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The NAIC as Long-Term Care Insurance Innovator

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The NAIC Innovation efforts outlined here represent only one of the three work streams of this group. This article focuses on their first product, recommendations to Congress on changes in federal laws that encourage broader participation by consumers in purchasing LTCI products and assisting in allowing more flexibility in product design. A second work stream will develop documents that help increase awareness of existing products. The third work stream will focus on model regulation changes that would allow for more innovation in product design. The NAIC is now actively moving forward on these other areas.

Somebody forget to tell the National Association of Insurance Commissioners (NAIC) that only insurance companies are allowed to create new products. Of course, it could be that the LTC insurance market is viewed by many as having stalled. So maybe time for others to step in.

Essentially what is going on is that state governments see the aging boom as still in full force, potentially wreaking havoc on their Medicaid and other aging support programs. They also feel a duty to their citizenry, many of whom may be left at risk if they have not planned for long-term care. So, what we are seeing is two-fold: States feel the need to step into the void left by the insurance world. But they have their traditional regulator duty to make sure products and regulations mesh better going forward.

To that end, the NAIC created an Innovation subgroup two years ago. They moved forward 10 ideas sent to Congress in Aptil 2017. What you have below is the titles of each of those concepts and my, hopefully pithy, take on each. For those that want to see what was what the NAIC really said about each please go *http://www.naic.org/documents/government_relations_ltc_fed_policy_opt.pdf*

- **Option 1: Permit retirement plan participants to make a distribution from 401(k), 403(b) or Individual Retirement Account (IRA) to purchase LTCI with no early withdrawal tax penalty.** How cool it this?! You slave away for years putting money into retirement accounts and now you can tap it for long-term care or long-term care insurance. There are a lot of little details about how to do this but this is one of the few ideas that gives immediate relief when someone has a long-term care crisis. People have already saved/invested funds. So, no need to move people to action such as buying LTC insurance. My personal take is that such accounts are not as good as if the person had insurance but, if they did not buy insurance, at least puts their money into play right now.
- **Option 2: Allow Creation of LTC Savings Accounts, similar to Health Savings Accounts (HSAs) and/or Enhance Use of HSAs for LTC Expenses and Premiums.** Republicans love HSAs. The idea is you pay more attention to your health care spending when it is right there in front of you than if you have the buffer of an insurance product. The problem with this idea is that people have to buy into it. Literally. In this Ayn Randian world of the future people may or may not put money aside for health needs via HSAs. But will they put other money into what we will call an LSA (long-term care savings account)? The same planning barriers exist as with buying LTC insurance. Frankly, I'm not going to hold out much hope for the broad middle class. Oh, and if you are going to go through all the trouble of convincing people they face a long-term care risk why solve it with a savings account? And at least with insurance you get the leveraging effect created when people pool money for a common risk. These LSAs will likely end up underfunded except for richer folk looking for a tax break.
- **Option 3: Remove the HIPAA requirement to offer 5% compound inflation with LTCI policies and remove the requirement that DRA Partnership policies include inflation protection and allow the States to determine the percentage of inflation protection.** I was one of those people that fought for 5 percent and now throw in the towel. No less notable a figure than Larry Summers says we are in for an extended period of "secular stagnation" like Japan has been seeing for decades. Decades! Kiss good rates of return good bye for LTC insurance (and life insurance, too). The best ideas going forward are those that allow the policyholder to track inflation but not over (or under) reserve for it. Good bye 5 percent.
- **Option 4: Allow flexible premium structures and/or cash value beyond return of premium (HIPAA and DRA).** Ooohhh, cash. Isn't this still just return of premium? Didn't it turn out it cost a lot more and no one bought it? Can't say I'm against it (you otherwise have that "use it or lose it" mentality) but not sure it will be a game changer until products are structured in such a way that the costs are not so high that purchasing this option is a non-starter. Perhaps the people selling products like universal life can step forward and give us their take on this.
- **Option 5: Allow products that combine LTC coverage with various insurance products (including products that "morph" into LTCI).** This is one of the most salient options requested by stakeholders to achieve market expansion. The reason is it better addresses consumers' needs over time. The Minnesota idea—LifeStage—for example would offer life

insurance to age 65 then turn into LTC. It does not solve all issues (for example what if the person still needed life insurance after age 65) but may be a better approach than combination products. Even better, just tap existing life insurance products better. As with Option 1 we are talking about products people have already bought. When you get the call that mom has to go into the nursing home tomorrow it will be funded by whatever she has at that point. About 60–70 percent of the population has some life insurance coverage and it's more direct to go after that than rely just on morphing products that will help 20–30 years from now. [Full disclosure: I have a client advocating for product/regulatory changes to access existing life insurance products.]

