



May 30, 2017

James Kennedy, Chairman
Receivership Model Law Working Group
National Association of Insurance Commissioners
2301 McGee Street, Suite 800
Kansas City, MO 64108

RE: Guaranty Association Issues Relating to Long-Term Care (“LTC”) Insurance

Dear Chairman Kennedy:

The American Council of Life Insurers (“ACLI”)¹ appreciates this opportunity to provide comments to the Receivership Model Law (E) Working Group’s (“RMLWG”) on the following:

(1) Guiding Principles on the following Long-Term Care Insurance (“LTCI”) Guaranty Association Assessment Issues that are listed as Priority Issues/Topics:

- LTCI classification
- Assessments on life industry vs. health industry
- Assessments based on type of license vs. type of product written
- Treat all health carriers equally, including HMOs
- Consideration of impact of changes in LTCI policies and new products

(2) *Request for NAIC Model Law Development* in order to re-open the *Life and Health Insurance Guaranty Association Model Act* (“Model”) to address LTC-related insolvencies.

General Comments

ACLI appreciates the NAIC’s renewed focus on regulatory issues critical to the LTCI marketplace, and welcomes the opportunity to work with the RMLWG, other key stakeholders and the entire NAIC as we move forward with this effort.

A reliable guaranty association system, which provides consistent and fair treatment of policy owners throughout the nation, is critical to sustaining the ongoing success of the state-based system of insurance regulation. The recent liquidation of Penn Treaty and its affiliates, however, has caused some important stakeholders to question the efficacy of the system, most notably the equity of the

¹ The American Council of Life Insurers (ACLI) is a Washington, D.C.-based trade association with 290 member companies operating in the United States and abroad. ACLI advocates in federal, state, and international forums for public policy that supports the industry marketplace and the 75 million American families that rely on life insurers’ products for financial and retirement security. ACLI members offer life insurance, annuities, retirement plans, long-term care and disability income insurance, and reinsurance, representing more than 94 percent of industry assets, 93% of life insurance premiums and 97% of annuity consideration in the United States. Learn more at www.acli.com.

assessment burden associated with the failure of an LTC insurer. For the past several months, ACLI has worked with various stakeholders with differing perspectives, including a coalition of major medical carriers, to come up with a balanced approach to LTCI-related assessments while maintaining the valuable protections the system provides to consumers.

Guiding Principles

It is critically important that any changes to the Model be part of a holistic approach to addressing the interconnected issues raised by the Penn Treaty insolvency, including the development of a consistent regulatory approach to reviewing and approving allowable LTCI rate increases. Therefore, in considering any revisions to the Model, ACLI recommends that the NAIC be guided by the following principles:

- (1) While differences among the states are inevitable, the guaranty association system should strive for the highest degree of consistency, predictability, and efficiency across all jurisdictions in order to fulfill its primary objective of promoting confidence in the life and health industry and its products.
- (2) The guaranty association system should provide for appropriate policyholder protection consistent with least-cost resolution for insolvent companies.
- (3) Assessments should not place untenable financial burdens on healthy companies, undue adverse consequences for any insurance products, or create competitive imbalances.
- (4) “Rough justice” must be preserved. Recognizing that a viable system requires a broad assessment base to function effectively, the NAIC wisely adopted a system that provides for assessments that do not fall exclusively on writers of specific products. While this can result in seemingly anomalous assessments in a particular insolvency, over the long run, the vast majority of companies have found this burden sharing arrangement to be equitable.
- (5) Premium tax offsets must be preserved. The Model has assigned a portion of the burden for protecting a failed company’s policyholders to the state by allowing the assessments that have been paid by the surviving companies to be set off against their premium taxes, while at the same time imposing on those surviving companies the actual (and opportunity) costs of supplying the requisite cash for such assessments. This provides appropriate incentives to help ensure that solvency regulation remains robust and that receiverships are conducted efficiently.
- (6) No product should be subject to assessment unless it is also covered, and the assessment mechanism must be consistent with the design and administration of the product that forms the basis for the assessment. In the case of most life insurance and annuity products, a surcharge mechanism has significant and perhaps insurmountable practical problems. Thus, at least for those products, the post-assessment mechanism must be retained. However, we recognize that a pre-funded assessment mechanism may make sense for certain health products.
- (7) The NAIC should make clear that any potential legislative changes to a state’s laws must be prospective only and apply only to liquidations entered into on or after the effective date of the legislation. Otherwise, retroactive legislative changes could become the subject of litigation.

Request for NAIC Model Law Development

Our support for reopening the Model hinges upon changes being quickly identified and prioritized, and critical updates being addressed on a fast track. With that said, while we recognize that issues may come up during the RMLWG's review of the Model, we want to reiterate our request that the work to address the priority issues not be slowed down.

ACLI, whose members offer life insurance, annuity, LTCI and supplemental health products, believe the following changes to the Model should be priorities for the RMLWG:

- (1) Adding HMOs to the LTCI assessment base to avoid competitive inequity between indemnity and HMO products. HMOs offer insurance-like solutions, are regulated similarly to health insurers, and are part of the overall health insurance market.
- (2) Broadening and re-aligning the assessment base for LTCI-related insolvencies among life and health insurers to reflect the evolution of the LTCI market. Any realignment must acknowledge the rapid growth of life insurance and annuity hybrid products, as such products account for approximately 24% of the current LTCI market and 85% of new LTCI sales.
- (3) Modernizing the process to assure that insureds are promptly placed with substitute major medical carriers so they can obtain coverage with a licensed carrier at the most advantageous cost.
- (4) Clarifying that benefits owed to individuals from LTCI riders (accelerated benefit riders) should be covered under the Model's provisions that relate to the base contracts.

We also note two basic points. First, much of the legacy LTCI business continues to be financially stressed and consumers would be ill-served by another insolvency. Second, as mentioned above, the rate-setting process needs to be improved so that books of LTCI business are at least at the break-even level.

Finally, in the two largest insolvencies of the past decade, the guaranty association system has been unduly strained not by failures of the system but rather by failures of the receivership process. We urge the NAIC to consider immediate reforms to the receivership process (e.g., incorporating an automatic stay similar to the federal bankruptcy stay) as it contemplates reforms to the guaranty association system.

ACLI stands ready to engage in a constructive and energetic discussion about these important issues. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink that reads "Bruce Ferguson". The signature is written in a cursive, flowing style.

Bruce Ferguson
Senior Vice President, State Relations

cc: Jane Koenigsman