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March 19, 2010

Ms. Karen Z. Schutter
IIPRC Executive Director
444 North Capital Street, NW
Hall of the States, Suite 701
Washington, DC 20210

Re: IIPRC Standards for LTC Insurance Policies

Dear Ms. Schutter:

Thank you for your March 18, 2010 E-mail to Malinda Shepherd regarding the subject standards and your offer to permit us and the other compact states to address some specific concerns that we have about the current provisions in these standards. We have conducted a thorough review of the standards and have attached to this letter our comments. While some of our concerns are serious, I should also point out that the standards provided insight into some areas where Kentucky should make improvements to our regulations.

The concerns in the attached are not listed in any specific order of priority. However, our major concerns are associated with the Partnership program, definitions which conflict with Kentucky's Public Health statutes that are not within the jurisdiction of the Department of Insurance, and the absence of limitations on innovated benefits.

The attached should be self explanatory, but if you have any questions about our concerns please contact William J. Nold of our Health and Life division at 502-564-6088.

Sincerely,

Sharon P. Clark
Commissioner



Comments to IIPRC on LTC Standards

Areas of Concerns

(1) LTC Partnership Insurance Policies:

These standards reference the future possibility of LTC partnership insurance policies and related forms filed through the IIPRC. Kentucky does not allow certification for LTC partnership policies. All Kentucky LTC partnership policies must be reviewed and approved as partnership products. Since IIPRC partnership standards do not yet exist, Kentucky would like a specific statement in the scope that these standards do not apply to Partnership policies. From the current language it appears that a company may file products that may be used as partnership. Kentucky does have some Partnership specific language in our laws. This is positive in that the standards allow variability for Kentucky specific requirements; however we do have concerns about IIPRC's ability to know the specific language/requirements of each state's laws.

Please see the following examples:

CORE STANDARDS FOR INDIVIDUAL LONG-TERM CARE INSURANCE POLICIES-- drafting note on page 1 , In the definitions of Page 2, and Page 3 §1C(1) relating to VARIABILITY OF INFORMATION.

INDIVIDUAL LONG-TERM CARE INSURANCE APPLICATION STANDARDS—drafting note on Page 2.

STANDARDS FOR INDIVIDUAL LONG-TERM CARE INSURANCE ADVERTISING MATERIAL, page 6, §2C(18)

(2) Definitions of LTC insurance and limitations on providers:

Kentucky law, KRS 304.14-600, includes the statement after the phrase “other than an acute care unit of a hospital” within the definition of LTC insurance. In Kentucky hospitals in rural areas may provide LTC services in areas that could be considered “an acute care unit of a hospital.” For this reason, the language “unless that unit is licensed or certified to provide LTC services” is necessary to require companies to pay claims to facilities that are both an acute care unit and a LTC provider. Without this clarification, consumers may be paying for a benefit they can never access in some rural areas. (CORE STANDARDS FOR INDIVIDUAL LONG-TERM CARE INSURANCE POLICIES, Page 1,)

Additionally, KRS 205.010(15) (which is not an insurance law) and 806 KAR 17:081§2(3) defines adult day care centers as “any adult care facility which provides part-time care, day or night, but less than twenty-four (24) hours, to at least four (4) adults not related to the operator of the adult care facility by blood, marriage, or adoption.” Since this definition and the licensure requirements are based on laws from the Cabinet for Health and Family Services, the Kentucky Department of Insurance is unable to change or alter these requirements. If this standard is imposed on Kentucky insureds, there could be situations where an insurer could deny payment to properly-licensed Kentucky Adult day care center based on a requirement that is not present in Kentucky. (CORE STANDARDS FOR INDIVIDUAL LONG-TERM CARE INSURANCE POLICIES, Page 10 §3I(1)(c))

Although not a public health requirement, Kentucky has adopted a more beneficial standard for home health care services which requires the inclusion of homemaker services, assistance with activities of daily living and respite care services as part of the definition of home health care. Kentucky's provision is more beneficial to Kentucky insureds. (CORE STANDARDS FOR INDIVIDUAL LONG-TERM CARE INSURANCE POLICIES, Page 10 §3I(1)(k))

