

Agenda Item 2. Discuss public comments and response to PSC questions on the updated Substantive Change Items in the IIPRC Office Report and Recommendation to the Product Standards Committee for the Uniform Standards currently subject to 5-Year Review (Phase 6 Long-Term Care Insurance)

(a) Substantive Change Item 1 - Revision Of Misstatement Of Age Provision

The Product Standards Committee (PSC) discussed the written and oral comments they received on the June 21st public call from the Industry Advisory Committee (IAC) related to their request to add a provision to the uniform standards that allows the insurer to cancel the policy and refund premium at any time if the age at issue was misstated and is beyond the maximum issue age for the policy.

Members noted that the IAC stated that it is a rare occasion that an age is misstated beyond the maximum issue age and it is not caught during underwriting. They also noted that the IAC stated that the reasons for misstatement are not only knowing misrepresentation, but are also typographical errors and even insurer input errors. Given those reasons, the PSC was disinclined to allow a provision to cancel the coverage at the time it is most needed – at claim.

The PSC then discussed revising their previously suggested language so it is consistent with the Incontestability provision as follows: “For a policy that has been in force for at least six months but less than two years, and prior to receiving notice of a claim, the company may terminate coverage and refund premiums if the correct age, at the time of policy issue, is outside the issue age ranges of the policy.” The members also discussed the IAC oral suggestion to add a disclosure regarding misstatement of age to the application. The members noted that the IAC did not believe extending the time to two years would address the issue since if the error is not discovered at underwriting, it would not be discovered until a claim. Following further discussion, members noted that the request from the IAC appears to address a concern that industry has not documented as actually occurring, that the provision as proposed by the IAC would hurt policyholders in situations where the insurer or agent was responsible for the error, and that the Incontestability provision already allows the insurer to rescind coverage and deny an otherwise valid claim if, for a policy in effect for less than 6 months, they can demonstrate a misrepresentation that is material to the acceptance for coverage. For these reasons, the PSC is not recommending any change to the Misstatement of Age or Sex provision.

(b) Substantive Change Item 2 - Allowance For Non-Duplication Of Benefits

The PSC members reviewed the IAC’s responses to the questions posed by the PSC regarding the request to add a non-duplication of benefits provision. IIPRC staff noted that there were two revised options following the public call; one suggested by the IAC that limited the provision to the same insurer or its affiliates and specifically states that the provision does not reduce the maximum total amount of benefits payable, and the second, to address regulator concerns regarding including riders in the proposal, that additionally adds a provision that the company cannot require the use of long-term care benefits only in the form of an acceleration of the death benefit rider. Oregon commented that the PSC should consider a third option which is no change. Several members noted that the request for this provision did not contain any indication that

prorating benefits would result in lower rates. IIPRC staff stated that during the public call, the IAC indicated they would research the rate question, but to date no additional information has been received. Minnesota noted that although the proposed new provision is labeled a Non-duplication of Benefits provision, in her opinion it does not look like normal non-duplication of benefits, which relate to not selling duplicative coverage rather than coordinating benefits at the time of claim. She noted that the provision is more of a coordination of benefits, but lacks the specificity of other coordination of benefits provisions. Noting that there are situations where duplication is appropriate for long-term care, she stated that she was not opposed to a discussion of coordination, but that it was important to separate the two concepts.

Maryland noted that the suggested language states that “the provision shall describe how the ratio will be calculated,” rather than including a required method of calculation in standards. She also noted that under Other Insurance with this Insurer provision of accident and sickness coverage, there is a refund of premiums for the excess insurance and this proposed standard contains no such premium adjustment. Oregon echoed concerns that there is no premium adjustment.

Colorado observed that expenses for long-term care benefits continue to increase and that stacking policies can result in situations where an insured receives more than 100% of the covered expenses. He questioned why it would not be appropriate to have a provision that limits payment to 100% of the covered expenses.

Karen Schutter, Executive Director of the IIPRC asked if there are member states that prohibit coordination in the payment of benefits for a long-term care policy. Nebraska responded that they allow it but with carve outs. Skilled nursing care may be coordinated but custodial care is not. Kansas stated that they prohibit coordination for long-term care policies. Several states indicated that they look at coordination for the medical services aspects of Long-term care as in the Coordination of Benefits Model, but there is nothing specific for non-duplication or for coordination of custodial care benefits in long-term care.

Mary Mealer, Chair of the PSC observed that she is not hearing support for the proposed amendment and asked if the members supported or did not support changes to the current provision. The PSC did not support making the proposed change to add a limitation or exclusion for non-duplication of benefits.

Agenda Item 3. Begin review of Clarification Items.

(a) Long-Term Care and Accelerated Death Benefits. IIPRC staff provided an overview of the first Clarification item, to add a sentence to the Scope of the Core Long-term Care Uniform Standards stating that the standards apply to accelerated death benefits that are advertised, marketed, offered or designed as providing coverage for long-term care services. In response to a question from David Bolton, Oregon, about whether the IIPRC reviews products using a combination of the Accelerated Death Benefits and the Long-term Care standards, Becky McElduff, IIPRC, explained that the practice is to review product filings using the specific

applicable uniform standards. A long-term care accelerated death benefit rider is reviewed using the applicable long-term care uniform standards. Mr. Bolton stated that Oregon law would prohibit an accelerated death benefit product from being sold as long-term care and that he believed this is what the Long-term Care Model Act states. IIPRC staff noted that the definition of Long-term care insurance in the Model Law only excludes accelerated death benefit riders where neither the benefits nor the eligibility for the benefits is conditioned upon the receipt of long-term care services. The Model also states that any product advertised, marketed or offered as long-term care insurance is subject to the law. In a situation where an accelerated death benefit is conditioned upon the receipt of long-term care services or is advertised, marketed or offered as long-term care insurance, it is subject to the IIPRC Core Standards for Individual Long-Term Care Insurance Policies.

Pennsylvania asked if the words “or designed” could be eliminated for consistency with other Uniform Standards and the NAIC Long-term Care Model Act. The PSC agreed to the following revision to the recommendation:

With regard to accelerated death benefits that are advertised, marketed or offered ~~or designed~~ as providing coverage for long-term care services, these standards shall apply.

Agenda Item 4. Any other matters.

The Chair noted that the Actuarial Working Group (AWG) is reviewing the Kentucky request to add some rate standards for dollar-for-dollar benefits. The AWG will see if they can add information that covers Kentucky’s concerns to the existing rate standards and will provide the PSC with language and recommendations for review.

The next PSC member call is scheduled for July 19th when the members will continue review of the clarification items.