COMMONWEALTH OF MASSACHUSETTS
Office of Consumer Affairs and Business Regulation
DIVISION OF INSURANCE

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JULIANNE M. BOWLER
COMMISSIONER OF INSURANCE

Bulletin 2004-03

To: Commercial Health Insurers and Fraternal Benefit Societies and Individuals or Corporations Licensed to Sell Health Insurance in Massachusetts

From: Julianne M. Bowler, Commissioner of Insurance Julianne M Bowler

Date: March 12, 2004

Re: Long-Term Care Policies that are Intended to Satisfy Minimum Coverage Requirements for Certain MassHealth Exemptions

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This bulletin is being sent to remind long-term care insurance carriers and producers of certain qualifications for MassHealth eligibility and recovery exemptions. This bulletin directs long-term care insurance carriers to use the attached documents in notifying current and prospective insureds on how long-term care benefits may qualify insureds for certain MassHealth exemptions

Plans Intended to Satisfy Minimum Coverage Requirements for Certain MassHealth Exemptions

Carriers offering long-term care insurance policies in the Commonwealth of Massachusetts are required to offer at least one plan intended to meet the MassHealth minimum coverage requirements identified in 130 CMR 515.014. In addition, carriers are required under 211 CMR 65.09(1)(e)(3) to use standard language to indicate whether the policy "(IS)(IS NOT) intended to satisfy Massachusetts' minimum long-term care insurance coverage requirements as of the policy's effective date for certain asset and liability exemptions under the Massachusetts MassHealth (Medicaid) Program."

In the same section of the policy, the policyholder is instructed to "[r]ead *Your Options for Financing Long-Term Care: A Massachusetts Guide* for important information about the federal and state exemptions." In the "Qualifying long-term care insurance policies" subsection of this document, under the section titled "What is a MassHealth (Medicaid) Qualified Policy?, it is specifically noted that in order for you to qualify for certain MassHealth exemptions, "when you enter a nursing home, your policy must meet" certain MassHealth standards. This does mean that the insured must have a policy that meets the MassHealth minimum benefit standards **as of the day the insured enters a nursing home**.

Marketing and Disclosure Materials

The Division reminds all carriers and agents that they should take care to ensure that their advertisements and marketing materials do not misrepresent MassHealth provisions if describing the MassHealth minimum coverage requirements in relation to a policy.

Carriers will be considered to be in compliance with the pertinent provisions of 211 CMR 65.00 and to have properly described the relevant provisions to existing policyholders if they forward a notice including the information identified in Attachment A to all policyholders who have bought policies intended to qualify for the MassHealth exemption on or after January 1, 2000. All such notices should be forwarded to the appropriate policyholder no later than 90 days after the date on this bulletin.

Carriers will be considered to be in compliance with the pertinent provisions of 211 CMR 40.00 – *Marketing of Insured Health Plans* - if the carrier provides a notice including Attachment B, as drafted, to all prospective insureds at the time of application and if the carrier or producer receives either a signed copy of Attachment B or a separate signed acknowledgement to keep on file as proof that the applicant has received a copy of Attachment B. If a separate signed acknowledgement is used, it must indicate that the prospective insured has received and read Attachment B and must contain the dated signature of the prospective insured. The requirement to distribute Attachment B to prospective insureds shall take effect 90 days after the date of this bulletin.

Carriers are reminded that Attachment A shall be issued on Division of Insurance letterhead and Attachment B shall be headed by the corporate name of the long-term care insurance carrier and presented in no less than 12-point type size. Each carrier is to forward a copy of Attachment B, and, if used, the separate signed acknowledgement sheet to the Division of Insurance for their files.

If you have any questions regarding this bulletin, please contact the Health Unit of the State Rating Bureau at 617-521-7347.

[Attachment A]

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COMMISSIONER OF INSURANCE

Re: Long-Term Care Insurance Policies Issued in Massachusetts that are Intended to Qualify Insureds for Certain MassHealth Exemptions

The purpose of this notice is to remind Massachusetts' long-term care policyholders of the minimum coverage requirements needed to potentially qualify for exemptions from some MassHealth eligibility and recovery rules. Although there is information about these coverage requirements in the publication *Your Options for the Financing of Long-Term Care: A Massachusetts Guide*, the Commissioner of Insurance has instructed all long term care insurance carriers to provide this notice to clarify the coverage requirements associated with MassHealth exemptions.

