LIFE INSURANCE ASSOCIATION
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August 12, 2015

The Honorable Daniel Judson
Commissioner
Division of Insurance
1000 Washington Street, 8th Floor
Boston, MA 02118

Dear Commissioner Judson:

The Life Insurance Association of Massachusetts appreciates the opportunity to participate in the Division of Insurance's regulatory review efforts.

As you know, 211 CMR 65: *Long Term Care Insurance*, is being updated to conform more closely to the NAIC Model. We would like to take this opportunity to reiterate our comments on the proposed changes to this regulation. I have attached a comment letter that was submitted last year at the regulation's hearing. The letter details our position on many important issues the regulation addresses.

However, our comments relating to effective date/implementation date need to be updated based upon the passage of time. **In order to allow carriers an appropriate period of time to implement the changes required by the new regulation, we recommend an effective date of September 1, 2016.**

Through the provisions of the regulation, we believe that the Division can take meaningful steps to assure rate adequacy, mitigate against excessive rate increases and promote a stable marketplace for long term care insurance in the Commonwealth.

We would be happy to provide you with any additional information you may need regarding long term care insurance and the proposed regulation.

Sincerely,

Luke A. Dillon
President and Chief Executive Officer

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August 13, 2014

The Honorable Joseph Murphy
Commissioner
Division of Insurance
1000 Washington Street, 8th Floor
Boston, MA 02118

Dear Commissioner Murphy:

I am writing on behalf of the Life Insurance Association of Massachusetts regarding proposed 211 CMR 65: *Long Term Care Insurance*. LIAM is a trade association representing 14 of the nation's leading life, long term care and disability income insurers.

The Life Insurance Association of Massachusetts and its members recognize the Division of Insurance's very thorough and deliberate approach to the daunting task of rewriting the Commonwealth's long term care insurance regulation. We were been pleased to be a part of the Long Term Care Rate Stabilization Working Group and participated in the Special Sessions you held to solicit input from the public. You enabled frank and open discussions among many constituencies concerning long term care regulation, including rate stability, that was productive and greatly informed the redrafting of 211 CMR 65.

Through the provisions of the regulation, we believe that the Division can take meaningful steps to assure rate adequacy, mitigate against excessive rate increases and promote a stable marketplace for long term care insurance in the Commonwealth. As you know over the past ten years, 88% of carriers who once sold long term care insurance have dropped out of the market, leaving only 12 carriers actively writing. The study concluded that it is "important to provide companies with more certainty around rate relief regulatory policy."

We are pleased to offer you the following comments on the proposed regulation:

EFFECTIVE DATE

Although the regulation itself becomes effective when promulgated in final form, many sections of proposed 211 CMR 65 go into effect or otherwise apply prospectively. In these sections, the provisions go into effect or otherwise apply to policies issued on or after July 1, 2014. That date creates obvious problems. In the NAIC Model, these sections are generally effective 6 or 12 months after the regulation is adopted.

The changes being made to 211 CMR 65 are considerable and group long term care insurance is now being regulated for the first time. Carriers will be facing a host of challenges in order to come into compliance with the many new provisions in the regulation. In addition, group carriers are facing the new task of submitting their policies for your review and approval. Accordingly, we recommend that the date July 1, 2015 be changed to July 1, 2015.

GROUP ISSUES

The NAIC Model Regulation references the definition of "group long term care insurance" found in the NAIC Model Act. The Model Act divides group long term care insurance into four categories: (1) policies issued to employers and labor organizations; (2) policies issues to professional, trade and occupational associations; (3) policies issued to other types of associations; and (4) discretionary groups. In the setting of group insurance, the notice, disclosures and mandatory offers required in the Model Regulation generally are made to the group policyholder and not to the certificateholder when the group policyholder is in category 1,2 or 3. With limited exceptions, only in the case of discretionary groups are the notice, disclosures and mandatory offers made to the certificateholders.

Proposed 211 CMR 65 does not follow the Model. Various sections of the proposed regulation address group long term care insurance in varying ways. This letter will address each of those sections individually, below.

DEFINITION OF ELIMINATION PERIOD

Elimination periods can be defined both in days and in dollars. We recommend adding this sentence, or similar, at the end of the definition: "In addition to being defined in number of days, the Elimination Period may also be defined by the number of dollars which must be spent on covered services before the long term care insurance policy begins to pay benefits."

65.05(3) FREE LOOK PERIOD

Section 65.05(3) tracks the NAIC Model Law in requiring a 30 day free look period, during which policyholders can return the policy and have their premium refunded if they are not satisfied. The NAIC Model Law excludes policies issued to category (1) groups – employers and labor organizations – from this requirement. The proposed regulation, however, excludes "employment-based" policies. We believe that the term "employment-based" is insufficiently clear. It is possible to obtain group long term care coverage through a policy issued to an employer that an individual does not -- and never has -- worked for (via a spouse, child or child-in-law). In the context of labor organizations, self-employed and unemployed individuals can obtain coverage if they are members and qualify for the coverage. We recommend that the regulation follow the NAIC Model Law and Regulation.

