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November 10, 2011

The Honorable Thomas M. Middleton, Chairman  
Senate Finance Committee  
Miller Senate Office Building, 3 East Wing  
11 Bladen St.  
Annapolis, MD 21401

The Honorable Peter A. Hammen, Chairman  
Health and Government Operations Committee  
House Office Building, Room 241  
6 Bladen St.  
Annapolis, MD 21401

Re: Life Insurance Policies and Health Insurance

Dear Chairman Middleton and Chairman Hammen:

House Bill 496, Chapter 42, Acts of the General Assembly of 2011, required that the Maryland Insurance Administration, in consultation with the life insurance industry, conduct an analysis of the appropriate scope of health insurance products that may be sold in conjunction with a life insurance policy. The Bill directed that the analysis be performed in light of the expansion of the definition of life insurance under Chapter 42 and determine if any legislative changes are needed.

*Background*

The analysis required by Chapter 42 of the Acts of 2011 requires an understanding of the current insurance market in Maryland. While the average consumer may think of health insurance as including only insurance for expenses related to medical care, Maryland law is more expansive, and includes in the definition of health insurance a broad array of coverage impacting human beings. For example, health insurance includes accidental death insurance, disability

insurance, long-term care insurance, travel accident insurance, and accidental dismemberment insurance.<sup>1</sup> Health insurance does not include a natural death benefit.

Life insurance under Maryland law is limited to insurance that provides a natural death benefit, but may include some additional benefits that would otherwise be defined as health insurance. For example, Maryland law specifically permits the following additional benefits to be included in a life insurance policy:<sup>2</sup>

1. Death benefits if death is caused by an accident;
2. Disability benefits due to dismemberment or loss of sight;
3. Waiver of premium benefits in the event of total and permanent disability;
4. Special surrender values, special benefits or annuities in the event of total and permanent disability;
5. Long-term care benefits for home health care or nursing home care;
6. Second opinion benefits for specified health conditions; and
7. Lump-sum benefits for a specified disease.

The permissible additional benefits described above are ancillary to the natural death benefit found in every life insurance policy.

Historically, group insurance contracts have differed greatly from individual insurance contracts. In general, group contracts tend to be written on a variable basis, so that the group policyholder (most often an employer) can select the benefit design that best meets the needs of the policyholder's employees or members. Group "combination" contracts have long been offered that are both life insurance and health insurance contracts. Due to the variability in design, and the wide choice provided to group policyholders, the combination contract can be issued as a stand-alone health insurance contract, with only health insurance benefits, a stand-alone life insurance policy with only life insurance benefits or as a combination of both life insurance and health insurance benefits. Employers and insurers have found that the group combination insurance contracts meet their needs for administrative simplification. Because the combination contract is submitted for approval to be offered as a possible stand alone health insurance contract or a stand alone life insurance contract, it is subject to all the applicable life insurance and health insurance laws.

Since 1993, when small group market reform was enacted, the combination of life insurance and comprehensive health insurance in the same contract was no longer an option for small employers (employers with 2-50 full-time employees). Instead, the only health benefit plan that insurers, nonprofit health service plans and health maintenance organizations have been permitted to sell to small employers is the comprehensive health benefit plan, plus optional additional benefits to the comprehensive health benefit plan.<sup>3</sup> The permissible additional

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<sup>1</sup> Insurance Article, § 1-101(p), Annotated Code of Maryland.

<sup>2</sup> Insurance Article, § 1-101(x), Annotated Code of Maryland.

<sup>3</sup> Insurance Article, §15-1204, Annotated Code of Maryland.

benefits to the comprehensive health benefit plan are limited to medical related benefits. Therefore, a small employer can no longer purchase one contract from an insurer to meet all the life insurance and health insurance needs of the employer's employees.

Individual life insurance, in contrast to group life insurance, is not written on a variable basis. The insurance company decides what benefits it will offer, and the individual applicant selects the options from those shown in the insurer's application. Additional benefits, such as the permissible benefits listed in §1-101 of the Insurance Article, may appear as standard benefits in the contract or as riders attached to the contract. However, any health insurance benefit, other than specifically defined to be life insurance in §1-101 of the Insurance Article, has not been permitted in an individual life insurance contract, nor is a natural death benefit permitted in an individual health insurance contract. This prohibition has appeared in Maryland Insurance Administration regulations since 1967.<sup>4</sup>

Because of the manner in which §1-101(x) of the Insurance Article is drafted, the additional benefits in an individual life insurance contract that would otherwise be considered to be health insurance are not subject to health insurance statutes or health insurance regulations because they are defined to be life insurance. In the past, when the legislature wanted to expand the definition of life insurance to include health insurance type benefits, careful drafting was needed to make sure that consumers had the protections that would apply if the additional health insurance type benefit were sold as a stand-alone product.

