REPORT OF THE
JOINT COMMISSION ON HEALTH CARE AND
THE STATE CORPORATION COMMISSION'S
BUREAU OF INSURANCE

LONG-TERM CARE INSURANCE REFORMS

(House Bill 2228 of the
2001 Session of the General Assembly)

TO THE HOUSE COMMITTEE ON COMMERCE
AND LABOR AND THE SENATE COMMITTEE
ON COMMERCE AND LABOR

JOINT COMMISSION ON HEALTH CARE

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House Bill (HB) 2228 of the 2001 Session of the General Assembly requires that the regulations adopted by the State Corporation Commission (SCC) regarding long-term care insurance must include provisions related to the disclosure of insurers' rating practices to consumers. This provision is consistent with one of the recent revisions to the "model" adopted by the National Association of Insurance Commissioners (NAIC), and offered as an alternative for those states that wish to adopt it. The second enactment clause of HB 2228 directs the Joint Commission on Health Care (JCHC) and the Bureau of Insurance of the State Corporation Commission (Bureau) to monitor the implementation of other revisions to the NAIC model regulations. Specifically, the study calls for the JCHC and Bureau to:

(i) monitor the implementation of the revisions to the Long-Term Care Insurance Model Regulation of the National Association of Insurance Commissioners dealing with Initial Filing Requirements and Premium Rate Schedule Increases;

(ii) document the experience of other states that have implemented the revised regulation; and

(iii) make recommendations as to whether Virginia should adopt the revised regulation.

As required in HB 2228, this issue brief serves as an interim report to the House Committee on Corporations, Insurance and Banking, the Senate Committee on Commerce and Labor, and the 2002 Session of the General Assembly. A final report will be submitted to the 2003 Session of the General Assembly. A copy of HB 2228 is attached as Appendix A.

This Report Is Presented In Four Major Sections

This first section discusses the authority for the study and organization of the report. Section II presents background information regarding Virginia's long-term care insurance statutes and the recent alternative provisions the National Association of Insurance Commissioners (NAIC) adopted in its model regulations for long-term care insurance. Section III describes the actions taken thus far by other states to implement the alternative NAIC model regulation changes. Section IV presents a series of policy options the Joint Commission may wish to consider regarding whether the Commonwealth should adopt NAIC's alternative rate setting practices model regulations now or continue on the intended course and monitor this another year to gauge the impact of this change in other states and at the NAIC.

II.
Long-Term Care Insurance Laws And Regulations In Virginia And The Alternative Rate-setting Methodology Adopted For Inclusion In The Model Regulations Published By The National Association of Insurance Commissioners

Virginia's Statutory Provisions Related To Long-Term Care Insurance Policies Are Found In Chapter 52 Of Title 38.2 Of The *Code Of Virginia*

Long-term care insurance policies delivered or issued for delivery in Virginia must conform to the statutory provisions contained in Chapter 52 of Title 38.2 of the *Code of Virginia.* Section 38.2-5200 defines long-term care insurance as:

> "any insurance policy or rider advertised, marketed, offered or designed to provide coverage for not less than twelve consecutive months for each covered person on an expense incurred, indemnity, prepaid, or other basis, for one or more necessary or medically necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance, personal care, mental health or substance abuse services, provided in a setting other than an acute care unit of a hospital."

Figure 1 provides a brief description of the provisions of the *Code of Virginia* that pertain to long-term care insurance policies.

The State Corporation Commission Has Promulgated Regulations Governing Long-term Care Insurance That Is Sold In The Commonwealth; Virginia's Regulations Are Based On The National Association Of Insurance Commissioners' Model Regulations

As authorized by the *Code of Virginia*, the State Corporation Commission (SCC) has promulgated regulations governing long-term care insurance. These regulations, which became effective on January 1, 1992, are provided in 14VAC5-200-10 through 14VAC5-200-210 of the Virginia Administrative Code. In addition to the provisions included in the regulations specific to long-term care insurance, insurers offering this type of insurance also must comply with other pertinent insurance regulations promulgated by the SCC.

