Report Regarding Long-Term Care Insurance Premium Rate Cap Legislation

(Senate Bill 828 (2023))

November 2023

SCOTT A. WHITE
COMMISSIONER OF INSURANCE
STATE CORPORATION COMMISSION
BUREAU OF INSURANCE

COMMONWEALTH OF VIRGINIA

P.O. BOX 1157
RICHMOND, VIRGINIA 23218

1300 E. MAIN STREET
RICHMOND, VIRGINIA 23219

TELEPHONE: (804) 371-9741
scc.virginia.gov

November 1, 2023

Transmitted via Email

The Honorable Richard L. Saslaw
Chair, Senate Commerce and Labor Committee
Senate of Virginia

The Honorable Lionell Spruill, Sr.
Senate of Virginia

Dear Senator Saslaw and Senator Spruill:

Pursuant to request of the Senate Commerce and Labor Committee and on behalf of the State Corporation Commission, the Bureau of Insurance submits this Study of the Subject Matter of Senate Bill 828 from the 2023 Regular Session of the Virginia General Assembly, related to the imposition of a cap on long-term care insurance rates.

Respectfully submitted,

Scott A. White
Commissioner of Insurance

cc: The Honorable Susan Clarke Schaar
Clerk, Senate of Virginia

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Executive Summary

During the 2023 Session of the Virginia General Assembly, Senator Spruill introduced Senate Bill 828 (SB 828), a bill prohibiting the State Corporation Commission (Commission) from approving any increase in annual premium rates or premium rate schedules for long-term care (LTC) insurance[1] greater than six percent of the current rates. The Senate Commerce and Labor Committee "passed the bill by indefinitely" with a letter instructing the Bureau of Insurance (Bureau) "to study the subject matter" in SB 828.

In its 2013 study of LTC insurance rates, the Bureau wrote: "While consumers, industry, and regulatory communities are eager to find solutions which will balance the needs and concerns of all parties affected by LTCI premium rate increases, there is no easy answer."[2]

The answer proposed in Senate Bill 828 is to impose a six percent annual rate cap on LTC insurance rate increases. To assess the impact of this proposal as requested in the committee letter, the Bureau retained an actuarial consultant[3] to conduct a theoretical retrospective analysis of the potential impacts of the proposed six percent annual rate cap on previously approved premium.[4] The consultant could not determine the actual premium impacts on future policyholders since the Bureau cannot predict whether and to what extent future premium rate increases will be requested and approved.[5] The analysis produced the following findings:

- The premium rate cap, applied retroactively over the period of the study, would have resulted in an average (aggregate) premium reduction of 26 percent.
- Depending on the richness of benefit, the reduction in the LTC insurance premium revenue ranged from 4 to 47 percent.
- The cap had the largest impact on policy configurations with richer benefits (i.e., plans with higher inflation and longer benefit periods).

Premium reductions through caps on rate increases translate into premium savings for policyholders. However, they also produce a corresponding revenue loss for insurers unrelated to actuarial justification and other applicable rate standards. This can affect their ability to deliver on their promises to policyholders and operate profitably. While the Bureau cannot determine the specific impacts of the proposal on individual insurers within the scope of this analysis, it can make this high-level observation:

> *Depending on a variety of factors such as the volume of LTC insurance the insurer writes, the volume of LTC insurance compared to its other writings, the materiality of its Virginia operations relative to its countrywide premium and surplus, and its overall financial position, such a premium revenue loss could adversely affect its ability to pay claims and fund loss reserves and its capacity[6] and willingness[7] to write new LTC insurance business in Virginia.*

1. Introduction

By letter dated March 24, 2023, the Senate Committee on Commerce and Labor requested that the Commission study the subject matter contained in Senate Bill 828 Senate Bill 828, as introduced would prohibit the Commission from approving any increase in annual premium rates or premium rate schedules for LTC insurance[8] greater than six percent of the current rates.

