



States, Strength & Speed Aligned

MEMORANDUM

TO: IIPRC Management Committee

FROM: Product Standards Committee

DATE: January 11, 2010

SUBJECT: Recommendation of Individual Long-Term Care Standards

The Product Standards Committee (“PSC”) of the Interstate Insurance Product Regulation Commission (“IIPRC”) is charged with formulating a plan for review and adoption of uniform product standards and with finalizing proposed drafts of uniform product standards. In carrying out its charge, the PSC has prepared 10 new proposed uniform standards to implement the IIPRC’s statutory authority to receive, review and approve uniform standards for individual long-term care insurance products, including the form of a policy and application, rate filings, advertisements and other related forms.¹

The Standards Committee recommends the Management Committee initiate the rulemaking procedure² with respect to the attached proposed uniform standards:

- 1. Core Standards for Individual Long-Term Care Insurance Policies**
- 2. Individual Long-Term Care Insurance Application Standards**
- 3. Standards for Forms Required to be Used with an Individual Long-Term Care Insurance Application**
- 4. Individual Long-Term Care Insurance Standards for the Outline of Coverage**
- 5. Rate Filing Standards for Individual Long-Term Care Insurance--Modified Rate Schedules**
- 6. Rate Filing Standards for Individual Long-Term Care Insurance--Issue Age Rate Schedules Only**
- 7. Standards for Individual Long-Term Care Insurance Benefit Features**
- 8. Standards for Individual Long-Term Care Insurance Application Change Form**
- 9. Standards for Riders, Endorsements or Amendments Used to Effect Individual Long-Term Care Insurance Policy Changes**
- 10. Standards for Individual Long-Term Care Insurance Advertising Material**

The text of the proposed standards are posted with this memorandum on the Rulemaking Docket on the IIPRC web site (www.insurancecompact.org), along with versions of the proposed standards highlighting revisions the PSC made to the Working Group drafts.

¹ As enacted by the IIPRC member states, the Interstate Insurance Product Regulation Compact provides authority to review individual long term care products in Article II, § 11 (definition of Product includes individual long term care insurance policy, application and related form attached to or made part of the contract); Article IV, § 3 (power to review Products and rate filings for long-term care insurance Products); and Article IV, § 4 (power to review Advertisement related to long-term care insurance Products).

² The rulemaking procedure is set forth in the Rule for Adoption, Amendment and Repeal of Rules for the IIPRC.

Drafting Process

All of the proposed standards were originally developed by the Long-Term Care Subgroup of the NAIC National Standards (EX) Working Group. Development of long-term care standards by the Working Group dates back to early 2004, when the initial draft of policy standards was prepared.³ Every meeting of the Working Group is open to public participation.

The PSC began its consideration of the individual long-term care insurance standards developed by the Working Group on November 20, 2008. Since then, the PSC has held at least 54 meetings to review the proposed standards, amounting to at least 3,930 minutes of review time. The PSC held six meetings in 2009 to receive public comments on the proposed standards: March 5, July 16, October 13, November 3, November 17 and December 17. Public comments were received from Compacting and non-Compacting states, the Legislative Committee, the Industry Advisory Committee, the Consumer Advisory Committee, consumer representatives and insurance companies. The PSC is greatly appreciative of the efforts of legislative, consumer and industry representatives to improve the proposed standards.

Enhanced Consumer Protections

Unique among the IIPRC-eligible product lines, uniform standards for long-term care are required to provide “the same or greater protections for consumers as, but shall not provide less than, those protections set forth in the [NAIC] Long-Term Care Insurance Model Act and Long-Term Care Insurance Model Regulation, respectively, adopted as of 2001.”⁴ Some of the enhanced consumer protections in the proposed standards are as follows.

- For policy forms:
 - Exclusions based on mental and nervous disorders are not permitted.
 - Exclusions based due to a preexisting condition or disease are limited to loss occurring within 6 months.
 - There are minimum readability requirements for policy forms.
 - Only post-dispute, voluntary, binding arbitration is permitted.
- For rate filings:
 - There are highly detailed standards for modified rate schedule and rate schedule increase filings.
 - For consumers to be able to make a more informed decision, companies offering a product with rates that are scheduled to increase up to age 65 must simultaneously offer a product with issue age rates.
 - A rate increase filing may not introduce a rating characteristic that was not relied on in the initial rate filing. For example, if a company uses unisex rates in the initial filing, it may not request gender-distinct rates in a rate increase filing.
 - All initial rate and rate increase filings are subject to prior approval, which is currently not the case for all states.
 - The insured must receive 60-days notice of a rate increase, rather than 30 or 45 days.
 - There are specific requirements for premium schedules other than level premium that can be offered.
- For advertising material:
 - There are highly detailed standards for advertising material.
 - Consumers must be alerted in advertisements that, unlike other products, the time period for late premium payments is 65 days.

