

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

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# HOUSE BILL

## No. 2178

Session of  
2005

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INTRODUCED BY CRAHALLA, BELFANTI, FICHTER, ARMSTRONG, BEBKO-JONES, BEYER, CALTAGIRONE, COHEN, DeLUCA, FRANKEL, GINGRICH, GRUCELA, HARHART, LEDERER, MARKOSEK, MUSTIO, O'NEILL, PICKETT, PYLE, REICHLEY, SCHRODER, SHANER, SOLOBAY, E. Z. TAYLOR, TIGUE, WALKO, WATSON, WOJNAROSKI, YOUNGBLOOD, RAPP AND MELIO, NOVEMBER 1, 2005

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AS AMENDED ON THIRD CONSIDERATION, HOUSE OF REPRESENTATIVES,  
JUNE 30, 2006

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## AN ACT

1 Amending the act of May 17, 1921 (P.L.682, No.284), entitled "An  
2 act relating to insurance; amending, revising, and  
3 consolidating the law providing for the incorporation of  
4 insurance companies, and the regulation, supervision, and  
5 protection of home and foreign insurance companies, Lloyds  
6 associations, reciprocal and inter-insurance exchanges, and  
7 fire insurance rating bureaus, and the regulation and  
8 supervision of insurance carried by such companies,  
9 associations, and exchanges, including insurance carried by  
10 the State Workmen's Insurance Fund; providing penalties; and  
11 repealing existing laws," FURTHER PROVIDING FOR NOTICE OF <—  
12 POLICYHOLDER'S RIGHT TO EXAMINE LIFE AND ENDOWMENT INSURANCE  
13 POLICIES AND FOR NOTICE OF CONTRACTHOLDERS'S RIGHT TO EXAMINE  
14 ANNUITY OR PURE ENDOWMENT CONTRACTS; PROVIDING FOR THE  
15 PROTECTION OF INSURANCE CONSUMERS IN ANNUITY TRANSACTIONS;  
16 regulating the solicitation of insurance ~~to certain elders;~~ <—  
17 ~~and prescribing penalties.~~ PRESCRIBING PENALTIES; AND <—  
18 PROVIDING FOR THE RETROACTIVE DENIAL OF REIMBURSEMENT OF  
19 PAYMENTS TO HEALTH CARE PROVIDERS BY INSURERS.

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

22 ~~Section 1. The act of May 17, 1921 (P.L.682, No.284), known~~ <—  
23 ~~as The Insurance Company Law of 1921, is amended by adding an~~  
24 ~~article to read:~~

1       SECTION 1.   SECTION 410D AND 410E OF THE ACT OF MAY 17, 1921   <—  
2   (P.L.682, NO.284), KNOWN AS THE INSURANCE COMPANY LAW OF 1921,  
3   AMENDED DECEMBER 18, 1996 (P.L.1003, NO.154), ARE AMENDED TO  
4   READ:

5       SECTION 410D.   NOTICE OF POLICYHOLDER'S RIGHT TO EXAMINE LIFE  
6   AND ENDOWMENT INSURANCE POLICIES.--(A)   (1)   EXCEPT AS PROVIDED  
7   IN PARAGRAPHS (2) AND (3), INDIVIDUAL FIXED DOLLAR LIFE  
8   INSURANCE OR ENDOWMENT INSURANCE POLICIES SHALL NOT BE DELIVERED  
9   IN THE COMMONWEALTH OF PENNSYLVANIA UNLESS THEY SHALL HAVE  
10   PROMINENTLY PRINTED ON THE FIRST PAGE OF SUCH POLICY OR ATTACHED  
11   THERE TO A NOTICE STATING IN SUBSTANCE THAT THE POLICYHOLDER  
12   SHALL BE PERMITTED TO RETURN THE POLICY WITHIN AT LEAST [TEN  
13   (10)] FORTY-FIVE (45) DAYS OF ITS DELIVERY AND TO HAVE THE  
14   PREMIUM PAID REFUNDED IF AFTER EXAMINATION OF THE POLICY, THE  
15   POLICYHOLDER IS NOT SATISFIED WITH IT FOR ANY REASON.

16       (2)   INDIVIDUAL FIXED DOLLAR LIFE INSURANCE OR ENDOWMENT  
17   INSURANCE POLICIES WHICH ARE OFFERED AS REPLACEMENTS FOR AN  
18   EXISTING LIFE INSURANCE POLICY OR ANNUITY CONTRACT WITH THE SAME  
19   INSURER OR INSURER GROUP SHALL NOT BE DELIVERED IN THE  
20   COMMONWEALTH OF PENNSYLVANIA UNLESS THEY SHALL HAVE PROMINENTLY  
21   PRINTED ON THE FIRST PAGE OF SUCH POLICY OR ATTACHED THERETO A  
22   NOTICE STATING IN SUBSTANCE THAT THE POLICYHOLDER SHALL BE  
23   PERMITTED TO RETURN THE POLICY WITHIN AT LEAST FORTY-FIVE (45)  
24   DAYS OF ITS DELIVERY AND TO HAVE THE PREMIUM REFUNDED IF AFTER  
25   EXAMINATION OF THE POLICY THE POLICYHOLDER IS NOT SATISFIED WITH  
26   IT FOR ANY REASON.

27       (3)   INDIVIDUAL FIXED DOLLAR LIFE INSURANCE OR ENDOWMENT  
28   INSURANCE POLICIES WHICH ARE OFFERED AS REPLACEMENTS FOR AN  
29   EXISTING LIFE INSURANCE POLICY OR ANNUITY CONTRACT WITH AN  
30   INSURER OR INSURER GROUP OTHER THAN THE ONE WHICH ISSUED THE

1 ORIGINAL POLICY OR CONTRACT SHALL NOT BE DELIVERED IN THE  
2 COMMONWEALTH OF PENNSYLVANIA UNLESS THEY SHALL HAVE PROMINENTLY  
3 PRINTED ON THE FIRST PAGE OF SUCH POLICY OR ATTACHED THERETO A  
4 NOTICE STATING IN SUBSTANCE THAT THE POLICYHOLDER SHALL BE  
5 PERMITTED TO RETURN THE POLICY WITHIN AT LEAST [TWENTY (20)]  
6 FORTY-FIVE (45) DAYS OF ITS DELIVERY AND TO HAVE THE PREMIUM  
7 REFUNDED IF AFTER EXAMINATION OF THE POLICY THE POLICYHOLDER IS  
8 NOT SATISFIED WITH IT FOR ANY REASON.

9 (B) (1) EXCEPT AS PROVIDED IN PARAGRAPHS (2) AND (3),  
10 INDIVIDUAL VARIABLE LIFE POLICIES SHALL NOT BE DELIVERED IN THE  
11 COMMONWEALTH OF PENNSYLVANIA UNLESS THEY SHALL HAVE PROMINENTLY  
12 PRINTED ON THE FIRST PAGE OF SUCH POLICY OR ATTACHED THERETO A  
13 NOTICE STATING IN SUBSTANCE THAT THE POLICYHOLDER SHALL BE  
14 PERMITTED TO RETURN THE POLICY WITHIN AT LEAST [TEN (10)] FORTY-  
15 FIVE (45) DAYS OF ITS DELIVERY IF AFTER EXAMINATION OF THE  
16 POLICY THE POLICYHOLDER IS NOT SATISFIED WITH IT FOR ANY REASON,  
17 AND THE NOTICE SHALL STATE THAT IN SUCH EVENT THE INSURER SHALL  
18 PAY TO THE POLICYHOLDER AN AMOUNT EQUAL TO ANY OF THE FOLLOWING:

19 (I) THE STIPULATED PAYMENT OR PREMIUM PAID;

20 (II) THE DIFFERENCE BETWEEN:

21 (A) THE PREMIUMS PAID, INCLUDING ANY POLICY FEES OR OTHER  
22 CHARGES AND THE AMOUNTS, IF ANY, ALLOCATED TO ANY SEPARATE  
23 ACCOUNTS UNDER THE POLICY; AND

24 (B) THE CASH VALUE OF THE POLICY OR, IF THE POLICY DOES NOT  
25 HAVE A CASH VALUE, THE RESERVE FOR THE POLICY ON THE DATE OF  
26 SURRENDER ATTRIBUTABLE TO THE AMOUNTS SO ALLOCATED; OR

27 (III) THE GREATER OF SUBPARAGRAPH (I) OR (II).

