COMMONWEALTH OF MASSACHUSETTS

Office of Consumer Affairs and Business Regulation

DIVISION OF INSURANCE

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Genworth Life Insurance Company Request for a Hearing on the Disapproval of a Long-Term Care Insurance Rate Filing Docket No. R2022-01

I. Introduction and Procedural Chronology

Genworth Life Insurance Company ("Genworth") is licensed to write life, accident, and health insurance, including Long Term Care Insurance ("LTCI"), in Massachusetts. On July 13, 2021, it submitted to the Division of Insurance ("Division") a rate filing ("the Filing") proposing to increase premiums for Massachusetts purchasers of individual LTCI policies that Genworth referred to collectively as the Products.[1] The Division's Health Care Access Bureau ("HCAB") reviewed the Filing. On December 30, 2021, the Division notified Genworth that the Filing was disapproved on the grounds that "the benefits provided in the policy forms are unreasonable in relation to the premiums proposed to be charged and the proposed rate increases are unjust, unfair, inequitable and misleading, or encourage misrepresentation as to such policies" (the "Disapproval"). The Disapproval further addressed 19 reasons for the Division's conclusions.[2]

[1] Genworth identified four policy forms on which it seeks increases 7042MA, 7044MA, 7042MA Rev and 7044MA Rev. It refers to the first two numbers as Choice 2, the latter two as Choice 2.1, and to the entire set as the "Products."

[2] The initial July 13, 2021, Long-Term Care Rate Increase Filing was made in SERFF, with Tracking No. GEFA 132905695 and is included in the 1215-page final Filing, entered into the record of this hearing as Exhibit 1.

On January 13, 2022, Genworth, as permitted under M.G.L. c.175, §108.8.A, requested the Commissioner of Insurance ("Commissioner") to hold a hearing on the Disapproval.

Jean F. Farrington, Esq. and Matthew A. Taylor, Esq. were designated to preside over the hearing. Genworth was represented by Kenneth Pfaeler, Esq. and Kristen B. Weil, Esq. of Dentons and Dean Richlin, Esq. of Foley Hoag. Matthew Mancini, Esq. appeared on behalf of the Health Care Access Bureau within the Division.

Genworth's request was docketed and a remote prehearing conference scheduled for February 14, 2022. At Genworth's request, at that conference we identified the purpose and scope of this hearing: to review the Disapproval and to determine whether the record supports the stated reasons for Disapproval and that those reasons are not based on errors of law. We expressly explained that our decision would not revise the Filing. Genworth asked to submit objections to the Disapproval in two formats, a Statement of Facts ("SoFs") and a Statement of Errors ("SoEs"). It was allowed to do so, with the further request that Genworth address with particularity its positions that the Disapproval was based on errors of law, a misreading of the facts, or unsupported by the record, and specifically identify the information in the Filing that Genworth relied on to support those arguments. The SoFs and SoEs were submitted on April 1, 2022. The Division filed a response to them on April 27, 2022.

On June 13, 2022, Genworth sought an order scheduling events that included the exchange of discovery requests and witness statements. By order dated July 8, 2022, we denied its requests. On July 11, 2022, Genworth objected to that order, contending that it would deprive Genworth of its right to due process. On October 3, 2022, an order, issued in response to that July 11, 2022, letter, reiterated that the object of this proceeding is to determine whether the Disapproval is supported by substantial evidence in the record or is based on errors of law. On October 25, 2022, Genworth moved to request a speedy hearing and for reconsideration of the October 3 Order. The HCAB filed a response to both motions on December 13, 2022. On April 24, 2023, an order was issued on Genworth's October 25 motions. On June 23, 2023, Genworth again requested a scheduling order; on June 30 it and the HCAB submitted a joint request for a hearing. On July 14 we scheduled a remote hearing for July 27, 2023.[3]

This decision first discusses Genworth's general objections to the Disapproval, including arguments that it repeated in response to many of the stated reasons for disapproval. Then we

[3] The transcript of that hearing was docketed on July 31, 2023.

examine each of those reasons to determine whether they are supported by substantial evidence and not based on error of law. Finally, we address Genworth's objections to the form of the hearing.

II. Overview of Individual Policy Rate Reviews

Rate requests for individual LTCI policies are filed and reviews are conducted under G.L. c. 175, §108 and two regulations, 211 CMR 42.00 and 211 CMR 65.00. Chapter 175, §108.8.A allows disapproval of a LTCI policy "if the benefits provided therein are unreasonable in relation to the premium charged, or if it contains any provision which is unjust, unfair, inequitable, misleading or deceptive, or which encourages misrepresentation as to such policy." The statute also requires a notice of disapproval to specify the reasons for disapproval and to advise the Filer of the time frame for requesting a hearing.[4]

211 CMR 65.00 specifically addresses LTCI and applies to LTCI policies offered in Massachusetts after February 25, 2005. Its requirements apply in addition to other applicable statutory provisions or lawful regulations including 211 CMR 40.00 and 211 CMR 42.00. 211 CMR 65.07 requires Genworth to file all individual policy forms, including applications, disclosure statements, replacement forms, and associated rates pursuant to the provisions of 211 CMR 42.06. The latter, in pertinent part, requires all rate filings at least to "explain formulas used to derive rates, expected claim costs, assumptions regarding mortality, morbidity and lapse rates, and the detailed commission schedule and anticipated administrative expenses associated with the policy.[5] In order to substantiate rate revisions, filings must maintain experience for that policy form, may combine experience for different policy forms where the coverage is substantially the same, and must demonstrate that the carrier is using fund accounting for guaranteed renewable policies to reflect premiums, investment income, losses, expenses, and provisions for reserves specific to that policy form."

III. Genworth's LTCI Rate Filing

The Products at issue in this Filing are "guaranteed renewable" policies that remain in effect so long as the policyholder pays the premium. Genworth contends that this language confers on it a right to increase those premiums.[6] A more precise reading of the

[4] That Genworth's request was timely is undisputed.
[5] LTCI filings are not required to include commissions and administrative expenses.
[6] SoFs 14,15, 105.

Commonwealth's insurance regulatory authority affirms that guaranteed renewable LTCI policies must be renewed so long as the premiums are paid but requires premium increases to be approved by the Commissioner.[7]

Genworth's proposed rate increase affects individual policyholders who purchased the Products in Massachusetts between November 2004 and May 2012 and now constitute a finite book of closed business.[8] The Filing reports that the policies issued to this cohort initially covered 14,601 lives; as of July 2021, policies covering 10,899 lives were still in force.[9] The premium rates initially approved for the Products in 2004 were unchanged until 2019. Genworth filed to increase Product premiums in 2015 but withdrew its request in 2016. It next submitted a filing in 2018 that sought a 92 percent rate increase. That filing was not approved as submitted but a negotiated increase was ultimately placed on file in August 2019, allowing Genworth a 40 percent rate increase to be implemented in stages over three years.[10]

The 2021 Filing proposes to increase current premiums for the Products by a uniform 161.60 percent, an amount that in part incorporates the portion of the 2018 filing that was not allowed in the 2019 rate revision.[11],[12] The Filing also offers policyholders Reduced Benefit Options ("RBOS") that would enable them to reduce the proposed premium increase in exchange for agreements to reduce the benefit provisions in their existing policies.

Although the Products that are the subject of this Filing were sold throughout the United States, premiums are not uniform nationwide. Genworth files initial rates and proposed increases in each state, where they are subject to approval by state insurance regulators in accordance with the jurisdiction's statutes and regulations. Rate reviews in Massachusetts recognize two

[7] 211 CMR 65.04 defines the term, specifying that a carrier cannot cancel, cannot decline to renew, and cannot make any unilateral change in any provision of a guaranteed-renewable policy without the agreement of the insured, but may, subject to the approval of the commissioner, revise premium rates for guaranteed-renewable policies on a class basis. In SoF 27 Genworth acknowledged the need for the Commissioner's approval.
[8] Exhibit 1, p, 1213.
[9] Exhibit 1, pp. 537, 1213.
[10] The final installment of that increase was implemented in May 2022. The Division's response to the Genworth SoF comments that the negotiated increase reflected concerns about the effect on policyholders of the proposed immediate 90 percent increase and, in the interest of fairness and equity, adopted a model allowing smaller increases to be phased in over three years.
[11] Two actuarial memoranda in the Filing, dated July and August 2021, identified the requested increase as 171.00 percent. The September memorandum revised it to 161.60 percent.
[12] According to the three July, August and September 2021 Actuarial Memoranda, the requested rate increase reflects updated assumptions and any remainder of the rate increase not approved in prior filings. Ex. 1, pp. 1190, 783 and. 514. We have found no data in the Filing quantifying the portion of the proposed rate increase that, in essence, would set aside the 2019 rate decision and allow Genworth now to collect through policyholder premiums a rate increase that was not allowed at that time.

concerns: 1) premiums must be sufficient for insurers to maintain solvency and the ability to pay future benefit claims and 2) must be reasonable for policyholders in relation to the benefits provided and contain no provision that is unjust, unfair, inequitable, misleading, deceptive, or encourages misrepresentation about the policy.[13]

IV. The SoE and the SoF

Genworth's response to the Disapproval consisted of its SoE and its SoF. We first address the SoE. Genworth's SoE does not address its particular objections to the 19 reasons for Disapproval but, in response to each, argues that it is in error because it: 1) violates G.L. c. 175, § 108; 2) is arbitrary and capricious; 3) is not supported by substantial evidence; and 4) is confiscatory and thereby unconstitutional.[14] The SoE concludes with four statements enlarging Genworth's assertion that the Disapproval violates G.L. c. 175, §108: 1) failure to give deference to Genworth's proposed rates; 2) effectively setting or capping rates in violation of the Commissioner's authority; 3) imposing upon Genworth rates that are inadequate and actuarially unsound in violation of the Commissioner's authority and his duty to ensure the fiscal stability of insurers; and 4) basing the disapproval on "extraneous and unauthorized factors." Genworth further contends that the Disapproval imposes on it confiscatory rates that violate the Massachusetts and United States constitutions.[15]

Genworth offers no citations or persuasive argument in either the SoE or the SoF to support this mantra of errors. In the former, its first alleged violation of §108 is that the Disapproval "fails to give deference to Genworth's proposed rates." Not only is this contention unsupported; it also demonstrates an elementary misunderstanding of the term "deference" and its applicability in the context of rate reviews. To the extent that deference in appellate proceedings gives weight to aspects of an earlier hearing decision, it is inapplicable to this singular event, a hearing on a rate disapproval. We are aware of no principle that reviewers of proposed insurance rates, rather than analyze the content of the filing to determine compliance with Massachusetts law, should defer to the filer. Genworth offers no support for its assertion that "deference" should limit the review of its filing.

