

# Summary of the Long-Term Care Insurance Model Update (B) Subgroup

## Purpose of the Long-Term Care Insurance Model Update (B) Subgroup

One of the charges of the Senior Issues (B) Task Force (SITF) is to review the existing long-term care insurance (LTCI) models to determine their flexibility to remain compatible with the evolving delivery of long-term care (LTC) services and remain compatible with the evolving LTCI marketplace. The Long-Term Care Insurance Model Update (B) Subgroup (Subgroup) was established to determine whether the *Long-Term Care Insurance Model Act* (#640) and the *Long-Term Care Insurance Model Regulation* (#641) needed to be updated to remain flexible and compatible with the LTCI marketplace.

The purpose of the Subgroup was to simply determine if language in the model no longer meets the current LTCI marketplace. It was NOT to edit the model. The charge was to look at the model and provide commentary if there was language that no longer remained flexible and compatible with the current LTCI marketplace.

If someone felt language was no longer compatible or flexible, they would provide comment and explain why it is no longer flexible or compatible and the Subgroup would discuss. New language was not necessary nor needed to be provided. Example: Simply provide an explanation why Section 4G, in this example, no longer met that flexibility or compatibility. The Subgroup was NOT editing the model.

At the end of the review, if the Subgroup determined (and SITF also agreed) that the Model Act and Regulation should be opened, then a Model Law Review (MLR) would be prepared and adopted by the SITF, the Health Insurance and Managed Care (B) Committee (B Committee) and the Executive Committee.

After completing a cursory review of Model 640 and Model 641 though Section 19, the chair of the Subgroup had left the New Jersey Department and no new chair was able to be found. In addition, there were no requests or interest as to the status of the Subgroup for nearly 8 months.

The SITF adopted to disband the Subgroup with the understanding that if it needs to be reinstated, the SITF can do so. The following is a summary of the work the Subgroup had completed.

## Members of the Long-Term Care Insurance Model Update (B) Subgroup

Phil Gennace (New Jersey) – Chair  
Laura Arp (Nebraska) – Vice Chair  
Sarah Bailey (Alaska)  
Tyler McKinney (California)  
Maureen Belanger (New Hampshire)  
Jill Kruger (South Dakota)  
Tomasz Serbinowski (Utah)  
Elsie Andy (Virginia)  
Melanie Anderson (Washington)

## Long-Term Care Insurance Model Act -- Model 640

**Section 1:** Tomasz Serbinowski (Utah) said he believes the scope section as well as the definition of long-term care insurance (LTCI) deserves a look. He said he has seen products that claim not to be long-term care (LTC) and are deemed not to be LTC by several states even though they would appear to meet the definition of LTC in the *Long-Term Care Insurance Model Regulation* (#641). He said most of the LTC policies sold today are combo products, and the Subgroup may want to revisit the parts of Model #641 that exempt life insurance policies that accelerate benefits for LTC.

Karrol Kitt (University of Texas at Austin) said Section 1 is not broad enough and needs to be more inclusive of newer products. Brenda J. Cude (University of Georgia) said the thought expressed in the drafting note to Section 1 should be expressly incorporated into the section.

**Section 2:** Bonnie Burns (California Health Advocates) said the section does not make it clear that limited LTCI products exist and there are models; i.e., the *Limited Long-Term Care Insurance Model Act* (#642) and the *Limited Long-Term Care Insurance Model Regulation* (#643). She said the reference to Medicare supplement in Section 2 is still included even though home recovery is no longer sold. Bob Grissom (Virginia) asked Ms. Burns to elaborate on why Model #642 and Model #643 should be mentioned or referenced in Model #641. Ms. Burns said Section 2 requires insurers to comply with all other applicable statutes, and limited LTCI competes with traditional LTCI.

**Section 4:** The consumer representatives' comments on Section 4 said there are no definitions, reference to or description of a reduced benefit option (RBO) or the full scope and range of RBOs that might be offered to policyholders. Their comments further reflect that while there is some language in Model #641 about the right to reduce benefits, there is neither anything in Model #642 or Model #643 that describes or defines all of the potential options insurers can give policyholders as a way to reduce the effect of a rate increase, nor is there anything that specifies how, when, or under what circumstances these options have to be offered.

Mr. Serbinowski said this section may be something the Subgroup should look at. He said there are several products in the marketplace that could arguably be LTC but are not deemed LTC. He reiterated that as most LTC policies are combo products, revisiting the parts of Model #640 that exempt life insurance policies that accelerate benefits for LTC may be necessary. He said some issues with these exemptions are: 1) it is not always clear how the prohibition against LTC premiums increasing above age 65 should be interpreted; 2) if a state does not regulate premiums on the underlying life product, adverse LTC experience could be passed on to the policyholders through the increase of the charges on the life insurance policy, effectively bypassing regulatory oversight of LTC rates; 3) LTC benefits attached to life or annuity policies typically do not offer inflation protection; 4) attaching LTC benefits to a non-permanent form of life insurance (including universal life [UL]) may lead to underfunding and lapse of the policy when most needed; and 5) attaching LTC benefits to life insurance with flexible premiums deprives policyholders of vital protection against unintentional lapse.

Mr. Serbinowski said given the change in the marketplace, LTCI connection to life insurance may warrant a look. He said he would be willing to provide more concrete examples at the next meeting. Ms. Burns said agents debate among themselves, and they are at times confused as to whether something is LTCI or not. Phil Gennace (New Jersey – Chair) reminded the Subgroup that it is not rewriting anything now; but he said it was a good discussion, and it may be worth looking into the definitions of LTCI.

