2013

The Interstate Insurance Product Regulation Compact and Consumer Protections Under Florida Law

A Report from the Florida Office of Insurance Regulation to the Florida Legislature and the Financial Services Commission Pursuant to Chapter 2013-140, Laws of Florida



FLORIDA OFFICE OF INSURANCE REGULATION

Kevin M. McCarty, Insurance Commissioner

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I. SUMMARY

In 2006, the Interstate Insurance Product Regulation Compact (Compact) became operational after 26 compacting states adopted legislation modeled by the National Association of Insurance Commissioners (NAIC). According to the Interstate Insurance Product Regulation Commission (Commission), the Compact is a "speed-to-market" modernization initiative.[1] It is designed to provide uniform state standards for annuity contracts, and life, disability income and long-term care insurance products, and operate as a single source for product filings and, in the case of disability income and long-term care insurance, rate filings. It conducts its affairs through a Commission with one representative from each Member State, a Management Committee, other standing and advisory committees and working groups, and a full-time staff.

During the 2013 Session, the Florida Legislature enacted House Bill 383 (Chapter 2013-140, Laws of Florida)–legislation adopting the Compact, effective July 1, 2014, subject to certain terms and conditions. These include the right of any person to access information consistent with Florida public records laws, regardless of the status of the records under the Compact; and a complete opt out of any uniform standards for long-term care insurance products and any standards—existing or future—that conflict with Florida consumer protections.

As a consequence of these provisions, Florida will enter the Compact operating under Florida public records laws and exempt from all existing uniform standards that conflict with Florida law or are otherwise excluded pursuant to the express conditions in the law, and with the authority (contrary to that permitted under the Compact) to impose additional requirements governing the content, approval and certification of products subject to the Compact. According to the Interstate Insurance Product Regulation Commission (Commission) Office, this may constitute a material variance and affect Florida's status as a compacting state: "(The Commission has) never been faced with a state that has enacted a version of the compact and materially altered its terms—which arguably HB 383 has done… . (W)e are not sure how HB (House Bill) 383 becomes operational on (J)uly 1, 2014."[2]

In the enabling legislation, the Legislature directed the Office of Insurance Regulation (Office) to examine the extent to which the uniform standards adopted by the Commission provide consumer protections equivalent to those under Florida law. As of December 31, 2013, the Commission had 93 uniform product standards, collectively containing hundreds, if not thousands, of individual provisions.

Because of this specific legislative directive and the large number of individual provisions within many of the Compact uniform standards, this report focuses on the differences between provisions in the Compact standards and those in Florida and the interpretation and application of Compact standards through Office review of a sampling of filings previously approved by the Commission. This report does not describe the many similarities between the two. The Office also reviewed related Compact policies governing access to public records.

The Office makes the following findings relative to Florida's entry into the Compact:

- A number of provisions in the Compact standards provide less consumer protection than under Florida standards.
- Florida may be subject to few of the uniform standards adopted by the Commission.
- Florida consumers seeking public records access to insurer filings under the Compact face additional burdens.
- Dual regulation may lead to consumer confusion.
- Compact products could be inadvertently marketed to Florida consumers by unauthorized insurers.
- Regulatory authority over the interpretation of product standards in Florida is delegated to the Compact Commission.
- Compact-approved product filings may not have been approved in Florida.
- Regulation under the Compact is extensive and pervasive.
- Management of Compact standards by the Florida Legislature could become cumbersome.

In conclusion, although the Compact uniform standards include many provisions that are equivalent to Florida law, and in other cases, exceed it, this report also shows that a number of consumer protections specific to Florida law will be compromised or abrogated if Florida enters the Compact without maintaining the various opt outs included within Florida's enabling legislation. However, retaining the current opt outs upon entry may constitute a material variance rendering Florida's acceptance of the Compact insufficient to qualify as a compacting state.

Further, while the public records provisions included by the Legislature preserve the right of Florida consumers to access information consistent with Florida law, Floridians exercising that right of access will face additional burdens that they are unaccustomed to in accessing insurer filings.

This report provides policymakers with additional information for consideration relative to Florida's participation in the Compact and is being submitted to the President of the Senate, Speaker of the House of Representatives and the members of the Financial Services Commission as required in the enabling legislation.

II. SCOPE OF REPORT

During the 2013 Session, the Florida Legislature enacted HB 383, a bill adopting the Compact effective July 1, 2014, subject to certain terms and conditions. Governor Scott signed the legislation into law on June 7, 2013. While the Legislature found that the Compact provides a "high level of consumer protection," it directed the Office to examine the extent to which Compact consumer protections for annuity, life, disability income, and long-term care insurance products are equivalent to those in Florida.[3]

Because of this specific legislative directive and the large number of individual provisions within many of the Compact uniform standards, this report focuses on the many differences between Compact standards and those in Florida, and the interpretation and application of provisions in Compact

standards through Office review of a sampling of actual filings approved by the Commission. This report does not discuss the majority of provisions the Office found to offer equivalent consumer protections.

In addition to the comparison of product standards, this report examines related Compact policies with implications for Florida consumers, including those governing public access to records such as product filings.

III. METHODOLOGY

The Office reviewed the Florida Insurance Code and insurance-related administrative rules to identify standards for products within the scope of the Compact. The Office then examined the provisions in the Compact uniform product standards for similarities and differences with Florida standards. This analysis did not include Compact standards for individual endowment policies, which Florida does not regulate, and group products, since all but one of these took effect after the beginning of the 2013 Session and the Commission has not yet promulgated a complete set of standards for group products. The Office then compared the two sets of standards and evaluated them as offering more, less or equivalent protection for Florida insurance consumers.

While Florida has product-specific requirements for deferred variable and non-variable annuities; and term, whole and universal life insurance products; unlike under the Compact, Florida generally does not have a separate set of provisions specific to the various iterations of core product types such as variable life insurance or current assumption whole life. These product variations generally are evaluated under the same standards as those applicable to the core products. Similarly, Florida has not adopted standards specific to business overhead expense coverage. The Office evaluates business overhead expense policy provisions using the standards for disability income insurance, and requires benefits to be triggered as a result of the disability of key individuals and be related to business expenses.

Because the interpretation of provisions within a standard can be as important as the content of the provision or standard, the Office also reviewed six random filings previously approved by the Commission to assess compliance with Florida standards.

Finally, the Office examined related Compact policies governing public access to records with implications for Florida consumers.

The Office met with the Commission Office on several occasions in the course of preparing this report.

IV. BACKGROUND

A. The Interstate Insurance Product Regulation Compact

1. Compact Purpose

According to the Commission—the "multi-state public entity" established to administer the Compact—the Compact is a "state-based regulatory modernization initiative" designed to "provide speed-to-market for the insurance industry, thus affording consumers quicker access to more competitive insurance products."[4]

The NAIC adopted the Interstate Insurance Product Regulation Compact Model Act in July 2003. The Compact is designed to provide collective state regulation of annuity, life, disability income and long-term care insurance products through a "uniform set of product standards and a single source for filing new products."[5] The Commission is charged with adopting uniform standards for products within the scope of the Compact, reviewing and approving product form filings and, for disability income and long-term care insurance products, rate filings.[6]

2. Compact Members, Governance and Administration

The Commission became operational in 2006, after the requisite 26 states had adopted the Compact legislation and the premium thresholds were achieved.[7] Not including Florida, 42 states, plus Puerto Rico, have adopted the Compact and, as of December 31, 2013, are members of the Commission. These Member States account for approximately 70% of product premium volume nationwide.[8] New York, California, and Arizona are among the eight states that have not adopted the Compact.[9] Florida has adopted the Compact with an effective date of July 1, 2014, and, therefore, is not yet a Member State.

The Commission is composed of the insurance regulator or designee from each Member State. The Florida Legislature has designated the Insurance Commissioner as Florida's representative on the Commission.[10]

The Commission "serves as an instrumentality of the Member States."[11] In effect, Member States delegate responsibilities to the Commission, which in turn, functions as an agent by acting on behalf of the Member States.

The Management Committee, composed of up to 14 members, is responsible for managing Commission affairs and overseeing the Commission offices.[12] In addition to providing administrative oversight, the committee establishes the organizational structure and procedures for the adoption of uniform standards and the review of state opt out decisions.[13] Upon becoming a Member State, Florida is expected to qualify for a seat on the Management Committee.

In addition, the Compact establishes a Legislative Committee composed of state legislators or their designees and two advisory committees, one comprised of independent consumer representatives

and the other consisting of insurance industry representatives.[14] Committees established by the Commission include the Product Standards Committee. According to the Commission Office, the Product Standards Committee is responsible for drafting, reviewing and recommending uniform standards to the Management Committee.[15]

For Fiscal Year 2014, the Commission projects operating expenses of $1.715 million and operating revenues of $1.540 million, and a staff of 11, including actuaries and product form and rate reviewers. According to the Commission Office, the NAIC covers any deficiency through a line of credit. Since 2006, the Commission has borrowed $3 million to cover operating deficits.[16] However, the Office indicates it is becoming "more self-sufficient each year" and, in 2013, did not access the line of credit.[17]

3. Adoption of Uniform Product Standards and Review of Product Filings

a. Uniform Standards

A key responsibility undertaken by the Commission on behalf of Member States is the development and adoption of uniform standards for products included within the Compact. The Compact defines a "uniform standard" as "a standard adopted by the (Interstate Insurance Product Regulation) Commission as of March 1, 2013, including any subsequent amendments, for a product line, and includes "all of the product requirements in (the) aggregate."[18] A "product" is defined as "the form of a policy or contract, including any application, endorsement, or related form which is attached to and made a part of the policy or contract, and any evidence of coverage or certificate for (a product)… an insurer is authorized to issue."[19]

Uniform product standards adopted by the Commission must be "reasonable."[20] Under the Compact, uniform standards have the status of rules and the force and effect of law in the compacting states.[21] Rules must be made in accordance with a process that conforms to the Model State Administrative Process Act of 1981, as amended, "as appropriate to the operations of the Commission."[22]

From 2007 through December 31, 2013, the Commission adopted 93 uniform standards, many of which include hundreds of separate requirements. (For a complete list of adopted standards, see Appendix A of this report.) Through 2012, the Commission focused principally on developing new standards for individual market products. More recently, the Commission has focused attention on group products, with nine new product standards taking effect in 2013, and many more expected over the next few years.

In addition, the Commission formally reviews uniform standards for any needed revisions based on a five year cycle. All proposed and adopted product standards are posted on the Commission website.[23]

The Management Committee must approve a uniform standard by a two-thirds vote prior to submitting it to the compacting states for consideration.[24] Before a new standard or an amendment

to an existing standard takes effect, the Commission must consult with and report to the Legislative Committee,[25]and approve it by a two-thirds vote of the members.[26] The Commission must notify the relevant state legislative committees in each Member State of its intention to adopt a uniform standard before it acts, and must consider all materials submitted in connection with the particular standard.

Once approved, uniform standards take effect either 90 days after adoption or at a later date specified by the Commission.

b. Product Filings

Commission review and approval of product form and rate filings is a second key function performed on behalf of the Member States. This review is completed through the Commission Office. "Product filings" refer to a "product, rate or advertisement submitted to the Commission for review."[27] Products approved by the Commission are referred to as Compact-approved products.

The Commission also reviews and approves rate filings for disability income and long-term care insurance products filed with the Commission. Insurers may not submit a disability income insurance or long-term care insurance product without also filing a rate schedule.[28] The Commission has established operational policies governing the filing process.[29]

Company filings are made through the System for Electronic Rate and Form Filing, or "SERFF." The SERFF [30] is used by all states except Florida. Florida uses the I-File Forms and Rates Filing Search system developed prior to the SERFF system, primarily because of this state's unique public records requirements.

I-File provides a three-dimensional system with capabilities not available in SERFF. As presently configured, the SERFF system used by the Commission prevents public records access to filings until approved by the Commission. This lack of public records access to filings until approved is reinforced in Commission policies governing public records access which provide that "public records" do not include "(p)roduct filings that are pending approval, have been disapproved, or are withdrawn.[31]

When filing a product, a company must identify the applicable uniform standards and pay SERFF transaction fees, Commission fees and any fees charged by each compacting state in which the company intends to market the product. The filing may include one or more products the insurer intends to use in combination.

The Commission must approve or disapprove a filing within 60 days of submission, except when the Commission formally objects to some aspect of the filing or extends the review period by up to 30 days, or the Management Committee finds that current workload prevents the Commission from completing the review within the prescribed timeframe.[32] By comparison, under Florida law, insurers must file life and health forms at least 30 days prior to use or delivery in this state.[33] Forms are deemed approved unless within 30 days from the date filed, the Office has affirmatively approved or disapproved the filing.

The Office may extend the review period by up to 15 days by notifying the insurer prior to the expiration of the initial 30-day period. In the event the Office approves the filing in fewer than 30 days, the remainder of the 30 day waiting period is waived. Rate filings for disability income insurance and long-term care insurance policies are subject to these same timeframes.[34]

If the Commission finds that the submission meets the uniform standard and filing requirements, the Commission must approve the filing. A product filing will be deemed to meet the requirements of a uniform standard "if (it) determines that the Product Filing contains provisions that in all respects are at least as favorable to the insured or annuitant as the requirements of the Uniform Standard."[35]

From June 2007 through November 30, 2013, the Commission approved 2,524 products and reviewed 9,950 forms, resulting in over 74,000 SERFF transactions. [36] The number of registered companies increased from 38 in 2008, to 180 in 2013. The average number of forms per filing is four. For 2013 through November 30, the Commission received 722 filings and approved 709 products. Life products accounted for 65% of all filings received, with 39% of these being whole life products. Annuity products accounted for 28% of all filing received, with the share for long-term care and disability income at 6% and 1%, respectively.

The average approval time for filings in 2013 has been 30 business days, not including company response time to objection letters, up from an average of 23 days in 2012.[37]

4. State Opt out of Uniform Standards

After becoming a Member State, a state may opt out of any uniform standard if finds objectionable by legislation or regulation. State opt out elections are reviewed by the Management Committee.

The Commission has adopted operating procedures implementing the Compact opt out process.[38] There is a distinct process for states electing to opt out of specific uniform standards by regulation. There does not appear to be a separate process for opting out by legislation, other than to recognize that a state may opt out by legislation. [39] A legislative opt out is unfettered and may occur at any time. This is a distinct sovereign right of a state.

When electing to opt out by regulation adopted pursuant to the state's Administrative Procedure Act, a state must notify the Commission within 10 days of Commission adoption of the uniform standard, and find that the uniform standard does not provide "reasonable protections to the citizens of the state, "given the conditions in the state."[40] As applied to Florida, the Compact would require the Financial Services Commission to make specific findings of fact, detailing the conditions justifying a departure and determining that the uniform standard would not reasonably protect the citizens of the state.[41]

Should a state seek to opt out of an existing uniform standard, the standard will remain in effect until either the Legislature enacts opt out legislation or the opt out regulation takes effect. The state

may also petition the Commission to stay the effect of the standard in that state for up to one year absent extraordinary circumstances while a regulatory opt out is pending.[42]

It is unclear whether or not the provisions for a stay apply to a legislative opt out. However, in the case of Commission adoption of a new standard, Florida's enabling legislation requires the Legislature to approve the standard in order for it to have the force and effect of law in Florida.

The Compact grants states a blanket authorization to prospectively opt out of all standards for long-term care insurance products at the time they enact the Compact, as Florida has done, without it constituting a "material variance" from the terms of the Compact.[43] This suggests that the Commission could treat similar opt outs for other product types, such as those included in Florida's enabling legislation, as a material variance or non-acceptance of the Compact. Noncompliance that triggers a default can result in a suspension of all rights, privileges and benefits under the Compact.[44]

5. The Effect of Adopted Uniform Standards and Approved Product Filings

Uniform standards adopted by the Commission are designed to pre-empt state product standards for annuities, and life, disability income and long-term care insurance products marketed through the Compact. They are intended to be the exclusive set of standards for a Compact-approved product: "the uniform standards, rules, and any other requirements of the Commission constitute the exclusive provisions applicable to the content, approval and certification of approved products."[45] However, the Commission may not abrogate or restrict any state laws relating to the construction of insurance contracts, remedies available under state law for breach of contract, tort, or other laws not specifically directed to the content of the product. [46] Despite this limitation, the distinction between what is or is not considered a product content requirement is not always evident.

With regard to product filings, the Commission is not intended to be the "exclusive entity for receipt and review of insurance product filings."[47] Product filings may be made through the Commission and be approved and marketed as a Compact-approved product, and also through an individual state and approved as a stand-alone product, subject to the content and other applicable requirements of that state. The Compact does not preclude the sale of state-approved stand alone products in Member States.

B. Florida's Entry into the Compact

Under the enabling legislation, Florida is scheduled to become a member of the Compact effective July 1, 2014, "pursuant to the terms and conditions of the act."[48] The Legislature imposed terms and conditions in the legislation, including the right of any person to access information consistent with Florida public records laws, regardless of the status of the records under the Compact; and the opt out of certain uniform standards, including a wholesale opt out of any standards pertaining to long-term care products.

