Commissioner Jessica Altman  
Chairman, NAIC LTCI Reduced Benefit Options (EX) Subgroup  
Pennsylvania Insurance Department

September 7, 2021

Dear Commissioner Altman,

The American Council of Life Insurers (ACLI)[[1]](#endnote-1) and the American Association of Health Insurance Plans (AHIP)[[2]](#endnote-2) appreciate the opportunity to comment on the draft “Issues Related to LTC Wellness Benefits,” exposed by the NAIC Long-Term Care Insurance Reduced Benefit Options (EX) Subgroup on July 22, 2021.

ACLI/AHIP applaud the work of the Subgroup in exploring innovative wellness benefit programs in long-term care insurance. It is our belief that as regulators and industry work together to consider and develop these programs, they will prove beneficial to policyholders and contribute to a strong LTC market.

GENERAL

Overall, ACLI/AHIP found the draft to be a balanced and comprehensive outline of issues related to wellness benefit programs in the LTC insurance realm. We do have three general observations about the draft.

First, we wish to reinforce the understanding that many wellness initiatives are in their infancy and will require significant development and testing. Insurers should be allowed to explore and develop these initiatives on a voluntary basis without regulatory mandates if they determine such initiatives are viable and appropriate for their businesses and policyholders.

Second, as the Subgroup’s work on wellness programs continues, we would like to discuss what form the ultimate deliverable will take. Since wellness benefit programs don’t directly correlate with rate actions, tying them together would unnecessarily encumber both. Therefore, we suggest that wellness initiatives not be incorporated into or made dependent on the RBO Checklist or MSSR process. Ideally, the final deliverable encourages uniform state approaches for wellness programs and discourages state-by-state reviews that could stymie uniformity.

And third, because LTC wellness benefit programs are in their infancy, and there is still much to do, we suggest prioritizing the issues explored in the draft. Issues related to the upfront design of programs, such as rebating and discrimination, are a top priority as they are necessary to get started. Those issues related to results, such as actuarial issues and consumer acceptance/confusion, should be a secondary priority because they will be easier to ascertain and address after we have made some progress.

With these general concepts in mind, we offer our analysis of the draft, by section, below.

BACKGROUND

Hybrid products constitute 80% of LTC products sold today. Given their key role in the LTC market, we suggest incorporating hybrid products into the background section.

Timing is an important component of wellness benefit programs that should be mentioned in this section. Many LTC policies provide some form of home modification and caregiver training benefits. The true value of these initiatives comes in providing them pre-claim when they are most effective.

This section refers to wellness initiatives as “claim cost-reducing innovation.” In addition to reducing claim costs for insurers, wellness initiatives help policyholders by potentially extending their independence at home and preventing severe impairment. Providing early access to existing benefits, such as caregiver training and home modifications, may postpone the need for formal care and enable insureds to remain in their homes under the care of their families. In addition to maintaining or improving the health and well-being of insureds, wellness initiatives ultimately benefit family members in caring for loved ones.

ANALYSIS OF EFFECTIVENESS

A major concern about developing wellness programs is determining how effective they will be. While there are certain desired results that could require years of study and implementation to ascertain whether they can be achieved, other results can be realized quickly. For instance, the affect wellness programs might have on reducing early claims or encouraging cost-effective home care could be known within months of implementation.

Further, the draft refers to upfront, significant costs associated with wellness programs. While this may be true, there are some wellness offerings that are not expensive and can be tested without much financial risk. For example, health education programs or immunization incentives would not cost much. And while individual blocks of LTC insurance policies might be unique, there could be wellness programs that are effective for most, if not all of them, such as stress management and certain medical screenings.

Paragraph (b)(iii) of this section mentions the stand-alone LTC insurance market. As previously mentioned, it’s important to account for the thriving hybrid LTC market. Carriers selling hybrid products can and should contribute to the industry’s wellness initiatives. The flexible design of hybrid products makes them uniquely suited to offer wellness programs that maintain policyholders’ independence at home. For example, the life component of the hybrid product could finance the wellness initiative. Alternatively, additional riders could be added to the hybrid policy to cover wellness programs.

In addition, there is likely much to be learned from wellness programs currently offered under life insurance policies, whether hybrid or not. LTC certainly has components that differentiate it from life and major medical insurance, but to the extent possible, learning from the experience of life and health insurance wellness programs would be advantageous, saving the LTC industry time and money, while expediting health outcomes. In addition to Medicaid and Medicare Advantage mentioned in the draft, there are other products and programs, such as workplace wellness programs and disability income insurance to look to for learning.

We recommend adding another “next step” to this section to better define what is meant by wellness. We need to be clear on what we are hoping to achieve. We are happy to work with the subgroup on a definition.