28 (2) INDIVIDUAL VARIABLE LIFE INSURANCE POLICIES WHICH ARE  
29 OFFERED AS REPLACEMENTS FOR AN EXISTING LIFE INSURANCE POLICY OR  
30 ANNUITY CONTRACT WITH THE SAME INSURER OR INSURER GROUP SHALL

1 NOT BE DELIVERED IN THE COMMONWEALTH OF PENNSYLVANIA UNLESS THEY  
2 SHALL HAVE PROMINENTLY PRINTED ON THE FIRST PAGE OF SUCH POLICY  
3 OR ATTACHED THERETO A NOTICE STATING IN SUBSTANCE THAT THE  
4 POLICYHOLDER SHALL BE PERMITTED TO RETURN THE POLICY WITHIN AT  
5 LEAST FORTY-FIVE (45) DAYS OF ITS DELIVERY IF AFTER EXAMINATION  
6 OF THE POLICY THE POLICYHOLDER IS NOT SATISFIED WITH IT FOR ANY  
7 REASON, AND THE NOTICE SHALL STATE THAT IN SUCH EVENT THE  
8 INSURER SHALL PAY TO THE POLICYHOLDER AN AMOUNT EQUAL TO ANY OF  
9 THE FOLLOWING:

10 (I) THE STIPULATED PAYMENT OR PREMIUM PAID;

11 (II) THE DIFFERENCE BETWEEN:

12 (A) THE PREMIUMS PAID, INCLUDING ANY POLICY FEES OR OTHER  
13 CHARGES AND THE AMOUNTS, IF ANY, ALLOCATED TO ANY SEPARATE  
14 ACCOUNTS UNDER THE POLICY; AND

15 (B) THE CASH VALUE OF THE POLICY OR, IF THE POLICY DOES NOT  
16 HAVE A CASH VALUE, THE RESERVE FOR THE POLICY ON THE DATE OF  
17 SURRENDER ATTRIBUTABLE TO THE AMOUNTS SO ALLOCATED; OR

18 (III) THE GREATER OF SUBPARAGRAPH (I) OR (II).

19 (3) INDIVIDUAL VARIABLE LIFE INSURANCE POLICIES WHICH ARE  
20 OFFERED AS REPLACEMENTS FOR AN EXISTING LIFE INSURANCE POLICY OR  
21 ANNUITY CONTRACT WITH AN INSURER OR INSURER GROUP OTHER THAN THE  
22 ONE WHICH ISSUED THE ORIGINAL POLICY OR CONTRACT SHALL NOT BE  
23 DELIVERED IN THE COMMONWEALTH OF PENNSYLVANIA UNLESS THEY SHALL  
24 HAVE PROMINENTLY PRINTED ON THE FIRST PAGE OF SUCH POLICY OR  
25 ATTACHED THERETO A NOTICE STATING IN SUBSTANCE THAT THE  
26 POLICYHOLDER SHALL BE PERMITTED TO RETURN THE POLICY WITHIN AT  
27 LEAST [TWENTY (20)] FORTY-FIVE (45) DAYS OF ITS DELIVERY IF  
28 AFTER EXAMINATION OF THE POLICY THE POLICYHOLDER IS NOT  
29 SATISFIED WITH IT FOR ANY REASON, AND THE NOTICE SHALL STATE  
30 THAT IN SUCH EVENT THE INSURER SHALL PAY TO THE POLICYHOLDER AN

1 AMOUNT EQUAL TO ANY OF THE FOLLOWING:

2 (I) THE STIPULATED PAYMENT OR PREMIUM PAID;

3 (II) THE DIFFERENCE BETWEEN:

4 (A) THE PREMIUMS PAID, INCLUDING ANY POLICY FEES OR OTHER  
5 CHARGES AND THE AMOUNTS, IF ANY, ALLOCATED TO ANY SEPARATE  
6 ACCOUNTS UNDER THE POLICY; AND

7 (B) THE CASH VALUE OF THE POLICY OR, IF THE POLICY DOES NOT  
8 HAVE A CASH VALUE, THE RESERVE FOR THE POLICY ON THE DATE OF  
9 SURRENDER ATTRIBUTABLE TO THE AMOUNTS SO ALLOCATED; OR

10 (III) THE GREATER OF SUBPARAGRAPH (I) OR (II).

11 SECTION 410E. NOTICE OF CONTRACTHOLDER'S RIGHT TO EXAMINE  
12 ANNUITY OR PURE ENDOWMENT CONTRACTS.--(A) (1) EXCEPT AS  
13 PROVIDED IN PARAGRAPHS (2) AND (3), INDIVIDUAL FIXED DOLLAR  
14 ANNUITY OR PURE ENDOWMENT CONTRACTS SHALL NOT BE ENTERED INTO IN  
15 THE COMMONWEALTH OF PENNSYLVANIA UNLESS THEY SHALL HAVE  
16 PROMINENTLY PRINTED ON THE FIRST PAGE OF SUCH CONTRACT OR  
17 ATTACHED THERETO A NOTICE STATING IN SUBSTANCE THAT THE  
18 CONTRACTHOLDER SHALL BE PERMITTED TO RETURN THE CONTRACT WITHIN  
19 AT LEAST [TEN (10)] FORTY-FIVE DAYS OF ITS DELIVERY AND TO HAVE  
20 THE STIPULATED PAYMENT OR PREMIUM PAID REFUNDED IF AFTER  
21 EXAMINATION OF THE CONTRACT, THE CONTRACTHOLDER IS NOT SATISFIED  
22 WITH IT FOR ANY REASON.

23 (2) INDIVIDUAL FIXED DOLLAR ANNUITY CONTRACTS WHICH ARE  
24 OFFERED AS REPLACEMENTS FOR AN EXISTING ANNUITY CONTRACT OR LIFE  
25 INSURANCE POLICY WITH THE SAME INSURER OR INSURER GROUP SHALL  
26 NOT BE ENTERED INTO IN THE COMMONWEALTH OF PENNSYLVANIA UNLESS  
27 THEY SHALL HAVE PROMINENTLY PRINTED ON THE FIRST PAGE OF SUCH  
28 CONTRACT OR ATTACHED THERETO A NOTICE STATING IN SUBSTANCE THAT  
29 THE CONTRACTHOLDER SHALL BE PERMITTED TO RETURN THE CONTRACT  
30 WITHIN AT LEAST FORTY-FIVE (45) DAYS OF ITS DELIVERY AND TO HAVE

1 THE PREMIUM REFUNDED IF AFTER EXAMINATION OF THE CONTRACT THE  
2 CONTRACTHOLDER IS NOT SATISFIED WITH IT FOR ANY REASON.

3 (3) INDIVIDUAL FIXED DOLLAR ANNUITY CONTRACTS WHICH ARE  
4 OFFERED AS REPLACEMENTS FOR AN EXISTING ANNUITY CONTRACT OR LIFE  
5 INSURANCE POLICY WITH AN INSURER OR INSURER GROUP OTHER THAN THE  
6 ONE WHICH ISSUED THE ORIGINAL CONTRACT OR POLICY SHALL NOT BE  
7 ENTERED INTO IN THE COMMONWEALTH OF PENNSYLVANIA UNLESS THEY  
8 SHALL HAVE PROMINENTLY PRINTED ON THE FIRST PAGE OF SUCH  
9 CONTRACT OR ATTACHED THERETO A NOTICE STATING IN SUBSTANCE THAT  
10 THE CONTRACTHOLDER SHALL BE PERMITTED TO RETURN THE CONTRACT  
11 WITHIN AT LEAST [TWENTY (20)] FORTY-FIVE (45) DAYS OF ITS  
12 DELIVERY AND TO HAVE THE PREMIUM REFUNDED IF AFTER EXAMINATION  
13 OF THE CONTRACT THE CONTRACTHOLDER IS NOT SATISFIED WITH IT FOR  
14 ANY REASON.

