

June 2008

# LONG-TERM CARE INSURANCE

## Oversight of Rate Setting and Claims Settlement Practices





Highlights of [GAO-08-712](#), a report to congressional requesters

## Why GAO Did This Study

As the baby boom generation ages, the demand for long-term care services, which include nursing home care, is likely to grow and could strain state and federal resources. The increased use of long-term care insurance (LTCI) may be a way of reducing the share of long-term care paid by state and federal governments. Oversight of LTCI is primarily the responsibility of states, but over the past 12 years, there have been federal efforts to increase the use of LTCI while also ensuring that consumers purchasing LTCI are adequately protected. Despite this oversight, concerns have been raised about both premium increases and denials of claims that may leave consumers without LTCI coverage when they begin needing care. GAO was asked to review the consumer protection standards governing LTCI policies and how those standards are being enforced.

Specifically, GAO examined oversight of the LTCI industry's (1) rate setting practices and (2) claims settlement practices. GAO reviewed information from the National Association of Insurance Commissioners (NAIC) on all states' rate setting standards. GAO also completed 10 state case studies on oversight of rate setting and claims settlement practices, which included structured reviews of state laws and regulations, interviews with state regulators, and reviews of state complaint information. GAO also reviewed national data on rate increases implemented by companies.

To view the full product, including the scope and methodology, click on [GAO-08-712](#). For more information, contact John Dicken at (202) 512-7114 or [dickenj@gao.gov](mailto:dickenj@gao.gov).

## LONG-TERM CARE INSURANCE

### Oversight of Rate Setting and Claims Settlement Practices

#### What GAO Found

Many states have made efforts to improve oversight of rate setting, though some consumers remain more likely to experience rate increases than others. NAIC estimates that since 2000 more than half of states nationwide have adopted new rate setting standards. States that adopted new standards generally moved from a single standard that was intended to prevent premium rates from being set too high to more comprehensive standards designed to enhance rate stability and provide other protections for consumers. Although a growing number of consumers will be protected by the more comprehensive standards going forward, as of 2006 many consumers had policies not protected by these standards. Regulators in most of the 10 states GAO reviewed said that they expect these more comprehensive standards will be effective, but also recognized that more time is needed to know how well the standards will work in stabilizing premium rates. State regulators in GAO's review also use other standards or practices to oversee rate setting, several of which are intended to help keep premium rates more stable. Despite state oversight efforts, some consumers remain more likely to experience rate increases than others. Specifically, consumers may face more risk of a rate increase depending on when they purchased their policy or which state is reviewing a proposed rate increase on their policy.

The 10 states in GAO's review oversee claims settlement practices by monitoring consumer complaints and completing examinations in an effort to ensure that companies are complying with claims settlement standards. Claims settlement standards in these states largely focus on timely investigation and payment of claims and prompt communication with consumers, but the standards adopted and how states define timeliness vary notably across the states. Regulators told GAO that they use consumer complaints to identify trends in companies' claims settlement practices, including whether they comply with state standards, and to assist consumers in obtaining payment for claims. In addition to monitoring complaints, these regulators also said that they use examinations of company practices to identify any violations in standards that may require further action. Finally, state regulators in 6 of the 10 states in GAO's review are considering additional protections related to claims settlement. For example, regulators from 4 states said that their states were considering an independent review process for consumers appealing claims denials. Such an addition may be useful, as some regulators said that they lack authority to resolve complaints where, for example, the company and consumer disagree on a factual matter regarding a consumer's eligibility for benefits.

In commenting on a draft of this report, NAIC compiled comments from its member states who said that the report was accurate but seemed to critique certain aspects of state regulation, including differences among states, and make an argument for certain reforms. The draft reported differences in states' oversight without making any conclusions or recommendations.

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## Abbreviations

ADL	activities of daily living
CMS	Centers for Medicare & Medicaid Services
DRA	Deficit Reduction Act of 2005
FLTCIP	Federal Long Term Care Insurance Program
HIPAA	Health Insurance Portability and Accountability Act of 1996
IRS	Internal Revenue Service
LTCI	long-term care insurance
NAIC	National Association of Insurance Commissioners
OPM	Office of Personnel Management

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June 30, 2008

### Congressional Requesters

About \$193 billion was spent nationwide on long-term care services in 2004, including nursing home care and other assisted-living services. Most of this care was financed by government programs, primarily Medicaid,<sup>1</sup> and a small share of these costs—less than 10 percent—was paid by private insurance. Elderly people—those aged 65 or older—consume about two-thirds of all long-term care services used in the United States. As the number of elderly Americans continues to grow, particularly with the aging of the baby boom generation, the increasing demand for long-term care services will likely strain state and federal resources. Some policymakers have suggested that increased use of long-term care insurance (LTCI) may be a means of reducing the future share of long-term care services financed by public programs such as Medicaid.

Oversight of the LTCI industry, including setting consumer protection standards for rate setting and claims settlement practices and ensuring that companies comply, is primarily the responsibility of states.<sup>2</sup> Over time, the National Association of Insurance Commissioners (NAIC) has provided guidance to states on how to regulate LTCI, including adoption of a model LTCI act in 1986 and subsequently a model regulation.<sup>3</sup> NAIC has updated these models periodically to address emerging issues in the industry.

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<sup>1</sup>Medicaid is a jointly funded federal-state health care financing program that covers certain categories of low-income individuals.

<sup>2</sup>In this report, the term rate setting practices refers to how companies (1) establish initial premium rates and justify rate increases for a policy, (2) disclose information about rates to consumers, and (3) implement rate increases. The term claims settlement practices refers to how companies determine eligibility for LTCI benefits, communicate with consumers about the claims process and about specific claims submitted, pay or deny claims, and communicate with consumers about the process for appealing denials.

<sup>3</sup>State insurance regulators established NAIC to help promote effective insurance regulation, to encourage uniformity in approaches to regulation, and to help coordinate states' activities. Among other activities, NAIC develops model laws and regulations to assist states in formulating their policies to regulate insurance.

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Federal efforts over the past 12 years have aimed to increase the use of LTCI and ensure that consumers who purchase policies are adequately protected. For example, the Health Insurance Portability and Accountability Act of 1996 (HIPAA) established federal consumer protection standards for LTCI that, if incorporated into individual policies, would allow for favorable federal tax treatment of the benefits received and premiums paid under such policies.<sup>4</sup> Since the enactment of HIPAA, Congress established the Federal Long Term Care Insurance Program (FLTCIP)<sup>5</sup> in 2000. It also authorized the expansion of the long-term care Partnership programs<sup>6</sup> when it passed the Deficit Reduction Act of 2005 (DRA). Policies sold through state Partnership programs as well as the FLTCIP must meet certain consumer protection standards.

Members of Congress, state regulators, and other interested parties have raised concerns that despite existing state and federal consumer protection standards, increases in LTCI premiums or denials of benefit claims may leave some consumers without LTCI coverage as they begin needing long-term care, which could have fiscal implications for Medicaid. Specifically, though LTCI policies are intended—but not guaranteed—to have premiums that stay level over time, some consumers have experienced increases in their premiums that led them to drop coverage. In addition, recent media reports have highlighted concerns with companies delaying or denying consumers' claims for LTCI benefits. You asked us to review the consumer protection standards governing LTCI policies and how those standards are being enforced. For this report, we examined (1) oversight of rate setting practices in the LTCI industry and (2) oversight of claims settlement practices in the LTCI industry.

To examine oversight of rate setting practices in the LTCI industry, we reviewed information provided by NAIC and interviewed NAIC officials. Specifically, we reviewed the provisions of NAIC's LTCI model act and model regulation related to rate setting, including changes made to the

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<sup>4</sup>Policies that include the HIPAA protections are referred to as tax qualified.

<sup>5</sup>The FLTCIP, which was implemented in 2002, offers group LTCI benefits for federal and U.S. Postal Service employees and retirees, active and retired members of the uniformed services, qualified relatives of these individuals, and certain others.

<sup>6</sup>Partnership programs are state-run programs that encourage individuals to purchase LTCI by allowing the purchasers to exempt some or all of their personal assets from Medicaid eligibility requirements should they exhaust their LTCI benefits and need Medicaid assistance to finance further long-term care costs.

