



STATE OF CONNECTICUT

INSURANCE DEPARTMENT

NOTICE OF INTENT TO ADOPT REGULATION

In accordance with section 4-168(a) of the Connecticut General Statutes, notice is hereby given that the Insurance Commissioner, pursuant to the authority of sections 38a-8 and 38a-819 of the Connecticut General Statutes, proposes to adopt revised regulations concerning Military Sales.

Statement of Purpose: To set forth standards to protect service members of the United States armed Forces from dishonest and predatory insurance sales practices by declaring certain identified practices to be false, misleading, deceptive or unfair.

All interested persons are invited to submit written data, views or arguments in connection with the proposed action within thirty days following publication of this notice in the Connecticut Law Journal to the State of Connecticut, Insurance Department, Attention: N. Beth Cook, P.O. Box 816, Hartford, CT 06142-0816.

Copies of the proposed regulation may be obtained by writing to the Insurance Department at the above address or sending an e-mail to Beth.Cook@ct.gov. The proposed regulation may also be viewed by visiting the Insurance Department's Internet Web site at www.state.ct.gov/cid and clicking on "Proposed Regulations".

A handwritten signature in black ink, reading "Thomas R. Sullivan".

Thomas R. Sullivan
Insurance Commissioner

IMPORTANT: Read Instructions on bottom of Certification Page before completing this Form. Failure to comply with instructions may cause disapproval of proposed Regulations.

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MILITARY SALES PRACTICES REGULATION

Section 1: Section 38a-819 of the Regulations of Connecticut State Agencies is amended by adding sections 38a-819-70 to 38a-819-75, inclusive, as follows:

(NEW) Section 38a-819-70 Purpose

(a) The purpose of this regulation is to set forth standards to protect service members of the United States Armed Forces from dishonest and predatory insurance sales practices by declaring certain identified practices to be false, misleading, deceptive or unfair.

(b) Nothing herein shall be construed to create or imply a private cause of action for a violation of this regulation.

(NEW) Section 38a-819-71 Scope

This regulation shall apply to the solicitation or sale of any life insurance or annuity product by an insurer or insurance producer to an active duty service member of the United States Armed Forces.

(NEW) Section 38a-819-72 Exemptions

This regulation shall not apply to solicitations or sales involving:

- (1) Credit insurance;
- (2) Group life insurance or group annuities where there is no in-person, face-to-face solicitation of individuals by an insurance producer or where the contract or certificate does not include a side fund;
- (3) An application to the existing insurer that issued the existing policy or contract when a contractual change or a conversion privilege is being exercised; or, when the existing policy or contract is being replaced by the same insurer pursuant to a program filed with and approved by the commissioner; or, when a term conversion privilege is exercised among corporate affiliates;
- (4) Individual stand-alone health policies, including disability income policies;
- (5) Contracts offered by Servicemembers' Group Life Insurance (SGLI) or Veterans' Group Life Insurance (VGLI), as authorized by 38 U.S.C. Section 1965 *et seq.*; or
- (6) Life insurance contracts offered through or by a non-profit military association, qualifying under Section 501 (c)(23) of the Internal Revenue Code (IRC), and which are not underwritten by an insurer; or
- (7) Contracts used to fund:
 - (A) An employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA);
 - (B) A plan described by Sections 401(a), 401(k), 403(b), 408(k) or 408(p) of the Internal Revenue Code (IRC), as amended, if established or maintained by an employer;
 - (C) A government or church plan defined in Section 414 of the IRC, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under Section 457 of the IRC;
 - (D) A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;

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- (E) Settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process; or
 - (F) Prearranged funeral contracts.
- (8) Nothing herein shall be construed to abrogate the ability of nonprofit organizations (and/or other organizations) to educate members of the United States Armed Forces in accordance with Department of Defense (DOD) Instruction 1344.07 – PERSONAL COMMERCIAL SOLICITATION ON DOD INSTALLATIONS or successor directive.
- (9) For purposes of this regulation, general advertisements, direct mail and internet marketing shall not constitute solicitation. Telephone marketing shall not constitute solicitation provided the caller explicitly and conspicuously discloses that the product concerned is life insurance and makes no statements that avoid a clear and unequivocal statement that life insurance is the subject matter of the solicitation. Provided however, nothing in this subsection shall be construed to exempt an insurer or insurance producer from this regulation in any in-person, face-to-face meeting established as a result of the solicitation exemptions identified in this subsection.

