Legal, Compliance & Regulatory

Navigating Regulatory Issues

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ILTCI

Disclaimer

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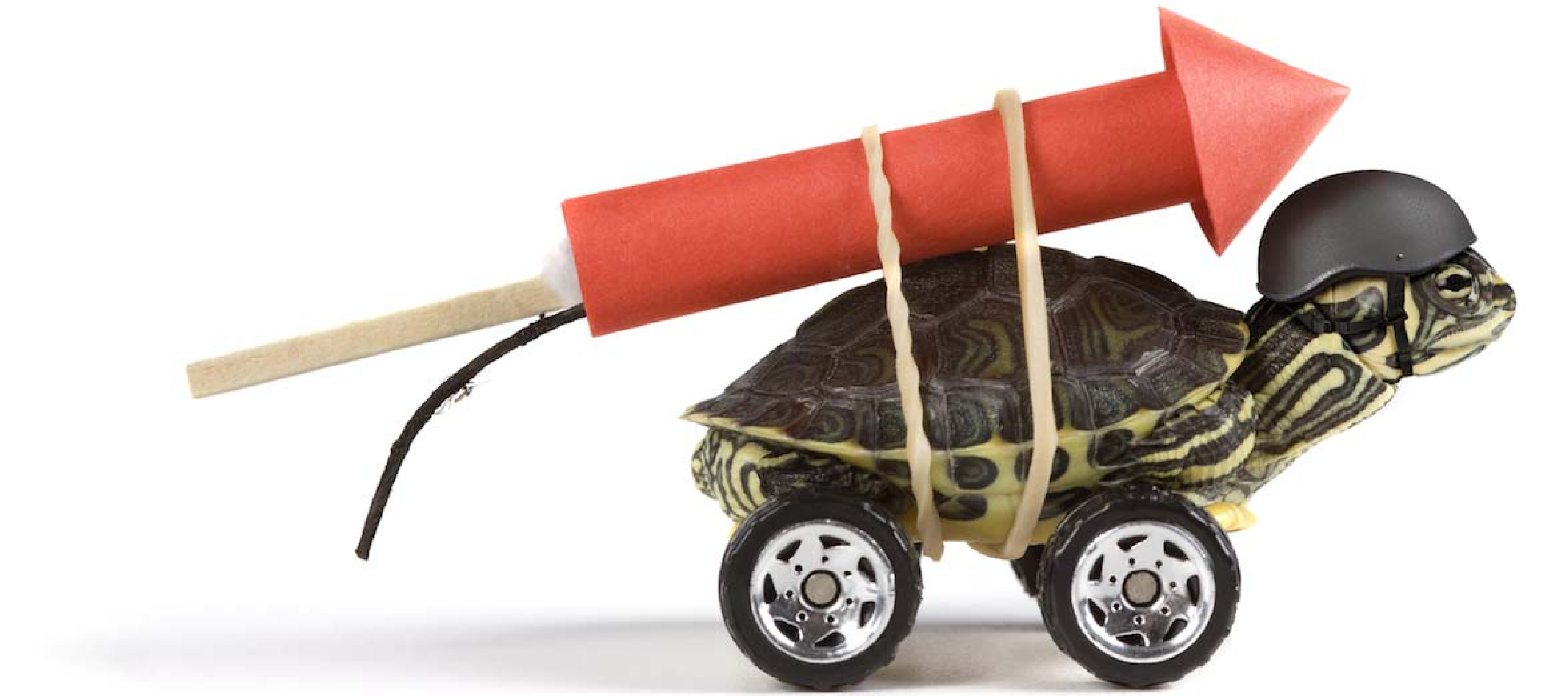
Overview

