Independence
Blue Cross

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November 2, 2001

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

VIA FEDERAL EXPRESS

IN RE: Long Term Care Insurance Proposed Regulations

Dear Mr. Salvatore:

We are pleased to have the opportunity to provide comments to the Pennsylvania Insurance Department on the Department's proposed long term care insurance regulations. We have developed these comments with the knowledge that the NAIC has issued model long term care insurance regulations on which the Pennsylvania proposed regulations are based. Also, we focused our comments on general provisions and nongroup requirements as we currently do not offer group long term care insurance.

Section 89a.104. Policy Definitions - "Cognitive Impairment"

We are concerned that the regulations define "Cognitive Impairment" without the ability of an insurer to qualify the level of impairment for purposes of benefit eligibility. Although we recognize that the proposed definition is medically standard, we believe that the term "deficiency," which is defined in the dictionary as "inadequacy", is not a sufficiently significant standard to trigger benefits for the type of cognitive impairment covered by long term care insurance policies. Further, it appears that the proposed regulations can be interpreted to prohibit an insurer from establishing an appropriate standard to determine the level of cognitive impairment subject to long term care insurance benefits. While we do not object to a definition requiring only one type of deficiency before a person would be determined cognitively impaired, it seems that the language of the proposed regulations could allow benefits to be triggered for minimum cognitive impairment when a person is still capable of functioning independently. We believe the proposed definition ultimately could lead to an inordinate number of claims for minimal cognitive impairment, and this could adversely affect premium rates for future policyholders.

In the alternative, we suggest the Department adopt a definition that allows the policyholder with moderate to severe cognitive impairment to appropriately claim benefits as well as the insurer to develop rates for long term care insurance that are affordable by the consumer. In this regard, we suggest the following definition:

"'Cognitive impairment' means a [significant deficiency/deterioration] in a person's short-term or long-term memory, recognition as to person, place and time, deductive or abstract reasoning, or judgment [as it relates to safety awareness/that requires continual supervision to protect the individual covered under the policy]."

An alternative would be to retain the proposed definition but include in the regulations an express provision that allows insurers to determine at least a moderate level of cognitive impairment in order for a policyholder to claim benefits.

Section 89a.105 Policy Practices and Provisions – "Level Premium"

We believe the proposed definition of "level premium" should be clarified by the addition of the phrase "for an individual person" after the phrase "change the premium." Otherwise, the absence of the term "level premium" may incorrectly lead the consumer to believe that the policy premium can change due to individual circumstances, such as attained age, health status, etc.

Section 89a.108 Required Disclosure of Rating Practices to Consumers

In general, we agree with the intent of the proposed regulations to protect the consumer by establishing new regulatory standards on disclosure and development of premium rates. We believe that certain insurers in the long term care marketplace have engaged in predatory pricing practices from time to time to the detriment of the consumer. As the Department is aware, predatory pricing can result in large rate increases often unaffordable for individual policyholders, who potentially would be left without coverage. This practice damages the industry's reputation as well. The Department should keep in mind, however, that long term care insurance is a relatively immature product without a large experience base or standard policies. Therefore, a significant amount of actuarial judgment is involved in developing rates. Furthermore, unlike health insurance, claims experience can take a long time to develop as well as be subject to short-term fluctuations. The practice of a ten-year "look back" period covers a period in which there were significant changes in the long term care insurance marketplace. We are concerned that such a long period could result in irrelevant and/or potentially misleading information being presented to the consumer. Therefore, we would recommend a shorter "look back" period, such as five years.

Section 89a.109 Initial Filing Requirements

Section 89a.109(b)(iv)(B) provides that an actuary must certify that he has taken into account moderately adverse experience, i.e., a contingency margin, and that the carrier is pricing with the expectation of no future rate increase. Overall, we believe that this provision is a positive addition to the regulatory scheme as it will protect the consumer from certain predatory pricing practices. We believe, however, that there is also a negative aspect to this requirement in cases when an actuary has followed the regulatory guidelines, including margin and pricing such that there is no anticipated rate increase, but the carrier still is forced to file a rate increase.

Section 89a.118 Premium Rate Schedule Increases

The required disclosure of all prior rate increases for similar policy forms, especially given the broad definition of "similar" policy forms in Section 89a.108(b)(5), could make selling policies difficult after a rate increase. Because the relevant loss ratio calculations for determining rate increases are on a present value basis, and because of the above-referenced disincentives for rate increases, a company with adverse experience might choose to wait and see if experience improves rather than file for a rate increase. If claims experience does not improve, however, the insurer could sustain a large financial loss that could result in a large premium increase later for the consumer.

Section 89a.118 allows for an 85% loss ratio on the premium increase and a 58% loss ratio on the initial premium in pricing a revised premium. Thus the loss ratio on the block of business over its lifetime is a weighted average (by premium dollars) of 58% and 85%. Under some circumstances, depending on claim and administrative expenses, an insurer ultimately could show a financial loss on the business. Too frequent and significant financial losses could result in the withdrawal of carriers from the marketplace.

Section 89a.123 Nonforfeiture Benefit Requirement

Overall we believe this provision is good because it prevents carriers from engaging in inappropriately low pricing. In certain instances, predatory pricing carriers would benefit from having received premiums, which later are raised significantly for policies that subsequently lapse after a rate increase. The reason this practice is favorable to such companies is that long term care insurance is considered a "lapse supported product". In considering profit or loss for a lapse supported product, an actuary takes into account those policies that lapse after covering issue and maintenance expenses but before claims are incurred.

Under the proposed regulations, the policyholder now has two choices. The policyholder can obtain either a reduced benefit, under certain circumstances, at the original premium or a reduced paid-up benefit with no further premium payments required in the event of a rate increase. We believe the addition of these options is a good alternative to the lapse of a policy after a consumer would have paid premiums for a number of years without receiving benefits.

We are concerned, however, that in the event of a rate increase that this provision, which potentially provides a nonforfeiture benefit depending on issue age and level of premium increase, imposes another additional cost to the insurer because long term care insurance is a lapse supported product. The proposed regulations do mitigate this cost somewhat by the Department's allowing the insurer (if the Department is convinced that a rising rate spiral exists) to replace existing coverage, without underwriting, with a comparable product being sold. This is essentially a pooling mechanism that allows individuals holding a troubled policy to switch to a more stable policy without underwriting. While this provision is preferable to merely letting the troubled policy spiral out of control, there are still restrictions on rate increases for the resulting combined block of policies that could prevent a carrier from effectively pricing its products to remain in the marketplace.

Please contact me at (215) 241-0696 if you have a question on the above. Again, we appreciate having this opportunity to comment on the proposed regulations.

Sincerely,

Alice P. L. Schwartz
Senior Counsel

c: Paul A. Tufano, Esq.
Richard F. Levins, Esq.

