

DATE: December 1, 2015
TO: IIPRC Product Standards Committee (PSC)
FROM: Industry Advisory Committee
SUBJECT: IIPRC Individual LTC Standards
5 Year Review Comments

Re: Policy Standards

We have attached a red-lined copy of the proposed standards. The page references refer to this attachment.

Scope, Page 1

We suggest adding a new paragraph following the first paragraph:

“With regard to accelerated death benefits that are advertised, marketed, offered or designed as providing coverage for long-term care services, these standards shall apply, as stated above, but in addition, these benefits are also subject to the Interstate Insurance Product Regulation Commission’s standards for accelerated death benefits, as applicable.”

We believe this clarification would be helpful to the filers and IIPRC staff.

We note that in the IIPRC Accelerated Death Benefit standards it is stated in the Scope section that:

“Products subject to these standards shall not be described as long-term care insurance or as providing long-term care benefits. ***If the payment of accelerated death benefit is contingent upon receipt of long-term care services or supports, these standards shall not apply and such benefit will be subject to the Interstate Insurance Product Regulation Commission standards for individual long-term care insurance.***” [Emphasis Added]

As we understand it, a combination product using an accelerated death benefit to fund LTC would have to comply with both standards, ***as applicable***. While not all accelerated death benefit requirements would apply and not all LTC requirements may apply (such as up until now rate filings were exempt), the filer and the IIPRC would look to both sets of standards for guidance.

If this is the case, we may need to change the accelerated death benefit Scope to clarify that both sets of standards come into play.

Drafting Notes, Page 3, “With regard to life insurance”

To reflect the changes made to the IIPRC Accelerated Death Benefit standards in 2013, we suggest updating the language to say:

With regard to life insurance, this term shall not include life insurance policies that accelerate the death benefit specifically for one or more of the qualifying events of terminal illness; medical conditions requiring extraordinary medical intervention; ~~or permanent institutional confinement;~~ chronic illness defined as permanent inability to perform a specified number of activities of daily living, or permanent severe cognitive impairment and similar forms of dementia; chronic illness as prescribed in the requirements of IRC Section 7702B and IRC Section 101(g); and that provide the option of a lump-sum payment for those benefits and where neither the benefits nor the eligibility for the benefits is conditioned upon the receipt of long-term care.

Drafting Notes, Page 3, “With regard to annuities”

To reflect the proposed changes for the IIPRC Additional Standards for Guaranteed Living Benefits for Individual Deferred Variable Annuities, we suggest updating the language to say:

With regard to annuities, this term shall not include annuity contracts that include: (a) a waiver of surrender charges for an annuitant who needs long-term care services, provided that the waiver is unrelated to the amount of charges incurred for the long-term care services, there is no separate premium for the waiver, and the annuity contract or waiver of surrender charges benefit is not advertised, marketed, offered or designed as coverage for long-term care services; and (b) a guaranteed living benefit (GLB) with a guaranteed withdrawal increase for specifically one or more qualifying events of medical condition that is reasonably expected to result in a drastically limited life span; receipt of care in a health care facility; inability to perform a specified number of activities of daily living; cognitive impairment; and where neither the benefits nor the eligibility for the benefits is conditioned upon the receipt of long-term care.

Section §3: R. LIMITATIONS AND EXCLUSIONS, Pages 20-21

The companies are respectfully requesting consideration of adding additional standards as shown below.

In today’s marketplace, there are various scenarios where a person may buy more than one LTC benefit:

- A person may buy one LTC policy providing a \$100 daily benefit, and a few years later buy another policy with a \$50 daily benefit.
- A person may buy a life insurance policy or an annuity with an LTC benefit with a \$100 daily benefit, and a few years later buy another LTC benefit for \$50 daily benefit.

- A person may buy an LTC policy and also buy a life insurance policy or an annuity with an LTC benefit; years later, that person may buy another LTC policy and/or another LTC benefit with his life insurance policy or annuity.
- A person's employer may offer worksite LTC coverage to employees, their spouses and family members. Those buying LTC coverage through the worksite may want to buy additional coverage at a later date for various reasons, such as the worksite coverage did not include inflation protection, or included a small daily room and board benefit.

