

THE COMMONWEALTH OF MASSACHUSETTS

**OFFICE OF CONSUMER AFFAIRS
AND BUSINESS REGULATION**

Division of Insurance

*Report on the Market Conduct Examination of
Berkshire Life Insurance Company of America*

Pittsfield, Massachusetts

For the Period January 1, 2010 through December 31, 2010

NAIC COMPANY CODE: 71714

EMPLOYER'S ID NUMBER: 75-1277524

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COMMONWEALTH OF MASSACHUSETTS
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DIVISION OF INSURANCE

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October 8, 2012

Honorable Joseph G. Murphy
Commissioner of Insurance
Commonwealth of Massachusetts
Division of Insurance
1000 Washington Street, Suite 810
Boston, Massachusetts 02118-6200

Dear Commissioner Murphy:

Pursuant to your instructions and in accordance with Massachusetts General Laws, Chapter 175, § 4, a comprehensive examination has been made of the market conduct affairs of

BERKSHIRE LIFE INSURANCE COMPANY OF AMERICA

at their home offices located at:

700 South Street
Pittsfield, MA 01201

The following report thereon is respectfully submitted.

SCOPE OF EXAMINATION

The Massachusetts Division of Insurance (the "Division") conducted a comprehensive market conduct examination ("examination") of Berkshire Life Insurance Company of America ("BLICOA" or "the Company") for the period January 1, 2010 through December 31, 2010. The examination was called pursuant to authority in Massachusetts General Laws Chapter ("M.G.L. c." 175, 4). The examination was conducted under the direction, management and control of the market conduct examination staff of the Division. Representatives from the firm of RSM McGladrey, Inc. ("McGladrey" or "the Examiners") were engaged to complete the examination.

During the exam period, the Company sold individual disability income products and individual long-term care insurance. In addition, the Company had a closed block of specialty life insurance.

EXAMINATION APPROACH

A tailored examination approach was developed using the guidance and standards of the 2011 NAIC Market Regulation Handbook, ("the Handbook") the examination standards of the Division, the Commonwealth of Massachusetts' insurance laws, regulations and bulletins, and selected Federal laws and regulations. All procedures were performed under the supervision of the market conduct examination staff of the Division, including procedures more efficiently addressed in the Division's separate financial examination of the Company. For those objectives, McGladrey and the market conduct examination staff used procedures performed by the Division's financial examination staff to the extent deemed appropriate to ensure that the market conduct objective was adequately addressed.

The operational areas that were reviewed under this examination include company operations/management, complaint handling, marketing and sales, producer licensing, policyholder service, underwriting and rating and claims. This examination report describes the procedures performed in these operational areas and the results of those procedures.

In addition to the processes' and procedures' guidance in the Handbook, the examination included an assessment of the Company's related internal controls. While the Handbook approach is designed to detect incidents of deficiency through transaction testing, the internal control assessment provides an understanding of the key controls that the Company's management uses to operate their business and to meet key business objectives, including complying with applicable laws and regulations related to market conduct activities.

The internal controls assessment is comprised of three significant steps: (a) identifying controls; (b) determining whether the control has been reasonably designed to accomplish its intended purpose in mitigating the risk; and (c) verifying that the control is functioning as intended (i.e., review or testing of the controls). The effectiveness of the internal controls was considered when determining sample sizes for transaction testing. The form of this examination report is "Report by Test," as described in Chapter 15, Section A of the Handbook. During the examination period, the Company had a population of 52 new Massachusetts LTC policies. As such, a judgmental sample of 20 new LTC business transactions was selected for testing.

During the examination period, the Company population of new DI policies in Massachusetts was 943. As such, a random sample of 115 policies was selected per the NAIC Market Regulation Handbook. Of the 115 policies, the Examiners tested the first 64 and after consulting with the Division, it was determined that the additional 51 policies should not be tested. The sample size of 64 was determined using ACL's statistical sample size

calculator, with a confidence level of 95%, an upper error limit of 10%, and an expected error limit of 3%. No new Life policies were issued during the examination period.

During the examination period, the Company received 25 DI claims, no Life claims and no LTC claims. Of the 25 DI claims, there were four that were paid and closed, nine denied and closed without payment and 12 claims which the Company categorizes as paid, pending or reopened. The Examiners tested all 12 DI claims which were categorized as paid, pending or reopened as well as the four claims that were paid and closed at a later date. In order to test that the Company's initial contact was timely once notified about a claim, a total number of 16 DI claims were selected for testing.

The Division considers a "finding" to be a violation of Massachusetts insurance laws, regulations or bulletins. An "observation" is defined as a departure from an industry best practice. The Division recommends that Company management evaluate any "finding" or "observation" for applicability to other jurisdictions. All unacceptable or non-compliant practices may not have been discovered or noted in this report. Failure to identify unacceptable or non-compliant business practices does not constitute acceptance of such practices. When applicable, corrective actions should be taken in all jurisdictions. The Company shall report to the Division any such corrective actions taken.

EXECUTIVE SUMMARY

This summary of the examination of the Company is intended to provide a high-level overview of the examination results highlighting where recommendations were made or required actions were noted. The body of the report provides details of the scope of the examination, the examination approach, internal controls for each standard, review and test procedures conducted, findings and observations, recommendations and required actions and if applicable, subsequent Company actions. Company managerial and supervisory personnel from each operational area should review the examination report for results relating to their specific area.

The following is a summary of all findings and observations, along with related required actions and recommendations and, if applicable, subsequent company actions noted in this examination. All Massachusetts laws, regulations and bulletins cited in this report may be viewed on the Division's website at: www.mass.gov/doj.

The examination resulted in no recommendations or required actions with regard to Complaint Handling and no recommendations with regard to Policyholder Services. The examination indicated that the Company is in compliance with all tested Company policies, procedures and statutory requirements addressed in the examination. Further, the tested Company practices appear to meet industry best practices in these areas.

The comprehensive market conduct examination resulted in the following required actions or recommendations:

I – COMPANY OPERATIONS AND MANAGEMENT

STANDARD I-5

Findings: None

Observations: The review indicated that the use of such third parties is conducted in compliance with Company policies and procedures. The review of the audit reports and contracts in effect with third parties indicated that the Company is monitoring the activities of entities acting on behalf of the Company. The Company indicated that a SAS 70 (SSAE 16) was not performed by LifeCare during the examination period and there are no plans to perform one in the future.

Recommendation: The Company should enhance its oversight of LifeCare, the TPA administering the LTC business, by requesting a SAS 70 (SSAE 16) be performed on an annual basis.

STANDARD I-6

Findings: None

Observations: The review indicated that the use of such third parties is conducted in compliance with Company policies and procedures. The review of the audit reports and contracts in effect with third parties indicated that the Company is monitoring the activities of entities acting on behalf of the Company. The Company indicated that a SAS 70 (SSAE 16) was not performed by LifeCare during the examination period and there are no plans to perform one in the future.

Recommendation: The Company should enhance its oversight of LifeCare, the TPA administering the LTC business, by requesting a SAS 70 (SSAE 16) be performed on an annual basis.

STANDARD I-7

Findings: The Company informed the Examiners that during the exam period, the Company was not retaining certain premium and billing notices that were sent to insureds. In addition, the Examiners found one new business DI file where the file noted that an adverse action notice was sent to the applicant; however, the Company did not retain a copy of the notice. As such, the Examiners could not validate the Company's compliance with M.G.L. c. 175I, §§ 1-22; Gramm-Leach-Bliley Act, §§ 502, 503, 504 and 505; and 16 CFR Part 313. Finally, the Examiners note that the Company does not retain the DI and LTC Outline of Coverage issued for each policy which contains required disclosure information as mandated under 211 CMR 42.09.

Observations: The Company has a record retention policy in place, and in general, most of the requested documents were produced by the Company.

Required Actions: The Company's policies and procedures need to be reviewed and modified as necessary to assure that all required records are retained and accessible. The Company should also conduct self audits to ensure that the noted documents are retained. The results of the audits shall be submitted to the Division by January 15, 2013.

Subsequent Actions: The Company informed the Examiners that all premium and billing notices are now being retained as of March, 2011. In addition, the Company began using electronic policy delivery to agencies which allows the Company to retain adverse notices and, if required, outlines of coverage delivered with the policy in electronic format as part of the policy application file.

STANDARD I-10

Findings: The Examiners found two DI new business transactions, and two policies that were issued as other than applied for or with non-standard rates, here the Company did not provide adverse underwriting action notices as required under M.G.L. c. 175I, §§ 1-22; Gramm-Leach-Bliley Act, §§ 502, 503, 504 and 505 and 16 CFR Part 313 as outlined under Standard I-10.

Observations: The Company's privacy practices appear to minimize any improper intrusion into applicants' and policyholders' privacy, and are disclosed to policyholders in accordance with the Company's policies and procedures. Further, based upon the results of life claims testing, the Examiners noted no evidence of the use of pretext interviews. Testing of the LTC transactions did not identify any exceptions.

Required Actions: The Company's policies and procedures need to be reviewed and modified as necessary to assure that all required Notices of Adverse Underwriting Action are sent timely. The Company should conduct periodic reviews to ensure that all insureds have received an Adverse Underwriting Notice where required. A copy of the new policy and procedure and the self audit results shall be provided to the Division by January 15, 2013.

Subsequent Actions: The Company informed the Examiners that the Company began using electronic policy delivery to agencies which allows the Company to retain adverse notices and, if required, outlines of coverage delivered with the policy in electronic format as part of the policy application file. The Company has initiated a project which automates notification to underwriters of the need for an adverse action notice. Until the project is complete the Company added an indicator on the underwriting sheet to identify all states when an adverse action notice is required. Finally, the Company has incorporated a sampling of five application reviews monthly (per underwriter) to monitor compliance to adverse action requirements in all states.

STANDARD I-12

Findings: Two of the DI files reviewed did not indicate that an adverse action notice was sent to the insured. This does not appear to comply with M.G.L. c. 175I, §§ 1-22; Gramm-Leach-Bliley Act, §§ 502, 503, 504 and 505; and 16 CFR Part 313 as outlined under this Standard.

In addition, the Examiners found one new business DI file where the file noted that an adverse action notice was sent to the applicant; however, the Company did not retain a copy of the notice. As such,

the Examiners could not validate the Company's compliance with M.G.L. c. 175I, §§ 1-22; Gramm-Leach-Bliley Act, §§ 502, 503, 504 and 505; and 16 CFR Part 313 as outlined under this Standard.

Observations: Testing did not identify any instances that the Company improperly provided information to parties other than the applicant. Testing of the LTC transactions did not identify any exceptions regarding Notices of Adverse Underwriting Action.

Required Actions: The Company's policies and procedures need to be reviewed and modified as necessary to assure that all required Notices of Adverse Underwriting Action are retained and available. A copy of the new policy and procedure shall be provided to the Division by January 15, 2013.

Subsequent Actions: The Company informed the Examiners that the Company began using electronic policy delivery to agencies which allows the Company to retain adverse notices and, if required, outlines of coverage delivered with the policy in electronic format as part of the policy application file. The Company has initiated a project which automates notification to underwriters of the need for an adverse action notice. Until the project is complete the Company added an indicator on the underwriting sheet to identify all states when an adverse action notice is required. Finally, the Company has incorporated a sampling of five application reviews monthly (per underwriter) to monitor compliance to adverse action requirements in all states.

STANDARD I-14

Findings: None.

Observations: The Company was unable to provide policies and procedures for the Examiners review but did provide a written response which stated that the Company follows the Guardian Life Insurance Company of America's policies on such matters and does not engage in any information sharing practices that would require opt out disclosures. However, the Company's privacy policy notice does indicate that the Company will advise customers of opt out rights if the Company decides to disclose information that would trigger opt out rights.

Recommendations: If the Company decides to share consumer information, the Company should develop opt out procedures that comply with Massachusetts requirements.

III – MARKETING AND SALES

STANDARD III-4

Findings: After reviewing the complete DI and LTC samples, the Examiners found that seven DI policies and one LTC policy were replacements. The Examiners testing of the DI policies found that six of the seven DI policies and the one LTC policy included all the required replacement forms. The Company was unable to provide the required forms for one DI policy. Therefore, it does not appear that the Company is complying with 211 CMR 27.06(4), 34.04, 42.08 and 42.11 as tested under this Standard.

Observations: The Company has policies and procedures in place regarding the replacement process regarding DI and LTC policies. Additionally, the DI and LTC new business applications contain questions regarding the applicant's other insurance policies and if the sale involves a replacement.

Required Actions: The Company needs to improve its oversight of replacements to assure that all the required forms are received when the application for a new BLICOA policy involves a replacement. The Company needs to modify the record retention policies and procedures to require that all replacement forms provided to and signed by applicants be retained. A copy of the new policy and procedure shall be provided to the Division by January 15, 2013.

STANDARD III-5

Findings: The Examiners found that the LTC replacement form does not meet the requirements of 211 CMR 42.08 and 42.11.

Observations: The Examiners did not find any unusual trends by Massachusetts producers regarding replacements. No Massachusetts producer replaced more than four policies during the examination period.

Recommendations: None.

Subsequent Actions: The Company informed the Examiners that Berkshire exited the long term care market in December 2011, and no new policies will be issued. As such, no actions are required in reference to the LTC replacement form revisions.

IV – PRODUCER LICENSING

STANDARD IV-1

Findings: Of the 10 agent terminations from the Division's records, and 10 terminations from the Company's records which also included Guardian's records, the Examiners found two agent terminations (10%) in which the termination dates did not match. The Company did not reconcile its list of licensed and appointed agents timely with the Division.

Observations: None.

Recommendations: The Company's internal audit department should conduct regular reviews of the agent termination process and the agent termination log.

Required Actions: The Company and Guardian shall review and modify as necessary, its agent termination procedure specifically regarding timely notification of terminations to the Division and accurate record keeping in the Guardian appointment system. The Company and Guardian shall perform a reconciliation between their agent records and the Division's records at least annually. The Company and the Division shall determine a mutually agreed upon date for such reconciliation.

STANDARD IV-2

Findings: One of the DI files reviewed identified an agent that was not properly appointed by the Company which appears to be in violation of M.G.L. c. 175, § 162S.

Observations: The Examiners testing of the 64 DI policies found that one agent sold Massachusetts issued policies to a Massachusetts resident but was not licensed in Massachusetts. As the examiners were unable to determine where the policy was delivered, this does not appear to be in violation of M.G.L. c. 175, § 177.

Required Actions: The Company shall enhance its oversight of the sales process to assure that the selling agent is properly licensed in the Commonwealth of Massachusetts if the applicant resides in Massachusetts, is employed in Massachusetts and/or the policy is delivered in Massachusetts. The Company should implement a delivery receipt process which shows how the policy was delivered (i.e. in person, mail, etc.) and if delivered in person the receipt should indicate where the delivery occurred. The Company's internal audit department should regularly monitor compliance with this requirement.

Subsequent Actions: The Company initiated the delivery of policies electronically to agencies in 2011. As part of the process, a policy receipt is provided with all policies. The policy delivery receipt has a section stating where the receipt is signed.

STANDARD IV-3

Findings: The Examiners testing identified two terminated agents that were not accurately recorded in the Division or Company log.

Observations: None.

Required Actions: The Company and Guardian shall review and modify as necessary, its agent termination procedure specifically regarding timely notification of terminations to the Division and accurate record keeping in the Guardian appointment system. The Company and Guardian shall perform a reconciliation between their agent records and the Division's records at least annually. The Company and the Division shall determine a mutually agreed upon date for such reconciliation.

V – POLICYHOLDER SERVICES

STANDARD V-6

Findings: None.

Observations: The Company has processes for locating missing policyholders and claimants.

Recommendations: The Company should review the Massachusetts Division of Insurance Escheatment Best Practices Document and enhance its existing procedures as needed. The Company should ensure that its procedures include all components of the Massachusetts Division of Insurance Escheatment Best Practices Document. The Company should implement independent monitoring procedures, which are performed by internal audit or the U.S. Compliance Department, to test and monitor compliance with the Company's policies and procedures regarding the following:

- thorough searches for missing individuals
- timely comparisons of in-force databases with the Social Security Death Index (or a comparable database) and any related Updates

- sharing of Social Security Death Index (or a comparable database) and related Updates comparison results between all Company and affiliate operational areas, and
- compliance with Massachusetts escheatment requirements.

Required Actions: The Company's and its affiliates' shall conduct searches for deceased policyholders and escheatment. The Company shall begin comparing its life insurance in-force listing quarterly to the Social Security Death Index effective December 1, 2012. In addition, the Company shall complete an assessment of communication procedures between operational areas for non-essential returned mail and make adjustments as deemed appropriate. The Company shall report to the Division on the results of its assessment and, as applicable, any changes to be made to procedures and their planned implementation. Documentation of this review shall be provided to the Division by April 26, 2013.