Under the enabling legislation, the Legislature provided that:

- Nothing in the Compact shall compromise a request by a resident of this state for public inspection and copying of information, data, or official records consistent with the Constitution and laws of Florida.[49]

- All requests by a resident of this state for public inspection and copying of information, data, or official records from the Commission, wherever received, by and in the possession of the Office, the Insurance Commissioner, or the Commissioner's designee, are subject to the Florida public records law, Chapter 119, F.S., notwithstanding the requirement in the Compact that confidential information of the Commission must remain confidential even after provided to any commissioner.[50]

- The Insurance Commissioner, with the assistance of the Commission, must respond to public records requests by Florida residents that include a trade secret consistent with Section 624.4213, Florida Statutes, or matters of privacy of individuals.[51]

Concerning the application of uniform standards, Florida:

- Prospectively opted out of all uniform standards involving long-term care insurance products.

- Prospectively opted out of any new uniform standard, or amendments to existing standards (if the amendments substantially alter or add to existing standards) until Florida enacts legislation to adopt the new or amended standards.[52]

- Opted out of any existing uniform standard that conflicts with Florida Statutes or rules providing consumer protections for products covered under the Compact.[53]

- Opted out of any existing uniform standard limiting the unconditional refund of premiums and fees to 10 days, and imposing underwriting criteria limiting the amount, extent or kind of life insurance based on future travel. [54]

- Rejected the exclusivity provision under the Compact which makes the uniform standards the only provisions applicable to the content, approval, and certification of the products subject to the Compact. This includes such state standards as notification of secondary addressees, limits on deferred sales charges, interest on surrender proceeds, and that benefits, values and premiums under a variable annuity are indeterminate. [55]

As a consequence of these provisions, Florida will enter the Compact operating under Florida public records laws and will be exempt from all existing uniform standards that conflict with Florida law or are otherwise excluded pursuant to the express conditions in the law, and with the authority (contrary to that permitted under the Compact) to impose additional standards governing the content, approval and certification of products subject to the Compact. According to the Commission Office, this could constitute a "material variance" under the Compact and affect Florida's status as a compacting state.[56]

> "(These provisions) would likely have the affect of materially altering several provisions of the Compact including, among others, Article XVI(2)(b) that "[f]or any Product approved or certified to the Commission, the Rules, Uniform Standards and any other requirements of the Commission (s)hall constitute the exclusive provisions applicable to the content, approval and certification of such products and Article X(3) that "[a]ny Product approved by the Commission may be sold or otherwise issued in those Compacting States for which the Insurer is legally authorized to do business." Changes that affect or change the agreement of the parties under the Compact would be ones that would need to be presented to the other Compacting States for consideration and acceptance. Because there is no mechanism in this Compact statute for handling unilateral and material changes to the terms of the Compact, it may be possible that such consent would need to be provided by each Compacting State's legislature."[57]

The Commission Office has also indicated that this situation may require a formal legal opinion if additional changes are not enacted during the 2014 Session. It states:

> "(The Commission has) never been faced with a state that has enacted a version of the compact and materially altered its terms - which arguably HB 383 has done… . (W)e are not sure how HB 383 becomes operational on (J)uly 1, 2014 and would look for (F)lorida's input as to how companies can file and use products approved under the uniform standards in (F)lorida when, based on the changes in HB 383, certain state-specific content requirements are still applicable. (W)hile (we) hope this does not happen, the (C)ommission or (F)lorida may have to seek a formal legal opinion on the status of membership if HB 383 takes effect with no further changes this (S)ession."[58]

From an operational perspective, Florida filings may only include forms for a single company,[59] whereas Compact filings may include multiple companies in a single filing. In addition, in Florida, amended filings must include the previous filing number in the transmittal letter for efficient tracking and review of subsequent filings by the Office and responding to consumer inquiries. Unlike Florida, the Compact does, however, require insurers to highlight changes to previously approved forms for all product types.

V. FINDINGS

A. A Number of Provisions in the Compact Standards Provide Less Consumer Protection than Under Florida Standards

While the Legislature directed the Office to examine the extent to which the Compact uniform standards provide consumer protections equivalent to those under Florida law, it did not prescribe specific guidelines for the Office to use in making this determination. Therefore, for guidance, the Office drew upon a combination of statements and principles including those embodied in rights expressed in the Florida Policyholders' Bill of Rights,[60] the Florida Unfair Insurance Trade Practices Act,[61] and the Florida Insurance Code.[62] Principles include promoting the fair treatment of Florida consumers through:

- Fair, accurate and truthful product information that enables consumers to determine the best value among comparable policies.
- Accurate and balanced information on the benefits and limitations of a policy.
- A readable insurance policy.
- Comprehensive coverage.
- Coverage from a financially stable insurance company.
- Clear and unambiguous policy terms, conditions and contingencies.
- Meaningful disclosures.
- Limits on unilateral changes.
- Fair settlement practices.
- Balanced and positive regulation with effective remedies and recourse.

Overall, the Office found that the majority of provisions in the Compact standards and in Florida are essentially equivalent, with the degree of equivalency varying across product lines. In other instances, the Compact standards include provisions that exceed Florida requirements. However, in many others, Compact standards include provisions providing less consumer protection than under Florida law.

1. Annuities and Life Insurance Products

The following are just some examples of where Florida provides greater consumer protections than under the Compact standards:

- **Annuity Cover Page Disclosures.** Florida law requires companies to include a specific set of disclosure statements in bold type on the annuity contract cover page, as applicable, that the Compact standards do not require. The statement makes four disclosures: one, that the purchase of an annuity contract is a long-term commitment and may restrict access to the purchaser's money; two, that it is important for the purchaser to understand how the bonus feature of their contract works and to refer to the contract for further details; three, that the interest rate applied to the contract may change periodically and may increase or decrease, subject to certain interest rate guarantees described in the contract; and four, that the company must provide the purchaser with a prospectus and contract summary, and/or buyer's guide.[63] Of these, the Compact standards require the existence of a bonus feature be disclosed on the cover page and, in the case of variable annuities, that contract values and benefits based on separate account assets are not guaranteed and will decrease or increase with investment experience. Bonus features may be in the form of a premium or interest bonus.[64]

- **Deferred Sales (Surrender) Charges.** Florida law limits deferred sales or surrender charges for all annuities to 10% of the amount withdrawn when a person age 65 years or older withdraws funds from an annuity.[65] The charge must be reduced over time and may not be applied at the end of the tenth policy year or 10 years after the premium is paid whichever is later. The Compact standards impose an equivalent limit only for nonvariable annuities, with surrender charges graded down to zero by the time the policyholder turns 70 or the 10th contract year, whichever is later. Under the enabling legislation, Florida's policy will continue to apply.

- **"Free Look"/Unconditional Refund.** Both Florida and the Compact require insurers to provide policyholders with a Right-to-Examine period, within which time, a purchaser may review the annuity contract or life insurance policy and return it for an unconditional refund. For policies or contracts that are not being used to replace an existing policy or contract, Florida requires an unconditional refund period of 14 days for life insurance policies and 21 days for annuities. The Compact standards require only a 10 day period for non-replacement policies.[66] Under the enabling legislation, Florida's policy will continue to apply.

- **Interest on Cash Surrender Value**. Florida requires insurers to pay interest if payment of the cash surrender value is delayed by more than 30 days.[67] The Compact standards do not have a provision specific to this requirement.

- **Secondary Notice of Lapse.** In Florida, insurers must, at application and while the policy is in force, notify applicants of their right to designate a secondary addressee to receive notice of policy lapse and then notify both the policyholder and the designated secondary addressee prior to being lapsed for nonpayment of premium.[68] This applies to policies in which premiums are paid less frequently than monthly. Under the enabling legislation, Florida's policy will continue to apply.

- **Suitability Determinations.** [69] Florida requires selling agents to provide prospective annuity purchasers with a completed Office-approved suitability form no later than the date of delivery of the contract. Compliance with this requirement should be indicated in the

transmittal document. These forms are intended to protect consumers against unsuitable annuity sales in the Florida marketplace. The Compact standards make no provision for reviewing and approving these forms. Although the Commission Office does not consider these forms to be product content requirements, forms with a similar purpose are included in the Commission's long-term care insurance standards. It is unclear how this requirement will be addressed under the Compact. (This example illustrates the need for the Commission to further define and provide additional guidance for determining what is and what is not a product content requirement under the Compact.

In a number of instances, provisions in the Compact standards exceed those of Florida and provide greater consumer protections. Among these are the following:

- **Interest on Payment of Death Benefits**. Under the Compact standards, interest on death benefits is payable from the date of death, not the date the insurer receives notice of death, as in Florida.

- **Nonforfeiture Benefit.** In Florida, policyholders must pay premiums for one year before a default in premium payments requires an insurer to provide a paid up nonforfeiture benefit on a plan stipulated in the policy.[70] The Compact standards impose no minimum timeframe for payment of premiums in order for the policyholder to receive a paid up nonforfeiture benefit.

- **Payment Deferrals.** The Compact standards require companies to certify that they will request and receive written approval from the state insurance regulator prior to exercising a right to defer payments of cash surrender values, loan values, partial withdrawals and any payments on commutation or transfer of funds. Florida does not require such an insurer certification before exercise a right to defer these payments.

- **Policy Exceptions and Conditions.** The Compact standards are more restrictive in prohibiting policy exceptions and conditions that "unreasonably" affect the risk purported to be assumed in the general coverage of the contract. Florida prohibits those that "deceptively" affect the risk.[71]

- **Readability.** The Compact standards have a slightly more stringent policy readability standard based on the Flesch test. The Flesch test is one of the oldest and most used formulas to determine ease of readability of a document.[72] For all but variable annuities, the Compact standards require a Flesch score of 50, while Florida requires a 45. According to the scale, a score between 30-49 means it is difficult to read, while a score of 50-59 means it is "fairly difficult." Scores between 60 and 70 are considered easy to understand by 8th and 9th graders, and those between 0 to 30, by college graduates.[73]

For additional examples of differences between Florida standards and provisions in the Compact standards for annuity and life insurance products, see Appendix B.

2. Disability Income Insurance Products

Examples of where Florida provisions provide greater consumer protections than provisions under the Compact standards include the following:

- **Benefit Scope.** Florida allows both income-based benefits and indemnity-based benefits. The Compact product allows only income-based benefits and does not generally allow indemnity-based benefits.

- **Legal Actions.** Florida places a five year limitation on policyholder actions to recover under the policy.[74] The Compact standards require an action to be brought within three years.

- **Limits on Accidental Death and Dismemberment Benefits.** Florida does not impose any specific limit on the amount of these benefits.[75] Under the Compact standards, accidental death and dismemberment benefits may not exceed an amount equal to 12 monthly disability benefit payments.

- **Notice of Policy Changes or Cancellation.** Florida requires insurers to provide a 45 day advance notice of any policy change or cancellation of insurance for reasons other than nonpayment of premium.[76] The Compact standards require no less than a 30 day advance notice of policy change.

- **Total Disability.** In Florida, during the first 12 months of disability, "total disability" requires that a person be unable to perform the material and substantial duties of the his or her regular occupation.[77] It does not expressly prohibit the person from engaging in any job or occupation for wage or profit. Under the Compact standards, the insured must likewise be unable to perform the material and substantial duties of their own occupation, but may not be engaged in any job or occupation for wage or profit during the first 12 months of disability.

In other instances, the Compact standards contain provisions exceeding those of Florida and provide greater consumer protections. Among these provisions are the following:

- **Benefit Limits or Reductions.** Under the Compact standards, any age-dependent benefit limits or reductions in the policy must be included on the cover page. Florida requires these to be identified in the policy, but does not require them to be noted on the cover page.[78]

- **Death Benefits.** Florida allows payment of death benefits in addition to any disability benefits, limited to $1,000 for death from any cause other than by accident.[79] Under the Compact standards, death benefits are limited to a lump sum not to exceed the equivalent of three monthly disability payments. (It is assumed that three monthly disability payments will generally exceed $1,000, and, therefore, be a greater consumer protection. Whether or not this is the case and provides more consumer protection will depend on each individual's unique situation.)

- **"Free Look"/ Unconditional Refund**. Both Florida and the Compact standards require insurers to provide disability income insurance to policyholders with a Right-to-Examine period, within which time, a purchaser may review the policy and receive an unconditional refund. Florida requires an unconditional refund period of 10 days for disability income

insurance policies.[80] By comparison, the Compact standards requires a 30 day minimum review period.

- **Preexisting Condition Exclusion.** The Compact standards expressly limits any preexisting condition exclusion to no more than two years, while Florida specifically exempts disability income insurance from the application of the two year limit on the preexisting condition exclusion.[81]

- **Probationary/Waiting Periods.** In Florida, probationary (i.e., waiting) periods are only prohibited for losses resulting from accidental injuries, but allowed for up to 30 days for losses due to sickness, with certain exceptions allowing longer periods for certain injuries or conditions such as six months for a hernia or gall bladder.[82] Florida requires insurers to include the time period in the policy schedule or benefits page. The Compact standards prohibits the use of probationary periods for specified medical conditions in a disability income insurance policy.

A summary description of additional differences between provisions in Florida and the Compact standards for disability income insurance products is in Appendix C.

3. Long-Term Care Insurance Products

The following are examples of where Florida provides consumers with greater protection than under long-term care provisions in the Compact standards:

- **Annual Rate Certification.** In Florida, as part of the annual rate certification, the insurer must certify that the benefits provided are reasonable in relation to the proposed premiums and that the premium schedule is not excessive, inadequate, nor unfairly discriminatory.[83] Under the Compact, the insurer must certify that the premium rate schedule continues to be sufficient to cover anticipated costs and that it is reasonably expected to be sustainable over the life of the form with no future premium increases anticipated. The emphasis seems to be on addressing premium increases. Although the Compact requires rates to be not excessive, inadequate, or unfairly discriminatory, the insurer is not specifically required as part of the annual certification to certify that the rates are not excessive, or that a premium decrease is anticipated or justified. Under the Compact rate certification provision, this could result in preserving insurer premium rates at current levels when experience might justify a rate decrease.

- **Cap on Rate Increases for Previously Marketed Policies**. In Florida, rate increases on closed blocks of long-term care insurance business are capped at the market average new business rates. The Compact standards do not include such a provision for closed blocks of business.

- **Nonforfeiture Benefit Adjustments After Policy Issue.** Florida prohibits a company from modifying the nonforfeiture benefit, based on the company's experience, after the policy has been issued.[84] The Compact permits insurers to adjust this benefit upon disclosure to the policyholder.

- **Payment of Premium Refunds.** In Florida, the insurer must promptly return any unearned premium to the policyholder in the event of cancellation.[85] Unlike Florida, the Compact does not include a specific prompt payment requirement.

- **Policy Change Forms**. The Compact permits a company to file a generic policy change form to accommodate all of the policy changes required to reflect the underwriting needs of a company. The insurer must provide specifics as to the changes being made and the conditions under which the changes will occur. The company must submit a Statement of Variability providing information sufficient to identify the potential policy changes that may be made and discuss the conditions under which each item may change. Florida prohibits generic open-ended accommodations and requires the company to provide the Office with the specifics and details, including the actual change language.

- **Secondary Notice of Lapse.** In Florida and under the Compact, insurers must, at application and while the policy is in force, notify applicants of their right to designate a secondary addressee to receive notice of policy lapse and then notify both the policyholder and the designated secondary addressee prior to being lapsed for nonpayment of premium. However, Florida requires the insurer to notify the policyholder of the right to designate a secondary addressee, at least once annually, compared to once every two years under the Compact standards.[86] Under the enabling legislation, Florida's policy will continue to apply.

In a number of other instances, the provisions in the Compact standards exceed those of Florida and provide greater consumer protection. Key examples include the following:

- **Benefit Triggers/Activities of Daily Living.** In Florida and under the Compact, a long-term care insurance policy must condition the payment of benefits on a determination of the insured's ability to perform activities of daily living and on cognitive impairment. Eligibility for the payment of benefits because of a deficiency in the ability to perform the activities of daily living may not be more restrictive than requiring a deficiency in the ability to perform not more than three activities of daily living under Florida law,[87] compared to two under the Compact.

- **Mental and Nervous Disorders Exclusion.** The Compact standards do not permit insurers to include exclusions or limits on mental and nervous disorders. In contrast, Florida allows exclusions or limitations, except on the basis of Alzheimer's Disease.[88]

- **Notice of Premium Rate and Rate Schedule Change**. Florida requires the insurer to provide the insured with a 45 day advance notice of a premium rate schedule increase or rate change.[89] The Compact provides a longer notice period—at least 60 days prior to the implementation of a premium rate schedule increase.

- **Policy Exceptions and Conditions.** The Compact standards are more restrictive in prohibiting policy exceptions and conditions that "unreasonably" affect the risk purported to be assumed in the general coverage of the contract. Florida prohibits those that "deceptively" affect the risk.[90]

- **Probationary/Waiting Periods.** Unlike the Compact standards, Florida permits insurers to include probationary or waiting periods in long-term care insurance policies.[91] The Compact does not include probationary periods among the permissible policy limitations and, therefore, may not be included in a Compact-approved long-term care insurance product.

