LONG-TERM CARE INSURANCE (B/E) TASK FORCE

Draft Pending Adoption

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Long-Term Care Insurance (B/E) Task Force
Orlando, Florida
April 8, 2019

The Long-Term Care Insurance (B/E) Task Force met in Orlando, FL, April 8, 2019. The following Task Force members participated: David Altmaier, Co-Chair (FL); Jessica Altman, Co-Chair (PA); Lori K. Wing-Heier represented by Sarah Bailey (AK); Jim L. Ridling represented by Steven Ostlund (AL); Keith Schraad represented by Erin Klug (AZ); Ricardo Lara represented by Perry Kupferman, Kim Hudson and Tyler McKinney (CA); Andrew N. Mais and Paul Lombardo (CT); Stephen C. Taylor represented by Howard Liebers (DC); Colin M. Hayashida represented by Kathleen Nakasone (HI); Doug Ommen represented by Andria Seip (IA); Dean L. Cameron (ID); Robert H. Muriel (IL); Vicki Schmidt represented by Julie Holmes (KS); Al Redmer Jr. represented by Nour Benchaaboun (MD); Eric A. Cioppa and Marti Hooper (ME); Anita G. Fox represented by Kevin Dyke (MI); Steve Kelley represented by Fred Andersen (MN); Chlora Lindley-Myers represented by Jessica Schrimpf (MO); Matthew Rosendale represented by Bob Biskupiak (MT); Jon Godfread represented by Chrystal Bartuska (ND); Bruce R. Ramge represented by Rhonda Ahrens, Martin Swanson and Laura Arp (NE); Marlene Caride represented by Philip Gennace (NJ); John G. Franchini represented by Paige Duhamel (NM); Barbara D. Richardson represented by David Cassetty (NV); Glen Mulready represented by Cuc Nguyen (OK); Andrew Stolfi (OR); Elizabeth Kelleher Dwyer represented by Sarah Neil and Matthew Gendron (RI); Julie Mix McPeak represented by Brian Hoffmeister (TN); Kent Sullivan represented by Doug Slape (TX); Todd E. Kiser represented by Tanji Northrup and Nancy Askerlund (UT); Scott A. White and Doug Stolte (VA); and Mike Kreidler and Doug Hartz (WA).

1. Heard Opening Comments

Commissioner Altmaier discussed how the NAIC membership has identified long-term care insurance (LTCI) as one of the key priorities of the NAIC for 2019, if not the No. 1 priority. He discussed how many of the workstreams this task force coordinates are doing a great deal of significant work, even though each one is focused on something distinctly different. He noted the appointment of a new Executive (EX) Committee-level task force on long-term care (LTC) pricing. He noted that the work of the Long-Term Care Insurance (B/E) Task Force will continue to be important, but said he also looks forward to coordinating with the new task force. He described how even though the states' markets are different, all the states share some of the same concerns with respect to LTCI.

Commissioner Altman reiterated the focus the NAIC has on the use of LTCI. She said she and Commissioner Altmaier are committed to working hand-in-hand with all the other bodies of work being conducted by other groups, as coordination and collaboration are critical in this area. She stated the need to build on the great work that had already been completed and explained that today's meeting is focused on hearing about the extensive work that has already been done. She noted that "level setting" is important as conversations begin in 2019.

2. Discussed Work Already Completed on the Product Innovation Charge

David Torian (NAIC) referred the Task Force to two documents previously developed by the now disbanded Long-Term Care Innovation (B) Subgroup. He described how the scope of this Subgroup was to consider ways to address some of the current challenges facing the LTCI market and develop realistic policy options that might result in an increase in the take-up rate of LTCI.

Mr. Torian said the first document, "Federal Policy Options to Present to Congress" (Attachment One), is a document the Subgroup developed to: 1) identify actionable, realistic policy options for consideration by state insurance regulators, state legislators, the NAIC as a body, federal agencies and the U.S. Congress; and 2) help increase private LTC financing options for consumers. He described how the document identifies policy options to consider, noting that it has been shared with various members of Congress, in both the U.S. House of Representatives and the U.S. Senate. He noted that in this current Congress, the NAIC has begun to share the document with those members who have expressed an interest in LTCI.

Mr. Torian noted that the second document, "Private Market Options for Financing Long-Term Care Services" (Attachment Two) was developed to help provide state insurance regulators, policymakers, consumers and other stakeholders an overview of the landscape of LTC financing mechanisms currently available in the private market, in addition to traditional LTCI. He stated that this document is currently posted on the Senior Issues (B) Task Force's web page under the Related Documents tab.