Consumers who can't afford a \$150 daily benefit on the day they apply for LTC benefits are encouraged by the suitability standards to buy what they can afford. As their financial circumstances change where they can afford additional coverage, there are several options available for them to do this. If a person also owns a life insurance policy or an annuity, they may consider adding an LTC benefit to these, or if they already have an LTC benefit with the life policy or annuity, they may buy another LTC policy or another rider to supplement the coverage they already have. If a person does not have a life insurance policy or annuity and wishes to buy one, they may do so and include an LTC benefit or more. Alternatively, the person may just buy another LTC policy to supplement their daily room and board benefit provided under the original LTC policy that was bought.

Some type of a non-duplication of benefits provision is needed in order to:

- ensure that the benefits provided under all policies and/or riders covering the insured so not exceed the actual expenses incurred for eligible long-term care services;
- clarify how multiple policies and/or riders will pay benefits for expenses incurred on a pro-rata basis;
- maintain tax qualification of the benefits paid; to be qualified, the benefits paid under any policy or rider must never exceed the actual expenses incurred and in some cases be subject to per diem maximums;
- maintain Partnership status; if a policy or rider loses its tax qualification status, it will also lose its Partnership status, if applicable; and
- enable the companies to price accordingly for such a provision.

Aside from the tax qualification requirements, if a person who bought multiple policies/riders for the same incurred expenses were able to collect the full benefit amount under each policy/rider, a moral hazard results that cannot be adequately priced for.

We believe that consumers should be encouraged to plan and pre-fund for their future LTC needs and if the sale of multiple policies/riders accomplishes this, then this type of market should be available. The use of multiple policies and/or riders:

- allows consumers to gradually build up their LTC pre-funding;

- provides greater flexibility for designing the type of LTC coverage that a person may need during a specific period of their life;
- enables a person to better manage their premium costs (a person may elect to have inflation protection on some of his coverage but not all);
- reduces the incidence of replacement (a person can add coverage instead of replacing a previous coverage with a new purchase and thereby lose age); and
- provides a combination of benefit pools that may be conserved for use for later claims (not an annual “use it or lose it” risk as may be the case with other lines of coverage, such as health insurance).

The best way to manage multiple policies/riders that are bought by the same person is to include some type of a non-duplication of benefits provision.

We note that in the *NAIC Long-term Care Insurance Model Regulation #641, Section 6.B. Limitations and Exclusions on pages 6-7*, states that “a policy may not be delivered or issued for delivery ...if the policy limits or excludes coverage....., except as follows:

(6) expenses for services or items available or paid under another long-term care insurance or health insurance policy”.

We also note that this item was not included in §3.R. LIMITATIONS AND EXCLUSIONS on pages 20-21 of the IIPRC LTC standards.

We believe that the multiple LTC insurance policy/rider market requires including some type of a non-duplication of benefits limitation/exclusion as reflected in subsection (6) of the Model, and we therefore respectfully request consideration of including a new items (1)(f) on page 21, as follows:

“(f) expenses for services or items available or paid under another long-term care or health insurance policy. A policy form may include a non-duplication of benefits provision that states that the benefits provided for allowable expenses under all long-term care insurance policy forms covering the insured do not exceed the actual expenses incurred for the covered services or items. If included, the provision shall describe how the ratio will be calculated to determine the proportional benefits would be paid on a pro-rata basis under the policy form.

At the option of the company, the policy form may also state that the provision shall apply to policy forms in-force for any one insured and issued by the company.

As used in this item (f), “policy form” means a policy or rider, amendment or endorsement, or any combination of these, which provide long-term care insurance.”

Draft Comments:

If a company chooses not to include a non-duplication provision to adjust its policy/rider benefits to account for the existence of other long-term care insurance, then its policies/riders would be subject to paying its benefits in full, regardless of the other insurance. With regard to how companies determine if an insured has other long-term care insurance, this information may be included in the insured's application and claim forms.

With regard to proper disclosure of the non-duplication of benefits provision, we note that the following IIPRC standards already would require this if this provision is included in the standards based on subsection 6.B.(6) of the NAIC Model, Limitations and Exclusions :

***IIPRC-LTC-I-3-OC [Outline of Coverage Standards]
Appendix A: Standard Format for the Outline of Coverage
Section 10. LIMITATIONS AND EXCLUSIONS, Item (e)***

***IIPRC-LTC-I-3-ADV [Advertising Standards]
Section 2.E.***

[Current items (1) (f), (g) and (h) on page 21 will become items ((g), (h), and (i), respectively. All sub-items under R.(1) need a semi-colon at their end. Item (d) needs an "and" at the end of (iv) and a semi-colon at the end of (v). An "and" is also needed at the end of new item (h).]

