

December 21, 1949

SUBJECT: INSURANCE

TO ALL AUTHORIZED INSURERS WRITING GROUP INSURANCE

Re: So-called Retention Agreements or Statements

It has come to the attention of the Department that in the sale or solicitation of group insurance companies are frequently asked the question, "Do you guarantee the retentions under your group insurance policies?" In this connection the term "retention" under a group policy is understood to mean the excess on a policy year basis of the gross premium earned over the sum of the claims and the dividend for that year, or over the sum of the claims and the amount of that year's premium returned by a retroactive readjustment of rate of premium. The retention is often expressed as a percentage of the gross premium.

Each company writing group insurance shall conform its operations in the sale or solicitation of group insurance to the statutory constructions stated below.

Many companies writing group life or accident and health insurance charge an initial premium per unit of insurance benefit in force during the policy year subject to a possible reduction in cost at the end of the policy year by payment of a dividend or by return of part of the premium as the result of a retroactive readjustment of rate based on experience pursuant to Section 204(2) or Section 221(9) of the Insurance Law, and further may provide that the premium rate be adjusted for the ensuing policy year pursuant to these sections. Such dividends or rate adjustments cannot be guaranteed in advance. Hence any "retention" letter or other statement given to a policyholder or prospect illustrating or describing the operation of dividend or rate adjustment plans must clearly state that it is not a guaranty and that the dividend or rate adjustment plan is fully subject to change by the insurance company, (Sections 142(1), 204(2), 209, 211 and 221(9) Insurance Law.)

On the other hand, certain group accident and health policies have been approved which provide for the initial collection of a deposit premium based on the estimated volume of coverage during the policy year and further provide that the actual premium for the policy year will be determined retrospectively at the end of the policy year in accordance with a stated formula-based on losses, the size of risk or other factors. The Department construes that such a practice is not a retroactive readjustment of rate authorized by Section 221(9) but is a method of premium determination which may be used for group accident and health insurance subject to the statutory requirements for premium rates. Such retrospective rating formula, with the specific factors used therein, must be filed with the Department and such formula with its factors must meet the prescribed requirements that the policy shall be self-supporting; that the benefits provided therein shall not be unreasonable in relation to the premium charged; and that there shall be no unfair discrimination or misrepresentation. (Sections 221(6), 154(1), 209(2) and 211(1).) In addition, such formula and applicable factors must be set forth in the policy. (Section 142(1).) If any group policy using the basis described in this paragraph for determining premiums also provides for dividends, statements with respect to such dividends are subject to the requirements of the preceding paragraph.

If a group life insurance policy is submitted for approval which proposes to use the basis described in the paragraph immediately above for determining premiums, approval would not be granted if the retrospective rating formula and its factors included in the policy at issue could result, for the first or any renewal year, in an initial premium rate or in an actual premium determined retrospectively less than the minimum promulgated by this Department in accordance with

Section 204(2).

Attention is also called to the fact that, in addition to the requirement that dividends must be distributed equitably, rate adjustments pursuant to Section 204(2) or Section 221(9) must not involve unfair discrimination among policyholders.

Your company is requested to acknowledge receipt of this letter.

Very truly yours

[SIGNATURE]

Deputy Superintendent and Counsel