

# PROPOSED RULEMAKING

## DELAWARE RIVER BASIN COMMISSION

[25 PA. CODE CH. 901]

### Proposed Amendments to the Commission's Ground Water Protected Area Regulations for Southeastern Pennsylvania

The Delaware River Basin Commission (Commission) will hold a public hearing to receive comments on proposed amendments to its Ground Water Protected Area Regulations for Southeastern Pennsylvania with respect to the establishment of numerical groundwater withdrawal limits for 62 subbasins which are entirely or partially within the Ground Water Protected Area. Limits, based upon baseflow frequency analyses, were initially specified for the 14 subbasins in the Neshaminy Creek Basin. Limits for the remaining 62 subbasins are based upon additional baseflow frequency analyses provided by the United States Geological Survey in 1998. Although the limits within the Neshaminy Creek Basin remain unchanged, the withdrawal limits for the entire protected area are presented in this notice.

#### *Dates*

The public hearing will be held on Tuesday, March 9, 1999, beginning at 1 p.m. and continuing until 5 p.m., as long as there are people present wishing to testify. The hearing will resume at 7 p.m. and continue until 9 p.m., as long as there are people present wishing to testify.

The deadline for inclusion of written comments in the hearing record will be announced at the hearing. Persons wishing to testify at the hearing are requested to register with the Secretary in advance of the hearing.

#### *Addresses*

Written comments should be submitted to Susan M. Weisman, Delaware River Basin Commission, P. O. Box 7360, West Trenton, NJ 08628. The public hearings will be held in the Hearing Room of the Pennsylvania Department of Environmental Protection's Southeastern Regional Office at 555 E. North Lane, Lee Park Suite 6010, Conshohocken, PA.

#### *For Further Information Contact*

Copies of the Commission's Ground Water Protected Area Regulations for Southeastern Pennsylvania may be obtained by contacting Susan M. Weisman, Commission Secretary, at (609) 883-9500 ext. 203.

#### *Supplementary Information*

##### *Background and Rationale*

The Commission's Ground Water Protected Area Regulations for Southeastern Pennsylvania were adopted in 1980 to prevent depletion of groundwater, protect the interests and rights of lawful users of the same water source, and balance and reconcile alternative and conflicting uses of limited water resources in the area. Lowered water tables resulting from withdrawals in excess of recharge rates have led to reduction of flows in some perennial streams in the region and have dried up some stream reaches which previously flowed all year. Such

reductions in base flow interfere with instream and downstream water uses, adversely affect fisheries and aquatic life, and threaten to reduce the capacity of streams in the region to assimilate pollutants.

On January 28, 1998, the Commission adopted amendments to the Ground Water Protected Area Regulations which established a two-tiered system of withdrawal limits. The first tier serves as a warning that a subbasin is "potentially stressed." In potentially stressed subbasins, applicants for new or expanded groundwater withdrawals are required to implement one or more programs to mitigate adverse impacts of additional groundwater withdrawals. Acceptable programs include: conjunctive use of groundwater and surface water; expanded water conservation; control of groundwater infiltration to the receiving sewer systems; and artificial recharge and spray irrigation. The second tier serves as the maximum withdrawal limit. The Commission seeks to prevent groundwater withdrawals from exceeding the maximum withdrawal limit.

The regulations also provide incentives for holders of existing DRBC docket and protected area permits to implement the above-cited conjunctive use and conservation programs to mitigate the adverse impacts of their groundwater withdrawals. If docket or permit holders successfully implement one or both programs, the Commission could extend the docket or permit duration for up to 10 years.

The regulations also specify administrative criteria for issuing and review of dockets and permits as well as protocol for updating and revising withdrawal limits to provide additional protection for streams designated by the Commonwealth of Pennsylvania as "high quality" or "exceptional value," or to correspond with any integrated resources plans adopted by municipalities for subbasins.

