Testimony of Mary Beth Senkewicz
Deputy Insurance Commissioner
Life & Health
Florida Office of Insurance Regulation

On behalf of:
The National Association of Insurance Commissioners

Long-Term Care Insurance: An Evolving Industry

Before the
Senate Special Committee on Aging
and the
Senate Committee on Homeland Security and Government Affairs,
Subcommittee on Oversight of Government Management,
The Federal Workforce, and the District of Columbia

October 14, 2009

Introduction:

Good afternoon Chairman Kohl, Chairman Akaka, Ranking Member Corker, Ranking Member Voinovich, and Members of both Committees. My name is Mary Beth Senkewicz, and I am the Deputy Insurance Commissioner for Life and Health for the Florida Office of Insurance Regulation. I also serve as Chair of the National Association of Insurance Commissioners' (NAIC) Senior Issues Task Force.

Today I am testifying on behalf of the NAIC, which represents chief insurance regulators from the 50 states, the District of Columbia, and five U.S. territories. However, I will also focus on the experience of the State of Florida, which has the oldest population in the United States. Florida has also implemented some of the most stringent consumer protection laws in the nation for seniors who purchase private long-term care insurance.

Thank you for inviting me to discuss the collective experience of the NAIC and its member states about the regulation of private long-term care insurance in the United States, which is important as you review recent developments in the Federal Long-Term Care Insurance Program (FLTICP). Long-term care insurance is a relatively new product which has posed unique challenges for state insurance regulators as well as for consumers. The NAIC and its member states have worked diligently to refine our regulatory approach to meet these challenges.

I would also like to thank the Special Committee on Aging for your continued focus on improving the long-term care insurance market. State Insurance Commissioners were pleased to testify at an Aging Committee hearing earlier this year to examine the value of long-term care insurance. And the NAIC was pleased to work with Chairman Kohl on S. 1177, the Confidence in Long-Term Care Insurance Act of 2009, which was introduced earlier this year and submitted as an amendment to health reform legislation in the Finance Committee by Senator Ron Wyden. Since the bill was originally introduced, Chairman Kohl was very receptive to incorporating suggestions made by state regulators and we appreciate this collaboration to improve the legislation. The NAIC strongly supports this bill, as amended, and believes that enactment of the consumer protections called for by the legislation will make important strides in improving the long-term care insurance market place.

Background:

As our population ages, our nation faces an increasing challenge of how to pay for long-term care services. These services can be very expensive: the average cost of a nursing home is over $74,000 a year today, and medical inflation is rising faster than incomes. While some individuals can afford to put aside money to pay for their own long-term care, others must rely on Medicaid.

A healthy long-term care insurance market will help alleviate pressure on state and federal programs. Currently, private long-term care insurance policies finance approximately 10% of the total long-term care services utilized in this country, but this is changing. In the past decade the market has grown from covering less than three million lives to now covering more than seven million lives. The market has grown from a premium volume of $16 billion to over $110 billion in 2007.

Individuals typically purchase long-term care insurance policies at a younger age to offset the anticipated costs of long-term care expenses in the future. Unlike most health-related insurance, this product is meant to mitigate expenses that may not occur for another 15-30 years. The initial long-term care products were developed in the 1960s following the creation of the Medicare program in 1965. These initial policies were intended to supplement payment for the primary form of long-term care at that time: nursing homes.

The long-term care insurance policies we see today have evolved significantly. In the 1980s, we observed the development of stand-alone nursing home policies. Over time, these policies were no longer tied to Medicare coverage, but instead were triggered by the insured's inability to perform defined activities of daily living (ADLs) and cognitive impairment. These policies now incorporate a myriad of long-term care service alternatives including home health care, respite care, hospice care, personal care in the home, services provided in assisted living facilities, adult day care centers and other community facilities. In addition, we have observed the emergence of group long-term care policies, the most notable being the Federal Long-Term Care Insurance Program.

State Regulation and the NAIC Model Regulation:

Long-term care insurance has been a challenging product to regulate. The NAIC and its member states have worked to protect consumers by enacting protections designed to keep abreast of the changes in product design and to address problems encountered in the marketplace. In 1987, the NAIC adopted the Long-Term Care Insurance Model Act followed by the Long Term Care

Insurance Model Regulation in 1988. These models were adopted to assist states in developing a regulatory structure for the oversight of long-term care insurance. Federal law subsequently required that consumer protections contained in the NAIC models be applied to tax-qualified long-term care insurance plans. Since then we have made numerous improvements to the models to address the unique challenges in this market – including rate stability, suitability, loss ratio requirements, consumer disclosures, and other critical consumer protections.

Because it is a relatively new product, long-term care insurance policies have limited accumulated claims experience. During the early years of this product, state regulators discovered that many companies were under-pricing long-term care policies due to faulty assumptions and data, particularly as it related to lapse rates and future anticipated claims. When a company's premiums are too low to cover claims, a company's solvency, or ability to pay claims, is threatened and the company must increase premiums.