Figure 1
Code Of Virginia Statutes Related To Long-Term Care Insurance

Code Section	Key Provision
§38.2-5200	Defines certain terms used in Chapter 52
§38.2-5201	Requires long-term care insurance policies/certificates to comply with other provisions of Title 38.2 related to insurance policies and certificates generally, except Article 2 of Chapter 34 (mandated benefits) and Chapter 36 (Medicare supplement policies)
§38.2-5202	Authorizes the Commission to adopt regulations; regulations must recognize the unique aspects of long-term care insurance
§38.2-5202.1	Requires insurers to include a premium refund provision in their policies in the event of cancellation or termination of coverage
§38.2-5203	Identifies prohibited practices regarding long-term care insurance policies
§38.2-5204	Defines "pre-existing condition," and prohibits long-term care insurance policies from using a more restrictive definition
§38.2-5205	Prohibits long-term care insurance policies from conditioning benefits for institutional care on receipt of a higher level of such care or for any benefits on a prior hospitalization
§38.2-5206	Provides that long-term care benefits may be required to meet certain loss-ratio standards; requires a certificate by a qualified actuary as to the adequacy of the rates and reserves to be filed with the Commission
§38.2-5207	Requires long-term care insurance policies to disclose certain information in an "outline of coverage"
§38.2-5207.1	Provides additional disclosure requirements for long-term care benefits included in a life insurance policy
§38.2-5207.2	Requires a monthly report to policyholder when long-term care benefits are paid through a life insurance policy by acceleration of death benefits
§38.2-5208	Requires that long-term care insurance policies allow policyholders to return the policy within 30 days of delivery with premium refund
§38.2-5209	Requires each long-term care policy have an "incontestability" provision that meets certain requirements
§38.2-5210	Requires that long-term care insurance policyholders be offered the option of purchasing a nonforfeiture benefit

Source: Joint Commission on Health Care staff analysis

Virginia's long-term care insurance regulations, as promulgated by the SCC, are based on the model regulations adopted by the National Association of Insurance Commissioners (NAIC). Virginia's regulations include most provisions of the NAIC model. In addition to standard provisions such as definitions, applicability and scope, etc., Virginia's long-term care regulations include sections dealing with topics such as: (i) required disclosure provisions, (ii) prohibition of post-claims underwriting; (iii) minimum standards for home health benefits; (iv) requirement to offer inflation protection; (v) reporting requirements; (vi) reserve standards; (vii) loss ratios; and (viii) standards for marketing.

The National Association Of Insurance Commissioners (NAIC) Recently Revised Its Long-Term Care Insurance Model Regulations In Response To State Regulators' Concerns Regarding Premium Rate Increases

The NAIC is the national organization of insurance regulators from all 50 states, the District of Columbia and the four U.S. territories. The NAIC provides a forum for the development of uniform policy when uniformity is appropriate, and provides staff support to insurance commissioners.

NAIC indicated that a number of state insurance regulators had raised concerns in recent years regarding the manner in which some long-term care insurance companies were imposing premium rate increases. One such concern has been that some companies offer policies with a low initial premium that attracts buyers, and then increase the premium substantially during the next several years. This rating practice is particularly problematic for senior citizens, many of whom are on fixed incomes. In response to these concerns, NAIC revised its model regulations to provide states with alternative suggested language to address such rating practices. The NAIC adopted a set of revisions to its long-term care insurance model regulations on August 17, 2000.

The revisions to the model regulations focus on two major areas: (i) the manner in which premium rates are calculated by carriers and approved by state insurance regulators; and (ii) extensive new requirements for information that must be disclosed to an applicant. The following paragraphs provide additional details regarding these two revisions.

