CLIENT ALERT

# NYDFS Issues Report on the Long-Term Care Insurance Market

July 10, 2023


AUTHORS

**Kara Baysinger | Stephanie Duchene | Matthew J. Gaul | Allison J. Tam**
**Marisa L. Matays**


On June 7, 2023, the New York State Department of Financial Services ("NYDFS") issued a report entitled, "Long Term Care Insurance: Looking Back and Thinking Ahead" (the "LTC Report").[1] The regulator states that the need for affordable long-term care ("LTC") insurance[2] is "perhaps more important than it has ever been" due to our aging population, which has increased demand for LTC services, and the rising cost of such services. The LTC industry is facing continued challenges for several reasons, including higher premiums, low lapse rates, and the departure of many LTC insurers from the market, while some of the remaining carriers face financial difficulty, threatening their ability to pay future benefits. The LTC Report is the product of Superintendent Adrienne A. Harris' effort to analyze the LTC insurance market with the following goals in mind: (i) to understand why the market is in a state of crisis on a nationwide basis, and (ii) to create a viable path forward for aging consumers who need LTC insurance benefits and insurance companies that have incurred significant losses as a result of offering these products.

1 *See* https://www.dfs.ny.gov/system/files/documents/2023/06/dfs_ltc_report_20230607.pdf

2 LTC insurance is a "type of insurance policy designed to cover the future costs of care associated with a chronic condition or disability that requires extended or long-term care. Long-term care … provides hands-on assistance or supervision to individuals who have functional or cognitive impairments associated with basic activities of daily living (ADLs; e.g., bathing, dressing, eating, mobility, toileting, and continence). If a policyholder becomes eligible for long-term care, the [LTC insurance] policy provides a daily cash amount (up to a maximum limit) that the policyholder may use to cover services." "*Long-Term Care Insurance: Overview*," by Congressional Research Service, updated November 22, 2022.

## NYDFS Issues Report on the Long-Term Care Insurance Market

### Background

LTC services are very expensive and many older individuals rely on fixed incomes which makes them “particularly vulnerable to cost increases.” The funding for LTC services comes from out-of-pocket payments, Medicaid and LTC insurance (or a combination thereof). Medicare does not cover LTC expenses. Funding issues have contributed to the difficulties in the LTC industry because many consumers cannot afford the cost of LTC services or LTC insurance premiums. In addition, there is risk associated with reliance on Medicaid, the largest payer of LTC expenses.

The LTC Report attributes today’s problems to inaccurate pricing of LTC insurance policies, which has led to premium rate increases and insurers leaving the market. The report indicates that several factors contributed to this situation, including:

- *Lack of Historical Claims Data When Policies Were First Issued*. In the late 1980s, when insurers first offered LTC insurance, there was no historical claims data to use for pricing assumptions (referred to as “experience data”). In addition, “[b]ecause of the uniquely long ‘tail’ of the risk associated with LTC insurance,” policyholders did not submit claims until many years after the early policies were issued. As a result, there was no experience data available for several decades and “premium rates [for LTC insurance] were substantially underpriced for many years.”

- *Cost of LTC Services*. When LTC insurance policies were initially priced, the assumptions relating to the cost of LTC services proved to be inadequate.

- *Investment Income*. An unexpected and sustained low-interest rate environment that began after many LTC policies were written led to lower investment returns on the fixed income securities backing the policies.

- *Renewability*. Most insurance policies renew annually at which time they are subject to premium increases. However, LTC insurance is a guaranteed renewable product (i.e., a policyholder has the right to continue the policy as long as premiums are paid). LTC policies generally include provisions allowing for premium increases with regulatory approval, but neither the regulators nor the insurers writing LTC coverage expected that frequent large increases would be necessary.

By the mid-2000s, LTC insurers began to file for rate increases, but regulators denied many requests because they were focused on protecting consumers from the negative impact of a rate increase. And in the instances where approvals were granted, regulators approved rate increases at lower levels than had been requested.

In terms of the impact on sustainability, many insurance companies have stopped selling LTC insurance during the past 15 years. In New York, 38 insurance companies were servicing existing LTC insurance policies as of 2021, but only five of those companies continue to offer new LTC insurance products.

## Looking Ahead

The NYDFS has indicated in the LTC Report that its goal is to ensure the viability of the LTC insurance market. The industry needs to be stabilized so LTC insurers remain solvent and consumers receive their benefits; premium increases have to reflect the escalating cost of LTC services while older consumers with limited funds need to be protected; and LTC insurers must remain in the market. In furtherance of its commitment to the LTC insurance market, the NYDFS has taken a number of steps, as described below.

*Using Creative Solutions to Mitigate the Impact of Rate Increases*

- *Developing a "Landing Spot" Option*. The NYDFS is working with LTC insurers to create options that promote affordability so consumers can avoid having to cancel their LTC insurance policies. In one such collaboration, a "landing spot" concept was developed to "allow policyholders to mitigate, either partially or fully, large LTC insurance premium rate increases. Policyholders were given a fixed set of options — the so-called landing spot — to lower policy benefits as an alternative to paying a higher premium rate. In order to be authorized to offer this mitigating option, insurers had to demonstrate to [the NYDFS] that the landing spot option was actuarially equivalent to the approved premium rate increase."

- *Tiered Rate Increases*. The NYDFS has approved tiered rate increases based on the age range of policyholders. With respect to one particular product, in August 2021, the NYDFS approved an 80% rate increase for policyholders aged 68 or younger, a 45% rate increase for policyholders aged between 69-74, and no increase for policyholders aged 75 or older. The NYDFS also required a phase-in period and a lifetime premium rate guarantee so the relevant LTC insurance policies will not be subject to future rate increases.

- *Cost-Sharing Options*. The NYDFS recently approved a LTC insurance product that allows consumers to choose from varying levels of cost-sharing (e.g., deductibles, coinsurance). It will continue to explore other policy options that provide consumers with different benefit levels and costs.

*Updating Premium Rate Approval Methodologies*. The NYDFS intends to refine its methodology for reviewing rate increase requests for LTC insurance, which is a more feasible exercise today because of the existing policyholder data. The NYDFS is taking a look at its own methodology as well as the approaches in the NAIC's Long Term Care Insurance Multistate Rate Review Framework. The framework strives to create a voluntary and efficient multi-state actuarial review process that encourages insurers to submit their LTC insurance products for multi-state review. The NYDFS is also considering the work of the Society of Actuaries and other experts in the field.

If you have any questions regarding this client alert, please contact the following attorneys or the Willkie attorney with whom you regularly work.

**Kara Baysinger**
415 858 7425
kbaysinger@willkie.com

**Stephanie Duchene**
310 855 3066
sduchene@willkie.com

**Matthew J. Gaul**
212 728 8261
mgaul@willkie.com

**Allison J. Tam**
212 728 8282
atam@willkie.com

**Marisa L. Matays**
212 728 8617
mmatays@willkie.com



Willkie Farr & Gallagher LLP is an international law firm with offices in Brussels, Chicago, Frankfurt, Houston, London, Los Angeles, Milan, New York, Palo Alto, Paris, Rome, San Francisco and Washington. The firm is headquartered at 787 Seventh Avenue, New York, NY 10019-6099. Our telephone number is (212) 728-8000 and our fax number is (212) 728-8111. Our website is located at www.willkie.com.