COMMONWEALTH OF MASSACHUSETTS
Office of Consumer Affairs and Business Regulation
DIVISION OF INSURANCE
One South Station • Boston, MA 02110 - 2208
(617) 521-7794 • FAX (617) 521-7773
TTY/TDD (617) 521-7490
http://www.state.ma.us/doi

MITT ROMNEY
GOVERNOR

KERRY HEALEY
LIEUTENANT GOVERNOR

BETH LINDSTROM
DIRECTOR, CONSUMER AFFAIRS AND BUSINESS REGULATION

JULIANNE M. BOWLER
COMMISSIONER OF INSURANCE

Bulletin 2003-04

To: **Commercial Health Insurers, Blue Cross and Blue Shield of Massachusetts, Inc., and Health Maintenance Organizations**

From: **Commissioner Julianne M. Bowler**

Re: **Review of Accident and Sickness Rate Filings**

Date: **April 18, 2003**

The purpose of this bulletin is to remind insurance carriers that file accident and sickness insurance plans about the use of policy form checklists and to ensure they are aware of recent changes to 211 CMR 42.00 ("The Form and Contents of Individual Accident and Sickness Insurance") that addresses product rate filings.

Mandatory Use of Policy Form Checklists

As noted in Bulletin 01-05, the Division of Insurance ("Division") requires that a completed checklist relevant to the policy forms submitted accompany all life, annuity, long-term care, and health insurance product filings. The checklists, which delineate statutory and regulatory requirements and prohibitions, are located on the Division's website at www.state.ma.us/doi. As stated in Bulletin 01-05, checklists must be completed in full indicating where in the insurance carrier's filing (page and paragraph number or section identifier) each requirement is addressed. In addition, each filing is to include a certification from a duly authorized representative of the insurance carrier that the forms submitted comply with applicable Massachusetts law as listed on the Division's website.

As noted in Bulletin 01-05, any product filing that is not accompanied by the applicable, completed checklist (with page and paragraph number or section identifier) and the appropriate certification of compliance will be rejected as incomplete and returned to the insurance carrier.

Review of Product Rate Filings

Following a public regulatory hearing, the Division promulgated changes to 211 CMR 42.00, effective January 3, 2003, that affect all individual accident and sickness filings subject to the Division's review. According to the revisions made to 211 CMR 42.06(3)(a), "[a]ll rate filings are subject to review by an actuary specified by the Commissioner whose costs will be paid by the company submitting the filing."

Commencing with all rate filings submitted to the Division on and after April 30, 2003, carriers will be required to submit those materials necessary for the Division to forward to an external actuary for review according to the requirements of 211 CMR 42.06(3)(a). In order to ensure that an insurance carrier agrees to pay all the costs associated with the actuarial review of a rate filing, all submitted rate filings must

include a document signed by the insurance carrier's Chief Financial Officer or officer authorized to guarantee payments certifying that the carrier will reimburse all actuarial expenses the Commissioner deems appropriate for the particular rate filing. The certification document must clearly state that the insurance carrier will pay the actuarial consultant within 30 days of receiving notice of the invoice from the Division or will add interest to the payment at the rate of 1-1/2 percent per month. Any Division approval of a submitted rate filing will be conditioned on the appropriate reimbursement being forwarded to the Division's consulting actuary. The product's rate filing will be considered incomplete without a signed certification.

In 2002, the Division created a pool of qualified actuarial consultants from those that contacted the Division to provide consulting work according to the specifications in RFR-2002-DOI-06 - "Request for Response for Proposal for Actuarial and Related Services." The Division subsequently contacted these actuarial consultants and developed a second pool that would agree to sign the attached commitment letter in order to participate in the rate review system created under 211 CMR 42.06(3)(a). Each firm's response to RFR-2002-DOI-06, including the fees and expenses that would be associated with the actuarial review of individual accident and sickness filings, is on file at the Division and is available for public review.

Following the Division's receipt of a completed product rate filing, the Division will contact one of its actuarial consultants to review the product filing according to the timelines described in section 2 of the commitment letter. Following the return of a signed commitment letter, the actuarial consultant will be responsible to review the rate filing, but only after the actuarial consultant is notified that the Division has completed the review of any associated policy form materials.

In the course of reviewing an insurance carrier's rate filing, an actuarial consultant may notify an insurance carrier regarding the time and expenses associated with the actuarial review. In addition, at the request of the insurance carrier, the actuarial consultant may notify the carrier by electronic mail, no more frequently than weekly, regarding an estimate of the time and expenses associated with the actuarial review to date. If, at any time during the actuarial review, the insurance carrier wishes to terminate the review and pay the expenses incurred, the insurance carrier will be responsible to notify the Division that it wishes the particular filing to be withdrawn from further review. The Division will notify the actuarial consultant by electronic mail or regular mail of the request, and the actuarial consultant will discontinue the actuarial review. The insurance carrier will be responsible to pay all expenses incurred through the point when the actuarial consultant receives notification from the Division of its decision to withdraw the rate filing from further review by the Division.