#### *Problems with Expanding the Definition of Life Insurance*

While the definition of life insurance in §1-101 of the Insurance Article has been amended several times over the years, the benefits that have been added to date:

1. Tend to be ancillary to the life insurance benefits in the contract, with no specific statutory or regulatory requirements that would apply had the benefits been submitted for approval as health insurance; or
2. If the benefits would be subject to specific health insurance laws or regulations had they been issued as stand-alone products, such as long-term care insurance or specified disease coverage, include requirements that the benefits comply with specific health insurance requirements.<sup>5</sup>

Due to the unique construction of Maryland law, unlimited expansion of the life insurance definition could result in Maryland consumers not having the protections that the law

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<sup>4</sup> COMAR 09.30.45.10, effective June 1, 1967; COMAR 09.30.45 recodified as COMAR 31.04.17. July 1998, Chapter revised effective April 25, 2005 with prohibition appearing as COMAR 31.04.17.13.

<sup>5</sup> Life insurance policies that include long-term care insurance are included in the definition of long-term care insurance in §18-101 of the Insurance Article and are therefore subject to Title 18, Subtitle 1 of the Insurance Article and to COMAR 31.14.01, COMAR 31.14.02 and COMAR 31.14.03. The text permitting specified disease benefits under §1-101(x)(ix) of the Insurance Article specifies that the benefits are required to "meet the requirements established by the Commissioner under §15-109" of the Insurance Article and are thereby subject to COMAR 31.10.14.

requires for the same type of health insurance benefits when offered as a stand-alone health insurance policy.

Another concern with further expanding the definition of life insurance is that consumers may not understand the product that they are purchasing. Life insurance is a complicated product that, in the Maryland Insurance Administration's experience, many consumers have difficulty understanding. It is important that consumers purchase the benefits that they need and want. If an insurance company adds an ancillary health insurance benefit to a life insurance policy solely to secure the sale, it may lead to more consumers complaining that they did not understand what they purchased.

Finally, life insurance premium rates are not required to be filed for approval by insurers with the Maryland Insurance Administration. In contrast, all health insurance premium rates are required to be filed by insurers and approved by the Maryland Insurance Administration before use in Maryland. If a health insurance benefit is included in an individual life insurance contract, without any required premium rate review, insurers may use this as an opportunity to charge an amount for an incidental health insurance benefit that is unreasonable in relation to the benefit provided. Such a health benefit would be disapproved under Insurance Article, §12-205(b)(6), Annotated Code of Maryland, but would not be subject to disapproval as a life insurance benefit.

#### *Consultation with Life Insurance Industry*

In accordance with Chapter 42 of the Acts of 2011, the Maryland Insurance Administration convened a meeting with interested representatives of the life insurance industry on June 21, 2011. Those attending included representatives of several life insurers and representatives of the League of Life and Health Insurers of Maryland and the American Council of Life Insurers. All in attendance agreed, on the basis described above under the *Background* section, that the only life insurance contracts that would be impacted by an expansion of the definition of life insurance in §1-101 of the Insurance Article would be individual life insurance contracts.

Both industry representatives and the Maryland Insurance Administration agreed that any expansion of the definition of life insurance to include other types of health insurance should not reduce the protections found elsewhere in the Insurance Article for the same health insurance benefits. Some industry representatives stated that they believed other states' laws permit more latitude in adding new health insurance type benefits to life insurance contracts. Industry representatives volunteered to research the laws of other states and to discuss with other interested life insurers possible changes to the Insurance Article. The industry representatives further volunteered that once the research and discussions were completed, they would provide feedback to the Maryland Insurance Administration regarding:

1. Suggestions of text that should appear in the Insurance Article if the law were to be substantially amended so that life insurance would not be defined as including health benefits, but instead include permissive text, outside the definitions provisions of the

- Insurance Article, that would describe what additional benefits could appear in life insurance contracts; and
2. Suggestions of types of additional health insurance benefits that should be added to the current definition of life insurance found in Insurance Article, §1-101(x), Annotated Code of Maryland, if the definition were not amended as described in option 1 above.

The industry representatives agreed in the June meeting that a September deadline would be appropriate for providing the requested information to the Maryland Insurance Administration. In October, a representative of the League of Life and Health Insurers of Maryland and the American Council of Life Insurers informed the Maryland Insurance Administration, in writing, that the industry was unable to identify any specific legislative changes that they would recommend and that if the Maryland Insurance Administration was not interested in further legislative changes to the process at this time, they would concur.

#### *Conclusion and Recommendation*

Expanding the definition of life insurance to permit the inclusion of additional health insurance benefits is something that should be considered carefully. It is important that consumer protections found in the Insurance Article and applicable to health insurance not be sacrificed by defining these benefits to be life insurance. At this time, participating representatives of the life insurance industry are not requesting that any specific types of insurance be added to the definition of life insurance.

Therefore, it is recommended that no change to the definition of life insurance be made at this time. If in the future, the life insurance industry identifies a particular health insurance benefit that appropriately belongs in a life insurance policy and is in the best interest of Maryland consumers, the law could be amended with careful attention given to ensure that other health insurance laws are not being avoided.

Sincerely,



Therese M. Goldsmith  
Commissioner  
Maryland Insurance Administration

cc: Patrick Carlson, Committee Staff, Senate Finance Committee  
Linda Stahr, Committee Staff, House Health and Government Operations Committee  
Sarah T. Albert, Library Associate, Department of Legislative Services (5 copies)  
Brenda A. Wilson, Associate Commissioner