Original: 2220

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November 5, 2001

TO: Peter Salvatore
PA Insurance Department

John H. Jewett
IRRC

FROM: Tim Wonder, EVP, IIAP
Scott Jackson, CEO, PAIFA
Ross Schriftman, LUTCF, PAHU

THROUGH: Vince Phillips

RE: Long Term Care Insurance Regulation

Following are comments made on behalf of the members of three of the four major associations of insurance producers. We are submitting these in tandem to emphasize our common view as to the necessity for the Insurance Department and the Independent Regulatory Review Commission to understand the importance we place on the Long-Term Insurance market as a growing need for Pennsylvanians. Every private sector long-term insurance policy is potentially one less burden on the Commonwealth in Medicaid assistance. We believe that the marketing standards are important to the viability of this market. In our view, they must be presented in an understandable way so those producers do not inadvertently run afoul of a technical violation. We believe that the regulation should recognize the rightful place of the insurance producer as an advocate for the consumer, someone who wants to work with the Department in helping consumers navigate the insurance system with claims resolution.

We also feel that this proposed regulation is still a work in progress. Despite evident thought that went into it, it still falls short of what it could be. Please review our suggested changes. If we can answer questions as to our rationale, please consider us as a resource.

Most importantly, please see that the insurance producer has a unique role in the system of meeting people's long-term care insurance needs. Agents and brokers are the ones who are on the front lines in educating the insurance consuming public every day. Agents and brokers are the men and women who serve as advocates for policyholders in getting claims paid. As such, we look at our comments on the proposed regulation as working in a partnership mode with the Insurance Department as it tries to craft good public policy to meet the public policy need for long-term care insurance marketing standards.

Drafting Comment: The final regulation should delete references to "agent" or "broker" since the Producer Licensing Act (SB 962 and HB 1882) has been introduced. Although the definition specifies that producers are agents and brokers (89a.103. Definitions), the use of the term producer throughout the document might forestall having to go into the regulation to update it soon after it is finalized. Here the definition of producer should be redefined as ***'a licensee that solicits, sells, or negotiates an insurance product'***. Since the outcome of proposed legislation it might be better not to tie it to a specific legislative citation. The term 'licensee' could be borrowed from the regulation on privacy of personal financial information finalized in July.

Some additional references to agents and brokers appear at:

89a. 105. Policy practices and provisions. (11)(g) Electronic enrollment for group policies. (1) 'Signature be obtained by [an agent or broker] ***producer***...

89a.120. Requirements for application forms and replacement coverage. (b) '[Agents] ***producers*** shall list health insurance policies they have sold to the applicant.

89a.120. Standards for marketing. (1) 'Establish marketing procedures and [agent] ***producer*** training...

89a.120 (b)(3) Cold lead advertising. 'Making use directly or indirectly of a method of marketing which fails to disclose in a conspicuous manner that a purpose...is solicitation of insurance and that contact will be made by an insurance [agent] ***producer***...'

89a.120 (c) (6) (ii) (The association)...shall 'Actively monitor the marketing efforts of the insurer and its [agents] ***producers***.'

89a. 121 Suitability (a) 'Every insurer...shall meet the following conditions: (2) Train its [agents] ***producers*** in the use of its suitability standards.

89a.121 (b) 'To determine whether the applicant meets the standards... by the issuer, the [agent] ***producer***...'

89a.121 (b) (1) 'The [agent] ***producers*** and issuer shall take the following into consideration:'

Other references to agent versus broker appear in 89a.121 (b)(iii)(2) and (4)

89a.129. Permitted compensation arrangements. (a) 'An insurer or other entity may provide commission or other compensation to [an agent or broker] ***a producer...'*** Other references in this section are found in (c) and (e)

Specific Comments

89.a. 104 Definitions

Exceptional increase. The wording is somewhat unclear and there criteria for approving premium schedule rate increases is not clearly spelled out in the regulation. IIAP. PAIFA, and PAHU suggest this substitution:

"Rate increases. Those increases in premiums for long-term care policies, which are either schedule rate, increases or exceptional rate increases.
(a) Schedule rate increases are those premium increases approved by the commissioner when...(list the conditions under which a schedule rate increase may occur.)
(b) Exceptional increases are those premium increases deemed by the commissioner to be outside of the scope of schedule rate increases and based on justification that:
(i) Due to changes in laws and regulations...
(ii) Due to increased and unexpected utilization...
(iii) Except as substantiated by an actuarial review requested by the commissioner

IIAP,PAIFA, and PAHU support the use of independent actuarial study to document requests for Department approval of exceptional increases.

Long-term care insurance. A restatement of section 1103 might be useful to show that it includes qualified and non-qualified products, which are then defined separately in the definition.

Producer. Please refer to comments above.

89.a.104. Policy Definitions.

Mental or nervous disorder – Definition should be checked to see if it is compliant with HIPAA and Act 150 regarding conditions covered under mental health parity. If there is a group LTC policy with over 50 lives, the definition may need to be compatible. In addition to the text of covered conditions, there should be proper legislative citation.

Home health care services – Does the regulation track with the 2000 law regulating home health care? Rep. DeLuca (D-Allegheny) had a proposal to regulate home health concerns as LTC insurance (something we supported). The regulation should include the citation incorporating that recent change.

89.a.105 Policy Practices and Provisions.

(b) Limitations and exclusions. (3) IIAP,PAIFA, and PAHU support the regulation intent to prevent duplicative payments as an active measure to reduce the cost of LTC insurance for consumers.

(f)(ii)(2) Premium rate increase. Where a reduction in benefits is not considered a premium change, is the Department saying that the insurer issues a retro credit or premium rollback to the initial annual premium date or simply that the initial premium rate stands although with reduced benefits?

89a.106. Unintentional Lapse.

(a)(3) The 30-day notice by the insurer to the insured of a lapse for nonpayment of premium should be preceded by a notice from the insurer to the insurance producer. The goal is to keep people covered. A producer can follow up to see if the premium notice was overlooked or that the insured's medical condition changed so that the bill was not paid. IIAP,PAIFA, and PAHU feel it is good public policy to prevent unintentional lapses in coverage. Requiring notification to the individual producer as soon as the termination date occurs puts the person who has the greatest interest in policy retention into the front line of clarifying the cause for the unintentional lapse. Producer notification as soon as the due date passes gives him or her a chance to preserve coverage.

89a. 107 Required disclosure provisions.

IIAP, PAIFA, and PAHU support the inclusion of (g) and (h) as to whether or not the policy is qualified or non-qualified.

89.a.108 Required Disclosure of Rating Practices to Consumers

(b)(5) Requiring ten years' rate experience seems like consumerism but it may be hard to achieve. Products change. LTC policies have evolved considerably over the past few years. It may not be possible to compare apples to kiwi fruit. Specific coverage being offered now may not have existed ten years ago, as with qualified LTC policies which did not come into existence until HIPAA in 1996. IIAP,PAIFA, and PAHU recommend that (b)(5) be deleted.

