1999 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2112

1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2112

Senate Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date January 12, 1999

Tape Number	Side A	Side B	Meter #
1		x	3095-6133
Committee Clerk Signature			

Minutes:

SENATOR MUTCH opened the hearing on SB 2112. Committee members present were: Sens. Mutch, H. Sand, J. Klein, K. Krebsbach, J. Heitkamp, and V. Thompson. Senator Deb Mathern was absent.

TOM SMITH testified in support of SB 2112 (see testimony).

SENATOR MUTCH The nonforfeiture benefit means the welfare board can't hook on to this?

TOM SMITH Nonforfeiture means that you pay for a long period of time and if you stop paying premiums and there is no benefits under the policy then you've forfeited all the premiums of credit. A nonforfeiture means you left some residual benefits and in this case that residual benefit is a reduced paid up policy.

SENATOR MUTCH They wouldn't have to provide a nonforfeiture type policy if they didn't want to.

TOM SMITH That's correct. Companies can offer a nonforfeiture benefit that people pay if there's no premium.

SENATOR SAND This gives the insurance company a chance to save face. Will some insurance companies use this as a way to save their reputation?

TOM SMITH Before companies can offer long term care insurance they have to file their policy and the rates. A vast amount of insurances in North Dakota are being responsible and I don't think we'll see this used in that manner. The purpose of this is if there are companies who aren't functioning properly, we need to give the insured an option that they don't now have.

SENATOR MUTCH Apparently, in the past, the insurance companies would have been rather lax in this type of insurance to allow some of these people the right to the policies they have.

TOM SMITH A company can't use it to get off the hook, it's guaranteed renewable.

Senator Mutch concluded the hearing on SB 2112.

Senator Krebsbach motioned for a do pass committee recommendation. Senator Heitkamp seconded the motion. The motion for a do pass on SB 2112 carried with a 6-0-1 vote.

Senator Sand will carry the bill.

SR060302

Date: 1/12/99
Roll Call Vote #: 2112

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.

Senate Industry, Labor & Business Committee

☐ Subcommittee on
or
☐ Conference Committee

Legislative Council Amendment Number

Action Taken Do Pass

Motion Made By Krebsbach Seconded By Heitkamp

Senators	Yes	No	Senators	Yes	No
Senator Mutch	X				
Senator Sand	X				
Senator Klein	X				
Senator Krebsbach	X				
Senator Heitkamp	X				
Senator Mathern					
Senator Thompson	X				

Total (Yes) 6 No 0

Absent 1

Floor Assignment Senator Sand

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2112: Industry, Business and Labor Committee (Sen. Mutch, Chairman) recommends **DO PASS** (6 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2112 was placed on the Eleventh order on the calendar.

1999 HOUSE INDUSTRY, BUSINESS AND LABOR

SB 2112

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2112

House Industry, Business, & Labor

❑ Conference Committee

Hearing Date 2-2-99

Tape Number	Side A	Side B	Meter #
1	x		0.5-55.0
1		x	0.0-1.9
Committee Clerk Signature Lisa Horner			

Minutes: BILL SUMMARY: Relating to nonforfeiture benefits of long-term care insurance.

Chairman Berg opened the hearing.

Tom Foley, N.D. Insurance Dept. : .5 testified in support of this bill. (See attached testimony) This is a simple bill.

Rep. Ekstrom : 10.6 What about your present policies in effect?

Tom : 11.8 We've had a lot of discussion about that. There are companies in the industry that are talking now, about adding contingent nonforfeiture to existing policies. That would indicate to the world how confident they are that their premium is priced properly. This would not mandate this for existing policies.

Rep. Keiser : Does the policy holder have to activate this?

Tom : The first policy anniversary, for their age is triggered, they will have 120 days after the increased premium, in order to say I don't want to pay any more premiums. They are notified 30 days before the increase, also.

Rep. Keiser : 13.3 If the insurance companies think it's such a great deal, and if their consumers want it; then why do we have to mandate it?

Tom : We need it for the maverick companies. They will not implement it automatically.

Rep. Klein : 15.1 I have been looking at the charts on increases. You have driven everyone out of the market. How can you afford those kind of increases. What does "deemed" mean?

Tom : 15.7 The deemed increase is that we have 60 days after we receive a rate increase filing or new filing to process that filing to say yes or no on that filing. If we don't do that within 60 days, then the company can deem that action, which means they can go ahead and implement without our permission.

Rep. Berg : What happens if these maverick companies go under the triggers?

Tom : 17.7 We all have plotted that possibility. It's one of those things that you have to draw a line in the sand and draw the line. The companies don't have control over some rate increases.

Rep. Berg : 18.5 Who approves the maverick companies to do business in N.D.?

Tom : The insurance department approves them to be licensed companies. Then they file their policy forms and rates with us. We asked lots of questions.

Rep. Berg : I am concerned we may be giving these policy holders a false sense of security.

Tom : Your observation is right.

Rep. Keiser : 21.5 I see a lot of problems with this bill. We need to get younger people taking this out, and not waiting until older.

Tom : At the younger ages, the triggering % is much higher. I dollar premium is much smaller, when young. I don't think a maverick company will be enticed to sell to the younger ages.

Rep. Glassheim : 25.2 Is the increase one time or cumulative. Will this action attract the young?

Tom : I think this is right.

Rep. Koppang : 26.4 Are we getting more and more maverick companies all the time?

Tom : Yes, there are many more companies offering long term care.

Tom Smith, ACLI : (an insurance trade association) 29.5, 535 members are in our association. Testified in support of the bill. This bill is appropriate road to take to deal with this type of issue. We are trying to control the bad companies.

Howard Snortland, AARP : 35.3 testified in support of bill. It's about time for this bill. We have been waiting for three sessions to get protection for consumers.

Rep. Frank Wald, Dickinson : 39.0 I have been an independent agent for 40 years in N.D. I am here in opposition to this bill. There is no definition to the standard to nonforfeiture benefits in this bill. Rep. Wald went on to explain section by section why he opposes this bill. Mr. Snortland's problem is not addressed in this bill. This bill is for future policies not current. It is very confusing.

