February 27, 2015

Tyler McKinney, Chair
Disclosure Subgroup, NAIC Senior Issues Task Force
Attn: Brian Webb

RE: Comments on Consumer Disclosures and Section 6 of the Model Act for Long Term Care Insurance

California Health Advocates appreciates the opportunity to provide comments on Section 6 of the Model Act regarding disclosures related to long term care insurance.

In addition to the subgroup’s overall review of the Models we’d like to call your attention to the need for a revised disclosure notice of a rate increase to accompany the requirements in the new NAIC Model Bulletin, the 2014 actuarial practices and filing revisions made to the Model Regulation, and the changes to the Guidance Manual that have just been exposed for comment.

We have commented many times on the need for an improved disclosure notice of a rate increase when one is being imposed, so that an insured individual can better understand their choices for mitigating a premium increase and understanding the best way to exercise those choices.

In our previous comments before the Senior Issues Task Force we asked that changes to the notice of a rate increase be delegated to a group specifically charged with working on disclosure notices. We think this subgroup is the appropriate venue for that task, and request that this disclosure notice be the first priority of the Disclosure Subgroup in addition to the more comprehensive review the Model Act, Regulation, and Guidance Manual.

Our comments on Section 6 of the Model Act as requested follow.  Attached to these comments is a redlined version of Section 6 with our suggested changes inserted for ease of comparison.

**CHA Comments on the NAIC Model Act, Section 6**

We suggest the following changes, deletions and revisions:

6 A We recommend adding “riders and benefits” to the range of topics to ensure that specific regulations can be developed related to these two items.

B (1) We recommend adding “gender” to the grounds under which insurers cannot cancel, nonrenew, or terminate coverage since gender is now used for separate pricing.

B (2) We recommend adding “or rider” to the language that prohibits a new waiting period for coverage issued by the same company.
B (3) We recommend striking the term “in a facility” to the prohibition against providing coverage for more skilled care than lower levels of care to ensure that the prohibition applies to all places of care.

Section 6 D: We do not think any long term care policy sold today should have any benefits that are conditioned on prior skilled care or facility coverage. These are outmoded concepts related to the transition of products from nursing home insurance to a design that allows a person to use the covered benefits that are the most appropriate to their care needs.

(2)(a) We recommend striking this subsection. These types of benefits are the forerunners of home care and designed to restrict payment to care at home only when it follows a facility stay, and then limit benefits to a specific recovery period.

(2)(b) Long term care at home or in the community is primarily assistance or supervision with activities of daily living. Insurers should not be able to condition eligibility for home and community care benefits by requiring the receipt of skilled care services. We recommend changing the language as follows.

A long-term care insurance policy or rider shall not condition eligibility for non-institutional benefits on the prior or continuing receipt or need for skilled care services.

(3) We recommend deleting all of 3 and the drafting note neither of which is necessary any longer.

Section 6 F: This section deals with the 30 day right of return. The statement about the 30 day free look varies by company from a dense paragraph of text to a simple, easily understood statement. One company may require a policy to be returned by mail to its home office while another instructs a policyholder to return the policy to their agent or broker where it can be held past the 30 period.

We recommend adding “This notice shall include specific instructions to accomplish a return of the policy to the company.”

Section 6 G(2): This section deals with topics that should be included in an outline of coverage.

We recommend adding 2 additional topics.

“New (b) A description of the eligibility trigger for benefits and how those trigger are met, and”

“New © A description of the process for submitting a claim for benefits,”

Section 6 J and K: These two subsection deals with requirements related to life products that include benefits for long term care insurance.
Many of the products sold today are combination products1 with long term care insurance benefits included as a rider, or a death benefit that is accelerated when an insured person needs long term care benefits. We are concerned that the Model Act exempts life insurance products from some of the requirements of the Act, while other protections that might be unique to life products seem to be missing. There may be some overlap between the Model Act for Long Term Care Insurance and the Model for Accelerated Benefits and/or Models governing Life insurance.

It would be helpful to have a side by side listing of the requirements and consumer protection of those Models to ensure that combination products include the full range of protections that a standalone product provides and that there are no gaps between the two sets of regulations.

One of our concerns is with the costs or charges applied to a life product or riders that are not immediately obvious to consumers, and that may continue or first occur at the time benefits begin. Another concern is clear disclosure of how benefits for long term care in a life or annuity product increase over time, if they do, and how that benefit then relates to the cost of care.

Since these are complicated financial products, often with an investment component, we think consumer need comprehensive information to understand any changes that may occur when benefits are used for other purposes than death. The Buyers Guide for Life Insurance does not specifically reference long term care benefits, or triggers based on the need for long term care services leaving consumers without adequate information to make an informed choice.

Section 6 M: This section deals with compliance with these requirements. We recommend adding “or designed to pay costs associated with long term care” to ensure that any product that a consumer might be approached to buy with benefits for long term care expenses, regardless of whether it’s marketed as a long term care policy, will meet the requirements of the Model and provide strong consumer protections.

As a side note, we have been approached by brokers who are very concerned about product design issues, agent knowledge of these products, and costs and expenses related to “hybrid” policies with a universal life chassis and “combo” products, generally whole life, with riders that meet federal 7702(B) requirements. These products are generally sold to higher net worth clients and seem to be replacing the sale of free standing long term care insurance policies for this population. We think it may be time for the NAIC to take a closer look at consumer protections and disclosure requirements for these products.

We appreciate the opportunity to comment on these important topics.

Sincerely,

Bonnie Burns, California Health Advocate
NAIC Funded Consumer Representative

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1 Our remarks about life insurance products that include benefits for long term care also include annuity products that also include benefits for long term care services, expense, or costs but are not specifically mentioned in Section 6 of the Model Act for Long Term Care Insurance.