(c) Requiring consumer signature attesting to the fact that he or she has read the cost of the product's evolution over ten years may be meaningless because, as mentioned above, the product is not the same. Besides, the consumer is more interested in what is being obtained now. That is a little like saying that a small group two-person health product costing $722.00 per month now only cost $200.00 ten years ago is relevant. It's not relevant to today's sale because the world has changed with new mandates, greater utilization, more uncompensated care and the resulting cost shifting to those with insurance, etc.

(e) Requiring notice of a premium rate schedule increase to consumers 45 days prior to implementation date is prudent. Advance notice to producers should also be sent out by the

insurer. This helps the consumer in two ways: First, the producer can explain the basis for the change and preserve the account, or, second, if the rate increase is too steep, the producer will have some time to shop around to other insurers on the consumer's behalf.

89.a.112 Requirement to Offer Inflation Protection

(g) IIAP,PAIFA, and PAHU support presenting the option of inflation protection to consumers. Unfortunately, the Model Regulation assumes a choice for inflation protection that may or may not be there unless the consumer specifically opts-out by rejecting this coverage. The NAIC and the Insurance Department clearly want to protect consumers from future expenses due to cost of living increases. The way the regulation is currently worded may result in higher-priced coverage than the consumer wanted in the event that the producer did not obtain the signature. This would lead to more consumer complaints to the Department and policy cancellations because they may feel that coverage was forced upon them even if the producer's error was unintentional. A simpler way is to require the signature form as part of the application.

We recommend the following language as a substitute for (g).

'(g) Inflation protection in a long-term care insurance policy shall be offered by the producer and documented by a form signed by the consumer that attests to the fact that inflation protection was offered and accepted, or rejected. The form may be included within the application or on a separate form as the insurer chooses. An insurer may not accept an application from a producer without this signed form.'

The text of this signed statement shall read, 'I have reviewed the outline of coverage and graphs that compare the benefits and premiums of this policy with and without inflation protection. Specifically, I have reviewed policies(s) _____ , and I accept ___ reject ___ (check one) inflation protection."

89a.114. Reporting Requirements.

(b) Requiring insurers to report to the Department the top ten percent of its producers with the greatest percentages of lapses and replacements appears to be adding to the Department workload without producing discernable benefit. For one thing, the Department's enforcement resources do not extend to launching an investigation of the top ten percent unless there is a specific suspected pattern of abuse. If the intent is to have ready access to the data through a Market Conduct Examination, another approach would be to have insurers collect this data and have it readily available should the Department need it.

Alternative wording should be:

(b) 'Insurers shall provide this data to the department in the event of a market conduct or enforcement investigation.'

(c) IIAP, PAIFA, and PAHU agree with the statement in the regulation that reported replacement and lapse rates do not constitute a violation of insurance law. The associations recommend that the word 'alone' be deleted in this sentence. Including it leaves the implication that reported lapse and replacement rates might be a violation of insurance laws or necessarily imply wrongdoing. There may be legitimate reasons why policies lapse, for example if a company does not renew a group plan or if an area is hit by layoffs or by the economic downturn.

The sentence 'The reports are for the purpose of reviewing more closely agent activities regarding the sale of long-term care insurance' should be deleted for the reason stated above. If the Department requires the information for purposes of a market conduct exam or enforcement investigation, it is available on a case by case basis from the insurer.

(f) This section requires reporting of qualified LTC contracts. Why did the Department ask for this information re qualified and not unqualified policies as well?

89a.115. Licensing.

As mentioned before, too specific a reference to a section of the law that may be changed because of Model Producer Licensing Act enactment in the near future may force the Department to update this regulation shortly after it went into effect. Alternative wording might be:

'No one may sell, solicit or negotiate with respect to long-term care insurance unless licensed as a producer by the department.'

89.a.120 Standards for Marketing

(c)(1) Associations promoting LTC insurance policies do not sell insurance unless they are licensed to do so. Associations may endorse a product under an arrangement with bona fide producers. The word 'selling' should be deleted. IIAP, PAIFA, and PAHU suggest the addition of a sentence to read,

"Nothing in this section shall be construed as permitting the marketing, soliciting, selling, or negotiating of an association-sponsored long-term care insurance policy unless there is compliance with producer licensing laws of the Commonwealth."

(3) The association is required in this section to reveal commissions received. Again, the association must be licensed before it can legally do so.

(5) The Board of Directors of an association should be required to approve of the sponsored plan and terms of compensation arrangements with the insurer. Please add the words **"or producer"** since the association considers a sponsored policy through a licensed producer and not necessarily directly to the insurer. Again, the word 'selling' should be deleted as inconsistent with licensing law.

(6) This section has an exemption for qualified long-term care insurance. Why? Does this pose an added regulatory hurdle for nonqualified plans? This section also mandates that an association "engage the services of a person with expertise in long-term care insurance' to examine the proposed policy etc.

IIAP, PAIFA, and PAHU question this requirement. Should the association always contract with a person having expertise in LTC insurance before deciding? It may not always be in its best interest if the expert is, in fact, partial towards a competitor. An expert may recommend that the association not pursue a long-term care policy because he or she may just happen to have a disability income policy that he or she wants to place. This requirement will enhance predatory behavior in the marketplace.

It may also add to the association's total cost of providing long-term care insurance because of the consultant's cost. In addition, if the association has a comfort level if an existing producer or product, why create another hoop to jump through? We understand where we think the Department is going on this provision but maintain that it will impede the growth of long-term care insurance. There is no harm in getting a second opinion but a better approach would delete existing (6) (i.) and use the following substitute language:

"Nothing shall prevent an association from engaging the services of a person with expertise in LTC insurance not affiliated with the insurer to conduct an examination of the policies..."

89a.124. Standards for benefit triggers.

(b) This section lists activities of daily living as 'triggers' for long-term care insurance. Although the Department uses the word 'may', there appears to be an inference that all must be triggered versus a number of these activities depending on the specific policy and whether or not it is qualified or nonqualified. Although not explicitly stated, the regulation appears to be addressing nonqualified plans since 89a.125 cites additional standards for qualified long-term care triggers.

In light of the DeLuca law, home health care plans that are regulated as long-term care insurance may not have the same set of triggers.

Consider substitute language:

'(b) Insurers must conspicuously list the activities of daily living necessary to trigger benefits.'

89.a.126 Standard Format for Coverage

(15) This part of the format directs the policyholder to contact the PA Department of Aging's Senior Health Insurance Assistance Program (APPRISE 1-800-783-7067) for general questions regarding LTC insurance and to the insurer for specific questions about the policy.

From the point of view of the three agents' associations commenting on this regulation, the first point of contact should be the producer who sold the policy. He or she has the professional credentials to discuss LTC insurance. He or she also has the professional basis to want a good customer relationship to continue. The incentive is to answer both general and specific questions. IIAP and PAIFA strongly believe that the producer is the first recourse. Contacting Senior Health Insurance Assistance Program and/or the insurer should be fallback options after the producer has tried to help resolve the question.