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rate setting requirements in the model regulation in 2000. In addition, to determine the rate setting standards in place in all 50 states and the District of Columbia, we interviewed NAIC officials, reviewed NAIC documents describing state rate setting standards, and reviewed relevant state laws and regulations. To supplement this information, we completed case studies for a judgmental sample of 10 states.<sup>7</sup> (We refer to these 10 states as the states in our review.) Among other considerations, we selected states that would account for a substantial portion of active LTCI policies in 2006 (at least 40 percent), would represent variation in the number of active policies, and would reflect the variation in state oversight of the product. The findings from our case studies are not generalizable. (See app. I for the criteria used to select states.) The first component of the case studies included a structured review of state laws and regulations. In the reviews, which were verified by the states, we identified the consumer protection standards and enforcement authorities in place at the state level applicable to rate setting practices. In addition to the reviews, we interviewed regulators from the selected states' insurance departments about (1) steps taken to oversee rate setting practices, (2) challenges they faced in overseeing this aspect of the product, (3) which standards have been effective in improving rate stability, and (4) regulatory changes under consideration. We also reviewed national data collected from companies and published by the California Department of Insurance on rate increases proposed and approved in any state from 1990 through 2006. With regard to these data, we spoke with a state official to discuss the checks they perform to verify the accuracy of the data and determined that these data were sufficiently reliable for our purposes. To identify federal requirements that affect oversight of rate setting practices, we reviewed federal laws, regulations, and guidance related to tax-qualified policies and policies issued under state Partnership programs. We also interviewed officials from the Internal Revenue Service (IRS), the Centers for Medicare & Medicaid Services (CMS), and the Office of Personnel Management (OPM). Finally, we interviewed officials from a judgmental sample of six companies selling LTCI regarding oversight of rate setting practices. These companies ranged in terms of market share in 2006 from 1 percent to more than 15 percent and together represented 40 percent of the market. In addition, the companies' financial ratings

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<sup>7</sup>The 10 states were California, Florida, Illinois, Iowa, New York, North Dakota, Pennsylvania, Texas, Washington, and Wisconsin.

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varied from superior to marginal.<sup>8</sup> The views of officials from these companies may not represent the views of officials from other companies.

In examining oversight of claims settlement practices in the LTCI industry, our review focused on the 10 states included in our case studies. In the reviews of state laws and regulations, we identified the consumer protection standards and enforcement authorities in place in these states applicable to claims settlement practices. Our interviews with regulators from the selected states' insurance departments included discussion of (1) steps taken to oversee claims settlement practices, (2) challenges they faced in overseeing this aspect of the product, (3) which standards have been effective in ensuring fair claims practices, and (4) regulatory changes under consideration. As part of the case studies, we also reviewed information on consumer complaints related to LTCI from 6 states that were able to provide this information. Five of the 6 states provided information from 2001 through 2007 on the number of LTCI complaints related to claims settlement practices, and 3 of the 6 states provided information on the outcomes of complaints related to claims settlement practices in 2006. To identify federal requirements that affect oversight of claims settlement practices, we reviewed federal laws, regulations, and guidance. Finally, in interviews with company officials we asked about oversight of claims settlement practices; we also reviewed company documents describing claims settlement practices and reporting the number of claim denials that were appealed by consumers and overturned by the company. We performed our work in accordance with generally accepted government auditing standards from September 2007 through June 2008.

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## Results in Brief

Many states have made efforts to improve oversight of rate setting practices in the LTCI industry, though some consumers remain more likely to experience rate increases than others. NAIC estimates that by 2006 more than half of all states had adopted new rate setting standards that were based on amendments to its LTCI model regulation in 2000. States that adopted new standards generally moved from a single standard that was intended to prevent rates from being set too high to more comprehensive standards intended to enhance rate stability and provide

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<sup>8</sup>Company financial ratings were conducted by A.M. Best and were effective as of 2006 or 2007 depending on the company. The ratings are based on a quantitative and qualitative evaluation of, for example, a company's balance sheet strength and operating performance.

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other protections for consumers. For example, one of the more comprehensive standards requires company actuaries to certify that policy premium rates are adequate to cover anticipated costs over the life of the policy, even under “moderately adverse conditions,” with no future rate increases anticipated. Although a growing number of consumers will be protected by the more comprehensive standards going forward, as of 2006 many consumers had policies not protected by these standards, either because they live in states that have not adopted the new standards or because they bought policies issued prior to implementation of these standards. While regulators in most of the 10 states we reviewed told us that they think the more comprehensive standards will be effective, they recognized that more time is needed to know how well the standards will work in stabilizing premium rates. Regulators in the states in our review also use other standards or practices to oversee rate setting, several of which are intended to help improve rate stability. For example, 1 of the states has a standard in place to limit premium increases for policies no longer being sold to the prevailing market rates for similar policies. Despite state oversight efforts, some consumers remain more likely to experience rate increases than others. Specifically, consumers may face more risk of a rate increase depending on when they purchased their policy, from which company their policy was purchased, and which state is reviewing a proposed rate increase on their policy. For example, consumers in some states may be more likely to experience rate increases than those in other states, because there is variation in the extent to which states approve companies’ rate increase requests.

Regulators in the states in our review oversee claims settlement practices by monitoring consumer complaints and conducting examinations of company practices in an effort to ensure that companies are complying with standards. Claims settlement standards in these states primarily focus on timely investigation and payment of claims, as well as prompt communication with consumers about claims. However, the standards adopted and how states define timeliness vary notably across the states. For example, for 9 of 10 states we reviewed that have a requirement to pay claims in a timely manner, the definition of timely varies in 7 states from 5 to 45 days and 2 states do not define timely. This variation may leave consumers in some states less protected than others. Regulators from all 10 states told us that reviewing consumer complaints is one of the primary methods for monitoring companies’ compliance with state standards. States use complaints to identify trends in companies’ claims settlement practices and to assist individual consumers in obtaining payment for claims. In addition to monitoring complaints, regulators from all of the states we reviewed said that they use market conduct examinations to

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determine whether companies are complying with claims settlement standards. These examinations can result in enforcement actions if the regulators identify violations of the standards. Regulators from 7 of the states we reviewed reported having one or more examinations under way as of March 2008. State regulators in 6 of the 10 states in our review reported that their states are also considering additional protections related to claims settlement. For example, regulators from 4 states said that their states were considering an independent review process for consumers appealing claims denials. Such an addition may be useful as some regulators said that they lack authority to resolve complaints where, for example, the company and consumer disagree on a factual matter, such as a consumer's eligibility for benefits.

We received comments on a draft of this report from NAIC. NAIC compiled and summarized comments from its member states, and NAIC officials stated that member states found the report to be an accurate reflection of the current LTCI marketplace. However, NAIC officials also reported that states were concerned that the report seemed to critique certain aspects of state regulation without a balanced discussion and seemed to be making an argument for certain reforms. In particular, NAIC officials noted that states said the draft report highlighted the differences in state regulation of rates and the fact that new regulations are not typically made retroactive. NAIC officials also noted that as in every other area of state regulation, state laws differ based on markets, consumer needs, and political realities. NAIC officials added that state lawmakers and regulators must balance many different factors when developing rules and one size often does not fit all. Our draft reported differences in states' oversight of rate setting and claims settlement practices without making any conclusions or recommendations. We reported both the extent to which NAIC model standards have been adopted and other standards and practices states have in place. Certain NAIC member states provided technical comments, which we incorporated into the report as appropriate.<sup>9</sup>

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<sup>9</sup>NAIC sent the draft report to all of its member states, and seven states provided technical comments. The states that provided technical comments were Florida, Louisiana, Maryland, Massachusetts, New York, Ohio, and Wisconsin.

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## Background

Long-term care includes services provided to individuals who have a cognitive impairment or who, because of illness or disability, are unable to perform certain activities of daily living (ADL)—such as bathing, dressing, and eating—for an extended period of time. These services may be provided in various settings, such as nursing facilities, an individual’s home, or the community. Long-term care can be expensive, especially when provided in nursing facilities. In 2006, the average cost of a year of nursing facility care in a private room was about \$75,000. The average hourly rate for a home health aide in that same year was \$19; as a result, 10 hours of such care a week would average close to \$10,000 a year.<sup>10</sup>

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## Long-Term Care Insurance

LTCI helps pay for the costs associated with long-term care services. Individuals can purchase LTCI policies from insurance companies or through employers or other groups. As of 2002, individual policies represented approximately 80 percent of the market, with policies purchased through employers representing most of the remaining 20 percent. The average age of consumers purchasing individual policies has decreased over time from an average age of 68 in 1990 to 61 in 2005. The number of LTCI policies sold has been relatively small—about 9 million as of the end of 2002, the most recent year of data available—with less than 10 percent of people aged 50 and older purchasing LTCI in the majority of states.

Companies generally structure their LTCI policies around certain types of benefits and related options.

- A policy with comprehensive coverage pays for long-term care in nursing facilities as well as for care in home and community settings, while other policies may only provide coverage for care in one setting. While 63 percent of policies sold in 1990 covered care in nursing facilities only, over time there has been a shift to comprehensive policies, which represented 90 percent of policies sold in 2005.<sup>11</sup>

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<sup>10</sup>Metropolitan Life Insurance Company, *The MetLife Market Survey of Nursing Home & Home Care Costs* (Westport, Conn.: Sept. 2006).

<sup>11</sup>America’s Health Insurance Plans, *Who Buys Long-Term Care Insurance? A 15-Year Study of Buyers and Non-Buyers, 1990-2005* (Washington, D.C.: Apr. 2007).