Kent Olson, Executive Director PIA : testified in opposition because it is too complicated. Also, the price is going up. The premium will go up.

Rep. Glassheim : 52.0 Wouldn't this bill encourage people, because they feel they will get something back? I think the industry would encourage this.

Kent : 53.2 As a policy holder, I'd love to see it. I don't think this does that.

Hearing no more testimony, Chairman Berg closed the hearing.

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2112 3-2-99

House Human Services Committee

☐ Conference Committee

Hearing Date 3-2-99

Tape Number	Side A	Side B	Meter #
3		x	1.2 - 1600
Committee Clerk Signature Lisa Horner			

Minutes: **SB 2112**

Chairman Berg opened the discussion of SB 2112.

The committee talked at length about the purpose of the bill on long term care insurance.

Vice Chairman Kempenich made a motion for a Do Not Pass.

Rep. Froseth second the motion.

The roll call vote was 8 yea, 7 nay.

The motion carried.

Vice Chairman Kempenich will carry the bill.

Date: 32-99
Roll Call Vote #: 1

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2112

House Industry, Business and Labor Committee

☐ Subcommittee on

or

☐ Conference Committee

Legislative Council Amendment Number

Action Taken do not pass

Motion Made By Kempenich Seconded By Froseth

Representatives	Yes	No	Representatives	Yes	No
Chair - Berg	✓		Rep. Thorpe		✓
Vice Chair - Kempenich	✓				
Rep. Brekke	✓				
Rep. Eckstrom		✓			
Rep. Froseth	✓				
Rep. Glassheim		✓			
Rep. Johnson	✓	~~✓~~			
Rep. Keiser	✓				
Rep. Klein	✓				
Rep. Koppang	✓				
Rep. Lemieux		✓			
Rep. Martinson		✓			
Rep. Severson		✓			
Rep. Stefonowicz		✓			

Total (Yes) 8 No 7

Absent

Floor Assignment Kempenich

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2112: Industry, Business and Labor Committee (Rep. Berg, Chairman) recommends **DO NOT PASS** (8 YEAS, 7 NAYS, 0 ABSENT AND NOT VOTING). SB 2112 was placed on the Fourteenth order on the calendar.

1999 TESTIMONY

SB 2112

Senate Bill 2112 is an insurance department bill adding contingent nonforfeiture benefit to all Long Term Care policies. This will give insureds an additional option if they are subjected to significant rate increases.

The Problem

Long Term Care insurance is offered for sale by insurers using a premium structure that is designed to provide level premiums for all years. However, the company reserves the right to increase premiums if their claims payments are significantly greater than expected.

Long Term Care Insurance policyholders in North Dakota have been subject to numerous rate increases over the last decade. One block of business had the average premium increase from $900 per year to $7,000 per year. These increases were granted by the department because the company experience met regulatory requirements for rate increases. These insureds were left with no good choices.

Currently, if a policy experiences substantial premium increases, insureds can either pay the larger premium, reduce benefits or drop the coverage without receiving any value. Insureds need to be given other options when a policy experiences large increases.

The Solution

This bill requires companies to offer an applicant the right to purchase – for an additional premium - a nonforfeiture benefit. This would provide a paid-up policy for a reduced amount if the insured discontinues paying premiums.

If the applicant declines the purchase of this nonforfeiture benefit, then the company must provide a contingent nonforfeiture benefit. This benefit would provide a reduced paid-up benefit if the policy experiences a substantial rate increase.

In either case, the insured is given a viable option if a policy experiences heavy premium rate increases. The insurance industry actively supports this bill

History

Long Term Care Insurance provides coverage for insureds who develop chronic care conditions that require them to have assistance to perform everyday functions. This assistance can be provided in nursing home facilities, adult day care facilities, assisted living facilities and at home. This coverage is increasingly important to North Dakotans as a larger percentage of the population is living to ages where chronic care conditions are present.

Long Term Care Insurance has been offered for sale in North Dakota since the early 1980's. Significant changes in coverage have occurred as this market has matured. Early policies offered coverage for nursing home stays only, with current policies offering a significant range of benefits including all those listed in the previous paragraph.

This coverage is offered under policy forms that are renewable at the insured's option for life. As long as the premium is paid, coverage is continued. The premium that is charged can be increased by the insurer filing and gaining approval from the Insurance Department for the change. The basis for the increased premium is that the benefits that are being paid are greater than was anticipated when the product was developed. The need for rate increases can be because the company developed aggressive (low) premiums, their underwriting was flawed or claim adjudication was inappropriate. Other cases are because more insureds used benefits than anticipated.

The Insurance Department has seen numerous rate increases filed since the late 80's and early 90's ranging from 5-150%. Some rate increases have been relatively small and occurring only once for a particular block of business; however, a few companies have requested multiple rate increases with the highest overall change in premium being 685% higher than the initial premium rate sold to insureds (see attachment A).

The Commissioner of Insurance and Department staff have had many discussions during the last 7-8 years with friends and relatives of those insured under policy forms that have experienced major rate increases. The meetings were to discuss the large increase in premiums and what options were available to the insured at this time. The options were to pay a substantially higher premium , significantly reduce benefits at the existing premium or to discontinue the policy. None of these options were appealing to those we counseled.

At the same time that these discussions were taking place, the National Association of Insurance Commissioners (NAIC) began to address this problem. The issue is what options should an insured have when their policy has large and unmanageable rate increases.

After much discussion and exploring of options among industry and regulators the concept of contingent nonforfeiture was developed. The intent of this provision is twofold: strongly encourage companies to determine premiums and benefits so that rate increases will not be needed and to give insureds another option if they experience significant rate increases.

At time of issue, an applicant is to be given an option to purchase, along with the Long Term Care policy, a nonforfeiture benefit. This benefit would provide a "reduced paid-up" policy if the insured decided, after three years, to stop paying premiums. The additional premium for this benefit ranges from 25% to 50%. This is an optional benefit.

If the applicant decides not to purchase the nonforfeiture benefit, then the company will automatically add a contingent nonforfeiture benefit to their policy. This benefit will have no additional premium. If an insured experiences a significant rate increase, then they will be given the option of stopping premiums and receiving a "reduced paidup" policy. Please consider an example.