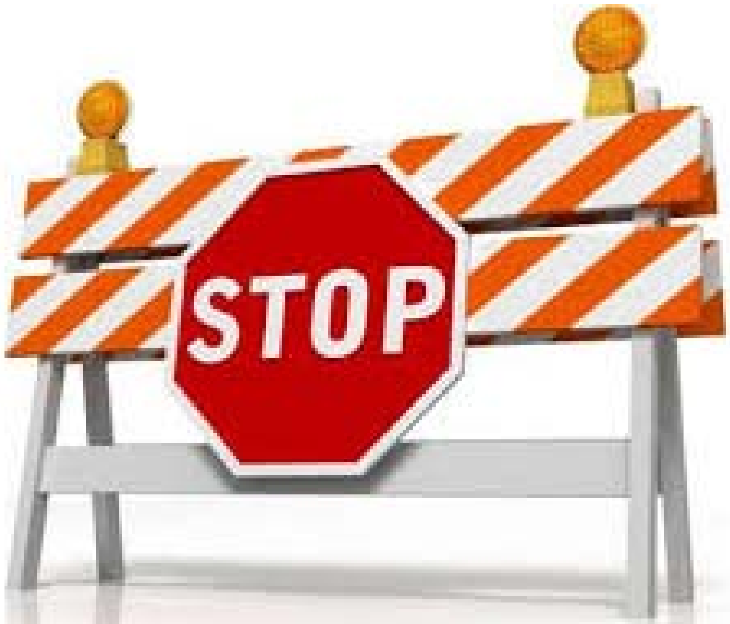
- Product life cycle
  - Development
  - Marketing and Sales Practices
  - Rate Increases
  - Claims
  - Litigation

Product Development

Innovate!



Roadblock to innovation?



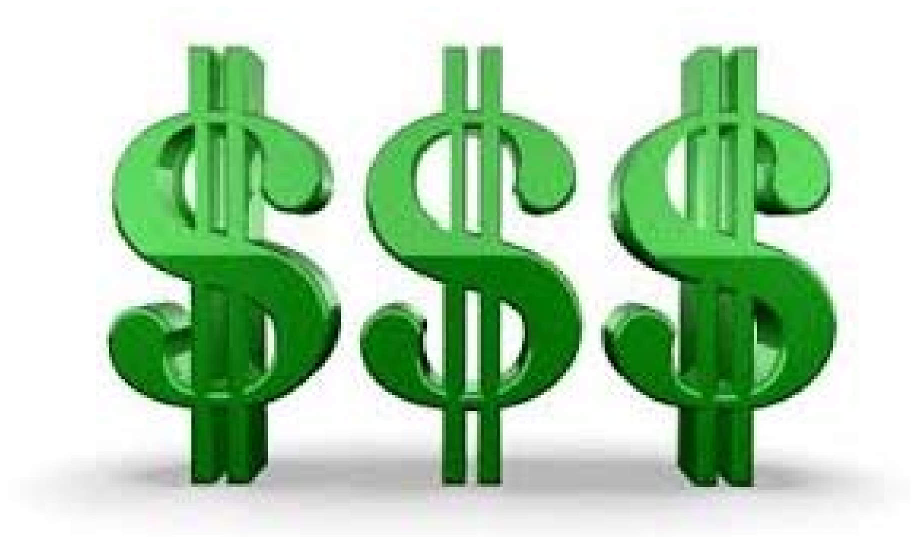
Compliance!

Product Development

- LTC subject to many regulatory requirements:
  - Form filing/approval
    - Coverage requirements
    - Eligibility criteria
    - Long arms
  - Rating/Underwriting
    - Rate approvals
    - Application questions, post claims underwriting
  - Marketing/Sales practices
    - Suitability, replacements, excess insurance
    - Filing/approval of advertisements

Product Development

Motivation for innovation?



Cost!