[13] Genworth recognizes these dual obligations. SoF 21.
[14] Genworth reiterates those assertions throughout the SoF as part of its particularized comments on each reason for disapproval.
[15] SoE p.8.

Genworth's second and third alleged violations are no more successful. It asserts that the Disapproval effectively sets or caps rates, in violation of the Commissioner's authority. Disapproval of the 2021 Filing neither sets nor caps Genworth's proposed LTCI insurance rates nor does it impose any rate upon Genworth. The rates currently in effect for the Products are those negotiated between Genworth and the Division in 2019; Genworth's claims that those rates are inadequate and actuarially unsound and in violation of the Commissioner's authority or his "duty to ensure the fiscal stability of insurers" are without merit. The negotiated rates remain in effect until Genworth files a rate request that is responsive to the Division's concerns as articulated in the Disapproval. Genworth's last alleged error of law is that the Disapproval is based on "extraneous and unauthorized" factors. It identifies no particular aspect of the Disapproval that is outside the scope of rate review or "unauthorized."

Genworth next asserts that the Disapproval is arbitrary and capricious, again failing to particularize any basis for that position or to support it with any citations to Massachusetts law.[16] Its argument perhaps expresses its desired outcome for this proceeding but provides no support for such a conclusion. Finally, Genworth asserts that the Disapproval is confiscatory and thereby unconstitutional. Genworth offers no support for either statement or explains how either concept relates to the Filing.

The Disapproval and the SoF are both grounded on the record in this proceeding. That record consists of Genworth's final Filing, initially submitted through SERFF and supplemented during the review process by documented communications between Genworth and the Division, and the Disapproval. In this decision the Filing is identified as Exhibit 1 and the Disapproval as Exhibit 2. Genworth's SoFs object to the Disapproval as a whole and to each separate reason stated therein.

V. M.G.L. c.175 §108.8.A

At hearing Genworth argued that the text of M.G.L. c. 175, §102 8.A and 211 CMR §42.06(i) could only be read to require approval of the Filing but cited no authority to support its position.[17] The statute has been in effect since 1947 and the Division has consistently applied it

[16] Under Massachusetts law an agency decision is arbitrary and capricious only if it lacks any reasonable basis or any rational explanation that reasonable persons might support. *City of Cambridge v. Civ. Serv. Comm'n*, 43 Mass. App. Ct. 300, 303 (1997) (citing *Attorney Gen. v. Sheriff of Worcester County*, 382 Mass. 57, 62 (1980); *Howe v. Health Facilities Appeal Bd.*, 20 Mass.App.Ct. 531, 534 (1985); *T.D.J. Dev. Corp. v. Conservation Comm. of N. Andover*, 36 Mass.App.Ct. 124,

[17] Transcript at pp 8-10.

to the review of individual accident and health insurance policies since that time.[18] Both statutes and regulation are within the Division's regulatory purview.[19] Therefore, we interpret it according to the plain language of the statute and long-standing agency practice.[20] The Division's reasonable interpretation of a statute it enforces is entitled to substantial deference.[21]

A. §108.8.A

Section 108.8.A of Chapter 175 reads in pertinent part: "The commissioner may… disapprove such form of policy if the benefits provided therein are unreasonable in relation to the premium charged, or if it contains any provision which is unjust, unfair, inequitable, misleading or deceptive, or which encourages misrepresentation as to such policy."[22] Genworth argues, erroneously, that because "benefits provided therein are unreasonable in relation to the premium charged" is in a separate clause than "contains any provision which is unjust…" that the premium can only be evaluated relative to the benefits provided.[23] It further argues that the premium is not a provision, and thus is not subject to the prohibition on provisions that are unjust, unfair, inequitable, misleading or deceptive, or which encourage misrepresentation.[24] Not only does Genworth's preferred interpretation contradict longstanding agency practice, but it contradicts the plain meaning of the statute.

The word "provisions" in Section 108.8.A refers to the provisions of the policy forms being evaluated, in more general terms, the provisions of the insurance contract.[25] The premium is itself a provision, or an essential part of one, and thus cannot be unjust, unfair, etc.[26] Additionally, provisions other than the premium itself are considered when determining "range

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[18] St. 1947, c.607. See *Cleary v. Cardullo's, Inc*., 347 Mass. 337, 343 (1964) ("Significance in interpretation may be given to a consistent, long-continued administrative application…."); *Wellington v. Commissioner of Corporations and Taxation,* 359 Mass. 448, 452 (1971).
[19] M.G.L. c.175, §3A. See *Lynch v. Commissioner of Educ.,* 317 Mass. 73, 80-83 (1944).
[20] See *Genworth Life Ins. Co. v. Comm'r of Ins.,* 95 Mass. App. Ct. 392, 395–96 (2019) (quoting *Commerce Ins. Co. v. Commissioner of Ins.,* 447 Mass. 478, 481 (2006) "We review questions of statutory interpretation de novo.... [However, w]e give substantial deference to a reasonable interpretation of a statute by the administrative agency charged with its administration enforcement."
[21] *Lumbermens Mut. Cas. Co. v. Workers' Comp. Tr. Fund*, 88 Mass. App. Ct. 183, 187 (2015).
[22] M.G.L. c.175 §108.8.A.
[23] Hearing Transcript p9.
[24] Hearing Transcript p8-9.
[25] See 108.8.A (the subject of the sentence being "forms"); "Provision." Merriam-Webster.com Dictionary, Merriam-Webster, https://www.merriam-webster.com/dictionary/provision. Accessed 4 Dec. 2023 (defining "Provision" as "… 3. Proviso" which is defined as "an article or clause (as in a contract) that introduces a condition"). Insurance policies are interpreted in the same manner as contracts. *Siebe, Inc. v. Louis M. Gerson Co.*, 74 Mass. App. Ct. 544, 554 (2009).
[26] See M.G.L. c.175 §108.8.A.

of reasonableness."[27] The language of 108.8.A makes this apparent by linking not only the "premium charged" to reasonableness but also the "benefits provided."[28] Therefore, all provisions of the insurance policy that describe what the benefits are and how those benefits are provided, which would presumably encompass every provision within the policy contract, are part of the reasonableness evaluation.

B. 211 CMR §42.06(2)

Genworth further argues that the reasonableness evaluation is linked to §42.06(2)(i) which describes the minimum loss ratio ("MLR"), the percentage of customer premiums that must be spent on services rather than retained by Genworth.[29] As noted above, the language of §108.8.A is permissive, "the Commissioner may…". In contrast, the language of §42.06(2) is not permissive.[30] Additionally, the language of §42.06 purely describes circumstances that would trigger mandatory disapproval, saying nothing about circumstances under which forms must be approved.[31] For rate review under §108, the range of reasonableness and the MLR calculation are two entirely separate analyses. A filing that does not meet the MLR requirement must be disapproved, there is no need to even examine reasonableness. A filing that does meet the MLR requirement must also pass the reasonable standard of §108 or risk disapproval. As above, this is consistent not only with the plain language of the regulation, but also consistent with long-standing agency practice.

Genworth's contention that M.G.L. c.175, §108.8.A and 211 CMR 42.06(2) can be read together to support an approval mandate is incorrect, as is their assertion that the Division's reasoning is based on error of law. By the plain language of the statute, the Filing is subject to all of the section's requirements; the premium, the benefits, and the manner in which the benefits are provided are all provisions of the insurance form and cannot be unjust, unfair, inequitable, misleading or deceptive, or encourage misrepresentation.[32] Similarly, every provision that deals with the premium, the benefits, and the way they are provided is included in the reasonableness evaluation.[33] The language of §108.8.A differs substantially from the language of 211 CMR

[27] *Blue Cross & Blue Shield of Mass., Inc. v. Comm'r of Ins*., 420 Mass. 707, 709 (S.J.C. 1995).
[28] See M.G.L. c.175 §108.8.A.
[29] Hearing transcript at p.9.
[30] 211 CMR §42.06(2)("Any rates filed, whether initial or revised, will be disapproved unless…").
[31] id.
[32] M.G.L. c.175 §108.8.A.
[33] Id.

§42.06(2) which imposes the MLR requirement.[34] Section 42.06 of the regulations is both wholly mandatory and wholly dispositive, providing no basis for the approval of a filing.[35] The MLR is evaluated separately from the reasonableness of the premium. These conclusions reflect the plain language of M.G.L. c.175 §108.8.A and 211 CMR 42.06(2) and the DOI's long-standing practice for reviewing individual insurance policies.[36] Accordingly, we are not persuaded that the Division's reasoning is based on an error of law.

