Testimony of the

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Regarding:

Long Term Care Insurance:

Are Consumers Protected for the Long Term?

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Introduction

I would like to thank Chairman Stupak, Ranking Member Shimkus and the other members of the Subcommittee on Oversight and Investigations of the Committee on Energy and Commerce for allowing me to testify today. My name is Eric Dinallo and I am the New York Insurance Superintendent.

New York can provide a model to other states for creating a more stable long term care insurance market with robust consumer protections.

New York strongly supports the use of both traditional long term care insurance and the New York State Partnership for Long Term Care Program to help consumers avoid impoverishment and to provide a funding source other than Medicaid to pay for expensive long term care services. Because the long term care insurance market is relatively young, however, there is a need for strict regulatory oversight that provides strong consumer protections, as well as a need to promote long term care insurance to increase enrollment.

New York is a leader in consumer protection. The New York State Insurance Department (NYSID) strictly regulates premium rates, solvency and policy forms for both Partnership and non-Partnership policies. The New York State Department of Health (NYDOH) oversees adjudication of Partnership claims, as well as marketing and the Medicaid aspect of Partnership policies. New York has not seen widespread problems in these areas, but increased claims activity may bring with it increased problems. New York's strict regulatory oversight attempts to anticipate potential problems to protect consumers as the long term care insurance market develops.

New York also recognizes the need to promote long term care insurance to increase enrollment. The New York State Partnership currently will help New York State Medicaid avoid, on average, three nursing home months per policyholder, which would have otherwise been the responsibility of the Medicaid program in the absence of the New York State Partnership. Increased enrollment will increase Medicaid savings. New York has devoted significant resources to promoting use of Partnership policies, establishing offices in every county to conduct individualized counseling to consumers, as well as public outreach and information sessions.

Here, let me review the general background of long term care insurance in New York State, the basic components of New York State Partnership policies, New York's regulatory oversight of long term care insurance, and various proposals by New York to expand and improve long term care insurance.

I. General Background of Long Term Care Insurance in New York State

Prior to 1986, long term care insurance was largely non-existent in New York State. According to the insurance industry, expensive nursing home stays, home care and similar long term care services were uninsurable risks. The New York State legislature, facing a large proportion of aging New Yorkers and realizing that Medicaid was the chief financing mechanism for long term care services, enacted legislation in 1986 to encourage the insurance industry to write long term care insurance in New York State. Long term care insurance would help consumers avoid impoverishment when faced with expensive nursing home and other long term care costs, and it would help protect State funds by providing an alternative to Medicaid.

In the late 1980s, the Robert Wood Johnson Foundation supported the development of the model Partnership Program. New York, along with California, Connecticut and Indiana joined the demonstration project. In 1993, New York implemented the New York State Partnership for

Long Term Care Program. (New York enacted enabling legislation in 1989, but it took four years to obtain the requisite federal waivers to amend the state Medicaid plan before implementing the Partnership Program). The original Partnership Program allows Partnership insureds to receive Medicaid benefits when their Partnership benefits are exhausted, while still retaining all of their assets, thereby avoiding the "spend-down" requirements for Medicaid eligibility. In 2005, New York allowed long term care insurers to expand products available under the Partnership to include other product designs, such as "dollar-for-dollar" asset protection, whereby the insured's assets are protected to the extent of the benefits paid under the Partnership policy.

Generally, Partnership policies offer more comprehensive benefits, but fewer coverage options, in order to protect the viability of the New York State Medicaid program. Non-Partnership policies offer a greater variety of insurance coverage options since non-Partnership coverage has no guarantee of "spend down" protection upon exhaustion of insurance coverage.

The New York State Partnership Program differs from the Partnership programs implemented recently under the Deficit Reduction Act of 2005. That Act allows the New York State Partnership Program to retain its current status as one of the four original Partnership states. As such, New York can offer full asset protection under Partnership policies, while the "non-grandfathered" states must offer only dollar for dollar asset protection.

