

March 13, 2018

Via e-mail to: ehienstra@clhia.ca

Canadian Life and Health Insurance Association
Attn: Erica Hiemstra
79 Wellington St, W, Suite 2300
P.O. Box 99, TD South Tower
Toronto, ON M5K 1G8

Dear Erica,

Re: Commentary on CLHIA Guideline G19 - Compensation Disclosure

TPAAC is an association comprised of businesses engaged in providing pension and benefit administration services to companies, unions and associations. Our goal is to represent the interests of the members of TPAAC as a common voice to the insurance industry and federal and provincial regulatory and government bodies. We strive to create a financially strong Third Party Administration (“TPA”) industry and to establish certain guidelines and uniform standards required to preserve the integrity of our industry.

TPAAC appreciates the opportunity to provide its preliminary comments to CLHIA on Guideline G19 (“G19”) and more broadly, the question of disclosure in the employee benefits field.

Guideline G19 sets out three guiding principles, the first of which is that insurers should take a customer-focused approach and thereby promote a culture of treating customers fairly. Fair treatment of financial consumers has developed as a broad oversight objective among regulators both internationally (IAIS Insurance Core Principles) and domestically (e.g. FSCO). Typical of other industry associations, TPAAC and its members abide by a code of conduct which follows similar principles, a copy of which can be accessed at www.tpaac.ca/resources.

Specific to G19 we have the following recommendations, and underlying concerns:

1. Create a Level Playing Field for Disclosure

ICP 19.0.1 of the IAIS Insurance Core Principles states, “Requirements for the conduct of insurance business help to: ...support a sound and resilient insurance sector by **creating level playing fields** (*emphasis added*) in terms of the basis on which insurers and intermediaries can compete while maintaining business practices that support the fair treatment of consumers.”

As stated to the CLHIA and insurer representatives participating in our January 19th and February 28th, 2018 meetings, it is TPAAC’s firm position that any proposed form of compensation disclosure must create - and maintain - a level playing field.

ICP 18.0.5 references and cites examples of outsourced insurer functions, and states that “These functions are excluded from the IAIS definition of insurance intermediation.”

Given G19's present wording, unless it is amended or otherwise clarified in writing to specifically state that a TPA's administration fees are excluded from the compensation calculation and disclosure, it is our view that G19 will, in fact, have the opposite effect and thus serve only to create an un-level playing field between insurers and TPAs.

Based on your comments at our February 28th meeting, and the hand-out example we provided to you, it appears that CLHIA is in agreement with our position that a TPA's administration fees (i.e. compensation for outsourced functions normally performed by an insurer) should not be included in the scope of the disclosure. Please confirm in writing whether CLHIA is in agreement with this fundamental issue.

2. Ensure the Disclosure is Appropriate

Fundamentally, we question the level of disclosure that CLHIA is proposing with G19.

ICP Standard # 18.5 states that "the supervisor requires insurance intermediaries to disclose to customers, at a minimum...information on the **basis** on which they are remunerated **where** a potential conflict of interest exists." (*emphasis added*) The guidance comments that follow in 18.5.2 state that when setting disclosure requirements, "supervisors may take into account differences in the nature of the insurance products; the level of sophistication of different customers; and the way in which different types of insurance are transacted (for example, differences between commercial and personal/retail lines). The nature time and detail of disclosures may differ according to the circumstances.

Based on the above, we contend that G19 is taking an unnecessarily complex and prescriptive approach to disclosure. Given the sophistication of the group insurance customer (a business rather than an individual consumer) and the complexity of the product (rarely identical products), our view is that a simpler approach - which doesn't include precise dollar amounts or percentages - would meet the standards set out in ICP 18.5. This would significantly reduce the work involved, particularly in allocating remuneration which is not specifically attached to a particular policy across all contracts, and thus substantially reduce the risk of error. Intermediaries receive compensation in a fairly narrow range for the majority of contracts. For example, the standard range for a given product and policy size could be disclosed with a note as to eligibility for incentive compensation and only require more detailed disclosure when compensation lies outside the standard range. In our opinion, this would meet the spirit of disclosure without the unnecessary complications and potential customer confusion that the proposed approach will bring. Also, given that business consumers are more inclined to ask for pricing details when desired, we feel this is a much more effective model.

3. Assign the Disclosure Responsibility to the Intermediary

Presently, G19 provides that the insurer would deliver the disclosure document to the customer. Under the TPA model, this is highly impractical and will again lead to negative customer outcomes. The group plans that TPAs administer frequently provide benefits from multiple insurers – it is not uncommon to have 3 or more different providers. Just imagine the confusion that plan sponsors will experience by receiving multiple disclosure statements from insurers that they hitherto had no direct dealings with. Any disclosure should come from the provider the customer regularly deals with (i.e. the TPA). Our members have had discussions with senior

representatives of their various insurer partners and it would appear that insurers are amenable to having TPA's handle the disclosure.

ICP 18.5.3 and 18.5.4 specifically contemplate that an intermediary can satisfy the disclosure requirements of its own accord by providing information directly to the customer.

Please confirm in writing that CLHIA is in agreement with TPAs handling the disclosure process to their plan sponsors.

Furthermore, we would encourage CLHIA to allow the advisor and TPA's to have greater involvement in the formation of any disclosure statement and the method of delivery.

4. Defer the Implementation Timeline

We appreciate that CLHIA has begun consultation with TPAAC and other industry stakeholders, and that, due to the initial feedback it received, CLHIA has deferred implementation for new cases to January 1, 2019.

However we strongly feel that the timeline for implementation, as well as fundamental components of Guideline G19 itself, are flawed. It is our view that this is still an inadequate timeframe within which to consult with all impacted stakeholders, develop a workable standard report and enable those do the reporting adequate time for make any needed system changes.

Notwithstanding our concerns around G19 itself, this timeline is completely untenable for both TPAs and the insurers in our opinion. The process and systems work required in this compressed timeframe will undoubtedly lead to errors and inconsistencies and thereby, negative outcomes for TPAs, the advisor community and our customers (plan sponsors).

In summary, we feel G19, as currently written, will not achieve its stated goals and recommend that it be set aside to allow for more fulsome consultation with all industry stakeholders. We look forward to your comments and continued discussions.

Yours truly,

A handwritten signature in blue ink, appearing to read "M. McClenahan".

Mike McClenahan
President - TPAAC