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LONG-TERM CARE INSURANCE

State Oversight of Rate Setting and Claims Settlement Practices

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Highlights

Highlights of GAO-08-1016T, a testimony before the Subcommittee on Oversight and Investigations, Committee on Energy and Commerce, House of Representatives

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Why GAO Did This Study

As the baby boom generation ages, the demand for long-term care services is likely to grow and could strain state and federal resources. The increased use of long-term care insurance (LTCI) may be a way of reducing the share of long-term care paid by state and federal governments. Oversight of LTCI is primarily the responsibility of states, but over the past 12 years, there have been federal efforts to increase the use of LTCI while also ensuring that consumers purchasing LTCI are adequately protected. Despite this oversight, concerns have been raised about both premium increases and denials of claims that may leave consumers without LTCI coverage when they begin needing care.

This statement focuses on oversight of the LTCI industry's (1) rate setting practices and (2) claims settlement practices. This statement is based on findings from GAO's June 2008 report entitled *Long-Term Care Insurance: Oversight of Rate Setting and Claims Settlement Practices* (GAO-08-712). For that report, GAO reviewed information from the National Association of Insurance Commissioners (NAIC) on all states' rate setting standards. GAO also completed 10 state case studies on oversight of rate setting and claims settlement practices, which included structured reviews of state laws and regulations, interviews with state regulators, and reviews of state complaint information. GAO also reviewed national data on rate increases implemented by companies.

To view the full product, including the scope and methodology, click on GAO-O-08-1016T. For more information, contact John Dicken at (202) 512-7114 or dickenj@gao.gov.

What GAO Found

Many states have made efforts to improve oversight of rate setting, though some consumers remain more likely to experience rate increases than others. NAIC estimates that since 2000 more than half of states nationwide have adopted new rate setting standards. States that adopted new standards generally moved from a single standard that was intended to prevent premium rates from being set too high to more comprehensive standards intended to enhance rate stability and provide other protections for consumers. Although a growing number of consumers will be protected by the more comprehensive standards going forward, as of 2006 many consumers had policies not protected by these standards. Regulators in most of the 10 states GAO reviewed said that they think the more comprehensive standards will be effective, but that more time is needed to know how well the standards will work. State regulators in GAO's review also use other standards or practices to oversee rate setting, several of which are intended to keep premium rates more stable. Despite state oversight efforts, some consumers remain more likely to experience rate increases than others. Specifically, consumers may face more risk of a rate increase depending on when they purchased their policy, from which company their policy was purchased, and which state is reviewing a proposed rate increase on their policy.

Regulators in the 10 states GAO reviewed oversee claims settlement practices by monitoring consumer complaints and conducting examinations in an effort to ensure that companies are complying with standards. Claims settlement standards in these states largely focus on timely investigation and payment of claims and prompt communication with consumers, but the standards adopted and how states define timeliness vary notably across the states. Regulators told GAO that reviewing consumer complaints is one of the primary methods for monitoring companies' compliance with state standards. In addition to monitoring complaints, these regulators also said that they use examinations of company practices to identify any violations in standards that may require further action. Finally, state regulators in 6 of the 10 states in GAO's review reported that their states are considering additional protections related to claims settlement. For example, regulators in several states said that their states were considering an independent review process for consumers appealing claims denials. Such an addition may be useful as some regulators said that they lack authority to resolve complaints where, for example, the company and consumer disagree on a factual matter, such as a consumer's eligibility for benefits.

In commenting on a draft of GAO's report issued on June 30, 2008, NAIC compiled comments from its member states. Member states said that the report was accurate but seemed to critique certain aspects of state regulation, including differences among states, and make an argument for certain reforms. The draft reported differences in states' oversight without making any conclusions or recommendations.

Mr. Chairman and Members of the Subcommittee:

I am pleased to be here today as you examine oversight of long-term care insurance (LTCI). About $193 billion was spent nationwide on long-term care services in 2004. Most of this care was financed by government programs, primarily Medicaid, and a small share of these costs—less than 10 percent—was paid by private insurance. Elderly people—those aged 65 or older—consume about two-thirds of all long-term care services used in the United States. As the number of elderly Americans continues to grow, particularly with the aging of the baby boom generation, the increasing demand for long-term care services will likely strain state and federal resources. Some policymakers have suggested that increased use of LTCI may be a means of reducing the future share of long-term care services financed by public programs.

Oversight of the LTCI industry is primarily the responsibility of states,[1] though federal efforts over the past 12 years have aimed to increase the use of LTCI and ensure that consumers who purchase policies are adequately protected. Members of Congress, state regulators, and other interested parties have raised concerns that despite existing state and federal consumer protection standards, increases in LTCI premiums or denials of benefit claims may leave some consumers without LTCI coverage as they begin needing long-term care, which could have fiscal implications for Medicaid. My remarks today are based on our June 2008 report on the oversight of rate setting and claims settlement practices in the long-term care insurance industry, *Long-Term Care Insurance: Oversight of Rate Setting and Claims Settlement Practices*.[2] In that report, we examined (1) oversight of rate setting practices in the LTCI industry and (2) oversight of claims settlement practices in the LTCI industry.[3]

[1]Over time, the National Association of Insurance Commissioners (NAIC) has provided guidance to states on how to regulate LTCI, including adoption of a model LTCI act in 1986 and subsequently a model regulation. NAIC has updated these models periodically to address emerging issues in the industry.

