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September 19, 2022

Interstate Insurance Product Regulation Commission (IIPRC)
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Hall of the States, Suite 700
Washington, DC 20001-1509
comments@insurancecompact.org

RE: *Operating Procedure for the Use of Compact-Approved Products for Other than Non-Employer Groups*

Interstate Insurance Product Regulation Commission:

The American Council of Life Insurers (“ACLI”) appreciates this opportunity to comment on the Compact’s proposed *Operating Procedure for the Use of Compact-Approved Products for Other than Employer Groups*.

The expansion of the definition of employer groups to include labor unions, employer trusts, insurer trusts and professional employer organizations (PEOs) will be very helpful to insurers and should serve to increase utilization of the Compact as a filing vehicle.

In addition, we would like to achieve the ability to file and secure approval of forms for non-employer groups on a general use basis versus filing forms with the compact for each and every non-employer group to whom we wish to issue coverage. Our desire is to have a sequential process which would flow in the following order:

- We would first file and secure approval of the forms with the Compact for non-employer use on a general use basis; and
- Once the forms are approved by the Compact, when an insurer wishes to use the Compact forms for any non-employer group, the insurer will file each group in the Compacting states in which:
 - There is a requirement that the group be filed; and
 - The non-employer group has residents.

The following are items on which we seek answers, clarification and/or reconsideration from the Compact:

(1) Who should make the decision about what eligible group types are allowed in each individual state and who will keep track of the various state requirements? The proposed “employer” group requirement states that, “If the group meets the state law definition of employer, portability trust, labor union, or PEO, the insurer can issue a Compact-approved group product without further authorization.” We are confused by this statement. If the Compact is expanded to allow approved forms to be issued to other “employer” groups, we should be able to rely on the Compact filing for use in all participating states. If we instead have to follow individual state guidelines – which are not even presented to us through the Compact but which require our own research and negotiations/discussions with the states – doesn’t that negate the advantage of the Compact?

Not all states have clear-cut eligibility definitions that spell out that they include labor unions (some do – yes, but what if silent?). In addition, there will not be any (or many) state eligible group laws that refer specifically to portability trusts or PEO’s, as most of those laws were written long before portability and PEO’s became “things.” If the Compact keeps these requirements as proposed, putting the onus on the insurer to determine the groups to which it can issue the Compact-approved policy, there will be a lot of inconsistency. As far as we are concerned, the advantage of the Compact is that it creates standards and consistency for insurers for issuance in all participating jurisdictions. If a state does not agree with the Compact standards, they can either opt out of those product standards or work with the Compact to establish exceptions, just like a few states did within the group DI standards for exclusions and limitations, and the list of exceptions to the more general group DI Product Standards were clearly included as part of the standards.

We strongly suggest that the Compact’s operating procedures and standards clearly state what types of groups are acceptable for each product and, if there are any state variations, clearly specify those state variations. The states are in the best place to clarify their state interpretation of their own eligible group laws and regs; it would be to everyone’s benefit if the state provided the Compact with a chart that insurers could use when submitting a Compact filing to ensure that everyone is on the same page. To do otherwise will cause confusion, inconsistency, and really nullifies the whole point of expanding the Compact standards to allow coverage for these other groups.

(2) We suggest that the Compact clarify and/or expand the types of groups they are including as “employer” groups. The proposed “employer” group type includes an employer, portability trust, labor union, or PEO. We have never seen an eligible group statute that mentions a “portability” trust. Does the Compact really mean a broader “insurer-established trust” which is what we see used for portability trusts? For example, some companies also offer conversion via a group policy issued to an insurer-established trust. If so, wouldn’t the intent be that this “conversion trust” be handled the same as a “portability trust”? We think the eligibility should be broader than just “portability” trusts and think that the broader “insurer-established trust” would be more appropriate.

In addition, we’ve never seen an eligible group statute that refers specifically to PEOs, so what exactly would satisfy this under a state’s laws?