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- A daily benefit amount specifies the amount a policy will pay on a daily basis toward the cost of care, while a benefit period specifies the overall length of time a policy will pay for care. Data on policies sold in 1995, 2000, and 2005 show that maximum daily benefits range from less than \$30 to well over \$100 per day, while benefit periods can range from 1 year to lifetime coverage.<sup>12</sup>
  - A policy's elimination period establishes the length of time a policyholder who has begun to receive long-term care has to wait before his or her insurance will begin making payments toward the cost of care. For policies sold in 2005, the elimination period was generally from 1 to 3 months.<sup>13</sup>
  - Inflation protection increases the maximum daily benefit amount covered by the policy and helps ensure that over time the daily benefit remains commensurate with the costs of care. Data from 2005 show that over three-quarters of consumers that year chose some form of inflation protection, up from less than half in 2000.<sup>14</sup>

To receive benefits claimed under an LTCI policy, the consumer must not only obtain the covered services, but must also meet what are commonly referred to as benefit triggers. Most policies provide benefits under two circumstances (1) the consumer has a specified degree of functional disability, that is, he or she cannot perform a certain number of ADLs without assistance, or (2) the consumer requires supervision because of a cognitive impairment, such as Alzheimer's. In addition, benefit payments do not begin until the policyholder has met the benefit triggers for the length of the elimination period, such as 30 or 90 days.

Determining whether a consumer has met the benefit triggers to begin receiving claimed benefits can be complex and companies' processes for doing so vary. Some companies rely on physician notes and claim forms. Others use a structured, in-person assessment conducted by a licensed health care practitioner, such as a registered nurse. To prove that the care received is covered and the consumer meets the eligibility criteria, consumers or those acting on their behalf must provide several types of documentation, such as a plan of care written by a licensed practitioner

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<sup>12</sup>*Ibid.*

<sup>13</sup>*Ibid.*

<sup>14</sup>*Ibid.*

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outlining the services that are appropriate and required to address the claimant's conditions and an itemized bill for the care provided. Ensuring that services are covered and the consumer is eligible to receive benefits is important for LTCI companies, as the average claim amount for LTCI tends to be high given that benefits are for an extended period of time, often beyond a year.

In the event that a consumer's claim for benefits is denied, the consumer generally can appeal to the insurance company to reconsider the determination. If the company upholds the determination, the consumer can file a complaint with the state insurance department or can seek adjudication through the courts.

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## Long-Term Care Insurance Premium Rates

Many factors affect LTCI premium rates, including the benefits covered and the age and health status of the applicant. For example, companies typically charge higher premiums for comprehensive coverage as compared to policies without such coverage, and consumers pay higher premiums the higher the daily benefit amount, the greater the inflation protection, and the shorter the elimination period. Similarly, premiums typically are more expensive the older the policyholder is at the time of purchase. For example, in California, a 55-year-old purchasing one company's 3-year, \$100 per day comprehensive coverage policy in 2007 would pay about \$2,200 per year, whereas a 70-year-old purchasing the same policy would pay about \$3,900 per year. Company assumptions about interest rates on invested assets, mortality rates, morbidity rates, and lapse rates—the number of people expected to drop their policies over time—also affect premium rates.

A key feature of LTCI is that premium rates are designed—though not guaranteed—to remain level over time. Companies calculate premium rates to ensure that the total premiums paid by all consumers who bought a given policy and the interest earned on invested assets over the lifetime of the policy are sufficient to cover costs. While under most states' laws insurance companies cannot increase premiums for a single consumer because of individual circumstances, such as age or health, companies can increase premiums for entire classes of individuals, such as all consumers with the same policy, if new data indicate that expected claims payments

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will exceed the class's accumulated premiums and expected investment returns.<sup>15</sup>

Setting LTCI premium rates at an adequate level to cover future costs has been a challenge for some companies. Because LTCI is a relatively new product, companies lacked and may continue to lack sufficient data to accurately estimate the revenue needed to cover costs. For example, according to industry experts, lapse rates, which companies initially based on experience with other insurance products, have proven lower than companies anticipated in initial pricing, which increased the number of people likely to submit claims. As a result, many policies were priced too low and subsequently premiums had to be increased, leading some consumers to cancel coverage. As companies adjust their pricing assumptions, for example, lowering the lapse rates assumed in pricing, initial premiums may be higher but the likelihood of future rate increases may also be reduced.

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## Long-Term Care Insurance Regulation

Oversight of the LTCI industry is largely the responsibility of states. Through laws and regulations, states establish standards governing LTCI and give state insurance departments the authority to enforce those standards. Many states' laws and regulations reflect standards set out in model laws and regulations developed by NAIC. These models are intended to assist states in formulating their laws and policies to regulate insurance, but states can choose to adopt them or not. In 1986 NAIC adopted the *Long-Term Care Insurance Model Act* and subsequently in 1987 the *Long-Term Care Insurance Model Regulation*, models which suggest the minimum standards states should adopt for regulating LTCI. In addition to the LTCI models, other NAIC insurance models, for example, the *Unfair Life, Accident, and Health Claims Settlement Practices Model Regulation*, address unfair claims settlement practices across multiple lines of insurance, including LTCI. NAIC has revised its models over time to address emerging issues in the industry, including revisions made to its LTCI model regulation in 2000 designed to improve rate stability.<sup>16</sup>

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<sup>15</sup>Stephanie Lewis, John Wilkin, and Mark Merlis, *Regulation of Private Long-Term Care Insurance: Implementation Experience and Key Issues* (Washington, D.C.: The Henry J. Kaiser Family Foundation, 2003).

<sup>16</sup>Rate stability means that premium rates initially set for an LTCI policy would be sufficient to cover costs and would not require increases over the life of the policy.

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Beyond implementing pertinent laws and regulations, state regulators perform a variety of oversight tasks that are intended to protect consumers from unfair practices. These activities include reviewing policy rates and forms, conducting market conduct examinations, and responding to consumer complaints.

- In reviewing rates and forms, state regulators examine a policy's price, terms, and conditions to ensure that they are consistent with state laws and regulations. This includes reviewing the company's pricing assumptions, such as lapse rates. Some states allow companies to begin selling policies before receiving approval for price and policy terms, while others require prior approval before policies can be sold.<sup>17</sup> A small number of states do not require companies to submit rates for review.<sup>18</sup>
- When conducting a market conduct examination, an examiner visits a company to evaluate practices and procedures, such as claims settlement practices, and checks those practices and procedures against information in the company's files.<sup>19</sup>
- Consumer complaints generally lead states to request information from the company in question. The state reviews the company's response for consistency with the policy contract and for violations of insurance laws and regulations.

Although oversight of the LTCI industry is largely the responsibility of states, the federal government also plays a role in the oversight of LTCI. HIPAA established federal standards that affect the LTCI industry as well as consumers purchasing policies by specifying conditions under which LTCI benefits and premiums would receive favorable federal income tax treatment.<sup>20</sup> Under HIPAA, a tax-qualified policy must cover individuals

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<sup>17</sup>See GAO, *Insurance Regulation: Common Standards and Improved Coordination Needed to Strengthen Market Regulation*, [GAO-03-433](#) (Washington, D.C.: Sept. 2003).

<sup>18</sup>According to a review completed by the Lewin Group for AARP in 2002, two states do not have authority to review LTCI rates at all, and three others review initial rates but have no authority to review rate increases. The Lewin Group, *Long-Term Care Insurance: An Assessment of States' Capacity to Review and Regulate Rates* (Washington, D.C.: Feb. 2002).

<sup>19</sup>In general, market conduct examinations are either comprehensive, in which regulators examine all or most of a company's operational areas, or targeted, which limits the examination to one or a few business areas.

<sup>20</sup>Pub. L. No. 104-191, §§ 321-327, 110 Stat. 1936, 2054-2067.

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certified as needing substantial assistance with at least two of the six ADLs for at least 90 days due to a loss of functional capacity, having a similar level of disability, or requiring substantial supervision because of a severe cognitive impairment. Tax-qualified policies under HIPAA must also comply with certain provisions of the NAIC LTCI model act and regulation in effect as of January 1993.<sup>21</sup> For example, tax-qualified LTCI policies must include an offer of inflation protection. The Department of the Treasury, specifically IRS, issued regulations in 1998 implementing some of the HIPAA standards. Under the law and regulations, a policy is tax qualified if it complies with a state law that is the same or more stringent than the analogous federal requirement. According to IRS officials, the agency generally relies on states to ensure that policies marketed as tax qualified meet HIPAA requirements. In 2002, 90 percent of LTCI policies sold were marketed as tax qualified.

The same consumer protections established under HIPAA for tax-qualified policies were included in DRA for Partnership policies. However, DRA provides for certain additional consumer protections to be included in Partnership policies. For example, states establishing Partnership programs must ensure that issuers of Partnership policies develop and use suitability standards consistent with the NAIC models. These standards are intended to determine whether LTCI is appropriate for each consumer considering purchasing a policy.<sup>22</sup> Although CMS is responsible for approving the amendments to states' Medicaid plans required to implement long-term care Partnership programs, state insurance departments are responsible for certifying that Partnership policies comply with DRA standards.<sup>23</sup> As of February 2008, 18 states had received CMS approval to begin Partnership programs subject to DRA standards, of

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<sup>21</sup>Since 1993, NAIC has made several changes to its model act and regulation, including adding consumer protection standards related to rate setting. These additional protections are not required under HIPAA.

