

Statement

Insurance Association of Connecticut

Judiciary Committee

March 31, 2014

HB 5595, An Act Concerning Collateral Source Payments In Personal Injury And Wrongful Death Actions And Requiring Disclosures Upon The Purchase Of An Annuity To Fund Pension Benefits

The Insurance Association of Connecticut, IAC, is opposed to Sections 1 and 3 of HB 5595, An Act Concerning Collateral Source Payments In Personal Injury And Wrongful Death Actions And Requiring Disclosures Upon The Purchase Of An Annuity To Fund Pension Benefits.

SECTION 1

The IAC is opposed to Section 1 of HB 5595 as it's extremely unclear and seemingly unnecessary. Section 1 of HB 5595 seeks to add to the list of permissible collateral offsets payments made by "private Medicaid managed care health plans", however it is unclear what is being added. "Private Medicaid managed care health plans" is undefined. Medicaid is provided by the state, typically with some subsidy from the federal government. It is not offered or provided by the private market.

The state's right to subrogate for payments made to a Medicaid beneficiary is statutory, see C.G.S Sec.17b-93. To aid in recovery, insurance claims are matched up against records for public assistance, incarceration and care or support with either the Departments of Social Services, Corrections, Mental Health and Addiction Services, Developmental Services or Children and Families and a lien is placed to recover money owed the state from the money a person may receive from that insurance company . As such, Section 1 is unnecessary.

SECTION 3

The IAC strongly opposes Section 3 of HB 5595 which would require insurers to make certain disclosures in connection with the purchase of any annuity contract by ERISA-covered pension plans for their participants. Section 3 is premised on many faulty presumptions,

ignores existing legal requirements, and creates unnecessary exposure for insurers while potentially creating confusion in the marketplace.

Section 3 is premised on the misconception that retirement benefits provided through an annuity contract are suspect and are need of greater scrutiny. These transactions are already governed by and subject to strict fiduciary standards established by federal law (the Employee Retirement Income Security Act, ERISA), administered and enforced by the Department of Labor. These standards require that the plan's fiduciaries discharge their duties prudently and solely in the interest of the plan's participants and beneficiaries. The annuitization of pension benefits is a well established practice that has delivered retirement security for decades used by business and government entities alike as a means to provide pension benefits.

Section 3 adds nothing new in the way of protections for annuitants. To the contrary, its effect will create confusion and potentially unsupported and unjustified concerns about the financial integrity of annuity products. Such products are subject to state insurance solvency standards and oversight; a regulatory and enforcement regime that has worked exceptionally well protecting consumers from financial risk for almost a hundred years.

Section 3's disclosure requirements are premised on a number of faulty assumptions, including the fact that Pension Benefit Guaranty Corporation, PBGC, coverage is superior to the guarantees of an insurer and state guaranty fund protections. The PBGC fund and state insurance guaranty association system are very different and therefore difficult to compare. Coverage applies differently and is provided in different circumstances. However, because the plans are different does not render one better than the other. Insurers issuing annuity contracts are required to maintain additional capital to back the annuity obligation, and follow prudent investment strategies. Insurers are also subject to significant insurance regulatory oversight. PBGC coverage acts a ceiling whereas state guaranty association coverage is the floor. The rate of full payment under a state guaranty system, and state regulation, is far higher than that under PBGC coverage. As coverage that may be provided under the state guaranty system is subject to many variables, it is not possible to predict those variables in a way that would yield any information for annuitant that is straightforward or useful.

Subsections 3(b)(2) and (4)-(5) requirements involve information that must be considered by the plan's fiduciaries *before* the annuity contract is issued. It is important to note that the decision to provide pension income benefits through an insured contract is the

decision of the plan sponsor, as settlor, and as a result, plan participants are not parties to the decision. The terms of the contract are confidential between the plan sponsor and insurer. Once the decision is made, however, plan participants are protected by the plan's fiduciaries' obligation to select an annuity provider in a manner consistent with federal law. Accordingly, there is little, to no, value in providing such information to the annuitant and could actually result in participant confusion. Additionally, HB 5595 ignores the reality that in many situations when a retirement plan is being converted to an annuity, the plan participants are already given notices in advance. They also receive additional communications from both the plan sponsor and the insurer prior to the transaction, which are better tailored to the participant and the specific transaction. HB 5595 would actually provide inferior information to the plan participant.

HB 5595 also seeks to require insurers to provide annuitants with information that is effectively tax and legal advice. There is no precedent for the imposition of such a requirement on insurers. Such disclosures could be both confusing and harmful to the extent a recipient uses it as a substitute for advice from the recipient's own independent tax or legal adviser and could unnecessarily and improperly expose insurers. For example, HB 5595 requires insurers to provide advice on the extent of potential claims by creditors or taxation obligations.

Plan sponsors, plan fiduciaries and insurers have strived to ensure that workers have all the information they need to understand their benefits entitlements and rights in connection with annuitization transactions. Insurers and plan sponsors' goal is to make the transition as seamless as possible for the plan participants so that the employees/participants' benefits remain the same after the transaction. The Department of Labor, the federal agency charged with protecting the interest of pension plan participants and beneficiaries, is in the best position to address, and adopt if necessary changes to ensure a uniform and consistent national regulatory scheme for such transactions. State based regulation could result in potentially conflicting and confusing multistate regulation, as well potential ERISA preemption issues.

For the above stated reasons the IAC urges your rejection of Sections 1 and 3 of HB 5595.