

# STATEMENTS OF POLICY

## Title 10—BANKS AND BANKING

### DEPARTMENT OF BANKING

[10 PA. CODE CH. 13]

#### Limited Purpose Banking Offices—Statement of Policy

The Department of Banking (Department) adopts §§ 13.61—13.68 (relating to exception to definition of “branch”—statement of policy). This statement of policy is published under sections 102 and 103 of the Banking Code of 1965 (act) (7 P. S. §§ 102 and 103) which was amended by the act of July 6, 1995 (P. L. 271, No. 39) (Act 39) and sections 201 and 202 of the Department of Banking Code (71 P. S. §§ 733-201 and 733-202).

#### *Purpose of the Statement of Policy*

Act 39 permits full interstate branching in this Commonwealth on a reciprocal basis. Consistent with creating a modern and responsive interstate branching environment in this Commonwealth, Act 39 also amended the definition of a “branch” office of a banking institution by removing several types of offices from the definition including: “automated teller machines,” “loan production offices” and “any other office the Department may determine by rule or regulation does not constitute a branch.” See section 102(h) of the act.

The Department has received numerous inquiries, from Pennsylvania State-chartered banking institutions and institutions chartered under the laws of other states, regarding whether offices of banking institutions which perform limited activities on behalf of those banking institutions are excepted from the definition of a “branch” under section 102(h)(vi) of the act. The Department has determined that the recognition of a “limited purpose banking office,” as an exception to the term “branch” under Commonwealth banking laws, is consistent with the purposes in section 103 of the act.

The Department has developed this statement of policy to provide guidance regarding: 1) the establishment of limited purpose banking offices located in this Commonwealth by banking institutions, as defined in § 13.61 (relating to definitions); and 2) the establishment of limited purpose banking offices located in other states by Pennsylvania State-chartered banking institutions.

The Department reserves the right to amend this statement of policy as needed.

#### *Effective Date*

The provisions of this statement of policy become effective immediately upon publication in the *Pennsylvania Bulletin*.

(*Editor's Note:* The regulations of the Department, 10 Pa.Code Chapter 13, are amended by adding a statement of policy at §§ 13.61—13.68 to read as set forth in Annex A.)

RICHARD C. RISHEL,  
*Secretary*

**Fiscal Note:** 3-34. No fiscal impact; (8) recommends adoption.

### Annex A

#### TITLE 10. BANKS AND BANKING

##### PART II. BUREAU OF BANKS

##### CHAPTER 13. LOANS

#### EXCEPTION TO DEFINITION OF “BRANCH”—STATEMENT OF POLICY

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#### § 13.61. Definitions.

The following words and terms, when used in this section and §§ 13.62—13.68, have the following meanings, unless the context clearly indicates otherwise:

#### *Banking institution—*

(i) A bank, bank and trust company, trust company and savings bank, chartered under the laws of the Commonwealth.

(ii) A National bank

(iii) A bank, bank and trust company, trust company and savings bank which is not regulated by the Office of Thrift Supervision, chartered under the laws of another state or territory of the United States.

*Pennsylvania banking institution—*A banking institution chartered under the laws of the Commonwealth.

*Non-Pennsylvania banking institution—*A banking institution chartered under the laws of the United States, Puerto Rico or a state or territory of the United States other than the Commonwealth.

*Limited purpose banking office—*An office of a banking institution which performs limited activities, such as those in § 13.63 (relating to permissible activities), on behalf of the banking institution but which does not:

(i) Accept or pay out deposits.

(ii) Make loans.

(iii) Pay checks.

(iv) Accept or administer any type of accounts, including trust or other fiduciary accounts.

#### § 13.62. Application.

Sections 13.61, 13.63—13.68 and this section address limited purpose banking offices located in this Commonwealth which are established by Commonwealth and non-Pennsylvania banking institutions, as defined in § 13.61 (relating to definitions). In addition, these sections address Pennsylvania banking institutions locating limited purpose banking offices in other states. The establishment and maintenance of a limited purpose banking office located in this Commonwealth by a non-Pennsylvania banking institution and the establishment in another state of a limited purpose banking office by a Pennsylvania banking institution may not be in violation of, or otherwise contrary to, the laws of the other relevant state.

**§ 13.63. Permissible activities.**

(a) The following activities may be conducted at a limited purpose banking office of a banking institution, if, in instances where another state is involved, the performance of the activities at the limited purpose banking office does not violate, and is not otherwise contrary to, the laws of the other relevant state:

