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July 26, 2021

Commissioner Scott A. White, Chair
Commissioner Michael Conway, Vice Chair
Long-Term Care Insurance (EX) Task Force
National Association of Insurance Commissioners (NAIC)

Attn: Jane Koenigsman, Senior Manager, Life and Health Financial Analysis

Re: Exposure Draft: Long-Term Care Insurance (LTCI) Multistate Rate Review Framework

Dear Commissioners White and Conway:

The American Academy of Actuaries¹ Long-Term Care Reform Subcommittee appreciates the opportunity to offer comments on the actuarial sections of the [exposure draft Long-Term Care Insurance Multi-State Rate Review Framework](#) (Framework) released June 10, 2021.

We previously provided comments on the operational aspects of the Framework in our [letter](#) dated May 24, 2021. We appreciate the NAIC LTC Insurance (EX) Task Force's consideration of our previous comments and the opportunity to discuss them with the LTCI Multistate Rate Review (EX) Subgroup during its June 22, 2021, meeting.

This letter provides our comments on the actuarial aspects of the Framework, grouped into four themes, plus some additional comments at the end. We welcome the opportunity to discuss the comments provided in this letter during any future meetings of the task force or subgroup.

Actuarial Judgment

The actuarial review sections of the Framework address the necessary application of judgement in reviewing rate increase requests. The term is variously modified in the draft document as “regulatory actuarial judgment” or “regulatory judgment.” Qualified actuaries performing an MSA Review would use their professional judgment as defined in Actuarial Standard of Practice (ASOP) No.1.²

¹ The American Academy of Actuaries is a 19,500-member professional association whose mission is to serve the public and the U.S. actuarial profession. For more than 50 years, the Academy has assisted public policymakers on all levels by providing leadership, objective expertise, and actuarial advice on risk and financial security issues. The Academy also sets qualification, practice, and professionalism standards for actuaries in the United States.

² Actuarial Standards Board; Actuarial Standard of Practice No. 1, [Introductory Actuarial Standard of Practice](#); March 2013.

2.9 PROFESSIONAL JUDGMENT

Actuaries bring to their assignments not only highly specialized training, but also the broader knowledge and understanding that come from experience. For example, the ASOPs frequently call upon actuaries to apply both training and experience to their professional assignments, recognizing that reasonable differences may arise when actuaries project the effect of uncertain events.

We suggest that the Framework consistently adopt the term “professional judgment” when referring to the actuarial work of the MSA Review Team. The actuaries on the MSA Review Team may be guided by ASOP No.41³ regarding appropriate communications and disclosures when issuing an actuarial opinion in an MSA Advisory Report. Specifically, disclosures may be necessary where material assumptions or methods are specified by applicable law (statutes, regulations, and other legally binding authority) or selected by another party.

Decision-making Process of the Multi-State Actuarial (MSA) Team

The Framework outlines three main approaches to calculating a justified rate increase: 1) loss ratio approach (including the 58%/85% standard for rate-stabilized business); 2) Minnesota approach; and 3) Texas approach. Other than a statement that the 58%/85% standard would produce the maximum allowable increase for relevant blocks (which is consistent with rate stability regulation), it is unclear how the results from the different approaches will generate the rate recommendation of the MSA Review Team. We suggest that additional information be provided regarding the decision-making process of the MSA Review Team. Some questions and considerations that currently exist are:

- What happens if the Minnesota and Texas approaches are in conflict whether a rate increase is justified or if the approaches produce materially different results? The two approaches differ in their structures, with the Minnesota approach looking at past and future impacts and including non-actuarial provisions through cost-sharing, while the Texas approach is geared toward ensuring only future impacts are captured.
- The discussion of the Texas approach does not explicitly discuss the “catch-up” and “transition” provisions outlined as part of the Prospective Present Value approach in the NAIC LTC Pricing Subgroup document *Long-term Care Insurance Approaches to Reviewing Premium Rate Increases*, approved by the Long-Term Care Actuarial (B) Working Group in 2018. Was the omission of these provisions (outside of the last paragraph in Appendix C) intentional?
- In both the Minnesota and Texas approaches as specified, it is not clear how a company would account for a prior rate increase which was reduced and/or delayed due to lack of credible experience or for another reason. It can be very difficult in future filings to achieve a requested rate increase after a regulatory reduction in prior years.