STANDARD V-7

Findings: The Examiners testing of five DI cancellation requests found that the Company inaccurately processed one request where the policy had unearned premium that was due to the insured, however, the Company did not issue a refund.

Observations: The five insured cancellation requests tested for Life and the two LTC transactions that involved unearned premium refunds were calculated correctly, returned in a timely manner, and in compliance with statutory requirements. In addition, the Company's policyholder survey results give the indication that the Company is handling the return of unearned premiums timely.

Required Actions: The Company's policies and procedures need to be reviewed and modified as necessary to assure that all unearned premium refunds are sent timely and accurately. The Company shall produce documentation to the Division of the refund the unearned premium plus interest to the insured by January 15, 2013.

Subsequent Action: Upon the Examiners discovery, the Company has refunded the unearned premium plus interest to the insured.

VI – UNDERWRITING AND RATING

STANDARD VI-1

Findings: The Examiners identified that one of the ten DI policies selected for re-rating contained an additional premium charge of 50% that was not found in the Company's rating manuals that were approved by the Division. The Examiners discussed this matter with the Company and were advised that the additional premiums are not in the Company's rating manual as the additional premium amount is an underwriting decision. The additional premiums as required by the Company's reinsurer, MunichRe, are not included in the Company's filed and approved rate filing.

Observations: None.

Required Actions: The Company's policies and procedures need to be reviewed and modified as necessary to assure that all rates are filed and approved by the Division timely. The Company will identify the potential use of extra premiums due to the risk associated with an applicant's medical history identified during underwriting in Berkshire's next rate filing with the Division. The Company shall file the appropriate rates with the Division by November 30, 2012.

STANDARD VI-5

Findings: The Company provides the Privacy Policy at new business and annually to all individual DI and LTC policyholders. The Privacy Policy is sent to the insured with the insurance policy and as such is deemed as a segment of the policy. The Privacy Policy was not filed with the Division as required under M.G.L. c. 175, § 108.

Observations: Each policy in the LTC and DI samples were tested to determine whether the policy issued had been filed and approved by the Division. Aside from the finding noted above, all contract forms, rider and endorsements tested were filed and approved by the Division.

Required Actions: The Company shall take the appropriate steps to file the Privacy Policy with the Massachusetts Division of Insurance in order to fully comply with M.G.L. c. 175, § 108; The Company's Privacy Policy shall be filed with the Division by January 15, 2013.

STANDARD VI-11

Findings: Of the 64 DI new business transactions tested, the Examiners found one policy that did not contain the AIDS Consent Form as required under 211 CMR 36.04-36.06 and 36.08 and outlined under this Standard.

Observations: All 20 LTC new business transactions tested included the necessary AIDS Consent Form as required under 211 CMR 36.04-36.06 and 36.08 and outlined under this Standard.

Required Actions: In order to ensure that the AIDS Consent Form is provided to all applicants as required under 211 CMR 36.04-36.06 and 36.08, the Company shall automate the process of providing required forms to applicants. All required forms should be packaged together to reduce the risk of an applicant not receiving one or all required forms.

Subsequent Actions: The Company informed the Examiners that the Company began using an electronic application process in 2012 that will assure that the required forms are used during the application process, specifically the AIDS Consent Form.

VII – CLAIMS

STANDARD VII-6

Findings: Of the 16 DI claims tested, the Examiners found three instances that the Company did not handle the claims in accordance with policy provisions. In each instance, the Company failed to administer the waiver of premium provision of the policy correctly.

Observations: None.

Recommendations: The Company needs to implement stricter controls to ensure that all policy provisions are administered correctly.

Required Actions: The Company shall provide documentation to the Division by November 30, 2012 indicating that the waiver of premium refund plus interest was sent to the insured.

Subsequent Action: Upon the Examiners discovery, the Company has refunded premiums to the insured due to the waiver provision of the contract plus interest.

STANDARD VII-10

Findings: Of the 16 DI claims tested, the Examiners found two instances that the Company did not handle the claims in accordance with policy provisions and benefit checks were incorrect. In both instances, the Company failed to administer the waiver of premium provision of the policy correctly.

Observations: The Examiners found that the benefit period details included in the Explanation of Benefits (EOB) for all the claims sampled, does not appear to accurately reflect the benefit period for which benefits were paid. The EOB includes the headings "Period From" and "Period To." The "Period From" should specify the start of the benefit period and the "Period To" should specify the end date for which benefits will be paid, including the elimination period. The Company verbally indicated that the application of the elimination period and the date to which benefits are paid is the date before the "Period To" date and not the date shown as "Period To". As a result, this information could be misleading to the policyholder.

Recommendations: The Company needs to implement stricter controls to identify policies which have not been put on waiver even after satisfying the policy requirements or have not been handled in compliance with the policy provisions.

In addition, with respect to the EOB, the Company should consider modifying the "Period From" date to specify the start of the benefit period and the "Period To" date should specify the end date for which the elimination period will be applied or benefits will be paid.

Required Actions: The Company shall provide documentation to the Division by November 30, 2012 indicating that the waiver of premium refund plus interest was sent to the insured.

Subsequent Action: Upon the Examiners discovery, the Company has refunded premiums to the insured due to the waiver provision of the contract plus interest.

COMPANY BACKGROUND

BLICOA is a wholly-owned subsidiary of The Guardian Life Insurance Company of America (Guardian). Founded in 1860, Guardian is the fourth largest mutual life insurance company in the United States. Based upon statutory accounting principles as of December 31, 2010, Guardian had \$42.7 billion in assets and \$4.2 billion in surplus. With more than 5,400 employees and 3,000 financial representatives, as well as over 80 agencies nationwide, Guardian and its subsidiaries provide individuals, businesses and their employees with life, disability, health and dental insurance products, and offer 401(k), financial products and trust services. BLICOA was formed in 2001 as the result of the merger of the former mutual company, Berkshire Life Insurance Company (BLICO), into Guardian. BLICO ceased to exist as a separate mutual company, and its policyholders became policyholders of Guardian. Immediately following the merger, Guardian contributed certain assets and continuing operations of BLICO into the newly formed BLICOA. BLICOA's primary mission is to operate a fully functioning DI insurance business for the Guardian group of companies.

BLICOA primarily markets its products through Guardian's career agency system, which consists of approximately 80 general agencies nationwide, with five such agencies located in Massachusetts. The Company sells individual DI products and a small amount of long-term care insurance. In addition, the Company has a closed block of specialty life insurance products.

The Company is rated A++ (Superior) by A.M. Best Company. In addition, Guardian is also rated AA+ (Very Strong) by Standard & Poor's Corp and Aa2 (Excellent) by Moody's. BLICOA had \$2.81 billion in admitted assets and \$490.5 million in surplus as of December 31, 2010. For the year ended December 31, 2010, the Company's premiums were \$458 million, and net income was \$50.7 million.

The following is the 2010 direct premium and annuity considerations (which include first year and renewal business) written by the Company in Massachusetts by annual statement line of business:

Massachusetts Direct Premium and Annuity Considerations in 2010	Total
Individual Life Insurance Premiums	\$954,269
Individual Annuity Considerations	\$0
Accident and Health (including disability income and long term care)	\$15,181,609
Individual Deposit-Type Funds	\$0
Group Life Insurance	\$0
Group Annuities	\$0
Other Group Considerations	\$0
Total	\$16,135,878

The following summarizes the approximate life insurance and annuity death claims and accident and health claims paid in Massachusetts in 2010 based on the Massachusetts Annual Statement State Page:

Massachusetts Claim Benefits Paid in 2010	
Life Insurance and Annuity Death Benefits Paid	\$0
Accident and Health Benefits Paid	\$1,826,908

In Massachusetts there were no life and annuity death claims paid in 2010. There were however, surrenders and withdrawals for life contracts in the amount of \$350,971. In 2010, 25 accident and health claims were filed.

I – COMPANY OPERATIONS AND MANAGEMENT

Evaluation of the Standards in this business area is based on (a) an assessment of the Company's internal control environment, policies and procedures, (b) the Company's response to various information and data requests, and (c) a review of various types of Company files. Unless otherwise stated, the policies and procedures addressed in the Standards below applied to the Company's management of DI, Life and LTC business.

Standard I-1. The Company has an up-to-date, valid internal, or external, audit program.

Objective: This Standard addresses the audit function and its responsibilities. See Appendix A for applicable statutes, regulations and bulletins.

Controls Assessment: The following controls were noted in review of this Standard:

- The Company's internal audit (IA) department performs audits of the Company's operational functions. During 2010, the BLICOA Internal Audit function was integrated into the Guardian Internal Audit Department.
- The IA department conducts an annual risk assessment in order to identify business risks and the audits that will be conducted during the next year. The process entails interviewing senior management in order to identify business risk levels, projects completed and those planned, a review of the Risk Management Committee meeting minutes, and Audit Committee meeting minutes. The annual audit plan is drafted and presented to the Audit Committee for approval.
- The IA department conducts BLICOA operations related audits throughout the year, and an audit report is issued at the end of the review. The audit report notes all issues that were identified, and each issue is followed by an action plan with target dates. The IA department utilizes an Excel Spreadsheet to monitor the status of all issues in order to ensure that issues are addressed by the target dates. All audit issues including the status of the issue (e.g., open, closed, open past target date) are reported to the Audit Committee. The issues that remain open after the target date must be reported to the Audit Committee, and the Company must indicate why the issue remains open and a new target date is established. The Audit Committee will closely monitor the status of issues until they are deemed as closed.
- Guardian Internal Audit Department is responsible for conducting field audits of Guardian agents.

Controls Reliance: The Examiners tested the Company's controls by reviewing policies and procedures and/or conducting transaction testing.

Transaction Testing Procedure: The Examiners reviewed all nine internal audit reports for audits conducted in 2010. The audits performed tested internal controls applicable to the scope of this examination.

Transaction Testing Results:

Findings: None.

Observations: The internal audit reports reviewed were thorough and many of the audit reports included findings and recommendations. The report with findings and recommendations included timelines to implement the recommendations and the necessary follow-up to assure the recommendation was implemented.

Recommendations: None.

Standard I-2. The Company has appropriate controls, safeguards and procedures for protecting the integrity of computer information.

No work was performed during this market conduct examination. All required activity for this Standard is included in the scope of the Division's statutory financial examination of the Company which includes the period January 1, 2010 through December 31, 2010.

Standard I-3. The Company has antifraud initiatives in place that are reasonably calculated to detect, prosecute, and prevent fraudulent insurance acts.

Objective: This Standard addresses the effectiveness of the Company's antifraud plan. See Appendix A for applicable statutes, regulations and bulletins.

Controls Assessment: The following controls were noted in review of this Standard:

- The Company utilizes the Anti-Fraud Plan (Plan) prepared by Guardian Life. The Plan has been in effect for BLICOA since the merger in 2001. The Plan includes the requirements that the Company take all reasonable precautions to prevent, detect and thoroughly investigate potential insurance fraud.
- The Plan outlines procedures to report suspected fraud. Cases are referred to the Company's Special Investigative Unit (SIU), then the Legal Department followed by the appropriate law enforcement authorities and the Massachusetts Insurance Fraud Bureau.

Controls Reliance: The Examiners tested the Company's controls by reviewing policies and procedures and/or conducting transaction testing.

Transaction Testing Procedure: The Examiners reviewed the Company's Plan for policies and procedures regarding the identifying and reporting of suspected fraud.

Transaction Testing Results:

Findings: None.

Observations: The Examiners review of the Company's Plan found that the policies and procedures have been in effect since 2001. The Company has reviewed and modified the plan since 2001 making minor changes to accommodate SIU staffing updates and new state fraud regulations. The core outline of the Plan has not changed significantly since the inception.

Recommendations: None.

Standard I-4. The Company has a valid disaster recovery plan.

No work was performed during this market conduct examination. All required activity for this Standard is included in the scope of the Division's statutory financial examination of the Company which includes the period January 1, 2010 through December 31, 2010.

Standard I-5. Contracts between the Company and entities assuming a business function or acting on behalf of the regulated entity, such as, but not limited to MGAs, general agents (Gas), third party administrators (TPAs) and management agreements must comply with applicable licensing requirements, statutes, rules and regulations.

Objective: This Standard addresses the Company's contracts with entities assuming a business function and compliance with licensing and regulatory requirements. See Appendix A for applicable statutes, regulations and bulletins.

Controls Assessment: The following controls were noted in review of this Standard:

- The Company has contractual agreements with third parties, other than producers, to perform a business function or action on behalf of the Company. The Company utilizes third parties to administer their LTC business, conduct medical examinations during the underwriting and claim reviews, conduct telephone interviews with applicants and conduct surveillance during claim reviews.
- The Guardian internal audit department conducts field audits of each of the Guardian general agencies at least every three to four years.

Controls Reliance: The Examiners tested the Company's controls by reviewing policies and procedures and/or conducting transaction testing.

Transaction Testing Procedure: The Examiners interviewed Company management and staff about the use of third parties to perform Company functions. Also, the Examiners reviewed the Company's audit reports and contracts in effect with third parties. In addition, while testing other Standards as part of this examination, the Examiners reviewed for the appropriate oversight of third parties.

Transaction Testing Results:

Findings: None

Observations: The review indicated that the use of such third parties is conducted in compliance with Company policies and procedures. The review of the audit reports and contracts in effect with third parties indicated that the Company is monitoring the activities of entities acting on behalf of the Company. The Company indicated that a SAS 70 (SSAE 16) was not performed by LifeCare during the examination period and there are no plans to perform one in the future.

Recommendation: The Company should enhance its oversight of LifeCare, the TPA administering the LTC business, by requesting a SAS 70 (SSAE 16) be performed on an annual basis.

<p><u>Standard I-6.</u> The Company is adequately monitoring the activities of any entity that contractually assumes a business function or is acting on behalf of the Company.</p>
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Objective: This Standard addresses the Company's efforts to adequately monitor the activities of the contracted entities that perform business functions on its behalf. See Appendix A for applicable statutes, regulations and bulletins.

Controls Assessment: See Standard I-5.

Controls Reliance: See Standard I-5.

Transaction Testing Procedure: The Examiners began by interviewing Company management and staff about the use of third parties to perform Company functions. The oversight processes as explained during the interviews were considered when reviewing the related processes and controls. Also, the Examiners reviewed

the Company's audit reports and contracts in effect with third parties. In addition, while testing other Standards as part of this examination, the Examiners reviewed for the appropriate oversight of third parties.

Transaction Testing Results:

Findings: None

Observations: The review indicated that the use of such third parties is conducted in compliance with Company policies and procedures. The review of the audit reports and contracts in effect with third parties indicated that the Company is monitoring the activities of entities acting on behalf of the Company. The Company indicated that a SAS 70 (SSAE 16) was not performed by LifeCare during the examination period and there are no plans to perform one in the future.

Recommendation: The Company should enhance its oversight of LifeCare, the TPA administering the LTC business, by requesting a SAS 70 (SSAE 16) be performed on an annual basis.

<p>Standard I-7. Records are adequate, accessible, consistent and orderly and comply with record retention requirements.</p>

Objective: This Standard addresses the adequacy and accessibility of the Company's records. See Appendix A for applicable statutes, regulations and bulletins.

Controls Assessment: The Company utilizes the Record Retention Policy prepared by Guardian Life. The policy details what records must be retained and as a general rule the Company requires that records be retained for a seven year period.

Controls Reliance: The Examiners tested the Company's controls by reviewing policies and procedures and/or conducting transaction testing.

Transaction Testing Procedure: The Examiners reviewed the Company's Record Retention Policy and tested the Company's compliance with such policies and procedures while testing other Standards as part of this examination.

Transaction Testing Results:

Findings: The Company informed the Examiners that during the exam period, the Company was not retaining certain premium and billing notices that were sent to insureds. In addition, the Examiners

found one new business DI file where the file noted that an adverse action notice was sent to the applicant; however, the Company did not retain a copy of the notice. As such, the Examiners could not validate the Company's compliance with M.G.L. c. 175I, §§ 1-22; Gramm-Leach-Bliley Act, §§ 502, 503, 504 and 505; and 16 CFR Part 313. Finally, the Examiners note that the Company does not retain the DI and LTC Outline of Coverage issued for each policy which contains required disclosure information as mandated under 211 CMR 42.09.

Observations: The Company has a record retention policy in place, and in general, most of the requested documents were produced by the Company.

Required Actions: The Company's policies and procedures need to be reviewed and modified as necessary to assure that all required records are retained and accessible. The Company should also conduct self audits to ensure that the noted documents are retained. The results of the audits shall be submitted to the Division by January 15, 2013.

Subsequent Actions: The Company informed the Examiners that all premium and billing notices are now being retained as of March, 2011. In addition, the Company began using electronic policy delivery to agencies which allows the Company to retain adverse notices and, if required, outlines of coverage delivered with the policy in electronic format as part of the policy application file.

Standard I-8. The Company is licensed for the lines of business that are being written.
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Objective: This Standard addresses whether the lines of business written by the Company are in accordance with the authorized lines of business. See Appendix A for applicable statutes, regulations and bulletins.