In the 1990s, state regulators witnessed a period of adjustment in the marketplace as companies refined their assumptions and adjusted their premiums accordingly. In Florida and in other states, we saw companies impose significant rate increases. One result was that many policyholders could not afford these new premiums and allowed their policies to lapse.

Although companies need to charge sufficient premiums to remain solvent and pay claims, state regulators believe that consumers must be treated fairly in the pricing of these policies. Insurers must charge consumers a higher initial rate to limit potential future increases, and ensure rate stability.

To prevent the continuation of sizeable rate increases and to mitigate the need for future rate increases, the NAIC developed and adopted rate stabilization standards in 2000 as part of revisions to the NAIC LongTerm Care Insurance Model Regulation. In addition to concerns about the rate increases themselves, regulators wanted to ensure the potential for future rate increases was adequately disclosed to consumers. As a result, the NAIC added supplemental requirements for consumer disclosures to the Long Term Care Insurance Model Regulation in conjunction with the rate stability provisions.

These rate stability standards, which were adopted by Florida in 2003, also required greater disclosure to the consumer, including the provision of a ten-year rate increase history to prospective policyholders that allows consumers to make a more informed decision. The standards require company assurances that rates are sufficient to pay anticipated costs under moderately adverse experience; it also requires a further assurance that rates are reasonable to sustain the coverage during the life of the policyholder.

Another provision of the standards to address initial under-pricing of policies pertained to minimum loss ratio requirements. Prior to 2000, long-term care insurance companies were required to meet a minimum loss ratio requirement of 60% -- meaning that 60% of the premium had to go towards payment of claims. In 2000, the NAIC changed this requirement to 58% of the original premiums filed. However, if the company increased rates, it would then need to meet an 85% loss ratio. This creates a strong disincentive for companies to under-price their products initially simply to gain market share.

Following each rate increase, the company is required to file its subsequent experience with the Commissioner for three years. If the increase appears excessive, the Commissioner may require the company to reduce premiums or adopt other measures, such as reducing its administrative costs to minimize the cost to policyholders. If premiums rise above a given level for a majority of policyholders based on their age, the company is required to file a plan for improved administration and claims processing or demonstrate that appropriate claims processing is in effect.

If the Commissioner believes that a rising rate spiral exists, he may require the company to offer policyholders affected by the premium increase to replace their existing policies (without underwriting) with comparable policies currently being sold. This allows policyholders trapped in a rising rate spiral to switch to a more stable policy. Finally, if the Commissioner determines that a company has persistently filed inadequate initial premium rates, the Commissioner may ban the company from the long-term care insurance marketplace for up to five years.

Following the adoption of these provisions, states experienced a decline in rate increases. However, these NAIC standards are applied prospectively, which means they do not address policies sold before the standards were in place.

As you see, the NAIC and states have worked diligently to regulate this demanding product effectively. The consumer protections and regulatory requirements work together to provide stability for the consumer. The NAIC continues to monitor this marketplace closely and to refine our regulatory approach. In fact, the NAIC recently adopted new external review standards for claims denials that will be an important new consumer protection.

The State of Florida has been even more aggressive in adopting regulations to protect seniors. In addition to the protections provided by the NAIC model acts, Florida enhanced rate pooling by defining similar benefits and articulating limits on the relationship between the new business and renewal rates, which helped reduce death spirals. Florida also requires pooling across affiliates. Florida also has an additional contingent nonforfeiture benefit for limited pay long-term care insurance policies that are more stringent than the NAIC model law. This revision recognized the impact of the greater amounts of premiums received in early policy years and provided significantly higher nonforfeiture benefits than the option that applies to lifetime pay plans. Insurers in Florida are required to offer a paid-up policy option should the policy lapse or the policyholder is unable to pay for rate increases.

Other Efforts:

With the complicated nature of the long-term care insurance product, consumer education is critical. Consumers often have a difficult time understanding how the product works, when and whether they should purchase it, and how coverage is accessed and premiums are determined.

To address this concern, the NAIC has developed a Long-Term Care Buyer's Guide, with products and tips for purchasing these products. This Buyer's Guide is an extensive explanation of the various aspects of the product. Most states require this guide to be provided to consumers by plans and producers.

The adoption of S. 1177 as amended would be another important tool to strengthen consumer protections for long-term care policyholders. This legislation augments state laws and model regulations developed by the NAIC. The bill would update federal consumer protection standards and institute a formal process for incorporating new NAIC-adopted protections in tax-qualified and Partnership plans.

Conclusion:

State regulators continue to vigilantly monitor the long-term care insurance marketplace. The NAIC and states have adopted numerous consumer protections and regulatory requirements in our model regulation to provide stability for the consumer. As regulators, companies, consumers, and policymakers gain more experience with this product, the regulation will need to continually evolve to protect consumers. We look forward to continuing our partnership with Congress to achieve this goal.