



**COMMONWEALTH OF MASSACHUSETTS**  
**OFFICE OF CONSUMER AFFAIRS AND BUSINESS REGULATION**  
**DIVISION OF INSURANCE**

***REPORT OF EXAMINATION OF THE***  
**BERKSHIRE LIFE INSURANCE COMPANY OF AMERICA**

**Pittsfield, Massachusetts**

**As of December 31, 2015**

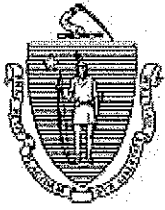
**NAIC GROUP CODE 0429**

**NAIC COMPANY CODE 71714**

**EMPLOYER ID NUMBER 75-1277524**

## **Berkshire Life Insurance Company of America**

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**COMMONWEALTH OF MASSACHUSETTS**  
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**GARY D. ANDERSON**  
ACTING COMMISSIONER OF INSURANCE

May 30, 2017

The Honorable Gary D. Anderson  
Acting Commissioner of Insurance  
Commonwealth of Massachusetts  
Division of Insurance  
1000 Washington Street, Suite 810  
Boston, MA 02118-6200

Honorable Commissioner:

Pursuant to your instructions and in accordance with Massachusetts General Laws, Chapter 175, Section 4 an examination has been made of the financial condition and affairs of

**BERKSHIRE LIFE INSURANCE COMPANY OF AMERICA**

at its home office located at 700 South Street, Pittsfield, Massachusetts 01201. The following report thereon is respectfully submitted.

## **SCOPE OF EXAMINATION**

Berkshire Life Insurance Company of America (“Company” or “BLICOA”) was last examined as of December 31, 2010 by the Massachusetts Division of Insurance (“Division”). The current multi-state examination was also conducted by the Division and covers the five-year period from January 1, 2011 through December 31, 2015, including any material transactions and/or events occurring subsequent to the examination date and noted during the course of this examination.

The examination was conducted in accordance with standards and procedures established by the National Association of Insurance Commissioners (“NAIC”) Financial Condition (E) Committee and prescribed by the current NAIC *Financial Condition Examiners Handbook*, the examination standards of the Division and with Massachusetts General Laws. The Handbook requires that we plan and perform the examination to evaluate the financial condition and identify prospective risks of the Company by obtaining information about the Company, including corporate governance, identifying and assessing inherent risks within the Company, and evaluating system controls and procedures used to mitigate those risks.

All accounts and activities of the Company were considered in accordance with the risk-focused examination process. This may include assessing significant estimates made by management and evaluating management’s compliance with Statutory Accounting Principles. The examination does not attest to the fair presentation of the financial statements included herein. If, during the course of the examination an adjustment is identified, the impact of such adjustment will be documented separately following the Company’s financial statements.

This examination report includes significant findings of fact, as mentioned in the Massachusetts General Laws, Chapter 175, Section 4, and general information about the insurer and its financial condition. There may be other items identified during the examination that, due to their nature (e.g., subjective conclusions, proprietary information, etc.), are not included within the examination report but separately communicated to other regulators and/or the Company.

The Company is audited annually by PricewaterhouseCoopers, LLP (“PwC”), an independent certified public accounting firm. The firm expressed unqualified opinions on the Company’s financial statements for the calendar years 2011 through 2015. A review and use of the Certified Public Accountants’ work papers was made to the extent deemed appropriate and effective. The Company is required to comply with the Model Audit Rule (“MAR”). All control work papers associated with MAR compliance have been reviewed as a source of information and were tested and leveraged as deemed appropriate and effective.

Baker Tilly Virchow Krause, LLP (“Baker Tilly”) was engaged to perform certain agreed upon procedures, which are in compliance with the NAIC *Financial Condition Examiners’ Handbook*. The assistance included a review of accounting records, information systems and investments. Lewis & Ellis, Inc. were contracted by Baker Tilly to perform the review of the actuarially determined loss and loss adjustment expense reserves, as well as other significant actuarial estimates.

## **SUMMARY OF SIGNIFICANT FINDINGS OF FACT**

There were no significant findings as a result of our examination.