**Section 5:** Birny Birnbaum (Center for Economic Justice—CEJ) said the section could use clarification. He said he was asked by a policyholder about a group policy issued to an organization in Washington, DC on a form approved by the Washington, DC Department of Insurance, Securities and

Banking (DISB) and with initial rates approved by the DISB. He said the insured is a Washington resident who encountered a rate increase approved by the DISB. He said Section 5 seems to cover whether the group policy approved in one state can be offered to organization members living in another state, but it does not address rate increases. He asked whether there can be differential rate increases across states if the group policy initially had the same rates regardless of insured location. He also asked why the Washington, DC DISB would not be responsible for all other rate changes if the DISB initially approved the group policy rates. Mr. Serbinowski said if the current language is sufficient to address the certificates of group policies and rate increases, then the language should remain.

Mr. Birnbaum said the language is not sufficient, and he cited the example he raised at the previous meeting. He said there needs to be clarification. Jan M. Graeber (American Council of Life Insurers—ACLI) said there are different types of products that are classified as group, such as true group. She said the model may not be specific, but the language is clear, and the states have the flexibility. Mr. Serbinowski said it may be useful to look at the question of why group long-term care (LTC) policies are still needed. Elsie Andy (Virginia) said language is still needed for group policies in existence today. Ms. Burns said group policies are used for marketing. She said employees believe the group policies are something different than what is out in the private sector. Shannen Logue (Pennsylvania) said the reason why group sales come in with low benefits is to avoid anti-selection issues and offer a modified guaranteed issue product.

**Section 6:** Mr. Birnbaum, Ms. Burns and Ms. Cude said Section 5 should be divided into two different sections, and significant thought must be given to what and how disclosures are made. Ms. Cude said there must be a more robust disclosure section. Ms. Burns said unintentional lapses and the waiver of premiums should be addressed and mentioned. Mr. Birnbaum said Model #641 has a lot of disclosure, and Model #642 and Model #643 cannot be viewed in isolation but in conjunction, as Model #642 must be read with Model #643.

**Section 6L:** Ms. Burns said a policyholder should not have to wait 60 days for an explanation to contest an unreasonable benefit denial.

**Section 8:** Ms. Burns said the language ties the size of the premium increase to the age of the policyholder over time. She said it unfairly penalizes policyholders who are unable to continue funding an ever-increasing premium (e.g., a widow left with diminished income after their spouse's death). She said she has not seen a lot of non-forfeiture, but no one should have to give up a policy that is paid for, and there should be options for policyholders should there be an income change.

Mr. Serbinowski said the Subgroup may want to consider requiring that the non-forfeiture benefit be equal to the greater of premiums paid, and 30 days of benefits should be built (required, not optional) in every policy. He said it should not cost too much, because this is a fairly low benefit and lapse rates are very low anyway.

Ms. Graeber asked Ms. Burns if she is looking for the ability to reduce coverage or terminate and pay the non-forfeiture and whether Section 22 of Model #641 would be of help. Ms. Burns said the language is vague, and Section 22 does not address the contingent benefit upon lapse.

**Section 9:** Ms. Burns said producers do not believe they need training or additional training since they are not selling long-term care insurance (LTCI). She asked if the term includes benefits in life and annuity products, and she said knowing and being able to explain the difference between free standing products for LTC and life and annuity-based products should be included for agents and brokers selling life or annuity-based products.

**Section 13:** Ms. Burns said the penalties are rather low and pointed out that some life and annuity commissions are above the current penalty level.

## Long-Term Care Insurance Model Regulation -- Model 641

**Sections 1 through 6:** Jan M. Graeber (American Council of Life Insurers—ACLI) said the ACLI believes the language currently contained in Sections 1–6 remains flexible and compatible with the current LTCI marketplace, and new language is unnecessary. She said as the Subgroup continues its review of the remaining sections of Model #641, the ACLI recognizes that changes needed to those sections could result in a need to reconsider their position regarding the opening of Sections 1 through 6.

Birny Birnbaum (Center for Economic Justice—CEJ) said Ms. Graeber should show evidence that Model #641 works and Sections 1–6 remain flexible and compatible with the current LTCI marketplace. Ms. Graeber said she has not seen anything in the marketplace being stifled by Sections 1–6. Tomasz Serbinowski (Utah) said it is difficult to prove a negative, and Sections 1–6 are mostly definitions.

**Section 3:** Emily Smith (California) said this section singles out one type of other product that may come within the scope of Model #641—disability income insurance with a benefit triggered by activities of daily living (ADLs)—but it does not address other types of products in the marketplace today that have triggers based on ADLs or confinement in a facility. She said inclusion or exclusion of these other products within the scope of Model #641 should be considered. Mr. Serbinowski said it would be helpful if the Subgroup could look at or see examples of these products that skate on the edge of being LTCI. Ms. Smith said she is unable to give specific examples at this time, but she could provide generic examples.

Bonnie Burns (California Health Advocates) said should be reviewed to determine if any part of it should apply to newer products that trigger benefits on ADLs and cognitive impairment, not just DI. Ms. Graeber said it would be helpful to see what these products are so products that are not really LTCI are not pulled in. Phil Gennace (New Jersey – Chair) said should Model #641 be opened for editing, the Subgroup can take a deeper look into these products.