VI. The HCAB's Review of the Filing

Throughout the SoFs and at the hearing Genworth objected to the HCAB's rate review process, culminating in an allegation at the hearing that the outcome was predetermined even before the review began.[37] Genworth repeatedly objects to the specific reasons for disapproval on grounds that allege, among other things, that in the course of its review the Division did not adequately communicate its concerns about the Filing to Genworth or advise it that a response to a Division inquiry was insufficient.[38] In other SoFs it asserts that during its review the Division did not raise issues that were ultimately among the grounds for disapproval, contending that Genworth was thereby denied an opportunity to address these issues.[39] It argues as well that it was unfair for the Division, after receiving Genworth's responses to inquiries documented in the SERFF filing, neither to ask additional questions nor specifically ask Genworth to revise its rate filing.[40] It further claims that it is unfair to disapprove the Filing on bases allegedly never raised in the review process.[41]

On other matters, Genworth contends that in the past, when it negotiated a rate increase with the Division, the latter did not object to Genworth's filing on grounds, such as its failure to inform policyholders of potential rate increases, that are now bases for Disapproval. It broadly asserts that the Division was aware of, and did not criticize, Genworth's proposed options for

[34] 211 CMR §42.06(2); contrast M.G.L. c.175 §108.8.A.
[35] See 211 CMR §42.06(2).
[36] See, *Cleary*, 347 Mass. 337, at 343 (1964); *Wellington*, 359 Mass. 448, at 452 (1971); *Lumbermens Mut.*, 88 Mass. App. Ct. 183, at 187 (2015); *Genworth Life*, 95 Mass. App. Ct. 392, at 395–96 (2019).
[37] Hearing Transcript at p7.
[38] SoFs 7, 31-33, 37. The Division's Objection Letters are shown at pages 15-18 of the SERFF filing and Genworth's responses at pages 19-40. Genworth's responses include references to telephone conversations with the Division about the Filing.
[39] SoFs 51, 60, 66, 79, 119, 143,150, 156, 162, 163, 168,174,189.
[40] SoFs 79, 130,157, 174.
[41] See SoFs 5, 51, 60, 66.

policyholders who let their policies lapse after a rate increase.[42] An alleged failure to state an objection to a proposal in a prior rate filing that ultimately settled provides no precedent for assessing a subsequent filing, nor does "awareness" that an insurer offers an option equate to tacit approval of its terms. Issues raised in particular filings may well differ from year to year as methodologies and circumstances change.[43]

Genworth contends throughout the SoFs that the Division incorrectly disapproved the Filing based on Genworth's choices about matters that it allegedly was under no legal or actuarial requirement to address. It asserts, for example. that there is no legal or actuarial requirement to stratify rate increases by policy class or benefits, such as a lifetime maximum benefit period, or to implement rate increases by policy class, further contending that Genworth does not define policy class as the Division uses the term in Paragraph 4 of the Disapproval.[44] It argues as well that it has no contractual or legal obligation to disclose the level of potential future rate increases, to commit to decrease premiums if future experience is more favorable than its predictions, to seek smaller incremental rate increases or to make RBOs actuarially equivalent to proposed rates.[45] Genworth's arguments fail to acknowledge that rate filings must comply with the information required by regulation 211 CMR 45.06 and satisfy the standards that the policy benefits provided are reasonable in relation to the premium charged, and that the filing contains no provision which is unjust, unfair, inequitable, misleading or deceptive, or which encourages misrepresentation as to such policy. Determining that a filing complies with those standards requires careful evaluation of many factors; some may have been considered in prior filings while others may be unique to a particular filing.[46]

In its response to the SoFs, the Division notes that between July 13, 2021, when the Filing was submitted, and December 30, 2021, the Disapproval date, there were numerous communications with Genworth about filing deficiencies. The SERFF system incorporates a formally documented process for requesting additional information on matters that are addressed

[42] SoF 65.
[43] Even if that information were relevant, the Filing does not document matters addressed in past settlement negotiations.
[44] SoFs 72, 75, 118, 128, 131.
[45] SoFs 118, 128, 131, 18, 185.
[46] Genworth prefers written standards, asserting that unwritten standards permit subjective and unknowable extralegal standards that it characterizes as "black-box" leaving the Division free to exercise its review authority in an arbitrary and capricious manner". SoFs 6, 77, 142.

in a filing. The Filing, the basis for our review, documents several communications between the Division and Genworth about the review process over that five-month period.[47]

Genworth in essence contends that the Division, as part of its review, should have proactively identified concerns about each aspect of the Filing and proposed or suggested specific revisions or alternatives to give Genworth an opportunity to address the issue.[48] Based on the documentation in Exhibit 1 we are not persuaded that over five months of communications about the content of the Filing Genworth was not advised of the Division's concerns. In any event, rate filings, as noted above, must comply with statutory and regulatory requirements and extensive filing guidelines. Genworth, as the Filer, selects and is fully responsible for the content of its filing, articulating the rationale for its requested rate increases, and supporting each of its choices.

The record in this matter confirms that decisions on filings may either accept or disapprove proposed rates, demonstrating as well that acceptance may reflect outcomes negotiated between the insurer and its regulator in the course of reviewing a filing.[49] The Filing under consideration here documents Genworth's rejection of Division offers to resolve its concerns through negotiation.[50] While the brevity of the reported documentation in the comments section of Exhibit 1 suggests that it does not specifically record every discussion between the parties throughout the review period, we find it reasonable to conclude that in the course of those review period discussions Genworth became aware of the Division's concerns and elected neither to revise its Filing nor agree to a settlement. We find no merit to Genworth's generalized objections to alleged issues with the Division's review process.

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[47] Exhibit 1, pp. 15-40 documents Objection letters and responses. Exhibit 1 pp. 44-55 document items such as extensions of the deemer provisions to enlarge the date for completing the review and referral to a reviewing actuary. Only one documents a discussion on the resolution of the filing. See fn 48 below.

[48] Its position is not entirely consistent with its statement that the Commissioner has no authority to set rates.

[49] Genworth is not unfamiliar with the process; its 2018 filing for a rate increase was resolved through such negotiation.

[50] Exhibit 1, at p.44, "12/30/2021 12:45 PM; **Subject:** Rate Proposal **Comments:**
"Genworth Life Insurance Company (GLIC) and the Division have engaged in discussions about GLIC's pending Choice 2 & 2.1 rate increase filing seeking a 161.6% rate increase in Massachusetts. The Division indicated that it would not approve GLIC's full rate increase request. Instead, the Division proposed a counteroffer in a substantially reduced amount, to be implemented over a period of several years. GLIC understands the Division's counteroffer to be identical or substantially similar to approvals given to other long term care insurance carriers seeking rate increases on their in-force policies. After giving due consideration to Massachusetts' proposal, including the fact that Massachusetts is already far behind its peers on cumulative Choice 2/2.1 rate increase approvals and would fall even further behind if the counteroffer were implemented over a period of several years (as other states continue to act on GLIC's Choice 2/2.1 rate increase filings), GLIC regrettably declines the counteroffer."

VII. The Stated Reasons for Disapproval

Rather than address the numbered reasons for Disapproval seriatim, we have grouped together those that address similar or related issues and evaluated them to determine their support in the record.

A. Financial Concerns

Genworth, throughout its SoF and at the hearing, urges overturning the Disapproval on the ground that the proposed premium increase i**s** both "necessary and actuarially justified."[51] "Necessary" reflects Genworth's concerns about solvency and the adequacy of premiums to cover policyholder benefit claims for many years.[52] To achieve that adequacy, the Filing proposes a premium increase sufficient not only to cover future benefit claims but also to cover the gap between rates requested by Genworth in a previous Massachusetts LTCI filing and the rates that were placed on file.[53] Responding to Genworth's concerns about solvency, the Disapproval concluded that "Genworth's solvency is protected, and financial condition not impacted even if the rate increases are not approved." That finding was based on information in Genworth's Annual Financial Statement filed with the Delaware Department of Insurance, specifically Genworth's reported surplus of $2.1 billion. Genworth does not contest that value.

Genworth contends that the Disapproval, if replicated by regulators in other jurisdictions, could threaten Genworth's solvency.[54] It points out that it is overseen by the Delaware Department of Insurance and under that state's statutes must maintain active life and disabled life reserves and meet Risk Based Capital ("RBC") requirements.[55] The Filing does not contend that Genworth's solvency is the target of any immediate or anticipated actions in Delaware or elsewhere nor does it identify any specific concerns about solvency.[56, 57]

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[51] SoFs1, 8.202, 204.
[52] The September Actuarial Memorandum states that if the entire rate increase is accepted and implemented on time "no further rate schedule increases are anticipated." Ex.1, p.536.
[53] See fn 12, p. 5.
[54] SoF 204; Hearing transcript at p 22.
[55] SoF 25. It notes that it is also subject to regulatory review or oversight by other jurisdictions in connection with policies issued in those jurisdictions. SoF 26. It also discusses RBC in SoFs 81-98.
[56] In SoF 68, Genworth's concerns about solvency are offset by its statement that in its experience the majority of policyholders elect to pay the full amount of the premium increases. It refers also to the options it offers to reduce benefits that, if accepted, would be expected to reduce future claim costs. The Filing does not propose a different percentage premium increase for policyholders who exercise a reduced benefit option.
[57] The September Actuarial Memorandum, Ex.1, p. 534.states that "Active life reserves have not been used in this rate increase analysis." The Division's review of LTCI rate filings does not incorporate an assessment of the carrier's surplus.

Genworth further objects to the Division's disapproval of the Filing as unfair, unjust and inequitable for reasons set out in the First and Sixth paragraphs of the Disapproval Letter. Those reasons address two factors, the effect of persistent underpricing of the products over time on the magnitude of the proposed rate increase and the financial challenges the proposed increase may present to Massachusetts policyholders.

The Division does not dispute Genworth's assertion that the actuarial assumptions underlying the initial rates were inaccurate and underestimated the future costs of providing benefits. The Actuarial Memorandum included in the Filing states that the 161 percent premium rate increase that Genworth now seeks is intended both to cover future claim costs and recover the difference between the increase it sought in 2018 and what was ultimately approved. The record indicates that Genworth did not file to increase premiums for the Products while it was actively marketing them in Massachusetts and thereafter not until 2015. The Disapproval pointed out that Genworth's decision to seek an increase of 161.60 percent many years after the products were priced and sold may have significant adverse effects on policyholders who are, of course, now older than they were at the age of purchase. It commented that policyholders' financial circumstances and health conditions may have changed, thereby limiting their ability to absorb the proposed increase and affecting the possibility of obtaining LTCI from another insurer. Open to them is the option of accepting an RBO from Genworth.[58]

That Genworth's actuarial assumptions underlying its initial rates for the Products were inaccurate and underestimated the future costs of providing benefits is not disputed.[59] The Disapproval arose from Genworth's decision to include in its proposed premium rate increase funding to cover projected rate needs to cover future claim costs during the next sixty years, to compensate it for underpricing the Products when it began to market them in 2004, and to recover the difference between the rate increase it sought in 2018 and what was ultimately approved in 2019. The Disapproval characterized that approach as an unfair, inequitable and unreasonable attempt to pass on substantial past costs that were not covered by the then approved rates to current policyholders.

[58] That option is discussed later in this decision.
[59] The Disapproval observed that 1) underpricing was not unique to Genworth and 2) could have been a marketing strategy. Neither comment is germane to our discussion.

The Disapproval pointed out that although Genworth realized some time ago that the Products were underpriced, it continued to sell them at the rates initially approved and to collect premiums at those rates for many years. Further, it observed, during that period Genworth chose not to utilize resources such as its surplus funds or funds of an affiliated company to cover its underestimated costs of future benefits and now asks the Product policyholders to pay significantly higher premiums to compensate Genworth for that persistent underpricing.

