POLICY INSIGHT

A Policy Newsletter on Life and Health Insurance and Financial Security Issues

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State and Insurers Working to Add Protections for Consumers During Sale of Annuities

Annuities can be a valuable investment tool for consumers, especially for those planning for retirement. But they can be hard to understand, and consumers can fall victim to agents who engage in fraudulent or unethical behavior during the sale of an annuity.

The Texas Association of Life and Health Insurers (TALHI) continues to support efforts to strengthen consumer protection and weed out unscrupulous agents. TALHI's work with the Texas Legislature has helped advance national model reform acts, giving new powers to the Texas Department of Insurance to stop the potential for abuse during the sale of annuities.

As a result, Texas has emerged as a leader in providing safeguards for individuals, especially senior citizens, who seek to purchase an annuity. In each of the last two sessions, lawmakers have strengthened consumer protections in the sale and marketing of these important financial products.

This session, the Texas Legislature will consider additional protections as part of model legislation proposed by the National Association of Insurance Commissioners. Key provisions of the proposals include an expanded list of consumer suitability information, new supervisory responsibilities when an insurer has contracted functions to a third party, a review of all recommended sales, and the establishment of standards for general annuity training and insurer product-specific training of all agents.

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TALHI supports the effort to bolster consumer protection and wants to work with policy makers to improve the model act by ensuring enforcement actions for unsuitable sales are based on a "pattern or practice" as applied under the Unfair Trade Practices Act rather than a single violation. Additionally, TALHI believes that the training requirements can be enhanced to better reflect what insurers are required to provide and what may be obtainable within the proposed time frame.

Adopting the model act, with the suggested changes, would build upon the actions taken by the Legislature in its previous two sessions to increase consumer safeguards.

In 2009, the Legislature took action to stop the use of misleading credentials by protecting consumers from Texas agents who use designations and certifications that are not earned, that are self-conferred, or that imply a level of professional qualifications the agent does not possess. To ensure agents are adequately qualified, state law now requires four hours of initial training

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Legislation Will Increase Protection for Texans with Annuities

Since it was created by the Texas Legislature in 1973, the Texas Life, Accident, Health and Hospital Service Insurance Guaranty Association (Guaranty Association) has offered resident insurance policyholders protection should their Texas-based insurance company be unable to pay claims because it becomes insolvent or is placed in liquidation. Should such a situation occur, the Guaranty Association pays outstanding claims and continues coverage up to specific limits, functioning much as the Federal Deposit Insurance Corporation (FDIC) does in insuring bank deposits.

Each of the estimated 1,100 insurance companies licensed to sell life, health or annuity policies in the state is required to be a member of the Guaranty Association and contribute to its funding. In the event that one of the state's insurers is unable to pay its claims due to insolvency or liquidation proceedings, the other members of the Guaranty Association offering the same type of coverage are assessed the amount needed to meet the failed company's obligations. The amount assessed is based on a company's share of total premiums collected for the particular line of business affected.

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In fiscal year 2009, Texas insurance companies paid more than $1.4 billion in premium taxes.

Currently, in Texas the limit for benefits paid by the Guaranty Association for annuity contracts is $100,000 per life. This amount has not been increased since the Guaranty Association was created almost 40 years ago. As a result, the annuity coverage limit has not kept pace with increases in protection provided by other states, leaving Texans at greater risk should their insurer fail.

Even though an increase in benefit limits for annuities will likely mean increased assessments against insurers in the event of a company failure, insurers believe the increase is important to protect consumers and to maintain their confidence in the insurance and annuity markets.

To address the disparity in protection for Texas policyholders, Senator Tommy Williams and Representative Kelly Hancock have introduced legislation that would raise the level of annuity coverage limits from the current $100,000 to $250,000 per life. The increased limit contained in the proposed legislation, SB 567/HB 1157, matches the current limits of the National Association of Insurance Commissioners Model Act and most other states.

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In addition to raising the limits of annuity coverage protection, the legislation also clarifies the Guaranty Association's role in dispersing funds deposited by an insurer as security against insolvency and makes clear the association's rights regarding reinsurance that may be in place for claims affected by insolvency. The legislation also proposes to change the name of the Guaranty Association to the Texas Life and Health Guaranty Association to more accurately reflect its purpose.

The National Organization of Life & Health Insurance Guaranty Associations estimates that since 1983, state guaranty associations have provided protection to more than 2.6 million policyholders, guaranteed more than $24.5 billion in coverage benefits and contributed more than $5.3 billion to ensure policyholders receive their benefits.

