



MEMORANDUM

TO: MANAGEMENT COMMITTEE
FROM: RULEMAKING COMMITTEE
DATE: JUNE 28, 2022
SUBJECT: DRAFT RECOMMENDATION FOR FRAMEWORK AND OPERATING PROCEDURE TO ACCOMMODATE USE OF COMPACT APPROVED PRODUCTS FOR NON-EMPLOYER GROUP

The Rulemaking Committee presents this recommendation to the Management Committee for notice and comment and further consideration. The Rulemaking Committee recommends the Commission adopt a framework outlined in Appendix A, including amendments to the group Uniform Standards and a proposed Operating Procedure, to permit use of Compact-approved group products for “other than employer groups” which is commonly referred to as “non-employer groups”. The recommended framework explicitly keeps authority for approval and disapproval of the non-employer group with each Compacting State.

This recommendation is in response to Priority I, Action Item 4 of the [Insurance Compact Compass Strategic Plan: 2020 – 2022](#) which charged the Rulemaking Committee to “[e]xplore whether to expand the Uniform Standards to accommodate group types available in the Compacting States for the authorized product lines (other than the existing employer-employee group type), and if approved by the Commission, commence development.” This item was also mentioned as a key recommendation in the Compact’s [independent business assessment](#) performed by Rector & Associates in 2020 to allow Compact-approved products to be issued to non-employer groups.

The Rulemaking Committee held regulator-only and public calls as well as conducted regulator and industry surveys and received presentations from regulators and companies on aspects of the regulatory compliance process for non-employer groups. Through discussions and surveys, the key regulatory concern is the current state laws and processes with respect to approval or disapproval of certain types of non-employer groups could be bypassed. This recommendation would preserve both the state laws and process for non-employer groups while allowing companies to use Compact-approved products for non-employer groups authorized in accordance with the existing state processes.

The Uniform Standards in effect for group product lines include life, annuities and disability income and the scope is currently only for employer groups (there are no group long-term care insurance Uniform Standards). Even though the current group Uniform Standards define employer group to cover “employers, or the trustees of a fund established by an employer,” each Standard

explicitly provides such employer groups must be permitted in the jurisdiction where the policy is delivered or issued for delivery. In other words, state law continues to apply to the definitions and appropriateness of employer groups. Just like the process in the states, insurers are generally not required to go through a separate review or approval process for a specific employer group, such as ABC Company.

Many states expressed concern with certain types of non-employer groups especially associations, certain trusts, and discretionary groups. The examples of regulatory action and concern are more likely to arise from association health plans which are outside the authorized product lines under the Compact statute. Even for group life, annuities, and disability income, several states have a robust process requiring a separate review to verify the legitimacy of the specific non-employer group, such as ABC Association, including review of the non-employer group's governing documents to ensure the group is established other than for the purpose of insurance.

Insurers expressed a desire for efficiency in filing group products through the Compact that can be issued to multiple group types. Today, insurers are faced with a choice of filing a group product through the Compact for employer groups and filing the same or similar group product state-by-state for non-employer groups or not filing through the Compact due to the bifurcation of what, in most cases, is the same group product.

This framework would allow insurers to submit group products for approval to the Compact under the member-adopted Uniform Standards which provide detailed and comprehensive content form requirements. It would expand the definition of employer group to include trusts known as portability trusts, which are created by insurers for continuation of group insurance when an employee terminates and exercises their contractual right to port, i.e., maintain, group coverage when no longer a member of the original group. The employer group definition would also be updated to include labor unions and professional employment organizations.

Under the framework, non-employer groups would:

- (1) Be defined as any group type other than employer groups recognized under the respective state's framework; and
- (2) Require the insurer to satisfy the eligibility, qualification and authorization process required in Compacting States

before being able to issue a Compact-approved product to the non-employer group. Creditor groups would continue to be prohibited from the scope of the group Uniform Standards.

The authority of whether a group fits the definition of an Employer Group or Non-Employer Group would be subject to the exclusive determination of the State and governed by applicable state law in the jurisdiction where the policy or the certificate is delivered or issued for delivery. The proposed Operating Procedure further reiterates in a drafting note that the *laws in the Compacting State where the policy or certificate is delivered or issued for delivery applies to whether the groups defined above are authorized to operating in the Compacting State. By categorizing these groups as "Employer Groups" and "Non-Employer Groups" for purposes of this Operating Procedure and Uniform Standards, there is no intent to create statutory definitions for these*

groups where none existing in the laws of the Compacting State where the policy or certificate is delivered or issued for delivery.

The Rulemaking Committee recommends a draft *Operating Procedure for the Use of Compact-Approved Products for Other Than Employer Groups* which circumscribes this process. The Rulemaking Committee recommends the Product Standards Committee consider amendments to the existing group Uniform Standards to include terminology or provisions to accommodate non-employer groups within their respective scopes.

Under this recommendation, the use of Compact-approved products would accommodate both employer and non-employer group types with the requirement that insurers continue to follow the existing state process for approval or disapproval of non-employer groups before a Compact-approved product can be issued to the non-employer group.

APPENDIX A

- A. Current Status of Group Uniform Standards
 - i. Can be used for employers, or the trustees of a fund established by an employer, that are permitted in the jurisdiction where the policy is delivered or issued for delivery.
 - ii. Adopted group standards include group term life insurance products, group disability income insurance products, single premium group fixed annuity products, and group guaranteed interest contracts for non-variable annuities. Group policyholder application standards applies across available product lines.

- B. Amend the Group Uniform Standards to Expand Scope
 - i. Add a clear statement that eligibility and qualification for a group falls within the authority (including the prior approval authority as applicable) of the Compacting States.
 - ii. Consider expanding the scope of employer or add specific definitions for labor unions, professional employer organizations, and possibly pooled employer plans.
 - iii. Add clear statement that approval of a group product by the Insurance Compact shall not be deemed as approval to use or issue the product to a non-employer group. (See Partnership statement in the [Core Standards for Individual Long-Term Care Insurance Policies](#)).
 - iv. Consider clarifying the scope of an employer to include a portability trust established specifically for, and limited to, providing portability coverage for employees and their dependents whose coverage ends under an employer's plan.
 - v. To facilitate compliance with state-specific non-employer group type requirements, determine if changes are necessary to the Variability of Information section or General submission requirements section.
 - vi. To accommodate terminology that may be used in group product forms for non-employer groups such as "association" instead of "employer," and "member" instead of "employee," amend the group Uniform Standards to provide an appendix to denote terminology and definitions, if applicable, for non-employer group types similar in nature to the Appendix for Fraternal Benefit Societies in the individual life insurance and annuity product Uniform Standards.

- C. Develop an Operating Procedure (or amend the current [Product Filing Rule](#))
- i. The purpose is to document the process for filing and reviewing group insurance products issued to a non-employer group permitted or approved, as applicable, by a Compacting State.
 - ii. The authority is Article X of the Insurance Compact, which authorizes the Commission to establish appropriate filing and review processes and procedures for products approved by the Commission
 - iii. A group insurance product approved by the Insurance Compact may be issued only to non-employer groups permitted or approved, as applicable, by the participating Compacting States.
 - iv. The Compact will review and approve group insurance products for compliance with Uniform Standards, which permit the use of variability and terminology to address differences among non-employer group type.
 - v. The filer will submit a certification signed by a company Officer in the filing to certify it will only use the Compact-approved product for non-employer groups which are permitted or approved, as applicable, by each of the Compacting States included in the product filing.