INTERIM JOINT COMMITTEE ON BANKING AND INSURANCE

Minutes of the 3rd Meeting
of the 2019 Interim

October 2, 2019

Call to Order and Roll Call

The 3rd meeting of the Interim Joint Committee on Banking and Insurance was held on Wednesday, October 2, 2019, at 3:00 PM, in Room 154 of the Capitol Annex. Senator Jared Carpenter, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Jared Carpenter, Co-Chair; Representative Bart Rowland, Co-Chair; Senators Rick Girdler, Dennis Parrett, Albert Robinson, John Schickel, Brandon Smith, and Reginald Thomas; Representatives Terri Branham Clark, Joseph M. Fischer, Deanna Frazier, Jim Gooch Jr., Kathy Hinkle, Adam Koenig, Stan Lee, Derek Lewis, Michael Meredith, Wilson Stone, Ken Upchurch, and Rob Wiederstein.

Guests: Chuck Piacentini, Vice President, Insurance Regulation and Associate General Counsel; Jan Graeber, ASA, MAAA, Senior Health Actuary; and Jana Lee Pruitt, Regional Vice President, State Relations, American Council of Life Insurers. Patrick O’Connor, II, Deputy Commissioner of Policy, Kentucky Department of Insurance; Dave Dillon, FSA, MAAA, Senior Vice President and Principal, Lewis & Ellis, Inc.; Bart Baldwin, Executive Director, ABA Advocates; Anne Gregory, and Becky Nastally, PhD, BCBA-D, LBA, Owner/Executive Director, Bloom Behavior Therapy.

LRC Staff: Jessica Sharpe, Breanna Miller, and Dawn Johnson

Minutes

A motion by Senator Schickel and second by Representative Lewis to approve the minutes of the September 11, 2019, meeting carried by voice vote.

Long-Term Care Insurance

Jana Lee Pruitt, Regional Vice President of State Relations, American Council of Life Insurers (ACLI) explained they are a national trade association representing 290 member life insurance companies who write the majority of life insurance annuity and long-term care insurance premiums in the country. Ms. Pruitt introduced Mr. Piacentini and Ms. Graeber.

Mr. Piacentini explained that long-term care needs are increasing as more Americans age. Approximately 13 million people are receiving long-term care services, with the number projected to increase to 27 million by 2050. It is important that consumers have access to meaningful solutions to protect themselves and their retirement assets should the need for long-term care services arise. Long-term care (LTC) insurance is not medical insurance. It is coverage designed to help individuals who lose the ability to perform daily activities, either through a disabling event or just through the aging process. Typically, benefits are paid directly to the consumer and will often be redirected to a care provider. Benefits enable an individual to seek care in the home, an assisted living facility, or a nursing home. Based on the policy, LTC benefits would cover a certain amount per day. If purchased, inflation protection would automatically increase benefits each year to keep up with increases in cost of care. Benefits may not begin immediately and may not cover the entire disability, depending on the policy. Some earlier policies provided lifetime benefits.

Jan Graeber, Senior Health Actuary, American Council of Life Insurers explained the dynamics of pricing a long-term care policy. Pricing is based on various assumptions, like the probability of death before benefits are received, the probability the insured will stop paying premiums before they receive benefits, and the probability the insured will be eligible to receive benefits and for how long. LTC insurance was designed to be a level premium product. Premiums generally should be collected for many years before claims are made. Premiums are used for policy administration, shareholders, taxes, and commissions, but the bulk goes to reserve funds for future benefits—the net premium. Net premiums are deposited similar to interest earning savings accounts. The scheduled deposit amount is determined initially based on estimates of benefit payments and interest earned. If the estimates are incorrect, the account may not have enough to cover future withdrawals. The amount of funds withdrawn depends on the number of people who keep their policies, the number of those who will use benefits, and the amount that is paid out to people who use benefits. When LTC insurance is priced, future net premiums plus the reserve fund must balance. They become out of balance when expected future withdrawals outweigh the deposit schedule. Rate increases are needed to restore balance.

Mr. Piacentini said LTC insurance is a relatively new product developed in the 1970s and 1980s. Cost projection assumptions have been wrong. Over time, as insurers became more experienced and evaluated the need for sufficient premiums to cover claims it was determined there was a gap. The industry has been working with insurance departments to ensure a collective understanding of what level of premium is necessary to ensure that consumers have the benefits within their contracts. Although these were projected as level premiums, they were structured as guaranteed renewable, meaning premium rates cannot be raised on individual consumers. However, if the entire program is insufficient, premiums can be raised across the board to address existing shortfalls. He said the industry needs to do a better job explaining the need for rate increases to consumers.