³ Actuarial Standards Board; Actuarial Standard of Practice No. 41, [Actuarial Communications](#); December 2010.

- How are past rate increase approvals considered across states? Is the time value of money considered where two states may be at the same current rate level, but one approved prior increases many years earlier than the other state?
- If the MSA Review provides a recommended rate increase (e.g., 40%) and a participating state approves a significantly lower increase (e.g., 10%), for how long may a company and/or a state regulator rely on the original MSA recommendation when submitting or reviewing a follow-up filing to achieve the recommended rate level? What is the process for the company to submit a follow-up filing for the remaining rate increase? Does the follow-up rate increase request go through the MSA Review again? Would the time value of money be considered in the review of the follow-up request?

The subcommittee appreciates the detail provided in the Framework to date and recognizes the significant effort in documenting this information. However, the answers to some of the questions above may be crucial to ensuring that companies and actuaries submitting LTC rate increase filings have the knowledge needed about the MSA Review process to be comfortable using the option.

Industry Standards and Benchmarking

Section V.A indicates that assumptions in a rate increase filing may be “deemed unreasonable or unsupported” by the MSA Review Team. We suggest that the MSA Review Team contact the filing actuary to provide additional support for his or her actuarial assumptions, if necessary, prior to deeming them “unreasonable.” If an actuarial assumption is deemed unreasonable or unsupported, it may have implications for the use of a similar assumption in a company’s asset adequacy testing and/or *Actuarial Guideline LI* analysis. We note that “Fair and reasonableness considerations” is listed in Section V.F (Non-Actuarial Considerations). This is a broad and not-well-defined category allowing wide latitude in regulatory decision-making regarding the results of an analysis, distinct from the justification of actuarial assumptions.

Section V.C.1(c) cites “concepts discussed in public NAIC LTC pricing subgroup calls from 2015 to 2019,” which provides inadequate documentation to include in a regulatory procedure document. Rate filing actuaries may not be aware of the content of past calls. We suggest citation to particular documents, such as adopted summaries or minutes of the referenced calls, if available.

Section V.C.5(a) refers to “industry-average assumptions at the time of original pricing” for LTC products. Where are these averages reliably to be found? How are variations in product, carrier, distribution channel, and other factors taken into account? What level of deviation from these averages (in one or more assumptions) would be considered “out of line” and trigger the use of “benchmark premium,” rather than actual original premium, in the MSA Review Team’s review process? Recognizing that regulators who approved a company’s original product and rate filings had the opportunity to review all relevant assumptions at the time of filing, and may not have enforced or suggested the use of industry averages at that time, it may not be appropriate to determine benchmark premiums with 20/20 hindsight uniformly for all product filings and company characteristics.

For rate-stabilized business, the draft states that the 58/85 test “would produce the recommended rate increase” if lower than the Minnesota and Texas approaches. Why would these approaches potentially override and reduce the recommended rate increase, when the rate stability model was already intended to address the issues with loss ratio regulation described in the preceding paragraph of the Framework?

Non-Actuarial Considerations

The Framework contains various non-actuarial considerations that may be contemplated as part of the rate recommendation. We believe it is important to recognize that many of these considerations, while listed as non-actuarial, have actuarial aspects or implications.

For example, the phase-in of a rate change over a period of years necessitates a higher cumulative rate increase to have the same financial impact as a single rate increase. Similarly, if limitations are imposed on when a company can file a future rate increase, such as a rate guarantee period, a future request may need to be higher due to the cost of waiting.

Caps or limits on rate increase approvals that are not based on actuarial considerations likewise increase the size of future rate increases. In this situation, where necessary premium rate increases are delayed, policyholders pay higher premiums, and the ultimate necessary premium level increases due to the delays in approvals.

