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Long Term Care Insurance: Are Consumers Protected for the Long Term?

Before the
House Committee on Energy and Commerce
Subcommittee on Oversight and Investigations

July 24, 2008

Good afternoon Chairman Stupak and Ranking Member Shimkus. My name is Kevin McCarty, and I am the Insurance Commissioner for the Florida Office of Insurance Regulation (Office). Thank you for the invitation to appear before you today to discuss important issues affecting our seniors and the role of long term care insurance. Having one of the oldest populations in the United States, Florida policymakers have implemented the most stringent requirements in the nation to protect seniors from unfair rate increases, unfair trade practices, and discrimination.

Background

Uncertain economic times combined with an aging population have created a greater demand for Long Term Care Insurance (LTCI). These products can be important for the financial and health needs of seniors, which in turn, has put pressure on policymakers to ensure a viable long term care insurance marketplace, and to protect the rights of seniors.

Florida has almost 18 million citizens, and over 4 million are age 60 and older –prime candidates for long term care insurance policies. Moreover, during the last 10 years, the number of persons over 85 has been the fastest growing age group. This growth is significant for policymakers and planners as the over 85 age group are four times more likely to need health care services or some type of long term care.

Florida currently has nearly half a million (500,000) people with long term care coverage, and currently 43 companies are marketing and selling some type of long-term care insurance in our state. The term “long term care insurance” is used broadly and includes facility care and non-facility care (i.e. home health care), or comprehensive, which includes both, or accelerated death benefit riders attached to life insurance policies. In 2007, consumers paid approximately $685 million, for an average annual premium of $1,370 per person. Despite these impressive numbers, approximately 88 percent of Florida’s over-age-60 population does not have any type of long term care insurance coverage.

Rate Stabilization Reforms in 2003

Long Term Care Insurance is a relatively new product, and unfortunately, was initially underpriced by insurance carriers in Florida. The market in the 1990s was characterized by rate increases that many policyholders could not afford. Florida regulators have worked vigorously to revise the pricing structures to make these products viable and suitable to Florida’s elderly population. To prevent a continuation of sizeable rate increases, and to mitigate the need for future rate increases for LTC policyholders, Florida adopted higher rate stabilization standards consistent with the national model (the Long-Term Care Insurance Model Regulation of the National Association of Insurance Commissioners (NAIC)) to require improved pricing in February, 2003.

These new standards required greater disclosure to the consumer, including the provision of a ten-year rate increase history, an assurance that rates are sufficient to pay anticipated costs under moderately adverse experience, and a further assurance that rates are reasonable to sustain the coverage during the life of the policyholder. The changes also required the company to establish standards for the suitability of the product to meet consumer's needs, and required stricter actuarial standards for the company.

One feature of the 2003 changes was to address rate increases and so–called "death spirals" that had been observed in the market place. The Act enhanced rate pooling by defining similar benefits and articulating limits on the relationship between the new business and renewal rates, which helped reduce death spirals. Older products that had poor experience (more claims), were given greater rate increases. Healthy individuals in these blocks switched to newer products, while the uninsurable could not receive new policies as they could not meet underwriting standards. With the block becoming increasingly populated with "sick" individuals, this in turn created a higher percentage of claims, new rate increases, and ultimately a "death spiral." The enhancements regarding pooling helped reduce that effect.

The 2003 rate stabilization standards only pertained to new business. Under the standards, future rate increases must return at least 85 percent of the increase in the form of benefits to the consumer. To further minimize future rate adjustments, the company must analyze the cause of its pricing problems, and overhaul company practices rather than simply raise rates.

Also in accordance with Florida's law, if the proposed rate increases would result in a significant number of policyholders terminating their coverage, the rate increase must undergo a more rigorous analysis by the Florida Office of Insurance Regulation. If the

Office determines the rate increase is due to a company's practice in persistently filing inadequate rates, the Office may require the company to replace the coverage with other coverage available within the company or through one of the company's affiliates. The Office may also order a company to cease selling new business for up to five years.

