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, 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.

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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.
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