

PSC Recommendation of Draft Amendments to Address Colorado statutory Conflicts in Response to Governance Committee Referral

In a referral to the Product Standards Committee, the Governance Committee has requested the PSC address possible conflicts between Colorado statute and certain provisions of the Uniform Standards. The referral letter is attached as Appendix A.

The PSC hereby provides a draft of its recommendation in response to the Governance Committee referral. The PSC will accept written comment until Thursday, September 9th and will hold a public call on Tuesday, September 14th at 1:30 pm ET to receive comments on these recommended amendments.

Draft Option to Amend the following provisions across the Life Insurance Uniform Standards

§3. POLICY PROVISIONS

T. REINSTATEMENT

(6) With respect to any reinstated policy, the following applies:

- (a) With respect to statements made in an application for reinstatement, the policy is incontestable after it has been in force during the insured's lifetime for two years beginning with the day of reinstatement. The contestable period is based only on statements in the reinstatement application unless the original contestable period has not yet expired. The reinstated policy may include an exception to the incontestability provision for fraud in the procurement of the reinstated policy when permitted by applicable law in the state where the policy is delivered or issued for delivery.
- (b) The suicide exclusion shall not exceed two years from the day of reinstatement, **or any shorter period as may be required by applicable law in the state where the policy is delivered or issued for delivery.**
- (c) If a policy contains a reinstatement provision or other policy provision that references the subject matter of Paragraph (6)(a) and/or (6)(b), the policy references shall be consistent with (6)(a) and/or (6)(b).

W. SUICIDE

- (1) The policy may provide for a suicide exclusion, which may include the phrase "sane or insane."
- (2) The suicide exclusion shall include the conditions of the provision.
- (3) The suicide exclusion period shall not exceed two years from the date of issue of the policy **or any shorter period as may be required by applicable law in the state where the policy is delivered or issued for delivery.**
- (4) At a minimum, a refund of all premiums paid, less dividends paid and any indebtedness, shall be paid by the company in the event of death by suicide during the suicide exclusion period.

Draft option to address gender as a rating characteristic in the Long-Term Care Uniform Standards

§ 2. ADDITIONAL SUBMISSION REQUIREMENTS FOR INITIAL RATE FILINGS

The following additional submission requirements apply to initial rate filings for individual long-termcare insurance policies:

A. GENERAL

- (1) If the initial rate filing is being submitted on behalf of the company, include a letter of authorization from the insurance company submitted by the party authorized to submit the filing.
- (2) A filing of a premium rate schedule for an existing policy form that increases one or more premium rates and does not decrease any premium rate and is to be applicable only to policies issued after a defined issue date is not considered an increase to a premium rate schedule but is considered a new initial rate schedule.
- (3) For guaranteed renewable policies, if the company has guaranteed premiums that will not increase after the insured has attained a specified age, the company shall certify that the basis for future rate increases will not include adverse experience for such insureds. However, this certification does not preclude the company from utilizing the actual experience of the insureds beyond the specified age in projecting the experience of any other segments of the insured population for which rate increases are permitted.
- (4) The company shall certify that the use of its rating characteristics (such as gender or smoking status) for premium schedules follow what is permitted by applicable law in the state where the policy is delivered or issued for delivery. More than one rate schedule or demonstration may be provided to accommodate differences in state law.



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.