Florida now provides additional contingent nonforfeiture benefits for limited pay LTCI plans that are more stringent than the NAIC model law. This revision recognized the impact of the greater amounts of premiums received in early policy years and provided significantly higher nonforfeiture benefits than the option that applies to lifetime pay plans. Insurers in Florida are required to offer a paid-up policy option should the policy lapse or the policyholder is unable to pay for additional rate increases.

Public Hearings and 2006 Reforms

While the 2003 rating reforms did help stabilize the long term care insurance market in Florida, the Office continued to study this marketplace and conducted a comprehensive long term care insurance research project, issuing a report in August, 2005. In the first phase of the research, the Office analyzed the long term care market on a national level with particular focus on issues specific to Florida. This overview was augmented by a series of public hearings designed to elicit alternative points of view, and to suggest methods to improve the efficacy of the long term care market in Florida. Some of the main findings of the report include:

- Consumers with policies issued before the 2003 reforms had minimal protection against sizeable rate increases;
- Allegations of rescissions based on inappropriate use of fraud exceptions due to a lack of mandated contestability limits;
- The continued and growing pressure that long term care expenditures were placing on state budgets;
- Initiatives taken by other states to address fiscal pressure on states' budgets;
- Alternative financing mechanisms available in addition to Medicaid and long term care insurance.

The Office also analyzed consumer complaints collected by the Florida Department of Financial Services (DFS). The primary complaints expressed by Florida policyholders of long term care insurance products included: the size and frequency of premium increases; the complexity of the products and difficulty in comparing products; the products did not meet the needs of policyholders; and finally, policy rescissions.

The Office completed phase II of the project, "Expanding the Vision: Long Term Care Insurance in Florida" in April 2006. This report focused on recommendations to achieve rate stability in the Florida long term care marketplace. Both project reports may be viewed on our website at www.floir.com/press/reports.

To address these findings, Florida lawmakers approved a comprehensive senior protection bill in April 2006 that provided marketplace reforms to make LTCI more affordable, available, and marketable. These legislative reforms unanimously passed in the Florida House of Representatives and the Florida Senate, and were signed by the Governor. These reforms exceed the standards contained in the existing NAIC model regulation.

In addition to providing for the establishment of a Long Term Care Partnership, the legislation required that any contestability period in a policy can be no longer than two years. Thus, insurers must challenge any statements by the insured within two years of policy issuance. After two years, the policy can only be cancelled for nonpayment of premium. This protects Floridians from the practice of “post-claims underwriting.” Post-claims underwriting occurs when insurers accept the statements of the insureds, but only review these statements following a claim. If the company can prove an inaccuracy in the application, it can rescind the policy, leaving the insured without any coverage.

This legislation requires long term care insurers not to charge existing policyholders more than it charges new policyholders for the same benefits. Thus, if the company is currently selling long term care insurance the premium for existing customers is capped by the rates it charges its new customers. The legislation also sets an upper limit on rates a company can charge for LTCI coverage if it is not currently selling new business, based on the prevailing new business rate in Florida.

These reforms eliminated a requirement that LTCI policies in Florida provide coverage for a minimum of 24 consecutive months of nursing home care. This allows a company to sell a shorter term policy at a lower premium, thus making coverage more affordable for some seniors, and providing additional long term care options.

In seeking rate approvals, the companies must pool the experience of all affiliated companies (not merely experience within the same company). This limits the ability of an insurance group to move business among its various companies to optimize potential rate increases by separating profitable and non-profitable blocks of business. This reduces death spirals within affiliates, not simply within companies.

Rate Review Process

In Florida, all initial and proposed rate increases for long term care insurance must be filed for review and approved prior to use. Every rate filing for LTCI is reviewed and approved by the Chief Actuary of the Life & Health Product Review Unit (LHPR). In addition, Florida requires an annual rate certification by actuaries of the long term care insurer whether or not a rate change is needed. Consequently, the Office reviews all in-force and new business rates on an annual basis.

