State of Wisconsin / OFFICE OF THE COMMISSIONER OF INSURANCE

Jim Doyle, *Governor*
Sean Dilweg, *Commissioner*

Wisconsin.gov

125 South Webster Street • P.O. Box 7873
Madison, Wisconsin 53707-7873
Phone: (608) 266-3585 • Fax: (608) 266-9935
E-Mail: ociinformation@wisconsin.gov
Web Address: oci.wi.gov

Office of the Commissioner of Insurance
Life Advisory Council

Minutes
Tuesday May 6, 2008
10:00 a.m. – 12:30 p.m.
125 South Webster Street
Room 227
Madison, WI 53707

Council Members Attended: Steve Stribling, Northwestern Mutual Life; Brad Bodden, American Family Insurance; Sarah Orr, CWAG; Sharon Brosnan, Thrivent; Jill Shilbauer, WEA Trust.

OCI Staff Attended: Eileen Mallow, Jim Harris, Mike Honeck, Sue Ezalarab.

Other Parties Attended: Jason Johns, Coventry; Bill Toman, Quarles & Brady; John Gerni, ACLI; Bruce Ferguson, ACLI; Vaughn Vance, WEA Trust; Connie O'Connell, WCLI; Ron Kuehn, DeWitt Ross & Stevens.

I. Approval of October 30, 2007 and February 5, 2008 minutes
Steve Stribling, Chair

The minutes were approved for posting.

II. Discussion on the NAIC Viatical Settlement Model Act and the NCOIL Life Settlements Model Act
Bruce Ferguson, ACLI
Marty Obrien, NAIFA

Mr. Ferguson provided several handouts for the council to follow along.

There are two models that currently support viatical settlements: the NCOIL Life Settlements Model Act and the NAIC Viatical Settlement Model Act.
The NAIC model:

- Deters Stoli by prohibiting settlement of life insurance policies for five years from policy issuance when the policy is purchased for the purpose of selling into the secondary market.
- Exempts legitimate life settlement transactions based on insurable interest and financing on insurance values.

- Address settlement broker conflicts of interest and require settlement broker compensation disclosure.
- Requires disclosures to insured, insurers, and insurance regulator.
- Expands regulatory discretion beyond settlements involving terminally or chronically ill individuals to invalidate transactions.

The NCOIL Life Settlements Model Act:

- Does NOT have 5 year prohibition language.
- Definition of "life settlement contract" also captures trust arrangements where STOLI has been masked.
- Definition of "Stranger Oriented Life Insurance."
- Violaton of STOLI is a fraudulent settlement act.
- Disclosures to consumer, insurer, and insurance regulator.
- Premium Finance Restrictions.

With STOLI, an investor "loans" the amount of the premiums for two years to the insured. At the end of two years, the insured transfers the policy to the investor in exchange of forgiveness of "loan." In some cases, the insured receives cash payment in connection with the transaction. Seniors regret the transaction because the money received in the transaction is taxable. Companies initiating the transactions are trying to rescind policies if the insurable interst was missing between the insured and third party.

Iowa and Ohio laws currently use the NAIC model as a platform and adds in NCOIL's model. Iowa has adopted the NAIC model, but uses the NCOIL definition of STOLI. . They also highlight the following: Prohibition of the settlement of life insurance policies for five years from policy issuance when the policy is purchased for the purpose of selling into the secondary market, a 60-day waiting period, disclosures, and provisions in the policy have to be identified in writing.
The ACLI is supportive of both NCOIL and NAIC. However, they oppose the NAIC model without the five year restriction and feels STOLI's definition is narrow at NCOIL.

By the end of 2008, about 17 states will adopt one or both of the methods. ACLI praised Wisconsin for taking on the issue. They feel it is important to adopt one of the models or a hybrid of the model to protect consumers and for the intergrity of the life policy's original purpose.

Marty Obrien elablorated further on Life Settlements and provided more specific actions states are taking. NAIFA is more in favor of Life Settlements and not STOLI. Mr. Obrien is in favor of doing a hybrid model. The NAIC model does not elminate STOLI. Minnesota has taken a hybrid approach with a strong comprehensive bill, but will not pass until sometime in 2009. Minnesota and Ohio have more current legislation to reference then most other states. Ohio's legislature may pass this year yet. The underlying pressure is due to the shifting demographics in the aging population. The two year versus five-year issue is a compromise to ensure insureds understand their needs are being met before making a decision to take a viatical settlement. Additionally, the five-year rule takes away the economic incentive for the prupose of settling the policy. This is the regulator a definition to help monitor practices. The opposition to the five-year limit and agruement for a person to sell their personal limitation is the issue of the individual ability to sell your personal property rights. Insurers need to do a better underwriting to notice transactions (i.e. amendments) to monitor activity and due diligence.

Washington DC: There is legislation in progress, but it is unclear how strigent their rule will be at this point.

Kentucky: has a watered down rule.

New York: Is very strong on the issue. They are including a two-year provision but also have strong language on financial transactions.

Louisiana: NCOIL was introduced but no bill came out of committee at this point.

Alabama: There is opposition, but will probably not take on any issues at this point.

Georgia: There is political opposition at this point but it is not due to the bill.

Comments from the Council:

- The Wisconsin law should be reviewed to see what is needed to protect the consumer. The target is to start drafting in December.
- The next meeting should include this topic to review actual rule/ model language to see what would fit Wisconsin's needs.

