

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

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In Re: Senior Health Insurance  
Company of Pennsylvania,  
(In Rehabilitation)

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Docket No.: 1 SHP 2020

**JOINT APPLICATION FOR INTERVENTION OF THE  
MAINE SUPERINTENDENT OF INSURANCE AND THE  
MASSACHUSETTS COMMISSIONER OF INSURANCE  
AND REQUEST TO GRANT LEAVE TO EXTEND THE TIME  
TO INTERVENE**

Pursuant to Pa.R.A.P. 123, 1531(b) & 3775 and the Court's *Case Management Order for Comments and Hearing on the Proposed Plan of Rehabilitation*, dated June 12, 2020 ("Case Management Order"), the Maine Superintendent of Insurance ("Superintendent") and the Massachusetts Commissioner of Insurance ("Commissioner") (collectively, the "State Insurance Regulators"), by and through undersigned counsel, ask that the Court enter an

order permitting them to intervene for the limited purpose of participating in the proceedings concerning and potentially opposing the Rehabilitator's *Application for Approval of the Plan of Rehabilitation for Senior Health Insurance Company of Pennsylvania* as described below.

The State Insurance Regulators further request that the Court grant leave to extend the time for other state insurance regulators to join as intervenors together with the Maine and Massachusetts insurance regulators until and including September 15, 2020 (the formal comment deadline).

In support thereof, the State Insurance Regulators state as follows:

### **Background**

1. Jessica K. Altman, Insurance Commissioner of the Commonwealth of Pennsylvania, in her capacity as Statutory Rehabilitator ("Rehabilitator"), has applied for approval of a plan of rehabilitation (the "Proposed Plan") for Senior Health Insurance Company of Pennsylvania ("SHIP"), an insurance company that specialized in long-term care coverage. The Proposed Plan is attached as Exhibit A to the Rehabilitator's Application.

2. In addition to the business that SHIP transacted within Pennsylvania, SHIP also operated for several decades as a licensed foreign insurer in 45 other states, the District of Columbia, and the U.S. Virgin Islands, subject to the laws of

those respective jurisdictions and the regulatory authority of each jurisdiction's insurance commissioner or comparable state official.

3. Under the terms of the Proposed Plan, "other state insurance departments" are specifically identified as "affected parties," and the Rehabilitator expressly seeks to have them "bound by the Court's approval of the Plan, and its modification of policies and premium rates as part of the Plan." *See* Proposed Plan at p. 80. Accordingly, the Proposed Plan acknowledges that state insurance departments should be "provided an opportunity to object." *Id.* The Case Management Order issued by this Court outlines how such an opportunity may be exercised through informal or formal comments, or intervention in the proceeding. The Case Management Order specifies further: "Any Commenter who intends to call or examine witnesses or introduce exhibits at the hearing on the proposed Plan of Rehabilitation or participate in any discovery that this Court may permit must file an application with the Court to intervene in the proceeding." *See* Case Management Order at ¶ 9.

4. Pennsylvania Rule of Appellate Procedure 3775 states in pertinent part:

Intervention in a formal proceeding shall be allowed if the proven or admitted allegations of the application establish a sufficient interest in the proceedings, unless the interest of the applicant is already adequately represented or intervention will unduly delay or prejudice the adjudication of the rights of the parties.

\* \* \*

(2) *Limited intervention.* When the applicant's interest involves a discrete controversy relating to the administration of the insurer's business or estate, the Court may grant the applicant limited intervention to participate as a party in the discrete controversy. The limited intervenor shall not be placed upon the master service list unless the Court orders otherwise.

Pa.R.A.P. 3775(c). The State Insurance Regulators satisfy the standard for limited intervention concerning the Rehabilitator's Application for Approval of the Proposed Plan, and they are seeking intervention in accordance with the Case Management Order.

### **Application for Intervention**

#### ***Interests of the Applicants***

5. The State Insurance Regulators have a direct and substantial interest in the Proposed Plan collectively and in their own respective rights. SHIP was licensed in both Massachusetts and Maine, and policyholders from each of those jurisdictions will be subject to the Proposed Plan, if approved. The State Insurance Regulators seek to intervene for the purpose of better understanding how the Proposed Plan affects those interests and to protect those interests by participating in discovery, participating in and presenting evidence at the hearing, and potentially objecting to the Proposed Plan.

## *State-Specific Interests*

### *Maine*

6. The Superintendent enforces state insurance laws and undertakes the duties of regulating insurers. *See* Maine Insurance Code, Title 24-A of the Maine Revised Statutes; specifically, 24-A Me. Rev. Stat. § 211.