2. Backdrop for a LTC Insurance Rate Cap

This proposed rate cap is being considered against the backdrop of rising costs and growing demand for long-term care services and supports for an aging population. In Virginia, the annual median cost for a variety of LTC services and supports ranges from more than $20,000 for adult day health care to nearly $110,000 for a private room at a nursing care facility.[9] According to a 2020 Congressional Research Service report, private payers accounted for 7.8 percent of the $475.1 billion in total spending on LTC services and supports.[10]

This report considers the significant financial challenges for Virginia policyholders and LTC insurers.

> "Consumer affordability is a valid concern, especially since many policyholders are in their senior years and living on fixed incomes. From a company perspective, solvency and profitability are also valid concerns, as evidenced by company restructurings and rehabilitations linked to LTC (insurance) business."[11]

Policyholders have affordability concerns as they face the continuing prospect of large rate increases and potential benefit reductions. This history of large rate increases has required some policyholders to choose between higher rates, reduced benefits, or lapsing coverage. In 2022, 32 carriers in Virginia requested rate increases averaging 79.7 percent, with the average approved increase being 52.5 percent.[12] Examples of policy form histories show cumulative approved rate increases ranging from 263 to 1196 percent since initial rates were approved. Likewise, companies have solvency and profitability concerns as they face mounting financial adversities. Updated projections of insurer claim costs have exceeded original estimates.[13] Nationally, several companies have become insolvent. The liquidation of three current LTC insurers domiciled in other states – Penn Treaty/American Network, Senior American and Time – has affected approximately 6,000 Virginia policies.[14]

Finally, the LTC insurance market continues to shrink in Virginia and countrywide. Many companies have stopped selling new standalone LTC insurance policies. In 2000, there were 125 companies[15] nationally writing new business; in 2022, that number had decreased to 23.[16] In Virginia, 13 companies were writing new business in 2022. The number of total covered lives nationally has dropped from its peak of 7.3 million covered lives in 2012 to 6.3 million in 2021.[17] Of these, the number of new covered lives in 2022 accounted for 1.7% of total covered lives countrywide, with just 1,742 in Virginia.[18]

3. Key Drivers of the LTC Insurance Premium Rate Increases

When LTC insurance gained popularity countrywide in the late 1980s and products were initially priced, insurers were relying on data to set assumptions that later proved to be inaccurate, leading to underpriced rates for many years.

Several of the pricing assumptions proved to be very wrong. For example, persistency rates turned out to be significantly higher than expected. Also, in the late 1980s and early 1990s, interest rates were much higher. As they began to fall, insurers were unable to earn as much on the deposited funds as they had expected. In addition, claim costs and claim duration turned out to be significantly higher than expected.

At first, insurers were reluctant to increase rates, leading to delayed or infrequent requests for rate increases. It took insurers many years to build the credible claims experience necessary to justify rate increases. As a result, insurers required even higher rate increases to offset the lost premium revenue due to delays, the lost interest earned on that lost premium, and shrinking blocks of business with fewer policyholders remaining to pay the higher premiums.

Insurers relied on the resulting "built-up funds" that lapsing policyholders left behind to fund the claims of the policyholders that remained. Because the lapse rate was lower than expected, insurers found that future premiums together with the built-up funds were insufficient to pay future claims.

These circumstances have had a lasting adverse impact on the trajectory and scope of LTC insurance rates and led to a search for solutions through the ratemaking process.

4. Regulating LTC Insurance Rates

In regulating LTC insurance benefits and rates, the Bureau is required to recognize the "unique, developing and experimental nature" of LTC insurance and the "unique needs" of "those individuals who have reached retirement age and the needs of those preretirement individuals interested in purchasing long-term care insurance policies."[19]

The standards used by the Bureau largely reflect those set forth in the National Association of Insurance Commissioner's Model Act 640 and Model Regulation 641 for LTC insurance since a version of each has been adopted by a majority of states. Therefore, the laws applicable to LTC insurance in Virginia are generally consistent with those of other states. As such, the Bureau reviews all LTC insurance filings that propose a rate increase to determine if they are actuarially justified. Pursuant to § 38.2-5206 C, of the Code of Virginia (Code), a company is required to submit "a certificate by a qualified actuary or other qualified professional approved by the Commission as to the adequacy of the rates and reserves … along with adequate supporting information."