For a summary of additional differences between Florida and provisions in the Compact for long-term care insurance products, see Appendix D.

B. Florida may be Subject to few of the Uniform Standards Adopted by the Commission

Under the enabling legislation, Florida enters the Compact exempt from all existing uniform standards in conflict with Florida law or otherwise excluded pursuant to the express conditions in the law, and with the authority (contrary to that permitted under the Compact) to continue to impose standards governing the content, approval and certification of products, in addition to those adopted under the Compact.

Applying the legislative exceptions to the Compact uniform standards, the Office finds that arguably, few, if any, of the uniform standards will likely apply to Florida. The Office found a number of conflicts between provisions in Florida law and the uniform standards for each product type. In addition, Florida expressly opted out of any existing Compact uniform standard limiting the "free look," unconditional refund of premiums and fees, to 10 days. Compact standards for annuity and life insurance products include a provision limiting the refund period to 10 days for non-replacement policies. Therefore, at the time it officially enters the Compact, Florida may not be subject to the vast majority of Compact standards pursuant to the terms and conditions of the enabling legislation.

In addition, the Commission Office has indicated that the terms and conditions placed on Florida's acceptance of the Compact may constitute a material variance. As a result, it has suggested that a formal legal opinion may be necessary to determine Florida's status of membership under the Compact "if (the enabling legislation) takes effect with no further changes this (S)ession."[92]

C. Florida Consumers Seeking Public Records Access to Insurer Filings under the Compact Face Additional Burdens

Pursuant to the enabling legislation, Florida's public records laws will continue to apply to records held by the Office, including insurer filings with the Commission, despite the narrower definition of a "public record" under Compact policies. However, despite this right of access, Florida consumers seeking access to Compact filings will face burdens not experienced in accessing filings in Florida.

Florida uses the I-File system and the Compact uses the SERFF system. Unlike SERFF, the I-File system permits immediate and unfettered public access through the Office website to any part of any filing in any stage of the process (e.g., cover letter, rate tables, exhibits, correspondence between the company and Florida Office staff), with the exception of trade secret designated documents in compliance with Section 624.4213, Florida Statutes. Currently, an individual does not need to make a public records request, pay any fees, or experience any delays to receive the records

because they are readily available online. Under the Compact, this would likely change since individuals do not currently have direct access to filings through the SERFF system.[93]

In response, the Commission Office has suggested that the Florida Office could be provided with direct access to the SERFF system. Direct access is important for the Florida Office to be able to assist consumers and monitor filings for products that will be sold in Florida. Under this option, the Florida Office would then make the information in SERFF available to the Florida public upon request. The Commission Office has also proposed sharing filings with the Florida Office through a "data dump" for upload into the I-File system. The logistics of this solution are unclear for any portions of this document identified as a trade secret. For example, the I-File system allows for multiple files to be uploaded, and entire files to be designated as trade secret or not. Problems arise in a data dump where everything is contained in one file. This may require programming or a manual review by the Florida Office. Regarding trade secrets, one potential solution might be to attempt to technologically integrate the I-File system into the SERFF/Compact Filing system to give the public proper access under state public records laws while having the functionality to selectively protect specific parts of the filing designated as a "trade secret." Either of these proposed options, depending on how the data is organized, would likely delay public access to filings and impose potentially significant costs on individuals requesting the information. These additional burdens placed on both individuals and the Office would limit the degree of public records access in Florida.

D. Dual Regulation May Lead to Consumer Confusion

In addition to filing through the Compact, an insurer may file the product in any state in which it is licensed to conduct business, [94] and upon approval, simultaneously market both a Compact-compliant product and a non-Compact state-compliant product to consumers within the same Member State. In this case, the filing is subject to the laws of the state where filed. Both the Commission and the Office will review the product for compliance with its particular set of requirements. As a result, similar products marketed in Florida may be regulated under two different sets of rules. From both a regulator and consumer perspective, this dual approach could make it more difficult to manage consumer inquiries, requests for assistance and complaints. In a parallel situation, for out-of-state group policies, Florida law requires applications for coverage to contain a specific statement informing the policyholder that the rating laws applicable to policies filed in Florida do not apply to these policies and identifying which state's laws govern the policy.[95] This helps reduce potential confusion.

As it stands now, having dual products, perhaps similar but approved by different authorities under a different set of requirements, could create confusion among consumers.

E. Compact Products Could Be Inadvertently Marketed to Florida Consumers by Unauthorized Insurers

As part of a Compact filing, companies must specify where they plan to market their products. While the operating procedures for the Commission clearly recognize that insurers must be authorized to do business in the states they select,[96] the Commission relies on Member States to police this

requirement. According to the Commission Office, it does not independently verify company licensure to make sure a company is licensed to sell the particular product in the state it intends to market it. For example, it does not perform a crosscheck of the list of states in which companies plan to sell Compact-approved products against the list of states in which they are authorized to sell the particular product. As a result, there is a risk some companies may unintentionally infer from Florida's membership in the Compact that the company may market Compact-approved products in this state without the necessary Florida-specific license and despite Commission procedures prohibiting it. While additional steps could be taken by the Commission Office to limit the risk and any potential adverse consumer impact, Office oversight will be necessary to make sure only Florida licensed insurers sell Compact-approved products in Florida.

F. Regulatory Authority over the Interpretation of Product Standards in Florida Is Delegated to the Compact Commission

Under the Compact, regulatory authority over certain products sold in Florida will be transferred to the Commission. Although the Legislature must approve any new product standards adopted by the Commission before they take effect within Florida, once they take effect in Florida, the Commission will interpret and apply these standards. While Compact standards and Florida standards have many provisions with similar wording, these may be interpreted differently.

For example, Compact product standards must be interpreted to "prohibit the use of any inconsistent, misleading or ambiguous provisions" and the product forms must not be "unfair, inequitable or against public policy *as determined by the commission*."[97] Florida has an equivalent provision. However, while these standards may be equivalent, different outcomes may result through differences in interpretation and degree of scrutiny. Several examples illustrate this point in the context of actual Compact-approved product filings:

- The Commission approved a policy with the provision "We <u>may</u> impose a Transfer fee for each Transfer you make in excess of the free Transfers allowed" in a variable annuity contract. The Office would find this statement unlawfully "ambiguous" as to whether or not the insurer would charge a transfer fee and the fee amount.

- In another example, the Commission approved a policy with the statement "The Company may modify these limitations, by lowering minimum applicable requirements or accepting larger maximum total Contributions." The Office would find this statement unlawfully "ambiguous."

- The Commission also approved a variable annuity contract containing the following provision that the Office found to be "ambiguous," especially in a flexible premium variable contract: "The Company may cease offering existing variable annuity payout options. The Company reserves the right to cease accepting Contributions at any time for any reason."[98]

G. Compact-Approved Product Filings may not Have Been Approved in Florida

The analysis conducted by the Office included a mock review of six randomly-selected product filings from among 14 previously approved by the Commission and supplied by the Commission Office.[99] Because of numerous deficiencies relative to Florida law, in addition to several Compact standards, none of the six filings would have been approved by the Office based on the information provided.

The Office identified the following deficiencies in one or more of the filings:

1. Transmittal Document

The Office found examples of transmittal documents that did not:

- Describe compliance with the suitability requirements of Rule 69B-162.011, when the annuity is recommended to a consumer age 65 or older. (Note: The Commission Office does not consider required suitability determinations to be a product content standard, despite a suitability provision in the long-term care standards.)

- Require readability certification for variable annuity products.

- Identify separate forms with a unique forms number, making it more difficult to assist consumers in responding to complaints or inquiries.

- Include a brief transmittal letter explaining the type and nature of the filing, including the subject, purpose and any unusual features, and whether or not it is a resubmission.

- Provide numerical exhibits in Excel with active formulas.

2. Application

The Office found examples of applications that did not:

- Include the consumer/purchaser disclosure regarding the variable, nonguaranteed basis for annuity payments and termination values.

- Demonstrate compliance with the requirements for replacement, when the application is taken via direct-to-consumer marketing.

- Provide space on several of the applications for the signature of the licensed Florida agent, printed name and identification number, even when marketing was direct-to-consumer.

- Comply with the secondary addressee designation for notification of past due premiums.

- Include the statutory fraud warning.

- Limit the required authorization to 24 months and permit the applicant to revoke the authorization at any time and the procedure for revocation.

I. Management of Compact Standards by the Florida Legislature Could Become Cumbersome

The prospective opt out provision in Florida's enabling legislation will require the Legislature to enact legislation approving each new or amended (within certain parameters) Compact standard before it may take effect in Florida. The Legislature and the Office will need to continuously monitor the work of the Compact to stay abreast of new or amended standards and evaluate the effect of the standards on Florida consumers and insurers. Given the large volume of product standards adopted by the Commission, and a pipeline apparently filled with many more, this could be an ongoing labor- and resource-intensive process.

Without the prospective opt out contained in the enabling legislation, Florida would either enact specific opt out legislation on a standard-by-standard basis or authorize the Financial Services Commission to opt out by regulation, if a standard was objectionable. During the period in which Florida would be pursuing an opt out through regulation, Florida could petition the Commission to stay the effectiveness of the uniform standard in Florida.

VI. CONCLUSION

While the Compact uniform standards include many provisions that are equivalent to Florida law, and in other cases, exceed it, this report shows that a number of consumer protections specific to Florida law will be compromised or abrogated if Florida enters the Compact without maintaining the various opt outs approved In Florida's enabling legislation. However, retaining the current opt outs upon entry could constitute a material variance rendering Florida's acceptance insufficient to qualify as a compacting state.

Further, while public record provisions included by the Legislature preserves the right of Florida consumers to access information consistent with Florida law, Floridians exercising that right of access will face additional burdens they are unaccustomed to in accessing insurer filings.

This report provides policymakers with additional information for consideration relative to Florida's participation in the Compact.

- Comply with Florida's limitation on underwriting inquiries concerning HIV, AIDS, or ARC by including question on medical history and inquiring into medication concerning AIDS, ARC or whether or not the applicant tested positive for HIV.

3. Policy

The Office found examples of applications that did not:

- Include the applicable disclosures for variable annuity policies, as well as required contact information for the selling agent and the Department of Financial Services (DFS).

- Include a provision for payment of interest on death benefits, and comply with the requirement that every contract include a provision that settlement be made upon receipt of proof of death and surrender of the policy, when a policy becomes a claim by the death of the insured.

- Include a provision for payment of interest on cash surrender value payments or withdrawals.

- Reference the possible imposition of a transfer fee once free transfers are exhausted is ambiguous in violation of Florida's fairness provisions and possibly discriminatory under the Unfair Insurance Trade Practices Act.

- Provide a Standard Nonforfeiture Law demonstration. The demonstration test did not show both the retrospective testing and prospective testing being passed.

H. Regulation under the Compact is Extensive and Pervasive

The Commission has 93 separate uniform product standards, many containing hundreds of individual requirements. Many of the provisions are repeated across product lines. The Commission has adopted uniform standards specific to all of the various iterations of product types that Florida regulates under a common set of standards. As a whole, Compact standards measured by volume and level of detail, appear to be more prescriptive and encompassing than in Florida for similar products. The Commission has also adopted regulations for products such as individual endowment policies that are not regulated by the Office.

According to the Commission Office, as of July 2013, the Commission had adopted "about 60%" of the uniform standards anticipated, with most of the new standards focused on group products.[100]

Commission product reviews are conducted using checklists ranging from 10 to 20-plus pages, containing detailed requirements, specifications and disclosures, specific to a multiplicity of product variations that Florida generally manages using relatively brief checklists. For example, while Florida relies on just three checklists for evaluating all life policies (one each for term, whole life and universal life policies), the Commission has 16. However, many of the provisions in the policy standards are common to all product variations.

VII. APPENDICES

Appendix A
List of Adopted Compact Uniform Standards by Product Type and Title (As of December 31, 2013)

Appendix B
Annuity and Life Insurance Applications and Policies: Comparative Summary of Florida and Compact Consumer Protections

Appendix C
Disability Income Insurance Applications and Policies: Comparative Summary of Florida and Compact Consumer Protections

Appendix D
Long-Term Care Insurance Applications and Policies: Comparative Summary of Florida and Compact Consumer Protections

APPENDIX A
List of Adopted Compact Uniform Standards by Product Type and Title*
(As of December 31, 2013)

INDIVIDUAL APPLICATION

Individual Life Insurance Application Standards
Individual Life Application Change Form Standards
Individual Annuity Application Standards
Individual Annuity Application Change Form Standards
Individual Long-Term Care Insurance Application Standards
Standards for Forms Required to Be Used with an Individual Long-Term Care Insurance Application
Standards for Individual Long-Term Care Insurance Application Change Form
Individual Disability Income Insurance Application Standards
Standards for Individual Disability Income Insurance Application Change Form

INDIVIDUAL TERM LIFE PRODUCT LINE

Individual Term Life Insurance Policy Standards
Individual Single Premium Term Life Insurance Policy Standards
Individual Joint Last to Die Survivorship Term Life Insurance Policy Standards
Individual Single Premium Joint Last to Die Survivorship Term Life Insurance Policy Standards

INDIVIDUAL WHOLE LIFE PRODUCT LINE

Individual Whole Life Insurance Policy Standards
Individual Single Premium Whole Life Insurance Policy Standards
Individual Joint Last to Die Survivorship Whole Life Insurance Policy Standards
Individual Single Premium Joint Last to Die Survivorship Whole Life Insurance Policy Standards
Individual Current Assumption Whole Life Insurance Policy Standards and Conforming Amendments to Individual Adjustable Life Standards
Additional Standards for Graded Benefit for Individual Whole Life Insurance Policies

INDIVIDUAL ENDOWMENT INSURANCE PRODUCT LINE

Individual Endowment Insurance Policy Standards
Individual Single Premium Endowment Insurance Policy Standards
Individual Joint Last to Die Survivorship Endowment Insurance Policy Standards
Individual Single Premium Joint Last to Die Survivorship Endowment Insurance Policy Standards

INDIVIDUAL NON-VARIABLE ADJUSTABLE LIFE INSURANCE PRODUCT LINE

Individual Flexible Premium Adjustable Life Insurance Policy Standards (Universal Life)
Individual Joint Last to Die Survivorship Flexible Premium Adjustable Life Insurance Policy Standards
Individual Modified Single Premium Adjustable Life Insurance Policy Standards

INDIVIDUAL VARIABLE ADJUSTABLE LIFE INSURANCE PRODUCT LINE

Individual Modified Single Premium Variable Life Insurance Policy Standards
Individual Modified Single Premium Joint First to Die Variable Life Insurance Policy Standards
Individual Flexible Premium Variable Adjustable Life Insurance Policy Standards
Individual Joint Last to Die Survivorship Flexible Premium Variable Adjustable Life Insurance Policy Standards
Additional Standards for Private Placement Plans for Individual Variable Adjustable Life Insurance Policies
*Additional Standards for Guaranteed Minimum Death Benefit for Non-Variable Annuities

STANDARDS FOR INDIVIDUAL LIFE BENEFIT FEATURES

Standards for All Benefit Features Added by Rider, Endorsement or Amendment to an Individual Life Policy
Standards for Accidental Death Benefits
Standards for Accidental Death and Dismemberment Benefits
Standards for Accelerated Death Benefits
Standards for Waiver of Premium Benefit
Standards for Waiver of Monthly Deductions Benefit
Standards for Waiver of Premium Benefit for Child Insurance in the Event of Payor's Total Disability or Death
Standards for Additional Life Insurance Benefits Provided on a Guaranteed Insurability Basis
Standards for Additional Term Life Insurance Benefits
Standards for Forms Used to Provide Tax Qualified Plan Provisions for Individual Life Insurance Policies
Standards for Forms Used to Exclude Policy Coverage Based on the Underwriting Process
Standards for Riders, Endorsements or Amendments Used to Effect Individual Life Insurance Policy Changes
Additional Standards for Index-Linked Crediting Benefit Features for Individual Adjustable Life Policies
Additional Standards for Intermediate Period Endowment Benefit Feature for Individual Life Insurance Policies (inc. Return of Premium)
Additional Standards for Overloan Protection Benefit
Additional Standards for Change of Insured Benefit

INDIVIDUAL VARIABLE ANNUITY PRODUCT LINE

Individual Deferred Variable Annuity Contract Standards
Individual Flexible Premium Deferred Variable Annuity Contract Standards (with Separate and General Accts)
Individual Fixed Premium Deferred Variable Annuity Contract Standards (with Separate and General Accts)
Individual Immediate Variable Annuity Contract Standards
Additional Standards for Guaranteed Living Benefits for Individual Deferred Variable Annuities
Additional Standards for Guaranteed Minimum Death Benefits for Individual Deferred Variable Annuities
Additional Standards for Private Placement Plans for Individual Deferred Variable Annuity Contracts