Genworth interprets the Disapproval language as a suggestion that Genworth, if it does not receive its proposed rate increase, could cover any shortfall between premium income and claim costs by drawing on its surplus or resources of its affiliated companies. Genworth vigorously objects to both possibilities, arguing that surplus is intended to maintain solvency when unexpected events occur and that it must be retained for LTCI because the majority of claims occur after policies have been effect for many years. It further argues that utilizing surplus might trigger action by its domiciliary regulator.[60]

We are not persuaded to transform historical observations in the Disapproval into a veiled proposal that Genworth adopt either option now. We conclude that the language of the Disapproval does not support Genworth's extrapolations, and that the Division's conclusions are supported by substantial evidence and are not based on any error of law.

B. Solvency and Price Comparisons

Throughout this proceeding the relevance of Genworth's rate filings for the Products in other jurisdictions to the Division's review of this Filing has been an issue. The Disapproval states that in assessing questions of carrier solvency the Division considers, among other things, rate increases that the company requested in other states. In Paragraph 19, the Disapproval observes that Genworth's proposed 161.61 percent increase exceeds requests made in other states. Genworth contends that rate increases it seeks in one state do not depend on or affect what it files for in other states. The Filing includes a chart indicating that rates in all states have increased over time but not from a common base or according to a consistent pattern of percentage goals to be applied to that base.[61]

Nevertheless Genworth, throughout its SoFs, objects to the disapproval on the ground that current Massachusetts rates for the Products are below those in almost every other United

[60] SoFs 85-98.
[61] Exhibit 1, pp. 684-85.

States jurisdiction and that a goal of this Filing is to bring its Massachusetts premiums "into line" with those charged for the Products in other states.[62] It asserts that Massachusetts lags behind other states in approving rate increases and that premium differentials will only increase as other states approve increases.[63] The Filing includes a chart that compares, as of December 31, 2020, average Massachusetts premiums for the Products to nationwide premiums. Data in that chart contradict Genworth's assertion that Massachusetts premium rates are far below those in other states.[64] They show that before the requested increase, the Massachusetts average was $2,638 and the nationwide average $2,539, and that post the requested increase, the Massachusetts average would be $6,894 and nationwide average $6,642.

A second table in the Filing shows rate increases Genworth sought in 48 other states for a range of policy forms between 2007 and September 30, 2021 and whether those increases were approved as filed or at a different level.[65] It includes a comparison of cumulative percentage rate increases that each state approved for the Products.[66] Concurrent with objecting to the disapproval on the ground that rates in Massachusetts are allegedly lower than in other states, Genworth asserts, that "[t]he amount of rate increase that [it] seeks on the Products in a particular state is not dependent on, and does not impact, the amount of the increase that it has obtained or requests in other states."[67] It contends that its goal in every state is to ensure that it meets regulatory lifetime loss ratios permitted in that state and to that end is pursuing everywhere the full amount of its proposed rate increases.[68] Nevertheless, it is evident from the table referenced above that Genworth's proposed increases were not always approved and that modification of its requests is not uncommon. On this record, we find that the stated reason for Disapproval 19 is supported by substantial evidence and is not based on an error of law.

Genworth also contends that disapproval of the Filing could have possible future consequences for the public fisc related to the costs of long term care.[69] It argues that LTCI benefits pay for a policyholder's long term care, an expense that, unless covered by the

[62] SoFs 9, 68.
[63] SoFs 20, 22,23.
[64] Exhibit 1, p.1213.
[65] Exhibit 1, p.692. While those tables show the number of filings for rate increases that Genworth made during that period, they do not show the baselines to which the increase applied or compare by jurisdiction the dollar cost to policyholders of proposed rate increases.
[66] SoFs 39, 40.
[67] SoF 200
[68] SoF 201
[69] SoF11.

policyholder's personal financial resources, might be met through the state Medicaid program. Genworth asserts that about one third of the Commonwealth's Medicaid budget is spent on long term care, and that without LTCI as a resource, that item might be much higher. It offers no data or analysis to support any aspect of that hypothesis.

Genworth further asserts that the magnitude of its requested uniform rate increase results in part from the Division's alleged failure to approve rate filings it made subsequent to the initial rate filing.[70] It is uncontested that the Division approved the initial pricing of premiums for the Products that were sold to Massachusetts residents for eight years, between 2004 and 2012.[71] Genworth contends that it timely filed for subsequent increases beginning in 2015; it offered no further information on that 2015 filing but a chart in the Filing reports that it was withdrawn in 2016.[72] Genworth next filed for an increase in November 2018, seeking an overall 92% increase; in April 2019 the Division placed on file a negotiated phased in 40% increase.[73]

Massachusetts statutes and regulations do not prescribe timetables for filing proposed changes to LTCI rates. Absent such requirements, responsibility for initiating requests for rate increases lies with the insurer. It is axiomatic that Genworth's 2021 proposed rate increase would be smaller if it had obtained rate increases at more frequent intervals; it is evident from the record that it did not routinely pursue such increases.[74] Genworth now views the negotiated rate increase it obtained in 2019 as an example of Division "inaction," apparently on the theory that it was entitled to the entire amount of its proposed increase. The record does not support Genworth's argument.

C. Advising Policyholders of Premium Increases

As a reason for disapproval the Division concludes that the Filing is unfair because Genworth seeks to raise rates now without sufficiently notifying policyholders over time about the possibility of future rate increases and the size of such increases. Paragraph 7 contends that Genworth, when it sold the policies, did not sufficiently notify purchasers about rate increases and thereafter gave inadequate notice to policyholders. It asserts that Genworth was aware

[70] SoFs 69, 112, 202, 203
[71] SoF 47.
[72] SoFs 110, 111, Exhibit 1, p. 692. This appears to be inconsistent with information in the decision in *Genworth Life Insurance Company v. Commissioner of Insurance,* 95 Mass. App. Ct. 392 (2019) that referred to a filing for a rate increase submitted in December 2012.
[73] id.
[74] In SoFs 68 and 202, Genworth asserts that Massachusetts policyholders have benefited by receiving years of coverage at lower premiums than those allowed in other states.

before 2015 that it would seek increases but waited years to do so.[75] Paragraph 8 contends that Genworth's failure over time to notify policyholders adequately about the magnitude of future rate increases effectively deprived them of an opportunity to consider alternatives to the Products that may now no longer be available to them. It contends that, advised of potential increases, policyholders might have sought to obtain LTCI from another source but that now, ten years after Genworth stopped selling the Products in Massachusetts, such a choice is circumscribed by two specific factors: the policyholder may be no longer insurable for medical reasons and marketplace changes have reduced the options available for purchasing LTCI.[76]

Genworth opposes these reasons, contending that the Products' initial pricing was developed in accord with actuarial standards and that the assumptions it used reflected a then current consensus of actuarial judgment and were consistent with industrywide practice.[77] Later, after the Products were sold Genworth, based on more recent claims experience data, developed new projections and began to file for rate increases.[78] Genworth particularly objects to allegations in the first paragraph of the Disapproval that Genworth intentionally refrained from increasing the rates for the Products in order to maintain its competitive position in the market. The reason for disapproval reflects a principle that, once an issuer concludes from new experience data that the assumptions on which it based the original pricing were inaccurate, it is unfair to postpone advising policyholders that their premiums will increase and to delay filing for an increase. Putative reasons for Genworth's chosen timetable for seeking rate increases are extraneous to that principle.

Genworth argues the record does not support disapprovals grounded in its alleged failure to notify policyholders of proposed rate increases.[79] It contends that the forms for the Products state in bold face type that the policy is guaranteed renewable so long as premiums are paid and satisfied the legal disclosure requirement set out in 211 CMR 65.09. Further, Genworth asserts that prospective policyholders received documents such as a Long Term Care Shopper's Guide

[75] Paragraph 7 also asserts that "[t]he policies were marketed with an example that included a flat annual premium that was "unfair, deceptive and misleading." We have not found a copy of such a document in Exhibit 1 and decline to comment further on it.
[76] In its response to the SoF the Division commented that at the time the Products were sold it had approved more than 40 insurers to write individual LTCI; now there are fewer than 10 in that market.
[77] SoF 45, 46. The parties do not dispute that the Division approved the initial pricing or that future experience differed from that assumed in that filing.
[78] SoF 29.
[79] SoFs 104,105, 115. See, for example, a document Genworth submitted to support its argument that it has provided adequate notice about rate increases to its policyholders. Exhibit 1, p. 739.

issued by the National Association of Insurance Commissioners ("NAIC") and personal worksheets to help them clarify their ability to pay for LTCI.[80] Genworth contends that marketing materials also gave notice that the rates could change and that, after the purchase, its annual mailings to LTCI policyholders continued to advise them that rates could change.[81]

The record does not support Genworth's position. Included in the Filing are copies of information for policyholders that Genworth distributed to LTCI purchasers, beginning with a document dated 2002 and concluding with a 2018 version.[82] Because the Products were first sold in Massachusetts in 2004, our review focusses on statements titled *Important Information About Long Term Care Insurance Premiums* dated 2004 and later that Genworth notes were sent to Product policyholders. The text of the 2004 document acknowledges that cost is an important element of LTCI and then poses and answers a series of questions. Genworth first suggests that prospective purchasers may not want to purchase LTCI unless they expect to be able to afford the yearly premiums, "including if they were to increase in the future, for example by 20%." It then outlines factors that underlie determining premium rates, including experience and assumptions, and what it characterizes as "unpredictable" factors that may affect price, such as advances in medical care, changes in consumer expectations and changes in social programs.[83]

Genworth then refers to the NAIC LTCI model regulation as the source of a rigorous process for rate filings that includes actuarial certification that an initial filed rate schedule is sufficient to cover anticipated costs under moderately adverse experience and is "reasonably expected to be sustainable over the life of the policy form filed, with no future premium increases anticipated."[84] In answer to a question about whether a policy premium might increase, Genworth replies "[i]t could," but expands its response to state that "[o]ur goal has been to price our LTCI policies so that premiums will remain at original levels for the duration of the policies." It subsequently informs policyholders that, dating back to 1974, it has never raised premium rates on these policies, adding the caveat that past performance is not a guarantee of the future.[85]

