

Long Term Care Insurance Options In New York State

A Report to the Governor and Legislature

2005

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in consultation with
the NYS Department of Health,
and the NYS Office for the Aging**

TABLE OF CONTENTS

Executive Summary	1
Legislative Goal.....	1
Background.....	2
Recommendations.....	2
I. Introduction	8
II. Barriers to the Purchase of Long Term Care Insurance	10
Denial.....	10
The Belief that Medicare/Medicaid will Pay.....	11
Medicaid as a Competitor to Long Term Care Insurance.....	12
Complexity and Confusion.....	13
Cost.....	13
Recommendations	14
III. Availability of Long Term Care Insurance in New York	15
Historical Background.....	15
Policies Currently in Force in New York.....	15
Comprehensive Long Term Care or Limited Coverages.....	18
The New York State Partnership for Long Term Care.....	21
Tax-qualified or non-Tax Qualified.....	24
Expense incurred or Indemnity.....	25
Individual or Group.....	25
Recommendations	30
IV. Adequacy of Long Term Care Insurance in New York	31
Availability of Care at Home.....	31
Adequacy of the Benefit Levels within Current Products.....	33
Inflation Protection.....	34
Lapse Protection (Nonforfeiture Benefits).....	35
Return of Premium upon Death Benefit.....	38
Accelerated Payment Options.....	38
Exhaustion of Policy Benefits.....	39
Financial Stability.....	39
Consumer Complaints.....	40
Dispute Resolution.....	40
Knowledge.....	41
Future Market (Demographics, Technology, and Living Arrangements)...	41
Recommendations	42

V. Affordability of Long Term Care Insurance in New York.....	43
Timing of the Decision to Purchase.....	43
Policy Selection Factors.....	44
Personal Factors to Consider.....	46
Insurer’s Factors Affecting Rates.....	47
Tax Deductions and Tax Credits.....	48
Establishment of Premium Rates.....	49
Recommendations.....	53
VI. Underwriting / Pre-Existing Conditions.....	55
Recommendations	59
VII. Combination Products.....	61
Long Term Care and Disability Income Products.....	61
Long Term Care Conversion Option.....	62
Right to Purchase Option	64
Long Term Care Credit Endorsement.....	65
Recommendations	66
Long Term Care and Life or Annuity Products.....	66
Long Term Care and Life Insurance Products.....	67
Long Term Care and Annuity Products.....	68
Accelerated Death Benefits including Long Term Care Triggers...	68
Right to Purchase Option.....	70
Other Uses of Life Insurance to Support Long Term Care.....	71
Regulatory Considerations.....	72
Recommendations	72
Long Term Care and Health Insurance.....	73
Health Savings Accounts.....	73
Recommendations	74
VIII. Alternative Long Term Care Financing Approaches.....	75
Continuing Care Retirement Communities.....	75
Managed Long Term Care	76
IX. Conclusion.....	78
Appendix A – Long Term Care Industry Survey.....	79
Appendix B – Survey of Other States.....	89
Appendix C – Total In-Force Policies.....	91
Appendix D – Age Breakdown of In-Force Policies.....	92
Appendix E – Acknowledgements and Thanks.....	93

Executive Summary

Legislative Goal

In 2004, Governor Pataki and the New York State Legislature launched a number of initiatives designed to expand private financing of long term care services. New York State's tax credit for the purchase of long term care insurance was increased from 10% of premiums up to 20% of premiums. State law was also changed to expand New York's Partnership for Long Term Care Program in order to offer a number of new long term care insurance products. Further, extensive resources were devoted to the development of a public education and outreach campaign designed to educate New Yorkers about the necessity of preparing themselves financially for the likelihood they will need long term care services in the future.

In addition to launching these initiatives, Governor Pataki and the 2004 Legislature passed a statute calling for this study which analyzes long term care insurance options in New York State. Specifically, the NYS Insurance Department, in consultation with the NYS Department of Health and the NYS Office for the Aging, was directed to study options to assist policyholders in preparing for the costs of Long Term Care. The study must analyze:

- 1) The adequacy and affordability of long term care insurance benefits, including the efficacy of benefits in assisting individuals to remain at home;
- 2) The availability of tax credits and/or deductions particularly for long term care insurance purchased by persons other than the insured;
- 3) The effect of pre-existing medical conditions on the availability and affordability of long term care insurance;
- 4) Combined insurance products, specifically:
 - i. Combination long term care and disability income products;
 - ii. "Living Benefit" life insurance policies; and
 - iii. Early access to life insurance benefits to pay long term care premiums.
- 5) Long term care insurance lapse protection, dispute resolution and appeals processes.

Work upon this study began upon its commission in the fall of 2004 and was completed in the fall of 2005. In the time permitted, a comprehensive survey instrument designed to elicit the advice and input of long term care insurance professionals statewide was forwarded to all insurance companies participating in New York's long term care insurance marketplace.¹ A separate survey regarding long term care insurance was developed to elicit the experience of other States and was transmitted nationwide with the assistance of the National Association

¹ See Appendix A

of Insurance Commissioners.² Additionally, a follow up survey was sent to select states with markets of particular interest to New York. Forums were held to obtain the advice of New York's consumers and their representatives, agents and brokers specializing in long term care insurance, and long term care insurance companies. Workgroups of industry representatives, the NYS Insurance Department, the NYS Department of Health and the NYS Office for the Aging analyzed the issues presented. We present this study with thanks to the many people who contributed their time and expertise (See Appendix E for a full listing of contributors).

The issues New York State and the nation are currently facing with respect to financing the ever increasing costs of providing appropriate long term care services do not have easy solutions. After completing the above study, we respectfully submit this report with its recommendations that suggest methods the State should implement to further assist citizens to prepare through the purchase of long term care insurance. Approaches that have been examined and rejected are addressed in the body of the study, also for your consideration.

Background

- Although the population of New York State is projected to have a low growth rate over the next twenty years, significant changes are anticipated in its aging. These changes are attributable to the aging of baby boomers, along with medical advancements and increased life expectancies. By 2025, at least 1 in 5 New Yorkers will be age 60 or older and half of those older people will be at least age 75.³
- Last year, New York's Medicaid program spent over \$34 Billion.⁴ An examination of these costs show that approximately 1/3 of the expenditures were attributable to long term care services rendered to the elderly and disabled.⁵ With the aging of New York's population, alternatives to the public financing of long term care services must be pursued.
- Older people commonly want to maintain their independence and "age in place" at home as long as possible. Advances in technology are anticipated to continue to extend one's ability to remain at home. However, as chronic illness and general infirmity advance with age, other living arrangement options may be necessary.

Recommendations

- **Tighten Medicaid Rules** – Medicaid is a strong competitor to long term care insurance in New York State. New York's Medicaid program provides generous long term care benefits. Medicaid's eligibility rules allow persons to transfer their assets to become eligible for Medicaid even though they have sufficient assets to purchase long term care insurance. Public and private responsibility for long term care financing should be realigned in New York in order to increase the incentives for the purchase of long term care insurance products. (See Section on Barriers – p. 10)

² See Appendix B

³ NYS Office of the Aging, *Demographic Projections to 2025*, 2002.

⁴ NYS Department of Health, *Website*, 2005.

⁵ NYS Department of Health, *Website*, 2005.

- **Increase Knowledge and Awareness -**

- **Intensify Consumer Education** – With long term care financing, change in perspective similar to what has been recently achieved with private retirement savings needs to occur. Not too long ago, consumers relied on their employers to provide them with a pension and they did not consider private retirement accounts. Now, many of those with sufficient means to save for their own retirements have IRAs in place. We feel an intense, concerted, long range consumer education campaign is essential to effectuating a similar culture change with respect to the private financing of long term care services.

The public should be made aware that, in general, their acute medical care policy, Medicare, and Medicare Supplement policy will not cover long term care services. People must be advised that Medicaid is designed only for the indigent and that their personal assets may be at risk if they do not plan for long term care needs. Citizens must be encouraged to take prudent steps to ensure their own financial security as they age. New Yorkers with reasonable assets and income must be educated that they must personally finance the cost of long term care and that various means are available, including long term care insurance. Consumers must understand the risk that they will need long term care services and the benefits of preparing financially for the possibility of such need. Consumers should also be encouraged to purchase long term care insurance when they are young in order ensure its availability and affordability. (See Sections on Barriers - p. 10, Affordability – p. 43, and Underwriting/Pre-Existing-p. 55)

- **Encourage Consumers to Purchase Coverage at Younger Ages** – Consumers should be encouraged to purchase long term care insurance early in life while healthy. The longer the purchase of coverage is delayed, the more likely it is they will experience deteriorating health which could eliminate the opportunity to purchase long term care insurance later. Public education is the key to effecting the cultural change required to make younger people aware of the need to plan for their future long term care needs. (See Sections on Affordability – p. 43 and Underwriting/Pre-Existing - p. 55)
- **Increase Consumer Awareness of the 20% New York State Tax Credit** – New York's tax credit for long term care premiums provides a substantial benefit to New Yorkers. Consumers should be aware that New York State will support their efforts to plan for the future by paying 1/5 of the bill for their long term care insurance premiums. Additionally, New York's credit is available to anyone paying premiums such that children paying for coverage on behalf of their parent can take advantage. This feature of the credit should be further publicized with the State's education efforts. (See Section on Affordability – p. 43)
- **Promote Agent Training** – Training in long term care insurance in New York should be available to all agents and brokers to improve their knowledge and confidence in offering the product. A New York State certified long term care agent/broker training program would assure consumers of the agent/broker's competence. (See Section on Adequacy – p. 31)

- **Allow for Product Choice –**

New York's current regulatory structure sets minimum standards for long term care insurance contracts and permits carriers to develop a wide range of products at a wide range of benefit levels. This flexibility fosters necessary innovation, while ensuring adequate consumer protections. Long term care insurance is a developing market with emerging experience. The risk the product is insuring against is ever changing with the emergence of technology, lengthening of life expectancies, increases in obesity rates, escalation in health care costs, etc. The long term care insurance market in New York should offer a range of long term care insurance options permitting consumers to either fully or partially rely on insurance to address their long term care needs. To further stimulate this market and increase availability and provide more affordable products, we make the following recommendations:

- **Encourage and/or Require Insurers to Offer Limited Policies (such as Nursing Home Only and Home Care Only Policies) and to Make Available Products with Minimum Benefit Amounts and Shortened Benefit Periods –** Products must be available and affordable to the typical New Yorker. New York's regulations allow lower level long term care insurance policies (with only home care benefits or only nursing home benefits) but they are not currently being promoted by insurance companies. Additionally, New York's regulations allow lower daily benefit amounts and shorter periods of coverage than are currently being offered by insurers. This is in part because the industry is likely targeting sales at consumers with higher net worth. Limited forms of coverage may be more affordable and realistic for middle income New Yorkers who would otherwise spend down to Medicaid eligibility in order to cover their long term care services. We recommend that insurers be encouraged or required to offer Nursing Home Only and Home Care Only policies. Insurers should also be encouraged or required to make available and disclose to the consumer the availability of minimum daily benefit amounts and minimum benefit periods. For the industry, these reduced policies offer the advantage of less liability. Less comprehensive policies offer consumers some coverage at an affordable cost as well as flexibility in planning to meet their long term care needs either fully or partially through the purchase of long term care insurance. The availability of such policies would provide consumers with the greatest extent of choice from which to make an informed decision. (See Sections on Availability – p. 15, Adequacy - p. 31, and Affordability - p. 43)
- **Encourage or Incentivize the Development of Combined Products -** We recommend that disability income carriers and life insurance carriers be encouraged or incentivized to continue to examine and experiment with combined product mechanisms. Such products carry some potential for making long term care insurance more available and affordable to policyholders. In particular, we recommend that more carriers offer long term care conversion options and options to purchase long term care insurance. These mechanisms appear to permit access to long term care insurance protections at an affordable cost. Additionally, we encourage life carriers to take advantage of the soon to be available option to offer accelerated death benefits with long term care triggers. (See Section on Combined Products – p. 61)

- **Stimulate the Group Long Term Care Insurance Market and Educate Employers -**
An employer market allows penetration to a population that is generally younger and healthier than the public at large – the primary factors contributing to a more affordable premium. Those purchasing long term care insurance in the group market also tend to purchase long term care coverage at younger ages. Employers in New York should be educated and encouraged to extend long term care insurance coverage to their employees. The federal tax structure should be amended to provide incentives to employees for the purchase of long term care insurance. We broadly recommend that employers be incentivized to offer coverage to their employees and retirees. (See Sections on Availability – p. 15, Affordability – p. 43, and Underwriting/ Pre-Existing Conditions – p. 55)
- **Encourage the Federal Government to take Action** – We feel all or any one of the following changes at the federal level would stimulate the purchase of long term care insurance. (See Sections on Availability – p. 15 and Affordability – p. 43)
 - **Allow an above-the line deduction or tax credit for long term care premiums.**
Federal tax law ties the availability of a federal tax incentive to medical expenses. A federal tax benefit is only available if long term care premiums, combined with medical expenses, exceed 7 1/2% of a taxpayer's adjusted gross income. This design severely limits the number of taxpayers that can benefit from federal tax policy. The uncertainty of the availability of the tax benefit hinders its utility as an incentive.
 - **Allow long term care insurance to qualify as part of a Cafeteria Plan under Section 125 of the Internal Revenue Code to allow Before-Tax Deductions for Premiums.** A cafeteria plan allows an employee to contribute to premiums on a tax-free basis. Current federal law prohibits inclusion of long term care insurance in a cafeteria plan. A change in federal tax policy to eliminate this prohibition would assist in stimulating the group long term care insurance market thereby encouraging younger, actively working consumers to plan for their future long term care needs.
 - **Allow funds committed to Flexible Spending Accounts to be spent on the premiums for long term care insurance.** Flexible spending accounts may be set up by employees so that they can make tax free contributions in order to pay for certain health expenses that are not covered by health insurance. Currently, federal law prohibits use of these funds to pay premiums for long term care insurance. A change in federal tax policy to eliminate this prohibition would assist in stimulating the group long term care insurance market thereby encouraging younger, actively working consumers to plan for their future long term care needs.
 - **Allow for the tax free use of individual retirement accounts (IRA's) and 401(k) funds to pay long term care insurance premiums.** These retirement savings mechanisms do not currently allow for penalty free withdrawals to pay premiums for long term care insurance. Access to these retirement planning funds for this purpose would facilitate private long term care financing.

- **Allow for a federal tax deduction by any individual paying long term care insurance premiums, regardless of who is the insured on the policy.** The current federal law allows an individual to claim long term care premiums as a medical expense deduction for themselves, their spouse and their dependents. However, children paying premiums on behalf of their aging parents would not be eligible to claim any tax benefit. Adult children may be highly motivated to pay long term care premiums on behalf of an aging parent who is unable to afford premiums. This investment can protect an adult child's future inheritance or assist them in preparing for anticipated care giving responsibilities. Similar to New York State's tax credit, a change in federal policy to permit a tax benefit for anyone paying premiums would further encourage the purchase of long term care insurance.

- **Request that the Federal Government Allow For Expansion of Health Savings Account Concept or the Creation of a New Long Term Care Financing Account** – the federal government should be encouraged to allow tax beneficial savings accounts which would assist citizens in saving for their long term care needs. This could be accomplished through modifications to Health Savings Accounts to make them more functional as a long term care financing mechanism or through the development of a new form of account specifically designed to finance long term care. (See Section on Combined Products – p. 61)

- **Encourage or Require the Availability of Long Term Care Insurance Coverage for those with Pre-existing Medical Conditions** – Those with pre-existing conditions may be highly motivated to invest in long term care insurance in order to plan for financing long term care services that they anticipate they will need. However, they may not be able to purchase the product due to medical underwriting. This can leave such consumers with almost no alternative to reliance upon Medicaid, perhaps in conjunction with Medicaid estate planning mechanisms designed to protect their resources from the State. In order to protect the Medicaid program and to serve such consumers, we need to provide people in such circumstances with other approaches and mechanisms for financing whatever portion of long term care services they are able to finance. At the same time, we cannot simply mandate that long term care insurers extend coverage to those with health conditions given that such a mandate could impact the viability of the product and the financial stability of the company. (See Section on Underwriting/Pre-Existing Conditions - p. 55)

- **Encourage, Incentivize or Allow the Creation of a New Category of Long Term Care Insurance for those with Pre-existing Conditions** - The State should allow creation of a new category of Long Term Care Insurance offering benefit levels that are lower than the current regulatory minimums. This coverage would only be available to applicants who had been diagnosed with certain preexisting conditions and who are unable to pass standard underwriting. This would offer a choice to people who were previously considered “uninsurable” while limiting an insurer's overall risk.

- **Insurance Companies Should be Encouraged to Make More Benefit Counteroffers to Applicants** – Insurers should be encouraged to make counter offers to applicants who have one or more pre-existing conditions but who are not completely “uninsurable”. This may require the insurer’s creation of new products that comply with the regulatory minimums and offer limited, but affordable, coverage.
- **Offer Products with Longer Elimination Products** - The Insurance Department will begin accepting submissions of Long Term Care Insurance products that offer elimination periods that are between 6 months and 1 year in length in order to encourage insurers to extend coverage to poorer risks. As a consumer protection, we will require that any product offering such a lengthy elimination period prominently disclose the insured’s responsibility for payment of their own care for the duration of that waiting period. Insurers should be encouraged to extend coverage with longer elimination periods to consumers who cannot pass standard underwriting.
- **Require Dispute Resolution Process be Specified in the Policy** - We recommend that New York State require all insurers selling long term care insurance in this State to include language in their policies describing the insurer’s dispute resolution process. (See Section on Adequacy, p. 31)
- **Consider Providing A Minimal Amount of Long Term Care Coverage to All New Yorkers** – The State should examine partnership with the insurance industry to provide a minimal amount of coverage to all adult New Yorkers through an actuarially sound long term care financing program. Such a program would extend the availability of long term care benefits to the broad population. Consideration should be given to studying the feasibility of such a program on a demonstration basis. (See Section on Availability, p. 15)

I. INTRODUCTION

New York's population is aging. This is largely due to the aging of New York's post World War II baby boomers, born between 1946 and 1964. There are 3.6 million baby boomers in New York State.⁶ This age cohort constitutes 18% of New York's total population.⁷ By 2025, at least 1 in 5 New Yorkers will be age 60 or older and half of those older people will be at least age 75.⁸ With medical advancements, these baby boomers are expected to outlive prior generations.

As New York's population ages, we must expect very significant increases in the demand for long term care services. The likelihood of a loss in physical functioning evoking a need for long term care services increases significantly with age. Approximately 19% of seniors over the age of 65 experience some form of chronic physical impairment.⁹ This percentage increases to 55% for those 85 years of age or older.¹⁰

At the same time New York's baby boomers are aging, we are seeing indications that disability rates among the non-elderly New Yorkers are increasing.¹¹ Obesity rates in New York State increased by 36% between 1990 and 2003, leading to increased morbidity from cardiovascular disease, cancer and diabetes.¹² A potential increase in the disability rates for those under the age of 65 could compound the issues relating to providing and financing long term care services in New York State in years to come.

While Medicaid is the primary financer of formal long term care services in New York State, New York's families voluntarily shoulder the burden for providing the majority of services needed by their elderly and disabled relatives.¹³ The value of these donated informal long term care services and supports cannot be overestimated. In years to come, it is predicted that great strains will be placed on this informal care system.

As the baby boom generation ages, the demand for long term care services will increase and since subsequent generations are smaller, the ability to rely on family members as caregivers will decrease. Women, who are the primary caregivers, are predicted to be in the workforce in greater proportions.¹⁴ As more people need long term care services and fewer family members are available to provide them with assistance, there will be an increased demand for easy access to more formal quality care, for greater choices of care, and for affordability of those options.

Currently, New York's Medicaid program pays for the bulk of formal long term care services rendered to New Yorkers. Formal long term care services accounted for one-third of the \$34

⁶ NYS Office of the Aging, *Demographic Projections to 2025*, 2002.

⁷ NYS Office of the Aging, *Demographic Projections to 2025*, 2002.

⁶ NYS Office of the Aging, *Demographic Projections to 2025*, 2002.

⁹ Congressional Budget Office, *Financing Long-Term Care for the Elderly*, April 2004

¹⁰ Congressional Budget Office, *Financing Long-Term Care for the Elderly*, April 2004

¹¹ William Mercer, *Employer Survey*, 2003. First Unum, *Disability Database*, 2003.

¹² NYS Department of Health, *Strategic Plan for Overweight and Obesity Prevention*, December 2004.

¹³ NYS Office of the Aging, *Demographic Projections to 2025*, 2002

¹⁴ Congressional Budget Office, *Financing Long-Term Care for the Elderly*, April 2004.

billion dollars spent by New York's Medicaid program in 2004.¹⁵ Given the changing demographic profile of the State, ongoing reliance on public funding to finance long term care services could have an overwhelming impact upon the New York State budget. Effective private mechanisms to finance long term care services are needed.

Long term care insurance is one of the mechanisms that can assist in addressing the need for enhanced private financing of long term care services. Long term care insurance coverage can help individuals in need of long term care services to maintain personal control and independence and avoid impoverishment. Such coverage can also be utilized to supplement informal care provided by New York's families and to support them in their efforts to care for their elderly and disabled relatives. However, long term care insurance sales are currently modest both in New York State and nationally.

Nationally, 60% of long term care spending is publicly financed through the Medicare and Medicaid programs (excluding informal care). Only 4% is financed through private insurance.¹⁶ In New York, as of December 31, 2004, the total number of persons with in-force long term care policies totaled 296,953. While this represents a significant number of policies sold, we note that New York has a current population of 18.3 million, with approximately 3.1 million New Yorkers over the age of 60.¹⁷ Many more New Yorkers must be reached with long term care insurance coverage in order for this mechanism to have a significant favorable impact upon future State budgets and the well being of New York's aging population.

¹⁵ NYS Department of Health, *Website*, 2005.

¹⁶ Congressional Budget Office, *Financing Long-Term Care for the Elderly*, April 2004

¹⁷ NYS Office of the Aging, *Demographic Projections to 2025*, 2002.

II. BARRIERS TO THE PURCHASE OF LONG TERM CARE INSURANCE

Long term care insurance is a relatively new form of insurance designed specifically to cover the costs of long term care. The primary issues that present barriers to the purchase of long term care insurance are:

- **Denial** – Many consumers believe they may not need long term care services in the future. Even those who recognize that there may be a need, avoid planning for this unpleasant eventuality.
- **Belief that Medicare/Medicaid Will Pay**– Many consumers believe that the cost of long term care services will be covered by Medicare or Medicaid.
- **Medicaid as a Competitor to Long Term Care Insurance** – New York Medicaid benefits for long term care services are generous and the current Medicaid eligibility rules permit citizens to spend down or transfer their assets in order to qualify for services. As long as the Medicaid program is structured in this way, numerous consumers capable of purchasing long term care insurance will choose to defer their long term care planning or focus their planning efforts upon approaches to qualify for government benefits.
- **Complexity and Confusion** – When investigating long term care insurance, many consumers become confused when faced with the myriad of choices of coverage such as the length of benefit period, the daily benefit, an elimination period, and the various costs that can be covered. Often, that confusion leads to indecisiveness and finally inaction.
- **Cost** – Long term care insurance is costly. Many consumers believe that the cost of long term care insurance is beyond their means.

Denial

Denial about future infirmity and the consequent unwillingness to consider options for long-term care financing before the need arises plays an important role in discouraging the purchase of long-term care insurance. Many consumers do not wish to make an expensive investment in a product that covers services that they do not like.