INDIVIDUAL NON-VARIABLE ANNUITY PRODUCT LINE

Individual Deferred Non-Variable Annuity Contract Standards
Individual Immediate Non-Variable Annuity Contract Standards
Index-Linked Crediting Features for Deferred Non-Variable Annuities
Index-Linked Payment Adjustment Benefit Standards
Additional Standards for Bonus Benefits (for Individual Deferred Non-Variable Annuities)
Additional Standards for Guaranteed Living Benefits for Individual Deferred non-Variable Annuities
Individual Deferred Paid-Up Non-Variable Annuity Contract Standards (Commonly Marketed as Longevity Standards)

STANDARDS FOR INDIVIDUAL ANNUITY BENEFIT FEATURES

Additional Standards for Market Value Adjustment Features Provided Through a Separate Account
Additional Standards for Market Value Adjustment Features Provided Through General Accounts
Standards for Forms Used to Provide Tax Qualified Plan Provisions for Individual Annuity Contracts
Additional Standards for Waiver of Surrender Charge Benefit
Additional Standards for Bonus Benefits for Individual Deferred Variable Annuity Contracts
Standards for Riders, Endorsements or Amendments Used to Effect Individual Annuity Contract Changes

INDIVIDUAL LONG-TERM CARE PRODUCT LINE

Core Standards for Individual Long-Term Care Insurance Policies
Individual Long-Term Care Insurance Application Standards
Individual Long-Term Care Insurance Standards for the Outline of Coverage
Rate Filing Standards for Individual Long- Term Care Insurance—Issue Age Rate Schedules Only
Rate Filing Standards for Individual Long-Term Care Insurance—Modified Rate Schedules
Standards for Forms Required to be Used with an Individual Long-Term Care Insurance Application
Standards for Individual Long-Term Care Insurance Advertising Material
Standards for Individual Long-Term Care Insurance Application Change Form
Standards for Long-Term Care Insurance Benefit Features
Standards for Riders, Endorsements or Amendments Used to Effect Individual Long-Term Care Insurance Policy Changes

INDIVIDUAL DISABILITY INCOME PRODUCT LINE

Standards for Individual Disability Income Insurance Policies
Standards for Individual Disability Income Insurance Outline of Coverage
Standards for Initial Rate Filings for Individual Disability Income Insurance Policies
Standards for Filing Revisions to Rate Filing Schedules in Individual Disability Income Insurance Policies
Standards for Forms Used to Limit or Exclude Individual Disability Income Insurance Policy Coverage Based on the Underwriting Process
Standards for Riders, Endorsements or Amendments Used to Effect Individual Disability Income Insurance Policy Changes
Individual Disability Business Overhead Expense Insurance Policy Standards

NON-APPENDIX A LIFE STANDARDS

Mortality Table Change Standards

GROUP TERM PRODUCT LINE

Group Term Life Insurance Policy and Certificate Standards for Employer Groups
Group Policyholder Application Uniform Standards for Group Term Life Insurance
Uniform Standards For Riders, Endorsements or Amendments Used to Effect Group Term Life Insurance Certificate Changes
Uniform Standards For Riders, Endorsements or Amendments Used to Effect Group Term Life Insurance Policy Changes
Uniform Standards for Group Term Life Insurance Enrollment Forms and Statement of Insurability Forms
Uniform Standards for Group Term Life Insurance Statement of Insurability Change Form
Group Term Life Insurance Uniform Standards for Accidental Death Benefits
Group Term Life Insurance Uniform Standards for Accidental Death and Dismemberment Benefits
Group Term Life Insurance Uniform Standards for Accidental Death and Dismemberment Benefits
Group Term Life Insurance Uniform Standard for Accelerated Death Benefits*****

**According to the Commission Office, the Commission lists a total of 96 standards; however, two of these standards have been subsumed under another standard and a third is redundant. Therefore, the current number of uniform standards is 93.*

********Recently adopted in December 2013; not yet included on the Commission website.*

APPENDIX B

Annuity and Life Insurance Applications and Policies: Comparative Summary of Florida and Compact Consumer Protections

B-1. Florida Consumer Protections Exceed Compact Uniform Standards

Table B-1 summarizes differences between provisions in Florida standards and Compact standards for annuity and life insurance products in which Florida appears to provide greater consumer protections.

TABLE B-1. ANNUITY AND LIFE INSURANCE: FLORIDA CONSUMER PROTECTIONS EXCEED COMPACT (IC) UNIFORM STANDARDS

PROTECTION	FLORIDA LAW	COMPACT STANDARD
Agent Identification	The annuity and life applications must also disclose the name and license identification number of the selling agent.[101]	No requirement to provide selling agent's name and license number.
Agent "Write-Ins"	Prohibits agents from writing in the initial interest rate on a life application.[102]	No equivalent provision.
Contact Information	For annuity policies, insurers must include toll-free telephone number for the state insurance department's help line and contact information for the insurer on the policy cover page.[103] For life policies, the insurer must provide a phone number for policyholders specifically for the purpose of presenting inquiries and obtaining coverage information and assisting with complaints.[104]	For annuities and life, insurers must include the telephone number of company and, if available, some method of internet communication, on the cover page. However, no statement as to the specific purpose of the number as required in Florida. The telephone number of the insurance department must also be included on either the cover or specifications page.
Cover Page Disclosures	For annuities, disclose the long-term nature of the commitment; the existence of any bonus features; the potential for interest rate fluctuations; and the right to a buyer's guide.[105]	Specific to these disclosures, only requires disclosure of bonus feature on cover page.
Deferred Sales Charge	For all annuity products, the deferred sales charge must not exceed 10% of the amount withdrawn when a senior (age 65+) withdraws funds from an annuity. Reduced over time and cannot be applied after the end of the 10th policy year or 10 years after the premium is paid, whichever is later.[106] The Office does both a retrospective and prospective review on all annuity products.	For nonvariable annuities only, surrender charges grade down to 0 by the time the policyholder turns 70 or the 10th contract year, whichever is later. Charge could be higher than 10% for variable annuity. The IC only does a retrospective review on variable annuities. ***(FL: Specific Opt out)***
Dividends	Dividends are deemed to be payable in cash even when the policy allows the insurer to defer payment for up to six years from date of apportionment.[107] The period of any dividend election option must not be less than 30 days following the date the dividend is due and payable.[108]	Policy must provide that the owner may receive any dividend paid in cash. No equivalent provision.

Entire Contract	For annuity and life products, Florida law declares what constitutes the entire contract.[109]	For annuity and life contracts, insurers must include a provision specifying what constitutes the entire contract.
Filings	Each filing must be limited to only one type of coverage. Annuity and life filings may contain forms for only one company and type of coverage.[110]	May file a single contract for use with more than one plan. Multiple companies may be represented in one filing and submit an application for use by more than one company.
Foreign Travel	Life Insurers may not exclude, limit or deny coverage based on future travel.[111] Policyholder knowledge of state law is not required since the provision is expressly stated in the policy. Florida law is interpreted as precluding inquiries into foreign travel, subject to certain exceptions.[112]	Defers to state law for insurer exclusion of coverage based on future travel. This requires policyholders to have knowledge of state law. Life application permits insurers to make certain inquiries into foreign travel. ***(FL: Specific Opt out)***
Fraud Incontestability Exception/ Knowledge of State Law	Fraud by the insured is not an exception (defense) to the incontestability of a policy by the insurer.[113] Policyholder knowledge of state law is not required since the provision is expressly stated in the policy.	Defers to state law regarding fraud as a defense, requiring policyholders to have knowledge of state law.
Fraud Warning/ Application	Annuity applications must include the following fraud warning: Applicant "is guilty of" insurance fraud if they act "knowingly and with intent to injure, defraud or deceive" when filing an application with "false, incomplete, or misleading information."[114] Proving policyholder fraud in Florida is subject to a higher standard.	Annuity applications must include the following fraud warning: the applicant may" be guilty if a "false statement" presented "knowingly" by the applicant. No showing of "intent to injure, defraud or deceive" required.
"Free Look"/ Unconditional Refund Period and Disclosure	21 days (annuities) and 14 days (life).[115] No distinction between replacement and non-replacement policies/contracts and the general and separate account.	10 days (non-replacement policies); 30 days for replacement policies for annuity and life policyholders. ***(FL: Specific Opt out)***
Guaranteed Benefits (Living, Minimum Death)	Can terminate ownership on assignment, but prohibits discrimination against individuals of the same actuarial class and equal expectation of life in the benefits, terms and conditions of coverage.[116]	Insurer may allow certain ownership changes while retaining the ability to terminate the benefit for others on a discretionary basis.
HIV Inquiries	Insurers may only inquire as to whether the person tested positive for exposure to HIV or was diagnosed as having AIDS or ARC. No other details may be requested for application.[117]	May request additional details such as name and contact information for the facility providing diagnosis, the dates of diagnosis, tests and treatments.
Interest on Cash Surrender Value	Interest required if payment of cash surrender value is delayed by more than 30 days.[118] (Interest rate index is Moody's Corp. Bond Yield Avg.—Monthly Avg. Corp. If the calculation methodology is substantially changed since January 1, 1981, then the rate index is the one approved by rule of the commission.)	No provision specific to payment of interest for delay in payment of cash surrender value by more than 30 days. ***(FL: Specific Opt out)***

Investment Return for Computing Variable Benefits	For variable annuities, in computing the dollar amount of variable benefits or other contractual payments or values, the investment assumption may not exceed 3.5%.[119]	In computing the dollar amount of variable benefits or other contractual payments or values under the annuity contract, the annual net investment increment must not exceed 5%.
Loans	The loan amount must at least equal the cash surrender value, less any outstanding indebtedness.[120] The insurer may not establish a "reasonable company minimum" loan requirement. If a life insurance application provides for an automatic premium loan to pay the premium on the policy in the event of nonpayment, this option will be deemed to be elected unless the applicant affirmatively chooses not to include this provision in the policy.	The loan amount may be less than the cash surrender value. Life policies may include a "reasonable company minimum" loan amount. No equivalent provision. If available, automatic premium loan is subject to owner election.
Marketing/ Distribution System	Cover (transmittal) letter must describe distribution systems (e.g. direct marketing, marketing through agents, marketing through financial or other institutions, etc.), and intended target population for all product filings.[121]	No equivalent provision.
Nonforfeiture Standards	Insurers must submit a single statement certifying compliance with numerous nonforfeiture standards for life insurance.	While equivalent standards, no provision requiring insurer submission of a single statement certifying compliance with numerous nonforfeiture requirements.
Readability	Flesch score of 45 for variable annuities. Also includes additional strictures regarding layout, spacing, wording and overall appearance for annuity and life products. Life plans must use 10-point font with unspaced alphabet height of not greater than 120 points. Does not exempt variable annuities from readability requirements as a registered security as the IC.	Exempts variable annuities from Flesch score requirement as registered securities subject to federal jurisdiction.
Replacement Questions	Signed statement as to whether the life insurance or annuity will replace existing life insurance. Must be with or part of application. Cannot be in a separate form.[122] Requires a signed statement to be submitted for both the applicant and agent.[123]	May be in a separate form. Requires only the applicant, and not the agent, to submit a signed statement regarding replacement.
Secondary Notice of Lapse	Insurers must, at application and while policy is in force, notify applicants of their right to designate a secondary addressee to receive notice of policy lapse and then notify both the applicant and the designated secondary addressee of a lapse in coverage.[124]	No provision. ***(FL: Specific Opt out)***
Sexual Orientation	Sexual orientation may not be used in the underwriting process or in determining which applicants must be tested for exposure to the HIV infection.[125]	No equivalent provision. Not expressly prohibited or permitted.
Suitability	As part of application process, requires significant	According to the Commission

Determinations	and comprehensive demonstrations of suitability through the use of Office-prescribed forms provided to the consumer no later than the time the contract is issued.[126] Compliance with requirement should be indicated in the transmittal document.	Office, the standards recognize state-specific suitability requirements. However, it is unclear where the regulatory point of entry is once the IC takes over the review and approval of Florida filings

B-2. Compact Consumer Protections Exceed Florida Standards

Table B-2 summarizes differences between provisions in Florida standards and the Compact standards for annuity and life insurance products in which the Compact appears to provide greater consumer protections.

TABLE B-2. ANNUITY AND LIFE INSURANCE: COMPACT (IC) CONSUMER PROTECTIONS EXCEED FLORIDA STANDARDS		
PROTECTION	**FLORIDA LAW**	**COMPACT STANDARD**
Grace Period Payments to Avoid Lapse	Requires payment within a grace period of not less than 30 days to avoid policy lapse.[127]	Requires payments "be postmarked" within the grace period to avoid lapse for nonpayment of premium. The IC postmark date, while an additional step, could result in the insurer being paid later than the 30 days required for payment in Florida.
Graded Benefit /"Free Look"	Requires the "free look," right-to-examine period of 14 days applicable to life insurance.	Provides a 30 day "free look," right-to-examine period.
Graded Benefit/Reduced Early Duration Benefits	No provision limiting time period for reduced early duration benefits for death from natural causes. No equivalent provision.	Limits time period for reduced early duration benefits for death from natural causes to three years. Amount of benefits for death from natural causes must not be less than the amount paid to the time of death with interest the rate used to determine nonforfeiture values under the policy.
Interest Rates/Payments During Grace Period and on Death Benefits	No provision prohibiting insurer from charging interest on overdue premium when insured dies during grace period. Insurer may charge interest of up to 8% for the number of days of grace elapsing before premium payment for life products[128] and up to 6% for annuities. Death benefits: For life insurance, interest at annual rate ≥ Moody's Corp. Bond Yield Avg.—Monthly Avg. Corp. as of the day the insurer received the claim. If the calculation method has substantially changed since January 1, 1993, then no less than 8%.[129]	Prohibits insurers from charging interest on overdue premium when insured dies during grace period. Interest may not be charged on overdue premium payments for life products. No provision regarding annuities. Death benefits: For life insurance, rate applicable to policy for funds left on deposit or, if it has no such rate, then the Two Year Treasury Constant Maturity Rate in effect at

		date of death. After 30 days, additional interest of 10% annually, subject to exceptions.
Interest on Death Benefits	Interest payable from the date the insurer receives written proof of death.[130] Unlike the IC, Florida law does not specify what constitutes "due proof" of death.	Interest on death benefits is payable from the date of death.
Nonforfeiture Benefit	Policyholders must pay premiums for one year before a default in premium payments requires an insurer to provide a paid up nonforfeiture benefit on a plan stipulated in the policy.[131]	No specified minimum timeframe for payment of premiums in order for the policyholder to receive a paid up nonforfeiture benefit.
Payment Deferral/ Certification	Permits deferral of payments without requiring certification.[132]	Companies must certify they will request and receive written approval from the regulator prior to exercising any contractual right to defer payments of cash surrender values, loan values, partial withdrawals, and any general fund amounts payable on commutation or transfer of funds.
Policy Exceptions and Conditions	Prohibits policy exceptions and conditions that "deceptively" affect the risk purported to be assumed in the general coverage of the contract.[133]	Prohibits policy exceptions and conditions that "unreasonably" affect the risk purported to be assumed in the general coverage of the contract.
Readability	Requires Flesch score of 45[134]	Requires a more stringent policy readability score for nonvariable annuities and term/whole life products—a Flesch Score of 50.

B-3. No Express Counterpart for Provisions in Compact Standards Under Florida Law

In a number of instances, a provision in a Compact standard has no express counterpart under Florida law. However, Florida law expressly allows policies to include additional provisions not inconsistent with the Florida Insurance Code and which are "desired by the insurer and neither prohibited by law nor in conflict with any provisions required to be included… ."[135] As part of this analysis, the Office found that a number of these Compact provisions are not prohibited under, or in conflict with, Florida law and would therefore be allowed but not necessarily required under, Florida law.[136]

APPENDIX C
Disability Income Insurance Applications and Policies: Comparative Summary of Florida and Compact Consumer Protections

C-1. Florida Consumer Protections Exceed Compact Uniform Standards

Table C-1 summarizes differences between provisions in Florida standards and the Compact standards for disability income insurance products in which Florida appears to provide greater consumer protections.

