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U.S. House of Representatives
Committee on Energy and Commerce
Washington, DC 20515–6115

JOHN D. DINGELL, MICHIGAN
CHAIRMAN

July 23, 2008

MEMORANDUM

TO: Subcommittee on Oversight and Investigations Members and Staff

FROM: Committee on Energy and Commerce Staff

SUBJECT: July 24, 2008, Hearing on, "Long-Term Care Insurance: Are Consumers Protected for the Long Term?"

On Thursday, July 24, 2008, at 10:00 a.m. in room 2123 Rayburn House Office Building, the Subcommittee on Oversight and Investigations will hold a hearing entitled, "Long-Term Care Insurance: Are Consumers Protected for the Long Term?" This hearing is the second in a series that the Subcommittee is holding on issues of long-term care service delivery and financing.

The purpose of this hearing is to examine the unique challenges facing consumers who purchase long-term care insurance (LTCI) policies and need to use their benefits. Key questions considered at the hearing will include:

- Are LTCI carriers unfairly denying claims?

- Are LTCI carriers appropriately responsive during the claims administration process to questions and complaints from policyholders, who are often elderly and severely disabled?

- Can the States adequately protect policyholders from potential abuses in claims administration and processing, or should the Federal Government play a greater role in promoting more uniform and stronger protections?

- What steps can Congress, State regulators, and the industry take to bolster consumer confidence that carriers will honor the promises that they make and that policyholders understand the risks and benefits of their coverage?

BACKGROUND

Approximately 9 million Americans over the age of 65 will need long-term care (LTC) services this year. By 2020, that number is expected to increase to 12 million. While the population age 75 or older is at substantially greater risk of needing LTC than most everyone else, nearly 40 percent of the LTC population is under the age of 65.[1]

Last year, the *New York Times* published an article alleging that the claims of thousands of LTCI policyholders were unfairly denied.[2] The article focused largely on two subsidiaries of Conseco, Inc.—Conseco Senior Health Insurance Company (Conseco Senior Health) and Banker's Life and Casualty Insurance Company (Banker's Life)—as well as Penn Treaty American Corporation (Penn Treaty), accusing them of purposely creating roadblocks for consumers, so as to avoid paying claims.

In response, the Committee began an investigation of those carriers' claims settlement practices. In addition, Chairman Dingell and Ranking Member Barton joined six Senators in requesting that the Government Accountability Office (GAO) review the status of the States' ability to protect consumers through rate stabilization and claims settlement regulation. GAO will release its findings the day before the hearing.

What is Long-Term Care?

Long-term care refers to a broad range of medical, personal, and supportive services needed by individuals who can no longer care for themselves due to physical or cognitive impairments. According to one study, more than two-thirds of individuals age 65 and older will require LTC services at some point in their lives.[3]

LTC is designed to assist people with activities of daily living (ADLs),[4] such as eating, dressing, toileting, transferring in or out of a bed or chair, and bathing, regardless of whether their medical problems have improved—as distinguished from medical care, which is designed to improve or correct medical problems.

Recipients of LTC services may need them on a regular or intermittent basis over a period of several months, years, or a lifetime. Services may be delivered in individual homes, assisted living or supportive housing, adult day centers, nursing facilities, or other institutional settings. For many, these services and supports can prolong one's life, preserve the ability to live in one's community, or remain employed.

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[1] National Clearinghouse for Long-Term Care Information, *Understanding LTC*. Washington, DC: U.S. Department of Health and Human Services, 2008.
http://www.longtermcare.gov/LTC/Main_Site/Understanding_Long_Term_Care/Basics/Basics.aspx.
[2] Charles Duhigg, "Aged, Frail, and Denied Care by their Insurers," *New York Times*, March 26, 2007.
http://www.nytimes.com/2007/03/26/business/26care.html?_r=1&oref=slogin.
[3] Peter Kemper, Harriet L. Komisar, and Lisa Alecxih, "Long-Term Care Over An Uncertain Future: What Can Current Retirees Expect?," *Inquiry*, Vol. 42 (Winter 2005–2006): 335-350.
[4] To a lesser degree, long-term care can refer to assistance with the Instrumental Activities of Daily Living (IADLs), such as preparing meals, managing medications and/or money, trips to the doctor's office, shopping for groceries or personal items, performing light or heavy housework, and using a telephone.

