

# CENTER FOR INSURANCE RESEARCH

1130 Massachusetts Avenue • Cambridge, MA 02138

April 27, 2007

Honorable Francis Galvin  
Secretary of the Commonwealth of Massachusetts  
Attention: Proposed Regulations  
Securities Division, Room 1701  
One Ashburton Place  
Boston, MA 02108

Re: Comments Regarding Proposed Regulation 950 CMR 12.204(2)(i)

Dear Secretary Galvin:

I wish to commend you for considering and developing Proposed Regulations 950 CMR 12.204(2)(i) and 12.205(9)(c)(15). The proposed regulations address a topic of great concern to consumers, namely the marketing of complex products like indexed annuities to seniors.

The Center for Insurance Research is an independent, 501(c)(3) nonprofit public policy and advocacy organization that actively represents insurance and financial services consumers in Massachusetts and across the nation.

The subject of annuity sales to seniors is a critical emerging issue that has drawn the attention of securities and insurance regulators alike. I serve as one of the Funded Consumer Representatives to the National Association of Insurance Commissioners (“NAIC”), and I am well acquainted with the work done on suitability standards by that body. In fact, the NAIC has recently developed and strengthened its model laws governing the suitability of annuity sales to seniors and other insurance consumers because of the same concerns raised by your office in the proposed regulations. The Massachusetts Division of Insurance has also amended regulations within the last year to establish a suitability requirement for the sale of annuity products.

Indexed annuities, in particular, have earned the scrutiny of state insurance regulators across the country – largely in part due to the increasing sales to seniors and the often undisclosed consequences of purchasing such a product. The long term lock up periods, excessive surrender fees and unfavorable tax consequences can make an indexed annuity particularly ill-suited for seniors, as your office has illustrated in the examples you have compiled.

Based on my own experience with senior consumers, complex financial products such as indexed annuities can cause a great deal of confusion in a buyer about the nature of the product he or she is actually purchasing. In many such circumstances, the consumer relies upon the advice and input of a financial adviser. Because of this relationship, it is vitally important that any senior advisors serve as truly independent sources of information and receive appropriate training to ensure the quality of the advice being offered.

Your office has already identified several troubling instances of individuals advertising themselves as “certified” by various senior education bodies that may not in fact, offer rigorous training or appropriate ethical policing. Given the potential dangers posed to the retirement savings of seniors living in the Commonwealth, the Center for Insurance believes the proposed regulations represent an appropriate and necessary response. Indeed, the Office of the Secretary of the Commonwealth should be applauded for taking proactive steps to safeguard the assets of senior residents.

Once again, based on my own experience as consumer advocate, I think it is important for the Secretary to retain oversight over the use of designations. A simple disclosure, particularly if located in fine print or surrounded with other assurance that detract from the impact of the message, is often insufficient to truly inform consumers. Even a relatively simple insurance policy can easily require a 20 page contract, even before riders or other amendments are added on. An indexed annuity is far more complex, and the sheer amount of text and other disclosures can be staggering, particularly for seniors with vision limitations. Simply adding a one or two sentence disclosure statement will not serve to put such at risk individuals on notice that a particular “certification” may fall short of ensuring a sales representative is fully trained to address the investment and tax consequences that are critical to a senior purchaser.<sup>1</sup>

Moreover, I recommend that your office continue to monitor the sales of these products and work in conjunction with the Division of Insurance to safeguard seniors. Other protections that might be worth considering include:

- A requirement that an agent selling an annuity to someone 65 and older on the basis of the product’s treatment under the state’s Medicaid program may not negligently misrepresent the treatment of any asset under the statutes, rules, and regulations of the Medicaid program, as it pertains to the determination of the individuals’ eligibility for any program of public assistance.
- Regulations establishing a standard of honesty, good faith and fair dealing for sales representatives.
- Appropriate monetary penalties for violations of the new regulation.

For these reasons, the Center for Insurance Research recommends the Proposed Regulations be adopted by the Secretary in their entirety and once again we offer our thanks for your efforts to protect the life savings vulnerable seniors.

Sincerely,



Brendan Bridgeland  
Policy Director

<sup>1</sup> The NAIC is currently conducting a study on the effectiveness of consumer disclosures. The Center for Insurance Research believes that mere disclosures alone would not provide sufficient protection absent a separate document that compares any in-force coverage that will be replaced or affected by the purchase of an indexed annuity.

## **Additional Support**

The following organizations and individuals wish to express their support of the comments made in the Center's letter.

Bonnie Burns  
Training and Policy Specialist  
California Health Advocates

Karrol Kitt  
2007 Funded Consumer Representative, National Association of Insurance  
Commissioners

Bill Newton  
Executive Director  
Florida Consumer Action Network

Amy Bach, Esq.  
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