

Draft: 5/17/21

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. The motion passed unanimously.

2. Discussed Comments Received on Sections 1 Through 7 of Model #641

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 #641. He asked if anyone wished to discuss the consumer representatives' comments on Section 1 of Model #641. 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 #641. 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 #641. 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 #641. 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 #641 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.

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 #641 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 #641. 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 #641. 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 #641. 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 #641 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 #641 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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