

No. 2004-216

AN ACT

SB 1096

Amending the act of May 17, 1921 (P.L.682, No.284), entitled "An act relating to insurance; amending, revising, and consolidating the law providing for the incorporation of insurance companies, and the regulation, supervision, and protection of home and foreign insurance companies, Lloyds associations, reciprocal and inter-insurance exchanges, and fire insurance rating bureaus, and the regulation and supervision of insurance carried by such companies, associations, and exchanges, including insurance carried by the State Workmen's Insurance Fund; providing penalties; and repealing existing laws," further providing for use of surplus notes, for lending of securities, repurchase agreements and reverse repurchase agreements, for nonforfeiture law for individual deferred annuities and for eligible investments; deleting provisions relating to loans to companies; further defining "long-term care insurance" and "prepaid home health or personal care service policy"; providing for exempt prepaid home health or personal care service policies; and further providing for disclosure and performance standards for long-term care insurance.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section 322.1 of the act of May 17, 1921 (P.L.682, No.284), known as The Insurance Company Law of 1921, is repealed.

Section 2. The act is amended by adding a section to read:

Section 322.2. Surplus Notes.—(a) A director, officer, person, corporation or other entity may advance cash, or other admitted assets having readily determinable values and liquidity satisfactory to the Insurance Commissioner, to a domestic insurer in exchange for a surplus note only as prescribed under this section. In addition, if a director, officer, person, corporation or other entity would acquire control of an insurer as a result of an advance, as control is defined in Article XIV, the advance may be made only after the director, officer, person, corporation or other entity has complied with the requirements relating to filing and approval of acquisitions of control prescribed under Article XIV.

(b) An advance may not be made unless the insurer has provided the Insurance Commissioner with written notice at least thirty days prior to the intended date of the advance, or such shorter period as the Insurance Commissioner may permit, and the Insurance Commissioner has not disapproved the advance prior to the intended date. The written notice shall include the form and amount of the advance, the content of the surplus note and other information relating to the advance as required by the Insurance Commissioner.

(c) Commissions, promotion expenses or finders fees may not be paid in connection with an advance except for commissions, expenses and fees customarily incurred within the context of public or private placement offerings underwritten by an investment banking or similar entity.

(d) Payment of principal or interest on a surplus note may not be made without the prior written approval of the Insurance Commissioner. The insurer shall provide the Insurance Commissioner with written notice at least thirty days prior to the intended date of the payment of principal or interest on a surplus note or such shorter period as the Insurance Commissioner may permit.

(e) Payment of principal or interest on a surplus note shall be subordinated to payment of all other liabilities of the insurer.

(f) Payment of interest on a surplus note may be made only from the unassigned funds of the insurer.

(g) An insurer shall report the issuance and holding of surplus notes, including principal repayment and interest, in financial statements filed with the Insurance Commissioner in compliance with statutory accounting practices prescribed or otherwise permitted by the Insurance Commissioner. Statutory accounting practices are the practices and procedures prescribed by the Accounting Practices and Procedures Manual published by the National Association of Insurance Commissioners, or successor organization, or as otherwise provided by law, regulation or order of the Insurance Commissioner. Principal or interest on a surplus note may not be recorded as a liability or an expense against the insurer except to the extent that payment has been approved by the Insurance Commissioner.

(h) The term "insurer" when used in this section shall mean a domestic insurance company, association or exchange; reciprocal or interinsurance exchange; employers' mutual liability insurance association; nonprofit health plan corporation, whether operating a hospital plan or a professional health services plan; fraternal benefit society or beneficial association; health maintenance organization; preferred provider organization; the Industry Placement Facility under the act of July 31, 1968 (P.L.738, No.233), known as "The Pennsylvania Fair Plan Act"; a joint underwriting association under Chapter 7 of the act of March 20, 2002 (P.L.154, No.13), known as the "Medical Care Availability and Reduction of Error (Mcare) Act"; or another person, corporation, company, partnership, association or other entity acting as an insurer.