The groundwater study which provided the basis for the withdrawal limits for the subbasins in the Neshaminy Creek Basin was prepared by the United States Geological Survey in cooperation with the Commission and is entitled "Water-Use Analysis Program for the Neshaminy Creek Basin, Bucks and Montgomery Counties, Pennsylvania." The United States Geological Survey was contracted by the Commission to prepare a similar study to investigate the withdrawal limits for the remaining subbasins in the protected area. The results of both studies are recorded on CD-ROM which is available from the Commission. Specific software, the Access database and ArcView from ESRI are required to view the CD-ROM. To review the CD-ROM at the Commission's offices, please contact Judith Strong, at (609) 883-9500 ext. 263 for an appointment. To order the CD-ROM at a cost of \$10, please contact Carolyn Hartman at (609) 883-9500 ext. 249. To review the CD-ROM at locations within the protected area, please contact Susan M. Weisman at (609) 883-9500 ext. 203.

The subject of the hearing will be as follows:

Amendment to the Commission's Ground Water Protected Area Regulations for Southeastern Pennsylvania Relating to the Establishment of Numerical Ground Water Withdrawal Limits for Subbasins in the Protected Area.

It is proposed to:

1. Amend the Ground Water Protected Area Regulations for Southeastern Pennsylvania as follows: Subsection 6.i.(3) is hereby revised to read as follows:

(3) The potentially stressed levels and withdrawal limits for all delineated basins and subbasins are set forth below:

<i>Neshaminy Creek Basin</i>		
<i>Subbasin</i>	<i>Potentially Stressed (mgy)*</i>	<i>Withdrawal Limit (mgy)</i>
West Branch Neshaminy Creek Basin	1,054	1,405
Pine Run Basin	596	795
North Branch Neshaminy Creek	853	1,131
Doylestown Subbasin Neshaminy Creek	710	946
Warwick Subbasin Neshaminy Creek	889	1,185
Warrington Subbasin Little Neshaminy Creek	505	673
Park Creek Basin	582	776
Warminster Subbasin Little Neshaminy Creek	1,016	1,355
Mill Creek Basin	1,174	1,565
Northampton Subbasin Neshaminy Creek	596	794
Newtown Creek	298	397
Core Creek Basin	494	658
Ironworks Creek Basin	326	434
Lower Section Subbasin Neshaminy Creek	3,026	4,034

  

<i>Schuylkill River Basin</i>		
<i>Subbasin</i>	<i>Potentially Stressed (mgy)</i>	<i>Withdrawal Limit (mgy)</i>
Hay Creek	974	1,299
Lower Reach Manatawny-Ironstone Creek	1,811	2,414
Pigeon Creek	611	815
Schuylkill-Crow Creek	1,157	1,543
Schuylkill-Mingo Creek	671	895
Schuylkill-Plymouth-Mill Creeks	4,446	5,929
Schuylkill-Sixpenny Creek	1,490	1,987
Schuylkill-Sprogels Run	1,091	1,455
Schuylkill-Stony Creek	687	916
Schuylkill-Trout Creek	1,082	1,443
Stony Creek	1,242	1,655
Valley Creek	1,865	2,486

  

<i>French and Pickering Creek Subbasins</i>		
<i>Subbasin</i>	<i>Potentially Stressed (mgy)</i>	<i>Withdrawal Limit (mgy)</i>
Lower Reach French Creek	634	845
Lower Reach Pickering Creek	1,716	2,288
Middle Reach French Creek	1,608	2,145
South Branch French Creek	1,044	1,393
Upper Reach French Creek	1,295	1,726
Upper Reach Pickering Creek	1,358	1,811

  

