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INDEPENDENT REGULATORY REVIEW COMMISSION
333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

December 6, 2001

Honorable M. Diane Koken, Commissioner
Insurance Department
1326 Strawberry Square
Harrisburg, PA 17120

Re: Regulation #11-208 (IRRC #2220)
Insurance Department
Long-Term Care Insurance Form and Rate Filings

Dear Commissioner Koken:

Enclosed are our Comments. They will soon be available on our website at www.irrc.state.pa.us.

Our Comments list objections and suggestions for consideration when you prepare the final version of this regulation. We have also specified the regulatory criteria which have not been met. These Comments are not a formal approval or disapproval of the proposed version of this regulation.

If you would like to discuss these Comments, please contact my office at 783-5417.

Sincerely,

Robert E. Nyce
Executive Director

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Enclosure

cc: Honorable Nicholas A. Micozzie, Majority Chairman, House Insurance Committee
Honorable Anthony DeLuca, Democratic Chairman, House Insurance Committee
Honorable Edwin G. Holl, Chairman, Senate Banking and Insurance Committee
Honorable Jack Wagner, Minority Chairman, Senate Banking and Insurance Committee

Comments of the Independent Regulatory Review Commission

on

Insurance Department Regulation No. 11-208

Long-Term Care Insurance Form and Rate Filings

December 6, 2001

We submit for your consideration the following objections and recommendations regarding this regulation. Each objection or recommendation includes a reference to the criteria in the Regulatory Review Act (71 P.S. § 745.5a(h) and (i)) which have not been met. The Insurance Department (Department) must respond to these Comments when it submits the final-form regulation. If the final-form regulation is not delivered by November 5, 2003, the regulation will be deemed withdrawn.

1. Section 89a.103. Definitions. - Clarity.

Producer

This term is defined as an "agent" or "broker." However, the text of the regulation does not use the term "producer" consistently. Instead, the terms "agent," "broker" and "producer" are all used in the body of the regulation. In the final-form regulation, the defined term should be used consistently throughout the regulation.

2. Section 89a.104. Policy definitions. - Need; Clarity.

Bathing

The definition of this term begins with a reference to "oneself," but concludes with the phrase "or drawing the water for a sponge bath and getting the equipment to the person or the person to the equipment." This phrase is not included in the definition of "bathing" in the National Association of Insurance Commissioners (NAIC) Long-Term Care Insurance Model Regulation (Model). Furthermore, the references to transporting equipment or the person imply that a second person is involved in the bathing process.

It is our understanding that the Department did not intend for the definition to encompass the services of a second person. The definition should be revised to clarify this point. The Department should also explain why it is necessary to deviate from the NAIC Model.

Medicare

This definition is similar to the corresponding definition in the NAIC Model. However, the NAIC Model definition of "Medicare" references "any later amendments or substitutes thereof."

The Department should revise the definition to include the NAIC language. Otherwise, the definition will not encompass future amendments to the Medicare statutes.

Subsection (b)

This subsection addresses the definitions of various service providers. The last sentence states, "The definition may require that the provider be appropriately licensed or certified when the licensure or certification of the provider is required by the Commonwealth."

This sentence is confusing. The intent of this provision should be clarified in the final-form regulation.

3. Section 89a.105. Policy practices and provisions. - Clarity.

Subsection (b) Limitations and exclusions

Paragraph (1)(ii) references "...Alzheimer's Disease or other related degenerative or dementing illnesses." The reference to "other related degenerative or dementing illnesses" is vague and is not included in the NAIC Model. The reference to "other" illnesses should be clarified in the final-form regulation, or the phrase should be deleted.

Subsection (g) Electronic enrollment for group policies

Subparagraph (1)(iii) requires that telephonic or electronic enrollment include safeguards that assure the confidentiality of "individually identifiable information." This provision in the NAIC Model includes the terms "individually identifiable information" and "privileged information." The NAIC Model also references a definition of "privileged information." The Department should explain why the term "privileged information" is not in this provision in the proposed regulation.

4. Section 89a.108. Required disclosure of rating practices to consumers. - Clarity.

In Subsection (b)(5), insurers are required to provide premium rate increase information for a policy form or similar forms for the past ten years. Comparable policies, in many cases, did not exist ten years ago. The Department should amend the regulation to provide for flexibility when ten years of data is not available.

5. Section 89a.109. Initial filing requirements. - Clarity.

In Subsection (b) of the NAIC Model, the insurer is given 30 days to provide the required information to the Commissioner. The proposed regulation does not mention a specific time period, but does reference 15 sections of the Accident and Health Filing Reform Act (Act). To be more specific, the regulation should reference the time periods set forth in Sections 3 and 4 of the Act (40 P.S. §§ 3803 and 3804).

6. Section 89a.113. Requirements for application forms and replacement coverage. - Fiscal impact; Need.

This section includes sample application forms that are to be used by insurance companies. The Department has changed NAIC Model language from "state" to "Commonwealth" in the

proposed regulation. Commentators have suggested that by substituting “Commonwealth” for “state” in various standardized forms, carriers would be required to print costly materials specific only to Pennsylvania. Is there a need for insurers to make application forms that are specific to Pennsylvania?

7. Section 89a.129. Permitted compensation arrangements. - Fiscal impact; Need.

This section retains existing provisions, which place limits on compensation to an agent or broker for the sale of a long-term care insurance policy (31 Pa. Code § 89.921). For example, the rule limits a commission or other compensation to a maximum of 50 percent of the first year premium of a long-term care policy. However, the NAIC Model Rule uses a maximum of 200 percent. Commentators question the need for the 50 percent limitation. What is the Department’s rationale for maintaining the 50 percent rule?