TABLE C-1. DISABILITY INCOME INSURANCE: FLORIDA CONSUMER PROTECTIONS EXCEED COMPACT (IC) UNIFORM STANDARDS		
PROTECTION	**FLORIDA LAW**	**COMPACT STANDARD**
"Accident" Defined	Requires the definition of "accident, accidental injury, accidental means" to employ "result" language and not include words establishing an "accidental means" test or use words such as "external, violent, visible wounds" or similar words of description. The definition must also not be more restrictive than "injury or injuries for which benefits are provided means accidental bodily injuries sustained by the insured which are the direct cause independently of disease, bodily infirmity or other cause of loss and occur while the insurance is in force." The definition may exclude injuries for which benefits are provided under workers compensation and no fault auto plan, or while engaged in business activity for wage or profit.[137]	No provision.
Agent Information	Must include agent's name and identification number on cover page or first page of application.[138]	No provision.
Benefit Scope	Allows both income-based benefits and indemnity-based benefits through additional coverages.	Disability policies pay a benefit based on the income of the insured when the insured becomes disabled. Per the IC, no indemnity-based benefits are allowed while a person is on disability under the IC-approved product.
Deductible Statement	The Office may require an insurer to include a statutorily prescribed deductible statement in any policy containing a deductible provision and print or stamp it on first page of policy in 18-point font.[139]	No provision.
Denial of Claims	Claimants must be provided with the opportunity to appeal a claim denied as not medically necessary to the insurer's	Policies must include a description of the process for appealing and resolving benefit

	physician. The physician must respond within 15 days.[140]	determinations.
Dependent coverage	Allows dependent coverage. For example, policy may include indemnity-based coverage for a homemaker spouse with no income in the event of a disability.	Not provided.
Entire Contract	Florida Statutes declare what constitutes the entire contract.[141]	Insurers must include a provision specifying what constitutes the entire contract.
Extension of Benefits	Requires reasonable extension of benefits provision, including treatment for a specific accident or illness occurring while policy was in effect and maternity expenses through pregnancy and not be based upon total disability. "Reasonable" is defined as at least 12 months for major medical and 90 days for other types of coverage for expenses incurred during a period of disability.[142] The Office uses 90 days for disability income policies.	No provision.
Filings	Each filing must be limited to only one type of coverage. Filings may contain forms for only one company and type of coverage.[143]	May file a single contract for use with more than one plan. Multiple companies may be represented in one filing and submit an application for use by more than one company.
Foreign Travel	While an insurer may inquire about foreign travel in the application, it may not refuse coverage because of applicant's intent to engage in future foreign travel or past lawful travel, unless it can show they are a separate actuarially supportable class.[144] Does not require policyholder to have knowledge of state law.	Permits insurers to inquire about foreign travel in the application, with no specific prohibition against insurer refusal to provide coverage based on foreign travel. Requires policyholder to have knowledge of state law since exclusion subject to state law. ***(FL: Specific Opt out)***
Fraud Warning/ Application	Applications must include the following fraud warning: Applicant "is guilty of" insurance fraud if they act "knowingly and with intent to injure, defraud or deceive" when filing an application with "false, incomplete, or misleading information."[145] Proving policyholder fraud in Florida is subject to a stricter standard.	Applications must include the following fraud warning: the applicant may" be guilty if a "false statement" presented "knowingly" by the applicant. No showing of "intent to injure, defraud or deceive" required.
Handicapped Children	Permits handicapped children chiefly dependent on the policyholder for support and maintenance to continue to be covered under the policy.[146] This occurs very rarely in disability income policies.	No provision.
HIV Inquiries	Insurers may only inquire as to whether the person tested positive for exposure to HIV or was diagnosed as having AIDS or	May request additional details such as name and contact information for the facility

	ARC. No other details may be requested for application.[147]	providing diagnosis, the dates of diagnosis, tests and treatments.
"Hospital" Defined[148]	For policy purposes, "hospital" defined in accordance with Florida law. Same definition (and therefore, same type of facilities) wherever policyholder seeks care.[149]	Definition is based on state where the policyholder receives care. Institutions qualifying as a "hospital" may vary depending on law of state where policyholder requires care. (Note: The Commission Standard for Long-Term Care insurance products seems to address this potential variation from one state to another through "Cross Border Rules." This provides that the policy must pay benefits for similar services obtained in another state if benefits for those services would have been paid in the policy state of issue, regardless of any facility licensing requirement differences between the states.)
Incidental Benefit Limits/Accidental Death	Does not include any specific limit for death by accidental means.[150] Can exceed 12 months. Limits death by sickness to $1,000.	Amount must be paid in lump sum and not exceed the equivalent of 12 monthly disability benefits under the policy. Benefits are paid due to death of insured from an injury pursuant to separate IC standard for accidental death and dismemberment benefits.
Incidental Benefits/Types	Much broader allowance of incidental or additional benefits (e.g., accidental death and dismemberment, hospital, physician, vocational-rehabilitation, spouse/child education, repatriation, dependent coverage.)	Allows accidental death and dismemberment as incidental benefits.
Incontestability/ Misstatements in Application	Policy may include an incontestability provision in lieu of a provision imposing a Time Limit for Certain Defenses by making timely payments.[151] Company must exclude periods of disability from the two year incontestability period.[152]	Same, but also requires payment of premiums at least until the insured reaches age 50 or at least five years for a policy issued after age 44. Company may add a clause tolling the two year period for any time the insured is disabled.
"Injury" Defined for Purposes of "Disability"	Does not define "injury" in terms of the timeframe within which the "disability"	Defines "injury" in terms of whether or not the "disability"

	occurred relative to the time of the injury.[153] Such a distinction between "injury" and "sickness" may affect the application of probationary or waiting periods under Florida law.	occurred within at least 30 days of the injury). If it did not occur within 30 days, then it is considered a "sickness" and not an "injury."
Legal Actions	Provides a five year limitation on actions to recover on the policy, and no action can be brought within 60 days of receiving written proof of loss. [154]	Same, but action must be brought within a three year window.
Military Service/ Suspension of Coverage	Inclusion of policy provision suspending coverage is optional. However, the suspension period is limited to period of active duty (which could be longer than the five years under the IC).[155]	Policy provision is required. However, suspension period limited to up to five years not to exceed period of active duty. Under this provision, period of suspension could be less than the period of active duty.
Notification of Policy Changes	Requires 45 day advance notice of any policy change or cancellation of insurance.[156]	Requires no less than 30 day advance notice of policy change
Notification to Applicant to Read Application	Requires the policy to include a prescribed notification statement printed in a prominent manner instructing the purchaser to check the application for completeness and correctness.[157]	Requires insureds to affirm they have read the application and all statements and answers are true and complete to the best of their knowledge and belief.
Order of policy provisions	Policy provisions must be ordered as they appear in Florida Statutes, or, at the option of the insurer, provisions may appear as a unit in any part of the policy, with other provisions to which it may be logically related.[158]	No provision.
Other Insurance	No provision requiring a maximum aggregate indemnity amount. Insurers are not prohibited from issuing excess insurance for that part of the expenses that exceed the total amount of benefits payable from the same and other insurers.[159]	If the company issued health policies to the insured before the disability policy containing this provision and all the policies are in force, then the company must indicate a maximum aggregate indemnity amount for the types of coverage under all in force health policies covered by the provision and that all excess insurance above the maximum indemnity amount is void and all premiums paid will be returned to the insured.
Payment of Claims/ Specific Methodology	Policies providing a specific methodology for paying claims (e.g., usual and customary), must specify the formula or criteria used in determining the amount to be paid.[160] Insurer must provide insured with an estimate of the amount the insurer will pay for particular medical procedures or services.[161] The use of a specific	No provision. Claims under the IC disability income policy are not paid based on a specific methodology or for medical procedures. The benefit is limited to income replacement when the policyholder becomes disabled under the terms of the

	methodology depends on the additional benefits included in the policy.	policy.
Payment of Claims/Time Period	Insurer must pay or deny claim within 45 days after receiving written proof of loss;[162] if claim denied, the insurer has another 45 days to pay or deny claim. Claimant knows within 45 days if insurer will pay or deny claim. All overdue payments shall bear simple interest at the rate of 10% per year.[163]	Policy must specify when the insurer is required to pay claims, but IC prescribes no specific time period. Insurer must pay 10% annual simple interest if claim paid more than 30 days after company receives "satisfactory" proof of loss.
Rate Filings	A new product filing, a rate revision or justification of existing rates must be accompanied by an actuarial memorandum and all numerical exhibits must be in Excel with active formulas.[164] Florida requests a complete underwriting manual to check for accuracy. Florida specifically asks if the company is using area factors. The Office request for trend is specific (includes mortality, morbidity and medical trend).	The actuarial memorandum for rate filings does not reference the submission of a complete copy of the insurer's underwriting manual, area factors, claims liability and reserves and active life reserves the company will hold, trend assumption (both medical and insurance) and the proposed date the company plans to market the product. IC does not request a complete underwriting manual or make a specific request for area factors. Makes a more generic trend request. Does not include medical trend.
Recurrent Disability[165]	To be considered a recurrent disability, the confinement or disabilities must not be separated in time by more than six months.[166]	To be considered a "recurrent disability," the disabilities must not be separated by more than 180 days if the benefit period is five years or less, and 365 days, if greater than five years.
Replacement Questions	Signed statement as to whether the policy will replace the existing policy. Must be with or part of application. Cannot be in a separate form.[167]	May be in a separate form.
Termination of Insurance	Must include termination provisions specifying the age or event at which the policy terminates. In Florida, based on the scope of most Florida-approved disability policies, termination is not nonrenewability since there can be other bases for termination such as loss of eligibility, non-payment of premium, or special events (e.g., divorce, child age limits). A noncancellable or guaranteed renewable policy may not terminate coverage for the spouse solely because of the occurrence of an event specified for terminating the insured's coverage, other than nonpayment of premium. Policy may	Relies on the Renewability provision. Per the IC, the cover page must state whether the policy is Conditionally Renewable, Guaranteed Renewable or Noncancelleable. Only a conditionally renewable may be nonrenewed. The uniform standards requires disclosure of the benefits and durations on the specifications page. Per the IC, the Florida provisions apply to coverages not within the jurisdiction of the Compact (i.e., hospital, surgical,

	provide the spouse becomes the insured in this situation.[168]	medical expense, hospital confinement indemnity or accident only).
Termination of Policy/Age	If policy terminates when a covered person reaches a certain age and premium is paid and accepted after that date, coverage will continue until end of period for which premium was paid. Also applies to dates and events other than age specified as a basis for termination.[169]	No provision specific to effect of acceptance of premium on coverage.
Total Disability Requirements	For first 12 months, person is unable to perform the material and substantial duties of the person's regular occupation. Does not prohibit the person from engaging in any job or occupation for wage or profit. The insurer may predicate the continuance of benefits on the person's ability to perform any work or occupation.[170] Does not specify the maximum elimination period, only that it be clearly expresses in the policy schedule or benefits page."Disability" not expressly defined.	For the first 12 months, (excluding the elimination period, which can effectively add an additional 90 days to the period of total disability and commences at disability), the insured is unable to perform material and substantial duties of their own occupation and is not in fact engaged in any job or occupation for wage or profit.[171] "Disability" defined as being due to injury or sickness.
Valid Loss of Time Coverage	The total monthly benefits paid under all valid loss of time coverage must not be reduced below $500.[172] Definition of "valid loss of time coverage" may be included.[173]	Total monthly benefits must not be reduced below $300. Definition of "valid loss of time coverage" must be included.

C-2. Compact Consumer Protections Exceed Florida Standards

Table C-2 summarizes differences between provisions in Florida standards and the Compact standards for disability income insurance products in which the Compact appears to provide greater consumer protections.

TABLE C-2. DISABILITY INCOME INSURANCE: COMPACT (IC) CONSUMER PROTECTIONS EXCEED FLORIDA STANDARDS		
PROTECTION	**FLORIDA LAW**	**COMPACT STANDARD**
Benefit Limits or Reductions	Florida requires benefit limits and restrictions to be identified in the policy, but does not require them to be on the cover page. They are included with either the benefit to which they apply or under an appropriate caption such as "Exceptions."[174] Florida lacks such an age-specific disclosure requirement.	Policy cover page must include a statement of any age-dependent benefit limits or reductions in a brief description of the policy.
Benefit Period	No such minimum period for income benefits. Would inquire about a benefit period of less than six months.	Requires policies to provide at least six consecutive months of periodic income benefits.
Contact Information	Does not expressly require a specific method of internet communication.	Requires some method of internet communication be identified on the cover page.

Death Benefits	Policy may include payment of death benefits in addition to any disability benefits, limited to $1,000 for death from any cause, except that the limit does not apply to death by accident.[175]	Also optional, but are limited to a lump sum not to exceed the equivalent of three monthly disability payments.
Exclusions and Limitations Statement	Insurer is not required to include such a statement, but instead must either print with an appropriate caption or with the benefit provisions to which they apply.[176]	Policy cover page must include a conspicuous statement instructing policyholders to read their policy carefully as exclusions and limitations may apply.
"Free Look"/ Unconditional Refund	Provides 10 days for the insured to examine the policy.[177]	Requires a 30 day minimum review period
Genetic Information	Exempts disability income insurance from the prohibition against establishing differential premium rates based on genetic information.	Application standard has no similar exemption.
Guaranteed Renewable and Noncancellable	Applies through at least age 50, or if issued after age 44, for at least five years the insurer may not make any unilateral changes while the policy is in force. [178]	Provides more specificity and makes policies guaranteed renewable or noncancellable until at least age 65
HIV Scope of Inquiry/Time Limit.	Florida allows a similar inquiry, but also allows inquiry to include AIDS-related Complex (ARC), with no express time limit on time period for inquiry.[179]	The IC permits inquiry into AIDS or AIDS virus, with 10 year time limit.
Military Service/Reinstatement of Suspended Coverage	Military insured's have 60 days.[180]	Military insured's have 90 days to apply for reinstatement without evidence of insurability.
Payment of Claims/Insured's Estate.	Permits an insurer to limit any such indemnity payment to $3,000.[181]	Insurer may include a provision limiting indemnity to the insured's estate or person not legally competent to give a valid release, to $5,000.
Policy Exceptions and Conditions	Prohibits exceptions and conditions that "deceptively" affect the risk.[182]	Prohibits policy exceptions and conditions that "unreasonably" affect the risk purported to be assumed in the general coverage of the contract.
Policy Execution.	Requires the signature of just one company officer.[183]	Requires the signatures of two company officers.
Preexisting Conditions.	The two year limitation on the preexisting condition exclusion does not apply to disability income policies;[184] however, insurers typically must justify the reasonability of any timeframe beyond two years under other provisions of Florida law.[185] The IC requires a specific disclosure statement, alerting policyholders to the potential existence of policy limitations and exclusions.	The IC limits the preexisting condition exclusion to no more than two years from the policy issue date, except in case of fraudulent misstatement.
Probationary/Waiting Period[186]	In Florida, probationary (i.e., waiting) periods are prohibited for losses from accidental injuries, but allowed for up to 30 days for losses due to sickness, with certain exceptions	Benefits may not be limited or excluded through a policy provision establishing a probationary period for medical

	allowing longer periods for certain injuries or conditions. Florida requires insurers to include the time period in the policy schedule or benefits page. [187]	conditions.

C-3. No Express Counterpart for Provisions in Compact Standards Under Florida Law

In a number of instances, a provision in a Compact standard has no express counterpart under Florida law. However, Florida law expressly allows policies to include additional provisions not inconsistent with the Florida Insurance Code and which are "desired by the insurer and neither prohibited by law nor in conflict with any provisions required to be included… ."[188] As part of this analysis, the Office found that a number of these Compact provisions are not prohibited under, or in conflict with, Florida law and would therefore be allowed but not necessarily required under, Florida law. [189]

APPENDIX D
LONG-TERM CARE (LTC) INSURANCE APPLICATIONS AND POLICIES: COMPARATIVE SUMMARY OF FLORIDA AND COMPACT CONSUMER PROTECTIONS

D-1. Florida Consumer Protections Exceed Compact Uniform Standards

Table D-1 summarizes differences between provisions in Florida standards and the Compact standards for long-term care insurance products in which Florida appears to provide greater consumer protections.