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[80] SoF 7. Genworth states that the Shopper's Guide "plainly discloses the possibility of rate increases."
[81] SoFs 108, 109, 117.
[82] See, Exhibit 1, pp. 701-776, passim.
[83] As discussed later in this decision, Genworth now contends that it is improper to consider those factors because they are unpredictable.
[84] Genworth notes that "currently" the NAIC model regulation is not implemented in many states," but does not specify its status by jurisdiction.
[85] Exhibit 1, pp. 716-717, 720

Beginning in 2005, the *Important Information* pamphlet omits the language advising insureds to be sure they can afford future premiums, even if they were to increase by 20 %. It slightly modifies the description of the NAIC model regulation but retains the statements about the expectation that the initial filed rate increase will remain in place for the duration of the policy and that Genworth has not increased rates since 1974. The 2007 pamphlet continues these representations. The 2008 edition of the pamphlet omits the statement that Genworth has not increased rates since 1974 but continues to state that its goal "has been to price our long term care insurance policies **so** that premiums will remain at original levels for the duration of the policies."[86]

Genworth reformatted the Important Information pamphlet distributed in 2011. The content retained the statements from the NAIC model regulation about actuarial certification that the "initial filed rate schedule is sufficient to cover anticipated costs under moderately adverse experience, and is reasonably expected to be sustainable over the life of the policy form filed, with no future premium increases anticipated" and reiterated Genworth's goal to price its policies so that premiums will remain at original levels. The 2012, 2013 and 2014 pamphlets duplicated the 2011 language. [87]

In 2015 Genworth revised the pamphlet significantly, omitting any information on the factors that affect rates, the NAIC model regulation, its goals in pricing policies and its intent to price policies so that premiums would not increase over the duration of the policy. Its first question now asks, "Can the premiums for my coverage increase over my lifetime?" It first answers yes, and eventually states that more than one increase is possible. Genworth also adds information on options available to policyholders that would reduce premium increases but decrease their benefits. Policyholders are advised to be sure keep their addresses current.[88]

This record demonstrates that in 2004 Genworth, in its *Important Information* communication to policyholders, cautioned them about purchasing LTCI unless they could afford future premiums, even if they were to increase by 20%. It then referenced language in the NAIC LTCI model regulation that required actuaries to certify that the initial filed rates were sufficient to cover anticipated costs, reasonably expected to be sustainable over the life of the

[86] Exhibit 1, pp. 725-726.
[87] Ex. 1, pp. 731-734, 739-740.
[88] Ex 1. P. 741-742. Genworth notes that this version was also sent out in 2016 and 2017. Ex. 1, pp. 743-746., 751-754. Minor revisions were made in 2018. Ex. 1, pp. 755-56.

policy and that no future premium increases were expected. Genworth specified its goal, to price its LTCI policies so that premiums would remain at their original level for the duration of the policy. It reinforced its success at meeting that goal with the statement that since 1974 it had never raised those premiums. Outside of the caution about the policyholder's ability to afford as much as a 20% increase, the 2004 language about the NAIC model regulation and Genworth's goal remained in place until 2008, when Genworth deleted the statement that it had not raised premiums since 1974. The 2011-2014 mailings retained both the citation to the model regulation and Genworth's goal of premium stability.

On its face, the NAIC model regulation appears to affirm Genworth's goal of stable premiums. However, the record does not show that Genworth advised policyholders whether their home state had adopted the model regulation and, if so, identify any state modifications. Without that information, policyholders may have thought that the model regulation offers protections that did not in fact apply to policies sold in their state.

Only in 2015, three years after the Products were no longer sold in Massachusetts, did Genworth's Important Information statement advise policyholders that premiums could increase, and more than once during their lifetimes. Even then, it offered no advice on the potential timing or magnitude of increases. The language in 211 CMR 65.09 that Genworth characterizes as a sufficient disclosure of a future possible premium increases, "in the future we may increase the premium you pay," was offset for over a decade by representations about requirements of the NAIC model regulation, statements about Genworth's own goal in pricing LTCI and the additional statement that it had not increased premiums since 1974.[89] It is unfair to disregard, as Genworth does, the effects of these positive representations about rate stability on policyholders' perceptions on the cost of their Products and its relevance to their financial planning.

We find that substantial evidence supports the 7th and 8th reasons for disapproval of the Filing on the grounds that Genworth, both during the period in which it actively sold the Products and thereafter, unfairly sent information to policyholders that was and continued to be misleading or deceptive with respect to premium increases.[90] We further find that its reasoning was not based on an error of law.

[89] Furthermore, the language suggests that Genworth may raise rates unilaterally, not that it must apply for and obtain permission to do so.

[90] The Division contends that it is unfair to raise premiums now because, if an insured's Genworth policy lapses, the policyholder may have become medically uninsurable and for that reason unable to find new coverage elsewhere.

D. Actuarial Matters

Insurance rate development customarily begins with analyses of historical data on matters such as claims experience for the benefits provided under the relevant policy forms, lapse rates, and mortality and morbidity data for the insured cohort. That data is the starting point for developing assumptions about the cohort that, adjusted to reflect factors or events that may affect that experience, are projected forward to develop prospective rates. Because assumptions, adjustments and projections are the principal factors in developing premium rates, determining whether proposed prospective rates will satisfy statutory requirements demands both careful analysis by the Filer of the historical data on which it relies and sensitivity to current or anticipated events that may affect that data.[91] Similarly, regulatory review requires careful consideration of the Filer's chosen assumptions and projections. Actuarial opinions are judgments and, even if derived from the Filer's selected historical inputs and its chosen approaches to estimating future occurrences, may well differ.[92] We find no merit to Genworth's contention that differences of actuarial judgment are not, per se, a basis for disapproving a rate filing.[93]

The 2021 filing indicates that Genworth developed its assumptions internally. The actuary who signed the September 2021 Actuarial Memorandum in the Filing stated that, in determining that the Filing "satisfies the minimum requirements and all applicable regulations in [Massachusetts]" she has "relied on assumptions developed by GLIC's Long-Term Care Experience Studies team in collaboration with other GLIC actuaries, which assumptions were

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Genworth questions that statement, arguing that the average current policyholder is age 71, that typically policyholders do not go on claim for years later, and there is no evidence of insufficient time to obtain replacement coverage. SoFs 99, 121. Although Genworth dismisses the concerns articulated by the Division, it acknowledges the scope of the underwriting process in each actuarial memorandum included in the filing, as follows: "[t]he underwriting process included an assessment of functional and cognitive abilities at issue ages considered by GLIC to be appropriate. Various underwriting tools were used in accordance with our underwriting requirements, including an application, medical records, an attending physician's statement, telephone interview and/or face-to-face assessment." Exhibit 1, p. 515. It is reasonable to expect that other LTCI issuers apply similar if not identical screening procedures to applicants for LTCI. The Division's concern is reasonable, though absent historical data on the denial rate for LTCI applications, the outcome may be difficult to quantify.

[91] The process does not always accurately predict hoped for future results. As Genworth notes, in SoF 29, the assumptions about claims experience that underlay the initial pricing of the products did not match the actual subsequent experience.

[92] Genworth contends that both insurers and policyholders need certainty and predictability in insurance regulation, dismissing out of hand a number of the Division's bases for disapproval as differences in actuarial judgment or based on hypothetical future events.

[93] SoF 155.

approved by Genworth's Assumption Review Committee."[94] She further notes that these "assumptions present the actuary's best judgement [sic] and are consistent with the issuer's business plan at the time of the filing." [95] An essential aspect of reviewing a Filing is to explore and evaluate those assumptions.

1. Lapse Rate Assumptions

A standard element in developing LTCI rates is the assumption that over time some policyholders in the cohort will drop their coverage. Paragraphs 3, 5 and 12 of the Disapproval arise from concerns about the effects of the proposed 161.60 percent increase on the lapse rate and on policyholder decisions to modify their Genworth policies. Paragraphs 3 and 5 focus on the potential for "shock lapse" that might be generated by the size of the proposed increase and its proposed effective date, *i.e.* on the heels of the increase approved in 2019. Paragraph 12 disapproved the Filing on the ground that Genworth's lapse rate assumptions did not account for lapses that could result because of different types of insurance products that might be available to policyholders[96]

Genworth asserts that in its experience "the majority of policyholders elect to pay the full amount of the premium increase, reflecting that they have concluded that their coverage is valuable and worth the increased premiums."[97] Genworth therefore concludes that it is reasonable to expect that in the future all policyholders will accept the rate increase and to assume that policyholders will not drop their policies in response to what Genworth characterizes as an actuarially justified increase.[98] It further responds that its lapse rate and persistency, *i.e*. policy retention, assumptions are consistent with the industry.[99] Genworth contends as well that it would be unreasonable to adjust its lapse and persistency assumptions to acknowledge the

[94] Exhibit 1, p. 536.
[95] Id.
[96] Lapses might occur when a policyholder switches from LTCI to a different product referred to as a "hybrid life long-term care insurance product." The 2022 edition of the NAIC Shopper's Guide to Long Term Care Insurance defines these as "a Hybrid/Combination Life Insurance Policy or Annuity Contract that has provisions that could be used for long-term care." Genworth does not suggest that it has no experience with such products.
[97] SoF 68.
[98] In its SoFs, Genworth relies on information in a 2016 paper from the Society of Actuaries, Long-Term Care Insurance: The SOA Pricing Project (Nov. 2016). Its conclusions were not tested by data from Massachusetts purchasers of the Products who, in the decade after Genworth stopped selling them, have experienced a single premium increase that was less than half what Genworth requested and was phased in over a three-year period.
[99] SoF 153.

possibility of future lapses in response to rate increases, arguing that to do so would implicitly apply a factor that would alter the increase and might therefore affect policyholder behavior. [100]

Genworth asserts that the low rate of policy lapses in its historical national experience data support its choice to characterize HCAB concerns about the effect on lapse rates of the size of the proposed premium increase, its timing or the availability of alternatives to LTCI as hypothetical. Genworth, however, neither discloses policyholder reasons for letting policies lapse nor offers any analysis of the effect on lapse rates of substantial immediate rate increases of the magnitude proposed in this Filing to support its assumption that the size of the proposed premium increase will not affect those rates. [101] As a rationale for deciding not to adjust lapse rate assumptions Genworth dismisses the effects on those assumptions of events that may occur over the next six decades as hypothetical, rather than uncertain. We find that projecting rate needs for future decades, without periodically assessing the predictive merits of Genworth's chosen assumptions, risks retaining in effect rates that no longer satisfy the statutory standards and is a sound basis for disapproving proposed rates that do not provide for periodic reassessment.