**Section 4:** Ms. Burns said it is similar, and she believes this section should be reviewed to determine if it covers newer products that provide benefits for long-term care (LTC) expenses.

**Section 4B(1):** Mr. Serbinowski said of the definition of the “exceptional increase,” it incorporates requirements that go beyond defining the term, and Utah would move the requirements outside of the section that defines the term. He said he merely is making an observation and has no real concern.

**Section 4F:** Mr. Serbinowski asked if there is a reason to require membership in a specific organization rather than maybe an actuary that is subject to the American Academy of Actuaries’ (Academy’s) “Qualification Standards.” He said the Academy does not recognize a status of “in good standing.” Barbara Snyder (Texas) said a qualified actuary could be defined as an actuary and is a member of the Academy and qualified under its qualification standards. She said the Academy has a particular document that defines the standards to be met. Mr. Serbinowski said it might be more useful to have alternative language, and that could be addressed should Model #641 be opened.

**Section 5:** Ms. Burns said the section should be reviewed to consider definitions for reduced benefit options (RBOs). She said the phrase is used often in NAIC discussions, but there is no definition, and a definition should be included if it is being used in Model #641 and elsewhere. Mr. Serbinowski said RBOs is not the exact term used. He said the language requires that a policy offers the option to reduce benefits. He said RBOs may be used by the NAIC, but it is not in Model #641. Ms. Burns said if the term is being used, it should have a definition, and she suggested the definition used by J.P. Wiese (Horizon Government Affairs). Mr. Serbinowski said it is hard to determine whether a definition is needed just based on Sections 1–6 and how it relates to any parts of Model #641 with respect to the

options to reduce benefits. He said while the term RBOs is not used in Model #641, should it be opened, a determination of whether a definition is needed can be decided.

**Section 5E:** Ms. Burns said this section should be reviewed to consider changing the wording “safety awareness” to a more specific definition. She said it seems to be a very outdated term, and there must be a better way to describe it, so the definition should be revised. Roni Karnis (New Hampshire) asked how changing the term safety awareness or using a different term would foster increased flexibility, as the goal of the Subgroup is to determine whether the language in Model #641 no longer remains flexible and compatible with the current LTCI marketplace. Ms. Burns said she did not know what “safety awareness” means. She said that terminology is more like a risk to oneself or others, but it does not make sense. Mr. Gennace said it seems like the issue is a matter of perhaps tightening up or increasing the clarity of the language, but he asked whether it is also a matter of just modernizing or if there is a need to address that as an improvement. Elsie Andy (Virginia) asked if this term could be a federally defined term, and if so, if it could even be adjusted. Ms. Burns said she is pretty sure it is not a federally defined term. Mr. Gennace asked David Torian (NAIC) if he could find some history on the term “safety awareness.”

**Section 6A(4):** Ms. Burns said the section refers to a “class” regarding rate increases, and there should be a definition of a class for the purpose of imposing a premium increase. Mr. Serbinowski said the Subgroup is not opposed to examining this but defining class could be a very tricky issue. Mr. Gennace asked whether this has been an issue, there have been problems, or if it is inadequate in some way. He said he could see why it may need to be defined, but he asked if there have been issues or concerns from it not being defined. Mr. Birnbaum said this issue has been a source of litigation.

Ms. Burns said her comment may not have been totally clear, and she has concerns about guaranteed renewable even though the section in question states the use of a class basis. She said on the front page of all policies is a visible guaranteed renewable section, but the right to raise premiums is buried in the section. She said policyholders do not see that and do not know it is there from her experience in counseling consumers. She said there should be two separate paragraphs that pertain to the right to raise premiums and the guaranteed renewability

Ms. Graeber said this is the standard definition of guaranteed renewable, and it starts to get problematic once defining class. She said the class concept would be covered under a state’s anti-discrimination statutes because any kind of class that is developed must have an actuarial support for it. Ms. Burns said there are three entirely different issues at play. She said there is the language on guaranteed renewability; the language on the right to raise premiums, which is not clear to policyholders; and the language on what constitutes a class for the purposes of premium increases.

Mr. Birnbaum said an increase in premiums is based on class, and there should be some definition of class but also some requirement that the policy states what one’s class is. Mr. Serbinowski asked, supposing that there is one class and then there is an increase for some people by 0.5% and some others by 200%, if the definition would prevent that. He also asked, supposing that the class are policyholders who are males, age 57, lifetime benefits, 3% inflation, 90-day elimination period, preferred underwriting, and there are 17 persons at that moment in that class, if that is what is being sought. Mr. Birnbaum said what the insurance company has used to determine the rate is the class the consumer is in. He said the insurance company must identify some rating class to issue a policy, so it should be made clear to the consumer what their class is. Mr. Serbinowski said the purpose of the term is to offer protection so a class cannot be people named Tomasz who speak Polish, because the narrower the class, the less protection exists.

**Section 6A(4):** Ms. Burns said level premium and the other terms discussed are confusing for consumers. She said consumers do not understand the terms and many times are unaware of what these terms mean for them. She said the term level premium needs more definition in the policy. She said all state insurance regulators encourage consumers to read their policies, but the main reason people do not read their policies is they do not understand what these terms mean.