(to insurers and consumers)

Product Development

- Innovation and Compliance do Mix!
  - Worksite sales
  - Combination products

Product Development

- Combination Products
  - Life Acceleration
    - NAIC Model: “A condition that requires continuous confinement in an eligible institution as defined in the contract if the insured is expected to remain there for the rest of his or her life”
    - IIPRC:
      - More traditional chronic illness/ADL definition allowed
      - Must also have a terminal illness accelerated benefit rider

Product Development

- Accelerated Death Benefit (CA SB 281)
  - Rider or provision in a life insurance policy or annuity that provides a surrender benefit on an accelerated basis in the event that the owner, insured or annuitant meets "LTC" triggers
  - Triggers
  - Required provisions
  - Prohibitions
  - Filing and approval required

Product Development

- Accelerated Death Benefits (CA SB 281)
  - Marketing/Advertising prohibitions
  - Disclosures
  - Application questions
  - No post-claims underwriting
  - Free look

Product Development

- New York
  - Triggers for:
    - C Trigger: Continuous care for life due to chronic illness qualified under 101(g)(3)
    - D Trigger: Chronic illness under 7702(B)
    - E Trigger: Nursing home for 3 months, expect permanent
  - Must also have Terminal illness trigger (may be separate form)
  - Certification from tax counsel required (C&D)

Product Development

- Combination Products
  - Life/LTC Combos or Annuity/LTC Combos
    - Draw down cash value
    - Then LTC benefits kick in
  - Need to ensure compliance with Life or Annuity requirements and LTC requirements

IIPRC Standards as a Design Tool

- A good baseline even if you are not filing via the IIPRC (follow Model closely)
- Checklist
- Get these in early in product design phase
- Other core states

Marketing/Sales Practices

"Any product advertised, marketed or offered as long-term care insurance shall be subject to the provisions of this Act."

Marketing/Sales Practices

- Two levels of regulation
  - Advertisements of Accident and Sickness Insurance Regulation
  - LTC regulation

Marketing/Sales Practices

- Most states require filing of advertising
  - Exceptions: AZ (group), AK, IA, IL, MA, MS, NJ (non-assn),NY, RI, SC
  - Informational: CA (out of state group)
  - As required: CO, CT, DC, LA,MN, MO, ND,UT NE, NH, NJ (assn), OH, PA(other than mail order),RI, TN, WI, WV
  - File and Use (30 day): CA, DE,KS, MD, SD, MI (45 days),TX
  - File and Use (immediate): FL, VA
  - File for approval: All others

Marketing/Sales Practices

- IIRPC
  - Single, ongoing filing
- Retention requirements
  - 3 year retention requirement (NAIC)
  - 5 year (KY, SD)

Rebating: General

- All U.S. states prohibit (with limited exceptions) the practice of "rebating" in connection with the sale of insurance.
- The rebating prohibition applies to all kinds of insurance:

    Long-term Care Insurance

    Life and Health Insurance

    Property/Casualty, Title Insurance,

    Mortgage Insurance, Financial Guaranty

Rebating: General

- The statutes generally prohibit 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**."

Rebating: General

- The rebating prohibition is intended to:
  1. prohibit discrimination against similarly situated insureds, and
  2. protect the solvency of insurance companies (if rebating were permitted, smaller insurers might not be able to effectively compete with larger insurers that were able to offer larger/better rebates).

Rebating: General

- Prohibitions are directed at:

  insurance companies and insurance producers.

- In some states, such as New York, it is also unlawful for any person to "receive" a rebate in connection with the purchase of insurance (a policyholder or insured that receives a rebate could, in theory, be the subject of an insurance law violation).

Rebating: General

- Statutes generally prohibit the practice of rebating "directly or indirectly."
- Use of an intermediary (even if unaffiliated) to provide something of value to a policyholder or insured could also qualify as a rebate paid by the insurer.

Rebating: General

- Exceptions: (state specific)
  1. The “thing of value” is specified in the policy.
  2. *De Minimis* Exception - an article of merchandise (*i.e.*, a “keepsake”) or periodical subscription that does not exceed a *de minimis* value (usually $25). Cash is not permitted (even if less than $25) as the policyholder would be paying an unapproved rate (a lower rate than the filed rate).
  3. Wellness programs – but must be specified in the policy.

Rebating: California

- In November 1988, California voters repealed California's then existing rebating prohibition (§ 750) by passing Proposition 103.
- However, the California Department of Insurance interprets the repeal of § 750 as only permitting rebating of insurance commissions by insurance agents (*i.e.*, rebating of insurance premiums by insurers remains unlawful).