What are the Costs of Long-Term Care?

For people requiring intensive or lengthy care, or for those with very modest resources, the cost of LTC may be catastrophic. The annual cost of LTC services can vary depending on the site of care, the level of care needed, the geographic location, and the caregiver's skill level. The average cost of personal care services (such as bathing, dressing, and transferring) at home is now $18 per hour, whereas skilled care from a visiting nurse costs on average $38 per hour.[5] The annual cost of home care varies by intensity. For example, assuming that care is provided 3 hours a day, 7 days a week, the annual cost would be $20,000 in 2008. Nursing home care generally costs more in that it provides LTC assistance 24 hours a day and includes the cost of room and board. The average cost of a nursing home stay is now $68,255 a year for a semi-private room and $76,285 for a private room.[6] In the absence of public or private insurance, few Americans have sufficient resources to pay for extensive LTC.

Public programs such as Medicaid and Medicare currently finance the majority of formal LTC expenditures, but private insurance has been a small, but growing, source of financing since early versions of LTCI were introduced in the 1970s as "nursing home policies." The most current data available indicate that private insurance financed about 7 percent of LTC expenditures in 2005.[7]

What is Long-Term Care Insurance (LTCI)?

Long-term care insurance pays for individuals to receive care in nursing homes, assisted living facilities, and their own homes, depending on the specific provisions of particular policies. Policyholders generally pay for LTCI over a relatively long period of time and then tend to collect benefits at the end of their lives. LTCI is similar to health insurance in that policyholders receive payment for variable health care expenses, but is similar to life insurance in that benefits are paid at the end of a long period of payment. The hybrid nature of LTCI is part of what makes it a difficult product to understand for consumers and insurance carriers alike.

As of 2005, roughly 5 million Americans were covered by long-term care policies through the individual market, and another 2 million were covered in the group market. According to the American Association of Long-Term Care Insurance, total premiums collected for LTCI policies were $10 billion in 2007, up 21 percent from $8.2 billion in 2004.[8]

State and Federal Regulation

Like other forms of insurance, LTCI is largely regulated at the State level. Many States' LTCI consumer protection laws reflect standards set out in model laws and regulations developed by the National Association of Insurance Commissioners (NAIC). Issues, however,

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[5] Genworth Financial, *2008 Cost of Care Survey*, April 2008.
http://www.genworth.com/content/etc/medialib/genworth/us/en/Long_Term_Care.Par.14291.File.dat/37522%20CoC%20Brochure.pdf.

[6] Ibid.

[7] Judith Feder, Harriet L. Komisar, and Robert B. Friedland, *Long-Term Care Financing: Policy Options for the Future*. Washington, DC: Georgetown University: Long-Term Care Financing Project, June 2007.
http://ltc.georgetown.edu/forum/ltcfinalpaper061107.pdf.

[8] Jennifer Levitz and Kelly Greene, "States Draw Fire for Pitching Citizens on Private Long-Term Care Insurance," *Wall Street Journal*, Feb. 26, 2008, at p. A1.

that are addressed in the models are reported only by consensus of the NAIC members. Even when a State does adopt a change, it is usually not retroactive.