A 2001 survey of individuals aged 45 and older contacted by the American Association for Retired Persons Public Policy Institute found that 85% of those aged 45 and over did not know how much long-term care cost, or how to pay for it.¹⁸ However, other studies demonstrate that many of us will need long-term care at some point in the future. Nearly 72% of those over age 65 will need some form of home care while nearly half will enter a

¹⁸ Roper. Washington, DC: AARP Public Policy Institute, *The Costs of Long-Term Care: Public Perceptions Versus Reality*, December, 2001.

nursing home.¹⁹ Indeed, the need for long-term care is not limited solely to the elderly. A 1998 Institute of Medicine Study found that 40% of long-term care users were between the ages of 40 and 64.²⁰

With statistics that show likelihood for the need for long-term care, why are people reluctant to purchase policies? Consumer representatives who advocate for and provide direct care to seniors state that people are reluctant to contemplate their future infirmity and unpleasant matters such as the need for custodial care. Elderly people who have been secretive about finances are also unwilling to disclose their financial situation with children or other loved ones in order to plan for such need. Consumer representatives also indicated that the children of the seniors in their care were more interested in long-term care insurance for themselves because they had observed first-hand the experiences of their parents.

This reluctance to plan for long term care is not limited to seniors. The members of our agent workgroup indicated that middle-aged consumers recognized the importance of long-term care insurance. However, many in their 40s and 50s feel as if other financial goals are more pressing, such as saving for college and retirement. Others feel that it is a purchase they can postpone because they will not need to access long-term care services for several decades. However, individuals who wait until they are older to purchase long-term care insurance may experience difficulties in purchasing the coverage if they later develop medical conditions.

Intensive education is necessary to assist the population in overcoming this denial factor. New Yorkers need to understand the likelihood that long term care insurance will be needed as well as the hardships that can result from a lack of planning and preparation. Currently, baby boomers are being exposed to the challenges of caring for their own aging parents. Now is the time to reach baby boomers with the message that long term care insurance can help them prepare for their own future care needs.

The Belief that Medicare/Medicaid will Pay

A common myth among consumers is that planning for long term care costs is unnecessary because those costs will be paid by Medicare or Medicaid.

Medicare should not be relied on as a resource to meet one's long term care needs. Medicare is designed primarily to cover the costs of acute medical care involving a medical necessity, not long term care involving custodial care to help a person perform their activities of daily living. Medicare does not pay for custodial care when that is the only kind of care needed. Even skilled nursing facility care is covered by Medicare only on a very limited basis.

¹⁹ Alecxih LM. Health Insurance Association of America. *Who Pays, How Much? In Boyd, ed. Long-Term Care: Knowing the Risk, Paying the Price*, 1997.

²⁰ Spector, W. D., Fleishman, J. A., Pezzin, L.E., & Spillman, B.C., *The Characteristics of Long-Term Care Users. Paper prepared for the Institute of Medicine, Committee on Improving Quality in Long-Term Care*, Washington, D.C., 1998.

Other private health insurance such as Medicare Supplement or acute medical coverage (such as through an HMO or an employer's health plan) primarily cover the costs of acute medical care as well and likely will not cover custodial care.

Medicaid, a governmental program designed for low-income individuals and families, currently is the major source of funding for long term care services. To qualify for Medicaid, a person must meet specific income and asset tests that are so low that most New Yorkers must "spend down" their own assets to reach the level of eligibility. Thus, a lifetime of savings may be at risk in order to become eligible for Medicaid. Also, due to the magnitude of the burden Medicaid places on New York State's budget as well as the federal budget, the current Medicaid program is likely to face substantive changes that will make it a less desirable option to cover the cost of long term care services in the future. As repeatedly emphasized in our workgroups, consumers only realize how difficult Medicaid standards are to meet when faced with a personal caregiving experience. However, then it is often too late to purchase insurance coverage for the person with the immediate need for services. Consumers need to be educated about the limitations of these public programs.

Medicaid as a Competitor to Long Term Care Insurance

The Medicaid program is the major competitor to long term care insurance in New York. New York has one of the most generous Medicaid programs in the nation. New York's Medicaid program includes attractive benefits for home and community based care. Many consumers view the Medicaid program as an acceptable alternative to addressing long term care risk more directly and appropriately through the purchase of long term care insurance or through other planning tools.

As discussed in the previous subsection, the Medicaid program is designed for the indigent and those wishing to access the benefits of the program must have very limited assets. If an individual in need of long term care services has more assets than permitted under Medicaid eligibility rules, they must first "spend down" their assets on their care in order to qualify for Medicaid benefits. Due to these eligibility requirements, families needing to rely on Medicaid benefits can experience significant financial hardship in the event long term care services are needed. However, at the same time, current Medicaid rules allow spousal refusals of support and asset transfers. With some advance planning, these mechanisms can be utilized by those with sufficient assets to contribute to the cost of their own care in order to become eligible for Medicaid benefits by appearing impoverished on paper. Penalties applicable to those transferring assets in order to qualify for Medicaid coverage of their nursing home stays can be avoided through advance planning (transferring assets well in advance of the need for care) or through reliance upon partial asset transfers (transfer $\frac{1}{2}$ of assets and retain $\frac{1}{2}$ to pay for care during any penalty period). New York State has an active elder law bar and other consultants who counsel persons on how to plan for possible future long term care needs. Sometimes this counseling focuses on how to use the State's Medicaid program to help fund future long term care needs.

Our workgroups reported that due to the attractiveness of Medicaid benefits and the ability to access financing through the Medicaid program with some advance planning, private long term care insurance products compete directly with the State Medicaid program. Our workgroups also indicated that even consumers with sufficient resources to fund some of

their long term care needs have a sense of “entitlement” to Medicaid financing of their long term care services. Long term care insurance is a viable alternative to the Medicaid program which could reduce the public’s dependence on government funds by shifting to an infusion of private funds where available. Our workgroups recommend tightening of Medicaid rules to provide an incentive for those capable of contributing to the cost of long term care to consider the purchase of long term care insurance. It is also recommended that education efforts stress the viability of long term care insurance.

Complexity and Confusion

When investigating long term care insurance, many consumers become confused when faced with the myriad of choices of coverage such as the length of benefit period, the daily benefit, an elimination period, and the various costs that can be covered. Consumers need to understand how the coverage interacts with the Medicare and Medicaid programs. Some consumers also receive conflicting advice from financial advisors and consumer publications as to whether the purchase of long term care insurance is a sound financial investment. Many times confusion leads to indecisiveness and finally inaction. Insurers and agents have noted that this confusion extends to the professional agent community.

The most demanding need viewed by our study workgroups is that a major culture shift must occur in view of the current financial pressures New York’s Medicaid program is facing and the future long term care demands that are expected to be placed on the program. To accomplish this culture shift, increased public education is necessary. General public education is important to convey the limitations of Medicare and Medicaid as a source for payment of long term care costs. Specific education is required to inform consumers that long term care insurance is a necessary and viable financial mechanism and to help consumers feel informed enough with the myriad of selection options.

Agents and brokers may be best suited to assist consumers in examining long term care insurance options. However, our agent workgroup concluded that since long term care insurance is a relatively new product, the number of agents who are comfortable with the sales process for the product is low in comparison to other products. Agent training is recommended to expand the number of agents able to assist consumers in navigating through the available options.

Cost

Another major barrier is the cost of long term care insurance. Long term care insurance is costly because the underlying services being covered are costly. However, using long term care insurance is less costly than personally saving sufficient funds for the future cost of long term care services. Insurance spreads the burden of a risk by pooling the risk among all individuals with the insurance. Since not everyone is expected to need long term care services, long term care insurance premiums are much less than what one individual would have to save regularly on their own to cover the same total cost.

A person should consider buying long term care insurance if:

- They have significant assets and income
- They want to protect some of their assets and income
- They want to pay for their own care
- They want to stay independent of the support of others.²¹

People need to be educated regarding the need for this coverage and the potential costs of going without such protection. See the Affordability section of this report for a full discussion on the affordability of long term care insurance in New York and the accompanying recommendations.

Recommendations Regarding Barriers to the Purchase of Long Term Care Insurance

- **Intensify Consumer Education** – The public needs to understand that their acute medical care policy, Medicare, and Medicare Supplement policy will not cover long term care services. Medicaid is only for the indigent. Therefore, a person with reasonable assets and income must personally finance the cost of long term care services and various means are available, including long term care insurance.
- **Tighten Medicaid Rules** – Medicaid is a strong competitor to long term care insurance as long as Medicaid provides generous long term care benefits and its rules allow those with sufficient assets to transfer those assets to become eligible on paper.

²¹ NAIC, *A Shopper's Guide to Long-Term Care Insurance*

III. AVAILABILITY OF LONG TERM CARE INSURANCE IN NEW YORK

Historical Background

Long term care insurance began in the 1980's. At that time, the policies typically provided coverage for nursing home services only. Over time, coverage for home care services was added emphasizing a desire to remain at home, if possible, and to avoid entering a nursing home. Gradually, varying services and providers entered the field including adult day care, hospice care, respite care, assisted living facilities, and continuing care retirement communities.

In 1992, the Insurance Department issued regulations allowing a wide variety of long term care insurance to be offered in New York State and establishing appropriate consumer protections for these policies.²² New York's statutory and regulatory framework sets minimum standards and permits insurers to offer more benefits or greater coverage. Given the long range nature of long term care insurance risk and the focus of sales upon elderly consumers, New York's regulations reflect a commitment to ensuring adequate consumer protections and appropriate administration over the full life of the coverage.

In 1993, the New York State Partnership for Long Term Care was established as a demonstration program. After a person purchases a Partnership long term care insurance policy and subsequently exhausts its benefits, he/she is allowed to qualify for benefits through New York's Medicaid program without spending down their assets. Income, however, remains subject to Medicaid's regular rules and a contribution toward the cost of care may be required. In 1997, legislation was signed making the Partnership a permanent New York State program. Partnership policies must meet certain minimum standards set forth in Insurance Department regulations and specific requirements set forth in an Insurer Participation Agreement with the Department of Health.²³

Policies Currently in Force in New York

As of December 31, 2004, the total number of persons with in-force long term care policies in New York totaled 296,953. This represents a market penetration of approximately 4% of those New Yorkers over 45 years of age²⁴. Approximately 15% of these in-force policies are Partnership policies while the remaining 85% are non-Partnership policies. Of the total number of current in-force policies, 12,571 or 4% were issued prior to 1992 when New York regulations became effective. A breakdown of the in-force policies by insurer can be found in Appendix C.

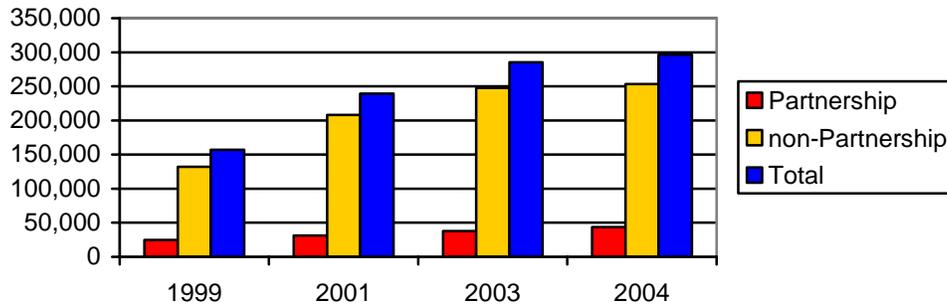
²² NYS Insurance Law Section 1117, 11 NYCRR 52.12, 52.13, and 52.25.

²³ NYS Insurance Law Section 1117, 11 NYCRR 39.3, 39.4, 39.5, and 39.6.

²⁴ NYS Office of the Aging, *Demographic Projections to 2025*, 2002.

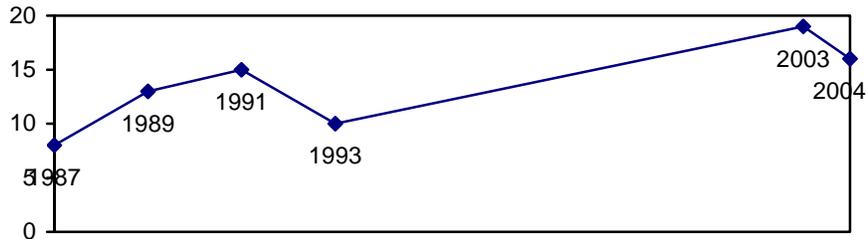
The following chart graphically demonstrates the continued growth experienced in the number of in-force long term care insurance policies, both Partnership and non-Partnership, in New York over the last five years as reported by the insurance carriers.

Growth in Long Term Care Policies



As shown in Appendix C, sixteen companies (including two fraternal benefit societies) currently market long term care products in New York State on an individual and/or group basis. Over time, the number of insurers marketing long term care insurance in New York doubled from eight to sixteen. As this product line emerged, there was a dramatic increase in insurers entering the market. Then, the number of insurers remained fairly constant but dropped slightly over the last year. The marked decrease shown in 1993 occurred one year after promulgation of the Insurance Department’s regulations for long term care insurance.

Number of Insurers

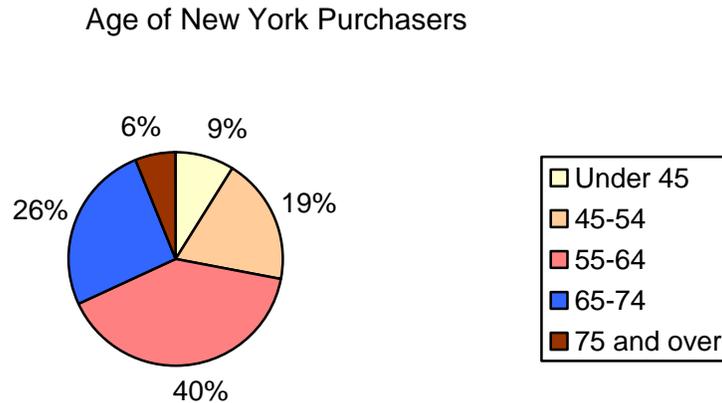


Although some insurers ceased marketing in New York in the past year, one insurer entered our market. Although the specific reasons for these departures are unknown, our experience has shown that insurers typically withdraw from a market for reasons including, but not limited to:

- mergers and acquisitions,
- economic downturns that cause a company to revisit the focus of their core business, and
- uncertainty of the risk due to its long term nature.

Sophisticated regulation of financial stability and long term care products that provide meaningful benefits results in carriers who are committed to the New York marketplace for the long term.

Of the total in-force policies, below is a chart showing the percentage of New Yorkers by age group when their policies were issued:



Persons under age 55 were issued non-Partnership policies at double the rate of those purchasing Partnership policies (30% versus 15%). Persons age 55 through 75 were issued 24% of the non-Partnership policies compared to 34% of the Partnership policies issued (see Appendix D). A possible explanation for this difference may be that younger consumers have not accumulated sufficient assets to be concerned with the asset protection offered by the NYS Partnership for Long Term Care program. Alternatively, younger consumers may be choosing non-partnership policies in an effort to control their own future long term care needs without reliance on Medicaid.

When long term care insurance began, it was primarily sold to elderly applicants ages 65 and over. Over time, the average age for sales dropped to about age 62. According to our industry survey of claims made, the average age at which a person incurs their first claim for long term care insurance is age 75 after having their policies for an average of 7.6 years.

Comprehensive Long Term Care or Limited Coverages

New York's Minimum Requirements for Long Term Care Insurance

Although this report has used the term “Long Term Care Insurance” broadly, New York technically has minimum standards²⁵ for the level of coverage for the following four classifications for insurance policies covering long term care services:

- Long Term Care Insurance
- Nursing Home and Home Care Insurance
- Nursing Home Insurance Only
- Home Care Insurance Only

The specific classification of “Long Term Care Insurance” policies provide the most comprehensive coverage of services by requiring a minimum of two years coverage for nursing home care and home care. Although there are three minimum designs for these policies, the most commonly-sold design requires that all levels of nursing home care must be covered (e.g., skilled, intermediate, and custodial care) with a benefit of at least \$100 per day in the metropolitan area or at least \$70 per day in the remainder of New York State. For this purpose, the metropolitan area consists of the counties of Bronx, Kings, Nassau, New York, Queens, Richmond, Suffolk, Rockland, and Westchester. In contrast, the National Association of Insurance Commissioners allows one year of coverage for a comprehensive long term care policy. The home care coverage in these policies must be at least 50% of the daily benefit amount provided for nursing home care. Partnership coverage is a special form of comprehensive Long Term Care Insurance and has its own minimum standards (see Partnership section which follows).

“Nursing Home and Home Care Insurance” must provide coverage for both nursing home care and home care for a minimum of one year for custodial care only. Coverage of skilled nursing facility or intermediate nursing home care is not required. Coverage for nursing home care must be at least \$50 per day while confined. Coverage for home care must be at least \$25 per day in a private home. This type of policy may be attractive to those persons who want some coverage for both types of services but cannot afford a comprehensive Long Term Care Insurance policy.

“Nursing Home Insurance Only” must provide nursing home care coverage for a minimum of one year for custodial care only. Coverage must be at least \$50 per day while confined. This type of limited policy may be attractive to consumers who have no desire or intention to receive long term care services in their home or have the financial resources to self-pay for home care services but desire financial protection against the greater cost of nursing home care.

“Home Care Insurance Only” must provide home care coverage for a minimum of one year for custodial care only. Coverage must be at least \$25 per day in a private home. Although this type of policy is limited, it may be attractive to consumers who have no desire or intention

²⁵ 11 NYCRR 52.12 and 52.13

of entering a nursing home and would be able to obtain long term care services in their home or those who already have a nursing home policy and wish to add a home care benefit.

Consumer Choice

The requirements described above are the minimum benefit standards for various types of long term care insurance policies. Insurers may offer a greater benefit or additional benefits to provide more flexibility or position themselves in this competitive market. The minimum daily benefits required for each type of care are set at low levels. This provides insurance carriers in New York with the ability to offer products at a wide range of coverage levels and a wide range of prices. New York has numerous regulations that provide other consumer protections for insurance policies in general and long term care coverage specifically.

In keeping with New York's philosophy of offering as much choice as possible to consumers, numerous types of coverage are available for insurers to offer. Some agents encourage applicants to buy a fully comprehensive policy with several additional benefits designed to cover most possible long term care costs. This approach results in the offer of a very costly product. If the cost is too high or the choices are too overwhelming, some applicants decide not to purchase coverage at all.

However, some consumers may elect to "hedge their bets". Some consumers recognize that they may or may not need long term care services in the future, so they may wish to purchase a policy with lesser coverage and self-insure the remaining portion of the possible cost. For example, they may want to cover the larger cost of nursing home and use their personal finances to cover the cost of any home care needed in the future. Or, if they perceive the need for a nursing home to be small, they may wish to purchase coverage for home care services only. Alternatively, if they perceive the need for coverage to be low and expect to have some financial resources available in the future, they may wish to purchase a comprehensive policy with lesser benefit amounts.

The purchase of long term care insurance should be encouraged whether consumers choose to purchase a highly comprehensive policy that would provide full coverage for every possible outcome or more affordable limited coverage designed to operate in conjunction with private payment in the event of a need for long term care services. Coverage does not need to be extremely comprehensive in order to provide valuable protection. While very comprehensive coverage may be ideal, long term care insurance in any form protects income and resources and can give the insured increased flexibility, independence and control. The availability of private forms of payment can also facilitate initial entry to some nursing homes. Additionally, from a public policy perspective, every dollar a consumer spends on private long term care insurance represents an assumption of personal financial responsibility yielding potential future savings to the Medicaid program.

There is some strong sentiment that essentially "no good" comes from long term care insurance if the benefits are not comprehensive enough to cover all long term care needs. The concern is that those who purchase non-comprehensive coverage could ultimately have to transfer assets or spend down resources in order to qualify for Medicaid in spite of their investment in long term care insurance. Some believe that such individuals would be better off utilizing Medicaid estate planning techniques at the outset to protect their resources.

Private resources invested in long term care insurance that ultimately delays, but does not prevent, reliance upon Medicaid are viewed as “wasted”. Such sentiment must be addressed by sending a clear message about the limitations of the Medicaid program and by restructuring private and public responsibility for long term care financing. Long term care financing must be recognized as a private responsibility which individuals have an obligation to plan for, and contribute to, to the extent of their ability.

Availability of Limited “Nursing Home Only” and “Home Care Only” Policies

When long term care insurance began, the policies primarily covered nursing home care only. As the demand for home care coverage increased, insurers began to offer home care insurance only policies and long term care insurance policies that encompassed both nursing home and home care. Currently, insurers concentrate on offering comprehensive long term care insurance enhanced with additional benefits such as assisted living, adult day care, etc. This may in part be due to the attractiveness of comprehensive products to consumers with relatively significant resources. Sales to consumers of lesser means are more difficult to achieve, such that many insurers may develop their products to target consumers with a higher net worth.

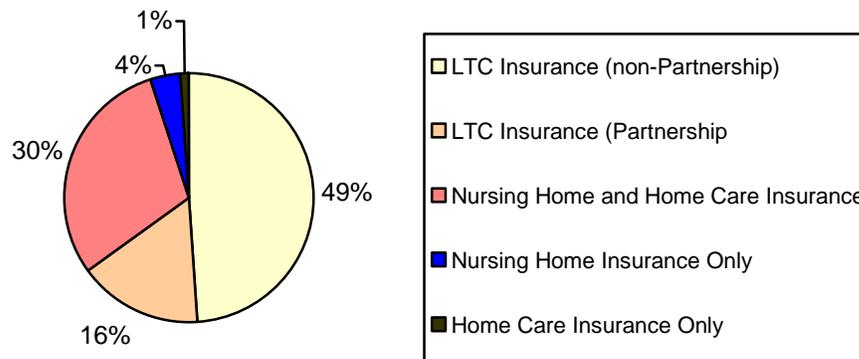
Few insurers currently offer Nursing Home Insurance Only and Home Care Insurance Only policies, although they are available under New York regulations. Some of the explanations offered by insurers who do not offer these limited policies are:

- It is difficult to predict what level of care will be needed or in what setting.
- Home Care Insurance Only policies cost nearly as much as comprehensive policies (because utilization of home care benefits tends to be very high).

In response to our industry survey, one insurer that currently only offers comprehensive products recognized that limited products have a place in a niche market. The company further explained that a facility only policy is a very appropriate product for an individual without family or other social supports.

The following summary shows that few of the total insureds in New York at the end of 2004 have policies providing limited coverage for a facility only or home care only:

Total Insureds in NYS by Type of Policy



We would recommend that insurers be encouraged or required to make nursing home only and home care only policies available so that consumers can access more affordable forms of long term care insurance coverage in New York. Such coverage might be attractive to more consumers with moderate incomes and resources and to consumers at any income level that would like to use insurance in combination with self payment as an approach to planning for long term care. The availability of such coverage options could be announced through the State’s public education and outreach campaign, given that insurers are likely to continue to focus their sales efforts upon consumers with extensive resources.

The New York State Partnership for Long-Term Care

New York is one of four states in the nation participating in the Partnership for Long Term Care program. This program started as a demonstration program designed to encourage the private purchase of long term care insurance through certain incentives offered by the Medicaid program. Essentially, the program combines private long-term care insurance with Medicaid Extended Coverage to provide the policyholder with a lifetime of long-term care benefits. The goal of the Partnership is financial independence for consumers through shared responsibility. Under the New York State Partnership for Long-Term Care, many people are able to provide for their own care without the need for complete impoverishment and total dependency on Medicaid.

A New Yorker participating in the NYS Partnership for Long Term Care program must purchase an approved comprehensive, long term care Partnership insurance policy from a private insurance carrier that participates in the program. When a need for long term care services arises, the Partnership insured must first access the benefits of their private Partnership policy. When the benefits of the Partnership policy are exhausted, the policyholder can then apply for a special Medicaid program called “Medicaid Extended Coverage.” Long term care services in the Medicaid Extended Coverage program are obtained through the Medicaid program without a spend down of all or part of the insured’s assets, depending on the insured’s policy choice. However, income is contributed to the cost of care when using Medicaid Extended Coverage.

Partnership long-term care insurance policies contain unique features and higher minimum standards than non-Partnership policies. These features are designed to ensure that the coverage provided under Partnership policies meet the needs of the policyholders while providing sufficient protection that the Medicaid program will not be accessed before the exhaustion of benefits under the Partnership policies. Both individual and group Partnership plans are available in New York. The vast majority of Partnership policies that are sold today meet current Federal and State tax qualification requirements.