[2]GAO-08-712 (Washington, D.C.: June 30, 2008).

[3]The term rate setting practices refers to how companies (1) establish initial premium rates and justify rate increases for a policy, (2) disclose information about rates to consumers, and (3) implement rate increases. The term claims settlement practices refers to how companies determine eligibility for LTCI benefits, communicate with consumers about the claims process and about specific claims submitted, pay or deny claims, and communicate with consumers about the process for appealing denials.

To conduct the work for our June 2008 report, we reviewed information provided by the National Association of Insurance Commissioners (NAIC) and interviewed NAIC officials. We also completed case studies for a judgmental sample of 10 states—which we refer to as the states in our review.[4] Our case studies included a structured review of state laws and regulations, interviews with regulators from the selected states' insurance departments, and a review of information on LTCI consumer complaints from the 6 states that were able to provide this information. In addition, we were able to determine rate setting standards in place in all 50 states and the District of Columbia by supplementing information from our case studies with information provided by NAIC and our own review of relevant state laws and regulations. We also reviewed national data collected from companies and published by the California Department of Insurance on rate increases proposed and approved in any state from 1990 through 2006. To identify federal requirements that affect oversight of rate setting and claims settlement practices, we reviewed federal laws, regulations, and guidance, and interviewed officials from the Internal Revenue Service (IRS), the Centers for Medicare & Medicaid Services (CMS), and the Office of Personnel Management (OPM). Finally, we interviewed officials from a judgemental sample of six companies selling LTCI—that together represented 40 percent of the market in 2006—regarding oversight of rate setting practices and reviewed company documents describing claims settlement practices. We performed our work in accordance with generally accepted government auditing standards from September 2007 through June 2008. A detailed explanation of our scope and methodology is included in the report.

In summary, we found that many states have made efforts to improve oversight of rate setting practices in the LTCI industry, though some consumers remain more likely to experience rate increases than others. NAIC estimates that by 2006 more than half of all states had adopted new rate setting standards that were based on amendments to its LTCI model regulation in 2000. States that adopted new standards generally moved from a single standard that was intended to prevent rates from being set too high to more comprehensive standards intended to enhance rate

[4]The 10 states were California, Florida, Illinois, Iowa, New York, North Dakota, Pennsylvania, Texas, Washington, and Wisconsin. Among other considerations, we selected states that would account for a substantial portion of active LTCI policies in 2006 (at least 40 percent), would represent variation in the number of active policies, and would reflect variation in state oversight of the product. The findings from our case studies are not generalizable.

stability and provide other protections for consumers. Although a growing number of consumers will be protected by the more comprehensive standards going forward, as of 2006 many consumers had policies not protected by these standards, either because they live in states that have not adopted the new standards or because they bought policies issued prior to implementation of these standards. While regulators in most of the 10 states we reviewed told us that they think the more comprehensive standards will be effective, they recognized that more time is needed to know how well the standards will work in stabilizing premium rates. Regulators in the states in our review also use other standards or practices to oversee rate setting, several of which are intended to help improve rate stability. Despite state oversight efforts, some consumers remain more likely to experience rate increases than others. Specifically, consumers may face more risk of a rate increase depending on when they purchased their policy, from which company their policy was purchased, and which state is reviewing a proposed rate increase on their policy.

Regulators in the 10 states in our review oversee claims settlement practices by monitoring consumer complaints and conducting examinations of company practices in an effort to ensure that companies are complying with standards. Claims settlement standards in these states primarily focus on timely investigation and payment of claims, as well as prompt communication with consumers about claims. However, the standards adopted and how states define timeliness vary notably across the states. This variation may leave consumers in some states less protected than others. Regulators from all 10 states told us that reviewing consumer complaints is one of the primary methods for monitoring companies' compliance with state standards. In addition to monitoring complaints, regulators from all of the states we reviewed said that they use market conduct examinations to determine whether companies are complying with claims settlement standards. These examinations can result in enforcement actions if the regulators identify violations of the standards. State regulators in 6 of the 10 states in our review reported that their states are considering additional protections related to claims settlement. For example, regulators in several states said that their states were considering an independent review process for consumers appealing claims denials. Such an addition may be useful as some regulators said that they lack authority to resolve complaints where, for example, the company and consumer disagree on a factual matter, such as a consumer's eligibility for benefits.