TABLE D-1. LONG-TERM CARE INSURANCE: FLORIDA CONSUMER PROTECTIONS EXCEED COMPACT (IC) STANDARDS

PROTECTION	FLORIDA LAW	COMPACT STANDARD
Actuarial Certification/ Appropriateness of Rates	As part of the annual rate certification, the insurer must certify that the benefits provided are reasonable in relation to the proposed premiums and that the premium schedule is not excessive, inadequate, nor unfairly discriminatory.[190]	As part of annual rate certification, the insurer must certify that the premium rate schedule continues to be sufficient to cover anticipated costs and that it is reasonably expected to be sustainable over the life of the form with no future premium increases anticipated. Although the IC generally requires rates to be not excessive, inadequate, or unfairly discriminatory, the insurer is not specifically required to certify that the rates are not excessive, or that a premium decrease is anticipated or justified.
	Florida reviews all rate increases.	The IC has a bifurcated review process, depending on the size of a proposed rate increase. If a proposed rate increase is 15% or less, the filing is subject to Commission review and approval; if it exceeds 15%, the filing is subject to review and approval of each compacting state.
Adult Day Care Center Definition	Same as IC definition but program must be for 6 or more individuals.[191]	A state licensed or certified program for a specified number of individuals providing social or health-related or both types of services during the day in a community group setting for the purpose of supporting frail, impaired elderly or other disabled adults who can benefit from care in a group setting outside the home. According

		to the Commission Office, Florida's requirements for providers of services and facilities would apply to Compact-approved policies issued in Florida.
Agent Identification	The LTC applications must also disclose the name and license identification number of the selling agent.[192]	No requirement to provide selling agent's name and license number.
Benefit Determinations and Denial of Claims/ Review Process	Also, claimants must be provided with the opportunity to appeal a claim denied as not medically necessary to the insurer's physician. The physician must respond within 15 (business) days.[193]	No provision.
Buyer's Notice of LTC Costs	The required policy statement regarding LTC costs must advise the buyer to "periodically review this policy in relation to the changes in the cost of long-term care." This notice encourages an ongoing reassessment of the policy as opposed to an initial assessment per the IC provision.[194]	The required policy statement regarding LTC costs must advise the buyer to "review carefully all policy limitations." This notice seems to encourage a one-time review of policy limits.
Cap on Rate Increases for Previously Marketed Policies	Rate increases on closed blocks of business are capped at the market average new business rates.	No such provision exists for closed blocks of business.
Certifications for Activities of Daily Living and Cognitive Impairment for a Tax-Qualified Policy	Requires certifications to be performed by a "licensed health care practitioner" (LHCP), defined to mean "any physician, nurse (e.g., registered nurse), psychotherapist, or any individual who meets any requirements prescribed by rule by the (Financial Services) Commission.[195] No reference to "other individuals meeting requirements prescribed by the Secretary of the Treasury." No provision.	Requires certifications to be performed by "the following licensed or certified professionals: physicians, registered professional nurses, licensed social workers, or other individual who meet requirements prescribed by the Secretary of the Treasury." Policy must also state that the certifications may be performed by a licensed health care professional at the direction of the carrier as is reasonably necessary with respect to a specific claim, with exceptions. A "licensed health care practitioner" is defined to mean a physician as defined in §1861®(1) of the Social Security Act, a registered provisional nurse, licensed social worker or other individual who meets requirements prescribed by the Secretary of the Treasury."
Claim Forms	The contract must include wording identical to the following provision: "Claim Forms: When the insurer receives the notice of claim, it will send the claimant forms for filing proof of loss. If these forms are not given to the claimant within 15 days, the claimant may meet the proof of loss requirements by giving	Per the Uniform Standard: "The policy must include provisions addressing the payment of claims."

	the insurer a written statement of the nature and extent of the loss within the time limit stated in the 'Proof of Loss' provision."[196]	
Contact Information	The policy must include a phone number for policyholders specifically for the purpose of presenting inquiries and obtaining coverage information and assisting with complaints.[197] No provision.	Insurers must include the telephone number of company and, if available, some method of internet communication, on the cover page. However, no statement as to the specific purpose of the number as required in Florida. The telephone number of the insurance department must also be included on either the cover or specifications page.
Deductible Statement	The Office may require an insurer to include a statutorily prescribed deductible statement in any policy containing a deductible provision and print or stamp it on first page of policy in 18-pt font.[198]	No provision.
Elimination Period[199]	Policy must not contain an elimination period in excess of 180 days.[200]	Policy must describe the terms and conditions applicable to all benefits, specifying when benefits begin (i.e., elimination periods). However, according to the Commission Office, Florida's 180-day elimination period limit would apply to Compact-approved products issued in Florida. The LTC Policy Core Standards provide that "(t)he variability of minimum daily benefit amounts, when benefits begin (elimination periods), and when benefits will end (benefit periods) shall comply with the maximums and minimums, if any required by applicable law in the state where the policy is delivered or issued for delivery."[201]
Filings	Each filing must be limited to only one type of coverage. Filings may contain forms for only one company and type of coverage.[202]	May file a single contract for use with more than one plan. Multiple companies may be represented in one filing and submit an application for use by more than one company.
Fraud Warning/ Application	Applications must include the following fraud warning: Applicant "is guilty of" insurance fraud if they act "knowingly and with intent to injure, defraud or deceive" when filing an application with "false, incomplete, or misleading information."[203] Proving policyholder fraud in Florida is subject to a higher standard.	Applications must include the following fraud warning: the applicant may" be guilty if a "false statement" presented "knowingly" by the applicant. No showing of "intent to injure, defraud or deceive" required.

"Free Look"/ Unconditional Refund Period and Disclosure	Policyholder has the right to return the policy within 30 days for premium refund if, after examination of the policy, the policyholder is not satisfied for any reason.[204] An individual LTC insurance policy must have a notice prominently printed on the first page of the policy or attached thereto stating in substance that the policyholder has this right.[205] Policyholder must return policy to receive premium refund, but does not specify whether to company, agent, or both.[206]	Right-to-examine provision must be included and provide a minimum of 30 days to examine the policy, commencing on the date the insured receives the policy. The insurer must include a right-to-examine provision on the cover page of the policy or that is visible without having to open the policy. Must return policy to the company or the agent.
HIV Inquiries	Insurers may only inquire as to whether the person tested positive for exposure to HIV or was diagnosed as having AIDS or ARC. No other details may be requested for application.[207]	May request additional details such as name and contact information for the facility providing diagnosis, the dates of diagnosis, tests and treatments.
Incontestability	A policy must provide that it is incontestable after it has been in force during the lifetime of the insured for period of two years after the date of issue, except for nonpayment of premiums.[208]	For a policy in force for two years, it is incontestable upon grounds of misrepresentation alone; the policy may be contested only upon a showing that the insured knowingly and intentionally misrepresented relevant facts relating to the insured's health. For a policy in force for less than six months, the company may rescind the policy or deny an otherwise valid claim for misrepresentation that is material to the acceptance for coverage. For a policy in force between six months but less than two years, the misrepresentation must be both material to the acceptance for coverage and pertain to the condition for which benefits are sought.
Legal Actions	Provides 5-year limitation on actions to recover on the policy, and no action can be brought within 60 days of receiving written proof of loss. [209]	Policy must conform to the laws of the state where the policy was delivered or issued for delivery. Policyholder knowledge of state law required.

Marketing/ Distribution System	Cover (transmittal) letter must describe distribution systems (e.g. direct marketing, marketing through agents, marketing through financial or other institutions, etc.), and intended target population for all product filings.[210]	No equivalent provision.
Minimum Coverage	Must also provide coverage for at least one type of lower level of care. May not provide significantly more coverage for nursing home care than for lower levels of care. [211] (Lower levels of care means nursing service, assisted living facility, home health centers, adult day care center, community care for the elderly, and personal care and social services.[212])	Essentially the same, except refers to "home health care or community care" instead of "lower levels of care." Refers to "home health care or community care" instead of "lower levels of care." "Home health care" means medical and non-medical services, to ill, disabled or infirm persons within their residences. "Community care" is not defined.
	In lieu of the 50% Equivalency Coverage Requirement between nursing home and lower levels of care, a policy may use an overall lifetime benefit maximum which may be exhausted by any combination of benefits provided it is at least 150 percent of the minimum required coverage (e.g., 24 months for policies issued or renewed prior to July 1, 2006) times the amount of daily nursing home benefit purchased.	No provision.
Nonforfeiture Protection/ Benefit Adjustments After Policy Issue	A company may not modify the nonforefeiture benefit after the policy has been issued, based on the company's experience.[213]	The nonforfeiture provision must state that the benefit amount may be adjusted subsequent to policy issue, as long as the policy is in force and a nonforfeiture benefit is not in effect only as necessary to reflect changes in claims, persistency and interest as reflected in changes in claims in the premium rate schedule for premium paying policies approved by the Commission for the same policy form.

Notice of Claim	The contract must include the following provision: "Notice of Claim: Written notice of claim must be given within 20 days after a covered loss starts or as soon as reasonably possible. The notice may be given to the insurer at its home office or to the insurer's agent. Notice should include the name of the insured and the policy number."	Per the Uniform Standard: "The policy must include provisions addressing the payment of claims."
	The contract may include the following provision with identical wording: "If the insured has a disability for which benefits may be payable for at least 2 years, at least once every 6 months after the insured has given notice of claim, the insured must give the insurer notice that the disability has continued. The insured need not do this if legally incapacitated. The first 6 months after any filing of proof by the insured or any payment or denial of a claim by the insurer will not be counted in applying this provision. If the insured delays in giving this notice, the insured's right to any benefits for the 6 months before the date which the insured gives notice will not be impaired."[214]	No provision.
Order of policy provisions	Policy provisions must be ordered as they appear in Florida Statutes, or, at the option of the insurer, provisions may appear as a unit in any part of the policy, with other provisions to which it may be logically related.[215]	No provision.
Payment and Refund of Premium	Policy must include the amount of premium and does not address the return of unearned premium in the event of death or discontinuation of coverage.[216] In the event of cancellation, the insurer will return promptly any unearned premium.[217]	Policy must include provision describing the terms and conditions for the payment of premium. Refund of unearned premium must be made in the event of death or at the insured's (owner if one designated under the policy), request to discontinue coverage.
	Premiums are refunded on a pro rata basis from the date of termination, not the month of termination.	If the insured terminates the policy during the premium-paying period, the insurer must refund a pro rata share of any modal premium paid by the insured for any period past the requested month of termination.
	The insurer must promptly return any unearned premium in the event of cancellation.[218]	No provision requiring that the insurer return the unearned premium "promptly."
	If the insured cancels, the earned premium shall be computed by the use of the short-rate table last filed with the state official having supervision of insurance in the state where the insured resided	No provision.

	when the policy was issued. If the insurer cancels, the earned premium shall be computed pro rata.[219]	
Payment of Claims/Time Period	Insurer must pay or deny claim within 45 days after receiving written proof of loss;[220] if claim denied, the insurer has another 45 days to pay or deny claim. Claimant knows within 45 days if insurer will pay or deny claim. All overdue payments shall bear simple interest at the rate of 10 percent per year.[221]	Policy must specify when the insurer is required to pay claims, but IC prescribes no specific time period. Insurer must pay 10% annual simple interest if claim paid more than 30 days after company receives "satisfactory" proof of loss.
Policy Change Forms	Generic open-ended accommodations are not allowed. The insurer must provide specifics as to the changes being made and the conditions under which the changes will occur. Requires submission of the specific language of the change.	Under the Standard for LTC Riders, Endorsements, Or Amendments, a company may file a generic policy change form to accommodate all of the policy changes required to reflect the underwriting needs of a company. Requires a company filing a generic policy change form to accommodate all policy changes required to reflect the underwriting needs of a company to submit a Statement of Variability providing information sufficient to identify the potential policy changes that may be made and discuss the conditions under which each item may change.
Policy Changes/ Signed Acceptance	The insured must provide signed acceptance of policy changes.[222] The IC alternative is not provided under Florida law.	Signed acceptance required; however, allows an alternative in which the company certifies that policy changes will be supported by an application signed by the insured or a signed written request from the insured.
Proof of Loss	The policy must include the following provision: "Proof of Loss: If the policy provides for periodic payment for a continuing loss, written proof of loss must be given the insurer within 90 days after the end of each period for which the insurer is liable. For any other loss, written proof must be given within 90 days after such loss. If it was not reasonably possible to give written proof in the time required, the insurer shall not reduce or deny the claim for this reason if the proof is filed as soon as reasonably possible. In any event, the proof required must be given no later than 1 year from the time specified unless the claimant was legally incapacitated.[223]	Per the Uniform Standard: "The policy must include provisions addressing the payment of claims."

Rate Filings—Modified Rate Schedules[224]	The Rate Filing Standards—Modified Rate Schedules would not apply in Florida because Florida law does not allow rate schedules which increase as a function of the insured's age.[225]	Modified Rate Schedules are applicable. Allows rate schedules which increase as a function of the insured's age. According to the Commission Office, the Rate Filing Standard for Individual Long-Term Insurance Modified Rate Schedules is not available for use in Member States that do not permit these schedules. The Commission would not permit a Modified Rate Schedule to be approved for Florida if its laws do not allow these rate schedules.[226]
Reinstatement	A policyholder may have a policy that is cancelled for nonpayment of premium, reinstated if, within a period of not less than five months after cancellation, the policyholder or any secondary addressee demonstrates that nonpayment was unintentional and due to the policyholder's cognitive impairment, loss of functional capacity, or continuous confinement in a hospital, skilled nursing or assisted living facility for more than 60 days.[227] Except in the case of a policy in which the insured has the right to continue in force subject to its terms by the timely payment of premiums until at least age 50 or, in the case of a policy issued after age 44, for at least 5 years from its date of issue, the following applies: "Any premiums the insurer accepts for a reinstatement will be applied to a period for which premiums have not been paid. No premiums will be applied to any period more than 60 days before the reinstatement date**."**[228]	Same as Florida, except does not include as a basis for reinstatement, the "continuous confinement in a hospital, skilled nursing or assisted living facility for a period in excess of 60 days." No provision.
Renewability	Renewability provision must be appropriately captioned, appear on the first page of the policy, clearly state that the policy is guaranteed renewable or noncancellable, and does not apply to policies without a renewability provision and under which the right to non-renew is reserved solely to the policyholder.[229] It must also include a statement that premiums may change, unless the LTC policy is one where the insurer may not change the premium.[230]	Requires the policy to state on the cover page if it is guaranteed renewable or noncancellable. Also requires statement that premium rates may change, unless the LTC policy is one that prohibits the insurer from changing the premium.
Replacement Questions	Signed statement as to whether the new policy will replace the existing policy. Requires both the agent and the applicant to sign a statement regarding replacement of coverage.[231]	Requires only the applicant, and not the agent, to submit a signed statement regarding replacement of coverage.
Secondary Notice of Lapse	Insurers must, at application and while policy is in force, notify applicants at least <u>once annually</u> of their right to designate a secondary addressee to receive notice of policy termination, in addition to	Policy must provide insured with the right to name at least one person to receive notice of termination for nonpayment of

	the insured. Policyholder may waive the right to designate a secondary addressee. The designation form must include a space for the policyholder to elect not to designate a secondary addressee and the form must include a prescribed waiver statement.[232]	premium, in addition to the insured. The policy must also provide that the insurer must notify the insured at least once every two years, of the right to change the written designation. No provision regarding waiver of this right.
Suitability Standards	Insurer and agent must make reasonable efforts to obtain certain information regarding suitability of LTC insurance. Efforts must include presenting the applicant with a LTC Personal Worksheet (Note: Florida's Worksheet differs from the NAIC Model by including additional consumer protections for senior citizens.)[233] For example, Florida requires past rate increases to be specifically identified and broken out by age range and policy form. NAIC requires only a generic summary of past rate increases. The issuer's worksheet must be filed with the Office.)	The application must include a statement agreed to by the applicant that the applicant received the LTC Personal Worksheet. This worksheet is designed to determine the suitability of the product for the prospective purchaser.
Tax Consequence Disclosure/ Life Policies Providing Accelerated LTC Benefits	Disclosure prominently displayed on the first page of the policy or rider and any other related documents.[234]	Must include a disclosure in prominent print on the first or second page of the policy.
Time Limit on Certain Defenses	See "Incontestability" provision in this table.	See "Incontestability" provision in this table.

D-2. Compact Consumer Protections Exceed Florida Standards

Table D-2 summarizes differences between provisions in Florida standards and the Compact standards for long-term care insurance products in which the Compact appears to provide greater consumer protections.

TABLE D-2. LONG-TERM CARE INSURANCE: COMPACT (IC) CONSUMER PROTECTIONS EXCEED FLORIDA STANDARDS		
PROTECTION	**FLORIDA LAW**	**COMPACT STANDARD**
Benefit Triggers for LTC Policies	A LTC insurance policy must condition the payment of benefits on a determination of the insured's ability to perform activities of daily living and on cognitive impairment. Eligibility for the payment of benefits may not be more restrictive than requiring either a deficiency in the ability to perform not more than three of the activities of daily living or the presence of cognitive impairment.[235]	Same as Florida, except that benefit eligibility must not be more restrictive than requiring either a deficiency in the ability of the insured to perform not more than two of the activities of daily living or the presence of cognitive impairment.
Contact Information	No provision specific to LTC policies.	The telephone number of the insurance department must also be included on either the cover or specifications page.
Death Benefits	Policy benefit incurred upon the death of the insured may not exceed $1,000.[236] Insurer may provide as an option an insured may or may not	No provision.

	purchase for a separate premium.	
Definitions	Includes statutory definitions for "long term care insurance policy," applicant," limited benefit policy," "policy," quantified limited benefit policy," and "qualified long-term care insurance policy."[237]	No provision.
Eligibility for Payment of Benefits Statement	No required description of benefit triggers in a separate paragraph with prescribed labeling, only that the LTC policy must in fact condition payment of benefits on certain determinations.[238]	Requires description of daily living and cognitive impairment benefit triggers in a separate paragraph in the policy labeled "Eligibility for the Payment of Benefits." If, to be eligible for benefits, an attending physician or other specified person must certify a certain level of functional dependency, this too must be specified.
"Free Look"/ Unconditional Refund	In the event of cancellation, the insurer must promptly return the unearned premium.[239]	Company must refund any premium paid within 30 days of the return of the policy, directly to the payer.
Inflation Protection/ Rejection of 5% Benefit Increase Option	No provision.	The Individual LTC Insurance Application Standards require applicants rejecting the 5% compound inflation protection offer to sign a prescribed statement as follows: "I have reviewed the outline of coverage and the graphs that compare the benefits and premiums of this policy with and without inflation protection. Specifically, I have reviewed Plan ___ and I reject compound inflation protection at 5%.
Interest on Reinstatement Premium	Insurer may require interest of 8% per annum for the number of days elapsing before the payment of the premium, during which period the policy will continue in force if the demonstration of cognitive impairment is made. If the policy becomes a claim during the 180 day period before the overdue premium is paid, the amount of the premium with interest may be deducted in settlement of the policy.[240]	Insurers may charge interest no greater than 6% on overdue premium.
Interest Rates/Payments During Grace Period	No provision prohibiting insurer from charging interest on overdue premium when insured dies during grace period Insurer may charge interest of up to 8% for the number of days of grace elapsing before premium payment.	Prohibits insurers from charging interest on overdue premium when insured dies during grace period. No provision for interest to be charged on overdue premium payments during grace period.
Mental or Nervous Disorders Exclusion	Permits a policy to exclude or limit coverage for mental or nervous disorders, other than on the basis of Alzheimer's Disease.[241]	Not permitted.
Policy Exceptions and Conditions	Prohibits policy exceptions and conditions that "deceptively" affect the risk purported to be	Prohibits policy exceptions and conditions that "unreasonably"

	assumed in the general coverage of the contract.[242]	affect the risk purported to be assumed in the general coverage of the contract.
Policy Execution	Requires the signature of just one company officer.[243]	Requires the signatures of two company officers.
Premium Rate and Rate Schedule Change	Requires the insurer to provide the insured with a 45 day advance notice of a premium rate schedule increase[244] or rate change.[245]	Provision must describe procedures for a change in the premium rate schedule. It must include a statement that the insurer will notify the insured at least 60 days prior to the implementation of a premium rate schedule increase.
Qualified LTC Services	Same, except does not specifically reference "therapeutic" services among the list of included services.[246]	Specifically references "therapeutic" services among the list of included services.
Readability	Requires Flesch score of 45[247]	Requires a more stringent policy readability score—a Flesch Score of 50.
Probationary/ Waiting Periods	Waiting periods are not permissible for loss resulting from accidental injuries as defined in the policy; otherwise, a waiting period may not exceed one year. Policy may not include a provision establishing a new waiting period in the event existing coverage is converted to or replaced by new or other forms of within the same company, except with respect to an increase in benefits voluntarily selected by the insured individual.[248]	Waiting periods are not a permissible limitation and would not be allowed in a Compact LTC insurance product.