15 (B) (1) EXCEPT AS PROVIDED IN PARAGRAPHS (2) AND (3),  
16 INDIVIDUAL VARIABLE ANNUITY CONTRACTS SHALL NOT BE ENTERED INTO  
17 IN THE COMMONWEALTH OF PENNSYLVANIA UNLESS THEY SHALL HAVE  
18 PROMINENTLY PRINTED ON THE FIRST PAGE OF SUCH CONTRACT OR  
19 ATTACHED THERETO A NOTICE STATING IN SUBSTANCE THAT THE  
20 CONTRACTHOLDER SHALL BE PERMITTED TO RETURN THE CONTRACT WITHIN  
21 AT LEAST [TEN (10)] FORTY-FIVE (45) DAYS OF ITS DELIVERY IF  
22 AFTER EXAMINATION OF THE CONTRACT THE CONTRACTHOLDER IS NOT  
23 SATISFIED WITH IT FOR ANY REASON. THE NOTICE SHALL STATE THAT IN  
24 SUCH EVENT THE INSURER SHALL PAY TO THE CONTRACTHOLDER AN AMOUNT  
25 EQUAL TO ANY OF THE FOLLOWING:

26 (I) THE STIPULATED PAYMENT OR PREMIUMS PAID;

27 (II) THE DIFFERENCE BETWEEN:

28 (A) THE PREMIUMS PAID, INCLUDING ANY CONTRACT FEES OR OTHER  
29 CHARGES AND THE AMOUNTS, IF ANY, ALLOCATED TO ANY SEPARATE  
30 ACCOUNTS UNDER THE CONTRACT; AND

(B) THE CASH VALUE OF THE CONTRACT OR, IF THE CONTRACT DOES NOT HAVE A CASH VALUE, THE RESERVE FOR THE CONTRACT ON THE DATE OF SURRENDER ATTRIBUTABLE TO THE AMOUNTS SO ALLOCATED; OR

(III) THE GREATER OF SUBPARAGRAPHS (I) OR (II).

(2) INDIVIDUAL VARIABLE ANNUITY CONTRACTS WHICH ARE OFFERED AS REPLACEMENTS FOR AN EXISTING ANNUITY CONTRACT OR LIFE

INSURANCE POLICY WITH THE SAME INSURER OR INSURER GROUP SHALL NOT BE ENTERED INTO IN THE COMMONWEALTH OF PENNSYLVANIA UNLESS

THEY SHALL HAVE PROMINENTLY PRINTED ON THE FIRST PAGE OF SUCH

CONTRACT OR ATTACHED THERETO A NOTICE STATING IN SUBSTANCE THAT

THE CONTRACTHOLDER SHALL BE PERMITTED TO RETURN THE CONTRACT

WITHIN AT LEAST FORTY-FIVE (45) DAYS OF ITS DELIVERY IF AFTER

EXAMINATION OF THE CONTRACT THE CONTRACTHOLDER IS NOT SATISFIED

WITH IT FOR ANY REASON, AND IN SUCH EVENT THE NOTICE SHALL STATE

THAT IN SUCH EVENT THE INSURER SHALL PAY TO THE CONTRACTHOLDER

AN AMOUNT EQUAL TO ANY OF THE FOLLOWING:

(I) THE STIPULATED PAYMENT OR PREMIUM PAID;

(II) THE DIFFERENCE BETWEEN:

(A) THE PREMIUMS PAID, INCLUDING ANY CONTRACT FEES OR OTHER CHARGES AND THE AMOUNTS, IF ANY, ALLOCATED TO ANY SEPARATE

ACCOUNTS UNDER THE CONTRACT; AND

(B) THE CASH VALUE OF THE CONTRACT OR, IF THE CONTRACT DOES NOT HAVE A CASH VALUE, THE RESERVE FOR THE CONTRACT ON THE DATE

OF SURRENDER ATTRIBUTABLE TO THE AMOUNTS SO ALLOCATED; OR

(III) THE GREATER OF SUBPARAGRAPH (I) OR (II).

(3) INDIVIDUAL VARIABLE ANNUITY CONTRACTS WHICH ARE OFFERED AS REPLACEMENTS FOR AN EXISTING ANNUITY CONTRACT OR LIFE

INSURANCE POLICY WITH AN INSURER OR INSURER GROUP OTHER THAN THE ONE WHICH ISSUED THE ORIGINAL CONTRACT OR POLICY SHALL NOT BE

ENTERED INTO IN THE COMMONWEALTH OF PENNSYLVANIA UNLESS THEY

1 SHALL HAVE PROMINENTLY PRINTED ON THE FIRST PAGE OF SUCH  
2 CONTRACT OR ATTACHED THERETO A NOTICE STATING IN SUBSTANCE THAT  
3 THE CONTRACTHOLDER SHALL BE PERMITTED TO RETURN THE CONTRACT  
4 WITHIN AT LEAST [TWENTY (20)] FORTY-FIVE (45) DAYS OF ITS  
5 DELIVERY IF AFTER EXAMINATION OF THE CONTRACT THE CONTRACTHOLDER  
6 IS NOT SATISFIED WITH IT FOR ANY REASON, AND IN SUCH EVENT THE  
7 NOTICE SHALL STATE THAT IN SUCH EVENT THE INSURER SHALL PAY TO  
8 THE CONTRACTHOLDER AN AMOUNT EQUAL TO ANY OF THE FOLLOWING:

9 (I) THE STIPULATED PAYMENT OR PREMIUM PAID;

10 (II) THE DIFFERENCE BETWEEN:

11 (A) THE PREMIUMS PAID, INCLUDING ANY CONTRACT FEES OR OTHER  
12 CHARGES AND THE AMOUNTS, IF ANY, ALLOCATED TO ANY SEPARATE  
13 ACCOUNTS UNDER THE CONTRACT; AND

14 (B) THE CASH VALUE OF THE CONTRACT OR, IF THE CONTRACT DOES  
15 NOT HAVE A CASH VALUE, THE RESERVE FOR THE CONTRACT ON THE DATE  
16 OF SURRENDER ATTRIBUTABLE TO THE AMOUNTS SO ALLOCATED; OR

17 (III) THE GREATER OF SUBPARAGRAPH (I) OR (II).

18 SECTION 2. THE ACT IS AMENDED BY ADDING ARTICLES TO READ:

19 ARTICLE IV-B

20 SUITABILITY OF ANNUITY TRANSACTIONS

21 SECTION 401-B. DEFINITIONS.

22 THE FOLLOWING WORDS AND PHRASES WHEN USED IN THIS ARTICLE  
23 SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS SECTION UNLESS THE  
24 CONTEXT CLEARLY INDICATES OTHERWISE:

25 "ANNUITY." A FIXED ANNUITY OR VARIABLE ANNUITY THAT IS  
26 INDIVIDUALLY SOLICITED, WHETHER THE PRODUCT IS CLASSIFIED AS AN  
27 INDIVIDUAL OR GROUP ANNUITY.

28 "COMMISSIONER." THE INSURANCE COMMISSIONER OF THE  
29 COMMONWEALTH.

30 "INSURANCE PRODUCER." A PERSON WHO SELLS, SOLICITS OR



1 NEGOTIATES CONTRACTS OF INSURANCE AS DEFINED IN SECTION 601-A OF  
2 THE ACT OF MAY 17, 1921 (P.L.789, NO.285), KNOWN AS THE  
3 INSURANCE DEPARTMENT ACT OF 1921.

4 "INSURER." A LIFE INSURANCE COMPANY LICENSED OR REQUIRED TO  
5 BE LICENSED UNDER SECTION 202 OR A FRATERNAL BENEFIT SOCIETY AS  
6 DEFINED IN SECTION 2403.

7 "MANAGING GENERAL AGENT." AS DEFINED IN SECTION 801 OF THE  
8 ACT OF MAY 17, 1921 (P.L.789, NO.285), KNOWN AS THE INSURANCE  
9 DEPARTMENT ACT OF 1921.

10 "RECOMMENDATION." ADVICE PROVIDED BY AN INSURANCE PRODUCER,  
11 OR AN INSURER WHERE NO PRODUCER IS INVOLVED, TO AN INDIVIDUAL  
12 CONSUMER THAT RESULTS IN A PURCHASE OR EXCHANGE OF AN ANNUITY IN  
13 ACCORDANCE WITH THAT ADVICE.