The rate review of existing policies is governed by the Florida Administrative Code. These requirements include premiums that are (1) reasonable in relation to the benefits provided by the policy, and that are (2) not excessive, inadequate or unfairly discriminatory. These standards are measured by “future” and “lifetime” tests of Actual to Expected experience.

If the Office determines there has been a violation of law, LHPR may withdraw approval of existing policy forms, require the company to cease new sales of certain forms, require benefit changes, premium refunds, disapprove a filing, or a combination.

To further ensure suitability and to allow the Office to monitor the LTCI market in Florida, all Insurers are required to submit the following forms to our Market Investigations Unit each year:

- Rescission Reporting Form by March 1st (Appendix A)
- Claims Denial Reporting Form by June 30th (Appendix E)
- LTCI Replacement and Lapse Reporting Form by June 30th (Appendix J)

These filings are reviewed and scrutinized to find any patterns or trends in possible post claim underwriting, excessive claim denials and issues pertaining to replacement and lapses of policies.

I am happy to report that our legislative reforms have had a positive impact. In calendar year 2004, the most common reason for complaints in the Florida LTCI market was due to rate increases. In calendar year 2005, the most common reason for complaints had changed to claim handling delays. In calendar years 2006 and 2007, claim handling delays and claim denials were the most common complaints, respectively. (See Appendix A)

In addition to legislative reforms, Florida has also overhauled and improved its oversight of the industry. Florida collects information from companies about claims submitted through a review of complaints filed with CS, MI and data calls. The data is analyzed to reflect specific trends and patterns that may indicate potential violations of the Florida Insurance Code, which often result in on-site target investigations or examinations of companies. Complaint data is collected by product type, complaint type and disposition. Reports can be generated to track any trends and patterns in types of products that may indicate misleading or discriminatory practices. The Business Units within the Office, which include Life and Health Product Review, Market Investigations and Legal Services, collaborate on non-compliance issues through the investigation and settlement process.

Solvency

Florida also has some of the most comprehensive solvency laws in the country, which are consistent with, and even exceed, standards established by the NAIC. Consequently, there have been no insolvencies in the Florida domestic long term care insurance market in the last decade. For a more comprehensive summary of Florida's solvency requirements see Appendix B.

The Office continues to not only monitor long term care insurance writers in Florida, but also to work with other states to address issues on a multi-state level. Pursuant to a request of this committee, I have included a summary of the recently completed multi-state examination of Bankers Life & Casualty Insurance Company and Conseco Senior Health Insurance Company. (See Appendix C)

Conclusion

Florida is not unique in its changing demographics. The population in the United States is aging, which combined with recent economic difficulties, has made long term care insurance even more important for seniors. Florida will continue to be a national leader in developing standards to protect its citizens and guarantee that consumers' long term care insurance does in fact protect them in the long-term. It is essential that we protect our citizens from unfair pricing, unfair trade practices, and discrimination while at the same time providing productive oversight of the industry to maintain a viable and stable long term insurance marketplace.

