

State of Rhode Island and Providence Plantations
DEPARTMENT OF BUSINESS REGULATION
Division of Insurance
1511 Pontiac Avenue, Bldg. 69-2
Cranston, Rhode Island 02920

CONCISE EXPLANATORY STATEMENT

Insurance Regulation 118 – Civil Unions

The Department of Business Regulation (“Department”) hereby adopts amendments to Insurance Regulation 118 effective December 23, 2011 and makes this statement in accordance with R.I. Gen. Laws § 42-35-2.3. The Department makes these amendments in order to prohibit insurers from unfairly discriminating between married couples and parties to a civil union. There are eight differences between the text of the proposed rule as published in accordance with R.I. Gen. Laws § 42-35-3 and the rule as adopted. Those differences are:

1. Section 3(D) was added to clarify that this regulation does not apply to self-insured entities. The Department does not intend this regulation to have application over any entity or type of insurance that it does not regulate. However, it also does not intend omission of these types of entities or products from this regulation to effect the obligations of an insurer to comply with the law of this state.
2. Section 4(A) was amended to add the phrase “comprehensive statewide” before domestic partnership and removed the word “comparable” before laws of another state to clarify that the regulation is meant to apply to all legal spousal relationships including those formed in states that may use different terminology such as California, Oregon, Washington and Nevada.
3. Section 4(C) was amended to add the phrase “include but not limited to” to remove any interpretation that this regulation does not apply to all insurance under the Department’s regulation.
4. Section 5 was amended to remove the undefined term “civil union couples” to avoid any possible interpretation that this term signifies something other than the defined “parties to a civil union.”
5. Section 6(A) was amended to remove the undefined term “civil union couples” to remove any possible interpretation that this term signified something different than the defined “parties to a civil union” and to remove the reference to section 7.
6. Section 6(D) was amended to add the phrase “unrelated to civil union status” to further clarify that civil union status is to be considered the same as “married” and not to be separated out as a rating criteria.

7. Section 6(G) was amended to provide additional clarity and to require notice to the Department on any occasion in which federal law is interpreted by the insurer to require an alteration in benefits.

8. Section 7 was amended to remove the requirement that previously approved forms be amended and refiled and instead provide a statement that “spouse”, “marriage” and synonyms in existing policy forms are amended by operation of law to include parties to a civil union. This change is in accordance with the modern trend most recently approved in Connecticut, Illinois and Delaware.

The Department received a number of comments requesting changes it declined to make and makes the following statements concerning those suggestions:

1. The Department declined a request to add a section to Section 3 indicating that the regulation applies to public entities providing insurance to married spouses. The Department’s jurisdiction is limited to the business of insurance. A public entity offering insurance to its employees is the consumer not the insurer and this department does not have the statutory authority to govern its conduct.

2. The Department declined a request to add “unrelated to sexual orientation” after the first sentence of section 6(D). Notice was not provided that the Department would be considering regulation of the much broader category of sexual orientation and, therefore, the Department does not believe that it could permissibly make this change without re-noticing the regulation. This statement should not be taken as a statement on use of sexual orientation as a rating criteria, rather, the declination is made solely as a result of compliance with the Administrative Procedures Act.

3. The Department declined to make changes suggesting limited applicability to an interpretation of the reciprocity provision of R.I. Gen. Laws § 15-3.1-8 or limiting insurance benefits to “dependents” and not “families.” For purposes of this regulation an insurer must treat parties to a civil union in the same manner that it treats married persons.

4. The Department declined to add a new section 6(H) concerning contract holder that fall under R.I. Gen. Laws § 15-3.1-5. This declination was based upon the fact that this language was not proposed and, therefore, sufficient notice was given to include it in the proposal to comply with the Administrative Procedures Act. The department suggests that an insurer that encounters such a situation should contact the department for further direction. In addition, the department will consider such a proposal in any amendment to this regulation.