



August 30, 2019

The Honorable Michael Faulkender  
Assistant Secretary for Economic Policy and  
Chair of the Federal Interagency Task Force on Long-Term Care Insurance  
Department of the Treasury  
1500 Pennsylvania Ave. NW, Room 3454 MT  
Washington, DC 20220

*Submitted electronically via [LTCITaskForce@treasury.gov](mailto:LTCITaskForce@treasury.gov)*

**RE: AHIP-ACLI Comments on Potential Federal LTC Reforms to Improve Financial Security of Americans**

Dear Mr. Faulkender:

America's Health Insurance Plans (AHIP) and the American Council of Life Insurers (ACLI), on behalf of their member insurers, appreciate the opportunity to respond to the Federal Interagency Task Force on Long-Term Care Insurance's (Task Force) invitation for comments on potential reforms to federal laws, regulations, and policies that complement reforms at the state level relating to the regulation of long-term care insurance (LTCI). We commend the Task Force for considering the challenges of long-term care (LTC) financing that American consumers face as a matter of national interest, requiring a coordinated response from the federal government.

Millions of Americans' financial and retirement security are at risk from exposure to unfunded LTC events. Access to additional options to meet and finance the need for long term services and supports (LTSS) will enable consumers to address those needs without eroding other assets or imposing on family and friends. We welcome the opportunity to work with the Task Force to develop policies that would improve the private financing of LTSS.

AHIP is the national association whose members provide coverage for health care and related services to millions of Americans every day. Through these offerings, we improve and protect the health and financial security of consumers, families, businesses, communities and the nation. We are committed to market-based solutions and public-private partnerships that improve affordability, value, access and well-being for consumers. Our members provide a range of products to millions of consumers, including major medical coverage, disability income insurance, dental insurance, LTCI, reinsurance, pharmacy benefits, and administrative services for self-funded health plans.

ACLI advocates on behalf of 280 member companies dedicated to providing products and services that promote consumers' financial and retirement security. Ninety (90) million American families depend on our members for LTCI, life insurance, annuities, retirement plans, disability income insurance, reinsurance, dental and vision and other supplemental benefits. ACLI represents member companies in state, federal, and international public policy forums that support the insurance marketplace and the families that rely on life insurers' products for peace of mind. ACLI members represent 95 percent of industry assets in the United States.

We understand that the Task Force has been reviewing various proposals to reform federal laws and regulations concerning LTCI, including, among other options, the federal policy options presented by the NAIC to Congress for its consideration in April 2017. Having also reviewed the NAIC options, we offer recommendations that we believe are achievable and would meaningfully improve consumers' access to private LTCI coverage. Further, as the Task Force requested, our recommendations specifically outline potential reforms to federal laws, regulations, and policies that would complement regulatory reforms at the state level related to LTCI. There may be additional and more comprehensive reforms warranted that will require systemic changes to the way we view LTC funding with the ultimate goal of creating a comprehensive LTSS financing system. One such approach that warrants discussion is the government serving as "catastrophic backdrop" and private insurance plans covering initial costs. However, we believe the Task Force's current consideration of the more achievable near-term changes described below would lead to meaningful improvements for American consumers seeking to access LTC coverage.

Below we summarize our recommendations regarding the Task Force's consideration of proposed options to expand consumer access to LTCI coverage:

- Launch a national educational campaign to help consumers understand both the need for and benefits of LTC coverage.
- Provide tax incentives to expand consumer access to LTC coverage through workplace and retirement plan options:
  - Making LTC coverage available through Internal Revenue Code (IRC) Section 125 cafeteria plans and Flexible Spending Arrangements (FSA);
  - Allowing tax-free premium payments for LTCI policies either from or within their 401(k)s, 403(b)s, IRAs, and other retirement plans; and
  - Permitting employees to make additional contributions to their Health Savings Accounts (HSA) to pay for LTCI premiums.
- Support legislation or regulatory guidance that would confirm and allow the payment of LTCI incidental benefits from LTCI policies that enhance care options for policyholders and provide access to benefits, including those intended to support healthy, independent living and aging in place, prior to satisfying the current eligibility requirements of a severe cognitive impairment or substantial assistance with the requisite activities of daily living. This allowance should not cause the policy to forfeit its tax qualified status.

- Revise current federal requirements surrounding inflation protection for LTCI policies to encourage policy design innovations that would meet the needs of consumers more effectively.

Our detailed recommendations are outlined in the enclosed attachment. We believe these recommendations align with our mutual goals to expand consumer choice and access to quality LTCI coverage, reduce LTC costs faced by consumers, manage LTCI premiums, and improve health outcomes for LTCI policyholders in the most cost-efficient manner possible.