Genworth contends as well that lapse rates are insignificant because it offers alternatives that allow policyholders to retain the Products and avoid premium increases, either by choosing to convert their current policies to fully paid-up policies with reduced benefits, or by accepting Reduced Benefit Options ("RBOs") with lower future premiums. [102] Genworth offers no estimate of the number of policyholders who might accept these alternatives, or the effect of selecting those alternatives on its assumptions about future claim costs and premium needs.

Genworth includes in the Filing proposed forms for RBOs that it proposes to offer policyholders as alternatives to paying the entire premium increase and maintaining current benefits. [103] Genworth contends that the Division disapproved those options in this Filing because

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[100] SoF 63, 154

[101] The Division's response to Genworth's SoFs cites a section of Actuarial Standard of Practice 18 that addresses lapse assumptions. *VOLUNTARY TERMINATION (LAPSE) ASSUMPTIONS*
"When developing voluntary termination (lapse) assumptions, the actuary should take into account product features, premium mode, premium payment method, nonforfeiture benefit, and rating agency rating. The actuary also should take into account reasonably available information regarding the method of marketing, the motivations for purchasing and continuing coverage, product and premium competitiveness, and the quality of service of the entity providing the benefits. The actuary should take into account any effect of rate changes or offering reduced benefits on voluntary lapses. The actuary should take into account whether lapses are reasonably represented as a proportion of total decrements."

[102] SoF 64, 102

[103] Genworth's information for policyholders mailing sent in 2015 advised policyholders about the availability of RBOs. The record does not indicate whether it offered them at that time in Massachusetts.

it did not want them to be available to policyholders, that the Division "approved" materially identical disclosures in connection with Genworth's 2018 Rate filing, that the NAIC endorses offering RBOs, and that in the past the Division required it to offer such options. To the extent that those arguments were previously addressed in this decision we will not reiterate them here.[104]

Disapproval Paragraphs 16 and 17 specifically address Genworth's proposed RBOs and their potential effect on Genworth's asserted rate needs. Paragraph 16 discusses that policyholder acceptance of RBOs may both reduce Genworth's expected claim costs and present it with an immediate financial benefit by enabling it to reduce the Active Life Reserves ("ALR") that Genworth maintains to cover claims generated from its Massachusetts business. Paragraph 17 states that Genworth offers no actuarial or other support to estimate the economic value of RBOs that it anticipates, to address their potential to lower Genworth's claim costs and affect its proposed rate increase, or to enable the Commissioner to determine whether proposed RBO premiums would satisfy the applicable statutory standards.

Genworth concedes that policyholder choices to select RBO options may result in releasing a portion of its ALR, but asserts that it will benefit "remaining" policyholders because the funds will still be used to support claim payments throughout the lifetime of the block of business.[105] The Disapproval points out that electing RBOs would benefit the Genworth twice, first by retaining ALR at a level projected to cover higher claim costs and second in the form of reduced future benefit claims. The Division concluded that Genworth's RBO proposal is unfair to consumers because it does not demonstrate that policyholders who choose RBOs will benefit from the reduced ALR value resulting from their choices.

Paragraph 17 disapproved the Filing because Genworth's RBO proposals failed to demonstrate actuarial equivalence between the proposed overall rate increase and the RBO rates. Genworth responds that the concept of actuarial equivalence is unclear, and that no regulation requires actuarial equivalence between a requested rate increase and RBO rates.[106] As noted

[104] SoFs 1, 177, 178. Genworth also contends that RBOs are commonly allowed in other states when Genworth seeks rate increases and that the NAIC supports their use. Genworth did not analyze that experience to project either the effect of RBO offers on policyholder retention of their original purchase or on its assumptions about future rate needs.

[105] Genworth comments that any such release will be smaller [as a result of RBO elections] than it would be if policyholders chose to surrender their policies. It offers no estimate of the size of the release under either scenario.

[106] Long term care regulation 211 CMR 65.06 sets out some requirements for mandatory benefit offers in rate filings. With respect to inflation benefit offers it requires that the applicant be informed of the cost. The Filing

above, 211 CMR 42.06.(2) requires rate filings at least to explain formulas used to derive rates, including expected claim costs and other assumptions. The proposed rates, then, must demonstrate that the RBO benefits are reasonable in relation to the premium charged and comply with other statutory standards. Genworth's SoFs do not identify information in Exhibit 1 that would permit review of RBO premiums to determine compliance with Massachusetts law.

Genworth characterizes the Division's objections to its RBO proposals as an attempt "to twist this benefit [intended for policyholders]" into an allegedly "unfair and unreasonable disapproval."[107] It claims that the materials it presents to prospective RBO purchasers make clear which benefits are being surrendered, that RBOs are not equivalent to retaining the original policy in force, and notify the policyholder that all options may not be equal.[108] Genworth notes that policyholders are directed to consult with their financial and tax advisors when selecting options. Genworth's arguments are not persuasive.

The Disapproval does not address the forms that Genworth proposes to send to policyholders electing RBOs but is based on the absence in the Filing of information on the accumulated value of past premium payments that policyholders will receive and the premiums they will be expected to pay for the reduced benefit or the effect of decisions to select RBOs on the rate increase sought in the Filing.[109] Genworth offers RBOs as an alternative to paying the proposed across the board increase; it is therefore necessary that it provide essential information that would enable Division reviewers to determine that the premiums associated with RBOs conform to applicable statutory and regulatory standards and that the Filing incorporates the anticipated effect of selecting those products on Genworth's current projected estimates of future claim experience. Genworth's argument that it need not provide support for its RBO premiums because there is no regulatory requirement that it do so is not persuasive.[110]

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included a cost for this benefit as part of an RBO offer but did not provide any analysis addressing it as a component of proposed RBO premiums.

[107] SoFs 178-180.

[108] *See* Exhibit 1, pp. 767, 774 (standard policyholder letter templates from 2019 and 2021, respectively).

[109] Genworth attached as Exhibits 14 and 15 to its SoF two NAIC publications: NAIC Reduced Benefit Options Associated with Long-Term Care Insurance (LTCI) Rate Increases, *Principles and Issues (including those with particular need for stakeholder input)*, adopted by the Long- Term Care Insurance Reduced Benefit Options (EX) Subgroup, Nov. 30, 2020 and Long Term Care Insurance (LTCI) Rate Increases, *Guiding Principles to Ensure Quality Consumer Notices of Rate Increases and Reduced Benefit Options*, adopted by the Long-Term Care Insurance Reduced Benefit Adopt _Options (EX) Subgroup, Nov. 30, 2020. Exhibit 1 does not indicate that RBO forms were discussed during the review of the Filing or that, if they were, these materials were considered.

[110] SoF 18.

The absence from the Filing of information on the issues addressed above fully supports the Disapproval on the grounds articulated in those sections; we find as well that none is based on an error of law.

2. Interest Rate Assumptions

Paragraph 13 of the Disapproval rejects the Filing on the ground that Genworth's interest rate assumptions for the next 60 years were weighted toward generally lower recent interest rate trends rather than on an average of interest rates over the past 60 years, a methodological choice that has the salutary effect of reflecting fluctuating interest rates over a lengthy economic period. Observing that future rates of actual return on invested assets may possibly rise to a level that is close to or exceeds the interest rates that were in place when the products were first priced, the Disapproval concluded that Genworth's assumption may understate its future returns, thereby overstate the magnitude of its proposed rate increase, and thus produce rates that do not comply with statutory standards**.**

Genworth contends that there is no reason to rely on the average interest rate since 1962 as a reasonable predictor of future interest rates. It asserts that it employed "fund accounting" to arrive at its proposed interest rate of 4.12 percent and that its proposed rate is "consistent with the company's actual past and best estimate future earning rate."[111] Genworth offers no further analysis of its past and estimated future earnings on the assets associated with the Products. Its interest rate assumption is significantly lower than any value on the historical interest chart submitted in the Filing and ignores a recent uptick in that value.[112] It provides no explanation for projecting that value as a long-range estimate of interest rates or support for the assertion that it now operates in an unchanging "low interest rate environment" and expects to do so for the future duration of the Products.

On this record, we conclude that substantial evidence supports disapproval of Genworth's interest rate value, and that it is not based on any error of law.

F. The Magnitude and Elements of Genworth's Proposed Uniform Rate Increase

In its response to the Genworth SoFs, the Division pointed out that it has long considered the effects of large premium increases on policyholders and, in the interest of fairness and equity, prefers to allow smaller phased in increases.[113] We note that Genworth, as well, has also expressed to policyholders concerns about affordability.[114] Genworth contends, however, that

[111] SoF 159.
[112] Ex.1, p. 531.
[113] It appears that position was a factor in the settlement of the 2018 rate increase.
[114] Its 2004 *Important Information* mailing to policyholders expressed such concern but rather than advise

periodic smaller premium increases will ultimately result in higher rates because of the cost of delay in implementing such increases and the reduced investment income it will earn on premium income that it holds to cover future claims.[115] It offers no economic analysis to quantify or otherwise support those outcomes. It asserts that its negotiated resolution of a 2018 rate filing that phased in a rate increase over a three-year period showed that smaller interim rate increases only necessitate higher ultimate rates; Genworth fails to acknowledge that in this Filing the proposed higher rate includes a request to collect premium that reflects the difference between what it sought in 2018 and what was allowed.[116]

In response to Division concerns about the effect on policyholders of Genworth's delays in seeking rate increases, Genworth contends that LTCI is a long-duration product that many policyholders purchase years before they expect to receive benefits.[117] Responding to the Division's concerns about such delays, it characterizes its initiation of a first rate increase in 2015 as "the antithesis of delay" and a "step toward prudent management of the Products."[118] It does not acknowledge that it withdrew that proposal, did not substitute a replacement and did not explain its reasons for waiting three years to make its next filing.

Paragraph 4 of the Disapproval addresses Genworth's proposal to apply an identical percentage increase to all rates rather than adjust it for different classes of policyholders, on the ground that its approach will generate excessive rates for some customers. Requests to revise premiums for "Guaranteed Renewable" policies must be filed on a "class basis" and apply to all policyholders insured under a particular form. The term "class basis" is defined by exclusion, *i.e.* it cannot be based on a change in the policyholder's age or personal health.[119] Genworth contends that because the Products do not additionally define policy class, its uniform percentage increase is permissible.[120] We do not find its argument persuasive.