Suppose a person age 65 buys a Long Term Care policy which has a $1,000 annual premium. The insured pays this premium for 10 years and in the 11th year, the company secures a 50% rate increase, so the premium for that year is to be $1,500. The three options currently available are:

1. The insured can pay this new premium and continue coverage.
2. The insured can reduce benefits under the policy and pay a reduced premium: reduced from the $1,500 level.
3. The insured can drop the policy.

Senate Bill 2112 provides a new option (contingent nonforfeiture) that would allow them to choose to pay no more premiums and receive a "reduced paidup" policy with total benefits equal to the premium paid to date, ie. $10,000 ($1,000 a year for 10 years).

The insurance industry was significantly involved in developing this benefit and is in full support of its adoption. We have several letters from insurers supporting this adoption.

LONG-TERM CARE RATE INCREASES
NORTH DAKOTA INSURANCE DEPARTMENT
(as of December 31, 1998)

Year Received	Company	Percent Requested	Granted
1989	A	20%, 30%	20%
1989	B	25%	25%
1989	C	100%	25%
1990	D	0%, 150% (age 80 and over)	100% first year 25% second year
1990	A	25%, 41%	25%, 41%
1991	E	20%	20%
1991	F	5%	5%
1991	G	5%	5%
1991	A	0%, 50%	0%, 30%
1991	B	35%	25%
1992	H	25%	25%
1992	I	40%	40%
1992	E	40%	40%
1992	J	20%, 35%	20%, 35%
1992	A	30%	30%
1993	A	0%, 25%, 40%	0%, 25%, 40%
1993	K	49.5%	25%
1993	E	60%	60%
1993	E	45%	45%
1993	L	15%	15%
1993	M	25%	25%
1993	A	50%	30%
1994	N	30%	30%
1994	K	24%	24%
1994	A	50%	30%
1994	B	30%	30%

Year Received	Company	Percent Requested	Granted
1994	J	12%	12%
1994	G	15%	15%
1994	F	15%	15%
1994	O	15%	15%
1994	O	15%	15%
1995	A	40%	20% (40% deemed)
1995	O	15%	15%
1995	J	12%	12%
1995	P	50%	25%
1995	K	25%	25%
1996	J	20%	0%
1996	K	12%	0%
1996	A	40%	40%
1996	K	15%	15%
1996	J	10%	0%
1996	Q	69%	0%
1996	I	50%	20%
1996	R	20.5%	0%
1996	J	25%	15%
1996	D	15%	15%
1996	B	25%	25%
1997	S	15%	0%
1997	L	15%	0%
1997	B	14%	14%
1997	J	25%	8%
1997	M	20%	10%
1997	A	40%	0%
1997	O	0%, 6%	0%, 6%
1997	T	3.6%	3.6%
1997	U	13%	0%

5

Year Received	Company	Percent Requested	Granted
1997	J	16%	16%
1997	D	15%	15%
1998	J	25%	0%
1998	J	25%	0%
1998	F	20%	10%
1998	G	20%	10%
1998	P	40%	15%
1998	O	10%, 15%	10%, 15%
1998	J	15%	8%

NEW YORK LIFE

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Austin, TX 78701
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Dennis O'Brien, FSA
Corporate Vice President
and Actuary

January 8, 1999

RECEIVED

JAN 1999

Commissioner of Insurance
State of North Dakota

Mr. Glenn Pomeroy, Commissioner of Insurance
North Dakota Department of Insurance
State Capitol, Fifth Floor
600 East Boulevard Avenue
Bismarck, North Dakota 58505

Dear Mr. Pomeroy:

I wish to express New York Life's strong support for the adoption in North Dakota of the NAIC model language on contingent non-forfeiture benefits for Long Term Care insurance.

Fair treatment of contractholders who lapse their Long Term Care coverage has been a difficult issue over the years for regulators and the industry. The recently adopted NAIC model language on contingent non-forfeiture for Long Term Care insurance represents the results of much hard work by both the regulators and industry to reach an agreement which provides significant additional consumer protection over what is in effect in most of the states, but which does not burden already expense Long Term Care coverage with expensive additional mandates.

Thank you for your consideration of this very beneficial change to the Long Term Care regulatory environment. Please let me know if our company can do anything to assist in the adoption of the NAIC model language in North Dakota.

Yours truly,

Dennis O'Brien

Dennis O'Brien
Corporate Vice President and Actuary

AEGON Insurance Group

AEGON Insurance Group
Long Term Care Division

Administrative Office:
2705 Brown Trail, Suite 400
Bedford, TX 76021
Telephone: (817) 285-3300

mailed 1-6-99

January 5, 1999

Mr. Glenn Pomeroy
Commissioner of Insurance
North Dakota Department of Insurance
State Capitol, 5th Floor
600 East Boulevard Avenue
Bismarck, ND 58505

RE: Long-Term Care Insurance Regulations
Proposed Contingent Non-forfeiture Language

Dear Commissioner Pomeroy:

AEGON Insurance Group is a world wide organization with a very large presence in the United States. Various insurance products, primarily life insurance and annuities, as well as supplemental insurance and long-term care insurance are marketed through several AEGON insurers. Assets total approximately $50 billion in the U.S. alone with approximately $95 billion in assets worldwide.

AEGON, through its Long-Term Care Division, is one of the largest writers of long-term care insurance. AEGON has written long-term care insurance policies since 1987 and over the last several years, we have watched the long-term care insurance market grow and develop. We have been very active in the development of the National Association of Insurance Commissioners (NAIC) Long-Term Care Model Act and Regulation. AEGON is a member of both the Health Insurance Association of America (HIAA) and the American Council of Life Insurance (ACLI) long-term care committees.

AEGON fully supports the NAIC Long-Term Care Model Act and Regulation, as they currently stand, without changes or deletions. In particular, we completely support the contingent non-forfeiture language that was adopted into the Models at the June, 1998 NAIC national meeting. We are encouraged to hear that North Dakota is planning to adopt the contingent non-forfeiture language as outlined in the NAIC model.