7. The Superintendent regulates SHIP. SHIP was licensed in Maine from 1991 until its license was suspended in March 2020. Previously, SHIP sought approval from the Superintendent for long-term care policy rate increases in Maine. SHIP made its most recent Maine rate increase requests between 2011 and 2019. The Superintendent reviewed each increase in accordance with Maine law. SHIP's 2011 and 2019 rate requests were disapproved as excessive after the Superintendent found that SHIP had failed to demonstrate that they met the rating standards required by the applicable regulation; and the Superintendent approved SHIP's 2016 rate request at a level slightly lower than requested.

8. The Proposed Plan will affect Maine policyholders. According to data provided to the Superintendent by the Rehabilitator, there were 388 Maine policies subject to the Proposed Plan as of November 30, 2019. The average estimated Phase One rate increase for Maine policyholders under the Proposed Plan is nearly 70%. Furthermore, that projected increase is not evenly distributed: 146 policies would have no rate increase; 47 policies would have rate increases

below 20%; 160 policies would have increases ranging between 20.1% and 199%; and 33 policies would have rate increases in excess of 200%, reaching as high as 1,275%.<sup>1</sup>

9. At the time this information was compiled, 38 Maine residents were entitled to “on-claim waiver” of premium, meaning they are not paying premium because they are currently receiving long-term care. Another 78 policies were entitled to “active waiver,” either because the policyholder’s spouse was currently on claim or because the policyholder’s spouse has already died and the terms of the policy entitled the surviving spouse to a lifetime waiver of premium. The waiver-of-premium benefit is one of the basic protections provided by long-term care insurance. Typically, once a patient has been in a long-term care facility for the waiting period specified in the policy, the patient stops paying the insurer and the insurer begins reimbursing the patient – without diminishing the policy benefit by deducting further premiums. The Proposed Plan would take this benefit away from patients who are already receiving it, turning their premium waiver into a premium discount capped at a fixed dollar amount.

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<sup>1</sup> The information about policies in this and the following paragraph was provided by the Rehabilitator to the Superintendent in a May 3, 2020 email and attachments from Patrick H. Cantilo to Benjamin Yardley. The estimated rate increases were calculated based upon that information. The number of policies referred to in this paragraph do not add up to 388 because there were two policies for which the estimated Phase One rate increase could not be calculated.

10. Like other jurisdictions in the United States, Maine has an extensive body of law, in both statute and regulation, protecting insurance policyholders by ensuring that they receive the insurance coverage they have been promised, and prohibiting excessive or unfairly discriminatory rate increases. In particular, long-term care insurance rates must be submitted for review by the Superintendent, which includes an actuarial analysis, and increases may not be implemented unless the Superintendent determines that they comply with applicable legal standards. *See e.g.* 24-A Me. Rev. Stat. § 2736 (“Every insurer shall file for approval by the superintendent every rate, rating formula, classification of risks and every modification” of long-term care rates for use in Maine so that the Superintendent can determine that the filing complies with “requirements that rates not be excessive, inadequate or unfairly discriminatory”); 02-031 Code Me. Rules, ch. 420, § (6)(A)(9) (“The filing must include sufficient supporting information to demonstrate [to the Superintendent] that the rates are not excessive, inadequate, or unfairly discriminatory.”) The Proposed Plan purports to set aside these laws, and comparable laws in other jurisdictions, and replace them with a process for setting rates on a nationwide basis.

## ***Massachusetts***

11. The Commissioner enforces state insurance laws and undertakes the duties of regulating insurers. *See* Massachusetts General Laws, Chapter 175; specifically, M.G.L. c. 175, § 3A.

12. The Commissioner regulates SHIP. SHIP has been licensed in Massachusetts to write long term care insurance since 1990. Previously, SHIP sought approval from the Commissioner for long-term care policy rate increases in Massachusetts. SHIP made its most recent Massachusetts rate increase requests in 2011 and 2019. The Commissioner reviewed each increase in accordance with Massachusetts law. The Commissioner permitted SHIP to increase rates at a level lower than requested in the 2011 filing and only after satisfying the applicable statutory and regulatory requirements. The 2019 rate request was withdrawn by SHIP in April 2020 prior to the Commissioner issuing a decision. The reason provided for the withdrawal of the 2019 rate request was SHIP's desire to include the pending rate increases in the Proposed Plan.