<i>Perkiomen and Skippack Creek Subbasins</i>		
<i>Subbasin</i>	<i>Potentially Stressed (mgy)</i>	<i>Withdrawal Limit (mgy)</i>
East Branch Perkiomen-Indian Creeks	633	844
East Branch Perkiomen-Mill Creeks	720	961
East Branch Perkiomen-Morris Run	1,214	1,619
Hosensack-Indian Creeks	1,257	1,676
Lower Reach Skippack Creek	1,069	1,426
Perkiomen-Deep Creeks	1,047	1,396
Perkiomen-Lodal Creeks	1,200	1,600
Perkiomen-Macoby Creek	1,252	1,669
Swamp-Middle Creeks	1,423	1,898
Swamp-Minister Creeks	547	730
Swamp-Scioto Creeks	746	994
Towamencin Creek	466	622
Unami-Licking Creeks	992	1,322
Unami-Ridge Valley Creeks	1,068	1,424
Upper Reach Perkiomen Creek	1,223	1,631
Upper Reach Skippack Creek	813	1,084
West Branch Perkiomen Creek	1,566	2,088

*Delaware River Basin*

<i>Subbasin</i>	<i>Potentially Stressed (mgy)</i>	<i>Withdrawal Limit (mgy)</i>
Jericho Creek	421	562
Mill Creek	1,600	2,134
Paunacussing Creek	513	684
Pidcock Creek	563	751
Upper Reach Cobbs Creek	871	1,161
Upper Reach Crum Creek	1,290	1,721
Upper Reach Darby Creek	1,625	2,167
Upper Reach East Branch Chester Creek	1,865	2,487
Upper Reach Frankford Creek	1,414	1,886
Upper Reach Poquessing Creek	1,008	1,344
Upper Reach Ridley Creek	1,707	2,275

*Tohickon Subbasin*

<i>Subbasin</i>	<i>Potentially Stressed (mgy)</i>	<i>Withdrawal Limit (mgy)</i>
Tohickon-Beaver-Morgan Creeks	1,156	1,541
Tohickon-Deep Run	956	1,274
Tohickon-Geddes-Cabin Runs	602	803
Tohickon-Lake Nockamixon	556	741
Tohickon-Three Mile Run	726	968

*Pennypack and Wissahickon Subbasins*

<i>Subbasin</i>	<i>Potentially Stressed (mgy)</i>	<i>Withdrawal Limit (mgy)</i>
Lower Reach Wissahickon Creek	2,750	3,666
Upper Reach Wissahickon Creek	1,302	1,736
Middle Reach Pennypack Creek	1,295	1,727
Upper Reach Pennypack Creek	1,358	1,811

*Brandywine Creek Subbasin*

<i>Subbasin</i>	<i>Potentially Stressed (mgy)</i>	<i>Withdrawal Limit (mgy)</i>
East Branch Brandywine-Taylor Run	1,054	1,405
Middle Reach Brandywine Creek	823	1,098
Upper Reach Brandywine Creek	1,614	2,153
West Branch Brandywine-Beaver Run	2,110	2,813
West Branch Brandywine-Broad Run	2,380	3,173
West Valley Creek	1,673	2,231

*Lehigh Subbasin*

<i>Subbasin</i>	<i>Potentially Stressed (mgy)</i>	<i>Withdrawal Limit (mgy)</i>
Upper Reach Saucon Creek	946	1,262

Subject to public notice and hearing, this section may be updated or revised based upon new and evolving information on hydrology and streamflow and groundwater monitoring or in accordance with (2).

\*mgy means million gallons per year

2. This regulation shall be effective immediately.

Delaware River Basin Compact, 75 Stat. 688.

SUSAN M. WEISMAN,  
*Secretary*

**Fiscal Note:** 68-39. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 25. ENVIRONMENTAL PROTECTION  
PART V. DELAWARE RIVER BASIN COMMISSION  
CHAPTER 901. GENERAL PROVISIONS**

**§ 901.5. Groundwater protection area, Southeastern Pennsylvania**

The Basin Regulations, Groundwater Protection, Southeastern Pennsylvania, as set forth at 18 CFR Part 430 ([ 1998 ] 1999), are hereby incorporated by reference and made part of this title.

[Pa.B. Doc. No. 99-184. Filed for public inspection February 5, 1999, 9:00 a.m.]