- (1) Loan production office activities, including:
  - (i) Soliciting loans, and, in connection therewith, assembling credit information.
  - (ii) Making property inspections and appraisals.
  - (iii) Securing title information.
  - (iv) Preparing applications for loans, including making recommendations with respect to action thereon.
  - (v) Soliciting investors to purchase loans from the banking institution.
  - (vi) Seeking to have the investors contract with the banking institution for the servicing of the loans.
  - (vii) Engaging in other similar agent-type activities.
- (2) Representative office activities, including: representational functions, such as soliciting banking and trust business, marketing services or acting as a liaison with customers on behalf of the banking institution:
  - (i) A banking institution may only solicit fiduciary business or other types of trust business at the limited purpose banking office if the banking institution is authorized to engage in fiduciary and trust activities under its laws of incorporation.
    - (ii) A banking institution which is chartered by or is headquartered in a state other than this Commonwealth may not act as a fiduciary or establish an office to conduct a fiduciary business in this Commonwealth, beyond the activities permitted in §§ 13.61, 13.62, 13.64—13.68 and this section, in contradiction of section 106(b) of the act (7 P. S. § 106(b)).
  - (3) Clerical, back office type of activities of the banking institution.
  - (4) Administrative activities related to the premises or personnel of the limited purpose banking office.
  - (5) Other similar activities, subject to the Department written nonobjection.

(b) The activities in subsection (a)(1) represent those activities which may be conducted by a loan production office, under section 102 (h)(v) of the act (7 P. S. § 102(h)(v)), and are consistent with the regulations of the Federal Reserve Board in 12 CFR 250.141 (h) (relating to member bank purchase of stock of "operations subsidiaries").

**§ 13.64. Impermissible activities.**

A limited purpose banking office of a banking institution may not:

- (1) Make final business decisions, other than decisions relating to the premises or personnel of the limited purpose banking office, for the account of the banking institution it represents, including contracting for or accepting any deposit or deposit-like liabilities on behalf of the banking institution.
- (2) Disburse loan funds, transmit funds, post loan repayments or be responsible for making the final decisions to approve loans.

(3) With respect to a banking institution which possesses fiduciary powers under its laws of incorporation, a limited purpose banking office of such a banking institution may not do any of the following: make final decisions regarding fiduciary account applications such as accepting fiduciary or other trust accounts, accept deposits for fiduciary or other trust accounts or administer fiduciary accounts. In addition, a non-Pennsylvania banking institution shall continue to satisfy the reciprocity and other requirements imposed by the Department under section 106(b) of the act (7 P. S. § 106(b)) to act as a fiduciary in this Commonwealth.

**§ 13.65. Information required.**

(a) A banking institution seeking to establish and maintain a limited purpose banking office under §§ 13.61—13.64, 13.66—13.68 and this section shall submit a prior notice to the Department's Manager of Corporate Applications in letter form. The Department may object to the establishment and maintenance of a limited purpose banking office within 20 business days of receiving the notice. If the Department objects to the notice, the banking institution may not establish or maintain the limited purpose banking office until the Department approves the action. The following information shall be included in the notice required under this section:

- (1) The name and address of the principal office of the banking institution.
- (2) The exact address and telephone number of the limited purpose banking office to be established.
- (3) The name of the banking institution's officer responsible for the activities of the limited purpose banking office.
- (4) A complete description of the activities to be performed at the proposed limited purpose banking office.
- (5) With respect to a non-Pennsylvania banking institution seeking to establish a limited purpose banking office in this Commonwealth or a Pennsylvania banking institution seeking to establish a limited purpose banking office in another state, a legal opinion providing that the establishment and maintenance of the proposed limited purpose banking office does not violate, and is not otherwise contrary to, the laws of the other relevant state, including reference to the applicable statutory or regulatory authority, or both, of the other state.
- (6) A statement providing that the banking institution has obtained the regulatory approvals required to establish and maintain the proposed limited purpose banking office.
- (7) Other information which is deemed necessary by the Department.

(b) Changes in the information submitted to the Department shall be promptly reported to the Department.

**§ 13.66. Designation as a limited purpose banking office.**

Office signs, stationery, telephone listings or print advertisements related to a limited purpose banking office established under §§ 13.61—13.65, 13.67, 13.68 and this section shall clearly indicate that the office is a representative type of office and is not a branch of the banking institution.

**§ 13.67. Authority of the Department.**

(a) When deemed necessary by the Department, a limited purpose banking office established and main-

tained under §§ 13.61—13.66, 13.68 and this section shall be subject to supervision, regulation, examination and orders issued by the Department. The Department has determined not to assess a fee associated with the establishment or maintenance of a limited purpose banking office. The Department reserves the right to assess a fee associated with the establishment, examination, supervision or regulation of a limited purpose banking office established under §§ 13.61—13.66, 13.68 and this section when deemed appropriate by the Department.

(b) Failure of a banking institution to comply with §§ 13.61—13.66, 13.68 and this section may cause the limited purpose banking office to be viewed by the Department as a branch, causing the office to be subject to the requirements related to bank branch offices contained in the act. Accordingly, the Department may take any enforcement action it deems appropriate under these circumstances.

### § 13.68. Application of other Pennsylvania laws.

A non-Pennsylvania banking institution may be required to register with the Department of State to do business in this Commonwealth under 15 Pa.C.S. Chapter 41 (relating to foreign business corporations). The Department recommends that a non-Pennsylvania banking institution seeking to establish a limited purpose banking office in this Commonwealth contact the Department of State to determine whether the banking institution must register with that agency to do business in this Commonwealth.