In addition, the Bureau may consider other factors such as insurer action plans, the average age of the policyholder, the period since the last rate increase, the percentage of premium a carrier has earned within a block, Virginia enrollment, and the practicality of spreading increases over time.

Following the Bureau's 2013 LTC insurance study, the Commission implemented recommendations to revise the methodology for rate increases, strengthen standards for rate increases, and permit companies to spread rate increases over a number of years, along with allowing a single rate increase or scheduled rate increases. Despite these efforts, large rate increases have persisted.

5. Impacts of the Proposed Rate Cap

In its 2013 study of LTC insurance rates, the Bureau wrote: "While consumers, industry, and regulatory communities are eager to find solutions which will balance the needs and concerns of all parties affected by LTCI premium rate increases, there is no easy answer."[20]

Senate Bill 828 proposes a six percent annual rate cap on LTC insurance rate increases. To assess the impact of this proposal as requested in the committee letter, the Bureau retained an actuarial consultant[21] to conduct a theoretical retrospective analysis of the potential impacts of a six percent annual rate cap on previously approved premium rates dating back to the first approved rate increase for each included product offered by LTC insurers with roughly 50 percent of the market share in Virginia.[22] The consultant could not determine the actual premium impacts on future policyholders since the Bureau cannot predict whether and to what extent future premium rate increases will be requested and approved.[23] The analysis produced the following findings:

- The premium rate cap, applied retroactively over the period of the study (2008 to 2022, would have resulted in an average (aggregate) premium reduction of 26 percent.
- Depending on the richness of benefit, the reduction in the LTC insurance premium revenue ranged from 4 to 47 percent
- The cap had the largest impact on policy configurations with richer benefits (i.e., plans with higher inflation and longer benefit periods).

Premium reductions through caps on rate increases translate into premium savings for policyholders. However, they also produce a corresponding revenue loss for insurers unrelated to actuarial justification and other applicable rate standards. This can affect their ability to deliver on their promises to policyholders and operate profitably.

The surplus of LTC insurers is not allocable by state, and most companies writing LTC insurance in Virginia write in multiple states and write multiple lines of insurance within these states. Facing a potential reduction of premium revenue under this proposal, they could choose, among other options, to draw on countrywide surplus to pay policyholder loss claims and maintain required reserve levels,[24] cross-subsidize LTC insurance operations in Virginia with premium increases in other states or other lines, or stop writing new business in Virginia if unable to operate profitably.

While the Bureau cannot determine the specific impacts of the proposal on individual insurers within the scope of this analysis, it can make this high-level observation:

> *Depending on a variety of factors such as the volume of LTC insurance the insurer writes, the volume of LTC insurance compared to its other writings, the materiality of its Virginia operations relative to its countrywide premium and surplus, and its overall financial position, such a premium revenue loss could adversely affect its ability to pay claims and fund loss reserves and its capacity[25] and willingness[26] to write new LTC insurance business in Virginia.*

With respect to the Bureau, implementing an annual rate cap could result in more frequent rate filings by LTC insurers, requiring it to conduct more rate reviews. The number of additional reviews is unknown; however, it could be significant. For example, LTC insurers generally request a rate increase on any given product less frequently than annually. Insurers seeking a 30 percent rate increase under the proposed cap might decide to make five separate annual filings at six percent per filing, rather than a single filing, unless allowed to spread the 30% increase over five years. Were separate filings to result, the Bureau could experience a significant workload increase with budget impacts.

6. Conclusion

This study shows that the proposed six percent annual premium rate cap would have reduced policyholder premiums for LTC insurance when applied retrospectively in lieu of previously approved rate hikes. From that, one can assume it would also reduce the size of approved future premium rate increases, but increase the frequency of filings. However, the extent to which that might occur is unclear since the Bureau cannot predict whether and to what extent LTC insurers will seek future premium rate increases.

The study also showed that a six percent annual premium rate cap would produce a corresponding amount of foregone premium revenue for insurers that could further challenge their ability to pay claim costs, adequately fund loss reserves, and reduce their capacity and willingness to write new business in Virginia.

Endnotes

[1] In § 38.2-5202 of the Code of Virginia (Code), “long-term care insurance,” is defined, in part, as “any insurance policy or rider advertised, marketed, offered or designed to provide coverage for not less than 12 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….” See also, 14VAC5-200-40.