(NEW) Section 38a-819-73 Definitions

- (1) "Active Duty" means full-time duty in the active military service of the United States and includes members of the reserve component (National Guard and Reserve) while serving under published orders for active duty or full-time training. The term does not include members of the reserve component who are performing active duty or active duty for training under military calls or orders specifying periods of less than 31 calendar days.
- (2) "Department of Defense (DOD) Personnel" means all active duty service members and all civilian employees, including nonappropriated fund employees and special government employees, of the Department of Defense.
- (3) "Door to Door" means a solicitation or sales method whereby an insurance producer proceeds randomly or selectively from household to household without prior specific appointment.
- (4) "General Advertisement" means an advertisement having as its sole purpose the promotion of the reader's or viewer's interest in the concept of insurance or in the promotion of the insurer or the insurance producer.
- (5) "Insurer" means an insurance company required to be licensed under the laws of this state to provide life insurance products, including annuities.
- (6) "Insurance producer" means a person required to be licensed under the laws of this state to sell, solicit or negotiate life insurance, including annuities.
- (7) "Known" or "Knowingly" means, depending on its use herein, the insurance producer or insurer had actual awareness, or in the exercise of ordinary care should have known, that the person solicited is a service member; or is a service member with a pay grade of E-4 or below.
- (8) "Life Insurance" means insurance coverage on human lives including benefits of endowment and annuities, and may include benefits in the event of death or dismemberment by accident and benefits for disability income and unless otherwise specifically excluded, includes individually issued annuities.
- (9) "Military Installation" means any federally owned, leased, or operated base, reservation, post, camp, building, or other facility to which service members are assigned for duty, including barracks, transient housing, and family quarters.

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- (10) "My Pay" is a Defense Finance and Accounting Service (DFAS) web-based system that enables service members to process certain discretionary pay transactions or provide updates to personal information data elements without using paper forms.
- (11) "Service Member" means any active duty officer (commissioned and warrant) or enlisted member of the United States Armed Forces.
- (12) "Side Fund" means a fund or reserve that is part of or otherwise attached to a life insurance policy (excluding individually issued annuities) by rider, endorsement or other mechanism which accumulates premium or deposits at interest or by other means. The term does not include (A) accumulated or cash value or secondary guarantees provided by a universal life policy; (B) cash values provided by a whole life policy which are subject to standard nonforfeiture law for life insurance; (C) or a premium deposit fund which (i) contains only premiums paid in advance which accumulate at interest; (ii) imposes no penalty for withdrawal; (iii) does not permit funding beyond future required premiums; (iv) is not marketed or intended as an investment; and (v) does not carry a commission, either paid or calculated.
- (13) "Specific Appointment" means a prearranged appointment agreed upon by both parties and definite as to place and time.
- (14) "United States Armed Forces" means all components of the Army, Navy, Air Force, Marine Corps, and Coast Guard.

(NEW) Section 38a-819-74 Practices Declared False, Misleading, Deceptive or Unfair

- (a) The following acts or practices when committed on a military installation by an insurer or insurance producer with respect to the in-person, face-to-face solicitation of life insurance are declared to be false, misleading, deceptive or unfair:
 - (1) Knowingly soliciting the purchase of any life insurance product "door to door" or without first establishing a specific appointment for each meeting with the prospective purchaser.
 - (2) Soliciting service members in a group or "mass" audience or in a "captive" audience where attendance is not voluntary.
 - (3) Knowingly making appointments with or soliciting service members during their normally scheduled duty hours.
 - (4) Making appointments with or soliciting service members in barracks, day rooms, unit areas, or transient personnel housing or other areas where the installation commander has prohibited solicitation.
 - (5) Soliciting the sale of insurance without first obtaining permission from an office designated by the installation commander.
 - (6) Posting unauthorized bulletins, notices or advertisements.
 - (7) Failing to present DD Form 2885, *Personal Commercial Solicitation Evaluation*, to service members solicited or encouraging persons solicited not to complete or submit a DD Form 2885.
 - (8) Knowingly accepting an application for life insurance or issuing a policy of life insurance on the life of an enlisted member of the United States Armed Forces without first obtaining for the insurer's files a completed copy of any required form which confirms that the applicant has received counseling or fulfilled any other similar requirement for the sale of life

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insurance established by regulations, directives or rules of DOD or any branch of the Armed Forces.