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policyholders to anticipate periodic rate increases or their potential size, Genworth proffered no information to encourage them to plan their finances accordingly.

[115] Sof 133.

[116] Ex. 1, September Actuarial Report, p. 514.

[117] In 2015, the year in which Genworth revised its *Important Information* mailing to advise policyholders that their premiums for LTCI could increase more than once over their lifetimes, it filed for and then withdrew a proposed rate increase in Massachusetts. It then waited three years to file another.

[118] SoF 111.

[119] 211 CMR 42.04 defines class as "Class means underwriting and rating classifications used when policy was originally issued."

[120]The actuarial memorandum dated July 2021 indicates that premiums differ based on daily benefit, benefit period, elimination period, Benefit Increase Option, and any applicable riders selected. Exhibit 1, p. 1194

The rationale for stratifying a proposed rate increase rather than applying it across the board recognizes that a policyholder's initial LTCI premium varied depending on the particular benefits they purchased. Uniform application of a later proposed premium increase assumes that premium differentials were correctly calculated at inception and would continue to reflect them accurately in the future. Applying a uniform increase to each policy therefore may not reflect current differentials in the cost of providing particular benefits to subsets of policyholders; a stratification analysis will ensure that premium increases are adjusted to reflect the cost of providing benefits to particular sets of policyholders. Genworth broadly asserts that its initial rates underestimated future experience but does not further address how that experience affected particular benefits provided by the policies or other rating factors.[121] Without additional analysis, uniform application of the proposed increase to all policies may overstate the future premium required to support some benefits and understate the need for others. The Disapproval is based on Genworth's failure to address that issue.

The Division identified two particular benefits for which the proposed increase should be "stratified" in order to produce more equitable results for policyholders: limited or lifetime benefits and whether the provision that automatically increases benefit levels to reflect inflation is calculated using simple or compound interest. Genworth, arguing that it has no legal requirement to stratify rate increases by policy class, relies on the judgment of its actuaries as the basis for its failure to do so, arguing that their decision is consistent with the concept that insurance pools risk across a group of people.[122] It offers no support for applying that concept as the basis for not adjusting premiums or premium increases to reflect the cost of providing benefits to subsets of the policyholder group.

The Filing indicates that stratifying requested premium increases by class is far from uncommon. A table of cumulative rate increases allowed in 51 United States jurisdictions between 2007 and 2020 demonstrates that a significant number differentiated increases allowed for Limited Benefit policies from those with Lifetime Benefit policies, with higher increases for the second group.[123] Genworth rejects that approach, but concedes that the uniform percentage

[121] In SoF 19 it contends that actuaries assert that longer lifespans and rising claim costs require increased premium to cover future costs. It does not distinguish between policies that provide a predictable fixed benefit and those that provide an uncertain lifetime benefit.
[122] SoF 74.
[123] Exhibit 1, p. 684-685.

increase it proposes will significantly increase premiums for some policyholders.[124] The Disapproval reflects the conclusion that a uniform increase may produce excessive premiums for some policyholders and that the failure to stratify is fundamentally unfair.[125] Genworth has provided no persuasive reason to reject that conclusion.

G. Genworth's Projections

In Paragraph 9, the Filing was disapproved because Genworth proposes to raise rates substantially and for a significant time period using projections that may not be valid in the future because its actual experience over that period may vary considerably. Genworth further declines to agree to decrease rates in the future if those projections do not reflect actual circumstances, asserting that it is under no legal requirement to do so.[126] Genworth's Filing anticipates projected rate needs for 60 years, to 2081.[127] Because experience may not support these projections throughout that period the Division, as noted above, supports filing rates at periodic intervals that enable it, as a regulator, to evaluate on a periodic basis changes to the filer's experience, its evolving rate needs, the assumptions underlying its requested rate changes and the environmental changes that affect LTCI. The Disapproval also reflects the premise that it is unfair and inequitable to place the burden of a rate increase projecting 60 years of Genworth costs on current Product policyholders rather than periodically seek smaller increases that rely on more recent experience and reevaluate future needs.

Several of Genworth's recurring objections to disapproval have been addressed earlier in this decision and need not be reiterated here.[128] Genworth now argues that the long duration of

[124] In response to the examples offered by the Division of the scope of the increases, Genworth acknowledges that the uniform increase will significantly increase premiums for policyholders with lifetime benefits or other higher options, but that they have the option of reducing their benefits. It does not differentiate premium needs to support particular benefit packages.

[125]The Division also cites ASOP 18 for the proposition that in developing recommendations for revisions to current premium rate schedules, the actuary should review material variations in experience and consider reflecting changes in expectations that would affect changes in premium rates.

[126] SoF 128. It asserts that an agreement to decrease premiums in the future if its current data and assumptions change would be inconsistent with the professional responsibilities of its actuaries. SoF 129. However, as the actuary who signed the September 2021 Actuarial Opinion in the Filing states, "all future projections are based on Genworth's best estimates, are uncertain and may not emerge as expected. Ex. 1, p. 536

[127] Genworth offers no explanation for its chosen 60-year projection period. The September 2021 Actuarial Memorandum, Ex.1 p 537, reports that as of December 31, 2020, the average age of the policyholder group is 71 and the average age at date of issues was 58. It does not provide a median or a range by age group. It appears unreasonable to request rates that project premium needs to cover claim costs during a period well beyond the life expectancy of most, if not all, members of this group.

[128] They include statements that Genworth has no legal obligation to commit to future premium decreases or to file for periodic smaller rate increases and that the Division did not ask it to do so. SoFs 128, 130, 131.

its projections means that they are inherently uncertain and that such uncertainty is not a valid reason for disapproving a proposed premium increase.[129] It contends that the Filing is based on "known information" and should be reviewed on the basis of that information, not on hypothetical future events.[130] Further, it argues that its actual experience to date makes it unlikely and unreasonable that any future experience would justify reducing premium in the future.

Genworth misstates the Division's ninth reason for disapproving the Filing. Uncertainty itself is not the issue; Genworth agrees that "uncertainty is inherent in all long-term projections."[131] The Division's concern is Genworth's position that its chosen assumptions derived from its historical experience with LTCI support its projected premium needs for the Products over the next 60 years. Genworth bases its argument on the premise that no significant changes have either occurred in recent history or will ever occur in the future that are sufficient to affect the factors that it examines to develop premium rates or to justify reducing those rates. It offers no support for expecting such stability over six decades.[132] Further, Genworth, as it is permitted to do, includes in its premium request a value for moderately adverse conditions to cover the possibility that its assumptions may underestimate future claims but declines to adjust premiums if conditions are such that the premiums are excessive.

Rate filings are prospective in nature, arising from an analysis of past experience and estimated projections of future events. The actuarial memoranda in the Filing caution that assumptions about future events are not immutable. Commenting on Genworth's assumptions on several factors, the September Actuarial Memorandum notes that "[e]xperience is still emerging at the later claim durations and is changing at the earliest durations, which may cause the assumptions to change over time."[133] It recognizes that "all future projections included in this memorandum, while based on GLIC's best estimates, are uncertain and may not emerge as expected."[134]

In Paragraph 10, the Disapproval pointed out that Genworth's assumptions about future claims experience do not adequately adjust for future significant technological advancements

[129] SoFs 123, 124,125.
[130] SoFs 123, 124,125.
[131] SoF 124.
[132] Nor does Genworth recognize that as time passes current uncertainties become realities.
[133] Exhibit 1, pp. 520, 522, 524, 527.
[134] Id. pp. 534, 536.

relating to the need for, availability and utilization of long-term care services that may delay or obviate the use of benefits that cover expensive institutional care. Those options, it noted, include the rapid advancement of technology enabling remote monitoring of health conditions and the availability of telemedicine for both diagnostic and preventive treatments. The Division also objects that Genworth has not adequately adjusted its assumptions to account for emerging trends in medical and social science that are likely to impact policyholders' needs for long-term care services. As examples, it notes changes in the prevalence of Alzheimer's disease and other forms of dementia, the availability of community living modalities, trends in exercise and habilitation treatment, and other innovations that will likely affect policyholder needs for LTCI benefits in the future.

Genworth argues that the reason for disapproval in Paragraph 10 is factually incorrect, asserting that it adjusted its assumptions about morbidity and mortality to reflect three events: future reduction in claims incidence, improved, i.e. future reduction in, mortality as policyholders live longer, and an increased cost of claims because of that increased longevity.[135] It asserts that those assumptions "implicitly" account for medical, social, or technological advances. Genworth, in earlier messages to policyholders, however, lists a number of "unpredictable" factors that may affect rate calculations: "advances in medical care and treatment, changes in consumers' expectations and changes in social programs can impact the price of a policy."[136]

Although Genworth acknowledges that social and technological changes may occur, at the same time it characterizes such advances as hypothetical and argues that they provide no support for future reductions in claim costs.[137] Genworth fails to recognize that factors such as mortality and morbidity are far from hypothetical; at issue is the extent to which they change over time. Disapproval of a Filing based on 60-year rate projections with no agreement for periodic assessments of the underlying assumptions and no provision to reduce premiums if actual experience no longer reflects those projections appropriately addresses the issue of ensuring that rates are fair to policyholders in the future.[138]

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[135] SoF 136
[136] SoF 137
[137] SoF 138
[138] Recent history amply demonstrates that the unanticipated may occur. Genworth bases the Filing on its data experience through the fourth quarter of 2019. It thus reflects none of the turmoil engendered by the Covid 19 pandemic.