There are two additional factors to consider when looking at the effectiveness of wellness programs. First, it should be noted that the goal of wellness programs is to improve the health outcomes of policyholders, which could affect loss ratios for insurers. Second, regulators and all participants should be cautious to avoid, even inadvertently, setting overly optimistic expectations as to what the ultimate impacts of any wellness initiatives might be. More innovative wellness programs may take months or years to pilot and assess before any actuarially meaningful results are revealed. They are likely to be one of many factors, in addition to necessary and actuarially justified rate increases, that may ultimately improve the LTC marketplace. However, wellness programs alone should not be considered a “cure” to industry issues.

PREVENTION OF UNFAIR DISCRIMINATION RELATED TO EXTRA-CONTRACTUAL BENEFITS AND COSTS  
Unfair discrimination is an important concern to navigate in LTC wellness programs if the same wellness benefits will not be offered to all policyholders. While certain preventative health programs might be offered to all insureds, other programs may be most effective and most utilized if focused on those insureds with a particular condition, age range, or sex. Targeted wellness programs could more effectively reduce claims costs and maximize the health of policyholders. Limiting wellness programs by geographic region, for example, might be necessary to test the effectiveness of programs before scaling up. To do so, insurers would need regulatory support that programs or initiatives focused on similarly situated insureds, for example, those in the “same class,” would not be considered unfair discrimination. Health insurers have a long history of targeting wellness programs aimed at those deemed high risk while avoiding unfair discrimination.

One issue for further study are the characteristics that can rightfully be used to define an acceptable cohort for a wellness initiative. For example, could an insurer only offer certain benefits to insureds without a spouse or other informal caregiver? Would differing methods of contacting policyholders, for example mail vs. email, be considered unfair discrimination? Also, what are the implications if policyholders share the cost of a more expensive wellness intervention? Similarly, what would the implications be, if, after a pilot program ends, policyholders wish to continue the wellness program by covering the cost themselves?

CONSUMER CONFUSION  
Consumer communication and education are vital to precluding confusion. Giving consumers the option to opt-in a program after they fully understand it is one way to ensure consumers are comfortable. Another option is to allow insureds to self-identify their conditions before a wellness initiative begins. An example of self-identification is optional testing for early dementia where early intervention is effective.

Clearly communicating with informal caregivers is also important. Depending on the wellness benefit program and condition of the insured, a caregiver may be the one utilizing the technology and other tools offered by a wellness program. We would suggest consulting caregiving groups, such as the National Alliance for Caregiving, which supports family caregivers, or the Paraprofessional Healthcare Institute, which represents direct care workers, to give stakeholders valuable insight into fostering caregiver engagement in wellness programs.

REBATING  
One can make a strong case that the wellness initiatives our industry is currently contemplating do not violate anti-rebating laws. Wellness benefit programs are intended to encourage behavioral changes that improve the insured’s health, thereby reducing the risk the insured will need LTC. Many states allow insurers to provide value-added services and programs for loss mitigation and rate reduction purposes to insureds at no additional charge or a discounted rate under certain conditions. The ACLI maintains a law survey on the subject of rebating that could prove useful to companies with access to the law survey when assessing the different requirements between states. Additionally, as the draft mentions, the NAIC Model Unfair Trade Practices Act explicitly exempts certain wellness benefits.

Another factor to consider is that many, if not most, wellness initiatives would *not* begin the moment a policy becomes effective. This factor is further evidence that wellness benefits are not rebates.

TAX CONSIDERATIONS  
Many wellness and similar initiatives designed to reduce the onset or severity of chronic illness can be undertaken today consistently with federal tax requirements for qualified long-term care insurance, but for others clarifying guidance from the Treasury Department or IRS would be helpful or amendment of tax requirements by Congress may be needed.

As noted, however, certain wellness initiatives are permissible under current tax law. For example, though not considered precedent, [PLR 201105026](https://www.irs.gov/pub/irs-wd/1105026.pdf) and [PLR 201105027](https://www.irs.gov/pub/irs-wd/1105027.pdf) describe certain wellness benefits as permissible under federal tax law. The IRS Private Letter Rulings both comment, “It would be inconsistent with the stated goal of § 7702B to deny qualification to a long-term care insurance contract because it provided ancillary mechanisms aimed at minimizing long-term care needs.”

To summarize, we caution the Subgroup to not purport to interpret existing federal tax requirements regarding wellness initiatives, although we think the NAIC and state regulators can perform an important informational role with respect to non-tax aspects of such initiatives in connection with any future efforts to obtain clarifying IRS/Treasury guidance or legislative changes, there may be tax consequences if benefits are provided to an insured who is not chronically ill as defined in 26 U.S.C.A. §7702B(c)(2), that is, outside the federal tax definition of qualified LTC benefits. Federal legislative changes to section 7702B could be required to ensure policyholders can receive wellness benefits without tax consequence.