In commenting on a draft of GAO's report issued on June 30, 2008, NAIC compiled comments from its member states. Member states said that the report was accurate but seemed to critique certain aspects of state regulation, including differences among states, and make an argument for certain reforms. The draft reported differences in states' oversight without making any conclusions or recommendations.

Background

LTCI helps pay for the costs associated with long-term care services, which can be expensive. However, the number of LTCI policies sold has been relatively small—about 9 million as of the end of 2002, the most recent year of data available. To receive benefits under an LTCI policy, the consumer must not only obtain the covered services, but must also meet what are commonly referred to as benefit triggers. Most policies provide benefits under two circumstances (1) the consumer cannot perform a certain number of activities of daily living (ADL)—such as bathing, dressing, and eating—without assistance, or (2) the consumer requires supervision because of a cognitive impairment. In addition, benefit payments do not begin until the policyholder has met the benefit triggers for the length of their elimination period. Elimination periods establish the amount of time a policyholder must receive services before his or her insurance will begin making payments, for example, 30 or 90 days. Determining whether a consumer has met the benefit triggers can be complex and companies' processes for doing so vary. In the event that a consumer's claim for benefits is denied, the consumer generally can appeal to the insurance company. If the company upholds the denial, the consumer can file a complaint with the state insurance department or can seek adjudication through the courts.

Many factors affect LTCI premium rates, including the benefits covered and the age and health status of the applicant. For example, companies typically charge higher premiums for comprehensive coverage as compared to policies without such coverage, and consumers pay higher premiums the higher the daily benefit amount and the shorter the elimination period. Similarly, premiums typically are more expensive the older the policyholder is at the time of purchase. Company assumptions about interest rates on invested assets, mortality rates, morbidity rates, and lapse rates—the number of people expected to drop their policies over time—also affect premium rates.

A key feature of LTCI is that premium rates are designed—though not guaranteed—to remain level over time. While under most states' laws insurance companies cannot increase premiums for a single consumer because of individual circumstances, such as age or health, companies can increase premiums for entire classes of individuals, such as all consumers with the same policy, if new data indicate that expected claims payments will exceed the class's accumulated premiums and expected investment returns.[5] Setting LTCI premium rates at an adequate level to cover future costs has been a challenge for some companies. Because LTCI is a relatively new product, companies lacked and may continue to lack sufficient data to accurately estimate the revenue needed to cover costs. For example, lapse rates have proven lower than companies anticipated in initial pricing, which increased the number of people likely to submit claims. As a result, many policies were priced too low and subsequently premiums had to be increased, leading some consumers to cancel coverage.

Oversight of the LTCI industry is largely the responsibility of states. Through laws and regulations, states establish standards governing LTCI and give state insurance departments the authority to enforce those standards. Many states' laws and regulations reflect standards set out in model laws and regulations developed by NAIC. These models are intended to assist states in formulating their laws and policies to regulate insurance, but states can choose to adopt them or not. Beyond implementing pertinent laws and regulations, state regulators perform a variety of oversight tasks that are intended to protect consumers from unfair practices. These activities include reviewing policy rates and forms to ensure that they are consistent with state laws and regulations; conducting market conduct examinations—where an examiner visits a company to evaluate practices and procedures and checks those practices and procedures against information in the company's files; and responding to consumer complaints.

[5] Stephanie Lewis, John Wilkin, and Mark Merlis, *Regulation of Private Long-Term Care Insurance: Implementation Experience and Key Issues* (Washington, D.C.: The Henry J. Kaiser Family Foundation, 2003).

Although oversight of the LTCI industry is largely the responsibility of states, the federal government also plays a role in the oversight of LTCI. For example, the Health Insurance Portability and Accountability Act of 1996 (HIPAA) established federal standards that specify the conditions under which LTCI benefits and premiums can receive favorable federal income tax treatment.[6] Under HIPAA, a tax-qualified policy must cover individuals certified as needing substantial assistance with at least two of the six ADLs for at least 90 days due to a loss of functional capacity, having a similar level of disability, or requiring substantial supervision because of a severe cognitive impairment. Tax-qualified policies under HIPAA must also comply with certain provisions of the NAIC LTCI model act and regulation in effect as of January 1993.[7] The Department of the Treasury, specifically the Internal Revenue Service (IRS), issued regulations in 1998 implementing some of the HIPAA standards.[8] However, according to IRS officials, the agency generally relies on states to ensure that policies marketed as tax qualified meet HIPAA requirements. In 2002, 90 percent of LTCI policies sold were marketed as tax qualified.