Since non-Partnership and Partnership policies were first authorized, New York State has experienced a slow but steady growth in the number of long term care insurers and insureds. As of December 31, 2006, nineteen insurers marketed traditional long term care insurance in New York State, with nearly 350,000 insureds (Partnership and non-Partnership). Five insurers currently sell Partnership long term care insurance in New York. 81,060 policyholders have purchased Partnership policies, and there are currently 62,718 active Partnership policyholders.

II. New York State Partnership for Long Term Care Insurance

Under the original Partnership Program implemented in 1993, NYSID promulgated regulations establishing minimum benefit standards under the program. The regulations require that all Partnership policies provide the following benefits:

- Coverage of all levels of care in a nursing home. In 1993, the minimum daily benefit for care in a nursing home was $100 per day. In 2008, the minimum daily benefit for care in a nursing home is $208.
- Inflation protection must be included so that benefits increase by at least 5%, compounded annually, for life. Inflation protection benefits are not mandatory if the policy is purchased at age 80 or over.
- Home care coverage must be provided in an amount that is 50% of the minimum required nursing home care benefit. Home care benefits are payable when services are provided in the insured's home, in a group setting such as an adult day care center or where human assistance is needed to aid the insured in necessary travel, such as to a physician's office. The home care benefit must cover skilled nursing care, home health care, personal care, adult day care and assisted living care.
- Respite care must be provided for at least 14 days annually and must be payable at the nursing home daily benefit amount.
- Alternate care benefits must be covered when the insured is in a hospital awaiting the availability of nursing home or home care services. Benefit payments must be in the amount of the nursing home daily benefit.
- Waiting periods of more than 100 days are not permitted.

The benefits and strict standards are necessary to protect the viability of the New York State Medicaid program, which is legally bound to provide benefits on a special eligibility basis after the benefits of the Partnership policy are exhausted.

In 2005, New York State amended its regulations to allow dollar for dollar asset protection. This allows Partnership insureds, once the Partnership policy benefits are exhausted, to protect assets equal to the dollar amount of the benefits paid under the Partnership policy. The 2005 amendments also allowed consumers to choose from a greater number of minimum benefit standard designs under the Partnership Program (including the original product design), as follows:

- A lifetime maximum nursing home benefit of at least 1½ or 3 years providing coverage of all levels of care in a nursing home of at least $208 per day for 2008, and increasing by 5% compounded annually. If the policy is purchased at age 80 or older, the 5% compound annual increase is optional. The insured must be allowed to substitute home care benefits on the basis of two home care days for one nursing home day. Home care coverage must be provided in an amount that is 50% of the minimum required nursing home care benefit ($104 per day in 2008) and is payable when services are provided in the insured's home, in a group setting such as an adult day care center, or where human assistance is needed to aid the insured in necessary travel, such as to a physician's office. The home care benefit must cover skilled nursing care, home health care, personal care, adult day care, and assisted living care.
- A lifetime maximum nursing home benefit of at least 2 or 4 years providing coverage of all levels of care in a nursing home of at least $208 per day for 2008, and increasing by 5% compounded annually. If the policy is purchased at age 80 or older, the

5% compound annual increase is optional. The home care daily benefit amounts must be at least $208 for 2008, and increasing by 5% compounded annually. (Note that in these policies the home care daily benefit amount is the same as the nursing home amount rather than 50% of the nursing home amount as described in the first design). The nursing home benefit must provide coverage of all levels of care in a nursing home. Assisted living care in a facility must be covered for nursing care, maintenance or personal care, therapy services and room and board accommodations. The home care benefit must provide coverage for services provided in the insured's home, in a group setting such as an adult day care center, or where human assistance is needed to aid the insured in necessary travel, such as to a physician's office. The home care benefit must cover skilled nursing care, home health care, personal care and assisted living care.

Both of these Partnership policy designs must also provide bed reservation benefits, respite care, hospice care, care management and alternate care. Waiting periods for the 1½- or 2-year design cannot exceed 60 days, and waiting periods for the 3- or 4-year design cannot exceed 100 days. Certain other optional benefits are available depending on the design chosen.