## **COMPANY HISTORY**

### **General**

Berkshire Life Insurance Company of America is a wholly owned subsidiary of Guardian Life Insurance Company of America ("Guardian") which is a New York domiciled mutual life insurance company headquartered in New York, NY. The Company operates as the individual disability insurance business unit of Guardian, selling individual disability income insurance and administering all disability income products of the Guardian group.

The Company was previously known as Healthsource Insurance Company, a dormant Tennessee domiciled company owned by Guardian. On July 1, 2001, Berkshire Life Insurance Company, a Massachusetts domiciled mutual insurance company that wrote life and annuity business as well as disability insurance, consummated a statutory merger with Guardian, whereby Guardian was the surviving entity. In connection with this transaction, Healthsource Insurance Company was renamed Berkshire Life Insurance Company of America and re-domesticated as a Massachusetts insurer. Guardian contributed \$267.5 million of capital to the new company. All the individual disability income business of Guardian and the previously merged Berkshire entity was transferred to the Company by means of a 100% coinsurance reinsurance treaty.

Effective January 1, 2013, with approval of the Division, 80% of all disability income business, including the business originally assumed by the Company in 2001 was ceded back to Guardian on a funds held basis.

### **Stockholder Dividends**

In 2014, the Company returned \$335,000,000 in capital to its parent, Guardian via a stockholder dividend of \$322,883,443 and a return of paid-in capital \$12,116,557. In addition, the Company returned paid-in capital to Guardian in the amount of \$65,000,000 in 2015.

## **MANAGEMENT AND CONTROL**

As a wholly owned subsidiary of Guardian, the Company falls under and complies with the corporate governance policies and procedures established by Guardian's Board of Directors and senior management. The corporate governance structure at Guardian includes an independent Board of Directors (other than the President and Chief Executive Officer of Guardian) and numerous Board Committees. These committees include the Executive Committee; Human Resources and Governance Committee; Investment Committee; Product and Distribution Committee; and the Audit and Risk Committee. All committees consist of only independent directors. The BLICOA Board of Directors, which is a management board, has voted to appoint the Guardian Audit and Risk Committee as the Audit and Risk Committee of the Company.

## Berkshire Life Insurance Company of America

Reporting to the Guardian Board is the Guardian executive leadership team which is led by the President and Chief Executive Officer. The executive leadership team has ownership, monitoring, and management responsibilities over the Risk Management Committee, and reports to the Audit and Risk Committee. The overall governance of the Company falls under this governance and risk management structure.

### Board of Directors

According to the bylaws, the Company's business shall be managed by a Board of Directors ("Board") which may exercise all of the powers of the Company, except as otherwise provided by the articles of incorporation, by law, or the bylaws. The Board shall consist of at least five directors. The president of the Company will be a member of the Board and unless the Board elects a chairman, the president shall preside at all meetings of the Board or the shareholders.

As of December 31, 2015, the Company had six directors, which is in compliance with the Company's bylaws. The Board is considered a "management board" comprised of senior officers within the Guardian group of companies. Set forth below is the name and principal title of each director on the BLICOA Board as of December 31, 2015.

<u>Name of Director</u>	<u>Title</u>
Dong H. Ahn	Guardian Executive Vice President, Group and Worksite Markets
Marc Costantini	Guardian Executive Vice President, Chief Financial Officer
Gordon G. Dinsmore, Jr.	Guardian Senior Vice President, Disability Income Insurance and President of BLICOA
Margherita DiManni	Guardian Senior Vice President and Associate Corporate Secretary
Michael Ferik	Guardian Executive Vice President, Life Insurance and Wealth Management
Michael Slipowitz	Guardian Senior Vice President, Corporate Chief Actuary and Chief Risk Officer

### Officers

Principal Officers of the Company as of December 31, 2015 were as follows:

<u>Name of Officer</u>	<u>Title</u>
Gordon G. Dinsmore, Jr.	President
Robert P. Coco	Vice President and Chief Financial Officer
Carl G. Amick	Vice President, Pricing and Underwriting Policy
Lawrence S. Hazzard	Vice President, Product and Market Strategy
Sean D. Quinn	Vice President, Lead Counsel and Corporate Secretary
Jeffrey A. Yeager	Vice President, Claims and Policy Services
Robin L. MacPherson	Vice President, Underwriting Operations & New Business Services
Carl Desrochers	Vice President and Appointed Actuary
William R. Chandler	Vice President and Chief Information Officer

## Berkshire Life Insurance Company of America

### Affiliated Companies

As stated in the Insurance Holding Company System Form B as filed with the Division, the Company is a member of a holding company system and is subject to the registration requirements of Massachusetts General Laws, Chapter 175, Section 206C, and 211 CMR 7.00. The “ultimate controlling person” of the group is Guardian Life Insurance Company of America, a mutual insurance company organized under the laws of the state of New York.