States Have Made Efforts to Improve Oversight of Rate Setting, Though Some Consumers Remain More Likely to Experience Rate Increases Than Others

In recent years, many states have made efforts to improve oversight of rate setting, though some consumers remain more likely to experience rate increases than others. Since 2000, NAIC estimates that more than half of all states have adopted new rate setting standards. States that adopted new standards generally moved from a single standard focused on ensuring that rates were not set too high to more comprehensive standards designed primarily to enhance rate stability and provide increased protections for consumers. The more comprehensive standards were based on changes made to NAIC's LTCI model regulation in 2000. While regulators in most of the 10 states we reviewed told us that they expect these more comprehensive standards will be successful, they noted that more time is needed to know how well the standards will work. Regulators from the states in our review also use other standards or practices to oversee rate setting, several of which are intended to keep premium rates more stable. Despite states implementing more

[6]Pub. L. No. 104-191, §§ 321-327, 110 Stat. 1936, 2054-2067.

[7]Since 1993, NAIC has made several changes to its model act and regulation, including adding consumer protection standards related to rate setting. These additional protections are not required under HIPAA.

[8]Under the law and regulations, a policy is tax qualified if it complies with a state law that is the same or more stringent than the analogous federal requirement.

comprehensive standards and using other oversight efforts intended to enhance rate stability, some consumers may remain more likely to experience rate increases than others. Specifically, consumers may face more risk of a rate increase depending on when they purchased their policy, from which company their policy was purchased, and which state is reviewing a proposed rate increase on their policy.

Many States Adopted More Comprehensive Rate Setting Standards since 2000, but It Is Too Soon to Determine the Effectiveness of the Standards

Since 2000, NAIC estimates that more than half of states nationwide have adopted new rate setting standards for LTCI. States that adopted new standards generally moved from the use of a single standard designed to ensure that premiums were not set too high to the use of more comprehensive standards designed to enhance rate stability and provide other protections for consumers. Prior to 2000, most states used a single, numerical standard when reviewing premium rates. This standard—called the loss ratio—was included in NAIC's LTCI model regulation.[9] For all policies where initial rates were subject to this loss ratio standard, proposed rate increases are subject to the same standard.

While the loss ratio standard was designed to ensure that premium rates were not set too high in relation to expected claims costs, over time NAIC identified two key weaknesses in the standard. First, the standard does not prevent premium rates from being set too low to cover the costs of claims over the life of the policy. Second, the standard provides no disincentive for companies to raise rates, and leaves room for companies to gain financially from premium increases. In identifying these two weaknesses, NAIC noted that there have been cases where, under the loss ratio, initial premium rates proved inadequate, resulting in large rate increases and significant loss of LTCI coverage from consumers allowing their policies to lapse.

To address the weaknesses in the loss ratio standard as well as to respond to the growing number of premium increases occurring for LTCI policies, NAIC developed new, more comprehensive model rate setting standards in 2000. These more comprehensive standards were designed to accomplish

[9]Specifically, NAIC's pre-2000 model stated that insurance companies must demonstrate an expected loss ratio of at least 60 percent when setting premium rates, meaning that the companies could be expected to spend a minimum of 60 percent of the premium on paying claims.

several goals, including improving rate stability.[10] Among other things, the standards established more rigorous requirements companies must meet when setting initial LTCI rates and rate increases, which several state regulators told us may result in higher, but more stable, premium rates over the long term.[11] The more comprehensive standards were also designed to inform consumers about the potential for rate increases and provide protections for consumers facing rate increases. Table 1 describes selected rate setting standards added to NAIC's LTCI model regulation in 2000 and the purpose of each standard in more detail.

[10]Rate stability means that premium rates initially set for an LTCI policy would be sufficient to cover costs and would not require increases over the life of the policy.

[11]For example, instead of a loss ratio requirement to demonstrate that a proposed premium is not too high, the standards require company actuaries to certify that a premium is adequate to cover anticipated costs over the life of a policy, even under "moderately adverse conditions," with no future rate increases anticipated. To fulfill this requirement, company actuaries must include a margin for error in their pricing assumptions.

Table 1: Selected Rate Setting Standards Added to NAIC's LTCI Model Regulation in 2000

