



NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS

NAIC 2021 | **SPRING NATIONAL MEETING VIRTUAL**

Date: 3/23/21

LONG-TERM CARE INSURANCE (EX) TASK FORCE

Friday, April 9, 2021

11:00 a.m. – 12:30 p.m. ET / 10:00 – 11:30 a.m. CT / 9:00 – 10:30 a.m. MT / 8:00 – 9:30 a.m. PT

ROLL CALL

Scott A. White, Chair	Virginia	Chlora Lindley-Myers	Missouri
Michael Conway, Vice Chair	Colorado	Troy Downing	Montana
Jim L. Ridling	Alabama	Bruce R. Ramge	Nebraska
Lori K. Wing-Heier	Alaska	Barbara D. Richardson	Nevada
Evan G. Daniels	Arizona	Marlene Caride	New Jersey
Alan McClain	Arkansas	Russell Toal	New Mexico
Ricardo Lara	California	Mike Causey	North Carolina
Andrew N. Mais	Connecticut	Jon Godfread	North Dakota
Trinidad Navarro	Delaware	Judith L. French	Ohio
Karima M. Woods	District of Columbia	Glen Mulready	Oklahoma
David Altmaier	Florida	Andrew R. Stolfi	Oregon
Colin M. Hayashida	Hawaii	Jessica K. Altman	Pennsylvania
Dean L. Cameron	Idaho	Elizabeth Kelleher Dwyer	Rhode Island
Dana Popish Severinghaus	Illinois	Raymond G. Farmer	South Carolina
Stephen W. Robertson	Indiana	Larry D. Deiter	South Dakota
Doug Ommen	Iowa	Carter Lawrence	Tennessee
Vicki Schmidt	Kansas	Doug Slape	Texas
James J. Donelon	Louisiana	Johnathan T. Pike	Utah
Eric A. Cioppa	Maine	Michael S. Pieciak	Vermont
Gary D. Anderson	Massachusetts	Mike Kreidler	Washington
Anita G. Fox	Michigan	James A. Dodrill	West Virginia
Grace Arnold	Minnesota	Mark Afable	Wisconsin
Mike Chaney	Mississippi	Jeff Rude	Wyoming

NAIC Support Staff: Jeffrey C. Johnston

AGENDA

1. Consider Adoption of its March 1 and 2020 Fall National Minutes Attachment One
—*Commissioner Scott A. White (VA)*
2. Receive the Reports of its Subgroups—*Commissioner Scott A. White (VA)*
 - a. Long-Term Care Insurance Multistate Rate Review (EX) Subgroup
—*Commissioner Michael Conway (CO)*
 - b. Long-Term Care Insurance Reduced Benefit Options (EX) Subgroup
—*Commissioner Jessica K. Altman (PA)*
 - c. Long-Term Care Insurance Financial Solvency (EX) Subgroup
—*Fred Andersen (MN)*
3. Discuss Any Other Matters Brought Before the Task Force
—*Commissioner Scott A. White (VA)*



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4. Adjournment

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Draft: 3/23/21

Long-Term Care Insurance (EX) Task Force
E-Vote
March 1, 2021

The Long-Term Care Insurance (EX) Task Force conducted an e-vote that concluded March 1, 2021. The following Task Force members participated: Scott A. White, Chair (VA); Michael Conway, Vice Chair (CO); Lori K. Wing-Heier (AK); Jim L. Ridling represented by Steve Ostlund (AL); Andrew N. Mais represented by Paul Lombardo (CT); Karima M. Woods represented by Philip Barlow (DC); Trinidad Navarro represented by Frank Pyle (DE); Colin M. Hayashida (HI); Dana Popish Severinghaus represented by Jeff Varga (IL); Stephen W. Robertson represented by Karl Knable (IN); Vicki Schmidt (KS); Anita G. Fox represented by Karen Dennis (MI); Grace Arnold (MN); Chlora Lindley-Myers (MO); Mike Causey represented by David Yetter (NC); Bruce R. Ramge represented by Rhonda Ahrens (NE); Russell Toal (NM); Judith L. French (OH); Elizabeth Kelleher Dwyer (RI); Raymond G. Farmer represented by Michael Wise (SC); Larry D. Deiter (SD); Carter Lawrence (TN); Johnathan T. Pike represented by Tanji J. Northrup (UT); Mike Kreidler (WA); Mark Afable (WI); James A. Dodrill represented by Joylynn Fix (WV); and Jeff Rude (WY).

