



To: The Interstate Insurance Product Regulation Commission (IIPRC) Management Committee

From: Bonnie Burns, California Health Advocates

Date: January 20, 2010

Re: Written Comments on Individual Standards for Long Term Care Insurance and the IIPRC

### **Long-term Care Insurance Policy Standards**

The IIPRC Product Standards Committee voted on January 11, 2010 to recommend that the Management Committee initiate the Rulemaking procedure with respect to the package of ten individual long-term care standards. During the call I noted my inability as a representative of consumer interests to be consistently involved in the discussions during development of these standards. We appreciate the Product Standards Committee's efforts to maintain high standards in regard to consumer protections. However we had hoped that a multi-state filing approval process would incorporate state standards that were more stringent than those in the National Association of Insurance Commissioners (NAIC) Model Act and Regulation.

We are disappointed that one standard in particular will allow companies to require a severe degree of impairment before paying benefits for home and community-based care. The Working Group incorporated the benefit trigger in the NAIC Model Regulation which allows a maximum of 3 out of 6 Activities of Daily Living (ADLs) to be required before benefits are payable. While this level of impairment is allowed under federal law for tax-qualified policies, many states including California have limited an issuer's ability to apply that standard for home and community benefits by setting the benefit trigger at 2 ADLs, a standard that is still within the federal threshold for tax-qualified policies.<sup>1</sup>

We believe that incorporating the 3 ADL benefit trigger standard in the NAIC Model Regulation into the Core Standard for policies approved by the IIPRC continues to be a severe disadvantage for claiming home and community-based benefits, and once claimed may shorten the duration of home care benefits and accelerate the need for institutional care. In addition, such a high threshold of functional impairment makes it more difficult for consumers to compare benefits and premiums between companies and policies. Consumers are unlikely to understand the significance of the difference between 2 and 3 ADL benefit triggers along with any corresponding premium differences, adding to the complexity of comparing policies, practices, and companies. We encourage the Management Committee to change this benefit trigger to the 2 ADL standard that states like California and Texas have both adopted.

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<sup>1</sup> California requires all long-term care benefits to be paid when a person has met a trigger of 2 out of 6 ADLs for federally tax-qualified policies. Institutional care was added to this requirement because most people refuse to move into institutional care until there is no other choice, limiting any induced utilization.

## **IIPRC Approval of Rates and Rate Increases**

We continue to express our concern with the movement of the IIPRC into the role of a regulator by approving not only the premiums that will be used within the member states, but also any rate increases that might follow. Delegating the approval of policy forms to one private outside entity in the pursuit of uniformity continues to be a source of concern to us. We believe this process bypasses state standards and protections and raises concerns about the delegation of state powers.

Even when the same state standards are used by the IIPRC that state has no jurisdiction over policy forms that are approved by the IIPRC. Consumers have no standing with the IIPRC nor does the IIPRC have the duty to consumers of a state insurance department. Moving beyond the goal of uniformity of form filings to approving premiums, along with subsequent rate increases that will be charged within the individual states, shifts the IIPRC into the role of an unaccountable regulator. It also exempts those products from the rating practices and authority of the individual states.

State insurance departments will no longer be accountable to their state residents for premiums and premium increases on policies approved outside the state's regulatory system. Once again, consumers have no standing with the IIPRC nor does the IIPRC have any duty to those consumers. The IIPRC is not designed to address consumer issues; that function is left to the states, yet the states will not have approved either initial rates or increases, setting up a perfect feedback loop that leaves consumers with few, if any, options. We find this movement by the IIPRC into the approval of rates and rate increases to be very troubling. While we agree that approval of initial rates and increases should both be done in the same place, we believe this is a state function and not one that should be delegated to an outside private entity.

## **Consumer Participation in the IIPRC Process**

Consumer participation in the IIPRC process is extremely limited. The 4 current members of the Consumer Advisory Committee cannot possibly participate in every meeting or conference call in which standards are developed and adopted for each line of insurance. Few consumer groups have the technical expertise to fully participate in the IIPRC process on a par with industry representatives. Each Consumer Advisory Committee member has a full-time job working on behalf of consumers in a variety of ways. Regulating insurance is usually not their primary focus, and the time they devote to the IIPRC process is donated time taken away from their regular paid employment.

Consumer representation is nearly invisible on the IIPRC website making it harder for the IIPRC to attract more groups that might be interested in filling the advisory committee's 4 open seats. The only mention of consumer group participation on the IIPRC website is found under "About the IIPRC" in the left hand column where the Consumer Advisory Committee is shown under that heading.

However, there are 4 prominent tabs in the middle of the home page of the IIPRC with one devoted exclusively to Industry Resources and another to member states. Without any emphasis on consumer group participation it is difficult to imagine that the Consumer Advisory Committee has any equivalency with the Industry Advisory Committee.

The Product Standards Committee notes in its summary that 54 meetings have been held on this package of ten documents alone that incorporate standards for every aspect of individual long-term care insurance products. It is unlikely that even one individual representing consumers was in attendance at the majority of those meetings, and had the time and expertise to analyze each draft and all the regulator and industry comments. Industry on the other hand has many qualified representatives to present their concerns at meetings and to prepare technical comments on each aspect of each of the ten documents. If consumer groups had similar resources the final individual long-term care insurance product standards might have looked quite different.

### **Conclusion**

While we have concerns about the outcome of the product standards and the entry of the IIPRC into rate regulation as expressed above, we appreciated the regulators and IIPRC staff who gave us time to express our concerns even when they disagreed, and the respect they gave our comments. We would also like to commend the regulators we heard on the calls we attended who consistently argued for tougher standards and identified areas in which their state had concerns, many of which were addressed by the committee and IIPRC staff. We will continue to participate in standards development when we are able, and to provide a consumer perspective on long-term care insurance standards and issues.

Respectfully submitted,

Bonnie Burns