3. Received an Oral Presentation on LTCI Trends and Regulatory Pressure

Mr. Slape, former chair of the Financial Analysis (E) Working Group, presented a summary of observations it had made relative to LTCI trends. He described how the Working Group had been reviewing LTCI companies and the LTCI space in general for well over a decade. He described how there had been a great deal of activity, but in a lot of cases, the discussion is centered on new products for the future. However, in the Working Group's mind, there has been less discussion on the legacy closed blocks of business. He noted that the Working Group undertook an initiative in 2018 that represented a high-level summary of issues companies are facing from a solvency perspective to highlight for the state insurance commissioners. He noted that the Working Group developed a confidential document, but the co-chairs believed it would be helpful to highlight some of the things from the document.

Mr. Slape described that, at one time, there were more than 170 companies writing LTCI; now that number is down to a little more than a dozen, with 80% of the reserves held by the top 15 companies. He noted that there was an increasing trend that companies can no longer subsidize the LTCI blocks of business, thus creating a cross-policyholder subsidization. He noted this comes now after the view for years that many of the largest writers of LTCI are well capitalized and diversified companies. However, the concern now is that as these companies move this business they are no longer willing to support, they do so with the LTCI business ending up with much weaker capitalized companies.

Mr. Slape described how the Working Group has been working with the Valuation Analysis (E) Working Group on some of the issues it found to communicate with the domiciliary state insurance regulators to address some of the concerns from Valuation Analysis (E) Working Group. This work will continue in 2019.

Mr. Slape noted that with respect to the pricing issue, the environment for getting rate increases is one where there is a lot of inconsistencies among the states. He stated the timing of getting rate increases is also having an impact on solvency because delaying rate increases is a negative to solvency.

Mr. Slape also addressed the concern that exists when the consumers may not be given the choice to make their own decision, given all states have limits on what can be collected under guaranty fund coverage if an LTCI insurer goes insolvent. He stated that Texas has seen companies requesting too little of rate increases, even though the actuarial justified data suggests otherwise. He noted the importance for companies to request the right rate; otherwise, the industry is potentially misleading consumers regarding what the true cost of the policy may be currently and in the future.

Mr. Slape stated that he believes there is an opportunity to make more options available to consumers and to consider the costs of the different options. He said had the industry and state insurance regulators been more willing to embrace these issues, perhaps the current situation would not be as bad. He also discussed how at times state insurance regulators may be their own worst enemy with a lack of linking between the liability valuation requirements and how the product is priced. He noted the high degree of opportunity either at the new task force, this Task Force or others, perhaps with new reporting that could better highlight issues.

Mr. Hudson noted that while state insurance regulators do have an obligation to help the timing on the rate increases, there is also an obligation that the companies do a better job of providing enough data or timely response to inquiries.

Bonnie Burns (California Health Advocates—CHA) stated that one of the things state insurance regulators may not be paying enough attention to is the way such services have changed. In the 1990s, that change began with the addition of home care and assisted living. However, over time, home care has become more significant, accounting for as much as 60% of the total costs of such services, with a small percentage for nursing home care and assisted living. The importance of keeping people in their homes and getting services in their homes reduces the later use of institutional care. She emphasized how new technology can be aimed at keeping people in their homes. She described the impact that home health care can have on caregivers and how that can affect the caregiver's ability to pay for their own LTC in the future. She noted that not all dementias are Alzheimer's and that they can affect each other differently and at different speeds.

Ms. Burns stated that she is concerned about the options being presented to people instead of an LTCI rate increase, questioning if the consumers are being steered toward the option that is best for the company. She described an example, noting that none of the options provided the option to eliminate the consumer inflation protection or a paid-up policy. She questioned this given the other facts of the situations and noted that all of this leads her to believe the options can lead to lapsing of policies.

Commissioner Altman agreed with the importance of the options being provided and said she looks forward to discussing the issue in more detail.

4. Discussed Work Already Completed by the Long-Term Care Pricing (B) Subgroup

Mr. Lombardo described in detail the Long-Term Care Pricing (B) Subgroup's activities since the 2018 Fall National Meeting, which included five conference calls. His update included how, in November 2018, the Subgroup discussed the idea of the multistate coordinated LTCI rate review concept that was presented to the Task Force at the 2018 Summer National Meeting. He noted that during this same call, the Subgroup also discussed the concept of a survey that would not only respond to a question from the former co-chair of the Task Force, Director Cameron, concerning the consistency in information received by the states, but could also assist the Task Force in completing its charge to assess state activities regarding the regulatory considerations on rate increase requests on blocks and identify common elements for achieving greater transparency and predictability.

Mr. Lombardo noted that the Subgroup developed such a survey in December 2018 and received 40 responses from the states and territories combined. He noted that since January, the Subgroup had spent a great deal of time discussing the survey, including whether solvency should affect LTCI rate increase decisions. He noted that most comments indicated that solvency should not play a role in the magnitude of the approved increase, and the magnitude should instead be determined purely by the actuarial justified amounts, although there was one state that suggested further discussion may be appropriate. He suggested this issue be discussed by the state insurance commissioners.