[Pa.B. Doc. No. 96-2095. Filed for public inspection December 13, 1996, 9:00 a.m.]

## DEPARTMENT OF BANKING

### [10 PA. CODE CH. 21]

#### Insurance and Annuities Authority

The Department of Banking (Department) has received several inquiries regarding the authority of Pennsylvania State-chartered banks, bank and trust companies, and savings banks (banking institutions) to act as agents in the sale of all types of insurance products. Interest has been intensified by the recent unanimous decision of the United States Supreme Court in *Barnett Bank of Marion County, N. A. v. Bill Nelson, Florida Insurance Commissioner*, 116 S.Ct. 1103 (1996). *Barnett* confirms that National banks have the statutory authority to act as agents in the sale of life, property and casualty, and other types of insurance provided the bank is located in any place the population of which does not exceed 5,000 inhabitants. This authority exists even if state law contains provisions which state that banks cannot sell insurance.

The effect of *Barnett* in this Commonwealth is that the Pennsylvania anti-affiliation statute, 40 P.S. § 281, which prohibits "lending institutions" from acting as insurance agents is no longer applicable to National banks. However, this creates a competitive disadvantage of serious economic proportions to Pennsylvania State-chartered banking institutions. Recognizing this disparity between State and National banking powers, the Department is exercising its rulemaking authority and administrative discretion to ensure that Pennsylvania State-chartered institutions remain competitive with other financial organizations operating in this Commonwealth.

Therefore, Pennsylvania banking institutions may act as agents in the sale of property and casualty, life or other types of insurance provided the bank is located in any place the population of which does not exceed 5,000 inhabitants, under their incidental powers provided in sections 315(i) and 502(h) of the Banking Code of 1965 (act) (7 P.S. §§ 315(i) and 502(h)). This grant of authority to Pennsylvania State-chartered banking institutions is analogous to the authority provided to National banks in *Barnett*. The Department's position herein is consistent with the authority provided by the General Assembly to the Department in section 103 of the act (7 P.S. § 103).

The Department also has received several inquiries as to the authority of Pennsylvania State-chartered banking institutions to sell annuities issued by insurance companies. These inquiries reflect the intense interest in such activity expressed by the banking industry across the country. That interest has increased sharply because of the United States Supreme Court's decision in *Nationsbank of North Carolina N. A. v. Variable Annuity Life Insurance Co.*, 115 S.Ct. 810 (1995), which upheld a ruling of the Office of the Comptroller of the Currency (OCC) that a National bank and its subsidiary have the authority to sell fixed, variable and hybrid annuities as agents.

The Court based its decision on a finding that annuities are essentially financial instruments, which a National bank has the authority (as an incidental banking power) to broker just as it does with other financial instruments. The Court also ruled that the provision of the national banking laws which gives National banks specific authority to sell insurance was not pertinent to the case because annuities are properly classified as investments and not as insurance.

The Department has reviewed the provisions of the act, including sections 315 and 502 of the act, relating to the incidental powers of banks and savings banks, and has determined that Pennsylvania State-chartered banking institutions and savings banks may engage in the sale of annuities as a power incidental to the banking business, directly or indirectly through a subsidiary.

The incidental powers language found in the act is substantially similar to the incidental power provision contained in the National Bank Act, which was relied upon by the OCC in determining that National banks may sell annuities. In addition, Pennsylvania-chartered institutions, like National banks, are statutorily authorized to sell financial instruments as part of the institutions' banking business.

Furthermore, under section 103 of the act, the Department is authorized to exercise its administrative discretion to assure that Pennsylvania State-chartered banking institutions remain competitive, with each other and other financial organizations, and to assure that these institutions have the opportunity to expand their services to serve effectively the convenience and needs of customers.

#### *Effective Date*

This statement of policy is effective upon publication in the *Pennsylvania Bulletin*.

*(Editor's Note: The regulations of the Department of Banking, 10 Pa. Code Chapter 21, are amended by adding a statement of policy at § 21.61 to read as set forth in Annex A.*

See 26 Pa. B. 5992 (December 14, 1996) for an Insurance Department document concerning this subject.)

RICHARD C. RISHEL,  
Secretary

**Fiscal Note:** 3-35. No fiscal impact; (8) recommends adoption. The Department of Banking will not incur any increased administrative costs from this regulatory action. Any increased costs incurred by the Insurance Department to process new licenses will be offset by the revenue generated by licensing fees.

#### Annex A

### TITLE 10. BANKS AND BANKING

#### PART II. BUREAU OF BANKS

#### CHAPTER 21. GENERAL PROVISIONS FOR ALL STATE-CHARTERED BANKING INSTITUTIONS

#### INSURANCE AND ANNUITIES

#### § 21.61. Insurance and annuities—statement of policy.

(a) Pennsylvania State-chartered banks, bank and trust companies and savings banks may act as agents in the sale of property and casualty, life or other types of insurance if the bank is located in any place the population of which does not exceed 5,000 inhabitants, under the incidental powers provided in sections 315(i) and 502(h) of the Banking Code of 1965 (7 P. S. §§ 315(i) and 502(h)). This authority is consistent with section 103 of the Banking Code of 1965 (7 P. S. § 103). This grant of authority to Pennsylvania State-chartered banking institutions is analogous to the authority provided to National banks in *Barnett Bank of Marion County, N. A. v. Bill Nelson, Florida Insurance Commissioner*, 116 S.Ct. 1103 (1996).

