attachment One). The motion passed unanimously.

2. Adopted the Report of the Long-Term Care Insurance Model Update (B) Subgroup

The Long-Term Care Insurance Model Update (B) Subgroup met July 15, May 27, May 6, and April 22. During its July 15 meeting, the Subgroup heard from stakeholders on the current long-term care insurance (LTCI) marketplace and what products are being seen, filed, and produced in the marketplace. During its May 27 meeting, the Subgroup completed its cursory review of Sections 8 through 14 of the *Long-Term Care Insurance Model Act* (#640). During its May 6 meeting, the Subgroup completed its cursory review of Sections 1 through 7 of Model #640. During its April 22 meeting, the Subgroup discussed the agenda, format, and procedures for its work in the coming year.

Mr. Henderson made a motion, seconded by Ms. Kruger, to adopt the report of the Long-Term Care Insurance Model Update (B) Subgroup, which included its July 15 minutes (Attachment Two). The motion passed unanimously.

3. Discussed Other Matters

Commissioner Caride asked if there are any other matters or issues to be raised before the Task Force. Mr. Henderson raised an issue about Medicare cold calling. He said Medicare beneficiaries in Louisiana are getting lots of cold calls from outfits, whom are not agents, but refer the beneficiary to an agent. He said the outfit appears to be out of Florida. He said many of these beneficiaries are changed into a different health plan that is not helpful and, in some cases, detrimental to their needs. He said he received a call because his mother's Medicare is attached to his cellphone. He said the Louisiana Department of Insurance (DOI) and the State Health Insurance Assistance Program (SHIP) have been working hard to help these beneficiaries and get them back into their original plans. He asked if other states have experienced a rash of cold calls.

Commissioner Caride said she has not been made aware of or is aware of any increase in cold calls in New Jersey. She asked if other states had any experiences.

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Mr. Swanson said the Antifraud (D) Task Force members have been participating in monthly regulator-only meetings concerning the improper marketing of health plans. He said Nebraska has prosecuted one of these outfits. He said the cold call came to an attorney who had worked at the Nebraska DOI 50 years ago. He said if Louisiana would like to raise this before the next monthly regulator-only meeting, he would send Mr. Henderson the information about the next meeting.

Mr. Henderson said he will provide his and other information to David Torian (NAIC) to share with Mr. Swanson. Commissioner Caride asked Mr. Torian to inform Task Force members of the day and time of the next monthly regulator-only meeting on the improper marketing of health plans.

Bonnie Burns (California Health Advocates—CHA) said both SHIP and Senior Medicare Patrol (SMP) have been dealing with this issue for years, and they work with the federal government to prosecute these outfits, presuming they are not out of the country. She suggested that some of SHIP could present before this monthly regulator-only meeting on the improper marketing of health plans.

Having no further business, the Senior Issues (B) Task Force adjourned.

