

Legal, Compliance & Regulatory

The Risk Management of Product Design

Jeffrey Feliciano – Genworth Financial

Jeremy Heinnickel - Saul Ewing LLP



17th Annual Intercompany Long Term Care Insurance Conference

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Risk Function Overview



- Independent Partner
- Provide Guidelines
- Strengthen Governance, Controls and Processes
- Consider Unintended Consequence
- Protect the Financial Condition of the Firm

Strong Risk Management Is a Competitive Advantage

Enterprise Risk Management (ERM)



Enterprise risk management (ERM) is the process of planning, organizing, leading, and controlling the activities of an organization in order to minimize the effects of risk on an organization's capital and earnings.

- Align with the Firm and Business Strategy
- Publish Risk Policy and Risk Appetite
- Define Key Risks
- Manage Risk
- Assess Capital and Solvency

ERM Is Good Practice and a Regulatory Requirement

Three Lines of Defense



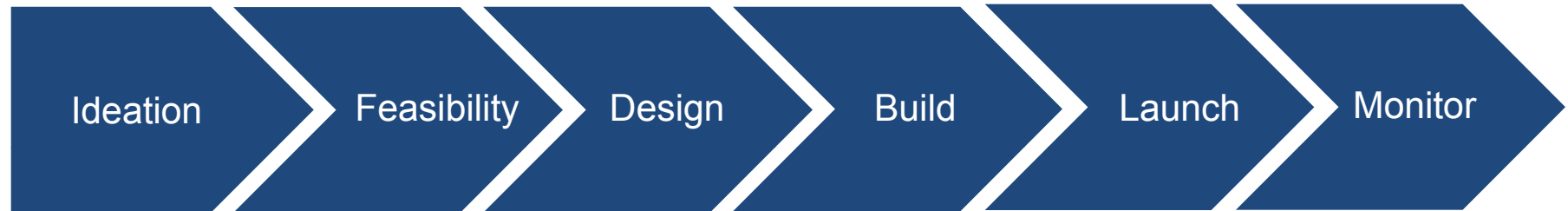
First line (operations and business units): Line management responsible for identifying and managing risks directly (design and operation of controls). This group has to regard risk management as a crucial element of their everyday jobs.

Second line (management assurance): This line includes risk, compliance and legal. The groups responsible for ongoing monitoring of the design and operation of controls in the first line of defense, as well as providing advice and facilitating risk management activities.

Third line (independent assurance): This line includes internal audit, external audit and some regulators, as long as the scope and nature of their work aligns with the organization's risk management objectives.

Risk Management Resides in the Second Line of Defense

Risk's Role in New Product Implementation



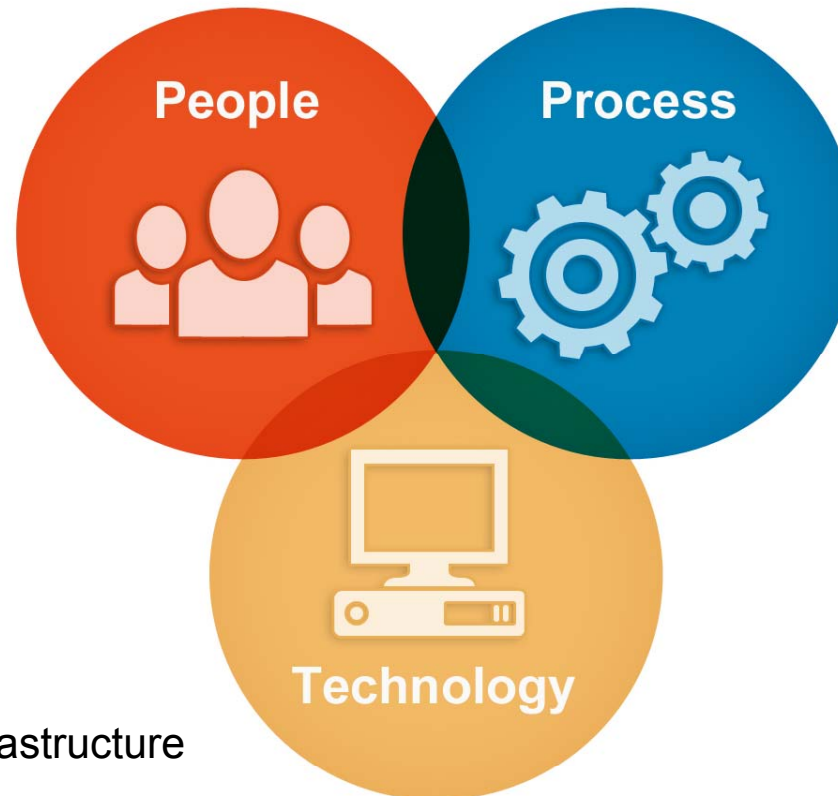
- | | | | | | |
|--------------|-----------|-----------|-------------|--------------|-------------|
| -Exposures | -Features | -Evidence | -Validation | -Day 2 Items | -Reporting |
| -Commitments | -Targets | -Review | -Mitigation | -Ops Risk | -Experience |
| -Experience | -Analysis | -Sign off | -Tracking | | |