65.05(09)(a)(3) and (4) LIFETIME MAXIMUM BENEFIT PERIODS

Section 65.05(09)(a)(3) and (4) track the current regulation by requiring lifetime maximum benefit periods to be at least 730 days. This is now in conflict with MGL Chapter 176U. Chapter 176U, section 1, defines "Long term care insurance" to be "a policy ... designed to provide coverage for not less than 12 consecutive months." As the statute clearly allows for the offer of a long term care insurance policy that provides at least 12 months but less that 730 days of coverage, we believe that Section 65.05(09)(a)(3) and (4) must be changed to reflect this statutorily-created lifetime maximum benefit.

65.07(2)(d) REQUIRED DISCLOSURE – SUBJECT TO RATE INCREASE

We are supportive of clear and concise consumer disclosure regarding the possibility of future rate increases at time of application and included within the policy itself. Section 65.07(2)(d) requires a

statement on the first page of the policy that "indicates that the company may apply for future rate increases if the projected future claims are higher than projected when rates were originally filed for regulatory approval." We believe such a statement is overly technical and may be confusing to consumers. It is important for policyholders with policies that are not noncancellable to understand that their premiums may change, but it is also important for this to be communicated in a clear and straightforward manner. The NAIC Model does just this. It requires "a statement that premium rates may change." We recommend following the NAIC Model language.

65.12(2) REQUIREMENT TO OFFER INFLATION PROTECTION

Section 65.12(2) requires insurers to offer policyholders the ability to purchase a policy with an inflation protection feature. With regard to group long term care insurance not issued to a continuing care retirement community, the offer must be made to each certificateholder. The NAIC Model recognizes the difficult issues carriers would face in offering the benefit to individual certificateholders and thus requires the offer to groups in categories 1,2 and 3 (employers, labor organizations, trade and professional associations and other types of associations) to be made at the group policyholder level. The offer is made at the certificateholder level only in the case of discretionary groups. Carriers writing group insurance policies often do not know the identity of their certificateholders until a claim is made, as the administration of the benefit is done by the group policyholder. Thus, it would be difficult, if not impossible, to make an inflation protection offer at the certificateholder level. We recommend the following language, which tracks the Model: "except if the policy is issued to a group as defined in clause (d) of 211 CMR 65.04 other than to a continuing care retirement community, the offering shall be made to each proposed certificateholder."

65.13 REQUIREMENT TO OFFER HOME HEALTH CARE BENEFIT

Section 65.13 requires carriers to offer at least one policy offering home health care benefits. This section is similar to NAIC Model language more closely, but is still flawed. In the case of group coverage the offer is to be made to the group policyholder, "except if the policy is issued to a group as defined in 211 CMR 65.04 other than to a continuing care retirement community, the offering shall be made to each proposed certificateholder." The issue with this language is that all four categories of groups are defined in 211 CMR 65.04. Thus the offer of home care benefits must be made at the certificateholder level for groups sponsored by employers, labor organizations, trade and professional associations and other types of associations, as well as discretionary groups. We recommend the following language, which tracks the Model: "except if the policy is issued to a group as defined in clause (d) of 211 CMR 65.04 other than to a continuing care retirement community, the offering shall be made to each proposed certificateholder."

65.15 REQUIREMENTS FOR APPLICATION FORMS AND REPLACEMENT COVERAGE

Please see comments on Section 65.13, above. We recommend the following language, which tracks the Model: "except if the policy is issued to a group as defined in clause (d) of 211 CMR 65.04 other than to a continuing care retirement community, the offering shall be made to each proposed certificateholder."

65.16 EXPERIENCE REPORTING AND CERTIFICATION

We believe that the experience reporting requirements in this section are duplicative. Massachusetts already requires that carriers report on experience via the NAIC Experience Reporting Forms due annually every April 1st.

The annual certification requirements go well beyond those of any other jurisdiction, and in some cases actuaries may be unable make these certifications. We recommend that, in the alternative, the Division adopt the annual certification requirements proposed in section 15I of the revised NAIC LTC Model Regulation (4/14/14). The new NAIC annual certification process as proposed was worked on for over a year by regulators and industry alike. We believe that the requirements found in the NAIC annual rate certification will provide regulators with the "early warning" indicator that a rate increase or some type of action is necessary.