1. Adopted the Long-Term Care Insurance Reduced Benefit Options (EX) Subgroup's 2021 Proposed Charges

The Task Force conducted an e-vote to consider adoption of the Long-Term Care Insurance Reduced Benefit Options (EX) Subgroup's 2021 proposed charges. The motion passed with a majority of members voting in favor of adopting the charges. The Subgroup's chair is Commissioner Jessica K. Altman (PA). The adopted charges are as follows:

The Long-Term Care Insurance Reduced Benefit Options (EX) Subgroup will:

- A. Further evaluate and/or recommend options to help consumers manage the impact of rate increases. This includes:
 1. The potential development of a process to evaluate innovative options that allow for insurers to offer benefits that lessen the likelihood of an insured needing LTC services, including the evaluation of the suitability of and regulatory barriers to proposed options.
 2. The potential development of mechanisms to help state insurance regulators and consumers objectively compare reduced benefit options (RBOs), including the comparison of accepting a rate increase and retaining current benefits to electing offered RBOs.
 3. The further exploration of pursuing more uniformity in consumer notices for RBOs.
- B. Support and provide expertise to the Long-Term Care Insurance Multistate Rate Review (EX) Subgroup regarding the evaluation of RBOs.

Having no further business, the Long-Term Care Insurance (EX) Task Force adjourned.

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Draft: 12/8/20

Long-Term Care Insurance (EX) Task Force Virtual 2020 Fall National Meeting December 4, 2020

The Long-Term Care Insurance (EX) Task Force met Dec. 4, 2020. The following Task Force members participated: Scott A. White, Chair (VA); Michael Conway, Vice Chair (CO); Lori K. Wing-Heier (AK); Jim L. Ridling (AL); Alan McClain represented by Carroll Astin (AR); Evan G. Daniels (AZ); Ricardo Lara represented by Perry Kupferman (CA); Karima M. Woods represented by Philip Barlow (DC); Trinidad Navarro (DE); David Altmaier (FL); Colin M. Hayashida (HI); Doug Ommen represented by Klete Geren (IA); Dean L. Cameron (ID); Robert H. Muriel (IL); Stephen W. Robertson represented by Karl Knable (IN); Vicki Schmidt represented by Nicole Boyd (KS); James J. Donelon represented by Rich Piazza (LA); Gary Anderson (MA); Eric A. Cioppa (ME); Anita G. Fox represented by Karen Dennis (MI); Grace Arnold represented by Fred Andersen (MN); Chlora Lindley-Myers (MO); Mike Chaney represented by Bob Williams (MS); Mike Causey represented by David Yetter (NC); Jon Godfread represented by John Arnold (ND); Bruce R. Ramge (NE); Marlene Caride (NJ); Russell Toal represented by Anna Krylova (NM); Barbara D. Richardson (NV); Glen Mulready (OK); Andrew R. Stolfi represented by TK Keen (OR); Jessica K. Altman (PA); Elizabeth Kelleher Dwyer (RI); Raymond G. Farmer (SC); Larry D. Deiter (SD); Carter Lawrence (TN); Texas represented by Doug Slape (TX); Tanji J. Northrup (UT); Michael S. Pieciak represented by Anna Van Fleet (VT); Mike Kreidler (WA); Mark Afable (WI); James A. Dodrill represented by Tonya Gillespie (WV); and Jeff Rude (WY).

1. Adopted its Nov. 2 and Summer National Meeting Minutes

Commissioner White said the Task Force conducted an e-vote that concluded Nov. 2 to adopt its 2021 proposed charges for the Task Force and its subgroups.

Commissioner Altmaier made a motion, seconded by Commissioner Kreidler, to adopt the Task Force's Nov. 2 (Attachment One) and Aug. 7 minutes (*see NAIC Proceedings – Summer 2020, Long-Term Care Insurance (EX) Task Force*). The motion passed unanimously.

2. Received a Report of the Long-Term Care Insurance Multistate Rate Review (EX) Subgroup

Commissioner Conway said the Subgroup met Oct. 22 and Oct. 8 in regulator-to-regulator session, pursuant to paragraph 3 (specific companies, entities, or individuals) of the NAIC Policy Statement on Open Meetings, to discuss specific insurers in connection with the Subgroup's efforts to design a state-based framework for analyzing insurer rate increase requests.

Commissioner Conway said the Subgroup's work is the centerpiece of the Task Force and to consider the work regarding reduced benefit options (RBOs) and non-actuarial considerations. The Subgroup aims to develop a more consistent state-based approach for reviewing long-term care insurance (LTCI) rate increase filings, resulting in actuarially appropriate increases granted by the states, in a timely manner. The Subgroup's goal is to reduce and/or eliminate existing cross-state rate subsidization and improve future parity of rate-levels across the states.