<sup>22</sup>DRA requires that Partnership policies meet a number of provisions from the NAIC LTCI models adopted in 2000. If NAIC revises or updates the specified provisions of the models or any other related provisions, DRA requires the Department of Health and Human Services to consider incorporating such changes into the requirements for Partnership policies.

<sup>23</sup>CMS is the agency within the Department of Health and Human Services responsible for administering the Medicaid program, including approving states' Medicaid plans. To implement a Partnership program, a state must include it in its state plan, which can be amended with CMS's approval.

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which 8 had begun certifying policies.<sup>24</sup> Partnership policies must also comply with state laws and regulations. States are responsible for reviewing Partnership policy forms and rates and overseeing claims settlement practices for companies that issue these policies.

In addition to the responsibilities of CMS and IRS in the federal government, OPM has oversight responsibility for the FLTCIP. As of March 2008, the federal program included nearly 220,000 enrollees. The contractor that administers the program must comply with provisions of the 2000 version of the NAIC LTCI models, such as the requirement that consumers be offered certain options in the event of a large rate increase. Policies sold under the federal program are not required to meet state insurance laws and regulations.

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## States Have Made Efforts to Improve Oversight of Rate Setting, Though Some Consumers Remain More Likely to Experience Rate Increases Than Others

In recent years, many states have made efforts to improve oversight of rate setting, though some consumers remain more likely to experience rate increases than others. Since 2000, NAIC estimates that more than half of all states have adopted new rate setting standards. States that adopted new standards generally moved from a single standard focused on ensuring that rates were not set too high to more comprehensive standards designed primarily to enhance rate stability and provide increased protections for consumers. The more comprehensive standards were based on changes made to NAIC's LTCI model regulation in 2000. While regulators in most of the 10 states we reviewed told us that they expect these more comprehensive standards will be successful, they noted that more time is needed to know how well the standards will work. Regulators from the states in our review also use other standards or practices to oversee rate setting, several of which are intended to keep premium rates more stable. Despite states implementing more comprehensive standards and using other oversight efforts intended to enhance rate stability, some consumers may remain more likely to experience rate increases than others. Specifically, consumers may face more risk of a rate increase depending on when they purchased their policy, from which company their policy was purchased, and which state is reviewing a proposed rate increase on their policy.

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<sup>24</sup>An additional four states had active Partnership programs prior to passage of DRA and are not subject to its consumer protections. However, DRA required these four states to maintain consumer protections that are no less stringent than those that applied in their Partnership programs as of December 31, 2005.

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Many States Adopted More Comprehensive Rate Setting Standards since 2000, but It Is Too Soon to Determine the Effectiveness of the Standards

Since 2000, NAIC estimates that more than half of states nationwide have adopted new rate setting standards for LTCI. States that adopted new standards generally moved from the use of a single standard designed to ensure that premiums were not set too high to the use of more comprehensive standards designed to enhance rate stability and provide other protections for consumers. Prior to 2000, most states used a single, numerical standard when reviewing premium rates. This standard—called the loss ratio—was included in NAIC’s LTCI model regulation. Specifically, NAIC’s pre-2000 model stated that insurance companies must demonstrate an expected loss ratio of at least 60 percent when setting premium rates, meaning that the companies could be expected to spend a minimum of 60 percent of the premium on paying claims. For all policies where initial rates were subject to this loss ratio standard, proposed rate increases are subject to the same standard.

While the loss ratio standard was designed to ensure that premium rates were not set too high in relation to expected claims costs, over time NAIC identified two key weaknesses in the standard. First, the standard does not prevent premium rates from being set too low to cover the costs of claims over the life of the policy. Second, the standard provides no disincentive for companies to raise rates, and leaves room for companies to gain financially from premium increases. In identifying these two weaknesses, NAIC noted that there have been cases where, under the loss ratio, initial premium rates proved inadequate, resulting in large rate increases and significant loss of LTCI coverage from consumers allowing their policies to lapse.<sup>25</sup>

To address the weaknesses in the loss ratio standard as well as to respond to the growing number of premium increases occurring for LTCI policies, NAIC developed new, more comprehensive model rate setting standards in 2000. These more comprehensive standards were designed to accomplish several goals, including improving rate stability. Among other things, the standards established more rigorous requirements companies must meet when setting initial LTCI rates and rate increases. For example, instead of a loss ratio requirement to demonstrate that a proposed premium is not too high, the standards require company actuaries to certify that a premium is adequate to cover anticipated costs over the life of a policy, even under “moderately adverse conditions,” with no future rate increases

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<sup>25</sup>If consumers lapse their policies, they may find it difficult to purchase a new policy, because the cost of purchasing LTCI increases as people age.

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anticipated. Moderately adverse conditions could include, for example, below average returns on invested assets. To fulfill this requirement, company actuaries must include a margin for error in their pricing assumptions.<sup>26</sup> Several regulators told us that allowing a margin for error may result in higher, but more stable, premium rates over the long term. In addition, while the more comprehensive standards no longer require companies to meet a loss ratio for initial premium rates, they establish a more stringent loss ratio—85 percent—for companies to meet when proposing premium increases. According to NAIC, this new loss ratio is intended to limit the financial benefits companies may gain from a rate increase.<sup>27</sup>

In addition to improving rate stability, the more comprehensive standards were also designed to inform consumers about the potential for rate increases and provide protections for consumers facing rate increases. To inform consumers about the potential for LTCI rate increases, the more comprehensive standards include, for example, a requirement for companies to disclose past rate increases to consumers applying for LTCI coverage. The standards also establish some additional protections for consumers facing rate increases, including providing certain consumers with the option of reducing their benefits. Table 1 describes selected rate setting standards added to NAIC's LTCI model regulation in 2000 and the purpose of each standard in more detail.

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<sup>26</sup>There is no standard definition of “moderately adverse conditions;” rather the actuary must determine for each policy filing the appropriate margin for error for the assumptions used to calculate the price. For more information, see National Association of Insurance Commissioners, *NAIC Guidance Manual for Rating Aspects of the Long-Term Care Insurance Model Regulation* (Kansas City, Mo.: Mar. 11, 2005).

<sup>27</sup>Specifically, NAIC noted that whereas under the old loss ratio standard 60 percent of the increased premium amount must be spent on claims and up to 40 percent of the increased amount could be allocated to company administrative expenses and profit, under the new standards the amount of the increase allocated to administrative expenses and profit drops to 15 percent.

**Table 1: Selected Rate Setting Standards Added to NAIC’s LTCI Model Regulation in 2000**

Standard	Description	Purpose of standard
Actuarial certification for initial premium rates and rate increases	When setting initial premium rates, companies are required to submit to state insurance departments a statement by a company actuary certifying that the initial rate is sufficient to cover anticipated costs over the life of a policy, even under “moderately adverse conditions,” with no future rate increases anticipated. When notifying state insurance departments of a rate increase, companies must submit a similar certification. However, if it becomes clear that a company is consistently filing inadequate initial rates (presumably based on a pattern of rate increases), state insurance departments may prohibit or limit the company from issuing certain new policies in the state.	To reduce the potential for rate increases by requiring a margin for error in pricing assumptions. Regulators from four states told us that this standard requires companies to make more conservative pricing assumptions, which, while increasing premium rates for consumers, decreases the likelihood of future rate increases. One company told us that with the advent of the more comprehensive standards, average initial premium rates went up 11 percent.
Higher loss ratio standard for rate increases	When notifying state insurance departments of a premium rate increase, companies are required to demonstrate an expected loss ratio of at least 58 percent for revenue associated with the original premium rate and 85 percent for revenue associated with the increase. In other words, companies are required to demonstrate that claims costs can be expected to equal or exceed the sum of 58 percent of the initial premium and 85 percent of the increase amount.	To decrease the financial benefit of a rate increase. Regulators from two states told us that this standard could act as a disincentive for companies to raise rates.
Enhanced reporting requirements after a rate increase	For at least 3 years after implementing a rate increase, companies are required to report data on premiums earned and claims incurred to the state insurance department. If these data show that actual experience does not match what companies projected in justifying the rate increase, state insurance departments can require companies to reduce this difference by, among other things, lowering premium rates.	To increase regulatory oversight once a rate increase is approved.
Disclosure of the potential for rate increases to consumers	At the time of application, companies are required to include in their disclosures to consumers (1) that premium rates may increase in the future and (2) all rate increases implemented on the policy or similar policies in any state for the preceding 10 years.	To provide consumers with adequate information about the potential for premium rate increases. Further, as disclosing rate increases to consumers could be damaging to a company from a marketing perspective, this particular standard may discourage companies from raising premium rates.
Protections for consumers facing rate increases	If the cumulative size of a rate increase meets a certain threshold that varies based on a consumer’s age and if a consumer lapses his or her policy within 120 days of the date the increased premium was due, companies are required to offer the consumer the option to (1) keep their original premium rate by reducing policy benefits or (2) stop paying premiums, but receive benefits for a shorter period of time than was originally covered. Also, under certain circumstances, the state insurance department may require companies to offer consumers, without underwriting, a comparable replacement policy.	To give consumers recourse in the event that rate increases occur.