Section 3. Section 404.2(15) of the act, added June 11, 1986 (P.L.226, No.64), is amended to read:

Section 404.2. Investment.—Subject to the provisions of sections 405.2 and 406.1, the assets of any life insurance company organized under the laws of this Commonwealth shall be invested in the following classes of investment, provided the value of which, as determined for annual statement purposes, but in no event in excess of cost, shall not exceed the specified percentage of such company's assets as of the thirty-first day of December next preceding the date of investment:

* * *

(15) Lending of securities, repurchase agreements and reverse repurchase agreements:

(i) Definitions:

(A) "Lending of securities" means an investment, other than a repurchase agreement, whereby an agreement is entered into which transfers ownership rights and possession of securities to the borrower of such securities with the agreement providing for a return of ownership rights and possession of the securities to the lender at a specified date or upon demand.

(B) "Repurchase agreement" means a bilateral agreement whereby a company purchases securities with a related agreement that the seller will purchase or repurchase at a specified price the equivalent or similar securities within a specified period of time or on demand.

(C) "Reverse repurchase agreement" means a bilateral agreement whereby a company (i) sells securities with a related agreement to purchase or repurchase at a specified price the equivalent or similar securities within a specified period of time or upon demand or (ii) borrows funds and transfers securities to the lender with a related agreement that equivalent or similar securities will be returned to the company upon repayment of the loan within a specified period of time or on demand.

(ii) Lending of securities, repurchase agreements and reverse repurchase agreements transactions are authorized on the following conditions:

(A) The agreement for each transaction or the master agreement for a series of transactions shall be reduced to writing.

(B) Securities acquired by a company and owned subject to reacquisition pursuant to an outstanding repurchase agreement may not be sold pursuant to a reverse repurchase agreement nor lent pursuant to a lending of securities agreement. Consideration, or collateral, received from a reverse repurchase agreement or lending of securities agreement may be used to acquire securities which are equivalent or similar to the securities transferred pursuant to such repurchase agreement or lending of securities agreement; however, such acquired securities may not be sold pursuant to a reverse repurchase agreement nor lent pursuant to a lending of securities agreement.

(C) A company is limited to no more than **[two per centum (2%)] five per centum (5%)** of its admitted assets being subject to lending of securities, repurchase or reverse repurchase agreements transactions outstanding with any one business entity under this clause (15).

(D) A company may engage in lending its securities or repurchase or reverse repurchase agreements up to forty per centum (40%) of its admitted assets, provided that such transactions are fully collateralized.

(E) The Insurance Commissioner may promulgate reasonable rules and regulations for investments and transactions under this clause (15), to include, but not be limited to, rules and regulations which impose financial solvency standards, valuation standards and reporting requirements.

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Section 4. Section 410C of the act, amended or added July 3, 1980 (P.L.351, No.89) and July 10, 2002 (P.L.749, No.110), is amended to read:

Section 410C. Standard Nonforfeiture Law for Individual Deferred Annuities.—(a) This section shall be known as the Standard Nonforfeiture Law for Individual Deferred Annuities.

(b) This section shall not apply to any reinsurance, group annuity purchased under a retirement plan or plan of deferred compensation established or maintained by an employer (including a partnership or sole proprietorship) or an employe organization; or by both, other than a plan providing individual retirement accounts or individual retirement annuities under section 408 of the Internal Revenue Code, as now or hereafter amended, premium deposit fund, variable annuity, investment annuity, immediate annuity, any deferred annuity contract after annuity payments have commenced, or reversionary annuity, nor to any contract which shall be delivered outside this State through an agent or other representative of the company issuing the contract.

(c) In the case of contracts issued on or after the exact date of this section as defined in subsection (l) no contract of annuity, except as stated in subsection (b) shall be delivered or issued for delivery in this State unless it contains in substance the following provisions, or corresponding provisions which in the opinion of the commissioner are at least as favorable to the contract holder, upon cessation of payment of considerations under the contract.

(1) That upon cessation of payment of considerations under a contract, the company will grant a paid-up annuity benefit on a plan stipulated in the contract of such value as is specified in subsections (e), (f), (g), (h) and (j).