(b) Pennsylvania State-chartered banks, bank and trust companies and savings banks may act as agents in the sale of annuities, under the incidental powers provided in sections 315 and 502 of the Banking Code of 1965. This authority is consistent with section 103 of the Banking Code of 1965. This grant of authority is analogous to the authority provided in *Nationsbank of North Carolina N. A. v. Variable Annuity Life Insurance Co.*, 115 S.Ct. 810 (1995).

(c) The license application requirements and procedures for the sale of insurance and annuities by banks are stated in an Insurance Department Statement of Policy in Chapter 38 (relating to procedures for State and Nationally chartered banking institutions selling annuities of insurance—statement of policy).

[Pa.B. Doc. No. 96-2096. Filed for public inspection December 13, 1996, 9:00 a.m.]

## Title 31—INSURANCE

### INSURANCE DEPARTMENT

#### [31 PA CODE CH. 38]

#### Procedures for State and Nationally Chartered Banking Institutions Selling Annuities or Insurance

On January 18, 1995, the Supreme Court of the United States ruled in *NationsBank of North Carolina v. Variable Annuity Life Insurance Company (VALIC)*, 115 S.Ct. 810 (1995), that the incidental powers of Nationally chartered

banks in section 24(7) of the National Bank Act included the authority to engage in the sale of annuity products as agents of an insurance company. With respect to the sale of annuities, therefore, any state law prohibiting the sale of annuities by National banks is preempted. By decision dated April 16, 1996, Secretary of Banking, Richard C. Rishel (Secretary), determined that the sale of insurance company annuity products was also within the incidental powers of State chartered banks, under section 315 of the Banking Code of 1965 (7 P. S. § 315).

On March 26, 1996, the Supreme Court of the United States ruled in *Barnett Bank of Marion County, N. A. v. Bill Nelson, Florida Insurance Commissioner*, 116 S.Ct. 1103 (1996), that section 92 of the National Bank Act preempts any state law that prevents National banks from exercising the insurance powers granted under that law. Section 92 of the National Bank Act gives National banks located in a place with a population not exceeding 5,000 the authority to act as an agent for any insurance company authorized to do business in the state where the bank is located. Under the Court's analysis, significant impairment of, or interference with a bank's authority under Federal law will be viewed the same as an outright prohibition.

Because the Insurance Department (Department) must continue to carry out its responsibility to regulate the sale of insurance and annuities in this Commonwealth, it is in the public interest for the Insurance Commissioner to issue procedures for allowing either National banks to exercise the authority they are granted under Federal law or State banks to sell annuities under Secretary Rishel's April 16, 1996, letter decision, and insurance under the Secretary's December 3, 1996, letter decision and the Department of Banking's Statement of Policy at 10 Pa. Code § 21.61 (relating to insurance and annuities—statement of policy). Under the following procedures banks are subject, to the extent possible, to the same licensing and operating requirements as other insurance or annuities agents. These procedures will afford oversight of a bank's insurance business by the State agency which is best suited to this responsibility.

The purpose of this policy statement is to set forth the Department's procedures for the sale of insurance and annuities by National and State banks in compliance with the preemption of state law as announced in *VALIC* and *Barnett*. This policy statement does not attempt to answer all questions that may arise as banks enter this arena because National banks remain within the regulatory jurisdiction of the Office of the Comptroller of the Currency (OCC). The OCC, however, has issued a final advisory letter dated October 8, 1996, which provides guidance to National banks to insure that they conduct insurance and annuities sales in a safe and sound manner that protects the interests of their customers. National banks as well as State banks should refer to the OCC Advisory Letter 96-8 for guidance regarding insurance activities.

Neither the existence of, nor compliance with, these procedures confers any property or other rights on licensed entities other than the right to conduct the business of selling insurance or annuities in accordance with this policy statement unless it is superseded by other authority.

#### Contact Information

To obtain agent license applications, or to notify the Department of a change in ownership of an agency, call or write to:

Pennsylvania Insurance Department  
Bureau of Producer Licensing  
1300 Strawberry Square  
Harrisburg, PA 17120  
Phone: (717) 787-3840  
Fax: (717) 787-8553

*Effective Date*

This statement of policy shall take effect upon publication in the *Pennsylvania Bulletin*.

(*Editor's Note:* The regulations of the Insurance Department, 31 Pa. Code, are amended by adding a statement of policy at §§ 38.1, 38.11, 38.21, 38.31—38.33 and 38.51—38.65 to read as set forth in Annex A. See 26 Pa. B. 5991 (December 14, 1996) for a Department of Banking document concerning the same subject.)