13. The Proposed Plan will affect Massachusetts policyholders. According to data provided to the Commissioner by the Rehabilitator, there were 345 Massachusetts policies subject to the Proposed Plan as of November 30, 2019. The average estimated Phase One rate increase for Massachusetts policyholders under the Proposed Plan is nearly 45%. Furthermore, that projected increase is not



evenly distributed: for example, 174 policies without inflation protection would have an average rate increase of 24%; 27 policies with lifetime benefits would have an average increase of 64%; and 11 policies issued to policyholders under age 70 would have an average rate increase of 97%.<sup>2</sup>

14. At the time this information was compiled, 39 Massachusetts residents were entitled to “on-claim waiver” of premium, meaning they are not paying premium because they are currently receiving long-term care. Another 91 policies were entitled to “active waiver,” either because the policyholder’s spouse was currently on claim or because the policyholder’s spouse has already died and the terms of the policy entitled the surviving spouse to a lifetime waiver of premium. The waiver-of-premium benefit is one of the basic protections provided by long-term care insurance. Typically, once a patient has been in a long-term care facility for the waiting period specified in the policy, the patient stops paying the insurer and the insurer begins reimbursing the patient – without diminishing the policy benefit by deducting further premiums. The Proposed Plan would take this benefit away from patients who are already receiving it, turning their premium waiver into a premium discount capped at a fixed dollar amount.

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<sup>2</sup> The information about policies in this and the following paragraph was provided by the Rehabilitator to the Commissioner in a December 20, 2019 email and attachments from Laura Lyon Slaymaker to Christopher M. Joyce. The estimated rate increases were calculated based upon that information.

15. Like other jurisdictions in the United States, Massachusetts has an extensive body of law, in both statute and regulation, protecting insurance policyholders by ensuring that they receive the insurance coverage they have been promised, and prohibiting excessive or unfairly discriminatory rate increases. In particular, long-term care insurance rates must be submitted for review by the Commissioner, which includes an actuarial analysis, and increases may not be implemented unless the Commissioner determines that they comply with applicable legal standards. *See* M.G.L. c. 175, § 108, 211 CMR 42.00 and 211 CMR 65. A long-term care insurance policy may be disapproved by the Commissioner “if the benefits provided therein are unreasonable in relation to the premium charged, or if it contains any provision which is unjust, unfair, inequitable, misleading or deceptive, or which encourages misrepresentation as to such policy.” M.G.L. c. 175, § 108(8)A; *see also Genworth Life Ins. Co. v. Comm’r of Ins.*, 126 N.E.3d 1019, 1023 (Mass. App. Ct. 2019)(affirming the Commissioner’s disapproval of requested long-term care insurance rate increases). The Proposed Plan purports to set aside these laws, and comparable laws in other jurisdictions, and replace them with a process for setting rates on a nationwide basis.

### ***Overarching Regulatory Interests***

16. The State Insurance Regulators have a regulatory interest in seeing that contract rights of Maine and Massachusetts policyholders are respected and that the standards and protections of the statutory rate-setting process are honored. The Proposed Plan acknowledges that the policies are structured as “level-premium guaranteed-renewable contracts” and that “this meant that, as long as the policyholders paid their premiums, the policies could not be cancelled despite changes in age, health, condition and other circumstances. Moreover, the premiums could only be increased if they were increased by the same percentage for all policyholders who had then same type of policy, and then only if the state regulator approved the increase.” Proposed Plan at 73.

17. The Proposed Plan, however, seeks to restructure the policies and ultimately to discharge certain benefit liability, *see* Proposed Plan at 77, and it expressly seeks to avoid review by Maine and Massachusetts insurance regulators of premium increases and policy modifications, *see* Proposed Plan at 22. It seeks to bind “affected parties (including other state insurance departments)” to the Plan’s “modification of policies and premium rates.” Proposed Plan at 80.

18. The Proposed Plan implicitly acknowledges that it needs “to place policyholders in no worse a position than they would face in a liquidation of SHIP.” Proposed Plan at 8. *See Foster v. Mutual Fire, Marine and Inland Ins.*

*Co.*, 531 Pa. 598, 613 (1992) (“Under *Nebblett [v. Carpenter]*, 305 U.S. 297 (1938)], creditors must fare at least as well under a rehabilitation plan as they would under a liquidation . . . .”). The State Insurance Regulators seek to understand how the Plan can comport with this standard in light of the apparently significant premium increases and/or benefit cuts proposed, in particular where those increases or cuts will vary across states. *See* Proposed Plan at 11, 22, 72, and 74.