Total asset protection from the Medicaid program is only available with Partnership policies providing at least 3 or 4 years of benefits. Upon exhaustion of the 3- or 4-year benefit design, the insured is able to apply for Medicaid and protect all of their assets. Partnership policies providing at least one and a half or two years of benefits offer partial asset protection on a dollar-for-dollar basis .

For the one and a half, two, three and four year designs, income (in excess of certain basic income amounts Medicaid allows everyone to keep) must be contributed toward the cost of long term care services.

III. New York's Regulation of Long Term Care Insurance

New York plays a dual role in its oversight of long term care insurance: consumer protection and promotion of long term care insurance.

A. Consumer Protection

New York's regulation of long term care insurance provides some of the strongest consumer protections in the country. New York performs four main regulatory functions, all of which help protect consumers: (1) claims oversight, (2) prior approval of premium rates, (3) ensuring solvency of insurers and (4) prior approval of policy forms and marketing materials.

1. Claims Oversight

New York has three main tools to oversee claims adjudication: review of all denied Partnership claims, market conduct exams, and response to consumer complaints (the latter two apply to both Partnership and non-Partnership insurance).

NYDOH reviews every claim denied by Partnership insurers. Staff reviews and analyzes the denials and, where appropriate, contacts the insured so they understand the denial. The New York Partnership Program is then required to link the insured to an independent assessor if the denial was based on the health and long term care needs of the insured to determine whether the long term care benefits were triggered under the policy. (Contractual disputes are handled by NYSID.) This review allows NYDOH a unique ability to monitor the long term care insurance market and to become of aware of potential coverage and adjudication issues. New York has not seen a great number of problems in this area and has been able to resolve problems when they occur.

NYSID staff perform market conduct exams on a regular basis and on an "as needed" basis. One of the purposes of these market conduct exams is to review the claims payment practices of insurers. While our examiners have not found widespread issues relating to inappropriate market conduct, they have instances of incomplete Explanation of Benefits statements and denial letters, untimely claims denials (sent to member beyond 30-day requirement), and failure to maintain documentation relative to utilization review determination communications. While recent headlines have brought to light improper activity by some long term care insurers, many long term care insurers have New York-only subsidiaries, which may have resulted in New York having market conduct experience different than other states.

NYSID also employs examiners who respond to and investigate individual complaints from insureds or providers. The issues may include, but are not limited to, sales and marketing practices, claims payment concerns, and premium rate matters. NYSID received approximately 270 complaints since 2005, but most of the complaints did not show inappropriate insurer action.

2. <u>Prior Approval of Premium Rates</u>

NYSID approves initial premium rates and rate increases before they go into effect. The reviews are conducted by staff actuaries. In reviewing rate submissions, NYSID actuaries ensure that the initial premium rate is self supporting based upon reasonable actuarial assumptions and generally accepted actuarial principles, and that the initial rate be set to reduce the likelihood of future rate increases that could drive away healthier policyholders, possibly leading to an anti-selective spiral of deteriorating experience that can jeopardize solvency. Likewise, NYSID's strict oversight of premium increases helps ensure that premiums remain relatively stable throughout the life of a policy.

NYSID is concerned that long term care projections are still imprecise. Long term care insurance became popular only in the last 15 years and credible experience on claim frequency and severity is lacking. It is critically important to have industry-based data, and the Department is working with the NAIC toward this end.

3. Solvency

NYSID reviews solvency to ensure that an insurer is able to pay future claims. For benefits to be paid over the very long term, companies must be healthy, so the role of the regulator is to strike an appropriate balance between the level of reserves, the affordability of coverage, and the amount of profits that can be realized before all benefit obligations have been satisfied.

NYSID periodically reviews the actuarial assumptions and methods underlying the reserves and requires that such reserves be actuarially sound based on the general criteria developed by NYSID actuaries. These criteria are expected to be adjusted as warranted by changing circumstances, such as changes in claims levels or prevailing interest rates.

4. Prior Approval of Policy Forms; Review of Marketing Materials

NYSID staff attorneys review and approve policy form language to ensure compliance with relevant statutes and regulations governing long term care insurance before those policies are delivered to insureds. NYSID attorneys also review any changes or riders to such policy forms.