Source: GAO analysis of NAIC’s LTCI model regulation, NAIC guidance on the model regulation, and statements from state regulators.

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Although a growing number of consumers will be protected by the more comprehensive standards going forward, as of 2006 many consumers had policies that were not protected by these standards. Following the revisions to NAIC's LTCI model in 2000, many states began to replace their loss ratio standard with more comprehensive rate setting standards based on NAIC's changes. NAIC estimates that by 2006 more than half of states nationwide had adopted the more comprehensive standards.<sup>28</sup> However, many consumers have policies not protected by the more comprehensive standards, either because they live in states that have not adopted these standards or because they bought policies issued prior to implementation of these standards.<sup>29</sup> For example, as of December 2006, according to our analysis of NAIC and industry information, at least 30 percent of policies in force were issued in states that had not adopted the more comprehensive rate setting standards. Further, in states that have adopted the more comprehensive standards, many policies in force were likely to have been issued before states began adopting these standards in the early 2000s.<sup>30</sup> The extent to which more states will adopt the more comprehensive standards is unclear. We found that of the 2 states in our 10-state review that had not adopted these standards as of January 2008, 1 state planned to adopt the standards. A regulator from the other state told us that the state had chosen not to adopt the standards, at least in part because its regulatory environment is already sufficiently rigorous.<sup>31</sup>

In states that have not adopted the more comprehensive standards for LTCI policies generally, federal standards for state Partnership programs provide additional protections for consumers purchasing Partnership

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<sup>28</sup>This estimate is based on an NAIC review of state laws and regulations completed in 2006.

<sup>29</sup>States generally adopted the more comprehensive standards on a going-forward basis, meaning that consumers with policies issued prior to implementation are still subject to the loss ratio standard.

<sup>30</sup>However, data on the number of policies in force did not allow us to determine the precise number of consumers not protected by the more comprehensive rate settings standards.

<sup>31</sup>Officials from this state reported that the state insurance department has actuaries perform stringent reviews of materials submitted by insurance companies so that the department can reach independent conclusions about the appropriateness of proposed rates and rate increases. Specifically, the officials reported that the expertise of department actuaries means that they already include a margin of error in the pricing assumptions they use to review rates. The state officials also reported that department actuaries have asked companies to raise initial premium rates if they determined that the proposed rates were not self-supporting.

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policies in these states. In expanding authorization for Partnership programs, DRA required that Partnership policies adhere to certain of the rate setting standards added to NAIC's LTCI model regulation in 2000, such as disclosure of past rate increases to consumers applying for coverage.<sup>32</sup> Other standards, such as actuarial certification, were not required. As of February 2008, CMS reported that 24 states either had an approved Partnership program subject to DRA standards or a request to implement one pending. Of these 24 states, 7 had not implemented at least one of the more comprehensive rate setting standards required by DRA.

Regulators from most of the states in our review said that they expect the rate setting standards added to NAIC's model regulation in 2000 will improve rate stability and provide increased protections for consumers, though regulators also recognized that it is too soon to determine the effectiveness of the standards. Of the states in our review, regulators in all but one of the eight states that had adopted the more comprehensive standards told us that the standards would likely be successful. For example, regulators from one state emphasized that a significant amount of collaboration between regulators, insurance companies, and consumer advocates went into development of the standards. However, regulators in these eight states also said that not enough time has passed since implementation to know how well these standards will work, particularly in stabilizing LTCI rates. Some regulators explained that it might be as much as a decade before they are able to assess the effectiveness of these standards. Regulators from one state explained that rate increases on LTCI policies sold in the 1980s did not begin until the late 1990s, when consumers began claiming benefits and companies were faced with the costs of paying their claims. Further, though the more comprehensive standards aim to enhance rate stability, LTCI is still a relatively young product, and initial rates continue to be based on assumptions that may eventually require revision. For example, several company officials told us that estimates of lapse rates and other LTCI pricing assumptions have become more reliable over time. However, officials from some companies also told us that companies still face uncertainties in pricing LTCI, including forecasting investment returns and predicting the cost of long-term care in a delivery system that continues to evolve.

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<sup>32</sup>HIPAA standards for tax-qualified policies do not include the more comprehensive rate setting standards added to NAIC's LTCI model regulation in 2000.

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## State Regulators Use Other Standards or Practices to Oversee Rate Setting

State regulators from the 10 states in our review use other standards—beyond those included in NAIC’s LTCI model regulation—or practices to oversee rate setting, including several that are intended to enhance rate stability. Regulators from 3 of the states in our review told us that their state has standards intended to enhance the reliability of data used to justify rate increases. For example, 1 state has a standard that requires companies to justify rate increases using data combined or “pooled” from all policies that offer similar benefits—including data on the premium revenues and claims costs associated with these policies—rather than using only the data on the policy subject to the increase. The regulators from this state explained that such a standard improves reliability by normalizing data so that, for example, newer, more adequately priced policies offset older, underpriced policies. Regulators from 2 states in our review also told us that these standards are among their states’ most effective tools for improving rate stability.

In addition to standards to enhance the reliability of data used to set rates, some states in our review have standards that limit the extent to which LTCI rates can increase. For example, one of the states we reviewed has a standard in place to cap premium rates at prevailing market rates for policies no longer being sold. Regulators from this state explained that capping premium rates on these policies sets an upper limit that companies can charge when requesting a rate increase. Regulators from another state told us that they have authority to fine companies for instituting cumulative rate increases that exceed a certain cap. Officials from one company confirmed that some states have standards to cap premium increase amounts.

Beyond implementing rate setting standards, regulators from all 10 states in our review use their authority to review rates to reduce the size of rate increases or to phase in rate increases over multiple years. For example, state regulators told us that they may require companies to implement smaller increases than requested or negotiate with companies to reach an agreement on a smaller increase.<sup>33</sup> In addition to working to reduce the size of the increases, regulators from some states said that to mitigate the effect of rate increases on consumers they may suggest that a company phase the increase in over multiple years. However, this approach only

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<sup>33</sup>Regulators from one state said that of the 16 rate increase requests they received in 2006, 15 were negotiated to a lower percentage than what the company originally proposed (ranging from 2 to 15 percentage points lower).

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provides consumers with short-term relief.<sup>34</sup> While state regulators work to reduce the effect of rate increases on consumers, regulators from six states explained that increases can be necessary to maintain companies' financial solvency.

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### Some Consumers May Remain More Likely to Experience Rate Increases Than Others

Although some states are working to improve oversight of rate setting and to help ensure LTCI rate stability by adopting the more comprehensive standards and through other efforts, there are other reasons why some consumers may remain more likely to experience rate increases than others. In particular, consumers who purchased policies when there were more limited data available to inform pricing assumptions may continue to experience rate increases. Regulators from seven states in our review told us that rate increases are mainly affecting consumers with older policies. For example, regulators from one state told us that there are not as many rate increases proposed for policies issued after the mid-1990s. Regulators in five states explained that incorrect pricing assumptions on older policies are largely responsible for rate increases. Specifically, regulators explained that inaccurate assumptions about the number of consumers who would allow their policies to lapse led to rate increases. Officials from more than one company confirmed that mistakes in pricing older LTCI policies, including overestimating lapse rates, have played a significant role in the rate increases that have occurred. However, officials from one company told us that there are now more data available, including claims data compiled by the industry, increasing the company's confidence in pricing LTCI.

Consumers' likelihood of experiencing a rate increase also may depend on the company from which they bought their policy. In our review of national data on rate increases by four judgmentally selected companies that together represented 36 percent of the LTCI market in 2006, we found variation in the extent to which they have implemented increases. For example, one company that has been selling LTCI for 30 years has increased rates on multiple policies since 1995, with many of the increases ranging from 30 to 50 percent. Another company that has been in the

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<sup>34</sup>While a phase-in may provide consumers with short-term relief from the rate increase, over time it may not provide a net financial benefit for consumers in terms of total premiums paid. For example, officials from one company told us that, if a state was proposing to phase in a 12 percent increase, the company would have to implement a cumulative increase of more than 12 percent to account for the loss of needed premiums in the early years of the phase-in.