Beginning in early 2006 two types of asset protection will be offered under the Partnership: (a) Total Asset Protection and (b) Dollar for Dollar Asset Protection. The type of Partnership insurance plan selected determines how much of the policyholders' assets will be protected when qualifying for Medicaid Extended Coverage. Total Asset Protection plans protect all of the insured's assets. There is no limit to the assets the insured may keep and still receive Medicaid Extended Coverage. Dollar for Dollar Asset Protection plans protect the insured's assets in an amount equal to the benefits paid out by the Partnership policy. Under Dollar for Dollar Asset Protection, unprotected assets are subject to Medicaid rules. Income remains subject to Medicaid rules under both Asset Protection plans. Total Asset Protection is offered with long term care insurance policies that provide 3 or more years of nursing home coverage. Dollar for dollar Asset Protection is available with products offering less than 3 years of nursing home coverage.

The following benefit offerings are present in all of the Partnership plans, Nursing Home Care, Home Care (including Home health care, Personal care, Assisted living care, Skilled nursing care and Adult day care), Respite care (14 nursing home equivalent days per year of care given by a formal caregiver to temporarily relieve an informal caregiver or family member from the responsibility of caring for the insured), Care management (two days of long-term care planning services by a professional), Alternate level of care (days spent in a hospital waiting for long-term care placement), Nursing home bed reservation (20 days per year), and Hospice care. The new products available in 2006 will give consumers an option to select a home care benefit which is paid out at the full daily nursing home coverage rate. This should provide Partnership policyholders with enhanced access to home care and assisted living benefits. The 2006 minimum nursing home benefit is \$189 per day for all Partnership policies including the Total Asset Protection and Dollar for Dollar Protection plans. The minimum nursing home benefit is the same for all Partnership plans, and higher benefit amounts are available for each of the plans.

New York's Partnership for Long Term Care program is one of only two programs in the nation that offer total asset protection. The New York State Partnership for Long Term Care is an excellent example of a joint effort between this State and the insurance industry to promote the awareness and encourage the sale of Long Term Care Insurance. The availability of Medicaid Extended Coverage provides a very meaningful incentive for the purchase of long term care insurance. When a consumer becomes aware of the State's involvement in the Partnership, their interest in the Partnership product, as well as long term care insurance in general, is heightened. The State's role as a "partner" in this program serves to boost consumer confidence in the coverage. Additionally, because Partnership policies are somewhat standardized, agents report that they provide a starting point for discussion of the benefits and costs of long term care insurance products. Partnership products currently constitute approximately 15% of long term care insurance sales in New York State.

We anticipate that the new Partnership benefit packages will extend the availability of Partnership products. Some carriers reported that their ability and flexibility to respond to marketplace demands has been constrained in the Partnership market due to minimum requirements and standardization of the product. It is hoped that the introduction of the new product designs and new minimum standards will provide the insurers with some enhanced flexibility to meet consumer demands. Additionally, agents have reported that, at least until now, their group sales of Partnership policies were hampered by the fact they could only provide employers with a single product choice. We note that group sales currently constitute only 5% of Partnership sales as opposed to 28% of non-Partnership sales. The availability of new Partnership products may increase the attractiveness of Partnership policies in the group market. Further, the new dollar for dollar products soon to be offered through the Partnership program should give the State meaningful experience with more limited and more affordable forms of long term care insurance. The State will be able to draw upon that experience when determining if all long term care insurers should be encouraged or required to make available policies offering minimal benefit packages.

It is important to note that Partnership products are not for everyone. The many consumer protections and requirements (designed to ensure the Medicaid program is appropriately protected by the Partnership long term care insurance coverage) cause Partnership products to be more expensive than other products available in New York. Agents report that the attractive features of the Partnership policies frequently open doors and start discussions, but that many times consumers elect to purchase a more affordable product. In addition, the Medicaid Extended Coverage discussed above is only useful to those who have significant amounts of assets to protect. Since income is still counted by the Medicaid program, the investment into a Partnership program will not yield any additional relief to those who do not hold significant assets, but continue to collect significant income at the time they require long term care services. The lack of income protection could explain relatively low Partnership enrollment in the New York City area where incomes are generally higher and where many residents rent rather than own property. Thus, the Partnership brings unique protections to the long term care marketplace and has the distinctive function of bringing an awareness of long term care insurance to New Yorkers who may not have otherwise considered it a priority, but it cannot be viewed as appropriate for all.

An additional concern regarding the Partnership program design is that, although the Partnership policy may currently be used outside New York State, the Medicaid Extended Coverage is available only when the policyholder applies for it in New York. This encourages Partnership policyholders who leave the State during their retirement years to return to the State when they require the protection of Medicaid. While New York State law has recently been amended to permit New York's Partnership program to enter into "reciprocal agreements" with other Partnership states, New York must approach such proposals for "reciprocity" cautiously. New York's Medicaid program offers extremely rich benefits including generous home care benefits that could potentially attract those in need of long term care services from other States if open reciprocity were to be made available.

Tax-Qualified Policies

When purchasing Long Term Care Insurance in New York State, a consumer may be able to choose between a “tax-qualified” policy and one that is “non tax qualified”. When a policy is considered “tax-qualified” it is eligible to receive favorable federal and New York State tax treatment. Generally, benefits received from tax qualified policies will not be considered as taxable income and the premiums charged for tax qualified policies are treated as medical expenses for the purpose of itemized deductions up to certain dollar limits that are indexed annually. To qualify for such treatment, the policy must meet or exceed all federal requirements for a tax-qualified policy. Any policy covering long term care services that was approved in New York and issued before January 1, 1997 also qualifies for favorable tax treatment with certain limited exceptions.

Sections 7702B and 4980C of the Internal Revenue Code set forth the elements that must appear in a long term care policy for it to be considered “tax-qualified”. The Code defines “Qualified Long Term Care Services” as necessary diagnostic, preventive, therapeutic, curing, treating, mitigating and rehabilitative services and maintenance or personal care services which (A) are required by a “chronically ill individual” and (B) are provided pursuant to a plan of care prescribed by a “licensed health care practitioner”. A “chronically ill individual” means any individual who, within the preceding 12 month period, has been certified by a “licensed health care practitioner” as:

- (i) being unable to perform without “substantial assistance” from another individual at least 2 out of the 6 “activities of daily living” for a period of at least 90 days due to a loss of functional capacity (the ADL trigger),
- (ii) having a level of disability similar to the level of disability described in the ADL trigger as determined under regulations prescribed by the Secretary of the Treasury in consultation with the Secretary of Health and Human Services (the Similar Level trigger), OR
- (iii) requiring “substantial supervision” to protect such individual from threats to health and safety due to “severe cognitive impairment” (the Cognitive Impairment trigger).

The Federal requirements continue by setting forth very specific definitions of the terms used above, as well as others. Insurers are left with very little room to be creative in the benefit trigger portion of a tax-qualified policy because the legislative mandates must be strictly followed in order for a policyholder to reap the desired tax benefits.

In contrast to “tax-qualified” Long Term Care Insurance, “non tax qualified” coverage is not bound by the same requirements. An insurer writing a non tax qualified policy can use different, less stringent, requirements such as “Medical Necessity” or “Cognitive Impairment” as triggers for the receipt of benefits. However, despite the fact that non tax qualified policies are not held to the Federal standards, we have found that in recent years the insurance industry has focused on developing and marketing the tax qualified policies. It is clear that consumers are more drawn to a product that offers a potential tax advantage, thus insurers have concentrated on developing the products that are in the highest demand.

Expense Incurred or Indemnity

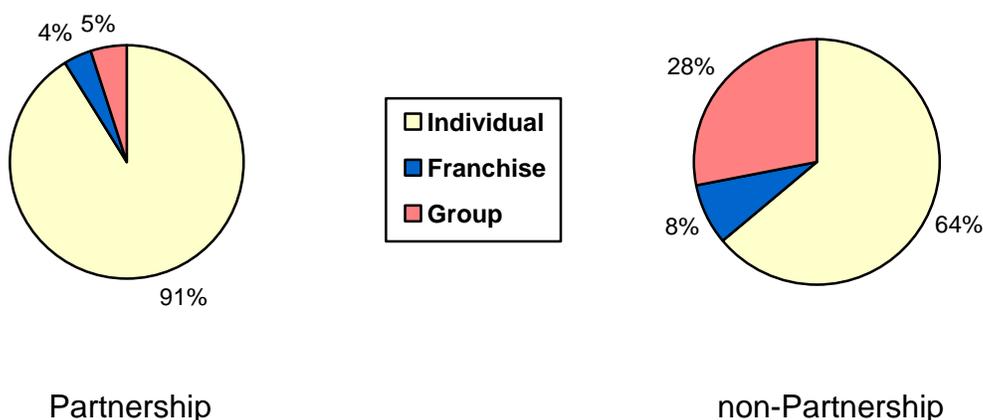
A long term care insurance policy may pay benefits on an expense-incurred or indemnity basis. An expense-incurred policy pays the actual cost of long term care services received up to a maximum daily or monthly amount. An indemnity policy pays a specified dollar amount per day or month regardless of the actual cost of long term care services incurred. An indemnity policy is typically more expensive than an expense-incurred policy. An indemnity policy offers an insured more flexibility because the amounts paid by the policy may be used for various long term care services including some that would not normally be covered by a policy such as transportation, home modification, or services performed by informal caregiver, unlicensed provider, or family member, etc.

If an indemnity policy is also tax-qualified, an insured should be aware of the possible tax implications. The Internal Revenue Code establishes a per diem limitation, indexed for inflation.²⁶ In 2006, any benefit amount received in excess of the greater of \$250 per day or the costs incurred for qualified long term care services is includible in gross income for income tax purposes.²⁷ An insured is advised to consult a tax advisor regarding possible adverse tax consequences due to claim payments made on an indemnity basis.

Individual or Group

The graph below compares the percent of in-force policies in New York by type of insurance (individual, franchise, or group) and by Partnership or non-Partnership policies. As the graph below shows, the greatest majority of the in-force policies in New York are individual policies:

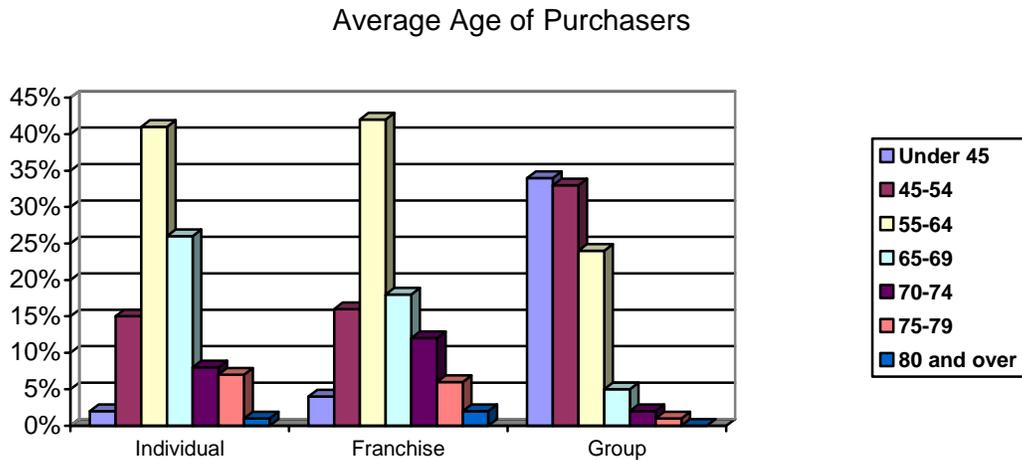
Percentage of In-Force Policies



²⁶ Internal Revenue Code, Section 7702B(d)(4)

²⁷ Internal Revenue Code, Section 7702B(d)(2)

Following is a comparison of the average age at which a person buys Partnership and non-Partnership individual, franchise or group long term care insurance in New York:



The chart above demonstrates that group policies appear to attract purchasers at younger ages than individual or franchise policies.

Individual

Policies can be purchased on an individual or group basis. True individual policies are typically sold on a one-on-one basis between the applicant and an agent. It is generally recognized that, for insurers, this method is the most time consuming and costly to administer. Medical underwriting is generally very detailed. In the individual market the insurers are unable to predict the characteristics of the persons who will purchase coverage. Discounts are available in the individual market only under very specific circumstances. For example, discounts designed to enhance sales to couples have been made available to spouses and domestic partners.

With individual sales, the insurer retains most of the bargaining leverage at point of sale. After the individual coverage is in force, the insurer retains that superior bargaining position concerning various issues such as claims processing. For these reasons, many of the Insurance Law provisions and regulations are more detailed and protective of those purchasing coverage on an individual basis. The Department has set regulatory requirements for individual long term care insurance products (including minimum loss ratios) keeping in mind the special characteristics of the individual long term care insurance market.

Group

Group policies are issued to an entity as the policyholder (such as an employer, labor union, association, or a trust) and the policy covers more than one person.²⁸ In contrast with individual coverage, an insurer selling group coverage is aware of the occupation of the applicant anticipated to apply and the risk they represent. If the composition of the group presents favorable risk to the insurer, premiums rates for the group policy may incorporate savings. In addition, since an insurance company may achieve administrative savings by reaching numerous people in a group setting, the impact of economies of scale results in making the cost of insurance more affordable. When group coverage is issued to an employer, the majority of employees are actively working and younger than the general public buying long term care insurance. For insurers, younger and healthier lives provide a better risk. Group coverage is convenient to employees because payroll deduction may be available. Employees also appreciate the involvement of their employers in evaluating the wide range of available long term care insurance options.

Generally, only the largest employers offer long term care insurance. The State of New York and the Federal government have demonstrated their strong commitment to long term care insurance by offering group coverage to their employees and retirees.

Some people raise concerns about purchasing long term care insurance through a group mechanism because they anticipate utilizing the benefits after retirement and they may retire or change jobs well in advance of the need for benefits. They are concerned that the coverage will not be available to them after they sever their relationship with the group sponsoring the coverage or if the group policyholder terminates the contract. However, either a continuation or conversion option must be made available to an insured under these circumstances.²⁹ Insurers may choose whether to utilize continuation or conversion as their desired method to ensure policy "portability" after the member leaves the group or after the group policyholder has terminated the contract. If the insurer elects to extend coverage through continuation, the insured continues as a member of the group and retains the same long term care insurance benefits after they leave the group. New York State regulation even allows the insurer to directly maintain the group through a trust mechanism in the event the policy is terminated by the employer or group policyholder. Alternatively, the offer of conversion allows an individual to continue coverage under an individual policy that provides the same or substantially similar coverage. The primary drawback to conversion is that the premium is no longer at the discounted group rate but is at the individual premium rate.

Over the years, to encourage older age groups to avail themselves of the lower group prices, the Department used our waiver authority under Section 1117 of the Insurance Law to modify Section 4235 of the Insurance Law as to who is a dependent eligible to obtain coverage. Through this device, we have permitted parents, parents-in-law, grandparents, grandparents-in-law, and adult children to be classified as "dependents" of the named insured in order to obtain group coverage. These people are subject to greater underwriting than the employee. This method helped older people get more affordable coverage, particularly early in the life of long term care products. Insurers and group policyholders can also agree to extend the

²⁸ NYS Insurance Law, Section 4235.

²⁹ 11 NYCRR 52.25(b)(4)

availability of long term care coverage by offering coverage to a domestic partner of an insured based on the insurer requiring proof of a committed relationship.

An employer offering group coverage may or may not contribute to the premium. If an employer elects to contribute to the premium, that cost may be deductible as a fringe benefit business expense for tax purposes. Based on our discussions with the industry, consumers, and agents, however, an entity may be hesitant to sponsor group coverage. One reason for the hesitancy includes not wanting any additional administrative burden related to the offering. Additionally, the cost of other fringe benefits, such as health insurance, makes it difficult for employers to be willing to contribute some portion of the premium cost. Another reason given for an employer's hesitancy is that they are only concerned with providing a fringe benefit directly related to active employment. This concern may be countered by the points that long term care is not needed only by retirees, the benefit assists in providing financial stability to the insured, it enhances employee loyalty, and it may even allow retention of an employee who faces becoming a caregiver to a family member.

An employer market allows penetration to a favorable populace that is generally younger and healthier than the general public – the primary factors contributing to a more affordable premium. It has been reported that the employer's involvement serves to boost consumer confidence in the product. A common recommendation from our study workgroups was to stimulate the group employer market. Possible steps to enhance the employer market include outreach to employers stressing the benefits not only of attracting qualified employees, but of avoiding the loss of qualified employees if faced with becoming caregivers to others, and the importance of aiding their employees by creating financial stability for themselves and their families. An additional step which could be taken by the federal government would be the inclusion of long term care insurance for favorable tax treatment as a cafeteria benefit under Section 125 of the Internal Revenue Code (see Tax Incentives section for additional discussion).

Quasi-Group

Insurers have sought to market individual long term care policies in quasi-group settings in New York. This means that the insurers market individual policies to established groups such as employer or association groups. Carriers have chosen to market long term care insurance in this way in part because this type of policy is more attractive to many prospective purchasers confused about the portability of true group coverage. This mechanism also allows the employer or association to avoid administrative responsibilities connected with holding a group policy. The advantages to the insurer include an ability to access a large volume of potential sales at a single site and efficiencies achieved through simplified administration.

The Department will approve an individual product with a **payroll deduction** arrangement. This arrangement remains subject to regulation as an individual product when used with no discounts at all and no other type of group or quasi-group methods, savings, or advantages to any significant degree.

NYS insurance regulations specifically allow for **Franchise** policies, which are a category of individual policies typically sold through an individual's relationship with an employer or association. Franchise policies are subject to specific class and participation rules.³⁰ Although an employer or association sponsors such coverage, the legal relationship remains directly between the insurer and the insured with no group policyholder. With franchise insurance, the insurer achieves savings because of the entity's sponsorship and access to numerous potential sales at a single site. The insurer may be able to extend savings to insureds purchasing coverage through a franchise mechanism if the nature of the group presents a favorable underwriting risk. The Department recognizes these factors and allows for discounts for the franchise arrangement when the product is initially sold. It should be noted that some insurers perceive difficulties in relying on the franchise mechanism set forth in the Insurance Regulations due to the participation requirements imposed.

Insurers in the long term care insurance market have approached the Insurance Department requesting additional flexibility to market individual policies in group settings. The Department has relied upon waiver authority provided in Section 1117 of the Insurance Law to permit such flexibility where appropriate in order to facilitate long term care sales. When insurers have sought to market or offer individual products using quasi-group methods, the Department desires to make certain that any savings or advantages of the quasi-group methods are passed on to the insureds. The Department also seeks to ensure that appropriate disclosures are available. Insureds, including the elderly, may be very vulnerable to being misled into believing an individual product has some group product advantages which really do not exist. The Department always seeks to balance the legitimate interests of long term care insurers with meaningful consumer protections for long term care insureds.

The Department was approached by insurers whose **marketing distribution** channels were not necessarily ideally suited for the sale of long term care insurance as franchise insurance or as only individual insurance. Often these insurers indicated to the Department that they desired to market their individual products at large places of employment or large association meetings, but the employer or association did not desire to be a group policyholder, grant exclusivity or be actively involved in the marketing process. These insurers indicated that long term care insurance is often a difficult sale with lower sales penetration rates, and marketing opportunities at places of larger employment or large association gatherings provided opportunities for better sales penetration. Some of these insurers indicated that franchise insurance participation limits in Regulation 62 were too limiting for certain of their markets, and the sponsorship, exclusivity and mass marketing indicia contemplated by the regulations for franchise insurance did not always exist for some of their markets.

The Insurance Department considers requests such as the foregoing on a "case by case" basis. Balancing the legitimate marketing needs of the insurer against consumer protections for the insured, the Department has entertained Section 1117 waiver (of certain franchise insurance requirements) requests from insurers which desire to market individual long term care insurance products as noted. To date, the Department has granted certain waiver requests where the insurer has explained its marketing plans in detail to us. This has resulted in another method to market individual long term care insurance products.

³⁰ 11 NYCRR 52.2(k), 52.19, and 52.70.

Recommendations Regarding Availability

- **Allow for Product Choice** - Retain New York's current structure which sets minimum standards but permits carriers to develop a wide range of products at a wide range of benefit levels to address the changing needs of this developing market.
- **Stimulate the Group Market and Educate Employers** – An employer market allows penetration to a favorable populace that is generally younger and healthier than the general public. These are the primary factors contributing to a more affordable premium. The group market tends to reach people with the sale of long term care coverage at younger ages. Employers should be encouraged to extend long term care insurance coverage to their employees where feasible.
- **Encourage the Federal Government Action to Stimulate the Group Market** – The federal government should be encouraged to allow long term care insurance to qualify as a cafeteria plan under Section 125 of the Internal Revenue Code to allow before-tax deductions for premiums.
- **Encourage and/or Require Carriers Participating in the Long Term Care Market to Make Nursing Home Only and Home Care Only Policies Available** –The availability of these types of products would permit more affordable access to long term care benefits.

IV. ADEQUACY OF LONG TERM CARE INSURANCE IN NEW YORK

Availability of Care at Home

One issue that became very apparent during the course of the creation of this study was that when asked about long term care options, most people want to be able to stay in their homes as long as possible. In response to that desire to continue living among familiar faces and surroundings, insurers have created different options for their insureds. For example, most of the insurers who responded to our survey indicated that they offer the services of a Care Manager to their policyholders. One insurer described the function of the Care Manager in this way, "Care Managers work closely with policyholders and their representatives to secure a safe environment for policyholders that allows as much independence as possible. Often, a Plan of Care can be created utilizing both formal and informal (paid and unpaid) caregivers ... that supports a policyholder remaining at home (and) that meets the policyholder's safety needs. All involved parties, including the (company's) Care Manager, must agree on this Plan of Care to ensure it addresses any on-demand care needs."

Another option available in most policies is the "Alternate Plan of Care" benefit, which can be built in to a policy or included by rider. The "Alternate Plan of Care" usually provides a dollar amount that is separate from the policy maximum that can be used for medically appropriate long term care services that are not explicitly covered by the long term care insurance policy. The Alternate Plan of Care adds flexibility to the policy for both the policyholder and the carrier allowing for long term care services that may not have been contemplated at the time the coverage was purchased. This benefit can be used to pay for durable medical equipment, caregiver training, additional services, medical transportation, etc, to the extent such benefits are not otherwise covered under the long term care insurance policy. For older policies that do not contain specific provisions for an alternate plan of care, an insurer faced with a choice of paying a nursing home benefit versus providing a less expensive service outside of the contract may opt to provide coverage for the less expensive service through an external agreement with the insured. Clearly, the insurance industry in New York is making great strides in accommodating their insureds' desire to stay home.

Insurers have responded to the consumers desire to remain at home as long as possible by adding benefits to their newer policies that provide the consumer with more flexibility. Insurers differ as to how many of these approaches they offer, but some of the other benefits that enhance a consumer's ability to remain at home include:

- **Assisted living facility coverage** – An assisted living facility is a residential facility that provides ongoing care and related services for persons needing assistance in the activities of daily living. An assisted living facility typically costs more than home care but less than nursing home care and allows an individual greater independence. This type of facility is fairly new in the realm of long term care services, but is becoming increasingly popular. According to our industry survey, current claims for assisted living facilities have grown to currently represent from 11% to 35% of their total claims for long term care services.

- **Payment on an indemnity basis** -- An indemnity policy typically pays benefits as a specific dollar amount on a daily or monthly basis regardless of the actual expense incurred as long as the insured meets the policy' eligibility requirements. Many indemnity policies only require that a person be certified as chronically ill and have a plan of care. An indemnity policy provides greater flexibility and independence to an insured because the benefit amount is not limited to use in paying providers who must meet specific policy requirements and can be used for whatever long term care services and providers are appropriate under the plan of care. This flexibility and independence allows an insured to select services that support remaining at home.
- **Care by an independent caregiver** – An independent caregiver means a fully licensed or certified caregiver who is not employed by a home health agency, but provides care independently. This benefit is particularly useful in rural areas where there is a shortage of home health agencies to supply caregivers.
- **Care by an informal caregiver** – Many of the needs of a chronically ill person are fulfilled by an informal caregiver such as a family member or neighbor that does not have a formal license or certification. Some of the available policies pay expenses to train an informal caregiver to provide home care for the insured.
- **Assistive equipment** – Newer policies offered by some insurers provide coverage for expenses related to assistive equipment such as installation of a ramp, railings, emergency alarm systems, etc.
- **Adult Day Care, Respite Care** – Most of the current generation of policies provide coverage for adult day care and respite care. Adult day care offers group supervision for elderly persons, including social and recreational services in a community facility. Some adult day care centers also offer health services. Both benefits provide relief to family members or other informal caregivers from caregiving responsibilities. Respite care consists of services to provide family members or informal caregivers a rest or vacation from their caregiving responsibilities.

