January 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: Charges Relating to Long-Term Care Products and 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 (“RMLWG”) as it addresses the following 2017 charges relating to long-term care (“LTC”) products and the guaranty association system:

1. Evaluate and consider the changing market place of LTC products and the potential guaranty fund impact.

2. Evaluate the need for amendments to Model 520, *Life and Health Insurance Guaranty Association Model Act* (“Model Act”), to address issues arising in connection with the insolvency of LTC insurers.

We support these charges and believe that these issues, particularly the way in which assessments for LTC-related insolvencies are handled, should first be addressed at the national level in order to achieve a more practical and uniform solution. Otherwise, there is a real risk that various states will begin to adopt inconsistent laws relating to LTC assessments, which in turn, would undermine our existing guaranty association system.

The report(s), as well as any recommendation(s), that the RMLWG releases in response to these charges could have a major impact on the LTC insurance industry and to all life and health insurers across the country, regardless of whether they sell LTC insurance. We are, therefore, ready to assist the RMLWG in any way possible as it addresses these important charges. In fact, the ACLI has created a Board-level Ad Hoc Committee on Guaranty Funds System and a related Deputies Group in order to address these issues, particularly whether the current assessment methodology for LTC-related insolvencies needs to be modified.

---

1 The American Council of Life Insurers (ACLI) is a Washington, D.C.-based trade association with 284 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 90 percent of industry assets and premiums. Learn more at [www.acli.com](http://www.acli.com).
Under the Model, which the ACLI has long supported, and in most state guaranty association laws, two types of assessment accounts are established in order to determine individual company assessments when an insurer becomes insolvent – (1) a life insurance and annuity account (which includes subaccounts for life insurance and annuities) and (2) a health insurance account. Each assessment account operates independently of the other, in that a guaranty association’s obligations relating to life insurance are generally funded by assessments on those insurers who sell life insurance (based on their pro rata shares of life insurance premiums). Similarly, obligations relating to annuities are generally funded by assessments on those insurers who sell annuities (based on their pro rata shares of annuity considerations), and obligations relating to health insurance are funded by assessments on those insurers who sell health insurance (based on their pro rata shares of health insurance premiums).

While LTC insurance has some commonalities with life insurance products, it is regulated as accident and health insurance in all 50 states and the District of Columbia and is, therefore, included in the health insurance assessment account in all state guaranty association laws, along with major medical insurance, disability insurance, dental insurance and other types of traditional health insurance. Thus, when an insurer who sells any type of health insurance becomes insolvent, the total amount of health insurance premiums collected by the guaranty association’s other member insurers are included in its health insurance assessment base in order to determine individual company assessments.

This assessment mechanism can, at times, cause perceived inequities for some insurers when they are assessed for obligations that relate to a specific type of life or health insurance or annuity product that they do not sell. This is the case with the ongoing Penn Treaty insolvency for those health and life insurers who do not sell LTC insurance, as well as with the recent Executive Life Insurance Company of New York insolvency for those annuity writers who did not sell structured settlement annuities. However, the assessment mechanism was intentionally designed this way in order to ensure adequate assessment capacity for each of the three main types of insurance.

The Penn Treaty insolvency is causing some regulators and health carriers to question the way in which LTC-related insolvencies are assessed under the Model Act and state guaranty association laws. ACLI is sensitive to their concerns, and we have had discussions with them in order to consider how such concerns might be appropriately addressed. That said, we have made it very clear that we would strongly oppose any proposal that would shift all or most of the LTC-related assessment burden from the health insurance account to the life insurance and annuity accounts.

While only 13% of health insurance groups have ever sold stand-alone LTC insurance, only 22% of life insurance groups have ever sold such stand-alone insurance and an even smaller percentage of them sell it now. Moreover, there has been a significant shift in LTC insurance sales from stand-alone products to hybrid products that combine LTC insurance with either life insurance or annuities. In fact, hybrid products now account for 85% of new LTC insurance sales and 24% of outstanding LTC insurance. Based on this market transformation, it appears that some LTC-related assessment exposures are already beginning to migrate from the health insurance assessment accounts to the life insurance and annuity assessment accounts.

If the RMLWG concludes that changes to the Model are necessary, we would urge that its concerns are addressed without departing from the underlying tenets of the Model and the life and health insurance guaranty association system, and are guided by the following set of principles:

- The state-based guaranty association system should be preserved, including its post-event assessment mechanism and its provision for premium tax offsets.
- While differences among the states are inevitable, the guaranty association system should strive for the highest degree of uniformity, predictability and efficiency across all jurisdictions.
The guaranty association system should provide for appropriate policyholder protection consistent with least-cost resolution for insolvent companies.