14 SECTION 402-B. APPLICABILITY AND SCOPE.

15 (A) GENERAL RULE.--THIS ARTICLE SHALL APPLY TO ANY  
16 RECOMMENDATION TO PURCHASE OR EXCHANGE AN ANNUITY MADE TO A  
17 CONSUMER BY AN INSURANCE PRODUCER, OR AN INSURER WHERE NO  
18 PRODUCER IS INVOLVED, THAT RESULTS IN THE PURCHASE OR EXCHANGE  
19 RECOMMENDED.

20 (B) EXCLUSIONS.--UNLESS OTHERWISE SPECIFICALLY INCLUDED,  
21 THIS ARTICLE SHALL NOT APPLY TO RECOMMENDATIONS INVOLVING THE  
22 FOLLOWING:

23 (1) DIRECT RESPONSE SOLICITATIONS WHERE THERE IS NO  
24 RECOMMENDATION BASED ON INFORMATION COLLECTED FROM THE  
25 CONSUMER PURSUANT TO THIS ARTICLE.

26 (2) ANNUITY CONTRACTS USED TO FUND:

27 (I) AN EMPLOYEE PENSION OR WELFARE BENEFIT PLAN THAT  
28 IS COVERED BY THE EMPLOYEE RETIREMENT INCOME SECURITY ACT  
29 OF 1974 (PUBLIC LAW 93-406, 88 STAT. 829).

30 (II) A PLAN DESCRIBED BY SECTIONS 401(A) OR (K),

1       403(B), 408(K) OR (P) OF THE INTERNAL REVENUE CODE OF  
2       1986 (PUBLIC LAW 99-514, 26 U.S.C. §§ 401(A) OR (K),  
3       403(B), 408(K) OR (P)), WHEN THE PLAN, FOR PURPOSES OF  
4       THE EMPLOYEE RETIREMENT AND INCOME SECURITY ACT OF 1974,  
5       IS ESTABLISHED OR MAINTAINED BY AN EMPLOYER.

6       (III) A GOVERNMENTAL OR CHURCH PLAN DEFINED IN  
7       SECTION 414 OF THE INTERNAL REVENUE CODE OF 1986 OR A  
8       DEFERRED COMPENSATION PLAN OF A STATE OR LOCAL GOVERNMENT  
9       OR TAX EXEMPT ORGANIZATION UNDER SECTION 457 OF THE  
10      INTERNAL REVENUE CODE OF 1986.

11      (IV) A NONQUALIFIED DEFERRED COMPENSATION  
12      ARRANGEMENT ESTABLISHED OR MAINTAINED BY AN EMPLOYER OR  
13      PLAN SPONSOR.

14      (V) SETTLEMENTS OF OR ASSUMPTIONS OF LIABILITIES  
15      ASSOCIATED WITH PERSONAL INJURY LITIGATION OR ANY DISPUTE  
16      OR CLAIM RESOLUTION PROCESS.

17      (VI) FORMAL PREPAID FUNERAL CONTRACTS.  
18      SECTION 403-B. DUTIES OF INSURERS AND INSURANCE PRODUCERS.

19      (A) GENERAL DUTIES.--IN MAKING A RECOMMENDATION TO A  
20      CONSUMER FOR THE PURCHASE OF AN ANNUITY OR THE EXCHANGE OF AN  
21      ANNUITY THAT RESULTS IN ANOTHER INSURANCE TRANSACTION OR SERIES  
22      OF INSURANCE TRANSACTIONS, THE INSURANCE PRODUCER, OR THE  
23      INSURER WHERE NO INSURANCE PRODUCER IS INVOLVED, SHALL HAVE  
24      REASONABLE GROUNDS FOR BELIEVING THAT THE RECOMMENDATION IS  
25      SUITABLE FOR THE CONSUMER ON THE BASIS OF THE FACTS DISCLOSED BY  
26      THE CONSUMER AS TO THE CONSUMER'S INVESTMENTS AND OTHER  
27      INSURANCE PRODUCTS AND AS TO THE CONSUMER'S FINANCIAL SITUATION  
28      AND NEEDS.

29      (B) CONSUMER INFORMATION.--PRIOR TO THE EXECUTION OF A  
30      PURCHASE OR EXCHANGE OF AN ANNUITY RESULTING FROM A

1 RECOMMENDATION, AN INSURANCE PRODUCER, OR AN INSURER WHERE NO  
2 INSURANCE PRODUCER IS INVOLVED, SHALL MAKE REASONABLE EFFORTS TO  
3 OBTAIN INFORMATION CONCERNING ALL OF THE FOLLOWING:

4 (1) THE CONSUMER'S FINANCIAL STATUS.

5 (2) THE CONSUMER'S TAX STATUS.

6 (3) THE CONSUMER'S INVESTMENT OBJECTIVES.

7 (4) OTHER INFORMATION USED OR CONSIDERED TO BE  
8 REASONABLE BY THE INSURANCE PRODUCER, OR THE INSURER WHERE NO  
9 INSURANCE PRODUCER IS INVOLVED, IN MAKING RECOMMENDATIONS TO  
10 THE CONSUMER.

11 (C) OBLIGATION LIMITS.--

12 (1) NEITHER AN INSURANCE PRODUCER NOR AN INSURER WHERE  
13 NO INSURANCE PRODUCER IS INVOLVED SHALL HAVE ANY OBLIGATION  
14 TO A CONSUMER UNDER SUBSECTION (A) RELATED TO ANY  
15 RECOMMENDATION THAT IS REASONABLE UNDER ALL THE CIRCUMSTANCES  
16 ACTUALLY KNOWN TO THE INSURER OR INSURANCE PRODUCER AT THE  
17 TIME OF THE RECOMMENDATION WHEN A CONSUMER:

18 (I) REFUSES TO PROVIDE RELEVANT INFORMATION  
19 REQUESTED BY THE INSURER OR INSURANCE PRODUCER.

20 (II) DECIDES TO ENTER INTO AN INSURANCE TRANSACTION  
21 THAT IS NOT BASED ON A RECOMMENDATION OF THE INSURER OR  
22 INSURANCE PRODUCER.

23 (III) FAILS TO PROVIDE COMPLETE OR ACCURATE  
24 INFORMATION.

25 (D) SUPERVISION OF RECOMMENDATIONS.--

26 (1) AN INSURER SHALL ASSURE THAT A SYSTEM TO SUPERVISE  
27 RECOMMENDATIONS THAT IS REASONABLY DESIGNED TO ACHIEVE  
28 COMPLIANCE WITH THIS ARTICLE IS ESTABLISHED AND MAINTAINED BY  
29 COMPLYING WITH PARAGRAPHS (3) AND (4), OR SHALL ESTABLISH AND  
30 MAINTAIN SUCH A SYSTEM THAT INCLUDES AT LEAST THE FOLLOWING:

1           (I) MAINTAINING WRITTEN PROCEDURES.

2           (II) CONDUCTING PERIODIC REVIEWS OF ITS RECORDS THAT  
3           ARE REASONABLY DESIGNED TO ASSIST IN DETECTING AND  
4           PREVENTING VIOLATIONS OF THIS ARTICLE.

5           (2) A MANAGING GENERAL AGENT SHALL ADOPT A SYSTEM  
6           ESTABLISHED BY AN INSURER TO SUPERVISE RECOMMENDATIONS OF ITS  
7           INSURANCE PRODUCERS THAT IS REASONABLY DESIGNED TO ACHIEVE  
8           COMPLIANCE WITH THIS ARTICLE, OR SHALL ESTABLISH AND MAINTAIN  
9           A SYSTEM THAT IS REASONABLY DESIGNED TO ACHIEVE COMPLIANCE  
10          WITH THIS ARTICLE. THE SYSTEM MUST INCLUDE AT LEAST THE  
11          FOLLOWING:

12           (I) MAINTAINING WRITTEN PROCEDURES.

13           (II) CONDUCTING PERIODIC REVIEWS OF RECORDS THAT ARE  
14           REASONABLY DESIGNED TO ASSIST IN DETECTING AND PREVENTING  
15           VIOLATIONS OF THIS ARTICLE.