Partnership vs. Engagement

Operational Risk for New Products



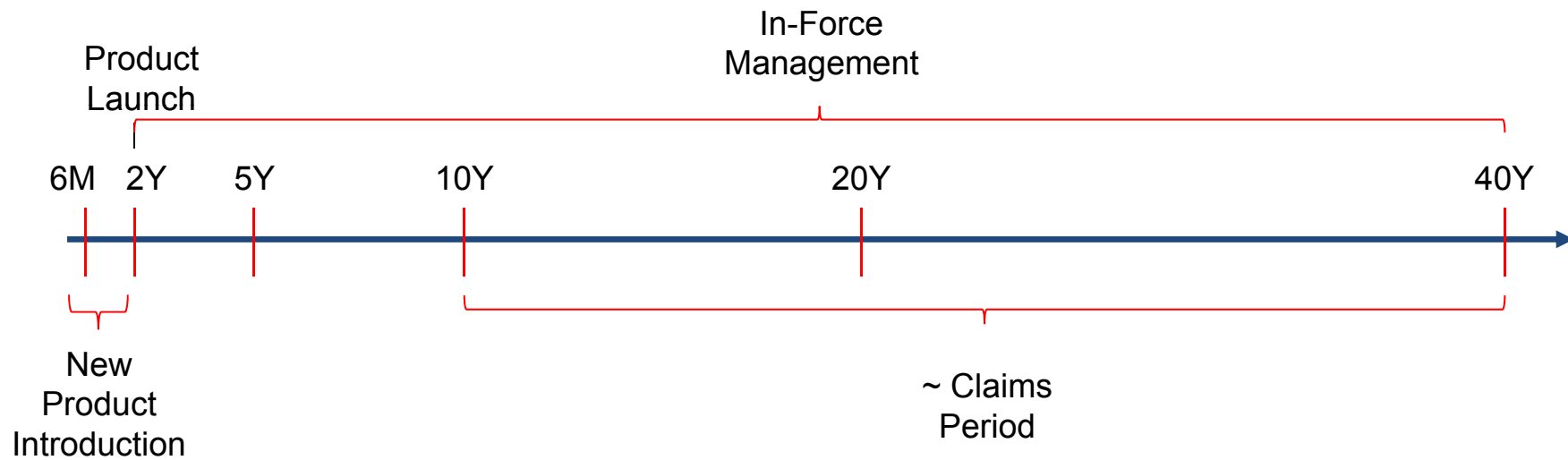
- Training
- Skills and Qualifications
- Competence



- Governance
- Policy, Procedures and Reporting
- Change Management
- Internal Audit

- Infrastructure
- System Capabilities
- Platform Support

LTC Product Timeline



Long Term Care = Long Term Liability

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The Risk Management of Product Design

