Statement of Chester M. Joy
On the Federal Long-Term Care Insurance Program

Testimony before the Select Committee on Aging and the Homeland Security and Governmental Affairs Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia, United States Senate, Washington, DC
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Good afternoon, Chairmen Kohl and Akaka, Ranking Members Corker and Voinovich, and other distinguished committee members. Thank you for inviting me here today to discuss the Office of Personnel Management's (OPM's) Federal Long Term Care Insurance program.

In 2002, before retiring from the Government Accountability Office, I, together with my wife, purchased Automatic Compound Inflation (or ACI) policies under this OPM program. We have paid over $60,000 in premiums since then, much more than we otherwise would have, because we believed this policy was special. We were told premiums would be locked in at a flat rate, while benefits increased by 5 per cent annually. Every other policyholder we've talked to in the last few months believed the same.

Here is why: Attachment 1 is a copy of the application form on which you checked your choice between this ACI policy and a second option called the Future Purchase Option (FPO). The form says above the boxes that: "If you have any questions regarding Inflation Protection, please refer to your *Inflation Protection Options Brochure* in your kit."

Attachment 2 is the cover of that brochure, and Attachment 3 is the text inside. As you can see, it says in the subtitle on the right, that if you buy the ACI Option you will "Pay More Now, But Lock in a Flat Rate." Three lines down from this it says there will be "NO" increase in premiums. The chart shows the ACI premium remaining flat over 30 years, as do other materials we received. This brochure is the last thing anyone would look at if they had any questions.

OPM now contends that it informed us our ACI premiums could be increased. It cites wording in its "*Outline of Coverage*" document that states:

> *"Your premium will not change because you get older or your heath changes or for any other reason related solely to you. We may only increase your premium if you are among a group of enrollees whose premium is determined to be inadequate. While the Group Policy is in effect, OPM must approve the change."*

However, this wording is contained in the document's discussion of **only** the Future Purchase Option and when its premium may change, not in the document's discussion of the Automatic Compound Inflation Option that we chose.

Specifically, in the "*Outline of Coverage*" document pages 11 to 13 there are graphs just like the one in the *Inflation Protection Options* Brochure that depicts the FPO Option with its initially lower premium that continues to rise over a period of 30 years compared to the initially much higher ACI premium that again is shown to remain level over this period.

Attachment 4 is a copy of page 10 of this *Outline of Coverage* document, the page just before these graphs, and it contains two separate bold-print titled sections describing each option. Notice the arrow at the end of the second section on the FPO Option pointing to a sentence that says "See the section titled When Your Premium May Change." In contrast, however, if you look up at the above section on the ACI Option – the option we bought – you will **<u>not</u>** see this sentence referring to the "When Your Premium May Change" section.

This "When Your Premium May Change" section – that is indicated as being relevant to the FPO Option, but not to the ACI Option -- is found on page 14 after the graphs and is included here as Attachment 5. Again, note the two arrows. The first arrow points to a short paragraph discussing the ACI Option, saying the premium will not go up because of inflation. The second arrow points to wording after the discussion of the FPO option that states

> *"Your premium will not change because you get older or your heath changes or for any other reason related solely to you. We may only increase your premium if you are among a group of enrollees whose premium is determined to be inadequate. While the Group Policy is in effect, OPM must approve the change."*

It is this wording that the insurers and OPM say is the basis for the ACI increase; i.e., that enrollees in the ACI Option are in a group whose premiums have been determined to be inadequate.

However, as you have just seen, this "When your Premiums May Change" section was not linked to the ACI option on page 10, but **<u>only</u>** to the FPO option. Separating the placement of this wording from the ACI Option and putting it next to the FPO Option -- an option whose premiums OPM stated may or may not prove adequate over time depending on how much costs increase as measured by a medical care consumer price index – further reinforced this lack of linkage to ACI.

The same disconnection of this wording from the ACI Option was repeated in the benefit booklet sent to applicants after they had been enrolled. Thus, although enrollees had a grace period to decline their acceptance, they had no reasonable cause to because this booklet did not link the wording to the ACI.