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market since the mid-1980s has increased rates on multiple policies since 1991, with increases approved on one policy totaling 70 percent. In contrast, officials from a third company that has been selling LTCI since 1975 told us that the company was implementing its first increase as of February 2008. The company reported that this increase, affecting a number of policies, will range from a more modest 8 to 12 percent.<sup>35</sup> Another company that also instituted only one rate increase explained that in cases where initial pricing assumptions were wrong, the company has been willing to accept lower profit margins rather than increase rates. While past rate increases do not necessarily increase the likelihood of future rate increases, they do provide consumers with information on a company's record in having stable premiums.

Finally, consumers in some states may be more likely to experience rate increases than those in other states, which company officials noted may raise equity concerns. Of the six companies we spoke with, officials from every company that has instituted a rate increase told us that there is variation in the extent to which states approve proposed rate increases. For example, officials from one company told us that when requesting rate increases they have seen some states deny a request and other states approve an 80 percent increase on the same rate request with the same data supporting it. Officials from another company told us that if they filed for a 25 percent increase in all states, they would expect to have varying amounts approved and have some states deny the proposed increase.<sup>36</sup> Officials from two companies noted that such differences across states raises an equity issue for consumers. While some company officials told us that initial LTCI premiums are largely the same across states,<sup>37</sup> variation in state approval of rate increases may mean that consumers with the same LTCI policy could face very different premium rates depending on where they live. Though some consumers may face higher increases than others, company officials also told us that they provide options to all consumers facing a rate increase, such as the option to reduce their benefits to avoid all or part of a rate increase.

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<sup>35</sup>Company officials told us that this increase will affect nearly a half million consumers.

<sup>36</sup>Company officials noted that one reason for this variation may be that some states have more capacity to review rate increases than other states.

<sup>37</sup>Company officials told us that differences in the initial pricing of LTCI across states are limited and primarily occur in states that mandate policies to include certain benefits.

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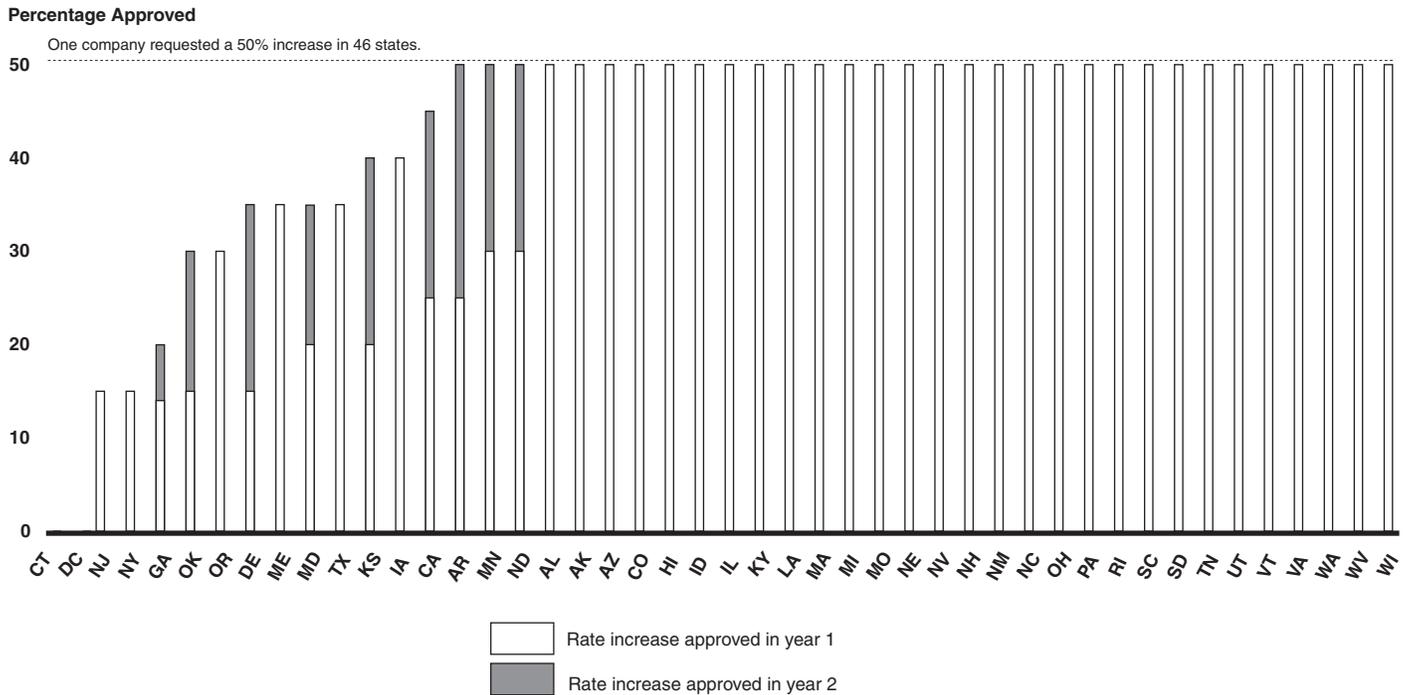
Our review of data on state approvals of rate increases requested by one LTCI company operating nationwide also indicated that consumers in some states may be more likely to experience rate increases.<sup>38</sup> Specifically, since 1995 one company has requested over 30 increases, each of which affected consumers in 30 or more states. While the majority of states approved the full amounts requested in these cases, there was notable variation across states in 18 of the 20 cases in which the request was for an increase of over 15 percent.<sup>39</sup> For example, for one policy, the company requested a 50 percent increase in 46 states, including the District of Columbia. Of those 46 states, over one quarter (14 states) either did not approve the rate increase request (2 states) or approved less than the 50 percent requested (12 states), with amounts approved ranging from 15 to 45 percent. The remaining 32 states approved the full amount requested, though at least 4 of these states phased in the amount by approving smaller rate increases over 2 years. (See fig. 1.)

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<sup>38</sup>These data include at least one state, Louisiana where officials reported that, for at least part of the time period included in our review, the state required companies to file notice of rate increases, but did not have the authority to approve or deny the increases. Additionally, according to a report completed by the Lewin Group in 2002, four other states do not require companies to file notice of rate increases at all.

<sup>39</sup>For smaller increases (15 percent and below) almost all states approved the full amount requested.

**Figure 1: Outcome of One Company's Request for a Premium Rate Increase in 46 States from 2003 through 2006**



Source: GAO analysis of company reported rate increase data collected by the California Department of Insurance.

Notes: Connecticut and the District of Columbia did not approve the proposed rate increase.

Data are based on company reports to the California Department of Insurance. However, in providing technical comments on a draft of this report, the Massachusetts Division of Insurance reported that the Division required the company to phase in the 50 percent increase over multiple years with increases not exceeding 20 percent in any one year.

Variation in state approval of rate increase requests may have significant implications for consumers. In the above example, if the initial, annual premium for the policy was, for example, \$2,000, consumers would see their annual premium rise by \$1,000 in Colorado, a state that approved the full increase requested; increase by only \$300 in New York, where a 15 percent increase was approved; and stay level in Connecticut, where the increase was not approved.<sup>40</sup> While a smaller number of states approved a lesser amount of the rate increase than requested compared to the 32 states that approved the full increase, 3 of the states approving

<sup>40</sup>Data on actual premium rates before and after the increase cited in fig. 1 were not included in the rate increase data maintained by the California Department of Insurance.

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lesser amounts cumulatively represented nearly 20 percent of all active LTCI policies in 2006. To the extent that states with a large share of the LTCI market regularly approve lower rate increases than the amounts requested, more LTCI consumers could experience smaller rate increases. Although state regulators in our 10-state review told us that most rate increases have occurred for policies subject to the loss ratio standard, variation in state approval of proposed rate increases may continue for policies protected by the more comprehensive standards. States may implement the standards differently, and other oversight efforts, such as the extent to which states work with companies, also affect approval of increases.

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## States in Our Review Oversee Claims Settlement Practices Using Consumer Complaints and Examinations, and Several States Are Considering Additional Protections

States in our review oversee claims settlement practices by monitoring consumer complaints and conducting market conduct examinations in an effort to ensure that companies are complying with claims settlement standards. Claims settlement standards in these states largely focus on timeliness, but there is notable variation in which standards states adopted and how states define timeliness. To identify violations of these standards, regulators from all 10 states in our review told us that they review consumer complaints and conduct examinations of companies' claims settlement practices, with regulators from 7 states reporting one or more examinations under way as of March 2008. State regulators in several states told us that they are considering additional protections related to claims settlement, with some states awaiting the outcomes of ongoing examinations to determine what additions may be necessary. For example, regulators from 4 states told us that their state is considering an independent review process for consumer appeals of claims denials.

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## States' Claims Settlement Standards Largely Focus on Ensuring Timely Practices, Though States Differ in Specific Standards Adopted and in Definitions of Timeliness

The 10 states in our review have standards established by law and regulations for governing claims settlement practices. The majority of the standards, some of which apply specifically to LTCI and others that apply more broadly to various insurance products are designed to ensure that claims settlement practices are conducted in a timely manner. Specifically, the standards are designed to ensure the timely investigation and payment of claims and prompt communication with consumers about claims. In addition to these timeliness standards, states have established other standards, such as requirements for how companies are to make benefit determinations.