(2) If a contract provides for a lump sum settlement at maturity, or at any other time, that upon surrender of the contract at or prior to the commencement of any annuity payments, the company will pay in lieu of any paid-up annuity benefit a cash surrender benefit of such amount as is specified in subsections (e), (f), (h) and (j). The company shall reserve the right to defer the payment of such cash surrender benefit for a period of six (6) months after demand therefor with surrender of the contract.

(3) A statement of the mortality table, if any, and interest rates used in calculating any minimum paid-up annuity, cash surrender or death benefits that are guaranteed under the contract, together with sufficient information to determine the amounts of such benefits.

(4) A statement that any paid-up annuity, cash surrender or death benefits that may be available under the contract are not less than the minimum benefits required by any statute of the state in which the contract is delivered and an explanation of the manner in which such benefits are altered by the existence of any additional amounts credited by the company to the contract, any indebtedness to the company on the contract or any prior withdrawals from or partial surrenders of the contract. Notwithstanding the requirements of this subsection, any deferred annuity contract may provide that if no

considerations have been received under a contract for a period of two full years and the portion of the paid-up annuity benefit at maturity on the plan stipulated in the contract arising from considerations paid prior to such period would be less than twenty dollars (\$20) monthly, the company may at its option terminate such contract by payment in cash of the then present value of such portion of the paid-up annuity benefit, calculated on the basis of the mortality table, if any, and interest rate specified in the contract for determining the paid-up annuity benefit, and by such payment shall be relieved of any further obligation under such contract.

(c.1) In the case of contracts issued on or after January 1, 2006, and in the case of any class of annuity contracts issued before January 1, 2006, as to which the issuing company has filed with the Insurance Department a notice of election of the applicability of this section, no contract of annuity, except as provided under subsection (b), shall be delivered or issued for delivery in this Commonwealth unless it contains in substance the following provisions, or corresponding provisions which in the opinion of the commissioner are at least as favorable to the contractholder, upon cessation of payment of considerations under the contract:

(1) That upon cessation of payment of considerations under a contract or upon the written request of the contract owner, the company shall grant a paid-up annuity benefit on a plan stipulated in the contract of such value as is specified in subsections (e), (f), (g), (h) and (j);

(2) If a contract provides for a lump sum settlement at maturity or at any other time, that upon surrender of the contract at or prior to the commencement of any annuity payments, the company shall pay in lieu of a paid-up annuity benefit a cash surrender benefit of such amount as is specified in subsections (e), (f), (h) and (j). The company may reserve the right to defer the payment of the cash surrender benefit for a period not to exceed six (6) months after demand therefore with surrender of the contract after making written request and receiving written approval of the commissioner. The request shall address the necessity and equitability to all policyholders of the deferral;

(3) A statement of the mortality table, if any, and interest rates used in calculating any minimum paid-up annuity, cash surrender or death benefits that are guaranteed under the contract, together with sufficient information to determine the amounts of the benefits; and

(4) A statement that any paid-up annuity, cash surrender or death benefits that may be available under the contract are not less than the minimum benefits required by any statute of the state in which the contract is delivered and an explanation of the manner in which the benefits are altered by the existence of any additional amounts credited by the company to the contract, any indebtedness to the company on the contract or any prior withdrawals from or partial surrenders of the contract. Notwithstanding the requirements of this subsection, a deferred annuity contract may provide that, if no considerations have been received under a

contract for a period of two (2) full years and the portion of the paid-up annuity benefit at maturity on the plan stipulated in the contract arising from prior considerations paid would be less than twenty dollars (\$20) monthly, the company may at its option terminate the contract by payment in cash of the then present value of the portion of the paid-up annuity benefit, calculated on the basis of the mortality table, if any, and interest rate specified in the contract for determining the paid-up annuity benefit, and by this payment shall be relieved of any further obligation under the contract.

(d) The minimum values as specified in subsections (e), (f), (g), (h) and (j), of any paid-up annuity, cash surrender or death benefits available under an annuity contract shall be based upon minimum nonforfeiture amounts as defined in this section.