One reason my wife and I are especially disturbed by the proposed ACI increase is that in late 2002, my agency, GAO, had a presentation on the program to which spouses were also invited. We both attended and in the question period I raised my hand and specifically asked representatives of the program under what exact circumstances any premium increase could occur. I was told that it could only happen in the very unlikely event that all program participants' premiums were raised. In other words, I was told we were all in a common risk pool.

But that, too, was not true, because the rate increase isn't being applied to all enrollees or to those in the Future Purchase Option. And it is only being applied on a sliding scale to those in the ACI whose age at purchase was less than 70. Moreover, it would seem that this structure of the premium increase is discriminatory. In essence it would appear that younger enrollees are being discriminated against based on age.

In an August 18, 2009 letter to DC Delegate Eleanor Holmes Norton, responding to concerns we expressed to her about the premium increase structure, OPM said that this is based upon differences in expected investment returns and persistency of participation of younger enrollees. However, they did not provide any specific data to support this. It remains unclear why this would lead to a perfectly even, smooth slope in differential increases across a single 5-year age cohort range and then cease to make any difference within or between the next and all successive such cohort ranges. Put another way, it seems counterintuitive, to say the very least, that the increases for those enrolled at ages 66, 67, 68, and 69 would decline by 5% in a perfectly steady fashion, while there would be no difference in premiums among those 70 and older and a flat 25% increase for all those 65 and younger, whether they were 35 or 64. This suggests that the insurer can and perhaps has defined different groups and rates of increase in such an arbitrary and invidious manner such that no enrollee can ever have any reasonable expectation, predict, or know how they might be grouped under the policy now or in the future. It is unacceptable for OPM to merely issue bland assurances that everything is being done correctly. It needs to disclose the details of all calculations and the associated rationales for its acceptance of this premium increase structure, and to show results are equitable across all other single year age groups, not just for 66-70.

In the same letter to DC Delegate Eleanor Holmes Norton, OPM also said its program materials could have and will in the future “emphasize more” the provision for increases. In fact, the materials it recently rolled out now include an asterisk linking a footnote on this provision to the ACI. The attached documents clearly refute OPM’s implication that such linkage ever existed or received any “emphasis” at all when we enrolled, and it still fails to acknowledge that any incorrect or inadequate materials such as you have seen today were ever provided. The new asterisk, while an apparent admission of mistakes, is still completely inadequate for enrollees to gain a clear understanding of such a critical matter.

The proposed ACI premium increase should be seen in a larger and, to us, even more disturbing perspective. Not only are we shocked to learn that OPM proposes to renege on our “locked in” premium rate, but we have only just now been told that the original contract was limited to only seven years. What this means, then, is that we are now placed in a terribly unfair position. Either we pay a higher premium now and possibly with every new contract, or we are forced to accept lesser coverage for the same high premium we pay and only hope that coverage isn’t further eroded in the future, or we must obtain a different policy in the marketplace. This third option is especially problematic since we’re seven years older which would make any new policy considerably more expensive and, given health changes, a new policy may not even be available for some of us.

Officials from OPM and insurers have said that there are not any plans for another increase in 2016 when the new contract expires. Yet, in a September 9, 2009 NPR interview, OPM Director John Berry stated that such increases will happen -- and I quote him here -- “every time.” OPM needs to disclose all calculations on which these conflicting judgments about this are based.

A decision on long-term care is probably the most crucial financial decision many of us will be making, because of its impact on our financial resources and on our loved ones. However, 5-1/2 months after OPM made a brief press statement saying it had approved an ACI premium increase, we still have not been told exactly what the increase is or what our options will be. If OPM does tell us this at the end of the month, as it has indicated, we will only have about 6 weeks to respond to OPM’s December 14th deadline. Long-term care insurance experts tell us this is not enough time to identify and compare other possible choices and to pass the required medical underwriting. This, in effect, amounts to stonewalling that precludes us from comparing this federal program with other options.

