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August 30, 2019

Federal Interagency Task Force on Long-Term Care Insurance
Department of the Treasury
1500 Pennsylvania Ave. NW
Room 3454 MT
Washington, DC 20220

Re: Invitation for Public Comment

Dear members of the Federal Interagency Task Force on Long-Term Care Insurance:

As members of the American Academy of Actuaries'[1] Long-Term Care Reform Subcommittee, we appreciate the opportunity to offer comments following our discussion with you earlier this year. In particular, we discussed two of the options (3 and 5) listed in the *Federal Policy Options to Present to Congress*[2] that was published by the Long-Term Care Innovation (B) Subgroup at National Association of Insurance Commissioners (NAIC). This letter reiterates and expands on our original discussion including addressing regulatory hurdles to innovation.

We would first like to emphasize the importance of actuarial input from the beginning of any process involving the consideration, design, and evaluation of a potential long-term care policy approach. Actuaries are uniquely qualified according to their professional standards and play a crucial role in the financing and design of LTC financing systems—from private long-term care insurance (LTCI) to public programs that provide LTC benefits. Actuaries have specialized expertise in managing the risk of adverse selection in insurance coverages, the ability to recognize and incorporate uncertainty into cost projections and premiums, and experience in evaluating the long-term solvency and sustainability of public and private insurance programs. An actuarial perspective can provide a basis for exploration of new and innovative program designs. We would also refer the task force to two specific publications. One is a recent article in the May/June 2019 issue of *Contingencies* magazine, published by the American Academy of Actuaries, written by four actuaries who have experience with hybrid products.[3] The second is a November 2016 Academy issue brief on the criteria that anyone evaluating reforms in the way LTC is covered should consider.[4]

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[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] NAIC, *Federal Policy Options to Present to Congress*.
[3] *Contingencies*, "Unlocking Potential—New combination long-term care insurance solutions show promise," May/June 2019.
[4] American Academy of Actuaries, *Essential Criteria for Long-Term Care Financing Reform Proposals*, November 2016.

Option 3: Remove the Health Insurance Portability and Accountability Act (HIPAA) requirement to offer 5% compound inflation with LTCI policies and remove the requirement that Deficit Reduction Act (DRA) Partnership policies include inflation protection and allow the States to determine the percentage of inflation protection.
The NAIC comments that inflation protection substantially increases LTCI premiums, and that removing the protections would increase insurer flexibility when designing products and could lead to lower premium costs.

Although HIPAA requires the 5% compound inflation benefit to be ***offered*** at the time of sale, it does not require that the product purchased must include inflation protection. In addition, at certain issue ages, a purchased policy must include a stated inflation amount, which may vary by state, in order to qualify for Partnership status enabling asset spenddown protection in the case of Medicaid eligibility.

We agree with the NAIC comments that inflation protection is costly. Premium loads for inflation protection vary by issue age and are not insignificant. We estimate that market premiums for policies sold with a 5% inflation protection benefit can be 4-5 times more expensive than a policy without inflation. Thus, when an applicant declines the offer of inflation protection, their resulting premiums and potential ultimate benefits are significantly lower, which may make a personal purchase of insurance coverage more likely. It is unclear whether the possibility of not being eligible for Partnership is a strong enough influence to encourage the additional required expenditure for the inflation coverage.

We share the following statistics regarding the popularity of these benefit features, based on 2018 sales according to the 2019 Milliman LTCI Survey published by *Broker World*:[5]

What percentage of LTCI sales are tax-qualified under HIPAA?	Very close to 100%. According to the survey, fewer than 0.2% of policies sold in each of the past four years (2015–2018) was not tax-qualified.
What percentage of LTCI sales include inflation protection?	Only 2% of sales included compound inflation of 4.5% or more. Around 37% of sales include an option to purchase additional inflationary coverage often called Guaranteed Purchase Option. Approximately 15.5% of sales did not include any inflation coverage. The remaining sales (45.5%) could have included various other types of inflation coverage, but none would consider the compound level of inflation included in the compound of 4.5% or more category noted above.

[5] *Broker World*, "2019 Milliman Long Term Care Insurance Survey," July 1, 2019.

What percentage of LTCI sales are Partnership Policies?	Varies considerably by state. Roughly 1% qualified in original Partnership states. In the DRA states, 52.5% of policies qualified for Partnership status (MN: 82%, WI: 75%, WY: 75%).

While we do not believe that inflation protection requirements alone would deter carriers from entering or remaining in the LTC market, the requirement to offer inflation protection complicates the sales process. In some cases, an insured may feel more comfortable purchasing a larger base benefit rather than inflation protection. This decision can depend on their ultimate plans for where to retire and other factors related to their individual preferences regarding which risks to cover when making an insurance purchase decision.

Five percent compound inflation protection may not be the appropriate inflation level given current and expected future costs of long-term supports and services (LTSS). We estimate that in the 1990s, LTC inflation rates averaged 4-5%. In more recent years LTC inflation rates appeared to have been closer to 2-3%, which may indicate that the 5% rate is more than is necessary to cover inflationary increases in costs.

Yet, because many policyholders are expected to hold the policies for over 30 years, inflation could increase. Those who project Medicaid budgets need to consider a potential scenario where inflation increases. Medicaid budgets are not harmed, or helped, by an individual being able to choose between spending down their assets or buying Partnership insurance to protect only those assets that are not already exempt. Medicaid budgets are helped when Partnership insurance policyholders receive benefits that exceed the assets they are protecting. If Partnership policyholders are willing to purchase policies with a higher level of inflation protection, it increases the likelihood that they will receive benefits that exceed the assets they are protecting and that the Medicaid program will in turn benefit.