LINDA S. KAISER,  
*Insurance Commissioner*

**Fiscal Note:** 11-145. No fiscal impact; (8) recommends adoption. Any administrative costs incurred by the Insurance Department to process new licenses will be offset by the revenue generated by the licensing fees.

**Annex A**

**TITLE 31. INSURANCE**

**PART I. GENERAL PROVISIONS**

**Subpart C. AGENTS AND BROKERS**

**CHAPTER 38. PROCEDURES FOR STATE AND  
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**PURPOSE**

**§ 38.1. Purpose.**

(a) This chapter sets forth the Insurance Department's procedures for the sale of insurance and annuities by National and State banks in compliance with the preemption of State law as announced in *NationsBank of North Carolina v. Variable Annuity Life Insurance Company*,

115 S.Ct. 810 (1995) and *Barnett Bank of Marion County, N. A. v. Bill Nelson, Florida Insurance Commissioner*, 116 S.Ct. 1103 (1996). This chapter does not attempt to answer all questions that may arise as banks enter this arena because National banks remain within the regulatory jurisdiction of the Office of the Comptroller of the Currency (OCC). The OCC, however, has issued a final advisory letter dated October 8, 1996, which provides guidance to National banks to insure that they conduct insurance and annuities sales in a safe and sound manner that protects the interests of their customers. National banks as well as State banks should refer to the OCC Advisory Letter 96-8 for guidance regarding insurance activities.

(b) Neither the existence of, nor compliance with, these procedures confers any property or other rights on licensed entities other than the right to conduct the business of selling insurance or annuities in accordance with this chapter unless this chapter is superseded by other authority.

**ACTIVITIES REQUIRING A LICENSE**

**§ 38.11. Activities requiring a license.**

(a) A bank or person shall be licensed to engage in one or more of the following:

- (1) Soliciting individuals to purchase insurance or an annuity.
- (2) Collecting premiums.
- (3) Transmitting an application for an annuity or policy of insurance.
- (4) Negotiating for, or placing risks.
- (5) Delivering policies.
- (6) Aiding in the transaction of the insurance or annuities business.

(b) If the individual performs exclusively clerical tasks, a license is not required.

(c) Organizations, such as corporations, that intend to act as insurance agencies and receive commissions shall also be licensed, and at least one officer of the organization shall also obtain an agent's license for the lines of authority in which the agency will transact business.

**COMMISSIONS**

**§ 38.21. Commissions.**

Commissions may not be paid to a person who is not licensed as an insurance agent or broker, and may not be paid to an insurance agency, bank subsidiary, or affiliate, third party administrator, or the bank itself unless the organization has obtained an agent's license. Commissions for the sale of variable annuities may be paid only in accordance with the rules of the National Association of Securities Dealers. An agent may not share commissions with a bank, unless the bank is also licensed as an agent.

**PROCEDURES FOR AUTHORITY TO SELL  
INSURANCE OR ANNUITIES**

**§ 38.31. Annuities.**

(a) A State chartered banking institution or a National bank may sell annuities if the bank and employees actively engaged in the sale of annuities have complied with the licensing requirements of the Insurance Department.

(b) Like all other agents, a banking institution's licensed employees or agents must hold the appropriate license to sell the types of annuities which they are actively selling.

**§ 38.32. Insurance.**

(a) A State chartered banking institution, a National bank or a subsidiary or affiliate of a State or National bank located and doing business in a place with a population not exceeding 5,000, as determined by the last decennial census, may sell insurance if the bank and employes actively engaged in the business of insurance have complied with all the licensing requirements of the Insurance Department.

(b) A State chartered banking institution or a National bank may directly employ a licensed insurance agent, or own a subsidiary, all or part of which is an insurance agency, or be affiliated with a licensed insurance agent located in a place with a population not exceeding 5,000. At this time, a branch of an insurance agency affiliated with a bank may not be located in a place with a population exceeding 5,000.

(c) The agency located in the place not exceeding 5,000 inhabitants (place of 5,000) must be bona fide. Agents should be managed from that location, and the place of 5,000 will be the agency's business location for licensing purposes. Each agency is responsible for collecting commissions from insurance carriers and paying commissions to its licensed sales staff. The agency is also responsible for processing insurance applications, delivering insurance policies and collecting premiums, where consistent with procedures of the relevant insurance carriers. In addition, business records of the agency, including copies of customer application and policy information, and licensing, customer complaint and other compliance records, should be available at the place of 5,000. In the alternative, the business records of the agency may be maintained and available at the agency in electronic form, with the original hard copy kept in offsite storage.

(d) The following principles should be applied by banks, bank affiliates or bank subsidiaries when acting as insurance agents (together, bank agencies) in determining the scope of solicitation and sales activities by bank agencies which are permissible outside the place of 5,000:

(1) Meetings with customers and solicitations and sales of insurance by agents of the bank agency may take place at locations inside or outside the place of 5,000, if the agents are managed and paid through the bank agency located in the place of 5,000 and use that bank agency location as their place of business for licensing purposes.

