

Rate Increase Tips and Tactics

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Disclaimer



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- **Variation Across the States**
- **Recent Legislation and Regulation**
 - State Trends
- **NAIC Activity on LTC**
 - Disclosure, Innovation, Benefit Adjustment



- **Implications for the Market**
 - Solvency, Company Withdrawals
- **What's Next?**
 - Getting to a Consistent, Predictable Framework
- **Current Initiatives**
 - LTC industry and regulators are working to provide for a better process



- **Know the authority of the regulator**
 - Prior Approval?
 - File and Use?
 - Deemer?
- **Know what rate increases have been approved and disapproved for competitors to the extent possible**
- **Know if there are any specific limitations in your state**
 - Rate Caps
 - Desk Drawer Rules

LTC Rate Increases – Filing Tips and Tactics



- **Be willing to offer to implement the rate increases over a two or three year period**
 - Phase-in approach
 - Actuarial equivalent for phased increases
- **Be willing to offer benefit reductions to keep rate at or close to current rate**
 - Landing spots
 - Other benefit reductions
- **The rate increase should fully support the need for the rate increase**
 - Use plain language, not actuarial language



- **Should you have a meeting with the Insurance Department prior to making the filing?**
 - In person or phone call?
 - How to interact with the Department?
 - Lessons learned, best practices
 - Best way to communicate
 - Open dialogue, focus on what regulator wants, provide statistics
 - How to prepare for the meeting?
 - Insurance Department should know the Company's key players (access to company actuaries)



- **Building a Record**
 - How to properly build a record in the event you need to challenge the insurance department's decision
- **Recent LTCI Litigation Examples**
 - New Hampshire
 - Massachusetts
 - Pennsylvania



- **Considerations and Strategies for Rate Increase Litigation**
 - A tool best used sparingly and only after careful consideration of the risks, benefits and alternatives



- **Appeal From an Administrative Denial**
 - An appeal is generally available as of right
 - All levels of regulatory review must be exhausted before accessing the courts
 - Grounds include:
 - challenge to the administrative process (if it was flawed),
 - abuse of discretion (if proposed rates satisfy applicable standards) and
 - possible arguments that current rates are confiscatory or an unconstitutional taking (in extreme cases)



- **Appeal From an Administrative Denial (continued)**
 - Abuse of Discretion - an unfavorable standard of review
 - Courts are inclined to defer to Commissioners' technical expertise
 - Adequacy of the administrative record is vital – building a record (discussed above) - consider refile if necessary
 - Timeliness is a consideration
 - A judicial determination that applicable requirements are not satisfied could set a bad precedent in other states
 - Potential for lasting damage to relationship with regulator



- **Litigation to Compel a Decision**

- Considerable delay, inactivity, outright refusal to act
- The remedy is likely a **writ of mandamus**
- Directs an administrative agency to act but not how to act
- If successful, may still have to appeal an adverse decision
- Defenses to mandamus: application not complete, agency in process of acting (mandamus is premature or unnecessary)
- Review the facts:
 - ongoing or unresolved communications?
 - outstanding information requests?
 - application pending a short time?



- **Litigation to Compel a Decision (continued)**
 - Mandamus likely to receive publicity – a very public statement of a company’s robust intention to pursue rate increases
 - Less common and more aggressive than appeal from a denial
 - The potential for more lasting damage to relationship with regulator (and other states’ regulators)
 - Minimize the risk: consider a program to proactively keep key regulators apprised of litigation in other states, the reasons for resorting to litigation (and the ultimate objectives)



- **Litigation Challenging the Validity of Rate Increase Restrictions**
 - New Hampshire – Challenge to Validity of Rate Increase Regulation (Rate Cap Regulation based on attained age of policyholder)



- **Other Considerations**

- Litigating in multiple states might be necessary
- If pursuing an aggressive litigation strategy, consider a robust program of building and maintaining relationships with regulators, particularly in key states
- Be perceived as a good corporate citizen – just doing what is required to ensure your ability to meet policyholder obligations
- Regulators often focus on “fairness” - as opposed to challenging rate increases on actuarial grounds (insurers should bear the burden of errors in original pricing)
- Rebut this assertion (in rate filings, litigation proceedings and public statements)



- **Questions?**

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