The proposed language ignores the vital function of the insurance producer.

Substitute language would be: ***"For questions of either a general or specific nature regarding long-term care insurance, contact the licensed insurance producer who sold you the policy. Other resources are the State Senior Health Insurance Assistance Program (APPRISE 1-800-783-7067) for questions generally relating to long-term care insurance or the insurer (insert insurance company name and phone number) for questions specific to a particular long-term care policy."***

89.a.130 Permitted Compensation Arrangements

(a) (b) These sections listing permitted compensation should spell out exactly what the legislative citation is regarding new policies (50 percent) and renewals (up to ten percent) as well as the prohibition is on receiving a higher commission on replacements.

(c) IIAP,PAIFA, and PAHU strongly disagree with the definition to include non-monetary incentives such as trips. Given that a producer's bonus may include more than type of insurance, it creates bookkeeping difficulty. If a producer sells several types of health insurance, incentives such as trips are usually bundled rather than being segmented by specific line. In addition, a bonus may have the real world impact of reducing producer financial compensation is there is an overall cap including non-monetary gain. This in effect amounts to an intrusion into the ways producers are compensated, a stretch from the traditional regulatory reach of the Insurance Department. Traditionally, the Department in areas such as Act 143 on the P/C side (agency termination law) has shied away from getting into the middle of agency-company commission issues.

Original: 2220

IRRC

From: Xenobun@aol.com
Sent: Saturday, November 03, 2001 5:50 AM
To: IRRC
Cc: RFS270@aol.com; mshaffer@benefitplans.com
Subject: LTC Regulation #11-208(#2220)

Please find attached the agent comments on the proposed regulation

Original: 2220

COMMONWEALTH OF PENNSYLVANIA
INSURANCE DEPARTMENT
SPECIAL PROJECTS OFFICE
1326 Strawberry Square
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November 5, 2001

Mr. Robert Nyce
Executive Director
Independent Regulatory Review Comm.
333 Market Street
Harrisburg, PA 17101

Re: Comments Received on Regulation #11-208

Dear Mr. Nyce:

Pursuant to Section 5(c) of the Regulatory Review Act, the Department is required to submit all comments on proposed regulations received during the public comment period to the Independent Regulatory Review Commission and the Legislative Standing Committees within 5 days.

The attached list represents comments that have been recently received by the Department.

If you have any questions regarding this matter, please contact me at (717) 787-4429.

Sincerely yours,

Peter J. Salvatore

Peter J. Salvatore
Regulatory Coordinator

Comments on the regulation listed below have been received from the following:

Reg #	*Regulation Title*
11-208	*Long-Term Care Insurance*

Mr. John Doubman
Secretary and Counsel
Insurance Federation of Pennsylvania, Inc.
1600 Market St.
Philadelphia, PA 19103
Phone (215) 665-0508 X00000
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Date Received *11/05/2001* Date Sent To Cmtes/IRRC *11/05/2001*

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John R. Doubman
Secretary & Counsel

November 2, 2001

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

Re: Long-Term Care Regulation: 31 Pa. Code Chapter 89, Fiscal Note 11-208

Dear Mr. Salvatore:

On behalf of the Insurance Federation, the Health Insurance Association of America and the American Council of Life Insurers, we take this opportunity to comment on the long-term care regulations published on October 2, 2001 in the Pennsylvania Bulletin by the Insurance Department. As I apprised you by letter of July 17, our associations remain generally supportive of the regulation.

The only major substantive issue which we bring to the Insurance Department's attention is the retention of the existing limits on sales commissions. These are retained in the new proposed regulation under Section 89a.129 in accordance with the optional provision in the NAIC Model on which this regulation is based. While I comment below on this section, we ask that the Department reconsider again the necessity for and public policy supporting the need for such limits.

In the remainder of this letter, I outline the comments which we have received from our members section by section. All of these comments, from stylistic suggestions to policy considerations, are meant to improve the regulation and give Pennsylvania the most effective, practical long-term care regulation possible.

1. Section 89a.104 - Definition of "Bathing"

As you know, the various components of the activities of daily living are essential to triggering benefits under long-term care policies and any variation from state to state would cause administrative problems. Several members noted that in the definition of "bathing" in Section 89a.104, the Department has added to the NAIC model definition the phrase, ". . . or drawing the water for a sponge bath and getting the equipment to the person or the person to the equipment."

This is a complicating addition for several reasons. First, it implies that some element in Pennsylvania differs from the understanding of insurers around the country about this term. Presumably, getting to and from the bathing location and equipment is an integral part of being able to wash oneself. Second, the introduction of the capabilities of a second person who may be bringing the person to the equipment or the equipment to the person is downright confusing. You cannot acquire an ADL from your caregiver.

Unless there is some major need for this additional phrase, it should be deleted, staying with the model's definition.

2. Section 89a.104 - Definition of "Medicare"

In referring to the federal legislation which constitutes this program, this definition omits the NAIC phrase "and any later amendments or substitutes thereof." Since the purpose of defining this term is presumably to treat benefits under that program as a whole, adding this phrase will prevent any inadvertent gaps from being created by changes in the Medicare program over time. We suggest including the quoted phrase to prevent that.

3. Section 89a.104(b) - Service providers

In providing that identifying providers of services may depend on their appropriate licensure or certification, the Department has added the phrase "when the licensure or certification of the provider is required by the Commonwealth." The phrase, which varies from the NAIC model, causes a problem by implying that appropriate

licensure may not be required if another state has no such requirement.

Since licensure or certification usually includes oversight, long-term care insurers would be hesitant to cover and somewhat lost to underwrite care provided at facilities not subject to such oversight. The Federation proposes that this phrase be deleted.

4. Section 89a.105(b)(1)(ii) - Limitations and exclusions

This subsection prohibits the exclusion or limitation of benefits based on someone having "Alzheimer's Disease or other related degenerative or dementing illnesses." In that these diseases are not clearly defined, we would suggest that the Department use the language within the Section 89a.126(e)(12) prohibiting exclusion for "insureds clinically diagnosed as having Alzheimer's disease or related degenerative and dementing illnesses."

While this would not operate as a complete definition, it would guarantee a clinical diagnosis of Alzheimer's or a related condition.

5. Sections 89a.111(4), (6) and (7) - Minimum standards

In each of those subsections removing "requiring" from the beginning of the phrase will follow the style of the other subsections which begin with "that."

6. Section 89a.112(g) - Inflation protection

In describing the process by which an applicant may accept or reject inflation protection, the Department prescribes the language by which a rejection should be made. The language currently states that the applicant has "reviewed policy(ies), and . . . ." rejects the inflation protection.

We suggest that it would be more accurate in terms of what actually takes place in such a process to have that last sentence state, "Specifically, I have reviewed Plans _____, and I reject inflation protection."