(1) With respect to contracts providing for flexible considerations, the minimum nonforfeiture amount at any time at or prior to the commencement of any annuity payments shall be equal to an accumulation up to such time at a rate of interest of three per centum (3%) per annum of percentages of the net considerations (as hereinafter defined) paid prior to such time, decreased by the sum of:

(A) any prior withdrawals from or partial surrenders of the contract accumulated at a rate of interest of three per centum (3%) per annum; and

(B) the amount of any indebtedness to the company on the contract, including interest due and accrued, and increased by any existing additional amounts credited by the company to the contract.

The net considerations for a given contract year used to define the minimum nonforfeiture amount shall be an amount not less than zero and shall be equal to the corresponding gross considerations credited to the contract during that contract year less an annual contract charge of thirty dollars (\$30) and less a collection charge of one dollar and twenty-five cents (\$1.25) per consideration credited to the contract during that contract year. The percentages of net considerations shall be sixty-five per centum (65%) of the net considerations for the first contract year and eighty-seven and one-half per centum (87.5%) of the net considerations for the second and later contract years. Notwithstanding the provisions of the preceding sentence, the percentage shall be sixty-five per centum (65%) of the portion of the total net consideration for any renewal contract year which exceeds by not more than two times the sum of those portions of the net considerations in all prior contract years for which the percentage was sixty-five per centum (65%).

(2) With respect to contracts providing for fixed scheduled considerations, minimum nonforfeiture amounts shall be calculated on the assumption that considerations are paid annually in advance and shall be defined as for contracts with flexible considerations which are paid annually with two exceptions:

(A) The portion of the net consideration for the first contract year to be accumulated shall be sum of sixty-five per centum (65%) of the net consideration for the first contract year plus twenty-two and one-half per centum (22.5%) of the excess of the net consideration for the first contract year over the lesser of the net considerations for the second and third contract years.

(B) The annual contract charge shall be the lesser of (i) thirty dollars (\$30) or (ii) ten per centum (10%) of the gross annual considerations.

(3) With respect to contracts providing for a single consideration, minimum amount shall be defined as for contracts with flexible considerations except that the percentage of net consideration used to determine the minimum nonforfeiture amount shall be equal to ninety per centum (90%) and the net consideration shall be the gross consideration less a contract charge of seventy-five dollars (\$75).

(d.1) In the case of contracts issued on or after January 1, 2006, and in the case of any class of annuity contracts issued before January 1, 2006, as to which the issuing company has filed with the Insurance Department a notice of election of the applicability of this section, the minimum values as specified in subsections (e), (f), (g), (h) and (j) of any paid-up annuity, cash surrender or death benefits available under an annuity contract shall be based upon minimum nonforfeiture amounts set forth in this section.

(1) The minimum nonforfeiture amount at any time at or prior to the commencement of any annuity payments shall be equal to an accumulation up to such time at rates of interest as indicated in paragraph (3) of the net considerations, as hereinafter defined, paid prior to such time, decreased by the sum of:

(A) Any prior withdrawals from or partial surrenders of the contract accumulated at rates of interest as indicated in paragraph (3); and

(B) An annual contract charge of up to fifty dollars (\$50), accumulated at rates of interest as indicated in paragraph (3);

(C) Any premium tax paid by the company for the contract, accumulated at rates of interest as indicated in paragraph (3); and

(D) The amount of any indebtedness to the company on the contract, including interest due and accrued.

(2) The net consideration for a given contract year used to define the minimum nonforfeiture amount shall be an amount equal to eighty-seven and one-half per centum (87.5%) of the gross consideration credited to the contract during that contract year.

(3) The interest rate used in determining minimum nonforfeiture amounts shall be an annual rate of interest determined as the lesser of three per centum (3%) per annum and the following, which shall be specified in the contract if the interest rate will be reset:

(A) The five-year Constant Maturity Treasury Rate reported by the Federal Reserve as of a date, or average over a period, rounded to the nearest one-twentieth of one per centum (.05%) specified in the contract

no longer than fifteen (15) months prior to the contract issue date or redetermination date under subparagraph (D) of paragraph (3);

(B) Reduced by one hundred twenty-five (125) basis points;

(C) Where the resulting interest rate is not less than one per centum (1%); and

(D) The interest rate shall apply for an initial period and may be redetermined for additional periods. The redetermination date, basis and period, if any, shall be stated in the contract. The basis is the date or average over a specified period that produces the value of the five-year Constant Maturity Treasury Rate to be used at each redetermination date.