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While the 10 states we reviewed all have standards governing claims settlement practices, the states vary in the specific standards they have adopted as well as in how they define timeliness. For example, 1 state does not have a standard that requires companies to pay claims in a timely manner. For the 9 states that do have a standard, the definition of “timely” the states use varies notably—from 5 days to 45 days, with 2 states not specifying a time frame. In addition, 2 of 10 states do not require companies to provide explanation of delays in resolving claims, and the 8 that do require companies to explain delays vary in how many days the state allows delays to go unexplained. Federal laws governing tax-qualified and Partnership policies do not address the timely investigation and payment of claims or prompt communication with consumers about claims. The absence of certain standards and the variation in states’ definitions of “timely” may leave consumers in some states less protected from, for example, delays in payment than consumers in other states. (See table 2 for key claims settlement standards adopted by the 10 states in our review and examples of the variation in standards.)

**Table 2: Claims Settlement Standards in Place in the 10 States in GAO’s Review**

	Number of states	Included in NAIC LTCI models	Examples of variation in standard
<b>Standards around timeliness</b>			
Timely communication with consumers about claims issues	10 <sup>a</sup>		State definitions of “timely” specified either 10 or 15 days and 5 states did not define “timely”
Affirm or deny liability on a claim within a reasonable amount of time	10 <sup>a</sup>		State definitions of “reasonable” varied from 15 to 40 days, and 6 states did not define “reasonable”
Timely investigation by companies of a claim	9 <sup>a</sup>		State definitions of “timely” specified either 15 or 30 days, and 5 states did not define “timely”
Timely payment of a claim	9 <sup>a</sup>		State definitions of “timely” varied from 5 to 45 days, and 2 states did not define “timely”
Provide consumers with necessary claims forms and instructions within a certain number of days after receiving notification of a claim	9 <sup>a</sup>		State standards specified either 10 or 15 days, and 1 state did not specify number of days
Provide a written explanation of a claim denial within a reasonable period of time	8 <sup>a</sup>	✓	State definitions of “reasonable” varied from 40 to 60 days, and 2 states did not define “reasonable”
Provide a reasonable written explanation of delay when a claim remains unresolved a certain number of days after receiving proof of loss	8		State standards varied in how much time can elapse before such notification is required from 15 to 45 days
<b>Other standards</b>			
Provide for a licensed or certified professional, such as a physician or social worker, to assess functional ability or cognitive impairment in making benefit determinations	10	✓	No significant variation in standard among states
Provide a description of the process for appealing claims in the policy language	9	✓	No significant variation in standard among states

Source: GAO review of state laws and regulations conducted from September 2007 through May 2008 and verified by states.

Note: The standards in this table are not intended to constitute a comprehensive list of all claims settlement standards affecting LTCI oversight.

<sup>a</sup>This standard is an explicit requirement in some states, while in other states it is encompassed in the definition of unfair claims settlement practices.

Given state variation, officials from four companies, which together represented 26 percent of the LTCI market in 2006, told us that they tailor their claims settlement practices nationwide to adhere to the most rigorous state standards. For example, officials from one company noted that they have adopted nationwide the most stringent state standard for timely payment of claims. Several officials added that they monitor changes in state standards in order to adjust their claims settlement practices. By tailoring their practices to adhere to the most rigorous state

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standards, companies may provide more uniform protection for consumers than would be provided under varying state standards.

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**States in Our Review Monitor Companies' Compliance with Claims Settlement Standards Primarily through Consumer Complaints and Examinations**

The states in our review primarily use two ways to monitor companies' compliance with claims settlement standards (1) reviewing consumer complaints and (2) conducting market conduct examinations. The first way the states monitor compliance is by reviewing consumer complaints on a case-by-case basis and in the aggregate to identify trends in company practices. Regulators in all 10 of the states we reviewed said that monitoring LTCI complaints is one of the primary methods for overseeing compliance with claims settlement standards.<sup>41</sup> When responding to complaints on a case-by-case basis, regulators in some states told us that they determine whether they can work with the consumer and the company to resolve the complaint or determine whether there has been a violation of claims settlement standards that requires further action. State regulators frequently resolve individual complaints by assisting consumers in obtaining payment. Regulators from 6 states told us that in response to complaints related to LTCI claims, state staff works with the company in question, for example, to determine if the consumer needs to provide additional documentation for a claim to be paid. In reviewing information on complaints related to LTCI from 3 states, we found that in 2006, about 50 percent of the 116 complaints related to either delays or denials eventually resulted in consumers receiving payment, with amounts in 1 state ranging from \$954 to \$29,910 per complaint.<sup>42</sup> Regulators in some states also resolve consumer complaints by providing explanation to consumers or their family members for why a claim was denied. Regulators from 6 states told us that consumers sometimes do not understand or are not aware of the terms of their policies. For example, although most policies include an elimination period, state regulators in 1 state noted that consumers often do not understand it and submit claims for services received during this period, which are subsequently denied by the company.

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<sup>41</sup>Across five states that provided complaint data from 2001 through 2007, 44 percent of consumer complaints were related to claims settlement issues in 2007.

<sup>42</sup>Not all states' information on complaints linked the reason for the complaint with the outcome of it.

Regulators from four states also told us that they regularly review complaint data to identify trends in company practices over time or across companies, including practices that may violate claims settlement standards. Three of these states review these data as part of broader analyses of the LTCI market during which they also review, for example, financial data and information on companies' claims settlement practices. However, regulators in three states noted that a challenge in using complaint data to identify trends is the small number of LTCI consumer complaints that their state receives. For example, information on complaints provided by one state shows that the state received only 54 LTCI complaints in 2007, and only 20 were related to claims settlement issues. State regulators told us that they expect the number of complaints to increase in the future as more consumers begin claiming benefits.<sup>43</sup> In our review of complaint information from five states, we did not find that an upward trend in the number of complaints has begun, though the information indicates that the proportion of complaints related to claims settlement issues has increased over time. Specifically, we found that from 2001 to 2007, the percentage of all complaints about LTCI that were related to claims settlement issues increased from about 25 percent (215 of 846) to 44 percent (318 of 721) (see table 3).

**Table 3: LTCI Complaints Related to Claims Settlement Issues Reported by Five State Departments of Insurance**

	2001	2002	2003	2004	2005	2006	2007
Number of LTCI complaints related to claims settlement issues	215	323	305	360	398	300	318
Total number of LTCI complaints	846	1305	1006	1043	982	716	721
Percentage of LTCI complaints related to claims settlement issues	25.4	24.8	30.3	34.5	40.5	41.9	44.1

Source: GAO analysis of complaint information from five state departments of insurance.

<sup>43</sup>Data on individual policies collected by NAIC from 23 companies that made up 78 percent of the LTCI market show that from 2004 to 2006 the total number of complaints related to LTCI reported to companies increased about 123 percent (from 1,785 to 3,983), with complaints specifically about claims issues increasing about 175 percent (from 708 to 1,945). However, the number of complaints reported to state departments of insurance fluctuated during the same time period—from 2,306 in 2004, to 2,938 in 2005, to 2,377 in 2006. For more information, see National Association of Insurance Commissioners, *Long Term Care Data Call & Analysis Report* (Kansas City, Mo.: May 2008).

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In addition to consumer complaints, the second way that states monitor company compliance with claims settlement standards is using market conduct examinations. These examinations may be regularly scheduled or, if regulators find patterns in consumer complaints about a company, they may initiate an examination, which generally includes a review of the company's files for evidence of violations of claims settlement standards. For example, one state initiated an examination of a company's consumer complaint files for 2005 through 2007 on the basis of three LTCI complaints made to the state. These complaints indicated a number of potential problems with the company's claims settlement practices, including delays in payment and improper claims denials. Some states also coordinate market conduct examinations with other states—efforts known as multistate examinations—during which all participating states examine the claims settlement practices of designated companies. If state regulators identify violations of claims settlement standards during market conduct examinations, they may take enforcement actions, such as imposing fines or suspending the company's license. As of March 2008, 4 of 10 states in our review reported taking enforcement actions against LTCI companies for violating claims settlement standards.<sup>44</sup> Regulators from one state, for example, told us that they fined one company \$100,000 for failure to promptly and properly pay LTCI claims.

As of March 2008, regulators from 7 of the 10 states reported having ongoing examinations into companies' claims settlement practices. Specifically, regulators from 2 states reported having an ongoing examination focused on a company's practices in their state, regulators from 2 states reported participating in ongoing multistate examinations, and regulators from 3 states reported having both types of examinations under way.<sup>45</sup> In addition to ongoing examinations, regulators in 1 state told us that the state is analyzing trends in claims settlement practices among the 14 companies with the largest LTCI market share in the state. If concerns are identified, regulators told us that this analysis may lead to a market conduct examination. Company officials that we spoke with noted

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<sup>44</sup>Some states may not have taken enforcement actions related to claims settlement practices as a result of several factors discussed by state regulators, including regulators proactively identifying problematic practices and an insufficient number of consumer complaints to establish that a company's action in one or more cases represents a general business practice.