Mr. Lombardo indicated that the Subgroup had discussed at length the potential cross-state policyholder inequity/cross-subsidization of LTC rates. He noted that there is a growing concern on behalf of those states that traditionally have approved requested rate increases that an inequity is created between their consumers and consumers in the states that have either not approved rate increases or have approved significantly lower rate increases.

Mr. Lombardo said the purpose of the survey was largely to make sure the state insurance commissioners could begin to have discussions on the differences that exist among the states in a regulator-to-regulator venue. He said the Subgroup would continue to discuss other issues, such as credibility where data is too small, and will continue to inform the Task Force of its discussions.

5. Discussed Work Already Completed by the Long-Term Care Valuation (B) Subgroup

Mr. Andersen said the Long-Term Care Valuation (B) Subgroup developed *Actuarial Guideline LI—The Application of Asset Adequacy Testing to Long-Term Care Insurance Reserves* (AG 51), which became effective with year-end 2017 reporting. He stated that related to this was the work of the Valuation Analysis (E) Working Group, which is reviewing AG 51 reports of companies. He described how AG 51 has allowed state insurance regulators to determine that morbidity experience development is most likely the cause of future reserve and rate volatility. He stated that the past issues of downward trends of mortality, lapse and investment return have generally been addressed and should not result in substantial future volatility in reserves or rates. He stated there is some variation by companies, noting that the Valuation Analysis (E) Working Group and the Financial Analysis (E) Working Group have helped to communicate this to the domiciliary insurance regulators of such companies.

Mr. Andersen described how, within the topic of morbidity, the consensus is that the length of a claim is generally increasing and there is still uncertainty in that area that could lead to volatility of reserves or rates. With respect to older age morbidity frequency, there is less consensus now and in the future. He stated that there is a varying amount of data among the companies, and they are addressing the lack of credibility in different manners, applying various amounts of margins.

Mr. Andersen stated that these findings led to actions in 2018. He noted how this includes how some companies established sizeable reserve increases mainly due to a reaction to updated morbidity studies. He stated that related to this was that companies have increased discipline in assumption setting, as evidenced by more frequent morbidity study updates. He stated that with respect to state insurance regulators' actions in 2018, the Valuation Analysis (E) Working Group reviewed AG 51 filings from more than 50 companies, which led to the findings stated previously. He indicated this also led to communication with domiciliary insurance regulators, the Financial Analysis (E) Working Group and public through forums such as this.

Mr. Andersen described how the Subgroup saw the need for additional guidance, describing its work with the industry to develop a guidance document, which is posted on the Subgroup's web page. As a result, all the AG 51 filings for year-end 2018 will contain information that will help state insurance regulators better understand the data underlying morbidity assumptions and methods, as well as the rationale for projecting future morbidity. He described how the goal was to better anticipate company-specific and industrywide volatility of reserves and, therefore, limit the frequency and magnitude of surprise reserve increases.

Mr. Andersen said that while most companies with LTCI business have no solvency concerns, some do. As a result, the regulatory actuaries are working toward targets to ensure future claims will be paid. Surprises lead to moving targets and financial uncertainty. He described why this has led the Subgroup to focus more on the volatility.

With respect to morbidity improvements, these relate only to incidence rates; for example, how the claim incidence of an 85-year-old in 2034 will compare to claim incidence of an 85-year-old today. Mr. Andersen stated that the data in this age range is coming in fast, but still not fast enough. He described how this is a complicated topic that includes factors such as what Ms. Burns highlighted.

Mr. Andersen said it is not just about health, but how consumers manage their health with lifestyle and other changes. This includes factors such as prevention, smoking cessation, awareness and general wellness. He described how there is a significant difference between the overall and insured population. He noted that the Subgroup will have to consider advances in Alzheimer’s treatment advancement, and not just the prevention but the reduction of severe conditions. He described how behavior management of LTC policies affect claims. This includes a decision to go on claim after minimal activities of daily living (ADLs) or wait. He described how factors such as trends in nursing home and home care usage, increases in less costly companion care, adult daycare and prevention will also have an impact, as well as education on programs that prevent costly LTCI events. One concern is the potential for a labor shortage in the area of caretaking. However, Mr. Andersen said more technology usage can offset any labor shortage. Finally, lifestyle can have an impact, noting that today families are more spread out, and “cheap” caregivers are less likely to be around as they were years ago. He said this trend is expected over the next 15 years. He stated that a lot of data, research and studies will help inform these views over the next few years.

Mr. Andersen said one of the areas of focus over the next year will include the morbidity improvement aspect, making sure it includes all the complicated factors previously noted. He said the Subgroup wants to ensure companies are not reliant on too simplistic of a view in setting future morbidity assumptions. He stated the Subgroup will be collecting a lot of information to gain greater insight into the entire morbidity improvement assumption. He described how there is a conservative base of state insurance regulators who believe this assumption is too optimistic, while other state insurance regulators might be on the other side. He said the Subgroup is hopeful that it will have a better handle on these complicated issues by the end of the year.