65.21(2)(f) POLICYHOLDER LETTER

This section adds a new requirement that a policyholder letter include the average increase in dollars per month or year, the basis for the rate increase, the carrier's current estimate of future rate increase need based on moderately adverse experience, all available options to reduce plan benefits to lower plan premiums and the role of the Division of Insurance in reviewing long term care insurance rates. Requiring disclosures that speculate on an insurer's future need for rate increases, suggesting that the current increase applied for is insufficient, or speculating on a determinable future increase are problematic and may lead to consumer confusion and unnecessary alarm. In addition, requiring explanation of <u>all</u> available options may also be difficult communicate and is unnecessary since companies typically work with each policyholder's to help them policyholder determine which options are most appropriate for their unique circumstances. We recommend reconsideration of the letter's content requirements.

65.21(4) and (6)

Sections 65.21(4) and (6) present technical and practical issues for carriers that make them unworkable. In addition, they could be interpreted to bar approval of rate increases phased in over time.

(4) states that rate increases are valid for only a 12 month period. Many carriers, however, implement rate increases on a rolling monthly basis based on policy anniversary date. It takes a full 12 months to go through the anniversary cycle. In addition, policies designated for a rate increase may be in suspended status, making implementing a rate increase within 12 months impossible.

(6) states that carriers shall only implement a single rate change at any one time and prohibits rate increases for at least 12 months since the last applied rate increase. Carriers, however, may need to simultaneously implement rate changes for different blocks of business. As written, this could preclude that.

One of the ideas the Rate Stabilization Working Group discussed frequently was the notion of approving rate increases that would be phased in over a number of years. The Report stated that "consumers would have a limit on the overall rate increase they would receive in one year" and (C)arriers could receive approval for all of their rate need and not be required to refile annually." In

addition, consumers would benefit from the predictability of phased in increases which would allow for easier planning and decision making on their part.

Both (4) and (6), however, could be read to preclude phased-in rate increases.

We believe these sections are unnecessary, unworkable and may hinder the development and implementation of more flexible solutions when rate increases are needed. We recommend deleting them.

65.24(3) STANDARDS FOR MARKETING

Both Section 65.24(3) and the NAIC Model's corresponding section concern groups which sponsor or endorse a group long term care insurance. It applies only to category 2 groups, business and trade associations. Section 65.24(3) applies to "groups, other than employment based groups." We believe that the term "employment-based" is insufficiently clear. We recommend limiting the application of this section to groups as defined in clause (b) of 211 CMR 65.04.

65.27(6) AVAILABILITY OF NEW SERVICES OR PROVIDERS

Please see comments on Section 65.13, above. We recommend the following language, which tracks the Model: "except if the policy is issued to a group as defined in clause (d) of 211 CMR 65.04 other than to a continuing care retirement community, the offering shall be made to each proposed certificateholder."

65.28(1)(a) RIGHT TO REDUCE COVERAGE AND LOWER PREMIUMS

Section 65.28(1)(a) applies to policies "issued or renewed on or after July 1, 2014." As this is intended to be a provision that applies entirely prospectively, we believe the words "or renewed" should be deleted.

65.29(2) NONFORFEITURE BENEFIT REQUIREMENT

Section 65.29(2) requires carriers to offer a nonforfeiture benefit. The section requires the offer to be made to the group policyholder for employment-based policies and to the certificateholder in the case of all other groups. This contradicts MGL Ch. 176U. Ch. 176U, Section 5(B), which requires the offer to be made at the group policyholder for all categories of groups except discretionary ones. We believe that this section must be changed and recommend the following language, which tracks the Ch. 176U: "except if the policy is issued to a group as defined in clause (d) of 211 CMR 65.04 other than to a continuing care retirement community, the offering shall be made to each proposed certificateholder."

65.29(4) TRIGGERS FOR SUBSTANTIAL PREMIUM INCREASE

We recommend liberalizing the triggers for substantial premium increases by adding the following to 65.29(4). "(g) For any long-term care policy issued in this state on or after July 1, 2015:
(1) in the event the policy or certificate was issued at least twenty (20) years prior to the effective date of the increase, a value of 0% shall be used in place of all values in the above table; and
(2) values above 100% in the table in (c) above shall be reduced to 100%."

OTHER TECHNICAL COMMENTS

Definition of Incidental – should be a reference to 211 CMR (13) not (11)

Definition of Group Long Term Care Insurance – in (d) "clauses (1) to (3)" should be "clauses (a) to (c)"

65.05(2) – e should be (d)3; f should be (d)4; g should be (d)5; h should be (d)6

65.05(11) "clause (4)" should be "clause (d)"

65.21(7) "closed blocks of coverage" is in quotes. It should therefore probably have a definition.

65.34(16) "SHINE PROGRAM" probably should be explained.

We would be pleased to offer the Division any other information and assistance as you continue your work on this important regulation.

Sincerely,

Jenny A. Erickson

Senior Vice President and General Counsel