# California Department of Insurance
# Eight-Hour Mandatory Long-Term Care Course
# Attachment IV

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CALIFORNIA INSURANCE COMMISSIONER

## MEMORANDUM

**TO:** California Health Advocates

**FROM:** Laszlo Komjathy, Jr.

**DATE:** August 14, 2020

**RE:** Long-Term Care and Health Insurance Policyholder Surcharge Notice

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**Q. MAY A LONG-TERM CARE OR HEALTH INSURANCE POLICY BE CANCELLED OR NON-RENEWED FOR FAILURE TO PAY A SURCHARGE ASSESSED BY AN INSURER TO RECOUP AN ASSESSMENT BY THE CALIFORNIA LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION (CLHIGA)?**

**A. NO. FAILURE TO PAY A CLHIGA SURCHARGE IS NOT A LEGALLY PERMISSIBLE BASIS UNDER CALIFORNIA LAW TO CANCEL OR NON-RENEW A LONG-TERM CARE OR HEALTH INSURANCE POLICY.**

In recent months, many California consumers received insurance premium invoices that include surcharges related to the insolvency of Penn Treaty Network America Insurance Company (Penn Treaty) and its subsidiary American Network Insurance Company (ANIC). Certain consumers have raised concerns regarding whether their long-term care or health insurance policy would be non-renewed or cancelled if they declined to pay the surcharge.

The recent policyholder surcharges result from assessments by CLHIGA relating to the liquidation of Penn Treaty and ANIC. CLHIGA is an association of insurance companies licensed to sell life insurance, health insurance, and annuities in California. Long-term care insurance is considered a type of disability insurance under the California Insurance Code. (Cal. Ins. Code §106(a).) Created by state law, CLHIGA provides protection to policyholders (up to limits set by state law) when one of its member insurers becomes insolvent and is ordered to be liquidated.

On March 1, 2017, Penn Treaty and ANIC were placed into liquidation by orders of the Commonwealth Court of Pennsylvania. Upon entry of the Orders of Liquidation, CLHIGA was obligated to provide coverage for all covered claims of California policyholders of Penn Treaty and ANIC. In order to have sufficient funds to provide this coverage, CLHIGA is authorized to assess its member insurers. Pursuant to California law, each insurer member of CLHIGA may recoup the assessment over a reasonable period of time by imposing a surcharge on the premiums billed to its policyholders. (Cal. Ins. Code §1067.08(i)(1).) Amounts recouped shall not, however, be considered premium for any purpose, including the computation of gross premium tax or agent commission. (Id.)

The California Department of Insurance (CDI) developed a notice that CLHIGA member insurers could include in any premium billing statement seeking to recoup the assessment from Penn Treaty and ANIC policyholders. The notice states as follows:

> "*California law allows all companies to surcharge their health policies to recover these assessments. This surcharge is not a premium under California law. Payment or non-payment of the surcharge* will not affect the status of your policy *with __________________________________________. Additionally, this surcharge is not connected to any premium rate change notices you may have received*."

Based on the foregoing, it is the position of the CDI that any surcharge billed to a policyholder by an insurer to recoup assessments paid by such insurer to CLHIGA is not considered premium for any purpose, and failure to pay a CLHIGA surcharge is not a permissible legal basis under California law to non-renew or cancel either a long-term care or health insurance policy. As noted, provided that the policyholder promptly pays any premium when due, the non-payment of the CLHIGA surcharge will not affect the status of a policyholder's long-term care or health insurance policy.