Ms. Ahrens said the Society of Actuaries (SOA) is working on several studies in these areas. She highlighted how some of conferences presented by the SOA might be helpful to non-actuaries, noting that many of the topics are not exclusively for actuaries. She specifically highlighted an InsurTech LTCI conference in May and why actuaries are interpreting morbidity improvement the way they are.

Ms. Seip asked Mr. Andersen to repeat the item that was having the single greatest impact on morbidity. Mr. Andersen responded that it is the impact of certain 85- to 90-year-olds coming onto claim going forward.

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

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Long-Term Care Innovation (B) Subgroup: Federal Policy Options to Present to Congress

As part of the NAIC's Retirement Security Initiative and ongoing focus on long term care insurance issues, the NAIC's Long Term Care Innovations (B) Subgroup ("the Subgroup") held 14 open calls and meetings, and continues such outreach, to gain insights from stakeholders on various approaches to financing long term care (LTC). The goal of this work is to identify and develop actionable, realistic policy options for consideration by state regulators, state legislators, the NAIC as a body, federal agencies, and Congress, that could increase the number of affordable asset protection product options available for middle-income Americans, potentially paving the way for the private market to play a more meaningful role in financing the LTC needs of our society.

Broadly speaking, some of the issues and questions the subgroup examined include the role for the private market in assisting people in financing their LTC needs; the steps that could be taken to encourage more participation by insurance companies or other innovators in this market; the future design of LTC insurance (LTCI) products; other asset protection products and the role they can and do play in financing LTC; the types of products most appealing to consumers; the types of products insurance companies would be interested in selling; the role employers should play in terms of offering products to assist in financing LTC services; the legal and regulatory barriers that may need to be overcome and any federal or state actions that could be taken to increase the number of options available to consumers to help them finance their potential LTC needs.

Although the focus of the Subgroup is on the private LTC insurance market, it is important to understand that no one is suggesting that private LTC insurance is the answer to the problem of how we as a society are going to finance the LTC needs of our citizens. We still expect Medicaid LTC costs to continue growing and recognize that many of the solutions being discussed by the Subgroup will not fully address long duration LTC needs. But, we believe the private market can be part of the solution.

The following is a list of federal policy changes that have been raised by various stakeholders, submitted to all Subgroup members for a 30-day comment period, vetted in the Subgroup during a 2-hour open conference call and reviewed by NAIC staff. The Subgroup believes these federal policy changes could help to increase private LTC financing options for consumers. Ultimately, any final recommendations to the federal government will need to be approved by the NAIC's Government Relations Leadership Council. The federal laws primarily identified by stakeholders that would require changes include the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Deficit Reduction Act of 2005 (DRA).

- **Option 1: Permit retirement plan participants to make a distribution from 401(k), 403(b) or Individual Retirement Account (IRA) to purchase LTCI with no early withdrawal tax penalty.** Related considerations include whether premium payments should be made directly from the retirement plan to the insurer; allowing purchase of combination or hybrid products as well as traditional LTCI; whether premium payments would be counted for purposes of satisfying the minimum distribution requirements; and permitting tax-favored contributions and distributions to pay for long term care services and supports or LTC insurance including allowances of LTCI as a plan investment.

- **Option 2: Allow Creation of LTC Savings Accounts, similar to Health Savings Accounts (HSAs) and/or Enhance Use of HSAs for LTC Expenses and Premiums~~.~~** HSAs are tax-advantaged medical savings accounts available to taxpayers who are enrolled in a high-deductible health plan (HDHP). The funds contributed to an account are not subject to federal income tax at the time of deposit. Advantages of HSAs include: 1) the account is tax-advantaged, meaning that money goes into the account before tax, thereby incenting savings; 2) the funds roll over from one year to the next; 3) the money can be invested in order to gain returns from stocks or other financial instruments, which helps the account grow more quickly; and 4) money withdrawn (including any investment growth) for approved expenses (which include LTCI premiums under current law) is tax-free. Consideration should be given to stand-alone accounts which could be used for LTC expenses and LTCI premiums. Such accounts should not be conditioned upon having a HDHP, since health insurance coverage generally does not cover LTC costs. Consideration also should be given to enhancing use of HSAs such as allowing an additional contribution (similar to a "catch-up contribution") to HSAs for owners of LTCI.