Controls Assessment: No control assessment was performed regarding this Standard.

Controls Reliance: Not Applicable.

Transaction Testing Procedure: As part of the examination planning process, the Examiners discussed with the Division which lines of business the Company was licensed to write in the Commonwealth during the examination period. The Examiners reviewed the Company's premium as reflected in the Company's 2010 annual statement to determine if the Company recorded premiums for any lines of business other than those the Company was licensed to write in the Commonwealth.

Transaction Testing Results:

Findings: None.

Observations: The Examiners review of the Company's annual statement indicated that the only new business premiums reported were for the lines of business the Company was licensed to write during the examination period.

Recommendations: None.

Standard I-9. The Company cooperates on a timely basis with examiners performing the examinations.

Objective: This Standard is concerned with the Company's cooperation during the course of the examination conducted in accordance with M.G.L. c. 175, § 4. See Appendix A for applicable statutes, regulations and bulletins.

Controls Assessment: No control assessment was performed regarding this Standard.

Controls Reliance: Not Applicable.

Transaction Testing Procedure: The Company's ability to respond to requests, provide access to information and provide access to staff was assessed throughout the examination.

Transaction Testing Results:

Findings: None.

Observations: During the examination, the Company was responsive to the needs of the Examiners but was unable to provide responses to several requests in a timely manner. Overall, the Company was cooperative and met the expectations of the Division.

Recommendations: None.

Standard I-10. The Company has procedures for the collection, use and disclosure of information gathered in connection with insurance transactions to minimize any improper intrusion into the privacy of applicants and policyholders.

Objective: This Standard is concerned with the Company's policies and procedures to ensure it minimizes improper intrusion into the privacy of consumers of life insurance. See Appendix A for applicable statutes, regulations and bulletins.

Controls Assessment: The following controls were noted in review of this Standard, and Standards I-11 through I-16:

- The Company maintains policies regarding the use and disclosure of personal information.
- The Company has a single document which acts as the Company's Privacy Statement and as a Privacy Policy that is distributed to customers with policy delivery and annually, thereafter. This policy indicates how the Company collects, discloses, and safeguards personal information. This notice also indicates how the Company shares information with affiliates and non-affiliates that administer the Company's business; and the insureds option to opt out of information sharing with non-affiliates which the Company does not do. Finally, this policy offers customers the opportunity to access their information and make any corrections.
- The Company maintains a document detailing the Company's information system risk assessment process and the Company's operational risk and security governance principles. It details security measures taken by the Company to protect electronic data and physical access to this data. Other information includes the use and protection of personal information such as social security numbers; third party vendor management; and application development that requires built in security controls.
- As part of the application process the Company requires the agent to provide the Notice of Insurance Information Practices to each applicant. The notice states that the Company gathers certain types of personal information from third parties or other sources and gives examples of such third parties or other sources. Further, the notice indicates that information may be disclosed in some cases, and that the applicant has a right to access and correct incorrect information.
- As part of the application process the Company requires the agent to provide the HIPAA/Privacy Disclosure Authorization. For both DI and LTC policies, the form is signed by the applicant at time of application for a new policy and submitted to the Company. The Company also requires the authorization to be submitted when a new claim is filed. The Company policy is to disclose nonpublic personal health information only as required or permitted by law to regulators and law enforcement agencies. Such information is provided to third parties who assist the Company in processing customer business transactions only if expressly authorized by the applicant.

- If the Company declines to issue a policy as applied for by the applicant, offers a policy to the applicant for less coverage than applied for by the applicant or offers coverage at higher than standard rates, the Company provides the applicant with a written Notice of Adverse Underwriting Decision which explains the reasons for the Company decision and the right to obtain additional information regarding the decision. The notice includes all statutory requirements.
- The Company's procedures comply with M.G.L. c. 175I, §§ 1-22 as the Company does not consider prior adverse underwriting decisions made by other insurers during the underwriting process; on the basis of sexual orientation or perceived orientation; or on personal information obtained from an insurance support organization, provided that the Company can base their decision on further information obtained as a result of the initial receipt of such personal information.
- The Company's privacy policies are available on the Company's website via a link to the Guardian website.
- The Company maintains a policy whereby pretext interviews are prohibited except as allowed by law.
- The Company limits access to the Company's nonpublic and health information to only those employees in key electronic and operational areas, where the need to access this information exists.

Controls Reliance: The Examiners tested the Company's controls by reviewing policies and procedures and/or conducting transaction testing.

Transaction Testing Procedure: The Examiners began by interviewing Company management and staff responsible for the underwriting and claims processes. Also, the Examiners reviewed procedures regarding privacy. DI Underwriting files and LTC and DI Claim files were reviewed in order to identify any evidence of the Company's use of pretext interviews. The Examiners also reviewed DI and LTC policies to determine whether the policies were issued as applied for or whether an additional premium was applied to the policy or included an exclusion rider at the time of issuance. Testing included verifying that all policies that were declined or issued as other than applied for contained an adverse underwriting action notice. As such, the Examiners reviewed 20 LTC and 64 DI new business transaction; 20 DI and 23 LTC transactions where policies were issued as other than applied for or with non-standard rates; and 20 DI and 5 LTC declined applications.

Transaction Testing Results:

Findings: The Examiners found two DI new business transactions, and two policies that were issued as other than applied for or with non-standard rates, here the Company did not provide adverse underwriting action notices as required under M.G.L. c. 175I, §§ 1-22; Gramm-Leach-Bliley Act, §§ 502, 503, 504 and 505 and 16 CFR Part 313 as outlined under Standard I-10.

Observations: The Company's privacy practices appear to minimize any improper intrusion into applicants' and policyholders' privacy, and are disclosed to policyholders in accordance with the Company's policies and procedures. Further, based upon the results of life claims testing, the Examiners noted no evidence of the use of pretext interviews. Testing of the LTC transactions did not identify any exceptions.

Required Actions: The Company's policies and procedures need to be reviewed and modified as necessary to assure that all required Notices of Adverse Underwriting Action are sent timely. The Company should conduct periodic reviews to ensure that all insureds have received an Adverse Underwriting Notice where required. A copy of the new policy and procedure and the self audit results shall be provided to the Division by January 15, 2013.

Subsequent Actions: The Company informed the Examiners that the Company began using electronic policy delivery to agencies which allows the Company to retain adverse notices and, if required, outlines of coverage delivered with the policy in electronic format as part of the policy application file. The Company has initiated a project which automates notification to underwriters of the need for an adverse action notice. Until the project is complete the Company added an indicator on the underwriting sheet to identify all states when an adverse action notice is required. Finally, the Company has incorporated a sampling of five application reviews monthly (per underwriter) to monitor compliance to adverse action requirements in all states.

Standard I-11. The Company has developed and implemented written policies for the management of insurance information.

Details of the Company's controls and testing related to privacy matters were included in the Scope of Standards I-10 and I-12 through I-17.

Standard I-12. The Company has policies and procedures to protect the privacy of nonpublic personal information relating to its customers, former customers and consumers that are not customers.

Objective: This Standard addresses policies and procedures to ensure privacy of nonpublic personal information. See Appendix A for applicable statutes, regulations and bulletins.

Controls Assessment: See Standard I-10.

Controls Reliance: See Standard I-10.

Transaction Testing Procedure: The Examiners selected a sample of 20 DI applications and 23 LTC applications that the Company offered coverage with an exclusion or offered coverage at non-standard rates as a Notice of Adverse Underwriting Decision would be required in each situation. Also, the Examiners selected a sample of 20 DI and five LTC applications that were declined by the Company. The review included verifying that the adverse underwriting action notice was provided to the applicant.

Transaction Testing Results:

Findings: Two of the DI files reviewed did not indicate that an adverse action notice was sent to the insured. This does not appear to comply with M.G.L. c. 175I, §§ 1-22; Gramm-Leach-Bliley Act, §§ 502, 503, 504 and 505; and 16 CFR Part 313 as outlined under this Standard.

In addition, the Examiners found one new business DI file where the file noted that an adverse action notice was sent to the applicant; however, the Company did not retain a copy of the notice. As such, the Examiners could not validate the Company's compliance with M.G.L. c. 175I, §§ 1-22; Gramm-Leach-Bliley Act, §§ 502, 503, 504 and 505; and 16 CFR Part 313 as outlined under this Standard.

Observations: Testing did not identify any instances that the Company improperly provided information to parties other than the applicant. Testing of the LTC transactions did not identify any exceptions regarding Notices of Adverse Underwriting Action.

Required Actions: The Company's policies and procedures need to be reviewed and modified as necessary to assure that all required Notices of Adverse Underwriting Action are retained and available. A copy of the new policy and procedure shall be provided to the Division by January 15, 2013.

Subsequent Actions: The Company informed the Examiners that the Company began using electronic policy delivery to agencies which allows the Company to retain adverse notices and, if required, outlines of coverage delivered with the policy in electronic format as part of the policy application file. The Company has initiated a project which automates notification to underwriters of the need for an adverse action notice. Until the project is complete the Company added an indicator on the underwriting sheet to identify all states when an adverse action notice is required. Finally, the Company has incorporated a sampling of five application reviews monthly (per underwriter) to monitor compliance to adverse action requirements in all states.

Standard I-13. The Company provides privacy notices to its customers and, if applicable, to its consumers who are not customers regarding treatment of nonpublic personal financial information.

Objective: This Standard addresses requirements to provide privacy notices. See Appendix A for applicable statutes, regulations and bulletins.

Controls Assessment: See Standard I-10.

Controls Reliance: See Standard I-10.

Transaction Testing Procedure: The Examiners interviewed Company management and staff responsible for the underwriting process. As detailed in the "Examination Scope" section, a sample of 20 new LTC business transactions and 64 new DI business transactions were selected for testing. The Examiners tested the issued DI and LTC policies to determine whether the policies were issued in compliance with statutory privacy disclosure requirements.

Transaction Testing Results:

Findings: None

Observations: The Company has procedures in place to ensure that all privacy forms are provided to applicants as required by M.G.L. c. 175I, §§ 1-22; Gramm-Leach-Bliley Act, §§ 502, 503, 504 and 505 and 16 CFR Part 313.

Recommendations: None.

Standard I-14. If the Company discloses information subject to an opt out right, the Company has policies and procedures in place so that nonpublic personal financial information will not be disclosed when a consumer who is not a customer has opted out, and the Company provides opt out notices to its customers and other affected consumers.

Objective: This Standard addresses policies and procedures with regard to opt out rights. See Appendix A for applicable statutes, regulations and bulletins.

Controls Assessment: See Standard I-10.

Controls Reliance: See Standard I-10.

Transaction Testing Procedure: The Examiners interviewed Company management and staff responsible for the underwriting process.

Transaction Testing Results:

Findings: None.

Observations: The Company was unable to provide policies and procedures for the Examiners review but did provide a written response which stated that the Company follows the Guardian Life Insurance Company of America's policies on such matters and does not engage in any information sharing practices that would require opt out disclosures. However, the Company's privacy policy notice does indicate that the Company will advise customers of opt out rights if the Company decides to disclose information that would trigger opt out rights.

Recommendations: If the Company decides to share consumer information, the Company should develop opt out procedures that comply with Massachusetts requirements.

<p><u>Standard I-15.</u> The Company's collection, use and disclosure of nonpublic personal financial information are in compliance with applicable statutes, rules and regulations.</p>

Objective: This Standard is concerned with the Company's collection and use of nonpublic personal financial information. See Appendix A for applicable statutes, regulations and bulletins.

Controls Assessment: See Standard I-10.

Controls Reliance: See Standard I-10.

Transaction Testing Procedure: The Examiners interviewed Company management and staff responsible for the underwriting process. As detailed in the "Examination Scope" section, a sample of 20 new LTC business transactions and 64 new DI business transactions were selected for testing. The Examiners tested the issued DI and LTC policies to determine whether the Company was in compliance with statutory and regulatory requirements pertaining to collection and use of nonpublic personal financial information.

Transaction Testing Results:

Findings: None.

Observations: Each policy in the LTC and DI samples were tested to determine whether the Company's collection and use of nonpublic personal financial information was reasonable and proper. Testing did not reveal any evidence that the Company's collection and use of nonpublic personal financial information was not in compliance with applicable statutes, rules and regulations. Therefore, it appears that the Company is complying with the terms of the Standard.

Recommendations: None.

Standard I-16. In states promulgating the health information provisions of the NAIC model regulation, or providing equivalent protection through other substantially similar laws under the jurisdiction of the Department of Insurance, the company has policies and procedures in place so that nonpublic personal health information will not be disclosed except as permitted by law, unless a customer or a consumer who is not a customer has authorized the disclosure.

Objective: This Standard addresses efforts to maintain privacy of nonpublic personal health information. See Appendix A for applicable statutes, regulations and bulletins.

Controls Assessment: See Standard I-10.

Controls Reliance: See Standard I-10.

Transaction Testing Procedure: The Examiners interviewed Company management and staff responsible for the underwriting process. As detailed in the "Examination Scope" section, a sample of 20 new LTC business transactions and 64 new DI business transactions were selected for testing. The Examiners tested the issued DI and LTC policies to determine whether the Company was in compliance with the appropriate use of HIPAA/Privacy Disclosure. In addition, while conducting testing sampled new business policies, policy declinations and claims the Examiners reviewed the files for any evidence that the Company improperly disclosed nonpublic personal health information.

Transaction Testing Results:

Findings: None.

Observations: Each policy in the LTC and DI samples were tested to determine whether the HIPAA/Privacy Disclosure was received and signed by each applicant for all new business applications and claims filed during the examination period. The appropriate forms were found in each LTC and DI new business and claim file. In addition, none of the files tested included any evidence that the Company disclosed nonpublic personal health information without authorization from the applicant or claimant. Therefore, it appears that the Company is complying with the terms of the Standard.

Recommendations: None.

Standard I-17. Each licensee shall implement a comprehensive written information security program for the protection of nonpublic customer information.

Objective: This Standard is concerned with the Company's information security efforts to ensure that nonpublic consumer information is protected. See Appendix A for applicable statutes, regulations and bulletins.

Controls Assessment: The following controls were noted in review of this Standard:

- The Company has developed and implemented information technology security policies and practices to safeguard nonpublic personal and health information. The Company annually conducts information systems risk assessments to consider, document and review information security threats and controls, and to continually improve information systems security.
- The Company's internal audit function conducts information technology audits, which address information security and access controls.
- Only individuals approved by Company management are granted access to the Company's electronic and operational areas where non-public personal financial and health information is located. Access is frequently and strictly monitored.

Controls Reliance: Controls tested via documentation inspection, procedure observation and/or corroborating inquiry appear to be sufficiently reliable to be considered in determining the extent of transaction testing procedures.

Transaction Testing Procedure: The Examiners interviewed Company management and staff responsible for privacy compliance. Limited work was performed during this market conduct examination as this Standard was also included in the scope of the Division's statutory financial examination of the Company which includes the period January 1, 2010 through December 31, 2010.

Transaction Testing Results:

Findings: None.

Observations: The Company's documentation supports that they periodically conduct an information systems risk assessment to consider, document and review information security threats and controls. Additionally, the Company's documentation includes procedures to implement and monitor information technology security practices to safeguard nonpublic personal and health information. Further, documentation supports that the Company communicates such practices to employees and producers in training programs, compliance presentations, various memoranda, and the Company's intranet contains several modules relating to privacy and security awareness. The Company has a privacy and security awareness training program in place regarding all employees and captive agents. Finally, documentation supports that only individuals approved by Company management are granted access to its key electronic and operational areas where such information is located, and further that such access is frequently monitored by management.

Recommendations: None.

<p>Standard I-18. All data required to be reported to department of insurance is complete and accurate.</p>
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Objective: This Standard addresses the Company's efforts to file complete and accurate certifications with the Division as required. See Appendix A for applicable statutes, regulations and bulletins.

Controls Assessment: No control assessment was performed regarding this Standard.

Controls Reliance: Not Applicable.

Transaction Testing Procedure: As part of the examination planning process, the Examiners discussed with the Division whether all data required to be reported to the Division was complete and accurate during the examination period. The Examiners reviewed the Company's premium as reflected in the Company's 2010 annual statement to determine if the Company recorded premiums for any lines of business other than those the Company was licensed to write in the Commonwealth.

Transaction Testing Results:

Findings: None.

Observations: The Examiners review of the Company's annual statement indicated that the only new business premiums reported were for the lines of business the Company was licensed to write during the examination period.

Recommendations: None

Standard I-19. The Company files all certifications with the insurance department, as required by statutes, rules and regulations.

Objective: This Standard addresses the Company's efforts to file certifications with the Division as required. See Appendix A for applicable statutes, regulations and bulletins.

Controls Assessment: No control assessment was performed regarding this Standard.

Controls Reliance: Not Applicable.

