Fiscal Impact Statement

DATE SUBMITTED: NOVEMBER 11, 2020

NAME OF INITIATIVE: LTCI LEGAL RESTRUCTURING

REGULATOR/BUSINESS SPONSOR: LONG-TERM CARE INSURANCE (EX) TASK FORCE

NAIC STAFF SUPPORT: DAN DAVELINE, DIRECTOR, FINANCIAL REGULATORY SERVICES

REQUESTED INITIATIVE START DATE: JANUARY 1, 2021

ANTICIPATED COMPLETION DATE: PHASE I-MARCH 31, 2021
 Phase II-DECEMBER 31, 2021 (IF TAKEN UP BY THE NAIC)

TOTAL REVENUE EXPECTED (2021): $0
 (2022): $0

TOTAL EXPENSE REQUESTED (2021): $175,000
 (2022): $0

TOTAL CAPITAL REQUESTED (2021): $0
 (2020): $0

I. Executive Summary:

The Long-Term Care Insurance (EX) Task Force is charged with exploring restructuring options and techniques to address potential inequities among policyholders in different states arising from variations in rating decisions. The purpose of this Fiscal Impact Statement is to engage a legal consultant to research and report on existing state laws and regulations that could support a new regulatory framework authorizing insurers to separate policies from one another. In general, the consultant is being asked to identify potential forms of restructuring transactions, including transfer or segregation of blocks of business and any related legal impediments and/or impact on state guaranty funds. The consultant is expected to complete this work by March 31, 2021.

II. Key Deliverables:

The selected consulting firm will be required to deliver the following during the initiative.
Phase I

1. Research and report on existing state law pertaining to insurer restructuring or LTCI transfer and develop company-specific recommendations.

The analysis should consider the potential risks to states’ guaranty funds and policyholders’ access to guaranty fund protections, focusing on options that avoid receivership. The consultant will identify any existing legal impediments in each state that could impair a restructure or transfer to prevent cross-state rate subsidization. They will also assess the impact of states failing to approve LTCI rate increases when actuarially appropriate; identifying the legal risks for such states and the legal recourse options available to affected stakeholders against such states.

2. Develop a report discussing the results from the consultant’s research and include specific recommendations on how to mitigate against each legal impediment and litigation risk.

The report must identify options for overcoming the legal and regulatory impediments and include an analysis of advantages and disadvantages for each recommendation.

3. Modify the report after the NAIC exposes the report for public comment, considering comments made by stakeholders and produce a document providing a legal basis for rejecting other comments.

Phase II (optional phase)

In the event the NAIC decides to continue the initiative into the second phase, the consultant will be asked to draft industry-wide solutions or statutory changes for consideration. The potential solutions or statutory changes will be incorporated into a report on how to mitigate against each legal impediment and litigation risk, including an analysis of advantages and disadvantages for each recommendation.

III. Financial and Organizational Impact:

Requested expenses for professional services are $135,000 for Phase I and $40,000 for Phase II, for a total of $175,000, based on the vendor’s response to the Request for Proposal (RFP) issued earlier this year (see Attachment I). In the event the NAIC does not continue the initiative into the second phase, the expense of $40,000 for Phase II will not be incurred.

NAIC staff will assist the firm as needed with the setup of conference calls and will provide any necessary assistance to the selected consulting firm to complete the project in a timely, appropriate manner.

IV. Risk Management Plan:

The primary risk associated with the project is the public and political risk that the work product may be controversial, as it is expected to provide legal options to separate policies in a manner that addresses cross-state subsidization.
V. **Security Impact:**

The selected consulting firm will be responsible for accumulating public legal information and as such, there will not be a security impact to the NAIC for this project.
## 2021 Budget

**Long-Term Care Insurance Legal Restructuring**  
**Project Cost Analysis**  

**Anticipated Start Date:** January 2021  
**Anticipated Completion Date:** December 2021

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<thead>
<tr>
<th>Description</th>
<th>2021 Budget</th>
<th>2022 Budget</th>
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<tbody>
<tr>
<td>Expenses:</td>
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<tr>
<td>Professional Services-Consulting</td>
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<tr>
<td><strong>Total Expenses</strong></td>
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<td>Revenues Over (Under) Expenses</td>
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