OPM has said repeatedly that its program complied with the National Association of Insurance Commissioner's (NAIC's) guidelines for long-term care insurance. OPM provided us with its own *Companion Guide* to NAIC's *Shopper's Guide*. But this OPM *Companion Guide* omitted mentioning a warning note in NAIC's *Shopping Guide,* that is shown here in Attachment 6. This warning note says that wording like "flat rate" or that "premiums will never increase" -- which, as you have seen, OPM used in describing the ACI Option -- is considered misleading and that many states have adopted regulations that don't let insurance companies use it.

Chairmen Kohl and Akaka, all ACI policyholders we've spoken with agree we never would have purchased these policies if we had known that OPM's "Pay More Now, But Lock In A Flat Rate" statement was not true. But now that we have, we're stuck in a very tough place. What is particularly galling to us, as current and former federal employees, is that what tipped the balance in our decision-making was our trust in OPM's oversight.

I'm not saying that OPM and the insurers were acting in bad faith. But, by the same token, OPM and the insurers cannot in good faith contend that the documents you've seen today support their claim that we were properly informed about how and when rate increases could occur.

The proposed fix of offering to let us pay the same amount for lesser coverage is not an equitable remedy in this instance for our real financial injuries. Where is the fairness and accountability, especially since this solution is silent on future additional changes that may be caused by potential later contract negotiations?

Ideally, the most equitable remedy would be to grandfather current enrollees at the existing rate, applying the increase only to new enrollees. Other non-mutually exclusive remedies might include:

> --Crediting current enrollees who switch to a lower level of ACI coverage or to an FPO policy with the difference between (a) the amount that they have paid to date in premiums and (b) the amount that they would have paid to date if they had purchased this lower coverage initially. This credit could be made either in cash or as forward funding of their new premium payments until the difference is exhausted, at which time new premium payments would recommence.
>
> --Making it that premiums are also reduced if investment returns rebound. (Surely OPM isn't endorsing a heads-they-win-tails-we-lose approach…)

--Automatically including, via legislation, existing ACI policies under state Medicaid Long-Term Care Partnership programs, as a pilot or exemplar of the thrust of Chairman Kohl's more far-reaching and thoughtful bill, S. 1177. This would, among other things, provide a special laboratory for his approach – an approach that appears likely to be central to any successful nationwide effort to expand the number of purchasers of long-term care policies and, thus, also ultimately lower federal and state Medicaid costs.

--Appointing a policyholder advisory body to participate in all program evaluation and decision processes and direct the GAO to conduct regular program evaluations.

However, there is a remedy needed which goes beyond making whole ACI policyholders who have been demonstrably injured. Throughout the discussions of this issue over the last few months, OPM has limited its responses to merely making assertions about its decision process and what went into it. It has not released the quantitative data underlying its or the insurers' assumptions for calculating premiums or their adequacy, despite telling the GAO in 2005 that it would provide these data to the Congress prior to the renewal or renegotiation of its contract with the insurers. By failing to do this, including disclosing how the structure of its increase was arrived at for different enrollee cohorts, it is falling short of the transparency that is reasonably expected and needed in the present circumstances.

Instead, OPM says that independent actuaries have confirmed the insurers' contentions regarding what they require. However, given events to date, it is clear that the only independent analysis taxpayers and enrollees can truly trust is one conducted by the GAO. The legislation establishing this program included a requirement for periodic GAO analysis. There can be no better time or circumstance to renew this oversight process than now.

According to GAO's December 2006 report (GAO-07-202), a portion of the insurer's profit is based on a "Report Card" score that OPM gives the insurer on how well it performed its responsibilities. Given the unexpected premium increase and OPM's statement that this occurred because the insurer made incorrect assumptions about enrollee persistence and other factors, it is difficult to understand how the insurer's grade could have been in the acceptable range. However, what this evaluation was, how it was made, and whether changes in this process or other OPM program management processes are needed to ensure accountability remain unknown and also need to be included in any GAO analysis. OPM's failure to identify the insurers’ errors during its own oversight review and analysis is as much or more of a concern as the insurer having made them in the first place.

