CalPERS LTC Insurance Crisis – January 2023 – Draft Verbiage for Letter to Legislators

In just a few months, one of the largest class-action lawsuits in US history will go to trial, where CalPERS is charged with financially abusing for decades hundreds of thousands of policyholders of CalPERS long-term care insurance. The tale is long, complex, and distressing.

In the early 1990s, the State of California decided to enter the long-term care marketplace to reduce Medi-Cal costs, as long-term care costs often impoverish families and individuals who then turn to Medi-Cal for support. To mitigate that financial risk to the State, the State repeatedly passed legislation enabling CalPERS to provide the LTC services and encouraged public employees in California to buy the insurance. But the program has been a gigantic financial failure and has caused grave damage to hundreds of thousands of policyholders. Why has the CalPERS long-term care (LTC) program failed so disastrously and, yet, without any substantive public accountability? When a government agency inflicts damages because of negligence, does it have any responsibility? These are the questions still to be answered.

After seven years of litigation, the $2.7 billion CalPERS LTC insurance class action settlement, preliminarily approved in 2021, collapsed on April 22, 2022, as policyholders voted to reject it. The suit has presented a mountain of evidence demonstrating that CalPERS flagrantly abused policyholders by breaking contractual obligations to not raise premiums on an estimated two hundred thousand policies. Policies with such contractually guaranteed level premiums in fact have suffered premium increases of 900% and more. The suit has so far resulted in two preliminary Superior Court decisions ruling in support of the plaintiffs, the policyholders, which now lead to a jury trial that is scheduled for May 23, 2023, in Los Angeles.

Yet the (failed) settlement itself would have been inadequate compensation for damages caused. Even a court judgment in favor of the policyholders in the future would be inadequate. This is because the suit is driven by law and the economics of class action lawsuits, but not by considerations about equity and honest business practices. For example, the law does not permit the suit to address premium increases prior to 2015 (2003 [30%], 2007 [42%], 2010-2013 [5% yearly]), the suit does not involve the 90% premium increase of 2020, and the suit cannot consider a host of abusive business practices which would be illegal if done by a regulated private insurance company. In sum, an estimated 60% of all policies sold by CalPERS are not included in the suit, but they should be, because of terminations caused by premium increases and of deaths among the elderly policyholders.

The reasons for these broad areas that the suit does not cover include the statute of limitations and the right of governments to be exempt of any fiduciary duty to deal fairly with policyholders. The economics of class action lawsuits also mean that the lawyers practically focus on those issues most likely to win in court and may make unreasonable compromises; the settlement that failed, for example, largely excluded policyholders who had terminated their policies before the final settlement date (which never arrived), regardless of how long they had paid in.

In addition to fighting policyholders in court for years, CalPERS has also adopted a position that it need not communicate candidly with the public about what has happened and what it is doing. Questions to members of the CalPERS board, in writing and in public meetings, about the LTC program go unanswered. Questions to the CalPERS staff are effectively blocked with the explanation that issues before a court may not be commented on. What is uncommon, however, is that **all the candidates for the most recent open CalPERS board seat spoke publicly about the program and directly called it a failure**. Yvonne Walker, the elected candidate, said clearly that the program was a failure and that CalPERS needed to exit the long-term care business while carrying for policyholders; it will be noteworthy to see whether Ms. Walker as a Board member will continue to speak out or will be somehow muzzled by CalPERS. (Ms. Walker's contact information – www.walkerforcalpers.com, 916-419-1228, info@walkerforcalpers.com).

While the state passed legislation on repeated occasions providing the legal basis of the CalPERS LTC program, and notwithstanding the massive failure of the program, the state legislature has not reviewed the program to access its work.

**In light of the failures of CalPERS, the Department of Insurance, the legal system, the Governor and the legislature to provide proper relief for CalPERS policyholders, if justice for policyholders is to be affected it is critical for policyholders to reach out in a concerted manner to government officials – particularly in the Assembly and Senate, and the Governor – and strongly urge them to take responsibility and to step forward publicly to work to ensure that the problems caused by the CalPERS LTC program are equitably fixed. A critical first step in addressing this crisis would be for legislators to call for the Joint Legislative Audit Committee to hold hearings about the CalPERS LTC program and thereby get the facts about what happened and how the damages may be addressed**. Such hearings should be started as soon as possible because policyholders are still being abused and are very elderly. Hearings also are to underscore to CalPERS the need for an early and equitable settlement of the current class action lawsuit.

Below are some key issues that need to be addressed in public hearings.

- Why were premiums raised enormously on policies when such premiums were contractually guaranteed not to increase?
- Why did CalPERS raise premiums over 900%, far higher than any other insurance program or what regulators would permit, while asserting that the CalPERS program was well managed?
- Why does CalPERS now assert, but to this day fails to disclosure to policyholders, that CalPERS, as a whole is, not financially responsible for the LTC program? Policyholders who bought policies were led to believe that they were dealing with CalPERS, not some undisclosed and undercapitalized subsidiary entity that CalPERS now points to as being responsible. (One former Board Chair has stated to Mr. Lawrence Grossman that the Board was following the advice of staff and that he had never heard that a subsidiary was involved or that any separation existed between CalPERS as a whole and the LTC program. The former Chair wrote: "We were led to believe that a private, commercial company could not match the CalPERS self-funded, non-profit benefits/rates.")
- Why does CalPERS fail to disclose to buyers of policies that CalPERS LTC insurance is not really insurance with rates and policy features regulated by the California State Department of Insurance? (One former Board Chair has stated to Mr. Lawrence

Grossman that the Board was following the advice of staff and that staff disparaged the DOI as unhelpful. The former Chair wrote: “I do not recall any mention of oversight by the California State Department of Insurance or any other related State or Federal agency”.)

- Why does CalPERS fail to disclose that the CalPERS LTC program does not qualify (as commercial insurance companies do) for assistance from the California Life and Health Insurance Guarantee Association or the California Insurance Guarantee Association, which come into play to help policyholders in financial mismanagement cases like CalPERS?
- Why has CalPERS ignored its enabling legislation since inception in 1991, at enormous cost to insureds, by failing to offer LTC from a commercial company, which would have been regulated and eligible for insurance guarantee assistance? A commercial company also would have provided competition for the “self-funded” program that CalPERS offered.
- Why has the California State Legislature failed to review the CalPERS program? the legislature modified the original 1991 enabling legislation in 1992, 1993, 1995, 1999 and 2001, but never apparently noticed that CalPERS was not implementing the legislation properly by falling to offer a commercial company option.

Elected Leaders

CalPERS Board Members: board@calpers.ca.gov . Write “for” and “Board Member Name” in the subject line.

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