Commissioner Conway said nearly every Task Force member responded to a recent survey on views relative to the multistate review process, which indicates that the vast majority of members viewed the multistate process and advisory reports as a positive development toward a more consistent and effective approach to rate filings. Many states indicated a willingness to rely on these reports in rate-making decisions, while others indicated a moderate level of reliance on such reports. Only a handful of states indicated a somewhat level of reliance on such reports. The Subgroup is still learning lessons and assessing the needs of state insurance departments relative to a multistate process that state insurance regulators will have confidence in. Commissioner Conway said the Subgroup encourages the Task Force's continued support.

Mr. Andersen said the multistate actuarial (MSA) review team is composed of state insurance department actuaries from Connecticut, Minnesota, Nebraska, Texas and Utah and is overseen by the Long-Term Care Insurance Multistate Rate Review (EX) Subgroup. The MSA review team performs a single actuarial review of a rate increase filing that can be relied upon or otherwise considered by the state insurance departments in their respective rate review analyses. Mr. Andersen said regarding the review process, the MSA review team considers the past experience and future expectations filed by the requesting insurance company on a block of business. The team considers actuarial issues, including those discussed at the Long-Term Care Pricing (B) Subgroup over the past several years, including handling shrinking blocks and disallowing inappropriate inclusion of past losses in remaining policyholders' rates. The team is collaborating with the Interstate Insurance Product

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Regulation Commission (Compact). For the filings received, the Compact is being used for efficiency to allow the company to make one initial filing that can be viewed by the MSA review team members and staff from impacted states. For filings related to new products that were approved by the Compact, if the company requests a 15% or lower rate increase, the Compact takes the lead and works together with the MSA review team to observe and learn from each other to establish enhancements to those practices.

Mr. Anderson said the pilot project is underway. The MSA review team is currently reviewing rate filings from several insurers. The product of the analysis of each rate increase filing is a detailed Rate Advisory Report. Rate Advisory Reports for two rate increase filings have been produced and disseminated to the Task Force members. A third report is nearing completion. The intention of these reports is to provide an analysis and a recommendation that state insurance departments can rely on. However, each state maintains its authority for approving, partially approving or disapproving the final rate increase that its policyholders are subject to. The rate increase in a Rate Advisory Report for a particular state is a recommendation, not a requirement and, therefore, not binding.

Commissioner Conway said the Subgroup is learning lessons and receiving feedback from the Task Force members on how to improve the usability of these Rate Advisory Reports. The Subgroup anticipates such work will continue over the next three months. The pilot project work will inform the Subgroup on the appropriate design and needs for a workable state-based review process that supports the goal of the Task Force. The Subgroup's work will also account for the RBO Principles and RBO Consumer Notices Principles documents.

Commissioner Conway said the Subgroup has drafted an outline of a framework for the multistate rate review process, which has been distributed to Subgroup members for comment. The Subgroup expects to begin drafting a framework document that reflects lessons learned and to have a draft by the 2021 Spring National Meeting. Through this process, the Subgroup will incorporate RBO and non-actuarial considerations.

Commissioner Conway said regarding the data call analysis completed by a consultant on the degree to which variations and state review practices can result in different premium levels, the Subgroup is weighing the findings and working with the consultant on the best public presentation.

Jan Graeber (American Council of Life Insurers—ACLI) asked when the Subgroup will meet in open session. Commissioner Conway said the Subgroup will meet in a public forum when it is ready to discuss the framework in more detail. The Advisory Review Reports from the pilot project are confidential.

Birny Birnbaum (Center for Economic Justice—CEJ) asked if the consultant's report on the data call has been received and the reason why it is not released to the public. Commissioner Conway said the report has been received. He said the information is confidential because the companies that participated in the data call were told their information would be confidential. The Subgroup is also considering the concerns of member state insurance regulators regarding what information should be confidential. The Subgroup will work through these issues to make as much public as possible. Mr. Birnbaum said he hopes the Subgroup makes this information public and expedites its review.

Mr. Birnbaum asked if the Rate Review Advisory reports are prepared by the multistate group of actuaries and provided to state insurance departments for their use. Mr. Andersen said that is a good high-level summary.

Mr. Birnbaum asked if the reports are public. Commissioner Conway said the reports are not public. They are confidential to encourage state insurance regulators to engage in this work and to use the information in the reports in different ways.

