

Legal, Compliance & Regulatory

A 360° Perspective — Grappling with the Challenges of LTC Rate Increases

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15th Annual Intercompany Long Term Care Insurance Conference

Agenda



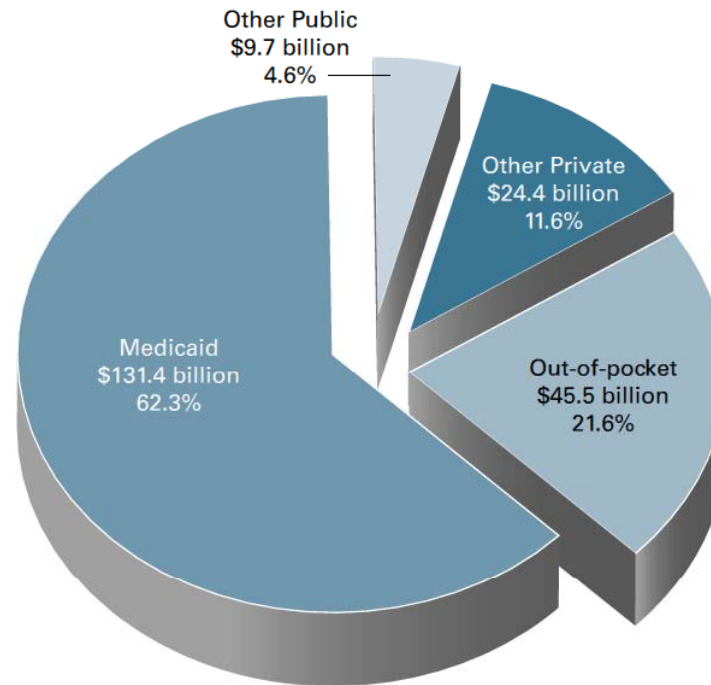
- I. Introduction -- Ongoing challenges for a valued product
- II. US Congressional Efforts/State LTC Partnership Programs
- III. An Overview of the Rate Increase Filing Process
- IV. The New NAIC Guidelines for Rate Increases
- V. State Standards for (Dis)Approving Rate Increases
- VI. Disparate State Responses to Similar Rate Increase Filings
- VII. Individual State Objections/Insurers' Efforts to Respond
- VIII. Continuing Litigation Challenges: Policyholder Attacks on Rate Increases

- Over 12 million Americans currently rely on long-term services and supports ("LTSS").¹
- That number is projected to more than double by 2050.¹
- Despite the growing need for long-term services and supports, only 10% of the potential market of Americans age 50 and above currently has private LTCl. ¹
- Due to recent challenges, many companies are discontinuing new sales and seeking rate increases on existing blocks of business.
 - A perfect storm: Morbidity, lapse, mortality, and interest rate challenges to original pricing assumptions

1. Commission on Long-Term Care, REPORT TO THE CONGRESS, at 3, 5, 27 (Sept. 30, 2013).

- Congress and the states have sought to make LTCI more widely available with mixed results.²

LTSS Expenditures by Source, 2011



Source: National Health Policy Forum, based on data from 2011 National Health Expenditure Accounts

2. Commission on Long-Term Care, REPORT TO THE CONGRESS at 4.

II. US Congressional Efforts/State LTC Partnership Programs



- The Federal LTC Act of 2000 created the largest group LTC policy in the United States for federal employees.
- Congress has not yet effectively addressed growing LTC needs.
 - The CLASS Act (halted in 2011, repealed in 2013)
 - 2013 Long-Term Care Commission Report to Congress
- States are trying to fill in the gaps.
 - State LTC Partnership Programs
 - Other State Initiatives to Encourage Private LTC Sales
- However, a huge unfunded future liability for elderly LTC in the United States remains.

III. An Overview of the Rate Increase Filing Process



- Filing Procedures
- Typical Timetable for State Action
- Rate Increase Implementation
 - Policyholder Options
- Policyholder Communications
 - What Should Be Covered
 - Role of Regulators

IV. The New NAIC Guidelines for Rate Increases



- The NAIC Senior Issues Task Force
- NAIC LTCI Rate Increase Model Bulletin
- NAIC LTCI Model Regulation Changes
- Proposed revisions to the NAIC Guidance Manual for Rating Aspects of the LTCi Model Regulation
- To date, very few states have officially adopted the new NAIC model regulations, though many states follow them.