The Revisions To NAIC's Long-Term Care Insurance Model Regulations Provide Incentives For Insurers To Price Adequately Long-Term Care Insurance Policies

Rate Setting: Prior to the recent changes, NAIC's model regulation (and Virginia's current regulation) required that long-term care insurance policies have an expected loss ratio of at least 60%. The August, 2000 revisions provide states with an alternative rate-setting methodology that eliminates the 60% loss ratio standard on the initial premium filed by the carrier, and imposes an 85% loss ratio on any premium increase requested by the insurer, along with a 58% loss ratio on the initial premium amount. NAIC believes this alternative provides a strong incentive for the insurer to file an initial premium that will be more stable in future years, and will not require the frequency and amount of increase that has concerned some state regulators across the country.

New Regulatory Authority: The revisions also would provide insurance commissioners with the authority to require the insurer to reimburse policyholders for any unnecessary rate increases (i.e., increases that did not meet the loss ratios described above). In addition, the revisions authorize an insurance commissioner to prohibit the insurer from filing and marketing comparable coverage for a period up to five years if the commissioner determines the insurer has "exhibited a persistent practice of filing inadequate initial premium rates for Long-term care insurance..."

The August, 2000 Revisions To NAIC's Long-Term Care Insurance Model Regulations Also Require Insurers To Disclose Extensive Information To Applicants On Premium Rates

The other major component of the August, 2000 revisions to NAIC's model Long-term care insurance regulations focuses on consumer information. The revisions require extensive new information that insurers have to provide to applicants regarding premium rates. The following are among the required information items:

- a statement that the policy may be subject to rate increases in the future;
- an explanation of potential future premium rate revisions;
- a description of when premium rate or rate schedule adjustments will be effective; and
- information regarding each premium rate increase on the policy form or similar policy forms over the past ten years.

Virginia has amended its long-term care regulation to include these revisions.

NAIC Suggested That The Revisions Will Be Of Significant Benefit To Consumers; The Long-Term Care Insurance Industry And Key Advocacy Groups Support The Changes

At the time the alternative rate-setting methodology was added to the NAIC Model, the President of NAIC stated that "[T]hese amendments will substantially aid consumers by reducing the potential for future rate increases by creating incentives for insurers to adequately price long-term care policies." Similarly, the Chairman of NAIC's Health Insurance and Managed Care (B) Committee said that "[R]ate increases on long-term care policies are a big problem because the average buyers are in their 60s, and consumers are least able to afford any premium increase as they get older. We believe these amendments will go a long way toward solving that problem."

The long-term care insurance industry supports the revisions. Representatives of the two major trade associations for long-term care insurers, the Health Insurance Association of America and the American Council of Life Insurers, indicated their organizations are supportive of the amendments. AARP and the Virginia Retired Teachers Association also have expressed support for NAIC's revised model regulations. In supporting the NAIC revisions, AARP has stated that it "believes the NAIC's rate stability standards represent an important improvement in regulatory requirement for long-term care insurance products and their sale consumer protection and should be fully implemented in every state, including Virginia." AARP further noted "[W]e believe that the new NAIC standards will successfully change the incentives for insurers to establish appropriate initial premiums, and limit the number and magnitude of future premium increases."

The Enactment Of House Bill 2228 Of The 2001 Session Of The General Assembly Implemented NAIC's Consumer Information Recommendations, And Directed The JCHC And Bureau Of Insurance To Conduct Further Study Of NAIC's Premium Rate Setting Recommendations

Following a 2000 study by the JCHC and the Bureau of Insurance (Bureau) on NAIC's revised long-term care insurance model regulations, the 2001 Session of the General Assembly passed, and the Governor signed, House Bill (HB) 2228 which implemented the consumer information recommendations of the NAIC. Specifically, HB 2228 amended §38.2-5202(A) of the *Code of Virginia* by requiring that the regulations promulgated by the SCC regarding long-term care insurance include "disclosure of rating practices to consumers" among the required standards for such policies.

