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Mr. David Torian  
Counsel and 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: Comments on Limited Long-Term Care Insurance Draft Model Act**

Dear Mr. Torian:

I am writing to provide comments on the draft Model Act entitled "Limited Long-Term Care Insurance". The NAIC Senior Issues Task Force Short Duration Long-Term Care Policies Subgroup drafted this new Model Act and accompanying Model Regulation for insurance products offered as short term long-term care coverage. The Subgroup's concern was that some products that provide long-term-care-type protection provide coverage for less than 12 months and, therefore, are outside the scope of state requirements for long-term care insurance ("LTCI").

**Clarify the Health Insurance Exclusion.** The draft model explicitly excludes a list of "health insurance" products that would not be within the scope of the new draft Model Act and Model Regulation and, therefore, not regulated as limited long-term care insurance products. The draft also includes some text that insurance using activities of daily living ("ADLs") to trigger benefits could bring an insurance product within the scope of the new Model Act and Model Regulation; however, this text precedes the express exclusion for the named "health insurance" and other insurance products and so is intended not to apply to these excluded products. However, a technical clarification is necessary to make this clear; otherwise the "exclusion" established for the list of enumerated health and other insurance products could be rendered entirely meaningless. We have attached, for consideration, suggested revisions to Section 4.A. of the proposed Model Act.

**Maintain the Title of Limited Long-Term Care Insurance.** The title of "Limited Long-Term Care Insurance" is appropriate for purposes of this Model Act and Model Regulation. Previously, the Subgroup's title read as "Short Term Care Insurance" and could have been read to include even "Short Term Limited Duration" insurance coverage, which is clearly a form of major medical insurance and not LTCI. As has been noted by the U.S. Supreme Court the title of a statute or section can aid in resolving an ambiguity in the text of legislation or a regulation. See *INS v. National Center for Immigrants' Rights, Inc.*, 502 U.S. 188 (1991). In that case the Court read the term "employment" in the text of a regulation as a reference to "unauthorized employment" as identified in the title of the regulation's paragraph.

In 1986 the NAIC grappled with the issue of a policy marketed as long-term care insurance but offering benefits of less than – at that time – a two-year period. Regulators were concerned then that this would create a loophole for products offered at the one-year level. They debated at that time whether or not products offered at the one-year level should not be referred to as “long-term”. However, after debate the group could not reach consensus but decided that any product marketed as “long-term care insurance” can’t be called anything else. See NAIC, *Long-Term Care Insurance Model Act*, Proceedings Citations (April 2011) at pages PC-640-2 and 3.

In the case of the current proposed Model Act, the stated intention is to establish standards for insurance products offered and marketed as a form of “long term care insurance” but for a coverage period of less than one year. The title of “Limited Long-Term Care Insurance” would appear consistent with that purpose and aid in resolving any ambiguity in the scope and text of Model Act or Model Regulation.

### **Reasons in Support of a Technical Clarification.**

1. The draft Model Act definition of “limited long-term care insurance” contains a phrase that says it “includes a policy or rider that provides for payment of benefits based upon cognitive impairment or the loss of functional capacity” that could, absent clarification, be misread to include even health insurance that may utilize ADLs to trigger a benefit payment but for the “exclusion” later in the paragraph.
2. Health insurance products such as stand-alone “recovery care” are not marketed or purchased as LTCI. These policies are filed and approved as “health insurance” and provide benefits for brief periods of post-surgical care and rehabilitation in a skilled nursing facility or at home. These products are already subject to standards established in NAIC Models 170 and 171.
3. No NAIC Model Act or Regulation prohibits the use of ADL triggers or recovery and home care benefits in health insurance products. As a result, existing health insurance model standards would permit ADL triggers for benefits and would have to be amended to reference the “limited long-term care insurance” such as in NAIC Models 170 and 171.
4. Medicare employs the use of ADL triggers for skilled nursing care and so Medicare Advantage plans as “health insurance” plans use ADLs for certain optional supplemental benefits. The recently enacted Bipartisan Budget Act of 2018 and CMS guidance (see April 27, 2018, CMS memorandum) allows MA plans to offer optional ADL-based supplemental benefits that improve or maintain overall function as “health-related” insurance benefits. Private coverage that is approved, offered, marketed, and sold as “health insurance” providing post-surgical ADL-based benefits should be permissible as well. Otherwise, private health insurance policyholders could be placed at a disadvantage relative to those covered under Medicare Advantage.
5. Health insurance products are not addressed in current NAIC Models 640 and 641 for “Long Term Care Insurance”. By inadvertently including health insurance products in the “Limited Long-Term Care” Model Act and Regulation a precedent would be established for standards that combine health insurance and long-term care insurance products making compliance and enforcement difficult.
6. Descriptions of health insurance products that are “excepted benefits” must conform to the language of the federal “excepted benefits” coverages expressly named in the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”). The phrase “hospital confinement indemnity insurance” must

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be updated to conform to the phrase used in HIPAA as "hospital indemnity or other fixed indemnity insurance".

Thank you for considering our comments. Please let me know if you have any additional questions.

Sincerely,

A handwritten signature in blue ink that reads "Kyle D. Conrad". The signature is written in a cursive style with a large, looping initial "K".

Kyle D. Conrad  
Senior Vice President  
and Chief Compliance Officer

Attachment

## Suggested Technical Clarifications to Limited Long-Term Care Insurance Model Act

### Section 4. Definitions

- A. "Limited long-term care insurance" means any insurance policy or rider advertised, marketed, offered or designed to provide coverage for less than twelve (12) consecutive months for each covered person on an expense incurred, indemnity, prepaid or other basis; for one or more necessary or medically necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance or personal care services, provided in a setting other than an acute care unit of a hospital. The term also includes a policy or rider (**other than the excluded policies listed below**) that provides for payment of benefits based upon cognitive impairment or the loss of functional capacity. Limited long-term care insurance may be issued by insurers; fraternal benefit societies; nonprofit health, hospital, and medical service corporations; prepaid health plans; health maintenance organizations or any similar organization to the extent they are otherwise authorized to issue life or health insurance. Limited long-term care insurance shall not include any insurance policy that is offered primarily to provide basic Medicare supplement coverage, basic hospital expense coverage, basic medical-surgical expense coverage, hospital ~~confinement~~ indemnity **or other fixed indemnity** coverage, major medical expense coverage, disability income or related asset-protection coverage, accident only coverage, specified disease or specified accident coverage, or limited benefit health coverage. Notwithstanding any other provision of this Act, any product advertised, marketed or offered as Limited long-term care insurance shall be subject to the provisions of this Act.