The Compact should make their eligible group wording as clear and broad as possible to avoid requiring insurers to have to also submit separate group filings in each member state to cover any remaining type of groups that may fall through the Compact’s limited definition. If we have to file in each state as well as the Compact, we might as well just use each state’s filing. And, as proposed

in the comment above, the Compact should also provide each state's interpretation of the eligible group guidelines for issuance in their state.

(3) How will we be able to tie Compact approved forms to any subsequent filings in individual states? Will there be any mix-and-matching of these Compact-approved forms with the same form filed directly in a member state for another type of eligible group that is not specifically included under the Compact "employer" group standards?

(4) There is a need for clearer guidelines and procedures for the "non-employer" groups (i.e., associations). We agree that there is a need for more clarity for the filing and approval process non-employer groups and exactly how the process (with each state and the Compact) should work. Is the intention that the insurer would just submit a filing for the specific type of non-employer group – but not the form itself – with the state, to obtain approval for the group type, and then submit the form filing with the Compact along with the state's approval of the group type? We agree with other comments that specific details are needed.

(5) When are the new guidelines effective and how will they be applied to existing group filings?

(6) We have a concern with respect to § 104.(4) - "The Compacting States shall provide, and the Commission shall publish, a listing of each Compacting State's requirements for seeking authorization." Our concern is that there are so many differences in eligible group laws and changes that happen such that it could become outdated quickly. Since the insurer is providing a certification that the required filings have been done in the states that require such filings in accordance with applicable law, that should be sufficient since the onus is on the insurer to certify those filings have been done and research state requirements appropriately.

(7) We have also found areas in which there a lack of clarity that could lead to confusion. Specifically, we are having some difficulty conceptualizing exactly how this will work in practice. The fundamental confusion surrounds the timing of Product Filings submitted to the Commission versus Non-Employer Group approval filings submitted to Compacting States.

- We will submit a Product Filing to the Commission for approval for use with Non-Employer Groups. "Product Filing" is used as a defined term, and is distinguished from group approval; see, e.g., § 103(1) ("A Product Filing approved by the Commission shall not be deemed as approval that the type of group meets the definition of an Employer Group or Non-Employer Group..."). Certain parts of the procedure seem to assume that approval of the Product Filing will, or at least may, occur prior to requesting approval for specific Non-Employer Groups (see, e.g., § 104(2) ("When an Insurer intends to issue a policy or certificate in a Product Filing approved by the Commission to a Non-Employer Group...") (emphasis added)). However, § 104(3) provides that "The Commission shall notify the representative(s) designated by the Compacting State(s) prior to approval of a Product Filing where the Compacting State is included and where the filer has indicated the policy or certificate will be issued to the Non-Employer Group" (emphasis added).
 - Which happens first? Is the Product Filing approved by the Commission, followed by a state-by-state attempt to get group approval, or do we need group approval before the Product Filing is approved? The Operating Procedure seems to jumble this sequence.
- § 104(2) provides: "When an Insurer intends to issue a policy or certificate in a Product Filing approved by the Commission to a Non-Employer Group, the Insurer shall include in the Product Filing both of the following:" (a) a certification of some kind (the language is confusing), and we can't tell if we are certifying that we will file with the states for approval, have already filed for approval, or already received approval), and (b) a "statement of intent" with respect to

where the policy or certificate will be issued. This section of the Operating Procedure requires that the statement of intent “sufficiently identifies for each Compacting State(s) the type of group and applicable state tracking information” (emphasis added). We don’t understand what the underlined language is supposed to mean. If we have to include state tracking information, it seems that we must have at least submitted the Non-Employer Group to the Compacting state for review, if not already had it approved. But if that’s the case, what is the purpose of the next two sections, § 104(3), (4) with respect to the Commission notifying representatives of the designated Compacting State(s), and the Compacting States responding with the States’ requirements for seeking authorization.