According to our survey of insurers, claims for nursing home care are steadily declining and currently range from 12% to 50% of each company's total long term care claims. This decrease is a result of the growing use of home health care and assisted living facilities. An overwhelming majority of the companies report that claims for home health care are steadily increasing and currently represent up to 78% of their claims for long term care.

It appears that carriers in the long term care market have effectively responded to demands for flexible coverage that permits policyholders to "age in place" to the greatest extent feasible. Due to the effectiveness of the marketplace incentives, we would not recommend imposing any mandates designed to require insurers to offer certain types of specific benefits for home and community based services.

Adequacy of the Benefit Levels within Current Long Term Care Products

The cost of long term care services is high but most benefit levels of current in-force policies in New York generally have kept up with the cost of long term care.

For example, the average cost of **nursing home care** in New York State in 2004 was approximately \$238 per day upstate and \$316 per day downstate.³¹ Based on these figures, the annual cost of nursing home care throughout New York averages between \$87,000 and \$112,000 per year. According to data provided by insurers, policies in New York provide an average nursing home benefit of \$214 per day in Partnership policies and \$177 per day in non-Partnership policies.

In-force Partnership benefits satisfactorily kept pace with upstate nursing home costs. Partnership policies establish a minimum benefit level and mandate inflation protection at a standardized level. Although the gap between nursing home costs and Partnership coverage downstate appears noteworthy, the Department of Health reports that significantly fewer Partnership policies are purchased downstate.

We recognize that this data indicates a fairly sizeable gap between nursing home costs and coverage by non-Partnership policies. Some of the reasons why current non-Partnership benefits do not fully meet current nursing home costs include, but are not limited to, the following:

- According to industry reporting, less than two-thirds of the current insureds who purchased non-Partnership policies purchased inflation protection.
- A small percentage of in-force policies were issued prior to the implementation of minimum standards in New York.
- Consumer choices of benefit levels vary depending on their willingness to co-insure some of the projected costs. Some people wish the greatest level of coverage available and select a policy that offers comprehensive coverage for an unlimited period. Others may choose a policy with lesser coverage because they are willing to bear a portion of the future costs. Others may perceive the need for nursing home care to be less and are willing to risk having to use other finances to fulfill the cost should the need arise. Some of the considerations that impact this selection vary and include uncertainty of the need for long term care, personal finances available, personal and family health, level of adversity to risk, marital status, and projected support systems.

The average cost of **home health care** in New York State in 2004 was \$20 per hour upstate and \$15 per hour downstate.³² Assuming 20 hours of care per week, this represents average home health care costs throughout the State reach \$15,000-\$21,000 per year. In response to our survey, the industry reported that in-force policies provide an average home health care benefit of \$130 per day in Partnership policies and \$147 per day in non-Partnership

³¹ MetLife Mature Market Institute, *The MetLife Market Survey of Nursing Home & Home Care Costs*, September 2004. Genworth Financial 2005 Cost of Care Survey, Mary 2005.

³² Ibid.

policies. These results show that, on average, home care coverage in current policies is sufficient because the amount equates to the cost of 6-9 hours of home care per day.

The average cost of **assisted living** in New York State in 2004 was \$2,393 per month upstate and \$3,098 per month downstate³³ representing \$80-\$103 per day. On an annual basis, this cost averages between \$28,000 and \$37,000 per year. According to data provided by insurers, where current policies provide such coverage, the average assisted living benefit is \$130 per day in Partnership policies and \$173 per day in non-Partnership policies. Therefore, current assisted living coverage in in-force policies exceeds the cost of care in New York.

Our workgroup considered whether it would be appropriate to amend regulations to increase the minimum daily benefit amount for non-Partnership policies. The current minimum for the benefit amount for nursing home care in non-Partnership long term care insurance policies is \$100 per day for policies issued in the metropolitan area and \$70 per day in the non-metropolitan area; for nursing home insurance only, \$50 per day, and for home care insurance only, \$25 per day.³⁴ Although these amounts are not reflective of the current costs for services in New York, companies are offering amounts in excess of these minimums adequate to cover current costs. Increasing the minimum benefit amounts would eliminate the flexibility for a consumer who wishes to co-insure a portion of the costs.

During our workgroup discussions, agents and brokers suggested that a standardized long term care insurance policy would be easier for consumers to understand and to compare benefits and premiums. Currently, New York sets minimum standards² and companies are free to develop innovative products above those standards in response to consumer and market demands. We recognize that standardization could reduce consumer confusion and possibly lead to greater affordability through increased competition. Conversely, a standardized product can stifle innovation and reduce the current and future range of offerings that arise as a result of market changes and consumer demands. An important consideration is that most companies who offer long term care insurance in New York are national, commercial carriers who sell in all 50 states. Mandating a standardized product may result in a company withdrawing from the New York market.

Inflation Protection

Because the cost of long term care services is expected to increase over time, the benefit amount that is adequate today may not be adequate when benefits may be needed in the future. For example, a nursing home that costs \$230 a day today may cost \$610 a day in 20 years, assuming 5% compounded inflation each year. An inflation protection benefit increases benefit levels over time to help keep pace with increased long term care costs.

³³ MetLife Mature Market Institute, *The MetLife Market Survey of Assisted Living Costs*, October 2004. Genworth Financial 2005 Cost of Care Survey, May 2005.

³⁴ NYS Insurance Law Section 1117, 11 NYCRR 39.3, 39.4, 39.5, 39.6, 52.12, and 52.13

In New York, every applicant for non-Partnership long term care insurance must be offered an option to purchase inflation protection. The extent of inflation protection offered can vary by company. Briefly, our regulation requires that, at a minimum, the inflation protection offered must be no less favorable to the insured than one of the following:

- An increase in benefit levels by 5% compounded annually or in proportion to the Consumer Price Index;
- A guarantee to the insured of the right to periodically increase benefit levels, without evidence of insurability; or
- Coverage of a specified percentage of actual or reasonable charges.

In non-Partnership policies, the most common inflation protection provision offered in long term care policies is 5% compounded annually. Our survey of the industry indicates that 57% of the non-Partnership insureds at the end of 2004 selected inflation protection.

Regarding Partnership policies, inclusion of an inflation protection provision that increases benefit levels by 5% compounded annually is mandated for all policies issued to an insured under age 80.³⁵ Since inflation protection is mandatory for Partnership policies issued to insureds under age 80, our survey of the industry indicates that 98.5% of all Partnership policies contain the required inflation protection provision.

We considered and rejected a recommendation mandating inflation protection in non-Partnership policies. Inflation protection deeply impacts premium cost and requiring it in every policy would remove flexibility of choice from the consumer.

Lapse Protection (Nonforfeiture Benefits)

A key consideration when analyzing the adequacy of the Long Term Care Insurance offerings in New York State is the question of whether or not policyholders are keeping their coverage until they require care, or if they are allowing their coverage to lapse (i.e. terminate due to non-payment of premium) before benefits are needed. When this study was commissioned, the Legislature asked the Department to develop strategies to reduce the potential for a lapse of insurance coverage due to an insured's inability to pay the premium. In order to develop such strategies, the study solicited information from insurance companies regarding their experience with the lapse of long term care insurance policies. The death of the insured is one of the main reasons for the lapse of long term care insurance policies. Unwillingness and/or inability to pay for the long term care insurance premiums are other contributing causes. Overall, the lapse rate for long term care insurance policies sold in New York tends to be fairly low. Indeed, for most companies the lapse rates have been lower than the assumptions made when long term care products were originally priced.

³⁵ 11 NYCRR 52.25(c)(3)-(5) and 39.3(b)(8), 39.4(b)(8), 39.5(b)(11), and 39.6(b)((11).

The following represents an average of the current lapse assumptions utilized by New York insurers in pricing long term care products:

<u>Policy Duration (in years)</u>	<u>Average Assumed Lapse Rate</u>
1	5.6%
2	3.7%
3	2.8%
4	2.2%
5	2.1%
6	2.0%
7	2.0%
8	1.8%
9	1.8%
10+	1.7%

The lapse rates assumed above are reflective of current experience with policy lapsation. As indicated, the majority of lapse occurs in the early years of the policy. Once policyholders have invested several years of premiums in the coverage, they are much less likely to lapse the policy.

It is important to note that this low rate of lapsation can be directly linked to New York State's approach to rate review of long term care insurance products. As discussed in greater detail later in this study, New York has a strict requirement that the premium rates and premium rate increases for individual and most group long term care insurance policies issued in this State must be approved by the NYS Insurance Department before insurers may use them. The Department's thorough approach to rate review helps ensure that premiums remain relatively stable throughout the life of a policy, thus avoiding the need for overwhelming premium increases that force insureds to lapse their coverage. Thus, although the Legislature has asked the Department to develop strategies to reduce the potential for a lapse of insurance coverage due to an insured's inability to pay the premium, we believe this State already has a system in place to reduce lapsation.

In the event that lapsation of a policy is unavoidable, certain consumer protections are currently available. In New York, every applicant for a comprehensive long term care insurance policy must be offered the option to purchase a nonforfeiture benefit.³⁶ This nonforfeiture benefit is designed to ensure that, if a person lapses their policy after a specified number of years, the insured may still access some benefits when long term care services are needed. The insured may choose whether or not to purchase this benefit. In New York, the nonforfeiture benefits that are currently available can typically add approximately 15 % to the base price of a policy. It was learned that sales of nonforfeiture benefits tend to be relatively low. Of the active insureds at the end of 2004, only 11% selected a nonforfeiture benefit.

³⁶ 11 NYCRR 52.25(c)(7) and (8)

The most common types of nonforfeiture benefits offered are a **reduced benefit level** and a **shortened benefit period**. The reduced benefit level provides for a reduced daily benefit amount if a policy lapses after a certain number of years, and is usually paid for the entire length of the benefit period selected by the insured. The shortened benefit period provides that if a policy lapses after a certain period of time, usually a period of at least three years, the daily benefit level purchased by the insured will continue to be paid until such time as the nonforfeiture benefit amount is exhausted. The purpose of this benefit is to provide the insured with some coverage in exchange for the premium paid until the point when the policy lapsed. The experience with this benefit is still developing. In response to our industry survey, companies reported that only 445 insureds exercised their nonforfeiture option.

In their model regulations the National Association of Insurance Commissioners (NAIC) requires insurers to offer nonforfeiture benefits to their insureds. The NAIC regulation is similar to the New York regulation on nonforfeiture, but the NAIC imposes an additional requirement on insurers. The NAIC model regulation states that if a policyholder does not choose nonforfeiture protection when it is offered, and the company later imposes a substantial premium rate increase, an insurer must provide nonforfeiture protection to its policyholders in the form of a reduced benefit amount or a reduced period of coverage at the same benefit level³⁷. This is typically called a **contingent nonforfeiture benefit** and this requirement was created in response to the fact that in recent years many policyholders in other states were choosing to lapse their policies when faced with substantial premium increases. The long term care insurance market in this state has not experienced the substantial premium increases and high lapsation seen elsewhere, and therefore the Insurance Department has decided that it is not necessary to mandate the use of the contingent nonforfeiture benefit in New York.

Another consumer protection that must be discussed when considering the incidence of long term care insurance policy lapsation. That is a consumer protection known as "Third Party Protection against Unintentional Lapse". This concept is set forth in the NAIC Model Regulation³⁸ and has been incorporated by reference into the federal tax qualification statute.³⁹ It requires that prior to the issuance of a long term care insurance policy, an applicant for a tax qualified long term care insurance policy must complete and return to the insurer a written designation of at least one person (in addition to the applicant) who is to receive notice of lapse or termination of the policy for nonpayment of premium. Alternatively, the applicant can sign a written waiver electing not to designate additional persons. Third party notice may not be given until 30 days after a premium is due and unpaid and the policy cannot be considered lapsed or terminated for nonpayment of premium unless the insurer gives notice to the insured and the designated third party 30 days before the effective date of the lapse or termination. In 2004, New York State enacted legislation requiring the designation of a third party in conjunction with non tax qualified policies. Third party designation serves the useful purpose of preventing an unintentional lapse of long term care insurance coverage for an insured that may be experiencing some physical and mental limitations due to advancing age.

³⁷ Section 26, NAIC Long Term Care Insurance Model Regulation, 2000

³⁸ Section 7, NAIC Long Term Care Insurance Model Regulation, 2000

³⁹ Internal Revenue Code, Section 7702(B)(g)

Another protection against lapsation offered to applicants for long term care insurance is a “Waiver of Premium” benefit. This feature functions by waiving an insured’s responsibility for payment of premium during a time when covered services are being received. The waiver of premium benefit is an optional benefit that many insurers choose to include in their policies. The exact terms of the premium waiver vary by company. New York, by regulation, requires all policies to include an “Extension of Benefits” provision which requires the company to extend benefits after termination of an insured policy in connection with a total disability that commenced while the policy was in effect. This protection is subject to the existing policy maximums and, with respect to benefits for home care services, can be reduced to 12 months of coverage. Extension of Benefits can serve to protect the insured in the event of a policy lapse.

Return of Premium Upon Death

As discussed in the section entitled “Lapse Protection (Nonforfeiture)”, the death of the insured is one of the main reasons for lapsation of long term care insurance policies in New York. Indeed, the fact that a policy may be lapsed due to the insured’s death before benefits are fully accessed often discourages consumers who consider purchasing this product. In response to this reaction by consumers, New York has permitted a return of premium upon death benefit.⁴⁰ Typically, this benefit requires long term care coverage to remain in force for a period of years before it will be paid to a designated beneficiary or the insured’s estate. The insurer may return the premium paid for the coverage, although the amount of money returned may be reduced by the cost of any claims paid under the policy prior to the death of the insured. Some benefits of this type are graded in that only a percentage of the premiums paid for coverage are returned upon death. A graded return of premium upon death benefit will usually return 100% of the premium paid, less any claims paid or payable, if the insured dies at a certain age (e.g. 65 years or younger). However, after the insured exceeds the fixed death age, the percentage of premium to be returned decreases by a certain percentage each year until the amount is 0% (e.g. 90 % of premiums paid is returned if death occurs at age 66, 80% is returned if death occurs at 67, etc.)⁴¹ As with many other optional benefits that are available with long term care insurance, the return of premium upon death benefit increases the cost of the product. This additional cost may be considered acceptable to consumers who are concerned that their premium dollars will be wasted if they die before they get their “money’s worth” from the coverage.

Accelerated Payment Options

Once an applicant has selected a long term care policy, they can pay premiums on a lifetime or accelerated basis. Lifetime premium is the least costly method because premium payments are paid over the course of the person’s lifetime, except for any claim period that may be subject to a waiver of premium. Accelerated payment options are more expensive because the full cost of the policy is being paid in a shorter period. Accelerated payment

⁴⁰ 11 NYCRR 52.16(b)

⁴¹ It should be noted that Internal Revenue Code Section 7702B(b)(2)(C) does not view return of premium upon death benefits as impermissible cash surrender values in tax qualified long term care insurance.

options may reduce the potential for policy lapsation by concentrating premiums to a shorter period of time immediately following the insured's decision to purchase the coverage.

The most common types of accelerated payment options available in New York are:

- 10 Year or 20 Year Paid Up Option – Under this option, policy premiums are payable over a 10-year or 20-year period after which no further premiums will be due.
- Paid-up at Age 65 Option – Under this option, policy premiums are payable until the insured reaches age 65 after which no further premiums will be due.

One of the advantages to utilizing a paid up benefit option is that the insured may use pre-retirement income to pay for their long term care insurance needs. Thus if they choose to pay the higher premium at a time when their income is more substantial, they will have the comfort of knowing their long term care insurance needs are paid up when they are living on their retirement funds. The key disadvantage to accelerated payment options is the increased premium cost. Some companies have reported that the percentage of insureds that choose these options range from less than 1% to 15% of their business, the higher percentage being prevalent in the group market.

Exhaustion of Policy Benefits

The number of policies for which benefits were exhausted may be a measure of the inadequacy of long term care insurance policies purchased.

Our industry survey revealed that of the nineteen insurers that provided information on this issue, eight had not experienced exhaustion of any policies. The remaining insurers reported the percentage of policies that did experience exhaustion of benefits ranged from .009% to 23%, with an average of 5.7%.

If all benefits of a policy were exhausted, one may assume that the extent of coverage provided by that policy was insufficient to meet the needs of that insured. However, this may not always be true. An insured may have purposely selected a policy with limited coverage as part of a total financial plan. That financial plan may have anticipated the use of other assets to pay for care extended beyond exhaustion of the policy.

Financial Stability

Because purchasing long term care insurance creates a lifetime relationship, many consumers are concerned about the financial stability of the insurance companies. Many rating services, including Standard & Poor's, Moody's Investor Services, A.M. Best, and Weiss Ratings, provide ratings that can be used to compare the financial stability of companies. For a further discussion of financial stability and the applicability of guaranty fund protection, see the Financial Stability of Insurer portion of the Affordability section of this study.

Consumer Complaints

As a possible indicator of the adequacy of long term care insurance available in New York, we reviewed the consumer complaints received by the Department. Over the last three years, the number of consumer complaints remained fairly even, ranging from 86 complaints in 2002 to 79 complaints in 2004. The number of complaints in 2004 represented less than .03% of the in-force long term care policies in New York.

Dispute Resolution

Disputes over claim decisions are somewhat common in the acute health care insurance market and insurers have well established processes for resolving them. Such processes are constantly being used as policyholders consistently access their benefits for regular medical treatment. Long term care insurance is different from acute health care insurance because many years may pass over the lifetime of a policy before a claim for benefits is made. In addition, since long term care insurance is a relatively new product, extensive claims experience has not fully developed. In response to our survey, four insurance companies reported that they had little to no claims experience yet. Other companies were able to provide data on which types of claims disputes were most common. The three most common types of claims disputes reported by the industry are: (a) failure to meet the benefit triggers; (b) failure to satisfy the elimination period; and (c) disputes over whether the policyholder used an ineligible provider or facility.

Every company that responded to the dispute resolution questions in the survey stated that they had a process to resolve claim disputes. The process outlined by the industry included review of the claims by someone who did not make the initial determination and an opportunity for the insured to submit supporting information to be considered on appeal. A few insurance companies reported having boards of representatives from their different departments review the appeals that consumers submitted. Almost all of the insurance companies also stated the timeframe for responding to the dispute. Most companies stated that they respond to the dispute in thirty or sixty days of receipt of the appeal. Several insurance companies also reported offering two or more levels of appeals to their insureds.

Less than half the insurance companies that responded to the survey reported that they currently include a description of the dispute resolution process in their policy language. This lack of information could cause the consumer confusion if and when a dispute arises between the consumer and the insurance company. We recommend that New York State require all insurers selling long term care insurance in this State to include language describing the insurer's dispute resolution process in their policies. This will give the insured notice of the process at the time of sale, not when a dispute arises, which could potentially be years later. This explanation of the dispute resolution process should include how the insured or their representative can dispute a claim decision, and a description of all of the information and documentation that must be submitted to the company. The policy should also state the timeframe for the insured's appeal of a claim determination, and the time allotted to the company for response to the appeal. As part of this new rule, insurers should be required to send notices describing the dispute resolution process to all existing insureds. The Insurance Department should review the policy language and the notices to ensure that consumers are adequately informed of all dispute resolution processes.

Knowledge

Another important aspect of adequacy is whether knowledge of the long term care insurance product is sufficient. In all of our workgroup meetings with consumers, industry, and agents, education repeatedly arose as a primary concern. Greater public education is required to recognize the need to plan for long term care expenses, educate consumers in the long term care insurance product itself, and explain the value of long term care insurance as a viable alternative in their plan for financial protection.

Not only is more public education needed, but agents need training in long term care insurance as well. As noted by a participant in our industry survey and reiterated in our agent workgroup, the long term care insurance product is relatively new so the number of agents and brokers who are comfortable with the sales process is low in comparison to the number of agents comfortable with life and/or annuity products and these sales people perceive the product as complicated. Therefore, efforts should be extended to promote agent and broker training in long term care insurance in New York to improve their knowledge and confidence in offering the product. Currently, such training is available to agents and brokers through various vendors that offer continuing education credit.

The NYS Partnership for Long Term Care Program conducts a mandatory training program for any agent or broker who wishes to become certified to sell a Partnership policy. This training program focuses primarily on the Medicaid program and its relationship to a Partnership policy and offers credits that may be applied to the continuing education credit requirements associated with agent licensure by the Insurance Department.

A New York State certified training program for long term care insurance in general would benefit the State by improving agent knowledge and confidence with the product, benefit the agent by permitting them to meet their continuing education requirements, and benefit consumers by providing assurance of the agent's competence to explain and offer the product.

Future Market (Demographics, Technology, Living Arrangements)

Long term care insurance must meet the future needs of New Yorkers.

As New York's Project 2015 report noted, "The family provides 80% of long term care services, yet few resources exist to help them cope. The stress on caregivers will increase as the dependence ratio changes (i.e., fewer caregivers available for the greater number of older persons needing care). Innovative skill-building, training and other support services need to be promoted and supported."⁴² New York's long term care financing mechanisms must support this need.

Technological advances in medical care have contributed to a longer life expectancy. In addition, technology offers assistance to people with chronic disabilities or who need help with activities of daily living. New technologies are emerging at a very fast pace. The

⁴² NYS Office for the Aging and The State Society on Aging in New York, *Project 2015: The Future of Aging in New York State, Articles and Briefs for Discussion*, page 7.

benefits of these new technologies must be available to New Yorkers. Many future technology enhancements will come with significant initial costs. Others will result in overall cost savings. Mechanisms to finance long term care must anticipate, and be prepared to respond to, the impact of emerging technologies in our fast paced society.

Older people commonly want to maintain their independence and “age in place” as long as possible. Advances in technology are anticipated to continue to extend one’s ability to remain at home. However, as chronic illness and general infirmity advance with age, other living arrangement options may be necessary. In addition to nursing homes, many alternative housing arrangements have arisen as assisted living facilities, continuing care retirement communities and more are anticipated as the demand increases. Long term care financing must respond to these demands.

Consumer protections for relatively vulnerable purchasers of long term care insurance must be maintained. At the same time, a regulatory environment that sets minimum standards, but permits flexibility and fosters innovation, will allow the marketplace to operate to best serve the future long term care needs of New Yorkers in the challenging and predictably, unpredictable years to come.

Recommendations Regarding Adequacy

- **Promote Agent Training** – Training in long term care insurance in New York should be available to all agents and brokers to improve their knowledge and confidence in offering the product. Training in a New York State certified program could assure consumers of the agent/broker’s competence.
- **Encourage and/or require insurers offering comprehensive long term care coverage to also offer nursing home only and home care only policies to applicants** – Current regulations allow lower level plans but they are not being promoted by companies. For the industry, these reduced policies offer the advantage of less liability. Although they are not comprehensive, they may offer consumers some coverage at an affordable cost as well as flexibility in planning to meet their long term care needs.
- **Require that that the Dispute Resolution Process be Specified in the Policy** - We recommend that New York State require all insurers selling long term care insurance in this State to include language describing the insurer’s dispute resolution process in their policies.
- **Retain a Regulatory Environment that Sets Minimum Standards, but Fosters Flexibility and Innovation** – this will allow the marketplace to operate to best serve the future long term care needs of New Yorkers in the challenging and predictably unpredictable years to come.