If AEGON can provide any assistance to the state of North Dakota in its efforts to adopt the NAIC contingent non-forfeiture language, please contact me. I can be reached at 817-285-3365.

Sincerely,

Steffani Crawley

Steffani Crawley
Director of Government Relations
AEGON Long-Term Care Division

cc: Lynn Boyd, ACLI
Amanda Matthiesen, HIAA

GE Capital Assurance

Samuel Morgante
Vice President
Product Development & Government Relations

Long Term Care Division
1650 Los Gamos Drive
San Rafael, CA 94903-1899
(415) 492-7721

January 11, 1999

The Honorable Glenn Pomeroy
Commissioner of Insurance
North Dakota Department of Insurance
State Capitol, Fifth Floor
600 East Boulevard Avenue
Bismarck, North Dakota 58505

RE: S 2112

Glenn

Dear ~~Commissioner~~ Pomeroy:

General Electric Capital Assurance Company ("GECA") has been an industry leader for more than two decades in providing affordable, flexible private insurance policies for an aging population concerned about the growing costs of long-term care. In addition to my work here at GECA, I also serve as chair of the Long Term Care Committee at the Health Insurance Association of America ("HIAA"), as well as being active in long term care insurance policy issues at the American Council of Life Insurance ("ACLI"). I am writing to you today in support of the above referenced proposed legislation governing long-term care insurance in the state of North Dakota.

GECA, and the insurance industry, support the work of the National Association of Insurance Commissioners ("NAIC") in the development of effective, reasonable regulation model acts and regulations that provide oversight and direction for the business of insurance. We have supported the work of the Long Term Care Working Group, the Senior Issues (B) Task Force and the Accident and Health Working Group of the Life and Health Actuarial (Technical) Task Force in their efforts updating and maintaining the NAIC Model Act on Long-Term Care Insurance ("Model Act") and Model Regulation on Long-Term Care Insurance ("Model Regulation"). The members of the NAIC have conducted their work in the development of the Model Act and Model Regulation in a public forum with the input of its member regulators, the insurance industry and insurance consumers. We especially commend the North Dakota Insurance Department in providing leadership at the NAIC level in regulating long-term care insurance.

The NAIC Plenary recently adopted amendments to the Model Act and Model Regulation The effect of these amendments was to delete the limitations on premium increases in Section 6 of the Model Regulation, and insert instead language calling for "contingent nonforfeiture". In addition, these amendments removed provisions requiring non-forfeiture benefits in LTC policies. These changes were fully supported by the long term care insurance industry, including GE Capital Assurance.

We are gratified that states such as North Dakota are taking the steps necessary to implement the recent changes to the NAIC Model Act. By adding this important piece of legislation, and subsequent addition of the language in the NAIC Model Regulation, the citizens of North Dakota will be even better protected from the potential abuse of large premium increases.

Please feel free to contact me if you have any questions. We look forward to working with you and your staff to provide an even healthier long term care insurance marketplace in North Dakota.

Sincerely,

Sam Morgante

Samuel Morgante
Vice President, Government Relations

CC: Amanda Matthiesen, HIAA
Lynn Boyd, ACLI
Daphne Beaty GEFA

Section 23. Nonforfeiture Benefit Requirement

A. This section does not apply to life insurance policies or riders containing accelerated long-term care benefits.

B. To comply with the requirement to offer a nonforfeiture benefit pursuant to the provisions of [insert reference to Section 8 of the NAIC Long-Term Care Insurance Model Act]:

(1) A policy or certificate offered with nonforfeiture benefits shall have coverage elements, eligibility, benefit triggers and benefit length that are the same as coverage to be issued without nonforfeiture benefits. The nonforfeiture benefit included in the offer shall be the benefit described in subsection E; and

(2) The offer shall be in writing if the nonforfeiture benefit is not otherwise described in the Outline of Coverage or other materials given to the prospective policyholder.

C. If the offer required to be made under [insert reference to Section 8 of the NAIC Long-Term Care Insurance Model Act] is rejected, the insurer shall provide the contingent benefit upon lapse described in this section.

D. (1) After rejection of the offer required under [insert reference to Section 8 of the NAIC Long-Term Care Insurance Model Act], for individual and group policies without nonforfeiture benefits issued after the effective date of this section, the insurer shall provide a contingent benefit upon lapse.

(2) In the event a group policyholder elects to make the nonforfeiture benefit an option to the certificateholder, a certificate shall provide either the nonforfeiture benefit or the contingent benefit upon lapse.

(3) The contingent benefit on lapse shall be triggered every time an insurer increases the premium rates to a level which results in a cumulative increase of the annual premium equal to or exceeding the percentage of the insured's initial annual premium set forth below based on the insured's issue age, and the policy or certificate lapses within 120 days of the due date of the premium so increased. Unless otherwise required, policyholders shall be notified at least thirty (30) days prior to the due date of the premium reflecting the rate increase.

Triggers for a Substantial Premium Increase

Issue Age	Percent Increase Over Initial Premium
29 and under	200%
30-34	190%
35-39	170%
40-44	150%
45-49	130%
50-54	110%
55-59	90%
60	70%
61	66%
62	62%
63	58%
64	54%
65	50%
66	48%
67	46%
68	44%
69	42%
70	40%
71	38%
72	36%
73	34%
74	32%
75	30%
76	28%
77	26%
78	24%
79	22%
80	20%
81	19%
82	18%
83	17%
84	16%
85	15%
86	14%
87	13%
88	12%
89	11%
90 and over	10%

(4) On or before the effective date of a substantial premium increase as defined in Paragraph (3) above, the insurer shall:

(a) Offer to reduce policy benefits provided by the current coverage without the requirement of additional underwriting so that required premium payments are not increased;

Drafting Note: The insured's right to reduce policy benefits in the event of the premium increase does not affect any other right to elect a reduction in benefits provided under the policy.

(b) Offer to convert the coverage to a paid-up status with a shortened benefit period in accordance with the terms of Subsection E. This option may be elected at any time during the 120-day period referenced in Subsection D(3); and

(c) Notify the policyholder or certificateholder that a default or lapse at any time during the 120-day period referenced in Subsection D(3) shall be deemed to be the election of the offer to convert in Subparagraph (b) above.