Once the actuarial review is complete, the actuarial consultant will forward an invoice to the Division, along with a detailed accounting of the hours each individual worked on the rate filing. The invoice is subject to the Division's review and approval prior to forwarding to the carrier for payment. The Division will contact the carrier regarding the results of the actuarial review and will expect the actuarial expenses to be paid according to the terms of the carrier's certification document.

In establishing the noted process, it is the Division's intent to streamline the review of product filings and to establish review timelines for accident and sickness product filers. If you have any questions regarding this bulletin, please contact the Health Unit of the State Rating Bureau at 617-521-7347.

COMMITMENT LETTER IN CONNECTION WITH THE ACTUARIAL REVIEW OF INDIVIDUAL ACCIDENT AND SICKNESS POLICIES PURSUANT TO MASSACHUSETTS GENERAL LAWS, CHAPTER 175 §108 and 211 CMR 42.00

Julianne Bowler
Commissioner of Insurance
Massachusetts Division of Insurance
One South Station
Boston, MA 02110

Dear Commissioner Bowler:

This Commitment Letter sets forth the terms and conditions under which **ACTUARIAL FIRM** (the "Consultant"), including its employees and agents will assist the Massachusetts Division of Insurance ("Division") in conducting an actuarial review of the rate filing for policy form **POLICY FORM IDENTIFIER** submitted by **NAME OF INSURANCE COMPANY** (the "Carrier") pursuant to M.G.L. c. 175 §108 and 211 CMR 42.00. The Consultant hereby commits to the following:

1. General Provisions. The Commissioner of Insurance ("Commissioner") has determined it is necessary to conduct an actuarial review of the rate filing(s) submitted by the Carrier for the above-noted policy form(s) according to M.G.L. c. 175 §108 and 211 CMR 42.00. The Commissioner has selected the Consultant, and the Consultant has agreed, to conduct an actuarial review and to deliver to the Commissioner a written report on the results of such actuarial review.

Pursuant to 211 CMR 42.06(3)(a), the Carrier will bear all proper costs of the actuarial review specified in Clause 2 below, including the cost of the services of the Consultant, its employees and agents. The Consultant, its employees and agents understand that the Carrier's obligation to pay those costs is imposed by law, that all recourse by the Consultant, its employees and agents for payment is to the Carrier, and that no obligation, either direct, indirect, contingent or otherwise, to pay for such services shall be imposed upon the Commonwealth of Massachusetts (the "Commonwealth") or any of its agencies or employees, including the Division and its employees.

2. Scope of Work. The Consultant will be contacted following the Division's receipt of (1) a Carrier's individual accident and sickness rate filing and (2) a certification signed by that Carrier's Chief Financial Officer or officer authorized to guarantee payments agreeing to pay the actuarial costs of reviewing said rate filing. The Consultant will notify the Division within four (4) business days regarding whether it can conduct an actuarial review of Carrier's filing so that if the Consultant cannot conduct such review, the Division may contact other contractors to conduct such actuarial review. The Consultant will contact the Carrier within one (1) week of agreeing with the Division to conduct such actuarial review to notify the Carrier that it will commence the review of the rate filing once notified by the Division that the policy form filing is complete. The Consultant will make all efforts to schedule and complete all such actuarial reviews within thirty (30) calendar days of being contacted by the Division. The Consultant will contact the Division as soon as practicable regarding any actuarial reviews that cannot be scheduled or completed within thirty (30) calendar days so that the Division may properly notify the Carrier as allowed under M.G.L. c. 175.

The Consultant shall review the submitted rate filing according to the provisions of M.G.L. c. 175 §108 and 211 CMR 42.00 that are relevant to the submitted filing. The Consultant will also advise the Commissioner on the application of any significant actuarial principles that should be considered in reviewing the rate filing. The scope of these activities may be expanded during the course of the project as determined by the Division.

The Consultant will submit final reports of the actuarial review to the Division as soon as practical but no later than thirty (30) calendar days following the completion of the actuarial review, unless the Consultant has received express written approval from the Division to forward this report by some day beyond the thirtieth calendar day

The Consultant shall provide expert testimony at any administrative or other proceeding(s), if requested to do so by the Division, on any matter arising out of its work hereunder.

It is understood that the above-referenced services are not all-inclusive and that the Division may call upon the Consultant to render such other services in connection with this actuarial review as the Division may, from time to time, in its absolute discretion, deem appropriate. In particular, but without limiting the generality of the foregoing, the Consultant shall, if so requested by the Division, update or otherwise revise any report or other submission of the Consultant to take into account any new or additional facts or circumstances that were known, or should have been known, to the Consultant and that were omitted from such report or submission or that came into existence after such report or submission was created but before it was delivered to the Division.

3. Confidentiality. The Consultant recognizes that in the performance of its work hereunder, the Consultant may acquire or have access to records and information considered confidential by the Commonwealth as defined in M.G.L. c. 66A and c. 4, §7(26) or any other law or regulation applicable thereto. The Consultant shall comply with all laws and regulations relating to confidentiality and privacy (including but not limited to the confidentiality and privacy of the Carrier), including any rules or regulations of the Division. The Consultant agrees to take reasonable steps to ensure the physical security of such data under its control. The Consultant shall not discuss information or findings with persons other than those specifically designated by the Division. The Consultant shall promptly notify the Division of any inquiries, requests or demands concerning any confidential information, including any subpoenas issued therefor.