- Do we get approval from each individual state with respect to the Non-Employer Group to which we want to issue, and does that approval need to be part of the statement of intent, or does this approval process with the state not begin until after the Commission has reached out to the Compacting States’ designated representatives? Again, the Operating Procedure seems to jumble this sequence.
- § 104(5) makes it sound like there is one statement of intent per product, rather than one statement of intent per Non-Employer Group, and we want to confirm that. We understand the notion of one statement of intent per product, but if we do have to “update” the statement of intent whenever we’re going to issue that product to a new Non-Employer Group (§ 104(5)), we are struggling to envision what these “updates”, or more to the point, what a slew of scores of updates per year, would look like in practice and how difficult it might be to administer.
- Do we know how these “updates” to the statement of intent will occur? We have some concerns about how an “update” to the statement of intent will be accomplished if there is one “statement of intent” per product; The Operating Procedure makes clear that it is not intended to create additional requirements with respect to group definitions. § 103(2), for example, provides: “The authority of whether a group fits the definition of an Employer Group or Non-Employer Group is subject to the exclusive determination of the State and governed by applicable state law...” The DRAFTING NOTE between § 103 and § 104 provides: “By categorizing these groups as “Employer Groups” and “Non-Employer Groups” for purposes of this Operating Procedure and Uniform Standards, there is no intent to create statutory definitions for these groups where none existing [sic] in the laws of the Compacting State where the policy or certificate is delivered or issued for delivery.”

We are confused, then, about what effect § 102(3)(b) and (c) are intended to have. Subparagraph (b) provides that a Non-Employer Group must not have been formed solely for the purpose of providing or obtaining insurance. Subparagraph (c) provides that a Non-Employer Group must have “a substantive commonality of interest and purpose apart from, and independent of, providing or obtaining insurance...” Although subparagraph (b) is a common requirement of bona fide association groups in most states, the language of subparagraph (c) is not so common in “association” statutes. As a practical matter, if there is no substantive commonality of interests, then a reviewer will likely conclude that the group was, in fact, formed for the purpose of obtaining insurance; however, the “substantive commonality” test is not one usually spelled out in state statutes.

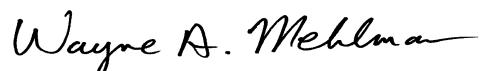
- Why would the Operating Procedure include these requirements at all if the explicit purpose is to not create additional requirements with respect to group eligibility? What happens if a Non-Employer Group satisfies a Compacting State’s bona fide association requirements but does not satisfy § 102(3)(c). Even if it would not affect a State’s approval of the Non-Employer Group, would it affect a member’s ability to rely upon a Commission-approved Product Filing?

(8) There are few typos or awkward sentences in the proposed Operating Procedure which reduce the clarity. We have included proposed changes in strikethrough and green text below:

- DRAFTING NOTE on Page 2: The laws in the Compacting State where the policy or certificate is delivered or issued for delivery ~~applies~~ apply to whether the groups defined above are authorized to ~~operating~~ operate in the Compacting State. By categorizing these groups as “Employer Groups” for purposes of this Operating Procedure and Uniform Standards, there is no intent to create statutory definitions for these groups where none existing exist in the laws of the Compacting State where the policy or certificate is delivered or issued for delivery.
- DRAFTING NOTE on Page 3: The laws in the Compacting State where the policy or certificate is delivered or issued for delivery ~~applies~~ apply to whether the groups defined above are authorized to ~~operating~~ operate in the Compacting State. By categorizing these groups as “Employer Groups” and “Non-Employer Groups” for purposes of this Operating Procedure and Uniform Standards, there is no intent to create statutory definitions for these groups where none ~~existing~~ exist in the laws of the Compacting State where the policy or certificate is delivered or issued for delivery.
- § 104.(2)a.: A certification that the Insurer has met the requirements for the Non-Employer Group as applicable under the Compacting State’s filing laws and procedures before it issues the policy or certificate approved by the Commission in the Compacting State, and that the Insurer will administer the Product Filing only in accordance with the statement of intent.

Thanks again for this opportunity to provide comments. If you have any questions, feel free to contact me at waynemehlman@acli.com or 202-624-2135.

Sincerely,



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