- (b) The following acts or practices when committed on a military installation by an insurer or insurance producer constitute corrupt practices, improper influences or inducements and are declared to be false, misleading, deceptive or unfair:
- (1) Using DOD Personnel, directly or indirectly, as a representative or agent in any official or business capacity with or without compensation with respect to the solicitation or sale of life insurance to service members.
 - (2) Using an insurance producer to participate in any United States Armed Forces sponsored education or orientation program.
- (c) The following acts or practices by an insurer or insurance producer constitute corrupt practices, improper influences or inducements and are declared to be false, misleading, deceptive or unfair regardless of location:
- (1) Submitting, processing or assisting in the submission or processing of any allotment form or similar device used by the United States Armed Forces to direct a service member's pay to a third party for the purchase of life insurance. The foregoing includes, but is not limited to, using or assisting in using a service member's MyPay account or other similar internet or electronic medium for such purposes. This subsection does not prohibit assisting a service member by providing insurer or premium information necessary to complete any allotment form.
 - (2) Knowingly receiving funds from a service member for the payment of premium from a depository institution with which the service member has no formal banking relationship. For purposes of this section, a formal banking relationship is established when the depository institution; (A) provides the service member a deposit agreement and periodic statements and makes disclosures required by the Truth in Savings Act, 12 USC §4301 et seq. and the regulations promulgated thereunder; and (B) permits the service member to make deposits and withdrawals unrelated to the payment or processing of insurance premiums.
 - (3) Employing any device or method or entering into any agreement whereby funds received from a service member by allotment for the payment of insurance premiums are identified on the service member's Leave and Earnings Statement or equivalent or successor form as "Savings" or "Checking" And where the service member has no formal banking relationship as defined in subsection 2 of this section.
 - (4) Entering into any agreement with a depository institution for the purpose of receiving funds from a service member whereby the depository institution, with or without compensation, agrees to accept direct deposits from a service member with whom it has no formal banking relationship.
 - (5) Using DOD personnel, directly or indirectly, as a representative or agent in any official or unofficial capacity with or without compensation with respect to the solicitation or sale of life insurance to service members who are junior in rank or grade, or to the family members of such personnel.
 - (6) Offering or giving anything of value, directly or indirectly, to DOD personnel to procure their assistance in encouraging, assisting or facilitating the solicitation or sale of life insurance to another service member.

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- (7) Knowingly offering or giving anything of value to a service member with a pay grade of E-4 or below for his or her attendance to any event where an application for life insurance is solicited.
- (8) Advising a service member with a pay grade of E-4 or below to change his or her income tax withholding or State of legal residence for the sole purpose of increasing disposable income to purchase life insurance.
- (d) The following acts or practices by an insurer or insurance producer lead to confusion regarding source, sponsorship, approval or affiliation and are declared to be false, misleading, deceptive or unfair:
- (1) Making any representation, or using any device, title, descriptive name or identifier that has the tendency or capacity to confuse or mislead a service member into believing that the insurer, insurance producer or product offered is affiliated, connected or associated with, endorsed, sponsored, sanctioned or recommended by the U.S. Government, the United States Armed Forces, or any State or Federal agency or government entity. Examples of prohibited insurance producer titles include, but are not limited to, "Battalion Insurance Counselor," "Unit Insurance Advisor," "Servicemen's Group Life Insurance Conversion Consultant," or "Veteran's Benefits Counselor." Nothing herein shall be construed to prohibit a person from using a professional designation awarded after successful completion of a course of instruction in the business of insurance by an accredited institution of higher learning. Such designations include, but are not limited to Chartered Life Underwriter (CLU), Chartered Financial Consultant (ChFC), Certified Financial Planner (CFP), Master of Science In Financial Services (MSFS), or Masters of Science Financial Planning (MS).
 - (2) Soliciting the purchase of any life insurance product through the use of or in conjunction with any third party service or fraternal organization that promotes the welfare of or assists members of the United States Armed Forces in a manner that has the tendency or capacity to confuse or mislead a service member into believing that either the insurer, insurance producer or insurance product is affiliated, connected or associated with, endorsed, sponsored, sanction or recommended by the U.S. Government, or the United States Armed Forces.
- (e) The following acts or practices by an insurer or insurance producer lead to confusion regarding premiums, costs or investment returns and are declared to be false, misleading, deceptive or unfair:
- (1) Using or describing the credited interest rate on a life insurance policy in a manner that implies that the credited interest rate is a net return on premium paid.
 - (2) Excluding individually issued annuities, misrepresenting the mortality costs of a life insurance product, including stating or implying that the product "costs nothing" or is "free."
- (f) The following acts or practices by an insurer or insurance producer regarding SGLI or VGLI are declared to be false, misleading, deceptive or unfair:
- (1) Making any representation regarding the availability, suitability amount, cost, exclusions or limitations to coverage provided to a service member or dependents by SGLI or VGLI, which is false, misleading or deceptive.
 - (2) Making any representation regarding conversion requirements, including the costs of coverage, or exclusions or limitations to coverage of SGLI or VGLI to private insurers which is false, misleading or deceptive.