We appreciate Treasury's efforts to seek detailed input on how to expand and improve private LTCI coverage to help achieve these mutual goals. We look forward to working with the Task Force throughout this process as a resource to provide further clarification on any of these comments and to offer additional perspectives on the issues that impact our members.

Sincerely,



Susan Coronel  
Executive Director for LTC  
AHIP



Charles Piacentini  
Vice President, Insurance Regulation  
& Associate General Counsel  
ACLI

Enclosures: AHIP-ACLI Recommendations

**AHIP-ACLI RECOMMENDATIONS**  
**TO FEDERAL INTERAGENCY TASK FORCE ON LONG-TERM CARE INSURANCE**  
**IN RESPONSE TO REQUEST FOR PUBLIC COMMENTS ON**  
**PUBLIC POLICY AND REFORM PROPOSALS THAT WOULD HAVE THE MOST IMPACT ON**  
**IMPROVING THE LONG-TERM CARE INSURANCE MARKET**

The public and private sectors must partner to improve access to long-term care insurance (LTCI) coverage, enabling individuals to preserve their health and protect their ability to remain financially secure as they age. Initiatives that (1) promote consumer awareness, (2) increase access to coverage, and (3) encourage innovation, both to address the diverse care needs of individuals and families and to respond to changes in the care delivery landscape, will enhance consumer choice and improve access to quality LTCI coverage. In addition, these initiatives will serve to reduce LTC costs, manage premiums, and improve health outcomes for LTCI policyholders. By expanding LTCI coverage among middle class Americans, the social safety net will be preserved for those who need it most.

**I. LAUNCH A NATIONAL AWARENESS CAMPAIGN TO HELP CONSUMERS UNDERSTAND THE IMPORTANCE OF PLANNING FOR A LONG-TERM CARE (LTC) EVENT**

Recognizing that consumers must appreciate the risks associated with a potential LTC event, implementing a comprehensive awareness campaign is a key component of efforts to expand access to LTCI, especially among the middle class. Educational programs must effectively explain, among other things, (1) the risks of potentially needing long-term supports and services (LTSS) later in life, (2) why planning for LTSS is a necessary part of a comprehensive retirement security strategy, and (3) the meaningful options available to assist consumers in covering their LTC needs, including the purchase of LTCI. A targeted education program will help consumers understand the importance of planning and may encourage the middle class to purchase LTCI.

A well-researched education and awareness effort is critical to encouraging and enabling consumers to take personal responsibility for their future LTC needs. Based on their past effectiveness, the “Own Your Future” Awareness Campaign and the National Clearinghouse for LTC Information website should be re-launched. Notably, consumer interest in purchasing insurance to address potential LTC needs increased as a result of “Own Your Future.”

LTCI carriers are committed to working with federal and state government leaders to support education and awareness efforts to inform consumers about the valuable protection LTCI coverage provides.

**II. PROVIDE TAX INCENTIVES TO EXPAND CONSUMER ACCESS TO LTC COVERAGE THROUGH WORKPLACE AND RETIREMENT PLAN OPTIONS**

Nearly 180 million Americans obtain health care coverage in the workplace, which suggests that employers are well-positioned to help individuals understand the value of Qualified Long-Term

Care Insurance (QLTCI) and expand investment in this coverage. Workers should be permitted to leverage workplace channels and retirement plan options to save for their LTC needs. Approaches that should be considered include:

- a. ***Cafeteria Plans (IRC 125) and other Flexible Spending Arrangements (FSA):*** Cafeteria plans (often incorporating an FSA) provide employees an opportunity to receive certain qualified benefits on a pre-tax basis. Under current law, qualified benefits include most accident and health benefits, adoption assistance, dependent care assistance, group term life insurance, and health savings accounts.

Permitting LTC coverage to be included in a cafeteria plan would make it more affordable. This solution would have limited impact on the tax dollars received from employees, because most employees would simply shift their cafeteria plan/FSA dollars from other pre-tax benefits to LTCI coverage. Adding QLTCI as a qualified benefit gives employers a new way to add value for their employees—and provides additional opportunities for Americans to become more educated on why QLTCI is important to their financial stability and peace of mind.

- b. ***Distributions from Retirement Plans:*** An uninsured LTC event significantly threatens the financial and retirement security of most Americans. Expanding consumer access to pre-tax funds to purchase LTCI will protect retirement savings from erosion resulting from funding costly LTSS.

Enabling individuals to make LTCI premium payments from their 401(k)s, 403(b)s, IRAs, and other retirement plan options, income tax free (or with a lesser tax burden imposed) and subject to limits, would permit the purchase of meaningful LTCI coverage. Consumers would be able to use these pre-tax assets to fund either a traditional LTCI policy or a “hybrid” (LTC benefits in conjunction with a life insurance policy or an annuity contract), which would reduce the cost of this coverage, making it accessible to more Americans. By utilizing a limited amount of their retirement assets to fund LTCI, consumers can protect themselves against LTC events as these assets accumulate while enhancing overall retirement security.