Although the IIPRC is using the same terminology for "All other providers" as the Model and Kentucky's regulation, we continually have difficulty with Companies submitting language that is not correct for Kentucky certification or licensure requirements of various facilities or providers. Therefore, we are concerned that the IIPRC will have this same difficulty, without the expertise of state-specific filing analysts. (CORE STANDARDS FOR INDIVIDUAL LONG-TERM CARE INSURANCE POLICIES, Page 11 §3I(1)(k))

The IIPRC has a drafting note regarding "policy" which states: Any reference to "policy" in these standards shall include a rider, endorsement or amendment used to provide long-term care insurance. "Policy" shall not include a group policy or a group certificate. -Kentucky law (806 KAR 12:010 & KRS 304.14-020) defines policy more broadly. STANDARDS FOR INDIVIDUAL LONG-TERM CARE INSURANCE ADVERTISING MATERIAL, page 2.

The Kentucky Cabinet for Health and Family Services, which establishes the requirements for home health aides, does not require licensure or certification (902 KAR 20:081 § 1(2)). The Kentucky Department of Insurance is unable to change or alter these requirements. If this standard is imposed on Kentucky insureds, there could be situations where an insurer could deny payment to a Home health aide based on a requirement that is not present in Kentucky. (CORE STANDARDS FOR INDIVIDUAL LONG-TERM CARE INSURANCE POLICIES, Page 13 §3O(2)(d))

(3) Modified Rate Schedules:

Modified Rate Schedules are prohibited, and conflict with Kentucky law at 806 KAR 17:081 §3(6)(a) which states:

The premium charged to an insured for long-term care insurance shall not increase due to the:

1. Increasing age of the insured at ages beyond sixty-five (65); or
2. Duration that the insured has been covered under the policy.

Kentucky's regulation is based on the NAIC Model Regulation. Kentucky is not concerned with the concept of a Modified Rate Schedule, but the NAIC Model Regulation standards should be revised. (CORE STANDARDS FOR INDIVIDUAL LONG-TERM CARE INSURANCE POLICIES Page 2,)

(4) Innovative Benefits:

Kentucky has general concerns on innovative benefits. This term is not defined nor are any standards provided. Few, if any, innovative products have been approved in Kentucky; no LTC Insurance innovative benefits have been approved. Since the IIPRC has primarily followed the NAIC Model language, how will Innovative benefits be permitted? Allowing the IIPRC to approve innovative benefits may give the IIPRC an unfair advantage over states that follow the NAIC Model. How will IIPRC review innovative benefits; what standards will be used? Will States be given the

opportunity to comment on an innovative product prior to approval. If an innovative benefit is approved, how will states be notified of the innovative benefits?

For examples please see CORE STANDARDS FOR INDIVIDUAL LONG-TERM CARE INSURANCE POLICIES, Page 3 §1B(10); STANDARDS FOR LONG-TERM CARE INSURANCE BENEFIT FEATURES, Page 1 §1A(5)

(5) Advertising:

Kentucky requires form filing approval prior to reviewing and approving advertising for a product; companies may not advertise a product until their forms approved. Will the IIPRC require approval prior to use of advertising or will advertising be considered a "file and use" filing? (CORE STANDARDS FOR INDIVIDUAL LONG-TERM CARE INSURANCE POLICIES Page 3, §3A (11))

Advertising material shall not use words or phrases such as "all," "full," "complete," "comprehensive," "unlimited," "up to," "as high as," "this policy will help fill some of the gaps that Medicare and your present insurance leave out," or similar words or phrases, if such use exaggerates a benefit beyond the terms of the policy. Kentucky law (806 KAR 12:010§3(2)(a)) contains more limitations on language used in ads. STANDARDS FOR INDIVIDUAL LONG-TERM CARE INSURANCE ADVERTISING MATERIAL, page 5, §2C(1)

A testimonial, recommendation or endorsement made by a person or entity who is not a spokesperson as defined in Item (5) below shall represent the current opinion of the author and shall reflect the author's personal opinions of or experiences with the company or its products.— Kentucky law (806 KAR 12:010§6) states that testimonials are the responsibility of the company... STANDARDS FOR INDIVIDUAL LONG-TERM CARE INSURANCE ADVERTISING MATERIAL, page 10 §2K(4)