Transaction Testing Procedure: As part of the examination planning process, the Examiners discussed with the Division whether all data required to be reported to the Division was complete and accurate during the examination period. The Examiners reviewed the Company's premium as reflected in the Company's 2010 annual statement to determine if the Company recorded premiums for any lines of business other than those the Company was licensed to write in the Commonwealth.

Transaction Testing Results:

Findings: None.

Observations: The Examiners review of the Company's annual statement indicated that the only new business premiums reported were for the lines of business the Company was licensed to write during the examination period.

Recommendations: None.

II – COMPLAINT HANDLING

Evaluation of the Standards in this business area is based on (a) an assessment of the Company's internal control environment, policies and procedures, (b) the Company's response to various information and data requests, and (c) a review of various types of Company files.

Standard II-1. All complaints are recorded in the required format on the Company complaint register.

Objective: This Standard addresses whether the Company formally tracks complaints or grievances as required by statute. See Appendix A for applicable statutes, regulations and bulletins.

Controls Assessment: The following controls were noted in review of this Standard, and Standards II-2 through II-4:

- The Company has written policies and procedures to manage the complaint handling process.
- "Executive complaints" are defined as both verbal and written received directly by the Company while "State complaints" are defined as complaints received from state insurance departments.
- All written and verbal complaints are logged by the Company in its complaint register in a consistent format. The Company maintains separate registers for executive and state complaints.
- The Company's complaint registers include the following information for each complaint: Company compliance number, date complaint was received, date complaint needs to be resolved per state statutes, state the complaint of residence or state insurance department, complainant's name, insured's name, policy number, subject of complaint, agency name, type of coverage, date response provided, complainant type, complaint reason code based on NAIC classification and complaint disposition code based on NAIC classification.
- Based on the complaint manual, the Company indicates that responses to the Division must be made with 14 calendar days of receipt.
- The Company's website provides a toll free telephone number and company address. In addition, the Company states the same information is provided on its written responses.

Controls Reliance: The Examiners tested the Company's controls by reviewing policies and procedures and/or conducting transaction testing.

Transaction Testing Procedure: The Examiners interviewed Company management and staff responsible for complaint handling. All complaints received by the Company were reviewed for completeness including whether the complaint had been recorded in the Company's standardized format for recording complaints.

Transaction Testing Results:

Findings: None.

Observations: The format used by the Company to record complaints in the complaint register, as stated in the Company's complaint handling manual, appears to include all necessary information. During the exam period, the Company received no executive complaints and one State complaint (from the Division). The State complaint tested by the Examiners included all the required information as stated in the Company's complaint handling manual.

Recommendations: None.

Standard II-2. The Company has adequate complaint handling procedures in place and communicates such procedures to policyholders.

Objective: This Standard addresses whether the Company has adequate complaint handling procedures, and communicates those procedures to policyholders and consumers. See Appendix A for applicable statutes, regulations and bulletins.

Controls Assessment: Refer to Standard II-1.

Controls Reliance: Refer to Standard II-1.

Transaction Testing Procedure: The Examiners interviewed Company management and staff responsible for complaint handling. During the exam period, the Company received no executive complaints and one state complaint (from the Division). The Examiners requested the complete state complaint for review. The Company responded to the complaint within 14 calendar days as required by MA State Statute and appeared to include all the necessary documentation to support the handling of the complaint. Also, the Company's Complaint Handling and Processing Manual defines a "complaint" as any written or verbal communication where a customer indicates dissatisfaction with a product or service. As the Company indicated that they review the post sale and policyholder service surveys for complaints, the Examiners reviewed the Company's log for completeness and to evaluate the handling of complaint matters. The Examiners selected and reviewed

communication for two post sale surveys. In addition, the Company's website and various forms sent to policyholders were reviewed to determine whether they include Company contact information to consumers.

Transaction Testing Results:

Findings: None.

Observations: The Company's complaint handling procedures for both executive and state complaints appears to be satisfactory. Testing performed by the Examiners found that the Company's communication with consumers appears to provide sufficient information regarding the Company's complaint handling procedures. The correspondence included in the Division complaint and the two post sale surveys were properly handled in accordance with the Company's policies and procedures.

Recommendations: None.

Standard II-3. The Company should take adequate steps to finalize and dispose of the complaint in accordance with applicable statutes, rules and regulations and contract language.

Objective: This Standard addresses whether the Company's response to the complaint fully addresses the issues raised, and whether policyholders or consumers with similar fact patterns are treated consistently and fairly. See Appendix A for applicable statutes, regulations and bulletins.

Controls Assessment: Refer to Standard II-1.

Controls Reliance: Refer to Standard II-1.

Transaction Testing Procedure: The Examiners interviewed Company management and staff responsible for complaint handling. The Examiners requested the complete complaint from the Division for review. The Company responded to the complaint within 14 calendar days as required by the Division and appeared to include all the necessary documentation to support the handling of the complaint.

Transaction Testing Results:

Findings: None.

Observations: The Examiners found that the Company responded to all issues identified in the state complaint and the file documentation appeared to be complete. During the exam period, the Company received no executive complaints and one state complaint from the Division. The complaint file included: the Company's complaint data form, the state complaint including the insured's complaint to the Division, the Company's response to the Division and other related correspondence.

Recommendations: None.

Standard II-4. The timeframe within which the Company responds to complaints is in accordance with applicable statutes, rules and regulations.

Objective: This Standard addresses the time required for the Company to process each complaint. See Appendix A for applicable statutes, regulations and bulletins.

Controls Assessment: Refer to Standard II-1.

Controls Reliance: Refer to Standard II-1.

Transaction Testing Procedure: The Examiners interviewed Company management and staff responsible for complaint handling. All complaints received by the Company were reviewed for completeness including whether the complaint had been recorded in the Company's standardized format for recording complaints.

Transaction Testing Results:

Findings: None.

Observations: During the exam period, the Company received no executive complaints and one state complaint from the Division. The Examiners requested the complete complaint from the Division for review. The Company responded to the complaint within 14 calendar days as required by the Division and appeared to include all the necessary documentation to support the handling of the complaint.

Recommendations: None.

III – MARKETING AND SALES

Evaluation of the Standards in this business area is based on (a) an assessment of the Company's internal control environment, policies and procedures, (b) the Company's response to various information and data requests, and (c) a review of various types of Company files.

Standard III-1. All advertising and sales materials are in compliance with applicable statutes, rules and regulations.

Objective: This Standard is concerned with whether the Company maintains a system of control over the content, form and method of dissemination for all advertising materials. See Appendix A for applicable statutes, regulations and bulletins.

Controls Assessment: The following controls were noted in review of this Standard:

- The Company has written policies and procedures pertaining to the review and use of advertising materials.
- The Company maintains a system identified as the Guardian Electronic Advertising Review ("GEAR"), to log all printed or web-based advertising and sales material. The system includes documentation that tracks the approval or disapproval of all sales and marketing documents.
- The Company's process requires that the Sales and Marketing department will review all sales and marketing requests for content and will consult with legal and compliance personnel regarding applicable legal requirements.
- If a request is approved, the requester is notified and a compliance approval number will be attached to the document. Compliance approval numbers do not expire. If the request is not approved, the requester is notified, and is advised of the steps that must be taken in order for the request to be approved. The GEAR system is updated to reflect the review status of the request (e.g., approved or disapproved).
- In October 2010, the Company transitioned from maintaining catalogues of approved sales and marketing materials to a web-based marketing library system which is updated in "real-time".
- The Company website provides the Company's name and address.

Controls Reliance: The Examiners tested the Company's controls by reviewing policies and procedures and/or conducting transaction testing.

Transaction Testing Procedure: The Examiners interviewed Company management and staff responsible for the sales and marketing process. The Company provided a list of approved sales and advertising materials in effect during the exam period for the Company's DI and LTC products. As such, a judgmental sample of five

approved advertising pieces was reviewed for content and home office approval. Also, the Company's website was examined for disclosure of the Company's name and address.

Transaction Testing Results:

Findings: None.

Observations: The Company policies and procedures regarding the review of advertising materials prior to approval appear adequate. Testing of the five approved advertising pieces revealed that the Company's process to approve advertising pieces was followed in all cases. Therefore, it appears that the Company is complying with the terms of the Standard.

Recommendations: None.

Standard III-2. Company internal producer training materials are in compliance with applicable statutes, rules and regulations.

Objective: This Standard is concerned with whether the Company's producer training materials are in compliance with state statutes, rules and regulations. Sales materials that are producer-related are tested in Standard III-1. See Appendix A for applicable statutes, regulations and bulletins.

Controls Assessment: The following controls were noted in review of this Standard:

- The Company has developed producer DI and LTC training programs which Guardian career agents must attend. The training programs can be tailored based on an agents experience and needs.
- The Company's GEAR system is utilized to log when training programs have been reviewed for content and approved for use. All training programs must be approved by management and the Company's compliance department prior to use.
- The Company does not have any required internal training for DI producers. The Company does require training for LTC producers; however, this training is provided by an outside source.

Controls Reliance: The Examiners tested the Company's controls by reviewing policies and procedures and/or conducting transaction testing.

Transaction Testing Procedure: The Examiners interviewed Company management and staff responsible for the sales and marketing process. The Company provided a list of trainings conducted during the exam period for the Company's DI and LTC products. As such, a judgmental sample of five trainings were reviewed for content and home office approval.

Transaction Testing Results:

Findings: None.

Observations: The Company policies and procedures regarding the review of training materials prior to approval appear adequate. Testing of the five approved training pieces revealed that the Company's process to approve training pieces was followed in all cases. Therefore, it appears that the Company is complying with the terms of the Standard.

Recommendations: None.

Standard III-3. Company communications to producers are in compliance with applicable statutes, rules and regulations.

Objective: This Standard is concerned with whether the written and electronic communication between the Company and its producers is in accordance with Company policies and procedures. See Appendix A for applicable statutes, regulations and bulletins.

Controls Assessment: The following controls were noted in review of this Standard:

- Producer communications including electronic mail and bulletins are approved by Company personnel prior to distribution.
- The Company updates producers on product and compliance matters by circulating "Guardian Weekly," an electronic newsletter containing headline topics and links to specific related articles.

Controls Reliance: The Examiners tested the Company's controls by reviewing policies and procedures and/or conducting transaction testing.

Transaction Testing Procedure: The Examiners interviewed Company management and staff responsible for the sales and marketing process. The Company provided a list of communications sent to producers during the exam period for the Company's DI and LTC products. As such, a judgmental sample of five communications were reviewed for content and home office approval.

Transaction Testing Results:

Findings: None

Observations: The Company policies and procedures regarding the review of communication materials prior to approval appear adequate. Testing of the five approved communication pieces revealed that the Company's process to approve communication pieces was followed in all cases. Therefore, it appears that the Company is complying with the terms of the Standard.

Recommendations: None.

Standard III-4. Company rules pertaining to producer requirements in connection with replacements are in compliance with applicable statutes, rules and regulations.

Objective: This Standard addresses appropriate replacement handling by the producer, including identification of replacement transactions on applications and use of appropriate replacement-related forms. See Appendix A for applicable statutes, regulations and bulletins.

Controls Assessment: The following controls were noted in review of this Standard:

- During the underwriting process of a new policy, the Company's application requires that the applicant and producer answer whether or not the policy applied for will replace an existing policy. This process is applicable to both DI and LTC.
- If the applicant and producer indicate that the applied for policy will replace an existing policy on the application, the Company requires that the applicant and producer sign a second form stating that the policy being replaced will be lapsed or terminated if the applied for policy with BLICOA is approved. A letter is sent to the other insurance company informing them that the applicant has applied for a new policy with BLICOA.
- The Company's underwriting guide specifies that the producers must evaluate whether replacement of an existing policy is in "the best interest of the policyholder."

Controls Reliance: The Examiners tested the Company's controls by reviewing policies and procedures and/or conducting transaction testing.

Transaction Testing Procedure: The Examiners interviewed Company management and staff responsible for the underwriting process. Also, a sample of 20 new LTC business transactions and 64 new DI business transactions were selected for testing. The Examiners reviewed each of the sampled policies to determine whether the policy was an external replacement. If the policy was an external replacement, the policy was tested to determine if it was in compliance with the Company's policies and procedures as well as being in compliance with statutory requirements.

Transaction Testing Results:

Findings: After reviewing the complete DI and LTC samples, the Examiners found that seven DI policies and one LTC policy were replacements. The Examiners testing of the DI policies found that six of the seven DI policies and the one LTC policy included all the required replacement forms. The Company was unable to provide the required forms for one DI policy. Therefore, it does not appear that the Company is complying with 211 CMR 27.06(4), 34.04, 42.08 and 42.11 as tested under this Standard.

Observations: The Company has policies and procedures in place regarding the replacement process regarding DI and LTC policies. Additionally, the DI and LTC new business applications contain questions regarding the applicant's other insurance policies and if the sale involves a replacement.

Required Actions: The Company shall improve its oversight of replacements to assure that all the required forms are received when the application for a new BLICOA policy involves a replacement. The Company needs to modify the record retention policies and procedures to require that all replacement forms provided to and signed by applicants be retained. A copy of the new policy and procedure shall be provided to the Division by January 15, 2013.

Standard III-5. Company rules pertaining to Company requirements in connection with replacements are in compliance with applicable statutes, rules and regulations.

Objective: This Standard addresses appropriate replacement handling by the producer, including identification of replacement transactions on applications and use of appropriate replacement-related forms. See Appendix A for applicable statutes, regulations and bulletins.

Controls Assessment: The following controls were noted in review of this Standard:

- The Company's underwriting guide provides details of how the Company handles replacements.
- The Company's application for both DI and LTC asks the applicant whether they are replacing an existing policy and the Company's process requires the producer to furnish a proper replacement notice to the applicant. The intent of this process is to comply with 211 CMR 42.08 and 42.11.
- The Company's underwriting system maintains information to identify replacements and the Company is able to produce a register of replacements for the examination period.
- During the underwriting process of a new policy, the Company's application requires that the applicant and producer answer whether or not the policy applied for will replace an existing policy. This process is applicable to both DI and LTC.

- If the applicant and producer indicate that the applied for policy will replace an existing policy on the application, the Company requires that the applicant and producer sign a second form stating that the policy being replaced will be lapsed or terminated if the applied for policy with BLICOA is approved. A letter is sent to the other insurance company informing them that the applicant has applied for a new policy with BLICOA.
- The Company's underwriting guide specifies that the producers must evaluate whether replacement of an existing policy is in "the best interest of the policyholder".

Controls Reliance: The Examiners tested the Company's controls by reviewing policies and procedures and/or conducting transaction testing.

Transaction Testing Procedure: The Examiners interviewed Company management and staff responsible for the underwriting process. Also, a sample of 20 new LTC business transactions and 64 new DI business transactions were selected for testing. The Examiners reviewed each of the sampled policies to determine whether the policy was an external replacement. The Examiners reviewed the replacement registers for unusual replacement trends by producers. Also, the Examiners reviewed the replacement forms to assure compliance with 211 CMR 42.08 and 42.11.

Transaction Testing Results:

Findings: The Examiners found that the LTC replacement form does not meet the requirements of 211 CMR 42.08 and 42.11.

Observations: The Examiners did not find any unusual trends by Massachusetts producers regarding replacements. No Massachusetts producer replaced more than four policies during the examination period.

Recommendations: None.

Subsequent Actions: The Company informed the Examiners that Berkshire exited the long term care market in December 2011, and no new policies will be issued. As such, no actions are required in reference to the LTC replacement forms revisions.

Standard III-6. An illustration used in the sale of a policy contains all required information and is delivered in accordance with statutes, rules and regulations.

Objective: This Standard is concerned with ensuring that policy illustrations, policy summaries and buyer's guides

contain all required information, and are timely provided to applicants. See Appendix A for applicable statutes, regulations and bulletins.

Controls Assessment: The following controls were noted in review of this Standard:

- The Company has written policies and procedures which require producers to provide applicants of both DI and LTC policies a policy summary/illustration and other required disclosures on the application date.
- As part of the underwriting process, the Company reviews all submitted applications for completeness. A complete application should include an application with all applicable questions answered, all required forms attached and all necessary signatures.

Controls Reliance: The Examiners tested the Company's controls by reviewing policies and procedures and/or conducting transaction testing.

Transaction Testing Procedure: The Examiners interviewed Company management and staff responsible for the underwriting process. Also, a sample of 20 new LTC business transactions and 64 new DI business transactions were selected for testing. The Examiners tested the sampled policies to determine whether the application for issued policies was signed and complete. Also, the Examiners reviewed the individual disability income and individual long-term care illustrations, policy summaries and other disclosures, and verified that they were timely provided to the applicants where required. Finally, the Examiners noted whether the insurance policies or contracts received were consistent with those applied for, and that any changes resulted in full written disclosure to applicants.

Transaction Testing Results:

Findings: None.

Observations: The Examiners testing of the DI and LTC samples found that all DI and LTC policy applications were complete and signed.

Recommendations: None.