# INSURANCE DEPARTMENT

[31 PA. CODE CH. 89]

## Medicare Supplement Insurance Minimum Standards

The Insurance Department (Department) hereby proposes to amend § 89.790 and Appendix E and to add § 89.777a, to read as set forth in Annex A. The Department is publishing these amendments as a proposed rulemaking. The Department proposes the amendments under the authority of sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P. S. §§ 66, 186, 411 and 412).

### *Purpose*

Chapter 89, Subchapter K (relating to Medicare Supplement Insurance minimum standards), was initially promulgated to establish certain minimum standards for Medicare Supplement Insurance. The Department seeks to modify Subchapter K to allow for the sale of "Medicare Select" products (previously a Federal pilot program) which is intended to expand the health care choices of Medicare eligible insureds. Generally, Medicare Select will allow consumers to purchase Medicare Select products for lower premiums than standard Medicare supplement policies. The major difference between standard Medicare supplement policies and Medicare Select policies is that each Medicare Select issuer will have a network of specific hospitals, and possibly specific doctors, that must be utilized to receive full benefits, except in the case of an emergency. It is similar in concept to preferred provider organizations (PPOs) for accident and health insurance. The addition of Medicare Select products in this Commonwealth will allow consumers an additional choice in selecting a Medicare supplement product and will bring a Nationally marketed product to this Commonwealth. Lastly, the Department has received numerous inquiries and letters of support for Medicare Select from consumers, the insurance industry and providers alike. The Department has also clarified and revised language to improve the readability and understandability of the regulations.

### *Explanation of Regulatory Requirements*

Section 89.777a (relating to Medicare Select policies and certificates) is being added to implement the policy requirements for Medicare Select. The Department is adopting the National Association of Insurance Commissioners' model regulation language. The addition of this product in this Commonwealth will allow greater selection of supplemental products for Medicare eligibles.

Section 89.790(b)(6) (relating to guaranteed issue for eligible persons) has been modified to ensure that this specific guaranteed issue protection applies to all Medicare supplement eligible individuals. This is consistent with the current regulatory requirement that Medicare supplement policies be offered to all eligible individuals when they qualify for coverage.

Appendix E (relating to Medicare supplement refund calculations) is being revised to incorporate minor format changes. These format changes are intended to eliminate confusion and improve understanding.

### *Fiscal Impact*

The Department currently has the capacity to review the new Medicare Select filings in the course of normal business and should experience minimal or no cost increases in reviewing these new products.

The insurance industry will incur minimal additional costs in filing for the approval of the new forms, if they chose to offer Medicare Select products. Most issuers should be able to submit forms either identical, or very similar to, variations approved in other states because this regulation is adopting the NAIC model language.

Consumers could experience additional savings based on greater product availability.

### *Paperwork*

Adoption of these proposed amendments will require additional paperwork in the product development area only if issuers choose to market Medicare Select products. Paperwork requirements should not be burdensome for the Department because the new Medicare Select products can be reviewed during the normal course of business.

### *Persons Regulated*

These proposed amendments apply to all insurance companies who issue Medicare Supplement products in this Commonwealth.

### *Contact Person*

Questions or comments regarding the proposed rulemaking may be addressed in writing to Peter J. Salvatore, Regulatory Coordinator, 1326 Strawberry Square, Harrisburg, PA 17120 within 30 days following the publication of this notice in the *Pennsylvania Bulletin*.

### *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on January 27, 1999, the Department submitted a copy of these proposed amendments to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Insurance Committee and the Senate Banking and Insurance Committee. In addition to submitting the proposed amendments, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of that material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, if IRRC has objections to any portion of the proposed amendments, it will notify the Department within 10 days of the close of the Committees' review period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for the Department, the Governor and the General Assembly to review these objections before final publication of the amendments.

M. DIANE KOKEN,  
*Insurance Commissioner*

*(Editor's Note: Section 89.790, proposed to be amended in this document, was added at 29 Pa.B. 172 (January 9, 1999) and will be codified in MTS 292 (March, 1999).)*

**Fiscal Note:** 11-193. No fiscal impact; (8) recommends adoption.

## ANNEX A

## TITLE 31. INSURANCE

## PART IV. LIFE INSURANCE

CHAPTER 89. APPROVAL OF LIFE, ACCIDENT  
AND HEALTH INSURANCESubchapter K. MEDICARE SUPPLEMENT  
INSURANCE MINIMUM STANDARDS

## § 89.777a. Medicare Select policies and certificates.

(a) This section applies to Medicare Select policies and certificates, as defined in this section.