Finally, we are wondering why there has been only one provider and apparently this situation will continue. OPM has said that regulations prohibit it from disclosing anything about other bidders, how many there were, etc. But this would not be privileged information from GAO, which underscores the need for its review function. We think examination and consideration of expanding the number of providers to ensure better competition should be included in GAO’s examination scope.

Thank you again for the opportunity to provide you with my views.

Attachment 1: Application Part H Inflation Protection

PART H | INFLATION PROTECTION

Select one Inflation Protection Option. If you have any questions regarding Inflation Protection, please refer to your *Inflation Protection Options Brochure* in your kit.

☒ **Automatic Compound Inflation Option**

OR

☐ **Future Purchase Option**

PART I | REPLACEMENT COVERAGE QUESTIONS

Please review and consider the following questions regarding replacement of existing coverage. Federal law requires that we ask you these questions about Medicaid and other current long term care insurance coverage. Please check "yes" only if the situation addressed in a question applies to you. Your answers to these questions will NOT affect your eligibility for insurance under the Federal Long Term Care Insurance Program. If you answer yes to question 2, we will notify your current insurance carrier that you have applied for coverage under this Program. You should not replace any existing medical or health insurance coverage with Federal Long Term Care Insurance. These are different types of insurance that cover different types of care.

1. Medicaid is the state/Federal program that helps pay medical costs for some people with low incomes and limited resources. It is known as Medi-Cal in California. Please note that Medicaid is NOT the same as Medicare.

☐ YES ☒ NO **Are you covered under Medicaid? If you answer yes, you may wish to carefully consider whether you really need long term care insurance.**

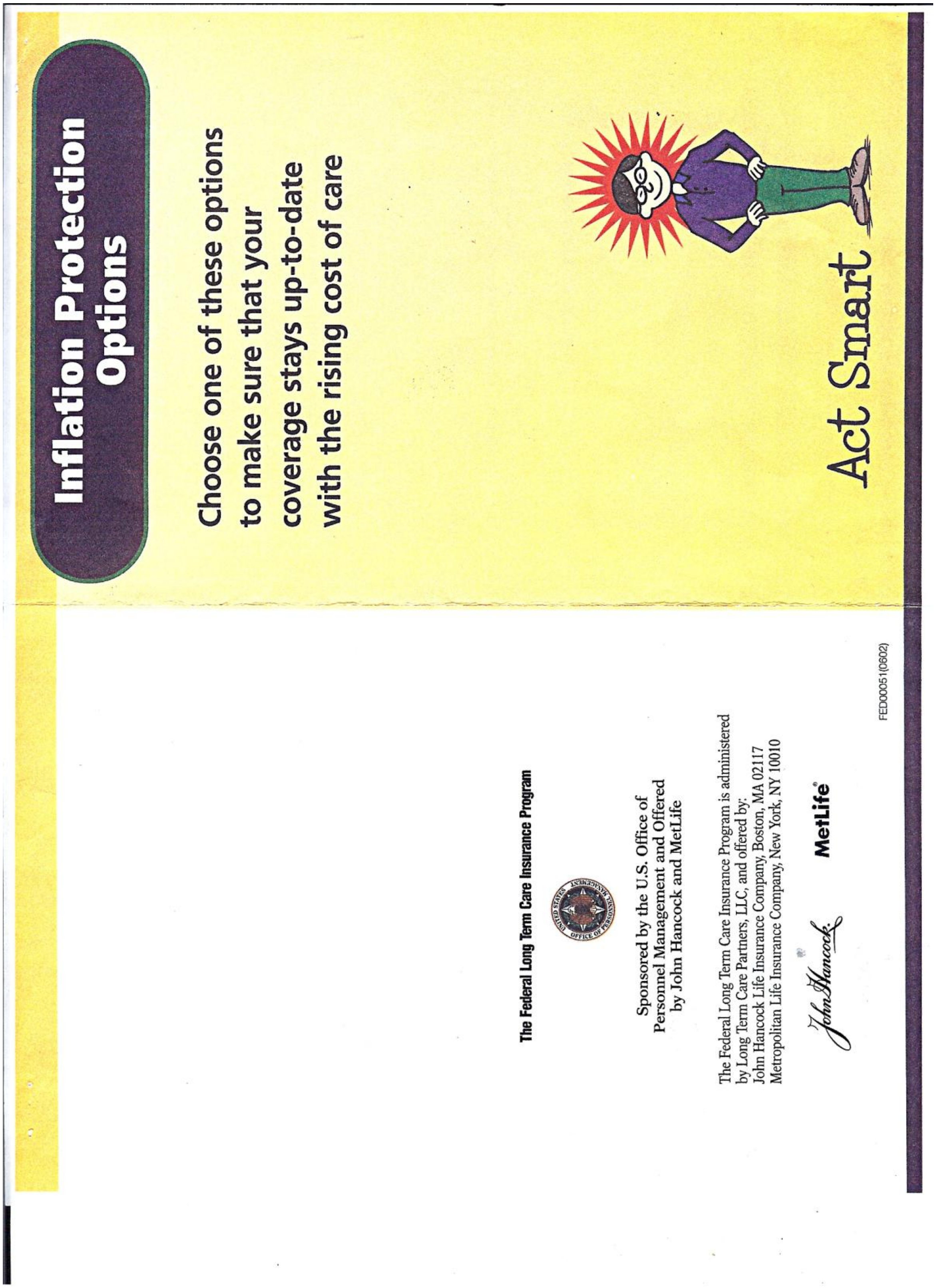
2. If you currently have a long term care insurance policy or certificate, you should compare its benefits and costs with the benefits and costs of the Federal Long Term Care Insurance Program. It may or may not make sense for you to replace that policy or certificate with coverage under this Program. You should be certain that you are making an informed decision, and certainly do not cancel any long term care insurance you currently have unless/until your coverage under this Program is effective.

