March 19, 2025

Representative Martin Carbaugh, Indiana House of Representatives

Senator Justin Busch, Indiana State Senate

Indiana State Capitol
200 West Washington Street
Indianapolis, IN 46204

RE: Comments on Senate Bill 3: Fiduciary Duty in Health Plan Administration

Dear Chairman Carbaugh and Senator Busch:

Thank you for the opportunity to comment on Indiana Senate Bill 3. This letter reflects comments from the Association of Indiana Life Insurance Companies, the American Council of Life Insurers (ACLI), NAIFA - Indiana, Big I Indiana, NABIP Indiana, and the National Alliance of Life Companies. We are writing to express our strong concerns with the scope of Senate Bill 3 that seeks to impose a fiduciary duty on agents, brokers, and insurers that market and sell HIPAA Excepted Benefits products in Indiana.

The legislation intends to impose a fiduciary duty on TPAs, PBMs, agents and brokers that interact with group health plan sponsors (usually employers) to advise a plan sponsor about and assist a plan sponsor in the administration of an employee health benefit program. This would likely include the recommendation and sales of comprehensive health insurance (e.g. health benefit plans) to employers and their employees. As written, this legislation would extend this fiduciary duty well beyond health benefit plans and other types of comprehensive medical insurance and would also sweep in those entities administering, marketing, selling, or representing other important types of financial protection insurance products including voluntary and supplemental benefits products. The imposition of such a fiduciary standard on these non-medical insurance products would have a strong negative impact on the cost and availability of these products and could ultimately result in many Indiana residents losing these highly-valued financial protections.

As you know, voluntary and supplemental benefits products are regulated as HIPAA Excepted Benefits meaning that they are exempt from most provisions of the Public Health Service Act and the Affordable Care Act because they are not meant to serve as a form of comprehensive health insurance coverage. Instead, these products are specifically designed to help protect people from costs that are NOT covered by major medical insurance but which arise when one is sick or injured.

Fiduciary standards are appropriate in cases where a financial professional provides ongoing individualized investment guidance to a customer and receives compensation for the provision of that guidance, not compensation from a third party for the sale of a product or service. Historically, those providing guidance or

assistance in the administration of health and welfare employee benefit programs are seen as service providers – not fiduciaries, because there is already a decision-making fiduciary in place – the plan sponsor – who has full discretionary authority over the administration of the benefit program. As such, imposition of a fiduciary standard on the presentation or sale of HIPAA excepted benefits products to plan sponsors already acting in the best interest of their employees is inappropriate. Additionally, unlike products that facilitate long-term or retirement savings, excepted benefit products are typically structured to provide specific benefits upon the occurrence of an event rather than used to accumulate assets for the future. Therefore, imposition of a fiduciary standard on HIPAA excepted voluntary and supplemental benefits would likely have a chilling effect on the offer of these benefits to employer plan sponsors and would create several unintended economic, legal, and marketplace consequences that will be detrimental to Indiana residents.

Recommendation #1: We recommend that the bill language be modified to make it clear that HIPAA excepted benefits are not subject to the provisions of this bill. We offer two options for modifying the bill to accomplish this exemption to create a HIPAA Excepted Benefits exclusion:

Option 1: This language is often inserted into Indiana law to clarify that HIPAA excepted benefits are excluded from requirements that are appropriately meant for health benefit plans and other forms of comprehensive health insurance coverage:

> *This section does not apply to the coverages identified in IC 27-8-5-2.5(a).*

Option 2: This language would simply insert a sentence that clarifies that the law is not applicable to coverages that meet the federal definition of HIPAA Excepted Benefits:

> *The term "health insurance coverage" does not include policies or coverage only for excepted benefits as described in 42 USC 300gg-91.*

Recommendation #2: We recommend that insurance producers be removed from the bill or remove the imposition of a fiduciary standard on insurance producers who do not provide advice for a fee and replace it with a standard of good faith and fair dealing. Imposition of a fiduciary standard on insurance producers would render them unable to work on a commission basis and would expose them to increased litigation and legal exposure that would ultimately make it untenable for them to continue to market and sell HIPAA excepted benefits products thus eliminating an import source of business income for them.

Thank you for the opportunity to provide these comments on SB 3. Please feel free to reach out with any questions or concerns to Trent Hahn at the Association of Indiana Life Insurance Companies.

Sincerely,

Trent Hahn
Executive Director and Counsel
Association of Indiana Life Insurance Companies
(317) 684-5442
tfhahn@bosepublicaffairs.com

John Mangan
VP and Deputy, State Relations
ACLI
(503) 701-7503
johnmangan@acli.com

Stephen W. Duff
Chief Executive Officer
Big I Indiana
(317) 627-7200
duff@bigi.org

David A. Berman, CLU
NABIP Indiana
(317) 590-7887
BermanInsuranceServices@gmail.com

Scott R. Harrison
Chief Executive Officer
National Association of Life Companies
(703) 967-0339
Scott@highpointstrategies.llc

Jeremy Stackhouse
President
NAIFA-Indiana
(260) 687-9721
jstackhouse@ft.newyorklife.com