- **Option 3: Remove the HIPAA requirement to offer 5% compound inflation with LTCI policies and remove the requirement that DRA Partnership policies include inflation protection and allow the States to determine the percentage of inflation protection**. In an LTCI policy with inflation protection, the LTC benefit increases each year at a specified rate; the aim of inflation protection is to ensure that the value of the benefit keeps up with inflation. Inflation protection substantially increases LTCI premiums. For tax-qualified policies and those governed by the NAIC Model Regulation, a 5% inflation protection option must be offered, although a purchaser may choose not to take it. However, if the purchaser is under 75, they must accept inflation protection in order for the policy to be Partnership qualified. For group coverage, this option must be offered to the group policyholder (usually an employer), but it is not generally required that it be offered to each individual group member, although some states require this as well. Removal of the requirement that insurers offer 5% compound inflation with LTCI policies and the requirement that Partnership policies include inflation protection would increase insurer flexibility when designing products and could lead to lower premium costs. At the same time, consideration should be given to requiring an offering of some type of inflation protection to ensure consumers continue to have the option to protect themselves against increasing LTC costs. [Note: this would require both federal changes, changes to the NAIC models, and adoption of revised NAIC models by states.]

- **Option 4: Allow flexible premium structures and/or cash value beyond return of premium (HIPAA and DRA).** Flexible premium policies with clear consumer disclosures and protections built in could increase consumer choice and flexibility by allowing prefunding for LTC needs under a variety of premium payment patterns. Cash value or cash surrender value is the amount of money the insurance company pays a policyholder or beneficiary when they terminate a life insurance policy or annuity contract that has a cash value feature. Federal law (HIPAA) prohibits tax qualified LTCI policies (but not hybrid products) from containing a cash value feature. Prohibiting cash value creates a "use it or lose it" design for LTCI, because a policyholder only receives a benefit from their policy if they need LTC services. [Note: some flexible premiums structures may be permissible under current federal law, but they are limited by the prohibition on cash value.]

- **Option 5: Allow products that combine LTC coverage with various insurance products (including products that "morph" into LTCI).** Many stakeholders emphasized the need for regulatory changes at the federal level to allow for LTCI innovation and market expansion. One consistent view of stakeholders is the need to expand products that can address a consumer's needs over time. Products that offer life, disability, critical illness, supplemental, and other benefits could be allowed in various combinations with or for conversion to LTCI, such as after the policyholder reaches a certain age. Legislative changes specifically allowing this type of product would be required for pertinent federal tax and NAIC governing documents.

- **Option 6: Support innovation by improving alignment between federal law and NAIC models (HIPAA and DRA).** HIPAA and the DRA require that LTC policies comply with specific provisions of outdated versions of the NAIC model act and regulation. The NAIC regularly updates its models, and this may result in confusion as the NAIC models evolve while federal law continues to reference old models. Therefore, it may make sense for federal law to reference and require compliance with pertinent provisions of the "current" version of the NAIC model for newly issued contracts (with appropriate transition rules to address model amendments) rather than require compliance with specific provisions of a specific version of the model. This would allow federal law to evolve as the NAIC, a collaborative body with active involvement of consumer and industry representatives, updates the models as needed. This would increase the flexibility of federal law to adapt to the evolving LTC market and regulatory requirements, and reduce confusion and possible inconsistencies between state and federal law.

- **Option 7: Create a more appropriate regulatory environment for Group LTCI and worksite coverage (HIPAA and DRA).** Ideas for consideration could include addressing concerns that may prevent an employer from providing LTCI on an opt-out basis by a) providing a safe harbor to limit the employer's fiduciary liability and b) allowing an employer to offer expanded "catch-up" contributions; and/or permitting LTCI to be available for purchase through cafeteria plans.

- **Option 8: Establish more generous federal tax incentives**. Ideas for consideration include allowing a full federal tax deduction for LTCI premiums (rather than for expenses over 7.5-10% of Adjusted Gross Income) each year an LTCI policy is in force and/or allowing purchases of LTCI under cafeteria plans and from FSAs (consideration may be given to whether tax incentives should be income-based or means tested to focus on lower and middle-income Americans who may not otherwise purchase a LTCI policy); and/or allowing shorter maximum benefit plans (<1 year) to be tax qualified to incent market expansion through lower-priced, shorter duration products.

- **Option 9: Explore adding a home care benefit to Medicare or Medicare Supplement and/or Medicare Advantage plans.** Medicare provides extensive acute care coverage but more limited post-acute coverage (home health and skilled nursing facility care). Medicare Advantage and Medigap plans fill the gaps in Medicare. But most LTC services are not covered by Medicare, leaving a considerable gap in coverage for post-acute care. The most comprehensive Medicare Advantage and Medigap plans do not cover LTC services, other than the daily Medicare co-payment for the 21st to 100th day of Medicare covered skilled care; they do not cover intermediate care, assisted living, Alzheimer's, custodial or adult day care. Medigap and Medicare Advantage plans only supplement Medicare covered nursing home care on a temporary basis, and help with hospice coverage. There has been discussion of adding either something akin to a long term care benefit or, less extensive, new home and community based benefits either to Medicare (which would affect supplemental carriers) or to Medicare Advantage and/or Medigap plans. If new benefits were provided in supplemental coverage it could make those products more expensive, though that increased cost might be offset by savings from delaying or preventing the use of more expensive institutional care. [Note: this would require federal changes to Medicare, changes to the NAIC models governing Medigap benefits, and adoption of revised NAIC models by states.]

