Comments of the Center for Economic Justice

To the NAIC Long Term Care Innovations Subgroup

April 3, 2017

The Center for Economic Justice (CEJ) submits the following comments to the Long-Term Care Innovation Subgroup regarding the proposed "Federal Policy Options."

CEJ has four general concerns with the proposals:

1. Despite the introduction to the proposals indicating an effort to assist middle-income consumers – "that could increase the number of affordable asset protection product options available for middle-income Americans" – the proposals are not oriented towards or analyze the distributional impacts towards consumers by income. In fact, many of the proposals will redistribute income from middle-income consumers to more affluent consumers.

2. The proposals fail to acknowledge that stand-alone LTCI is a troubled product and seek support for increased sales of this troubled product instead of emphasizing the provision of LTC financing through public insurance and private hybrid insurance products. The proposals also fail to indicate the inherent problems with asking consumers to buy yet another stand-alone policy in addition to numerous other insurance products and retirement investments.

3. The proposals seek more tax preference for private LTCI – including stand-alone LTCI – with no analysis of or recognition of the distributional impacts of such tax incentives from low- and middle-income taxpayers to affluent taxpayers.

4. The list fails to explicitly indicate priority actions with the result that those items listed first may be seen as higher priority than those options later in the list. With scarce federal resources, the list should be limited to the highest priority proposal to avoid federal efforts on low-impact or counter-productive activities.

We provide comments on each proposal, below.

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.

This proposal specifically mentions the use of retirement funds to purchase "traditional LTCI." The proposal should delete traditional LTCI as one of the uses of retirement funds. Federal tax expenditures should not be used for stand-alone LTCI.

<u>We oppose this proposal as written.</u> Were the proposal to state that additional federal tax incentives must be limited to low- and moderate-income taxpayers and to hybrid LTCI products, we would support the proposal.

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~~.~~

This option seeks additional federal tax expenditures to subsidize the purchase of LTCI, yet provides no evaluation of the distributional impacts of such tax policy or, stated differently, who will pay for these tax expenditures. <u>We oppose this proposal.</u>

Since the proposal fails to de-emphasize stand-alone LTCI, the tax expenditures for such LTC Savings Accounts will benefit affluent taxpayers at the expense of low- and moderate-income taxpayers. Low- and moderate-income taxpayers already face many pressing financial needs and likely do not have the disposable income to fund yet another type of savings account. In contrast, more affluent consumers – who are already able to afford LTCI – will receive unneeded tax benefits.

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.

<u>We support this proposal as written.</u>

Option 4: Allow flexible premium structures and/or cash value beyond return of premium (HIPAA and DRA).

<u>We oppose this proposal.</u> The description states: "Federal law (HIPAA) prohibits tax qualified LTCI policies (but not hybrid products) from containing a cash value feature." Consequently, the proposal would target stand-alone LTCI. State insurance regulators should be de-emphasizing such products and emphasizing private hybrid LTCI and public LTCI. In addition, adding a cash value feature will make unaffordable stand-alone LTCI even more unaffordable.

Option 5: Allow products that combine LTC coverage with various insurance products (including products that "morph" into LTCI)

We support this proposal as written and suggest it be placed as a top priority with Option 9.

Option 6: Support innovation by improving alignment between federal law and NAIC models (HIPAA and DRA).

We support this proposal as written.

Option 7: Create a more appropriate regulatory environment for Group LTCI and worksite coverage (HIPAA and DRA).

We oppose this proposal as written because it would provide "a safe harbor to limit the employer's fiduciary liability" without excluding stand-alone LTCI. Given the current and likely future problems with stand-alone LTCI, an exclusion from fiduciary duty should not be provided for stand-alone LTCI.

Were the proposal limited to hybrid LTCI products, we would support the proposal.

Option 8: Establish more generous federal tax incentives.

We strongly oppose this proposal as written – yet another request for tax expenditures that fails to de-emphasize stand-alone LTCI or limits tax benefits to low- and moderate-income taxpayers. The language in the proposal – "consideration may be given to whether tax incentives should be income-based or means tested to focus on lower and middle-income Americans who may not otherwise purchase a LTCI policy" – is inadequate.

Were the proposal to state that additional federal tax incentives must be limited to low- and moderate-income taxpayers and to hybrid LTCI products, we would support the proposal.

Option 9: Explore adding a home care benefit to Medicare or Medicare Supplement and/or Medicare Advantage plans.

We strongly support this proposal and suggest that it be identified as a top priority along with Option 5.

Option 10: Federal education campaign around retirement security and the importance of planning for potential LTC needs.

While we always favor information and education which empowers consumers, this proposal cites no evidence that the proposed federal expenditures would accomplish the stated goals or reach the target audience. The proposal should reference a successful education campaign that could serve as a template for a cost-effective federal program.