### Company Organization

The Company is one of three principal insurance subsidiaries of Guardian. The following is a list of all Companies in the Guardian group. Note: Companies listed below ending with a state abbreviation identifier are insurance entities within the Guardian NAIC Group Code.

The Guardian Life Insurance Company of America (NY)

    Park Avenue Life Insurance Company (DE)

        Family Service Life Insurance Company (TX)

            Sentinel American Life Insurance Company (TX)

Guardian Investor Services LLC

    RS Investment Management Company LLC

        RS Funds Distributor LLC

**Berkshire Life Insurance Company of America (MA)**

The Guardian Insurance and Annuity Company, Inc. (DE)

    Park Avenue Securities LLC

    Hanover Square Funding, LLC

First Commonwealth, Inc.

    First Commonwealth Limited Health Services Corporation (IL)

    First Commonwealth of Illinois Inc.

    First Commonwealth of Missouri, Inc. (MO)

    First Commonwealth Limited Health Services Corporation of Michigan (MI)

    First Commonwealth Insurance Company (IL)

    Access Professional Dental Care, LLC

    Access Dental Plan

    Access Dental Plan of Utah, Inc. (UT)

    Access Dental Plan of Nevada, Inc. (NV)

    Access Dental Service, LLC

    Managed DentalGuard, Inc. (OH)

    Reed Group, Ltd

    Premier Access Insurance Company (CA)

    Premier Access Administrators Company

    Data Telesis Private Limited

Managed DentalGuard, Inc. (TX)

Managed Dental Care of California

Managed DentalGuard, Inc. (NJ)

Innovative Underwriters, Inc.

## Berkshire Life Insurance Company of America

### Transactions and Agreements with Affiliates

*Administrative Services Agreement:* The Company and Guardian have in place an Administration Service Agreement effective July 1, 2001 that relates to the original individual disability insurance reinsurance agreement which identifies the services, rights, and obligations of both Guardian and the Company with respect to the administration of the reinsured policies. The agreement is still in effect as the policies are still administered by the Company.

*Investment Management:* The Company's investments are managed by the investment department of Guardian. Annually, investment authorizations are presented to the Board of Directors for approval. The authorizations include general and specific provisions governing certain limitations of investment classes as well as a provision citing the investment provisions of Massachusetts General Law, Chapter 175, Section 63.

*Tax Sharing Agreement:* The Company files its federal income tax on a consolidated basis along with Guardian and other affiliates within the Guardian group. There is a written tax sharing agreement, approved by the Board of Directors, which sets forth the manner in which the total combined federal income tax is allocated to each entity which is a party to the consolidation. In accordance with the tax sharing agreement, the Company computes its tax provision and liability on a separate return basis and tax liabilities/benefits are settled subsequent to the filing of the consolidated federal income tax return.

### **TERRITORY AND PLAN OF OPERATION**

The Company is licensed in all 50 states and the District of Columbia. As the disability insurer within the Guardian group, the Company sells, through the Guardian Career Agency System as well as through independent brokers, individual disability insurance and multi-life disability insurance products. Prior to 2012 the Company sold a long term care product which has been discontinued and is now considered a closed block, which is 90% reinsured and managed by a third-party administrator.

### Treatment of Policyholders – Market Conduct

During the financial examination of the Company, the Division's Market Conduct Department initiated a comprehensive market conduct examination of the Company for the period January 1, 2015 through December 31, 2015. The market conduct examination was called pursuant to authority in Massachusetts General Law Chapter 175, Section 4. The market conduct examination was conducted at the direction of, and the overall management and control of, the market conduct examination staff of the Division. Representatives from the firm of Risk & Regulatory Consulting, LLC were engaged to complete certain agreed upon procedures which were developed using the guidance and standards of the NAIC Market Regulation Handbook, the market conduct examination standards of the Division, and the Commonwealth of Massachusetts insurance laws, regulations and bulletins. The business areas that were reviewed under the market conduct examination are Company Operations/Management; Complaint Handling; Marketing and Sales; Producer Licensing; Policyholder Services; Underwriting and Rating and



## Berkshire Life Insurance Company of America

Claims. Each business area reviewed includes the identification and evaluation of the insurer's internal controls.

