Statement of Charles N. Kahn III

Introduction

Chairman Grassley, Members of the Committee, I am Charles N. Kahn III, President of the Health Insurance Association of America (HIAA). HIAA is the nation's most prominent trade association representing the private health care system. Its 294 members provide health, long-term care, dental, disability, and supplemental coverage to more than 123 million Americans. It is the nation's premier provider of self-study courses on health insurance and managed care.

I appreciate this opportunity to speak to you today about HIAA's longstanding efforts to help Americans protect themselves against the financial risk of long-term care needs - and to improve their long-term care choices - through private insurance. The long-term care insurance market has grown an average of 21 percent each year between 1987 and 1997. To date more than 100 companies have provided long-term care coverage to more than 6 million Americans. Quality private insurance coverage is offered through a variety of mechanisms, including individual coverage, employer-sponsored arrangements, and riders to life insurance plans.

Before I go any further, I want to thank you emphatically, Mr. Chairman, for your leadership on long-term care insurance issues - and particularly for your sponsorship of the "Long-Term Care and Retirement Security Act of 2000." I also want to express my sincere gratitude to the other Members of this Committee - Senators Jeffords, Hagel, and Bayh - for their cosponsorship of this measure.

Let me begin by summarizing the most important points of my testimony:

- Long-term care is the largest unfunded liability facing Americans today, and despite the tremendous need for long-term care protection, most Americans remain unprepared to meet their future long-term care needs.
- There is a growing and critical role for private insurance to provide a better means of financing long-term care for the vast majority of Americans who can afford to protect themselves. Continued growth of the market will protect millions of Americans against the financial risk of long-term care need, enhance their long-term care choices, and help reduce reliance on scarce public dollars.
- The long-term care insurance market is growing and the products that are available today are affordable for many middle class Americans and of high quality.
- Both the federal and state governments have a key role to play - through tax policy, consumer protection, and public education - in improving access to quality long-term care insurance coverage.
- HIAA has joined with AARP in calling on this Congress to enact legislation to provide a tax credit to individuals and families with current long-term care need and to encourage private long-term care coverage against future need through an above-the-line deduction. HIAA supports Senator Grassley's legislation to enact these proposals, which would also strengthen federal long-term care insurance consumer protections.
- HIAA has an extensive history of supporting public policies aimed at maximizing the benefits that long-term care insurance can bring to consumers, caregivers, and government treasuries - including the development and implementation of long-term care insurance consumer protections.
- HIAA supports all the mandatory provisions of the 2000 National Association of Insurance Commissioners (NAIC) Long-Term Care Model Act and Regulation. HIAA also supports the adoption of the 2000 Model by the states. We believe the 2000 Model will go a long way toward addressing the long-term care insurance rate stability concerns of our industry, regulators, consumers, and this Committee.

- In conjunction with the establishment of an above-the-line federal income tax deduction for long-term care insurance premiums, HIAA supports updating the long-term care insurance consumer protection provisions of the Health Insurance Portability and Accountability Act (HIPAA) of 1996 by reference to the appropriate components of the 2000 NAIC Model.
- It is imperative, however, that the incorporation of components of the 2000 NAIC Model preserve the appropriate and distinct role of the states in the regulation of insurance.

Background

Long-term care is the largest unfunded liability facing Americans today, and despite the tremendous need for long-term care protection, there is a clear lack of adequate planning for it. Unless Congress begins now to take steps to address the looming long-term care crisis, an aging "boomer" generation will overwhelm our nation's patchwork long-term care system and leave millions of Americans unprepared for the heavy financial and emotional burden of long-term care. In 2020, one of six Americans will be age 65 or older - 20 million more seniors than today. By 2040, individuals 85 and older (the group most likely to require long-term care) will more than triple to over 12 million.

Today, fully 30 percent of long-term care costs in this country are paid for by the individuals who need long-term care or their families. But without substantial assistance, the full cost of long-term care is out of reach of most families. The average cost of a one-year nursing home stay is over $46,000 - and growing. Helping people pay for these services directly and helping them purchase quality insurance products should be part of our nation's answer to this long-term care need.

The Private Long-Term Care Insurance Market Today

The long-term care insurance market is growing, and the policies that are available today are affordable for many Americans, including middle income Americans. And the benefits offered are of very high quality. There is a critical role for private insurance to provide a better means of financing long-term care for the vast majority of Americans who can afford to protect themselves. Continued growth of the market will protect millions of Americans against the financial risk of long-term care need, improve their long-term care choices, and help reduce reliance on scarce public dollars. HIAA estimates reveal that, to date, more than 100 companies have sold over 6 million long-term care insurance policies, and the market has experienced an average annual growth of about 20 percent. These insurance policies include individual, group association, employer-sponsored, and riders to life insurance policies that accelerate the death benefit for long-term care.