V. AFFORDABILITY OF LONG TERM CARE INSURANCE IN NEW YORK

Long term care insurance is considered costly. According to our survey of the industry, following are the average annual premiums for in-force policies in New York at the end of 2004:

Non-Partnership	Individual	\$3,324
Non-Partnership	Group	\$2,306
Partnership	Individual and Group	\$4,037

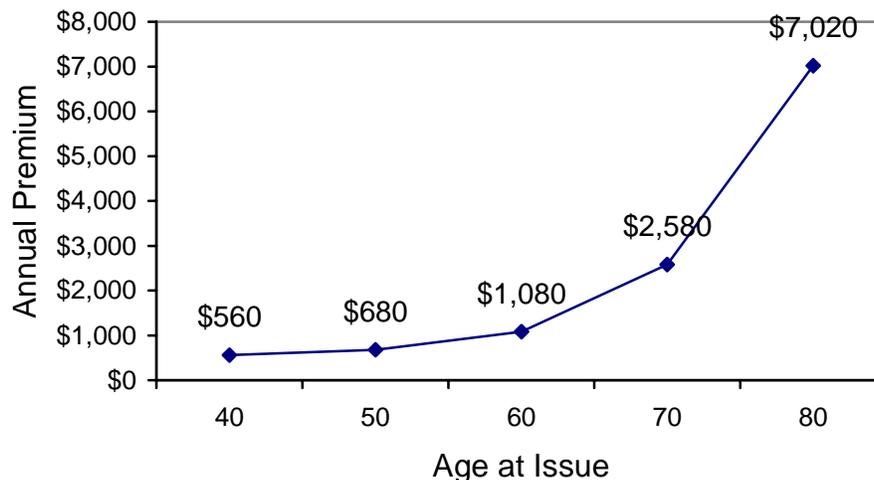
Please note that these figures are averages of all policies held at the end of 2004.

Timing of the Decision to Purchase

The timing of the decision to purchase long term care insurance is probably the most important factor impacting the cost for each applicant because long term care insurance is priced based on an insured's age when issued. Young people pay a much lower premium while older people pay a much higher premium.

To illustrate the impact of waiting to purchase long term care insurance, the chart below indicates how the premium increases for a sample policy solely based on attained age at issue⁴³.

Example of Effect of Issue Age on Premium



⁴³ This example is based on the assumptions that the policy provides long term care insurance with a 3 year benefit period, benefit amounts of \$200 per day for nursing home care and \$200 per day for home care, a 90-day elimination period, no inflation protection, lifetime premium payments, and life expectancy to age 85.

Although the premiums may vary dramatically based on issue age, consideration must be given to the total amount that is paid for the policy depending on the length of time a person is covered before a claim arises.

Using the above example, hypothetically, a 45 year old is expected to actually pay a simple grand total of \$24,800 in premiums while a 65 year old will pay only \$32,000. Some younger people delay their decision reasoning that interest could accumulate on the premiums they would have paid before needing insurance coverage.

By purchasing at a younger age, the younger person has continuous protection for a much longer period of time in the event a claim arises than the older person. Also, since long term care insurance is medically underwritten, delaying the decision may provide time for a medical condition to arise and increase the cost of coverage or prohibit the opportunity to purchase coverage.

An accelerated payment option (e.g., 10 years or 20 years) presents a way to pay premiums for a specifically determined period of time rather than over a lifetime, so it may be attractive to the younger purchaser.

Policy Selection Factors

In addition to varying by issue age, a premium is impacted by the type of coverage purchased (comprehensive long term care, nursing home only, home care only, or nursing home and home care), the market it is purchased through (individual or group), the various policy benefit selections included in the coverage (benefit period, daily benefit, the extent of any special benefits included), and the issuing company.

Whether long term care insurance is affordable is strictly a personal decision based on one's individual circumstances. Numerous choices made when purchasing a long term care insurance policy affect its cost. Those include, but are not limited to, the following:

- **Comprehensiveness of the policy** - If the policy covers both nursing home and home care, it will generally cost more than a policy that covers only nursing home or only home care.
- **Length of benefit period** – Clearly, the longer the benefit period covered, the higher the premium.
- **Amount of daily benefit or policy maximum benefit** – Naturally, a higher benefit amount requires a higher premium.
- **Length of elimination period** – This is the amount of time that must elapse between being eligible for benefits and actually receiving benefits. An elimination period may also be known as a waiting period. An insured must be able to pay for any long term care services received during this period. The shorter the elimination period, the higher the insurance premium but the less one's exposure to out-of-pocket costs once one becomes eligible for benefits. On the other hand, the longer the elimination period, the lower the insurance premium but the higher the

amount a person would have to pay out-of-pocket after becoming eligible for benefits. Companies vary as to the length of elimination periods they offer, but they generally range from zero to 180 days.

- **Inflation protection** – In New York, every applicant for long term care insurance must be offered the option to purchase inflation protection (except where mandatory for Partnership policies issued under age 80). Because of the increase in the cost of services over time, a benefit amount that is adequate today may not be adequate when benefits may be needed. The additional premium charged for the inflation benefit depends heavily on issue age. The highest percentage increase occurs at the youngest issue ages and the lowest percentage increase occurs at the oldest issue ages. For example, based on one company's rates, the approximate increase in premium for a 5% compound inflation feature would be 200% at issue age 45, 100% at issue age 65, and 50% at issue age 79.
- **Nonforfeiture benefit** – In New York, every applicant for a comprehensive long term care insurance policy must be offered the option to purchase a nonforfeiture benefit. A nonforfeiture benefit is designed to ensure that if a person lapses their policy (i.e., stops paying premiums) after a specified number of years, some benefits are available. In the event the policy lapses in the future, this benefit typically provides either reduced benefits for the original term of the policy or provides full benefits for a reduced period of time. This benefit alone can typically add approximately 15% to the base price of a policy.
- **Additional benefits** – Each insurer offers a different array of additional benefits in a policy or rider, such as assisted living, adult day care, hospice care, respite care, informal caregiver training, supportive equipment, home modification, waiver of premium, restoration of benefits, return of premium, survivorship benefit, shared benefit with a spouse or domestic partner in the event of exhaustion of one policy, and numerous other “bells and whistles”. Many of these additional benefits are created by insurers in response to a perceived need in the marketplace. Obviously, the more “bells and whistles” in a policy, the higher the premium.
- **Expense-incurred or Indemnity** – A long term care insurance policy may pay benefits on an expense-incurred basis (where the policy pays the cost of long term care services received up to a maximum daily amount) or an indemnity basis (where the policy pays a specified dollar amount per day or month regardless of the cost of long term care services incurred). An indemnity policy is typically more expensive than an expense-incurred policy but provides more flexibility in the use of the benefit amounts paid such as paying long term care services that would not normally be covered by the policy provisions (e.g., informal caregiver, unlicensed provider, family member, home modification, etc.).

Personal Factors to Consider

Some financial advisors may suggest that premiums for long term care insurance should not exceed 5-7% of annual income in general. Discussions with our consumer and agent workgroups clearly expressed that this decision is too personal to apply one standardized formula to all persons.

In addition to income, many subjective and personal factors affect everyone's decision regarding whether the cost of long term care insurance is affordable. These factors include age, available finances, cash flow, medical condition, family medical history, availability of a support network of caregivers, and adversity to risk.

Some examples of people and their decisions on affordability are:

- An older person who does not have a mortgage on their home may be concerned about protecting their assets and financial future while recognizing that their health may deteriorate as they age. Therefore, they are willing to pay a more significant portion of their income toward the purchase of long term care insurance to protect their assets.
- Parents of young children facing increasing daily costs of maintaining a home and growing family and beginning to plan for the children's college education may only find room in the family budget for a long term care insurance premium if it is extremely affordable.
- A retired parent on a fixed pension who is facing higher premiums because they waited to purchase until a later age may not be able to pay the premiums from their income. However, their children may agree to pay the premium for long term care insurance for the parent to protect the parent's independence, financial stability, and assets.
- A person with a medical condition that can be expected to develop into a chronic situation requiring services in the future may be willing to pay a very large portion of their income toward long term care insurance, if it were available to them.
- A healthy person in their peak earning years at work, whose family has grown and whose mortgage has reduced, now plans ahead for retirement. Realizing that their future retirement income will remain fairly level but living costs can be expected to increase during retirement; they want to preserve as much retirement income as possible. That person may agree to purchase long term care insurance and pay a higher premium while working by using an accelerated payment option to preserve as much retirement income as possible and to avoid increases to their premiums later in life.

Insurance by its very nature is less expensive than the savings one would have to amass to cover the full cost of long term care services themselves. Since not everyone is expected to use long term care services, insurance spreads the risk among all people with coverage so an individual's premium is much less than the amount of money that would be necessary to meet the same level of cost.

To illustrate the savings insurance can provide, we will assume that a nursing home costs \$200 per day and a three-year stay would currently total about \$219,000 per year. If a person decides to save for the future cost of long term care, and 20 years pass before a nursing home is needed, that cost can be expected to rise to \$581,000⁴⁴. If a person decided to systematically save to cover that future expense, they would have to save about \$1,413 per month⁴⁵ or \$16,694 per year for 20 years.

In comparison, as a hypothetical illustration, if that same person purchased a long term care insurance policy⁴⁶ with a \$200 daily nursing home benefit at age 65 and claims do not begin for 20 years, the premium for that coverage would be \$2840 per year. This wide difference shows the impact of spreading the risk of a claim through insurance. The person saving for himself is assuming he will have a claim whereas the insurance assumes not everyone with a policy will have a claim.

Insurer's Factors Affecting Rates

Medical underwriting is a legal means of managing an insurer's business risk in the offering of long term care insurance. When evaluating premium rates submitted for approval by the Department, the extent of medical underwriting and its criteria are taken into consideration. When an insurer uses stringent medical underwriting criteria, the insurer is accepting only the healthiest applicants. Taking the healthiest applicants tends to delay claims from new insureds for long term care services for a period of time, thereby aiding the insurer in keeping premium rates lower. Conversely, less stringent medical underwriting criteria aid less healthy applicants in obtaining coverage, but claims from new insureds for long term care services tend to occur earlier placing upward pressure on the premium rates charged by an insurer.

Agent commissions also affect the premium charged for a policy. Since insurers pay commissions as a percentage of the total dollar premium for the product sold, an agent has an incentive to sell enriched policy benefit packages. When faced with a premium that appears unaffordable, a consumer may benefit from a discussion with the agent regarding other more basic policy benefit packages that may be available at a lower cost.

Since administrative and overhead costs differ among insurers, the premium cost for the same or similar benefit package may differ among insurers. Since medical underwriting mechanisms may differ among insurers, the premium cost for the same or similar benefit packages may differ among insurers. Therefore, it is advisable for a consumer to shop comparatively when considering the purchase of long term care insurance.

⁴⁴ Assuming costs rise at 5% compounded annually.

⁴⁵ Assuming interest on savings at 5% compounded annually.

⁴⁶ Assuming a 3-year benefit period, 100\$ home care, a 90-day elimination period, and inflation protection at 5% compounded annually.

Tax Deductions and Tax Credits

During the preparation of this study, information was solicited from the insurance industry, insurance companies and insurance agents, as well as consumers in order to evaluate current long term care tax benefits. Those surveyed all agreed that the tax incentives on the purchase of long term care insurance send a message that the government, both State and federal, is in support of the product and that people should be planning for their long term care needs.

In New York State a taxpayer is allowed a tax credit of twenty percent (20%) of the premium paid during the taxable year for long term care insurance. In order to qualify for the tax credit, the taxpayer's premium payments must be for the purchase of a tax-qualified long term care insurance policy. The credit is allowed for the long term care insurance premiums paid by any taxpayer regardless of who is the long term care insurance policyholder. Thus, a child paying the insurance premiums for their parent(s) in order to protect a future inheritance or to plan for anticipated care giving responsibilities is eligible for the credit. This is known as a "third party tax credit".

At the federal level, tax deductions are available for tax qualified long term care insurance premiums. Long term care insurance premiums on a tax qualified long term care insurance policy are considered "Medical Expenses" for the purpose of itemizing deductions. A person's age will determine the amount of long term care insurance premiums that may be applied as medical expenses. Medical expenses in excess of seven and a half percent (7 ½%) may be deducted from an individual taxpayer's adjusted gross income. Individual taxpayers are only allowed to take a deduction for themselves, their spouse and their dependents. Employers may take advantage of a business expense deduction for long term care insurance premiums paid on behalf of their employees.

With regard to the New York State tax credit, it was learned that while the twenty percent (20%) tax credit was supported, there was not much public awareness of the increase in the tax credit from ten percent (10%) to twenty percent (20%). Also, the number of individuals taking advantage of the availability of the third party tax credit tends to be relatively small. Such an option is not well promoted outside of the employer-employee insurance market. As a result of these findings, it is recommended that the State increase public awareness about the availability of the twenty percent (20%) tax credit for long term care insurance premium payments. The New York State tax credit is available to all who pay long term care insurance premiums. In contrast, the federal tax deduction can only be used by taxpayers with high medical expenses.

Discussions on the federal tax incentives revealed that such incentives need to be made more generous to the taxpayer to help stimulate the long term care insurance market. To that effect, it is recommended that federal regulations be revised so as to allow for the removal of the tax deduction link to "Medical Expenses" and to create an "above the line" federal tax deduction. This would allow more people to take advantage of the tax benefit. Also, federal legislation is needed to allow for a tax deduction by any individual paying long term care insurance premiums, not just for an individual taxpayer who is paying premiums for themselves, their spouse and their dependents. This would allow any taxpayer who pays long term care insurance premiums to receive the tax benefit, regardless of whether or not they are the actual long term care insurance policyholder. Revisions to federal regulations

are also necessary to permit the inclusion of long term care insurance benefits in “cafeteria” or Section 125 benefits plans. Lastly, federal legislation is needed to allow for the tax free use of individual retirement accounts (IRA’s), 401(k) funds and Flex Spend Accounts for the purchase of long term care insurance. The creation of these additional tax incentives, combined with the revisions to the existing incentives, will encourage individuals who may be uncertain about the purchase of long term care insurance to buy the product, thus adding to the sales of long term care insurance.

It has been suggested that the study consider the use of an ascending tax benefit as a means to lower the lapse rate of long term care policies. While another section of this study explains that policy lapsation is not problematic in this state, we would recommend that New York allow for the provision of ascending tax benefits to payers of long term care insurance premiums. The tax benefit would increase for every year the policy is maintained, providing an incentive to continue the payment of premiums on a long term care policy. The availability of another tax benefit will further emphasize the message to consumers that New York believes in the importance of purchasing and maintaining long term care insurance coverage.

Establishment of Premium Rates

When considering the cost of long term care insurance and the length of time they expect to own the policy, most consumers are concerned about the potential for premium increases in the future. These concerns grew in recent years when numerous news articles were written about elder Americans who purchased policies and but then were faced with large premium increases just a few years after policy issuance. The policyholders depicted in those articles found themselves unable to pay their insurance premiums at a time in their lives when the need for long term care services was becoming a reality.

So far, these stories are based on actions in states other than New York where some insurers entered the long term care insurance market with low premiums in an effort to pick up market share, but then found it necessary to increase premiums at a significant rate. Other insurers may have inadvertently set premiums too low at issuance due to general unfamiliarity with the risks involved in the coverage. Although we cannot guarantee that a large premium increase will never occur in New York, we are confident that we currently have a sufficient statutory and regulatory framework to deter such practices and their consequences. This section describes the efforts in New York to deter significant premium rate increases after long term care coverage issuance so that:

- New York insureds can maintain their long term care coverage in a relatively stable premium rate environment; and
- The majority of long term care insurers offering appropriately priced products do not suffer adverse consequences in the New York long term care insurance market due to the inappropriate pricing practices of some of their competitors.

Initial Rates

First, a policy must be priced appropriately at its issuance. The initial rate for all individual long term care insurance policies and group long term care insurance policies/certificates issued for deliverance in this State must be reviewed and approved by the Insurance Department. Our actuaries conduct the review to help assure that the initial rate is self-supporting for the product submitted based upon reasonable actuarial assumptions and generally accepted actuarial principles. New York's overall standards are generally more stringent than those often used by other states. New York's standards are based upon the complexities of marketing long term care insurance in a state with a large population and a long standing tradition of insurance regulation designed to protect both consumers and the majority of well-intentioned insurers.

Long term care insurance policies have a level premium.⁴⁷ Level premium means that the premium is expected to remain the same over the life of the policy regardless of any change in the nature of the risk. Under level premium, insureds at younger ages are paying for some of the added risk of needing long term care services at older ages in an effort to avoid significant premium rate increases at older ages when most insureds are on fixed incomes.

Since long term care insurance is usually purchased long in advance of the time claims are anticipated, and because premiums are level, premiums paid early in the policy's life must include sufficient reserves to support the expected payment of claims in the future. Active life reserves are intended to keep each block of policies self-supporting, without any rate increases, throughout the life of the insured pool provided the actuarial assumptions used in the original pricing are correct.

Premium Increases

An individual long term care insurance policy must be guaranteed renewable.⁴⁸ Under a guaranteed renewable policy, the policy stays in-force for the insured's lifetime (subject to the exhaustion of benefits) as long as the premiums continue to be paid on time. An insurer cannot unilaterally change the terms of a guaranteed renewable policy while it is in force. However, premium rates may be revised by the insurer on a class basis. For all individual and many group long term care products, premium rate changes must be approved by the Insurance Department.

As mentioned above, premiums for long term care insurance are expected to remain stable throughout the life of a policy, but premium increases can occur on a class basis. A premium increase on a class basis means that a person cannot be singled out for their own premium increase but an increase could be approved for all persons who have a particular policy if something significantly changed with respect to the original assumptions made for that policy.

⁴⁷ Level premium is required in Partnership policies. It is not required in non-Partnership policies but, as a practical matter, they are level premium since they are guaranteed renewable. 11 NYCRR 52.40(b)(1)(ii)

⁴⁸ 11 NYCRR 52.25(b)(1)

Approval of premium increases may result from inadequate reserves because of incorrect assumptions in the rate calculations for the policy. Since long term care insurance is a fairly new product, the assumptions in early generations of policies might have been based on insufficient industry experience. To date, New York has approved increases for only two distinct blocks of long term care insurance policies, one for 8% and one for 15%.

In some states, insurers have issued long term care insurance policies with the initial rate guaranteed for a specified number of years (e.g., four, six, or ten years). For those persons concerned about a future increase in rates, a rate guarantee for an extended period sounds attractive. However, although the Insurance Department approves long term care insurance policies with rate guarantees, they are only for shorter periods due to the following reasons:

- As discussed above, the Insurance Department believes that the current system of prior approval of initial rates and premium increases reduces the opportunity for significant increases in the future.
- The Insurance Department is concerned that long time periods of rate guarantee allow insurers to only raise the rates on some of the people with the same policy. That rate method with longer periods applies increases only to those insureds who were not recently underwritten. Thus that method encourages lapses for those insureds who held the policies longer and are more likely to need the benefits. Since the rate increases would be granted to those who held the policies longer, the rate increases are higher because the risk is not spread over all insureds. New York's system spreads the risk over all insureds thus reducing the impact of an increase.
- Use of a long time period of rate guarantee allows two groups of insureds with the same policy form are treated differently. The newer group pays one rate while those who held their policy longer would pay a different rate creating unfair discrimination.

Loss Ratio

A simplified definition of loss ratio is a percentage of total premium dollars that is paid for claims on a particular type of long term care coverage. New York's Insurance Department sets minimum loss ratio standards for long term care coverages⁴⁹. In deriving the premium rate, the insurer must meet at least the minimum standard set by regulation. The Insurance Department also has a system to monitor whether certain coverages actually meet the minimum loss ratio standards. Where monitoring indicates the standards are not met, the Insurance Department can require adjustments where warranted. This product remains relatively new and, by its nature, anticipates a long time between issue and claim. As the duration of the long term care product increases, monitoring will become more significant.

⁴⁹ 11 NYCRR 52.45

Closed Blocks of Business

An insurer may decide to close a block of business for a number of business reasons. A closed block of business means the insurer ceases to issue a particular policy or certificate and no new applicants are accepted. Existing insureds are allowed to remain on the policy or certificate.

Regardless of the status of a block of business (i.e. closed or active growing), active life reserves should keep the block self-supporting, without any rate increases, throughout the life of the insured pool provided the actuarial assumptions used in the original pricing are correct.

The Insurance Department monitors premium increase requests and loss ratios for all policies, including closed blocks of business. Insurers may be aggressive in requesting rate hikes on closed blocks because they are no longer attempting to attract new business. However, rate increases will not be approved by the Insurance Department unless actuarially justified. The Insurance Department will not approve rate increases solely intended to encourage coverage lapses which would allow the insurer to avoid payment of claims. Of the two increases granted to date, one was based on a closed block of business and the amount granted was far less than originally requested.

Financial Stability of Insurer

The primary reason for New York's system of approval of premiums is the concern for the financial stability of the insurer. Protecting a company's financial stability helps to assure the consumer that the company will be there to pay claims in the future. Few company failures have occurred in the past, and the Insurance Department remains confident that the statutory and regulatory framework currently in place will continue to afford the consumer the greatest protection and the least disruption to their coverage. When necessary, the Insurance Department will work with an insurer to take all reasonably feasible actions to rehabilitate its financial situation, including supervision of the reinsurance or sale of one or more blocks of business.

To date, New York has not experienced a company's financial failure involving long term care insurance. Several published opinions by the Insurance Department's Office of General Counsel⁵⁰ have concluded that the Life Insurance Company Guaranty Corporation⁵¹ is applicable to long term care insurance policies issued by life insurance companies authorized to transact accident and health insurance in New York. Under this guaranty fund, life insurance companies that are members meet their obligations to the guaranty fund by offering coverage to those individuals who lose coverage under the insolvent firm. The coverage may or may not be the same as the prior coverage. This fund applies only to life insurance companies.

⁵⁰ Examples include Opinion Numbers 00-07-02 issued July 10, 2000 and 01-12-25 issued December 27, 2001.

⁵¹ The Life Insurance Company Guaranty Corporation of New York Act under Article 77 of the Insurance Law.

Recommendations Regarding Affordability

- **Encourage and/or Require Insurers Offering Long Term Care Coverage at Any Level to Also offer Applicants a Policy with Minimum Benefits in the Form of the Minimum Daily Benefit Amount and the Minimum Benefit Period** – Current regulations set a minimum standard but they are not being promoted by companies. For the industry, these reduced policies offer the advantage of less liability. Although they are not comprehensive, they may offer consumers some coverage at an affordable cost as well as flexibility.
- **Intensify Consumer Education** – With long term care financing, we need to effectuate a culture change similar to what has been recently achieved with private retirement savings. Not too long ago, consumers relied on their employers to provide them with a pension and they did not consider private retirement accounts. Now, many of those with sufficient means to save for their own retirements have IRAs in place. We feel an intense, concerted, long range consumer education campaign is essential to effectuating a similar culture change with respect to the private financing of long term care services.

The public needs to understand that, in general, their acute medical care policy, Medicare, and Medicare Supplement policy will not cover long term care services. Medicaid is designed only for the indigent. Citizens must be encouraged to take prudent steps to ensure their own financial security as they age. New Yorkers with reasonable assets and income must be educated that they must personally finance the cost of long term care and that various means are available, including long term care insurance. Consumers must understand the risk that they will need long term care services and the benefits of preparing financially for the possibility of such need. Consumers should also be encouraged to purchase long term care insurance when they are young in order ensure its availability and affordability.

- **Increase Consumer Awareness of the 20% New York State Tax Credit** – This is a substantial benefit to New Yorkers and consumers should be familiar with its availability and savings.
- **Stimulate the Group Long Term Care Insurance Market and Educate Employers** – An employer market allows penetration to a favorable populace that is generally younger and healthier than the general public – the primary factors contributing to a more affordable premium. Those purchasing long term care insurance in the group market tend to purchase long term care coverage at younger ages. Employers should be encouraged to extend long term care insurance coverage to their employees and the federal tax structure should be amended to provide incentives.
- **Educate Consumers about the Need to Purchase Long Term Care Insurance Early** – The premiums for long term care insurance coverage are significantly lower at younger ages. Consumers are much more likely to be able to afford their long term care premiums if they purchase the coverage at younger ages so that they can spread the cost out over their lifetime. Consumers are also much less likely to be negatively impacted by underwriting at younger ages. Where affordable, accelerated payment options can be utilized by a young purchaser to ensure that premiums do not extend beyond a set number of years.

