

**TESTIMONY OF**

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**DEPARTMENT OF AGING**

**Long Term Care Insurance: Are Consumers Protected for  
the Long Term?**

**Before the**

**Committee on Energy and Commerce**

**Subcommittee on Oversight and Investigation**

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Chairman Stupak, Congressman Barton, and Congressman Shimkus, and distinguished members of the committee, thank you for the opportunity to testify today on the important issues of long term care insurance and consumer protections. My name is Jack Vogel song, Chief of the Division of the Long Term Living Public Education and Outreach, housed at the Pennsylvania Department of Aging.

When Governor Edward G. Rendell took office in 2003, he outlined several strategic priorities that would serve to guide his administration. One of these important priorities was to reform Pennsylvania's long term living system. By the year 2020, one in four Pennsylvanians will be over the age of 60, and more than half of all individuals will need long term care at some point during their lifetime. When asked, nearly 90% of individuals indicate that they would prefer to receive long term care in their homes and communities rather than in an institutional setting. In addition to the issue of consumer preference, institutional care is nearly twice as expensive to provide as home and community based services. Despite these compelling facts, when the Governor took office, 80% of long term care was delivered in institutional settings, only 20% of long term care was provided in home, and community based settings. The Rendell administration recognized, therefore, that balancing the long term living system to enable more individuals to remain in their homes and communities was both the ethically and fiscally responsible approach. To this end, the Governor convened the Long Term Living Council, a cabinet-level body charged with creating a long term living strategic reform plan.

The Council introduced a number of reform initiatives, including the creation of a new division of Long Term Living Public Education and Outreach housed in the Department of Aging. The division represents the Council's acknowledgment that, for its long term living reform initiatives to be successful, it is essential to raise public awareness about the availability of long term living services and the need to plan for one's long term living future. The division was created in March of 2008 signaling the administration's commitment to its long term living reform strategy. It targets individuals living with disabilities, older adults, their families, and loved ones and assists them to plan effectively and to navigate the complexities of the long term living system.

Prior to assuming my current position, I served for over 12 years as the Director of Pennsylvania's State Health Insurance Assistance Program (SHIP), better known in Pennsylvania as the APPRISE. The availability of the SHIP Network to assist consumers is expressed in the National Association of Insurance Commissioners publication "*A Shopper's Guide to Long Term Care Insurance, The Department of Health and Human Services National Clearinghouse for Long term Care Information,*" and in most states, insurance agents are required to provide information to the consumer at the time of sale. SHIPs provide information to consumers about the appropriateness of long term care insurance and, if appropriate, assist consumers in matching their projected long term living needs and preferences with a policy. Also, SHIPs are contacted when consumers have complaints about claims processing and eligibility for benefits under their policy.

In Pennsylvania, our APPRISE network includes staff in the 52 Area Agencies on Aging (AAAs) and nearly 500 volunteers. As Pennsylvania's former SHIP director, I have personally counseled hundreds of people to determine the appropriateness of long term care insurance on a case-by-case basis. As part of this counseling, I assisted consumers in clarifying their financial goals for an insurance product and educated them on the long term care delivery system to ensure that the policy they selected would provide coverage consistent with their service preference, should they ever need those services. These decisions are challenging indeed for a consumer who, most likely, is decades away from the time during which they might need care.

Often, consumers called on me to help them evaluate their existing policies and determine if their coverage matched their goals. In several cases, I was asked to intervene on the consumer's behalf to obtain payment from the insurer when the consumer believed he or she was entitled to payment of claims for services received.

As the former SHIP director, my experiences with resolving claims issues on behalf of the policyholder have revealed the following:

- Certain carriers have employed strategies to delay payment of legitimate claims by asking for repeated documentation for services provided, and in one occasion refused to send the required claim forms to the policyholder.
- In some cases, a caregiver acting on behalf of the policyholder only became aware of the existence of the policy months after they began receiving services and had difficulty obtaining the required provider documentation to submit the claim.

- In most cases, the claims issues were a result of the policy not providing reimbursement because the policyholder was not receiving services in the appropriate long term care setting.

If there were, one single piece of advice that I can give a consumer with a claims issue it would be to contact their state Insurance Department for assistance.

In a recent survey for the Commonwealth, the Penn State Center for Survey Research conducted 2,630 interviews with individuals age 50 and older. The study surveyed these individuals to determine their current health status, their involvement with people needing long term living services, income, education, insurance coverage, their plans and preparation for long term living services and their knowledge of services. To summarize these findings, the survey determined that the majority of people (56.7%) do not believe that they will ever need long term care services; most (94.1%) believed that Medicare would provide payment for their long term care services. Notably, 19% of the respondents said that they had private long term care insurance, even though the market penetration for long term care insurance in Pennsylvania is believed to be less than 8%. Of respondents who reported having long term care insurance, 44.8% did not know whether their policy included coverage for Adult Daily Living Services.

Moreover, the vast majority (92.1%) of respondents said that they would prefer to remain in their own home and have family members involved with their care should they ever need services. In fact, 11% of the respondents indicated that they are providing long term

living supportive services for an individual living in their home. The respondents providing support indicated that, in the prior week, they provided an average of 28.5 hours of care.