<sup>45</sup>A multistate examination coordinated through NAIC in 2007 focused on a company's complaint and claims handling practices and resulted in fines, restitution, and a requirement for the company to improve its claims administration procedures.

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that states have increased their scrutiny of claims settlement practices since mid-2007, after media reports of consumers experiencing problems receiving payments for claims.<sup>46</sup> Officials in four companies we interviewed told us that their company had received requests for information about company claims settlement practices from several states. In addition, officials from three companies noted that states are examining companies' claims settlement practices in more detail than they had previously. For example, officials from one company said that the rigor of states' market conduct examinations has increased, both in terms of the number of case files state regulators examine and in terms of the scope of the information that regulators collect.

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### Several States Are Considering Additional Protections Related to Claims Settlement

Regulators from six of the states in our review reported that their state is considering or may consider adopting additional consumer protections related to claims settlement, such as additional standards. Of these six states, four have completed or expect to complete in-depth reviews of LTCI in their states, and two of the completed reviews have resulted in recommendations for additional claims settlement standards. For example, a report completed by Iowa in 2007 included a recommendation for adopting a standard requiring timely payment of claims by companies selling LTCI policies.<sup>47</sup> As of March 2008, regulators from two of the six states told us that they were awaiting the results of ongoing NAIC data collection efforts<sup>48</sup> or ongoing market conduct examinations before considering specific protections.

The additional protection most frequently considered by the state regulators we interviewed is the inclusion of an independent review process for consumers appealing LTCI claims denials. Regulators from four of the states in our review told us that their states were considering establishing a means for consumers to have their claims issues reviewed by a third party independent from their insurance company without having to engage in legal action. Further, a group of representatives from NAIC

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<sup>46</sup>See, for example, Charles Duhigg, "Aged, Frail and Denied Care by Their Insurers," *The New York Times*, March 26, 2007.

<sup>47</sup>Iowa Insurance Division, *Long-Term Care Insurance Study: A Report to the Governor and Lt. Governor* (Des Moines, Iowa: Sept. 2007).

<sup>48</sup>On behalf of NAIC, certain states requested data from companies, such as data on consumer complaints and claims paid and denied, to provide all state regulators with information to identify trends in recent LTCI activity that may need further investigation.

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member states was formed in March 2008 to consider whether to recommend developing provisions to include an independent review process in the NAIC LTCI models. Such an addition may be useful, as regulators from three states told us that they lack the authority to resolve complaints involving a question of fact, for example, when the consumer and company disagree on a factual matter regarding a consumer's eligibility for benefits. Further, there is some evidence to suggest that due to errors or incomplete information companies frequently overturn LTCI denials. Specifically, data provided by four companies we contacted indicate that denials are frequently overturned by companies during the appeals process, with the percentage of denials overturned averaging 20 percent in 2006 among the four companies and ranging from 7 percent in one company to 34 percent in another.

There is precedent for an independent review process for denied claims. For example, one state reported that an independent review process is available under its state law for appeals of denials of health insurance claims.<sup>49</sup> Further, officials from one company in our review told us that the company had started implementing an independent review option for its LTCI consumers, though it had not selected the third-party reviewer as of February 2008. Finally, the FLTCIP includes an independent review process. However, the FLTCIP process remains largely untested as, according to OPM officials, only three consumers had made appeals as of April 2008.

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## Agency Comments and Our Evaluation

We received comments on a draft of this report from NAIC. NAIC compiled and summarized comments from its member states, and NAIC officials stated that member states found the report to be an accurate reflection of the current LTCI marketplace. However, NAIC officials also reported that states were concerned that the report seemed to critique certain aspects of state regulation without a balanced discussion and seemed to be making an argument for certain reforms. In particular, NAIC officials noted that states said the draft report highlighted the differences in state regulation of rates and the fact that new regulations are not

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<sup>49</sup>In discussing the possibility of adding an independent review process, regulators in another state mentioned that the unique nature of LTCI would make such a process complicated, noting that determinations of benefit eligibility are more complex than for other types of insurance, such as health insurance.

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typically made retroactive. NAIC officials also noted that as in every other area of state regulation, state laws differ based on markets, consumer needs, and political realities. NAIC officials added that state lawmakers and regulators must balance many different factors when developing rules and one size often does not fit all. Our draft reported differences in states' oversight of rate setting and claims settlement practices without making any conclusions or recommendations. We reported both the extent to which NAIC model standards have been adopted and other standards and practices states have in place.

Further, NAIC officials noted that states expend considerable resources to educate consumers so that they make informed decisions. While this may be the case, our review was focused on the oversight of rate setting and claims settlement practices because of recent concerns in these areas. We did not review states' broader consumer education efforts related to long term care insurance.

Finally, certain NAIC member states provided technical comments, which we incorporated into the report as appropriate.<sup>50</sup>

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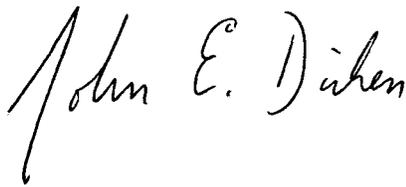
As arranged with your offices, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days after its issue date. At that time, we will send copies of this report to NAIC and other interested parties. We will also make copies available to others on request. In addition, the report will be available at no charge on the GAO Web site at <http://www.gao.gov>.

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<sup>50</sup>NAIC sent the draft report to all of its member states, and seven states provided technical comments. The states that provided technical comments were Florida, Louisiana, Maryland, Massachusetts, New York, Ohio, and Wisconsin.

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If you or your staffs have any questions about this report, please contact me at (202) 512-7114 or [dickenj@gao.gov](mailto:dickenj@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made major contributions to this report are listed in appendix II.

A handwritten signature in black ink that reads "John E. Dicken". The signature is written in a cursive style with a large initial 'J' and 'D'.

John E. Dicken  
Director, Health Care

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*List of Requesters*

The Honorable Herb Kohl  
Chairman  
Special Committee on Aging  
United States Senate

The Honorable Charles E. Grassley  
Ranking Member  
Committee on Finance  
United States Senate

The Honorable John D. Dingell  
Chairman  
The Honorable Joe Barton  
Ranking Member  
Committee on Energy and Commerce  
House of Representatives

The Honorable Hillary Rodham Clinton  
United States Senate

The Honorable Byron L. Dorgan  
United States Senate

The Honorable Amy Klobuchar  
United States Senate

The Honorable Barack Obama  
United States Senate

# Appendix I: Methodology for Selecting States for Case Studies

To conduct case studies on oversight of long-term care insurance (LTCI), we selected a judgmental sample of 10 states on the basis of several criteria. First, we selected states that together accounted for at least 40 percent of all policies in force in 2006 and represented variation in terms of the number of policies in force. In addition, we selected states that were both congruent and not congruent with the National Association of Insurance Commissioners (NAIC) LTCI model act and regulation to reflect the variation in state oversight of the product. We also selected states that represented geographic variation. Finally, we considered the number of complaints the state reported receiving related to LTCI in 2006. (See table 4 for the list of selected states.)

**Table 4: States Selected for Case Studies**

State	Number of policies in force <sup>a</sup>	Percentage of national policies in force	State ranking for number of policies in force	Fully adopted NAIC's models <sup>b</sup>	Number of consumer complaints in 2006 <sup>b</sup>
California	478,325	8.5	1	Yes	Over 100
Texas	325,673	5.8	2	No	Fewer than 100
Florida	319,657	5.7	3	Yes	Over 100
New York	288,991	5.1	4	No	Fewer than 100
Illinois	250,899	4.5	5	Yes	Over 100
Pennsylvania	233,855	4.2	6	Yes	Over 100
Washington	138,947	2.5	15	No	Over 100
Wisconsin	135,920	2.4	17	No	Over 100
Iowa	127,078	2.3	19	Yes	Fewer than 100
North Dakota	35,262	0.6	38	Yes	Fewer than 100
<b>Total</b>	<b>2,334,607</b>	<b>41.5<sup>c</sup></b>			

Source: GAO summary of data provided by LIMRA and NAIC.

<sup>a</sup>Data obtained from LIMRA, an industry research group that issues annual sales reports on LTCI. These data were obtained through a survey of companies selling LTCI. Because not all companies participated, the numbers likely understate the total number of policies in force in each state.

<sup>b</sup>Data obtained from NAIC.

<sup>c</sup>Numbers do not add due to rounding.

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# Appendix II: GAO Contact and Staff Acknowledgments

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## GAO Contact

John E. Dicken, (202) 512-7114 or [dickenj@gao.gov](mailto:dickenj@gao.gov)

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## Acknowledgments

In addition to the contact named above, Kristi Peterson, Assistant Director; Susan Barnidge; Krister Friday; Julian Klazkin; Rachel Moskowitz; and Sara Pelton made key contributions to this report.

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