The NAIC developed its first model act on long-term care insurance in 1987, followed by model regulations the next year. The NAIC has revised its models over time to address emerging issues in the industry, including revising its LTCI model regulation in 2000 to improve rate stability.[9]

To the extent that there are uniform standards and nationwide consumer protections for LTCI customers, they derive from two congressional initiatives. First, the Health Insurance Portability and Accountability Act of 1996 (HIPAA) allows favorable tax treatment for policies that include certain consumer protections. Second, the Medicaid Long-Term Care Insurance Partnership Program (Partnership Program) established by the Deficit Reduction Act of 2005 (DRA) has prompted States to adopt certain consumer protections by offering them the prospect of possible Medicaid savings. With both HIPAA and the Partnership Program, however, Federal law incorporated older versions of the NAIC models that lacked new protections, such as suitability requirements, omitted some key protections, and even specifically exempted others, such as rate stability requirements.

CHALLENGES FACING CONSUMERS PURCHASING LTCI

Marketing and Sales

LTCI is a complicated product and, generally, should be evaluated in the context of comprehensive financial planning for retirement—a task for which most sales agents are not qualified. Even for agents specializing in LTCI, comparing one long-term care policy with another is a challenge. An unwary consumer who relies on choosing the policy with the lowest premiums may have fewer benefits, expensive gaps in benefits, higher out-of-pocket costs than expected, and the potential for a steep increase in premiums later.

LTCI policies carry some of the highest commissions in the insurance business, with lucrative payments to the individual agents who sell the policies. Agents can receive between 30 percent and 65 percent of the first year's total premium payments, followed by annual commissions between 3 percent and 5 percent for a set period after the first year.[10]

Agents may be loath to disclose policy pitfalls when it means risking the loss of sizable commissions. Moreover, the very nature of the discussion between agent and applicant about LTCI can be fraught with emotion and anxiety because it requires the applicant to consider and plan for scenarios of dependence and vulnerability later in life. More than one witness interviewed by Committee staff noted that the industry often says that "people do not buy long-term care insurance; they are *sold* long-term care insurance."

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[9] Rate stability means that premium rates initially set for an LTCI policy would be sufficient to cover costs and would not require increases over the life of the policy.

[10] Levitz and Greene, op. cit.

Rate Stability

Consumers are often told, correctly, that the premiums for LTCI are "level," and that they cannot be singled out for an increase in premium because of their age or health. Companies cannot raise premiums because of individual circumstances, but they can petition State insurance departments for legal authority to raise premiums for all policyholders in a given pool of insured and then raise rates for everyone in that class (e.g., all policies issued in the State to persons age 75 and older). Although some States require companies to justify premium increases based on their experience in paying benefits, and some States (e.g., New York) perform their own in-house actuarial review of rate applications to determine whether increases are justified, many States have limited authority to deny those increases.

Consumers faced with unexpected rate increases—particularly retirees on fixed incomes—frequently have no good options. They may not be able to afford the higher premiums, but they cannot qualify for coverage elsewhere because they are no longer insurable. In order to keep the premium level, policyholders often agree to accept reduced benefits.

The relative newness of LTCI as an insurance product, the lack of substantial claims experience, and erroneous predictions by carriers about the rate at which consumers drop their policies—or "lapse"—contributed to under-pricing of policies by some carriers in earlier years,[11] thereby necessitating sizable rate increases. Some insurers, however, reportedly used under-pricing as a strategy to increase market share in the 1980s and 1990s, followed by substantial rate hikes in more recent years to address solvency issues.

During the 1990s, LTCI was one of the industry's fastest-growing products. Companies such as Conseco Senior Health and Banker's Life (together, Conseco) and Penn Treaty aggressively solicited clients who were not in the best health, at rates below those of their competitors, to gain market share, according to a number of witnesses interviewed by Committee staff. In the 2000s, cracks in the business model began appearing when policyholders in nursing homes started living longer than expected and the costs of providing LTC to people with Alzheimer's disease, Parkinson's disease, and diabetes ballooned. In addition, carriers discovered that policyholders were not letting their policies lapse at the expected rates. Thus, more people filed claims than anticipated.

