

November 20, 2019

To: [comments@insurancecompact.org](mailto:comments@insurancecompact.org)

The Texas Department of Insurance welcomes the opportunity to comment on the draft strategic plan of the Interstate Insurance Product Regulation Compact.

Texas was one of the founding 26 states to adopt the Compact and has been an active member ever since. Since more than 10 years has passed since the Compact approved its first forms in 2007, this strategic planning project presents an important opportunity to thoroughly reassess the now mature Compact. Aside from the adoption of almost 100 product standards and the approval of many subsequent product filings, the Compact has not changed much since its founding. This project allows the member states to reflect anew on how they want the Compact to look for the next 10 years. With this broad scope in mind, Texas has five suggestions for action items for the strategic plan:

- 1) Reassess governance
- 2) Explore ways to strengthen the Compact's legal foundation
- 3) Explore new ways the Compact can assist the states
- 4) Explore ways to improve consumer understanding of Compact approved forms
- 5) Explore ways to publicly demonstrate the quality work of Compact staff

## **1) Reassess Governance**

With any maturing organization, it is important to periodically assess whether its current operations continue to reflect the expectations of its members. This is especially true for the Compact, where over a quarter of the current member states have joined since the original bylaws were adopted. The Compact's governance, which consists of officers, the Management Committee, voting members, and Compact staff, is particularly complex. In such a complicated arrangement, clear communication and control is essential. It is important to periodically determine whether the officers, Management Committee, and voting members have timely access to information that they need to make their decisions and whether control of the Compact is appropriately delegated to the officers, Management Committee, and staff.

Recently, for instance, the Compact appeared as an amicus in litigation in Colorado and, even though Texas is on the Management Committee, it was difficult to obtain timely information and participate fully in developing the brief to the court. Obviously,

when staff, officers, and the Management Committee are all working on an issue, communications and coordination are essential, and all members should be comfortable with the delegation of authority to run the Compact. As another example, we note that the current bylaws of the Compact prohibit a member of the Management Committee from being a member of the Audit Committee. The strategic planning process is an opportune time to reassess governance decisions like this, perhaps by hiring an outside consultant as the NAIC did in 2014.

Accordingly, Texas suggests a new action item:

*Review the current governance structure, including delegation of authority to the officers and to staff, to evaluate the effectiveness of the current structure, procedures for communications from staff and officers, and opportunities for improvement.*

## **2) Explore ways to strengthen the Compact's legal foundation**

The recent Colorado litigation is notable for its attempt potentially to call into question the very legal foundations of the Compact. Given this attack on the Compact, the current strategic planning initiative is a good opportunity to initiate a new evaluation of the Compact's legal structure and whether there might be ways to strengthen it against such litigation. For instance, should the Compact pursue approval at the federal level that might give industry greater confidence that the Compact will not face state by state challenges to the legality of Compact approved forms and rates? Should the Compact explore contingency plans in case it receives an adverse court decision in Colorado or another state?

Accordingly, Texas suggests a new action item:

*Explore ways to strengthen the legal foundation of the Compact.*

## **3) Explore new ways the Compact can assist the states**

Texas noted with interest Action Item 8 on page 10 of the draft strategic plan. That item currently reads:

*Develop a process for working with Compacting States willingly wanting to incubate a product filing through the Insurance Compact filing process where aspects of the product (benefit or actuarial) are novel to determine if they can be filed under existing or future Uniform Standards.*

This item seems to be based on the fact that the Compact will never have uniform standards for every innovation that industry may come up with, and yet the Compact staff have a great deal of expertise to offer states, many of which have limited staff. Texas has concerns about the legal ability of the Compact to issue approvals that only apply to certain states. However, Texas agrees that it would be very useful for Compact staff to assist states in their review of nationwide filings. Compact staff are already assisting with issues such as long term care rate reviews. If Compact staff could provide the states the results of their independent review of forms or rates, this could greatly expedite the state approval process.

Accordingly, Texas suggests revising Action Item 8 as follows:

*Develop a process for Compact staff to work with Compacting States to assist with state review of product filings where aspects of the product (benefit or actuarial) are not able to be approved under current Uniform Standards.*

#### **4) Explore ways to improve consumer understanding of Compact approved forms**

Currently, the Compact has little in the way of plain language requirements in its product standards. For instance, the Compact appears to only have the following readability standards for individual immediate non-variable annuities:

##### **READABILITY REQUIREMENTS**

*(1) The contract text shall achieve a minimum score of 50 on the Flesch reading ease test or an equivalent score on any other approved comparable reading test. See Appendix A for Flesch methodology.*

*(2) The contract shall be presented, except for specifications pages, schedules and tables, in not less than ten point type, one point leaded.*

*(3) The style, arrangement and overall appearance of the contract shall give no undue prominence to any portion of the text of the contract or to any endorsements or riders.*

*(4) The contract shall contain a table of contents or an index of the principal sections of the contract, if the contract has more than 3,000 words printed on three or fewer pages of text or if the contract has more than three pages regardless of the number of words.*

...

##### **FAIRNESS**

*(1) The contract shall not contain inconsistent, ambiguous, unfair, inequitable or misleading clauses, nor contain provisions that are against public policy as determined by the Interstate Insurance Product Regulation Commission, nor contain*

*exceptions and conditions that unreasonably affect the risk purported to be assumed in the general coverage of the contract.*

Texas is working to strengthen its own form review requirements to make insurance more clear and understandable for consumers, but the Compact has the ability to impact far more consumers. Texas suggests considering the creation of a uniform product standard applicable to all lines that would impose minimum plain language requirements.

Accordingly, Texas suggests adding a new action item to Priority I on page 7 of the draft:

*Develop standards applicable to all products to promote the use of plain, understandable language in forms.*

#### **5) Explore ways to quantify the quality work done by Compact staff**

The Compact continues to grow. According to the 2018 Annual Report, the Compact approved 829 products in 2015. This number rose to 1,226 in 2018. Currently, there is no systematic review or audit of the work of Compact staff. Most states, including Texas, do not have the resources to review every Compact approval to ensure that the states have no concerns. To be clear, Texas can point to no specific form that we believe was erroneously approved. However, the comfort of state consumers, regulators, and legislators with the Compact would be increased if there was some independent review of the approval decisions made by Compact staff.

Accordingly, Texas recommends adding a new action item to Priority II on pages 9-10 of the draft:

*Implement an audit process either through an outside party or through participation of state regulators to confirm that products approved by the Compact are compliant with Compact product standards.*

Sincerely,



Doug Slape  
Chief Deputy Commissioner