**Section 6B(2):** Mr. Gennace opined Mr. Serbinowski to mean the section allows exclusions or limitations based on “mental or nervous disorders” and it specifically disallows exclusion based on Alzheimer's disease. He said Mr. Serbinowski asked if there is a better definition since if someone Googles “nervous disorder,” the search comes up with “nervous system disorders” that include things like Parkinson's or stroke. Mr. Gennace said the term may be problematic and not exactly clear, and should Model #641 be opened, the Subgroup may want to redefine this section. Ms. Burns said the section does not include other dementias, and this definition needs work.

**Section 6B(4)(c):** Ms. Burns said the section allows for an exclusion for conditions related to military service and discriminates against members of the military who may have been exposed to conditions that cause a disabling condition later in life. She said it is long past time to remove this discriminatory exclusion.

**Section 6B(8):** Ms. Burns said the drafting note contains language that is specific and should be added to Section 6B(8). She said the specific language in the drafting note is “. . .if the claim would be approved but for the licensing issue, the claim must be approved.” Mr. Gennace said Mr. Serbinowski had a comment on Section 6B(8)(a) that the language “the state of policy issued” in the third line should be “the state of policy issue.” Mr. Gennace asked Ms. Burns to discuss the comment on Section 6B(9). Ms. Burns said it was merely to point out that if there are changes made to the *Long-Term Care Insurance Model Act* (#640) regarding extraterritoriality, then changes must be made to the Model #641.

**Section 6D:** Jaakob Sundberg (Utah) on behalf of Mr. Serbinowski said the Subgroup should probably look at this section, as in practice, most group LTC policies do not have any formal “conversion” provision. He said the coverage under the same certificate continues when the person leaves the group or the group terminates as if the certificate was an individual policy, and the section should probably reflect what is happening in practice. Ms. Graeber asked Mr. Sundberg if he means the conversion provision does not allow for a company to convert to an individual policy. Mr. Sundberg said if a person purchased a policy through their company and then retires, that person maintains the same policy. He said there is no real conversion from group to individual. He said they just maintain coverage with that same group. Ms. Graeber said some companies do that, and there may be instances where a conversion to an individual policy happens, but she asked if the current language would allow for both.

Ray Nelson (TriPlus Services Inc./American Association of Health Insurance Plans—AHIP) said the language allows for either a conversion or a continuation. Ms. Graeber said she is not sure what sort of change is being envisioned for the language. She said there is not a lot of true group policies in the marketplace, but conversions exist. Mr. Sundberg said if there are conversions happening, then leaving the language as it is would not be an issue, but he said Mr. Serbinowski can clarify his comments at the next meeting. Roni Karnis (New Hampshire) said with an eye toward thinking about whether more flexibility is needed in Model #641 and whether adding something about portability in this section would be helpful. She said she does not know if that is practical, but perhaps getting some input from industry might be helpful. She said it may not be necessary if the majority of consumers remain on their former employers group policy, but it may be something to think about in terms of flexibility. Mr. Gennace said it could be helpful if Ms. Graeber or someone else from industry cares to provide some insight at the next meeting.

Mr. Sundberg, on behalf of Mr. Serbinowski, said he believes there is a need to specify what is meant by “continue” in Section 6D. He said the plain reading of the section suggests that there ought to be a conversion policy on the group policies, and most policies do not include one. He said the concern is not that there is no conversion policy, but whenever these policies are reviewed and a group policy is seen without a conversion policy, then it is objected to even though the group policy continues, so Mr. Serbinowski believes there needs to be some clarity about what it means to continue the policy.

Ms. Burns asked if there were not a conversion and that group policy continues, whether the certificate holder who is no longer part of the group would be in danger of having their certificate terminated if the group policy is terminated. Mr. Sundberg said he has not dealt with enough group LTC to know, but he would be interested in a response from industry on this. Ms. Burns said it is her understanding that a conversion is required so that the person then has what constitutes an individual policy separate from whatever action the group policy takes later.

Ted Hamby (North Carolina) agreed with Ms. Burns and said they would hold that continuation should be allowed for the individual person. Sarah Bailey (Alaska) said one of the things she has been seeing across all lines of business is portability, and it may be messy and not a good fit for LTC. She said the insurer creates a trust, and if the group policyholder terminates the plan, then they move the certificate holder to the portability trust and the portability certificate is issued to the consumer so that they can continue the same benefits that they previously had. Mr. Hamby said he has seen this arrangement as well.

**Section 7:** Mr. Serbinowski said additional guidance may be appropriate regarding the application of Section 7 to the long-term care (LTC) benefits provided through a policy or contract without specified premiums. He said when LTC benefits are provided through a universal life insurance policy, there is no required premium; and typically, by the time the policy enters the grace period, the premium required to continue the policy is prohibitive. He said at the time, life insurance and hybrid products were kind of an afterthought, but they are now a major piece of LTCI, and this may be more of an important issue than it was at the time. Ms. Burns said she is supportive of the comments. Mr. Birnbaum said this is part of a broader set of issues as to what type of guidance is needed for hybrid products in general, and there is nothing really in the model that addresses that.

**Section 7A(1):** Ms. Burns said insurers should be required to send any changes in their contact information to the third party as well as an insured. She said there have been instances when there was a change in address for an insurer, and consequently, past due premiums and notices of an impaired policyholder were returned to the third party, as they were mailed to an outdated address. She said adding a confirmation notice to be sent to the current third party every two years would be helpful, and insurers should be required to notify policyholders of the right to change a third party for notification of a lapse in premium payment. She said there is no current requirement that an insurer periodically confirm the current contact information for the third party who is to be notified of a pending lapse, and she knows of instances where a third party has moved or died, or the notice went to an outdated or even wrong address. Mr. Birnbaum agreed with Ms. Burns and said there has been a lot of work done on plain language and user-friendly approaches to providing disclosures to consumers, and this example illustrates that there is a better way than simply calling it a notice of lapse or termination. He said the requirement to send first-class mail should be updated to include electronic delivery, particularly for the third party.