- **Encourage Federal Government Action to –**
 - Allow an above-the line deduction or tax credit for long term care premiums.
 - Allow long term care insurance to qualify as a cafeteria plan under Section 125 of the Internal Revenue Code to allow before-tax deductions for premiums.
 - Allow for the tax free use of individual retirement accounts (IRA's), 401(k) funds and Flexible Spending Accounts for the purchase of long term care insurance.
 - Allow for a federal tax deduction by any individual paying long term care insurance premiums, not just for an individual taxpayer who is paying premiums for themselves, their spouse and their dependents.

VI. UNDERWRITING / PRE-EXISTING CONDITIONS

When the New York State Legislature directed the Insurance Department, the State Office for the Aging, and the Health Department to prepare this study, we were instructed to evaluate the effect of preexisting medical conditions on the availability and affordability of long term care insurance benefits. In our industry survey, the Insurance Department asked each company to describe its underwriting practices. This section provides a general overview of the current underwriting methodology used in the long term care insurance market. An applicant's pre-existing conditions are revealed through the process of underwriting and the insurance industry has developed different criteria for acceptance or rejection of an applicant depending upon the nature of the conditions and the level of risk involved. During the underwriting process, the company must balance the interests of the new applicant with those of the insured's already maintaining coverage. Any additional risk taken on through the acceptance of new applicants could have a negative impact on the whole pool of insureds. If the risk associated with a new insured is miscalculated by the company, the result could be an increase in premium costs for the entire block of business.

There are many conditions that cause an applicant to be considered "uninsurable" by most long term care insurers. Other conditions require a more intrusive underwriting process before acceptance or rejection will be determined. As they gain more experience, insurers have begun to consider acceptance of applicants who have been treated for certain illnesses and/or they have extended benefit counter-offers to some applicants. Overall, however, insurers are still very cautious and conservative in their underwriting of this product. If we are going to be able to increase the sales of long term care insurance in New York State, we must first encourage the industry to be more open to accepting applicants with pre-existing conditions and the State must work with the industry to create new long term care insurance options for those applicants who are now considered uninsurable.

When a person applies for long term care insurance, the application is usually subjected to "underwriting" which is defined as the "process of examining, accepting or rejecting insurance risks and classifying those selected, in order to charge the proper premium for each. The purpose of underwriting is to spread the risk among a pool of insureds in a manner that is equitable for the insureds and profitable for the insurer."⁵² Underwriting and risk classification take on great significance in long term care insurance because the insured may not need the benefits provided by the coverage for many years after the date of purchase. We live in an age of constantly changing science, technology and pharmaceuticals that keep people alive and healthier longer. However, the same science, technology and pharmaceuticals can keep a policyholder alive but in a condition requiring care at home or in a facility for years. This necessity for care may result in a great deal of long term care insurance claims.

During the underwriting process, insurers ask questions about the applicant's health history, current health, and age, and they must use that information to make certain assumptions about the likelihood of that applicant actually using the coverage offered by the policy. In response to our survey one insurer wrote, "We follow a comprehensive medical underwriting process when evaluating applicants... Our risk evaluation process focuses on determining the applicant's overall health status, their physical and mental functioning and their cognitive

⁵² Barron's Dictionary of Insurance Terms, Fourth Edition.

abilities...We believe that by following a comprehensive approach in evaluating our long term care applicants, we will maintain a satisfactory risk pool that will ultimately benefit our applicants, policyholders, agents and the company.” This statement appears to accurately reflect the overall industry approach to underwriting in the long term care insurance market.

The health questions asked on the application seek to elicit the applicant’s pre-existing conditions. The existence of certain preexisting conditions cause insurers to automatically reject an applicant. Examples of such types of conditions include Acquired Immune Deficiency Syndrome (AIDS), Alzheimer’s disease, Huntington’s chorea, Kidney Failure, Multiple Sclerosis and Metastatic Cancer, as well as current residence in a nursing home and current ongoing receipt of home health care. Traditionally, insurers will not accept an applicant with one of these conditions (or many others) because of the significant increase in likelihood that he or she will need immediate care and access to benefits.

The presence of certain other conditions will cause insurers to conduct further inquiry into the applicant’s health. When asked to list the pre-existing health conditions that the company utilizes as a reason to conduct additional review into an applicant’s health before a determination of acceptance for coverage can be made, one company responded as follows: “There are numerous conditions and scenarios that would require our company to conduct an additional review of an applicant’s medical history. Here are the common scenarios:

- Medical records are ordered on all applicants aged 65 and older,
- Medical records are ordered for all insurable scenarios where a substandard rating is expected,
- Medical records are ordered for insurable scenarios where multiple medical conditions are present,
- Medical records are ordered for insurable scenarios where more information is needed on an applicant’s medical history in order to apply the applicable risk class (Preferred, Class I, II, or III).
- Face to Face Assessments are ordered on all applicants age 70 and older,
- Face to Face Assessments are ordered when we cannot determine an applicant’s level of functionality (ability to perform ADLs and IADLs) based on the medical records and applications alone and/or where the underlying medical condition has associated mobility restrictions.

If the applicant then passes the levels of scrutiny illustrated above, he or she is offered coverage, but the information the company has obtained will have a decided effect on how the applicant is categorized by the company, and the premium that will be imposed. Insurers prefer to cover people who apply for the coverage while in excellent health. Those who seek coverage after being treated for certain conditions find that they must pay the company to agree to take certain risks on board.

The process described above is typical for an individual insurance application. A different process applies when the application is for group insurance. In that case, if the applicant is a member of the group (for example, an employer group) and “actively at work” he or she may be able to take advantage of simplified underwriting where a short list of questions are asked, often those seeking to determine if the applicant has a pre-existing condition that would cause the company to categorize them as uninsurable. If the applicant does not have a severe pre-existing condition they will be accepted for coverage without being subjected to additional intrusive health questions or interviews. Insurers allow for simplified underwriting in group products because the group dynamic allows for a balance of healthy insureds with those who have preexisting conditions so that, statistically, the group will represent the average person with standard health. Spouses, children, and other relatives of the group member may also be able to apply for coverage, but they will be required to submit to extensive underwriting. In rare instances, an insurer will have an open enrollment period where the policy is sold to “actively at work” group members on a “guaranteed issue” basis. A person offered a “guaranteed issue” product is granted the right to purchase insurance without supplying information about past and present medical conditions. New York State offered long term care insurance to its active workforce on a guaranteed issue basis when it initially offered the product several years ago.

It is encouraging to note that as insurers have gained more experience with this product, they have become comfortable with accepting applicants who have been treated for, and recovered from, certain illnesses. In response to the Department’s survey, one insurer was able to reduce the required **stability period** (period of time required from the last date of treatment before applying) for most cancer histories, and to allow for a Preferred Health Discount where once applicants with a cancer history were not eligible. In another example, that company was able to offer coverage to applicants with diabetes regardless of the units of insulin required to maintain control. With respect to diabetes, the company determined that ultimate control was the key element and requiring more units of insulin to maintain control was not always indicative of poorly controlled diabetes. A similar experience was noted with hypertension. Another insurer has considered and implemented shorter waiting periods for stability and full recovery in certain medical conditions. A good example is a heart attack. In the past, that company has required 12 months stability and now will consider that condition after 6 months of stability. Clearly, the underwriting process is evolving and changes are being made by the industry as the latest claims experience for insureds with preexisting condition becomes available.

However, even when the insurer is willing to take on a less than perfect risk, the insured must pay a higher premium to make the assumption of that risk worthwhile to the insurer. In addition, the industry’s unwillingness to offer coverage when the applicant admits to having been diagnosed with any one of a very long list of “uninsurable” conditions serves to prevent many people from accessing long term care insurance. Some companies have attempted to mitigate this issue by offering substandard rating to applicants who have health conditions that make them a poor candidate for standard and preferred rating. The premium **load** (the addition to the pure cost of insurance⁵³) for a substandard rated product may start at 25% but can go as high as 300%. While this approach does allow access to the product when such access would otherwise be denied, such high premium loads often put an already costly product out of the average person’s reach. In addition, very few companies have

⁵³ Barron’s Dictionary of Insurance Terms, Fourth Edition

experimented with substandard rating because the risk that accompanies it is not appealing to most insurers.

Another option that may be presented to an applicant who has a preexisting health condition is a benefit counteroffer. In a counteroffer scenario, after the applicant has been subjected to full underwriting and the company has determined that the applicant poses a significant risk of requiring benefits at some future date, the company offers a benefit package that is different from the one originally applied for. Examples of counteroffers include offering Nursing Home Only Insurance when Nursing Home and Home Care Insurance is applied for, offering a longer elimination period than the period requested by the applicant, offering a lower benefit level or benefit period, and/or offering a tax-qualified policy when a non tax qualified policy is applied for. These counteroffers may be combined with a substandard rated premium.

While benefit counteroffers seem to be a promising way to allow individuals with preexisting health conditions to access long term care insurance, some of the companies that responded to our survey felt that they could not use this method. One company indicated that it does not feel (that) offering a lesser benefit changes the risk selection, since the premium structure for each benefit is designed for applicants meeting the company's risk selection criteria. Also, including potentially higher risk with applicants who originally applied for the lower benefits would not provide a representative sampling or appropriate rate classification. Still another company responded that it has considered and was once more amenable to making counteroffers, but experience has indicated that it is not in the best interest of the applicant to offer coverage that will not cover the needs associated with their medical history. It was also clear that, in some instances, it is not possible to secure enough premiums to cover the company's exposure. This practice would ultimately end up hurting insureds with potentially higher rates to compensate for inaccurate risk assessment and/or it would mean that customers expended precious personal funds for something that had little to no value. This cautious approach to the long term risk associated with this product is the approach taken by most of the insurers who are active in this market, and it often serves to limit the availability of long term care insurance to many who wish to purchase it.

In sum, it is apparent that pre-existing medical conditions have a significant impact on both the availability and affordability of long term care insurance to the average applicant. As noted above, the presence of a pre-existing condition can lead to (i) immediate rejection of an application, (ii) extensive underwriting, which can still result in rejection, or (iii) extensive underwriting followed by acceptance for coverage at a very high premium cost.

The Insurance Department recognizes the insurers' need to carefully consider the risk that each applicant represents, because the future claims of each accepted applicant can have an impact on the entire block of business and the company as a whole. However, we believe that the industry should take a less conservative approach to underwriting and New York State should take an active role in creating an environment where that new approach can be encouraged and be successful.

Recommendations Regarding Applicants with Pre-Existing Conditions

- **Encourage Consumers to Purchase Coverage at Younger Ages** – Consumers should be encouraged to purchase long term care insurance early in life while healthy. The longer the purchase of coverage is delayed, the more likely it is they will experience deteriorating health which could eliminate the opportunity to purchase long term care insurance later. Public education is the key to effecting the cultural change required to make younger people aware of the need to plan for their future long term care needs.
- **Stimulate the Employer Market** - Insurance companies should be encouraged to further explore marketing of long term care insurance to groups or quasi-groups where the pool of applicants would be “actively at work” and thus could be subjected to less stringent underwriting. This could be done to more “true groups” (such as employer, labor union, association, or trust), or through the marketing of individual policies at large places of employment or large association gatherings. New York should reach out to employers and other groups to educate those entities on the importance of this product for their employees and members.
- **Insurance Companies Should be Encouraged to Make More Benefit Counteroffers to Applicants** – Insurers should be encouraged to make counter offers to applicants who have one or more pre-existing conditions but who are not completely “uninsurable”. This may require the creation of new products that comply with the regulatory minimums and offer limited, but affordable, coverage.
- **Offer Products with Longer Elimination Products** - The Insurance Department will begin accepting submissions of Long Term Care Insurance products that offer Elimination Periods that are between 6 months and 1 year in length in order to encourage insurers to extend coverage to poorer risks. In the past we have only considered Elimination Periods of 6 months or less, but our actuaries will now consider the use of longer Elimination Periods if the products are appropriately priced. This new approach will not require any change in regulation or statute. As a consumer protection, we will require that any product offering such a lengthy Elimination Period prominently disclose and describe the insured’s responsibility for payment of their own care for the duration of that waiting period.
- **Encourage, Incentivize or Allow the Creation of a New Category of Long Term Care Insurance for those with Pre-existing Conditions** - The State should allow creation of a new category of Long Term Care Insurance offering benefit levels that are lower than the current regulatory minimums. This coverage would only be available to applicants who had been diagnosed with certain preexisting conditions and who would never be able to pass standard underwriting. This would offer a choice to people who were previously considered “uninsurable”, but who could still afford to pay the premium cost every month. This could be done in the form of a demonstration project, similar to the way the New York State Partnership for Long Term Care began. New regulations would need to be drafted that would set up the new lower minimum benefit standards, as well as a list of criteria for determining who would be eligible for this coverage. The Insurance Department would work in conjunction with the industry

to draft new minimum benefits and language for new policy forms. This project would be beneficial to New York's citizens because it would open up this coverage to people who could not access it before, it would bring a new block of business and experience to the insurance companies, and it would increase the number of insureds in this State, thereby decreasing the number of people who may someday try to access Medicaid.

VII. COMBINATION PRODUCTS

As directed by the Legislature, our workgroups have studied the use of certain health insurance and life insurance “combination products” as vehicles to reduce the cost of long term care insurance, to pay for long term care and to pay long term care insurance premiums. These types of products are known by a variety of names, sometimes referred to as “combined,” “hybrid” or “linked” policies. As required, we explored the combining of long term care insurance with disability insurance and life insurance. We have examined ways to structure life insurance and annuity products to provide a feature or benefit that could be used to support long term care or long term care insurance premiums. We have also analyzed the concept of combining long term care insurance features with traditional health insurance products.

We learned from our consumer focus group that the demand for long term care products would be enhanced by the availability of insurance policies combining elements of life insurance or disability insurance with long term care insurance. Many consumers, particularly those in younger age brackets, appear to be discouraged from buying traditional long term care insurance by a concern that the premium dollars are “wasted” if in fact long term care is never required. Rather than investing in long term care insurance, those consumers with discretionary income often make a decision to save or otherwise invest these dollars and retain access to the funds for themselves, their families and their heirs. The availability of combination products has potential to address that concern, at least in part, because the coverage would extend protection against varied risks.

The results of our industry survey indicate that enthusiasm for combination products is not widespread amongst the sellers of long term care insurance in New York. To some degree this can be explained by the fact that not all companies writing long term care insurance are licensed to write life insurance and/or annuities. There is also caution associated with long term care insurance generally, a product still comparatively new on the market. Long term care insurance presents pricing challenges due to a lack of fully developed claims experience. Combination products which include long term care features raise some added pricing complexities. Additionally, because the demand for long term care insurance is low, insurers question whether sales of their disability or life insurance products will be significantly enhanced by the availability of a long term care feature and whether the potential for enhanced sales is worth the risk they would be assuming. Some carriers expressed the feeling that they felt consumers were simply better served by separate policies specifically designed to meet their differing insurance needs.

COMBINATION OF LONG TERM CARE AND DISABILITY INCOME PRODUCTS

Combining the full benefits of a typical disability income policy with the full benefits of a long term care insurance policy would result in a single policy with a high premium that would be unlikely to attract new buyers of long term care insurance. Such coverage can currently be obtained through the purchase of two separate policies. We have, therefore, focused upon innovative features within disability products that may be attractive to potential policyholders. We will use a discussion of products approved in New York as a basis for analysis of the issues raised by combined long term care and disability income products.

Some Observations

- Benefits under long term care insurance and disability income insurance are payable when somewhat different triggering events occur. However, the need for long term care insurance begins to increase when the need for disability income insurance begins to recede.
- Disability income insurance benefits are meant to provide for income replacement, whereas long term care insurance benefits are meant to indemnify for covered expenses for long term care services.
- Disability income insurance tends to cover persons who are younger and are working. Long term care insurance tends to cover persons who are older and retired. The combination of these two types of insurance could expand the long term care insurance market to encompass a younger population.
- The need for disability income insurance coverage to replace income diminishes as a person approaches retirement age, while the need for long term care insurance increases as a person approaches retirement age. Premiums paid toward disability income insurance could be “seamlessly” directed toward the payment of long term care insurance. Providing an insured with a right to convert from disability income coverage to long term care coverage would allow for a “seamless” transition from disability income coverage to long term care coverage. As a result, the new long term care insured may not feel quite as large a decrease in disposable income at retirement due to long term care premiums.

Disability Coverage with a Long Term Care Conversion Option

Individuals typically purchase a disability income policy to replace income lost due to illness or injury until they reach age 65, when social security benefits would begin to be paid. Currently, there is an insurer in New York marketing a product which links disability income insurance with long term care insurance through the use of a conversion option. The combined product permits the insured to convert the disability income policy into a long term care policy. There are at least 3 options for consumers to choose from, each of which permits conversion of the disability income policies at specified ages. The long term care type policy that an insured may convert to is specified in each available option. This leaves an insured with a few decisions, including decisions as to which conversion option and which long term care policy makes the most sense for him or her. In this way, the insured has the ability to access the coverage most appropriate for his or her age bracket and needs. Importantly, insured policyholders who are currently disabled are not restricted from converting coverage at the age indicated in the option they have purchased. Such disabled individuals may convert to a long term care policy without being subjected to additional medical underwriting.

The availability of the long term care conversion option described above does increase the cost of the underlying disability policy by approximately 5% of premiums. However, because the additional premium is purchasing a right to convert to a long term care policy rather than

actual coverage for long term care services, the additional cost is not great. Therefore, for a relatively minimal price, the conversion feature described above provides a younger person who has purchased a disability income policy with protection from being excluded from the long term care insurance market due to a health condition that develops after the disability income policy is purchased. At younger ages, this protection permits the policyholder to focus their resources on the expenses of a mortgage, raising a family, and educating children, while affording the protection offered by disability income coverage. Later, the policyholder can convert to a long term care product at the standard rate for their age and gender without being subjected to medical underwriting.

The availability of such a disability/long term care conversion option serves public policy goals of New York State. Individuals who cannot purchase long term care insurance due to a pre-existing health condition are more likely than other individuals to need long term care services at some future point. Because they are unable to purchase long term care insurance, such individuals may have no choice but to rely on the Medicaid program to pay for necessary long term care services. Under circumstances where Medicaid is relied upon, such individuals must either incur impoverishment or engage in Medicaid planning techniques in an effort to protect their resources. This is true in spite of the fact that individuals meeting this profile may be highly motivated to invest personal resources in order to prepare financially for the likelihood that they will need long term care services in the future. The availability of the conversion option would ensure that such individuals would have a long term care insurance option available to them as an alternative to full reliance on the Medicaid program.

The concept of attaching a conversion option to a disability income policy is not without its limitations. While more affordable, a disability income policy with a conversion option is not the equivalent of retaining a full disability income policy and a separate long term care insurance policy. This difference has practical implications, particularly for an individual who becomes disabled early in their lives. For example, a policyholder relying on a disability policy with a long term care conversion option must wait until the ages specified in the policy in order to exercise their option to convert to a long term care policy. If the policyholder becomes disabled and in need of long term care services prior to the age they are permitted to convert to a long term care policy, they may need to spend down their own income and resources in order to pay for such care. Due to the high cost of long term care services, this could potentially result in full depletion of their resources before the insured reaches the age at which they can exercise their conversion right. Additionally, an insured who becomes disabled before retirement age may have the need to access disability income benefits to replace necessary lost income while also needing long term care insurance benefits to pay for long term care services. A disability product with a conversion option does not provide for the retention of both policies. The insured would have to choose either to retain the disability income policy or convert to the long term care policy according to what need they assess to be the greatest.

An additional limitation impacting disability income policy that includes an option to convert to a long term care policy relates to the pricing of the disability income policy. The potential for anti-selection against the long term care product offered upon exercise of the conversion option is significant. If the long term care product is not priced competitively with other long term care insurance products on the market, less healthy individuals will opt for the long term

care conversion product due its availability. Conversely, relatively healthy individuals able to access long term care insurance elsewhere in the marketplace will purchase the other available coverage at a lower premium. Such a result could leave the long term care conversion product financially unstable due to a relatively unhealthy book of business. To offset the impact of such anti-selection, additional premium for the conversion option must be collected and reserved during the life of the disability income product. The additional reserved premium must be transferred to support the long term care conversion product. These funds serve to ensure that the long term care conversion product remains competitively priced in spite of the increased likelihood that disabled individuals will obtain the coverage.

As discussed above, correct pricing of both the disability product which includes the conversion option and the long term care conversion product itself is critical to the viability of this type of “linked” product offering. Numerous assumptions must be built into the pricing of these products. The assumptions must focus on the utilization of policyholders that will likely not be accessing long term care benefits for decades into the future. With long term care insurance being a relatively new product with emerging experience, some carriers have expressed that they do not feel that the risks of extending this type of benefit is worth the rewards in potential enhanced sales of both disability and long term care insurance products.

Right to Purchase Option

Recently, the Department approved a rider for use with an individual disability income policy which will act as an option for the insured to elect to purchase a long term care insurance policy at some point in the future. As with the conversion option, the insured would not be subject to underwriting at the time the option is exercised. This will permit an insured to act at a time when he or she is insurable to lock in the ability to obtain long term care coverage even if the insured is no longer in good health at the time the option is exercised. For this option, a 45 year old, non-smoker, choosing an option to purchase 3 years worth of nursing home and home care benefits with a \$200 dollar daily benefit, would pay approximately \$11.50 monthly in additional premium for their disability income policy. This option differs from the conversion option in that it would be possible for the individual to retain their disability income policy and also exercise their option to purchase a long term care policy. All of the public policy considerations described above with respect to analysis of the conversion option also apply to the analysis of this right to purchase option.

Long Term Care Credit Endorsement

Another innovation a carrier has introduced in the disability income market is an incentive for policyholders to remain with the disability income carrier when they seek to purchase long term care insurance either in addition to or in lieu of their disability income policy. The program is called a long term care credit endorsement. Those who have purchased a long term disability policy will receive a credit equal to 2% of the total cumulative premium paid for the disability income policy if they purchase a long term care policy. The credit will be applied toward the first year premium of the long term care policy. This program would not appear to fix the determination of insurability for a policyholder that chooses to delay purchase of a long term care policy. Insureds covered under the disability income policy would have to apply and be accepted as would any other applicant. However, this mechanism provides the insured with a valuable incentive and opportunity to purchase long term care insurance.

Additional Considerations

There are some additional practical considerations that must be analyzed in assessing the value of combination disability/long term care insurance products to the financing of long term care services in New York State. Those considerations include:

- We note that the number of carriers which are participating in both the disability income and long term care insurance markets in New York State is not large. In order to offer a combined disability/long term care product, those carriers that are not currently in both markets would either have to extend into a new market or embark on a joint venture with another insurer. This may serve as a barrier to the participation of certain carriers. Joint ventures would either leave the long term care insurer at risk for policyholders initially screened and accepted by the disability income carrier, or, alternatively, force a dual application process which could be onerous upon the insured.
- The purchase of disability income policies is not widespread. Therefore, while it appears that attaching long term care features to disability income products would extend the availability of long term care insurance, at this time, we would not expect the reach of a combined product of this nature to be vast.
- Disability income policies tend to be purchased by people with economic means. This is true both in the individual marketplace and the group marketplace where coverage is most typically offered on an “employee pay all” basis. As such, it would be difficult to reach a broad cross segment of the population with long term care features offered in conjunction with a disability income product.
- Introducing long term care insurance features to group disability income products would appear to have potential for a broader reach than attaching such features to individual disability income products. However, such an introduction would raise greater challenges with respect to pricing. Disability income coverage offered on a group basis may not be fully underwritten. Therefore, the pricing of a conversion option would have to take the enhanced risk of anti-selection into account.

