



**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](mailto:psalvatore@state.pa.us)**

February 8, 2002

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

**RE: REQUEST FOR TOLLING AND RE-SUBMISSION OF FINAL RULES  
INSURANCE DEPARTMENT  
Regulation #11-208  
31 Pa. Code, Chapter 89, §§89.901-89.921 and 89a, §§89a.101-89a.129**

Dear Mr. Nyce:

By letter dated February 8, 2002, the Independent Regulatory Review Commission (IRRC) identified a clarification issue with respect to the above-referenced final form rules, specifically §89a.104(b) and suggested that the issue could be clarified through the tolling procedure found in 1 Pa. Code, §305.7 (relating to procedures for tolling). By this letter, the Pennsylvania Insurance Department is requesting that the time for review of the final form rules be tolled to revise the section indicated herein and simultaneously is resubmitting the pages of the final form rule with revisions to address the issue raised by IRRC as follows:

**Section 89a.104. Policy definitions.**

The last sentence in Subsection (b) refers to the certification of a provider required by the Commonwealth. The reference to "Commonwealth" should be deleted and replaced with the phrase "state in which the provider is located." This is necessary to recognize providers licensed in other states that provide services to Pennsylvania residents. The Preamble (enclosed page 5) and Annex A (enclosed page 8) have been changed to reflect the clarification.

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

Sincerely yours,

A handwritten signature in cursive script that reads "Peter J. Salvatore".

Peter J. Salvatore  
Regulatory Coordinator

*Medicare*

The IFP stated that 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. They suggested the above quoted phrase to contemplate future changes.

The IRRC stated that 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.

**The Department agrees and has made the requested changes.**

*89a.104(b)*

The IFP stated 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 IFP proposes that this phrase be deleted.

The IRRC had concerns with subsection (b) which 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." The IRRC believed that this sentence was confusing and that the intent of this provision should be clarified in the final-form regulation.

**The Department is concerned that long-term care insurers could require providers of services who are not subject to Commonwealth licensure or certification to be licensed or certified in order to cover their services. The section has been modified to clarify that an insurer can require licensure or certification "only" if the "state in which the provider is located" requires licensure or certification of that provider.**

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

Medicare--The program under the Health Insurance for the Aged Act in Title XVIII of the Social Security Amendments of 1965 (42 U.S.C.A. §§ 1395--1395ggg) AND ANY LATER AMENDMENTS OR SUBSTITUTES THEREOF.

Mental or nervous disorder--The term may not be defined to include more than neurosis, psychoneurosis, psychopathy, psychosis, or mental or emotional disease or disorder.

Personal care--The provision of supervisory or hands-on services to assist an individual with activities of daily living.

Skilled nursing care, intermediate care, personal care, home care and other services--These terms shall be defined in relation to the level of skill required, the nature of the care and the setting in which care must be delivered.

Toileting--Getting to and from the toilet, getting on and off the toilet and performing associated personal hygiene.

Transferring--Moving into or out of a bed, chair or wheelchair.

(b) All providers of services, including, but not limited to, skilled nursing facility, extended care facility, intermediate care facility, convalescent nursing home, personal care facility and home care agency shall be defined in relation to the services and facilities required to be available and the licensure or degree status of those providing or supervising the services. The definition may require that the provider be appropriately licensed or certified ONLY when the licensure or certification of the provider is required by the Commonwealth STATE IN WHICH THE PROVIDER IS LOCATED.

§ 89a.105. Policy practices and provisions.