D-3. No Express Counterpart for Compact Provision Under Florida Law

In a number of instances, a provision in a Compact standard has no express counterpart under Florida law. However, Florida law expressly allows policies to include additional provisions not inconsistent with the Florida Insurance Code and which are "desired by the insurer and neither prohibited by law nor in conflict with any provisions required to be included… ."[249] As part of this analysis, the Office found that a number of these Compact provisions are not prohibited under, or in conflict with, Florida law and would therefore be allowed but not necessarily required under, Florida law. [250]

VIII. ENDNOTES

[1] IIPRC (Commission), Update on the Interstate Insurance Compact (As of April 30, 2013). http://www.naic.org/documents/government_relations_2013_flyin_inscom_summary.pdf

[2] E-mail from Karen Schutter, Executive Director, Commission Office, December 29, 2013.

[3] " Effective upon this act becoming a law, the Office of Insurance Regulation shall prepare a report that examines the extent to which the Interstate Insurance Product Regulation Compact and the uniform standards adopted thereunder, provide consumer protections equivalent to those under state law and the Administrative Procedure Act for annuity, life insurance, disability income, and long-term care insurance products. The Office shall submit the report to the President of the Senate, the Speaker of the House of Representatives, and the Financial Services Commission by January 1, 2014." (Section 9, Chapter 2103-140, Laws of Florida)

[4] IIPRC, Update on the Interstate Insurance Compact (As of April 30, 2013). http://www.naic.org/documents/government_relations_2013_flyin_inscom_summary.pdf

[5] Section 626.9931(3), F.S.

[6] Section 626.9932, art. III(1), F.S.; Section 626.9932, art. IV(3), F.S..

[7] Section 626.9932, art. XIII(2), F.S. The Compact requires 26 states or states representing more than 40% of the premium volume for the covered lines based on NAIC records from the prior year.

[8] IIPRC, Update on the Interstate Insurance Compact (As of April 30, 2013). http://www.naic.org/documents/government_relations_2013_flyin_inscom_summary.pdf

[9] Eight states, the District of Columbia, and four territories are not Compact members. The states are Arizona, California, Connecticut, Delaware, Florida, New York, North Dakota, and South Dakota.

[10] Section 626.9932, art. V(1)(a)2, F.S.

[11] IIPRC, Update on the Interstate Insurance Compact (As of April 30, 2013). http://www.naic.org/documents/government_relations_2013_flyin_inscom_summary.pdf

[12] Section 626.9932, art. V(2)(a) and (b), F.S.

[13] Section 626.9932, art. V(2)(b), F.S.

[14] Section 626.9932, art. V(3), F.S.

[15] E-mail from Karen Schutter, Executive Director, Commission Office, December 29, 2013.

[16] Interstate Insurance Product Regulation Commission (IIPRC), Discussion of Significant Variances, October 2013 Financial Statement, includes the following statement: "The note payable to the NAIC currently totals $3,005,923. This is a $66,816 increase over the prior year due to the capitalization of interest on the outstanding loan amount over the past 12 months. IIPRC has used lines of credit from the NAIC to fund operational needs since 2007. The resulting note payable carries an interest rate of 2.25%, equal to the prime rate of 3.25% at January 1, 2010, the effective date of the debt restructure, less 1%. Principal and interest payments are deferred until the year following the year in which the IIPRC achieves a profit of $250,000 or an accumulated cash balance from operations of $500,000 excluding funds from draws. Outstanding interest is capitalized monthly. A line of credit in the amount of $250,000 to cover expenses of the IIPRC in 2013 was approved at the NAIC 2013 Spring National Meeting. IIPRC has not drawn on this line of credit and anticipates cash flow for the next two months to be sufficient to cover operational needs."

[17] E-mail from Karen Schutter, Executive Director, Commission Office, December 29, 2013.

[18] Section 626.9932, art. II(16), F.S.. This definition suggests, contrary to what the Compact implies throughout, that only a standard adopted as of March 1, 2013, is a uniform standard.

[19] Section 626.9932, art. II(12), F.S.

[20] Section 626.9932, art. IV(2), F.S.

[21] Section 626.9932, art. II(13), F.S.

[22] Section 626.9932, art. VII(2), F.S.

[23] www.iiprc.org

[24] Section 626.9932, art. V(2)(b)2., F.S.; Commission Bylaws, Art. 3, section 3.C.

[25] Section 626.9932, art. V(3), F.S.

[26] Section 626.9932, art. IV(1)(b), F.S.

[27] Section 102(l), IIPRC Operating Procedure for the Filing and Approval of Product Filings, adopted as amended, February 28, 2011.

[28] Section 1.A., IIPRC, Core Standards for Individual Long-Term Care Insurance Policies and the Standards for Individual Disability Income Insurance Policies.

[29] IIPRC, Operating Procedure for the Filing and Approval of Product Filings, adopted as amended, February 28, 2011.

[30] System for Electronic Rate and Form Filing

[31] Section 103(b)(11), IIPRC, Establishment of Conditions and Procedures for Public Inspection and Copying of Information and Official Records of the Interstate Insurance Product Regulation Commission, adopted as amended, September 21, 2008.
[32] Section 105(b), Operating Procedure for the Filing and Approval of Product Filings, adopted as amended, February 28, 2011.
[33] Section 627.410(2), F.S.
[34] Section 627.410(6)(c), F.S.
[35] Section 105(d), IIPRC Operating Procedures for the Filing and Approval of Product Filings, adopted as amended July 27, 2009.
[36] IIPRC, 2013 IIPRC Product Filing Trends, November 30, 2013
[37] IIPRC, 2013 IIPRC Product Filing Trends, November 30, 2013
[38] IIPRC, Operating Procedure for Providing Notice of Opt Out of Uniform Standard by Regulation and for Submission and Consideration Of Petitions For Stay Of Uniform Standard, adopted March 28, 2008.
[39] Section 626.9932, art. VII(4)(a).
[40] Section 626.9932, art. VII(4).
[41] Section 626.9932, art. VII(4)
[42] Section 104(a), IIPRC ,Operating Procedure for Providing Notice of Opt Out of Uniform Standard by Regulation and for Submission and Consideration of Petitions for Stay of Uniform Standard, adopted March 28, 2008.
[43] Section 626.9932, art. VII(4)(b).
[44] Section 626.9932, art. XIV(2)
[45] Section 626.9932, art. XVI(2)(b).
[46] Section 626.9932, art. XVI(2)(b).
[47] Section 626.9932, art. III(1).
[48] Section 626.9931(4), F.S.
[49] Section 626.9936(2), F.S.
[50] Section 626.9932, art. VIII(2).
[51] Section 626.9936(1)(a) and (b), F.S.
[52] Section 626.9934(2), F.S.
[53] Section 626.9934(4)(c), F.S.
[54] Section 626.9934(4)(a) and (b), F.S.
[55] Section 626.9934(5), F.S.
[56] E-mail from Karen Schutter, Executive Director, Commission Office, December 16, 2013.
[57] E-mail from Karen Schutter, Executive Director, Commission Office, December 16, 2013.
[58] E-mail from Karen Schutter, Executive Director, Commission Office, December 29, 2013.
[59] See 69O-149.021(3), F.A.C.
[60] The Policyholders Bill of Rights is a source of protections for insurance consumers in Florida. It provides:
Section 626.9641, F.S., Policyholders' Bill of Rights.—
(1) The principles expressed in the following statements shall serve as standards to be followed by the department, commission, and office in exercising their powers and duties, in exercising administrative discretion, in dispensing administrative interpretations of the law, and in adopting rules:
(a) Policyholders shall have the right to competitive pricing practices and marketing methods that enable them to determine the best value among comparable policies.
(b) Policyholders shall have the right to obtain comprehensive coverage.
(c) Policyholders shall have the right to insurance advertising and other selling approaches that provide accurate and balanced information on the benefits and limitations of a policy.
(d) Policyholders shall have a right to an insurance company that is financially stable.
(e) Policyholders shall have the right to be serviced by a competent, honest insurance agent or broker.
(f) Policyholders shall have the right to a readable policy.
(g) Policyholders shall have the right to an insurance company that provides an economic delivery of coverage and that tries to prevent losses.
(h) Policyholders shall have the right to a balanced and positive regulation by the department, commission, and office.
(2) This section shall not be construed as creating a civil cause of action by any individual policyholder against any individual insurer.
[61] Part IX, Chapter 626, F.S.
[62] Chapters 624-632; 634-636; 641-642; 648; and 651, F.S.
[63] Section 626.99(4)(c), F.S.
[64] Paraphrasing from the 2013 NAIC Buyer's Guide for Deferred Annuities, a premium bonus is usually a lump sum amount the insurer adds to an annuity when purchased or when the purchaser adds money. An interest bonus is the amount the insurer adds to the annuity when interest is earned, usually as a set percentage of the interest earned. There may be time restrictions on the withdrawal of the premium bonus.

[65] Section 627.4554(8), F.S.
[66] Section 626.99(4)(a) and (b), F.S.
[67] Section 627.482(1), F.S.
[68] Section 627.4555, F.S.
[69] Section 627.4554(5)(b) and (f), F.S.
[70] Section 627.476(2), F.S.
[71] Section 627.411(1)(b), F.S.
[72] http://www.readabilityformulas.com/flesch-reading-ease-readability-formula.php
[73] http://www.readabilityformulas.com/flesch-reading-ease-readability-formula.php
[74] Section 627.616, F.S.; Section 95.11(2)(b), F.S.
[75] Section 627.603, F.S.
[76] Section 627.6043(1), F.S.
[77] Section 627.4233(1)(a), F.S.
[78] Section 627.602(1), F.S.
[79] Section 627.603, F.S.
[80] Rule 69O-154.003, F.A.C.
[81] Section 627.6045, F.S.
[82] Rule 69O-154.105(6), F.A.C.
[83] Rule 69O-149.006(3)(b)28., F.A.C.
[84] Section 627.94072, F.S.; Rule 69O-157.118, F.A.C.
[85] Section 627.6043(2), F.S.
[86] Section 627.94073(2), F.S.
[87] Section 627.94074(1)(a), F.S.
[88] Rule 69O-157.104(2)(b), F.A.C.
[89] Section 627.6043(1), F.S.; Rule 69O-157.107(4), F.A.C.
[90] Section 627.411(1)(b), F.S.
[91] Rule 69O-157.011, F.A.C.
[92] E-mail from Karen Schutter, Executive Director, Commission Office, December 29, 2013.
[93] Section 103(b)(11), IIPRC, Establishment of Conditions and Procedures for Public Inspection and Copying of Information and Official Records of the Interstate Insurance Product Regulation Commission, adopted as amended, September 21, 2008. (Commission policies expressly classify "(p)roduct filings that are pending approval, have been disapproved, or are withdrawn" as records which "are not public and shall be exempt from inspection, examination and copying.")
[94] Section 626.9932, art. III(1) and Art. X(1), F.S.
[95] Section 627.6515(2)(d), F.S.
[96] Section 105(h), IIPRC Operating Procedures for the Filing and Approval of Product Filings, adopted as amended, July 27, 2009.
[97] Section 626.9932, art. II(16), F.S.
[98] The inability of a consumer to make additional premium payments without clearly stated lifetime maximums and minimums in a flexible premium product unless required to comply with law or regulations (e.g., tax qualification) may come as an unpleasant surprise for those who bought into the flexible premium nature of the contract in order to contribute affordable, periodic amounts toward funding some future retirement goal.
[99] Filings received from Karen Schutter, Executive Director, Commission Office, via email on September 10, 2013.
[100] From a telephonic meeting between the Florida Office and Karen Schutter, Executive Director, Commission Office, August 15, 2013.
[101] Section 627.4085(1), F.S.
[102] Section 626.9541(1)(a) and (b), F.S.
[103] Section 626.99(4), F.S.
[104] Section 627.4131, F.S.
[105] Section 626.99(4)(c), F.S.
[106] Section 627.4554, F.S.
[107] Section 627.457(2), F.S.
[108] Section 627.457(2), F.S.
[109] Section 627.454, F.S.
[110] Rule 69O-149.021(2) and (3), F.S.
[111] Section 626.9541(1)(dd), F.S.
[112] Rule 69O-125.003(5), F.A.C.
[113] Section 627.455, F.S.
[114] Section 817.234(1)(b), F.S.

[115] Section 626.99(4)(a), F.S. (Insurers must provide a 14 day "free look," unconditional refund period, if they do not create and provide a purchaser-specific policy summary for each, individual sale prior to accepting an applicant's money --- something they have not done in practice. As a result, in nearly every instance, the 14 day "free look," unconditional refund period applies to life policies.)
[116] Section 626.9541(1)(g), F.S.
[117] Section 627.429(4), F.S.
[118] Section 627.482(1), F.S.
[119] Rule 69O-162.008, F.A.C.
[120] Section 627.458, F.S.
[121] Rule 69O-149.023(4), F.S.
[122] Rule 69O-151.005, F.A.C.
[123] Rule 69O-151.005, F.A.C.
[124] Section 627.4555, F.S.
[125] Section 627.429(4)(d), F.S.
[126] Section 627.4554, F.S.
[127] Section 627.453, F.S.
[128] Section 627.453, F.S.
[129] Section 627.4615, F.S.
[130] Section 627.4615, F.S.
[131] Section 627.476(2), F.S.
[132] Section 627.476(3), F.S.
[133] Section 627.411(1)(b), F.S.
[134] Section 627.4145(1)(a), F.S.
[135] Section 627.614, F.S.
[136] In addition to the application of section 627.614, F.S., permitting insurers to include provisions not prohibited under or inconsistent with the Florida Insurance Code, the Office would evaluate Compact provisions under 627.411(1) and 627.413(1), F.S. [Policies must not contain "provisions that are unfair or inequitable or contrary to the public policy of this state or that encourage misrepresentation and must include "the conditions pertaining to the insurance"] These provisions include the following:

•**Accidental Death Benefits**. In Florida, there is no provision limiting time period within which death must result after an injury occurs to be eligible for accidental death benefits. The Compact standard limits to 180 days the time period within which death must result after an injury occurs to be eligible for accidental death benefits.

•**Assignment.** The Compact standard includes both assignment and ownership provisions; Florida law only speaks to assignment, making such a provision optional.

•**Commutation of Annuity Benefits.** Applicable to immediate annuities, the Compact standard contains a number of provisions providing for the commutation of any life contingent or non-life contingent annuity benefits payable to the annuitant or beneficiary. While Florida has no express provision, commutation is generally allowed under Florida law.

•**Contract Values.** The Compact standard requires that the values of any interest rate used in determining account, cash, cash surrender and annuity values, and death benefit, and stated in the contract be guaranteed. Values of nonguaranteed interest rates may not be included in the contract. In addition, the contract must define and describe the method of calculating all values and benefits, and include a complete description of all fees, charges and credits used to determine these values. A zero entry in a range of values on the specifications page for any benefit or credit is unacceptable under the Compact standard. While Florida has no such express provisions, the Office would allow these Compact standard provisions under Florida law.

•**Contract Description on Cover Page.** The Compact standard requires the description to include an indication that the contract contains a benefit waiving surrender charges, if applicable. While Florida has no express provision, the Office would allow this Compact provision in a policy under Florida law.