- **Option 10: Federal education campaign around retirement security and the importance of planning for potential LTC needs.** The federal government could provide funding and partner with states to provide education to consumers about retirement security. Such a campaign would focus on encouraging people to think about their future retirement and long term care needs and provide education on the array of private products available to help finance these costs.

Adopted by Long-Term Care Innovation (B) Subgroup
July 19, 2017

Private Market Options for Financing Long-Term Care Services

The National Association of Insurance Commissioners (NAIC) is currently involved in an effort aimed at increasing the number of affordable asset protection product options available for Americans, potentially paving the way for the private market to play a more meaningful role in financing the long-term care needs of our society. Part of this effort involves identifying and addressing potential regulatory barriers to innovation in the private market, in order to spur innovative private market solutions to financing Americans' long term care needs. At the same time, it is important to recognize that a variety of options currently exist to help consumers finance their long term care needs.

This document is intended to provide regulators, policymakers, consumers, and other stakeholders an overview of the landscape of long term care financing mechanisms currently available in the private market. These options are in addition to traditional long term care insurance, in which the consumer pays a regular premium in return for coverage for long term care services, if needed. Additional options outlined below include various hybrid products that combine life insurance or annuities with coverage for long term care needs, and life settlements, which allow consumers to sell an existing life insurance policy in order to pay for long term care services.

The information that follows is offered as a high-level summary. As with any insurance/financial product, there is no single "best" product design. Before making any decisions, prospective insureds and their families should have a frank discussion about their plans and location for retirement, their potential family and community care options, and their need for long term care if the need arises. They should also have a frank discussion with a trusted advisor about their long term goals and financial resources, and at a minimum consider current and anticipated future financial resources, their health, and possible tax advantages or disadvantages or various options for financing future care.

Background - Traditional Long Term Care Insurance

By way of background, long-term care (LTC) insurance is an insurance coverage that consumers can access individually or through a group, such as employer.[1] This coverage typically requires regular premium payments in return for coverage for long term care services, if needed. LTC coverage is generally either offered on a reimbursement basis, reimbursing the insured for eligible services, or on an indemnity basis, paying the insured a set daily dollar amount once the insured qualifies for the benefit. Typically, a policy pays benefits when the insured is unable to perform two of the activities of daily living (ADLs): bathing, continence, dressing, eating, toileting, and transferring.

When buying a policy, consumers typically make several choices to customize the policy to meet their needs and budget. Those choices include: a maximum daily benefit (the maximum amount the policy will reimburse, or pay out directly if it's an indemnity policy, per day); the number of years of benefit that will be paid; the length of the elimination period, which is a period of time that the policy won't pay the cost of LTC services, and the consumer may owe the cost; and whether, and at what level, to buy inflation protection, which protects the policy's value from being eroded by inflation over time.

Traditional LTC insurance sales have fallen precipitously in recent years, from 754,000 individual policies in 2002 to 129,000 in 2014. Likewise the number of insurers offering the coverage has diminished from slightly over 100 in 2002 to about a dozen today, and premium rates for newly issued policies have risen as the

[1] The NAIC document "A Shopper's Guide to Long-Term Care Insurance" provides an excellent introduction to LTC insurance, and is available at: http://www.naic.org/documents/prod_serv_consumer_ltc_lp.pdf.

remaining writers have refined their pricing. These numbers reflect the fact that in many cases, insurers struggled to accurately price LTC insurance initially and made a number of assumptions that turned out to be inaccurate. The result has been significant losses for many companies selling this line of insurance and many LTC insurance consumers facing significant premium increases they did not anticipate. Ultimately, LTC insurance has proved to be a more expensive product as many insurers have refined their pricing. Hence, many consumers may be interested in exploring alternatives to traditional LTC insurance as they consider ways to finance their potential LTC needs.

Hybrid Life and Annuity Products

As mentioned previously, sales of traditional LTC insurance have fallen significantly in recent years. In contrast, sales of hybrid products that combine life insurance or annuities with long term care benefits have increased in recent years. Hybrid products can appeal to consumers who are reluctant to purchase traditional LTC insurance due to its history of rate increases and the absence of death or surrender benefits.

Although many forms of premium structures are available, the more popular hybrids are funded through a single premium, which eliminates the risk of future premium increases but requires considerable liquid assets to pay the premium. Hybrids give the consumer the option to receive benefit dollars for necessary LTC services and, to the extent not used for LTC benefits, as death benefits or withdrawal/surrender benefits. Life/annuity LTC hybrid products may be either reimbursement or indemnity products, and may be marketed as providing LTC benefits.