Standard III-7. The Company has suitability standards for its products, when required by applicable statutes, rules and regulations.

No work was performed under this market conduct examination as the Company did not offer the products covered by this Standard during the examination period.

Standard III-8. Pre-need funeral contracts or pre-arrangement disclosures and advertisements are in compliance with statutes, rules and regulations.

No work was performed under this market conduct examination as the Company did not offer the products covered by this Standard during the examination period.

Standard III-9. The Company's policy forms provide required disclosure material regarding accelerated benefit provisions.

No work was performed under this market conduct examination as the Company did not offer the product covered by this Standard during the examination period.

Standard III-10. Policy application forms used by depository institutions provide required disclosure material regarding insurance sales.

No work was performed under this market conduct examination as the Company did not offer the product covered by this Standard during the examination period.

Standard III-11. Insurer rules pertaining to producer requirements with regard to suitability in annuity transactions are in compliance with applicable statutes, rules and regulations.

No work was performed under this market conduct examination as the Company did not offer the product covered by this Standard during the examination period.

Standard III-12. Insurer rules pertaining to requirements in connection with suitability in annuity transactions are in compliance with applicable statutes, rules and regulations.

No work was performed under this market conduct examination as the Company did not offer the product covered by this Standard during the examination period.

Standard III-13. The insurer has procedures in place to educate and monitor insurance producers and to provide full disclosure to consumers regarding all sales of products involving fixed-index annuity products, and all sales are in compliance with applicable statutes, rules and regulations.

No work was performed under this market conduct examination as the Company did not offer the product covered by this Standard during the examination period.

Standard III-14. The insurer has procedures in place to educate and monitor insurance producers and to provide full disclosure to consumers regarding all sales of products involving index life, and all sales are in compliance with applicable statutes, rules and regulations.

No work was performed under this market conduct examination as the Company did not offer the product covered by this Standard during the examination period.

Standard III-15. The insurer's underwriting requirements and guidelines pertaining to travel are in compliance with applicable statutes, rules and regulations.

Objective: This Standard is concerned with the Company's requirements regarding travel are in compliance with Massachusetts requirements. See Appendix A for applicable statutes, regulations and bulletins.

Controls Assessment: The following controls were noted in review of this Standard:

- The Company's policies and procedure provides the necessary oversight regarding the consideration of travel as a part of the underwriting process.
- In order to better determine which products are best suitable for an applicant, the Company uses standardized DI and LTC applications to gather information consistently for each product. The information gathered through the application is used to determine the applicant's needs in addition to determining underwriting risk.

Controls Reliance: The Examiners tested the Company's controls by reviewing policies and procedures and/or conducting transaction testing.

Transaction Testing Procedure: The Examiners interviewed Company management and staff responsible for the underwriting process. Also, a sample of 20 new LTC business transactions and 64 new DI business transactions were selected for testing. The Examiners tested the sampled policies to determine whether the Company rejected an applicant, cancelled a policy, or required a higher rate of premium for reasons based solely upon an applicant's or insured's past lawful travel experiences or future lawful travel plans.

Transaction Testing Results:

Findings: None.

Observations: The Examiners testing of the DI and LTC samples found that all DI policy applications and LTC policy applications were complete and signed. Policies issued by the Company that varied from the application included the necessary disclosure to the applicant. No issues were identified in the testing of the sampled policies pertaining to travel. Therefore, it appears that the Company is complying with the terms of the Standard.

Recommendations: None.

IV – PRODUCER LICENSING

Evaluation of the Standards in this business area is based on (a) an assessment of the Company's internal control environment, policies and procedures, (b) the Company's response to various information and data requests, and (c) a review of various types of Company files.

Standard IV-1. Company records of licensed and appointed (if applicable) producers agree with insurance department records.

Objective: The Standard addresses licensing and appointment of the Company's producers. See Appendix A for applicable statutes, regulations and bulletins.

Controls Assessment: The following controls were noted in review of this Standard, and Standards IV-2 through IV-5:

- The Company uses producers known as "field representatives" that are primarily Guardian career general agents. The Guardian Agent Licensing and Contracting Department (Guardian Unit) is responsible for obtaining and reviewing background check information for each new Guardian agent; creating agent records on the Company's Licensing System after a new contract is established; processing agent appointments with each state in which the agent is authorized to sell Company products; processing renewal appointments; and performing monthly self audits.
- The Company also uses independent brokers. The Berkshire Broker Licensing Department (BLICOA Unit) is responsible for reviewing background check information for each new broker; creating broker records on the system after a new contract is established; and processing broker appointments in each state in which the broker is authorized to sell Company products.
- The Guardian and BLICOA Units (collectively referred to as the Units) receive notification of a new agent (Guardian responsibility) or a new broker (BLICOA responsibility) from the General Agency Department. The Units will review the National Insurance Producer Registry in order to determine if the agent or broker is licensed in applicable states. The Company will not contract with an agent or broker (collectively referred to as producers) until they are licensed and pass background check to be in compliance with State, and Company requirements. Once producers are licensed and meet background criteria, the Units will enter appointment information into the Company's system and a producer record is established. Simultaneously, appointments for each producer are entered into the Massachusetts on-line producer appointment system referred to as OPRA. Producer appointment terminations are handled by the Units in the same manner as new appointments.

- The Company and Guardian use standard individual written contracts that define the Producers' duties and responsibilities including their responsibility to maintain current licenses, comply with law and regulations and conduct business honestly and ethically.
- All appointment renewals are performed by the Guardian Unit. Most states require annual appointment renewals. On a monthly basis, the Guardian Unit will submit renewal rosters by state to the BLICOA unit. The BLICOA Unit will inform the Guardian Unit of all producers' appointments that need to be renewed, and those that need to be terminated.
- The Company tracks all producers' appointments through a Guardian database. On a monthly basis, the Guardian unit performs audits regarding all appointment transactions processed by the Guardian and BLICOA Units to ensure that the Company's records reconcile to the state's records. The Guardian Unit will inform the BLICOA unit of all producers' un-reconcilable items, and the BLICOA Unit will process corrective entries and inform the Guardian Unit once completed. The Guardian Unit will address all un-reconcilable items regarding producers. Appointment errors are addressed with employees, and the unit does not publish a formal audit report. Management indicated that the Guardian Unit is audited on a periodic basis by Internal Audit, and a review was performed in 2010. Management indicated that no significant issues were identified.
- The Company and Guardian have a written policy which requires notice, as defined in the agreement, to agents when their appointment is terminated.
- The Company's written policy is to notify the Division of all agent terminations and the reason for any "for cause" termination.

Controls Reliance: The Examiners tested the Company's controls by reviewing policies and procedures and/or conducting transaction testing.

Transaction Testing Procedure: The Examiners interviewed Company management and staff responsible for the licensing and appointment process. Also, the Examiners selected a random sample of 10 agent terminations from the Division's records, and 10 terminations from the Company's records which also included Guardian's records to determine if the termination dates match. The Examiners reviewed the reason for termination in the Company records to determine if any terminations were "for cause." If the termination was "for cause," the Examiners inquired about timely notification to the Division.

Transaction Testing Results:

Findings: Of the 10 agent terminations from the Division's records, and 10 terminations from the Company's records which also included Guardian's records, the Examiners found two agent terminations (10%) in which the termination dates did not match. The Company did not reconcile its list of licensed and appointed agents timely with the Division.

Observations: None

Recommendations: The Company's internal audit department should conduct regular reviews of the agent termination process and the agent termination log.

Required Actions: The Company and Guardian should review and modify as necessary, its agent termination procedure specifically regarding timely notification of terminations to the Division and accurate record keeping in the Guardian appointment system. The Company and Guardian shall perform a reconciliation between their agent records and the Division's records at least annually. The Company and the Division shall determine a mutually agreed upon date for such reconciliation.

Standard IV-2. Producers are properly licensed and appointed and have appropriate continuing education (if required by state law) in the jurisdiction where the application was taken.

Objective: This Standard addresses the requirement that producers must be licensed and agents must be appointed. See Appendix A for applicable statutes, regulations and bulletins.

Controls Assessment: Refer to Standard IV-1.

Controls Reliance: Refer to Standard IV-1.

Transaction Testing Procedure: The Examiners interviewed Company management and staff responsible for the producer contracting, appointment and termination process. Also, a sample of 20 new LTC business transactions and 64 new DI business transactions were selected for testing. The Examiners tested the sampled policies to determine whether the selling producer for each issued policy was included on the Division's list of Company appointed agents.

Transaction Testing Results:

Findings: One of the DI files reviewed identified an agent that was not properly appointed by the Company which appears to be in violation of M.G.L. c. 175, § 162S.

Observations: The Examiners testing of the 64 DI policies found that one agent sold a Massachusetts issued policy to a Massachusetts resident but was not licensed in Massachusetts. As the Examiners

were unable to determine where the policy was delivered, this does not appear to be in violation of M.G.L. c. 175, § 177.

Required Actions: The Company shall enhance its oversight of the sales process to assure that the selling agent is properly licensed in the Commonwealth of Massachusetts if the applicant resides in Massachusetts, is employed in Massachusetts and/or the policy is delivered in Massachusetts. The Company should implement a delivery receipt process which shows how the policy was delivered (i.e. in person, mail, etc.) and if delivered in person the receipt should indicate where the delivery occurred. The Company's internal audit department should regularly monitor compliance with this requirement.

Subsequent Actions: The Company initiated the delivery of policies electronically to agencies in 2011. As part of the process, a policy receipt is provided with all policies. The policy delivery receipt has a section stating where the receipt is signed.

<p>Standard IV-3. Termination of producers complies with applicable standards, rules and regulations regarding notification to the producer and notification to the state, if applicable.</p>
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Objective: This Standard addresses the Company's termination of producers in accordance with applicable statutes requiring notification to the state and the producer. See Appendix A for applicable statutes, regulations and bulletins.

Controls Assessment: Refer to Standard IV-1.

Controls Reliance: Refer to Standard IV-1.

Transaction Testing Procedure: The Examiners interviewed Company management and staff responsible for the producer contracting, appointment and termination process. Also, the Examiners selected a random sample of 10 agent terminations from the Division's records, and 10 terminations from the Company's records which also included Guardian's records to determine if the termination dates match. The Examiners reviewed the reason for termination in the Company records to determine if any terminations were "for cause". If the termination was "for cause", the Examiners inquired about timely notification to the Division.

Transaction Testing Results:

Findings: The Examiners testing identified two terminated agents that were not accurately recorded in the Division or Company log.

Observations: None

Required Actions: The Company and Guardian should review and modify as necessary, its agent termination procedure specifically regarding timely notification of terminations to the Division and accurate record keeping in the Guardian appointment system. The Company and Guardian shall perform a reconciliation between their agent records and the Division's records at least annually. The Company and the Division shall determine a mutually agreed upon date for such reconciliation.

Standard IV-4. The Company's policy of producer appointments and terminations does not result in unfair discrimination against policyholders.

Objective: The Standard addresses the Company's policy for ensuring that producer appointments and terminations do not unfairly discriminate against policyholders. See Appendix A for applicable statutes, regulations and bulletins.

Controls Assessment: Refer to Standard IV-1.

Controls Reliance: Refer to Standard IV-1.

Transaction Testing Procedure: The Examiners interviewed Company management and staff responsible for the producer contracting, appointment and termination process. Also, the Examiners selected a random sample of 10 agent terminations from the Division's records, and 10 terminations from the Company's records which also included Guardian's records to determine if the termination dates match. The Examiners reviewed the agent termination records for any evidence of unfair discrimination against policyholders. In addition, the Examiners tested for any evidence of unfair discrimination against policyholders while reviewing the DI and LTC new business files for Standard VI-4.

Transaction Testing Results:

Findings: None.

Observations: Testing of the agent terminations revealed no evidence of unfair discrimination against policyholders. Therefore, it appears that the Company is complying with the terms of the Standard.

Recommendations: None.

Standard IV-5. Records of terminated producers adequately document the reasons for terminations.

Objective: The Standard addresses the Company's documentation of producer terminations. See Appendix A for applicable statutes, regulations and bulletins.

Controls Assessment: Refer to Standard IV-1.

Controls Reliance: Refer to Standard IV-1.

Transaction Testing Procedure: The Examiners interviewed Company management and staff responsible for the producer contracting, appointment and termination process. The Examiners selected a random sample of 10 agent termination from the Division's records, and 10 terminations from the Company's records which also included Guardian's records to determine if the Company and Guardian's documentation regarding an agent's termination was adequate.

Transaction Testing Results:

Findings: None.

Observations: Testing of the agent termination records revealed that the Company and Guardian retain adequate documentation regarding an agent's termination. Therefore, it appears that the Company is complying with the terms of the Standard.

Recommendations: None.

Standard IV-6. Producer account balances are in accordance with the producer's contract with the Company.

Objective: The Standard is concerned with whether the Company's contracts with producers limit excessive balances with respect to handling funds. See Appendix A for applicable statutes, regulations and bulletins.

Controls Assessment: The following controls were noted in review of this Standard:

- The billing methods the Company offers for its DI policies are either direct to the insured, automatic withdrawal, group list billing or an individual list billing. The billing methods offered for its LTC policies are either direct to the insured, automatic withdrawal or a group list billing.
- The Company pays commissions and provides a commission statement to producers semi-monthly.

- The Company generates an 'aged payable report' to identify negative commission balances. BLICOA also determines if producers have future vested earnings from other policies to offset negative commissions. If so, future commissions earned will be used to offset the negative commission. If no future earnings exist, producers are notified via letter and requested to reimburse the amount due via check.

Controls Reliance: The Examiners tested the Company's controls by reviewing policies and procedures and/or conducting transaction testing.

Transaction Testing Procedure: The Examiners interviewed Company management and staff responsible for the producer contracting, appointment and termination process. Also, a sample of 20 new LTC business transactions and 64 new DI business transactions were selected for testing. From these samples, the Examiners randomly selected samples of 10 DI Policies and 10 LTC Policies to ensure that commission payments were paid accurately in accordance with contracted terms and also to ensure compliance with laws and regulations.

Transaction Testing Results:

Findings: None.

Observations: Testing of the 10 DI Policies and 10 LTC Policies revealed that the Company's commission payments were paid accurately in accordance with contracted terms. Therefore, it appears that the Company is complying with the terms of the Standard.

Recommendations: None.

V – POLICYHOLDER SERVICE

Evaluation of the Standards in this business area is based on (a) an assessment of the Company's internal control environment, policies and procedures, (b) the Company's response to various information and data requests, and (c) a review of various types of Company files.

Standard V-1. Premium notices and billing notices are sent out with an adequate amount of advance notice.

Objective: This Standard addresses efforts to provide policyholders with sufficient advance notice of premiums due and disclosure of the lapse risk due to non-payment. See Appendix A for applicable statutes, regulations and bulletins.

Controls Assessment: The following controls were noted in review of this Standard:

- The Company has written policies and procedures regarding policy premiums and billings that are aligned to meet state requirements including M.G.L. c. 175, §§ 108, 110B, 187C and 187D.
- The Company offers several billing modes such as monthly through electronic funds transfer, quarterly, semi-annual, and annual. The insured is able to select their preferred billing mode. Additionally, premiums regarding policies sold through marketing agreements with employers are remitted to the Company through payroll deductions.
- Premium Billing Notices are sent 30 days in advance of the payment due date. This notice states that the policy will lapse if the premium due is not received.
- If payments are not received by the due date, the Company sends a Late Payment Offer Letter to the insureds 17 days after the payment due date. This notice mentions a 31 day grace period for payments. Also, the notice indicates that the insured will not have coverage if payment is not received by the 62nd day after the premium due date.
- If premiums are not received by the end of the grace period, the Company sends several other letters to insureds at the following intervals: 35, 70, and 120 days after the premium due date. These letters include reinstatement offers.
- The Company has established time standards for premium and billing notices and performance of these time standards is monitored by management through the client services Balanced Scorecard.

Controls Reliance: The Examiners tested the Company's controls by reviewing policies and procedures and/or conducting transaction testing.

Transaction Testing Procedure: The Examiners interviewed Company management and staff responsible for the billing process. During the exam period, the Company processed the following number of policy lapses: 175 for Disability; 16 for LTC; and 24 for Life. The Examiners selected a sample of five policy lapses for each of the three products as stated above. The Examiners also reviewed the billing related time standard reports that were in effect during the period in order to determine if management was provided with information to monitor the premium and billing process.

Transaction Testing Results:

Findings: None.

Observations: The Company provides timely notice to policyholders prior to policy lapse on several occasions that is in compliance with statutory requirements. The Examiners review of each of the five lapsed policies for each product line indicated that premium billing notices appeared to be mailed with adequate advance notice and included required disclosure of potential lapse in the event of non-payment. Also, based upon the Examiners review of billing reports, the Company appears to be meeting its premium billing service standards.

Recommendations: None.