☐ YES ☒ NO **Are you replacing another long term care insurance policy or certificate currently in force? If yes, please provide the following information:**

Policy # ____________________ Insurance Company Name ______________________________

Insurance Company Address ______________________________

Attachment 2: Brochure – Inflation Protection Options–Front & Back Cover



Attachment 3: Brochure-Inflation Protection Options-Inside Contents

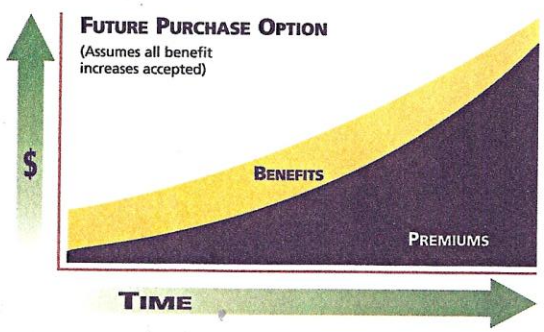
Choose an Inflation Protection Option

Future Purchase Option
Pay Less Now, But More Later

With this option, you get an inflation increase every two years unless you decline the increase. The premium for your additional long term care insurance coverage will be based on your age at the time the increase takes effect. Note that the Future Purchase Option increases stop after you decline three offers or while you are eligible for benefits.

The increase in your Daily Benefit Amount and the remaining amount of your Maximum Lifetime Benefit is based on increases in the Consumer Price Index for Medical Care.

With each offer, you can switch to the Automatic Compound Inflation Option without proof of good health, as long as you are not eligible for benefits at that time and have not declined three increases in the past. As your benefit increases, your Future Purchase Option premium increases and eventually becomes greater than the Automatic Compound Inflation Option premium. Since the Future Purchase Option premium increases steeply during normal retirement ages, you should consider whether you will be able to afford the higher premium under the Future Purchase Option.