- **Option 6: Support innovation by improving alignment between federal law and NAIC models (HIPAA and DRA).** The basis of this idea is that federal law (HIPAA and the DRA primarily) link to the NAIC model at the time of passage of the federal law. The reason for this is that the feds probably won't just say "use current NAIC model" since the NAIC is not a federal body. In theory Congress could just update HIPAA and DRA every year. In theory. Good luck with that. The NAIC solution is more along the lines of saying "use current NAIC model." I don't think either the administration (this or any other) or the Congress will go for this. A better solution would be to for laws to better kick the matter over to the Department of Health and Human Services (HHS). HHS can more easily alter its regulations to follow the NAIC than Congress can but it keeps the control the federal government will want. [Full Disclosure: I was a federal regulator and had management responsibilities for the Federal Long Term Care Insurance Program.]

- **Option 7: Create a more appropriate regulatory environment for Group LTCI and worksite coverage (HIPAA and DRA).** One of the ideas here is to provide a safe harbor to limit the employer's fiduciary liability. Another is to allow an employer to permit LTCI to be available for purchase through Section 125 cafeteria plans. I run into the safe harbor issue on retirement policy and have respect for both points of view. It definitely inhibits employers from offering more services to employees but you don't want the employer to offer any old advice and walk away when it is lousy. The better approach here might be just to make sure group LTC gets into the cafeteria plans and figure out later how to expand on take up. (Just being in the cafeteria plan won't help most employees if they select dental and vision or other benefits and ignore the need for LTC coverage.)

- **Option 8: Establish more generous federal tax incentives.** This has been kicking around for years. The core idea is to allow a full federal tax deduction for LTCI premiums not just, as per HIPAA, for expenses over 7.5–10 percent of Adjusted Gross Income. No to that. It only works for the higher income folks and they seem to be buying (or not) without tax consideration. Having said that, I'm not opposed to changing tax policy. As above, changing the tax code to allow tax benefits via cafeteria plans would be nice, and probably for FSAs as well. One wrinkle the NAIC noted was that you might have to recognize the shift to policies offering shorter maximum benefit periods (short-term care). Not allowed now. But under the theory that some protection is better than no protection, I'd go for that.

- **Option 9: Explore adding a home care benefit to Medicare or Medicare Supplement and/or Medicare Advantage plans.** This is my current hobby horse. [Full Disclosure: I'm a consultant to the Minnesota Department of Human Services which is looking at this very idea.] Medicare provides extensive acute care coverage but more limited post-acute coverage (home health and skilled nursing facility care). Medicare Advantage and Medigap plans fill the gaps in Medicare. What is not well known is that Medicare has been covering a greater and greater amount of post-acute care that essentially amounts to long-term care. There is some controversy around this but it may be one of the best ways to create a true social insurance base for long-term care needs that can be supplemented by private insurance. It will look more like Medigap than LTC but, hey, if that is what it takes, then we should go for it

- **Option 10: Federal education campaign around retirement security and the importance of planning for potential LTC needs.** This is the Own Your Future concept. I was the one that created the initial efforts when I worked at the U.S. Department of Health and Human Services. It has now been fielded in over half the states, usually through the governors' office. The problem with the initial campaigns was that there was no real push to action. You have to scare or titillate the buyer—move them to act—*and* have a product they can buy. With the LTC insurance market declining through the last 10–15 years that is a problem. But new solutions and innovative product ideas would allow public information campaigns to reinforce the corporate messaging and move people to act. ■

Disclaimer: The views in this article are solely of the author and do not necessarily represent NASI or the other organizations or clients he represents.

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