Rebating: Florida – Commission Rebates

- Allows agent to rebate commissions

(a) Must be available to all insureds in the same actuarial class.

(b) Need a rebating schedule filed by the agent with the insurer.

(c) The rebating schedule must be uniformly applied in that all insureds who purchase the same policy through the agent for the same amount of insurance receive the same percentage rebate.

Rebating: Florida – Commission Rebates

(d) Rebates must not be given if the insurer prohibits its agents from rebating commissions.

(e) The rebate schedule must be prominently displayed in public view.

(f) The age, sex, place of residence, race, nationality, ethnic origin, marital status, or occupation of the insured or location of the risk is not utilized.

Payments to Non-Licensees

"Positive" Commission States - "**An insurer or insurance producer may pay** or assign commissions, service fees, brokerages or other **valuable consideration** to an insurance agency or **to persons who do not sell, solicit or negotiate insurance** in this state, unless the payment would violate [insert appropriate reference to state law, i.e. citation to anti-rebating statute, if applicable]. ." (Emphasis added.)

Marketing/Sales Practices

Payments to Non-Licensees

"Negative" Commission" States -

"**An insurer or insurance producer shall not pay**, directly or indirectly, any commission, service fee, brokerage or other **valuable consideration** to any **person or entity for selling, soliciting or negotiating insurance** in this state, **unless** such person holds a valid license as required by law.

Payments to Non-Licensees

- Avoid Rebating - Payments to Non-Licensees who are also insureds/policyholders are rebates.

Payments to Non-Licensees

Referral Fee Statutes –

- Prohibit payments for acting as an insurance producer without a license.
- Permit "referral of a person to a licensed insurance agent or broker that does not include a discussion of specific insurance policy terms and conditions and where the compensation for referral is not based upon the purchase of insurance by such person."

Payments to Non-Licensees

Problematic States:

- Mississippi
- New Mexico
- Montana

LTC Insurance Compensation Limitations

- Long-term care insurance products are being primarily sold to the senior citizen market, a market that has been identified as being susceptible to abusive marketing practices.
- Compensation Limitations address the potential for marketing abuses resulting from large differences between first year premiums and renewal commissions.

LTC Insurance Compensation Limitations

Optional provision of the NAIC Long-Term Care Insurance Model Regulation

- Entitled “Permitted Compensation Arrangements”

LTC Insurance Compensation Limitations

1. The first year commission or other compensation may be no more than 200% of the commission or other compensation paid for selling the policy or certificate in the second year or period.
2. The commission or other compensation in subsequent (renewal) years must be the same as that provided in the second year or period and must be provided for a reasonable number of years.

LTC Insurance Compensation Limitations

3. No entity shall provide compensation to its agents or other producers greater than the renewal compensation payable by the replacing insurer on renewal policies.

LTC Insurance Compensation Limitations

- Limitations in:

  Alabama, California, Delaware, Indiana, Kentucky, Michigan, North Carolina, Nevada, New York, Pennsylvania, South Dakota and Wisconsin

LTC Rate Increase Limitations

General – Rates may not be "excessive," "inadequate" or "unfairly discriminatory."

- Excessive Rates – harm consumers
- Inadequate Rates – harm insurers (and consumers, indirectly)
- Unfairly Discriminatory Rates – are without actuarial or other legitimate justification

Rate Increase Limitations

- Several states have sought to impose rate caps, including: MD, NH, DC, CT and OR

Examples:

Maryland – "An insurer may not charge a renewal premium rate for a long-term care policy which exceeds by more than 15 percent any premium charged for the policy during the preceding 12 months."

