



MEMORANDUM

TO: Insurance Compact Management Committee

FROM: Insurance Compact Governance Committee
Insurance Compact Product Standards Committee

DATE: August 12, 2022
Updated November 16, 2022, for clarity

SUBJECT: Recommendation of Draft Amendments to Address Colorado Statutory Conflict with Suicide Exclusion Provisions

The Governance Committee provides its recommendation in response to the specific conflict that gave rise to the *Amica Life Insurance Company v. Wertz* opinion issued by the Colorado Supreme Court in 2020. In 2021, the Governance Committee referred to the Product Standards Committee (PSC) specific conflicts between Colorado statute and the Uniform Standards. With the PSC's feedback, at this time the Governance Committee is recommending amendments to certain Uniform Standards to maintain a maximum suicide exclusion period of up to two years and to include an exception for a shorter maximum suicide exclusion period—up to one year—where required by state law. The Governance Committee recommends deferring any other discussion with respect to state-specific conflicts until the Compact puts a more deliberative process in place. This recommendation addresses the specific statutory conflict at issue in the *Amica* case.

The Governance Committee took up this issue as one element of addressing the *Amica* case on behalf of the Colorado Division of Insurance and the other Compacting States. With the finalization of Position Statement 1-2022 concluding that Congress consented to the Compact in 2006, the Governance Committee turned back to this direct conflict between state statute and Uniform Standards. This recommendation serves to acknowledge the different maximum suicide exclusion period in two Compacting States and one non-Compacting State, including one state with a binding supreme court ruling.

In response to the Governance Committee's referral, the PSC identified two sections in the individual and group life insurance Uniform Standards—the Reinstatement and Suicide provisions—and suggested amendments to maintain a maximum suicide exclusion period of up to two years and to include an exception for a shorter maximum suicide exclusion period where required by state law. Appendix A shows the proposed amendments to the relevant provisions in the Uniform Standards. Appendix B lists the Uniform Standards affected by the proposed amendments.

INTERSTATE INSURANCE PRODUCT REGULATION COMMISSION (INSURANCE COMPACT)
444 North Capitol Street, NW • Hall of the States Suite 700 • Washington, DC 20001
(202) 471-3962 • comments@insurancecompact.org • www.insurancecompact.org • @InsCompact

The amendments are proposed to apply prospectively only, meaning they will apply to new business issued in Compacting States upon the effective date because the amendments make a substantive change to the determination of compliance meaning that it is not necessary to re-file to demonstrate compliance. The change will apply to new issues of previously-approved Compact products. In other words, filers may need to update their previously-approved Compact products for compliance with this substantive amendment for products issued after the effective date of this amendment. This is consistent with all other Uniform Standards amendments to date; moreover, it has been possible to include a suicide exclusion period shorter than two years under the current Uniform Standards. The change going forward would allow the insurance form to state that a shorter period will apply if required under state law where the policy is delivered or issued for delivery.

The PSC held a public hearing on August 10, 2021, to receive comments on the referral from the Governance Committee in advance of drafting its recommendation. There were no written comments. The PSC drafted proposed amendments and exposed the draft for comments. The PSC held a second public call on September 14, 2021, to receive comments. ACLI and AHIP submitted written comments and provided oral comments. Both ACLI and AHIP expressed concern with amending the Uniform Standards for state-specific exceptions noting such action would jeopardize uniformity and efficiency as well as increase compliance costs and possibly reduce reliance by the industry on the Compact's filing platform. ACLI and AHIP also expressed concern from an operational and market perspective if these changes were to apply other than prospectively.

The PSC discussed the comments from ACLI and AHIP and did not make further changes to its recommendation as these comments did not directly address the substance of the suggested amendments. The Governance Committee relied on the public participation afforded by the PSC, and the formal rulemaking process for Uniform Standards amendments that will provide further opportunity for vetting this proposed, targeted amendment.

The Governance Committee received the PSC's response on November 10, 2021. It then turned to finalizing Position Statement 1-2022 and returned to the Uniform Standards amendments in recent months. The Governance Committee decided to proceed with the Suicide provision amendments because they are directly related to the Colorado Supreme Court opinion. The PSC's recommendation included amendments to address a Colorado statutory conflict regarding gender-neutral rate schedules for individual long-term care insurance; however, the Committee decided to narrow its recommendation to the Suicide provision alone. The Position Statement recognizes congressional consent and affirms the purpose of the Compact that the Uniform Standards are intended to apply as the exclusive requirements for Compact-approved products.