E. Benefits continued as nonforfeiture benefits, including contingent benefits upon lapse, are described in this subsection.

(1) For purposes of this subsection, attained age rating is defined as a schedule of premiums starting from the issue date which increases age at least one percent per year prior to age fifty (50), and at least three percent (3%) per year beyond age fifty (50).

(2) For purposes of this subsection, the nonforfeiture benefit shall be of a shortened benefit period providing paid-up long-term care insurance coverage after lapse. The same benefits (amounts and frequency in effect at the time of lapse but not increased thereafter) will be payable for a qualifying claim, but the lifetime maximum dollars or days of benefits shall be determined as specified in Paragraph (3).

(3) The standard nonforfeiture credit will be equal to 100% of the sum of all premiums paid, including the premiums paid prior to any changes in benefits. The insurer may offer additional shortened benefit period options, as long as the benefits for each duration equal or exceed the standard nonforfeiture credit for that duration. However, the minimum nonforfeiture credit shall not be less than thirty (30) times the daily nursing home benefit at the time of lapse. In either event, the calculation of the nonforfeiture credit is subject to the limitation of Subsection F.

(4) (a) The nonforfeiture benefit and the contingent benefit upon lapse shall begin not later than the end of the third year following the policy or certificate issue date.

(b) Notwithstanding Subparagraph (a), except that for a policy or certificate with a contingent benefit upon lapse or a policy or certificate with attained age rating, the nonforfeiture benefit shall begin on the earlier of:

(i) The end of the tenth year following the policy or certificate issue date; or

(ii) The end of the second year following the date the policy or certificate is no longer subject to attained age rating.

(5) Nonforfeiture credits may be used for all care and services qualifying for benefits under the terms of the policy or certificate, up to the limits specified in the policy or certificate.

F. All benefits paid by the insurer while the policy or certificate is in premium paying status and in the paid up status will not exceed the maximum benefits which would payable if the policy or certificate had remained in premium paying status.

G. There shall be no difference in the minimum nonforfeiture benefits as required under this section for group and individual policies.

H. The requirements set forth in this section shall become effective twelve (12) months after adoption of this provision and shall apply as follows:

(1) Except as provided in Paragraph (2), the provisions of this section apply to any long-term care policy issued in this state on or after the effective date of this amended regulation.

(2) For certificates issued on or after the effective date of this section, under a group long-term care insurance policy as defined in Section [insert reference to Section 4E(1) of the NAIC Long-Term Care Insurance Model Act], which policy was in force at the time this amended regulation became effective, the provisions of this section shall not apply.

I. Premiums charged for a policy or certificate containing nonforfeiture benefits or a contingent benefit on lapse shall be subject to the loss ratio requirements of Section 17 treating the policy as a whole.

J. To determine whether contingent nonforfeiture upon lapse provisions are triggered under subsection D(3), a replacing insurer that purchased or otherwise assumed a block or blocks of long-term care insurance policies from another insurer shall calculate the percentage increase based on the initial annual premium paid by the insured when the policy was first purchased from the original insurer.

SENATE BILL NO. 2112
TESTIMONY BEFORE THE HOUSE
INDUSTRY, BUSINESS AND LABOR COMMITTEE

THOMAS C. FOLEY
LIFE/HEALTH ACTUARY
NORTH DAKOTA INSURANCE DEPARTMENT

Senate Bill No. 2112 is an Insurance Department bill adding contingent nonforfeiture benefit to all long-term care policies. This will give insureds an additional option if they are subjected to significant rate increases.

The Problem

Long-term care insurance is offered for sale by insurers using a premium structure that is designed to provide level premiums for all years. However, the company reserves the right to increase premiums if their claims payments are significantly greater than expected.

Long-term care insurance policyholders in North Dakota have been subject to numerous rate increases over the last decade. One block of business had the average premium increase from $900 per year to $7,000 per year. These increases were granted by the Department because the company experience met regulatory requirements for rate increases. These insureds were left with no good choices.

Currently, if a policy experiences substantial premium increases, insureds can either pay the larger premium, reduce benefits, or drop the coverage without receiving any value. Insureds need to be given other options when a policy experiences large increases.

The Solution

This bill requires companies to offer an applicant the right to purchase--for an additional premium--a nonforfeiture benefit. This would provide a paid-up policy for a reduced amount if the insured discontinues paying premiums.

If the applicant declines the purchase of this nonforfeiture benefit, then the company must provide a contingent nonforfeiture benefit. This benefit would provide a reduced paid-up benefit if the policy experiences a substantial rate increase.

In either case, the insured is given a viable option if a policy experiences heavy premium rate increases. The insurance industry actively supports this bill

History

Long-term care insurance provides coverage for insureds who develop chronic care conditions that require them to have assistance to perform everyday functions. This assistance can be provided in nursing home facilities, adult day care facilities, assisted living facilities, and at home. This coverage is increasingly important to North Dakotans as a larger percentage of the population is living to ages where chronic care conditions are present.

Long-term care insurance has been offered for sale in North Dakota since the early 1980s. Significant changes in coverage have occurred as this market has matured. Early policies offered coverage for nursing home stays only, with current policies offering a significant range of benefits including all those listed in the previous paragraph.

This coverage is offered under policy forms that are renewable at the insured's option for life. As long as the premium is paid, coverage is continued. The premium that is charged can be increased by the insurer filing and gaining approval from the Insurance Department for the change. The basis for the increased premium is that the benefits that are being paid are greater than was anticipated when the product was developed. The need for rate increases can be because the company developed aggressive (low) premiums, their underwriting was flawed, or claim adjudication was inappropriate. Other cases are because more insureds used benefits than anticipated.

The Insurance Department has seen numerous rate increases filed since the late 1980s and early 1990s ranging from 5-150%. Some rate increases have been relatively small and occurring only once for a particular block of business; however, a few companies have requested multiple rate increases with the highest overall change in premium being 685% higher than the initial premium rate sold to insureds (see Attachment A).