- c. ***“Within Plan” Investments:*** Individuals currently saving for retirement through 401(k)s, 403(b)s, IRAs, and other retirement plans would be permitted to make premium payments for LTCI coverage that will be considered a retirement plan investment (“Within Plan”).

Individuals would be allowed to leverage their retirement savings through the “Within Plan” approach to invest directly in QLTCI coverage. Premium payments would be treated as a movement of monies from one plan investment to another, so they would not be taxable distributions. Should the policyholder become chronically ill or otherwise entitled to QLTCI policy benefits, the benefits would be paid to the retirement plan which would then pay them to the participant as a plan distribution.

The benefits would be treated in the same manner as income on any other plan investment and, therefore, considered taxable income when distributed under existing tax rules

governing retirement plan distributions. This approach would have only a modest tax revenue loss since pre-existing retirement savings used to pay premiums are already in a tax-favored format.

- d. ***Health Savings Accounts (HSA):*** Under current law, individuals with high deductible health plans can choose to make tax-deductible contributions to an HSA. In addition to helping to pay for out-of-pocket health costs, these tax-deductible dollars can be used to pay premiums for QLTCI.

We support changes to the contribution limits for HSAs that would allow individuals to make additional contributions to their HSAs equal to what they would pay in premiums for qualified LTC plans. In addition, individuals should be allowed to contribute to their spouse's HSA if the spouse is covered by QLTCI.

Under current law, if an individual has an HSA but no longer has high deductible health plan coverage, he or she cannot contribute additional amounts to the HSA. However, under this proposal, if the individual has QLTCI coverage during a taxable year, he or she would be allowed to make additional contributions in that year, pursuant to this special rule, equal to their QLTCI premiums as long as they already have an HSA. This approach provides more flexibility and choice, allowing employees to save more pre-tax dollars to buy LTCI coverage for themselves or their spouse.

### **III. ALLOW PAYMENT OF LTC INCIDENTAL BENEFITS THAT WOULD ENHANCE CARE OPTIONS FOR LTCI POLICYHOLDERS**

Older adults will need assistance as their levels of dependence begin to increase. Waiting until the onset of chronic illness or severe cognitive impairment is too late. LTCI policies can help policyholders and their families delay the need for more substantial levels of facility care and keep them in their homes. Since facilities tend to be more expensive, this would be a benefit to care recipients, their families, and ultimately to private and public payers.

Federal legislation or regulatory guidance should confirm that tax qualified LTCI policies may provide incidental benefits prior to the onset of an insured's chronic illness where such benefits are (a) incidental to a policy's overall benefits (e.g., less than 10% of the policy's lifetime benefit limit), and (b) expected to delay the onset of an insured's chronic illness or the severity of the insured's future chronic illness. Examples would include the provision of home assessments to identify risks which could lead to chronic illness (such as tripping hazards), installation of ramps and railings, caregiver training for family members, and sharing information regarding local LTC providers to those who need (or anticipate needing) assistance.

This allowance should not cause a LTCI policy to forfeit its tax qualified status. Providing these benefits would allow insurers to provide personalized services to their policyholders and permit consumers to stay in their homes and communities, which is what they generally prefer.

#### IV. AMEND CURRENT FEDERAL INFLATION PROTECTION REQUIREMENTS

Inflation protection is an important LTCI feature. However, existing laws governing this benefit option often discourage consumers from seeking LTC protection altogether. Eliminating or revamping inflation protection requirements could encourage policy design innovations that would meet the diverse needs of consumers. Given that “one-size-fits-all” solutions do not work for everyone, it is important for consumers to have a variety of products and options from which to choose when evaluating their LTC protection needs.

Below are specific recommendations to revise current inflation protection requirements contained in Health Insurance Portability and Accountability Act (HIPAA) and the Deficit Reduction Act of 2005 (DRA):

- a. **HIPAA - Remove the requirement that 5% inflation coverage be offered to all applicants and replace it with a requirement to offer some form of inflation protection.** A carrier may offer the applicant inflation coverage (compound, simple, or a guaranteed purchase offer) that best meets their needs without requiring an expensive 5% compound offer that may not even be appropriate. This change would simplify the sales/disclosure process. An LTCI policy should still retain its tax-qualified status with this change so long as some offer of inflation coverage is made that is approved by the applicable state regulatory authority.
- b. **DRA - Remove the inflation coverage age tier requirements.** As long as an LTCI policy meets all tax qualification requirements under HIPAA (i.e., the inflation requirement as described above), the DRA Medicaid Partnership requirements should be fulfilled as well. Thus, a tax-qualified policy would satisfy the DRA Partnership requirements.