(2) Mailings to advertise and sell insurance may originate from inside or outside of the place of 5,000, and brochures, leaflets and other literature alerting potential customers to the bank's insurance activities may be distributed from locations both inside and outside of the place of 5,000, including other branches of the same bank.

(3) Personnel of bank branches outside of the place of 5,000 also may make referrals to the bank's insurance agency.

(4) Telephone and cybermarketing may be used and the calls and messages need not originate within the place of 5,000.

(e) The bank or bank agency may contract with third parties to assist the bank agency's sales activities.

(f) Like other agents, a banking institution's licensed employes or agents must hold the appropriate license for the lines of insurance which they are actively selling.

(g) An insurance agency in which a bank acquires any ownership interest must file a change of ownership notification with the Insurance Department. To advertise

under the bank name or participate in the sales of insurance operation, other than by receiving dividends from the insurance business, the bank must hold an agent's license.

**§ 38.33. Application.**

A bank, or its subsidiary or affiliate must apply for a license on the Insurance Department's application form and must include the following:

(1) A certified copy of its charter.

(2) An officer's certification of a board resolution authorizing the bank to engage in the sale of insurance or annuities and to make appropriate application to the Department.

(3) A list of the bank officers as required on the application.

(4) If the application is one for selling insurance, an affidavit from a qualifying active bank officer that the State chartered bank or National bank, or subsidiary or affiliate thereof, is located in a place with a population not exceeding 5,000 as measured by the last decennial census and stating the actual population as recorded by the census.

(5) Other information required of applicants for a bank agency's license.

**CONSUMER PROTECTION****§ 38.51. Statutory requirements.**

Bank agencies selling insurance or annuities are subject to the consumer protection provisions of Pennsylvania law, including The Insurance Department Act of 1921 (40 P. S. §§ 341—991.1718), the Unfair Insurance Practices Act (40 P. S. §§ 1171.1—1171.15), and the regulations thereunder. Many of the measures required to protect against possible consumer abuses and unfair competition by a lender who is also selling insurance are included in the Federal antitying provisions of section 106(b) of the Bank Holding Company Act Amendments of 1970 (12 U.S.C.A. § 1972), and the disclosure provisions of the February 14, 1994 Interagency Statement on Retail Sales of Nondeposit Investment Products, issued jointly by Federal bank regulatory agencies. Adherence to these standards may help avoid violations of State law but will not exempt banks acting as agents from compliance with State laws and regulations applicable to insurance agents.

**§ 38.52. Licensed personnel.**

Insurance or annuities sales transactions must be conducted by individually licensed agents. The bank officer responsible for the bank's insurance or annuities sales activities must ensure that all employes are aware that the conduct of the business of insurance or the sale of annuities by unlicensed bank employes may subject the bank, the responsible officer and the employes who do insurance business or sell annuities, to liability for transacting unauthorized insurance or annuities business.

**§ 38.53. Qualifications and training.**

A bank should have knowledgeable, experienced and qualified personnel to ensure that the bank's sales program is carried out in a manner that provides customers with competitive products, sound advice and accurate information. Licensed employes shall satisfy the continuing education requirements in the insurance laws and regulations.

**§ 38.54. Authorized or approved carriers.**

Banking institutions may offer only insurance and annuity products of insurance companies authorized or approved to do business in this Commonwealth.

**§ 38.55. Tying of banking products with annuities or insurance products prohibited.**

Bank products may not be tied in with annuities or insurance products. Banks may not require the purchase of insurance or annuities from the bank or from a designated insurer or agent as a condition of other bank transactions. A bank should train its employees about the tying prohibitions and monitor incentives, such as fees, commissions and fee splitting arrangements, that may encourage tying. Banking institutions should consult the Federal Reserve Board's 1995 grant of a regulatory "safe harbor" and the Office of the Comptroller of the Currency Guidance On Tying Arrangements.

**§ 38.56. Inducements or rebating.**

A banking institution may not offer special benefits, such as rebates or discounts, as an inducement to purchase annuities or insurance from the bank, except that a bank may offer a discount or benefit which is specified in the insurance policy or annuity contract. A banking institution may offer incentives in the form of rebates or discounts on banking services which are offered in conjunction with the sale of annuities or insurance products, unless the rebates or discounts would violate Federal antitying provisions. In distributing revenue resulting from the sale of annuities or insurance, a banking institution must be careful to avoid violation of rebating or inducement prohibitions under The Insurance Department Act of 1921 (40 P. S. §§ 1—297.4).

**§ 38.57. Discrimination against nonaffiliated companies or agents prohibited.**

A banking institution may not do any of the following:

- (1) Condition the provision or terms of any bank service upon acquisition of insurance or annuities through a particular insurer, agent or broker.
- (2) Reject a required policy solely because the policy was sold by a person who is not associated with the bank.
- (3) Impose a requirement on any agent or broker not associated with the bank that is not imposed on any agent who is associated with the bank.