Recommendations for Disability Income/Long Term Care Product Combinations

- **Encourage Carriers to Develop Products Combining Long Term Care Insurance with Disability Income Products** – We recommend that disability income carriers and long term care insurance carriers be encouraged or incentivized to continue to examine and experiment with combined product mechanisms that have the potential to make long term care insurance more available and affordable to policyholders.
- **Encourage or Incentivize Disability Income Carriers to Offer Long Term Care Conversion Options** -- We also recommend that disability income carriers participating in the long term care insurance market in New York State be encouraged or incentivized to make long term care conversion options available to their individual and group policyholders.

We have considered and rejected recommendation of a mandate that long term care conversion options be included in individual disability income policies. We have also considered and rejected a recommendation of a requirement that such conversion options be “made available” in the group disability income market.

COMBINED LONG TERM CARE AND LIFE INSURANCE OR ANNUITY PRODUCTS

A significant consideration in the design and ultimately the Insurance Department’s approval of combination products is the fact that health insurance products, including disability insurance and long term care insurance, are governed by certain statutes and regulations and life insurance and annuity products are governed by other statutes and regulations. When a combination product includes both long term care insurance and life insurance or an annuity, it must comply with both sets of statutes and regulation, as applicable.

Some Observations

- While life insurance is purchased for a wide range of reasons, some parents purchase life insurance to ensure that sufficient resources will be available to support their dependent children in the event they die. Once the children have been raised and educated, for some, the need for life insurance diminishes. At the same time, due to advancing age, the same consumer’s need for long term care insurance may increase.
- Deferred annuity products are designed to be held over an extended period of time and to make income payments after the maturity date , typically upon or at some point after retirement It is possible that the need for long term care services will arise prior to the maturity date of the annuity product and the incorporation of certain long term care features into an annuity product could provide an insured with the flexibility to address that need. However, it is our understanding that the IRS has not interpreted the relevant provisions of the Internal Revenue Code to permit tax qualified treatment of such benefits. Insurers have indicated that this is a significant disincentive for offering such a product.

- A life insurance policy with an accelerated death benefit including a long term care trigger will make available to consumers a product that provides the flexibility to access the death benefit to pay for long term care needs to the extent that they may arise and to otherwise maintain all or part of the death benefit for their beneficiary(ies).
- Based on the results of our consumer focus group, for those who question that they will ever need long term care insurance, the concept of a blended product which will pay out a death benefit if long term care services are not accessed or an annuity product which will pay out income in the event there is no long term care need may be appealing.

Long Term Care and Life Insurance Products

The New York Insurance Law does not prohibit such products. However, based on available data from the Life Bureau of the Insurance Department (the bureau that is responsible for the review and approval of life insurance and annuity products), as of the date of this writing, life insurers have not made any formal submissions for the review and approval of a true life insurance/long term care combination product.

As part of the Long Term Care study, we developed and circulated to licensed insurers a survey which included a section on combination products. We received 26 responses to the questions pertaining to combination life insurance with long term care products. Of the 26 responses, 3 insurers indicated that they sell such combination products in other states. However, it appears from their responses that these insurers actually offer life insurance with an accelerated death benefit that has a long term care trigger rather than a true combination life insurance/long term care insurance product. Of the 24 insurers who did not respond affirmatively, 3 insurers indicated that they are evaluating the feasibility of or have not ruled out the possibility of offering such products. Two insurers indicated that they used to sell these products but no longer offer them. One determined that there was little market acceptance for these products. The other stated that the products could not be sold profitably.

Based on various discussions with the life insurance industry, we believe that the following factors are the most significant impediments to their development of such combined products. First, there is an apparent lack of interest on the part of the general public in purchasing long term care insurance. It is noted that the target market of insurers who do sell some form of long term care or combination long term care insurance product is generally limited to the high net worth market. Second, in long term care insurance carriers use the experience of the industry as a whole and the company's own experience for premium rating. The premiums charged by insurers are based on the prior claims paying experience. Since long term care is a relatively new type of insurance with a relatively small pool of experience, the data for the rating is limited. In addition, there is rate regulation in the long term care insurance area but not in life insurance. These rating issues deter some life insurers from considering combination products. Third, some insurers have indicated that they do not believe that long term care insurance is a profitable area. Fourth, a true combination life insurance/long term care insurance product must comply with all relevant statutory and regulatory requirements for life insurance as well as all statutory and regulatory requirements

for long term care insurance. Life insurers have indicated a strong disinclination to comply with many of the long term care requirements such as the requirements for minimum benefits, minimum loss ratios, minimum duration, experience rating, guaranteed renewability, extension of benefits and certain disclosure statements. Similarly, some long term care insurers are not licensed to issue life insurance and are unfamiliar with and disinclined to delve into the area of life insurance and all of the related requirements.

Long Term Care and Annuity Products

Based on available data from the Life Bureau, as of the date of this writing, no formal submissions from a life insurance company have been made for the review and approval of a true combination annuity/long term care policy. Over the last few years, the Life Bureau has received several formal submissions for an annuity product with some element of long term care coverage. However, while New York Insurance Law does not prohibit such products, none have been approved to date.

The Combination Products section of the long term care survey sent to licensed insurers included a question on combination annuity/long term care products. Of the 28 insurers that responded to the question, only one company indicated that they offer an annuity with a long term care type benefit in other states. That company also stated that they do not offer a true combination annuity/long term care insurance product in any state.

Based on discussions with the life insurance industry we believe that the following factors are the significant impediments to the development of these products. First, it is our understanding and that of the industry that such a product does not meet the definition of qualified long term care insurance contract under section 7702 of the Internal Revenue Code and therefore would not receive favorable tax treatment. In general, the long term care products on the market today are tax qualified products and as such are more consumer friendly. In addition, each of the factors set forth above with respect to the combination life insurance/long term care insurance products are also applicable to the combination annuity/long term care insurance products.

Accelerated Death Benefits

An accelerated death benefit is a benefit provided under a life insurance policy or rider which permits the owner of the policy to accelerate all or part of the death benefit upon the occurrence of certain qualifying events or triggers. At the time of acceleration, the death benefit under the policy is reduced, based on the methodology described in the policy, in relation to the amount accelerated.

In accordance with the authorizing statute and regulation, since 1992 life insurers have been offering accelerated death benefits using the two traditional triggers under section 1113(a)(1)(A) and (B) of the Insurance Law. For the last several years, the Department has been working closely with LICONY (the Life Insurance Council of New York) and the life insurance industry on drafting an amendment to the regulation to implement two new long term care type triggers that have been authorized by the Legislature under section 1113(a)(1)(C) and (D) of the Law.

Section 1113 (a)(1)(C) of the Insurance Law provides for acceleration upon “certification by a licensed health care practitioner of any condition that requires continuous care for the remainder of the insured’s life in an eligible facility or at home when the insured is chronically ill... .” Section 1113 (a)(1)(D) provides for acceleration upon “certification by a licensed health care practitioner that the insured is chronically ill... .” Both the (C) and (D) triggers require that the insured is chronically ill as defined in section 7702 (B) of the Internal Revenue Code and that the accelerated payments be tax qualified under section 101 (g)(3) of the Code. Under the (D) trigger it is not required that the chronic illness requires continuous care for the remainder of the insured’s life. A significant additional requirement under (D) is that the insurer must be a qualified long term care insurance carrier under section 4980c of the Code. Payments under both the (C) and (D) triggers are generally made on an installment basis and are either based on costs incurred for qualified long term care services or on a per diem basis as set by the Internal Revenue Code without regard to the expenses incurred for qualified long term care services.

In October 2004, the Insurance Department received approval from the Governor’s Office of Regulatory Reform (GORR) to submit its pre-proposed amendment under the State Administrative Procedures Act (SAPA). Following its promulgation in January 2005 and subsequent rollout, the availability of these benefits will provide consumers with an additional financial resource to help pay the costs of long term care. In addition to providing for acceleration of the death benefit based on the two long term care type triggers, the amendment also allows insurers to pay an additional benefit under these two triggers, that is in excess of the policy’s death benefit as long as there are no premium requirements for such benefits once those benefits are being paid. The excess amount is limited by a formula set forth in the amendment which is designed to ensure that, in general, the present value of the long term care benefits, including any excess amount, would be no greater than the death benefit.

One advantage of this type of benefit is that once an insurer has a rider approved it allows for immediate integration and dissemination of the benefit. Once a rider is approved, an insurer can, in many instances, offer it in conjunction with at least some of the company’s previously approved life insurance products. In addition, the insurer may choose to make the rider available to its in-force policyholders, i.e. policyholders who purchased their policies prior to promulgation of the regulation and the approval of the insurer’s rider.

This amendment will allow the owners of life insurance policies to have access to all or part of the death benefit of their policy in the event that they become chronically ill and need additional resources to pay for their long term care. Under cash value type life insurance policies, the cash value of the policy is required to be generally available to the policyowner. The death benefit is not available except to the beneficiary upon the death of the insured. This amendment will make the death benefit available to the policyowner under the C and D triggers, which is often a significantly larger financial resource than the cash value.

This benefit may offer policyowners the flexibility to accelerate part or all of the death benefit depending upon the needs of the policyowner. Insurers can structure the feature so that only a certain percentage of the death benefit is available to be accelerated or so that the entire death benefit must be accelerated. Based on the long term care riders that have been approved under the A and B triggers, it appears that most insurers allow the policyowners the flexibility to accelerate part or all of the death benefit, depending upon the needs of the

policyowner. This allows the policyowner the flexibility to preserve as much of the death benefit as s/he wants or as necessity permits.

Another advantage to this benefit is that, in some instances there may be no up front charge or premium for the rider. The insurer must choose one of three methods that may be used to pay for the benefit, the discount approach, the lien approach or the premium or cost of insurance charge approach. Under the first two methods, there is no cost to the benefit unless and until accelerated death benefits are paid out. Under these two methods, if the benefit is never needed, no premiums or charges are ever paid for having the benefit available.

A limitation of this benefit is that the amount that can be paid out to support long term care costs is restricted to the amount of the death benefit of the life insurance policy with the limited exception described above. As such, it is likely that, in many instances, the amount available under the policy may not be sufficient to fully provide for all of the costs incurred associated with long term care. This benefit is not long term care insurance. The proposed amendment states, in section 41.8 (s) "The policy or certificate shall not be advertised as long term care insurance, nursing home insurance, home care insurance....Any advertisement, description, comparison, marketing material or illustration shall state in bold that "This product is a life insurance policy that accelerates the death benefit for qualified long term care services ...(or) on account of chronic illness ...and is not a health insurance (policy)(certificate) providing long term care insurance subject to the minimum requirements of New York Law..."

Another disadvantage to life insurance products with a long term care benefit is that there will be no remaining death benefit once the acceleration is fully exercised. Since the product is a life insurance policy, it is likely that it was the policyowner's intent to provide financial resources via the death benefit to his/her beneficiary(ies).

Right to Purchase Option

An option to purchase long term care type coverage is a benefit which is set forth in a rider that attaches to a life insurance policy. The rider provides the owner of the life insurance policy with the option to purchase long term care insurance coverage on certain specified option dates without having to provide additional evidence of insurability at the time of the purchase. Evidence of insurability is taken during the application process for the purchase of the life insurance policy and the option rider when the insured is younger and likely in better health.

As discussed above with respect to disability income products, for a relatively minor cost, policyholders with a right to purchase option can ensure that they will not be prevented from purchasing long term care insurance coverage, as long as the final option date has not expired, due to a pre-existing condition that develops while they are waiting to invest in the direct purchase of a long term care insurance. The policy considerations discussed above with respect to disability income policies are also applicable where options to purchase are attached to life insurance products.

A limitation on the use of this life insurance benefit as a way to expand the availability of long term care insurance is that this benefit would likely not be available with the lower cost or small face amount types of life insurance that require little or no underwriting, i.e. little or no evidence of insurability. Thus, this benefit may not be available on the types of policies typically purchased by people in the lower income brackets. The insurance company is taking on a certain amount of risk with this benefit since there is no underwriting at the time the long term care insurance is purchased and policyholders who later purchase the long term care insurance under the option may tend to be the ones who will need the long term care services. Therefore, the types of life insurance policies that offer this benefit are likely to be the ones that use full underwriting at the time the policy is purchased.

Currently, two companies have submitted right to purchase option riders to the Insurance Department for review and approval. These submissions are pending in the Life and Health Bureaus, both of which are very close to approval as of the date of this writing. These are the first two formal submissions of this type of benefit that we have seen and we look forward to their approval shortly. We believe that this is a good benefit and hope to see more of them from other insurers in the near future.

Other Uses of Life Insurance to Support Long Term Care

Many types of life insurance such as whole life, universal life and variable universal life insurance have a cash value which may increase during the life of the policy. The Insurance Law requires that policyholders be able to access the cash value of their policies. Policyholders can access their cash values by taking a partial withdrawal or a loan against the cash value. If the policyholder no longer needs the life insurance, s/he may surrender the policy for its cash value. Through access to cash values, life insurance provides another financial resource that can be used to support long term care costs.

Finally, viatical settlements and life settlements are another way that life insurance policyowners can access additional resources that may be used to help pay the costs of long term care. A life settlement is a transaction by which a life settlement company purchases an individual's life insurance policy for an agreed upon purchase price. The life settlement company then continues to pay any required premiums and becomes the owner and beneficiary of the policy. A viatical settlement is similar except that the insured under the policy must have a catastrophic or life threatening illness or condition. Since the insured's life expectancy is generally shorter in a viatical settlement, the purchase price paid by the viatical settlement company may be higher. Currently, the viatical settlement industry is regulated in New York. However, the life settlement industry is not currently regulated.

Regulatory Considerations Affecting Life Insurance and Annuity Products when Combined with Long Term Care Insurance Products

Combining elements of traditional life insurance and traditional health insurance such as long term care into a single contract does pose regulatory issues and challenges. For decades, and appropriately so, life insurance and health insurance have been regulated by different standards, separate and distinct articles of the New York Insurance Law, and separate and distinct regulations issued by the New York State Insurance Department. In addition, as health insurance has become more the domain of Health Maintenance Organizations, Preferred Provider Organizations and other managed health care plans, provisions of the New York State Public Health Law and New York State Department of Health Regulations have become applicable. These distinct regulatory constructs for life insurance and health insurance have been developed over the years without regard to each other.

Due in part to the regulatory dichotomy noted above, product development and compliance functions of insurers writing both life and health lines of business have typically been separated. It is not uncommon for a multi-line insurer to develop and establish different operating divisions, and even corporations, staffed with different personnel, for its life insurance and health insurance businesses. In addition, many companies have historically written either life insurance or health insurance to the exclusion of the other.

We believe that the foregoing at least partly explains why we have not seen more of the combination-type products along the lines of what was described.

Recommendations Regarding Combination Life Insurance/Annuity and Long Term Care Products

- **Encourage Life Insurance Carriers to Develop Products Combining Long Term Care Insurance with Life Insurance/Annuity Products** – We believe that the State, the regulators and the industry all need to take steps to encourage the development and sale of combined products. At the same time, consumer protections within long term care products (particularly prior approval of the premium rates) need to be maintained.
- **Encourage or Incentivize Life Insurance Carriers to Examine Approaches to Combining Long Term Care Insurance with Life/Annuity Insurance Products** – We recommend that carriers in the life insurance and annuity markets be encouraged to continue to examine and experiment with combined products that may make long term care insurance more available and affordable to consumers.
- **Encourage Life Insurance Carriers to Offer Accelerated Death Benefits with Long Term Care Triggers** -- We encourage life carriers to take advantage of the soon to be available option to offer accelerated death benefits with long term care triggers.

LONG TERM CARE INSURANCE AND TRADITIONAL HEALTH INSURANCE

While the legislation calling for this study did not focus upon the combination of health insurance and long term care insurance, we believe this area merits further exploration. Currently, those carriers writing the bulk of traditional health insurance products covering hospital and medical services (HMOs, not for profit health insurers, etc.) do not write long term care insurance. This is due in part to the fact that these products are more financial in nature than traditional health insurance products. Traditional health insurance policies typically collect premiums and pay out benefits on an immediate basis. Health insurance premiums can also be raised on an immediate basis if premiums are not sufficient to pay claims. In contrast, premiums for long term care products must be collected, reserved and invested potentially for decades before claims are paid out. The premium for long term care policies should be a level premium that is sufficient to support the policy without premium increases. Health carriers may also be choosing not to enter this market due to the low level of demand for long term care products or an assessment that offering such coverage may not be profitable.

We note that integrating full long term care insurance benefits into an acute health insurance policy would greatly increase the cost of the health insurance policy. The affordability of health insurance is an issue that that we would not recommend compounding by requiring that acute health insurance policies include coverage for long term care insurance. The same concern would apply to the concept of mandating long term care insurance benefits be covered in Medigap type policies. However, there would appear to be advantages relating to the concept of such a combination that should not be over-looked. Primarily, a single carrier would be paying for both long term care services and other services. This carrier would have a significant incentive to manage the care early on so as to reduce the need for long term care insurance. The carrier would have strong incentives to avoid institutional settings and to provide appropriate supports in order to care for the policyholder in the least restrictive setting. Experience that health insurance carriers have gained over the years in managing health care benefits and negotiating provider rates could be brought to bear in the long term care arena.

Health Savings Accounts

Health Savings Accounts (HSAs) have recently been introduced as an approach to reducing health insurance premiums while engaging the policyholders in directly managing the cost of their own health care. HSAs permit policyholders purchasing health insurance policies with high deductibles to invest funds in a tax deductible annual health care savings account. The funds that can be invested annually in the tax deductible accounts are limited. However, if the funds in the savings account are not utilized in a given tax year, they may be rolled over to be utilized in future. Funds from the savings accounts may be utilized to pay for long term care expenses or long term care premiums.

HSAs are an additional mechanism that can be relied upon to assist with paying long term care expenses or premiums. However, they have several drawbacks as a mechanism to address the financing of necessary long term care services . First, they must be paired with use of a high deductible health insurance policy. Those meeting their acute hospital and medical needs with a high deductible health insurance policy are likely to regularly draw down

on their tax deductible savings account for acute health care needs. The amount remaining in their tax deductible account to pay for long term care services would depend upon the extent to which the policyholder needed to access the coverage for acute care purposes. Therefore, those in the worst of health and most likely to need formal long term care services are likely to have the least money accumulated in their HSA account. Additionally, because there is a limit as to how much can be contributed to an HSA account annually and because such contributions must stop when the policyholder reaches Medicare eligibility, even under the best of circumstances, the account would still not have sufficient funds to pay for long term care services in the event of a significant disability requiring formal long term care.

Recommendations regarding Combined Health and Long Term Care Insurance

- **Encourage or Incentivize Health Insurance Carriers to Examine Approaches to Combining Long Term Care Insurance with Traditional Health Insurance Products** – Products combining long term care insurance features with traditional health insurance should be further examined.
- **Request that the Federal Government Allow For Expansion of HSA Account Concept for use as a Long Term Care Financing Mechanism** – The federal government should be encouraged to allow tax beneficial savings accounts which would assist citizens in saving for their long term care needs. This could be accomplished through modifications to Health Savings Accounts or through the development of a new form of account specifically designed to finance long term care.

VIII. ALTERNATIVE LONG TERM CARE FINANCING APPROACHES

Long term care insurance is one of a wide range of options to finance long term care services. Personal finances such as savings, investments (stocks, IRA or 401K) may be used to pay for long term care services. A person may also use the equity that has accumulated in their home to fund long term care costs by sale or reverse mortgage. Studies indicate that the elderly population has a great deal of home equity that could be accessed to assist in paying for long term care services.

A discussion of such non-insurance finance mechanisms is beyond the scope of this study. However, the alternatives described below have components worthy of discussion with respect to features that may lend value to the analysis of long term care insurance options. We recommend that the experience of these models be monitored as it develops.

Continuing Care Retirement Communities

Continuing care retirement communities (CCRCs) provide individuals with another option for meeting their long term care needs. This option tends to be expensive and is usually chosen by those persons with higher than average incomes and significant assets to protect.

CCRCs are residential communities that offer seniors a place to live that will provide them with a variety of services and care, including long term care services. These communities provide, not only housing, but also organized social events, dining facilities, sports facilities, special interest clubs, outings and vacation opportunities. They also provide home care services, nursing facility services, adult home services and access to physician and other professional services for their residents.

CCRCs in New York State offer three different types of life care contracts for their residents. Type A is all-inclusive, Type B provides modified services, and Type C requires fee for service:

Type A Contracts: Type A contracts provide housing, residential services, many amenities and unlimited, specific health-related services, including long term care services. If the resident's health deteriorates to the point that they need long term care services or admission to the nursing home, all of the services covered under the contract are provided without an increase in the monthly fee (except for normal operating costs and inflation adjustments). The monthly fee also will not increase due to the amount of services the resident requires.

Type B Contracts: Type B contracts provide housing, residential services and many amenities. This contract differs from the Type A contract in the amount of long term care services that will be provided before an adjustment is made in the amount of the monthly fee paid by the resident. For example, under this type of contract, the CCRC could allow residents a specified number of days in a nursing home without a change in the monthly fee. Once this limit is reached, the resident could be required to pay for continued nursing home services on a full per diem basis or a discounted per diem basis.

Type C Contracts: Type C contracts cover housing, residential services and amenities under the entrance fee and/or monthly fee in the same way that the other two types do. This contract differs from the other two types of CCRCs in that all other health related services, including nursing home care, are paid for by the resident as they are needed on a fee for service basis. Under this type of agreement, the resident pays lower fees upon entry, but in turn accepts the risk of paying for the care needed.

Type A contracts present a fully insured model where acute care and long term care services are managed by the CCRC and the entry fee combined with the monthly fees are designed to cover the cost of care throughout the resident's lifetime (with support from Medicare, for those eligible). Reserves must be set aside to ensure that the CCRC has sufficient funding to meet its obligations to residents. In part because of this lifetime insurance guarantee, entry fees and monthly fees tend to be very high for Type A contracts. As a result, this option tends to be available only to the wealthiest New Yorkers.

Type B is a partially insured model. Type B contracts also tend to be very expensive because of the all inclusive services and benefits provided by the CCRC. The residents could need additional financing mechanisms to fully provide for their long term care needs. Long term care insurance could be utilized in conjunction with a type B contract. While type B contracts hold potential as a mechanism for residents to plan for financing of some of their long term care needs, New York State developers, to date, have not focused heavily on the Type B models.

Type C contracts are newly permitted fee for service models. Type C contracts do not include an insurance component. If the CCRC resident needs health or long term care services, they must pay for them. Long term care insurance, Medicare or Medicaid could be the ultimate financer for the long term care services needed by the fee for service CCRC resident. The entry fees and monthly fees for fee for service CCRCs are expected to be significantly lower than other types of CCRC contracts such that this option may be reachable to those of moderate means.

There are currently eight operational CCRCs located throughout New York and several more in the process of being developed.

Managed Long Term Care

Chapter 659 of the Laws of 1997 enacted the Long Term Care Integration and Finance Act. This act was intended to facilitate the creation of the necessary components for the development of a broader and more integrated continuum of long term care financed by a range of private, public and public/private options. Among its provisions, the act dealt with continuing care retirement communities, made the Partnership for Long Term Care program permanent and established a legislative and regulatory framework for designing and implementing demonstrations of managed long term care approaches.

Regarding managed long term care demonstration approaches, to date these approaches focus upon two models. Both models are intended to serve populations who are eligible for nursing home admission, and the models involve Medicaid capitated payments and/or Medicare capitated payments dependent upon the benefit designs of each model. The models emphasize receipt of long term care type services in a home or community setting as alternatives to more costly institutional settings. The models also emphasize integrated/coordinated care delivery. Most enrollees in these demonstrations/plans are eligible for Medicaid, but some of these managed long term care demonstrations/plans enroll a small private pay population.

For some persons with health conditions making them eligible for nursing home care who meet the detailed eligibility requirements for each demonstration/plan and have the service area of a managed long term care demonstration/plan available to them, these developing managed long term care demonstrations/plans may be an alternative to explore in regard to long term care. Individuals who would not be able to purchase long term care insurance policies due to their health could potentially manage the cost of the care they access through participation in such a program.