16           (3) AN INSURER MAY CONTRACT WITH A THIRD PARTY,  
17           INCLUDING A MANAGING GENERAL AGENT, TO ESTABLISH AND MAINTAIN  
18           A SYSTEM OF SUPERVISION AS REQUIRED BY PARAGRAPH (1) WITH  
19           RESPECT TO INSURANCE PRODUCERS UNDER CONTRACT WITH OR  
20           EMPLOYED BY THE THIRD PARTY.

21           (4) AN INSURER SHALL MAKE REASONABLE INQUIRY TO ASSURE  
22           THAT THE THIRD PARTY CONTRACTING UNDER PARAGRAPH (3) IS  
23           PERFORMING THE FUNCTIONS REQUIRED UNDER PARAGRAPH (1) AND  
24           SHALL TAKE SUCH ACTION AS IS REASONABLE UNDER THE  
25           CIRCUMSTANCES TO ENFORCE THE CONTRACTUAL OBLIGATION TO  
26           PERFORM THE FUNCTIONS. AN INSURER MAY COMPLY WITH ITS  
27           OBLIGATION TO MAKE REASONABLE INQUIRY BY DOING BOTH OF THE  
28           FOLLOWING:

29           (I) THE INSURER ANNUALLY OBTAINS A CERTIFICATION  
30           FROM A THIRD PARTY SENIOR MANAGER WHO HAS RESPONSIBILITY

1       FOR THE DELEGATED FUNCTIONS THAT THE MANAGER HAS A  
2       REASONABLE BASIS TO REPRESENT, AND DOES REPRESENT, THAT  
3       THE THIRD PARTY IS PERFORMING THE REQUIRED FUNCTIONS.

4       (II) THE INSURER, BASED ON REASONABLE SELECTION  
5       CRITERIA, PERIODICALLY SELECTS THIRD PARTIES CONTRACTING  
6       UNDER PARAGRAPH (3) FOR A REVIEW TO DETERMINE WHETHER THE  
7       THIRD PARTIES ARE PERFORMING THE REQUIRED FUNCTIONS. THE  
8       INSURER SHALL PERFORM PROCEDURES TO CONDUCT THE REVIEW  
9       THAT ARE REASONABLE UNDER THE CIRCUMSTANCES.

10       (5) WHERE THERE IS NO PURCHASE OR EXCHANGE OF AN  
11       ANNUITY, AN INSURER OR MANAGING GENERAL AGENT IS NOT REQUIRED  
12       TO DO EITHER OF THE FOLLOWING:

13       (I) REVIEW OR PROVIDE FOR REVIEW OF ALL INSURANCE  
14       PRODUCER-SOLICITED TRANSACTIONS.

15       (II) INCLUDE IN ITS SYSTEM OF SUPERVISION AN  
16       INSURANCE PRODUCER'S RECOMMENDATIONS TO CONSUMERS OF  
17       PRODUCTS OTHER THAN THE ANNUITIES OFFERED BY THE INSURER  
18       OR MANAGING GENERAL AGENT.

19       (6) A MANAGING GENERAL AGENT CONTRACTING WITH AN INSURER  
20       PURSUANT TO PARAGRAPH (3) SHALL PROMPTLY, WHEN REQUESTED BY  
21       THE INSURER PURSUANT TO PARAGRAPH (4), GIVE A CERTIFICATION  
22       AS DESCRIBED IN PARAGRAPH (4) OR GIVE A CLEAR STATEMENT THAT  
23       IT IS UNABLE TO MEET THE CERTIFICATION CRITERIA.

24       (7) NO PERSON MAY PROVIDE A CERTIFICATION UNDER  
25       PARAGRAPH (4)(I) UNLESS BOTH THE FOLLOWING CONDITIONS ARE  
26       MET:

27       (I) THE PERSON IS A SENIOR MANAGER WITH  
28       RESPONSIBILITY FOR THE DELEGATED FUNCTIONS.

29       (II) THE PERSON HAS A REASONABLE BASIS FOR MAKING  
30       THE CERTIFICATION.

1     (E) COMPLIANCE WITH OTHER RULES.--COMPLIANCE WITH THE  
2 NATIONAL ASSOCIATION OF SECURITIES DEALERS CONDUCT RULES  
3 PERTAINING TO SUITABILITY SHALL SATISFY THE REQUIREMENTS UNDER  
4 THIS SECTION FOR THE RECOMMENDATION OF VARIABLE ANNUITIES.  
5 NOTHING IN THIS SUBSECTION SHALL LIMIT THE COMMISSIONER'S  
6 ABILITY TO ENFORCE THE PROVISIONS OF THIS ARTICLE.

7     (F) INTERNAL AUDIT AND COMPLIANCE PROCEDURES.--NOTHING IN  
8 THIS ARTICLE SHALL EXONERATE AN INSURER FROM THE INTERNAL AUDIT  
9 AND COMPLIANCE PROCEDURE REQUIREMENTS UNDER SECTION 405-A.  
10 SECTION 404-B. MITIGATION OF RESPONSIBILITY.

11     (A) CORRECTIVE ACTIONS.--THE COMMISSIONER MAY ORDER:

12         (1) AN INSURER TO TAKE REASONABLY APPROPRIATE CORRECTIVE  
13 ACTION FOR ANY CONSUMER HARMED BY THE INSURER'S OR BY ITS  
14 INSURANCE PRODUCER'S VIOLATION OF THIS ARTICLE.

15         (2) AN INSURANCE PRODUCER TO TAKE REASONABLY APPROPRIATE  
16 CORRECTIVE ACTION FOR ANY CONSUMER HARMED BY THE INSURANCE  
17 PRODUCER'S VIOLATION OF THIS ARTICLE.

18         (3) A MANAGING GENERAL AGENT THAT EMPLOYS OR CONTRACTS  
19 WITH AN INSURANCE PRODUCER TO SELL OR SOLICIT THE SALE OF  
20 ANNUITIES TO CONSUMERS, TO TAKE REASONABLY APPROPRIATE  
21 CORRECTIVE ACTION FOR ANY CONSUMER HARMED BY THE INSURANCE  
22 PRODUCER'S VIOLATION OF THIS ARTICLE.

23     (B) REDUCTION OF PENALTY.--ANY APPLICABLE PENALTY PERMITTED  
24 UNDER SECTION 406-B MAY BE REDUCED OR ELIMINATED IF CORRECTIVE  
25 ACTION FOR THE CONSUMER WAS TAKEN PROMPTLY AFTER A VIOLATION WAS  
26 DISCOVERED.

27 SECTION 405-B. RECORDKEEPING.

28     AN INSURER, MANAGING GENERAL AGENT AND INSURANCE PRODUCER  
29 SHALL MAINTAIN OR BE ABLE TO MAKE AVAILABLE TO THE COMMISSIONER  
30 RECORDS OF THE INFORMATION COLLECTED FROM THE CONSUMER AND OTHER

1 INFORMATION USED IN MAKING THE RECOMMENDATIONS THAT WERE THE  
2 BASIS FOR INSURANCE TRANSACTIONS FOR FIVE YEARS AFTER THE  
3 INSURANCE TRANSACTION IS COMPLETED BY THE INSURER. AN INSURER IS  
4 PERMITTED BUT SHALL NOT BE REQUIRED TO MAINTAIN DOCUMENTATION ON  
5 BEHALF OF AN INSURANCE PRODUCER.

6 SECTION 406-B. ENFORCEMENT.

7 (A) PENALTIES AND REMEDIES.--UPON A DETERMINATION BY HEARING  
8 THAT THIS ARTICLE HAS BEEN VIOLATED, THE COMMISSIONER MAY PURSUE  
9 ONE OR MORE OF THE FOLLOWING COURSES OF ACTION:

10 (1) ISSUE AN ORDER REQUIRING THE PERSON IN VIOLATION TO  
11 CEASE AND DESIST FROM ENGAGING IN THE VIOLATION.

12 (2) SUSPEND OR REVOKE OR REFUSE TO ISSUE OR RENEW THE  
13 CERTIFICATE OR LICENSE OF THE PERSON IN VIOLATION.

14 (3) IMPOSE A CIVIL PENALTY OF NOT MORE THAN \$5,000 FOR  
15 EACH VIOLATION.

