DEPARTMENT OF INSURANCE

Statutory Authority: 18 Delaware Code, Sections 314 & 1111 (18 **Del.C.** §§314, 1111)
18 **DE Admin. Code** 1408

FINAL

1408 Standards for Prompt, Fair and Equitable Settlement of Claims for Long-Term Care Insurance

ORDER

Proposed Regulation 1408 relating to Standards for Prompt Pay and Equitable Settlement of Claims for Long-term Care Insurance was published in the *Delaware Register of Regulations* on March 1, 2010. The comment period remained open until April 5, 2010. There was no public hearing on proposed Regulation 1408. Public notice of the proposed Regulation 1408 in the *Register of Regulations* was in conformity with Delaware law.

Summary of the Evidence and Information Submitted

Comment was received from the Governor's Advisory Council for Exceptional Citizens and from the State Council for Persons with Disabilities. The comments were the same. The councils pointed out that the proposed regulation was weaker than a similar regulation covering health insurance and does not contain a "rebuttable presumption of an unfair practice basedon three instances of a carrier's failure to comply…".

Findings of Fact

Based on Delaware law and the record in this docket, I make the following findings of fact:

While the comments of the two councils are valid, the proposed regulation, based on the NAIC Model, is more than adequate to, for the first time, establish reasonable requirements for the payment of claims for long-term care insurance.

The requirements of the proposed Regulation 1408 best serve the interests of the public and of insurers and comply with Delaware law.

Decision and Effective Date

Based on the provisions of 18 **Del.C.** §§314, 1111 and 29 **Del.C.** §§10113-10118 and the record in this docket, I hereby adopt Regulation 1408 as may more fully and at large appear in the version attached hereto to be effective on July 1, 2010.

Ttext and Citation

The text of the proposed Regulation 1408 last appeared in the *Register of Regulations* Vol. 13, Issue 9, pages 1181-1182.

IT IS SO ORDERED this 6th day of April 2010.

Karen Weldin Stewart, CIR-ML
Insurance Commissioner

1408 Standards for Prompt, Fair and Equitable Settlement of Claims for Long-Term Care Insurance

1.0 Authority

This regulation is adopted by the Commissioner pursuant to 18 **Del.C.** §§311, 2304(16), and 2312 and 7107. It is promulgated in accordance with 29 **Del.C.** Ch. 101.

2.0 Scope

This regulation shall apply to all carriers as defined herein.

3.0 Definitions

The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:

"Carrier" means any entity that provides long-term care insurance in this State. "Carrier" also includes any 3rd-party administrator or other entity that adjusts, administers or settles claims in connection with long-term care plans.

"Days" means calendar days.

"Institutional Provider" means a hospital, nursing home, or any other medical or health-related service facility caring for the sick or injured or providing care or other coverage which may be provided in a long-term care policy. An entity must be a Provider under this Regulation in order to be an Institutional Provider.

"Policyholder," "Insured," or **"Subscriber"** means a person covered under a long-term care insurance policy or a representative (other than a provider) designated by such person and entitled to make claims on his behalf.

"Provider" means any entity or individual licensed, certified, or otherwise permitted by law pursuant to Titles 16 or 24 of the **Delaware Code** to provide long-term care services**,** irrespective of whether the entity or the individual is a participating provider pursuant to a written agreement with the carrier. When used alone, the term "provider" shall include individual providers and institutional providers.

4.0 Prompt Payment of Clean Claims

4.1 "**Claim**" means a request for payment of benefits under an in-force policy, regardless of whether the benefit claimed is covered under the policy or any terms or conditions of the policy have been met.

4.2 "**Clean Claim**" means a claim that has no defect or impropriety, including any lack of required substantiating documentation, such as satisfactory evidence of expenses incurred, or particular circumstances requiring special treatment that prevents timely payment from being made on the claim.

4.3 Within thirty (30) days after receipt of a claim for benefits under a long-term care insurance policy or certificate, an insurer shall pay such claim if it is a clean claim, or send written notice acknowledging the date of receipt of the claim and one of the following:

4.3.1 The insurer is declining to pay all or part of the claim and the specific reason(s) for denial; or

4.3.2 That additional information is necessary to determine if all or any part of the claim is payable and the specific additional information that is necessary.

4.4 Within thirty (30) days after the receipt of all the requested additional information, an insurer shall pay a claim for benefits under a long-term care insurance policy or certificate if it is a clean claim, or send a written notice that the insurer is declining to pay all or part of the claim, and the specific reason or reasons for denial.

4.5 If an insurer fails to comply with 4.3 or 4.4, such an insurer shall pay interest at the rate of 1% per month on the amount of the claim that should have been paid but that remains unpaid after forty-five (45) days after the receipt of the claim with respect to 4.3 or all requested additional information under 4.4. The interest payable pursuant to this sub-section shall be included in an late reimbursement without requiring the person who filed the original claim to make any additional claim for such interest.

4.6 These provisions shall not apply where the insurer has a reasonable basis supported by specific information that such claim was fraudulently submitted.

4.7 Any violation of this regulation by an insurer if committed flagrantly and in conscious disregard of the provisions of this regulation or with such frequency as to constitute a general business practice shall be considered a violation of 18 **Del.C.** §2304.

5.0 Waiver

The provisions of this regulation may not be waived, voided, or nullified by contract.

6.0 Causes of Action

This regulation shall not create a private cause of action for any person or entity, other than the Delaware Insurance Commissioner, against a carrier or its representative based upon a violation of 18 **Del.C.** §2304.

7.0 Separability

If any provision of this regulation, or the application of any such provision to any person or circumstances, shall be held invalid, the remainder of such provisions, and the application of such provisions to any person or circumstance other than those as to which it is held invalid, shall not be affected.

8.0 Effective Date

This regulation becomes effective for all claims submitted for payment on or after July 1, 2010.

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