To address its earlier under-pricing, Penn Treaty, for example, sought repeated rate increases on multiple policies beginning in 1995, with many of the increases ranging from 30 to 60 percent. Likewise, Conseco has increased rates on multiple policies since 1991, with increases approved on one older policy offered by Banker's Life totaling 70 percent. According to some witnesses interviewed by the Committee, in some cases, policyholders have now paid in almost as much in premium as the total potential value of their benefits.

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[11] Complex actuarial assumptions go into the pricing of policies. Assumptions can include, for instance, the anticipated cost and incidence of claims and eligible benefits, the rate of inflation, interest rates, and expected returns on investment. Actuaries also consider morbidity and mortality rates, corporate tax rates, reserve requirements, and anticipated lapse rates. Actuaries will even attempt to factor in the probability that medical advances may reduce LTCI costs by preventing or curing costly diseases such as Alzheimer's or increase the life expectancy of impaired persons.

Claims Practices

The *New York Times* article, and the announcement of investigations by the House Committee on Energy and Commerce and the Senate Committee on Aging into the issue of denied claims, spurred the NAIC to conduct a survey of the States to determine the extent of the problem. The actual volume and number of these denied claims is still the subject of a dispute between State regulators and the industry because of definitional and data collection variations among carriers and States. The NAIC recently began working on amendments to its model regulation on unfair claims settlement practices to provide for consumer appeals of benefit trigger determinations to independent review organizations, which most States allow in their health insurance markets.

In a survey of the 23 largest long-term care insurance companies, the NAIC found that approximately 27,704 out of 719,726 policyholders who had submitted a claim for coverage in 2006 had their claims denied (3.85 percent).[12] The NAIC has noted that, on average, *more than 70 percent of these claims denials are overturned in favor of the consumers*, and advises that "[t]his is a pattern of error not typically found in other lines of health-related insurance."[13]

Most LTCI policies permit the insurance company, or a designated administrative agent, to determine whether the insured is eligible to receive benefits. Thus, the tools that companies use to assess people for ADL disability vary from one company to another. Although a third-party agent might appear to be more objective, the insurance company normally chooses the agency and pays for its services, thus resulting in some inevitable bias.

A number of State regulators have become concerned about problematic trends in industry claims settlement practices. Over the past 5 years, the top 10 LTCI companies by market share have averaged more than 12 market conduct examinations each.[14] The top 20 LTCI companies by market share have averaged more than 11 market conduct examinations each. All told, companies that make up 98 percent of the LTCI market have had at least one market conduct examination in the last 5 years.

Conseco Market Conduct Examination Settlement

In May, Conseco announced a settlement between State insurance regulators and two of its insurance subsidiaries, Conseco Senior Health and Banker's Life. The settlement concluded a multistate market conduct examination led by Pennsylvania, Illinois, Indiana, Texas, and Florida related to the companies' claims practices and procedures, complaint handling, and sales and marketing practices. Among other things, the on-site examination showed that pending claims were not handled in a timely manner; claim files were not properly documented or maintained, and periods for company responses to claimants did not adhere to applicable regulations. The settlement covers claims filed from January 1, 2005, through April 30, 2007.

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[12] National Association of Insurance Commissioners, *Long Term Care Data Call and Analysis Report*, Washington, DC: NAIC, May 9, 2008, p. 12. http://www.naic.org/documents/committees_b_ltc_analysis_report.pdf.
[13] National Association of Insurance Commissioners, Letter to Senator Charles Grassley, June 22, 2007.
[14] Ibid.

Conseco self-reported serious issues in its complaint and claims handling, and blamed the problems on the challenge of integrating various computer systems. The settlement requires the company to contract with an experienced long-term care claims administrator to process claims in a timely and appropriate manner. According to the terms of the settlement, Conseco Senior Health, which is not actively writing new policies, will: automatically review 1,112 claims that were initially denied; will provide notices to another 18,000 policyholders covering 49,000 claims that may have been partially denied or subsequently denied after initial payment; and will set up a toll-free call center for all claimants who believe their claim settlement was not handled properly. The investigation found that the primary problems in most cases were delays in claim payments, rather than outright claim denials.