[2] Commonwealth of Virginia, State Corporation Commission, Final Report of Findings, Bureau of Insurance Case No. INS-2012-00282, In the Matter of Investigating Long-Term Care Insurance Premium Rates, October 2, 2013. (link)

[3] In preparing this part of the report, the Bureau engaged the services of Actuarial Resources Corporation of Georgia (“ARC-GA”) to conduct an analysis of the theoretical impact of the proposed 6% rate cap on premium revenues. They included the following statement with their analysis: “In arriving at our opinion, we used and relied on information provided by the SCC and contained in SERFF [System for Electronic Rate and Form Filing] filings as of May 30, 2023, of the companies that were in scope of the assignment without independent investigation or verification. If this information is inaccurate, incomplete, or out of date, our findings and conclusions may need to be revised. While we have relied on the data provided without independent investigation or verification, we have reviewed the data for consistency and reasonableness. In the event that we found the data inconsistent or unreasonable, we have requested clarification.”

[4] The “period of the study” included rate approvals between 2008 and 2022.

[5] The analysis compared the average annual premium based on two scenarios: the actual rate increases approved by the Bureau in past years and the actual rate increases approved by the Bureau but implemented at no more than a 6% increase per year. No related actuarial opinion has been provided or can be implied. Although the analysis did not include products without any previous premium rate increases, the number of those are believed to be statistically insignificant. Nevertheless, the outcome may have been different for these products. The study did not allow the 6% cap to be greater than the approved rate increase. Had the 6% cap been in place, the company may have filed for and received approval of a rate increase sooner than the timing of the actual approved rate increase. Projections could not assume future rate increases the company may have filed other than the 6% cap.

[6] Any premium reduction and resulting surplus drawdowns could reduce the capacity of LTC insurers to write new business were it to have the effect of reducing the number of premium dollars for every dollar of surplus – a key measure of an insurer’s capacity to write new business.

[7] One could also expect such a reduction in premium revenue to adversely affect the profitability of an insurer’s operations in Virginia and precipitate further market departures, making it even more difficult for consumers shopping for LTCI to obtain coverage.

[8] In § 38.2-5202 of the Code, “long-term care insurance,” is defined, in part, as “any insurance policy or rider advertised, marketed, offered or designed to provide coverage for not less than 12 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….” See also, 14VAC5-200-40.

[9] Cost of Long-Term Care by State | Cost of Care Report | Genworth

[10] 2020 Congressional Research Service, Who Pays for Long-Term Services and Supports?, Updated June 15, 2022, at 1.

[11] Because of the increase in both the number and frequency of premium rate increase requests by insurers writing LTCI in Virginia, in 2013 the Commission conducted a study of the premium rate increases implemented by insurers writing LTCI in Virginia on or after January 1, 2009. [Commonwealth of Virginia, State Corporation Commission, Final Report of Findings, Bureau of Insurance Case No. INS-2012-00282, In the Matter of Investigating Long-Term Care Insurance Premium Rates, October 2, 2013, at 6.] (link)

[12] The approved rate increases ranged from a low of 10% to a high of 109%. While 52.5% is the average amount of the approved rate increase, the annual amount implemented may be less depending upon the length of the implementation period. Were the increase spread out over three years – typically the longest period per Bureau practice, the comparable annual rate increase would be 17.5%.

[13] Source: Analysis by Fred Anderson, FSA, MAAA – Minnesota Department of Commerce. For example, claim costs increased from $40 billion original estimates to $135 billion on Generation 1 policies (issued from 1999-2010), while claim costs increased from $50 billion original estimates to $65 billion on Generation 2 policies (issued from 2010-2019).