**§ 38.58. Disclosures.**

(a) To avoid customer confusion, in addition to the disclosures specifically required by the insurance laws of the Commonwealth and the regulations thereunder, advertising, promotional material and solicitation shall include prominent disclosure that a purchase of insurance or annuities:

- (1) Is not a deposit.
- (2) Is not protected by the Federal Deposit Insurance Corporation or another agency or instrumentality of the Federal government.
- (3) Is not guaranteed by the banking institution.
- (4) If applicable, is subject to investment risk, including possible loss of principal, unless the bank affirmatively determines, for specific products or otherwise, that customers would not reasonably benefit from, or might in fact be confused by, these disclosures.

(b) If a particular carrier's product is described in an advertisement, the name of the insurance company underwriting the product must be identified.

**§ 38.59. Disclosures when insurance is required as a condition of obtaining a loan.**

When a bank requires a customer to obtain insurance in connection with a loan and the insurance is available through the bank, sales personnel may inform customers that insurance is available from the bank, its subsidiary or an affiliate. To avoid the impression that a linkage exists between the bank's credit decision and the customer's choice of insurance seller, the customer should also be advised at the time of solicitation that the customer need not purchase insurance from the bank, a subsidiary or an affiliate, and that the purchase of insurance from an agent of the customer's choice will not affect current or future credit decisions.

**§ 38.60. Affirmative statement signed by insurance customer.**

To the extent practicable, at the time a bank customer determines to purchase insurance from the bank and prior to the actual purchase, the bank should obtain a written affirmative statement from the bank customer which acknowledges that the bank customer has been advised that the customer was not required to purchase the insurance through the bank and that the additional disclosures in this chapter were provided to the customer.

**§ 38.61. Separation from deposit and loan activities.**

Sales of insurance and annuities should, to the extent practicable, take place in a location that is distinct from the area where retail deposits are taken and loan applications are discussed and accepted. Signs or other means should be used to distinguish the insurance or annuities sales area from the retail deposit taking and lending areas. Policy documents and account statements for the annuity and insurance products should contain required disclosures. If a customer's periodic deposit account and loan statements include account information concerning the customer's insurance or annuities products, the information concerning these products should be clearly separate from the information concerning the deposit and loan accounts.

**§ 38.62. Distribution of revenue.**

A portion of the insurance business profits may flow to parent companies or holding companies, but not as a sharing of commissions. Nonlicensed entities may not be awarded a portion of the insurance business revenue as a reward for referrals.

**§ 38.63. Referral fees.**

Tellers and other employees, while located in the routine deposit taking area, may not make general or specific investment recommendations regarding insurance or annuities products, qualify a customer as eligible to purchase the products, accept orders for the products, even if unsolicited, or perform other activities that involve the sale of an insurance or annuity product. Employees who are not authorized to sell insurance or annuity products may refer customers to individuals who are specifically licensed to assist customers interested in the purchase of the products. Since insurance agents not affiliated with a bank are prohibited from paying referral fees to unlicensed persons, unlicensed employees of a bank may not receive a referral fee from the bank or its subsidiary or affiliated agency.

**§ 38.64. Customer privacy.**

In the course of providing banking and other services, banks will acquire various types of financial and personal

information about their customers. Banking institutions should be sensitive to the privacy expectations of the bank's customers regarding this information. This includes taking appropriate internal measures to safeguard the security of customer information as well as determining the standards the bank will use to decide if and how it may use customer information. A banking institution must comply with applicable State laws regarding privacy and confidential information. Insurance and annuities sales and other activities may raise questions regarding the use and sharing of confidential information. Use of certain customer information such as a customer's credit standing in connection with the sale of annuities and insurance products may be regulated by law. The disclosure of this information to third parties, including bank subsidiaries or affiliates, may be restricted. Banks should consider especially whether any provisions of the Fair Credit Reporting Act (15 U.S.C.A. §§ 1681a—1681u) are applicable before using or disclosing customer information.

### § 38.65. Compliance.

Banking institutions should develop and implement policies and procedures to ensure that sales activities are conducted in compliance with applicable laws and regulations and in a manner consistent with this chapter. Compliance procedures should identify potential conflicts of interest and how conflicts should be addressed. The compliance procedures should also provide for a system to monitor customer complaints and their resolution. The compliance function should be conducted independently of insurance and annuity product sales and management activities.

[Pa.B. Doc. No. 96-2097. Filed for public inspection December 13, 1996, 9:00 a.m.]

## Title 55—PUBLIC WELFARE

### DEPARTMENT OF PUBLIC WELFARE

#### [55 PA. CODE CH. 1101]

#### Medical Assistance Manual; General Provisions

This statement of policy clarifies instances in which the Department of Public Welfare (Department) will refuse to enter into or terminate a provider agreement with providers of intermediate care for the mentally retarded (ICF/MR), nursing facility services, inpatient psychiatric or inpatient rehabilitation services.

#### *Discussion*

The Department is the single State agency designated to administer the Commonwealth's Medicaid Program, which is known in this Commonwealth as the Medical Assistance (MA) Program. The MA Program is a cooperative Federal-State program through which various health care services are provided to poor and needy individuals in this Commonwealth. As the single State agency, the Department is required by Federal law to adopt methods and standards that may be necessary to safeguard against the unnecessary utilization of care and services under the MA Program and to assure that MA payments are consistent with efficiency, economy and quality of care, 42 U.S.C.A. § 1396a(a)(30)(A).

