



National Association of Insurance
and Financial Advisors

April 20, 2018

National Association of Insurance Commissioners
Short Duration Long-Term Care Policies (B) Subgroup
Attn: Mr. David Torian, Health Policy Analyst & Counsel
444 North Capitol Street
Suite 700
Washington, D.C. 20001

Re: NAIFA Comments on Proposed Limited Long-Term Care Insurance Model Act and Model Regulation

Dear Mr. Torian:

This letter provides comments from the National Association of Insurance and Financial Advisors (NAIFA) to the Short Duration Long-Term Care Policies (B) Subgroup (“Subgroup”) to consider as it prepares to finalize its work on developing the Limited Long-Term Care Insurance Model Act (“Model Act”) and the Limited Long-Term Care Insurance Model Regulation (“Model Regulation”). During the recent NAIC Spring Meeting, NAIC staff circulated a revised version of each model and requested comments from regulators and interested parties by May 4, 2018. NAIFA directs its comments on two optional provisions found in each model: 1) Section 9, “Producer Training Requirements,” in the draft Model Act and, 2) the provision on “Permitted Compensation Arrangements” in the draft Model Regulation.

Founded in 1890 as The National Association of Life Underwriters, NAIFA is one of the nation’s oldest and largest associations representing the interests of insurance professionals from every Congressional district in the United States. NAIFA members assist consumers by focusing their practices on one or more of the following: life insurance and annuities, health insurance and employee benefits, multiline, and financial advising and investments. NAIFA’s mission is to advocate for a positive legislative and regulatory environment, enhance business and professional skills, and promote the ethical conduct of its members

NAIFA commends the Subgroup for developing the draft Model Act and Model Regulation and we appreciate the Subgroup working to incorporate NAIFA’s views throughout the drafting process. We do, however, offer other proposed changes on the provisions in the models pertaining to producer training and producer compensation arrangements. We explain in detail below our concerns on these two provisions and also suggest recommended language for the Subgroup’s consideration.

Producer Training Requirements

Regarding the optional provision on Producer Training Requirements in the Model Act, NAIFA agrees with the Subgroup’s conclusion that this provision should be an optional item that is not part of the actual Model. Moreover, we commend the Subgroup for incorporating a drafting note indicating that

states should only consider such a provision if there is evidence of deficiencies in producer training or abusive marketing practices in relation to the sales of Limited Long-Term Care Insurance (LLTCI). NAIFA has consistently supported reasonable training requirements for advisors in connection with the insurance and financial products they market to consumers, and we find the optional training requirements to be reasonable and appropriate.

However, a state's decision on whether to include this optional provision in its version of the Model Act should be based on the existence of clear and measurable evidence that there is insufficient agent training and inappropriate sales practices taking place in the market, and not implemented simply on the *belief* that such practices may be happening. We therefore offer for the Subgroup's consideration the following changes to the Drafting Note in Section 9 of the Model Act:

Drafting Note: If a state ~~believes that there is~~ has sufficient, verifiable, and quantifiable evidence that the limited long-term care insurance market is experiencing deficiencies in producer or agent training or abusive marketing practices, the state may wish to consider adopting the optional producer training requirements below.¹

It is also our view that if a state includes the section on producer training requirements in its version of the Model Act, the section should clarify that courses on LLTCI training shall be eligible for continuing education (CE) credit and that such courses should count towards, and not be in addition to, a producer's existing overall CE requirements. State insurance regulators have generally determined that insurance producers must complete 24 hours of CE courses over the course of a two-year period, and both regulators and industry agree that this amount of CE is sufficient and appropriate. We therefore propose that the Subgroup consider amending Section 9.A(4) accordingly:

(4) The training requirements of Subsection B ~~may~~ shall be approved as continuing education courses under [insert reference to applicable state law or regulation]. Such courses shall count towards an insurance producer's biannual continuing education requirements.

Permitted Compensation Arrangements

At the conclusion of the Subgroup's conference call on February 14th, the Subgroup concluded that the provision on permitted compensation arrangements should not be part of the Model Regulation, and instead exist as an optional item which a state may include in its version of the Model. The Subgroup included a Drafting Note for this optional provision recommending that states may incorporate this language into a proposed rule based on the Model Regulation if a state believes there is evidence of abusive marketing practices in the LLTCI market.

We appreciate the Subgroup recognizing that producer compensation restrictions should be optional language and not part of the Model Regulation. However, we strongly recommend that the Subgroup consider amending the drafting note to explicitly mention that a state should only consider enacting such a measure if there is clear and sufficient evidence of improper sales behavior and not impose compensation restrictions simply based on the anecdotal *belief* that inappropriate producer conduct may be occurring. Further, we argue that States should not use evidence that is purely anecdotal in nature as a justification for regulating LLTCI compensation. Broadly placing limits on the compensation all agents receive without sufficient and confirmed cases of misconduct is unnecessary and unfair to the vast majority of agents that have acted responsibly. At present, we are not aware of any data or

documentation that has been presented regarding the existence or extent of sales abuses in the market to warrant such an approach.

We therefore suggest that the Subgroup consider amending the drafting note in connection with the optional producer compensation arrangement provision with the following language:

Drafting Note: If a state ~~believes that there is~~ has sufficient, verifiable, and quantifiable evidence that the limited long-term care insurance market is experiencing abusive marketing practices, the state may wish to consider adopting the optional agent compensation provision above. Evidence that is merely anecdotal in nature should not be used as a basis for implementing restrictions on agent compensation.

We again commend the Subgroup for working to develop this new model regulation, and we thank you for your time and consideration of our views. Please contact me if you have any questions.

Sincerely,



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ⁱ Text covered with a strikethrough mark is proposed deletion. Text underlined is proposed addition