³ 1 PROCEEDINGS OF THE NAIC 187 (2004).

⁴ Article IV, § 2.

- Mandatory disclosures in advertisements must be set out in close conjunction to the statement to which they relate.
- If company may increase rates on a policy, advertisements for the policy must state that fact.
- Advertising material may not require the consumer to opt out of receiving unsolicited material.
- Advertising that describes an inflation protection option must also describe the mandatory inflation protection option.
- Stricter requirements on sourcing of statistics used in advertising material are established.

Rate Filing Framework

The Working Group and the PSC spent considerable time developing a framework for the proposed rate filing standards to address the unique nature of a centralized platform for rate review and prior approval. The PSC believes the centralized yet state-based platform for rate review available through the IIPRC will contribute to improved speed-to-market for long-term care insurance products. The PSC was also mindful of the requirement of the Compact that uniform standards for long-term care insurance provide the same or greater level of consumer protection as the NAIC models, which allow for rates based on the age of the insured at issue and also for rates with scheduled increases up to age 65.

To gather more information on state requirements and practices for review of long-term care rate filings for both initial rates and rate increases, the PSC conducted a survey of all states in January 2009.⁵ Forty-six states responded to the survey, including 31 current Compacting states. The survey showed that 100% of responding states have approved filings for rates based on issue age that are not expected to increase by duration, but are not guaranteed. The survey also showed that 68% of responding states, including 78% of responding Compacting states, would hypothetically allow rate structures with scheduled increases up to age 65 that contain inflation protection. A very revealing fact from the survey was that only four states reported receiving more than five filings containing rate structures other than those based on issue age that are not expected to increase by duration but are not guaranteed.

The survey results led the PSC to conclude that even though the model allowed for rate structures with scheduled increases, there appears to be no guidance on this rating structure, and as a result, not a high level of comfort among the states with reviewing and approving such rates. This conclusion led the PSC to develop two major approaches for the proposed rate filing standards.

- The proposed standards include one set of standards for rates based on the age of the insured at issue and another set of standards for rates with scheduled increases up to age 65. The proposed standards for products with premiums scheduled to increase are called “modified rate schedules.” The proposed standards for modified rate schedules require the company to file, offer and provide rates based on the age of the insured at issue if the company elects to offer modified rate schedules.
- The proposed standards combine requirements for both initial rate filings and rate increase filings into one document for issue age rate schedules and one document for modified rate schedules. There are no separate standards for rate increase filings. As a result, this approach means states that do not want rate increase filings being reviewed and approved by the IIPRC would be opting out of the proposed standards. The PSC viewed this approach as ensuring that all consumers who purchase a policy approved by the IIPRC will not have rates or rate increases that are excessive, inadequate or unfairly discriminatory across state lines.

⁵ The survey results are posted with the proposed rate filing standards on the Rulemaking Docket on the IIPRC web site (www.insurancecompact.org).

The approach of creating standards for modified rate schedules calls for each Compacting state to identify whether modified rate schedules can be used in their state, provided a filing complies with the applicable standards. This enables states with specific prohibitions or limits on modified rate schedules to still be able to take advantage of IIPRC standards for long-term care products with rates based on the age of the insured at issue.

Other Key Decisions

Other key decision points for the PSC in the development of the proposed standards include:

- **Recommending standards as a complete suite**—Early in the review process, the PSC made a policy decision to complete the entire suite of uniform standards for individual long-term care insurance before making a recommendation, because the policy form must be accompanied by the other forms before it can be made available in the market.
- **Mix and match**—In general, the proposed standards are not recommended to be available for use in combination with state-approved forms. The exception is that long-term care riders approved by the IIPRC may be combined with state-approved life insurance and annuity products.
- **Self-certification**—The only proposed standards recommended to be available for filing on a self-certification basis are the Standards for Forms Required to be Used with an Individual Long-Term Care Insurance Application, which include the Personal Worksheet and Potential Rate Increase Disclosure Form. This is based on the extent to which these standards and the NAIC models prescribe the content of the required forms, although companies will have to provide accurate information regarding historical rate increases in all states, including non-Compacting states. None of the other proposed standards are recommended to be available for self-certification.
- **Partnership**—The proposed standards may be used for products intended to qualify as a Long-Term Care Partnership Program plan in any state with an operational Partnership program subject to the company subsequently certifying to the state(s) where the product will be delivered or issued for delivery that the product meets all Partnership requirements.