The Commissioner of Insurance and Department staff have had many discussions during the last 7-8 years with friends and relatives of those insureds under policy forms that have experienced major rate increases. The meetings were to discuss the large increase in premiums and what options were available to the insured at this time. The options were to pay a substantially higher premium, significantly reduce benefits at the existing premium, or to discontinue the policy. None of these options were appealing to those we counseled.

At the same time that these discussions were taking place, the National Association of Insurance Commissioners (NAIC) began to address this problem. The issue is what options should an insured have when their policy has large and unmanageable rate increases.

After much discussion and exploring of options among industry and regulators, the concept of contingent nonforfeiture was developed. The intent of this provision is two-fold: strongly encourage companies to determine premiums and benefits so that rate increases will not be needed and to give insureds another option if they experience significant rate increases.

At time of issue, an applicant is to be given an option to purchase, along with the long-term care policy, a nonforfeiture benefit. This benefit would provide a "reduced paid-up" policy if the insured decided, after three years, to stop paying premiums. The additional premium for this benefit ranges from 25% to 50%. This is an optional benefit.

If the applicant decides not to purchase the nonforfeiture benefit, then the company will automatically add a contingent nonforfeiture benefit to their policy. This benefit will have no additional premium. If an insured experiences a significant rate increase, then they will be given the option of stopping premiums and receiving a "reduced paid-up" policy. Please consider an example.

Suppose a person age 65 buys a long-term care policy which has a $1,000 annual premium. The insured pays this premium for 10 years and in the 11th year, the company secures a 50% rate increase, so the premium for that year is to be $1,500. The three options currently available are:

1. The insured can pay this new premium and continue coverage.

2. The insured can reduce benefits under the policy and pay a reduced premium: reduced from the $1,500 level.

3. The insured can drop the policy.

Senate Bill No. 2112 provides a new option (contingent nonforfeiture) that would allow them to choose to pay no more premiums and receive a "reduced paid-up" policy with total benefits equal to the premium paid to date, i.e., $10,000 ($1,000 a year for 10 years).

The insurance industry was significantly involved in developing this benefit and is in full support of its adoption. We have several letters from insurers supporting this adoption.

TRANSAMERICA
OCCIDENTAL LIFE

Morris L. Melloy
Director, Government Relations
Long Term Care Insurance
Transamerica Occidental Life Insurance Company
1100 Walnut Street Suite 2400
Kansas City, MO 64106-2152
800-690-2758/816-855-8515/fax 815-855-5950

January 14, 1999

RECEIVED

JAN 19 1999

Commissioner of Insurance
State of North Dakota

Honorable Glenn Pomeroy
North Dakota Department of Insurance
State Capitol, Fifth Floor
600 E. Boulevard Avenue
Bismarck, North Dakota 58505-0320

Commissioner Pomeroy:

I recently learned of your interest in the provisions of the NAIC Long-Term Care Insurance Model Regulation on "contingent nonforfeiture." On behalf of Transamerica Occidental Life Insurance Company, I would like to express our support of your adoption of these provisions and the Legislature's adoption of SB 2112.

As you know, I have been an active participant in the development of the NAIC long-term care insurance models for over ten years. The contingent nonforfeiture provisions are certainly one of the most important improvements to the Model and the regulation of long-term care insurance.

The vast majority of the companies selling long-term care insurance are making every effort to ensure the rates charged are adequate for the risk insured. As you know, this risk is relatively unknown and the changing delivery system and attitudes toward long-term care are and will continue to have a significant impact on the evolution of this product. Far too often, consumers who have taken the responsible step to insure against this risk have been penalized by the actions of certain insurers. Contingent nonforfeiture is a good **first** step toward protecting North Dakotans from irresponsible insurer practices.

Contingent nonforfeiture is an excellent, balanced regulatory response to address inappropriate rating practices without penalizing those of us utilizing the limited data available and making responsible efforts to adequately price this evolving product. Please let me know if there is anything Transamerica can do to assist you in the adoption of this important consumer protection. I look forward to working with you on this and additional developments on this very important issue.

Sincerely:

Morris L. Melloy
Director, Government Relations
Long-Term Care Insurance
morris.melloy@transmerica.com

UNUM.

January 19, 1999

JAN 21 1999

Honorable Glenn Pomeroy
Commissioner of Insurance
North Dakota Department of Insurance
State Capitol, 5th Floor
600 East Boulevard Avenue
Bismarck, ND 58505

RE: Proposed Contingent Nonforfeiture Requirements in Long-Term Care Insurance

Dear Commissioner Pomeroy:

We understand that the Department of Insurance is proposing to adopt the NAIC's contingent nonforfeiture provision. UNUM endorses the contingent nonforfeiture language adopted by the NAIC in June of 1998, and would, therefore, support your attempt to enact a similar requirement.

As background about our company, UNUM is the nation's leading provider of long-term disability insurance. In addition, we are the market leader in terms of group long-term care insurance policies sold to employers and among the top insurers in the individual long-term care insurance market. We have been actively involved over the years in the development of much of the NAIC's Long-Term Care Insurance Model Act and Regulations.

We would be pleased to assist you in adopting the NAIC's contingent nonforfeiture model in North Dakota. Please contact me at 207-770-4311, if you need assistance.

Sincerely,

David H. Brenerman
Second Vice President, Government Relations

cc: Lynn Boyd
Amanda Matthiesen

FORTIS

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January 27, 1999

Mr. Glen Pomeroy
Commissioner of Insurance
State of North Dakota
State Capitol, Fifth Floor
600 East Boulevard Avenue
Bismarck, ND 58505

Fortis Long Term Care

501 West Michigan
P.O. Box 2986
Milwaukee, WI
53201-2986
Telephone
1 800 377 7311

Dear Commissioner Pomeroy:

Fortis Long Term Care is the ninth largest long term care insurance company in the country. We are active members of the Health Insurance Association of America and the American Council of Life Insurance. Through those affiliations, we were involved in the NAIC discussions surrounding contingent nonforfeiture and the LTC models. Consistent with our position at that time, we support adopting the NAIC Long Term Care Insurance Model language on contingent nonforfeiture.

Thank you for giving us the opportunity to comment on this proposal.