-- Appendix A --

Home Health Care / Long Term Care Insurance Complaints

IN FLORIDA

2004-2007

Long Term Care / Home Health Care

1/1/2004 to 12/31/2004		1/1/2005 to 12/31/2005		1/1/2006 to 12/31/2006		1/1/2007 to 12/31/2007	
Count	REASON	Count	REASON	Count	REASON	Count	REASON
192	Premium Issue	135	Claim Handling Delay	88	Claim Handling Delay	93	Claim Handling Delay
149	Information Requested	108	Premium Issue	68	Claim Denial	62	Claim Denial
138	Claim Handling Delay	72	Claim Denial	53	Premium Issue	56	Premium Issue
65	Claim Denial	59	Information Requested	48	Coverage Question	42	Coverage Question
59	Coverage Question	47	Claim Problem Not Listed	27	Claim Problem Not Listed	36	Information Requested
43	Other	45	Coverage Question	23	Premium Refund	21	Claim Problem Not Listed
40	Claim Problem Not Listed	34	Premium Refund	23	Information Requested	15	Can/Nonrenew Nonpayment
36	Premium Refund	32	Other	21	Other	13	Premium Refund
32	Company Information	23	Co Delays/No Response	17	Can/Nonrenew Nonpayment	10	Other
22	Agent Handling	17	Can/Nonrenew Nonpayment	11	Agent Handling	8	Agent Handling
22	Additional Premium	15	Additional Premium	11	Co Delays/No Response	8	Cancel/Nonrenewal Other
19	Co Delays/No Response	15	Claim Underpayment	10	Additional Premium	8	Claim Underpayment
18	Claim Underpayment	15	Agent Handling	10	Cancel/Nonrenewal Other	7	Additional Premium
12	Availability	15	Company Information	9	Misrepresentation	7	Company Information
10	Misrepresentation	13	Cancel/Nonrenewal Other	7	Company Information	6	Co Delays/No Response
10	Can/Nonrenew Nonpayment	5	Extension Of Benefits	7	Claim Underpayment	5	Misrepresentation
8	Cancel/Nonrenewal Other	5	Misrepresentation	4	Extension Of Benefits	4	Underwriting Issue
5	Extension Of Benefits	5	Availability	2	Underwriting Issue	3	Extension Of Benefits
4	Refusal To Insure - Other	4	Underwriting Issue	2	Availability	3	Availability
3	Underwriting Issue	3	Other Unfair Trade Pract.	1	Can/Nonrenew Misrep/Fraud	1	Can/Nonrenew Misrep/Fraud
3	Quality Of Care	2	Deductible/Copay Issue	**442**	**2006 Total Count**	1	Other Unfair Trade Pract.
3	Co Delays / No Response	2	Agent Information			1	Advertising/Marketing
3	Agent Information	1	Advertising/Marketing			**410**	**2007 Total Count**
2	Other Unfair Trade Pract.	1	Quality Of Care				
2	Premium Misquote	1	Unfair Discrimination				
2	Advertising/Marketing	1	Refusal To Insure - Other				
1	Cancel/Nonrenew Other	**675**	**2005 Total Count**				
1	Refusal-Claim History						
1	Balance Billing Problem						
1	Can/Nonrenew Misrep/Fraud						
1	Cancel/Nonrenew Nonpayment						
1	Cancel/Nonrenew Misrep/Fraud						
908	**2004 Total Count**						

-- Appendix B --

Overview of LTCI Solvency Requirements in Florida

Insurance companies authorized to underwrite long term care business as well as other types of health insurance products in Florida are required by statute to meet the National Association of Insurance Commissioners (NAIC) Risk Based Capital (RBC) ratio standards as well as Florida specific minimum capital and surplus requirements.

In addition, life and health insurance companies are required by Florida Statute to maintain a capital and surplus level equal to the greater amount of $1.5 million or 4% of total liabilities plus 6% of liabilities relative to health insurance. Both regulatory capital and surplus solvency standards are applied to domestic, foreign and alien life and health insurance companies authorized in Florida. Florida's Long Term Care Insurance solvency standards have been successful in recent years as evidenced by the fact there have been no insolvencies of Florida domestic long term care insurance companies in our state within the last decade.

-- Appendix C --

Market Investigation update on:

Bankers Life & Casualty Insurance Company

and

Conseco Senior Health Insurance Company

Under the leadership of Pennsylvania with the active involvement of Florida, Illinois, Indiana and Texas a multi-state targeted market conduct examination was called on April 10, 2007 to review two Conseco, Inc. subsidiaries providing long term care coverage: Bankers Life & Casualty Insurance Company and Conseco Senior Health Insurance Company.

The National Association of Insurance Commissioners' (NAIC) Market Analysis Working Group coordinated the examination, which was conducted on behalf of 39 participating states. The onsite examination of Bankers Life & Casualty Insurance Company was conducted in Chicago, Illinois simultaneously with the onsite examination of Conseco Senior Health Insurance Company in Carmel, Indiana.