(4) During the period or term that a contract provides substantive participation in an equity index benefit, it may increase the reduction described in paragraph (3)(B) by up to an additional one hundred (100) basis points to reflect the value of the equity index benefit. The present value at the contract issue date, and at each redetermination date thereafter, of the additional reduction shall not exceed the market value of the benefit. The commissioner may require a demonstration that the present value of the additional reduction does not exceed the market value of the benefit. Lacking such a demonstration that is acceptable to the commissioner, the commissioner may disallow or limit the additional reduction.

(5) The commissioner may adopt rules to implement the provisions of paragraph (4) and to provide for further adjustments to the calculation of minimum nonforfeiture amounts for contracts that provide substantive participation in an equity index benefit and for other contracts that the commissioner determines adjustments are justified.

(e) Any paid-up annuity benefit available under a contract shall be such that its present value on the date of annuity payments are to commence is at least equal to the minimum nonforfeiture amount on that date. Such present value shall be computed using the mortality table, if any, and the interest rate specified in the contract for determining the minimum paid-up benefits guaranteed in the contract.

(f) For contracts which provide cash surrender benefits, such cash surrender benefits available prior to maturity shall not be less than the present value as of the date of surrender of that portion of the maturity value of the paid-up annuity benefit which would be provided under the contract at maturity arising from considerations paid prior to the time of cash surrender reduced by the amount appropriate to reflect any prior withdrawals from or partial surrenders of the contract, such present value being calculated on the basis of an interest rate not more than one per centum (1%) higher than the interest rate specified in the contract for accumulating the net considerations to determine such maturity value, decreased by the amount of any indebtedness to the company on the contract, including interest due and accrued, and increased by any existing additional amounts credited by the company to the contract. In no event shall any cash surrender benefit be less

than the minimum nonforfeiture amount at that time. The death benefit under such contracts shall be at least equal to the cash surrender benefit.

(g) For contracts which do not provide cash surrender benefits, the present value of any paid-up annuity benefit available as a nonforfeiture option at any time prior to maturity shall not be less than the present value of that portion of the maturity value of the paid-up annuity benefit provided under the contract arising from considerations paid prior to the time the contract is surrendered in exchange for, or changed to, a deferred paid-up annuity, such present value being calculated for the period prior to that maturity date on the basis of the interest rate specified in the contract for accumulating the net considerations to determine such maturity value, and increased by any existing additional amount credited by the company to the contract. For contracts which do not provide any death benefits prior to the commencement of any annuity payments, such present values shall be calculated on the basis of such interest rate and the mortality table specified in the contract for determining the maturity value of the paid-up annuity benefit. However, in no event shall the present value of the paid-up annuity benefit be less than the minimum nonforfeiture amount at that time.

(h) For the purpose of determining the benefits calculated under subsections (f) and (g) in the case of annuity contracts under which an election may be made to have annuity payments commence at optional maturity dates, the maturity date shall be deemed to be the latest date for which election shall be permitted by the contract, but shall not be deemed to be later than the anniversary of the contract next following the annuitant's seventieth birthday or the tenth anniversary of the contract, whichever is later.

(i) Any contract which does not provide cash surrender benefits or does not provide death benefits at least equal to the minimum nonforfeiture amount prior to the commencement of any annuity payments shall include a statement in a prominent place in the contract that such benefits are not provided.

(j) Any paid-up annuity, cash surrender or death benefits available at any time, other than on the contract anniversary under any contract with fixed scheduled considerations, shall be calculated with allowance for the lapse of time and the payment of any scheduled considerations beyond the beginning of the contract year in which cessation of payment of considerations under the contract occurs.