Buying long-term care insurance in Massachusetts that meets certain standards may qualify the policyholder for exemptions from some of the eligibility and recovery rules under the Massachusetts MassHealth (Medicaid) Program. **It is important to note that MassHealth minimum coverage requirements are based upon benefits available as of the day the individual enters a nursing home, not what is available on the day the person buys a policy**.

One of the existing requirements to qualify for MassHealth exemptions is that an individual's long-term care insurance must have benefits available to pay at least $125 per day for at least 730 days (2 years) of nursing home care as of the day the individual enters a nursing home.

Although a long-term care insurance policy may satisfy the MassHealth minimum coverage requirements at the time it is purchased, if the insured uses the policy to pay for non-nursing home benefits (e.g., home health care, personal care or assisted living benefits), the amount of benefits available to pay for nursing home care may be reduced. Depending upon the original maximum benefit and other benefits that may have been used, the policy may not meet the MassHealth minimum coverage requirements as of the day the individual enters a nursing home.

For example: a person purchased a policy with 730 days of nursing home and home health care coverage and, prior to entering the nursing home, used 100 days of coverage to pay for home health care services. On the day the individual enters the nursing home, the person would have 630 days of coverage left to pay for nursing home care. This is less than the minimum 730 days of nursing home coverage required for certain MassHealth exemptions.

It should also be noted that a long-term care policy with an inflation protection benefit may ultimately satisfy the MassHealth minimum coverage requirements, even if the policy failed to meet the MassHealth minimum coverage requirements on the day it was purchased. For example, a policy that initially had a $100 per day benefit with an annual inflation adjustment could potentially

increase over time to meet the MassHealth minimum coverage requirements as of the day the person enters a nursing home.

Please note that this notice does not change any contractual obligations under any existing long-term care insurance policies issued in Massachusetts. Qualifying for insurance benefits is independent from qualifying for an exemption under the MassHealth law. For more information, contact your agent or read *Your Options for Financing Long-Term Care: A Massachusetts Guide* provided at the time you applied for a policy.

Please be aware that laws may change and the exemptions and the MassHealth minimum coverage requirements that exist today may not necessarily be the same in the future (or might not exist at all).

[Attachment B – Notice on company letterhead to be used in marketing new long-term care insurance policies]

Re: Long-Term Care Insurance Policies Issued in Massachusetts that are Intended to Qualify Insureds for Certain MassHealth Exemptions

The purpose of this notice is to describe the minimum coverage requirements needed to potentially qualify for exemptions from some MassHealth eligibility and recovery rules. Information about these coverage requirements is also available in the publication *Your Options for the Financing of Long-Term Care: A Massachusetts Guide.* The Commissioner of Insurance has instructed all long term care insurance carriers to provide this notice to clarify the coverage requirements associated with MassHealth exemptions.

Buying long-term care insurance in Massachusetts that meets certain standards may qualify the insured for exemptions from some of the eligibility and recovery rules under the Massachusetts MassHealth (Medicaid) Program. **It is important to note that MassHealth minimum coverage requirements are based upon benefits available as of the day the individual enters a nursing home, not what is available on the day the person buys a policy**.

One of the existing requirements to qualify for MassHealth exemptions is that an individual's long-term care insurance must have benefits available to pay at least $125 per day for at least 730 days (2 years) of nursing home care as of the day the individual enters a nursing home.

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For example: a person purchased a policy with 730 days of nursing home and home health care coverage and, prior to entering the nursing home, used 100 days of coverage to pay for home health care services. On the day the individual enters the nursing home, the person would have 630 days of coverage left to pay for nursing home care. This is less than the minimum 730 days of nursing home coverage required for certain MassHealth exemptions.

It should also be noted that a long-term care policy with an inflation protection benefit may ultimately satisfy the MassHealth minimum coverage requirements, even if the policy failed to meet the MassHealth minimum coverage requirements on the day it was purchased. For example, a policy that initially had a $100 per day benefit with an annual inflation adjustment could potentially increase over time to meet the MassHealth minimum coverage requirements as of the day the person enters a nursing home.

Qualifying for insurance benefits is independent from qualifying for an exemption under MassHealth. For more information, contact your agent or read *Your Options for Financing Long-Term Care: A Massachusetts Guide*.

Please be aware that laws may change and the exemptions and the MassHealth minimum coverage requirements that exist today may not necessarily be the same in the future (or might not exist at all).

I have received and read this notice

_____ _____

(Your signature) (Date)