Section §3: S. MISSTATEMENT OF AGE OR SEX, Page 21

To remedy those situations where coverage was wrongfully issued, we are suggesting that the following change be made to the standard:

S. MISSTATEMENT OF AGE OR SEX

- (1) The policy shall contain a misstatement of age provision or, if the policy is written on a sex distinct basis, a misstatement of age or sex provision, providing that the amount payable as a benefit shall be such as the premium paid would have purchased at the correct age or the correct age and sex.
- (2) The company may terminate coverage and refund premiums if the correct age, at the time of policy issue, is outside the issue age ranges of the policy,

Formatted: Font: Not Bold

The typical application requests the applicant's age and date of birth (this is reflected in the IIPRC standards for the LTC application, as well as life, annuity, DI application). To some, this is overkill, but companies have historically done this to ascertain that each answer confirms the other – some applicants when responding to "date of birth" mistakenly use the current year as their year of birth, so the age question serves as an underwriting tool to confirm the applicant's age. Since companies do not require a copy of the applicant's birth certificate to apply for coverage (this is true for all lines of business, the application items requesting age and date of birth are the only tools that can verify an applicant's age. Like all insurance application

processes, the company relies on the applicant to provide accurate information. But sometimes, for various reasons, wrong information is provided and the company relies on it in good faith.

Suppose a company has LTC rates filed up to age 79, beyond which the company has no intention of issuing LTC coverage. This could be for reasons that coverage issued at such ages would not provide a sufficient funding period, or that the higher the issue age the more likely it is that a person's health is failing and that he or she may be close to submitting a claim. For life insurance products, issue ages get into higher age brackets, such as 100 and perhaps beyond; a misstatement of age can be corrected by adjustment of premiums and coverage accordingly. For LTC products, the situation is different.

As an example, suppose, further suppose that two applicants both age 80 apply for coverage. One applicant will provide his correct age and will be declined since his age is outside the issue age 79 parameter for coverage. The other applicant will state that he is 77 and coverage may be issued. Unless companies have the right to fix this situation, telling the truth will penalize one applicant and not providing the correct age will reward another. There has to be an incentive to applicants to state their correct age.

In previous discussions of this issue, one state argued that the companies be required to extrapolate a premium for the 80 year old applicant who misstated his age. Are the companies then also required to go back to the 80 year old applicant who provided his correct age and also offer him coverage?

We believe that the proposed changes are fair and equitable and allow companies to stay within the parameters of their respective filed rates and underwriting intent.

Section §3: T. NONFORFEITURE BENEFITS, Item (4) Contingent Benefit On Lapse, Page 23

Section §3: BB. RIGHT TO REDUCE COVERAGE AND LOWER PREMIUMS

The suggested changes in the attached red-lined copy of the policy standards reflect the recent changes made to the NAIC Long-Term Care Insurance Model Regulation #641 ('the Model') and adopted by the NAIC in August 2014.

Re: Application Standards

Section §3: L. AGREEMENTS, Item (1)(v), Page 11

We suggest that "NAIC" be added to the beginning of the item for consistency with other IIPRC standards, such as Appendix B of the Standards for Forms Required To Be Used With The Application, page 14.

It is important to note that both HIPAA and the Deficit Reduction Act (DRA) point to the NAIC Model Regulation #641 APPENDIX C where “NAIC” is included when referring to the Shopper’s Guide, and the standards are supposed to reflect the Model.

Additionally, the APPENDIX B of the of the Standards for Forms Required To Be Used With The Application which refers to “NAIC” may be filed on a self-certification basis. When the LTC standards were first adopted, there was no discussion or contemplation of state variations for the Shopper’s Guide, and state variation requirements would put a wrinkle to the self-certification process for the Appendix, as well as opening up the other forms required to be used with the application to similar state variations, thus nullifying the self-certification process for these forms. We do not believe that this is what was contemplated and strongly urge the IIPRC not to go down this path.