(b) A policy or certificate may not be advertised as a Medicare Select policy or certificate unless it meets the requirements of this section.

(c) For the purposes of this section, the following words and terms have the following meanings, unless the context clearly indicates otherwise:

**Complaint**—Dissatisfaction expressed by an individual concerning a Medicare Select issuer or its network providers.

**Grievance**—Dissatisfaction expressed in writing by an individual insured under a Medicare Select policy or certificate concerning the administration, claims practices or provision of services with a Medicare Select issuer or its network providers.

**Medicare Select issuer**—An issuer offering, or seeking to offer, a Medicare Select policy or certificate.

**Medicare Select policy or Medicare Select certificate**—A Medicare supplement policy or certificate, respectively, that contains restricted network provisions.

**Network provider**—A provider of health care, or a group of providers of health care, which has entered into a written agreement with the issuer to provide benefits insured under a Medicare Select policy.

**Restricted network provision**—A provision which conditions the payment of benefits, in whole or in part, on the use of network providers.

**Service area**—The geographic area approved by the Commissioner within which an issuer is authorized to offer a Medicare Select policy.

(d) The Commissioner may authorize an issuer to offer a Medicare Select policy or certificate, under this section and section 4358 of the Omnibus Budget Reconciliation Act (OBRA) of 1990 (42 U.S.C.A. § 1395b-2) if the Commissioner finds that the issuer has satisfied the requirements of this section.

(e) A Medicare Select issuer may not issue a Medicare Select policy or certificate in this State until its plan of operation has been approved by the Commissioner.

(f) A Medicare Select issuer shall file a proposed plan of operation with the Commissioner in a format prescribed by the Commissioner. The plan of operation shall contain at least the following information:

(1) Evidence that all covered services that are subject to restricted network provisions are available and accessible through network providers, including a demonstration that:

(i) Services can be provided by network providers with reasonable promptness with respect to geographic location, hours of operation and after-hour care. The hours of operation and availability of after-hour care shall reflect the usual practice in the local area. Geographic availability shall reflect the usual travel times within the community.

(ii) The number of network providers in the service area is sufficient, with respect to current and expected policyholders, to either:

(A) Deliver adequately all services that are subject to a restricted network provision.

(B) Make appropriate referrals.

(iii) There are written agreements with network providers describing both parties' specific responsibilities.

(iv) Emergency care is available 24 hours per day and 7 days per week.

(v) In the case of covered services that are subject to a restricted network provision and are provided on a prepaid basis, there are written agreements with network providers prohibiting the providers from billing or otherwise seeking reimbursement from or recourse against an individual insured under a Medicare Select policy or certificate. This subparagraph does not apply to supplemental charges or coinsurance amounts as stated in the Medicare Select policy or certificate.

(2) A statement or map providing a clear description of the service area.

(3) A description of the grievance procedure to be utilized.

(4) A description of the quality assurance program, including the following:

(i) The formal organizational structure.

(ii) The written criteria for selection, retention and removal of network providers.

(iii) The procedures for evaluating quality of care provided by network providers, and the process to initiate corrective action when warranted.

(5) A list and description, by specialty, of the network providers.

(6) Copies of the written information proposed to be used by the issuer to comply with subsection (j).

(7) Other information requested by the Commissioner.

(g) A Medicare Select issuer shall file:

(1) Proposed changes to the plan of operation, except for changes to the list of network providers, with the Commissioner prior to implementing the changes. Changes shall be considered approved by the Commissioner after 30 days unless specifically disapproved.

(2) An updated list of network providers with the Commissioner at least quarterly, if changes occur.