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Draft: 6/14/21

Senior Issues (B) Task Force
Virtual Meeting
June 8, 2021

The Senior Issues (B) Task Force met June 8, 2021. The following Task Force members participated: Marlene Caride, Chair (NJ); Lori K. Wing-Heier, Vice Chair, represented by Sarah Bailey (AK); Jim L. Ridling represented by Anthony L. Williams (AL); Evan G. Daniels represented by Steve Fekety (AZ); Ricardo Lara represented by Tyler McKinney (CA); Michael Conway represented by Peg Brown (CO); Andrew N. Mais represented by Paul Lombardo (CT); Karima M. Woods represented by Howard Liebers (DC); Trinidad Navarro represented by Susan Jennette (DE); David Altmaier represented by Chris Struk (FL); Colin M. Hayashida represented by Kathleen Nakasone (HI); Doug Ommen represented by Andria Seip (IA); Dean L. Cameron represented by Weston Trexler (ID); Amy L. Beard represented by Rebecca Vaughan (IN); Vicki Schmidt (KS); Sharon P. Clark (KY); James J. Donelon represented by Ron Henderson (LA); Gary D. Anderson represented by Kevin Beagan (MA); Kathleen A. Birrane represented by Joy Hatchette (MD); Eric A. Cioppa represented by Sherry Ingalls (ME); Anita G. Fox represented by Renee Campbell (MI); Grace Arnold represented by Jan Ludwigson (MN); Chlora Lindley-Myers (MO); Troy Downing represented by Ashley Perez (MT); Mike Causey represented by Robert Croom (NC); Jon Godfread represented by Yuri Venjohn (ND); Eric Dunning represented by Martin Swanson (NE); Chris Nicolopoulos represented by Roni Karnis (NH); Judith L. French represented by Tynesia Dorsey (OH); Glen Mulready represented by Mike Rhoads (OK); Andrew R. Stolfi represented by Gayle Woods (OR); Jessica K. Altman (PA); Larry D. Deiter (SD); Carter Lawrence represented by Vickie Trice (TN); Doug Slape (TX); Jonathan T. Pike represented by Tanji J. Northrup (UT); Scott A. White represented by James Young (VA); Mike Kreidler (WA); Mark Afable represented by Jennifer Stegall (WI); and James A. Dodrill (WV). Also participating were: Eric Anderson (IL); Bob Williams (MS); Bogdanka Kurahovic (NM); Martin Wojcik (NY); Andrew Dvorine (SC); Brenda R. Clark (VT); and Mavis Earnshaw (WY).

1. Adopted its Feb. 23 and Oct. 20, 2020, Minutes

The Task Force met Feb. 23 and Oct. 20, 2020. During its Oct. 20, 2020, meeting, the Task Force adopted its Oct. 8, 2020; Sept. 2, 2020; and 2020 Summer National Meeting minutes. During its Feb. 23 meeting, the Task Force discussed its 2021 agenda.

Director Lindley-Myers made a motion, seconded by Mr. Henderson, to adopt the Task Force's Feb. 23 (*see NAIC Proceedings – Spring 2021, Senior Issues (B) Task Force*) and Oct. 20, 2020 (*see NAIC Proceedings – Fall 2020, Senior Issues (B) Task Force, Attachment One)* minutes. The motion passed unanimously.

2. Heard a Presentation on Bundling Medicare Supplement and Short-Term Care Insurance

Commissioner Caride introduced Ken Clark (Milliman) and Robert Eaton (Milliman) to discuss their article. Mr. Eaton said he and Mr. Clark looked at both products, Medicare Supplement (Medigap) and short-term care (STC); where it may make sense to bundle the sale of these products; and what the benefits of such bundling would be. He said looking at the long-term care (LTC) product, including the newer STC products, they are triggered by the inability to do activities of daily living (ADLs). He said both have steep claim costs curves, and people need the benefit a lot more later in life. He said the pricing of these LTC products hinges on key actuarial assumptions, such as lapse assumption, which is critical. He said he and Mr. Clark believe a company may benefit from having both these policies sold to the same policyholder. He said if you look through the list of key risks for all these policies, such as persistency, morbidity and selection risk, the joining of these products may be beneficial to both the insurer and the consumer policyholder.

Mr. Eaton said the article looks at the hedging of risks of combining these two products. He said if looking at other products that hedged the risks by combining (e.g., LTC and life insurance), the increasing sales of the combined product (e.g., the natural hedging of risks with mortality) is a positive. He said he and Mr. Clark believe this could be done with STC and Medigap, where the policyholder is given an incentive to buy these policies at the same time through something like a discount and recognizing that purchasing together means a better risk profile and the insurer is able to offer a lower price on the STC policy. He said he and Mr. Cark wrote the article to illustrate a case study of the potential advantages—i.e., interns of the volatility of future earnings—for a company that offers both these products combined.

Mr. Clark said health arena Medigap and STC are kind of unique in that they are both priced on a lifetime basis versus Medicare Advantage or commercial business insurance. He said if a carrier wants to be profitable and competitive with Medigap, they

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really need good persistency, which is at odds with STC models where too good persistency could result in potential losses. He said he and Mr. Eaton used a simple case study of a carrier having both products and selling them together, showing that there would be some crossover in terms of membership of both products. He said under the current regulatory environment, it would not be possible to actually create a hybrid-type product. He said nothing like that exists today.