Consumers can also purchase life/annuity products with a “chronic illness” benefit feature, which provides acceleration of death benefits or other benefit enhancements. While these products may provide a consumer with important benefits, they do not provide bona fide LTC insurance benefits, cannot be marketed as providing LTC benefits, and should not be compared directly to LTC products. Differences between life/annuity LTC hybrid products and life/annuity products with a chronic illness benefit feature include benefit triggers, benefit design, and, potentially, tax treatment. LTC hybrid products generally provide coverage when an insured requires substantial assistance with at least two ADLs for at least 90 days; in contrast, a chronic illness benefit feature generally will require a physician to certify that the qualifying conditions are likely to persist for the remainder of the insured’s lifetime. LTC hybrid products typically provide a defined benefit, whereas the dollar amount of benefit offered through a chronic illness benefit feature may not be known in advance, as it may be calculated as a function of the death benefit (or other defined covered amount) at the time the chronic illness benefit is triggered. Lastly, products with a chronic illness benefit feature may not qualify fully for favorable tax treatment for which LTC hybrid products may qualify.

Single Premium Permanent Life Insurance Policies

The most common life insurance-LTC hybrid is a single premium permanent (whole or universal) life insurance policy sold with a long term care acceleration rider and a long term care extension rider. The acceleration rider will allow the policyowner to access the death benefit, typically in level monthly amounts over a 20 to 50 month period, in order to pay for qualified long term care services. The extension rider, which if added on the acceleration rider, will continue such payments for a set period of time after the acceleration rider has exhausted the death benefit. It is important that the life insurance policy be a permanent policy, that is, either a fully paid-up whole life policy or a universal life policy with a fully funded death benefit guarantee. This ensures that the policy will have value if LTC benefits are needed. Other types of life insurance policies, depending on variables such as the extent of future premium obligations or policy loan activity, may have little or no value when LTC benefits are needed. The life insurance-LTC hybrid products available today generally have more stringent underwriting requirements than annuity-LTC hybrids, and, as a result, may offer greater long-term care benefits per dollar of premium compared to annuity-LTC hybrids.

Adopted by Long-Term Care Innovation (B) Subgroup
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One currently available life insurance-LTC hybrid product is a single premium whole life policy with both acceleration and extension riders that can provide three possible benefits to the owner or beneficiary. First, the policy can provide long term care benefits where the first two years of claim are covered by the acceleration rider and up to four more years are covered by the extension rider. Second, the policy can provide a death benefit if such benefit has not been fully accelerated. Finally, if LTC benefit payments or other partial withdrawals have not occurred, and presumably in the event of some pressing financial need, the policyowner can surrender the policy and receive a return of premium. The above sample policy returns 90% of the single premium in the first two policy years and 100% of the premium thereafter. Exercising the return of premium option would eliminate the coverage provided by the policy, but provides consumers with future financial flexibility.

Annuity-LTC Hybrids

The most common annuity-LTC hybrid is a single premium deferred annuity that allows penalty-free withdrawals from the account value (i.e., the accumulation of premiums plus interest, net of expense charges and cash withdrawals) for qualified long term care services. Similar to life insurance hybrids, claim payments continue after the exhaustion of the account value if the consumer has purchased an extension rider. This type of product generally has less stringent underwriting requirements than the life insurance-LTC hybrid and, as a result, may not offer quite as much LTC value per dollar of premium compared to life-LTC hybrids.

There are also some annuity products with a chronic illness feature that can be viewed as analogous to life insurance policies with an acceleration of benefits feature triggered by chronic illness. These annuity products offer withdrawal benefits (i.e. cash payments to the owner that reduce the account value), that, in the event of chronic illness, are somewhat higher than those payments supported solely by the account value. As in the case of a life insurance policy with an acceleration feature triggered by chronic illness, these products should not be compared directly to bona fide annuity-LTC hybrids. The annuity products with a chronic illness feature generally have the least stringent underwriting requirements and may incorporate a short waiting period.

One currently available annuity-LTC hybrid is a single-premium deferred annuity with long term care benefits. The single premium is credited with interest in a fund until the account value is annuitized (i.e. converted to a lifetime payment stream). If the policyowner dies prior to annuitization, the account value is paid to the beneficiary as a death benefit. If the policyowner needs long term care services prior to annuitization, then the account value covers LTC services for the first two years of claim. After the annuity's account value is exhausted, LTC expenses can be covered by an extension rider for 4 years. At any time prior to annuitization, the policyowner may take withdrawals (subject to withdrawal charges and penalties) or surrender the annuity and receive any remaining fund value net of surrender charges.