Standard V-2. Policy issuance and insured requested cancellations are timely.
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Objective: This Standard addresses the Company's procedures to ensure that insured-requested cancellations are processed timely. Policy issuance testing is included in Standard VI-6. See Appendix A for applicable statutes, regulations and bulletins.

Controls Assessment: The following controls were noted in review of this Standard:

- The Company has written policies and procedures regarding policy issuance and insured request cancellations that are aligned to meet state requirements including 211 CMR 42.05.
- Company procedures require insureds to submit cancellation requests in writing. Cancellations are effective on the date that the Company receives such written requests, and any unearned premium is refunded to the insured.
- New DI policyholders are afforded the opportunity to return a policy to the Company within 10 days of receiving it. Similarly, new LTC policyholders have 30 days to return a policy to the Company. Premium payments are subsequently returned to the policyholder.
- The Company has written service standards regarding the timely processing of insured request cancellations and performance of these standards is monitored through the Balanced Scorecard.

- The Company has a program in place to conduct policyholder and post sale service surveys to measure customer satisfaction. Company procedures require the timely investigation and response to significant feedback.

Controls Reliance: The Examiners tested the Company's controls by reviewing policies and procedures and/or conducting transaction testing.

Transaction Testing Procedure: The Examiners interviewed Company management and staff responsible for the insured request cancellation process. During the exam period, the Company processed the following number of insured request cancellations: 74 for Disability; two for LTC; and seven for Life. The Examiners selected a sample of five insured request cancellations for each DI and Life; and the entire population of two for LTC. The Examiners also reviewed the insured request cancellations related time standard reports that were in effect during the period in order to determine if management was provided with information to monitor this process. Finally, the Examiners reviewed the post sale and policyholder service surveys in order to determine if significant feedback was timely investigated and responded to by the Company.

Transaction Testing Results:

Findings: None.

Observations: The Examiners testing of five Life, five DI and two LTC insured cancellations found that the cancellations appeared to be processed accurately, timely and in compliance with statutory requirements. In addition, the Company's policyholder survey results give the indication that the Company is issuing policies and handling insured cancellation requests timely.

Recommendations: None.

Standard V-3: All correspondence directed to the regulated entity is answered in a timely and responsive manner by the appropriate department.

Objective: This Standard addresses the Company's procedures for providing timely and responsive information to customers. See Appendix A for applicable statutes, regulations and bulletins.

Controls Assessment: The following controls were noted in review of this Standard:

- The Client Services Unit is responsible for providing service to agents and customers regarding policy transactions such as address changes, insured request cancels, policy reinstatement and conservation,

changes in coverage and premium billing changes that are received through mail, facsimile, or phone. There are written policies and procedures governing the processing of each type of transaction.

- The Company has written service standards regarding the timely processing of insured requests and performance of these standards is monitored through its Balanced Scorecard.
- The Company has a program in place to conduct policyholder and post sale service surveys to measure customer satisfaction. According to the Company's policies and procedures, responses to survey comments are to be done timely and address all comments.

Controls Reliance: The Examiners tested the Company's controls by reviewing policies and procedures and/or conducting transaction testing.

Transaction Testing Procedure: The Examiners interviewed Company management and staff responsible for processing insured requests. During the exam period, the Company processed the following number of insured requests: 1,708 for DI; 33 for LTC; and 69 for Life. The Examiners selected a sample of five insured request transaction each for Life, DI, and LTC. Testing of the Company's handling of correspondence by the appropriate area will be done while testing other Standards as part of this examination. Finally, the Examiners reviewed the post sale and policyholder service survey results in order to determine if significant feedback was timely investigated and responded to by the Company.

Transaction Testing Results:

Findings: None.

Observations: The Examiners testing of five Life, five DI and five LTC insured requests found that the Company appeared to be processing the requests completely and in a timely manner. In addition, the Company's policyholder survey results give the indication that the Company is responding to all correspondence timely where applicable.

Recommendations: None.

Standard V-4. Whenever the regulated entity transfers the obligation of its contracts to another regulated entity pursuant to an assumption reinsurance agreement, the regulated entity has gained prior approval of the insurance department and the regulated entity has sent the required notices to affected policyholders.

No work was performed under this market conduct examination as the Company did not offer the product covered by this Standard during the examination period.

Standard V-5. Policy transactions are processed accurately and completely.

Objective: This Standard addresses loan interest rates and procedures for processing beneficiary and ownership changes, conversions, policy loans and maturities. See Appendix A for applicable statutes, regulations and bulletins.

Controls Assessment: The following controls were noted in review of this Standard:

- The Client Services Unit is responsible for providing service to agents and customers regarding policy transactions such as address changes, insured requested cancellations, policy reinstatement and conservation, changes in coverage and premium billing changes that are received through mail, facsimile, or phone. There are written policies and procedures governing the processing of each type of transaction.
- The Company provides written notice prior to policy maturity for DI policies that are cancelable at age 65. The notice meets the requirements of M.G.L. c. 175, § 110H.
- The Company has written service standards regarding the timely processing of insured requests and performance of these standards is monitored through Balanced Scorecard.
- The Company has a program in place to conduct policyholder and post sale service surveys to measure customer satisfaction. Company procedures require the timely investigation and response to significant feedback.

Controls Reliance: The Examiners tested the Company's controls by reviewing policies and procedures and/or conducting transaction testing.

Transaction Testing Procedure: The Examiners interviewed Company management and staff responsible for processing insured requests. During the exam period, the Company processed the following number of insured requests: 1,708 for DI; 33 for LTC; and 69 for Life. The Examiners selected a sample of five insured request transaction each for Life, DI, and LTC. The Examiners also reviewed the insured requests related time standard reports that were in effect during the period in order to determine if management was provided with information to monitor this process. Also, the Examiners reviewed the Company's procedures regarding maturing policies. Finally, the Examiners reviewed the post sale and policyholder service survey results in order to determine if significant feedback was timely investigated and responded to by the Company.

Transaction Testing Results:

Findings: None.

Observations: The Examiners testing of five Life, five DI and five LTC insured requests found that the Company appeared to be process the requests completely and in a timely manner. Regarding the Company's policyholder survey results, they give the indication that the Company is handling policy transactions accurately and completely. Finally, the Company provides written notice prior to policy maturity for DI policies that are cancelable at age 65. For LTC policies, proper notice is provided to claimants in advance of exhaustion of benefits. The notice meets the requirements of M.G.L. c. 175, § 110H.

Recommendations: None.

Standard V-6. Reasonable attempts to locate missing policyholders or beneficiaries are made.

Objective: This Standard addresses efforts to locate missing contract owners and beneficiaries, and to comply with escheatment and reporting requirements. See Appendix A for applicable statutes, regulations and bulletins.

Controls Assessment: The following controls were noted in review of this Standard:

- The Company has policies and procedures in place to locate missing policyholders and claimants.
- The Company policy requires that outstanding checks, including claim payments and premium refunds be reported as unclaimed property and escheated to the state when the policy owner cannot be found.
- The Company annually reports escheatable funds to the State Treasurer as required under M.G.L. c. 200A, §§ 7-7B, 8A.

Controls Reliance: The Examiners tested the Company's controls by reviewing policies and procedures and/or conducting transaction testing.

Transaction Testing Procedure: The Examiners reviewed the Company's policies and procedures related to the escheatment process and compared the information the Massachusetts Division of Insurance Escheatment Best Practices Document. The Escheatment Reporting process is being examined under the scope of the Financial Examination that is being conducted simultaneously with this Market Conduct Examination. As such, no testing was done under this examination.

Transaction Testing Results:

Findings: None.

Observations: The Company has processes for locating missing policyholders and claimants.

Recommendations: The Company should review the Massachusetts Division of Insurance Escheatment Best Practices Document and enhance its existing procedures as needed. The Company should ensure that its procedures include all components of the Massachusetts Division of Insurance Escheatment Best Practices Document. The Company should implement independent monitoring procedures, which are performed by internal audit or the U.S. Compliance Department, to test and monitor compliance with the Company's policies and procedures regarding the following:

- thorough searches for missing individuals
- timely comparisons of in-force databases with the Social Security Death Index (or a comparable database) and any related Updates
- sharing of Social Security Death Index (or a comparable database) and related Updates comparison results between all Company and affiliate operational areas, and
- compliance with Massachusetts escheatment requirements.

Required Actions: The Company's and its affiliates' shall conduct searches for deceased policyholders and escheatment. The Company shall begin comparing its life insurance in-force listing quarterly to the Social Security Death Index effective December 1, 2012. In addition, the Company shall complete an assessment of communication procedures between operational areas for non-essential returned mail and make adjustments as deemed appropriate. The Company shall report to the Division on the results of its assessment and, as applicable, any changes to be made to procedures and their planned implementation. Documentation of this review shall be provided to the Division by April 26, 2013.

Standard V-7. Unearned premiums are correctly calculated and returned to the appropriate party in a timely manner and in accordance with applicable statutes, rules and regulations.

Objective: This Standard addresses the calculation and timely return of unearned premiums. See Appendix A for applicable statutes, regulations and bulletins.

Controls Assessment: The following controls were noted in review of this Standard:

- The Company has written policies and procedures regarding policy cancellations that are aligned to meet state requirements including M.G.L. c. 175, §§ 187C and 187D.
- The Company's system automatically calculates the unearned premium on cancelled policies for return of premium to policyholders.
- The Company has written service standards regarding the timely processing of insured requests and performance of these standards is monitored through Balanced Scorecard.

- The Company has a program in place to conduct policyholder and post sale service surveys to measure customer satisfaction. Company procedures require the timely investigation and response to significant feedback.

Controls Reliance: The Examiners tested the Company's controls by reviewing policies and procedures and/or conducting transaction testing.

Transaction Testing Procedure: The Examiners interviewed Company management and staff responsible for the insured request cancellation process. During the exam period, the Company processed the following number of insured request cancellations: 74 for Disability; two for LTC; and seven for Life. The Examiners selected a sample of five insured request cancellations for each DI and Life; and the entire population of two for LTC. The Examiners also reviewed the insured request cancellations related time standard reports that were in effect during the period in order to determine if management was provided with information to monitor this process. Finally, the Examiners reviewed the post sale and policyholder service surveys in order to determine if significant feedback was timely investigated and responded to by the Company.

Transaction Testing Results:

Findings: The Examiners testing of five DI cancellation requests found that the Company inaccurately processed one request where the policy had unearned premium that was due to the insured; however, the Company did not issue a refund.

Observations: The five insured cancellation requests tested for Life and the two LTC transactions that involved unearned premium refunds were calculated correctly, returned in a timely manner, and in compliance with statutory requirements. In addition, the Company's policyholder survey results give the indication that the Company is handling the return of unearned premiums timely.

Required Actions: The Company's policies and procedures need to be reviewed and modified as necessary to assure that all unearned premium refunds are sent timely and accurately. The Company shall produce documentation to the Division of the refund the unearned premium plus interest to the insured by January 15, 2013.

Subsequent Action: Upon the Examiners' discovery, the Company has refunded the unearned premium plus interest to the insured.

<p>Standard V-8. Reinstatement is applied consistently and in accordance with policy provisions.</p>

Objective: This Standard addresses consistent reinstatement processing in compliance with policy provisions. See Appendix A for applicable statutes, regulations and bulletins.

Controls Assessment: The following controls were noted in review of this Standard:

- The Company has policies and procedures regarding the reinstatement process and such information is designed to align with state requirements including M.G.L. c. 175, § 108.
- Premium notices that are sent to insureds after their policies have lapsed include information regarding reinstatements of coverage. The policy contracts allow insureds to apply for reinstatement of their insurance coverage up to six months past the lapse date and the insured needs to complete a short form application. The insured must submit a new business application after the six month period as reinstatement of coverage is not available.
- The Company has written service standards regarding the timely processing of reinstatements and performance of these standards is monitored through the Balanced Scorecard.

Controls Reliance: The Examiners tested the Company's controls by reviewing policies and procedures and/or conducting transaction testing.

Transaction Testing Procedure: The Examiners interviewed Company management and staff responsible for the reinstatement process. During the exam period, the Company processed the following number of reinstatements: 14 for Disability; one for Life; and no reinstatements were processed for LTC. The Examiners selected a sample of five reinstatements for DI and the one transaction for Life. The Examiners also reviewed the policy reinstatement related time standard reports that were in effect during the period in order to determine if management was provided with information to monitor this process.

Transaction Testing Results:

Findings: None.

Observations: The Examiners review of the reinstatements determined that all were processed consistently and in a timely manner. Therefore, it appears that the Company is complying with the terms of the Standard.

Recommendations: None.

<p>Standard V-9. Non-forfeiture options are communicated to the policyholder and correctly applied in accordance with the policy contract.</p>

No work was performed under this market conduct examination as the Company did not offer the product covered by this Standard during the examination period.

Standard V-10. The regulated entity provides each policy owner with an annual report of policy values in accordance with statutes, rules and regulations and, upon request, an in-force illustration or contract policy summary.

Objective: This Standard addresses periodic disclosure to the policyholder of contract information. See Appendix A for applicable statutes, regulations and bulletins.

Controls Assessment: The following controls were noted in review of this Standard:

- The Company mails DI and LTC individual policyholders annual statements disclosing monthly benefits, automatic benefit increases, elimination periods, and premium changes to policyholders on their policy anniversary date.
- The Company has written service standards to ensure the timely processing of annual statements to policyholders.

Controls Reliance: The Examiners tested the Company's controls by reviewing policies and procedures and/or conducting transaction testing.

Transaction Testing Procedure: The Examiners reviewed annual statement disclosure procedures with Company personnel, and reviewed examples of such disclosures.

Transaction Testing Results:

Findings: None.

Observations: The Company appears to have adequate procedures for providing policyholders with timely annual statements in compliance with Company policies.

Recommendations: None.

Standard V-11. Upon receipt of a request from policyholder for accelerated benefit payment, the regulated entity must disclose to policyholder the effect of the request on the policy's cash value, accumulation account, death benefit, premium, policy loans and liens. The regulated entity must also advise that the request may adversely affect the recipient's eligibility for Medicaid or other government benefits or entitlements.

No work was performed under this market conduct examination as the Company did not offer the product covered by this Standard during the examination period.

VI – UNDERWRITING AND RATING

Evaluation of the Standards in this business area is based on (a) an assessment of the Company's internal control environment, policies and procedures, (b) the Company's response to various information and data requests, and (c) a review of various types of Company files.

Standard VI-1. The rates charged for the policy coverage are in accordance with filed rates (if applicable) or the Company rating plan.

Objective: This Standard addresses whether the Company uses and charges proper premium rates. See Appendix A for applicable statutes, regulations and bulletins.

Controls Assessment: The following controls were noted in review of this Standard:

- The Company has written policies and guidelines to provide oversight of the underwriting process. The policies and guidelines are intended to promote consistency when making policy determinations for new and renewal business.
- The factors utilized by the Company to determine occupation classes and rates for individual DI policies include: occupation, age, years of work experience and the applicant's health. The Company applies premium surcharges to increase rates when an increase in claim risk exists (i.e., pre-existing health condition). The Company utilizes parameters as set by the Company's reinsurer, MunichRe, in order to apply additional premiums. The Company offers a preferred rate discount to those applicants who meet certain underwriting criteria.
- The factors utilized by the Company to determine classes and rates for individual LTC policies include: age, weight to height ratio, and health of the applicant. The Company offers two substandard risk classes when an increase in claim risk exists (i.e., pre-existing health condition). A Preferred Plus discount is available for applicants meeting certain underwriting criteria, such as non-smokers. In addition, multi-policy discounts are available for applicants that have other policies with the Company. Finally, policies can be issued on a joint basis for husband and wives.
- The Company uses software to automatically compute all product rates based on applicant information and rating classifications assigned by the underwriter for both DI and LTC policies.
- The Company does file product rates with the Division and the rates filed were approved by the Division. This process is intended to comply with statutory underwriting and rating requirements.

Controls Reliance: The Examiners tested the Company's controls by reviewing policies and procedures and/or conducting transaction testing.

Transaction Testing Procedure: The Examiners interviewed Company management and staff responsible for the underwriting process. Also, a sample of 20 new LTC business transactions and 64 new DI business transactions were selected for testing. The Examiners also tested 10 of the DI and 10 of the LTC new business transactions to determine whether the premiums charged were accurate and verified that the rate classifications applied by the Company for each policy was in compliance with statutory requirements. In doing so, the Examiners also reviewed the Company's reinsurance rating manual, MunichRe that is segmented by medical condition and respective additional premium amounts. Also, in conjunction with Standard VI-5, the Examiners requested documentation to support that the product filings were submitted and approved by the Division.

Transaction Testing Results:

Findings: The Examiners identified that one of the ten DI policies selected for re-rating contained an additional premium charge of 50% that was not found in the Company's rating manuals that were approved by the Division. The Examiners discussed this matter with the Company and were advised that the additional premiums are not in the Company's rating manual as the additional premium amount is an underwriting decision. The additional premiums as required by the Company's reinsurer, MunichRe, are not included in the Company's filed and approved rate filing.