7. Section 89a.113 - Replacement forms

We bring to your attention that while it is legally more accurate, the substitution of "Commonwealth" for "state" in various standardized forms which must be delivered requires carriers to dispense with current materials, file forms for approval and print materials specific to Pennsylvania. It would save insurers money if this change were deleted from the proposal at least with respect to specified forms which must be delivered and the use of which insurers may already have adopted across their operations.

We point out, for example, in Section 891.113(c) that item 4 of the Statement to Applicant By Agent starts: 2. Commonwealth law provides . . . ." This is a variation from the NAIC model, which, while meaningless in terms of substance, is a cost item which is more than negligible.

8. Section 89a.118(h)(1) - Premium Rate Schedule

Projected lapse and past lapse rates are required for rate increase filings meeting certain criteria under this section. Following the wording of the NAIC model, it appears that the last word in the first criteria (h)(1) should be "form or forms" rather than "form."

9. Section 89a.119, 123 and 124 Statutory References

One of our members called attention to the fact that statutory references in the proposed regulation in the captioned sections differ from citations in the current regulation. I suspect this is not surprising in light of intervening changes, but we suggest they be reviewed for accuracy.

10. Section 89a.129 - Permitted Compensation Arrangements

We very much appreciate the Department's willingness to take another look at the advisability of retaining the current regulation's restrictions on sales compensation. I realize that you have received some correspondence from insurers separate from the Federation's on this issue. Moreover, as we discussed, this is noted as an optional piece in the NAIC model. Frankly, our companies have been living with the regulation for some time, so deleting this

takes second seat to getting the overall regulation in place.

There is little use in my reiterating arguments for deleting this section which have been well articulated by companies which are experts in selling the product. However, the success of the effort to delete this section probably depends on the Insurance Department's view of what has happened in the marketplace and what protections are required.

The new regulation unarguably contains many standards intended to address the problem of inappropriate replacements. Further, the Department is aware that the proper sale of this product is contact intensive, so that, unless inappropriate sales behavior is a major problem, allowing ample selling inducements is essential to having both knowledgeable agents and sound sales practices. Consequently, unless there is widespread inappropriate replacement activity which these older restrictions really help discourage, the Federation believes the case for dropping this section is compelling.

I enclose a copy of the HIAA's talking points on agent compensation limits which succinctly articulates the considerations which should guide the Department on this issue.

11. Appendix B - Agency on Aging Reference

The Long Term Care Personal Worksheet which is Appendix B follows the model except for the addition on the second page under the question about buying inflation protection referring applicants to the Agency on Aging. That information is already provided in the Shopper's Guide and its repetition here would require a separate Pennsylvania form. As we have indicate, this is an additional cost to insurers which it appears unnecessary to incur in light of the redundancy.

Please feel free to call with any questions or comments about these recommendations.

Sincerely,

John Doubman

cc: John H. Jewitt

TALKING POINTS ON:
LTC INSURANCE
AGENT COMPENSATION LIMITS

ISSUE: Should agent commissions for LTC insurance products be capped?

POSITION: Oppose commission caps on agent compensation.

RATIONALE: Commission caps will not remove incentives for unwarranted initial sales or ill-advised policy replacements. (In fact, replacements are appropriate for purposes such as upgrading coverage contained in older policies). Blanket restrictions on agent commissions will not distinguish between agents selling in an ethical, responsible way and those who do not.

ARGUMENT AGAINST POSITION: Commission caps are needed to prevent agents from making inappropriate sales or continuously replacing policies to earn higher premiums.

REBUTTAL:

- There is no documented evidence of rampant abuses in the sale of LTC policies.
- Agent commissions for LTC are no higher than comparable individually sold products such as whole life and disability. Industry-wide averages for first year commissions are around 40% -not 70% as alleged. Average renewal commissions are about 7.5%.
- Other safeguards and restrictions are better suited to addressing problems related to lapsing and ill-advised sales, such as:

  ~ prohibitions against unfair sales and marketing practices such as twisting, churning, high pressure sales tactics and cold lead advertising;

  ~ prohibitions against selling to those eligible for Medicaid;

  ~ agent training and education requirements;

  ~ financial sanctions for agents and carriers that violate marketing and sales standards.

Original: 2220

COMMONWEALTH OF PENNSYLVANIA
INSURANCE DEPARTMENT
SPECIAL PROJECTS OFFICE
1326 Strawberry Square
Harrisburg, PA 17120

Phone: (717) 787-4429
Fax: (717) 772-1969
E-mail: psalvatore@state.pa.us

November 5, 2001

Mr. Robert Nyce
Executive Director
Independent Regulatory Review Comm.
333 Market Street
Harrisburg, PA 17101

Re: Comments Received on Regulation #11-208

Dear Mr. Nyce:

Pursuant to Section 5(c) of the Regulatory Review Act, the Department is required to submit all comments on proposed regulations received during the public comment period to the Independent Regulatory Review Commission and the Legislative Standing Committees within 5 days.

The attached list represents comments that have been recently received by the Department.

If you have any questions regarding this matter, please contact me at (717) 787-4429.

Sincerely yours,

Peter J. Salvatore

Peter J. Salvatore
Regulatory Coordinator

11208c.doc

Original: 2220

Comments on the regulation listed below have been received from the following:

Reg #	*Regulation Title*
11-208	*Long-Term Care Insurance*

Mr. Tim Wonder
Executive Vice President
Independent Insurance Agents of Pennsylvania
2807 North Front Street
Harrisburg, PA 17110-1259
Phone (717) 236-4427 X00000

Date Received *11/05/2001* Date Sent To Cmtes/IRRC *11/05/2001*

Letter Co-Author Scott Jackson & Ross Schriftman

EMail twonder@iiap.com

Pennsylvania Assn. of Insurance and Financial Advisors
(717) 234-2523 (800) 552-7258
FAX (717) 234-5190
www.paifa.org

Independent Insurance Agents of Pennsylvania
(717) 236-4427
FAX (717) 236-6697
www.iiap.com

Pennsylvania Assn. of Health Underwriters
(215) 682-7075
FAX (215) 682-7076
rfs270@aol.com

November 5, 2001

TO: Peter Salvatore
PA Insurance Department

John H. Jewett
IRRC

FROM: Tim Wonder, EVP, IIAP
Scott Jackson, CEO, PAIFA
Ross Schriftman, LUTCF, PAHU

THROUGH: Vince Phillips

RE: Long Term Care Insurance Regulation

Following are comments made on behalf of the members of three of the four major associations of insurance producers. We are submitting these in tandem to emphasize our common view as to the necessity for the Insurance Department and the Independent Regulatory Review Commission to understand the importance we place on the Long-Term Care Insurance market as a growing need for Pennsylvanians. Every private sector long-term care insurance policy is potentially one less burden on the Commonwealth in Medicaid assistance. We believe that the marketing standards are important to the viability of this product. In our view, they must be presented in an understandable way so those producers do not inadvertently run afoul of a technical violation. We believe that the regulation should recognize the rightful place of the insurance producer as an advocate for the consumer, someone who wants to work with the Department in helping consumers navigate the insurance system with claims resolution.