**Sections 8A(2) and 8E:** Ms. Burns said policyholders often do not see the language about premium increases buried in the paragraph about guaranteed renewability, and a notice of the right to increase premiums should be in a separate paragraph from guaranteed renewability. She said there also should be a requirement for a clear notice of waiver of premium, and the notice should describe any benefits covered by a premium waiver; a clear notice of the benefits not covered by a premium waiver; and a clear notice of how and when the premium waiver will be credited or refunded. She said policy language generally describes that premium payment will be owed when benefits are no longer payable but may not clearly describe how and when waived premiums will be credited or returned. She said generally, a premium waiver is described in one place in a policy, while the return or credit of the waived premium is described separately.

Mr. Birnbaum said there should be a glossary or a table of contents to help consumers navigate the model, and the definition of class, as discussed on the last call, should be included in this part as well. He said the history of the company's rate increases, itemized and cumulative, should be included.

Mr. Gennace asked if this is something that has changed in the LTCI marketplace that would require or precipitate the need for these changes or something where the regulation could be improved. Ms. Burns said it is two-fold. She said these are experiences people have had with their policies, so improvements are needed; but going forward, it also illustrates how the marketplace needs to work better. Mr. Birnbaum said he agrees with Ms. Burns, the nature of the products have changed significantly, and significant advances have developed since the model was developed.

Mr. Nelson said he understands Ms. Burns' concerns about rating practices, and Section 9 added a lot of rating practices notices and disclosures for consumers that are beyond what is just in the policy. He said, as Mr. Birnbaum noted, there are a lot of disclosure requirements already, and most of them are regarding the sales process, so many of the concerns are addressed, and any changes should be looked at in total.

**Section 9:** Ms. Burns said life and annuity contracts that provide for LTC benefits have internal costs associated with the policy and the benefits paid by the policy, and there is no mention in this section of how those costs might change. She said, for instance, the cost of insurance charged in a policy might change, or the cost of LTCI might change, which could affect the earnings in a policy and the daily benefit amount paid for care, and while this is not a change in premium, changes in internal costs affect the benefit a policyholder will receive.

Mr. Serbinowski said it is not clear why in Section 9B(5)(a) the rate increase history is limited to 10 years when most prospective buyers will keep their policies for much longer than that. He said a cumulative rate increase for each policy form might be preferable to a long list of individual increases. He said for Section 9B(5)(d), one should consider if this provision allows some rate increases to not be reflected. He said if every company transferred business after the first increase, no company would be required to disclose more than one increase on a policy form.

**Section 10:** Mr. Serbinowski said one should consider adopting retention requirements for actuarial assumptions, similar to those in Section 10C of the *Limited Long-Term Care Insurance Regulation* (#643). He said it can create problems as to how much assumptions change and produce projections based upon prior filing assumptions. He said this is not a reason alone to open the model, but should the model be open for updating or editing, retention language would be a good addition.

Mr. Birnbaum said he had a comment on a part of Section 10. He said the section requires that insurers develop their best estimate of future claim costs under moderately adverse experience, then pad that estimate by at least 10%. He said the theory seems to be that insurers not only did not know what they were doing in the 1990s, but they have not learned anything given historically low interest rates, extensive lapse, and claims experiences. He said insurers are already using conservative values for estimating future claim costs, so it is unclear why this 10% padding is still needed, and there is no requirement for the insurers to return the excess profits resulting from the 10% padding. He said an insurer can raise rates of claimed costs that are worse than expected, but there is no requirement to lower rates of claim costs that are as good or better than expected before the 10% padding. He said Section 10 also provides for a margin greater than 10% if the company has less than credible experience to support its assumptions. He said eliminating this 10% margin is consistent with AHIP's justification for limiting rate increase history to 10 years.

Mr. Serbinowski said he disagrees with Mr. Birnbaum. He said perhaps if rate stability does not work, the Subgroup could rethink the model altogether and think of a different way to do LTC, but if there is an expectation that the Subgroup wants an actuary to certify that the rates are expected to be good for the lifetime of the product, then the Subgroup wants to have a margin.

Mr. Nelson said he believes the 10% margin is in addition to the moderately adverse experience because one has to certify that the rates are sufficient under moderately adverse experience, and this moderately adverse experience has to be at least 10% of lifetime claims unless the company can justify reasons to



have lower margins; therefore, the 10% margin is not on top of the moderately adverse experience. Mr. Serbinowski and Mr. Gennace agreed with Mr. Nelson's reading of that section.

**Section 11C(1):** Ms. Burns said insurers have begun to ask questions about family health history as part of the application process, and that could lead to misinformation or mistaken information that could be used later to rescind coverage. She said insurers and others have access to information and data from many sources that could contain erroneous information or information and data that are different from what the policyholder entered on the application. She said, for instance, an applicant might know anecdotally about the cause of death of a family member, but that might be inconsistent with the medical cause of death listed on a death certificate. She said some older family members might conceal a health condition from other family members, leading to an erroneous response on an application.