Based on my experience, I believe that many consumers are ill prepared to make an informed decision to purchase long term care insurance that meets their financial goals and allows them to receive the types of services they prefer.

### **What is Pennsylvania Doing?**

**We are enacting strong consumer protections through legislation.** As I mentioned earlier, consumers lack the basic information on public and private funding options for long term living services. In addition they are unfamiliar with their probability of needing services, the cost and types of services that they would have available to them should they ever need care. Inaccurate and incomplete information prevents consumers from making informed decisions and makes them vulnerable to the actions of certain agents. We do not condone actions by agents that present half of the story and utilize scare tactics to create a sense of fear in individuals in order to sell long term care insurance. The notion of “scare them, then sell them” does not belong in the market place. The result is that consumers are sold policies that are often ill-suited to their financial and service needs.

To safeguard consumers from these and other tactics on July 17, 2007, Governor Rendell signed into law Act 40 establishing the Long Term Care Partnership (LTCP). Act 40

contains strong consumer protections, including a requirement that makes it illegal to sell long term care policies that will pay claims only for nursing home care. Act 40 now requires that all long term care policies in Pennsylvania offer comprehensive coverage that allows consumers to choose the service delivery method – nursing home, home care or other similar care -- that best meets their needs. Additional protections under Act 40 include:

- Insurance agents must complete a certified training,
- Minimum standards for inflation protection,
- the ability to exchange existing policies for Partnership Policies, and
- an increase in the guaranty fund of \$300,000 to protect consumers against loss if an insurance company becomes insolvent (a significant improvement over the prior limit of \$100,000 that likely covered less than 1.5 years of services).

To date the Pennsylvania Insurance Department has approved partnership policies for five Long Term Care (LTC) companies and is working with other companies to approve additional policies.

**We are enacting strong consumer protections through responsive complaint investigations.** The Pennsylvania Insurance Department relies heavily on complaint data, collaboration with other regulators and state agencies to drive their back-end regulatory functions and to develop legislative fixes when problems arise. A staff of experts that is sensitive to the needs of the consumer handles every complaint the Department receives. Complaints are used to develop action plans when problems arise and market conduct exams are utilized. For example, the Department recently collaborated with other state

Insurance Departments to review the claims practices of the Conseco Senior Health Insurance Company. As a result, Conseco Senior Health developed stronger internal controls, replaced key management, implemented systems improvements, enhanced its employee training, and made other structural changes to benefit the policy holder. Similar market conduct exams are underway for other LTC insurance carriers. When a complaint is filed with the Insurance Department, every effort is made to expeditiously resolve it to the consumer's satisfaction. While the Department's Consumer Services Bureau and Consumer Liaison have conducted numerous public outreach events, including presentations to senior centers, more outreach is needed to ensure that consumers are aware of services available to them.

The Pennsylvania Insurance Department has three regional Consumer Service offices focused on addressing the needs of insurance consumers. The Department's Office of Consumer Liaison developed training and outreach events focusing on the insurance needs of our citizens specifically targeting people interested in senior products such as long term care insurance.

**We are raising public awareness via "Own Your Future".** On March 26, 2008, Governor Rendell launched the state's new "Own Your Future" campaign and urged Pennsylvanians to begin planning ahead to better meet their future long term care needs. The "Own Your Future" long term care awareness campaign is a joint federal-state initiative to increase awareness among the American public about the importance of planning for future long term care needs. Pennsylvania and Ohio were selected to participate in the campaign in 2008, joining 16 states that participated in previous rounds.

As part of Pennsylvania's "Own Your Future" outreach effort, 1.6 million state residents ranging in age from 45 to 65 received letters from Governor Rendell encouraging them to order a free planning kit produced by the U.S. Department of Health and Human Services. The kit offers information about planning for the future in areas including finances, legal services, and housing, health care and long term care insurance. Pennsylvania also contributed \$1 million toward a comprehensive media buy to help supplement Governor Rendell's mailing. Included in the media buy were television and radio spots, along with internet and newspaper advertising. As of July 11, 2008, nearly 16% of the people who received Governor Rendell's letter have requested the "Own Your Future" planning kit. This is more than twice the expected response rate based on previous "Own Your Future" campaigns. Ohio's "Own Your Future" campaign has seen a similarly high response rate. We believe this trend reflects a growing interest by the American public in this issue. The time is right to promote education on long term living planning.

While we were pleased to see the insurance industry redouble our efforts by actively participating in the "Own Your Future" campaign by mailings and other methods, we also noted practices that confused the public and steered them to a product that may not have been in their best interest. Pennsylvania has and will continue to report these instances to its Department of Insurance for investigation.

**We are raising public awareness via public events:** The Pennsylvania Departments of Aging and Insurance will be sponsoring a series of information and assistance events across the Commonwealth to assist consumers to better prepare their future planning. These events will assist consumers to review their existing insurance coverage, examine their policy benefits and limitations, and become educated on the role of the Insurance Department in complaint resolution.

