MEMORANDUM

FROM: Governance Committee
TO: Product Standards Committee
DATE: June 15, 2021
SUBJECT: Request to Address Possible Conflicts Between Colorado Statute and Uniform Standards

The Governance Committee continues to work on a recommendation for next steps to respond to the Colorado Supreme Court opinion issued in April 2020, which concluded the Colorado General Assembly could not delegate authority to an interstate administrative agency its power to adopt regulations that conflict with a Colorado state statute if the interstate compact does not have the consent of the U.S. Congress.

As part of its multi-pronged approach, the Governance Committee has discussed the need to identify, and in certain cases, address common or key conflicts between a state statute and a provision of the Uniform Standards. The Governance Committee recommends minimizing conflicts between provisions in the Uniform Standards and state statute regardless of implied congressional consent.

Since Colorado has a binding state Supreme Court opinion that state statute rules when in conflict with the Uniform Standards, the Governance Committee suggests the Product Standards Committee address two meaningful conflicts in Colorado while it further explores the recognition of implied congressional consent.

Colorado has a state statute that limits the exclusion from policy benefits because of death by suicide to one year. The Uniform Standards have a general provision that permits a two-year suicide exclusion period. Colorado has a state statute that prohibits gender as a rating characteristic for individual long-term care insurance rate schedules. The Rate Filing Standards for Individual Long-Term Care Insurance Policies permit gender to be used as a rating characteristic for individual long-term care insurance rate schedules.

Since the development of the first Uniform Standards, a handful of provisions within the Uniform Standards have identified state law as the applicable requirement. In such cases, the provisions either indicate state law in the jurisdiction where the policy is issued applies, or state law applies if it is more stringent than the provision in the Uniform Standards. Notable examples of each
include the fraud exception to the incontestability clause and the right to examine period for replacement policies, respectively. The Product Standards Committee could consider these and other solutions for the identified conflicts between Colorado statute and the applicable Uniform Standards.

The Governance Committee respectfully requests the Product Standards Committee review these conflicts and recommend to the Management Committee proposed changes to the Uniform Standards to minimize the conflict with Colorado statute with regards to these respective provisions.