Mr. Piacentini stated that the next generation of LTC insurance options for consumers is critically important. New options include life insurance hybrid or combo products that combine LTC benefits with a life insurance or annuity policy. These products are much less risky because insurers know that benefits are going to be paid out either as LTC or death benefits. He recommended exploring financing options for LTC benefit plans. The industry is advocating for increased consumer access to tax preferred funds to reduce the cost of LTC premiums. Mr. Piacentini said ACLI works to ensure the sanctity of the state guaranty association system, which provides a level of protection should there be an insolvency. In the next generation of LTC products, ACLI will consider how to address LTC risk to ensure greater premium certainty for customers. The importance of rate increases is to stabilize the market to enable additional carriers to get into the next generation of LTC, which ensures consumers have access to meaningful products to protect themselves and their families.

Responding to Representative Stone's question about premiums that have been collected but not dispersed due to lapse of payment or death, Ms. Graeber said the net premium goes into a reserve fund. LTC generally does not provide a non-forfeiture benefit. Most companies will offer a contingent non-forfeiture benefit in the event of a lapse, which is a return of your premium, similar to life insurance. Ms. Graeber said when the model was developed, it was assumed that a higher number of people would lapse their policies, however, more people than projected held on to their policies. Mr. Piacentini said this is why there is growth in the hybrid plans because those plans have a guaranteed payout. In the case of a policyholder who is unable to pay due to a rate increase, there may be some mitigation offered through a paid-up policy. If an individual meets the LTC triggers, typically their premiums are no longer payable under most policies.

In response to Senator Parrett's question about whether there have been insolvencies in Kentucky, Mr. Piacentini said two insurers in Kentucky were associated with the Penn Treaty insolvency. The Kentucky Guaranty Association would have picked up the coverage for that, up to the guarantee limits of $300,000.

Patrick O'Connor, Deputy Commissioner of Policy, Kentucky Department of Insurance (KDOI) said the department receives a number of complaints from LTC insurance policy holders about rate increases. The KDOI does not "rubber stamp" rate increase requests. There is a thorough review process and not all requested amounts are approved. Another common complaint from policy holders is their belief that companies are not allowed to increase rates. A provision of Kentucky law, and language included within the policy, allows rate increases. Since 2016, KDOI has received 206 rate increase request filings from 45 different insurance companies. Because there is a maximum 90 day period to review the requests, some agencies are asked to refile if more time is needed. Resubmitted applications are included in the total number. The Department has approved 123 rate increase requests. The average increase requested was 49 percent. Increases requested range from 5 percent to 231 percent. The average approved increase was 24 percent. Increases approved range from one percent to 126 percent. Many rate increases are for “closed block” plans that are not for sale anymore. Rate filings beginning with 2018 are public record and available online.

Deputy Commissioner O’Connor explained that rate increase requests are filed electronically. The application includes basic filing information and a detailed actuarial memorandum supporting the request. Rate filings are subject to independent actuarial review. Factors considered include lifetime projections of earned premium and incurred claims, comparison to new product premiums, if applicable, impact to various subsets of policyholders, state-by-state comparisons, and prior period premium review and projection. If a policyholder will be subject to a rate increase, the KDOI wants to see ways the company can mitigate its impact. This includes multi-year phase-ins and decreasing benefits to mitigate premium increases. The department also reviews and approves correspondence provided to policyholders. Deputy Commissioner O’Connor said LTC insurance rate increase requests are a significant concern for the KDOI. They are collaborating with other states to devise solutions. The KDOI tries to balance financial solvency concerns of insurers with consumer interests and is focusing on improving the review process to become more timely and efficient.

