

Testimony of Washington State Insurance Commissioner, Mike Kreidler

**Before the House Energy and Commerce Committee
Subcommittee on Oversight and Investigations**

**July 24, 2008
10:00 AM**

Good morning Chairman Stupak, Ranking Member Shimkus, and members of the Committee. Thank you for the opportunity to testify today on the issue of whether long-term care insurance consumers are protected for the long-term. My name is Mike Kreidler, and I am the Insurance Commissioner for the State of Washington and a former member of Congress. I am testifying today on behalf of Washington State as it is my belief that our experience in regulating long-term care insurance and the lessons learned in our state over the past 22 years will be helpful to you as you plot the course for future regulation of this product.

My primary mission as an insurance regulator is consumer protection. It is my duty and the duty of my office to make sure that policyholders are treated fairly. And if they're not, we have laws in place to hold the insurance companies accountable. At the same time, it is critically important that the insurance companies we oversee remain financially sound in order to pay the claims of the consumers we protect. The importance of this crucial oversight can not be understated as this Committee focuses on the problems related to the cost of long-term care insurance and the impact of rate increases on consumers.

Washington state's experiences with long-term care insurance regulation

In the mid 1980's, Washington State was on the cutting edge of regulating long-term care insurance. Our public policymakers recognized that products being marketed as "Skilled Nursing Facility Insurance" were woefully inadequate and failed to provide benefits for custodial long-term care. Consumers often did not realize until it was too late, that benefit limitations or "gatekeepers" such as prior hospitalization clauses and requirements that the benefits were only for "skilled" care meant that most claims submitted for custodial services would not be paid under those policies.

As a result of these problems, the Washington State Legislature passed comprehensive laws in 1986 to govern the content and sales practices of long-term care insurance products. The laws and rules were adopted a year before the NAIC model Act and Rule and although there were similarities between the two sets of laws in many areas, there were some differences. In particular, Washington's laws differed in the area of rating requirements and permitted exclusions. At the time our laws were developed, they were considered progressive with strong consumer protections. We put into place stringent rating requirements and the products and rates were reviewed by individuals with expertise in the area of long-term care services and the delivery system as they existed in 1986. Exclusions for all mental illnesses, not just "organic" brain disorders, were prohibited. Inappropriate sales to low-income individuals who were eligible for Medicaid were prohibited. Companies could not condition the receipt of nursing home care on a three-day prior hospitalization.

In spite of all of this good work, the public policymakers never imagined how the long-term care service delivery system would evolve over the next 22 years and how consumers would respond to this relatively new product. In addition, the remarkable period of low interest rates of the '90s and advances in health care that prolonged the life of many seniors all influenced the price of long-term care insurance products.

Given the theme of today's hearing, I'll address some of the lessons learned in our state with the hope that you will learn from our past to inform the future of long-term care insurance regulation.

Premium Price Increases for Long-term Care Insurance:

The majority of consumer complaints my office receives about long-term care insurance are about the double-digit rate increase they receive on products they purchased in the late '80s and early to mid '90s. Consumers who receive these double-digit rate increases every few years do not understand how the rate increases could be justified.

Unfortunately, many can no longer afford the premiums.

Adding to their frustration, consumers often misunderstand the level of authority my office has over long-term care insurance rates. Many believe that my office has the authority to either "set rates" or disapprove rate increases even if the rate increase is justified. When faced with repeat double-digit increases, they do not want to hear how rates must be sufficient to ensure the ongoing financial viability of the company.

From the very beginning of long-term care insurance regulation, Washington put into place very strong rules governing pricing of these products. The guiding statutory

principle for our rate review authority is that rates may not be “excessive, inadequate or unfairly discriminatory.” All initial rates and rate changes must be submitted to my office and may not be used until they are approved. Unfortunately, the first generation of long-term care policies were simply priced too low, and in some cases, significantly so.

Because these products were new to the market, actuaries for companies and the actuaries for insurance regulators were forced to make assumptions in setting the premiums. They needed to estimate how long people would keep their policies in force, what the interest rate of return would be on their reserves, and the future cost of long-term care services. And, I can say with regret but confidence that no one, neither the companies nor the regulators reviewing the rates got it right.