NYDOH prior approves all materials used by insurers, brokers and agents to market Partnership policies to ensure such materials not deceptive or misleading and comply with applicable law. NYSID reviews marketing materials during its market conduct examination and in response to consumer complaints.

B. Promotion of Long Term Care Insurance

New York expends significant resources to promote innovative products and encourages the purchase of long term care insurance as an alternative to sole reliance on Medicaid to meet nursing home and other expenses. The New York State Legislature appropriated $1.75 million in 2007-2008 and $1.92 million in 2008-2009 for the New York State Long Term Care Insurance and Education and Outreach Program, a media and outreach campaign coordinated by the New York State Partnership Program that conducts regular informational sessions for consumer groups, service centers and business groups. In addition, the New York State Office for the Aging has established in every county a long term care resource center where consumers can get individualized unbiased counseling on long term care insurance.

In addition to the Partnership program, New York offers a 20% New York State income tax credit for premiums paid on federally tax-qualified long term care policies. New York's other proposals for increased enrollment and innovative products are included in the following section.

IV. Proposals for Expanding and Improving Long Term Care Insurance.

New York has developed various proposals to expand and improve long term care insurance.

A. <u>Governor's 2008 Legislative Proposals</u>

In 2008, Governor Paterson proposed the following legislative initiatives.

- Allow income protection, as well as asset protection, for New York State Partnership plans.
- Require external appeals for long term care insurance. This would allow third parties who are not employed by the long term care insurer to review claims denials to ensure objectivity and compliance with applicable laws.
- Require long term care insurers to comply with New York's Prompt Pay Law, which requires insurers to pay claims within 45 days, or to deny or pend claims within 30 days.
- Expand the focus of the New York State Long Term Care Insurance and Education and Outreach Program beyond insurance.

B. <u>NYSID 2005 Report to Governor and Legislature</u>

In 2005, the New York Legislature commissioned NYSID to prepare a report regarding long term care options in New York. As part of that study, NYSID made various recommendations to increase consumer knowledge and awareness, allow product choice, and encourage the Federal Government to review the Internal Revenue Code. Our specific proposals included the following.

- Increase consumer knowledge and awareness.

  - Intensify consumer education;

  - Encourage consumers to purchase coverage at younger ages;

  - Increase consumer awareness of 20% New York State tax credit.
- Allow product choice. New York's current regulatory structure sets minimum

standards for long term care insurance contracts and permits carriers to develop a wide range of products at a wide range of benefit levels. This flexibility fosters necessary innovation, while ensuring adequate consumer protections.

- Encourage and/or require insurers to offer limited policies (such as nursing home only and home care only policies) and to make available products with minimum benefit amounts and shortened benefit periods. Care should be given to ensure full consumer protections are included in such policies;

- Encourage or incentivize the development of combined products, such as combining long term care policies with disability income coverage or life insurance coverage;

- Stimulate the group long term care insurance market and educate employers;

● Encourage the Federal Government to review the Internal Revenue Code to create further tax incentives for consumers to enroll in long term care policies.

V. Summary

New York strongly supports the use of traditional long term care insurance and the New York State Partnership for Long Term Care to protect consumers from impoverishment while minimizing reliance on Medicaid to pay for long term care services. Because the long term care insurance market is relatively young, there is a strong need to protect consumers and promote increased enrollment in long term care products.

New York provides some of the strictest regulation in the country in the following areas to protect consumers purchasing long term insurance: (1) claims oversight, (2) prior approval of rates, (3) solvency and (4) prior approval of policy forms and marketing materials. Strong regulatory oversight with ensure a stable long term care insurance market.

New York also expends significant resources to promote the sale of long term care insurance. Increased enrollment will increase Medicaid savings. For instance, the New York State Partnership currently will help New York State Medicaid avoid, on average, three nursing home months per policyholder, which would have otherwise been the responsibility of the Medicaid program in the absence of the New York State Partnership. Outreach programs like those conducted by the New York State Office for the Aging will help increase sale of long term care policies.

New York can provide a model for other states to create better long term care insurance market with robust consumer protections, which can provide greater Medicaid savings.