The State SHIP program currently has 79 APPRISE counselors trained to assist individuals in the selection of long term care insurance. These counselors have completed a 3-day course and passed an exam. Counselors are required to attend annual recertification training and pass a recertification exam. These counselors will also host public seminars to educate consumers about financing options and dispel the myths that Medicare provides payment for long term care services.

The Division of Long Term Living Public Education and Outreach will continue to build on the success of the “Own Your Future” campaign through public seminars, training of health care providers, development of publications and the expansion of the Commonwealth’s long term living web site. The Division will also promote the expansion of home and community based services and programs that empower consumers to remain in their homes and receive support services through formal and informal caregivers. We will also encourage individuals to consider their housing options to ensure that their homes are conducive to their aging in place. In the survey recently conducted by the Penn State Center for Survey Research, nearly half of the

respondents indicated that they lived in two or more story housing. Narrow hallways and doorways, steep stairs and the absence of safety features such as access ramps, grab bars, raised toilet seats, and levered door knobs can make it difficult to remain in their homes. Although in some cases modification can be made to the home, in other cases people will be encouraged to use lifestyle considerations including relocation to Continuing Care Communities as well as other housing options.

**We are raising public awareness via web-based tools.** In the fall of 2008, a web based decision tool will go live that will ask consumers a series of questions about their finances, health status, and personal care preferences. Based on their responses they will be provided written guidance for planning ahead, tips for selecting a long term care insurance policy, and private and public options to finance services.

At this time, I would like to move into the recommendations portion of my testimony.

**Recommendations for States to Consider:**

1. Insurance agents should be required to provide a written statement to consumers that discloses:
  - a. the monthly out-of-pocket cost for nursing home care when selling a policy with a daily benefit of less than 80% of the average daily cost of nursing home care in the consumers' target market.
  - b. the out-of-pocket costs borne by the consumer to meet the policy's deductible or elimination period.

- c. As the long term insurance industry pursues the public sector for tax incentives and the long term partnership, it should concurrently ensure that their agents perform to the highest ethical standards.
2. Enact safeguards in the long term care insurance market similar to the safeguards adopted in the Medicare Private Fee-for-Service market when marketing abuses arose there. These include:
  - a. Hold insurers accountable for the market misconduct of their independent agents.
  - b. Require that all market materials be reviewed and approved by the state Insurance Department.
  - c. Require insurers or their agents to provide a schedule of their upcoming public information seminars to respective state insurance departments in advance of the events to enable investigators to monitor and ensure the accuracy of the information presented.
3. Afford State Insurance Departments adjudicatory authority for claims disputes that permit direct penalties for single violations rather than depending on a pattern of practice under the Unfair Insurance Practices Act. By providing single occurrences with fines of \$5,000 per violation and \$10,000 for each willful violation, cease and desist order license suspension or revocation, and restitution. Single incident fines would provide significant incentive for insurer to investigate the claim issues of their policyholder appropriately.

4. Require insurers to provide written claims payment information on a regular and periodic basis to their policyholders as they age and whenever policyholders contact the insurer seeking information when they become eligible for benefits.
5. Require that insurers uniformly advise their clients at the time a claim is denied or a policy cancelled that they have the option to contact their State Insurance Department to file a complaint. All claim disclosures should identify the Insurance Department as a claims resolution resource for the policyholder or his/her representative.
6. Require that the industry adopt uniform billing codes for long term care services to expedite the claims processing process.
7. Require the insurance industry to develop a standard of excellence in customer services.
8. Require the insurance carrier at the time they issue a policy to contact the policyholder to ascertain whether they were fairly and ethically treated by the agent and to determine the appropriateness of the product for them.
9. The industry should adopt performance measures to assure that policyholders fully understand the policy features.
10. The insurance industry should support consumer directed models that allow consumers to pay family members to provide care. While we recognize the hesitancy of the industry to adopt consumer directed approaches, this is an important approach in light of the projected workforce shortages in the long term living industry.
11. Congress and the Administration should continue to fund the “Own Your Future” campaign on the federal level, and, if possible, increase the speed that it engages additional states in the project.

12. The Centers for Medicare and Medicaid Services should be apportioned the resources to continue to train and support SHIP programs. Perhaps no other initiative has done more to ensure a uniform level of service and quality of providing individual assistance to consumers and unbiased information to consumers.

**Recommendations for Congress to Consider:**

There may be a role for Congress to clarify provisions of the Deficit Reduction Act to improve consistent application of the DRA’s Long Term Care Partnership program by the states.

1. Congress should define the levels of inflation protection, which are currently only generally described.
2. Congress could standardize producer training requirements to facilitate consistency among the states.
3. Finally, Congress could standardize the reciprocity requirements between and among states; such standardization would enhance the “Own Your Future” campaign efforts by making LTCP policies more portable.

**Conclusion**

On behalf of Governor Edward G. Rendell and Secretary of Aging, Nora Dowd Eisenhower, I would like to thank the Committee, for inviting me to share Pennsylvania’s experiences, remedies and recommendations on how to raise public awareness and protect our most vulnerable constituents. I would be glad to answer any questions at this time.