With the advantage of hindsight, we’ve learned that people buying long-term care insurance bought it for the long-haul. They did not drop their coverage at the frequency originally estimated by the actuaries. And as people live longer with chronic illnesses, they’re also using their benefits at higher rates than anticipated. In addition, interest rates on the companies’ reserves dropped to historic lows and stayed there for a long period of time leaving the earned income on the reserves well below what was needed. We’re now faced with granting justified rate increases on products that were significantly underpriced.

Although the NAIC model for long-term care insurance has attempted to address this area of concern by establishing rate stability requirements, all policymakers—state and federal law makers—should be concerned about how vastly different the world could be 25 to 30

years from now when the typical 50 year old that purchases long-term care insurance requires the services.

Last year, the Washington State Legislature adopted the NAIC Model Act. My office is in the process of adopting the Model Rule for products issued as of January 2009. It is my hope and belief that the consumer protections and rate stability provisions in these Model laws will help ensure that consumers are better protected against underpriced long-term care products. Unfortunately, we may not know if we've been successful until 10 to 15 years from now.

Benefit design and covered services

In Washington State, we learned another valuable lesson around the area of benefits or plan designs. The first few generations of long-term care insurance products were not designed to modify benefits overtime to keep up with the dynamic changes in the delivery system. In fact, because these products are “guaranteed renewable,” companies could not modify the benefit structure. Most early generation long-term care products provided for nursing facility care and some limited home health care services, but they specifically excluded other types of services. The early generation products do not cover new delivery systems such as assisted living facilities, adult day care centers and other community-based services. Many consumers are not aware that the types of services they desire are not eligible for benefits under their policies until it is too late.

Long-term care policies must be flexible enough that the benefits adapt as the delivery system evolves. However, companies will likely charge more for this flexibility because it is difficult to rate the unknown.

Consumer Complaints and Market Oversight

Washington State has relatively few consumer complaints regarding how claims are settled. With the exception of a few companies that have faced financial difficulty, most long-term care claims are settled promptly. And most of the complaints we receive regarding claim denials are appropriate under the terms of the policy.

That we've received a limited number of complaints regarding claim denials may be due in part to the fact that very few claims are ever made in the early years of a long-term care policy. Individuals who buy long-term care insurance undergo strict health underwriting. This process screens out consumers with chronic illnesses that may lead to the need for long-term care services. As a result, unless there is a sudden and unexpected illness or accident, it is unlikely that the policyholders will require long-term care services for many years after buying their policy.

Other complaints we receive regarding claim denials deal specifically with a particular provider type not being covered under the policy. We hear from consumers who are upset that the products they purchased many years ago will not cover new types of long-term care services, especially community-based care and alternatives to nursing home services. Unfortunately, there is little we can do regarding coverage of benefits for the older generation of policies. The insurance contracts cannot be modified after the issue date

because they are guaranteed renewable. The initial pricing assumptions did not take into account the changes in utilization that would occur if additional services were provided under the policy.

Claim payment delays, however, are a serious problem. We deal directly with companies on a case-by-case basis to make sure that claims are paid appropriately. We also report the information to the NAIC's complaint database and, if appropriate, to the Market Analysis Working Group (MAWG) for consideration for a possible multi-state Market Conduct Examination.

Suitability of Sales

There is an old adage among long-term care insurance agents that 'long-term care insurance is bought, not sold.' In other words, unlike other types of insurance that people purchase such as life, auto and homeowners insurance, long-term care insurance is something that few individuals understand or purchase without persuasion by an insurance agent. Many individuals are unaware that Medicare does not pay for long-term care services. The role of educating individuals on the financing of long-term care services often falls to insurance agents. Although our state mandates specific educational requirements for agents selling long-term care insurance, it is important to note that this product needs to be evaluated as part an overall financial planning strategy. It is not for everyone.

From the very early days of long-term care insurance regulation, Washington State prohibited the sale of these products to Medicaid-eligible individuals. In addition, many

affluent individuals tend to consider long-term care insurance as part of their estate planning and often utilize other financial products and services to fund their long-term care needs.

These and other factors leave a limited market of middle-class individuals who may consider buying long-term care insurance. It is critically important that we focus on the suitability of long-term care insurance to fund an individual's long-term care needs.

In closing, I hope that you will find my perspective useful in evaluating the future of private and public financing of long-term care services. Although this product may serve the needs of certain individuals, it is not the solution to our long-term care funding crisis.