(6) Arbitration Clauses:

Kentucky does have some minor concerns regarding the use of arbitration to resolve disputes in that Kentucky laws guarantee access to the courts. However, post-dispute and the voluntary exercise of Arbitration would probably not run afoul of Kentucky Law. (CORE STANDARDS FOR INDIVIDUAL LONG-TERM CARE INSURANCE POLICIES Page 6 §3B)

(7) Optional/Mandatory Beneficiary Provision:

The CORE STANDARDS FOR INDIVIDUAL LONG-TERM CARE INSURANCE POLICIES states that policies *may* have a beneficiary provision; however Kentucky law requires a beneficiary in KRS 304.17-160. When would a policy be issued without a clear beneficiary designated? (CORE STANDARDS FOR INDIVIDUAL LONG-TERM CARE INSURANCE POLICIES Page 7 §3D)

(8) Utilization Review and Discretionary Clauses:

The company may also retain the right to verify that the plan of care is appropriate and consistent with generally accepted standards.-This appears to be a discretionary clause which not permitted

in Kentucky. If the phrase "retain the right" is removed, this language would be permissible. However, we are concerned that the company's ability to verify a "plan of care" appears to be a utilization review (UR) standard. How will an insured appeal if the insurer determines that the plan of care is not appropriate and consistent? (CORE STANDARDS FOR INDIVIDUAL LONG-TERM CARE INSURANCE POLICIES Page 12 §3K(3))

(9) Home Health Care or Community Care Benefits:

The home health or community care benefit is not consistent with Kentucky law or the NAIC Model's provision in §12B. (Page 13, CORE STANDARDS FOR INDIVIDUAL LONG-TERM CARE INSURANCE POLICIES §30(1))

(10) Nonforfeiture Benefit :

It is not clear in the IIPRC standards whether or not the nonforfeiture benefit is a *required offering*. Kentucky requires an offering of the nonforfeiture benefit in 806 KAR 17:081 Section 25(2). (CORE STANDARDS FOR INDIVIDUAL LONG-TERM CARE INSURANCE POLICIES Page15 §3T)

(11) "Other Similar Offerings":

Within the nonforfeiture benefit section, the company is to provide one of the following options which includes the language "Other similar offerings approved for use by the Interstate Insurance Product Regulation Commission." How will states be notified of "other similar offerings"? Prior to IIPRC approval? (CORE STANDARDS FOR INDIVIDUAL LONG-TERM CARE INSURANCE POLICIES Page 16 §3T(2)(f))

(12) Utilization Review (UR):

Kentucky does not have specific UR requirements for LTC. The IIPRC standards references a "process for internal and external review of benefit determinations and resolving benefit disputes consistent with the applicable laws and regulations where the policy is delivered or issued for delivery." If the state does not have any applicable laws and regulations, what will the company or IIPRC use as a guideline for UR standards? (CORE STANDARDS FOR INDIVIDUAL LONG-TERM CARE INSURANCE POLICIES Page 19§3W(2))

(13) Multiple Company Forms and Company name and addresses:

Kentucky's form filing regulation (806 KAR 14:007) does not allow forms to be filed for multiple company use. Each company and form filing has a unique form number that is used for recordkeeping and document tracking purposes. We are also concerned about the statement that the form could be used for multiple purposes or lines. Our regulation (Section 3) does not permit more than one line of insurance per form filing. Would this allow compact forms to include non-compact products. How can the IIPRC ensure that a company will not file an application (for example) for IIPRC approval that includes non-compact and compact forms/products? For examples, please see INDIVIDUAL LONG-TERM CARE INSURANCE APPLICATION STANDARDS, Page 3, §1A(3) & (4); Page 5 §2A (2) & (3); STANDARDS FOR INDIVIDUAL LONG-TERM CARE