Similarly, in Paragraph 11 the Division disapproved the Filing because Genworth did not adjust its assumptions about the effect of morbidity and mortality on future claims experience to recognize the impact of Covid-19 both on sickness and deaths among, in particular, older citizens. It objected that assumptions based on historical experience neither reflected Covid-19's effect on current policyholders or on the future benefit claims rate of the insured population.[139] Genworth objects to that reason for disapproval, asserting that it is not supported by actuarial standards because Covid-19's effect on claims experience is not yet apparent.[140] Characterizing the Covid-19 pandemic as a "singular near-term event," Genworth cites a November 2021 comment from an NAIC Actuarial Working Group that at this time there are no conclusive indications on the effect of Covid-19 on LTC mortality.[141] Genworth asserts further that almost all LTCI insurers have not adjusted baseline assumptions because of Covid-19.[142]

The September 2021 Actuarial Memorandum concludes that if Genworth's proposed premiums, based on the assumptions underlying the Filing, are approved without delay no premium rate increases are anticipated over the duration of the policies.[143] While that goal might be consistent with Genworth's traditional goal for its LTCI rates, it has been demonstrated to be ineffective when experience did not match assumptions. The Disapproval is grounded on the premise that experience during the next 60 years may very well diverge from the assumptions underlying the Filing and that as new experience accumulates rates based on previous experience may no longer comply with statutory standards. Filing LTCI rates at intervals will permit review of more recent experience data and a reassessment of the environment in which the proposed rates will be in effect. We conclude that substantial evidence supports the Disapproval for the reasons set out in Paragraphs 4, 9, 10 and 11 and that none is based on an error of law.

H. Provisions for Moderately Adverse Conditions (MAC)

Paragraphs 2 and 18 of the Disapproval address the Filing's provision for Moderately Adverse Conditions (MACs), a value added to rate filings that reflects the possibility that the

[139] The September 2021 Actuarial Memorandum indicates that the Genworth's assumptions on matters such as voluntary terminations of policies, mortality and morbidity relied on data only through December 2019.
[140] SoF 146. Covid-19 related data would not have affected 2019 experience. Genworth did not suggest that it might be appropriate to reconsider its rates after that experience developed.
[141] SoF 147. Genworth cites as the source for its position a study published in November 2021 by a Work Group of the American Academy of Actuaries. This information postdated the Filing and is not part of the record. In any event, commenting that LTCI insurers address this matter differently does not enhance Genworth's position.
[142] SoF 148. It appears, then, that some have done so.
[143] Ex. 1, p. 536.

proposed rates underestimate actual future claim costs because they are based on assumptions about future conditions that understate the actual events. Provisions for MACs are required in LTCI rate filings.[144] The HCAB disapproved both Genworth's methodology for calculating the MAC and its application in the Filing.

Paragraph 2 disapproved the Filing on the ground that Genworth relied on national rate increase targets that utilized the MAC incorrectly. It pointed out that Genworth applied this margin to its lifetime loss ratio calculation, a value that includes both incurred and projected claims regardless of the age of the policy form. Including a risk margin on closed claims, it noted, effectively enables Genworth to recover its past losses on this group of policies. Paragraph 18 disapproved the Filing because the cash flows on which Genworth developed lifetime loss ratios included a MAC of 5 percent but provided no data to demonstrate the reasonableness of that value.

In response to Paragraph 2, Genworth contends that it included two charts in the filing that show nationwide experience with its requested 161.6 percent rate increase with a MAC and another second chart showing Nationwide Experience All Benefit Periods - With Requested 161.6% Rate Increase without a MAC.[145] However, as applied in the Filing, the proposed MAC value is a constant but, because it serves as is a hedge against uncertainty, should be applied only to projected claims.[146] Over time, more losses represent incurred, rather than projected claims. The diminished proportion of projected claims affects the projection of the lifetime loss ratio and the base for applying a MAC.

Genworth objected to Paragraph 18 on the grounds that a 5% MAC has been included in previous rate filings and was not questioned by the Division. As addressed earlier in this decision, inclusion of a 5 percent MAC in other rate filings does not alleviate Genworth's obligation to support its use in this Filing. Similarly, the argument that the reviewer is obligated to ask for information before disapproving any aspect of the filing has no merit. [147]

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[144] Accident & Sickness Insurance Filing Guidance Notice 2009–C Revised at 2-3 (Feb. 22, 2011).

[145] Genworth asserts that the 5 percent value is lower than the value it uses nationwide; that statement does not support a conclusion that it is a reasonable value to use in this Filing,

[146] Genworth concurs that Incurred claims have no uncertainty. SoF 58.

[147] SoFs 195, 196. Genworth, in SoF 197, also contended that the Filing would result in a minimum loss ratio of over 60% even if it did not include a MAC. As noted elsewhere in this decision, compliance with the statutory minimum loss ratio does not reduce the Filer's obligation to support every aspect of the Filing,

We conclude that substantial evidence supports the reasons in Disapproval Paragraphs 2 and 18 and that neither is based on an error of law.

I. Failure to Support Assumptions

In Paragraph 14, the Division disapproved the Filing on the ground that Genworth did not provide detailed support for its revised assumptions about its future expected cash flows. Those cash flows, the Division wrote, are used to support the Filing and, without that support, the assumptions could not be validated.

Genworth affirms that the Filing did not include support for those assumptions, contending that no regulation requires it and that it is not included in the Division filing instructions. It asserts again that the Division has not required detailed support in the past.[148] Genworth, without further explanation, also contends that all assumptions in the Filing were explained and complied with legal requirements and that the Division did not ask for "additional" support about Genworth's assumptions.[149]

In Paragraph 15, the Filing is disapproved on the basis of Genworth's refusal to comply with the Division's request to provide a document that Genworth relied on, but did not include, in its initial Filing. In the course of its review, the Division requested a complete copy of a 2020 report from Milliman, an actuarial consulting firm that, according to an actuarial memorandum in the Filing, had reviewed Genworth's claim termination rate assumptions. Absent that report, the reviewers were not able to review those assumptions and did not find adequate support for those assumptions. Genworth did not provide the entire report, arguing that it was proprietary, but elected to submit a cover letter and a summary.[150]

Genworth does not contest that the Division requested the entire document or that Genworth had access to it. Its objection to Paragraph 15 asserts that if the summary was insufficient the Division could have requested additional information.[151] As discussed above, Genworth is obligated to provide information requested by the Division. It apparently chose not to explore possible options for controlling access to allegedly proprietary information in the entire report with the reviewers.

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[148] SoF 167.
[149] SoFs 166, 168, 169. As with other reasons for disapproval Genworth asserts that if the Division had requested the support it would have provided it.
[150] Exhibit 1, p. 25
[151] SoF 173.

On this record, we conclude that the absence of evidence on Genworth's future expected cash flows and its claim termination rate assumptions substantially support the reasons set out in Paragraphs 14 and 15 of the Disapproval.

VIII. Form and Scope of the Hearing

In addition to their arguments on the subject of this hearing, the Disapproval, Genworth has objected to the scope of the hearing that was defined at the February 14, 2021, prehearing conference, and subsequently reaffirmed in our October 3, 2022 and April 28, 2023 Orders, arguing that it should be conducted as a de novo hearing to permit supplementing the record with additional evidentiary materials and witness testimony.[152] However, the request for a hearing on the Disapproval arises under c.175, §108.8.A.[153] That section describes the statutory standards for disapprovals and provides that a filer may request a hearing on a disapproval.[154] At no point does Section 108.8.A provide for a hearing on the filing itself. Because the Disapproval, rather than the filing, is the subject of a Section 108.8.A hearing, the hearing will not order revisions to the Filing or examine the Filing's merits. If a disapproval is upheld, the Filer may submit a new Filing.[155]

Genworth argues that it is entitled to a de novo review of its filing rather than a review of the Disapproval, in essence, an opportunity to duplicate and expand the analytical procedures of rate review.[156] It offers no legal authority for such an entitlement. The rate review process for individual health policies does not include any hearing; a Section 108.8.A hearing is only available once the rate review concludes, and a disapproval has issued.[157] A §108.8.A hearing is not an opportunity for either the applicant or the Division to supplement the record. Doing so would negate the plain meaning of M.G.L. c.175, §108.8.A and the purpose of 211 CMR §42.06(3)(b). The standard of review for §108.8.A hearing is whether substantial evidence in the rate filing supports the disapproval and that the disapproval is not based on an error of law.[158]

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[152] In fact, on [date] Genworth submitted additional material to the docket as though this were a de novo hearing despite the existing Orders to the contrary.
[153] Request for Hearing at page #
[154] M.G.L. c.175 §108.8.A
[155] The Disapproval will be upheld if at least one stated reason is found to be supported by substantial evidence and not based on an error of law.
[156] Transcript at p5.
[157] M.G.L. c.175 §108
[158] *Cave Corp. v. Conservation Comm'n of Attleboro*, 91 Mass. App. Ct. 767, 773 (2017)(citing *Healer v. Department of Envtl. Protection*, 75 Mass. App. Ct. 8, 13 (2009), stating the evidence necessary to support an administrative decision is such evidence as a reasonable mind might accept as adequate to support a conclusion).

When de novo review is part of an insurance rate proceeding it is designated in the applicable statutes or regulations.[159] The statutes and regulations applicable to filings for individual health insurance, such as LTCI, contain no such provision.[160]

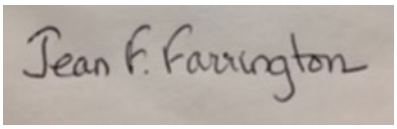
The hearing examines the merits of the Disapproval but does not propose or order revisions to the Filing. The record it reviews consists of two relevant documents: the Filing and the Disapproval. Insurers have no guarantee that a particular rate or form will be placed on file for use in Massachusetts; disapproval of a particular filing does not limit an insurer's opportunity to submit another filing.[161]

IX. Conclusion

This decision reviews HCAB's December 30, 2021, Disapproval. The Disapproval is responsive to the statutory requirements; Massachusetts law permits disapproval of proposed premium rates for individual LTCI insurance policies "if the benefits provided therein are unreasonable in relation to the premium charged, or if it contains any provision which is unjust, unfair, inequitable, misleading or deceptive, or which encourages misrepresentation as to such policy."[162] We conclude, as discussed above, that substantial evidence supports the HCAB's stated reasons for disapproval. We have identified no error of law in the reasoning of the Disapproval. Accordingly, the Disapproval is upheld.

SO ORDERED

April 30, 2024



Jean Farrington, Esq.
Presiding Officer

Matthew A. Taylor, Esq.
Presiding Officer

[159] See e.g. 211 CMR §43.07(7)(pertaining to the disapproval of Health Maintenance Organization rates).
[160] See M.G.L. c.175, §108; 211 CMR 42.06
[161] The resubmission of disapproved filings with corrections or amendments is expressly anticipated by the regulations. 211 CMR §42.06(b).
[162] M.G.L. c.175 §108.8.A