It should not result in undue burdens on healthy companies or undue adverse consequences for any insurance products.

It should promote confidence in the life and health insurance industry and its products.

Thanks again for giving us the opportunity to provide comments on this very important matter, and we look forward to working with the RMLWG as it addresses its charges. If you have any questions, feel free to call me at (202) 624-2135.

Sincerely,

Wayne Mehlman
Senior Counsel, Insurance Regulation

cc: Jane Koenigsman
February 7, 2017

VIA EMAIL
Mr. James Kennedy
Texas Department of Insurance
Chair, Receivership Model Law (E) Working Group
c/o Jane Koenigsman
Sr. Manager, L/H Financial Analysis
National Association of Insurance Commissioners (NAIC)
jkoenigsman@naic.org

Re: Life and Health Insurance Guaranty Association Model Act (#520)

Dear Chairman Kennedy:

On behalf of the 36 independent members of the Blue Cross Blue Shield Association (BCBSA) that provide health coverage to over 106 million – one in three – Americans, we would like to take this opportunity to thank you for undertaking a review of the Life and Health Insurance Guaranty Association Model Act (#520), as well as the implications of long-term care insurance company insolvencies on receivership practices and processes and the guaranty fund system. We believe this is a long overdue review and stand ready to assist you as your Working Group moves through its review process. We understand that the information gathered during this process is intended to assist the Working Group in identifying issues for discussion and consideration as it prepares to address the following (new) 2017 charges:

- Evaluate and consider the changing marketplace of long-term care products and the potential guaranty fund impact; and
- Evaluate the need for amendments to Model #520, Life and Health Insurance Guaranty Association Model Act, to address issues arising in connection with the insolvency of long-term care insurers.

The Life and Health Insurance Guaranty Association Model Act has not been reviewed in many years and is in dire need of a fresh look, particularly in view of the dramatic changes the health insurance market has undergone since the enactment of the Affordable Care Act. Under current
law, the funding of an insolvency of a long-term care insurance company is disproportionately borne by health insurance writers. This is despite the fact that long-term care is most often a product developed and sold by life insurers or subsidiaries of life insurers. The inequity of this burden could perversely jeopardize the solvency of a health insurer that is already suffering from substantial losses and market instability, and that likely does not write or sell long-term care products. This current situation is unwarranted and inequitable. The guaranty fund system was put in place for the financial protection of consumers – not to shift risk from one industry sector to another at the expense of policyholders.

The need to ensure the viability of the long-term care market is fundamental to this discussion. Rising costs of care, product design, and rate adequacy have simply not kept pace with changing market and demographic realities.

For the sake of existing and future long-term care insurance consumers, we urge you and your Working Group to carefully review the Model Act to determine ways in which it may be modernized. We look forward to working with you to achieve this important goal.

Thank you for the opportunity to provide comments. If you have any questions, please do not hesitate to contact me.

Sincerely,

Kim Holland
Vice President, State Affairs
(202)626-4810
kim.holland@bcbsa.com
Mr. James Kennedy, Chair  
Receivership Model Law (E) Working Group  
C/O Jane Koenigsman  
Sr. Manager I - Life/Health Financial Analysis  
National Association of Insurance Commissioners  
1100 Walnut Street  
Suite 1500  
Kansas City, MO 64106-2197  

RE: MODEL 520 COMMENTS  

Dear Mr. Kennedy:  

During a call on December 6, 2016, and by email dated December 15, 2016, the working group requested:

“comments on issues and implications of long-term care insurance (LTCI) insolvencies on receivership practices and processes, the guaranty fund system, the applicability of provisions within Life and Health Insurance Guaranty Association Model Act (#520) (the “Model Act”) on long-term care insurance, and any other receivership laws/regulations. Also please comment on any recommendations for solutions to the issues and implications identified. The information gathered from this request is intended to assist the Working Group in identifying issues for discussion and consideration as it prepares to address the following 2017 charges:

Evaluate and consider the changing market place of long-term care products and the potential guaranty fund impact.

Evaluate the need for amendments to Model 520, Life and Health Insurance Guaranty Association Model Act, to address issues arising in connection with the insolvency of long-term care insurers.