Mr. Birnbaum said he thinks a company would want to know the basis for the disposition of a rate filing. He said if a state insurance regulator contracts the rate review to a consultant, he thinks the consultant's report that the state insurance regulator relied on would be available to the insurance company and the public. He said he hoped the reports would be public so stakeholders like himself and others who are interested in consumer protection can review the basis for the state insurance regulator's decision. He asked the Subgroup to keep these concerns in mind. Commissioner Conway said if Colorado hires a consultant and the consultant's report is used to reach a decision, that report may necessarily be public. He said individual states need to and do explain how decisions are reached on rate increases or other matters. He said regarding public information on the Subgroup's work, the focus will be on the framework. Once the Subgroup begins drafting the framework, it will provide the opportunity for everyone to see what the MSA review team has been working on and how it reached the results of the reviews.

Mr. Birnbaum said the Maine Insurance Department released an examination report on a company in which the long-term care (LTC) reserves were deficient and noted in the report that the company issued dividends to the parent. He asked if the MSA

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review team takes dividends into consideration. Mr. Commissioner said the specific circumstances would be reviewed on a case-by-case basis.

Mr. Andersen said nearly every state law uses a lifetime loss ratio approach to evaluate rate increases. The lifetime loss ratio approach contemplates that all premiums and related investment income is available to pay claims and related expenses for that block of business. To the extent there were past shareholder or other dividends paid out of that block, the company would not get credit for that. The company would not be able to say that it has additional losses related to this block of business due to dividends. He said he does not believe past shareholder dividends is an issue affecting rate increases. In a typical case, the financial condition of the insurer is not a basis for the rate increase decision. He said it is contemplated in the lifetime loss ratio approach. State insurance regulators have thought through how focusing on financial condition would play out. If financial condition were considered, a worst-case scenario would result in a healthy company receiving low or no increases and an unhealthy company receiving a large rate increase, which could inspire companies to move blocks of LTCI to unhealthy companies in order to get bigger rate increases. The lifetime loss ratio laws prevent that from happening, treat the block of LTCI as a self-contained company, and avoid issues with solvency and dividend impacts.

Superintendent Cioppa said he agrees with Mr. Andersen. He said Maine's examination report should be read and evaluated based on the whole picture of the company, what took place and the plan to cure the deficiency. The Maine Bureau has worked with the company for several years on the analysis of the LTCI reserves, evaluated the capital structure, and in looking at the dividends carefully evaluated the need for reserve strengthening. The Bureau will be monitoring the company. He said he thinks it is a mischaracterization to summarize that the reserves are deficient, and they are issuing dividends. He encouraged anyone to read the report and reach out to the Bureau if they have questions. Mr. Birnbaum said he did not think there was a mischaracterization.

Commissioner White said the Task Force has had discussion on the questions raised about confidentiality, which involves balancing different considerations. The issues raised will be carefully considered.

Commissioner Altman made a motion, seconded by Commissioner Conway, to receive the report of the Long-Term Care Insurance Multi-State Rate Review (EX) Subgroup. The motion passed unanimously.

3. Received the Report of the Long-Term Care Insurance Reduced Benefit Options (EX) Subgroup

Commissioner Altman said the Subgroup met four times since the Summer National Meeting. During its Nov. 30 meeting, the Subgroup addressed comments received and adopted the RBO Principles and RBO Consumer Notices Principles, which completes the charges assigned to the Subgroup.

Commissioner Altman said the RBO Principles started development in the RBO workstream, which was tasked with assisting the Task Force in completing the following charge: Identify options to provide consumers with choices regarding modifications to long-term care insurance contract benefits where policies are no longer affordable due to rate increases. The RBO Principles are intended to provide guidance for evaluating RBO offerings by insurers. In summary, the RBO Principles document addresses issues related to:

- Fairness and equity for policyholders that elect a reduced benefit option or that choose to accept the rate increase and continue their coverage at the current benefit level.
- Clarity of communication with policyholders eligible for a reduced benefit option.
- Any policy or regulatory requirements for an insurer to offer certain RBOs.
- State insurance regulators' consideration of the potential impact on remaining policyholders in the block, the insurer's finances and/or the impact on Medicaid budgets, if encouraging or requiring reduced benefits.
- Innovation, particularly where an outcome of improved health and lower claim costs are possible.
- Types of widely established RBOs in lieu of rate increases.