We will be making the same “NAIC Shopper’s Guide” comments for the Outline of Coverage.

Re: Standards for Forms Required To Be Used With The Application

We have attached a red-lined copy of the proposed standards. The page references refer to this attachment.

Definition Section, “Similar policy forms”, Page 2

Since the LTC benefit may be included as a rider attached to a life insurance policy or annuity, and such riders are subject to the LTC standards, we suggest the following changes to the current definition:

“Similar policy forms” means all of the long-term care insurance policies and amendments, riders or endorsements ~~and certificates~~ issued by the company in the same long-term care benefit classification as the policy being considered. For purposes of determining similar policy forms, long-term care benefit classifications are defined as follows: institutional long-term care benefits only, non-institutional long-term care benefits only, or comprehensive long-term care benefits.”

We have deleted reference to “certificates” since these standards are for individual LTC.

We had planned to recommend language specifically exempting the “dollar for dollar” plans from having to comply with the Suitability and Potential Rate Increase requirements since these plans are currently exempt from a rate filing requirements under exceptions (1) and (2) on the first page of the Issue Age and Modified Rate Standards. This language is included in the attached marked-up copy of the ***Standards For Forms Required To Be Used With An Application***. However, Kentucky has submitted comments recommending a separate set of rate standards for these plans, so the recommended language can’t be finalized until we see what Kentucky recommends.

For Appendix A (Personal Worksheet) and Appendix C (Potential Rate Increase Disclosure) as used in the standards, we are recommending that the IIPRC substitute the Appendices B and F recently adopted by the Senior Issues Task Force.

Re: Outline of Coverage

We have attached a red-lined copy of the proposed standards. The page references refer to this attachment.

In Appendix A, there are numerous errors in the references to group master policy and certificate. While these show up as options, this is not done consistently – note that in Caution there is no mention that a certificate may be rescinded.

On page 1, we are suggesting adding a definition of “Policy” and “Rider” so that it is clear that the requirements apply to a standalone LTC policy as well as an LTC rider issued with a life policy or an annuity.

On page 4, for clarity we are suggesting introducing the generic term “form” so that the Appendix is clearly applicable to:

1. A standalone LTC policy.
2. An LTC rider issued with a life insurance policy.
3. An LTC rider issued with an annuity contract.
4. A group LTC policy.
5. A group LTC certificate.

APPENDIX A, Item 15, Page 9

Section 33 of the Model Regulation #641 did not include the reference to the Shopper’s Guide which is included in item 15. When the Shopper’s Guide reference was added to this Appendix, the correct reference should have stated “CONTACT THE STATE AGENCY LISTED IN *THE NAIC’S SHOPPER’S GUIDE TO LONG-TERM CARE INSURANCE*.”

As discussed earlier in these comments, the intent was to refer to the NAIC version of the Shopper’s Guide.

Rate Standards: Issue Age Rate Schedules and Modified Rate Schedules

We have attached a red-lined copy of the proposed standards.

The suggested changes on pages 5 of both sets of standards, pages 7, 13 and 14 of the Issue Age and pages 10, 16 and 17 of Modified reflect the recent changes made to the NAIC Long-Term Care Insurance Model Regulation #641 (“the Model”) and adopted by the NAIC in August 2014.

On pages 9 of the Issue Age and page 11 of the Modified standards, we have suggested language to allow companies to file rate schedule increases on a phased-in basis over a specified period of time, such as 5% for the next three years, as permitted by the NAIC Model Bulletin.

We note that Kentucky has recommended that a separate set of standards be developed for the “dollar for dollar” plans currently exempted from a rate filing requirement under items (1) and (2) on pages 1 of the Issue Age and Modified standards. We have been working with Kentucky on this issue but we were not able to finalize a draft by the 12/1 deadline, but we are continuing to work with Kentucky on the issue. We agreed to change the language on pages 1 of both sets of standards as shown.

Submitted by the Industry Advisory Committee:

Bill Anderson, NAIFA
Hugh Barrett, Mass Mutual Life
Jason Berkowitz, IRI
Tanya Gonzales, Great West Life
Angela Hanson, Northwestern Mutual
Amanda Matthiesen, AHIP
Joseph Muratore, New York Life