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- (3) Suggesting, recommending or encouraging a service member to cancel or terminate his or her SGLI policy or issuing a life insurance policy which replaces an existing SGLI policy unless the replacement shall take effect upon or after the service member's separation from the United States Armed Forces.
- (g) The following acts or practices by an insurer and or insurance producer regarding disclosure are declared to be false, misleading, deceptive or unfair:
- (1) Deploying, using or contracting for any lead generating materials designed exclusively for use with service members that do not clearly and conspicuously disclose that the recipient will be contacted by an insurance producer, if that is the case, for the purpose of soliciting the purchase of life insurance.
 - (2) Failing to disclose that a solicitation for the sale of life insurance will be made when establishing a specific appointment for an in-person face to face meeting with a prospective purchaser.
 - (3) Excluding individually issued annuities, failing to clearly and conspicuously disclose the fact that the product being sold is life insurance.
 - (4) Failing to make, at the time of sale or offer to an individual known to be a service member, the written disclosures required by Section 10 of the "Military Personnel Financial Services Protection Act," Pub. L. No. 109-290, p.16.
 - (5) Excluding individually issued annuities, when the sale is conducted in-person face-to-face with an individual known to be a service member, failing to provide the applicant at the time the application is taken: (A) an explanation of any free look period with instructions on how to cancel if a policy is issued; and (B) either a copy of the application or a written disclosure. The copy of the application or the written disclosure shall clearly and concisely set out the type of life insurance, the death benefit applied for and its expected first year cost. A basic illustration that meets the requirements of section 38a-819-62 shall be deemed sufficient to meet this requirement for a written disclosure.
- (h) The following acts or practices by an insurer or insurance producer with respect to the sale of certain life insurance products are declared to be false, misleading, deceptive or unfair:
- (1) Excluding individually issued annuities, recommending the purchase of any life insurance product which includes a side fund to a service member in pay grades E-4 and below unless the insurer has reasonable grounds for believing that the life insurance death benefit, standing alone, is suitable.
 - (2) Offering for sale or selling a life insurance product which includes a side fund to a service member in pay grades E-4 and below who is currently enrolled in SGLI, is presumed unsuitable unless, after the completion of a needs assessment, the insurer demonstrates that the applicant's SGLI death benefit, together with any other military survivor benefits, savings and investments, survivor income, and other life insurance are insufficient to meet the applicant's insurable needs for life insurance. (A) Insurable needs are the risks associated with premature death taking into consideration the financial obligations and immediate and future cash needs of the applicant's estate and survivors or dependents. (B) Other military survivor benefits include, but are not limited to: the Death Gratuity, Funeral Reimbursement, Transition Assistance, Survivor and Dependents' Educational Assistance, Dependency and Indemnity Compensation, TRICARE Healthcare Benefits, Survivor Housing Benefits and Allowances, Federal Income Tax Forgiveness, and Social Security Survivor Benefits.