HB 2228 did not implement the alternative NAIC model language that would change the long-term care insurance premium rate setting process (e.g., eliminating the 60% minimum loss ratio on initial premiums). Because the alternative NAIC language represents a significant change from the current rate setting process, the Bureau was concerned about the potential for unintended consequences resulting from such a change. In response to these concerns, HB 2228 directed the JCHC and the Bureau to monitor the implementation of the rate setting provisions in other states and to document the experience of those states which had adopted the NAIC changes. Section III presents a summary of the JCHC and Bureau's findings with regard to this issue.

III.
Implementation Of NAIC's Alternative Premium Rate Setting Model Language In Other States

House Bill 2228 Of The 2001 Session Of The General Assembly Directs The Joint Commission On Health Care And The Bureau Of Insurance To Monitor The Implementation Of The National Association of Insurance Commissioners' Revised Model Regulations Regarding Long-Term Care Insurance Rating Practices

House Bill (HB) 2228 of the 2001 Session of the General Assembly requires the JCHC and Bureau of Insurance to: (i) monitor the implementation of NAIC's alternative rate setting model by other states; and (ii) document the experience of other states that have implemented the alternative rate setting model. As required by HB 2228, this interim report will be submitted to the 2002 Session of the General Assembly; a final report will be submitted to the 2003 Session.

NAIC Reports That, Thus Far, 28 Other States Have Adopted or Plan On Adopting The New Alternative Rating Practices And Enhanced Consumer Disclosure Amendments Included In NAIC's Revised Long-Term Care Insurance Model Regulations

NAIC recently conducted a survey of all 50 states and the District of Columbia to determine which states plan to adopt the NAIC revised model regulations. A total of 46 responses were received (including Virginia). The survey results indicate that, thus far, 28 other states plan to adopt the revisions to NAIC's long-term care insurance model regulations. Eight other states responded that they did not plan to adopt the revised model regulations. Ten other states indicated they were undecided. (As previously stated in this report, Virginia has already adopted the consumer disclosure amendments, but is undecided on the adoption of the rate-setting practice provisions. Because the focus of this report is on NAIC's rate setting practice regulations, Virginia is included among the "undecided" states.)

According to NAIC, California had adopted similar legislation in 2000. Of the remaining 27 other states, 13 plan to adopt the NAIC revisions during 2001 (although the NAIC shows only four states that actually did adopt the revised regulation in 2001); 8 states plan to adopt the revisions in 2002; and 3 other states have not set a definite date. Eighteen of the 28 states indicated they plan to adopt the NAIC revisions without any changes; seven states reported they likely will be adopting the model regulations with some changes. The remaining states which plan to implement the revisions are undecided as to whether the revisions will be adopted with or without any changes.

The eight states which do not plan to adopt the NAIC's revised model regulations reported to NAIC varying reasons for their respective decisions. The reasons cited by the insurance department in each of the eight states are summarized in Figure 2.

Figure 2

Reasons Cited By Insurance Departments In Eight States For Not Adopting NAIC's Revised Long-Term Care Insurance Model Regulations

State	Reason For Not Adopting NAIC Revised Model Regulations
Alabama	Other legislative priorities this year
Colorado	Skeptical that revisions will inhibit insurers' filing rate increases or make it more difficult to get rate increases approved than under current process
Connecticut	Major concerns have not surfaced; model regulations are being reviewed
Indiana	Does not believe intended goal will be accomplished; anticipates higher premiums at issue of policy restricting access to some insureds; not convinced that future premium increases would be avoided
Iowa	Issue has been raised, but apparently no interest in adopting revisions
Massachusetts	Revisions do not provide for reasonable and fair premiums and are not consistent with our actuarial review
Nebraska	Had just amended regulations in September, 2000
New York	Many of NAIC revisions already are addressed in current state regulations

Source: National Association of Insurance Commissioners, June, 2001

As noted in Figure 2, only three states (Colorado, Indiana, and Massachusetts) expressed specific concern or opposition to NAIC's revised model regulations. The remaining five states cited other reasons for not adopting the revisions (e.g., other legislative priorities, already addressed in current regulations, etc.). The ten states that are undecided about implementing the NAIC revised model regulations all indicated that the revisions are under consideration.