I offer the following comments addressing the second of these charges. The views I express are strictly my own and not offered on behalf of any client or organization. They are informed generally by my experience with troubled insurers and insurance regulation during the last four
decades and specifically by my work with troubled long term care insurers during the last five years. In summary my comments are:

1. The assessments for LTCI failures should be allocated among all life and health insurer members of the guaranty associations, not just or principally health insurers.
2. Section 3.B.(2)(c) of the Model Act (the “Moody’s Rollback” provision) should be clarified to exclude health insurance and LTCI benefits.
3. Consideration should be given to clarifying that the premiums that belong to the guaranty association under Section 8.D. are those portions of the total premiums for relevant policies that correspond to the portions of the policies for which coverage is provided under Section 3.B.

**DISCUSSION**

In more detail, my recommendation and the rationale for each position follows. I strive here to keep the discussion brief but will be please to expand on any of these points if requested.

**Assessments**

Section 9 of the Model Act authorizes each guaranty association to assess member insurers for amounts needed to discharge statutory obligations with respect to specific failed insurers (“Class B Assessments”) and such assessments are typically allocated by “accounts and subaccounts” corresponding to lines of insurance business. Long-term care insurance is classified as health insurance in most states though traditional health insurers sell very little or none of this product. Instead, LTCI mostly has been sold by life insurers engaged in many lines of business or by “monoline insurers” who marketed almost exclusively LTCI products. While it is impossible to design an assessment mechanism that will be viewed as perfectly fair by all assessed insurers, the disparity between the group of companies engaged in the sale of LTCI products and the group of companies likely to be assessed for the failure of such insurers is striking. In the case of the Penn Treaty companies, for example more than 75% of the aggregate assessment is likely to be borne by health insurers though they did not sell the product. On the other hand, many life insurers never sold LTCI and fewer still do so presently. Because there are so few viable monoline LTCI insurers in the market, creating a stand-alone LTCI subaccount would be impractical. It simply would not have a remotely adequate assessment base. Instead, I propose that the assessment burden be spread over the broader industry. To accomplish this, I propose that the following subsection be added as Section 9.C.(4) of the Model Act:

For purposes of this Section long term care insurance shall be deemed to be both life and health insurance and the subaccount for life insurance described in Section 6.A.(1) shall be aggregated with the account for health insurance described in Section 6.A.(2) for purposes of determining each member insurer’s share of a Class B assessment necessary to discharge the association’s responsibilities with respect to long term care insurance issued by the impaired or insolvent insurer.

---

1Unless specified otherwise, all statutory references are to the Model Act.

January 26, 2017 - Model 520 comments of Patrick Cantilo - page 2
There clearly can be many other ways of reallocating part of the LTCI burden away from health insurers to other sectors of the industry. I offer this approach as one that could be relatively easily implemented.

**Moody’s Rollback**

Largely because of the Penn Treaty insolvency and the desire of certain health insurers to mitigate their resulting assessment liability, there has been much debate about the applicability of Section 3.B.(2)(c) (the Moody’s rollback provision) to the inflation benefits provided by many long term care insurance policies. I will not describe this debate in any detail here as that discussion alone could consume volumes. Suffice it to note that in my view when the Moody’s rollback provision was adopted it was for the purpose of mitigating guaranty association liability for certain investment contracts in the belief that investment expectations were not deserving of the same “safety net” protection as consumer insurance products. No one believed at the time that these provisions would or should serve to reduce benefits under long-term care or other health insurance products. Suggestions to the contrary would simply be disingenuous. Many technical arguments can be offered pro and con applicability of the Moody’s rollback provision to long term-care insurance, such as whether the inflation protection features at issue are truly “based on a rate of interest.” I leave that debate to others or for another day. Suffice it to note that in my view the overriding public policy is and should be not to reduce safety net protection for long-term care insureds on this basis. To avoid that result I propose that Section 3.B.(2)(c) be amended as follows:

A portion of a policy or contract other than one for long term care or other health insurance to the extent that the rate of interest ...

**Premium Allocation**

In the context of long-term care insurance failures, a potentially material issue exists with respect to the allocation of the future premium to be paid by policyholders under the insurer’s continuing policies after the guaranty associations are triggered. Specifically, should such continuing premium be (1) paid in its entirety to the guaranty associations, or (2) allocated between the guaranty associations (as to the covered portion of the contracts) and the liquidator (as to the uncovered portions)?

There is not much precedent for this issue because historically the life and health contracts for which life and health guaranty associations became responsible were fully assumed by the guaranty associations or other insurers and/or did not provide for continuing premiums. LTCI failures differ in that a material portion of a policyholder’s contractual benefits may exceed guaranty association limits and will therefore not be covered. At the same time, the underlying contracts require the payment of premiums unabated through termination of the contract or until waived due to onset of a claim. Under these circumstances the fairness and propriety of the guaranty associations collecting all the premium but continuing only part of the coverage is a legitimate issue. Especially to the extent that the liquidator will make efforts to provide some replacement coverage for the portions of the underlying LTCI policies not covered by guaranty associations, it is not only fair but important that the portion of the premium corresponding to the uncovered contractual coverage be left with the liquidator for that purpose.