Mr. Birnbaum agreed with Ms. Burns and said the insurer should be required to provide evidence as to why there may have been a denial of benefits and disclose any third-party databases used in that decision. Mr. Gennace asked whether there have been cases of this happening where a policy is rescinded or if this is more of a general concern. Ms. Burns said she had been involved with cases where answers on the application were challenged, but the use of third-party databases is a new area, and she could see this happening more frequently.

Silvia Yee (Disability Rights Education and Defense Fund—DREDF) said there are cultural issues involved as well, especially with older relatives. She said in quite a few cultures, it is difficult to get information from relatives, especially older relatives, about how a family member may have died. She said she has experienced this personally, and in some cultures, how a death or serious illness has occurred or what occurred is just not spoken about. She said this could be a serious impact on certain groups of people.

Mr. Birnbaum said while the Fair Credit Reporting Act (FCRA) requires disclosures of sources, it does not cover third-party databases like social media; therefore, there is no opportunity for the consumer to address erroneous information found through these third-party databases.

Laura Arp (Nebraska) asked if big data should be part of this discussion. Mr. Birnbaum said in the last decade, insurers have been using third-party databases to not only obtain or verify information given by the consumer but to also speed up the application process. He said he raised this issue in this section, as it could hurt the consumer having a denial based upon information that is not true coming from these third-party data sources.

Ms. Arp asked if language in this section needs to be changed or if it is a matter of keeping an eye on denials and cancellations of coverage based upon the information insurers receive that was not available 20 or 30 years ago. Mr. Birnbaum said two things need to be addressed. He said the first is what it means to make an untrue statement that can result in a claim denial and giving the consumer some examples of what an untrue statement would be that could cause a denial would be useful. He said the second is disclosure to a consumer that third-party sources are going to be used and providing the consumer with what those sources are in the event of a denial so that the consumer is on notice and can correct incorrect information found through a third-party data source.

**Section 12:** Ms. Burns said the dollar amount of \$25 should probably be increased, as a home health care benefit that provides \$25 a day would be illusory based on costs today. She said in addition, the drafting note seems to conflict with the language in Section 12B. Mr. Nelson said industry has typically been against having a minimum dollar amount because there are occasions where a policyholder buys a second or third policy to add to the previous policy, and they are sometimes buying \$25 worth to just add on. He said that would be the concern of putting in higher minimums, but the \$25 figure is small. Ms. Yee agreed and said the language in Section 12B is outdated, as making a distinction between home health and nursing home care and the language in the section stating "at least one-half of one year's coverage" is in conflict.

**Section 13:** Ms. Graeber said the ACLI and AHIP believe that the language currently contained in Sections 13 through 19 remains flexible and compatible with the current long-term care insurance (LTCI) marketplace and new language is unnecessary. However, she said Section 13A states that insurers must offer a policyholder the option to purchase a policy that provides for benefit levels to increase with benefit maximums or reasonable durations, which are “meaningful to account for reasonably anticipated increases in the costs of long-term care services covered by the policy,” and Sections 13A(1) and 13A(2) require that the “increases are compounded annually at a rate not less than five percent (5%).”

Ms. Graeber said based on industry data, an increase of 5% compounded annually does not align with the current LTCI marketplace and results in insurers offering policyholders a product that is more expensive than needed to meet their future needs. She said Section 13A(1) and 13A(2) should be opened specifically to update “5%” to a percentage that more appropriately aligns with “reasonably anticipated increases in the costs of long-term care services covered by the policy.”

Emily Smith (California) said California’s comments are slightly different, but in Section 13B, the requirement to offer 5% inflation protection may be out of step with the current economy, and 5% is an expensive option. She said it might be wise to consider changing the requirement to an offer of 3%, which is a more practical option for most consumers. Alternatively, she said if a 5% option is still seen as important, there could be requirements to offer both a 3% option and a 5% option in order to provide flexibility for consumers. Mr. Serbinowski said the 5% increase amount is likely too high in the current environment.

Ms. Burns said on behalf of the NAIC Consumer Representatives, in Section 13, life insurance that provides long-term care (LTC) benefits are not required to include inflation protection. She said this exemption assumes that life insurance benefits accumulate differently, and inflation protection described in Model #641 is contrary to the way in which life insurance benefits fluctuate. She said there needs to be a clear requirement for how life insurance benefits will meet the cost of care in future years.

Ms. Burns said Model #641 should adapt to a major change in the market where the majority of LTC benefits are now sold with life and annuity insurance benefits. She said it is important that consumers understand the daily benefit amounts they will have to meet their daily LTC expenses when they need them and how benefits they are buying will meet that need in the future. She said there does not seem to be any specific exception for annuity products in this section of Model #641 as there is for life insurance. She said we are concerned about whether annuities provide benefits that can increase over time to meet the increased cost of care and if those products are required to include inflation protection or some similar way for benefits to address the increasing cost of care. She said those requirements should be clear in Model #641, or there should be cross references to a similar requirement in other models.

Ms. Burns said consumers who buy those financial products with LTCI benefits need clear information about their benefits for LTC expenses and how those benefits will change over time. She said there should be some requirement in Model #641 to address these issues. She said requirements that affect LTC benefits in life and annuity products that do not fit in Model #641 might require changes to other models. She said there should be citations to those other models, as cross referencing to other models becomes even more important as the industry introduces creative new products and platforms that can include benefits to pay for LTC expenses.