Standard	Description	Purpose of standard
Actuarial certification for initial premium rates and rate increases	When setting initial premium rates, companies are required to submit to state insurance departments a statement by a company actuary certifying that the initial rate is sufficient to cover anticipated costs over the life of a policy, even under "moderately adverse conditions," with no future rate increases anticipated. When notifying state insurance departments of a rate increase, companies must submit a similar certification. However, if it becomes clear that a company is consistently filing inadequate initial rates (presumably based on a pattern of rate increases), state insurance departments may prohibit or limit the company from issuing certain new policies in the state.	To reduce the potential for rate increases by requiring a margin for error in pricing assumptions. Regulators from four states told us that this standard requires companies to make more conservative pricing assumptions, which, while increasing premium rates for consumers, decreases the likelihood of future rate increases. One company told us that with the advent of the more comprehensive standards, average initial premium rates went up 11 percent.
Higher loss ratio standard for rate increases	When notifying state insurance departments of a premium rate increase, companies are required to demonstrate an expected loss ratio of at least 58 percent for revenue associated with the original premium rate and 85 percent for revenue associated with the increase. In other words, companies are required to demonstrate that claims costs can be expected to equal or exceed the sum of 58 percent of the initial premium and 85 percent of the increase amount.	To decrease the financial benefit of a rate increase.[a] Regulators from two states told us that this standard could act as a disincentive for companies to raise rates.
Enhanced reporting requirements after a rate increase	For at least 3 years after implementing a rate increase, companies are required to report data on premiums earned and claims incurred to the state insurance department. If these data show that actual experience does not match what companies projected in justifying the rate increase, state insurance departments can require companies to reduce this difference by, among other things, lowering premium rates.	To increase regulatory oversight once a rate increase is approved.
Disclosure of the potential for rate increases to consumers	At the time of application, companies are required to include in their disclosures to consumers (1) that premium rates may increase in the future and (2) all rate increases implemented on the policy or similar policies in any state for the preceding 10 years.	To provide consumers with adequate information about the potential for premium rate increases. Further, as disclosing rate increases to consumers could be damaging to a company from a marketing perspective, this particular standard may discourage companies from raising premium rates.
Protections for consumers facing rate increases	If the cumulative size of a rate increase meets a certain threshold that varies based on a consumer's age and if a consumer lapses his or her policy within 120 days of the date the increased premium was due, companies are required to offer the consumer the option to: (1) keep their original premium rate by reducing policy benefits or (2) stop paying premiums, but receive benefits for a shorter period of time than was originally covered. Also, under certain circumstances, the state insurance department may require companies to offer consumers, without underwriting, a comparable replacement policy.	To give consumers recourse in the event that rate increases occur.

Source: GAO analysis of NAIC's LTCI model regulation, NAIC guidance on the model regulation, and statements from state regulators.

[a]Whereas under the old loss ratio standard 60 percent of the increased premium amount must be spent on claims and up to 40 percent of the increased amount could be allocated to company administrative expenses and profit, under the new standards the amount of the increase allocated to administrative expenses and profit drops to 15 percent.

Although a growing number of consumers will be protected by the more comprehensive standards going forward, as of 2006 many consumers had policies that were not protected by these standards. Following the revisions to NAIC's LTCI model in 2000, many states began to replace their loss ratio standard with more comprehensive rate setting standards based on NAIC's changes. NAIC estimates that by 2006 more than half of states nationwide had adopted the more comprehensive standards.[12] However, many consumers have policies not protected by the more comprehensive standards, either because they live in states that have not adopted these standards or because they bought policies issued prior to implementation of these standards.[13] For example, as of December 2006, according to our analysis of NAIC and industry information, at least 30 percent of policies in force were issued in states that had not adopted the more comprehensive rate setting standards. Further, in states that have adopted the more comprehensive standards, many policies in force were likely to have been issued before states began adopting these standards in the early 2000s.[14]

Regulators from most of the 10 states in our review said that they expect the rate setting standards added to NAIC's model regulation in 2000 will improve rate stability and provide increased protections for consumers, though regulators also recognized that it is too soon to determine the effectiveness of the standards. Some regulators explained that it might be as much as a decade before they are able to assess the effectiveness of these standards. Regulators from 1 state explained that rate increases on LTCI policies sold in the 1980s did not begin until the late 1990s, when consumers began claiming benefits and companies were faced with the costs of paying their claims. Further, though the more comprehensive standards aim to enhance rate stability, LTCI is still a relatively young product, and initial rates continue to be based on assumptions that may eventually require revision.

[12]This estimate is based on an NAIC review of state laws and regulations completed in 2006.

[13]States generally adopted the more comprehensive standards on a going-forward basis, meaning that consumers with policies issued prior to implementation are still subject to the loss ratio standard.

[14]However, data on the number of policies in force did not allow us to determine the precise number of consumers not protected by the more comprehensive rate settings standards.

State regulators from the 10 states in our review use other standards—beyond those included in NAIC's LTCI model regulation—or practices to oversee rate setting, including several that are intended to enhance rate stability. Regulators from 3 of the states in our review told us that their state has standards intended to enhance the reliability of data used to justify rate increases, and regulators from 2 states told us that they have standards to limit the extent to which LTCI rates can increase. Beyond implementing rate setting standards, regulators from all 10 states in our review use their authority to review rates to reduce the size of rate increases or to phase in rate increases over multiple years.[15] While state regulators work to reduce the effect of rate increases on consumers, regulators from 6 states explained that increases can be necessary to maintain companies' financial solvency.

Some Consumers May Remain More Likely to Experience Rate Increases Than Others

Although some states are working to improve oversight of rate setting and to help ensure LTCI rate stability by adopting the more comprehensive standards and through other efforts, there are other reasons why some consumers may remain more likely to experience rate increases than others. In particular, consumers who purchased policies when there were more limited data available to inform pricing assumptions may continue to experience rate increases. Regulators from seven states in our review told us that rate increases are mainly affecting consumers with older policies. For example, regulators from one state told us that there are not as many rate increases proposed for policies issued after the mid-1990s. Regulators in five states explained that incorrect pricing assumptions on older policies are largely responsible for rate increases.