Managed long term care plans are gaining experience with the management of care on a capitated basis which could be valuable to consideration of approaches to integrate long term care with traditional health insurance. However, as currently configured, they are not designed to operate as financing mechanisms. Managed long term care plans operate in conjunction with other financing mechanisms, such as Medicare, Medicaid and for a small percentage of participants, self pay.

IX. CONCLUSION

The importance of long term care insurance for New Yorkers cannot be overemphasized. The aging of the baby boomer generation combined with advances in health care and technology will create an unprecedented need for long term care services in the very near future. The longer New Yorkers continue to avoid purchasing long term care insurance, the greater the potential strain on an already overburdened Medicaid program. While the State and the insurance industry have made great strides in making long term care insurance products available to consumers, a great deal of work still needs to be done. This work must take the form of:

- educational programs for consumers and agents/brokers,
- coordinated efforts between the State and the industry aimed at creating products that more people can access and afford,
- development of products combining the benefits of different types of insurance designed to complement each consumer's overall financial planning strategy, and
- communication with the federal government in an effort to encourage the creation of greater federal tax benefits for those who purchase long term care insurance.

A commitment of time and resources from several New York State agencies and branches of State government will be needed to complete the tasks ahead. In addition, although this particular study has been completed, the State must continue to examine the long term care insurance market as it currently exists, and as it develops over time. Our population is aging, healthcare and technology are advancing, but New York State's ability to pay the cost of care will remain limited. It is the State's responsibility to foster an environment that encourages its non-indigent citizens to create plans for their future healthcare needs and to make the purchase of long term care insurance a realistic part of those plans.

Long Term Care Industry Survey

Adequacy and Affordability

- Results of marketing long term care** policies. Please provide the information requested below for all insurance policies covering long term care services in New York State as of December 31, 2004. For group policies, the column “No. of Insureds in NY” should only include certificates issued to residents of New York State. The column, “Ages of Those Purchasing Contracts” should be the number of certificates issued to residents of New York State, broken down by age. For those insurers no longer selling long term care insurance, please provide this information for any in-force policies in New York State. *Please complete this chart for New York State business in the same format used in the past for the bi-annual report, but note the different breakdown for age 65 and over.*

	Contract Form # / Approval Date	No. of Contracts in NY	No. of Insureds in NY	Ages of Those Purchasing Contracts	
				Age Group at Purchase	No. of Persons Covered
Non-Partnership				Under 45	
				45-54	
				55-64	
				65-69	
				70-74	
				75-79	
				80 +	
Partnership Long Term Care				Under 45	
				45-54	
				55-64	
				65-69	
				70-74	
				75-79	
				80 +	

- If your organization participates in the NYS Partnership for Long Term Care (or participated in the past), please complete the following tables regarding in-force **Partnership** policies.

		Age Group of Insureds at Purchase						
		Under 45	45-54	55-64	65-69	70-74	75-79	80 +
# insureds in each Market*	Group							
	Individual							
	Franchise							
Daily Nursing Home Benefit Amount at Current Level*	Lowest							
	Highest							
	Average							
Daily Home Care Benefit Amount at Current Level*	Lowest							
	Highest							
	Average							
Average Length of Coverage Purchased for Nursing Home Care								
Average Annual Premium Cost (at Current Level)								
# insureds with Waiver of Premium								
# insureds who received benefits								

If your organization participates in the NYS Partnership for Long Term Care (or participated in the past), please describe your marketing success of Partnership policies compared to non-Partnership policies.

4. Please complete the following tables regarding in-force **non-Partnership** policies.

			Age Group of Insureds at Purchase						
			Under 45	45-54	55-64	65-69	70-74	75-79	80 +
# insureds by Policy Type and Market	LTC	Group							
		Indiv							
		Franchise							
	NH&HC	Group							
		Indiv							
		Franchise							
	NH only	Group							
		Indiv							
		Franchise							
	HC only	Group							
		Indiv							
		Franchise							
Average Annual Premium Cost (at Current Level)	LTC	Group							
		Indiv							
		Franchise							
	NH&HC	Group							
		Indiv							
		Franchise							
	NH only	Group							
		Indiv							
		Franchise							
	HC only	Group							
		Indiv							
		Franchise							
Average Benefit Period Purchased for Nursing Home Care	LTC								
	NH&HC								
	NH only								
# of insureds with Waiver of Premium coverage	LTC								
	NH&HC								
	NH only								
	HC only								
# of insureds with Inflation Protection coverage	LTC								
	NH&HC								
	NH only								
	HC only								
# insureds who received benefits	LTC								
	NH&HC								
	NH only								
	HC only								

4. What is the average age of an insured when first claim is made for policy benefits? What is the average period of time between purchase and first claim for policy benefits? What trends have you experienced over time?
5. What is the number of insureds with in-force policies issued prior to New York regulations (1/1/92)?
6. Approximately what portion of your individual long term care** insurance policies are paid for by someone other than the insured (e.g., family member)? What trends have you experienced over time? Does your organization target its marketing to third parties?

7. If your company does not currently offer a Nursing Home and Home Care, Nursing Home only, and Home Care only policies for sale in New York State, please explain why you've chosen to limit your product types.
8. Please describe any care coordination provisions in your products. Please describe the success you have experienced in marketing such products and any trends you have associated with these provisions.
9. Please describe the accelerated payment option provisions (i.e., paid up at age 65, 10-year paid up) in your products. Please describe the success you have experienced in marketing such products and any trends you have associated with these provisions.
10. Please provide daily benefit amounts in effect for in-force non-Partnership policies in New York.

Type of Benefit		Type of Policy			
		Long Term Care	Nursing Home and Home Care	Nursing Home only	Home Care only
Nursing Home	High				
	Low				
	Average				
Assisted Living	High				
	Low				
	Average				
Home Care	High				
	Low				
	Average				
Adult Day Care	High				
	Low				
	Average				

11. Please discuss your experience with guaranteed issue or different underwriting among various covered persons for policies in a group setting.
12. Please explain the steps your organization has taken or proposes to take to allow greater flexibility in assisting a person to stay in their home rather than in a facility. Include your experience, if any, with indemnity plans that pay benefits regardless of the expense incurred.
13. Of the policies on which claims were made, what is the percentage of insureds who exhaust their policy benefits? Please describe how your experience differs by product type (i.e., Partnership, non-Partnership long term care, nursing home and home care, nursing home only, or home care only) and the period of time for which benefits were paid (e.g., 3 years, 1 year, etc.)?
14. What barriers (regulatory and non-regulatory) exist, if any, to your success selling long term care** insurance in New York due to the structure of the existing Medicaid program? Which of those barriers do not exist in other states? Do you have any recommendations for changes?
15. How do estate planning mechanisms impact on your success selling long term care** insurance in New York State?
16. What barriers (regulatory and non-regulatory) exist to your success selling group long term care** insurance? What barriers, if any, are specific to your success selling long term care** insurance to group markets in New York? Why is penetration in the group market not more extensive?
17. What barriers (regulatory and non-regulatory) exist, if any, to your success selling long term care** insurance to individual markets in New York? Why is penetration in the individual market not more extensive? Which of those barriers do not exist in other states?
18. What trends have you experienced in utilization of nursing home, assisted living, and home care benefits?

19. Does your company negotiate with long term care service providers to obtain more favorable rates for your insureds? If your company does negotiate rates, please describe the outcome of such efforts. If your company has considered this approach and rejected it, please provide the reasons for such rejection.
20. How have your marketing efforts been impacted, if any, by the recent enactment of legislation regarding assisted living? What changes, if any, are contemplated in your marketing efforts due to this legislation?
21. What are your strategies to meet the long term care demands of the aging “baby boomers”?
22. What trends do you foresee in the next decade or two with respect to anticipated changes to long term care services? How do you anticipate your organization will respond to new market demands?

Combination Products

Please read all subparts to the following questions, even if your company’s response to the lead in question is in the negative.

1. In New York or in other states, does your company currently offer combination disability income insurance and long term care** insurance products? In conjunction with the sale of disability income insurance, does your company offer an option to purchase long term care** insurance at some future date?
 - a. If you are offering combination disability/long term care products in other states, please list which states.
 - b. If you have responded in the affirmative to either of the questions set forth above, please describe the product or products.
 - c. If applicable, please describe the marketing results of the combination product or products thus far. Have sales met, exceeded or failed to meet expectations?
 - d. If your company sells a combination disability income/long term care product, what is the targeted demographic for those products? Does the targeted demographic differ for the group and individual markets?
 - e. Has your company considered selling any type of combination disability income/long term care product but ultimately rejected the idea? If so, please provide the reasons why the idea was rejected.
 - f. If your company is not currently in both the disability and long term care markets, have you considered a joint venture but ultimately rejected the idea? If so, please provide the reasons why the idea was rejected.
2. In other states, does your company currently offer combination life insurance and long term care insurance products? In conjunction with the sale of life insurance, does your company offer an option to purchase long term care insurance at some future date? Does your company offer accelerated death benefits in life insurance policies to cover long term care services? Are there any other life products you offer where the benefits are designed specifically to assist with covering the cost of long term care services?
 - a. Is your company licensed in NYS to write life insurance?
 - b. If you are offering combination life/long term care/accelerated death benefits in other states, please list which states.
 - c. If you have responded in the affirmative to the questions set forth above, please describe the product or products.
 - d. If you have responded in the affirmative, please describe the marketing results of the product(s) thus far. Have sales met, exceeded or failed to meet expectations?
 - e. Has your company considered selling any type of combination life insurance/long term care/accelerated death benefit product but ultimately rejected the idea? If so, please provide the reasons why the idea was rejected.

- f. If your company sells a combination life insurance/long term care product, what is the targeted demographic for those products? Does the targeted demographic differ for the group and individual markets?
 - g. Would your company be interested in offering accelerated death benefits to cover long term care services in conjunction with life insurance policies once such benefits are available in New York? Is this an idea that has been or currently is under consideration by your company? If so, would you expect it to have an impact on your long term care business in New York?
 - h. If your company is not currently in both the life and long term care** markets, have you considered a joint venture but ultimately rejected the idea? If so, please provide the reasons why the idea was rejected.
3. In other states, does your company currently offer combination annuity products and long term care** insurance products? In conjunction with the sale of annuities, does your company offer an option to purchase long term care** insurance at some future date?
- a. If you have responded in the affirmative to the questions set forth above, please describe the product or products.
 - b. If you are offering combination annuity/long term care products in other states, please list which states.
 - c. If you have responded in the affirmative, please describe the marketing results of the product(s) thus far. Have sales met, exceeded or failed to meet expectations?
 - d. If your company sells a combination annuity/long term care** product, what is the targeted demographic for those products? Does the targeted demographic differ for the group and individual markets?
 - e. Has your company considered selling any type of combination annuity/long term care** product but ultimately rejected the idea? If so, please provide the reasons why the idea was rejected.
 - f. If your company is not currently in both the annuity and long term care** markets, have you considered a joint venture but ultimately rejected the idea? If so, please provide the reasons why the idea was rejected.
 - g. Would your company be interested in offering a combination annuity/long term care product in New York? Is this an idea that has been or currently is under consideration by your company?

Pre-existing conditions/underwriting

Your responses to the questions below should distinguish between the individual and group markets.

1. Please provide a detailed explanation of your underwriting process for long term care** insurance policies in New York State. Your explanation should include:
 - A list of the pre-existing health conditions that your company utilizes as a reason to immediately deny coverage to an applicant.
 - A list of the pre-existing health conditions that your company utilizes as a reason to conduct additional review into an applicant's health before a determination can be made.
 - Please advise of any differences in the underwriting process for the group market and the individual market.
2. Based upon your company's experience, explain how the underwriting process has changed over time.
3. Has your Company ever considered, researched, or utilized a less restrictive underwriting approach that would allow more applicants with certain pre-existing health conditions to have access to long term care** insurance?
 - a. If the company has researched such approach, what were the results and conclusions formed from that research?
 - b. If your company has not considered such approach, would it be open to considering it now? Why or Why not?
4. Does your company offer substandard rating (higher premium rates for greater health risks)? If yes, how many substandard rating classes does your company offer and what are the associated substandard premium loads? If no, provide reasons for not offering substandard rating classes.

5. For applicants that do not meet your standard underwriting criteria, does your company make benefit counteroffers (a lesser benefit package for greater health risks) to the insureds?
- a. If yes, please describe the type of counteroffers your company may make:
- if the applicant has requested a Partnership long term care policy but does not meet your underwriting requirements for that type of policy.
 - if the applicant has requested a non-Partnership long term care policy but does not meet your underwriting requirements for that type of policy.
 - if the applicant has requested a nursing home and home care policy but does not meet your underwriting requirements for that type of policy.
 - if the applicant has requested a nursing home only policy but does not meet your underwriting requirements for that type of policy.
 - if the applicant has requested a home care only policy but does not meet your underwriting requirements for that type of policy.
- b. If your company has considered and rejected this approach, please provide an explanation for the rejection.
6. Does your company have any other approaches to covering applicants who do not meet your standard underwriting criteria? If so, please explain.
7. Please complete the chart below. We are requesting results for 2004, broken down by type of individual policy applied for and by individual enrollment in group policies.

			Long Term Care	Nursing Home & Home Care	Nursing Home Only	Home Care Only
A	# of LTC applications/enrollment forms submitted to your company in 2004.	IND				
		GRP				
B	# of applications/enrollment forms accepted based upon the answers given on the application form (without further investigation or medical tests).	IND				
		GRP				
C	# of applications/enrollment forms immediately rejected due to the answers on the application relating to the applicant's health (without further investigation or medical tests).	IND				
		GRP				
D	# of applications/enrollment forms requiring additional investigation into the applicant's health before a determination could be made.	IND				
		GRP				
E	# of applicants/enrollees requiring additional review that were ultimately accepted and offered coverage.	IND				
		GRP				
F	# of applicants/enrollees referenced in row E that were offered coverage at substandard premium rates.	IND				
		GRP				
G	# of applicants/enrollees referenced in row E that were offered a lesser benefit package than the one for which they applied.	IND				
		GRP				

- Does your company utilize the pre-existing condition or disease exclusionary language set forth in Section 52.25(b)(2)(i) of Regulation 62? If you have considered utilizing this exclusion and have rejected it, please explain.

Expected Benefit Ratios

- What are the expected benefit ratios for your latest portfolio of long term care** products? Describe the trends in expected benefit ratios between different generations of long term care** products. Provide information separately for individual and group products.

Retention Components

- For your latest portfolio of long term care** products, provide a breakdown of retention, expressed as a percentage of premium, into (a) administrative expenses excluding commissions and claim handling expenses, (b) claim handling expenses, (c) commissions to agents and/or brokers, and (d) contingency and/or profit margins. Describe what the actual trends have been between different generations of long term care** products for each of these components. Provide separate information for individual and group products.

Lapse Protection

- Please complete the chart below.

		Age Group of Insureds at Purchase						
		Under 45	45-54	55-64	65-69	70-74	74-79	80 +
# of in-force insureds with Nonforfeiture Protection	Partnership							
	LTC							
	NH&HC							
	NH only							
	HC only							
# of insureds who exercised Nonforfeiture Protection	Partnership							
	LTC							
	NH&HC							
	NH only							
	HC only							
Lapse Rate	Partnership							
	LTC							
	NH&HC							
	NH only							
	HC only							

- Please describe the type(s) of lapse protection/nonforfeiture benefits that your company offers with its long term care** policies.
- Please explain what your company's marketing experience has been with offering a lapse protection/nonforfeiture benefit option.
- Has your company researched or tested any non-traditional forms of lapse protection? Please explain.
- Please explain the root causes for the lapse rate reflected in the above chart.
- Are there any significant differences in the lapse rate by type of policy?

Tax Incentives

1. How have the New York State tax incentives for long term care** insurance premiums impacted your marketing efforts? How were your marketing efforts impacted, if at all, by the increase in the New York State's tax credit effective with the tax year 2004? Has your company seen an increase in the sale of long term care** policies as a result of New York State tax incentives?
2. The New York State tax credit for long term care** insurance premiums is available to anyone who actually pays the premium (does not have to be the insured or the owner of the policy). Has your company directed any marketing efforts toward non-insureds who would be paying the long term care** insurance premiums?
3. How have the federal tax incentives for long term care** premiums impacted on your marketing efforts? Has your company seen an increase in the sale of long term care** policies as a result of federal tax incentives?
4. Do you have any recommendations for federal or state tax incentives?
5. Please describe any trends in sales for tax qualified policies versus non-tax qualified policies.

Dispute Resolution

1. Provide a description or an explanation of the general dispute resolution and appeals/grievance procedures currently in place for your New York issued long term care** insurance policies. Is this procedure detailed in the insured's policy language?
2. For "non-Partnership policies," does your company have a procedure in place to resolve disputes between the insurer and the insured/insured's health care provider relating to whether the insured meets the plan's benefit triggers? If yes, please provide a description.
3. Does your company have a procedure in place to resolve disputes between the insurer and the insured/insured's health care provider regarding health care provider's plan of care? If yes, please provide a description.
4. Provide examples of the most common types of claims submitted by your insureds or your insureds' health care providers that have been denied pursuant to the insured's long term care** policy. What is the basis for such denials?
5. If your company offers both tax qualified and non-tax qualified long term care policies, please explain how your tax qualified policy benefit triggers differ from your non-tax qualified policy benefit triggers.

Summary Information

To complete our overview of the current long term care market, please provide the following information based on your experience since July 1, 2003:

- Results of any marketing studies or surveys on long term care insurance.
- Any educational programs used by your company to inform the public of the need for long term care insurance.
- Information on how your long term care plans are advertised and marketed.
- If your product is marketed in different states, relative success of marketing in New York State compared to other states and perceived reasons for any difference in success.
- Factors contributing to or impeding the development of enrollment in your long term care plans.
- New York State actions you would recommend to improve the sale of long term care plans.

- Innovative policy provisions or other steps taken to make long term care** insurance more desirable, affordable, and/or available.
- Innovative marketing efforts to encourage employers to offer long term care** insurance to their employees.
- Any other information which would be helpful to the Department in preparing the report.

* includes Inflation Protection increases

** In these instances, the term “long term care” is used broadly and includes, where applicable, policies covered by Regulation 62 (long term care, nursing home and home care, nursing home only, and home care only) and Regulation 144 (NYS Partnership for Long Term Care).

**Questions for NAIC
Survey of Other States**

1. Does your state set minimum standards for LTC policies? If so, what are your minimum standards for a daily benefit amount, period of coverage, maximum elimination period, inflation protection, nonforfeiture benefits, medical underwriting of applicants)?
2. What are the major categories of consumer complaints you receive regarding LTC insurance.
3. What impediments do you see to the sale of long term care insurance in your state?
4. Would your state allow products which combine LTC with another product (e.g., disability, life, annuity, etc.)? In conjunction with the sale of other insurance products, would your state allow an option to purchase LTC insurance at some future date?
5. In view of national Medicaid reforms now being discussed, does your state currently have in place or contemplate putting in place programs to encourage the citizens of your state to purchase private LTC insurance as an alternative to using your state's Medicaid program to fund LTC services? Please explain any current or contemplated programs.

Additional Survey Questions for Select States

1. Is the number of in-force Long Term Care (LTC) insurance policies increasing or decreasing in your state? Is the number of insurers selling LTC policies increasing or decreasing in your state? Are the changes for each attributable to national trends or state-specific reasons?
2. Does your state (or a political subdivision of your state) offer LTC insurance to its employees or retirees?
3. Generally, what lapse rates have you seen with LTC coverage?
4. Does your state approve LTC rate increases before implementation? In the past five years, how many insurers increased their rates on in-force LTC policies? Of these increases, what is the average percentage rate increase granted? What is the maximum percentage rate increase that your state would approve in any given year?
5. Does your state set minimum standards for loss ratios for LTC policies? If so, what are they for group and individual policies?
6. Does your state allow insurers to write guaranteed issue or guaranteed to issue individual LTC policies? If yes, please provide full details.
7. What is the maximum substandard rating, expressed as a multiple of standard premium rates, that your state would allow?
8. Does your state allow insurers to use short form applications in the underwriting process for LTC insurance? (Note: When we use the term "short form application", we are referring to applications that base acceptance for coverage upon an abbreviated list of health-related questions). If your state does not allow the use of short form applications, please provide the rationale for that decision.
9. Does your state offer a tax incentive (in addition to the Federal) to purchase LTC insurance?
10. Does your state require an appeal/grievance or dispute resolution process for LTC policies?
11. In the past five years, has your state had legislation or engaged in any activities to encourage the awareness, knowledge, or sale of LTC insurance? If so, please explain your efforts and the results.
12. Please explain any steps your state has taken or proposes to take to allow greater flexibility in assisting a person to stay in their home rather than in a facility.
13. Has your state conducted or participated in any marketing studies or surveys on LTC insurance? If so, please explain the results or provide us with a copy of the report.
14. What are your state's strategies to meet the long term care needs of the aging "baby boomers"? Please include the entire continuum of LTC including assisted living and Continuing Care Retirement Communities.
15. If your state is not California, Connecticut, or Indiana (that currently offer Partnership policies which combine public and private resources to encourage LTC insurance), does your state plan to offer Partnership policies if the Federal law changes to allow you to do so?

APPENDIX C

TOTAL IN-FORCE LONG TERM CARE POLICIES

As of December 31, 2004

Insurer	Non-Partnership	Partnership	Total Insureds	% of Market
Aetna Life	2,604		2,604	.9%
AFLAC*	392	4	396	.1%
American Independent	2,030		2,030	.7%
American International Life*	550		550	.2%
American Progressive*	3,009	112	3,121	1.1%
Bankers Life (prev. John Alden)*	160	414	574	.2%
Berkshire Life	32		32	--
CIGNA (INA)*	246		246	.1%
Combined Life*	146		146	--
Conseco Life*	2,875	1,448	4,323	1.5%
Continental Casualty (CNA)	23,654	7,920	31,574	10.6%
First United American*	130		130	--
First UNUM Life	34,580		34,580	11.6%
GE Capital	38,987	9,193	48,180	16.2%
Hartford Life*	8		8	--
IDS Life*	8,687		8,687	2.9%
John Hancock (includes First Fortis*)	46,132	9,451	55,583	18.7%
Knights of Columbus	361		361	.1%
Massachusetts Mutual	1,565	81	1,646	.6%
MedAmerica	12,949	5,784	18,733	6.3%
MetLife (includes TIAA*)	38,058	1,917	39,975	13.5%
Mutual of Omaha	1,556	119	1,675	.6%
New York Life	5,013	56	5,069	1.7%
Northwestern	1,207		1,207	.4%
Prudential	6,113	146	6,259	2.1%
State Farm Mutual	1,359		1,359	.5%
Thrivent Financial*	335		335	.1%
Transamerica*	164	24	188	.1%
Travelers*	20,411	6,971	27,382	9.2%
GRAND TOTALS	253,313	43,640	296,953	100.0%

*Not currently marketing in New York

AGE BREAKDOWN OF IN-FORCE POLICIES

As of December 31, 2004

Issue Age	Non-Partnership	Partnership	Total	% of Total
Under 45	25,149	707	25,856	9%
45-54	50,033	5,797	55,830	19%
55-64	100,774	19,481	120,255	40%
65-69	45,985	11,417	57,402	19%
70-74	16,079	3,478	19,557	7%
75-79	13,066	2,030	15,096	5%
80 & over	2,227	730	2,957	1%
TOTALS	253,313	43,640	296,953	100%

Acknowledgements and Thanks

In preparing this study, the New York State Insurance Department convened several workgroups composed of individuals and representatives from government agencies who work in the area of long term care insurance and services. Those individuals freely offered their knowledge of long term care insurance and their experience with the aging and disabled. Their thorough, frank discussions provided the Department with valuable information, perspective, and guidance.

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Maine
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Michigan
Montana
North Carolina
Pennsylvania
South Dakota
Washington
Wyoming