On December 18, 1996, Chapter 7 and all other portions of the Health Care Facilities Act (35 P.S. §§ 448.701—448.712) pertaining to Certificate of Need

(CON) sunsets. The purpose of the CON process was to assure the quality of and access to health care services for Pennsylvanians while controlling health care costs by limiting the supply of certain clinically related health services. ICF/MR, nursing facility services, inpatient psychiatric services and inpatient rehabilitation services were included in the clinically related health care services subject to CON. Entities that desired to furnish these services were required to first obtain from the Department of Health a determination of need for the proposed service in the region of this Commonwealth in which it would be offered.

The CON requirement has been one of the mechanisms that the Department used to safeguard against unnecessary utilization of institutional services and to assure that its payments for these services are consistent with efficiency, economy and quality of care. To participate as a provider in the MA Program, an entity must be currently licensed and certified by the appropriate State agency. See 55 Pa. Code § 1101.42(a) (relating to prerequisites for participation). Prior to December 18, 1996, an entity could not obtain a license to operate in this Commonwealth as an ICF/MR, a nursing facility or a psychiatric or rehabilitation hospital or to expand its existing licensed capacity by ten beds or 10%, whichever is less, over a 2-year period, without first having secured a CON. Consequently, a prior determination of the need for the provider's services by the Commonwealth was a prerequisite to participation in the MA Program. The sunset of the CON mechanism removes an important safeguard against unnecessary utilization and creates the risk of increased and uncontrolled costs to the MA Program.

In the absence of the CON review process, the Department must otherwise continue to fulfill its obligation under Federal law to control unnecessary utilization and to assure that its payments are consistent with efficiency, economy and quality of care. Therefore, it is the Department's intent to adopt measures creating a need review process which entities will be required to follow in order to enroll as a provider of ICF/MR, nursing facility, inpatient psychiatric or inpatient rehabilitation services or to expand existing institutional services. These measures will, at a minimum, require a prior determination of need for the services.

#### *Interpretation*

Pending the adoption of measures creating a need review process, the Department has adopted the following interim policy. First, the Department will not enter into a provider agreement with an ICF/MR, nursing facility, inpatient psychiatric hospital or rehabilitation hospital that does not have a CON dated on or prior to December 18, 1996. See 55 Pa. Code § 1101.42(a). Second, the Department will terminate the provider agreement of any currently enrolled ICF/MR, nursing facility, inpatient psychiatric hospital or rehabilitation hospital that expands its existing licensed bed capacity by more than ten beds or 10%, whichever is less, over a 2-year period, without having obtained a CON or letter of nonreviewability dated on or prior to December 18, 1996, approving the expansion. See 55 Pa. Code § 1101.77(b)(1) (relating to enforcement actions by the Department). The Department will consider exceptions to this policy on a case-by-case basis.

#### *Contact Person*

Comments and questions regarding this statement of policy should be directed to Regulations Coordinator, Office of Medical Assistance, Room 515 Health and Welfare Building, Harrisburg, PA 17120, (717) 787-1870.



*Effective Date*

This statement of policy shall take effect on December 19, 1996.

FEATHER O. HOUSTOUN,  
*Secretary*

**Fiscal Note:** 14-BUL-048. No fiscal impact; (8) recommends adoption.

**Annex A****TITLE 55. PUBLIC WELFARE****PART III. MEDICAL ASSISTANCE MANUAL****CHAPTER 1101. GENERAL PROVISIONS****PARTICIPATION****§ 1101.42b. Certificate of Need requirement for participation—statement of policy.**

(a) Effective December 19, 1996, the Department will not enter into a provider agreement with an ICF/MR, a nursing facility, an inpatient psychiatric hospital or a rehabilitation hospital unless the Department of Health issued a Certificate of Need authorizing construction of the facility or hospital in accordance with 28 Pa. Code Chapter 401 (relating to Certificate of Need program) or a letter of nonreviewability indicating that the facility or

hospital was not subject to review under 28 Pa. Code Chapter 401 dated on or before December 18, 1996.

(b) The Department will consider exceptions to subsection (a) on a case-by-case basis.

**FEES AND PAYMENTS****§ 1101.77a. Termination for convenience and best interests of the Department—statement of policy.**

(a) Effective December 19, 1996, under § 1101.77(b)(1) (relating to enforcement actions by the Department), the Department will terminate the enrollment and direct and indirect participation of, and suspend payments to, an ICF/MR, nursing facility, inpatient psychiatric hospital or rehabilitation hospital provider that expands its existing licensed bed capacity by more than ten beds or 10%, whichever is less, over a 2-year period, unless the provider obtained a Certificate of Need or letter of nonreviewability from the Department of Health dated on or prior to December 18, 1996, approving the expansion.

(b) The Department will consider exceptions to subsection (a) on a case-by-case basis.

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