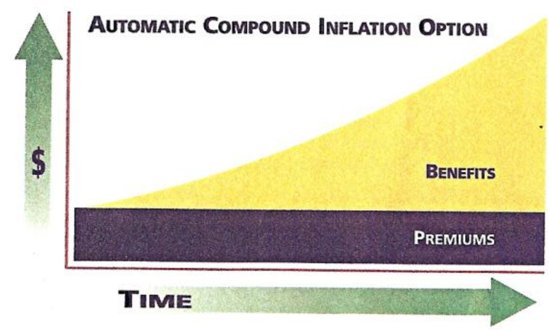


OR

Automatic Compound Inflation Option
Pay More Now, But Lock in a Flat Rate

With this option, your Daily Benefit Amount and the remaining amount of your Maximum Lifetime Benefit will automatically increase by 5% compounded every year with NO corresponding increase in your premium. And the benefit increases continue even when you are eligible for benefits.

With health care costs continuing to rise almost every year, you should consider the Automatic Compound Inflation Option. While the initial premium is significantly higher with this option, you won't have to think about having to buy additional long term care insurance coverage or worry about whether your coverage will keep pace with inflation. Your benefits increase year after year, without causing an increase in your premium.



These charts illustrate how a 45-year old's Daily Benefit Amount and premiums are affected over 30 years with the Future Purchase Option vs. the Automatic Compound Inflation Option. For illustrative purposes only.

Indicate Your Choice of the Future Purchase Option or the Automatic Compound Inflation Option on Your Enclosed Application

Attachment 4: Outline of Coverage – Page 10

7. **RELATIONSHIP OF COST OF CARE AND BENEFITS**

Because the costs of long term care services will likely increase over time, you should consider whether and how benefits under the Federal Program may be adjusted. You have the choice of receiving benefit increases under the automatic compound inflation option or the future purchase option.

Automatic Compound Inflation Option

On each anniversary of your original effective date of coverage (or the date you switch to this option), your daily benefit amount and the remaining portion of your maximum lifetime benefit will automatically increase at a rate of 5% compounded annually. These increases are made even if you are eligible for benefits, without regard to your age, claim status, claim history or the length of time your coverage has been in effect, and will not cause your premium to increase.

Future Purchase Option

Every two years we will increase your daily benefit amount and the remaining portion of your maximum lifetime benefit, except as described below. We will send notice of the first increase in the fall of 2003 for the increase that will apply on January 1, 2004. Increases will occur every two years on January 1st thereafter. Your coverage must be in effect for at least 12 months in order for you to receive your first increase under this provision. The increase will be a percentage based upon the change in the Department of Labor's Consumer Price Index for Medical Care or another index mutually agreed upon by OPM and us.

If you do not want the increase, you must send us a written rejection before the date the increase will take effect. If you want the increase, you do not have to take any action other than paying the additional premium. The increase will automatically take effect. Increases under this option will be made regardless of your age, but we will not increase your benefits under this option if you are eligible for benefits or if you declined a total of three prior increases.

Increases under this option do not require you to provide evidence of your good health, except as noted below. Each time we send you notice of an increase under this option, we will also offer you the opportunity to receive future benefit increases under the automatic compound inflation option instead of this option. If you elect to switch to the automatic compound inflation option, you will not receive the current increase under the future purchase option.

If you have declined a total of three increases under this option and you later wish to resume receiving increases, you must provide, at your expense, evidence of your good health that is satisfactory to us.

See the section titled When Your Premium May Change.

Comparison of Automatic Compound Inflation Option and Future Purchase Option

The sets of graphs that follow compare the automatic compound inflation option (ACI) and the future purchase option (FPO) under the Comprehensive Option. The FPO graphs reflect two scenarios: all FPO increases accepted and all FPO increases declined. There are comparisons for three issue ages: 45, 55 and 65. The graphs compare your monthly premium over time and your daily benefit amount over time. The length of time we have used for the issue age 45 graphs is 30 years; for the issue age 55 and 65 graphs, we have used 20 years. The lengths of time are illustrative only and do not imply that your coverage would end after either length of time shown.

Attachment 5: Outline of Coverage – Page 14

Other Benefit Changes (Upgrades and Downgrades)

At any time, you may request an increase (upgrade) or decrease (downgrade) in your coverage. In order to receive approval of a request for an increase, you must provide, at your expense, evidence of your good health that is satisfactory to us. You do not have to provide evidence of your good health for a decrease. The amount of an increase or decrease is subject to Federal Program options available at the time of your request. Any increase that is approved by us will be based on your age and the premium rates when the increase takes effect. See the section titled When Your Premium May Change.