### REINSURANCE

The Company mitigates certain risks associated with its policies through the use of reinsurance. For Universal Life and Level Term products, a combination of coinsurance, modified coinsurance and quota share treaties are in place with Guardian as well as third-party reinsurers. There is also in place a First Dollar Quota Share with a Facultative option ceded to a pool of reinsurers depending on the plan and policy issue date. Life products are no longer issued by the Company and all previously issued policies are now part of a closed block and the reinsurance treaties are closed to new business.

The Company has in place a number of reinsurance treaties in place, primarily on a coinsurance basis, to reinsure various disability income policies or policy features with both external third-party reinsurers and Guardian. As of the examination date, most of these agreements were already terminated to new business and effective 1/1/2016, the Company completely stopped reinsuring new business to any third-party reinsurers.

Effective 1/1/2013, the Company entered into a reinsurance agreement with Guardian whereby it now cedes, on a coinsurance basis with funds held, 80% of the liabilities and obligations of all individual and multiple life disability income policies in-force and all new business written. This agreement effectively cedes back to Guardian 80% of all policies assumed and reinsured by the Company under the original treaty dated 7/1/2001, the date the Company commenced business.

The Company also has in place two reinsurance treaties ceding 90% of its long term care business. The Company stopped writing new long term care policies during 2011 and this business is now a closed block and administered by a third-party administrator.

**FINANCIAL STATEMENTS**

The following financial exhibits are based on the statutory financial statements prepared by management and filed by the Company with the Division and present the financial condition of the Company for the period ending December 31, 2015. The financial statements are the responsibility of Company management.

Statement of Assets, Liabilities, Surplus and Other Funds as of December 31, 2015

Summary of Operations for the Year Ended December 31, 2015

Reconciliation of Capital and Surplus for Each Year in the Five-Year Period Ended December 31, 2015

Berkshire Life Insurance Company of America

Statement of Assets, Liabilities, Surplus and Other Funds  
As of December 31, 2015

Assets	Per Annual Statement
Bonds	\$ 3,206,977,684
Real estate:	
Properties occupied by the company	16,931,460
Properties held for the production of income	1,689,071
Cash, cash equivalents and short-term investments	22,394,808
Contract loans	1,216,889
Other invested assets	3,803,811
Subtotals, cash and invested assets	3,253,013,723
Investment income due and accrued	49,023,578
Premiums and considerations:	
Uncollected premiums and agents' balances	(5,285,781)
Deferred premiums booked but not yet due	5,173,710
Reinsurance:	
Amounts recoverable from reinsurers	6,579,004
Other amounts receivable under reinsurance contracts	19,903,567
Current federal and foreign income tax recoverable	2,654,803
Net deferred tax asset	41,991,352
Guaranty funds receivable or on deposit	29,921
Receivables from parent, subsidiaries and affiliates	8,291,121
Aggregate write-ins for other than invested assets	248
Total assets excluding Separate Accounts, Segregated Accounts and Protected Cell Accounts	3,381,375,246
Total Assets	\$ 3,381,375,246

Berkshire Life Insurance Company of America

Statement of Assets, Liabilities, Surplus and Other Funds (Continued)  
As of December 31, 2015

Liabilities	Per Annual Statement
Aggregate reserve for life contracts	\$ 41,446,485
Aggregate reserve for accident and health contracts	651,102,809
Contract claims:	
Life	482,822
Accident and health	12,823,263
Policyholder dividends due and unpaid	(38,646)
Dividends apportioned for payment	784,752
Premiums and annuity considerations received in advance	1,352,604
Contract liabilities not included elsewhere:	
Other amounts payable on reinsurance	24,405,521
Interest Maintenance Reserve	30,577,560
Commissions to agents due or accrued	831,921
Commissions and expense allowances payable on reinsurance assumed	77,123
General expenses due or accrued	11,537,353
Taxes, licenses and fees due or accrued, excluding federal income taxes	2,230,028
Amounts withheld or retained by company as agent or trustee	13,699
Remittances and items not allocated	389,738
Miscellaneous liabilities:	
Asset valuation reserve	25,309,588
Funds held under coinsurance	2,369,741,197
Aggregate write-ins for liabilities	364,946
Total Liabilities excluding Separate Account business	<u>3,173,432,763</u>
Total liabilities	<u>3,173,432,763</u>
Common capital stock	3,198,000
Gross paid-in and contributed surplus	228,369,929
Unassigned funds (surplus)	(23,625,439)
Surplus	<u>204,744,490</u>
Total capital and surplus	<u>207,942,490</u>
Totals	<u>\$ 3,381,375,253</u>