IV. The New NAIC Guidelines for LTC Rate Increases -- Summary of NAIC LTC Bulletin and Regulation Changes



Pre-Rate Stabilization Bulletin – Formally adopted 12/2013

Post Rate Stabilization - NAIC LTC Model Regulation Changes – Formally adopted 8/2014

- All rate increases must be filed with and approved by DOI
- DOI may agree to phased in implementation with cost of delay
- Carrier must pay for outside actuary review
- States may use reviews done for other states
- Carrier must agree to 3-year monitoring/reporting

- All rate increases must be filed with and approved by DOI
- DOI may agree to phased in implementation with cost of delay
- Carrier to pay for outside actuary review
- States may use reviews done for other states
- Carrier to agree to annual rate certification similar to Interstate Compact
 - If carrier cannot certify, must submit plan of action

- If full rate increase approved, carrier will not increase rates for next 3 years.

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- Would apply a 60% loss ratio to current rate schedule and 80% (75% for GLTC) to increase portion

- Using the greater of 58% and the original expected loss ratio on original premium

- Must file PH communication package
- Improved and more detailed information provided to consumers

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 - Maximum aggregate threshold now 100%
 - For policyholders who have held policy for 20 + years, CNF will be made available with no rate increase % threshold

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 - Maximum aggregate threshold now 100%
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- Also includes guidance for pre-RS business originally priced under loss ratios requirements consistent with many of the tenets above

V. State Standards for (Dis)Approving Rate Increases



- Each state promulgates its own version of NAIC Models governing LTC rate increase requirements.
- In addition, each state has statutes speaking to the discretion of the state DOI to (dis)approve insurance rates and increases.
- Typical state law criteria include:
 - must be actuarial justification for new rates
 - benefits must be reasonable in relationship to premiums charged
 - new policy must not contain provisions (including rates) that are unjust, unfair, inequitable, misleading or deceptive, or contrary to state laws
 - proposed rates may not be either excessive or inadequate
- Most of these terms are not defined.
- State laws uniformly give Commissioner wide discretion, and defer to regulators expertise.
- DOI decision reversible only under abuse of discretion or clearly erroneous filings.

VI. Disparate State Responses to Similar Rate Increase Filings



- Majority of states apply these statutes and regulations and work with insurers on implementation of rate increases, often over time.
- Some states have legislated or imposed regulatory limitations (percentages, amount, frequency, attained age, other) on LTC rate increases.
- A minority of states have refused to allow some or any LTC rate increases, notwithstanding data reflecting compliance with state statutory, regulatory, and actuarial requirements.
- This refusal creates issues for insurers and for other state regulators who are approving actuarially-justified rate increases.

VII. Individual State Objections



- States issuing non-actuarial based denials of rate increases have used various arguments that proposed increases:
 - are excessive
 - are not affordable
 - are not reasonable in relation to benefits
 - are not adequately documented and supported
 - will create shock lapses by (elderly) policyholders
 - are the result of faulty actuarial work at the time of original pricing and during prior rate increase requests
 - should have been rectified by prior rate increases granted
 - are unfair/inequitable to policyholders
 - constitute a deceptive trade practice
 - the insurer's actuarial assumptions keep changing and are not reliable
- In addition, states have asked for confidential economic data showing that:
 - the insurer has already sustained significant losses to date on the policy form
 - the insurer is sharing some of the projected lifetime loss under the policy form

VII. Insurers' Efforts to Respond



- Various landing spots/options to downgrade coverage/ retain premiums
- Contingent non-forfeiture benefits
- Issue age/attained age rate increase moratoriums
- Nationwide evidence of minimal policy surrenders/no shock lapse
- Enhanced communications with policyholders before/ during/after rate increases
- Spreading the increases over time

In the past year, insurers have considered less conventional options with persistently recalcitrant states:

- potential rate hearing/appeal of DOI's decision
- withdrawal from new LTC policy sales in the state

VIII. Continuing Litigation Challenges: Policyholder Attacks on Rate Increases



In the Courts

- Policyholder class actions filed over the past 20 years have challenged the original pricing and rate increases, with mixed results.
- Some insurers have settled; some have fought (and often won).
- These lawsuits claim breach of contract, fraud, intentional/negligent (i) underpricing and (ii) misrepresentations.