Dave Dillon, Senior Vice President and Principal, Lewis & Ellis, Inc. is a health actuary that has been engaged by the KDOI since 2012 to review and make recommendations on provider rate increase requests. He is the health actuary for ten other states. Mr. Dillon said that while the life insurance industry is fairly consistent, the LTC insurance industry, which is relatively new, is not. There are many considerations when looking at reasons for insufficient premium amounts. Losses are difficult to overcome. When plan products were first priced in the 1970s and 1980s, they were priced primarily like annuity products, with similar assumptions. Lapse rates were overestimated by three to four percent. Over an extended period of time, large rate increases were the result. Mr. Dillon said many key players have exited recently. There are not many new policies. He said the Genworth/China Oceanwide transaction is very important. Genworth has had some financial difficulties and has filed for many rate increases. They are in the process of being purchased, but have faced a lot of regulatory issues from different entities. There have not been many transactions nor have there been many people buying and selling blocks for investment purposes for different reasons. This may be about to change. Mr. Dillon said life and annuity hybrid products account for 85 percent of new sales which is good because life insurance is more stable. Pairing a highly volatile product with a more stable product is good. Growth has been mainly in affluent markets so there are still a lot of opportunities in the middle market. Mr. Dillon reviewed provider data on actual-to-expected covered lives and actual-to-expected claims. He also stated that LTC insurance rate increases are a nationwide issue. Prior to 2000, the regulatory approach resulted in many and large rate increases resulting in a lot of complaints. From 2000 to 2014, there was rate stabilization because regulators required insurers to make more conservative assumptions on the front end. The current model, promulgated by the National Association of Insurance

Commissioners (NAIC) and adopted by a few states, is a variation of the previous approach of being more diligent on the front end.

Mr. Dillon said there is a lot of variation among state approaches to LTC rate increase requests, mainly due to recoupment of past losses and delays in seeking the increase. Mr. Dillon discussed the approaches used in other states and said that Kentucky tries to keep in line with other states. Mr. Dillon said rate increases and rate stabilization regulation is helping to mitigate the problem. He also reviewed data on closed rate filings since 2010 in Kentucky and several other states.

Senator Schickel introduced constituents Marie and Wayne Enstice to share their experiences with LTC insurance rate increases. Mr. Enstice said for the past two years, he and his wife have sought answers as to why their LTC insurance payment increased so drastically. Mr. Enstice said he e-mailed a set of solutions he and his wife suggest to approach the problem to committee members. The Enstices purchased policies in 2007. In 2017, their rate increased 45 percent in each of their premiums. While they were aware they would face rate increases, the magnitude was the problem. After researching LTC insurance rate increases, they realized it is a national problem. They found initial assumptions were wildly inaccurate. He noted the KDOI's motto of making sure Kentuckians are treated fairly in the marketplace. The Enstices were given two months to decide whether to pay the increased rate or let their policies lapse. They filed a complaint. Mr. Enstice said they were diligent and did much research before purchasing their policy. It was obviously something they were going to keep unless something catastrophic happened. Their policy has cost approximately $70,000, so they were not going to lightly reduce their coverage. They experienced a sudden increase of $3,400 out of their budget. They contacted their insurance carrier to find out what the insurance company was doing to shoulder some of the burden. The insurers should be held responsible since the product was so faulty to begin with. The Enstices received a pro forma response from the KDOI when they were actually looking for some help in terms of long range planning within the KDOI in handling issues like this. The only response they received was that no laws were broken. While they knew to expect rate increases, they had no forewarning of the size of the increase. Through an open records request, they found their insurance company was given the option of spreading the increase over two years, however, the company chose one. When they asked the KDOI why this was, they were told there was no historical record. Mr. Enstice said they feel no more fairly treated in the marketplace today than they did two years ago. Through their research, they found many states would not allow such a significant rate increase at one time. They asked several times to speak to the Commissioner and were told she was not available. The Enstices suggested Kentucky pass increase caps or spread rate increases over several years if there was a pressing need based on actuarial assumptions. There is an insurance compact in Kentucky. They can be arbiters for requests that exceed a cap. He said policyholders in Ohio paid a lower rate increase for the exact same policy. The whole rate structure and process needs to be more transparent. The Enstices said they are vulnerable. If they receive another sizeable rate increase, they will be in crisis mode. He asked that the committee and legislature pass measures to achieve a corrective balance.

Chairman Carpenter expressed the committee's appreciation to the Enstices for their testimony and sharing the consumer side of the issue. Senator Schickel said he has been working with the Enstices for two years and will continue to try to make some headway.

Responding to Senator Thomas' question, Deputy Commissioner O'Connor said LTC insurance policies do not exclude specific conditions, including Alzheimer's and dementia. The policy pays based on a lack of ability to perform daily activities, regardless of the reason. Mr. Dillon agreed, saying someone with any specific type of condition will not get a rate increase based on it.