The Governance Committee recommends the Compact put a more deliberative process in place to address meaningful conflicts with state law, including but not limited putting a more nimble process in place for seeking changes in the Uniform Standards.

The Governance Committee is available to respond to any questions or requests for information to assist the Management Committee in taking up this recommendation.

APPENDIX A

PROPOSED CHANGES TO THE RELEVANT PROVISIONS IN THE UNIFORM STANDARDS

LENGTH OF SUICIDE EXCLUSION PROVISION

§3. POLICY PROVISIONS

T. REINSTATEMENT

(6) With respect to any reinstated policy, the following applies:

- (a) With respect to statements made in an application for reinstatement, the policy is incontestable after it has been in force during the insured's lifetime for two years beginning with the day of reinstatement. The contestable period is based only on statements in the reinstatement application unless the original contestable period has not yet expired. The reinstated policy may include an exception to the incontestability provision for fraud in the procurement of the reinstated policy when permitted by applicable law in the state where the policy is delivered or issued for delivery.
- (b) The suicide exclusion shall not exceed two years from the day of reinstatement, **or any shorter period as may be required by applicable law in the state where the policy is delivered or issued for delivery.**
- (c) If a policy contains a reinstatement provision or other policy provision that references the subject matter of Paragraph (6)(a) and/or (6)(b), the policy references shall be consistent with (6)(a) and/or (6)(b).

W. SUICIDE

- (1) The policy may provide for a suicide exclusion, which may include the phrase "sane or insane."
- (2) The suicide exclusion shall include the conditions of the provision.
- (3) The suicide exclusion period shall not exceed two years from the date of issue of the policy **or any shorter period as may be required by applicable law in the state where the policy is delivered or issued for delivery.**
- (4) At a minimum, a refund of all premiums paid, less dividends paid and any indebtedness, shall be paid by the company in the event of death by suicide during the suicide exclusion period.

APPENDIX B

UNIFORM STANDARDS FOR THE PROPOSED AMENDMENT RELATED TO THE LENGTH OF THE SUICIDE EXCLUSION PERIOD

INDIVIDUAL TERM LIFE PRODUCT LINE

Individual Term Life Insurance Policy Standards
Individual Single Premium Term Life Insurance Policy Standards
Individual Joint Last to Die Survivorship Term Life Insurance Policy Standards
Individual Single Premium Joint Last to Die Survivorship Term Life Insurance Policy Standards

INDIVIDUAL WHOLE LIFE PRODUCT LINE

Individual Whole Life Insurance Policy Standards
Individual Single Premium Whole Life Insurance Policy Standards
Individual Joint Last to Die Survivorship Whole Life Insurance Policy Standards
Individual Single Premium Joint Last to Die Survivorship Whole Life Insurance Policy Standards
Individual Current Assumption Whole Life Insurance Policy Standards

INDIVIDUAL ENDOWMENT INSURANCE PRODUCT LINE

Individual Endowment Insurance Policy Standards
Individual Single Premium Endowment Insurance Policy Standards
Individual Joint Last to Die Survivorship Endowment Insurance Policy Standards
Individual Single Premium Joint Last to Die Survivorship Endowment Insurance Policy Standards

INDIVIDUAL NON-VARIABLE ADJUSTABLE LIFE INSURANCE PRODUCT LINE

Individual Flexible Premium Adjustable Life Insurance Policy Standards (Universal Life)
Individual Joint Last to Die Survivorship Flexible Premium Adjustable Life Insurance Policy Standards
Individual Modified Single Premium Adjustable Life Insurance Policy Standards

INDIVIDUAL VARIABLE ADJUSTABLE LIFE INSURANCE PRODUCT LINE

Individual Modified Single Premium Variable Life Insurance Policy Standards
Individual Modified Single Premium Joint First to Die Variable Life Insurance Policy Standards
Individual Flexible Premium Variable Adjustable Life Insurance Policy Standards
Individual Joint Last to Die Survivorship Flexible Premium Variable Adjustable Life Insurance Policy Standards

GROUP TERM LIFE PRODUCT LINE

Group Term Life Insurance Policy and Certificate Standards for Employer Groups