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(3) Excluding individually issued annuities, offering for sale or selling any life insurance contract which includes a side fund: (A) unless interest credited accrues from the date of deposit to the date of withdrawal and permits withdrawals without limit or penalty; (B) unless the applicant has been provided with a schedule of effective rates of return based upon cash flows of the combined product. For this disclosure, the effective rate of return will consider all premiums and cash contributions made by the policyholder and all cash accumulations and cash surrender values available to the policyholder in addition to life insurance coverage. This schedule will be provided for at least each policy year from one (1) to ten (10) and for every fifth policy year thereafter ending at age 100, policy maturity or final expiration; and (C) which by default diverts or transfers funds accumulated in the side fund to pay, reduce or offset any premiums due.

(4) Excluding individually issued annuities, offering for sale or selling any life insurance contract which after considering all policy benefits, including but not limited to endowment, return of premium or persistency, does not comply with standard nonforfeiture law for life insurance.

(5) Selling any life insurance product to an individual known to be a service member that excludes coverage if the insured's death is related to war, declared or undeclared, or any act related to military service except for an accidental death coverage such as double indemnity, which may be excluded.

(NEW) Section 38a-819-75 Severability

If any provision of these sections or the application thereof to any person or circumstance is held invalid for any reason, the invalidity shall not affect the other provisions or any other application of these sections which can be given effect without the invalid provisions or application. To this end all provisions of these sections are declared to be severable.

Statement of Purpose: The purpose of this regulation is to set forth standards to protect service members of the United States Armed Forces from dishonest and predatory insurance sales practices by declaring certain identified practices to be false, misleading, deceptive or unfair.

(A) The problems, issues or circumstances that the regulation proposes to address.

In July of 2004, state regulators initiated a coordinated multi-state investigation into allegations of illegal sales practices involving the sale of life insurance products to members of the United States Armed Forces ("Armed Forces"). The investigation uncovered a number of deceptive and improper sales practices leading to nationwide settlements with four life insurance companies. As a result of these agreements, approximately 59,000 service members received cash refunds and other benefits valued at over \$70 million. The multi-state regulatory investigations are ongoing. At the request of Congress, the Government Accountability Office (GAO) conducted its own investigation into these allegations.

On September 29, 2006, President Bush signed the Military Personnel Financial Services Protection Act, (Public Law 109-290) (herein "the Act"). Included as rationale for the Act, Congress decided that given the great sacrifices that members of the Armed Forces make to protect our Nation, they must be offered first-rate financial products. Congress found it imperative that members of our Armed Forces be shielded from "abusive and misleading sales practices," and protected from certain life insurance products that are "improperly marketed as investment products, providing minimal death benefits in exchange for excessive premiums that are front-loaded in the first few years, making them entirely inappropriate for most military personnel."

In light of the investigational findings and Congress' stated purpose for implementing the Act, the NAIC Military Sales Working Group (herein "Working Group") developed for implementation, a model regulation and procedures to fully protect members of the Armed Forces from the abusive and unfair practices.

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The use of false, misleading, and deceptive sales practices to sell life insurance products to members of the Armed Forces has been a long-standing problem. Although the number of insurers engaged in these practices comprise a very small segment of the life insurance industry, the results of the aforementioned investigation reveals that the impact of these practices and products on successive generations of America's service members has been very harmful. Unfortunately, before the Act, state regulators confronted uncertainty regarding their authority to aggressively pursue the few bad actors on and involving military installations.

In the Act, Congress clarified the ambiguity regarding state regulators' authority to pursue improper sales practices of insurance products on military reservations worldwide. The Model Regulation enables regulators to exercise their authority vigorously to ensure the protection of future generations of service members. Pursuant to Section 9 of the Act, the Model Regulation addresses the kinds of unlawful practices uncovered during the multi-state investigations and tracks or incorporates relevant DOD solicitation regulations.

The Model Regulation also addresses Congressional concerns in Section 11 of the Act regarding suitability and product standards. In this regard, the Model Regulation requires insurers that market products with a "side" or savings fund to demonstrate suitability for junior enlisted service members in pay grades E-4 and below. Also, certain product features are prohibited altogether, regardless of suitability. These include deceptive interest crediting methodologies and automatic premium payment provisions, which divert accumulations from side funds to pay for the life insurance in the event of default. Finally, the Model Regulation requires insurers that market these side fund products to disclose a true rate of return that would incorporate the cost of the insurance.

