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REGULATORY REVIEW COMMISSION



April 10, 2000

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Peter J. Salvatore
Regulatory Coordinator
Pennsylvania Insurance Department
1326 Strawberry Square
Harrisburg, PA 17120

**Re: Chapter 118 - Discounting of medical malpractice
loss reserves**

Dear Mr. *Salvatore* Salvatore:

This is to recommend that the Insurance Department retain, not delete, this chapter of its regulations and therefore allow the continued allowance of loss reserve discounting by medical malpractice insurers.

We see no reason for discontinuing a practice the Department has long allowed, not just for medical malpractice insurance but also for other lines of coverage. In the August 14, 1999 Pennsylvania Bulletin, the Department proposed to continue, albeit with some modernization, Chapter 116 of its regulations allowing discounting of workers compensation loss reserves; it allows loss reserve discounting in other lines, too. It makes no sense to prohibit it for medical malpractice insurers while allowing it in other lines.

As the Insurance Department noted in its revisions to Chapter 116, the practice of loss reserve discounting is a legitimate one that merits ongoing and flexible regulation so that the Department (and insurers) can adapt to changing economic conditions.

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To that end, the Department may want to consider a modernization of Chapter 118, just as it modernized Chapter 116. We recommended some modernization, largely editorial in nature, to the Department in our initial comments on this chapter on August 1, 1996. There may be other changes more attuned to current economic conditions, as with imposing a cap tied to the current yield to maturity on United States Treasury debt instruments, as the Department proposed for workers compensation loss reserve discounting. Of course, if the regulation is continued but changed, there should also be consideration of any retroactive impact.

The proposed deletion of Chapter 118, however, goes in the exact opposite direction of the goal to establish ongoing and flexible regulatory oversight of loss reserve discounting. Instead, it is a blanket, and permanent, prohibition.

I appreciate the proposed deletion will not have an immediate impact on the one insurer that utilizes loss reserve discounting in accordance with the regulation, at least with respect to its solvency status (although it may have a harmful impact on that insurer's surplus and therefore its capacity to accept new business). I believe that justifies retention, not deletion, of the regulation: It is not causing solvency concerns for the Department, the one insurer using it or the policyholders of that insurer, but its deletion may harm that insurer's ability to grow and serve both existing and prospective policyholders.

I also appreciate the need for the Insurance Department to ensure the solvency of medical malpractice insurers - we are the ones "stuck with the tab" for the PIC and PIF insolvencies - but the repeal of Chapter 118 will not help. To the contrary, it will prohibit, for one line of coverage, a practice generally allowed by the Department, and it will apply to the one insurer that was most vociferous in warning of the PIC and PIF insolvencies, all without any benefit to industry or regulatory solvency concerns.

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Yes, the Department should be vigilant in regulating the solvency of insurers, and we have long supported the Department in that task; but deleting Chapter 118 does not further this.

Thank you for the opportunity to comment on this. We welcome the chance to work with the Department on modernizing, not deleting, Chapter 118.

Sincerely,



Samuel R. Marshall

C: Robert E. Nyce, Executive Director
Independent Regulatory Review Commission