(k) For any contract, which provides, within the same contract by rider or supplemental contract provision, both annuity benefits and life insurance benefits that are in excess of the greater of cash surrender benefits or a return of the gross considerations with interest, the minimum nonforfeiture benefits shall be equal to the sum of the minimum nonforfeiture benefits for the annuity portion and the minimum nonforfeiture benefits, if any, for the life insurance portion computed as if each portion were a separate contract. Notwithstanding the provisions of subsections (e), (f), (g), (h) and (j),

additional benefits payable (i) in the event of total and permanent disability, (ii) as reversionary annuity or deferred reversionary annuity benefits, or (iii) as other policy benefits additional to life insurance, endowment and annuity benefits, and considerations for all such additional benefits, shall be disregarded in ascertaining the minimum nonforfeiture amounts, paid-up annuity, cash surrender and death benefits that may be required by this section. The inclusion of such additional benefits shall not be required in any paid-up benefits, unless such additional benefits separately would require minimum nonforfeiture amounts, paid-up annuity, cash surrender and death benefits.

(l) After the effective date of this section, any company may file with the commissioner a written notice of its election to comply with the provisions of this section after a specified date before the second anniversary of the effective date of this section. After the filing of such notice, then upon such specified date, which shall be the operative date of this section for such company, this section shall become operative with respect to annuity contracts, thereafter issued by such company. If a company makes no such election, the operative date of this section for such company shall be the second anniversary of the effective date of this section.

(m) Notwithstanding the provisions of subsection (d) *and except as provided under subsections (c.1) and (d.1)*, for any contract issued on or after July 1, 2002, and before January 1, [2005] 2006, the interest rate at which minimum nonforfeiture amounts, partial withdrawals and partial surrenders shall be accumulated shall be one and one-half per centum (1.5%) per annum.

Section 5. Section 518C(a)(11)(ii) of the act, added December 22, 1989 (P.L.755, No.106), is amended to read:

Section 518C. Eligible Investments.—(a) Every domestic stock fire, stock marine or stock fire and marine insurance company shall invest and keep invested all its funds in sound investments enumerated below, except such cash as may be required in the transaction of its business. Such investments shall include:

* * *

(11) Lending of securities, repurchase agreements and reverse repurchase agreements.

* * *

(ii) Lending of securities, repurchase agreements and reverse repurchase agreements transactions are authorized on the following conditions:

(A) The agreement for each transaction or the master agreement for a series of transactions shall be reduced to writing.

(B) Securities acquired by a company owned subject to reacquisition pursuant to an outstanding repurchase agreement may not be sold pursuant to a reverse repurchase agreement nor lent pursuant to a lending of securities agreement. Consideration, or collateral, received from a reverse repurchase agreement or lending of securities agreement may be used to acquire

securities which are equivalent or similar to the securities transferred pursuant to such repurchase agreement or lending of securities agreement; however, such acquired securities may not be sold pursuant to a reverse repurchase agreement nor lent pursuant to a lending of securities agreement.

(C) A company is limited to no more than [**two percentum (2%)**] **five percentum (5%)** of its admitted assets being subject to lending of securities, repurchase agreements or reverse repurchase agreements transactions outstanding with any one business entity under this section.

(D) A company may engage in lending its securities or repurchase or reverse repurchase agreements up to forty percentum (40%) of its admitted assets: Provided, however, That such transactions are fully collateralized.

(E) The Insurance Commissioner may promulgate reasonable rules and regulations for investments and transactions under this section to include, but not be limited to, rules and regulations which impose financial solvency standards, valuation standards and reporting requirements.

* * *

Section 6. Section 809 of the act is repealed.