There Is Little Experience In Other States That Have Adopted The NAIC Revised Regulations At This Time

HB 2228 directs the JCHC and Bureau of Insurance to document the experiences of other states that have adopted the NAIC revised model regulations. However, given that states are just beginning to implement the new provisions, there is no information available to assess their experiences with regard to whether the revisions in question will achieve the principal goal of NAIC's revised rate setting practices regulations, which is to reduce the number of future premium increases. What experience is available from states that have adopted the alternative language included in the revised NAIC regulation is limited to experiences with initial rate filings since no filings for premium rate increases have been made to date. Of the five states that the NAIC documents as having adopted the model regulation or similar legislation, one state reports problems with insurers making filings with incorrect actuarial certifications and two other states indicate that they plan to administratively delay implementation of the revised regulations in view of questions which have arisen regarding the responsibilities of actuaries and regulators in connection with this new language. Some of the questions that have arisen are currently under review by the NAIC as well as a work group of the American Academy of Actuaries. Since many other states have indicated that they plan to implement the revised regulation in 2002, there is an increasing understanding among states and at the NAIC that many of the current questions will need to be resolved in the coming year.

IV.
Policy Options

As noted in Section I of this report, this is an interim report. While HB 2228 calls for a final report to be submitted to the General Assembly in 2003, it is likely that the only additional information available next year will be an update on the number of states which have adopted the revised regulations. The impact of adopting the NAIC changes likely will not be known for several years. As such, the following Policy Options are offered in this interim report should the JCHC wish to take action this year regarding implementation of NAIC's revised model regulations on rate setting practices.

Option I **Continue to monitor the implementation of NAIC's revised model regulations for long-term care insurance in other states, and document the experiences of other states**

Option II **Introduce legislation to adopt NAIC's revised model regulations pertaining to rate setting practices for long-term care insurance**

APPENDIX A

CHAPTER 114

An Act to amend and reenact § 38.2-5202 of the Code of Virginia, relating to long-term care insurance; disclosure of rating practices.

[H 2228]

Approved March 13, 2001

Be it enacted by the General Assembly of Virginia:

1. That § 38.2-5202 of the Code of Virginia is amended and reenacted as follows:

§ 38.2-5202. Promulgation of regulations; standards for policy provisions.

A. The Commission may adopt regulations to establish specific standards for policy provisions of long-term care insurance policies. These standards shall be in addition to and in accordance with applicable laws of this Commonwealth. The standards shall address terms of renewability, nonforfeiture provisions if applicable, initial and subsequent conditions of eligibility, continuation or conversion, nonduplication of coverage provisions, coverage of dependents, preexisting conditions, termination of insurance, probationary periods, limitations, exceptions, reductions, elimination periods, requirements for replacement, recurrent conditions, ~~and~~ definitions of terms, *and disclosure of rating practices to consumers* and may address any other standards considered appropriate by the Commission.

B. The Commission shall promulgate such regulations regarding long-term care insurance policies and certificates as it deems appropriate.

C. Regulations issued by the Commission shall:

1. Recognize the unique, developing and experimental nature of long-term care insurance;
2. Recognize the appropriate distinctions necessary between group and individual long-term care insurance policies;

3. Recognize the unique needs of both those individuals who have reached retirement age and those preretirement individuals interested in purchasing long-term care insurance products; and

4. Recognize the appropriate distinctions necessary between long-term care insurance and accident and sickness insurance policies, prepaid health plans, and other health service plans.

