

IN RE:

BANKERS LIFE AND  
CASUALTY COMPANY

) CONSENT AGREEMENT  
)  
) Docket No. INS 02-835

This document is a Consent Agreement, authorized by 10 M.R.S.A. § 8003(5)(B), entered into by and among Bankers Life and Casualty Company (hereafter “Bankers”), the Superintendent of the Maine Bureau of Insurance (hereafter “the Superintendent”), and the Office of the Attorney General. Its purpose is to resolve, without resort to an adjudicatory proceeding, failure to comply with the requirements of the Maine Insurance Code as set forth below.

## FACTS

1. The Superintendent is the official charged with administering and enforcing Maine’s insurance laws and regulations.
2. Bankers Life and Casualty Company is licensed in Maine as a foreign life and health insurance company, Maine license number 127, NAIC number 61263.
3. On April 19, 2002, Consumer filed a written complaint with the Bureau, complaint number 200518374. Consumer’s complaint stated that, after receiving notice that her premium would be increasing from \$139.85 to \$174.56 per month, she received a call from a Bankers’ producer who wanted to talk to her about her Aunt’s Medicare Supplement coverage. Consumer asserted that the Bankers’ producer informed Consumer that he could offer Consumer’s Aunt a group rate of around \$130.00 for the same coverage the Aunt currently had. Consumer asserted that the Bankers’ producer told her that he could not offer her the same group plan because she was not yet 65 and she was eligible for Medicare because of disability. Consumer’s complaint stated, “I feel this is discrimination because I am not at retirement age.”
4. Bankers’ May 15, 2002 response to the Bureau regarding Consumer’s complaint stated, in part:

“As our agent explained to [Consumer], she wouldn’t be eligible for all plans offered under the GR-A11 Group Medicare Supplement Policy being offered at the present time because this isn’t either of her Medicare open enrollment periods, nor is this an HMO termination. We do offer open enrollment for Plan A coverage under the GR-A11 group Medicare Supplement Plan in December of each year for underage 65 disabled individuals. If [Consumer] is interested in changing her coverage to the group plan, she may apply for an exchange to our GR-A11 Plan A supplement in December.”
5. The Bureau’s May 20, 2002 letter to Bankers requested Bankers to reconsider its position in light of the requirements of 24-A M.R.S.A. §§ 5002-B.
6. Bankers’ June 19, 2002 response to the Bureau again refused to offer Consumer a Medicare Supplement policy plan G, stating in part: “[Consumer] may apply for an exchange in coverage to our GR-A11 Plan A supplement during our Company’s open enrollment period in the month

of December.”

7. Title 24-A M.R.S.A. Section 5002-B(1 & 2) guarantees Maine consumers the right to change Medicare Supplement plans (with the same carrier or with a different carrier) if they have maintained “continuous coverage” and they are not applying for a plan that provides greater benefits than their current plan. The statute applies to disabled Medicare enrollees under the age of 65 as well as to Medicare enrollees over the age of 65. The statute provides, in part:

**1. Persons provided continuity of coverage.** This section provides continuity of coverage for a person who seeks coverage under a Medicare supplement policy if:

A. That person was previously covered under a Medicare supplement policy issued by the same or a different carrier. For purposes of this section, the Medicare supplement policy under which the person is seeking coverage is the "succeeding policy." The Medicare supplement policy that previously covered the person is the "prior policy";

B. Coverage under the prior Medicare supplement policy terminated within 90 days before the date the person applies for the succeeding policy; and

C. The prior policy was issued during the insured's open enrollment period or was issued to replace another Medicare supplement policy and the insured had continuous coverage beginning in the insured's open enrollment period with no gap in coverage in excess of 90 days. For purposes of this section, any Medicare supplement policy that covered the person before the prior policy is an "earlier policy."

**2. Prohibition against discontinuity.** The insurer shall, for any person described in subsection 1, waive any medical underwriting or preexisting conditions exclusion to the extent that benefits would have been payable under the prior policy and any earlier policy if those policies were still in effect. This subsection does not require the succeeding insurer to pay any benefits that are not within the terms of coverage of the succeeding policy solely because they would have been paid by the prior policy.

## **CONCLUSIONS OF LAW**

8. As described in paragraphs 1- 6 above, Bankers failed to comply with the requirements of 24-A M.R.S.A. Section 5002-B by underwriting and rejecting the Medicare Supplement application of a consumer entitled to “guaranteed issue.”

## **COVENANTS**

9. A formal hearing in this matter is waived and no appeal will be made.

10. At the time of executing this Agreement, Bankers shall pay to the Bureau of Insurance a penalty in the amount of Five Thousand Dollars and No Cents (\$5,000.00), payable to the Treasurer of the State of Maine.

11. Bankers shall immediately cease marketing Medicare supplement policies through the Golden Life Association in the State of Maine, and agrees to renew policies issued through the Golden Life Association as a closed block of business.

12. In consideration of Bankers' compliance with the terms of this Consent Agreement, the Superintendent agrees to forgo pursuing any disciplinary measures or other civil sanction for the specific failure to comply with the requirements of 24-A M.R.S.A. Section 5002-B described above. The Superintendent also agrees to forgo disciplinary action for the failure to comply with the requirements of Maine's Medicare Supplement guaranteed issue laws with respect to denials of applications entitled to guaranteed issue of Golden Life policies that Bankers has provided to the Bureau prior to the date of this agreement.

**MISCELLANEOUS**

13. This Consent Agreement may only be modified by the written consent of the parties.

14. It is understood by the parties to this Agreement that nothing herein shall affect any rights or interests of any person not a party to this Agreement.

15. Bankers acknowledges that this Consent Agreement is a public record within the meaning of 1 M.R.S.A. § 402, that it will be available for public inspection and copying as provided for by 1 M.R.S.A. § 408, and that it will be reported to the NAIC and included in the RIRS database.

16. Bankers has been advised of its right to consult with counsel and has, in fact, consulted with counsel before executing this Agreement.

17. Nothing herein shall prohibit the Superintendent from seeking an order to enforce this Agreement, or from seeking additional sanctions in the event that Bankers does not comply with the above terms, or from taking further legal action in the event that the Superintendent receives additional evidence not previously a part of this investigation that further legal action is necessary.

**Signature Page**

**BANKERS LIFE AND CASUALTY COMPANY**

By:

Dated: \_\_\_\_\_, 2003

\_\_\_\_\_

\_\_\_\_\_  
*Printed Name and Title*

Subscribed and sworn to before me  
this \_\_\_\_\_ day of \_\_\_\_\_, 2003

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Printed name

\_\_\_\_\_  
Date of commission expiration

**MAINE BUREAU OF INSURANCE**

Dated: \_\_\_\_\_, 2003

\_\_\_\_\_  
Alessandro A. Iuppa  
Superintendent of Insurance

**MAINE OFFICE OF THE  
ATTORNEY GENERAL**

Dated: \_\_\_\_\_, 2003

\_\_\_\_\_  
Thomas C. Sturtevant, Jr.  
Assistant Attorney General