III. Long Term Care Partnership Program Administrative Rule
Guenther Ruch, OCI

Guenther Ruch provided a summary of WI Act 20 effective as of October 2007 which has authorized that qualified Long Term Care policies can be used on a dollar for dollar basis for care. The filing with CMS was done in January 2008 to start the state process. The subgroup for the Long Term Care Partnership rule has finished meeting. A draft rule has been prepared for the hearing on May 12, 2008. The state plan will be implemented on January 1, 2009. The goal of the rule is to have total transparency. Below are issues the Subgroup reviewed:

Two issues with training:

- Agents selling Long-term care insurance (LTCI) will need to have their training completed by January 1, 2009 to continue selling or to start selling LTC. This is due to the language drafted in Act 20.
- If the training is not completed, then agents cannot sell LTCI at all.

To implement, OCI and AHIP staff worked in conjunction with DHFS Staff to ensure the rule issues were addressed and the training needs were identified. For the training requirements:

- 8 hours of initial agent training with 2 hours that have to be state specific
- 4 hours of ongoing agent training.
- DHFS is designing the course work for the state specific training and will have it available on online. OCI will link with their information.

Additionally, two other issues the subgroup discussed included policy exchanges and reciprocity. Regarding Policy Exchanges, those who have LTCI may currently have policies meeting all the necessary criteria of a qualified LTC Partnership Policy, with the exception of the issue date. Notices will go out informing insureds they qualify. Insurance companies will need to report the data to OCI. Those who do not qualify, for example, having no inflation protection will be viewed as a replacement. Companies will have the ability to amend or add a rider to policies to make it a qualified LTC Partnership policy.

Policies will be required to have inflation protection in the following cases:

- Individuals age 60 or under: compounded at 3%
- Individuals ages 61 to 75: at least simple interest
- Individuals over the age of 75: no interest requirement, but an offer should be made for interest.

The issue of reciprocity is a difficult issue for Wisconsin. For example, if an individual moves from Florida to Wisconsin, then the policy has to be issued in Wisconsin to qualify for the policy. Group policies and Exchanges: will be exempt on certain group policies and language will be drafted in the rule.

IV. Model Audit Rule Update

Kim Shaul, OCI

Commissioner Dilweg created the Model Audit work group this spring to review the NAIC Model Audit Rule and discuss how to implement it efficiently in Wisconsin. The purpose of the rule is to establish internal controls for non-public insurance companies similar to the federal Sarbanes-Oxley Act passed in 2002. The group that met did determine there is a need for clarity on independent auditors and how to form an independent audit committee. The Commissioner saw this as an ideal use of the rule making process and the opportunity to speak with the industry, councils, and committees to gain input. This rule is likely to be an accreditation standard.

V. Annuities Sales Supervision Advisory Committee Update

Kim Shaul, OCI

In the April 22, 2008 Annuity Sales Supervision Advisory Committee meeting presentations were given by FINRA and Jim Mumford of the Iowa Insurance Department. The work of the committee is serving as a framework for the recently established NAIC Suitability of Annuity Sales Working Group. There initially maybe some duplication as the national working group reviews the issues surrounding Annuities. The Wisconsin committee continues to work on the development of new principles surrounding annuity sales and this work will be shared with the NAIC working group. Updates will be given at the Life Council meetings on the progress of both the Wisconsin Annuity Supervision Advisory Committee and the NAIC Suitability of Annuity Sales Working Group.

VI. Senior Designations

Commissioner Sean Dilweg, OCI
Kim Shaul, OCI

- Senior Investment Protection Act of 2008: S 2794
- Senior Alert
- Bulletin

Senator Kohl introduced the Senior Investment Protection Act of 2008. The purpose of the bill is to protect seniors and establish grants to states to prosecute and investigate inappropriate financial products sold or marketing practices used. The NAIC is taking action through its “A” Committee to develop a model act for states to adopt uniform standards in the use of designations by insurance producers selling life and annuity products to seniors. The NAIC “A” Committee recently issued a bulletin in regard to senior designations and Wisconsin issued a bulletin as well with a consumer alert. The consumer alert was to remind agents of proper conduct when soliciting sales and not to misrepresent their designations.

VII. Amendment to the NAIC Unfair Trade Practices Act

Kim Shaul, OCI

The NAIC Unfair Trade Practices Act involves life insurance. The issued developed when a company in Florida declined an application for life insurance based on the applicants expected travel to foreign jurisdictions. The NAIC “A” committee reviewed the issue. A compromise was reached at the NAIC Spring National meeting to amend the NAIC unfair trade practices model act addressing underwriting criteria for foreign travel. From OCI’s perspective, the market in Wisconsin is doing well and the office has not received any complaints.

Comments from the Council:

- One concern is the risk classfication. Insurers are going to charge appropriately for the risk. Underwriting is not different on foreign travelers' verus skydiving.
- Past experience has been to deny policies but only once the reasons for denial has been explained to the customer.
- Underwriting assigns risk to the policy. The model is too restrictive for life insurers.

VIII. Interstate Compact
Eileen Mallow, OCI

Ms. Mallow provided a handout on the compact. So far 31 states have joined the compact. This compact speeds up the process for filling forms with states and reduces filing costs. Sue Ezalarab will be representing Wisconsin in this process. It is asked that companies join committees to ensure representation. The following states are looking to pass the compact in 2008: New York, South Carolina, and Louisiana. California will be reviewing the compact this fall. Connecuit may adopt the model, but their legislature is still in the process of reviewing the model.

IX. Other Business
Steve Stribling, Chair

No other business was discussed.

X. Next Meeting
August 5, 2008