8. **WHEN YOUR PREMIUM MAY CHANGE**

If you select the automatic compound inflation option, your premium is designed to include all future inflation increases you will receive each year while you are insured. Your premium will not increase due to inflation increases under this option.

If you select the future purchase option, your premium will increase for each inflation increase under this option. The additional premium for each increase will be based on your age and the premium rates in effect at the time the increase takes effect. If you accept an offer to switch from the future purchase option to the automatic compound inflation option, your premium will increase at the time that switch goes into effect. This increase in premium pays for future increases under the automatic compound inflation option. Once you have switched, your premium will not increase for any subsequent inflation increase.

If you request and we approve a daily benefit amount increase other than an inflation increase, your additional premium will also be based on your age and the premium rates in effect at the time the increase takes effect. Other coverage increases you request and we approve will cause your entire premium to be based on your age and the premium rates in effect at the time the increase takes effect. If you request a decrease in coverage consistent with available Federal Program options, your premium will decrease.

See the section titled Relationship of Cost of Care and Benefits for a summary of these benefit change provisions.

Your premium will not change because you get older or your health changes or for any other reason related solely to you. We may only increase your premium if you are among a group of enrollees whose premium is determined to be inadequate. While the Group Policy is in effect, OPM must approve the change.

9. **WHEN YOU MAY RECEIVE A PREMIUM REFUND**

30 Day Free Look/Cancellation of Coverage

Within 30 days after you receive your Benefit Booklet, you may cancel your coverage if you are not satisfied with it and receive a refund or your premium. If you wish to do this, you must notify us within 30 days of receiving the Benefit Booklet. Then we will refund all of your premium within 30 days. It will be as if the coverage was never issued.

You may cancel your coverage at any other time; however, we will only refund premium that covers a period after the effective date of your cancellation.

Other Refunds of Premium

We will refund any premium that you paid to cover any period after the date of your death or during which your premium is waived.

Attachment 6: NAIC's A Shopper's Guide to Long-Term Care Insurance Page 24

When you buy a long-term care policy, think about how much your income is and how much you could afford to spend on a long-term care insurance policy now. Also try to think about what your future income and living expenses are likely to be and how much premium you can pay then. If you don't expect your income to increase, it probably isn't a good idea to buy a policy if you can barely afford the premium now.

Some states have laws that limit rate increases. Check with your insurance department to learn how your state regulates rate increases.

NOTE: Don't be misled by the term "level premium." Some agents might tell you that your long-term care insurance premium is "level" and suggest that it will never increase. Except for **whole life insurance** policies and **noncancellable policies** or riders, companies can't guarantee premiums will never increase. Many states have adopted regulations that don't let insurance companies use the word "level" to sell guaranteed renewable policies. Companies must tell consumers that premiums may go up. Look for that information on the outline of coverage and the policy's face page when you shop.

If You Already Own a Policy, Should You Switch Plans or Upgrade the Coverage You Have Now?

Before you switch to a new long-term care insurance policy, make sure it is better than the one you already have. Even if your agent now works for another company, think carefully before making any changes. First check to see if you can upgrade the coverage on your current policy. If not, you may replace your current policy with a different one that gives you more benefits, or even choose a second policy. Be sure to discuss any change in your coverage with your financial advisor.

If you decide to switch to a new long-term care insurance policy, make sure the new company has accepted your application and issued the new policy before you cancel the old one. When you cancel a policy in the middle of its term, many companies will not give back any premiums you have paid. If you switch policies, new restrictions on pre-existing conditions may apply. You may not have coverage for some conditions for a certain period.

Switching may be right for you if your old policy requires you to stay in the hospital or to receive other types of care before it pays benefits. Before you decide to change, though, make sure you are in good health and can qualify for another policy. If you bought a policy when you were younger, you might ask the insurance company if you can improve it. For example, you might add inflation protection or take off the requirement that you stay in the hospital. It might cost less to improve a policy you have now than to buy a new one.