Ms. Burns said pertaining to the discussion on the 5% inflation, she is not opposed to lowering the inflation amount but would not be supportive of weakening the requirement for inflation protection. Mr. Gennace asked Ms. Burns in what way would or could this be weakened if a lower inflation amount is offered. Ms. Burns said if any lower inflation is offered, the requirement for full disclosure must be retained, that should not be weakened, and the disclosure and reporting documents related to inflation protection should not be done away with.

Mr. Birnbaum said recent inflation numbers suggest the decision should not be based upon what happened in the recent past but on what makes sense going forward. He said it is unclear to him why industry would care if 5% inflation protection is required or not, given that whether they offer 5% or 3%, they will price it accordingly, and the company will make money either way. He said if there is a concern about the 5% inflation, the appropriate solution is to improve the disclosures to consumers to help consumers better understand how the cost of service has inflated over time and could inflate over time as compared to what their benefit is going to be over time. He said at a minimum, improvement of the disclosure requirements would be most effective.

Mr. Serbinowski said he does not think that was the point; the point is that it is agreed that meaningful inflation protection is needed, and 5% in today's environment is too high. He said the experience of the last 10 to 15 years have shown that the benefits of policies issued many years ago with 5% inflation protection have outpaced the cost of care. He said the point of this discussion at this time is not to find a solution but to determine if changes need to be made. He said if a solution is being sought, then it might be smarter to have the inflation benefit tied to something like the Consumer Price Index (CPI) rather than a specific figure or amount requirement. He said if the Subgroup decides to open Model #641, it can then look at how to change that.

Ms. Burns said there is a worker shortage currently for people who provide this type of care. She said it has been mostly nursing home care, but it is now affecting home care, which will affect inflation costs and increase minimum wages. All these factors need to be discussed should Model #641 be opened and changes are to be made.

Ned Gaines (Washington) said he agrees that 5% is too high, but he is concerned that lowering the amount may not be sufficient in a few years should a problem arise. He said having it tied to some outside factor would be better than having a set inflation figure since the goal is to ensure we are keeping up with inflation and not unintentionally limiting the benefit down the road.

Mr. Serbinowski said in Section 13B, most of the group policies today are non-contributory; i.e. the entire premium is paid by the certificate holder. He said in cases where the certificate holder pays the entire premium, it would make more sense to have the offer made to the certificate holder. He said if Model #641 is opened, this is something that would be good to look at. Ms. Burns said she agrees with Mr. Serbinowski.

Mr. Serbinowski said in Section 13C, it is not clear if this subsection applies to LTC benefits provided through annuities. In addition, he said given the shift in the marketplace to combo products, the issue of whether combo products need to offer inflation protection should be revisited. Ms. Burns said she agrees with Mr. Serbinowski on this point as well, and it is a good example of why Model #641 needs to be updated. Mr. Gaines said if the intent is for annuities to be included, then it must be spelled out in Model #641.

Mr. Gennace said California had a comment on Section 13D and the drafting note, and he agrees that he is not sure if that drafting was intended for another section; he asked Ms. Smith to discuss her comment. Ms. Smith asked if the drafting note that follows Section 13D is somehow related to that section because its placement is confusing. She said the statement that inflation protection be "provided" rather than "offered" seems inconsistent with Section 13A, and the suggestion that meaningful benefits or durations could include "providing increases to attained age" or for "at least 20 years" sounds contradictory to Section 13E, which states that inflation protection benefits shall continue without regard to an insured's age or length of time insured. She said she does not know if it needs to be changed, but it could cause some confusion, and maybe the Subgroup could look at it.

Ms. Smith said regarding Section 13E, people want more flexibility around inflation protection, and given the high cost of inflation protection and varying needs among consumers, more flexibility could be achieved by a requirement that "at least one inflation protection option offered" must meet the

continuation requirements. That way, she said insurers could also offer options for inflation protection of a shorter duration that may better meet the needs and budget of a consumer.

Mr. Serbinowski said he has always read Section 13E to be a kind of condition for a specific inflation protection that must be offered. For example, he said an offer of 5% inflation does not mean 3% cannot be offered, but rather a lifetime inflation; and if 5% is declined, an offer of 3% for 20 years could be offered. Ms. Smith asked Mr. Serbinowski if he believes Section 13E does not require that inflation benefits last for the life of the policy. Mr. Serbinowski said the offer of inflation protection must be made, but there is flexibility as to how much is to be offered. He said the offer of 5% is required for the lifetime, but any additional protection does not have to be for the lifetime.

Ms. Burns said she remembers this subsection being included as a protection against companies manipulating inflation protection over a period of time. She said the Subgroup needs to carefully consider that removing inflation protection or reducing it is very common, and people who have held policies for 20 to 25 years, that is a very important option for reducing a premium increase; the Subgroup should carefully think about this issue should the Subgroup consider modifying this requirement. Ms. Smith said her comments were not to suggest that the requirement be lessened or eliminated, but rather that some additional options or flexibility be offered to consumers.

Mr. Serbinowski said this subsection says the insurer has an obligation to offer a specific inflation protection, and it does not prohibit offering other forms of inflation protection. He said a solution does not need to be found at this time, and he does not want to get too deep in the weeds on this. Ms. Smith said she would prefer language stating that there is a requirement for at least one inflation protection that meets the continuation requirements. She said the language currently written in Section 13E says “shall continue,” and it does not seem to be flexible.