Observations: None.

Required Actions: The Company's policies and procedures need to be reviewed and modified as necessary to assure that all rates are filed and approved by the Division timely. The Company will identify the potential use of extra premiums due to the risk associated with an applicant's medical history identified during underwriting in Berkshire's next rate filing with the Division. The Company shall file the appropriate rates with the Division by November 30, 2012.

<p>Standard VI-2. All mandated disclosures are documented and in accordance with applicable statutes, rules and regulations.</p>

Objective: This Standard addresses mandated underwriting disclosures for insurance policies, which are required in accordance with statutes, regulations and Company policy. Requirements to provide illustrations and other disclosures are included in Standard III-6. Replacement disclosures are included in Standards III-4 and III-5, and adverse underwriting notices are included in Standards VI-7 and VI-8. See Appendix A for applicable statutes, regulations and bulletins.

Standard VI-3. The Company does not permit illegal rebating, commission-cutting or inducements.

Objective: This Standard prohibits illegal rebating, commission cutting or inducements in Company correspondence to producers, and in advertising/marketing materials. Reduced commissions paid on internal replacements are discussed in Standard III-5. See Appendix A for applicable statutes, regulations and bulletins.

Controls Assessment: The following controls were noted in review of this Standard:

- The Company has written policies and guidelines to provide oversight of the process to pay agents' commissions. The Company has implemented steps to prevent illegal rebating, commission cutting and inducements as required by this Standard through its agent contracts and Company policies.
- After agents are properly licensed and pass the Company appointment criteria, they are contracted and appointed with the Company. Agents are paid in accordance with their agent agreements.

Controls Reliance: The Examiners tested the Company's controls by reviewing policies and procedures and/or conducting transaction testing.

Transaction Testing Procedure: The Examiners interviewed Company management and staff responsible for the underwriting process. Also, a sample of 20 new LTC business transactions and 64 new DI business transactions were selected for testing. From these samples, the Examiners randomly selected samples of 10 DI Policies and 10 LTC Policies to ensure that commission payments were paid accurately in accordance with contracted terms and also to ensure compliance with laws and regulations.

Transaction Testing Results:

Findings: None.

Observations: Testing of the commissions paid on the sampled LTC and DI policies found that commissions were paid according to the agent's contract and appeared reasonable. The Company's processes appear sufficient to prevent inducements, commission cutting and rebating. Therefore, it appears that the Company is complying with the terms of the Standard.

Recommendations: None.

Standard VI-4. The Company's underwriting practices are not unfairly discriminatory.
The Company adheres to applicable statutes, rules and regulations and regulated entity guidelines in the selection of risks.

Objective: This Standard addresses unfair discrimination in underwriting. See Appendix A for applicable statutes, regulations and bulletins.

Controls Assessment: The following controls were noted in review of this Standard:

- The Company has written policies and guidelines to prohibit unfair discrimination while underwriting. The Company has implemented steps designed to assure reasonable consistency in classification and rating of risks as required by this Standard.
- The Company has procedures in place for underwriting self audits to ensure adherence to underwriting guidelines.

Controls Reliance: The Examiners tested the Company's controls by reviewing policies and procedures and/or conducting transaction testing.

Transaction Testing Procedure: The Examiners interviewed Company management and staff responsible for the underwriting process. Also, a sample of 20 new LTC business transactions and 64 new DI business transactions were selected for testing. The Examiners verified that the policy form for each application was approved with no evidence of discriminatory rates or contract provisions.

Transaction Testing Results:

Findings: None.

Observations: Each policy in the LTC and DI sample were tested to determine whether the Company unfairly discriminated when approving a policy application. All policies tested appeared to be complete and used only contract forms, riders and endorsements approved by the Division. Therefore, it appears that the Company is complying with the terms of the Standard.

Recommendations: None.

Standard VI-5. All forms, including contracts, riders, endorsement forms and certificates are filed with the insurance department, if applicable.

Objective: This Standard addresses the required filing of all policy forms and endorsements. See Appendix A for applicable statutes, regulations and bulletins.

Controls Assessment: The following controls were noted in review of this Standard:

- The Company utilizes policy forms, rates, contract riders, and endorsement forms that are developed by teams from its actuarial, marketing, legal, compliance and information technology departments, and subsequently filed and approved by the Division to comply with statutory provisions.
- The Company's underwriting guidelines were developed and are utilized to assure reasonable consistency that the necessary forms are filed with the Division as required by this Standard.

Controls Reliance: The Examiners tested the Company's controls by reviewing policies and procedures and/or conducting transaction testing.

Transaction Testing Procedure: The Examiners interviewed Company management and staff responsible for the underwriting process. Also, a sample of 20 new LTC business transactions and 64 new DI business transactions were selected for testing. The Examiners tested the sampled policies to determine whether the contracts, riders and endorsement forms used by the Company were submitted and approved by the Division.

Transaction Testing Results:

Findings: The Company provides the Privacy Policy at new business and annually to all individual DI and LTC policyholders. The Privacy Policy is sent to the insured with the insurance policy and as such is deemed as a segment of the policy. The Privacy Policy was not filed with the Massachusetts Division of Insurance as required under M.G.L. c. 175, § 108.

Observations: Each policy in the LTC and DI samples were tested to determine whether the policy issued had been filed and approved by the Division. Aside from the finding noted above, all contract forms, rider and endorsements tested were filed and approved by the Division.

Required Actions: The Company shall take the appropriate steps to file the Privacy Policy with the Massachusetts Division of Insurance in order to fully comply with M.G.L. c. 175, § 108. The Company's Privacy Policy shall be filed with the Division by January 15, 2013.

Standard VI-6. Policies, riders and endorsements are issued or renewed accurately, timely and completely.
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Objective: This Standard addresses whether the Company issues insurance policies timely and accurately. See Appendix A for applicable statutes, regulations and bulletins.

Controls Assessment: The following controls were noted in review of this Standard:

- The Company's underwriting guidelines were developed and are utilized to assure reasonable consistency that all policies and riders are issued or renewed accurately, timely and completely as required by this Standard.
- The Company's policies and procedures require that all new business applications and supporting information submitted to the Company are reviewed by the new business department for accuracy and completeness. Once all the required new business information is received, insurance applications are assigned to an underwriter for further review. Company underwriters review all insurance applications to ensure that they are complete and internally consistent, and to obtain additional information needed to make an underwriting decision.
- The Company has developed time standards regarding the handling of new and renewal policies and riders. Business unit self audits include many components including the complete, accurate, and timely issuance of policies.
- The Company's management reviews production reports daily that includes aging of new business applications.

Controls Reliance: The Examiners tested the Company's controls by reviewing policies and procedures and/or conducting transaction testing.

Transaction Testing Procedure: The Examiners interviewed Company management and staff responsible for the underwriting process. Also, a sample of 20 new LTC business transactions and 64 new DI business transactions were selected for testing. The Examiners tested the sampled policies to determine whether the policies and riders issued by the Company were done timely, accurately and completely.

Transaction Testing Results:

Findings: None.

Observations: Each policy in the LTC and DI sample were tested to determine whether the policy was issued accurately, timely and completely as required by the Division. All policies tested were

accurately, timely and completely. Therefore, it appears that the Company is complying with the terms of the Standard.

Recommendations: None.

Standard VI-7. Rejections and declinations are not unfairly discriminatory.
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Objective: This Standard addresses whether application denials are fair. See Appendix A for applicable statutes, regulations and bulletins.

Controls Assessment: The following controls were noted in review of this Standard:

- The Company's underwriting guidelines for both DI policies and LTC policies that were developed and are utilized to assure reasonable consistency that all policies are handled without discrimination as required by this Standard.
- The Company uses policy forms, rates, contract riders and endorsement forms that are developed by teams from its actuarial, marketing, legal, compliance and information technology departments.
- The Company maintains approval by the Division of all such policy forms, rates, contract riders and endorsement forms to comply with applicable statutes.

Controls Reliance: The Examiners tested the Company's controls by reviewing policies and procedures and/or conducting transaction testing.

Transaction Testing Procedure: The Examiners interviewed Company management and staff responsible for the underwriting process. Also, the Examiners selected a random sample of declined or rejected DI and LTC applications for review. The Examiners randomly selected 20 declined/rejected DI applications and five declined/rejected LTC declinations/rejections to evaluate whether the Company's determination was in compliance with the Company's written underwriting guidelines. The Examiners tested each application to determine if the applicant received returned any premiums paid with the application.

Transaction Testing Results:

Findings: None.

Observations: Each policy in the LTC and DI sample were tested to determine whether the Company unfairly discriminated when rejecting or declining a policy application. All policies tested appeared to be complete and used only contract forms, riders and endorsements approved by the Division. Therefore, it appears that the Company is complying with the terms of the Standard.

Recommendations: None.

Standard VI-8. Cancellation/nonrenewal, discontinuance and declination notices comply with policy provisions, state laws and the regulated entity's guidelines.

Objective: This Standard addresses whether the non-underwriting reasons for a cancellation are valid according to policy provisions and state laws. Compliance with adverse underwriting notice requirements are tested in Standard VI-7. See Appendix A for applicable statutes, regulations and bulletins.

Controls Assessment: The following controls were noted in review of this Standard:

- The Company's DI and LTC policies are guaranteed renewable and as such the Company may not cancel any policy except as stated in M.G.L. c. 175 ss 108 (3)(a)(2).

Controls Reliance: The Examiners tested the Company's controls by reviewing policies and procedures and/or conducting transaction testing.

Transaction Testing Procedure: The Examiners selected a sample of lapsed DI, LTC and Life policies for review. The Examiners judgmentally selected five DI policies, five LTC policies and five Life policies cancelled for nonpayment to evaluate whether the Company's cancellation of these policies was in compliance with statutory requirements.

Transaction Testing Results:

Findings: None.

Observations: Each policy in the LTC, DI, and Life samples were tested to determine whether the policy was cancelled for nonpayment of premium or for some other cause. All policies tested were appropriately cancelled for non-payment of premium. Therefore, it appears that the Company is complying with the terms of the Standard.

Recommendations: None.

Standard VI-9. Rescissions are not made for non-material misrepresentation.

Objective: The Standard addresses whether (a) rescinded policies indicate a trend toward post-claim underwriting practices; (b) decisions to rescind are made in accordance with applicable statutes, rules and regulations; and (c) Company underwriting procedures meet incontestability standards. See Appendix A for applicable statutes, regulations and bulletins.

Controls Assessment: The following controls were noted in review of this Standard:

- The Company's DI and LTC policies are guaranteed renewable and as such the Company may not rescind any policy except as stated in M.G.L. c. 175 ss 108 (3)(a)(2).
- The Company's underwriting unit considers the risk of material representation by applicants, and attempts to validate information included on the application. In the event that a policy is being considered for rescission, the underwriter must review the policy with a supervisor or manager, and the case must also be referred to the Law Department for review.

Within the first two years of the policy issuance date for Massachusetts policies, the Company will rescind a policy if material misrepresentations are made. After the said two year period, the Company will rescind a policy only if fraudulent misstatements were made by the applicant during the application process.

Controls Reliance: The Examiners tested the Company's controls by reviewing policies and procedures and/or conducting transaction testing.

Transaction Testing Procedure: The Company had no rescissions during the examination period and as such the Examiners were unable to conduct testing of the Company's handling of rescinded policies. No files involving rescission investigations were identified while testing standards applicable to claims or complaints.

Transaction Testing Results:

Findings: None.

Observations: As there were no rescission files to review, it appears that the Company is complying with the terms of the Standard.

Recommendations: None.

Standard VI-10. Pertinent information on applications that form a part of the policy is complete and accurate.

Objective: This Standard addresses whether (a) the requested coverage is issued; (b) the Company verifies the accuracy of application information; (c) applicable non-forfeiture and dividend options are indicated on the application; (d) changes and supplements to applications are initialed by the applicant; and (e) supplemental applications are used where appropriate. See Appendix A for applicable statutes, regulations and bulletins.

Controls Assessment: The following controls were noted as part of this Standard:

- The Company's individual disability income applications require submission of information regarding the applicant's employment status, occupation, monthly earnings, income, age, existing disability income coverage and family member information, to assist in determining the applicant's needs.
- The Company's long-term care applications require submission of information regarding the applicant's type and amount of coverage requested, age, medical history and benefit limits.
- The Company reviews all individual disability applications to ensure that they are complete and internally consistent.
- The Company's long-term care new business and policy servicing processes are outsourced to an unaffiliated third party administrator. The contract contains performance standards requiring timely and accurate new business and policy servicing processes and compliance with all applicable laws and regulations.

Controls Reliance: Controls tested via documentation inspection, procedure observation and/or corroborating inquiry appear to be sufficiently reliable to be considered in determining the extent of transaction testing procedures.

Transaction Testing Procedure:

The Examiners interviewed Company management and staff responsible for the underwriting process. Also, a sample of 20 new LTC business transactions and 64 new DI business transactions were selected for testing. The Examiners tested the sampled policies to determine whether the application for issued policies was signed and complete. Also, the Examiners reviewed the individual disability income and individual long-term care illustrations. The Examiners noted whether the insurance policies or contracts received were consistent with those applied for, and that any changes resulted in full written disclosure to applicants.

Transaction Testing Results:

Findings: None.

Observations: Based upon testing, the application submitted for each sale was signed and completed in accordance with Company policy. Each insurance policy or annuity contract was issued consistent with the application, or any changes resulted in proper disclosure to the applicant.

Recommendations: None.

Standard VI-11. The Company complies with the specific requirements for AIDS-related concerns in accordance with statutes, rules and regulations.

Objective: This Standard addresses procedures to ensure that the Company does not use medical records indicating AIDS-related concerns to discriminate against life and individual disability income insurance applicants, without medical evidence of disease. See Appendix A for applicable statutes, regulations and bulletins.

Controls Assessment: The following controls were noted in review of this Standard:

- The Company's underwriting guide addresses that the Company shall not use medical records indicating AIDS-related concerns to discriminate against applicants without medical evidence of the disease.
- The Company's new business submission process includes requirements in underwriting regarding 211 CMR 36.04-36.06 and CMR 36.08.
- Regarding 211 CMR 36.05 which states that an applicant must give prior written informed consent before and insurer may conduct an AIDS-related test, the Company has a form provided at the time of application that includes this disclosure.
- The Company requires applicants to acknowledge in writing that he or she understands his or her rights regarding the tests for HIV status that are required for underwriting.

Controls Reliance: The Examiners tested the Company's controls by reviewing policies and procedures and/or conducting transaction testing.

Transaction Testing Procedure: The Examiners interviewed Company management and staff responsible for the underwriting process. Also, a sample of 20 new LTC business transactions and 64 new DI business transactions were selected for testing. The Examiners tested the issued DI and LTC policies to determine whether the policies included signed Massachusetts AIDS testing disclosure notices from the applicants and that no discrimination was applied during the underwriting process.

Transaction Testing Results:

Findings: Of the 64 new business transactions tested, the Examiners found one DI policy that did not contain the AIDS Consent Form as required under 211 CMR 36.04-36.06 and 36.08 and outlined under this Standard.

Observations: All 20 LTC new business transactions tested included the necessary AIDS Consent Form as required under 211 CMR 36.04-36.06 and 36.08 and outlined under this Standard.

Required Actions: In order to ensure that the AIDS Consent Form is provided to all applicants as required under 211 CMR 36.04-36.06 and 36.08, the Company shall automate the process of providing required forms to applicants. All required forms should be packaged together to reduce the risk of an applicant not receiving one or all required forms.

Subsequent Actions: The Company informed the Examiners that the Company began using an electronic application process in 2012 that will assure that the required forms are used during the application process, specifically the AIDS Consent Form.

VII – CLAIMS

Evaluation of the Standards in this business area is based on (a) an assessment of the Company's internal control environment, policies and procedures, (b) the Company's response to various information and data requests, and (c) a review of various types of Company files.

Standard VII-1. The initial contact by the Company with the claimant is within the required time frame.

Objective: The Standard addresses the timeliness of the Company's initial contact with the claimant. See Appendix A for applicable statutes, regulations and bulletins.