Commissioner Caride asked if there were any questions. Mr. Lombardo asked Mr. Eaton and Mr. Clark to talk more about the loss ratios for both products. He said they mentioned that both products are priced on a lifetime concept, and that is true for LTC and STC; but for Medigap, there are fairly quick durational loss ratio requirements by plan, so he asked if they could provide more background on lifetime loss ratio pricing for Medigap.

Mr. Clark said in their case, they assumed Medigap as an attained age product; but even so typically, there is a durational pattern for Medigap. He said depending on the state and what is allowed in the state, there can be a durational component of loss ratio; but it is definitely flatter than what is assumed for STC products, and they typically level out at a point in time for Medigap. He said even if the loss ratio increases, it does not increase the magnitude of STC products.

Commissioner Caride asked about the pricing for the consumer and how affordable it would be for the consumer. Mr. Eaton said an average stand-alone STC policy may be about $800 to $900 a year; but overall, it would probably be south of $1000 a year and north of $500 a year. Mr. Clark said to keep in mind that Medigap rating, like STC, will go up by age; but the ballpark range would be about $150 to $250 a month. He said that would be for middle range, not necessarily something all-inclusive, and of course it would vary by state.

Commissioner Caride asked if there is a chance that the consumer may be paying double for service of the crossover benefits. Mr. Eaton said one of the reasons they like this pairing of Medigap and STC is that STC usually picks up where original Medicare leaves off, at least in terms of facilities days. He said this is why there is a kind of prevalence of a 90-day elimination period and LTC or STC come in after Medicare. He said there may be some overlap in the benefits; but generally, they are usually separate.

Commissioner Caride said she asked this because she had an incident of a company wanting to offer a product already offered in Medigap and charge seniors for that when there was no reason to do that. Mr. Clark said as long as the STC product is just for custodial care and there are no other bells and whistles, then he does not believe there would be a crossover.

Mr. Trexler asked if this could be structured as an innovative benefit for Medigap. Mr. Clark said in his opinion and from a regulatory point of view of what would be allowed, it seems that innovative benefits are intended to be little or small additional benefits. He said if it were added as an innovative benefit, it would be half or almost as big as the Medigap benefit itself. He said some states obviously do not allow innovative benefits, so it would not be possible to be done nationally; but if a state wanted to, it would be hard because it would be difficult to add an innovative benefit that large. Mr. Trexler agreed that the usual innovative benefit is for vision or dental; but he asked whether from what they are describing with STC products, none of that is duplicative with Medicare or Medigap. Mr. Clark said no as long as it is just custodial, such as home care or nursing care. Mr. Eaton said this is one of the paths forward to solve the LTC and STC risk issues. He said there is a lot of coverage for the first 90 days in the skilled nursing facility after an inpatient stay, then that risk for any of those long-term needs is transferred to the policyholder. He said some of them may have an LTC policy of a hybrid combo product, but the incentives are created when a carrier is incentivized to deliver the best care to the policyholder, whether they are kind of within the first 90 days or after that. He said he believes there is some benefit in a confluence of incentives to have that managed in some part by a single entity, but an entity to be at risk for both portions for someone's LTC stay.

Mr. Trexler asked if Mr. Clark or Mr. Eaton are aware of companies that offer both Medigap and STC or if they are usually different types of companies. Mr. Clark said both he and Mr. Eaton are aware of companies. He said there are more Medigap carriers than STC carriers, but they both know of companies.