A recent survey of long-term care insurance purchasers reveals positive trends in the long-term care coverage being purchased today:

- Middle income Americans continue to find long-term care insurance coverage affordable. More than a third of purchasers had annual incomes under $35,000.

- Coverage being purchased today is much more comprehensive than it was just a few years ago. The proportion of dual-coverage policies (i.e., those that cover both institutional care and home care) grew from 37 percent in 1990 to 77 percent in 2000.

- Over the past five years, the average daily nursing home benefit has increased by 28 percent, which is higher than the rate of inflation.

- The difference between the daily benefit paid in institutional settings and that paid in home care settings has narrowed significantly. The average daily benefit for home care has grown by 36 percent over the five-year period.

- There is also a growing trend toward the purchase of compound inflation protection. This trend probably reflects the increase in younger buyers, who are more likely to need inflation protection.

The Employer-Sponsored Long-Term Care Insurance Market

The growth in employer-sponsored plans during recent years is particularly promising. Employer plans offer the opportunity to reach a large number of people efficiently during their working years when premiums are more affordable. Enrollment experience shows that the average age of employees electing this coverage is 43. This is strong evidence that with education and availability, younger people can and will purchase long-term care protection. Most of these plans offer coverage to the elderly as well by including retired employees and their spouses and parents of the employee or employee's spouse.

By the middle of 1998, more than 2,100 employers were offering a long-term care insurance plan to their employees and retirees. There were more than 600 employer-sponsored plans introduced in 1997 and the first half of 1998. Since June 1990, many small employers (between one and 500 employees) have started offering long-term care insurance. This number has increased dramatically, rising from 58 in 1990 to more than 1,200 by mid-1998. This group represents over 60 percent of all employers offering long-term care coverage to their employees and/or retirees. There also have been substantial increases in the number of medium- and large-sized employers that offer long-term care coverage.

The employer-sponsored long-term care insurance market got a very significant boost this year with the recent congressional passage of "The Long-Term Care Security Act" (H.R. 4040). HIAA applauds Congress for passing this important measure. The Long-Term Care Security Act will help millions of federal employees, military personnel, retirees, and dependents meet their long-term care needs through quality private insurance coverage. The measure will also make the federal government - the nation's largest employer - a model for private sector employers by encouraging them to offer long-term care coverage to their employees and dependents.

Long-Term Care Insurance Rate Stability and Lapse Rates

The vast majority of companies currently offering long-term care insurance have not increased premiums on policies that they have developed and priced. There have been cases of long-term care insurance rate instability. However, these have generally occurred in instances where an insurer has continued coverage of products acquired from other companies that have left the long-term care insurance market. Although long-term care insurance rates have generally been stable, limited cases of rate instability have raised the concerns of consumers, regulators, and lawmakers. Therefore, HIAA has taken a leadership role in working with the NAIC, other industry trade groups, and consumer representatives to craft improvements to NAIC Long-Term Care Models to address these issues.

For more than ten years, HIAA has worked to improve long-term care insurance products and protect long-term care insurance consumers. HIAA has carried out research to provide crucial information for long-term care insurers as they develop new policies or revise their assumptions about the future. HIAA has completed three major consumer surveys to determine the factors and reasons behind consumer decisions to buy - or not to buy - long-term care insurance coverage. These surveys have been instrumental in the development of NAIC suitability provisions that provide standards for appropriate long-term care insurance purchases. HIAA fully supports the NAIC suitability provisions. Moreover, it is critically important that each company develop and follow some criteria so that policies are not sold in cases where there is no need, insufficient ability to maintain premium payment, or some other reason why a purchase may not be suitable.

HIAA has also published actuarial data regarding long-term care insurance lapse experience in both the individual and employer-sponsored markets. This information has been an important source for tracking and understanding the improvements in long-term care insurance lapse rates. HIAA estimates that actual lapse rates for individual long-term care insurance policies are below five percent annually. For employer-sponsored coverage we estimate lapse rates below three percent annually. These figures exclude the roughly one to two percent of policy lapses due to the death of the policyholder.

Current pricing of long-term care insurance, as we understand it, generally reflects assumptions that 70 percent or more of policies issued will still be in force after eight years. A substantial portion of the 30 percent of "terminated policies" will have lapsed because of the death of the policyholder. It is important to note that the average lapse rates of individual long-term care insurance policies are comparable to, if not lower than, those for most individually sold life and health insurance products.