[14] For Virginia policyholders, any resulting financial adversity for an insurer could jeopardize continued coverage and the benefits to which they might otherwise be entitled. For example, the National Organization of Life and Health Insurance Guaranty Associations has three liquidations involving LTC insurers domiciled in other states – Penn Treaty/American Network, Senior American and Time – that has affected approximately 6,000 Virginia policies. The resolution of some of these rely on a strategy of premium rate increases that could be impacted by a proposed rate cap. The rate increases for liquidated companies are generally used to minimize Guaranty Association assessments of member insurers. The Virginia Life, Accident & Sickness Insurance Guaranty Association continues coverage and pays benefits of up to $300,000 when a LTC insurer is liquidated by court order in accordance with state law. Policy benefits exceeding this limit may not be provided in full. Other statutory limitations or exclusions may also apply. If necessary, the Guaranty Association may levy assessments against all life and health insurers in Virginia to fund any deficits. Source: The Virginia Life, Accident & Sickness Insurance Guaranty Association, Annual Report 2022.

[15] America’s Health Insurance Plans, “Long-Term Care Insurance in 2002,” June 2004, *cited in* National Association of Insurance Commissioners, “The State of Long-Term Care Insurance: The Market, Challenges and Future Innovations,” 2019, at 12.

[16] 2020-2022 Source: NAIC Annual Statement Long Term Care Experience Reporting Form Part 5 - Stand Alone and Hybrid Products Direct State.

[17] 2020-2022 Source: NAIC Annual Statement Long Term Care Experience Reporting Form Part 5 - Stand Alone and Hybrid Products Direct State.

[18] Value defined in Instructions for the NAIC LTC Exhibit Reporting Form 5 as the “total number of new lives issued Stand-Alone LTC policies during the year.”

[19] § 38.2-5206 B of the Code.

[20] Commonwealth of Virginia, State Corporation Commission, Final Report of Findings, Bureau of Insurance Case No. INS-2012-00282, In the Matter of Investigating Long-Term Care Insurance Premium Rates, October 2, 2013. (link)

[21] In preparing this part of the report, the Bureau engaged the services of Actuarial Resources Corporation of Georgia ("ARC-GA") to conduct an analysis of the theoretical impact of the proposed 6% rate cap on premium revenues. They included the following statement with their analysis: "In arriving at our opinion, we used and relied on information provided by the SCC and contained in SERFF [System for Electronic Rate and Form Filing] filings as of May 30, 2023, of the companies that were in scope of the assignment without independent investigation or verification. If this information is inaccurate, incomplete, or out of date, our findings and conclusions may need to be revised. While we have relied on the data provided without independent investigation or verification, we have reviewed the data for consistency and reasonableness. In the event that we found the data inconsistent or unreasonable, we have requested clarification."

[22] The "period of the study" included rate approvals between 2008 and 2022.

[23] The analysis compared the average annual premium based on two scenarios: the actual rate increases approved by the Bureau in past years and the actual rate increases approved by the Bureau but implemented at no more than a 6% increase per year. No related actuarial opinion has been provided or can be implied. Although the analysis did not include products without any previous premium rate increases, the number of those are believed to be statistically insignificant. Nevertheless, the outcome may have been different for these products. The study did not allow the 6% cap to be greater than the approved rate increase. Had the 6% cap been in place, the company may have filed for and received approval of a rate increase sooner than the timing of the actual approved rate increase. Projections could not assume future rate increases the company may have filed other than the 6% cap.

[24] Some LTC insurers assume future unapproved rate increases in funding reserves. Imposing a premium rate cap could negatively, and possibly substantially, affect the amount of anticipated premium revenue and require the company to draw from surplus to increase the level of reserves to make up for the expected future loss of premium revenue.

[25] Any premium reduction and resulting surplus drawdowns could reduce the capacity of LTC insurers to write new business were it to have the effect of reducing the number of premium dollars for every dollar of surplus – a key measure of an insurer's capacity to write new business.

[26] One could also expect such a reduction in premium revenue to adversely affect the profitability of an insurer's operations in Virginia and precipitate further market departures, making it even more difficult for consumers shopping for LTCI to obtain coverage.

