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Via Email

David Torian
Counsel & Health Policy Analyst
National Association of Insurance Commissioners (NAIC)
444 North Capitol Street NW
Hall of the States Building; Suite 700
Washington DC 20001-1512

Re: Comment Letter to draft Limited Long Term Care Insurance Model Act and Regulation

Dear Mr. Torian:

Aetna appreciates this opportunity to provide comments on the Limited Long Term Care Insurance Model Act and Regulation. Aetna is one of the leading diversified health benefit companies, providing members with resources to enable better informed decisions about their health. Aetna participated in the Sub-Group calls as an interested party. Some of these comments are repetitive to those voiced during the Sub-Group calls, but are submitted now in the hope that the Senior Issues Task Force (SITF) may consider them.

Aetna's Senior Supplemental Insurance Division has been issuing supplemental insurance plans for over 25 years. Those plans consist of Medicare Supplement, individual hospital indemnity, nursing facility, home care insurance and, since 2013, a hospital indemnity plan commonly referred to by the market as recovery care¹.

Background of Recovery Care products. Hospital indemnity, nursing facility and home care insurance products have been around for many years. These products are typically indemnity products designed to provide coverage for out of pocket costs that major medical does not cover. That could be any expenses associated with a hospital confinement such as, family travel to treatment facilities, lodging, meals or household expenses. By paying benefits directly to insureds to use as the insureds deem appropriate, this product helps meet consumers' needs.

¹ The recovery care policy cover page contains the following disclosures:

- This is a limited benefit hospital indemnity and short term recovery care fixed indemnity policy – please read it carefully.
- This policy is not a Medicare Supplement policy.
- This is not a long-term care policy – this policy provides a limited benefit for hospital confinement and short term recovery care only.

Medicare has reduced its reimbursement for hospitalizations and encouraged facilities to reduce confinements often resulting in rehabilitation needs. The medical community encourages people to recover at home where surroundings are familiar and family members often available to assist. As more emphasis arose to reduce hospitalization confinements, the market saw a need to offer a product that consumers could buy to help fund the cost of recovery care. While hospital confinement might not be a prerequisite to benefits under recovery care, these short term care plans often provide benefits after a fall or accident where rehabilitation is needed only for a short period of time. These products are inexpensive. Their benefits are limited and the benefit period is less than 12 months. They simply do not meet the legal definition of long term care insurance.

Sub-Group work. The Sub-Group made a fundamental decision as it began its work to use the existing long-term care model act and regulation as a starting point for the new models. We believed then that this was an erroneous place to start. The Sub-Group chair's state, Connecticut, is the most recent state to adopt a law and a regulation on these products. The Connecticut law and regulation are titled Short Term Care Insurance. The regulation was adopted in May 2017. It contains sixteen sections and consists of approximately twenty pages. (Reference RCSA 38a-501a-1 to -16.) Conversely, the new model regulation contains thirty-two sections and consists of over sixty pages.

As the SITF Sub-Group began its work, we initially believed the supplemental plans marketed by Aetna were not intended to be included in the new short term care, now limited long term care, models. These plans were approved by thirty States and fully regulated by existing laws, namely NAIC Model Law 170, Accident and Sickness Insurance Minimum Standards Model Act and its related regulation, NAIC Model Regulation 171.

Aetna believes this new regulation is not needed and may result in unintended consequences of having less choice for consumers as insurers grapple with the new law and regulation. The new models may result in more expensive short term recovery care products resulting in consumers being priced out of short term care similar to many today being priced out of long-term care products.

During the Sub-Group's work, two insurers submitted their recovery care policy forms for review. The consensus of the members of the Sub-Group was that these products met the intended scope of the new model despite their already being regulated by an existing model law and regulation and despite their being approved for sale in many states. We believe regulators, insurers, agents and consumers will be confused and uncertain as to which law governs these products creating unnecessary litigation and regulatory actions.

Health insurance plans are offered, underwritten or administered by Aetna Life Insurance Company and its affiliates (Aetna). Health information programs provide general health information and are not a substitute for diagnosis or treatment by a physician or other health care professional. Information is believed to be accurate as of the production date; however, it is subject to change. For more information about Aetna plans, refer to www.aetna.com.

The Sub-Group indicated the following concerns at the outset of this project:

(1) Not all states would approve plans providing for short term long term care benefits. One of the benefits of a new model would be to provide a basis for those states who were not approving short term care plans to begin reviewing and approving the plans, resulting in additional consumer choice and a larger market for insurers.

Interestingly, one of the Sub-Group members (Texas) elected to release a product filing checklist to be used by industry for recovery care plans during the period the Sub-Group worked on the new models. Aetna is not aware of any new Texas statute that was enacted during the time of the Sub-Group's work. Texas is currently approving recovery care type products.

(2) A second concern, largely identified by consumer advocates, is that consumers were confused with some new products, often referred to as short term or recovery care plans. The advocate(s) informed the Sub-Group that licensed insurance producers expressed concern about these new plans that looked like and were being sold as being "poor persons" long-term care insurance but did not contain the consumer protections required for long-term care insurance products. The producers were allegedly concerned that consumers might think they'd purchased long-term care insurance.

Regarding the first concern, there is no guarantee that states will approve the new model law and regulation. As for the second concern, we believe this is a sales practice issue not a product design issue that warrants a new model law. This is why Aetna prominently displays certain disclosures (see the footnote on page 1 of this letter) on its policy cover and marketing brochures. Even if an agent does not use our brochure or tries to mislead the consumer, when the consumer receives the policy they will know they did not purchase long term care and will be able to return the policy for a full refund.