January 26, 2017 - Model 520 comments of Patrick Cantilo - page 3
In truth, the Model Act and similar statutes may already address this sufficiently in the definition of premiums:

"Premiums" means amounts or considerations (by whatever name called) received on covered policies or contracts less returned premiums, considerations and deposits and less dividends and experience credits. "Premiums" does not include amounts or considerations received for policies or contracts or for the portions of policies or contracts for which coverage is not provided under Section 3B except that assessable premium shall not be reduced on account of Sections 3B(2)(c) relating to interest limitations and 3C(2) relating to limitations with respect to one individual, one participant and one contract owner. "Premiums" shall not include:

(1) Premiums in excess of $5,000,000 on an unallocated annuity contract not issued under a governmental retirement benefit plan (or its trustee) established under Section 401, 403(b) or 457 of the United States Internal Revenue Code, or

(2) With respect to multiple non-group policies of life insurance owned by one owner, whether the policy owner is an individual, firm, corporation or other person, and whether the persons insured are officers, managers, employees or other persons, premiums in excess of $5,000,000 with respect to these policies or contracts, regardless of the number of policies or contracts held by the owner.

Model Act, Section 5.Q. Emphasis added. However, to avoid ambiguity and continuing debate, it may be appropriate to amend Section 8.D of the Model Act as follows:

Premiums due or received for coverage after entry of an order of liquidation of an insolvent insurer for the portions of policies or contracts for which coverage is provided under Section 3B shall belong to and be payable at the direction of the Association. If the liquidator of an insolvent insurer requests, the Association shall provide a report to the liquidator regarding such premium collected by the Association. The Association shall be liable for unearned premiums due to policy or contract owners arising after the entry of the order.

The assets of failed LTC insurers are allocated between the guaranty associations and the liquidator in proportion to coverage without controversy. Similar allocations are followed in other types of insolvencies in which material portions of the contractual benefits owed to policyholders are “uncovered” by the guaranty associations. See for example workers’ compensation insolvencies. It is hard to conceive of a principled argument against similar allocations of future premiums.

I would be happy to answer any questions about these matters. Thank you for your courtesy in considering my comments.

Very truly yours,

Patrick H. Cantilo

January 26, 2017 - Model 520 comments of Patrick Cantilo - page 4
February 7, 2017

Mr. James Kennedy
Chairman, Receivership Model Law Working Group
Texas Department of Insurance
P.O. Box 149140
Austin, TX 78714-9104

Sent Via Email: james.kennedy@tdi.texas.gov

On behalf of Cigna, I would like to thank the receivership Model Law Working Group for its request for comments on the issues and implications of long-term care insurance (LTCI) on the guaranty fund system and the applicability of provisions within the Life and Health Insurance Guaranty Association Model Act (#520) on LTCI.

Over the past several years, health insurers and HMOs have experienced significant regulatory changes impacting how health insurance products are financed and underwritten. In light of these dynamics, and due to the impact of health insurer and LTCI insolvencies, Cigna believes this conversation is timely and we are grateful for the opportunity to participate in this discussion.

As you may be aware, major medical health insurers, who write only approximately 3% of the LTC premiums in the market, are shouldering 75% of the assessments. This is patently unfair to major medical policyholders. The need to change the assessment base for LTC insurance is not to benefit any one company or segment of companies over the other. Rather, it is to spread the societal responsibility of policyholder protection as broadly as possible so as not to create benefits or cause disruption for one industry segment over another. As we have noted in the past, health companies understand and welcome the opportunity to be part of the solution to this problem. The health companies, however, cannot shoulder the lion’s share of this burden alone.

1. As a matter of fairness, health insurance consumers should not have to pay for the failures of other lines of insurance.

Beginning in 2015 and heading into 2016, more than 16 health insurers (mostly CO-OPs) have closed or have been ordered to close by regulators. In addition, Penn Treaty, which will cost insurers billions in long-tail claim obligations, is only the first major LTC writer to become insolvent. As a result, state Life and Health Guaranty Associations will be under significant pressure for the foreseeable future—particularly as interest rates remain low and LTC carriers are unable to secure rate increases.