Berkshire Life Insurance Company of America

Summary of Operations  
For the Year Ended December 31, 2015

	Per Annual Statement
Premium and annuity considerations	\$ 118,224,676
Net investment income	185,338,579
Amortization of interest maintenance reserve	7,796,991
Commissions and expense allowances on reinsurance ceded	232,805,464
Reserve adjustments on reinsurance ceded	958,643
Miscellaneous Income	
Aggregate write-ins for miscellaneous income	(8,599,067)
Totals	536,525,286
Death benefits	509,168
Disability benefits and benefits under A&H policies	54,343,025
Surrender benefits and withdrawals for life contracts	39,166
Interest and adjustments on contract or deposit-type contract funds	(31,048)
Increase in aggregate reserves for life and accident and health policies and contracts	41,423,569
Totals	96,283,880
Commissions on premiums, annuity considerations and deposit-type contract funds	80,890,543
Commissions and expense allowances on reinsurance assumed	49,223,941
General insurance expenses	123,240,890
Insurance taxes, licenses and fees, excl. federal income taxes	20,452,144
Increase in loading on deferred and uncollected premiums	628,228
Aggregate write-ins for deductions	141,394,972
Totals	512,114,598
Net gain from operations before dividends to policyholders and federal income taxes	24,410,688
Dividends to policyholders	420,268
Net gain from operations after dividends to policyholders and before federal income taxes	23,990,420
Federal income taxes incurred (excluding tax on capital gains)	5,423,836
Net gain from operations after dividends to policyholders and federal income taxes and before realized capital gains or (losses)	18,566,584
Net realized capital gains or (losses)	(4,322,090)
Net Income	\$ 14,244,494

# Berkshire Life Insurance Company of America

## Reconciliation of Capital and Surplus For the Five Year Period Ended December 31, 2014 (in thousand's)

	2015	2014	2013	2012	2011
Capital and surplus, December 31, prior year	<u>\$ 269,463</u>	<u>\$ 583,000</u>	<u>\$ 543,363</u>	<u>\$ 530,906</u>	<u>\$ 493,775</u>
Net income (loss)	14,244	16,943	59,954	43,915	29,287
Change in net unrealized capital gains or (losses)	206	170	435	(673)	(120)
Change in net unrealized foreign exchange capital gain (loss)					
Change in net deferred income tax	7,841	(10,636)	(34,370)	10,183	6,977
Change in nonadmitted assets	(4,790)	13,006	19,378	(8,957)	(3,931)
Change in reserves on account of changes in valuation basis	(10,100)		(1,558)	(31,058)	(16,050)
Change in asset valuation reserve	(3,608)	1,980	(4,202)	(951)	(2,781)
Cumulative effect of changes in accounting principles	(312)				
Surplus adjustment:					
Paid in	(65,000)	(12,117)			
Dividends to stockholders		(322,883)			
Aggregate write-ins for gains and (losses) in surplus					23,749
Net change in capital and surplus for the year	<u>(61,520)</u>	<u>(313,537)</u>	<u>39,636</u>	<u>12,457</u>	<u>37,131</u>
Capital and surplus, December 31, current year	<u>\$ 207,942</u>	<u>\$ 269,463</u>	<u>\$ 583,000</u>	<u>\$ 543,363</u>	<u>\$ 530,906</u>

**ANALYSIS OF CHANGES IN FINANCIAL STATEMENTS RESULTING FROM THE  
EXAMINATION**

There were no changes in the financial statements resulting from the examination.