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE  
REGULATORY REVIEW ACT**

I.D. NUMBER: 11-208  
 SUBJECT: Long-Term Care Insurance  
 AGENCY: DEPARTMENT OF INSURANCE

**TYPE OF REGULATION**

Proposed Regulation

X Final Regulation

Final Regulation with Notice of Proposed Rulemaking Omitted

120-day Emergency Certification of the Attorney General

120-day Emergency Certification of the Governor

Delivery of Tolled Regulation

a. \_\_\_\_\_ With Revisions      b. \_\_\_\_\_ Without Revisions

**FILING OF REGULATION**

DATE	SIGNATURE	DESIGNATION
2/8/02	<i>Shirley Carhart</i>	HOUSE COMMITTEE ON INSURANCE
2/8/02	<i>W/E Tetcher</i>	
2/9/02	<i>Michael</i>	SENATE COMMITTEE ON BANKING & INSURANCE
2/8/02	<i>J. McDaniel</i>	
2/8/02	<i>E. Royce</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
_____	_____	ATTORNEY GENERAL
_____	_____	LEGISLATIVE REFERENCE BUREAU

January 22, 2002

JOHN R. MCGINLEY, JR., ESQ., CHAIRMAN  
ALVIN G. BUSH, VICE CHAIRMAN  
ARTHUR COCCODRILLI  
ROBERT J. HARBISON, III  
JOHN F. MIZNER, ESQ.  
ROBERT E. NYCE, EXECUTIVE DIRECTOR  
MARY S. WYATTE, CHIEF COUNSEL



PHONE: (717) 783-5417  
FAX: (717) 783-2664  
irrc@irrc.state.pa.us  
<http://www.irrc.state.pa.us>

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

February 11, 2002

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

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

Dear Commissioner Koken:

We received your letter informing us of your intent to toll the subject regulation and your revisions to the regulation on February 8, 2002. The Commission does not object to your request.

Pursuant to Section 5.1(g)(3) of the Act (71 P.S. § 745.5a(g)(3)), the Committees will now have until February 19, 2002, to complete their review. The Commission will act on this regulation at its public meeting on February 21, 2002.

If you have any questions, please contact me at 783-5506 or [bobn@irrc.state.pa.us](mailto:bobn@irrc.state.pa.us).

Sincerely,

Robert E. Nyce  
Executive Director  
wbg

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  
David J. DeVries, Esq., Office of Attorney General  
Stephen F. Tuckey, Esq., Office of General Counsel

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

February 8, 2002

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

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

Dear Commissioner Koken:

On February 8, 2002, we discussed a potential tolling issue related to this final-form regulation with Peter Salvatore. We recommend that you consider the following revision:

**1. Section 89a.104. Policy definitions.**

The last sentence in Subsection (b) refers to the certification of a provider required by the Commonwealth. The reference to "Commonwealth" should be deleted and replaced with the phrase "state in which the provider is located." This is necessary to recognize providers licensed in other states that provide services to Pennsylvania residents.

If the Department chooses to toll the review period, it must deliver written notice to both the Standing Committees and the Commission on the same day. The written notice must be delivered prior to any Standing Committee action on the regulation, or before the end of the Standing Committee's review period on February 12, 2002, whichever occurs first.

As required by Section 307.5 of our regulations, written notice must include:

1. A citation to the section(s) the Department is considering revising,
2. A description of the revisions being contemplated, and
3. An explanation of how the revisions will satisfy our concerns.

February 8, 2002

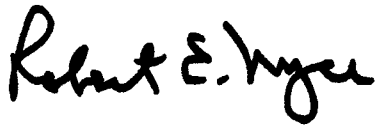
Honorable M. Diane Koken, Commissioner

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If the Commission objects to tolling the review period, we will notify you and the Standing Committees within two business days after receipt of your tolling notice. In the event the Commission objects to your tolling notice, the review period will not be tolled and your regulation will be considered by the Commission at our public meeting on February 21, 2002. If the Commission does not object, the review period is tolled for up to 30 days beginning with receipt of your letter and ending on the day you resubmit the regulation.

If you have any questions, please call me at 783-5506.

Sincerely,

A handwritten signature in black ink that reads "Robert E. Nyce". The signature is written in a cursive, slightly slanted style.

Robert E. Nyce  
Executive Director

wbg

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  
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David J. DeVries, Esq., Office of Attorney General  
Stephen F. Tuckey, Esq., Office of General Counsel