REGULATORY ROLE IN APPROVING OR EVALUATING LTC WELLNESS APPROACHES  
Ideally, the effort to incorporate wellness initiatives in LTC results in a process that minimizes or eliminates state-by-state reviews of wellness programs and fosters flexibility for insurers wanting to offer these incentives.

The draft posits the question of whether a company’s commitment towards innovation efforts could be a contingency to receiving a fully actuarially justified rate increase. It may ultimately be just one factor, of many, to consider in a rate decision. And, first, it would be necessary to establish objective criteria to evaluate companies fairly.

The following items should be considered as wellness initiatives are more fully developed:

* Wellness initiatives are designed to improve the health of policyholders and the impact on claims and loss ratios are still unknown. Linking rate increases to wellness offerings will not be appropriate for some time.
* Formal regulator approval of a wellness offering could stifle innovation. Rather than a formal approval process, companies could provide information to regulators on an as needed basis or upon request.
* Because the impact on claims is unknown at this time, there should not be an assumption that wellness programs are available to all or that engagement in the wellness initiative will be high.
* Finally, characterization of LTC insurance in (d)(iii) as being in a “desperate situation” discounts the vibrant hybrid market.

ACTUARIAL CONSIDERATIONS  
First, as with any other actuarial assumption, actuaries must have a valid justification for the impact of the wellness initiative, especially as it relates to in-force rate increases. As discussed throughout the draft, this will take time to develop.

Second, while a wellness program could be tied to a reduced benefit option, there should not be an expectation that it will be. This determination is best made by the insurer.

DATA PRIVACY  
Data privacy is a fundamental and legitimate concern in the development and implementation of wellness benefit programs. Because these programs are an emerging innovation, starting small by allowing insureds to participate at their discretion and/or self-attest to their medical conditions is key.

In this section of the draft, there are multiple questions raised that likely already have adequate regulations in place to address them. (e.g. “Should insurers purchase data regarding their policyholders?” and “Should insurers partner with vendors or service providers to supply specific policyholder data to the wellness company?”) For issues that have already been addressed, we suggest specifying that their inclusion in the draft is to give a comprehensive overview on the topic, alert regulators for oversight focus, or for some other stated purpose.

Along those same lines, the draft would benefit from bifurcation between issues governed by clear regulations vs. those that are not (either because the issue falls within a gray area or no regulation exists). Similarly, if the NAIC has already addressed substantially similar topics, the draft should refer to the NAIC’s work rather than replicate their efforts. (e.g. “When considering big data, are there unacceptable ‘correlations’”? “How will insurers recognize relevant correlations vs. irrelevant statistically significant correlations?”)

The ability to collect and analyze data is essential to test pilot programs and eventually implement fully developed wellness initiatives. In data privacy matters that are unsettled, insurers need assurance they can move forward without fear of adverse legal or regulatory action. The ongoing efforts of regulators and industry stakeholders to coordinate and balance the public policies of data privacy, improved health, and lower LTC costs can give that assurance.

As we move forward, guiding principles are vital. ACLI/AHIP are strongly committed to the proper use and protection of consumer data. We encourage clear and concise notice about the collection, use, and disclosure of personal information. We also support the ability for consumers to have appropriate control over their information, including the ability to access and correct inaccuracies, consistent with legitimate business purposes and/or legal requirements to retain such information.

OTHER CONSIDERATIONS  
At this time, ACLI/AHIP have no comments on this section of the draft.

CONCLUSION  
Thank you for the opportunity to provide these comments. ACLI/AHIP welcome the opportunity to discuss our comments with you soon.

Sincerely,

 

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1. The American Council of Life Insurers advocates on behalf of 280 member companies dedicated to providing products and services that promote consumers’ financial and retirement security. Ninety million American families depend on our members for life insurance, annuities, retirement plans, long-term care (LTC) insurance, disability income insurance, reinsurance, dental, vision, and other supplemental benefits. ACLI represents member companies in state, federal and international forums for public policy that supports the industry marketplace and the families that rely on life insurers’ products for peace of mind. ACLI members represent 95 percent of industry assets in the United States. [↑](#endnote-ref-1)
2. AHIP is the national association whose members provide coverage for health care and related services to hundreds of millions of Americans every day. Through these offerings, we improve and protect the health and financial security of consumers, families, businesses, communities and the nation. We are committed to market-based solutions and public- private partnerships that improve affordability, value, access, and well-being for consumers. [↑](#endnote-ref-2)