BULLETIN 98-6

TO: Life and Health Insurers

FROM: Darla L. Lyon, Director

RE: Trusts.

DATED: June 30, 1998

This Bulletin replaces Bulletin 98-4 and outlines the Division's position with respect to the use of trusts as policyholders for the marketing of group life and health insurance sold to employers associations.

Bulletin 98-4 represented an alteration in the Division's position which was in part necessitated by the statutory change to SDCL 58-11-12. The prior method of handling such policy forms issued to a trust is not valid as such policy forms issued to a trust cannot be filed for informational purposes if the insurance is to be marketed in this state. Therefore, for those policies and certificates issued to a trust which are subject to prior approval under SDCL 58-11-12, the following requirements must be followed:

1. The Trust must be established by an employer, labor union or association. The association itself must meet the requirements of SDCL 58-16-30 and 58-18-3 as applicable, and may not be a multiple association trust.

2. Employers who are in an unrelated industry may not join the trust for purposes of obtaining insurance. The statutes require that the employers insured through a trust must be in the same or related industry.

3. The insurer must provide evidence to the director that (a) the issuance of the policy is not contrary to the best interests of the public, (b) the issuance of the policy would result in economies of acquisition or administration, and (c) the benefits are reasonable in relation to the premiums charged.

4. No change in the benefits provided under the group policy insuring eligible employees and dependents of participating employees will become effective as to any employer who does not consent to such change. Any policy form sold in conjunction with a trust, subject to the requirements of this bulletin, must have a provision describing the process of consent which should include at a minimum written reasonable notice to the employer by the insurer.

5. In the event the insurer decides to terminate coverage (for other than non-payment of premium), it must first notify the director of its decision and schedule no such termination sooner than 180 days following the date it has mailed notice of the termination to participating employers. Any policy form sold in conjunction with a trust, subject to the requirements of this bulletin, must have a provision describing the process of termination.

6. For purposes of this bulletin, the Trustee's actions shall be considered to be that of the insurer. Nothing in this bulletin in any manner changes any restrictions on non-renew ability of coverage pursuant to SDCL 58-18-46 and 47 and 58-17-83 and 84, whether or not the trust continues to exist.

The requirements of this bulletin are applicable to all filings made from this date forward. Any filing approved prior to this date which involved the issuance of coverage through a trust in a method that does not comply with this bulletin may only continue to be used until August 1, 1998 unless an extension is granted by the division. Policy forms previously approved should be re-submitted to the Division to determine whether or not they now comply. No new filings will be approved which are not in compliance with this bulletin.