16 (4) IMPOSE ANY OTHER PENALTY OR REMEDY DEEMED  
17 APPROPRIATE BY THE COMMISSIONER, INCLUDING RESTITUTION.

18 (B) OTHER REMEDIES.--THE ENFORCEMENT REMEDIES IMPOSED UNDER  
19 THIS SECTION ARE IN ADDITION TO ANY OTHER REMEDIES OR PENALTIES  
20 THAT MAY BE IMPOSED BY ANY OTHER APPLICABLE STATUTE, INCLUDING  
21 THE ACT OF JULY 22, 1974 (P.L.589, NO.205), KNOWN AS THE UNFAIR  
22 INSURANCE PRACTICES ACT. VIOLATIONS OF THIS ARTICLE ARE DEEMED  
23 AND DEFINED BY THE COMMISSIONER TO BE AN UNFAIR METHOD OF  
24 COMPETITION AND AN UNFAIR OR DECEPTIVE ACT OR PRACTICE PURSUANT  
25 TO THE UNFAIR INSURANCE PRACTICES ACT.

26 SECTION 407-B. PRIVATE CAUSE OF ACTION.

27 NOTHING IN THIS ARTICLE SHALL BE CONSTRUED TO PRECLUDE A  
28 PRIVATE CAUSE OF ACTION FOR A VIOLATION OF THIS ARTICLE IF THE  
29 COMMISSIONER FAILS TO INVESTIGATE AND RULE ON A COMPLAINT  
30 ALLEGING A VIOLATION OF THIS ARTICLE WITHIN 60 DAYS.

ARTICLE VI-B

SOLICITATION OF INSURANCE TO ~~ELDERS~~

<—

Section 601-B. Scope.

This article relates to the advertisement, sale,  
solicitation, and negotiation of life, disability and long-term  
care contracts of insurance ~~or annuity contracts to individuals~~  
~~65 years of age or older.~~

<—

Section 602-B. Definitions.

The following words and phrases when used in this article  
shall have the meanings given to them in this section unless the  
context clearly indicates otherwise:

"Commissioner." The Insurance Commissioner of the  
Commonwealth.

"Department." The Insurance Department of the Commonwealth.

"Educational or retirement seminars." A planned event or  
anything substantially equivalent conducted by an insurer,  
insurance producer, financial planner or an individual with an  
advanced designation which involves the public gathering of  
elders for the purpose of generating leads or to solicit or sell  
life insurance products, including annuities or the collecting  
of information from elders which may lead to a future sale of  
such products.

~~"Elder." An individual who is 65 years of age or older.~~

<—

"Financial planner, advisor or consultant." The term  
includes an insurance producer or individual who holds himself  
or herself out as a financial planner, advisor or uses any  
substantially equivalent term or uses an advanced designation or  
an investment professional designation that is listed with the  
National Association of Securities Dealers.

"Formal prepaid funeral OR CEMETERY contract." A contract,

<—



1 including an insurance policy, certificate, annuity or trust,  
2 used to fund a ~~prearranged funeral~~. PREARRANGED FUNERAL OR <—  
3 CEMETERY ARRANGEMENTS.

4 "Insurance producer." An individual who sells, solicits or  
5 negotiates a contract of insurance ~~or annuity~~ on behalf of an <—  
6 insurer.

7 "Insurer." A stock or mutual insurance company, association,  
8 exchange or fraternal benefit society licensed by the Insurance  
9 Department to transact a contract life, disability, ~~long term~~ <—  
10 ~~care insurance or annuity~~ OR LONG-TERM CARE INSURANCE within <—  
11 this Commonwealth.

12 "Negotiate." To confer directly with or to offer advice  
13 directly to a purchaser or prospective purchaser of a particular  
14 contract of insurance concerning the substantive benefits, terms  
15 or conditions of the contract, provided that the person engaged  
16 in that act either sells insurance or obtains insurance from  
17 insurers for purchasers.

18 "Sell." To exchange a contract of insurance by any means for  
19 money or its equivalent on behalf of an insurer.

20 "Solicit." To attempt to sell insurance or ask or urge an  
21 individual to apply for a particular kind of insurance from a  
22 particular insurer.

23 Section 603-B. Advertisement of insurance.

24 (a) Direct response advertising.--An advertisement used by  
25 an insurer or insurance producer or an individual with an  
26 advanced designation or an investment professional designation  
27 that is listed with the National Association of Securities  
28 Dealers ~~which is directed at an elder~~ to produce leads to sell, <—  
29 solicit or negotiate an insurance policy ~~or an annuity~~ based on <—  
30 a response from a potential insured shall prominently disclose

1 that an insurance producer or other individual may contact the  
2 consumer if the contact is to occur. An insurance producer or  
3 other individual who contacts ~~an elder~~ ANY PERSON as a result of <—  
4 acquiring the ~~elder's~~ PERSON'S name through an advertisement or <—  
5 other device shall, during the initial contact with the ~~elder~~ <—  
6 PERSON, disclose the manner in which the ~~individual's~~ PERSON'S <—  
7 name was acquired.

8 (b) Prohibited acts in advertising.--No advertisement or  
9 other device used by an insurer, insurance producer or financial  
10 planner ~~which is directed at an elder~~ to sell, solicit or <—  
11 negotiate an insurance policy ~~or an annuity~~ shall employ any of <—  
12 the following:

13 (1) A name which is deceptive or misleading with regard  
14 to the status, character or business or professional capacity  
15 of the insurer, insurance producer or financial planner or to  
16 the true purpose of the advertisement.

17 (2) A name of a state or political subdivision in a  
18 policy name or description.

19 (3) A name, service mark, slogan, symbol or similar  
20 device that in any manner implies that the insurer, the  
21 insurance ~~or annuity~~ advertised, or an insurance producer or <—  
22 other individual who may contact ~~an elder~~ A PERSON in <—  
23 response to the advertisement, is connected with a  
24 governmental agency.

25 (4) An implication that the ~~elder~~ PERSON may lose a <—  
26 right, privilege or a benefit under Federal or State law or  
27 local ordinance if the ~~elder~~ PERSON fails to respond to the <—  
28 advertisement.

29 (5) An address which may be deceptive or misleading as  
30 to the identity, location or licensing status of the insurer

1 or insurance producer.

2 (6) A trade name or other terminology used to describe  
3 an insurance policy ~~or annuity~~ that is so similar to the name <—  
4 of a governmental agency or governmental program as to be  
5 deceptive or misleading to the ~~elder~~ PERSON. <—

6 (7) A word, letter, initial, symbol, professional  
7 designation or other similar device which is so similar to  
8 those used by a governmental agency, a nonprofit or  
9 charitable institution, senior organization or another  
10 insurer that they could be deceptive or misleading. Examples  
11 of deceptive or misleading material shall include, but not be  
12 limited to, those which falsely imply any of the following:

13 (i) The insurance policy ~~or annuity~~ benefits <—  
14 advertised are provided by or are in any way endorsed by  
15 a governmental agency, nonprofit or charitable  
16 institution or senior organization.

17 (ii) The insurer is in any way connected with or is  
18 endorsed by a governmental agency, nonprofit or  
19 charitable institution or senior organization.

20 (8) A statement or implication that the occupational or  
21 other personal status of an individual entitles the  
22 individual to a reduced rate or premium on a group or other  
23 basis when in fact the insurance policy ~~or annuity~~ being <—  
24 advertised is sold on an individual basis at regular rates.

25 (c) Approval.--An advertisement used by an insurance  
26 producer to sell, solicit or negotiate an insurance policy ~~or an~~ <—  
27 ~~annuity~~ offered by an insurer must have written approval of the  
28 insurer before the advertisement may be used.

29 (d) Definition.--For the purposes of this section, the term  
30 "advertisement" includes, but is not limited to, an envelope,

stationery, business card or other material designed to describe  
and promote the purchase of an insurance policy ~~or annuity.~~

<—

Section 604-B. Educational or retirement seminars.

(a) Advertisement disclosure.--In addition to the  
advertising requirements and restrictions prescribed in section  
602-B, no advertisement for an event shall include the terms  
"seminar," "class," "informational meeting" or any substantially  
equivalent term to describe the event unless it also includes,  
in the same type size and font, the words "and may lead to the  
sale of an insurance product" immediately following those terms.