We also feel that this proposed regulation is still a work in progress. Despite evident thought that went into it, it still falls short of what it could be. Please review our suggested changes. If we can answer questions as to our rationale, please consider us as a resource.

Most importantly, please see that the insurance producer has a unique role in the system of meeting people's long-term care insurance needs. Agents and brokers are the ones who are on the front lines in educating the insurance consuming public every day. Agents and brokers are the men and women who serve as advocates for policyholders in getting claims paid. As such, we look at our comments on the proposed regulation as working in partnership with the Insurance Department as it tries to craft good regulations to meet the public policy need for long-term care insurance marketing standards.

Drafting Comment: The final regulation should delete references to "agent" or "broker" since the Producer Licensing Act (SB 962 and HB 1882) has been introduced. Although the definition specifies that producers are agents and brokers (89a.103. Definitions), the use of the term producer throughout the document might forestall having to go into the regulation to update it soon after it is finalized. Here the definition of producer should be redefined as ***'a licensee that solicits, sells, or negotiates an insurance product'.*** Since the outcome of proposed legislation it might be better not to tie it to a specific legislative citation. The term 'licensee' could be borrowed from the regulation on privacy of personal financial information finalized in July.

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Other references to agent versus broker appear in 89a.121 (b)(iii)(2) and (4)

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Specific Comments

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Producer. Please refer to comments above.

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IIAP, PAIFA, and PAHU support the inclusion of (g) and (h) as to whether or not the policy is qualified or non-qualified.

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(b)(5) Requiring ten years' rate experience seems like consumerism but it may be hard to achieve. Products change. LTC policies have evolved considerably over the past few years. It may not be possible to compare apples to kiwi fruit. Specific coverage being offered now may not have existed ten years ago, as with qualified LTC policies which did not come into existence until HIPAA in 1996. IIAP, PAIFA, and PAHU recommend that (b)(5) be deleted.

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(e) Requiring notice of a premium rate schedule increase to consumers 45 days prior to implementation date is prudent. Advance notice to producers should also be sent out by the insurer. This helps the consumer in two ways: First, the producer can explain the basis for the change and preserve the account, or, second, if the rate increase is too steep, the producer will have some time to shop around to other insurers on the consumer's behalf.

89.a.112 Requirement to Offer Inflation Protection

(g) IIAP, PAIFA, and PAHU support presenting the option of inflation protection to consumers. Unfortunately, the Model Regulation assumes a choice for inflation protection that may or may not be there unless the consumer specifically opts-out by rejecting this coverage. The NAIC and the Insurance Department clearly want to protect consumers from future expenses due to cost of living increases. The way the regulation is currently worded may result in higher-priced coverage than the consumer wanted in the event that the producer did not obtain the signature. This would lead to more consumer complaints to the Department and policy cancellations because they may feel that coverage was forced upon them even if the producer's error was unintentional. A simpler way is to require the signature form as part of the application.

We recommend the following language as a substitute for (g).

'(g) Inflation protection in a long-term care insurance policy shall be offered by the producer and documented by a form signed by the consumer that attests to the fact that inflation protection was offered and accepted or rejected. The form may be included within the application or on a separate form as the insurer chooses. An insurer shall not accept an application from a producer without this signed form.'

The text of this signed statement shall read, 'I have reviewed the outline of coverage and graphs that compare the benefits and premiums of this policy with and without inflation protection. Specifically, I have reviewed policies(s) _____ , and I accept ___ reject ___ (check one) inflation protection."

89a.114. Reporting Requirements.

(b) Requiring insurers to report to the Department the top ten percent of its producers with the greatest percentages of lapses and replacements appears to be adding to the Department workload without producing discernable benefit. For one thing, the Department's enforcement resources do not extend to launching an investigation of the top ten percent unless there is a specific suspected pattern of abuse. If the intent is to have ready access to the data through a Market Conduct Examination, another approach would be to have insurers collect this data and have it readily available should the Department need it. The other thing missing from this section is the understanding that all replacements are not the same. The Department is looking for abuses occurring when the original policy did not need to be replaced. It should not lump these abuses in with legitimate replacements occurring because of a policy enhancement.

Alternative wording should be:

(b) 'Insurers shall provide this data to the department in the event of a market conduct or enforcement investigation. For purposes of this section, the term replacement shall not include long-term care product improvements or enhancements of coverage as an endorsement to or in the context of an existing policy.

(c) IIAP, PAIFA, and PAHU agree with the statement in the regulation that reported replacement and lapse rates do not constitute a violation of insurance law. The associations recommend that the word 'alone' be deleted in this sentence. Including it leaves the implication that reported lapse and replacement rates might be a violation of insurance laws or necessarily imply wrongdoing. There may be legitimate reasons why policies lapse, for example if a company does not renew a group plan or if an area is hit by layoffs or by the economic downturn.

The sentence 'The reports are for the purpose of reviewing more closely agent activities regarding the sale of long-term care insurance' should be deleted for the reason stated above. If the Department requires the information for purposes of a market conduct exam or enforcement investigation, it is available on a case by case basis from the insurer.

(f) This section requires reporting of qualified LTC contracts. Why did the Department ask for this information re qualified and not unqualified policies as well?

89a.115. Licensing.

As mentioned before, too specific a reference to a section of the law that may be changed because of Model Producer Licensing Act enactment in the near future may force the Department to update this regulation shortly after it went into effect. Alternative wording might be:

'No one may sell, solicit or negotiate with respect to long-term care insurance unless licensed as a producer by the department.'

89.a.120 Standards for Marketing

(c)(1)Association group marketing of long-term care insurance is a growing component of the market. Associations promoting LTC insurance policies do not sell insurance unless they are licensed to do so. Associations may endorse a product under an arrangement with bona fide producers. The word 'selling' should be deleted. IIAP, PAIFA, and PAHU suggest the addition of a sentence to read,

"Nothing in this section shall be construed as permitting the marketing, soliciting, selling, or negotiating of an association-sponsored long-term care insurance policy unless there is compliance with producer licensing laws of the Commonwealth."

(3) The association is required in this section to reveal commissions received. Again, the point must be made that associations must be licensed before it can legally receive commissions. The other issue is the disclosure of the commission itself. Certainly, the association's Board and other decision-makers would have that information when the decision was made. Disclosing commissions received might encourage agent rebating. Members might exert pressure to "give back" some of the commission, something at odds with Act 205 and long-standing Department policy. This regulation should not place producers in a position to fend off association demands for a rebate. Insurance producers are not required to disclose commission income now for any type of insurance. This should not be the place to start.