In the case of Banker's Life, which is writing new policies, the investigation uncovered inadequate marketing and sales compliance issues.

Going forward, both companies are required to:

- Revise claims-handling procedures to guarantee timely and accurate processing;
- Handle all complaints completely and in a timely fashion;
- Create a centralized complaint database; and
- Establish a countrywide contact for complaints.

WITNESSES

Panel I—Consumer Experiences with Long-Term Care Insurance

- ***Ms. Bonnie Burns*** is a Training and Policy Specialist for California Health Advocates who will discuss the difficulties that consumers have in navigating the long-term care insurance system, including the confusing nature of policies and the types of problems that they have when making claims.

- ***Mr. Jack E. Vogelsong*** is Chief of the Division of Long Term Living Outreach and Education for the Pennsylvania Department of Aging. Mr. Vogelsong will discuss his experiences from 12 years of serving as the director of Pennsylvania's State Health Insurance Program (SHIP).

- ***Marc A. Cohen, Ph.D.*** is President of LifePlans, Inc. Dr. Cohen will present the findings of his decade-long analysis of LTCI industry data, with a focus on how a policyholder's experience of receiving benefits from a company changes over time.

- ***Mr. John E. Dicken*** is Director of Health Care for the U.S. Government Accountability Office. He will discuss the findings of GAO's latest report, *Long-Term Care Insurance: Oversight of Rate Setting and Claims Settlement Practices*, to be released on July 23, 2008.

- ***Mr. Al Bode*** of Charles City, Iowa is a retired Spanish teacher and son of Mrs. Marjorie Bode, who currently resides in a nursing home and is a Conseco Senior Health Insurance Company policyholder. Mr. Bode will recount the difficulties that his family faced in gaining reimbursement from Conseco for his mother's care.

Panel II—State Regulation of Long-Term Care Insurance

- ***The Honorable Sean Dilweg*** is the Commissioner of Insurance for the State of Wisconsin. Mr. Dilweg will testify on behalf of the NAIC and will highlight the role of the NAIC in regulating LTCI.

- ***The Honorable Kevin M. McCarty*** is the Commissioner of Insurance for the State of Florida. He will expound on Florida's approach to regulating rate setting and explain the market conduct examination report on Conseco Senior Health Insurance Company.

- ***The Honorable Eric Dinallo*** is the Superintendent of the New York State Insurance Department. Mr. Dinallo will recount New York's experience with the Medicaid Long-Term Care Insurance Partnership Program and its efforts to protect consumers.

- ***The Honorable Mike Kreidler*** is the Insurance Commissioner for the State of Washington and a former member of this Committee. Mr. Kreidler will describe the evolution of LTCI delivery systems, pricing practices, and policy challenges at the State and Federal levels.

Panel III—Insurance Industry Perspectives on Long-Term Care Insurance

- ***Mr. Thomas M. "Buck" Stinson*** is President of Genworth Long Term Care. Mr. Stinson will offer Genworth's perspective on the changing LTCI marketplace, given its position as the largest seller of this product in the United States.

- ***Mr. Thomas E. Samoluk*** is Vice President of Government Affairs and Counsel for John Hancock. Mr. Samoluk will discuss rate setting and claims settlement from the vantage point of one of the industry's leading firms.

- ***Mr. John Wells*** is Senior Vice President of Long-Term Care for Conseco, Inc. Mr. Wells will report on Conseco's efforts to improve its business practices in light of the findings of the NAIC's market conduct examination and interstate regulatory settlement agreement.

- ***Mr. Cameron B. Waite*** is Executive Vice President of Strategic Operations for Penn Treaty Network America. Mr. Waite will address allegations made by the *New York Times* and Penn Treaty's policyholders that its business practices have been unfair.

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If you have any questions or require additional information, please contact Kristine Blackwood or Michael Heaney with the Committee on Energy and Commerce staff at ext. 6-2424.