

From: Tomasz Serbinowski, Utah Insurance Department

To: IIPRC Product Standards Committee

Date: February 5, 2016

Re: Proposed amendments to the Additional Standards GLB for Individual Annuities

On behalf of the State of Utah, I would like to submit the following comments on the proposed amendments to the two uniform standards:

- a. Additional Standards For Guaranteed Living Benefits For Individual Deferred Variable Annuities; and
- b. Additional Standards For Guaranteed Living Benefits For Individual Deferred Non-Variable Annuities.

Our comments apply to the provisions that are identical in both standards (Standards), and as such are equally applicable to either of the aforementioned documents.

The main thrust of our comments is that the proposed amendments appear to allow certain long-term care type benefits to be provided through products not subject to the standards established by the IIPRC for individual long-term care insurance. We believe this to be a potential violation of the IIPRC statute which sets a higher standard for long-term care insurance by mandating that any uniform standards established by IIPRC for long-term care insurance “shall not provide less than, those protection set forth in the National Association of Insurance Commissioners’ Long-Term Care Insurance Model Act and Long-Term Care Insurance Model Regulation, respectively, adopted as of 2001.”

Here is an outline of our argument.

1. Certain benefit triggers added to the Standards appear to make the products that offer these benefits meet the definition of the long-term care insurance (as defined in the NAIC Long-Term Care Insurance Model Act).
2. If the above is in fact correct, these products are long-term care insurance and should be subject to the IIPRC standards applicable to the individual long-term care insurance.
3. The IIPRC does not have authority to exempt products deemed long-term care insurance by the NAIC Long-Term Care Insurance Act from the IIPRC standards applicable to the long-term care insurance as it would amount to providing less protection.
4. If the IIPRC believes that majority of the member states deem such products not to be long-term care insurance, IIPRC should work with the NAIC to amend the Long-Term Care Model Act to align it better with the states stance on what is and what is not long-term care insurance.
5. The IIPRC statute allows the Commission to “consider whether any subsequent amendments to the NAIC Long-Term Care Insurance Model Act or Long-Term Care Insurance Model Regulation adopted by the NAIC require amending of the Uniform Standards established by the Commission for long-term care insurance products.”

Therefore, we believe that it is absolutely crucial that the IIPRC provide an analysis that led it to conclude that the new benefit triggers added to the Standards do not in fact make the products that offer them meet the definition of the long-term care insurance. Below, we provide our argument to the contrary.

Qualifying events 1, 6, and 7 in the Standards contain long-term care benefit triggers.

Qualifying event 1 provides for a benefit eligibility based on the “covered person [...] receiving care from a health care facility” where the facility “may include but is not limited to, the [...] nursing home, skilled nursing, extended care, intermediate care, convalescent care or hospice care.” In addition, the care “may also include personal or home care.”

Model definition of long-term care includes policies or riders “designed to provide coverage [...] on an expense incurred, indemnity prepaid or other basis.” Qualifying event 1 would appear to be designed to provide such coverage on an indemnity basis.

Qualifying event 6 provides for a benefit eligibility based on the covered person inability “to perform certain number of ‘activities of daily living’.”

Qualifying event 7 provides for a benefit eligibility based on the covered person having “cognitive impairment.”

Model definition of long-term care specifically includes “individual annuities [...] that provide directly or supplement long-term care insurance.” It also includes “a policy or rider that provides for payment of benefits based upon cognitive impairment or the loss of functional capacity.”

When the enhanced benefit (benefit based on the qualifying event) continues once the account value has been depleted, it unequivocally provides payment of benefit (difference between the enhanced benefit and the base benefit) based upon a long-term care trigger. There should be no doubt that in that case, the benefits meet the definition of the long-term care insurance.

However, even prior to the account value exhaustion, an argument could be made that the enhanced withdrawal provides directly or supplements long term-care. Definition of long-term care does not require that payment be based on the cost of care or even conditioned on the receipt of care. In fact, the definition specifically contemplates “indemnity” benefits, where the amount of the benefit payment is not related to the cost of care.

Finally, we note that some life insurance policies that accelerate death benefits for long-term care are excluded from the model definition, but that there is no corresponding exclusion for annuity contracts or riders.

Sincerely,

Tomasz Serbinowski, PhD, FSA
Actuary
Utah Insurance Department
(801) 537-9289
tserbinowski@utah.gov