(b) Credentials accepted by department.--The commissioner  
shall maintain a list of professional or advanced designations  
needed and required by individuals directly conducting a  
seminar. The commissioner shall consult with the National  
Association of Securities Dealers' list of professional  
designations to assist in this requirement. If the National  
Association of Securities Dealers discontinues for any reason,  
the commissioner shall determine what is necessary to maintain  
the list. The department shall promulgate rules and regulations  
to enforce this section.

Section 605-B. Sale or solicitation of insurance in ~~elder~~  
homes.

<—

(a) Meeting notification.--Except as set forth in subsection  
(c), all of the following apply:

(1) An insurance producer who meets with an ~~elder~~ A  
PERSON in the ~~elder's~~ PERSON'S home to sell, solicit or  
negotiate an insurance policy ~~or an annuity,~~ or to generate  
leads which may result in additional meetings with the ~~elder~~  
PERSON, shall deliver a notice in writing to the ~~elder~~ PERSON  
no less than 24 hours prior to an initial meeting in the

<—

<—

<—

<—

<—

1 home.

2 (2) If ~~an elder~~ THE PERSON has an existing relationship <—  
3 with another insurance producer and requests a meeting with  
4 that insurance producer in the home that same day, the  
5 written notice shall be delivered to the ~~elder~~ PERSON prior <—  
6 to that separate meeting.

7 (3) The notice shall be in the following form, with the  
8 appropriate information inserted, in 14-point type:

9 During this visit or any future visit, you will be given  
10 a sales presentation on the following (indicate all that  
11 apply):

12 ( ) Life insurance, including annuities.

13 ( ) Other insurance products (specify): \_\_\_\_\_.

14 (1) You have the right to have other persons present at  
15 the meeting, including family members, financial advisors  
16 or attorneys.

17 (2) You have the right to end the meeting at any time.

18 (3) You have the right to contact the Insurance  
19 Department for information or to file a complaint. (The  
20 notice shall include the consumer assistance telephone  
21 numbers at the department).

22 (4) The following individuals will be coming to your  
23 home: (list all attendees and insurance license  
24 information, if applicable).

25 (b) Disclosure upon initial contact.--Except as set forth in  
26 subsection (c), upon first contact with ~~an elder~~ A PERSON in the <—  
27 ~~elder's~~ PERSON'S home, the insurance producer shall, before <—  
28 making any statement other than a greeting, state that the  
29 purpose of the meeting is to discuss insurance or to gather  
30 information from the ~~elder~~ PERSON for a future visit if that is <—

1 to occur. Except as set forth in subsection (c), the insurance  
2 producer shall also state or provide all of the following  
3 information:

4 (1) The name and titles of all individuals present at  
5 the ~~elder's~~ PERSON'S home who will participate in the <—  
6 meeting.

7 (2) The name of the insurer represented by the insurance  
8 producer.

9 (3) A business card or other written identification of  
10 each individual participating in the meeting which contains  
11 each individual's name, business address, telephone number  
12 and insurance producer license number.

13 (c) Exemption.--Subsections (a) and (b) do not apply to  
14 formal prepaid funeral OR CEMETERY contracts. <—

15 (d) Departure from home.--The insurance producer and all  
16 other individuals attending a meeting in the home of an ~~elder~~ <—  
17 THE PERSON shall conclude the meeting and depart the home <—  
18 immediately upon being asked to do so by the ~~elder~~ PERSON. <—

19 (e) Misrepresentation prohibited.--No insurance producer or  
20 other individual may seek any contact with an ~~elder~~ A PERSON or <—  
21 sell, solicit or negotiate an insurance policy ~~or an annuity~~ in <—  
22 the home of an ~~elder~~ A PERSON, either in person or by telephone, <—  
23 by using any deceptive means or in any manner which  
24 misrepresents the true purpose of the contact with the ~~elder~~ <—  
25 PERSON. <—

26 Section 606-B. Examination period.

27 (a) Return of policy ~~or annuity~~.--Every insurance policy ~~or~~ <—  
28 ~~annuity~~ offered for sale to an ~~elder~~ A PERSON shall provide an <—  
29 examination period of 45 days after the delivery and receipt of  
30 the policy ~~or annuity~~ by an ~~elder~~ during which time the ~~elder~~ BY <—

1 THE PERSON DURING WHICH TIME THE PERSON may return the policy or <—  
2 annuity. The return of a policy or annuity shall completely void <—  
3 the contract, and the elder PERSON shall be in the same position <—  
4 as if no policy or annuity had been issued. <—

5 (b) Refund of premium.--The premium, policy or membership  
6 fee or other payment made by an elder A PERSON shall be fully <—  
7 refunded by the insurer no later than 30 days after the insurer  
8 issuing the policy or annuity receives the returned policy or <—  
9 annuity RECEIVES THE RETURNED POLICY from an elder THE PERSON. <—

10 If the insurer issuing the policy or annuity fails to fully <—  
11 refund the premium, fee or other payment made within this  
12 period, the elder PERSON shall receive interest on the refunded <—  
13 amount of premium at the legal rate of interest plus 2% 5%. The <—  
14 interest shall be paid from the date the insurer received the  
15 returned policy or annuity. <—

16 (c) Printed notice.--Every insurance policy or annuity <—  
17 issued and delivered to an elder A PERSON shall have a notice <—  
18 prominently printed on the cover page of the policy or annuity, <—  
19 in 14-point bold type, disclosing that the elder PERSON has the <—  
20 right to return the policy or annuity within 45 days after its <—  
21 receipt and is entitled to a full refund of any premium, fee or  
22 other payment made.

23 Section 607-B. Enforcement by department.

24 (a) Notice.--Upon evidence of a violation of this article,  
25 the department shall notify the person of the alleged violation.  
26 The notice shall specify the nature of the alleged violation and  
27 fix a time and place, at least ten days thereafter, when a  
28 hearing on the matter shall be held.

29 (b) Hearing.--The department shall conduct the hearing on  
30 the violation in accordance with 2 Pa.C.S. Ch. 5 Subch. A

1 (relating to practice and procedure of Commonwealth agencies).

2 (c) Evidence.--No person shall be excused from testifying or  
3 from producing any books, papers, contracts, agreements or  
4 documents at any hearing held by the commissioner under this  
5 article on the ground that the testimony or evidence may tend to  
6 incriminate that person.

7 (d) Penalties.--After the hearing or upon failure of the  
8 person to appear at the hearing, if a violation of this article  
9 is found, the commissioner may, in addition to any penalty which  
10 may be imposed by a court, impose any combination of the  
11 following deemed appropriate:

12 (1) Denial, suspension, refusal to renew or revocation  
13 of the license, if any, of the person.

14 (2) A civil penalty not to exceed \$5,000 for each action  
15 in violation of this article.

16 (3) An order to cease and desist.

17 (4) Any other conditions as the commissioner deems  
18 appropriate.

19 Section 608-B. Attorney General.

20 The department shall notify the Attorney General of any  
21 violations of this article.

22 ARTICLE VI-C

23 RETROACTIVE DENIAL OF REIMBURSEMENTS

24 § 601-C. SCOPE OF ARTICLE.

25 THIS ARTICLE SHALL NOT APPLY TO REIMBURSEMENTS MADE AS PART  
26 OF AN ANNUAL CONTRACTED RECONCILIATION OF A RISK-SHARING  
27 ARRANGEMENT UNDER AN ADMINISTRATIVE SERVICE PROVIDER CONTRACT.

28 § 602-C. DEFINITIONS.

29 THE FOLLOWING WORDS AND PHRASES WHEN USED IN THIS ARTICLE  
30 SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS SECTION UNLESS THE



1 CONTEXT CLEARLY INDICATES OTHERWISE:

2 "CODE." ANY OF THE FOLLOWING CODES:

3 (1) THE APPLICABLE CURRENT PROCEDURAL TERMINOLOGY (CPT)  
4 CODE, AS ADOPTED BY THE AMERICAN MEDICAL ASSOCIATION.

5 (2) IF FOR DENTAL SERVICE, THE APPLICABLE CODE ADOPTED  
6 BY THE AMERICAN DENTAL ASSOCIATION.