Consumers' likelihood of experiencing a rate increase also may depend on the company from which they bought their policy. In our review of national data on rate increases by four judgmentally selected companies that together represented 36 percent of the LTCI market in 2006, we found variation in the extent to which they have implemented increases. For example, one company that has been selling LTCI for 30 years has increased rates on multiple policies since 1995, with many of the increases ranging from 30 to 50 percent. Another company that has been in the market since the mid-1980s has increased rates on multiple policies since

[15]While a phase-in provides consumers with short-term relief from a rate increase, over time it may not provide a net financial benefit for consumers in terms of total premiums paid.

1991, with increases approved on one policy totaling 70 percent. In contrast, officials from a third company that has been selling LTCI since 1975 told us that the company was implementing its first increase as of February 2008. The company reported that this increase, affecting a number of policies, will range from a more modest 8 to 12 percent.[16] Another company that also instituted only one rate increase explained that in cases where initial pricing assumptions were wrong, the company has been willing to accept lower profit margins rather than increase rates. While past rate increases do not necessarily increase the likelihood of future rate increases, they do provide consumers with information on a company's record in having stable premiums.

Finally, consumers in some states may be more likely to experience rate increases than those in other states, which officials from two companies noted may raise equity concerns.[17] Of the six companies we spoke with, officials from every company that has instituted a rate increase told us that there is variation in the extent to which states approve proposed rate increases.[18] For example, officials from one company told us that when requesting rate increases they have seen some states deny a request and other states approve an 80 percent increase on the same rate request with the same data supporting it. While some consumers may face higher increases than others, company officials also told us that they provide options to all consumers facing a rate increase, such as the option to reduce their benefits to avoid all or part of a rate increase.

Our review of data on state approvals of rate increases requested by one LTCI company operating nationwide also indicated that consumers in some states may be more likely to experience rate increases.[19] Specifically, since 1995 one company has requested over 30 increases, each of which

[16]Company officials told us that this increase will affect nearly a half million consumers.

[17]Some company officials told us that initial LTCI premiums are largely the same across states and that differences in the initial pricing of LTCI primarily occur in states that mandate policies to include certain benefits.

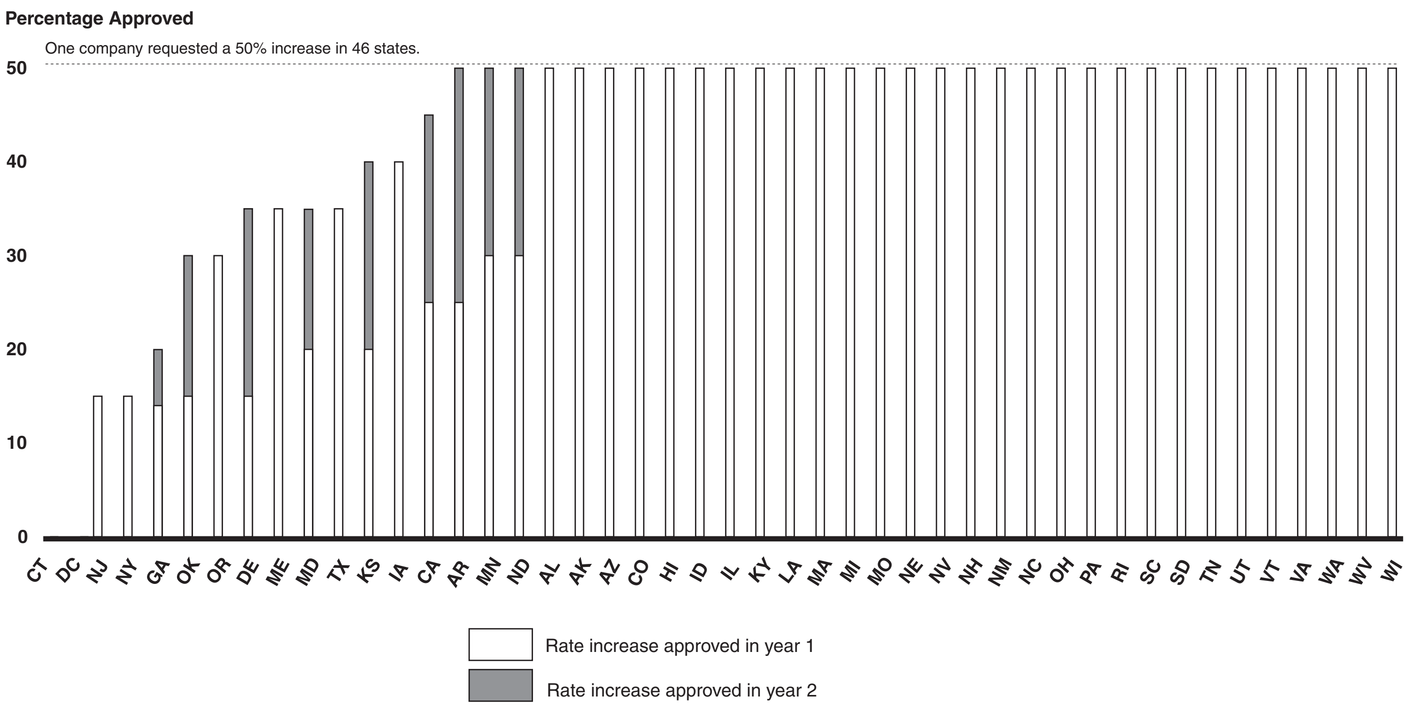
[18]Company officials noted that one reason for this variation may be that some states have more capacity to review rate increases than other states.

