Comments of the Center or Economic Justice

To the NAIC Long Term Care Innovations Working Group

February 21, 2017

The Center for Economic Justice submits the following comments to the Long Term Care Innovations Working regarding the recommendations in the December 19, 2016 presentation "A Vision for Moving Forward." Our comments are intended to suggest some next steps to implement the concepts the working group has developed.

1. **Articulate the problem the working group is trying to solve and the goal the working group is trying to achieve.** CEJ suggests the problem is the absence of long term care services and related financing for the vast majority of Americans and particularly for low- and moderate-income families. CEJ suggest the goal is to identify the most efficient methods of providing and financing long term care services, particularly for low- and moderate-income families, with the clear emphasis on the role of insurance regulators and insurance products in the overall solution. While private long term care insurance ("LTCI") may be part of a strategy, promoting private LTCI is not and should not be a goal of the working group.

2. The vision set out in the presentation recommends:
    a. Model regulation changes that pertain to "Savings Mentality" products;
    b. Advocate for Federal Tax Incentives
    c. Consumer Education and Awareness

    We address each prong of the strategy.

3. **Stand-alone LTCI is a failed and defective product. Regulators should be leading the transition away from stand-alone LTCI to other methods of financing LTC services.** State insurance regulators are in the best position to recognize that stand alone LTCI is a deeply troubled product which should be phased out in favor of other methods of providing and financing LTC services. The problems with stand-alone LTC are significant and include:

a. Inefficient delivery of long-term care services;
b. Consigned to a niche market, at best, requiring the purchase of a separate insurance policy competing with consumers' needs for other insurance products and retirement income products in a lengthy period of stagnant incomes for low- and moderate income families;
c. Complex product difficult for consumers to understand and coordinate with other related health and retirement income insurance and financing sources;
d. Non-viable insurance product requiring public assistance to encourage private insurers to offer the product;
e. An increasingly defective product which, due to significant limitations on coverage, no longer provides long term care, but specified care for a period of time limited to periods shorter than many consumers will require; and
f. Difficulty in pricing and providing regulatory oversight, including
    i. Impossible choices for consumers faced with unaffordable premium increases, reduced benefits and/or giving up decades of investment due to massive and unexpected rate increases;
    ii. strain on the guaranty fund system due to current and future failures of LTC insurers;
    iii. the current regulatory regime which <u>requires</u> LTCI insurers to add a margin (additional premium) to the best estimate of the cost of transfer of risk – despite historically conservative assumptions for investment income, lapse and mortality.

4. **CEJ asks the working group to consider a policy decision to phase out stand-alone LTCI products and develop emphasize long term financing through combination with other insurance products, including Medicare, life insurance and annuities.** Such combination products accomplish several things, including:

    a. Reducing the number of products consumers must purchase by providing more comprehensive coverage of lifetime health and retirement income needs, reducing complexity of products,
    b. better meeting consumer needs and expectations and requiring less "consumer education," and
    c. particularly in the case of adding LTC coverage to Medicare, more efficient delivery / financing of long term care services.

5. **CEJ asks the working group to abandon advocacy of tax incentives for private LTCI and to consider the options for spending tax dollars to facilitate or provide long term care services.** As a preliminary matter, CEJ does not believe it is the role of government to guarantee private market profits nor have taxpayers cover the costs of market failures to allow private interests to operate profitably. We believe the role of government is to create rules of the road to allow competition and to address market failures with regulation or fees to ameliorate those market failures. The problems with stand-alone LTCI are not a result of market failures, but problems with the product and the ability to create a stand-alone insurance product limited to long term care financing.

   The premise behind advocacy of LTCI tax credits seems to be that private insurers must be able to sell LTCI and government's role is to facilitate that with taxpayers paying for costs of ensuring that LTC insurers make a profit. We disagree.

   We agree that private insurers can be more efficient that public insurers – see our calls for privatization of flood insurance. But in the area of health care delivery, that is not the case. Medicare delivers 95 cents of benefits per dollar of premium. At best, private LTCI will deliver 60 cents on the dollar in benefits, with the remaining 40 cents plus significant investment income going to high sales costs, claims settlement, executive salaries and profit for investors. There is nothing wrong with investors getting a return on investment, but the premise behind such return is that the private enterprise is delivering greater value than the alternatives.

   The various proposals to encourage private insurers – shifting catastrophic risks and claims to taxpayers while leaving standard and capped risks to private insurers – will result in at least three negative outcomes for the vast majority of consumers and taxpayers.

   First, these proposals would privatize profit while socializing risk. This is unfair. Second, it will result in less efficient delivery of long term care services. Third, it will exacerbate income inequality and impoverish low and moderate income consumers. This last result is clear from a comparison between adding LTC coverage to Medicare versus further subsidizing private LTCI. The former is funded by a progressive tax system with contributions related to ability to pay. The latter redistributes income from low- and moderate-income consumers to more affluent consumers and to management and shareholders of private insurers.

There does not seem to be recognition by proponents of tax credits for LTCI that a tax credit is government expenditure. Consequently, the working group has not compared this type of government expenditures to other types of government expenditures. Proposing continued tax credits, let alone increased tax credits, amounts to asking for preferred tax treatment of a defective product that has wreaked havoc on tens of thousands of consumers and now threatens to further punish taxpayers and policyholders through the guaranty fund system. The proposed tax credits represent an upward distribution of income from low- and moderate-income consumers/taxpayers to higher-income consumers/taxpayers to promote inefficient delivery of long term care services.

A tax dollar spent to provide long term care services under Medicare will produces 95 cents of long term care services paid for a progressive tax system. A tax dollar spent to provide a tax credit for stand-alone LTCI will provide subsidies for many consumers who don't need the financial assistance and would purchase stand-alone LTCI or other insurance product in the absence of the tax subsidy. A tax credit approach will predominantly benefit more affluent purchasers at the expense of low-and-moderate income taxpayers who will receive disproportionately fewer benefits, all to promote a far less efficient delivery of LTC services.

Our comparison is rudimentary and clearly a more refined analysis is needed, but that is the point – there has been no analysis of the costs and benefits of proposed tax credits or any comparison to alternative uses of tax dollars.

6. **CEJ asks the working group to consider the limitations of "consumer education" in promoting LTCI or other "Savings Mentality" products.** We also ask the working group to consider the balance between simplifying stand-alone LTCI products and the resulting product meeting consumer expectations and providing reasonable value.

7. **Consider insurance product development consistent with the "Savings Mentality" goal.** CEJ supports government, including insurance regulators', efforts to help consumers understand lifetime insurance and retirement income needs. But, insurance regulators, in particular, should be promoting insurance product designs which support this education effort and should not be promoting insurance products which thwart the education effort. LTC insurance products designs which combine LTC financing with other common health insurance or retirement income product purchases are consistent with the "Savings Mentality" education theme. Stand-alone LTCI is not.