•**Convertible Policies.** Under the Compact standard, the cover page of a term life policy must indicate whether or not the policy is convertible, participating, and/or renewable. The cover page must include the conversion period unless shown on the specifications page. The conversion period and conditions of the conversion privilege must be described. While Florida has no express provision, the Office would allow the Compact provision under Florida law.

•**Dividends/Unearned Charges.** This relates to one of three dividend options available to policyholders. Under the IC, whenever one year term insurance is purchased by dividends in connection with a policy, the policy shall provide for the return of the unearned charge in the event of termination of the policy (other than by death) prior to the expiration of such one year term insurance. Florida has no express provision, but the Office would allow the Compact provision under Florida law.

•**Death from Excluded Acts**. (E.g. policy excludes benefits for death due to war and policyholder dies due to war.) Payments under the Compact standard must be at least equal to the greater of the gross premiums paid for the policy or the policy reserve, each adjusted for dividend values, loans, partial withdrawals and surrenders.

•**Guaranteed Purchase Rates.** A company that retains the right to change the guaranteed annuity purchase rates for any new premiums and account transfers made or varies guaranteed purchase rates between the general and separate accounts, must do so for each set of guaranteed purchase rates used under the contract.
•**Partial Withdrawals.** Under the Compact standard, contracts that develop cash values may provide for a partial withdrawal provision.
•**Settlement Options.** Under the Compact standard, for both annuity and life products, contracts orpolicies must describe each type and form of settlement option provided in the contract. The guaranteed interest rate and mortality table used for a designated option must also be identified in the contract, or in lieu thereof, complete tables of guaranteed settlement option amounts. For variable annuity payment options, the contract must describe how annuity payments are determined and state the smallest annual rate of investment return that must be earned in order for variable payments to not decrease. Finally, the contract must state that the annuity benefits at the time they begin will not be less than those provided by the application of the CSV to purchase a single premium immediate annuity at purchase rates offered by the company at the time to the same class of annuitants.
•**Specifications Page.** As applicable for both annuities and life products, the Compact standard requires the insurer to place all premium amounts, benefits, premium schedules, value of annuity payments, charges used to determine contract values, any guaranteed minimum interest and initial nonforfeiture rates, and the maturity date on the specifications page. For life products and paid up variable annuities, if no dividends are expected, the insurer must state that on the specifications page. Finally, the specifications page must be completed with hypothetical data that is realistic and consistent with other contents of the policy and actuarial filings. While Florida requires the insurer to provide this type of information, it does not require it to be all in one place on the specifications page, but would allow it.

[137] Rule 69O-154.104(1), F.A.C.
[138] Section 627.4085(1), F.S.
[139] Section 627.602(2), F.S.
[140] Section 627.6141, F.S.
[141] Section 627.606, F.S.
[142] Section 627.667, F.S. Provided in group context and used as guidance in individual market.
[143] Rule 69O-149.021(2) and (3), F.A.C.
[144] Rule 69O-125.003, F.A.C.
[145] Section 817.234(1)(b), F.S.
[146] Section 627.6041, F.S.
[147] Section 627.429(4), F.S.
[148] Comments from the Commission Office: "Hospital" is defined to mean "an institution that is licensed as a (h)ospital by the proper authority of the state where it is located." This appears consistent with Florida's definition that a hospital be at a minimum defined as an institution licensed as a hospital and operated pursuant to law.
[149] Requirements for "hospital" defined in Rule 69O-154.104(5), F.S.
[150] Section 627.603, F.S.
[151] Section 627.607, F.S.
[152] Section 627.607(2)(a), F.S.
[153] Rule 69O-154.104(1), F.A.C., defines "accident," "accidental injury," and "accidental means."
[154] Section 627.616, F.S.; Section 95.11(2)(b), F.S.
[155] Rule 69O-154.005(8)(e), F.A.C.
[156] Section 627.6043, F.S.
[157] Rule 69O-154.001, F.A.C.
[158] Section 627.630, F.S.
[159] Section 627.635, F.S.
[160] Section 627.6044, F.S.
[161] Section 627.6044, F.S.
[162] Section 627.613(1), F.S.
[163] Section 627.613(6), F.S.
[164] Rules 69O-149.002, 69O-149.003, and 69O-149.006, F.A.C.
[165] Neither the Compact standard nor Florida standard can be said to provide more or less consumer protection than the other. It depends on the circumstances of the individual policyholder.
[166] Rule 69O-154.105(10), F.A.C.
[167] Rule 69O-151.005, F.A.C.
[168] Rule 69O-154.105(3), F.A.C.
[169] Section 627.634, F.S., F.A.C.; Rule 69O-154.105(3)(f)
[170] Section 627.4233(1), F.S.

[171] This provision seems to conflict with additional language in another part of the standard that states that an insured shall not be required to be unable to perform "any occupation whatsoever."
[172] Section 627.624(1), F.S.
[173] Section 627.624(2), F.S.
[174] Section 627.602(1)(e), F.S.
[175] Section 627.603, F.S.
[176] Section 627.602(1)(e), F.S.
[177] Rule 69O-154.003, F.S.
[178] Rule 69O-154.004, F.S.
[179] Section 627.429(4), F.S.
[180] Rule 69O-154.005(8)(e), F.A.C.
[181] Section 627.614(2)(a), F.S.
[182] Section 627.411(1)(b), F.S.
[183] Section 627.416, F.S.
[184] Section 627.6045, F.S.
[185] Section 627.411, F.S.
[186] "Probationary" period is also referred to as a "waiting" period. A probationary period is the period of time after a policy is issued before coverage is effective. Rule 69O-154.105(6), F.A.C.
[187] Section 627.602(1)(b), F.S.; Rule 69O-154.105(6), F.S.
[188] Section 627.614, F.S.
[189] In addition to the application of section 627.614, F.S., permitting insurers to include provisions not prohibited under or inconsistent with the Florida Insurance Code, the Office would evaluate Compact provisions under 627.411(1) and 627.413(1), F.S. [Policies must not contain "provisions that are unfair or inequitable or contrary to the public policy of this state or that encourage misrepresentation and must include "the conditions pertaining to the insurance"] These provisions include the following:

- **Cost of Living Guarantee.** Under the Compact standard, benefits or calculations subject to modification by a consumer price index must not be reduced below the initial amount purchased or the amount after owner reductions after initial purchase. Florida has no such express provision, but generally operates under the same standard.
- **Definitions of Terms.** The Compact standard defines key terms for disability income insurance such as "benefit period," "catastrophic disability," "concurrent disability," disability," "earnings," "occupation," and "partial disability," while Florida leaves many key terms undefined. In Florida, contractual definitions are subject to reasonableness in their application.
- **Disclosure Acknowledgment.** Under the Compact standard, the application may include an acknowledgement by the insured of receipt of all required disclosures. Florida has no such provision, and would allow the Compact standard.
- **Elimination Period.** Unlike the Compact standard, Florida does not impose a specific limit on the length of the elimination period. Consumers may prefer a longer elimination period because of the effect on rates. A longer elimination period can result in lower premiums. The Compact standard limits the elimination period to 90 days. Both approaches can be of benefit to consumers.
- **Future Medical Benefits.** Under the Compact standard, policies that offer the owner the right to purchase additional disability coverage in the future without evidence of medical insurability must clearly state the amount of future coverage and the necessary requirements such as underwriting requirements. Florida has no express provision, but would allow a similar provision.
- **Incidental Benefit Limits/Dismemberment.** No specific limit on amounts payable. Florida accepts industry standards. Under the Compact, the amount payable must be paid in a lump sum and not exceed the equivalent of 12 monthly disability benefits under the policy.
- **Limitations or Exclusions.** There are a number of permissible exclusions and limitations that are not expressly provided for under Florida law, but which provisions Florida would allow, including: losses resulting from aviation, chemical dependency, cosmetic surgery, commission of a felony by the insured, an illegal occupation, and during incarceration.
- **Misstatement of Tobacco Use Status.** Under the Compact standard, if an insured misstates tobacco use, the amounts payable under the policy will be as if purchased at the correct tobacco use status. While that is a universal standard and Florida would allow it, Florida has no express provision for misstatement of tobacco use.
- **Outline of Coverage.** The Compact standard prescribes a specific format that Florida does not require but would not prohibit.
- **Ownership.** Unlike the Compact standard, Florida has no provision describing the procedures for designating or changing the owner of the policy.
- **Participating Policy Dividend Disclosure.** For participating policies, the Compact standard requires the specifications page to indicate that dividends are not guaranteed and whether or not the insurer intends to pay dividends. Florida has no express provision applicable to participating policy dividend disclosures for disability income insurance policies.

- **Premium Rates.** The Compact standard requires insurers to issue a new specifications page if premium rates on the current specifications page are subsequently changed. Florida has no express provision and does not require this.
- **Prohibited Exclusions and Limitations/Pregnancy.** The Compact standard prohibits exclusion or limitation for disabilities due to the complications of pregnancy. Florida has no such express proscription.
- **Schedule of Benefits.** The Compact standard effectively treats the policy specifications page as a schedule of benefits located all in one place. While Florida includes many of these benefits, insurers are not required to include them all in one location.
- **Suicide Exclusion.** The Compact standard includes suicide as a permissible limitation or exclusion. Florida has no express provision, but would allow such a standard.
- **Supplemental Benefits.** Under the Compact standard, policies may include supplemental benefits for specified injury, sickness or injury and sickness. Florida has no express provision, but would allow policies to include supplemental benefits.
- **Valid Loss of Time Benefits.** The Compact standard requires insurers to return that portion of premium paid for two years immediately preceding a disability which exceeds the pro-rata amount of premiums for the proportional benefits actually paid. Florida has no express provision.
- **Waiver of Premium.** Under the Compact standard, a policy may include a provision stating that for a time period of not more than 90 days of total disability, the company must refund any premiums that were due and paid for the policy while the insured was totally disabled and waive the payments that become due for as long as the disability continues, but not beyond the benefit period; and resume payments after the disability ends. Florida has no express provision but would allow such a provision.

[190] Rule 69O-149.006(3)(b)28.(III), F.A.C.
[191] Rule 69O-157.103(1), F.A.C.
[192] Section 627.4085, F.S.
[193] Section 627.6141, F.S.
[194] Section 627.9407(9), F.S.
[195] Section 627.9404(6), F.S
[196] Section 627.611, F.S.
[197] Section 627.4131, F.S.
[198] Section 627.602(2), F.S.
[199] Section 627.9407(3), F.S.: Elimination period means the number of days at the beginning of a period of confinement for which no benefits are payable.
[200] Section 627.9407(3)(d), F.S.; Rule 69O-157.013, F.A.C.
[201] The Commission maintains a chart on its website providing a comprehensive listing of state-specific requirements for both offer and/or issue of minimum daily benefits, maximum elimination periods and minimum benefit periods, based on information reported by Member States.
http://www.insurancecompact.org/documents/industry_resources_ltc_state_specific.pdf.
[202] Rule 69O-149.021(2) and (3), F.A.C.
[203] Section 817.234(1)(b), F.S.
[204] Section 627.9407(8), F.S.
[205] Section 627.9407(8), F.S.
[206] Section 627.9407(8), F.S.
[207] Section 627.429(4), F.S.
[208] Section 627.94076, F.S.
[209] Section 627.616, F.S.; Section 95.11(2)(b), F.S.
[210] Rule 69O-149.023(4), F.A.C.
[211] Rule 69O-157.104(4)(b), F.A.C.
[212] Rule 69O-157.104(4)(d), F.A.C.
[213] Section 627.94072, F.S.; Rule 69O-157.118, F.A.C.
[214] Section 627.610, F.S.
[215] Section 627.630, F.S.
[216] Section 627.413, F.S.
[217] Section 627.6043(2), F.S.
[218] Section 627.6043(2), F.S.
[219] Section 627.6043(2), F.S.
[220] Section 627.613(1), F.S.
[221] Section 627.613(6), F.S.
[222] Rule 69O-157.106(2), F.A.C.
[223] Section 627.612, F.S.

[224] Per the IIPRC-LTC-I-3-RATEM, "Modified rate schedules" are rate schedules where premiums are based on issue age and where premiums are scheduled to increase during the premium-paying period according to a specified pattern due to attained age or duration since issue as permitted by § 2.B(6) of the Rate Filing Standards for Individual LTC Insurance—Modified Rate Schedules. Limited pay policies (e.g., 20-pay policy) and noncancellable policies are allowed under this definition.
[225] Section 627.9407(7)(a), F.S.
[226] See "Availability" subsection under "Scope" section of this standard. This information is maintained on the Commission website: http://www.insurancecompact.org/documents/industry_resources_ltc_state_specific.pdf.
[227] Section 627.94073(3), F.S.
[228] Section 627.609, F.S.
[229] Rule 69O-157.106(1), F.A.C.
[230] Rule 69O-157.106(1)(b), F.A.C.
[231] Rule 69O-157.110(1), F.A.C.
[232] Section 627.94073(2), F.S.
[233] Rule 69O-157.116(3)(b)1., F.A.C.
[234] Rule 69O-157.106(6)(b), F.A.C.
[235] Section 627.94074(1)(a), F.S.
[236] Rule 69O-157.104(6), F.A.C.
[237] Section 627.9404, F.S.
[238] Section 627.94074(1)(a) and (b), F.S.
[239] Section 627.6043(2), F.S.
[240] Section 627.94073(3), F.S.
[241] Rule 69O-157.104(2)(b), F.A.C..
[242] Section 627.411(1)(b), F.S.
[243] Section 627.416, F.S.
[244] Rule 69O-157.107(4), F.S.
[245] Section 627.6043(1), F.S.; Rule 69O-157.118, F.A.C.
[246] Section 627.9404(11), F.S.
[247] Section 627.4145(1)(a), F.S.
[248] Rule 69O-157.011, F.A.C.
[249] Section 627.614, F.S.
[250] In addition to the application of section 627.614, F.S., permitting insurers to include provisions not prohibited under or inconsistent with the Florida Insurance Code, the Office would evaluate Compact provisions under 627.411(1) and 627.413(1), F.S. [Policies must not contain "provisions that are unfair or inequitable or contrary to the public policy of this state or that encourage misrepresentation and must include "the conditions pertaining to the insurance"] These provisions include the following:

- **Application Questions.** In the Compact standard, the provision related to whether or not the applicant has been advised to enter or is planning to enter a nursing home, is receiving specified services such as home health care, or use specified medical equipment such as a wheelchair, is not expressly provided in Florida. The Compact standard also includes a number of application questions related to tobacco use, profile information, driving record, personal physician or medical facility, various medical questions. Florida has no express provision specific to these types of questions. Florida relies on s. 627.411(1)(b), F.S., to request that the company make medical questions about insurance declined, postponed, modified or rated, more general and phrased "to the best of my knowledge." Open-ended questions are not permitted as part of the application. Florida does not expressly address this, but would evaluate these under s. 627.411(1)(b).
- **Application Statements.** Under the Compact standard, the application must include statements agreed to by the applicants that the company will have no liability until a policy is issued on the application and accepted by the owner and the first premium due is paid; that an agent or medical examiner does not have the company's authorization to accept risk, pass on insurability or affect any provisions of the application or policy; and that the company may require an attending physician statement, medical exam, motor vehicle report or other questionnaire, test or prescription drug report. Florida makes no such express provision.
- **Benefit Eligibility.** Under the Compact standard, subject to all policy provisions, any plan of care required under the policy shall be provided by a licensed health care practitioner and shall not require company approval. The company may provide a predetermination of benefits payable pursuant to the plan of care. This does not prevent the company from having discussions with the licensed health care practitioner to amend the plan of care. The company may also verify that the plan of care is appropriate and consistent with generally accepted standards.
- **Contestability Period.** Under the Compact standard, the policy may allow a separate contestability period for any increase in benefits that was subject to evidence of insurability. The contestability provision for the increased benefits shall be limited to the amount of the increase and the evidence provided for such increases. This is allowed in Florida.

- **Defined Terms.** The term “acute condition” is not defined under Florida law for purposes of LTC insurance. The Compact defines it to mean that the individual is medically unstable. Such individuals require frequent monitoring by medical professionals, such as physicians and registered nurses, in order to maintain their health status.
- **Dependent Coverage.** Under the Compact standard, the policy may provide coverage for dependents and family members. This would be allowed under Florida law.
- **Discount Data.** Under the Compact standard, the application may allow the applicant to specify the type of discount they may be eligible to receive such as a marital or family, and if so, it may request the data needed to administer the discount such as descriptions of relationships and the length of the relationships. Florida has no express provision.
- **Hypothetical Data/Specifications Page.** The specifications page of a policy must be completed with hypothetical data that is realistic and consistent with the other contents of the policy and any required actuarial filings.
- **Ownership.** Under the Compact standard, policy may contain an ownership provision. In Florida, an ownership provision is allowed but not expressly provided.



FLORIDA OFFICE OF INSURANCE REGULATION

Kevin M. McCarty, Insurance Commissioner

200 E. Gaines Street – Tallahassee, Florida 32399

Phone: (850) 413-3140

www.floir.com