The Unintended Consequences of Health Insurance Mandates

Regardless of how well-intentioned a health insurance mandate may be, it's indisputable that they have the unintended consequence of causing most consumers to pay for coverage they may not want and will never need, and making insurance less affordable for many individuals and small businesses.

A health insurance mandate is a requirement that an insurance company or health plan offer coverage for specific health care providers, illnesses, treatments and patient populations.

That extra cost of a health insurance mandate is distributed to all policyholders, regardless of whether they are affected by the mandate. The Council for Affordable Health Insurance (CAHI) estimates mandated benefits increase the cost of basic health coverage from a little less than 20 percent to as much as 50 percent.

Mandates are a relatively recent development. CAHI reports that there were few mandates in place in the 1960s, compared to more than 2,100 separate mandates today, spread across the 50 states. Many states have adopted 40 or more health insurance mandates. Texas currently has more than 50 mandates.

It is not difficult to be moved by the emotional argument for most mandates, but as the focus on reducing the cost of health care has increased, policy makers and advocates for more affordable health care are recognizing the negative consequences mandates can have. The impact mandates have on the cost of health insurance, the ability of mandates to negatively affect quality of care, the reduction in consumer choice that results, and the fact that mandates do not adequately reflect changes in medical technology or evolving standards of care are among the reasons cited for opposition to their adoption.

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Statistics from the Texas Department of Insurance (TDI) indicate that only 25 percent of Texans obtain their health coverage from a fully insured private sector source to which state-adopted health mandates would apply. The remaining population is either uninsured or receives their coverage from insurance to which the mandates do not apply (i.e., self-funded employers, military, Medicare, Medicaid and CHIP).

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In 2009, $20 billion was paid to Texans in the form of death benefits, matured endowments, policy dividends, surrender values and other payments.

This key aspect of state health benefit mandates is often overlooked.

According to TDI, roughly one-fourth of Texans receive their health benefits from employers that self-fund or pay for their employees' coverage out of company funds rather than obtaining a fully insured policy.[2] Such plans are regulated by the Employees Retirement Income Security Act (ERISA) and are exempt from state regulations including mandates. Many employers choose the self-funded approach to avoid the high cost associated with the mandates required for fully insured plans.

Additionally, state mandates are typically not reviewed once adopted. Without review, there is no assurance that the mandate is still relevant and conforms to advances in medical technology. Mandates are also frequently adopted without the benefit of a cost impact statement that would show how the

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Protections

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and four hours of annual continuing education requirements for individuals who sell, solicit or negotiate an annuity contract or represent an insurer in relation to annuity products.

A bill requiring detailed disclosure of annuity rates and a summary of options and restrictions was also adopted. Because the governor believed the legislation would create a new private cause of action, he vetoed it and instead directed the Texas Insurance Commissioner to adopt the consumer protections in the form of new rules.

In 2007, Texas lawmakers passed model legislation to ensure that any annuity product recommended by an agent is suitable to the insurance and financial needs of consumers at the time of purchase. The Legislature also adopted minimum standards of conduct for insurers and agents for transactions involving replacement of a life insurance or annuity product.

TALHI was pleased to support these efforts during the 2007 and 2009 legislative sessions. It will continue to be a leader in advocating for measures that will maintain consumer confidence in the financial products they purchase to guarantee their financial security and stability throughout their life.

Texas Insurance Insight

The life insurance industry is one of the largest sources of investment capital in the nation with approximately $320 billion invested in the Texas economy.

Consequences

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particular mandate would affect the cost of health care.

There is a growing trend, however, to take a closer look at the economic impact. At least 30 states now require that a mandate's cost be assessed before it is implemented. CAHI estimates that at least 10 states provide for mandate-lite policies, which allow some individuals to purchase a policy with fewer mandates more tailored to their needs and financial situation.

Finally, new federal requirements could result in state taxpayers having to pay for certain mandates. Beginning in 2014, states will have to reimburse health plan enrollees or health plans for the cost of any mandates that exceed an essential benefits package to be established by the federal government.

ABOUT TALHI: Texas Association of Life and Health Insurers

TALHI is the trade association for life and health insurers doing business in Texas. It was formed when the Texas Life Insurance Association and the Texas Legal Reserve Officials Association merged in 1997.

Now representing the majority of insurers doing business in the state, TALHI has emerged as a leading voice for life and health insurers on legislative and regulatory matters.

TALHI is an open-door trade association boasting some of the most progressive life and health insurance company officials throughout the country. We are united for the mutual benefit and development of a healthy and competitive insurance market.

The work that TALHI does in the public policy arena is intended to strengthen the insurance market by enhancing insurers' ability to provide Texans financial security for their future.

We welcome the opportunity to work with you.

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