Representative Gooch said members are sympathetic to the issue. Guaranteed renewable plans were sold decades ago that were not actuarially sound, but they are now closed, which means no new premium dollars are going into these particular plans. As rates increase, younger and healthier people find cheaper plans. Those left in the plan may be older and sicker and using the policy. At some point, it appears that every closed plan will collapse. By mitigating rate increases, you are encouraging people to stay in the plan and pay premiums. It is not likely that insurance companies want a huge rate increase where everyone drops out except a few. Deputy Commissioner O'Connor said Representative Gooch's comments highlight the heart of the issue. The KDOI is in an extremely difficult position. They must consider the financial solvency of LTC insurance companies against the interests of longtime policyholders to find a landing spot where companies can remain in business and policyholders can continue to have the most affordable policy possible considering the situation. Mr. Dillon said when reviewing a rate increase request, if a company has an open and a closed block, they consider those premium rates for the on-the-street rates and compare to the closed block rates. The struggle is there are many closed blocks for companies who no longer sell policies. That is where we get into landing spots and actuarially equivalent alternatives such that the consumer may choose a $200 benefit instead of a $300 benefit to mitigate a rate increase.

Anthem Reimbursement Reduction for Providers of Services to Children with Autism

Bart Baldwin, Executive Director of ABA Advocates said the General Assembly has been very supportive of autism-related issues with the passage of the 2010 health mandate relating to autism, as well as the 2018 update sponsored by Chairman Rowland. The concern now is an announced Anthem change in coding used by providers of services to children with autism. This change undermines the intent of the legislation.

Dr. Becky Nastally, Owner and Executive Director of Bloom Behavior Therapy said there is a grave access to treatment problem for children with autism in Kentucky and worldwide. Dr. Nastally said she is a doctorate level board certified applied behavior analysis (ABA) therapist providing ABA therapy. ABA therapy is the most evidence-based treatment for autism. It is approved by the Surgeon General, the American Medical Association, and the American Association of Pediatrics. It is best when delivered at the onset of diagnosis. Autism can be identified as early as 18 months of age. It is best when it is delivered intensively. There is a shortage of providers in the state. Only recently has licensure existed in Kentucky. Dr. Nastally said therapists are constantly fighting a battle for funding. The insurance mandate requires insurance companies to provide medically necessary treatment for children with autism. There are loopholes in the mandate with huge out-of-pocket costs that families still have to incur because of deductibles, copays, and reaching out-of-pocket maximums. Service providers have experienced rate cuts, including the 25 percent reimbursement reduction by Anthem. Without the necessary treatment, symptoms of autism increase. Dr. Nastally asked the committee to help prevent insurance companies from further restricting access to treatment for children with autism, who represent one of the most vulnerable populations within society.

Anne Gregory, advocate and parent of a child with autism, said during the 2010 Legislative Session, she was the lead parent volunteer and Kentucky liaison for Autism Speaks in its push for autism insurance reform across the country. Her son was 10 years old at the time. Ms. Gregory discussed the significant impact ABA therapy and other services have on the future of children with autism. ABA therapy is crucial to long-term prognosis. She never thought she would be back before the legislature but she cannot allow insurance companies to undermine the benefits of all their hard work and create hardships for families across the state. Ms. Gregory explained the learning progression of her son in an ABA therapy program. Anthem’s 25 percent rate cut would be devastating to providers of ABA therapy and would revert more financial burden onto family members of those with autism. Anthem’s actions would be devastating, even more so if other insurers follow suit.

Responding to Representative Gooch’s question, Dr. Nastally said the 25 percent reduction is an across the board cut. Every ABA provider that utilizes that particular code which is used for the primary area of practice will have their reimbursement rate cut by 25 percent. Mr. Baldwin said ABA therapy has a variety of Current Procedural Terminology (CPT) codes. The one CPT code primarily used in billing is the one being targeted. Representative Gooch said he would like clarification because he had been told something somewhat different.

Senator Girdler asked if anyone had met with Anthem. Mr. Baldwin answered yes. Senator Girdler said he understood there are different codes for ABA therapy. He suggested they try to resolve the issue with an Anthem representative since the proposed change would go into effect November 1. Mr. Baldwin said there are different codes for licensed behavior analyst and a behavior technician who implements the treatment plan as designed by the analyst. Dr. Nastally explained that a Board Certified Behavior Analyst, someone with a master's degree or PhD, would at times also use that code in question to provide direct therapy. She said Anthem does not use modifiers, as some companies do, which ties the code to the provider type. Mr. Baldwin said they met with Anthem representatives in August and they plan to develop a workgroup to work on value-based contracting and some other approaches, but currently there is an immediate issue. He understood that the committee is limited in what it can do.

Chairman Carpenter said currently there is little the committee can do but he hoped representatives attending the meeting could work with them on this issue.

There being no further business the meeting adjourned at 4:55 PM.