Yours sincerely,

Bill Robinson /lt

Bill Robinson
President

John Hancock Mutual Life Insurance Company

Long-Term Care
Contracts & Legislative Services

John Hancock Place, C-7
Post Office Box 111
Boston, Massachusetts 02117-0111
(617) 572-7497
Fax: (617) 572-0590

Internet: dmartin@jhancock.com

David S. Martin
General Director

John Hancock.
WORLDWIDE SPONSOR

January 22, 1999

RECEIVED
JAN 26 1999
Commissioner of Insurance
State of North Dakota

Honorable Glenn Pomeroy
Commissioner of Insurance
Department of Insurance
State of North Dakota
State Capitol, 5th Floor
600 East Boulevard Avenue
Bismarck, ND 58505-0320

**Re: North Dakota Long-Term Care Insurance Regulation:
Proposed Contingent Nonforfeiture Provision**

Dear Commissioner Pomeroy:

I understand that North Dakota is considering the adoption of the contingent nonforfeiture provision contained in the most recent NAIC Long-Term Care Model Act and Regulation. As you know, the insurance industry was very active in working with the NAIC to develop this important consumer protection provision.

As you move forward with contingent nonforfeiture, please let me know if there is any assistance we can provide. John Hancock fully supports the current NAIC Long-Term Care Model Act and Regulation. We believe that the addition of the contingent nonforfeiture provision is an important one and support your efforts to include this provision in North Dakota's long-term care regulation. We currently insure over 275,000 persons for long-term care --- about 131,000 individual insureds and 147,000 group insureds.

Should you need industry testimony in support of either the contingent nonforfeiture benefit or the current NAIC Models, I would be pleased to provide written testimony to this effect, as well as come to Bismarck to testify.

My best wishes to you.

Very truly yours,

Dave Martin

David S. Martin

PROPOSED RULES

NORTH DAKOTA ADMINISTRATIVE CODE
CHAPTER 45-06-05
LONG-TERM CARE INSURANCE MODEL REGULATION

A new section to Chapter 45-06-05 is created as follows:

45-06-05-12. Nonforfeiture benefit requirement.

1. This section does not apply to life insurance policies or riders containing accelerated long-term care benefits.

2. To comply with the requirement to offer a nonforfeiture benefit pursuant to the provisions of subsection 1 of section 26.1-45-08.1:

   a. A policy or certificate offered with nonforfeiture benefits shall have coverage elements, eligibility, benefit triggers and benefit length that are the same as coverage to be issued without nonforfeiture benefits. The nonforfeiture benefit included in the offer shall be the benefit described in subsection 5; and

   b. The offer shall be in writing if the nonforfeiture benefit is not otherwise described in the outline of coverage or other materials given to the prospective policyholder.

3. If the offer required to be made under subsection 1 of section 26.1-45-08.1 is rejected, the insurer shall provide the contingent benefit upon lapse described in this section.

4. a. After rejection of the offer required under subsection 1 of section 26.1-45-08.1, for individual and group policies without nonforfeiture benefits issued after the effective date of this section, the insurer shall provide a contingent benefit upon lapse.

   b. In the event a group policyholder elects to make the nonforfeiture benefit an option to the certificateholder, a certificate shall provide either the nonforfeiture benefit or the contingent benefit upon lapse.

   c. The contingent benefit on lapse shall be triggered every time an insurer increases the premium rates to a level which results in a cumulative increase of the annual premium equal to or exceeding the percentage of the insured's initial annual premium set forth below based on the insured's issue age, and the policy or certificate lapses within one hundred twenty days of the due date of the premium so increased. Unless otherwise required, policyholders shall be notified at least thirty days prior to the due date of the premium reflecting the rate increase.

Triggers for a Substantial Premium Increase

Issue Age	Percent Increase Over Initial Premium
29 and under	200%
30-34	190%
35-39	170%
40-44	150%
45-49	130%
50-54	110%
55-59	90%
60	70%
61	66%
62	62%
63	58%
64	54%
65	50%
66	48%
67	46%
68	44%
69	42%
70	40%
71	38%
72	36%
73	34%
74	32%
75	30%
76	28%
77	26%
78	24%
79	22%
80	20%
81	19%
82	18%
83	17%
84	16%
85	15%
86	14%
87	13%
88	12%
89	11%
90 and over	10%

d. On or before the effective date of a substantial premium increase as defined in subdivision c, the insurer shall:

(1) Offer to reduce policy benefits provided by the current coverage without the requirement of additional underwriting so that required premium payments are not increased;

(2) Offer to convert the coverage to a paid-up status with a shortened benefit period in accordance with the terms of subsection 5. This option may be elected at any time during the one hundred twenty-day period referenced in subdivision c of subsection 4; and

(3) Notify the policyholder or certificateholder that a default or lapse at any time during the one hundred twenty-day period referenced in subdivision c of subsection 4 shall be deemed to be the election of the offer to convert in paragraph (2).

5. Benefits continued as nonforfeiture benefits, including contingent benefits upon lapse, are described in this subsection.

a. For purposes of this subsection, attained age rating is defined as a schedule of premiums starting from the issue date which increases age at least one percent per year prior to age fifty, and at least three percent per year beyond age fifty.

b. For purposes of this subsection, the nonforfeiture benefit shall be of a shortened benefit period providing paid-up long-term care insurance coverage after lapse. The same benefits (amounts and frequency in effect at the time of lapse but not increased thereafter) will be payable for a qualifying claim, but the lifetime maximum dollars or days of benefits shall be determined as specified in subdivision c.

c. The standard nonforfeiture credit will be equal to one hundred percent of the sum of all premiums paid, including the premiums paid prior to any changes in benefits. The insurer may offer additional shortened benefit period options, as long as the benefits for each duration equal or exceed the standard nonforfeiture credit for that duration. However, the minimum nonforfeiture credit shall not be less than thirty times the daily nursing home benefit at the time of lapse. In either event, the calculation of the nonforfeiture credit is subject to the limitation of subsection 6.

d. (1) The nonforfeiture benefit and the contingent benefit upon lapse shall begin not later than the end of the third year following the policy or certificate issue date.