Some policies in the past offered a variable inflation rate design based on Consumer Price Index (CPI). We think this design may be confusing to consumers. In addition, there is a question as to which CPI measure to use, because an LTC CPI does not exist. Unlike medical care, LTC inflation is driven more by wages than cost of medicine, and CPI for nursing home and home care costs for the elderly might be possible indices to use in LTC policies. A CPI peg creates a potentially variable insurance risk. In order for insurance companies to avoid an unknown ceiling on the benefits they promise, a 5% annual or cumulative cap could be included as well.

Finally, inflation protection is just one of many choices that must be made in purchasing LTC coverage. For example, policyholders could purchase higher daily benefit maximums with lower inflation protection. There are also other ways that consumers can select a coverage amount. For example, a spectrum of options are available related to whether a policy covers home health care in addition to skilled nursing facility care. Ultimately, the real question could be whether some coverage is better than no coverage. It is possible that more people would consider covering this risk through insurance if ***all*** levels of coverage received some sort of beneficial protection (tax or Medicaid spenddown) regardless of whether inflation is part of the benefit calculation.

If the HIPAA and DRA inflation protections were eliminated, replacing them with lower formulas or giving insurance carriers the flexibility to choose the options they want to offer policyholders could be in order. Options and factors to consider include:

- Allow any LTC coverage to qualify for DRA Partnership status if it provides a minimum level of total benefits.
- With respect to Partnership coverage, if issued without inflation protection it may be likely that Medicaid will be needed at an earlier point in time depending on the initial level of insurance purchased.
- Inflation options could add confusion to the sales process without added benefit given the additional cost of the added coverage inflation provides.

Option 5: Allow products that combine LTC coverage with various insurance products (including policies that "morph" into LTCI).

The NAIC recommended the federal government treat products that combine LTC with other coverage in a similar fashion as it treats stand-alone LTCI insurance. The most popular combination product today is a life/LTC hybrid product. The hybrid product could consist of accelerated benefits and an extension of benefits. The accelerated benefits part of the product pays out the death benefit prior to death when the policyholder qualifies for and chooses to access the benefits to cover LTC expenses. The extension of benefits aspect provides LTC coverage after the entire death benefit has been accelerated. The accelerated benefit coverage might be sold as an LTC rider or chronic illness rider. The benefits and benefit triggers can be substantially similar but they are governed under different sections of the Internal Revenue Code and NAIC model regulations. Chronic illness riders typically do not contain some of the features of LTC riders such as the offer of inflation projection; as such they cannot be marketed as LTC insurance. Benefit triggers for acceleration products typically use the LTC benefit qualification standard of being unable to perform at least two activities of daily living or requiring substantial supervision for severe cognitive impairment.

According to a LIMRA study, 2017 sales of policies that included LTC benefits consisted of 21% stand-alone policies, 39% chronic illness riders, and 40% long-term care riders. Clearly the hybrid life products have grown in popularity. Hybrid life policies with an extension of benefits rider make up about 14% of the policies in the hybrid market.

In addition, annuity products might offer an LTC rider where benefits are paid without penalty for early withdrawal and without the interest accumulation being taxed. As in life/LTC hybrid policies, the annuity owner must satisfy the LTC benefit criteria.

Benefits from accelerated benefits are certain, either in the form of living or death benefits, so the cost is higher than for stand-alone LTCI. Presumably, the fixed premium structure of these policies is attractive to those who can afford the hybrid products.

For insurance companies, so far the experience on accelerated benefits has been favorable. The cost of accelerated benefits is offset by the reduction in death benefits, and therefore the risk lies in the time value related to how much sooner the death benefits are accelerated.

The risk for covering extended benefits is much like that for stand-alone LTCI, except generally the premium rates cannot be increased and there might be some value from the policyholder

seeking to preserve the death benefit (an extended benefits rider does not pay benefits until after the acceleration of death benefits is complete).

The complexities associated with hybrid products create questions associated with reserving and reporting, and the NAIC as well as the Interstate Insurance Compact are beginning to address those questions.

Yet another type of combination product provides different coverage at different stages of life. The state of Minnesota prepared a report on "Life Stage" protection,[6] where a policyholder buys term life insurance coverage for the period until they plan to retire, at which point the coverage amount becomes the lifetime maximum for LTC coverage. In essence, the insurance company's LTC underwriting is performed at a relatively young age, and the policyholder does not need to be concerned about deterioration in their health prior to being ready to seek LTC coverage. Once again inflation in the cost of LTSS is an important consideration for the policyholder and for those projecting Medicaid budgets should this type of product gain traction in the marketplace. To date, we're not aware of any insurance company filing such a product.

Regulatory Hurdles to Innovation

Regulatory hurdles remain for innovative products including "Life Stage" protection. Actuarial questions such as proper reserving can be a concern for those considering new types of products, yet regulatory hurdles seem to be a deterrent to the innovation that is required to engender growth. For example, the NAIC model regulation for LTC insurance requires certain levels of benefits. If an innovation does not satisfy the NAIC LTC requirements, the product will be classified as some other health insurance policy. Therefore, some federal requirements or restrictions could be imposed on such health policies that are not imposed on LTC insurance.

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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 David Linn, the Academy's senior health policy analyst, at 202-223-8196 or linn@actuary.org.

Sincerely,

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[6] Minnesota, *LifeStage Protection Product Final Report*, December 2018.