Helping Americans Through Long-Term Care Tax Relief

The enactment of the long-term care insurance tax clarifications in The Health Insurance Portability and Accountability Act (HIPAA) of 1996 were very helpful, but they are not enough. HIPAA's long-term care insurance tax benefits for premiums apply primarily to employer-sponsored long-term care coverage. But 80 percent of long-term care insurance is individual coverage. Under current tax law, an individual purchasing a long-term care policy, who is not self-employed, gets to deduct premiums only if he or she itemizes deductions and only to the extent medical expenses exceed 7.5 percent of adjusted gross income. Only about 4.5 percent of all tax returns report medical expenses as itemized deductions.

Under current law, tax benefits can range from a full exclusion from income if one's employer pays the premiums to no tax benefit if an individual pays and does not have sizeable medical expenses. These disparities lead to inequitable results. For many, the current law's tax deduction is illusory.

Strengthening federal tax incentives for private long-term care insurance would help expand private long-term care insurance coverage and reduce the burden on public programs. Last year, HIAA commissioned researchers Marc A. Cohen, Ph.D. of LifePlans, Inc. and Maurice Weinrobe, Ph.D. professor of economics at Clark University, to examine the impact that a 100 percent "above-the line" federal income tax deduction for long-term care insurance premiums would have on the net cost of long-term care coverage to taxpayers, the expansion of coverage, and Medicaid spending for long-term care. Cohen and Weinrobe concluded that the above-the-line federal tax deduction would significantly increase long-term care insurance coverage and that the resulting savings in Medicaid spending would more than pay for the foregone tax revenues. Specifically, they estimate that the above-the-line deduction would:

- reduce long-term care insurance premium costs, on average, by 19 percent;
- spur the purchase of additional long-term care coverage by 14 - 24 percent above current growth; and
- generate more than enough future Medicaid savings from the expansion of private long-term care coverage to offset the cost of the tax deduction for these policies.

Thus, as individuals are encouraged to assume greater personal responsibility for meeting their future long-term care needs by purchasing private insurance, the fiscal pressures on the federal government and state governments will decline. This will help assure that the private sector piece of the long-term care financing puzzle will play an ever-growing and critical role in helping to address this important social policy issue.

What Difference Does Private Long-Term Care Coverage Make?

In addition to the peace of mind of knowing that there will be sufficient resources to pay for long-term care if needed, private long-term care coverage can bring significant improvements in quality of life. Recent studies of policyholders, claimants, and informal caregivers show that the presence of long-term care insurance can:

- delay or prevent institutionalization;
- afford a greater choice of long-term care services and providers;
- enable easier access home care and/or assisted living;
- ease the financial, physical, and emotional burdens on families providing care in the home; and
- preserve assets for heirs.

Earlier this year, the U.S. Department of Health and Human Services (HHS), Office of Disability, Aging, and Long-Term Care Policy (DALTCP) made public "A Descriptive Analysis of Patterns of Informal and Formal Caregiving among Privately Insured and Non-Privately Insured Disabled Elders Living in the Community." This analysis is based on interviews with nearly 700 long-term care insurance claimants and informal caregivers. It presents the first systematic study of the practical benefits of private long-term care insurance coverage to policyholders and their families. Among the findings:

- The vast majority of claimants (86 percent) is satisfied with their policy and most (75 percent) had no difficulty understanding what their policy covered.
- About 90 percent of all individuals filing claims had no disagreements with their insurance companies or had a disagreement that was resolved satisfactorily.
- About 60 percent of claimants indicated that without their policy they would not be able to afford their current level of services and would have to consume fewer hours of paid care.
- Many also indicated that without their policy benefits, they would have to rely more on informal supports.
- About half of all claimants and informal caregivers indicated that without private insurance, they would have to seek institutional alternatives - nursing home care or assisted living facilities.
- About two in three informal caregivers indicate that the presence of private insurance benefits has reduced their level of stress.

HIAA/AARP Cooperation to Strengthen Access to Long-Term Care and Long-Term Care Insurance Consumer Protections

In March, HIAA joined AARP in calling for federal legislation to enact both an above-the-line deduction for long-term care insurance premiums and a tax credit of up to $3,000 for those with long-term care needs (or their caregivers). Working with HIAA and AARP, Senators Charles Grassley (R-IA) and Bob Graham (D-FL), along with Representatives Nancy Johnson (R-CT) and Karen Thurman (D-FL) in the House of Representatives, introduced the Long-Term Care and Retirement Security Act of 2000 (S. 2225/H.R. 3872). This legislation would:

- phase-in a 100 percent above-the-line tax deduction for long-term care insurance premiums;

- phase-in a $3,000 tax credit for those with current long-term care needs (or their caregivers);

- allow long-term care insurance to be offered under cafeteria plans and flexible spending arrangements (FSAs); and

- strengthen federal long-term care insurance consumer protections.