Mr. Sundberg said he had two questions. He said his first question was whether Mr. Clark and Mr. Eaton are thinking of a particular plan to pair this bundling. He said Plan A does not cover nursing home benefits and have generally higher premiums because of other regulations around it. He said his second question was whether they intended for companies to only offer the Medigap product to the folks that get the STC type option, because in his experience over time, the Medicap rates for a company can become stale and no longer marketable to the general public. He said that can take a cycle of five years, but limited LTC or STC companies usually have those rates available for five to 10 years and do not need a lot of manipulation afterward unless there are larger changes. He asked what happens if the Medigap rates are no longer palatable, but the STC product is still palatable. Mr. Clark said he and Mr. Eaton us Plan G in their case study. He suggested starting out with understanding that

these are two products priced on a stand-alone basis and that there may be a program of bonus incentives to agents and encouraging the bundling, but the underlying premise is that these are two separate product lines appropriately priced on a stand-alone basis. He said when it comes to rate actions, he presumes that the Medigap product would go through their normal rate filing increases. He said within each product line, there will be some membership that has both products as policies, and there will be some that only have Medigap policies. He said from an actuarial point of view, the overall rate level needs to be adequate in total, but if pointing out how some carriers might close out blocks of business or sell under a different carrier, that is an issue and a very good point.

Mr. Lombardo asked how a Medigap policy and an STC policy being sold by the same company to an individual when they sign up for Medigap and the individual wants to change Medigap carriers affects the individual's STC policy. Mr. Eaton said one way to envision this is if there was a small discount offered on the STC premium when the products are purchased together, and in that case, the discount may go away, but the STC coverage could continue to stay over. He said a company may decide that the discount is worth keeping and the idea is to kind of incentivize them to the policies together because there are benefits of having both together.

Commissioner Caride asked questions from the chat box, and the first was from Jeffrey M. Klein (McIntyre & Lemon PLLC) asking how deductibles and copayments would be treated with a combined product. Mr. Eaton said they would be handled independently, and the products would each continue to function similar to the stand-alone product; so if one has a deductible for Medigap and they already collected some benefits under STC, the same deductible would continue to apply for the Medigap policy.

Commissioner Caride asked another question from the chat box from Harry Ting (Consumer Advocate Volunteer, Chester County Department of Aging Services – Apprise Program), who asked whether a consumer would be able to purchase the short-term policy later than the supplement (e.g., the supplement at age 65 and the short-term policy at age 75). Mr. Eaton said that is a very good question and he had not contemplated that. He said he does not think that means a company would not be able to do this if, for example, the policyholder already owns a Medigap policy and they want to purchase an STC policy many years later. He said the underwriting would get more difficult the older they get for STC because they would be closer to the age of when they need that care. He said he does not see why it could not be done, but it was not envisioned for the purposes of the article; it was still a great question.

Bonnie Burns (California Health Advocates—CHA) said the Medicare benefit for skilled nursing care is not an easy benefit to get and very few people ever get the full 90 days. She said the average number of days is around 20 days. She said she can see the benefit for companies, but she has a much harder time seeing the benefit for consumers. She said these STC policies have a higher threshold for benefits. She said they can use three ADLs as opposed to two; they have a much lower loss ratio requirement, at 50%; and they often have the same deductible period that LTC does. She said what she has seen with these products is that they are sold in 90-day increments, so people buy benefits for 90 days. She said that is a question of value given the premium. She said if they have a 90-day waiting period and then 90 days of benefits, that seems to be a very questionable benefit for the value related to the premium. She said she is very concerned about any product that is linked to a Medigap in a way that could potentially jeopardize the health care coverage of that individual. She said she wants to interject a little reality about how these policies have been sold, the amounts of coverage, and having a higher threshold for benefits may mean that people are going to have a much harder time getting coverage for their care.

Commissioner Caride asked a question from the chat box from Silvia Yee (Disability Rights Education and Defense Fund—DREDF), who asked if Mr. Clark or Mr. Eaton ever see policies as being in potential conflict. For example, the short-term policy could be drawn down for a period of personal care at home for a few weeks or for more expensive rehab hospital care; and if the short-term policy claim is denied, it increases the chances of a fall in the home that would result in medical claims. Mr. Eaton said that is a good question, and he thanked Ms. Burns for her good observations. He said the reason he and Mr. Clark believe these products may potentially go together quite naturally is that there is very little overlap in the benefits. He said there may be situations where if a claim in one is denied, it makes it tougher for the other; but he believes there is a kind of net gain even if there may be some cases where someone does not end up qualifying for the benefits according to the contract. He said these kinds of incidents are something all companies would want to be aware of when approaching this kind of market; and when selling these products together, they are very clear on the coverages, what that really means, and how they work together or how they do not work together when they are just independent.