(2) Notwithstanding paragraph 1, except that for a policy or certificate with a contingent benefit upon lapse or a policy or certificate with attained age rating, the nonforfeiture benefit shall begin on the earlier of:

(a) The end of the tenth year following the policy or certificate issue date; or

(b) The end of the second year following the date the policy or certificate is no longer subject to attained age rating.

e. Nonforfeiture credits may be used for all care and services qualifying for benefits under the terms of the policy or certificate, up to the limits specified in the policy or certificate.

6. All benefits paid by the insurer while the policy or certificate is in premium paying status and in the paid-up status will not exceed the maximum benefits which would be payable if the policy or certificate had remained in premium paying status.

7. There shall be no difference in the minimum nonforfeiture benefits as required under this section for group and individual policies.

8. The requirements set forth in this section shall become effective twelve months after adoption of this provision and shall apply as follows:

a. Except as provided in subdivision b, the provisions of this section apply to any long-term care policy issued in this state on or after the effective date of this amended regulation.

b. For certificates issued on or after the effective date of this section, under a group long-term care insurance policy as defined in subdivision a of subsection 3 of section 26.1-45-01, which policy was in force at the time this amended regulation became effective, the provisions of this section shall not apply.

9. Premiums charged for a policy or certificate containing nonforfeiture benefits or a contingent benefit on lapse shall be subject to the loss ratio requirements of section 45-06-05-08 treating the policy as a whole.

10. To determine whether contingent nonforfeiture upon lapse provisions are triggered under subdivision c of subsection 4, a replacing insurer that purchased or otherwise assumed a block or blocks of long-term care insurance policies from another insurer shall calculate the percentage increase based on the initial annual premium paid by the insured when the policy was first purchased from the original insurer.

DEPARTMENT OF INSURANCE
STATE OF NORTH DAKOTA

Glenn Pomeroy
Commissioner of Insurance

MEMORANDUM

TO: Member of the House Industry, Business and Labor Committee

FROM: Chris Edison, General Counsel CE

DATE: February 22, 1999

SUBJECT: Senate Bill No. 2112

At the committee's hearing of February 2, 1999, on Senate Bill No. 2112, the Insurance Department's bill regarding contingent nonforfeiture benefits for long-term care insurance policies, the Insurance Department's review of rates came up as an issue. The following is a brief explanation of the Insurance Department's statutory authority for reviewing rates, as well as the process of rate review in the area of long-term care.

RATE REVIEW OF LONG-TERM CARE INSURANCE POLICIES

Under North Dakota Century Code § 26.1-30-19, all insurance policies and contracts must be filed with, and approved by, the Insurance Commissioner before use in the state. The Insurance Department feels this section requires the prior approval of long-term care insurance policies and rates. This section also establishes a "reasonableness" standard for approval of rates. It states that premium rates for health insurance must be disapproved if the benefits provided are unreasonable in relation to the premium charged.

N.D. Cent. Code Chapter 26.1-45 establishes the requirements for long-term care insurance issued in this state. N.D. Cent. Code § 26.1-45-08 gives the Insurance Commissioner authority to adopt rules establishing loss ratio standards for long-term care policies. These rules appear in Section 45-06-05-08 of the Administrative Code. Under this chapter of the Administrative Code, all long-term care insurance policies must meet a 60 percent loss ratio. This means that all policies must return 60 cents in benefits for every dollar collected in premium. If they do, the Commissioner must deem the premium rate the company seeks to charge reasonable.

600 EAST BOULEVARD DEPT 401 • BISMARCK, ND 58505-0320 • (701) 328-2440
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The core of the premium review process is an extensive analysis of the actuarial memorandum that accompanies the premium rates. Outlined below are the key elements of this review. Every reasonable effort is made to assure the company's proposed premiums are not inadequate, excessive, or unfairly discriminatory.

In order to make sure these requirements are met, the Insurance Department performs the following review activities on all initial and renewal premium filings for long-term care insurance:

1. An extensive analysis of all assumptions submitted for morbidity, mortality, interest, expenses, commissions, and voluntary termination rates. This review is based on the reported company program for field and home office underwriting, claims adjudication, proposed policy benefits, and marketing plan.

2. An extensive review of policy benefits and provisions relative to those being marketed by other companies to determine the potential for selection by insureds or agents against the company. For example, a company that has unusually attractive benefits for home health care should expect those wanting and needing these benefits to apply.

3. A comparison of the proposed premiums with a broad section of premiums being offered by other companies.

The overall purpose of these review activities is to assure that premiums are not excessive, inadequate, or unfairly discriminatory. This review notwithstanding, the intention of the company relative to lifetime adequate premiums would be greatly enhanced by the adoption of contingent nonforfeiture.

At the hearing on Senate Bill No. 2112, the suggestion was made that the Insurance Department should simply disapprove all rate filings which vary by more than five percent from those filed by the five largest insurers in the state by premium volume. The Insurance Department does do that sort of analysis as part of its rate review. However, it is simply a tool which will alert the Insurance Department about when to dig deeper regarding an insurer's proposed rate filing. It is untenable as an absolute criterion for approval of rates. Other factors may justify a difference of more than five percent between insurers. For instance, the relative underwriting criteria companies use might vary so significantly that the rates they propose should not be similar from one carrier to another.

Maybe I can illustrate my point. The five top insurers for long-term care insurance may all have relatively "stiff" underwriting criteria, i.e., they reject many applicants based on risk and, therefore, have a relatively low annual premium, let's say $100 annually. This is an obviously low amount but is useful for illustrative purposes. Carrier B may have relatively "loose" underwriting standards and accepts most applicants. Should the Insurance Department disapprove all rate filings that vary by more than five percent from those of the top five carriers, Carrier B would only be able to charge $105 annually for its coverage. This is an arbitrary and artificial way to determine the rate a company should charge. In fact, Carrier B may be able to actuarially justify a premium of $125 or more given the risk characteristics of its target market. Carrier B would not offer the product in North Dakota and it would be more difficult for higher risk insureds to get insurance. This is a tremendously simplified example but it illustrates why the suggestion is untenable as an absolute criterion for rate approval in North Dakota.

CE/njb