19. In sum, the Proposed Plan is unprecedented and ignores the long-standing allocation of authority for state insurance regulators to approve or set rates on a state-specific basis. When a Maine or Massachusetts insurer does business in Pennsylvania, Pennsylvania residents are protected by having the fairness and reasonableness of the rates they pay determined under Pennsylvania law by the Pennsylvania Commissioner, subject to review by Pennsylvania’s courts. Maine and Massachusetts residents are entitled to the same protection when they buy coverage from a Pennsylvania insurer. The State Insurance Regulators’ concerns in this matter include protecting Maine and Massachusetts residents from unfair and excessive rate increases and unreasonable benefit decreases; and preserving a process for reviewing rate increases and benefit decreases that respects state sovereignty and interstate comity.

***Purposes for which Intervention is Sought***

20. In these circumstances, the State Insurance Regulators seek limited intervention for the purposes of participating in discovery, participating in and presenting evidence at the hearing, and potentially objecting to the Proposed Plan and appealing from orders entered concerning the Proposed Plan. Evidence may include facts such as those cited in paragraphs 8-9 and 13-14 above demonstrating the effect of the Proposed Plan on policyholders and the differing treatment of policyholders both within a state and across states. The potential objections may include non-compliance with the rate-setting statutes of the various states cited in paragraphs 10 and 15 above and the statutory and constitutional limitations on rehabilitation plans. Intervention is necessary because “the fundamental Plan structure is unlikely to change unless the Court requires it.” Proposed Plan at 11.

21. The State Insurance Regulators are considering and analyzing the factual and legal issues presented by the Proposed Plan. The State Insurance Regulators will file Formal Comments on or before September 15, 2020, in accordance with the schedule set in paragraphs 8 and 9 of the Case Management Order. If permitted to intervene, the State Insurance Regulators will provide information concerning the witnesses and exhibits they intend to introduce at the hearing on or before September 30, 2020 in accordance with the schedule set in paragraph 9 of the Case Management Order. In light of the Case Management

Order's schedule for filings, the provision of Pa.R.A.P. 3775(b) concerning attachment of the document to be filed if intervention is granted does not apply.

### **Request to Grant Leave to Extend the Time to Intervene**

22. If other states determine that a similar intervention in this proceeding is an appropriate process for protecting the interests of their own residents, it would promote efficiency and judicial economy to grant all interested states the option of consolidating their claims in a single intervention. The State Insurance Regulators making this application request further that the Court grant leave to permit other state insurance regulators to join as intervenors with the Maine and Massachusetts insurance regulators, until and including September 15, 2020, or other date set by the Court.

### **Conclusion**

For all of the above reasons, the Maine Superintendent of Insurance and the Massachusetts Commissioner of Insurance request that the Court (1) grant them intervention in this matter for the limited purpose of participating in the proceedings concerning and potentially opposing the Rehabilitator's Application for Approval of the Proposed Plan and appealing from orders concerning the Proposed Plan, and (2) grant leave to extend the time for other state insurance regulators to join as intervenors together with the Maine and Massachusetts

insurance regulators by application filed with the Court until and including September 15, 2020, or other date set by the Court.

Respectfully submitted,

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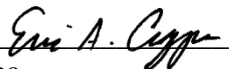
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Dated: July 31, 2020

## VERIFICATION

I, Eric A. Cioppa, Maine Superintendent of Insurance, hereby state that the facts stated in paragraphs 2, 5, 6–10, 16, and 19–21 above are true and correct to the best of my knowledge, information, and belief. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

Date: July 31, 2020

  
\_\_\_\_\_  
Eric A. Cioppa  
Superintendent of Insurance



## VERIFICATION

I, Gary D. Anderson, Commissioner of Insurance of the Massachusetts Division of Insurance, hereby state that the facts stated in paragraphs 2, 5, 11-15, 16, and 19-21 above are true and correct to the best of my knowledge, information, and belief. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

Date: July 31, 2020



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Gary D. Anderson  
Commissioner of Insurance

## **PROOF OF SERVICE**

I, Stephen G. Harvey, Esq., hereby certify that on this date, I caused a true and correct copy of the foregoing Joint Application for the Intervention of the Maine Superintendent of Insurance and the Massachusetts Commissioner of Insurance and Request to Grant Leave to Extend the Time to Intervene, to be served upon the following and in the manner indicated below:

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Dated: July 31, 2020

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