3. Discussed Other Matters

Commissioner Caride asked if there are any other matters or issues to be raised before the Task Force. None were heard.

Having no further business, the Senior Issues (B) Task Force adjourned.

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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 (Attachment Two-A). 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 (ADBs) 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.

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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 find 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 synchs 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 average 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 extraordinary 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 will 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 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 the 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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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 Act* (#640).

Mr. McKinney made a motion, seconded by Ms. Kruger, to adopt the Subgroup's May 6 minutes (Attachment Two-A1). 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 #640 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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Long-Term Care Insurance Model Update (B) Subgroup
Virtual Meeting
May 6, 2021

The Long-Term Care Insurance Model Update (B) Subgroup of the Senior Issues (B) Task Force met May 6, 2021. The following Subgroup members participated: Philip Gennace, Chair (NJ); Laura Arp, Vice Chair (NE); Sarah Bailey (AK); Tyler McKinney (CA); Heather Silverstein (NH); Lisa Harmon (SD); Tomasz Serbinowski (UT); Bob Grissom (VA); and Michael Bryant (WA). Also participating were: Jennifer Li (AL); Andrew Greenhalgh (CT); Susan Jennette (DE); Teresa Winer (GA); Martha Im (HI); Cynthia Banks Radke (IA); Kathy McGill (ID); Karl Knable (IN); Brenda Johnson (KS); Ron Kreiter (KY); Adam Zimmerman (MD); Marti Hooper (ME); Renee Campbell (MI); Carrie Couch (MO); Bob Williams (MS); Ashley Perez (MT); Ted Hamby (NC); Angie Voegele (ND); Bogdanka Kurahovic (NM); Jack Childress (NV); Martin Wojcik (NY); Laura Miller (OH); Jim Laverty (PA); Sarah Neil (RI); Andrew Dvorine (SC); Vickie Trice (TN); Mei Feng (TX); Anna Van Fleet (VT); Julie Walsh (WI); and Tana Howard (WY).

1. Adopted its April 22 Minutes

The Subgroup met April 22 to discuss its work.

Ms. Bailey made a motion, seconded by Mr. Grissom, to adopt the Subgroup's April 22 minutes (Attachment Two-A1a). The motion passed unanimously.

2. Discussed Comments Received on Sections 1 Through 7 of Model #640

Mr. Gennace asked Mr. Serbinowski to elaborate on his comments sent to the Subgroup. Mr. Serbinowski said he believes the scope section as well as the definition of long-term care insurance (LTCI) deserves a look. He said he has seen products that claim not to be long-term care (LTC) and are deemed not to be LTC by several states even though they would appear to meet the definition of LTC in the *Long-Term Care Insurance Model Regulation* (#641). He said most of the LTC policies sold today are combo products, and the Subgroup may want to revisit the parts of Model #641 that exempt life insurance policies that accelerate benefits for LTC.

Mr. Gennace said the Subgroup would go through the comments received from the consumer representatives to the first seven sections of Model #640. He asked if anyone wished to discuss the consumer representatives' comments on Section 1 of Model #640. Bonnie Burns (California Health Advocates—CHA) said the focus of Section 1 is on the beginning of the process, but it does not address the issue of claims and other factors during the process. She said so many LTCI benefits are attached to life insurance products, and Section 1 does not address any of these products, which leads to a lot of confusion.

Karrol Kitt (University of Texas at Austin) said Section 1 is not broad enough and needs to be more inclusive of newer products. Brenda J. Cude (University of Georgia) said the thought expressed in the drafting note to Section 1 should be expressly incorporated into the section.

Mr. Gennace asked if anyone wished to discuss the consumer representatives' comments on Section 2 of Model #640. Ms. Burns said the section does not make it clear that limited LTCI products exist and there are models; i.e., the *Limited Long-Term Care Insurance Model Act* (#642) and the *Limited Long-Term Care Insurance Model Regulation* (#643). She said the reference to Medicare supplement in Section 2 is still included even though home recovery is no longer sold. Mr. Grissom asked Ms. Burns to elaborate on why Model #642 and Model #643 should be mentioned or referenced in Model #640. Ms. Burns said Section 2 requires insurers to comply with all other applicable statutes, and limited LTCI competes with traditional LTCI.