Impaired-risk Payout Annuities

Impaired-risk (substandard, as determined by medical underwriting) single-premium immediate annuities (SPIAs) have long been available, primarily for the retirement income market. The impaired-risk product could be of particular interest to an individual who retired early owing to disability, where higher periodic income payments can be anticipated in comparison to a standard-risk SPIA. However, the larger market segment appears to be directed toward achieving tax-efficient wealth transfer goals.

An increasing number of life insurance companies are developing products intended for individuals who are already receiving, or will soon be receiving, long-term care services and who have the financial resources to pay a large single premium but need to guard against the risk of needing care longer than their personal finances can support. Individuals do have to go through underwriting – so the insurance company can assess the person's anticipated longevity. In this circumstance considerable medical documentation is usually readily available regarding the insured person's health, so companies can evaluate the degree of elevated mortality and establish higher payout rates with minimal inconvenience to the individual receiving care.

As such products are currently structured, the annuitant may, but does not have to, apply any portion of the benefit payments to fund long-term care. The benefit payments may be higher or lower than the cost of care, and such payments continue for life regardless of any change in health status. Some products have an optional, and very limited, return of premium feature upon early death which differs from the traditional option found in a standard payout annuity. In the case of a standard SPIA, any return of premium benefit would diminish gradually and over a longer period of time.

It must be kept in mind that even if the payout rate is 50% higher than a standard annuity, based on the insurer's determination of reduced longevity, the required single premium is still only within reach for those who already have substantial ability to self-fund. As a result, the market is primarily those wishing to manage family assets efficiently and to preserve a much more predictable portion of an estate. This may suggest that only a modest redeployment of private assets to fund long-term care can be anticipated with increased availability of impaired-risk payout annuities.

Life Settlements

Life Settlements – the sale of an in-force life insurance policy for a market-based settlement value in excess of the cash surrender value (i.e., the account value less any surrender charge) – is one option seniors might use to generate resources to pay for their long-term care needs. Some elder care providers and professional advisors recommend that their clients consider using life settlement proceeds to fund an account with a bank and trust company to make monthly payments directly to a designated long-term care provider. Upon death, in addition to a modest reserve to defray final expenses, any remaining balance in the account is paid to a designated beneficiary.

Policyowners who sell their policies receive a lump sum payment that is generally four or more times greater than if they lapsed or surrendered their policy, according to government[2] and university[3] studies. In particular, where there has been deterioration in the insured's health since the life insurance policy's issue date, the owner can sell the policy for an amount substantially greater than the cash surrender value. Additionally, consumers with policies that have a minimal to zero cash value and low to moderate required premiums may be able to sell their policies for a settlement value that substantially exceeds the cash surrender value of the policy. In some cases the owner may be able to sell a portion of the policy, thus retaining a portion of the original death benefit for their beneficiaries, while reducing or eliminating future premiums. In the past, it was more difficult for sellers to find a buyer for smaller-face life insurance policies (as low as $100,000), but over the past few years the market has increasingly been purchasing these policies. The payment upon settlement can vary among life settlement companies, so policyowners should shop around to find the highest available offer net of transaction expenses.

Buyers of policies (known as life settlement providers) and brokers are generally required to be licensed in the state where the seller resides. Life settlement companies are generally required to provide sellers with consumer disclosures that include: alternatives to entering into a life settlement, financial risks associated with entering into a life settlement (tax consequences, loss of government benefits, claims of creditors), financial

[2] *Life Insurance Settlements: Regulatory Inconsistencies May Pose a Number of Challenges*, United States Government Accountability Office (2010) Appendix III
[3] *Empirical Investigation of Life Settlements: The Secondary Market for Life Insurance Policies*, Afonso V. Januario, Narayan Y. Naik, London Business School (2013)

information about the specific settlement transaction, privacy protections and a notice that sellers should consult with appropriate tax and financial advisors. Policyowners in immediate need of long-term care can sell their policies and receive the proceeds of the sale free from federal tax (Internal Revenue Code §101(g)). To find out more information on how life settlements and life settlement providers and brokers are regulated in a specific state, consumers can contact their state Department of Insurance.

Over the past few years, there has been some movement toward the standardization of disclosure requirements around life settlements. For example, the National Conference of Insurance Legislators adopted a model law and a number of states have adopted laws or rules to improve disclosure to seniors regarding alternatives to the lapse or surrender of a policy. In addition, a handful of states have considered or adopted laws that would require the state Medicaid agency to advise seniors to consider selling their policies as a means to fund their long-term care needs, reducing the financial burdens on the senior, their families and the state treasury.[4]

[4] GWG Presentation to NAIC Long-Term Care Innovation (B) Subgroup, (August 25, 2016) Slides 14-19; see also Your Texas Benefits: Medicaid and Life Settlements; and Florida Agency for Health Care Administration Accelerated Life Benefits Technical Advisory Workgroup Final Recommendations Report with Proposed Legislation (January 15, 2013)