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For more information,
contact:

Bernhardt Nadell
+1 212 556 2252
bnadell@kslaw.com

Gary Ho
+1 212 556 2174
gho@kslaw.com

King & Spalding

New York
1185 Avenue of the Americas
New York, New York 10036-
4003
Tel: +1 212 556 2100

Long-Term Care Insurance Regulatory Updates

I. Introduction

State insurance regulators, insurers, consumers and potential investors in the long-term care sector have for quite some time been concerned with two major issues facing the U.S. long-term care industry - significant rate increase requests by insurers and inconsistent approaches taken by different state insurance regulators with respect to the rate review process. These inconsistent approaches have led to cross-state rate subsidization, where policyholders in one state in which rate increases have been approved indirectly provide an economic subsidy to policyholders in another state where rate increases have not been approved or the approved amount is insufficient. Under state rate review processes, a state insurance regulator evaluates and approves or disapproves a premium rate change proposed by an insurance company for an insurance product issued by such insurer.

In response to these issues, among others, the NAIC formed the Long-Term Care Insurance (EX) Task Force (the "Task Force") in 2019 and charged the Task Force with two major goals:

1. to develop a consistent national approach for reviewing long-term care insurance rates that result in actuarially appropriate increases being granted by the states in a timely manner; and
2. to focus on ensuring that consumers are provided with meaningful options to reduce their benefits in situations where the premiums are no longer affordable.

Last year, the Task Force made progress in accomplishing these two tasks. In December 2020, the Task Force held a virtual meeting, during which it received reports from two subgroups, the Long-Term Care Insurance Multistate Rate Review (EX) Subgroup (the "Rate Review Subgroup") and Long-Term Care Insurance Reduced Benefit Options (EX) Subgroup ("RBO Subgroup"). Both subgroups had been tasked with formulating potential solutions to the two issues discussed above.

The Task Force's and its subgroups' progress on these issues should bring further clarity and certainty with respect to the likelihood and potential magnitude of future premium rate changes and the features of reduced benefit options (RBO) offered to consumers. Both affect the



valuation of a long-term care insurer or block of long-term care business. We expect that such clarity and certainty will eventually help acquirors and sellers of an insurer or block bridge any divide that may exist with respect to valuation and reduce the need to draft complex price adjustments in legal agreements to address the variability in future premium rate approvals (or denials) by state insurance regulators.

II. Long-Term Care Insurance Multistate Rate Review (EX) Subgroup

The Rate Review Subgroup aims to develop a more consistent state-based approach for reviewing long-term care insurance rate increase filings, which would result in actuarially appropriate increases granted by the states. This subgroup's goal is to reduce and/or eliminate existing cross-state rate subsidization and improve future parity of rate-levels across the states.

The Rate Review Subgroup is currently conducting a pilot project in which a multistate actuarial (MSA) review team reviews rate filings from several insurers and develops a Rate Advisory Report per filing. Specifically, the MSA review team performs a single actuarial review for each rate increase filing that can be relied upon or otherwise considered by the state insurance departments in their respective rate review analyses. As part of its review process, the MSA review team considers the past experience and future expectations filed by the requesting insurance company on a block of business. The team considers actuarial issues, including handling shrinking blocks and disallowing inappropriate inclusion of past losses in remaining policyholders' rates. The Rate Review Subgroup hopes that this pilot project (and the results thereof) will inform the subgroup on the appropriate design and needs for a workable state-based rate review process.

Rate Advisory Reports for two rate increase filings were produced and disseminated to the Task Force members before the December meeting and a third report was near completion. Even though the purpose of these reports is to provide an analysis and a recommendation that state insurance departments can rely on, each state still maintains its authority for approving, partially approving or disapproving the final rate increase that its policyholders are subject to. The proposed rate increase in a Rate Advisory Report for a particular state is merely a recommendation, not a requirement and, therefore, not binding on any state.

Currently, the Rate Review Subgroup is receiving feedback from the Task Force members on how to improve the usability of these Rate Advisory Reports. The subgroup anticipates such work will continue over the next couple months. The Rate Review Subgroup has also drafted an outline of a framework for the multistate rate review process, which has been distributed to Rate Review Subgroup members for comment. The subgroup expects to complete a draft of the framework by the 2021 NAIC Spring National Meeting. Through this process, the Subgroup will account for the RBO Principles and RBO Consumer Notices Principles (see discussion below) and non-actuarial considerations.

III. Long-Term Care Insurance Reduced Benefit Options (EX) Subgroup

The RBO Subgroup was charged with assisting the Task Force in completing the following charge: identify options to provide consumers with choices regarding modifications to long-term care insurance contract benefits where policies are no longer affordable due to rate increases. In furtherance of its mission, the RBO Subgroup developed two sets of principles: the RBO Principles and the RBO Consumer Notices Principles, both of which were adopted during the RBO Subgroup's November 30th meeting.

The RBO Principles were formulated in order to provide guidance to state insurance regulators for evaluating RBO offerings and addresses issues related to:

- Fairness and equity for policyholders that elect a RBO or that choose to accept the rate increase and continue their coverage at the current benefit level.
- Clarity of communication with policyholders eligible for a RBO.
- Any policy or regulatory requirements for an insurer to offer certain RBOs.



- State insurance regulators' consideration of the potential impact on remaining policyholders in the block, the insurer's finances and/or the impact on Medicaid budgets, if encouraging or requiring reduced benefits.
- Innovation, particularly where an outcome of improved health and lower claim costs are possible.
- Types of widely established RBOs in lieu of rate increases.

The RBO Consumer Notices Principles seek to provide guiding principles to long-term care insurers and state insurance regulators (including the MSA review team) in evaluating the quality of consumer notices and RBO materials presented to policyholders. The RBO Consumer Notices Principles address various issues insurers should consider relating to:

- How long before insurers should deliver rate action letters to policyholders.
- Frequency of insurer notices to policyholders that are subject to rate increases that are phased-in over multiple years, along with disclosure of all approved future planned rate increases in each notice.
- Readability and accessibility issues for policyholders, such as making the rate action easy to understand; presenting RBOs in a way that is comprehensible, memorable and adjusted to the needs of the audience; including definitions of complex terms used; and providing a question-and-answer (Q&A) section that answers commonly asked questions in plain language.
- Identification to policyholders of what is happening, why it is happening to them, when is it happening, what can they do about it and how they can take action.
- Touch and tone of the communication to policyholders—for example, drafting the communication in a way that helps policyholders reflect on the reason(s) why they purchased a long-term care insurance policy, conveying as much empathy as possible regarding the impact a rate action(s) may have on policyholders, presenting RBOs fairly without emphasizing one option over another, communicating policyholders' ability to maintain current benefits by paying the increased premium, and using word choices that appreciate how those words could influence policyholders' decisions.
- Providing contact information for sources that can answer policyholders' questions, and suggesting policyholders consult a family member or other trusted advisor prior to making a decision.
- Providing the right amount and type of information such that policyholders can make decisions about policy options that meet their needs.

IV. Conclusion

As mentioned above, we believe that as the Task Force and its subgroups continue to make progress on the charges assigned to them greater clarity and certainty with respect to future premium rate changes and availability of RBOs to consumers are likely to emerge.

If you have any questions regarding the topics discussed in this article or any other topics relating to long-term care insurance, feel free to contact us.



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