HIAA strongly supports the Long-Term Care and Retirement Security Act of 2000 and we continue to work for its enactment this year.

NAIC Long-Term Care Insurance Model Regulation

HIAA has a long history of working closely with the NAIC on models for long-term care insurance regulation. We supported all of the mandatory provisions of the Long-Term Care Insurance Model as it stood before the recent changes were adopted. HIAA also supported, back in 1996, the incorporation of the relevant components of a previous version of the model into the long-term care insurance consumer protection provisions of HIPAA.

Since the enactment of HIPAA, we have continued to support NAIC efforts in three areas:

- protecting the equity of policyholders in the event of a premium rate increase;
- reducing the potential for premium rate increases; and
- improving consumer disclosure regarding the history of premium rate increases for a particular company and more clearly alerting applicants about the potential for future rate increases.

Based on work begun in the early 90's, in 1998 the NAIC added to the Long-Term Care Model a requirement to protect the equity of policyholders in the event of a significant premium rate increase. The requirement, known as "contingent benefit upon lapse," afforded those applicants who declined the nonforfeiture benefit (and the premium cost that the nonforfeiture benefit adds) some recourse in the event of a substantial increase or series of increases (e.g. decreasing the amount the policy pays per day of care or converting to a policy with a shorter duration of benefits) in the face of a significant increase in their policy premiums. HIAA was involved throughout the development of the contingent benefit upon lapse Model requirement and supported its addition to the Model.

On August 17, the NAIC adopted an updated Long-Term Care Insurance Model Regulation. The updated model offers states a new regulatory mechanism intended to guarantee stable long-term care insurance premiums. In brief, with respect to a state's regulation of premium rates, the recently updated NAIC Long-Term Care Insurance Model Regulation:

- Eliminates the use of loss ratio requirements on initial rate filings in order to increase margins to economically appropriate levels, thereby reducing the potential for future rate increases.

- Substantially increases the portion of any additions to the initial premium that must be paid out as LTC benefits by the insurer.

- Requires reimbursement to policyholders of premiums paid for unnecessary rate increases.

- Authorizes review and approval by the state insurance commissioner of a company's administration and claim practices.

- Provides that companies can be required to provide policyholders with the option to escape rate spirals by replacing or converting existing coverage, without underwriting, to a comparable product currently being sold.

- Authorizes a state's insurance commissioner to ban a company from the marketplace for up to five years if the company persistently files inadequate initial premium rates.

- Requires a company to provide actuarial certification that no rate increases are anticipated.

In addition, the revised model adds the following provisions for disclosure to consumers regarding the potential for premium rate increases:

- Requires disclosure of rate increase histories for the past 10 years.

- Specifies information that companies must provide to applicants for long-term care coverage.

- Requires signed acknowledgement by applicants of potential rate increases.

- Strengthens requirements for agent training and licensure.

HIAA worked alongside the NAIC throughout the development and adoption of these amendments to the Long-Term Care Insurance Model Regulation. Just in the past three months, HIAA has consulted with the working group that has developed a guidance manual to assist states in their review of the required disclosure information. The manual includes standards for language and examples of acceptable and unacceptable disclosures.

HIAA supports the mandatory provisions of the 2000 NAIC Model and its adoption by the States. We expect formal endorsement when our Board of Directors meets later this year. HIAA also supports the use of the appropriate components of the 2000 NAIC Model to strengthen the consumer protection provisions of HIPAA. However, as members of this Committee - and others in Congress - consider linking the 2000 NAIC Model to federal law, HIAA urges that you take care to preserve the appropriate and distinct role of the states in the regulation of insurance.

NAIC Long-Term Care Insurance Model Provisions As Federal Tax Requirements

HIAA believes that legislation to strengthen tax incentives for long-term care insurance is a key step the federal government should take to help Americans plan for and protect against future long-term care needs. In conjunction with strengthening federal tax incentives for long-term care coverage, HIAA is willing to support the incorporation into HIPAA's long-term care insurance consumer protections of the appropriate components of the 2000 NAIC Long-Term Care Insurance Model.

