

April 28, 2009

The Honorable Herb Kohl
United States Senate
Special Committee on Aging
330 Hart Senate Office Building
Washington, DC 20510-4903

The Honorable Mel Martinez
United States Senate
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330 Hart Senate Office Building
Washington, DC 20510-4903

Dear Chairman Kohl and Ranking Member Martinez:

The National Conference of Insurance Legislators (NCOIL) believes that seniors must be highly protected in their dealings with life settlements. NCOIL—an organization of state legislators devoted to sound insurance public policy—has been actively engaged in this debate for over a decade. We would like to share with the Special Committee on Aging insights gained during our extensive undertaking, which culminated in a 2000 NCOIL *Life Settlements Model Act*, recently amended in response to mounting concerns over stranger-originated life insurance (STOLI) schemes.

NCOIL believes that transparency, disclosure, and accountability are key components in regulating the market. In amending our model to address STOLI, NCOIL legislators—with input from all interested parties—devoted more than 35 hours of debate and deliberation for over 18 months. The result was legislation that strikes a delicate balance between regulating life settlements and protecting policyowners.

By clearly defining STOLI and making these transactions illegal, our model isolates bad actors without impacting legitimate settlement transactions. To enhance accountability, we coupled the definition with stronger penalties and increased insurance department authority. We believe extensive disclosure to state regulators—including information on the total number and aggregate face amounts of policies settled annually—arms them with data to police the market.

Our model also protects a policyowner's right to settle after the standard two-year contestability period, regardless of whether the individual uses liquid assets or premium-financing to pay premiums. Particularly in today's economy, it is important to note that certain individuals—who may have significant assets to protect—may not have the liquid assets to purchase a policy without assistance. Our model protects their interests on an equal basis with those who purchase a policy outright.

During our deliberations, lawmakers stressed the need to enhance disclosures to policyowners who are considering a life settlement, as well as insurers and settlement companies. Toward that end—and to address some of the most frequent consumer concerns—our model requires written disclosure prior to settlement of the tax consequences of a settlement, and that proceeds could be subject to claims of creditors. It also requires a life settlement provider to inform the policyowner that he/she should seek professional tax advice.

The NCOIL model also requires disclosure that a settlement may negatively affect future access to public assistance and insurance. Specifically, our bill requires policyowner notice that receipt of the settlement proceeds could adversely affect his/her eligibility for public aid, government programs, and entitlements. It also requires a disclosure that—because there is a limit to how much coverage insurers will issue on one life—participation in a settlement could limit the insured's ability to purchase future life insurance.

In order to increase transparency in settlement transactions, our model requires life settlement brokers to disclose, among other things, any compensation received in connection to the life settlement contract. It also requires the broker to disclose a complete and accurate description of all the offers received related to the proposed settlement contract, as well as any affiliations or contractual arrangement between the broker and any person making an offer on the settlement contract.

We appreciate the opportunity to provide written comments in lieu of participating in tomorrow's hearing, and to convey what we know is vital in the protection of seniors. As a result of extensive research, the NCOIL *Life Settlements Model Act* requires important consumer disclosures, demands transparency and accountability, and has provided the framework for most of the state settlement bills enacted since 2007. NCOIL is committed to working with the Committee should Members decide to further investigate the regulation of life settlements.

Sincerely,

A handwritten signature in black ink that reads "James L. Seward". The signature is written in a cursive style with a large, looped initial "J".

Sen. James Seward (NY)
NCOIL President

cc: U.S. Senate Special Committee on Aging
NCOIL Legislators