INSURANCE APPLICATION CHANGE FORM, Page 1 §1A(3) and (4), Page 2 §1B(1)(a), Page 3 §2(3); STANDARDS FOR INDIVIDUAL LONG-TERM CARE INSURANCE ADVERTISING MATERIAL, page 2, §1A(3), Page 3, §1B(1), Page 4, §2A(3); STANDARDS FOR LONG-TERM CARE INSURANCE BENEFIT FEATURES, Page 2 §2A(1)

Similarly, Kentucky law 806 KAR 14:007§2(11)) does not allow a company name to be variable text. (INDIVIDUAL LONG-TERM CARE INSURANCE APPLICATION STANDARDS, Page 4, §1B(1)(b))

Kentucky law 806 KAR 14:007§2(11)) requires the company address on all filings. STANDARDS FOR RIDERS, ENDORSEMENTS OR AMENDMENTS USED TO EFFECT INDIVIDUAL LONG-TERM CARE INSURANCE POLICY CHANGES, page 2 §2A(1)

Concern (14) Application question

In the question “Does the applicant currently reside in, or has the applicant been advised to enter, or is the applicant planning to enter a nursing home, assisted living facility or other custodial facility?” there is no time frame provided; this question seems misleading. (INDIVIDUAL LONG-TERM CARE INSURANCE APPLICATION STANDARDS, Page 6, §3A(2))

The question, “Has the applicant ever been:....(i) Diagnosed or treated by a member of the medical profession for specified symptoms such as: immune deficiency, anemia, recurrent fever, fatigue or unexplained weight loss, malaise, loss of appetite, diarrhea, fever of unknown origin, severe night sweats; unexplained or unusual infections or skin lesions; unexplained swelling of the lymph glands; Kaposi’s Sarcoma or Pneumocystis Carinii Pneumonia; or” ... is overly broad and could be discriminatory. Some of these conditions such as “fatigue, loss of appetite, diarrhea, fever of unknown origin” are very common conditions to an average healthy applicant. This healthy individual may be denied for conditions that do not relate to any serious illness. On the other hand, several of these conditions could be linked to HIV/AIDS, which could be discriminatory questioning as Kentucky law (KRS 304.12-013) does not allow insurers to ask certain questions relating to HIV/AIDS. Furthermore, since there is no time frame for these questions, a healthy individual who had a fever of unknown origin over twenty years ago could be excluded from coverage. INDIVIDUAL LONG-TERM CARE INSURANCE APPLICATION STANDARDS, Page 7, §3A(2)(g))

The IIPRC allows companies to ask if the applicant has “been given medical advice by a member of the medical profession” regarding disorders and diseases-- Kentucky law (KRS 304.12-013(4)(e)) and the Genetic Information Nondiscrimination Act of 2008 does not allow this limitation. INDIVIDUAL LONG-TERM CARE INSURANCE APPLICATION STANDARDS, Page 12, §4F(1)(f) and Page 13 §4F(1)(second f))

(15) Caution and disclosure statements:

The IIPRC caution statement, which is based on the NAIC model states “Caution: If your answers on this application are incorrect or untrue, [company] may deny benefits or rescind your policy. Kentucky law, 806 KAR 17:081 §8(3)(a), includes the phrase “to the best of your knowledge and belief” in the caution statement. This language is more beneficial to consumers. INDIVIDUAL LONG-TERM CARE INSURANCE APPLICATION STANDARDS, Page 9, §3K(1)(d)

The IIPRC requires this disclosure on the outline of coverage--Notice to buyer: This policy may not cover all of the costs associated with long-term care incurred by the buyer during the period of coverage. The buyer is advised to review carefully all policy limitations. Kentucky (806 KAR 17:081 §20(1)(b)) requires this language in the first page of the policy as well. INDIVIDUAL LONG-TERM CARE INSURANCE STANDARDS FOR THE OUTLINE OF COVERAGE, page 3, Appendix A

(16) Fraud Statement:

The IIPRC's Fraud statement is missing various Kentucky-required elements as found in KRS 304.47-030. INDIVIDUAL LONG-TERM CARE INSURANCE APPLICATION STANDARDS, Page10 §3M

(17) Suitability standards:

806 KAR 17:081 §21(17)(a)1 requires insurers to issue a "Suitability Letter (LTC-6)" in addition to the personal worksheet if the applicant has declined to provide information or if the company determines that the applicant does not meet the financial suitability standards. The company is required to keep a copy of the letter. This letter is a protection for both the consumer and the company issuing the policy. STANDARDS FOR FORMS REQUIRED TO BE USED WITH AN INDIVIDUAL LONG-TERM CARE INSURANCE APPLICATION, Page 1,§1A

The IIPRC standard states "The company may request the applicant to provide additional information to comply with its suitability standards"---What kind of information will be permitted? STANDARDS FOR FORMS REQUIRED TO BE USED WITH AN INDIVIDUAL LONG-TERM CARE INSURANCE APPLICATION, Page 1,§1A(1)(b)

(18) Signature Requirement:

The IIPRC Standards states "The form may include a section for the applicant to sign an acknowledgement of receipt of the disclosure" however Kentucky law requires a signed acknowledgement. STANDARDS FOR FORMS REQUIRED TO BE USED WITH AN INDIVIDUAL LONG-TERM CARE INSURANCE APPLICATION, page 3 §1B5

(19) Rate Guarantee Periods:

The IIPRC Standard does not allow Rate guarantee periods in excess of five years. Kentucky does not have a limitation on rate guarantees, and Kentucky has not allowed a company to charge more during a "rate guarantee period". This standard is silent as to whether a company would be permitted to charge an extra premium for this guarantee. RATE FILING STANDARDS FOR INDIVIDUAL LONG-TERM CARE INSURANCE, Page5 §2B(4).

(20) Timeframe for Approving Rate Increase:

The IIPRC Standards requires companies to file at "least 30 days prior to the required rate increase notice period as provided in the policy." Kentucky requires at least 60 days. Is the rate increase deemed approved if it is not disapproved within 30 days? RATE FILING STANDARDS FOR INDIVIDUAL LONG-TERM CARE INSURANCE, Page6 §3A(2).

(21) Generic Policy Changes:

The IIPRC Standard states "The company may file a generic policy change form to accommodate all the policy changes required to reflect the underwriting needs of a company. In Kentucky any change to a form requires a new form number; What is a "generic policy change form?" STANDARDS FOR RIDERS, ENDORSEMENTS OR AMENDMENTS USED TO EFFECT INDIVIDUAL LONG-TERM CARE INSURANCE POLICY CHANGES Page 1, §1B

(22) Multi-state information:

The last section of the Outline of Coverage states:

CONTACT THE STATE AGENCY LISTED IN A SHOPPER'S GUIDE TO LONG-TERM CARE INSURANCE IF YOU HAVE GENERAL QUESTIONS REGARDING LONG-TERM CARE INSURANCE. CONTACT THE INSURANCE COMPANY IF YOU HAVE SPECIFIC QUESTIONS REGARDING YOUR LONG-TERM CARE INSURANCE POLICY OR CERTIFICATE.—Kentucky law refers consumers to the SHIP information; How will IIPRC ensure that the right contact information is provided for each state? INDIVIDUAL LONG-TERM CARE INSURANCE STANDARDS FOR THE OUTLINE OF COVERAGE, page 6, Appendix A

TYPOS

STANDARDS FOR FORMS REQUIRED TO BE USED WITH AN INDIVIDUAL LONG-TERM CARE INSURANCE APPLICATION, Page 1, within "Similar policy forms" should "issues be issued?"

RATE FILING STANDARDS FOR INDIVIDUAL LONG-TERM CARE INSURANCE, Page3 §2B(1)(d)(iii) refers to Item (2)(d), but this cite does not exist.

RATE FILING STANDARDS FOR INDIVIDUAL LONG-TERM CARE INSURANCE, Page3 §2B(1)(e) refers to Item (2)(f), but this cite does not exist.

RATE FILING STANDARDS FOR INDIVIDUAL LONG-TERM CARE INSURANCE, Page5 §2B there appear to be two "(3)". The section should be renumbered.

RATE FILING STANDARDS FOR INDIVIDUAL LONG-TERM CARE INSURANCE, Page9 §3B should "(7)" be "(4)".