The examinations focused on areas of Complaint Handling and Long Term Care (LTC) and Home Health Care (HHC) Claim Handling. Since Conseco Senior Health Insurance

Company no longer writes new business, the focus on marketing and sales activities was restricted to Bankers Life & Casualty Insurance Company. The examination included a review of company activities in all states, with the Lead States of Pennsylvania, Florida, Illinois, Indiana, and Texas overseeing the daily examination activities.

The companies self-reported a number of issues that had been identified prior to the initiation of the examinations through complaints, internal audits and other state market conduct examinations.

Based on the companies' self-reporting, prior market conduct examination reports and the large population of policyholder files identified, the examiners utilized a random sampling to select the files reviewed for the examinations. The examinations included two phases of complaint handling review. Phase I included analysis of electronic complaint data and Phase II consisted of reviewing a random sample of written complaints.

While there were claim issues identified, the companies generally had adequate procedures for claims handling. The predominant areas of concern revealed during the examinations were found in the areas of timelines of claims adjudication, processes for handling claims, and marketing and sales.

The Chief Compliance Officer for Bankers Life & Casualty Company (W. Mark Johnson) responded to examination findings by stating that:

> "…., like you and your colleagues, we believe market conduct examinations serve a useful purpose by identifying areas in the manner in which insurance companies do business that can be improved. In this instance, we believe that the examiners have identified certain areas of the Company's claim, complaint handling, and marketing processes that can be improved. We are committed to investing the necessary resources to bring about that improvement."

Shortly thereafter, the Lead Regulators engaged the companies in discussions with respect to concerns raised by the multistate examinations, and the development of a plan of corrective actions to address those concerns for the benefit of current and former policyholders and insureds.

After extensive discussions regarding the mechanics of implementation, the companies agreed to a plan of corrective action addressing:

a. Implementation of changes to the companies' claims and complaint handling procedures and standards to ensure that they are timely, appropriate and that they are otherwise compliant with applicable state laws; and

b. Establishment of a compliance plan for marketing activities of Bankers Life to ensure that its producers comply with applicable state laws and regulations.

On March 30, 2008 Bankers Life & Casualty Insurance Company and Conseco Senior Health Insurance Company entered into a Regulatory Settlement Agreement with the Lead States of Pennsylvania, Florida, Illinois, Indiana, and Texas and the insurance regulators of each of the remaining states and the District of Columbia that agreed to adopt the agreement.

On May 7, 2008 Pennsylvania's Acting Commissioner Joel Ario announced 40 states had signed on to the Regulatory Settlement Agreement.
The settlement resulted in:

- $2.3M penalty (Florida's portion was $355,000)
- $4M minimum set aside for initial restitution
- $26M improvement in systems and operations
- $10M backend penalty for noncompliance
- Claims Re-adjudication Process – for calendar years (2005-2007)

Additionally, under the settlement agreement the companies will provide to the Lead Regulators quarterly reports on the implementation of corrective actions to address achievement of benchmarks, including, with respect to Conseco Senior, the number of claims readjudicated, the number of claims for which restitution was found to be appropriate, the amount of restitution paid and any other going forward information or documents deemed necessary by the Lead Regulators.

Conseco is expending approximately $26 million in systems enhancements, including contracting with an independent third party administrator, the Long Term Care Group, Inc., to substantially improve claims and complaint handling practices. Under the contract the Long Term Care Group will assume responsibility for the customer call center and the processing of continuing claims and other transactions for long term care policies in force. Conseco employees currently performing these functions will become employees of LTCG.

We are optimistic that this multistate collaborative effort will benefit consumers, and greatly enhance both the continuity and timeliness of Conseco's adjudication of long term care claims.

It is a challenge to stay current on the changes in the industry, while ensuring consumer protections without stifling innovation and competition. It is important to be responsive to change without relaxing our standards and to maintain our statutory required review of all rate increases for approval prior to use.