7 (3) ANOTHER APPLICABLE CODE UNDER AN APPROPRIATE UNIFORM  
8 CODING SCHEME USED BY AN INSURER IN ACCORDANCE WITH THIS  
9 ARTICLE.

10 "CODING GUIDELINES." THOSE STANDARDS OR PROCEDURES USED OR  
11 APPLIED BY A PAYOR TO DETERMINE THE MOST ACCURATE AND  
12 APPROPRIATE CODE OR CODES FOR PAYMENT BY THE PAYOR FOR A SERVICE  
13 OR SERVICES.

14 "FRAUD." THE INTENTIONAL MISREPRESENTATION OR CONCEALMENT OF  
15 INFORMATION IN ORDER TO DECEIVE OR MISLEAD.

16 "HEALTH CARE PROVIDER." A PERSON, CORPORATION, FACILITY,  
17 INSTITUTION OR OTHER ENTITY LICENSED, CERTIFIED OR APPROVED BY  
18 THE COMMONWEALTH TO PROVIDE HEALTH CARE OR PROFESSIONAL MEDICAL  
19 SERVICES. THE TERM INCLUDES, BUT IS NOT LIMITED TO, A PHYSICIAN,  
20 DENTIST, ORTHODONTIST, CHIROPRACTOR, OPTOMETRIST, PROFESSIONAL  
21 NURSE, CERTIFIED NURSE-MIDWIFE, PODIATRIST, HOSPITAL, NURSING  
22 HOME, AMBULATORY SURGICAL CENTER OR BIRTH CENTER.

23 "INSURER." AN ENTITY SUBJECT TO ANY OF THE FOLLOWING:

24 (1) 40 PA.C.S. CH. 61 (RELATING TO HOSPITAL PLAN  
25 CORPORATIONS) OR 63 (RELATING TO PROFESSIONAL HEALTH SERVICES  
26 PLAN CORPORATIONS).

27 (2) THIS ACT.

28 (3) THE ACT OF DECEMBER 29, 1972 (P.L.1701, NO.364),  
29 KNOWN AS THE HEALTH MAINTENANCE ORGANIZATION ACT.

30 "MEDICAL ASSISTANCE PROGRAM." THE PROGRAM ESTABLISHED UNDER

1 THE ACT OF JUNE 13, 1967 (P.L.31, NO.21), KNOWN AS THE PUBLIC  
2 WELFARE CODE.

3 "MEDICARE." THE FEDERAL PROGRAM ESTABLISHED UNDER TITLE  
4 XVIII OF THE SOCIAL SECURITY ACT (49 STAT. 620, 42 U.S.C. § 301  
5 ET SEQ. OR 1395 ET SEQ.).

6 "REIMBURSEMENT." PAYMENTS MADE TO A HEALTH CARE PROVIDER BY  
7 AN INSURER ON EITHER A FEE-FOR-SERVICE, CAPITATED OR PREMIUM  
8 BASIS.

9 § 603-C. RETROACTIVE DENIAL OF REIMBURSEMENT.

10 (A) GENERAL RULE.--IF AN INSURER RETROACTIVELY DENIES  
11 REIMBURSEMENT TO A HEALTH CARE PROVIDER, THE INSURER MAY ONLY:

12 (1) RETROACTIVELY DENY REIMBURSEMENT FOR SERVICES  
13 SUBJECT TO COORDINATION OF BENEFITS WITH ANOTHER INSURER, THE  
14 MEDICAL ASSISTANCE PROGRAM OR THE MEDICARE PROGRAM DURING THE  
15 12-MONTH PERIOD AFTER THE DATE THAT THE INSURER PAID THE  
16 HEALTH CARE PROVIDER; AND

17 (2) EXCEPT AS PROVIDED IN PARAGRAPH (1), RETROACTIVELY  
18 DENY REIMBURSEMENT DURING A 12-MONTH PERIOD AFTER THE DATE  
19 THAT THE INSURER PAID THE HEALTH CARE PROVIDER.

20 (B) WRITTEN NOTICE.--AN INSURER THAT RETROACTIVELY DENIES  
21 REIMBURSEMENT TO A HEALTH CARE PROVIDER UNDER SUBSECTION (A)  
22 SHALL PROVIDE THE HEALTH CARE PROVIDER WITH A WRITTEN STATEMENT  
23 SPECIFYING THE BASIS FOR THE RETROACTIVE DENIAL. IF THE  
24 RETROACTIVE DENIAL OF REIMBURSEMENT RESULTS FROM COORDINATION OF  
25 BENEFITS, THE WRITTEN STATEMENT SHALL PROVIDE THE NAME AND  
26 ADDRESS OF THE ENTITY ACKNOWLEDGING RESPONSIBILITY FOR PAYMENT  
27 OF THE DENIED CLAIM.

28 § 604-C. EFFECT OF NONCOMPLIANCE.

29 EXCEPT AS PROVIDED IN SECTION 605-C, AN INSURER THAT DOES NOT  
30 COMPLY WITH THE PROVISIONS OF SECTION 603-C MAY NOT

1 RETROACTIVELY DENY REIMBURSEMENT OR ATTEMPT IN ANY MANNER TO  
2 RETROACTIVELY COLLECT REIMBURSEMENT ALREADY PAID TO A HEALTH  
3 CARE PROVIDER.

4 § 605-C. FRAUDULENT OR IMPROPERLY CODED INFORMATION.

5 (A) REASONS FOR DENIAL.--THE PROVISIONS OF SECTION 603-C DO  
6 NOT APPLY IF AN INSURER RETROACTIVELY DENIES REIMBURSEMENT TO A  
7 HEALTH CARE PROVIDER BECAUSE:

8 (1) THE INFORMATION SUBMITTED TO THE INSURER WAS  
9 FRAUDULENT;

10 (2) THE INFORMATION SUBMITTED TO THE INSURER WAS  
11 IMPROPERLY CODED AND THE INSURER HAS PROVIDED TO THE HEALTH  
12 CARE PROVIDER SUFFICIENT INFORMATION REGARDING THE CODING  
13 GUIDELINES USED BY THE INSURER AT LEAST 30 DAYS PRIOR TO THE  
14 DATE THE SERVICES SUBJECT TO THE RETROACTIVE DENIAL WERE  
15 RENDERED; OR

16 (3) THE CLAIM SUBMITTED TO THE INSURER WAS A DUPLICATE  
17 CLAIM.

18 (B) IMPROPER CODING.--INFORMATION SUBMITTED TO THE INSURER  
19 MAY BE CONSIDERED TO BE IMPROPERLY CODED UNDER SUBSECTION (A)(2)  
20 IF THE INFORMATION SUBMITTED TO THE INSURER BY THE HEALTH CARE  
21 PROVIDER:

22 (1) USES CODES THAT DO NOT CONFORM WITH THE CODING  
23 GUIDELINES USED BY THE CARRIER APPLICABLE AS OF THE DATE THE  
24 SERVICE OR SERVICES WERE RENDERED; OR

25 (2) DOES NOT OTHERWISE CONFORM WITH THE CONTRACTUAL  
26 OBLIGATIONS OF THE HEALTH CARE PROVIDER TO THE INSURER  
27 APPLICABLE AS OF THE DATE THE SERVICE OR SERVICES WERE  
28 RENDERED.

29 § 606-C. COORDINATION OF BENEFITS.

30 IF AN INSURER RETROACTIVELY DENIES REIMBURSEMENT FOR SERVICES

1 AS A RESULT OF COORDINATION OF BENEFITS UNDER PROVISIONS OF  
2 SECTION 605-C(A), THE HEALTH CARE PROVIDER SHALL HAVE SIX MONTHS  
3 FROM THE DATE OF THE DENIAL, UNLESS AN INSURER PERMITS A LONGER  
4 TIME PERIOD, TO SUBMIT A CLAIM FOR REIMBURSEMENT FOR THE SERVICE  
5 TO THE INSURER, THE MEDICAL ASSISTANCE PROGRAM OR MEDICARE  
6 PROGRAM RESPONSIBLE FOR PAYMENT.

7 Section 2 3. This act shall take effect in 60 days.

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