**COMMENTS ON FINANCIAL STATEMENT ITEMS**

As a result of the examination, no issues with non-compliance, adverse findings, or material changes to the financial statements were identified.

Included as part of its assistance to the Division, Lewis & Ellis, Inc. ("L&E") was retained by Baker Tilly to assist in the analysis of various actuarially determined items in the 2015 Annual Statement. Given the "risk focused" examination approach of the overall examination, L&E's approach was aimed at identifying the actuarial items on the financial statements with the greatest risk of material error. L&E considered processes and controls used by the Company to manage risk and sought to identify significant residual risk, if any. Additionally, L&E's procedures considered the Company's exposure to business risks and the controls and processes in place to address such risk.

In summary, L&E performed the following actuarial procedures in order to support the Division's overall examination of the Company:

1. L&E met with Company management to understand the business of the Company, its procedures around actuarial calculations, its approach to risk management and its likely areas of financial statement and business risk.
2. L&E read and assessed PwC audit work papers to identify audit procedures as they apply to actuarial items and to the effectiveness of controls to protect from material errors. L&E supplemented its analysis of the PwC work papers with additional independent assessments and calculations.
3. L&E selectively analyzed assumptions and methods used to calculate reserves and related actuarial items and compared them to statutory guidance.
4. L&E reviewed the Company's reinsurance arrangements to understand the Company's exposure to and reliance on reinsurance counterparties and the appropriateness of reserve credits obtained through reinsurance.
5. L&E performed independent calculations of sample actuarial items to assess whether the Company used reasonable, appropriate and sufficient actuarial methods.

Aggregate reserves for accident and health contracts accounts for \$651.1 million of the Company's actuarial liabilities. This provision includes Active Life Reserves ("ALRs") and Claim Reserves.

Berkshire Life Insurance Company of America

- A. ALRs are liabilities established when a portion of the premium due prior to the valuation date is designed to pay all or a part of the claims expected to be incurred after the valuation date.

Based on a sampling approach, L&E independently tested the Company's ALRs and determined them to be reasonable, appropriate, and adequate.

- B. Claim Reserves are the present value of future gross benefit payments less the present value of future offsets for persons that are currently receiving a benefit. Expected future gross benefit payments and future offsets are a function of the reserving termination rates and the benefit and offset end dates.

Based on a sampling approach, L&E independently tested the Company's Claim Reserves and determined them to be reasonable, appropriate, and adequate.

Aggregate reserves for life contracts accounts for \$41.4 million of the Company's actuarial liabilities. This provision is comprised of term life ("TL") and universal life ("UL") products.

- A. The term life block consists of several term products with level premiums during a specified period, after which the premiums follow an annual renewable premium scale.

Based on a sampling approach, L&E independently tested the Company's TL reserves and determined them to be reasonable, appropriate, and adequate in the aggregate.

- B. The universal life block is a flexible premium UL plan with front-end loads and surrender charges; it also offers optional Secondary Guarantee after an automatic no-lapse guarantee period.

Based on a sampling approach, L&E independently tested the Company's UL reserves and determined them to be reasonable, appropriate, and adequate in the adequate.

- 6. L&E assessed the Company's Asset Adequacy Analysis Memorandum and supporting documentation along with PwC's work papers for consistency with typically observed methods, including the setting of assumptions, and for the levels of sufficiency reported by the Company.

L&E utilized the Company's 2016 Asset Adequacy Analysis to perform a retrospective analysis of the projections performed as of 12/31/2015 and determined such projections of life and accident and health reserves to be reasonable and appropriate.



**SUBSEQUENT EVENTS**

Effective in 2016, the Company no longer cedes any new business to external reinsurers.

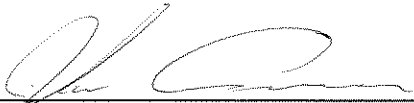
**SUMMARY OF RECOMMENDATIONS**

No significant recommendations were identified during the examination that should be noted in this report.

**SIGNATURE PAGE**

Acknowledgement is made of the cooperation and courtesies extended by the officers and employees of the Company during the examination.

The assistance rendered by Baker Tilly and Lewis & Ellis, Inc. who participated in the examination is hereby acknowledged.



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John M. Curran, CFE

Supervising Examiner and Examiner-in-Charge

Commonwealth of Massachusetts

Division of Insurance