It should also be noted that the Minnesota and Texas approaches, while primarily actuarial in presentation, already include decisions based on non-actuarial considerations, such as specific cost-sharing provisions and disallowing interest rate deviations as a reason for a rate increase.

Finally, we believe that the MSA Review process may ultimately add little value if its actuarial conclusions are frequently overridden at the state level by non-actuarial considerations. The task force may wish to consider the degree of commitment demonstrated by Participating States when evaluating the success of the MSA Review program in meeting the NAIC’s objective of “developing a consistent national approach for reviewing current LTCI rates that results in actuarially appropriate increases being granted by the states in a timely manner.”

Additional Items

There is a potential interaction between the NAIC’s Reduced Benefit Options workstream and the MSA Review. Appendix E, “Guiding Principles on LTCI Reduced Benefit Options Presented in Policyholder Notification Materials,” suggests that insurers should consider “disclosing all associated future planned rate increases approved by regulators” in their rate increase notification letters. Will the existence of an MSA Review report with a recommended cumulative rate level impose any obligation on an insurer to disclose the likelihood of future rate increases to reach this level? How would any such disclosure apply to Participating and/or non-Participating states?

The tone of several sections of the document seems to unnecessarily impute suspect motivations to companies who sold and/or currently sell LTC insurance:

- Section V.B.4(b) states that the loss ratio method results in “low incentive for responsible pricing.” Practicing LTC pricing actuaries are responsible for compliance

with all relevant actuarial standards of practice, and a company has incentives to price appropriately. Most companies would prefer to receive premium sooner rather than later. Additionally, there are the costs associated with filing and implementing a rate increase and the impact on policyholders of premium adjustments.

- Section V.C.2(a) refers to “a direction that could be seen as misleading.” Subparagraph (a) could be deleted entirely without affecting the definition of the Minnesota approach.
- Section V.C.5, “anti-bait and switch adjustment,” where we suggest a less pejorative term could be used. In the context of a rate increase review, see our comments above regarding industry standards and benchmarking. The concern regarding potential deliberate underpricing to boost market share, expressed in subparagraph 5(a)(iii), is best addressed in the context of an initial rate review by regulators.

In our May 24 comment letter, the subcommittee reserved comment on Appendix B of the April 9 Framework draft until its information requirements could be considered in context with exposure drafts of the Actuarial Review section. We now offer the following comments:

- Item A.1. should provide clarification for the desired issue state for group products (i.e., master group policy issue state or certificate issue state).
- Some items from subsections A and B are at least partially duplicative. Specifically, items regarding attribution of rate increase, waiver of premium handling, and assumption comparisons to asset adequacy testing are repeated in both locations.
- We encourage Participating States to agree that the listing of information for an MSA Review (as outlined in Appendix B) is exhaustive. If no further requests for information are needed as part of a specific state review, the filing process could be streamlined for both filers and reviewers.

Conclusion

Thank you for the opportunity to provide input on the development of the actuarial aspects of the MSA Review process. The subcommittee thanks members who participated in the drafting of this comment letter, including J. Patrick Kinney, MAAA, FSA; Mike Bergerson, MAAA, FSA; Greg Gurlik, MAAA, FSA; Aaron Wright, MAAA, FSA; Ali Zaker-Shahrak, MAAA, FSA; Sisi Wu, MAAA, FSA; P.J. Beltramini, MAAA, FSA; Gordon Trapnell, MAAA, FSA; Jim Glickman, MAAA, FSA, FCA; Zenaida Samaniego, MAAA, FSA; and Perry Kupferman, MAAA, FSA.

We would welcome the opportunity to speak with you in more detail and answer any questions you have regarding these comments or on other topics. If you have any questions or would like to discuss further, please contact Matthew Williams, the Academy's senior health policy analyst, at williams@actuary.org.

Sincerely,

Andrew H. Dalton, MAAA, FSA
Vice Chairperson, LTC Reform Subcommittee
American Academy of Actuaries

CC: Eric King, Health Actuary, NAIC