"Cigna" is registered service mark and the "Tree of Life" logo is a service mark of Cigna Intellectual Property, Inc., licensed for use by Cigna Corporation and its operating subsidiaries. All products and services are provided by or through such operating subsidiaries, including Connecticut General Life Insurance Company, and not by Cigna Corporation.
Because life and health insurers share guaranty association obligations, health carriers who do not sell LTCI are required to pay long-tail claims when a long-term care insurer fails. This adds pricing pressure to price-sensitive health insurance consumers. This might be acceptable if long-term care consumers were equally assessed for failures of health insurance companies, but, in practice, this is not the case.

Since 2014, health insurance is available on a guaranteed-issue basis, which effectively precludes the assessment of long-term care insurers for health company failures because customers of the failed health insurers can return to the commercial market and purchase a similar product at a similar price. Therefore, health insurance consumers are required to pay assessments for the failure of LTC companies (which are predominately written by life insurers), however, that same obligation will never, in all practicality, be incurred by a customer of a long-term care company in the face of a failed health insurer. As a matter of fundamental fairness, assessment regulations should be amended to reflect this basic difference between the regulatory requirements of two very distinct lines of business.

Basing assessment obligations solely on the type of license the company holds without regard to the type of products the insurer sells places form over substance by failing to account for significant differences in the types of products the companies actually sell. The long term nature of LTCI is very different than the short-term risks that health insurance companies undertakes. As UnitedHealth Group rightfully discusses in their comments on a related topic to the Colorado Insurance Division, “Health insurance is a single year policy and major medical health insurance writers (and HMOs) must match their investments and internal financing to match the annual nature of their policies.”

In our view, regulators should take a more nuanced view than the current assessment mechanism allows. LTC insolvencies should be paid for by those who write it. Only in those instances where there is not enough assessment capacity within the life insurance industry should other lines of insurance be assessed. We believe that this approach protects health insurance consumers from paying higher rates for their health insurance to cover costs not even remotely related to their health care. As matter of fairness, those who benefit from underwriting and using their LTC insurance should be primarily responsible for the failure of LTC companies.

2. All health insurance carriers – including HMOs – should play by the same rules in insololvency matters.

If, after exceeding the assessment capacity of the life insurance industry, health insurance companies are assessed for LTC insolvency, all health carriers – including HMOs – should be treated equally. In Cigna’s view, it does not matter whether rules are amended to require HMOs to participate in the Life and Health Guaranty Association or whether all health companies (including HMOs and non-HMOs) should create a separate, stand-alone guaranty association. However, it is fundamentally unfair to maintain the status quo, i.e. where HMOs are not a part of any guaranty association.

When HMOs were first introduced to the market, there were a variety of public policy and legal reasons to differentiate them from other health carriers. However, both the non-HMO and HMO markets have evolved, leaving no substantive distinction between the two types of carriers, as both are providing the same types of products and services to consumers. Here, again, due to significant changes in the market, we have a regulatory structure that puts form over substance. Currently, in the context of guaranty fund assessment obligations, this distinction between HMOs and non-HMOs absolves HMOs from any guaranty fund assessments. As a result, HMOs could offer the identical plan as a non-HMO at a lower
cost. The unintended consequence is that price-sensitive health insurance consumers will be steered towards HMO products and away from other products which might be a better fit for their unique health care needs. Therefore, we request that the working group consider adopting regulatory policies to remedy this inequity by supporting reforms that will treat HMOs and non-HMOs equally for purposes of the guaranty fund assessment.

We believe that adhering to these principles will spread the societal responsibility of policyholder protection as broadly as possible so as not to create benefits or cause disruption for one industry segment over another. We look forward to working with members of the working group on this important issue—and hope that you will consider us to be a resource to you as you consider options to reform the system.

Sincerely,

Amy Lazzaro
Vice President, State Regulatory Affairs

cc: Jane Koenigsman
Sr. Manager, Life and Health Financial Analysis
NAIC
February 7, 2017

James Kennedy (TX)
Chair, Receivership Model Law Working Group (“RMLWG”)

RE: Request for Comment on LTCI Issues and Implications

On behalf of the International Association of Insurance Receivers (“IAIR”), this letter responds to your request for comments on issues and implications of long-term care insurance (“LTCI”) insolvencies on receivership practices and processes, the guaranty fund system, the applicability of provisions within Life and Health Insurance Guaranty Association Model Act (#520) on long-term care insurance and any other receivership laws/regulations.