When HIPAA established a federal tax definition of a "qualified long-term care insurance contract" (QLTCI), this legislation specified consumer protection requirements that had to be satisfied in order for a policy to be qualified, and also imposed a penalty tax on persons failing to meet certain consumer protection standards. These consumer protection requirements were largely imposed through cross-references in the Internal Revenue Code to provisions of the Long-Term Care Insurance Model Act and Long-Term Care Insurance Model Regulation , as promulgated by the NAIC.

Model Rules Incorporated by HIPAA. Most of HIPAA's consumer protection rules for QLTCI contracts establish ground rules relating to fairness. These rules specify certain minimum requirements for policies and on company actions in their relationship with the consumer. For example:

- requiring policies to be at least guaranteed renewable;

- specifying the circumstances when coverage could be canceled or rescinded, such as when the applicant lied to obtain coverage;

- limiting the circumstances where benefits need not be provided, such as in the case of alcoholism or drug addiction;

- requiring free-look periods immediately after issue and grace periods for premium payments;

- requiring numerous disclosures, including an outline of coverage, and building in notice and other safeguards to prevent unintended lapses of policies;

- establishing minimum standards for home health benefits; and

- requiring offers of inflation protection and non-forfeiture benefits.

Model Rules Not Incorporated by HIPAA. In addition to addressing the relationship between insurers and consumers, the Long-Term Care Insurance Models also include rules providing for the regulation of insurance companies by state insurance departments. The Models, for example, authorize state insurance departments to impose limitations with respect to the pricing of policies (*e.g.*, loss ratio requirements), and also authorize state insurance commissioners to impose sanctions or require remedial action in certain instances. These Model provisions were not incorporated by HIPAA as federal tax requirements since they relate more to the state's regulation of the insurance company than to the fairness standards that should be met with respect to a QLTCI contract.

Recommendation for Update of the Consumer Protection Standards. HIAA will support the 2000 NAIC Model provisions, and hopes for their speedy adoption by the states.

In addition, HIAA believes it is appropriate that federal legislation enhancing the tax treatment of QLTCI contracts include components of the 2000 NAIC Model the extent they establish ground rules relating to fairness or otherwise define minimum standards in the relationship between an insurer and consumer. As an example, HIAA recommends that the new Model provisions relating to contingent nonforfeiture benefits provided on lapse be included as new requirements relating to the definition of a QLTCI contract. In addition, HIAA recommends that the required disclosure to consumers relating to rate stability be added as a requirement. We would also note that HIAA supports the addition of the changes to the prescribed "Outline of Coverage" that is to be given to applicants, thereby providing an explanation of the value of these provisions to the consumer.

Similar to the framework of HIPAA, it would not be appropriate to include as federal tax requirements those provisions of the revised NAIC Models that relate more to the manner in which a state regulates an insurance company. The McCarren-Ferguson Act and the more recently enacted Gramm-Leach-Bliley (GLB) Act of 1999 affirm that the proper regulation of insurance companies resides with the states rather than with the federal government.

HIAA strongly supports the continued separation of these roles, as maintained by HIPAA and by GLB. While disclosures to consumers, such as of an insurer's history of price increases, may be appropriate as uniform federal tax requirements, the federal government should not take on the role of state insurance departments with respect to the regulation of the amount charged for policies. To do so would create very substantial coordination problems, since the methods for regulating prices in the Models will in many instances be inconsistent with the regulatory methods actually applied by states. As a result, states often would either need to defer to the federal regulatory scheme and forego their preferred method of regulation, or they would effectively have to prohibit the offering of QLTCI contracts in their State.

In addition, HIAA believes that the federal government should not authorize actions by state insurance departments that have not been authorized by the state in question, as this would similarly represent an intrusion on the state's proper role in the regulation of insurers. HIAA also believes that it would be inappropriate to take these regulatory powers away from the states.

Summary and Conclusions

Long-term care insurance coverage continues to grow and market competition and innovation continue to bring quality and value to consumers. Federal and state public policies will have a crucial role in determining how fully private long-term care insurance realizes its potential to protect Americans against the financial risk of long-term care need, to improve their long-term care choices, and to relieve the burden on public programs. The combination of enhanced federal consumer protections, combined with state adoption of the 2000 NAIC Models, will improve long-term care insurance rate stability and ultimately make long-term care insurance a better product. This, combined with appropriate tax treatment of long-term care insurance, will substantially enhance the appeal of such insurance as a way for Americans to address the possible long-term care needs they could face with advancing age.

Thank you Mr. Chairman and Members of the Committee. We look forward to working with you for the enactment of legislation to help Americans meet their long-term care needs with quality long-term care insurance coverage.