(5) The Board of Directors of an association should be required to approve of the sponsored plan and terms of compensation arrangements with the insurer. Please add the words **"or producer"** since the association considers a sponsored policy through a licensed producer and not necessarily directly to the insurer. Again, the word 'selling' should be deleted as inconsistent with licensing law.

(6) This section has an exemption for qualified long-term care insurance. Why? Does this pose an added regulatory hurdle for nonqualified plans? This section also mandates that an association "engage the services of a person with expertise in long-term care insurance' to examine the proposed policy etc.

IIAP, PAIFA, and PAHU question this requirement. Should the association always contract with a person having expertise in LTC insurance before deciding? It may not always be in its best interest if the expert is, in fact, partial towards a competitor. An expert may recommend that the association not pursue a long-term care policy because he or she may just happen to have a disability income policy that he or she wants to place. This requirement will enhance predatory behavior in the marketplace.

It may also add to the association's total cost of providing long-term care insurance because of the consultant's cost. In addition, if the association has a comfort level with an existing producer or product, why create another hoop to jump through? We understand where we think the Department is going on this provision but maintain that it will impede the growth of long-term care insurance. There is no harm in getting a second opinion but a better approach would delete existing (6) (i.) and use the following substitute language:

"Nothing shall prevent an association from engaging the services of a person with expertise in LTC insurance not affiliated with the insurer to conduct an examination of the policies..."

89a.124. Standards for benefit triggers.

(b) This section lists activities of daily living as 'triggers' for long-term care insurance. Although the Department uses the word 'may', there appears to be an inference that all must be triggered versus a number of these activities depending on the specific policy and whether or not it is qualified or nonqualified. Although not explicitly stated, the regulation appears to be addressing nonqualified plans since 89a.125 cites additional standards for qualified long-term care triggers.

In light of the DeLuca law, home health care plans that are regulated as long-term care insurance may not have the same set of triggers.

Consider substitute language:

'(b) Insurers must conspicuously list the activities of daily living necessary to trigger benefits.'

89.a.126 Standard Format for Coverage

(15) This part of the format directs the policyholder to contact the PA Department of Aging's Senior Health Insurance Assistance Program (APPRISE 1-800-783-7067) for general questions regarding LTC insurance and to the insurer for specific questions about the policy.

From the point of view of the three agents' associations commenting on this regulation, the first point of contact should be the producer who sold the policy. He or she has the professional credentials to discuss LTC insurance. He or she also has the professional basis to want a good customer relationship to continue. The incentive is to answer both general and specific questions. IIAP, PAIFA, and PAHU strongly believe that the producer is the first recourse. Contacting the Senior Health Insurance Assistance Program and/or the insurer should be fallback options after the producer has tried to help resolve the question.

The regulation's language ignores the vital function of the insurance producer.

Substitute language would be: ***"For questions of either a general or specific nature regarding long-term care insurance, contact the licensed insurance producer who sold you the policy. Other resources are the State Senior Health Insurance Assistance Program (APPRISE 1-800-783-7067) for questions generally relating to long-term care insurance or the insurer (insert insurance company name and phone number) for questions specific to a particular long-term care policy."***

89.a.130 Permitted Compensation Arrangements

(a) (b) These sections listing permitted compensation should spell out exactly what the legislative citation is regarding new policies (50 percent) and renewals (up to ten percent) as well as the prohibition is on receiving a higher commission on replacements.

(c) IIAP, PAIFA, and PAHU strongly disagree with the definition to include non-monetary incentives such as trips. Given that a producer's bonus may include more than one type of insurance, it creates bookkeeping difficulty. If a producer sells several types of health insurance, incentives such as trips are usually bundled rather than being segmented by specific line. In addition, a bonus may have the real world impact of reducing producer financial compensation if there is an overall cap including non-monetary gain. This amounts to an intrusion into the ways producers are compensated, a stretch from the traditional regulatory reach of the Insurance Department. Traditionally, the Department in areas such as Act 143 on the P/C side (agency termination law) has shied away from getting into the middle of agency-company commission issues.

Original: 2220

IRRC

From: Vince Phillips [vphillips@iiap.com]
Sent: Tuesday, November 06, 2001 5:18 PM
To: IRRC
Subject: RE: Long-Term Care Regulation

LTCREGULATION.doc

Here's hoping for number two...

-----Original Message-----
From: IRRC [SMTP:IRRC@IRRC.STATE.PA.US]
Sent: Monday, November 05, 2001 4:37 PM
To: Vince Phillips
Subject: RE: Long-Term Care Regulation

Mr. Phillips, there are no attachments on your e-mail. Could you please resend. Thank you.

-----Original Message-----
From: Vince Phillips [mailto:vphillips@iiap.com]
Sent: Monday, November 05, 2001 1:15 PM
To: IRRC
Cc: 'rfs@aol.com'
Subject: Long-Term Care Regulation

TO: John Jewett

FR: Vince Phillips

John, attached are the comments from three of the four agent associations. Please disregard the one I sent you early this a.m. as a number of errors surfaced. Sorry. I should have learned by now that the next proofreading is always the best one.

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November 5, 2001

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(e) Requiring notice of a premium rate schedule increase to consumers 45 days prior to implementation date is prudent. Advance notice to producers should also be sent out by the insurer. This helps the consumer in two ways: First, the producer can explain the basis for the

change and preserve the account, or, second, if the rate increase is too steep, the producer will have some time to shop around to other insurers on the consumer's behalf.

89.a.112 Requirement to Offer Inflation Protection

(g) IIAP, PAIFA, and PAHU support presenting the option of inflation protection to consumers. Unfortunately, the Model Regulation assumes a choice for inflation protection that may or may not be there unless the consumer specifically opts-out by rejecting this coverage. The NAIC and the Insurance Department clearly want to protect consumers from future expenses due to cost of living increases. The way the regulation is currently worded may result in higher-priced coverage than the consumer wanted in the event that the producer did not obtain the signature. This would lead to more consumer complaints to the Department and policy cancellations because they may feel that coverage was forced upon them even if the producer's error was unintentional. A simpler way is to require the signature form as part of the application.

We recommend the following language as a substitute for (g).

'(g) Inflation protection in a long-term care insurance policy shall be offered by the producer and documented by a form signed by the consumer that attests to the fact that inflation protection was offered and accepted or rejected. The form may be included within the application or on a separate form as the insurer chooses. An insurer shall not accept an application from a producer without this signed form.'

The text of this signed statement shall read, 'I have reviewed the outline of coverage and graphs that compare the benefits and premiums of this policy with and without inflation protection. Specifically, I have reviewed policies(s) _____ , and I accept ___ reject ___ (check one) inflation protection."

89a.114. Reporting Requirements.