IAIR was founded in 1991 as an association of professionals involved with insurance receiverships and financially stressed or troubled insurers. IAIR’s mission includes facilitating the exchange of information concerning the administration and restructuring of such insurers. IAIR’s members include experienced insurance receivers (including rehabilitators and liquidators), insurance regulators, life and health and property and casualty insurance guaranty associations, and other professionals (attorneys, accountants, actuaries, information technology experts, etc.) that provide consulting services in rehabilitation and liquidation proceedings.

When LTCI products were introduced in the late 1970’s and early 1980’s, there was no insured experience data available. LTCI is a lapse supported product. As there is usually no value to the policyholder upon lapse, the reserves on lapping policies help fund the benefits for those remaining in force. The lapse rate has developed significantly lower than priced. This is due to changes in policyholder behavior. The result has been inadequate premiums on legacy blocks of LTCI. Additionally, socioeconomic factors influencing the long-term care market have significantly changed. There are more options available to those unable to perform routine activities of daily living and the cost of such care has risen. These factors among others resulted in adverse development of many legacy LTCI products that were underpriced and under reserved.

Rate increases are often sought to remediate adverse development. However, rate increases for LTCI products could likely have a significant adverse effect as policyholders who had paid premiums for possibly decades may be unable to afford the increased premiums at this time in their lives and may lose their prior investment in this guaranteed renewable protection. Due to the nature of LTCI and public policy concerns, rate increase requests have had varying experience in being approved.

The long exposure period of LTCI and the guaranteed renewable provision further complicate resolution in receivership actions. Life and annuity blocks of business are typically assumed by another company with
funding provided from the company assets and by guaranty association assessments. However, due to the issues discussed above, there is limited or no market for LTCI blocks.

From a guaranty association perspective, LTCI is treated as health insurance and assessments for its coverage fall upon the member insurers that write health insurance, many of which do not write LTCI. LTCI is often written by life insurers or monoline insurers who specialize in that product. In addition, over the last few years, health markets within a state may be dominated by one insurer, or a small number of insurers, resulting in only a few member insurers to bear a large portion of the assessments for an extended period of years. Industry is calling for a change in the assessment process to ensure those companies writing LTCI pay a proportionate share of assessments for LTCI products and that LTCI assessment obligations do not create significant and disproportionate financial burdens on a small group of health insurers in a state.

Additionally, while most states have adopted $300,000 or more of guaranty association coverage for LTCI policies, a few states remain at the older $100,000 limit. While even the lower limit is not expected to be an issue for some LTCI policyholders, there are likely to be exceptions where the benefits due under the LTCI policy exceed the guaranty association coverage.

Finally, the introduction of hybrid life and annuity LTCI products create some confusion regarding how these products would be covered by a guaranty association should the insurer fail. Clarification regarding under which line of business these products would be viewed in an insolvency might be advantageous in furthering the consumer protection intent of the guaranty associations.

We thank you for the opportunity to opine in this matter. IAIR would be pleased to respond to any questions on the foregoing and welcomes the opportunity to assist and participate in further discussions.

Respectfully submitted,

Jonathan Bing, Esq.
First Vice President
International Association of Insurance Receivers
From: Gerber, Jim (DIFS)  
Sent: Wednesday, December 07, 2016 8:21 AM  
To: Koenigsman, Jane M.  
Cc: Kennedy, James  
Subject: Receivership Model Working Group -LTD

Jane and James,

My comments here are related to Long Term Care and the 2017 charges. One major issue is how inflationary riders will be handled by the guaranty associations (some refer to this as the Moody's Bond Index rollback) however I believe the actual guaranty fund statute should be amended to provide transparency and clarity as how this will be handled. Of course another issue is the lack of uniformity between guaranty associations as to the maximum coverages which vary from state to state. A question I often get is I'm on claim now and have spent $100,000 in policy benefits with a maximum lets say of $500,000, so does in a liquidation does the guaranty association deduct the $100,000 of benefits already paid under my policy from their maximum or do they pay their maximum in addition to what has already been paid? Another issue of course is that the health insurers (non HMOs) are not happy about them being assessed for long-term care policies especially if they didn't write or offer the product. This plus whatever happens to the ACA may be put along of financial strain on the health insurance industry. More of market conduct issue is the lack of non-forfeiture provisions in the long term care policies themselves, if there rate increases later in the policy and policyholder’s life the policyholder may not be able to afford the premiums and have to let the policy lapse and lose all the premiums paid for years which results in a financial windfall for the insurer. We need to make sure that our guaranty funds offer options to the policyholders that would allow them to take reduced benefits in lieu of premium increases especially in insolvencies where the rates were inadequate to support the benefit levels promised.

I more less freelanced my thoughts on this topic and hope both of you find it helpful.