Mr. Gennace asked if anyone wished to discuss the consumer representatives' comments on Section 4 of Model #640. He said the consumer representatives' comments on Section 4 said there are no definitions, reference to or description of a reduced benefit option (RBO) or the full scope and range of RBOs that might be offered to policyholders. He said the comments further reflect that while there is some language in Model #640 about the right to reduce benefits, there is neither anything in Model #642 or Model #643 that describes or defines all of the potential options insurers can give policyholders as a way to reduce the effect of a rate increase, nor is there anything that specifies how, when, or under what circumstances these options have to be offered.

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Mr. Serbinowski said this section may be something the Subgroup should look at. He said there are several products in the marketplace that could arguably be LTC but are not deemed LTC. He reiterated that as most LTC policies are combo products, revisiting the parts of Model #640 that exempt life insurance policies that accelerate benefits for LTC may be necessary. He said some issues with these exemptions are: 1) it is not always clear how the prohibition against LTC premiums increasing above age 65 should be interpreted; 2) if a state does not regulate premiums on the underlying life product, adverse LTC experience could be passed on to the policyholders through the increase of the charges on the life insurance policy, effectively bypassing regulatory oversight of LTC rates; 3) LTC benefits attached to life or annuity policies typically do not offer inflation protection; 4) attaching LTC benefits to a non-permanent form of life insurance (including universal life [UL]) may lead to underfunding and lapse of the policy when most needed; and 5) attaching LTC benefits to life insurance with flexible premiums deprives policyholders of vital protection against unintentional lapse.

Mr. Serbinowski said given the change in the marketplace, LTCI connection to life insurance may warrant a look. He said he would be willing to provide more concrete examples at the next meeting. Ms. Burns said agents debate among themselves, and they are at times confused as to whether something is LTCI or not. Mr. Gennace reminded the Subgroup that it is not rewriting anything now; but he said it was a good discussion, and it may be worth looking into the definitions of LTCI.

Mr. Gennace asked if anyone wished to discuss the consumer representatives' comments on Section 5 of Model #640. Birny Birnbaum (Center for Economic Justice—CEJ) said the section could use clarification. He said he was asked by a policyholder about a group policy issued to an organization in Washington, DC on a form approved by the Washington, DC Department of Insurance, Securities and Banking (DISB) and with initial rates approved by the DISB. He said the insured is a Washington resident who encountered a rate increase approved by the DISB. He said Section 5 seems to cover whether the group policy approved in one state can be offered to organization members living in another state, but it does not address rate increases. He asked whether there can be differential rate increases across states if the group policy initially had the same rates regardless of insured location. He also asked why the Washington, DC DISB would not be responsible for all other rate changes if the DISB initially approved the group policy rates.

Mr. Gennace asked if anyone wished to discuss the consumer representatives' comments on Section 6 of Model #640. Mr. Birnbaum, Ms. Burns and Ms. Cude said Section 5 should be divided into two different sections, and significant thought must be given to what and how disclosures are made. Ms. Cude said there must be a more robust disclosure section. Ms. Burns said unintentional lapses and the waiver of premiums should be addressed and mentioned. Mr. Birnbaum said Model #641 has a lot of disclosure, and Model #642 and Model #643 cannot be viewed in isolation but in conjunction, as Model #642 must be read with Model #643.

Mr. Gennace asked if anyone wished to discuss the consumer representatives' comments on Section 6J of Model #640. He said it seems this has already been discussed, and he asked if there were any further comments. He asked if anyone wished to discuss the consumer representatives' comments on Section 6L of Model #640 that a policyholder should not have to wait 60 days for an explanation to contest an unreasonable benefit denial. Ms. Burns said it is self-explanatory.

Mr. Gennace said the next meeting of the Subgroup would be held on May 27, and he asked for comments to Sections 7 through 14 of Model #640 to be submitted by close of business on May 21.

