

BE MADE PURSUANT TO A RULE MAKING PROCESS THAT CONFORMS TO THE MODEL STATE ADMINISTRATIVE PROCEDURE ACT OF 1981, AS AMENDED, AS MAY BE APPROPRIATE TO THE OPERATIONS OF THE COMMISSION. BEFORE THE COMMISSION ADOPTS A UNIFORM STANDARD, THE COMMISSION SHALL GIVE WRITTEN NOTICE TO THE RELEVANT STATE LEGISLATIVE COMMITTEES IN EACH COMPACTING STATE RESPONSIBLE FOR INSURANCE ISSUES OF ITS INTENTION TO ADOPT THE UNIFORM STANDARD. THE COMMISSION, IN ADOPTING A UNIFORM STANDARD, SHALL CONSIDER FULLY ALL SUBMITTED MATERIALS AND ISSUE A CONCISE EXPLANATION OF ITS DECISION.

3. EFFECTIVE DATE AND OPT OUT OF A UNIFORM STANDARD. A UNIFORM STANDARD SHALL BECOME EFFECTIVE 90 DAYS AFTER ITS PROMULGATION BY THE COMMISSION OR SUCH LATER DATE AS THE COMMISSION MAY DETERMINE; PROVIDED, HOWEVER, THAT A COMPACTING STATE MAY OPT OUT OF A UNIFORM STANDARD AS PROVIDED IN THIS ARTICLE. "OPT OUT" SHALL BE DEFINED AS ANY ACTION BY A COMPACTING STATE TO DECLINE TO ADOPT OR PARTICIPATE IN A PROMULGATED UNIFORM STANDARD. ALL OTHER RULES AND OPERATING PROCEDURES, AND AMENDMENTS THERETO, SHALL BECOME EFFECTIVE AS OF THE DATE SPECIFIED IN EACH RULE, OPERATING PROCEDURE, OR AMENDMENT.

4. OPT OUT PROCEDURE. A COMPACTING STATE MAY OPT OUT OF A UNIFORM STANDARD, EITHER BY LEGISLATION OR REGULATION DULY PROMULGATED BY THE INSURANCE DEPARTMENT UNDER THE COMPACTING STATE'S ADMINISTRATIVE PROCEDURE ACT OR DULY PROMULGATED PURSUANT TO THE COMPACTING STATE'S LAW. IF A COMPACTING STATE ELECTS TO OPT OUT OF A UNIFORM STANDARD BY REGULATION, IT MUST: (I) GIVE WRITTEN NOTICE TO THE COMMISSION NO LATER THAN 10 BUSINESS DAYS AFTER THE UNIFORM STANDARD IS PROMULGATED, OR AT A TIME THE STATE BECOMES A COMPACTING STATE; AND (II) FIND THAT THE UNIFORM STANDARD DOES NOT PROVIDE REASONABLE PROTECTIONS TO THE CITIZENS OF THE STATE, GIVEN THE CONDITIONS IN THE STATE. THE COMMISSIONER SHALL MAKE SPECIFIC FINDINGS OF FACT AND CONCLUSIONS OF LAW, BASED ON A PREPONDERANCE OF THE EVIDENCE, DETAILING THE CONDITIONS IN THE STATE WHICH WARRANT A DEPARTURE FROM THE UNIFORM STANDARD AND DETERMINING THAT THE UNIFORM STANDARD WOULD NOT REASONABLY PROTECT THE CITIZENS OF THE STATE. THE COMMISSIONER MUST CONSIDER AND BALANCE THE FOLLOWING FACTORS AND FIND THAT THE CONDITIONS IN THE STATE AND NEEDS OF THE CITIZENS OF THE STATE OUTWEIGH: (I) THE INTENT OF THE LEGISLATURE TO PARTICIPATE IN, AND THE BENEFITS OF, AN INTERSTATE AGREEMENT TO ESTABLISH NATIONAL UNIFORM CONSUMER PROTECTIONS FOR THE PRODUCTS SUBJECT TO THIS COMPACT; AND (II) THE PRESUMPTION THAT A UNIFORM STANDARD ADOPTED BY THE COMMISSION PROVIDES REASONABLE PROTECTIONS TO CONSUMERS OF THE RELEVANT PRODUCT.

NOTWITHSTANDING THE FOREGOING, A COMPACTING STATE MAY, AT THE TIME OF ITS ENACTMENT OF THIS COMPACT, PROSPECTIVELY OPT OUT OF ALL UNIFORM STANDARDS INVOLVING LONG-TERM CARE INSURANCE PRODUCTS BY EXPRESSLY PROVIDING FOR SUCH OPT OUT IN THE ENACTED COMPACT, AND SUCH AN OPT OUT SHALL NOT BE TREATED AS A MATERIAL VARIANCE IN THE OFFER OR ACCEPTANCE OF ANY STATE TO PARTICIPATE IN THIS COMPACT. SUCH AN OPT OUT