Section 7. The definitions of "long-term care insurance" and "prepaid home health or personal care service policy" in section 1103 of the act, amended December 20, 2000 (P.L.967, No.132), are amended to read:

Section 1103. Definitions.—As used in this article, the following words and phrases shall have the meanings given to them in this section:

* * *

"Long-term care insurance." Any insurance policy or rider advertised, marketed, offered or designed to provide coverage [**for not less than twelve (12) consecutive months**] for each covered person on an expense-incurred, indemnity, prepaid or other basis for functionally necessary or medically necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance or personal care services provided in a setting other than an acute care unit of a hospital. The term includes a policy, rider or prepaid home health or personal care service policy which provides for payment of benefits based upon cognitive impairment or the loss of functional capacity. The term includes group and individual policies or riders issued by insurers, fraternal benefit societies, nonprofit health, hospital and medical service corporations, health maintenance organizations or similar organizations. The term does not include any insurance policy which is offered primarily to provide basic Medicare supplement coverage, basic hospital expense coverage, basic medical-surgical expense coverage, hospital confinement indemnity coverage, major medical expense coverage, disability income protection coverage, accident-only coverage, specified disease or specified accident coverage or limited benefit health coverage.

* * *

"Prepaid home health or personal care service policy." A policy, contract, subscriber agreement, rider or endorsement delivered or issued for delivery in this Commonwealth to provide home health or personal care services

[whereby coverage for home health or personal care services is conditioned upon certification of either cognitive impairment or the inability to perform activities of daily living]. This term [shall not include home] *excludes*:

(1) *Home* health or personal care services administered through a local area agency on aging or as a government service or provided by a nonprofit association, organization or corporation other than a nonprofit health, hospital or medical service corporation.

(2) *A contract or arrangement which meets all of the following criteria:*

(i) *Provides for services upon demand without regard to medical condition.*

(ii) *Does not seek or utilize any form of medical questionnaire or information, written or verbal, for assessment of health condition for any reason.*

(iii) *Provides for cost of services that is not based on any estimate or contingency of actual or anticipated use of services.*

(iv) *Does not contain any waiting period.*

(v) *Contains the following notice, verbatim in boldface, 18-point type on the face sheet to the contract:*

This contract is not insurance; it is not to be used as a substitute or replacement for insurance; it provides none of the safeguards of insurance regulated by the Pennsylvania Insurance Department, such as a guarantee that all benefits or services will be fully funded. In the event of insolvency, there is no Pennsylvania Life and Health Insurance Guaranty Association protection.

Under Pennsylvania law, the service contract provider may not seek or use any medical information to determine your eligibility for purchasing this contract or to set rates under the contract. Further, the service contract provider must provide you with all contracted services upon demand, without regard to your medical condition or medical necessity.

Any attempted or actual solicitation or sale of this product as a substitute for or replacement of a long-term care policy is a violation of Pennsylvania insurance laws, reportable to the Insurance Department of this Commonwealth.

Section 8. The act is amended by adding a section to read:

Section 1104.1. Prepaid Home Health or Personal Care Service Policies; Exempt Entities.—Any entity that solicits or provides prepaid home health or personal care service policies claiming to be exempt under this article shall, upon demand by the department, provide all books and records which, in the department’s sole judgment, are necessary for the department to determine the entity’s status as an exempt entity.

Section 9. Section 1105(b) of the act, added December 15, 1992 (P.L.1129, No.148), is amended to read:

Section 1105. Disclosure and Performance Standards for Long-term Care Insurance.—* * *

(b) No long-term care insurance policy may:

(1) be canceled, nonrenewed or otherwise terminated on the grounds of the age or the deterioration of the mental or physical health of the insured individual or certificate holder;

(2) contain a provision establishing a new waiting period, in the event existing coverage is converted to or replaced by a new or other form within the same company, except with respect to an increase in benefits voluntarily selected by the insured individual or group policyholder; **[or]**

(3) contain coverage for skilled nursing care only or contain coverage that provides significantly more skilled care than coverage for lower levels of care[.]; *or*

(4) *be marketed, offered or designed to provide coverage for less than twelve consecutive months.*

* * *

Section 10. This act shall take effect as follows:

(1) The following provisions shall take effect in 45 days:

(i) The amendment of section 1103 of the act.

(ii) The addition of section 1104.1 of the act.

(iii) The amendment of section 1105(b) of the act.

(2) The remainder of this act shall take effect immediately.

APPROVED—The 30th day of November, A.D. 2004.

EDWARD G. RENDELL