4. Conflict of Interest. The Consultant agrees that it will not engage in any conduct that violates or induces others to violate the provisions of M.G.L. c. 268A regarding the conduct of state employees. The Consultant hereby certifies that it is in compliance with the provisions of said chapter 268A and will remain in compliance therewith throughout its work on this project.

5. Publication, Reproduction and Use of Material. All published material, including but not limited to reports, manuals, pamphlets and articles prepared in connection with the work done on this examination/survey shall be the property of the Division and shall appropriately designate the Commonwealth as the owner. All documents and materials prepared, in whole or in part, in connection with work done on this actuarial review shall be deemed to be works made for hire; and the Consultant hereby acknowledges and agrees that all right, title and interest, including without limitation copyright in and to such documents and materials shall be owned exclusively by the Commonwealth. The Division agrees not to take or claim any right, title or interest, including but not limited to copyright, in Consultant's pre-existing intellectual property or any derivative works created by Consultant, which includes data collection tools, report templates, methodologies, standards, scoring or other documents and materials created by Consultant to conduct the actuarial review contemplated by this Agreement, nor shall the Division obtain any license to use such intellectual property by virtue of this Agreement. All rights in and to the final report of actuarial review submitted by Consultant to the Division shall be owned by the Division. Subject to the provisions hereof relating to ownership of pre-existing works, and works derivative thereof, the Division shall have unrestricted authority to publish, disclose, distribute and otherwise use, in whole or in part, any reports, data, or other materials prepared pursuant to the examination/survey, in accordance with all applicable laws.

6. Indemnification of the Division and the Commonwealth. The Consultant, its employees and agents shall indemnify and hold harmless the Division and the Commonwealth against any and all alleged liabilities, losses, damages, costs, or expenses for personal injury or damage to real or tangible personal

property which the Division and the Commonwealth may sustain, incur, or be required to pay, which may arise out of or in connection with services performed hereunder, by reason of any negligent action, inaction or willful misconduct of the Consultant, its performing work on this project, and all other agents and employees of the Consultant; provided that (a) the Consultant is notified of any claim within a reasonable time after the Commonwealth becomes aware of it; and (b) the Consultant is afforded the opportunity to participate in the defense of such claims.

7. Company's Sole Obligation to Pay the Consultant. The Carrier's obligation to pay for the services of the Consultant and all employees and agents of the Consultant arises from applicable law, including but not limited to 211 CMR 42.06(3)(a), and is not an obligation of the Commonwealth, the Division, the Commissioner or any of its employees and agents. Consistent therewith, the Consultant and all agents and employees of the Consultant, expressly waive any claim against the Commonwealth, the Division, the Commissioner or any of its employees and agents, whether jointly or severally, arising out of services rendered by the Consultant and all agents and employees of the Consultant, pursuant to the project.

8. Rate of Pay. All fees and expenses charged by the Consultant and all agents and employees of the Consultant under this engagement will be in accordance with this Commitment Letter, including but not limited to, Clause 7 above, and the Response to Request for Proposal for Actuarial and Related Services submitted by the Consultant in response to RFR-2002-DOI-06. The Consultant agrees that it will employ no subcontractors on this project unless authorized to do so in writing by the Division.

The Consultant agrees that it will assign staff and resources so that the dual goals of highest quality work product and cost efficiency are met. Billings will be forwarded promptly to the Division along with the final report and will include detailed representations of the persons and number of hours that each person worked on a project, for the Division's review and approval consistent with the cost of related actuarial services prior to forwarding to the Carrier for payment. In the course of conducting the review of the Carrier's materials, the Consultant may notify the Carrier regarding the time and costs associated with the actuarial review to date so that the Carrier may notify the Division that it wishes to stop the actuarial review, pay the costs incurred through the point the Consultant receives notification from the Division of such decision and withdraw the form review or rate filing from further consideration by the Division. At the request of the Carrier, the Consultant agrees that it will notify by e-mail a person designated by the Carrier, no more frequently than weekly, regarding an estimate of the time and costs associated with actuarial review to date. The Consultant agrees to make every attempt to make an accurate determination of the time and costs incurred through a particular point. However, the billings forwarded to the Division along with the final report will contain the exact and final time and costs. The Carrier will be responsible for notifying the Division that it wishes to stop the actuarial review. The Division will notify the Consultant by e-mail or by regular mail of the request and the Consultant will stop the actuarial review upon receiving such notice from the Division.

9. Choice of Law. This Commitment Letter shall be construed under and governed by the laws of the Commonwealth of Massachusetts. The Consultant, and all agents and employees of the Consultant agree that any legal proceeding concerning or relating to this Commitment Letter or the work done thereunder shall be brought in a court of competent jurisdiction within the Commonwealth of Massachusetts and the Consultant hereby submits to the jurisdiction of the federal and state courts of the Commonwealth of Massachusetts for that purpose.

Sincerely,

_____ _____

Duly Authorized Agent of the Consultant
and all agents and employees of the Consultant

Date