Thank you.

James Gerber, CFE  
Director of Receiverships  
Department of Insurance and Financial Services -State of Michigan
The life insurers need to be brought in to contribute to the assessment in some manner.

There needs to be an assessment of the changes to LTC policies and the new products developed by life insurers that have LTC components before any changes are made to Guaranty Act.

Nebraska will want this to be addressed through NAIC processes so that there is as much uniformity as we can manage. Coordination by the NAIC is key. This should also be put on a fast track, if possible, with coordination with LTC Innovation Subgroup.

Christine Neighbors
Deputy Director and General Counsel
Nebraska Department of Insurance
January 27, 2017

James Kennedy, Chair
Receivership Model Laws Working Group
National Association of Insurance Commissioners
100 Walnut Street, Suite 1500
Kansas City, MO 64106-2197

Jane M. Koenigsman, Life/Health Financial Analysis Manager
National Association of Insurance Commissioners
1100 Walnut Street, Suite 1500
Kansas City, MO 64106-2197

Re: The Receivership Model Law Working Group’s LTC charges

Dear James and Jane:

We understand that, as part of its 2017 charges, the Receivership Model Laws Working Group will be considering issues related to long term care products, the marketplace, and potential implications of long term care insolvencies on the guaranty association system (“LTC Charges”).

In connection with the LTC Charges, NOLHGA would be willing to make an educational presentation to the Working Group to provide background information on Long Term Care products and the related LTC marketplace.

Please let us know if you would like us to make such a presentation, and if so, when it would be convenient to do so.

Sincerely,

[Signature]

Peter G. Gallanis
President
Pennsylvania Insurance Department

From: McDonald, Crystal
Sent: Friday, January 27, 2017 7:28 AM
To: Koenigsman, Jane M.
Cc: Slaymaker, Laura Lyon
Subject: RMLWG: Request for Comment on LTCI Issues and Implications

Jane,

Below are some ideas from Pennsylvania with regard to the Model Life and Health Insurance Guaranty Act:

- **Assessment options**

  Long term care insurance is classified as a health product yet the majority of the health insurers to not sell it. The Model Act does not specifically define LTC as a Health Product, however, insurers who sell long term care have traditionally classified the product as a health product in the forms they file with the state insurance departments and they have reported their premiums as a health product. This requires further clarification.

- **Moody’s Adjustment Provision**

  The Moody’s Adjustment provision in the Model Act is being applied to LTC policies to lower benefits. The applicability of this provision should be determined.

If you have any questions please don’t hesitate to ask.

Best,

Crystal McDonald

Crystal D. McDonald, Esquire | Project Director
Insurance Department | Office of Liquidations, Rehabilitations and Special Funds
From: Romeo Raabe [mailto:rraabe@thelongtermcareguy.com]
Sent: Tuesday, December 20, 2016 5:05 PM
To: Koenigsman, Jane M.
Subject: LTCi insolvency issues

One thought I’d suggest is to consider any LTCi policy that ends up collecting from the guarantee fund, to be made partnership eligible. If someone has a lifetime benefit and the company goes under and benefits are limited to $300,000, then at least allow the person who took the initiative to insure to collect Medicaid no matter their asset level once the guarantee funds run out.

Romeo Raabe LUTCF, LTCP
Kathy Lichter MS
(920) 884-3030 (800) 219-9203
www.TheLongTermCareGuy.com
Finding ways to help people pay for their LTC OR protecting assets from the Medicaid spend-down

HTTP://TheLongTermCareGuyBlog.com
February 7, 2017

Mr. James Kennedy
Chair, Receivership Model Law (E) Working Group
Texas Department of Insurance
P.O. Box 149140
Austin, Texas 78714-9104

VIA E-MAIL

Re: Life and Health Insurance Guaranty Association Model Act

Dear Mr. Kennedy:

The undersigned appreciates the opportunity to provide comments regarding the issues and implications of long term care insurance insolvencies. As we have learned over the last number of years, when a long-term care insurer becomes insolvent operational and other challenges arise that were not contemplated when the underlying guaranty association models were first drafted and adopted. These challenges are not insurmountable, and we commend the working group for undertaking the review needed to address them. We offer the following general comments to open the conversation about issues that have arisen during the course of a recent long-term care insolvency and look forward to discussing them with the working group in more detail.