Commissioner Altman said the RBO Consumer Notices Principles document seeks to provide guiding principles in evaluating the quality of consumer notices and RBO materials presented to policyholders. The RBO Consumer Notices Principles addresses various issues insurers should consider related to:

- How long before insurers should deliver rate action letters to policyholders.
- Frequency of insurer notices to policyholders that are subject to rate increases that are phased-in over multiple years, along with disclosure of all approved future planned rate increases in each notice.
- Readability and accessibility issues for policyholders, such as: making the rate action easy to understand; presenting RBOs in a way that is comprehensible, memorable and adjusted to the needs of the audience; including definitions of complex terms used; and providing a question-and-answer (Q&A) section that answers commonly asked questions in plain language.

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- Identification to policyholders of what is happening, why it is happening to them, when is it happening, what can they do about it and how they can take action.
- Touch and tone of the communication to policyholders—for example, drafting the communication in a way that helps policyholders reflect on the reason(s) why they purchased an LTCI policy, conveying as much empathy as possible regarding the impact a rate action(s) may have on policyholders, presenting RBOs fairly without emphasizing one option over another, communicating policyholders' ability to maintain current benefits by paying the increased premium, and using word choices that appreciate how those words could influence policyholders' decisions.
- Providing contact information for sources that can answer policyholders' questions, and suggesting policyholders consult a family member or other trusted advisor prior to making a decision.
- Providing the right amount and type of information such that policyholders can make decisions about policy options that meet their needs.

Commissioner Wing-Heier made a motion, seconded by Ms. Van Fleet, to receive the report of the Subgroup (Attachment Two) and to refer the Reduced Benefit Options (RBO) Principles (Attachment Three) and RBO Consumer Notices Principles (Attachment Four) to the Long-Term Care Insurance Multistate Rate Review (EX) Subgroup. The motion passed unanimously.

Bonnie Burns (California Health Advocates—CHA) experienced technical difficulties during the meeting and was unable to voice her comments. She provided the following written comments immediately following the Task Force meeting and are included with permission from the Task Force chair.

“Regulators don't know much about the effects of these rate increases and RBOs on policyholders. Our organization has had experience with many different consumer issues that have arisen following a rate increase. We think regulators need data and information from insurers to understand what happens after these rate increases have been imposed. For instance, how many partnership policyholders have lost asset protection by exercising an RBO? This should be a concern to state regulators since policyholders are unlikely to fully understand the implications of the loss of asset protection until benefits are needed. Were policyholders given enough information and choices to reduce benefits, durations or inflation protection that would allow them to stay within the minimum requirements of a partnership program? A simple warning about a particular choice would be insufficient for this population. Is the value of lost asset protection a factor in the pricing of a particular RBO? When a policyholder gives up or reduces a benefit, is the value of that change of greater benefit to the insurer than the lowered premium to the policyholder? We are hearing from agents that some companies do not notify them of premium increases and will not give them any information about their clients so that they can help them consider the RBOs they've been offered, while other companies have sent out detailed policyholder lists to their agents. Older blocks of policyholders are often orphaned from their agent. Agents attempting to help an orphaned policyholder are often shunned by a company that refuses to work with an agent who is not the agent of record. This practice deprives a policyholder of the technical assistance they may need to make informed choices about RBOs they have been offered. We wonder about the effect on commissions, if any, when an RBO is exercised. Is there any reason an agent would favor one RBO over another? Why are so many agents referring to RBOs as a formula for induced lapse? Many of the agents who contact our program are angry about RBOs and think they favor the insurer. What is the pattern of lapse six months or more following a rate increase? We have had family members bringing in unopened notices of a rate increase months after they were mailed to a policyholder. Do insurers always, never or only sometimes allow policyholders the same or different choices of RBOs outside the period of the initial increase notice? We have had cases where a policyholder has failed to respond or reply to a notice, which creates the impression they have accepted the increased premium amount. However, what happens later may result in a lapse when a policyholder is unable to support the increased cost. In the case of automatic bank payments, it may result in the inability to pay monthly bills or result in one or more overdrafts before coverage is terminated. These are just a few of the issues I wanted to encourage regulators to consider and realize there is much more information needed to fully understand what happens to consumers following these rate increases and RBO choices were made, or not made, to reduce the impact of significantly higher premiums.”

4. Discussed Engaging a Legal Consultant

Commissioner White reported that the Executive (EX) Committee and the Internal Administration (EX1) Subcommittee exposed a fiscal impact statement regarding the engagement of an outside legal consultant to assist the Task Force on matters relating to restructuring LTCI policies for a 15-day public comment period ending Dec. 22.

Having no further business, the Long-Term Care Insurance (EX) Task Force adjourned.

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