(b) Requiring insurers to report to the Department the top ten percent of its producers with the greatest percentages of lapses and replacements appears to be adding to the Department workload without producing discernable benefit. For one thing, the Department's enforcement resources do not extend to launching an investigation of the top ten percent unless there is a specific suspected pattern of abuse. If the intent is to have ready access to the data through a Market Conduct Examination, another approach would be to have insurers collect this data and have it readily available should the Department need it. The other thing missing from this section is the understanding that all replacements are not the same. The Department is looking for abuses occurring when the original policy did not need to be replaced. It should not lump these abuses in with legitimate replacements occurring because of a policy enhancement.

Alternative wording should be:

(b) 'Insurers shall provide this data to the department in the event of a market conduct or enforcement investigation. For purposes of this section, the term replacement shall not include long-term care product improvements or enhancements of coverage as an endorsement to or in the context of an existing policy.

(c) IIAP, PAIFA, and PAHU agree with the statement in the regulation that reported replacement and lapse rates do not constitute a violation of insurance law. The associations recommend that the word 'alone' be deleted in this sentence. Including it leaves the implication that reported lapse and replacement rates might be a violation of insurance laws or necessarily imply wrongdoing. There may be legitimate reasons why policies lapse, for example if a company does not renew a group plan or if an area is hit by layoffs or by the economic downturn.

The sentence 'The reports are for the purpose of reviewing more closely agent activities regarding the sale of long-term care insurance' should be deleted for the reason stated above. If the Department requires the information for purposes of a market conduct exam or enforcement investigation, it is available on a case by case basis from the insurer.

(f) This section requires reporting of qualified LTC contracts. Why did the Department ask for this information re qualified and not unqualified policies as well?

89a.115. Licensing.

As mentioned before, too specific a reference to a section of the law that may be changed because of Model Producer Licensing Act enactment in the near future may force the Department to update this regulation shortly after it went into effect. Alternative wording might be:

'No one may sell, solicit or negotiate with respect to long-term care insurance unless licensed as a producer by the department.'

89.a.120 Standards for Marketing

(c)(1)Association group marketing of long-term care insurance is a growing component of the market. Associations promoting LTC insurance policies do not sell insurance unless they are licensed to do so. Associations may endorse a product under an arrangement with bona fide producers. The word 'selling' should be deleted. IIAP, PAIFA, and PAHU suggest the addition of a sentence to read,

"Nothing in this section shall be construed as permitting the marketing, soliciting, selling, or negotiating of an association-sponsored long-term care insurance policy unless there is compliance with producer licensing laws of the Commonwealth."

(3) The association is required in this section to reveal commissions received. Again, the point must be made that associations must be licensed before it can legally receive commissions. The other issue is the disclosure of the commission itself. Certainly, the association's Board and

other decision-makers would have that information when the decision was made. Disclosing commissions received might encourage agent rebating. Members might exert pressure to "give back" some of the commission, something at odds with Act 205 and long-standing Department policy. This regulation should not place producers in a position to fend off association demands for a rebate. Insurance producers are not required to disclose commission income now for any type of insurance. This should not be the place to start.

(5) The Board of Directors of an association should be required to approve of the sponsored plan and terms of compensation arrangements with the insurer. Please add the words **"or producer"** since the association considers a sponsored policy through a licensed producer and not necessarily directly to the insurer. Again, the word 'selling' should be deleted as inconsistent with licensing law.

(6) This section has an exemption for qualified long-term care insurance. Why? Does this pose an added regulatory hurdle for nonqualified plans? This section also mandates that an association "engage the services of a person with expertise in long-term care insurance' to examine the proposed policy etc.

IIAP, PAIFA, and PAHU question this requirement. Should the association always contract with a person having expertise in LTC insurance before deciding? It may not always be in its best interest if the expert is, in fact, partial towards a competitor. An expert may recommend that the association not pursue a long-term care policy because he or she may just happen to have a disability income policy that he or she wants to place. This requirement will enhance predatory behavior in the marketplace.

It may also add to the association's total cost of providing long-term care insurance because of the consultant's cost. In addition, if the association has a comfort level with an existing producer or product, why create another hoop to jump through? We understand where we think the Department is going on this provision but maintain that it will impede the growth of long-term care insurance. There is no harm in getting a second opinion but a better approach would delete existing (6) (i.) and use the following substitute language:

"Nothing shall prevent an association from engaging the services of a person with expertise in LTC insurance not affiliated with the insurer to conduct an examination of the policies..."

89a.124. Standards for benefit triggers.

(b) This section lists activities of daily living as 'triggers' for long-term care insurance. Although the Department uses the word 'may', there appears to be an inference that all must be triggered versus a number of these activities depending on the specific policy and whether or not it is qualified or nonqualified. Although not explicitly stated, the regulation appears to be addressing nonqualified plans since 89a.125 cites additional standards for qualified long-term care triggers.

In light of the DeLuca law, home health care plans that are regulated as long-term care insurance may not have the same set of triggers.

Consider substitute language:

'(b) Insurers must conspicuously list the activities of daily living necessary to trigger benefits.'

89.a.126 Standard Format for Coverage

(15) This part of the format directs the policyholder to contact the PA Department of Aging's Senior Health Insurance Assistance Program (APPRISE 1-800-783-7067) for general questions regarding LTC insurance and to the insurer for specific questions about the policy.

From the point of view of the three agents' associations commenting on this regulation, the first point of contact should be the producer who sold the policy. He or she has the professional credentials to discuss LTC insurance. He or she also has the professional basis to want a good customer relationship to continue. The incentive is to answer both general and specific questions. IIAP, PAIFA, and PAHU strongly believe that the producer is the first recourse. Contacting the Senior Health Insurance Assistance Program and/or the insurer should be fallback options after the producer has tried to help resolve the question.

The regulation's language ignores the vital function of the insurance producer.

Substitute language would be: ***"For questions of either a general or specific nature regarding long-term care insurance, contact the licensed insurance producer who sold you the policy. Other resources are the State Senior Health Insurance Assistance Program (APPRISE 1-800-783-7067) for questions generally relating to long-term care insurance or the insurer (insert insurance company name and phone number) for questions specific to a particular long-term care policy."***

89.a.130 Permitted Compensation Arrangements

(a) (b) These sections listing permitted compensation should spell out exactly what the legislative citation is regarding new policies (50 percent) and renewals (up to ten percent) as well as the prohibition is on receiving a higher commission on replacements.

(c) IIAP, PAIFA, and PAHU strongly disagree with the definition to include non-monetary incentives such as trips. Given that a producer's bonus may include more than one type of insurance, it creates bookkeeping difficulty. If a producer sells several types of health insurance,

incentives such as trips are usually bundled rather than being segmented by specific line. In addition, a bonus may have the real world impact of reducing producer financial compensation if there is an overall cap including non-monetary gain. This amounts to an intrusion into the ways producers are compensated, a stretch from the traditional regulatory reach of the Insurance Department. Traditionally, the Department in areas such as Act 143 on the P/C side (agency termination law) has shied away from getting into the middle of agency-company commission issues.