General Comments

As the working group is no doubt aware, long-term care insurance is, for the purpose of guaranty fund assessments, classified as a health insurance line of business. It is unclear to us how this historically came about. “Health” insurers, that is, companies writing major medical insurance coverage, or other short-tailed lines of business, rarely if ever write long-term care insurance. Rather, long-term care insurance is written as either an adjunct to a life or annuity insurance policy, or, a stand-alone product issued almost exclusively by companies that primarily write either long-term care insurance, or other long-tailed lines such as life, disability or annuity business. The result is unique in the history of guaranty funds: for long-term care insolvencies the industry and account responsible for funding the insolvency is not the industry that writes the product. We believe that it is critical (and appropriate) to align the industry that writes long-term care insurance with the account responsible for providing the guaranty fund safety net, which is how the guaranty system was originally designed to operate. This alignment is critical because of the potential large assessment exposure for long-term care insolvencies and the resulting health insurance market implications since, in most states, HMOs are not members of the guaranty association but are significant writers of major medical coverage.
It is important to look at the entire life, annuity and health insurance industry as a whole when making decisions about only a small piece of that whole. The major medical health insurance industry – as distinguished from those writing long-tailed products such as life and disability, and those writing only ancillary products such as dental or vision – has for a number of years been under a series of stresses that have never been visited upon any other industry. The advent of the Affordable Care Act, the potential repeal and replacement of the Affordable Care Act, the additional fees and taxes visited upon major medical health insurers, (such as the Cadillac Tax and the health insurer fee), minimum medical loss ratios, guaranty issue and guaranty renewability provisions, rate band and rate regulation from both state and federal agencies, make the business of providing comprehensive major medical insurance highly complex. As we seek answers to the problems posed by long-term care insolvencies, it is critical that the health insurance market is not rendered noncompetitive, and that carriers are not forced into consolidating or leaving markets or driven into changing their product mix to the detriment of policyholders. Any and all of these results are clearly possible and are indeed happening in some states.

**Additional suggestions**

In order to avoid these pitfalls we make some initial suggestions. First we recommend that the working group review the language in the model act to ensure that guaranty associations have not only the ability, but the obligation to ensure that long-term care insurance rates are adequate. There is no public policy rationale that can justify intentionally undercharging one set of policyholders at the expense of others. The purpose of guaranty funds should not be to provide policyholders with benefits or premiums unsustainable in the market, but to provide continuation of coverage. If a company has become insolvent because its rates are inadequate, good public policy demands that those inadequate rates not be perpetuated at the expense of state budgets and health insurance policyholders, and that the individuals who received guaranty association coverage are charged adequate rates. The guaranty fund system was designed to prevent ancillary harm to the remaining market, but in the case of a long-term care insolvency one of the only ways to prevent that harm is to require that long-term care policyholders receive their benefits – at actuarially justified rates. Guaranty associations should be specifically permitted and charged to seek the application of actuarially sound rates, both immediately before and at appropriate times after, the association coverage is triggered.

It is also critically important that the guaranty associations be permitted, and tasked where appropriate, to provide policyholders with alternatives, rather than to seek only rate increases for existing policies. These alternatives are routinely offered today in the marketplace when a policyholder faces a rate increase. Furthermore, we have an ever-increasingly mobile society; individuals who purchase insurance do not necessarily reside in the states in which their policy was issued; in the event of an insolvency, policyholders will look to the guaranty association in their state of residence, not their state of issuance. The idea that states with no current nexus to the policyholder will have ultimate control over the premiums that policyholders will pay does not survive close scrutiny. Guaranty associations should be able and encouraged to reissue or provide alternative policies to create a uniform environment in their state, with uniform rates, rules and obligations. These reissued or alternative policies should be under the jurisdiction of the local insurance commissioner, rather than the receiver or the estate’s domiciliary commissioner.
Conclusion

As we have learned over the last few years, the mismatch between the long-tailed nature of long-term care insurance and the short-tailed business of comprehensive health insurance creates significant challenges for the guaranty system as a whole. It is important that, as we deal with long-term care insolvencies we remain focused on the system as a whole, and impact not only on the long-term care policyholders, but on the entirety of the citizens of the states in which these policyholders reside. A well-functioning safety net system will not sacrifice one set of citizens for others, but will find the middle ground that will provide safety and care for them all. We suggest that the issues we outlined above, while not the final word on recommendations for solutions to the issues raised by long-term care and health insolvencies, will certainly move the system toward a more just and fair operation.

We thank you for the opportunity to provide our initial thoughts and we look forward to working with you as this conversation unfolds. Please do not hesitate to contact the undersigned if you have any questions or comments.

Sincerely,

/s/ Randi Reichel

Randi Reichel
Vice President, Regulatory Affairs
UnitedHealth Group