COMAR 31.14.01.04

Rate Increase Limitations

New Hampshire – "The commissioner shall not approve any increase if the resultant increase results in a percentage increase for any policyholder that exceeds an amount as set forth below based on the policyholder's attained age: [sliding scale – "Maximum Permitted Increase" is lower for older policyholders]"

New Hampshire Insurance Regulation 3601.19

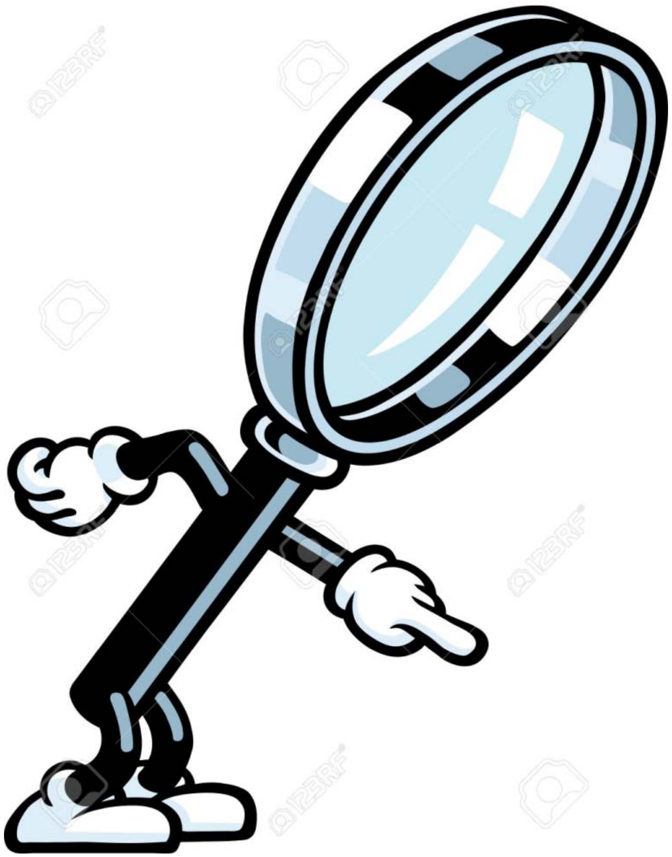
Rate Increase Limitations

DC – "Any approved increase of a magnitude in excess of a cumulative increase threshold of 10% shall be phased-in, and the insurer shall notify policyholders of the entire amount of the increase prior to implementing the increase."

Bulletin 03-PPI-005-11/24

Claims Examinations

How to handle…



REGULATORY SCRUTINY

Claims Examinations

- Commonly identified claims exam issues
  - Intake process
  - Duplicative, unnecessary forms and requests
  - Reasonable assistance
  - Delay/timely, diligent investigations
  - Eligibility determinations/re-certifications
  - Misrepresentation of policy provisions

Claims Examinations

- Commonly identified claims exams issues
  - Inadequate EOBs
  - Nonpayment of interest
  - Home health care (provider licensing, proof of payment)
  - Calculating Medicare offsets
  - Timeliness, accuracy of communications with claimants

Complaints

- Increase in LTC complaint activity
  - Due to rising rates
  - Often dealing with relative
- Mitigate with better communications
- Address quickly and thoroughly to avoid additional scrutiny

Bad Outcomes

- Risks of bad outcomes
  - Penalties/fines
  - Bad press
  - Administrative findings used by plaintiffs bar = increase in lawsuits, class actions
  - Increased inquiries and complaints
  - Interplay with pending rate filings

Filed Rate Doctrine

"The filed rate doctrine upholds the validity of rates approved by a regulatory authority and is often applied to bar claims implicating authorized rates."

- Prof. Vonda Mallicoat Laughlin

Filed Rate doctrine

Total Jurisdictions that have adopted the Filed Rate Doctrine: 32

- Adoption with express application to state Insurance Regulation (either by state court, Federal Court predicting state law, or by statute): 25
- Adoption with application to other heavily state-regulated entities (not yet expressly extended to the Insurance industry):7

Filed Rate doctrine

- Total Jurisdictions that have not yet considered the Filed Rate Doctrine, either in regard to Insurance, or other heavily-regulated industries: 17
- Total Jurisdictions where current case law renders future application of the Filed Rate Doctrine questionable: 1
- Total Jurisdictions which have rejected the Filed Rate Doctrine in the Insurance industry context: 1

Questions

Questions?

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