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

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Draft: 4/26/21

Long-Term Care Insurance Model Update (B) Subgroup
Virtual Meeting
April 22, 2021

The Long-Term Care Insurance Model Update (B) Subgroup of the Senior Issues (B) Task Force met April 22, 2021. The following Subgroup members participated: Philip Gennace, Chair (NJ); Laura Arp, Vice Chair (NE); Sarah Bailey (AK); Tyler McKinney (CA); Maureen Belanger (NH); Jill Kruger (SD); Tomasz Serbinowski (UT); Elsie Andy (VA); and Michael Bryant (WA). Also participating were: Steve Dozier (AL); Erin Klug (AZ); Paul Lombardo (CT); Susan Jennette (DE); Andria Seip (IA); Kathy McGill (ID); Karl Knable (IN); Eric Anderson (IL); Craig VanAalst (KS); Ron Kreiter (KY); Adam Zimmerman (MD); Sherry Ingalls (ME); Renee Campbell (MI) Fred Andersen (MN); Carrie Couch (MO); Bob Williams (MS); Martin Wojcik (NY); Stephen Flick (OH); Mike Rhoads (OK); Jim Laverty (PA); Sarah Neil (RI); Andrew Dvorine (SC); Vickie Trice (TN); Rachel Bowden (TX); Mary S. Block (VT); Julie Walsh (WI); Grego Elam (WV); and Tana Howard (WY).

1. Discussed the Work of the Subgroup

Mr. Gennace explained the process, procedure and format for the Subgroup moving forward. He said one of the charges of the Senior Issues (B) Task Force is to review the existing long-term care insurance (LTCI) models to determine their flexibility to remain compatible with the evolving delivery of long-term care (LTC) services and remain compatible with the evolving LTCI marketplace. He said the Subgroup was established to determine whether the *Long-Term Care Insurance Model Act* (#640) and the *Long-Term Care Insurance Model Regulation* (#641) need to be updated to remain flexible and compatible with the LTCI marketplace. He said if the Subgroup determines an update is needed, it will report to the Senior Issues (B) Task Force, and the Subgroup would begin work. He said if the Subgroup determines an update is not needed, the Subgroup will report to the Senior Issues (B) Task Force and will await any recommendations from the Long-Term Care Insurance (EX) Task Force.

Mr. Gennace said Model #640 and Model #641 have not been fully reviewed since 2009/2010. He said the most recent updates to the models were done in 2016, specifically to Section 6 of Model #640 and to Appendix B and Appendix F of Model #641. He said it is important the Subgroup focuses on the purpose of its work and not get sidelined by comments, requests and/or recommendations to edit the model. He said the Subgroup is not editing Model #640 or Model #641 but rather will determine if Model #640 or Model #641 retains the flexibility to remain compatible with LTC services and the LTCI marketplace or if it needs an update to language, terms or definitions.

Mr. Gennace said the Subgroup would first review Sections 1–7 of Model #640. He said comments should be submitted to David Torian (NAIC) by close of business on April 30. He said Mr. Torian will redline the comments, share with the Subgroup, and those comments will be discussed during the Subgroup's next meeting scheduled for 1:00 p.m. ET on May 6. He asked if there were any questions or comments.

Birny Birnbaum (Center for Economic Justice—CEJ) said he thinks the timeline is too short for a full review and will result in an ineffective review. He said there are sections that are referenced in different parts of the model that may not be in the sections the Subgroup would be reviewing at that time. Mr. Gennace said if there is a cross reference, it can be noted in the comments to be submitted. Mr. Birnbaum said he still thinks the format does not allow for sufficient time for parties to review, edit and comment. Ms. Kruger said there is nothing preventing the Subgroup from going back to a previous section if necessary. Ms. Andy said this beginning process is not edit and update but rather to determine whether to edit and update. Karrol Kitt (University of Texas at Austin) said her experience with other model updates was to go section by section or smaller grouped sections. Mr. Gennace said the Subgroup should see how this works and move ahead with the planned format, and if the timing does not seem to work, the Subgroup will make the necessary adjustments.

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

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