Mr. Gennace said the language specifically says inflation protection increases, which would seem to mean all of them, as opposed to the other subsection that says the offer in Section 13A, which requires the specific 5% lifetime. He said he believes Section 13E applies to any inflation protection benefit increase, not the one offered in Section 13A, but that is a very technical reading of the language.

Mr. Gennace asked Ms. Burns to discuss her comments on Section 13F. Ms. Burns said the Subgroup suggests changing the language in Section 13F from the permissive language of “may change” to “likely will change.” She said premium increases are more of a fact of life now since Model #641 was last amended. She said the language should be read as:

Subsection F: An offer of inflation protection that provides for automatic benefit increases shall include an offer of a premium which the insurer expects to remain constant. The offer shall disclose in a conspicuous manner that the premium ~~may~~ *likely will* change in the future unless the premium is guaranteed to remain constant.

Mr. Gennace said this regulation essentially requires the insurer to price and offer the benefit without the expectation of a premium increase; although, there could be, so he asked if the presumption is that there should not be but there may be. Mr. Birnbaum said it is a fine assumption, but the reality of it is quite different. He said pretending there are not going to be rate increases while presenting it as if it is going to be a stable premium product, when in fact history says it has never been that, seems to be deceptive to the consumer. Mr. Gennace said this can maybe be discussed should the Subgroup decide to open Model #641.

**Section 14:** Ms. Burns said the requirements in Section 14 continue to provide important consumer protections to mitigate the inappropriate replacement or stacking of multiple variations of LTCI benefits. She said the two notices in this section should be reviewed in light of advances in consumer information and disclosure technology and knowledge. However, she said she suggests that the lead-in sentence on the current replacement notice should be redrafted to reflect newer products that include

benefits for LTC in life and annuity products, riders to these newer hybrid products, and short-term LTC products.

**Section 15A through Section 15F:** Ms. Burns suggested that a category of reporting include a requirement to report third-party sources of data used in the underwriting and application process. She said consumers need careful regulation of the costs and benefits of these newer complex financial products, and these hybrid products promise consumers benefits for LTC as part of a life or annuity product. She said these are already complicated products with costs accruing inside the policy that few policyholders understand, and consumers need to know about the interaction between these policy costs and their benefits to know how LTC benefits will work when they need them. She said as has been mentioned repeatedly during these calls, newer more specific disclosure notices are required regarding hybrid products with LTC benefits, along with some changes and additions to the existing Model #641.

Mr. Birnbaum said the reporting requirements in this section seem to focus on lapses and replacements, and the items to be reported include 10% of the agents with the greatest percentage of lapses and replacements. He said it also includes claims denied by class of business for qualified contracts. He said there is additional information that is missing from this reporting, such as the number of applications received by product, the number of applications denied by product, the reasons for denial, and the third-party sources used for the underwriting and application process. He said there are sources of data that were not even contemplated when Model #641 was done, and these should be disclosed not just to state insurance regulators but to the consumers as well. Mr. Gaines asked if the term “producers” should be used instead of “agents.”

**Section 15I(2)(a)(i)(I) and 15I(2)(a)(i)(II):** Ms. Smith said the comments came from an actuary in her department who believes the sections permit a margin for moderately adverse experience (MAE) to be added outside of the rate increase request process, and an insurer should not be allowed to re-establish this margin each year, as any necessary rate adjustments should be handled through the established rate increase process.

Mr. Serbinowski said as an actuary, he does not understand the concern. He said this is supposed to prevent a situation in which something is first being marketed, it is not looked at for 10 years, and then there is a realization or discovery that something was mispriced and now a huge rate increase is needed. He said the annual certification was put in place so there would be a regular review. He said the section does not really say anything other than allowing the actuary to opine on the rates.

Mr. Serbinowski said this requirement was put in place when standards were written for the Interstate Insurance Product Regulation Commission (Compact) for LTC. He said everything that is filed with the Compact since 2011 is subject to this requirement, and companies that file these forms must annually provide that certification.

**Section 18:** Mr. Serbinowski questioned whether this section is necessary. He said if the Subgroup decides to open Model #641 for edits, it may be a good idea to check with the Health Actuarial (B) Task Force and Life Actuarial (A) Task Force about whether this guidance is needed. He said LTC reserves are addressed in other places like the *Health Insurance Reserves Model Regulation* (#10). He said the *Limited Long-Term Care Insurance Model Regulation* (#643) simply refers to Model #10.

Ms. Burns said this section and the previous section need to be looked at in conjunction with other work being done at the NAIC and for the applicability to life and annuity products that include LTC.

**Section 19C:** Mr. Serbinowski said this subsection also raises the question of how things apply to annuities and even to the extension of benefits. He said it exempts only life insurance policies that accelerate benefits for LTC, and it seems that life insurance policies with extension benefits are not exempt. He said neither are annuities that provide LTC because the section only applies to pre-rate stability policies, and there might not be too many combo products to which it applies, so this comment

may not have much impact. Mr. Serbinowski said the language says it shall not apply to life insurance that accelerate extension benefits, but he asked what accelerate really means in this case. He asked if one could have a life insurance policy that has a death benefit of \$100,000 accelerated to \$300,000. He said that would seem to be quite an acceleration. He asked if accelerate means you can pay the \$100,000 sooner than the death. He said when this was written, there were not many policies like this, but now there are many life insurance and annuities that have not just acceleration but also extension benefits.