[19]These data include at least one state, Louisiana where officials reported that, for at least part of the time period included in our review, the state required companies to file notice of rate increases, but did not have the authority to approve or deny the increases. Additionally, according to a report completed by the Lewin Group in 2002, four other states did not require companies to file notice of rate increases at all.

affected consumers in 30 or more states. While the majority of states approved the full amounts requested in these cases, there was notable variation across states in 18 of the 20 cases in which the request was for an increase of over 15 percent.[20] For example, for one policy, the company requested a 50 percent increase in 46 states, including the District of Columbia. Of those 46 states, over one quarter (14 states) either did not approve the rate increase request (2 states) or approved less than the 50 percent requested (12 states), with amounts approved ranging from 15 to 45 percent. The remaining 32 states approved the full amount requested, though at least 4 of these states phased in the amount by approving smaller rate increases over 2 years. (See fig. 1.)

[20]For smaller increases (15 percent and below) almost all states approved the full amount requested.

Figure 1: Outcome of One Company's Request for a Premium Rate Increase in 46 States from 2003 through 2006



Source: GAO analysis of rate increase data from the California Department of Insurance.

Notes: Connecticut and the District of Columbia did not approve the proposed rate increase.

Data are based on company reports to the California Department of Insurance. In providing technical comments on a draft of our report, the Massachusetts Division of Insurance reported that the division required the company to phase in the 50 percent increase over multiple years with increases not exceeding 20 percent in any one year.

Variation in state approval of rate increase requests may have significant implications for consumers. In the above example, if the initial, annual premium for the policy was, for example, $2,000, consumers would see their annual premium rise by $1,000 in Colorado, a state that approved the full increase requested; increase by only $300 in New York, where a 15 percent increase was approved; and stay level in Connecticut, where the increase was not approved.[21] Although state regulators in our 10-state review told us that most rate increases have occurred for policies subject to the loss ratio standard, variation in state approval of proposed rate increases may continue for policies protected by the more comprehensive standards. States may implement the standards differently, and other oversight efforts, such as the extent to which states work with companies, also affect approval of increases.

States in Our Review Oversee Claims Settlement Practices Using Consumer Complaints and Examinations, and Several States Are Considering Additional Protections

The 10 states in our review have standards established by law and regulations for governing claims settlement practices. The majority of the standards, some of which apply specifically to LTCI and others that apply more broadly to various insurance products, are designed to ensure that claims settlement practices are conducted in a timely manner. Specifically, the standards are designed to ensure the timely investigation and payment of claims and prompt communication with consumers about claims. In addition to these timeliness standards, states have established other standards, such as requirements for how companies are to make benefit determinations.

While the 10 states we reviewed all have standards governing claims settlement practices, the states vary in the specific standards they have adopted as well as in how they define timeliness. For example, 1 state does not have a standard that requires companies to pay claims in a timely manner. For the 9 states that do have a standard, the definition of "timely" the states use varies notably—from 5 days to 45 days, with 2 states not specifying a time frame. In addition, federal laws governing tax-qualified policies do not address the timely investigation and payment of claims or prompt communication with consumers about claims. The absence of certain standards and the variation in states' definitions of "timely" may leave consumers in some states less protected from, for example, delays in payment than consumers in other states. (See table 2 for key claims settlement standards adopted by the 10 states in our review and examples of the variation in standards.)

[21] Data on actual premium rates before and after the increase cited in figure 1 were not included in the rate increase data maintained by the California Department of Insurance.