Appendix A. Summary of the Theoretical Retrospective Impacts of a 6% Rate Cap

Summary by Company		Company level				Policyholder level			
Company	#pols	Approved Cumulative Premium*	Capped Cumulative Premium*	Difference	% Diff	Approved Cumulative Premium*	Capped Cumulative Premium*	Difference	% Diff
Company A	44,894	1,414,470,980	1,025,640,824	(388,830,156)	-27%	31,507	22,846	(8,661)	-27%
Company B	35,990	1,540,609,984	1,153,222,308	(387,387,677)	-25%	42,807	32,043	(10,764)	-25%
Company C	7,088	158,171,130	130,724,786	(27,446,344)	-17%	22,315	18,443	(3,872)	-17%
Company D	4,902	57,970,971	51,994,577	(5,976,394)	-10%	11,826	10,607	(1,219)	-10%
Total	**92,874**	**3,171,223,065**	**2,361,582,494**	**(809,640,571)**	**-26%**	**34,145**	**25,428**	**(8,718)**	**-26%**

Summary by Category			Product Grouping level				Policyholder level			
Benefit Period	Subcategory	#pols	Approved Cumulative Premium*	Capped Cumulative Premium*	Difference	% Diff	Approved Cumulative Premium*	Capped Cumulative Premium*	Difference	% Diff
All	All	61,626	1,862,030,169	1,420,550,426	(441,479,743)	-24%	30,215	23,051	(7,164)	-24%
Limited	High Inflation	20,009	824,504,433	625,464,919	(199,039,513)	-24%	41,207	31,259	(9,947)	-24%
Lifetime	High Inflation	3,718	281,659,545	170,818,516	(110,841,029)	-39%	75,756	45,944	(29,812)	-39%
Lifetime	All	2,754	109,766,554	72,301,294	(37,465,260)	-34%	39,864	26,257	(13,606)	-34%
Limited	All	1,237	41,218,578	31,160,330	(10,058,248)	-24%	33,321	25,190	(8,131)	-24%
Lifetime	Lifetime Pay	1,160	14,060,442	12,538,380	(1,522,062)	-11%	12,119	10,807	(1,312)	-11%
6Yr	Lifetime Pay	788	6,887,372	6,197,929	(689,442)	-10%	8,740	7,865	(875)	-10%
6Yr	All	659	6,260,279	5,633,610	(626,669)	-10%	9,502	8,551	(951)	-10%
3Yr	Lifetime Pay	241	617,313	594,865	(22,448)	-4%	2,564	2,470	(93)	-4%
3Yr	All	220	612,116	589,857	(22,259)	-4%	2,787	2,686	(101)	-4%
Lifetime	Low Inflation	219	15,132,284	8,072,186	(7,060,098)	-47%	69,097	36,859	(32,238)	-47%
Lifetime	Limited Pay	129	4,657,189	4,185,236	(471,953)	-10%	36,013	32,363	(3,649)	-10%
6Yr	Limited Pay	88	3,114,329	2,842,802	(271,527)	-9%	35,455	32,363	(3,091)	-9%
3Yr	Limited Pay	27	702,461	632,143	(70,318)	-10%	26,172	23,552	(2,620)	-10%
Total		**92,874**	**3,171,223,065**	**2,361,582,494**	**(809,640,571)**	**-26%**	**34,145**	**25,428**	**(8,718)**	**-26%**

*This is the sum of premium collected only in years where the rate cap would have applied.

NOTE1: The comparison of cumulative premium is based on two scenarios: "Approved" – the actual rate increases approved by the Bureau in past years; and "6% Cap" – the actual rate increases approved by the Bureau but capped at a 6% increase per year.

NOTE2: In preparing this part of the report, the Bureau of Insurance engaged the services of Actuarial Resources Corporation of Georgia ("ARC-GA") to conduct an analysis of the theoretical impact of the proposed 6% rate cap on premium revenues. They included the following statement with their analysis: "In arriving at our opinion, we used and relied on information provided by the SCC and contained in SERFF [System for Electronic Rate and Form Filing] filings as of May 30, 2023, of the companies that were in scope of the assignment without independent investigation or verification. If this information is inaccurate, incomplete, or out of date, our findings and conclusions may need to be revised. While we have relied on the data provided without independent investigation or verification, we have reviewed the data for consistency and reasonableness. In the event that we found the data inconsistent or unreasonable, we have requested clarification."

NOTE3: Companies A through D represent roughly 50% of the Virginia long-term care insurance market in 2022 based on covered lives.