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BULLETIN 91-2

TO: ALL COMPANIES WRITING LIFE AND ACCIDENT AND HEALTH INSURANCE

FROM: Earl R. Pomeroy, Commissioner

DATE: April 26, 1991

SUBJECT: A. Prohibition of the Use of the Existence of the North Dakota Life and Health Insurance Guaranty Association in Sales, Solicitation, or Inducement to Purchase Insurance

B. Denial of Long-Term Care or Nursing Home Benefits to Persons Receiving Benefits In a Basic Care Facility

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A. North Dakota Insurance Department Bulletin 90-6, dated October 26, 1990, addresses improper usage of the Life and Accident and Health Guaranty Fund Disclosure Form. Since the issuance of that Bulletin, a number of questions have been posed to the Insurance Department relative to an agent's ability to respond to inquiries about the Guaranty Association.

N.D.C.C. § 26.1-38.1-16 states in part that:

> "1. No person . . . may make . . . any advertisement, announcement or statement, written or oral, which uses the existence of the insurance guaranty association of this state for the purpose of sales, solicitation, or inducement to purchase any form of insurance covered by the North Dakota Life and Health Insurance Guaranty Association Act. . . ."

This statute does not prohibit a person from responding to or answering questions about the Guaranty Association when asked about the existence of it or about the coverages and exclusions provided by it.

N.D.C.C. § 26.1-38.1-16 was enacted to prevent the inducement to purchase insurance based on the protection of the State Guaranty Association rather than the financial strength of the particular company writing the coverage. Basically this statute prohibits the unprovoked offering of the existence of the Guaranty Association as an inducement to the purchase of insurance by a prospective insured. This prevents discussions of the association in a light that would lead a prospective insured to believe that it in fact provides a "guarantee" similar to the FDIC, or that it is an association prefunded by companies in anticipation of insolvencies which occur in the regular course of business. Neither of these two perceptions are true. The Guaranty Association is not "prefunded", but rather, it is a "post-assessment" entity. The statute then allows a premium tax credit for any assessments made on member companies. This credit becomes a direct reduction to the general fund of the state, which means the Guaranty Association assessments are ultimately paid for by the taxpayer.

The Guaranty Association chapter is a very complicated one and the determination of coverage is not subject to a yes or no answer. Agents cannot be singled out for administrative sanctions for discussing the Guaranty Association within the guidelines of this Bulletin.

B. In 1989, the North Dakota Legislative Assembly began licensing what are known as "basic care facilities" under N.D.C.C. Chapter 23-09.3. In response to these statutes, the Department of Health and Consolidated Laboratories promulgated rules in order to make these facilities conform to the standards established by the Legislative Assembly. N.D. Admin. Code Chapter 33-03-24. It has come to our attention that certain companies may be arbitrarily denying nursing home or long-term care claims solely upon the fact that a person is confined to and is receiving care in a "basic care facility". North Dakota law prohibits this by preventing a company from denying claims solely on the basis of the type of facility.

Companies are hereby placed on notice that persons residing within a "basic care facility" can be receiving <u>not only custodial care</u> but under some circumstances <u>intermediate care</u>. Companies are required to review a person's medical records in order to determine the level of care they are receiving on a case-by-case basis prior to the denial of a claim. This Department will consider the conduct of a company to be an unfair claims settlement practice if it denies nursing home or long-term care benefits to persons solely on the basis they are residing within a "basic care facility".

ERP/njb