DATE: April 7, 2016

TO: IIPRC Product Standards Committee (PSC)

FROM: Sonja Larkin-Thorne, Brendan Bridgeland, Angela Lello, Fred Nepple, IIPRC Consumer Representatives and Bonnie Burns, California Health Advocates

SUBJECT: “Non-duplication Clause,” Page 37, IIPRC Office Report and Recommendation to the Product Standards Committee (“PSC”) for the Uniform Standards currently subject to 5-Year Review (Phase 6 Long-Term Care Insurance)

A “Non-duplication Clause,” unless properly constructed, will leave the claims of vulnerable consumer caught between insurers and also subject them to unsuitable sales. We again write to urge the PSC to refer this Industry Advisory Committee (“IAC”) request to the NAIC Senior Issues Task Force so all the issues associated with it may be considered. We also urge you to address and obtain a response to the questions raised in our January 19, 2016 memo (attached).

IIPRC adoption of a Non-duplication Clause will lock it in nationally and foreclose state insurance departments and the NAIC from developing a considered approach to this issue. We also note that the industry sought a “Non-duplication Clause” in 2010 arguing precisely the “assumptions and circumstances” advanced today. The IIPRC rejected those arguments. There is no change in “underlying assumptions and circumstances” that justifies consideration of a Non-duplication Clause, whatever its merits, in the 5-year review process.

If you nevertheless decide to proceed with this poorly considered proposal we ask that you attempt to mitigate some of these issues by asking the Actuarial Workgroup to consider whether there should be separate rate standards for long term care policies sold as additional coverage and by constructing the provision as follows:

Section 3. R. Limitations and Exclusions

(f) Expenses for services available or paid for under a similar policy form issued by this company but only if:
1. This policy permits accumulation of benefits deferred due to this exclusion;

2. The application non-duplication of benefit provisions does not reduce benefits provided under this policy and the similar policy form to less than the total amount of expenses for services or items for which benefits are otherwise available or payable for under both policies; and

3. The similar policy form complies with the following:
   a. It has no non-duplication of benefits provision or has a non-duplication provision that reciprocates with this policy provision on a prorate basis.
   b. It permits accumulation of benefits deferred due to application of a non-duplication of benefits provision, if any.
DATE: January 19, 2016

TO: IIPRC Product Standards Committee (PSC)

FROM: Sonja Larkin-Thorne, T. Ryan Wilson, Brendan Bridgeland, Angela Lello, Fred Nepple, IIPRC Consumer Representatives and Bonnie Burns, California Health Advocates

SUBJECT: Industry Advisory Committee (“IAC”) comments relating to the IIPRC Long Term Care Standards 5 Year Review

The IIPRC in 2010 explicitly rejected inclusion of a “non-duplication” clause in the Long Term Care Uniform Standard (“LTC Standard”). We urge the Product Standards Committee to recommend referral of the IAC proposal to resurrect such an exclusion to the National Association of Insurance Commissioners Senior Issues Taskforce. We urge you to take up this proposal only after the NAIC has given it the careful study it deserves.

The need for a thorough examination of this proposal is compelling. The credibility of the IIPRC is at stake. A number of state legislatures enacted the Compact after the IIPRC rejected a “non-duplication” exclusion. Those states made their election under Article VII 4 of the Compact to opt out from participation in the LTC Standard based on that decision.

This history also makes the IAC proposal particularly inappropriate for consideration in a 5 Year Review process. Moreover the IAC does not assert that “circumstances or underlying assumptions have changed since the last time the rule was adopted, amended or reviewed,” the IIPRC scope for a 5 year review amendment.

More important, the IAC proposal does not lend itself to abbreviated consideration. The NAIC Long Term Care Insurance Model Regulation on this topic is vague and does not address the many issues associated with it. It is unknown to what extent state insurance departments approve either inter-company (non-duplication between policies issued by unaffiliated insurers) or intra-company (non-duplication between policies issued by the same insurer) exclusions.
The NAIC has revised the Long Term Care Insurance Model Regulation repeatedly to address issues that have arisen in the marketplace. This IAC proposal invites a thorough inquiry by the NAIC that likely will lead to another revision, including:

1) Which state departments disapprove non-duplication exclusions? Why?
2) Which states departments approve only intra-company exclusions? Why?
3) What forms of non-duplication exclusions are currently in-force?
4) Are insurer non-duplication exclusions included in existing in-force polices in reciprocal form and are they all compatible with the proposed exclusion (i.e. are provisions in in-force policies, and the proposed exclusion, reciprocal such that the insured is not left in a claims “gap.”)?
5) Have state insurance departments received consumer complaints regarding application of incompatible exclusions or disclosures?
6) What compatibility/reciprocal issues have insurer claim departments observed when applying inter-company exclusions?
7) How do insurer claims departments apply such an exclusion? How do they determine and react to another insurer’s adjudication of a claim?
8) Do insurers apply an exclusion only when both policies permit extending benefits by preserving a “pool” of benefits? To what extent do existing in-force policies lack such a feature for extension of coverage? How are consumers who purchased coverage without such a feature protected from inappropriate loss of benefits?
9) What compensation standards do insurers apply to limit incentive for inappropriate sale of unsuitable additional coverage?
10) Have state insurance departments observed insurer compensation practices that inappropriately provide incentive for unsuitable sale of additional coverage? Have any departments adopted standards to mitigate such as practice?
11) Have state insurance departments observed marketplace practices of sale of additional coverage to circumvent replacement restrictions, including compensation limits?
12) Can insurers adopt rating practices for intra-company replacements to enhance coverage that mitigates issue age loss so that replacement coverage, rather than additional coverage, can be appropriately issued?
13) What are the rating practices that are applied and that are they appropriate when coverage is offered that provides benefits only on a prorate basis because of application of a non-duplication exclusion.
14) Since sale of additional coverage is driven by representations of long term care inflation projections is it appropriate to develop standards for this type of marketing?
15) What are the disclosures that are appropriate regarding “non-duplication” exclusions?

These questions need to be asked. The NAIC Senior Issue Taskforce is best positioned to consider these issues and to develop a response that protects consumers and preserves an efficient and uniform long-term care insurance market. We urge you to refer the matter to the NAIC.