PART II – Legal / Regulatory
Considerations for Introducing New
Products



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Drafting Policy Language



- **Goal** - capturing business concepts and legal/regulatory considerations into policy language
- Requires meetings/conversations between business and legal
- **Risks**
 - Coverage
 - Regulatory / Compliance
 - Litigation, including Class Actions





Consider General Rules of Insurance Policy Construction

- Ambiguous policy language construed against insurer
 - **Tip:** *Keep language simple and clear*
- Terms given plain and ordinary meaning (unless otherwise defined)
 - **Tip:** *Define words if they will have specialized meaning*
- All policy provisions given effect
 - **Tip:** *Avoid inconsistencies in the policy*



Insurance Regulatory Landscape

- Insurance primarily regulated at the state level
- NAIC – Model Laws and Regulations
- Interstate Insurance Product Regulation Commission (IIPRC)





Regulatory Involvement With New Products

- Filing / Approval of Policy Forms
- Filing / Approval of Rates
- Marketing / Sales Oversight





Filing / Approval

- Approval process can vary by state and product (and between forms and rates)
 - Prior approval
 - Use and file
 - Informational purposes only
 - File and use
 - Flex rating
- Deemer Provisions
- Extraterritorial concerns for out-of-state group policies



Interstate Insurance Product Regulation Commission (IIPRC)

- 44 member states (39 for LTCL – AZ, HI, IN, MT and NJ opted out)
- *Pro:* 1 Filing with IIPRC instead of state-by-state in compact states
- *Con:* Have to meet uniform product standards (NAIC requirements plus more)
- *Con:* Partnership policies still need to be filed/certified in each state



LTCL Policy Form Requirements

- Several requirements are listed in the NAIC's Model Act and Regulation, including but not limited to:
 - Exclusions limited
 - Group coverage – continuation / conversion
 - Premium restrictions
 - Inflation protection
 - Unintentional Lapse Protections



Rate Requirements

- **General Requirement:** Rates may not be “excessive,” “inadequate” or “unfairly discriminatory.”
 - VT also requires that rates be “affordable” and fair
- Section 10 of NAIC’s Model LTCI Regulation sets forth requirements





Marketing / Sales Oversight

- What is an advertisement?
 - IIPRC Standards
 - NAIC's Advertisements of Accident and Sickness Model Regulation
- Filing requirements for advertisements (NAIC Model Reg § 22 / IIPRC Standards)
- Advertising requirements



Discrimination

- All insurers discriminate (and that's ok)
- Only “unfair discrimination” prohibited
 - Discrimination of protected classes
 - Discriminating among policyholders of the same class and of essentially the same hazard (*i.e.*, “similarly situated” policyholders)



Tips to Avoid Unfair Discrimination Issues

- Be aware of protected classes in each state
 - Some are obvious and reoccurring (i.e. race)
 - Others vary by state (HIV, genetic conditions etc.)
- Distinctions between classes of insureds must have a proper underwriting/actuarial basis.



Rebating

- With limited exceptions, “rebating” is barred in all states.
- Paying, giving or offering the policyholder or the insured anything of value that is not specified in the policy.
- Many rebating statutes apply when something of value is given “as an inducement to such policy . . . or in connection therewith.”



Tips to Avoid Rebating Issues

- Address in the policy language
- Limit inducements to states' *De Minimis* Exception
 - Usually merchandise under \$25, cannot be cash
- Wellness programs (must also be included in policy language)



Electronic Delivery of Insurance Policies

- E-sign (federal) / UETA (state) authorize electronic delivery of insurance documents if the policyholder consents
- But, these laws do not alter existing laws requiring specific manner of delivery (such as by mail)
- Several states have adopted laws authorizing electronic delivery of insurance documents



Tips for Electronic Delivery

- Determine which documents must be delivered in writing
- Comply with E-Sign / UETA (consent, disclosures, etc.)
- Check state law for non-electronic delivery requirements
- Check for specific state laws on electronic delivery