Controls Assessment: The following controls were noted in review of this Standard, and Standards VII-2 through VII-13:

- The Company has written policies and procedures to provide oversight of the claim handling process.
- Regarding the Company's handling of DI claims, the claims analyst must determine whether the insured is "disabled" as defined by their policy. In order to meet the policy definition of "disabled" the insured must be either "totally disabled" or "residually disabled." In order to be considered totally disabled, the insured must be unable to perform the material and substantial duties of his or her own occupation ("own occ"). In order to be considered residually disabled, the insured must be gainfully employed and not totally disabled with a specific loss of income percentage based on the policy language (i.e., 15%). For certain occupations underwritten by the Company, following the first five years of disability the insured must be totally disabled from any occupation ("modified own occ"). The insured must remain disabled throughout the policy's elimination period which is stated in the policy as a specific number of days or months. Once the elimination period has been satisfied, the insured is eligible for the monthly benefit as stated in the policy, in addition to any riders.
- DI claims are reported to the Company through an agent or through the Company's toll free phone number. The claim is entered into the Company's claim system and assigned to a claims examiner. The claims examiner sends the initial claim form package to the claimant within five business days of claims notification. The initial claim form package consists of an informational letter, a Claimant Statement, an Attending Physician's Statement, an Authorization Form which must be signed by the claimant to allow the Company to communicate with the claimant's attending physician. Prior to sending the initial claim form package, the claims examiner must determine whether multiple policies are in force for the insured by researching the Company databases. The Company's policy is to send follow up letters to the claimant within 30 days of the initial informational letter. The Company's policy is to send additional follow-up letters within 31-60 days and if no claim forms are received after

90 days, the Company gives final notice to the claimant that information must be submitted within 30 days or the claim will be closed.

- The Company's process is to provide an acknowledgement letter to the claimant when the initial claim forms are received by the Company. If necessary, the Company will gather medical records and financial data before making a claim determination. The Company used both in-house and contracted medical staff to assist in reviewing medical records. In addition, the Company uses in-house and contracted financial experts to assist in reviewing financial data used to calculate residual disability claims and business overhead expense claims.
- If fraud is suspected, the claim is referred to the law department and the SIU for investigation.
- The Company's claims system, "Cypress", maintains claim documentation and history notes. The Company also uses occupational experts when necessary to conduct on-site visits to assess a claimant's disability.
- The Company makes the initial DI benefit payment once it receives all information necessary to adjudicate a claim and determines if benefits are due.
- Regarding the waiver of premium provision on the policies, the claims examiner is responsible for notifying the billing department that the policy should be placed on waiver. According to the policy language, once the insured is eligible for the waiver of premium benefit the policy premium mode will be changed to an annual premium based on the policy if the premium mode is not already annual.

Controls Reliance: The Examiners tested the Company's controls by reviewing policies and procedures and/or conducting transaction testing.

Transaction Testing Procedure: The Examiners interviewed Company management and staff responsible for claims handling. During the exam period, the Company received 25 DI claims, and no LTC claims. Of the 25 DI claims, there were four that were paid and closed at a later date, nine denied and closed without payment and a total of 12 claims which the Company categorized as paid, pending or reopened. The Examiners tested all 12 of DI claims which were categorized as paid, pending or reopened as well as the four claims that were paid and closed at a later date. In order to test that the Company's initial contact was timely once notified about a claim, a total number of 16 DI claims were selected for testing.

Transaction Testing Results:

Findings: None.

Observations: In all of the 16 DI claims tested, the Examiners found that the Company's initial contact was timely. Regarding the Company's initial contact with DI claimants, testing performed indicated

that the Company's policies and procedures appear to be sufficient and in compliance with statutory requirements.

Recommendations: None.

Standard VII-2. Timely investigations are conducted.

Objective: The Standard is concerned with the timeliness of the Company's claims investigations. See Appendix A for applicable statutes, regulations and bulletins.

Controls Assessment: See Standard VII-1.

Controls Reliance: See Standard VII-1.

Transaction Testing Procedure: The Examiners interviewed Company management and staff responsible for claims handling. During the exam period, the Company received 25 DI claims, and no LTC claims. Of the 25 DI claims, there were four that were paid and closed at a later date, nine denied and closed without payment and a total of 12 claims which the Company categorized as paid, pending or reopened. The Examiners tested all 12 of DI claims which were categorized as paid, pending or reopened as well as the four claims that were paid and closed at a later date. In order to test that the Company's claim investigations were done in a timely manner, a total number of 16 DI claims were selected for testing.

Transaction Testing Results:

Findings: None.

Observations: In all of the 16 DI claims tested, the Examiners found that the Company investigated claims timely. Regarding the Company's timely investigation of DI claims, testing performed indicated that the Company's policies and procedures appear to be sufficient and in compliance with statutory requirements.

Recommendations: None.

Standard VII-3. Claims are resolved in a timely manner.

Objective: The Standard is concerned with the timeliness of the Company's claims settlements. See Appendix A for applicable statutes, regulations and bulletins.

Controls Assessment: See Standard VII-1.

Controls Reliance: See Standard VII-1.

Transaction Testing Procedure: The Examiners interviewed Company management and staff responsible for claims handling. During the exam period, the Company received 25 DI claims, and no LTC claims. Of the 25 DI claims, there were four that were paid and closed at a later date, nine denied and closed without payment and a total of 12 claims which the Company categorized as paid, pending or reopened. The Examiners tested all 12 of DI claims which were categorized as paid, pending or reopened as well as the four claims that were paid and closed at a later date. In order to test that the Company settled claims timely, a total number of 16 DI claims were selected for testing.

Transaction Testing Results:

Findings: None.

Observations: In all of the 16 DI claims tested, the Examiners found that the Company settled claims timely. Regarding the Company's timely settlement of DI claims, testing performed indicated that the Company's policies and procedures appear to be sufficient and in compliance with statutory requirements.

Recommendations: None.

Standard VII-4. The Company responds to claims correspondence in a timely manner.
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Objective: The Standard addresses the timeliness of the Company's response to all claim correspondence. See Appendix A for applicable statutes, regulations and bulletins.

Controls Assessment: See Standard VII-1.

Controls Reliance: See Standard VII-1.

Transaction Testing Procedure: The Examiners interviewed Company management and staff responsible for claims handling. During the exam period, the Company received 25 DI claims, and no LTC claims. Of the 25 DI claims, there were four that were paid and closed at a later date, nine denied and closed without payment and a total of 12 claims which the Company categorized as paid, pending or reopened. The Examiners tested all 12 of

DI claims which were categorized as paid, pending or reopened as well as the four claims that were paid and closed at a later date. In order to test that the Company responds to claim correspondence timely, a total number of 16 DI claims were selected for testing.

Transaction Testing Results:

Findings: None.

Observations: In all of the 16 DI claims tested, the Examiners found that the Company responded to claims correspondence timely. Regarding the Company's timely response to of DI claim correspondence, testing performed indicated that the Company's policies and procedures appear to be sufficient and in compliance with statutory requirements.

Recommendations: None.

Standard VII-5. Claim files are adequately documented.

Objective: The Standard addresses the adequacy of information maintained in the Company's claim records. See Appendix A for applicable statutes, regulations and bulletins.

Controls Assessment: See Standard VII-1.

Controls Reliance: See Standard VII-1.

Transaction Testing Procedure: The Examiners interviewed Company management and staff responsible for claims handling. During the exam period, the Company received 25 DI claims, and no LTC claims. Of the 25 DI claims, there were four that were paid and closed at a later date, nine denied and closed without payment and a total of 12 claims which the Company categories as paid, pending or reopened. The Examiners tested all 12 of DI claims which were categorized as paid, pending or reopened as well as the four claims that were paid and closed at a later date. In order to test that the Company adequately documented claim files, a total number of 16 DI claims were selected for testing.

Transaction Testing Results:

Findings: None.

Observations: In all of the 16 DI claims tested, the Examiners found that the Company adequately documents claim files. Regarding the Company's adequate documentation of DI claim files, testing performed indicated that the Company's policies and procedures appear to be sufficient and in compliance with statutory requirements.

Recommendations: None.

Standard VII-6. Claims are properly handled in accordance with policy provisions and applicable statutes (including HIPAA), rules and regulations.

Objective: This Standard addresses whether appropriate claim amounts including applicable interest have been paid to the appropriate beneficiary/payee. See Appendix A for applicable statutes, regulations and bulletins.

Controls Assessment: See Standard VII-1.

Controls Reliance: See Standard VII-1.

Transaction Testing Procedure: The Examiners interviewed Company management and staff responsible for claims handling. During the exam period, the Company received 25 DI claims, and no LTC claims. Of the 25 DI claims, there were four that were paid and closed at a later date, nine denied and closed without payment and a total of 12 claims which the Company categorized as paid, pending or reopened. The Examiners tested all 12 of DI claims which were categorized as paid, pending or reopened as well as the four claims that were paid and closed at a later date. In order to test that the Company handles claims in accordance with policy provisions and applicable statutes correspondence timely, a total number of 16 DI claims were selected for testing.

Transaction Testing Results:

Findings: Of the 16 DI claims tested, the Examiners found three instances that the Company did not handle the claims in accordance with policy provisions. In each instance, the Company failed to administer the waiver of premium provision of the policy correctly.

Observations: None.

Recommendations: The Company needs to implement stricter controls to ensure that all policy provisions are administered correctly.

Required Actions: The Company shall provide documentation to the Division by November 30, 2012 indicating that the waiver of premium refund plus interest was sent to the insured.

Subsequent Action: Upon the Examiners discovery, the Company has refunded premiums to the insured due to the waiver provision of the contract plus interest.

Standard VII-7. The Company claim forms are appropriate for the type of product.

Objective: The Standard addresses the use of claim forms that are appropriate for the policy. See Appendix A for applicable statutes, regulations and bulletins.

Controls Assessment: See Standard VII-1.

Controls Reliance: See Standard VII-1.

Transaction Testing Procedure: The Examiners interviewed Company management and staff responsible for claims handling. During the exam period, the Company received 25 DI claims, and no LTC claims. Of the 25 DI claims, there were four that were paid and closed at a later date, nine denied and closed without payment and a total of 12 claims which the Company categorized as paid, pending or reopened. The Examiners tested all 12 of DI claims which were categorized as paid, pending or reopened as well as the four claims that were paid and closed at a later date. In order to test that the Company used the appropriate claim forms, a total number of 16 DI claims were selected for testing.

Transaction Testing Results:

Findings: None.

Observations: In all of the 16 DI claims tested, the Examiners found that the claim forms were appropriate for administering DI claims. Testing performed indicated that the claim forms used were in compliance with the Company's policies and procedures.

Recommendations: None.

Standard VII-8. Claim files are reserved in accordance with the regulated entity's established procedures.

No work performed under this market conduct examination. All required activity for this Standard is included in the scope of the Division's statutory financial examination of the Company which includes the period January 1, 2010 through December 31, 2010.

Standard VII-9. Denied and closed without payment claims are handled in accordance with policy provisions and state law.

No work performed under this market conduct examination. All required activity for this Standard may be included in the scope of a future market conduct examination by the Division.

Standard VII-10. Canceled benefit checks and drafts reflect appropriate claim handling practices.

Objective: The Standard addresses the Company's procedures for issuing claim checks. See Appendix A for applicable statutes, regulations and bulletins.

Controls Assessment: See Standard VII-1.

Controls Reliance: See Standard VII-1.

Transaction Testing Procedure: The Examiners interviewed Company management and staff responsible for claims handling. During the exam period, the Company received 25 DI claims, and no LTC claims. Of the 25 DI claims, there were four that were paid and closed at a later date, nine denied and closed without payment and a total of 12 claims which the Company categorized as paid, pending or reopened. The Examiners tested all 12 of DI claims which were categorized as paid, pending or reopened as well as the four claims that were paid and closed at a later date. In order to test that the appropriateness of Company's claim handling process by reviewing canceled benefit checks and drafts, a total number of 16 DI claims were selected for testing.

Transaction Testing Results:

Findings: Of the 16 DI claims tested, the Examiners found two instances that the Company did not handle the claims in accordance with policy provisions and benefit checks were incorrect. In both instances, the Company failed to administer the waiver of premium provision of the policy correctly.

Observations: The Examiners found that the benefit period details included in the Explanation of Benefits (EOB) for all the claims sampled, does not appear to accurately reflect the benefit period for which benefits were paid. The EOB includes the headings "Period From" and "Period To." The "Period From" should specify the start of the benefit period and the "Period To" should specify the end date for which benefits will be paid, including the elimination period. The Company verbally indicated that the application of the elimination period and the date to which benefits are paid is the date before the "Period To" date and not the date shown as "Period To." As a result, this information could be misleading to the policyholder.

Recommendations: The Company needs to implement stricter controls to identify policies which have not been put on waiver even after satisfying the policy requirements or have not been handled in compliance with the policy provisions.

In addition, with respect to the EOB, the Company should consider modifying the "Period From" date to specify the start of the benefit period and the "Period To" date should specify the end date for which the elimination period will be applied or benefits will be paid.

Required Actions: The Company shall provide documentation to the Division by November 30, 2012 indicating that the waiver of premium refund plus interest was sent to the insured.

Subsequent Action: Upon the Examiners discovery, the Company has refunded premiums to the insured due to the waiver provision of the contract plus interest.

Standard VII-11. Claim handling practices do not compel claimants to institute litigation, in cases of clear liability and coverage, to recover amounts due under policies by offering substantially less than is due under the policy.

Objective: The Standard addresses whether the Company's claim handling practices force claimants to (a) institute litigation for the claim payment, or (b) accept a settlement that is substantially less than what the policy contract provides for. See Appendix A for applicable statutes, regulations and bulletins.

Controls Assessment: See Standard VII-1.

Controls Reliance: See Standard VII-1.

Transaction Testing Procedure: The Examiners interviewed Company management and staff responsible for claims handling. During the exam period, the Company received 25 DI claims, and no LTC claims. Of the 25 DI claims, there were four that were paid and closed at a later date, nine denied and closed without payment and a total of 12 claims which the Company categorized as paid, pending or reopened. The Examiners tested all 12 of DI claims which were categorized as paid, pending or reopened as well as the four claims that were paid and closed at a later date. In order to test whether the Company compels claimants to institute litigation to receive claim payments or for claimants to accept less than the amount due under the policy, a total number of 16 DI claims were selected for testing.

Transaction Testing Results:

Findings: None.

Observations: In all of the 16 DI claims tested, the Examiners found no instances where claimants needed to institute litigation to receive claim payments or where claimants were required to accept less than the amount due under the policy. Testing of the 16 DI claims indicated that the Company's policies and procedures appear to be sufficient and in compliance with statutory requirements to prevent claimants from needing to institute litigation to receive claim payments or accept less than the amount due under the policy.

Recommendations: None.

Standard VII-12. The Company provides the required disclosure material to policyholders at the time an accelerated benefit payment is requested.

No testing was performed during this examination as this Standard does not apply to any claims received by the Company during the examination period.

Standard VII-13. The Company does not discriminate among insureds with differing qualifying events covered under the policy or among insureds with similar qualifying events covered under the policy.

Objective: The Standard is concerned with whether the Company's claim handling practices discriminate against claimants with similar qualifying events covered under its policies. See Appendix A for applicable statutes, regulations and bulletins.

Controls Assessment: See Standard VII-1.

Controls Reliance: See Standard VII-1.

Transaction Testing Procedure: The Examiners interviewed Company management and staff responsible for claims handling. During the exam period, the Company received 25 DI claims, and no LTC claims. Of the 25 DI claims, there were four that were paid and closed at a later date, nine denied and closed without payment and a total of 12 claims which the Company categorized as paid, pending or reopened. The Examiners tested all 12 of DI claims which were categorized as paid, pending or reopened as well as the four claims that were paid and closed at a later date. In order to test that the Company does not unfairly discriminate against claimants, a total number of 16 DI claims were selected for testing.

Transaction Testing Results:

Findings: None.

Observations: In all of the 16 DI claims tested, the Examiners found that the Company does not unfairly discriminate against claimants. Testing revealed that the Company's claim handling policies and procedures do not appear to discriminate against claimants with similar qualifying events covered under its policies.

Recommendations: None.

SUMMARY

During this examination, McGladrey reviewed and tested Company operations/management, complaint handling, marketing and sales, producer licensing, policyholder service, underwriting and rating and claims as set forth in the NAIC Market Conduct Examiner's Handbook, the market conduct examination standards of the Division, and the Commonwealth of Massachusetts insurance laws, regulations and bulletins. McGladrey has made identified required actions for which the Company needs to report to the Division by specified dates as well as recommendations the Company should consider addressing in the future.

ACKNOWLEDGMENT

This is to certify that the undersigned is duly qualified and that, in conjunction with McGladrey, applied certain agreed-upon procedures to the corporate records of the Company in order for the Division of Insurance of the Commonwealth of Massachusetts to perform a market conduct examination of the Company.

The undersigned's participation in this examination as the Examiner-In Charge encompassed responsibility for the coordination and direction of the examination performed, which was in accordance with, and substantially complied with, those standards established by the National Association of Insurance Commissioners ("NAIC") and the *NAIC Market Conduct Examiners' Handbook*. This participation consisted of involvement in the planning (development, supervision and review of agreed-upon procedures), administration and preparation of the examination report. In addition to the undersigned, James Wright of the Division's Market Conduct Department participated in the examination and in the preparation of the report.

The cooperation and assistance of the officers and employees of the Company extended to all examiners during the course of the examination is hereby acknowledged.

Matthew C. Regan, III
Director of Market Conduct &
Examiner-In Charge
Commonwealth of Massachusetts
Division of Insurance
Boston, Massachusetts