VIII. Continuing Litigation Challenges: Policyholder Attacks on Rate Increases



Insurers have done well on appeals.

- *Rakes v. Life Investors*, 582 F.3d 886 (8th Cir. 2009):

"Where the plaintiffs have provided citations, the documents and testimony support Life Investors' position that it priced the policies using appropriate lapse rates . . ."

"The plaintiffs were not guaranteed a level premium for life; they were guaranteed the right to renew their LTC insurance policies . . . Life Investors disclosed its right to change premium rates on the first page of its policies, in boldface, capital letters."

- *Alvarez v. Ins. Co. of N. Am.*, 2008 WL 647784 (3d Cir. 2008):

"The policy was guaranteed renewable, not guaranteed affordable. . . . This guaranteed the right to renew the policy, and did not imply that premiums would never increase, or that they would only increase by a limited, affordable amount."

VIII. Litigation Challenges (continued)



- *Flint v. Met Life*, 2011 WL 7463938 (6th Cir. 2011):
 - Court affirmed dismissal based on policy language and the filed rate doctrine.
 - Other trial courts have also dismissed judicial challenges to LTC rates based on the filed rate doctrine.
 - Some courts have and some complaints have focused on elderly policyholders as a vulnerable class. See *Milburn*.

Administrative Hearings

- *Hatfield v. Kentucky Dep't. of Insurance* (2010):
 - KY policyholders and the KY Retired Teacher's Union brought an action to challenge the KY DOI's approval of LTC rate increases.
 - The KY DOI and Transamerica prevailed after a four day hearing before a KY administrative hearing officer, who issued a 60 page decision upholding the rate increases.
- *Genworth on behalf of Met Life Insurance Company, USA v. MN Department of Commerce* (2014)
 - Genworth filed an administrative appeal on behalf of Met Life of the MN DOC's denial of rate increase requests.

Discussion

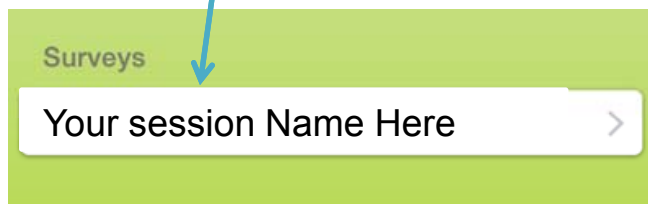
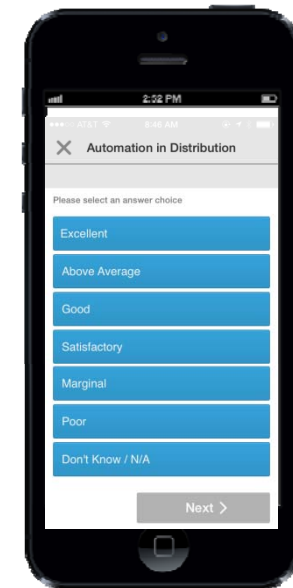
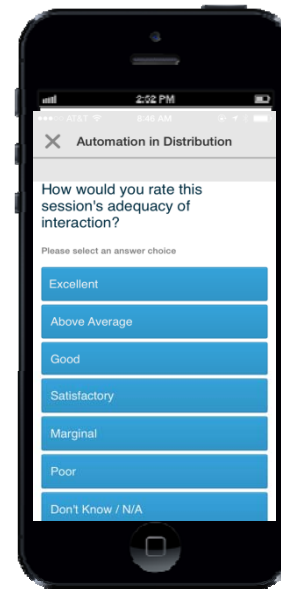
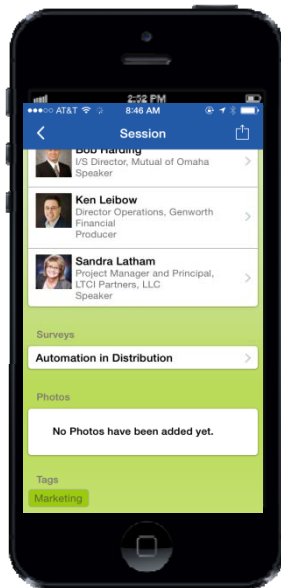
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