2. That the Joint Commission on Health Care and the Bureau of Insurance of the State Corporation Commission shall (i) monitor the implementation of the revisions to the Long-Term Care Insurance Model Regulation of the National Association of Insurance Commissioners, dealing with Initial Filing Requirements and Premium Rate Schedule Increases, (ii) document the experience of other states that have implemented the revised regulation, and (iii) make recommendations to whether Virginia should adopt the revised regulation. The Joint Commission and the Bureau of Insurance shall report to the House Committee on Corporations, Insurance and Banking and the Senate Committee on Commerce and Labor on the progress of their study in an interim report to the 2002 Session of the General Assembly and in a final report to the 2003 Session of the General Assembly.

APPENDIX B

JOINT COMMISSION ON HEALTH CARE

SUMMARY OF PUBLIC COMMENTS:
Long-Term Care Insurance Reforms Study
HB 2228

Individuals/Organizations Submitting Comments

A total of four individuals and organizations submitted comments in response to the Long-Term Care Insurance Reforms Report.

- AARP
- John Cutler of the U.S. Office of Personnel Management
- American Council of Life Insurers (ACLI)
- State Corporation Commission, Bureau of Insurance

Policy Options Included in the Long-Term Care Insurance Reforms Study

As noted in Section I of this report, this is an interim report. While HB 2228 calls for a final report to be submitted to the General Assembly in 2003, it is likely that the only additional information available next year will be an update on the number of states which have adopted the revised regulations. The impact of adopting the NAIC changes likely will not be known for several years. As such, the following Policy Options are offered in this interim report should the JCHC wish to take action this year regarding implementation of NAIC's revised model regulations on rate setting practices.

Option I Continue to monitor the implementation of NAIC's revised model regulations for long-term care insurance in other states, and document the experiences of other states

Option II Introduce legislation to adopt NAIC's revised model regulations pertaining to rate setting practices for long-term care insurance

Overall Summary of Comments

Three commenters (AARP, John Cutler, and ACLI) strongly supported Option II.

Summary of Individual Comments

AARP

Jack R. Hundley, Chair, Virginia State Legislative Committee of AARP commented that "AARP strongly encourages implementation of the entire NAIC rate stability standard…[N]othing could jeopardize consumer confidence in the insurance industry, or this product, more than unexpected premium increases for vulnerable populations, including seniors…AARP also is especially interested in making comparative information on premium rate increases available to consumers as soon as possible."

John Cutler of the U.S. Office of Personnel Management

John Cutler commented on his own and not on behalf of OPM. Mr. Cutler indicated that the NAIC model…"provides for consumer disclosure and for changes in certain actuarial rating review practices. I would like to strongly support both components of the NAIC model." Mr. Cutler also commented that "Virginia should fully adopt the NAIC 2000 model law and regulations."

American Council of Life Insurers (ACLI)

J. Christopher Jankowski, Counsel and Director, State Political Affairs of ACLI, commented that its members write 80% of the long-term care insurance policies in the Commonwealth. ACLI believes "the rate flexibility authorized by Option II is important for policyholders as well as the companies that issue policies… It is important to act now for the benefit of consumers and the industry." Mr. Jankowski commented that while Virginia's current regulations require a 60% loss ratio and are designed to keep initial prices low, they provide little additional authority to control rate increases. The new model rules place significant controls on future increases. "For these reasons, the ACLI urges the JCHC to move forward now and adopt Policy Option II."

State Corporation Commission, Bureau of Insurance

Alfred W. Gross, Commissioner of the Bureau of Insurance, commented: "I believe that the appropriate action at this point is to adhere to the time frames set forth in HB 2228." Mr. Gross stated: "the methodology for reviewing long-term care insurance premiums in the amended NAIC model is new and untried. Although many states are now adopting this methodology there is no credible experience at this point on how it will operate or the impact it will have on the premiums charged for this coverage. Some in the actuarial profession have expressed concern regarding the lack of specificity in the new NAIC standards." Mr. Gross indicated the Bureau is working with its actuaries to determine how to administer the new methodology and that "it would be premature to adopt the new methodology at this point without completing this review."

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