The Model Regulation takes a simple and straightforward approach to protect service members from the practices and products identified. It makes actionable certain acts and practices which until now have not been declared to be false, misleading, deceptive or unfair under state trade practices statutes because of the lack of authority to do so. Many of the practices identified incorporate DOD solicitation rules. For example, the Model Regulation, tracking DOD regulations, makes it a deceptive trade practice to solicit in barracks, day rooms and other restricted areas.

Although Congress limited its Section 9 mandate in the Act to the development of standards to protect service members from problematic sales practices occurring on military installations, the Model Regulation captures some of the more egregious practices, which were not confined to military installations, but occurred off-base. For example, the misuse and manipulation of the allotment system, which abrogated important rights guaranteed to certain service members, including the right to a cooling-off period and counseling, frequently occurred off-base. The Model Regulation also addresses Congressional concerns set out in Section 11 of the Act regarding suitability and product standards.

B. A summary of the main provisions of the regulation

ON A MILITARY INSTALLATION

The first category of issues relates to acts or practices by an insurer or producer that are misleading or unfair when committed on a military installation or in military-controlled housing

ANY LOCATION

The second category of issues relates to acts or practices by insurers or producers that are misleading or unfair regardless of the location.

CONFUSION REGARDING SOURCE, SPONSORSHIP, APPROVAL, AFFILIATION

The regulation prohibits acts that could create confusion regarding source, sponsorship, approval or affiliation.

CONFUSION REGARDING PREMIUMS, COSTS AND INVESTMENT RETURNS

The regulation prohibits acts that could lead to confusion regarding premiums, costs or investment returns.

DISPARAGEMENT OF SGLI OR VGLI

The regulation prohibits any acts that disparage SGLI or VGLI.

REQUIRED DISCLOSURES

The regulation prohibits acts that use any lead generating material that does not clearly and conspicuously disclose that the recipient will be contacted by an insurance producer, if that is the case; failing to provide all disclosures required by Section 10 of the Act; and, failing to provide the applicant at the time a policy

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is applied for a copy of the policy application or a written disclosure that clearly and concisely explains the cost, coverage, free look period, and cancellation instructions associated with the product.

The regulation prohibits offering for sale or selling any life insurance contract that includes a side fund:

- Unless interest credited accrues from the date of deposit to the date of withdrawal and permits withdrawals without limit or penalty; and,
- Unless the applicant has been provided with a schedule of effective rates of return based upon cash flows of the combined product upon surrender or cancellation for at least each policy year from one (1) to ten (10) and for every fifth policy year thereafter ending at age 100, policy maturity or final expiration and that, by default, diverts or transfers funds accumulated in the side fund to pay, reduce or offset any premiums due.

The regulation prohibits the offering for sale or selling any life insurance contract that:

- After considering all policy benefits, including but not limited to endowment, return of premium or persistency, does not comply with standard nonforfeiture laws for life insurance; and,
- Excludes coverage if the insured's death is related to war.

C. The legal effects of the regulation, including all ways that the regulation would change existing regulations or other laws.

The regulations, which are promulgated pursuant to statutory authority provided in Conn. Gen. Stat. §§38a-8 and 38a-819, expand the Commissioner's authority to oversee and regulate unfair insurance practices to military installations. Conn. Gen. Stat. §38a-8 which provides in relevant part that the commissioner shall see that all laws respecting insurance companies and health care centers are faithfully executed and shall administer and enforce the provisions of this title. The commissioner has all powers specifically granted, and all further powers that are reasonable and necessary to enable the commissioner to protect the public interest in accordance with the duties imposed by this title. Pursuant to Conn. Gen. Stat. §38a-819, the commissioner may issue regulations implementing the provisions of section 38a-816, which defines unfair and deceptive acts or practices in the business of insurance. With the enactment of the Military Personnel Financial Services Protection Act (Pub. L. No. 109-290) ("the Act"), the state regulatory agencies have been given the authority to enforce state laws on federal land and within federal reservations. That extension of authority establishes extend the additional authority a Connecticut insurance commissioner would need to protect active duty service members of the military.

Pursuant to Section 9 of the Act, the regulations must be in place in the states no later than **September 29, 2007**; which is one year after enactment of the federal law.