Table 2: Claims Settlement Standards in Place in the 10 States in GAO's Review

	Number of states	Included in NAIC LTCI models	Examples of variation in standard
Standards around timeliness			
Timely communication with consumers about claims issues	10[a]		State definitions of "timely" specified either 10 or 15 days, and 5 states did not define "timely"
Affirm or deny liability on a claim within a reasonable amount of time	10[a]		State definitions of "reasonable" varied from 15 to 40 days, and 6 states did not define "reasonable"
Timely investigation by companies of a claim	9[a]		State definitions of "timely" specified either 15 or 30 days, and 5 states did not define "timely"
Timely payment of a claim	9[a]		State definitions of "timely" varied from 5 to 45 days, and 2 states did not define "timely"
Provide consumers with necessary claims forms and instructions within a certain number of days after receiving notification of a claim	9[a]		State standards specified either 10 or 15 days, and 1 state did not specify number of days
Provide a written explanation of a claim denial within a reasonable period of time	8[a]	✓	State definitions of "reasonable" varied from 40 to 60 days, and 2 states did not define "reasonable"
Provide a reasonable written explanation of delay when a claim remains unresolved a certain number of days after receiving proof of loss	8		State standards varied in how much time can elapse before such notification is required from 15 to 45 days
Other standards			
Provide for a licensed or certified professional, such as a physician or social worker, to assess functional ability or cognitive impairment in making benefit determinations	10	✓	No significant variation in standard among states
Provide a description of the process for appealing claims in the policy language	9	✓	No significant variation in standard among states

Source: GAO review of state laws and regulations conducted from September 2007 through May 2008 and verified by states.

Note: The standards in this table are not intended to constitute a comprehensive list of all claims settlement standards affecting LTCI oversight.

[a]This standard is an explicit requirement in some states, while in other states it is encompassed in the definition of unfair claims settlement practices.

The states in our review primarily use two ways to monitor companies' compliance with claims settlement standards. One way the states monitor compliance is by reviewing consumer complaints on a case-by-case basis and in the aggregate to identify trends in company practices.[22] When

[22]Across five states that provided LTCI complaint data from 2001 through 2007, 44 percent of consumer complaints were related to claims settlement issues in 2007.

responding to complaints on a case-by-case basis, regulators in some states told us that they determine whether they can work with the consumer and the company to resolve the complaint or determine whether there has been a violation of claims settlement standards that requires further action.

Regulators from four states also told us that they regularly review complaint data to identify trends in company practices over time or across companies, including practices that may violate claims settlement standards. Three of these states review these data as part of broader analyses of the LTCI market during which they also review, for example, financial data and information on companies' claims settlement practices. However, regulators in three states noted that a challenge in using complaint data to identify trends is the small number of LTCI consumer complaints that their state receives. For example, information on complaints provided by one state shows that the state received only 54 LTCI complaints in 2007, and only 20 were related to claims settlement issues. State regulators told us that they expect the number of complaints to increase in the future as more consumers begin claiming benefits.

The second way that states monitor company compliance with claims settlement standards is by using market conduct examinations. These examinations may be regularly scheduled or, if regulators find patterns in consumer complaints about a company, they may initiate an examination, which generally includes a review of the company's files for evidence of violations of claims settlement standards. Some states also coordinate market conduct examinations with other states—efforts known as multistate examinations—during which all participating states examine the claims settlement practices of designated companies. If state regulators identify violations of claims settlement standards during market conduct examinations, they may take enforcement actions, such as imposing fines or suspending the company's license. As of March 2008, 4 of the 10 states in our review reported taking enforcement actions against LTCI companies for violating claims settlement standards and 7 reported having ongoing examinations into companies' claims settlement practices.[23]

In addition to their efforts to monitor compliance with claims settlement standards, regulators from six of the states in our review reported that their state is considering or may consider adopting additional consumer protections related to claims settlement. The additional protection most frequently considered by the state regulators we interviewed is the inclusion of an independent review process, which would allow consumers appealing LTCI claims denials to have their issue reviewed by a third party independent from their insurance company without having to engage in legal action.[24] Also, a group of representatives from NAIC member states was formed in March 2008 to consider whether to recommend developing provisions to include an independent review process in the NAIC LTCI models. Such an addition may be useful, as regulators from three states told us that they lack the authority to resolve complaints involving a question of fact, for example, when the consumer and company disagree on a factual matter regarding a consumer's eligibility for benefits. Further, there is some evidence to suggest that due to errors or incomplete information companies frequently overturn LTCI denials during the appeals process. Specifically, data provided by four companies we contacted showed that the average percentage of denials overturned was 20 percent in 2006, ranging from 7 percent in one company to 34 percent in another.

Mr. Chairman, this concludes my prepared remarks. I would be happy to answer any questions that you or other members of the committee may have.

[23]Some states may not have taken enforcement actions related to claims settlement practices as a result of several factors discussed by state regulators, including regulators proactively identifying problematic practices and an insufficient number of consumer complaints to establish that a company's action in one or more cases represents a general business practice.

[24]In discussing the possibility of adding an independent review process, regulators in one state mentioned that the unique nature of LTCI would make such a process complicated, noting that determinations of benefit eligibility are more complex than for other types of insurance, such as health insurance.

For future contacts regarding this statement, please contact John E. Dicken at (202) 512-7114 or at dickenj@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this statement. Kristi Peterson, Assistant Director; Krister Friday; and Rachel Moskowitz made key contributions to this statement.

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