It was noted several times during the Sub-Group's calls that insurers were selling short term or recovery care products, often for in excess of 20 years, without requesting any rate increases nor experiencing any of the consumer complaints that plagued the long-term care industry.

Comments on the draft model act. We have reviewed the new model act and would like to offer the following comments:

1. Title: We believe the proposed title of the new model act will lead to confusion at a minimum if not open the door for consumers to be misled. The term 'long term care

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insurance', by law, means coverage that exceeds 12 months. Reference Long-Term Care Model Act, Section 4.A. definition of "long-term care insurance" which says "...means any insurance policy or rider advertised, marketed, offered or designed to provide coverage for not less than twelve (12) consecutive months....." The definition of limited long-term care insurance in the new model is identical to the definition of long-term care insurance except the new model says limited long-term care insurance provides coverage "...for less than twelve (12) consecutive months..."

We believe it is confusing, if not misleading, to have a model law name a product designed to provide short term coverage (less than 12 months) with words that mean a product that provides coverage that exceeds 12 months. Using the word "limited" does not solve this problem because it is ambiguous. It will be unclear to a consumer whether the word 'limited' modifies the type or number of benefits typically provided by long-term care products or if it limits the time period for which benefits are payable or both. By using two adjectives ("limited" and "long term") to describe the type of coverage where the first adjective seemingly contradicts the second adjective is Alice in Wonderland type logic. ("If I had a world of my own, everything would be nonsense. Nothing would be what it is, because everything would be what it isn't. And contrary wise, what is, it wouldn't be. And what it wouldn't be, it would. You see?" Lewis Carroll, *Alice's Adventures in Wonderland*).

The new model design does not offer all of the benefits of long-term care nor does it regulate products with benefit periods exceeding 12 months. To call the model law "limited long term care insurance" is to call it what "it wouldn't be". This is a recipe for confusion that will create more complaints and less consumer satisfaction with the product.

One of the concerns that led to the work by the Sub-group was agents selling products that were not long term care but calling them long term care or perhaps "poor person's long term care". Calling the products regulated by this new model a name that includes long term care will increase the likelihood that selling agents will call these plans long term care when they're not. Under existing law regulators would be able to enforce misleading sales practices against advertising or selling a product as long term care when by definition the benefits are for less than 12 months and, therefore, not long term care insurance. Naming a new model law to regulate that product using long term care in the title is tantamount to giving a license to mislead consumers.

2. Section 4. Definitions. The definition of limited long term care insurance in paragraph A of this section is ambiguous. The current exclusion of products regulated by the new model should be expanded to include any fixed indemnity product because fixed indemnity products are already regulated by existing model law 170 and 171.

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3. Section 9. Producer Training. We agree with the decision to make producer training optional with the states to allow flexibility to the regulators and align this product more closely to other limited benefit, short term benefit insurance products. The states already require producers to obtain continuing education and can easily add a segment on items listed in this section. We believe many, if not most, producers who sell short term, recovery care products do not sell long-term care. As such, we are not convinced they need to possess detailed knowledge of aspects of long-term care insurance but, in reality, all producers have to possess detailed knowledge of the product being offered to consumers. These plans are not long-term care plans, so the concept of taking what exists for long-term care producers and applying it to the new model is not reasonable. Given the fact that we know of few consumer complaints on short term recovery care products, we support the concept of making the training section optional and encourage states to consider adding to existing continuing education programs the salient topics related to these limited benefit plans to encourage producers to learn more about the products and offer them to their clients.

Comments on the new draft model regulation. We have the following comments to the model regulation:

1. Section 4. Definitions.

- a. Paragraph A contains a reference to independent review. That term was removed by the sub-group.
- b. The next drafting note contains a reference to Section 31 which now is Section 29. At the bottom of page 3 is another reference to Section 31 that should be Section 29.

2. Section 9. Required Disclosure of Rating Practices. As discussed during the sub-group calls, industry advised that it was not aware of any rate increases requested in existing plans that might be regulated by this new model. Given that, we suggest that it might be prudent to provide insurers with an exemption from this section, or item B. 5. at a minimum, until a rate increase is approved. That action would then trigger this section to apply to all applications solicited after the date any rate increase is implemented. Unless and until a rate increase is approved, there's nothing to tell applicants other than the rate they will pay and that such rate is subject to change in the future and what, if any, options they will have in the event the premium rate is increased. Some of this information is addressed in Section 8, Required Disclosure Provisions.

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3. **Section 22. Standard for Marketing.** Item (6) requires written notice be provided to consumers residing in states that have a senior insurance counseling program with the name, address and telephone number of the program. This requirement will result in additional expenses to provide such notice and to monitor this information to keep such information current and up to date. This expense may be passed on to consumers. Rather than requiring state specific notices, consideration should be given to making the reference to the state insurance regulator and putting this information on the policy form.

Aetna believes the new model law and regulation are unnecessary and may create a number of unintended consequences such as confusion in the marketplace, increased complaints, litigation and higher compliance and benefit costs that will impact affordability and price consumers out of a needed benefit. All products sold by insurers are filed with and reviewed by state regulators. More than half the states have approved these recovery care products for sale to their consumers. Other states could take the same action and begin reviewing and approving these products under existing law. This would give their residents the opportunity to consider whether recovery care coverage makes sense for them.

Aetna appreciates the opportunity to comment on the proposed new models. We would be happy to respond to any follow-up questions you may have.

Sincerely,

Esigned by Michael Colliflower, CLU, ChFC, FLMI, AIRC
Counsel

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