(h) A Medicare Select policy or certificate may not restrict payment for covered services provided by nonnetwork providers if the following apply:

(1) The services are for symptoms requiring emergency care or are immediately required for an unforeseen illness, injury or a condition.

(2) It is not reasonable to obtain services through a network provider.

(i) A Medicare Select policy or certificate shall provide payment for full coverage under the policy for covered services that are not available through network providers.

(j) A Medicare Select issuer shall make full and fair disclosure in writing of the provisions, restrictions and limitations of the Medicare Select policy or certificate to each applicant. This disclosure shall include at least the following:

(1) An outline of coverage sufficient to permit the applicant to compare the coverage and premiums of the Medicare Select policy or certificate with other:

(i) Medicare supplement policies or certificates offered by the issuer.

(ii) Medicare Select policies or certificates.

(2) A description, including address, phone number and hours of operation, of the network providers, including primary care physicians, specialty physicians, hospitals and other providers.

(3) A description of the restricted network provisions, including payments for coinsurance and deductibles when providers other than network providers are utilized.

(4) A description of coverage for emergency and urgently needed care and other out-of-service area coverage.

(5) A description of limitations on referrals to restricted network providers and to other providers.

(6) A description of the policyholder's rights to purchase another Medicare supplement policy or certificate otherwise offered by the issuer.

(7) A description of the Medicare Select issuer's quality assurance program and grievance procedure.

(k) Prior to the sale of a Medicare Select policy or certificate, a Medicare Select issuer shall obtain from the applicant a signed and dated form stating that the applicant has received the information provided under subsection (j) and that the applicant understands the restrictions of the Medicare Select policy or certificate.

(l) A Medicare Select issuer shall have and use procedures for hearing complaints and resolving written grievances from the subscribers. The procedures shall be aimed at mutual agreement for settlement and may include arbitration procedures.

(1) The grievance procedure shall be described in the policy and certificates and in the outline of coverage.

(2) At the time the policy or certificate is issued, the issuer shall provide detailed information to the policyholder describing how a grievance may be registered with the issuer.

(3) Grievances shall be considered in a timely manner and shall be transmitted to appropriate decision-makers who have authority to fully investigate the issue and take corrective action.

(4) If a grievance is found to be valid, corrective action shall be taken promptly.

(5) The concerned parties shall be notified about the results of a grievance.

(6) The issuer shall report by each March 31st to the Commissioner regarding its grievance procedure. The report shall be in a format prescribed by the Commissioner and shall contain the number of grievances filed in the past year and a summary of the subject, nature and resolution of the grievances.

(m) At the time of initial purchase, a Medicare Select issuer shall make available to each applicant for a Medicare Select policy or certificate the opportunity to purchase any Medicare supplement policy or certificate otherwise offered by the issuer.

(n) For purposes of this section, the following apply.

(1) At the request of an individual insured under a Medicare Select policy or certificate, a Medicare Select issuer shall make available to the individual insured the opportunity to purchase a Medicare supplement policy or certificate offered by the issuer which has comparable or lesser benefits and which does not contain a restricted network provision. The issuer shall make the policies or certificates available without requiring evidence of insurability after the Medicare Select policy or certificate has been in force for 6 months.

(2) For the purposes of this subsection, a Medicare supplement policy or certificate will be considered to have comparable or lesser benefits unless it contains one or more significant benefits not included in the Medicare Select policy or certificate being replaced. For the purposes of this paragraph, a "significant benefit" means coverage for the Medicare Part A deductible, coverage for prescription drugs, coverage for at-home recovery services or coverage for Part B excess charges.

(o) Medicare Select policies and certificates shall provide for continuation of coverage in the event the HHS Secretary determines that Medicare Select policies and certificates issued under this section should be discontinued due to either the failure of the Medicare Select Program to be reauthorized under law or its substantial amendment.

(1) Each Medicare Select issuer shall make available to each individual insured under a Medicare Select policy or certificate the opportunity to purchase any Medicare supplement policy or certificate offered by the issuer which has comparable or lesser benefits and which does not contain a restricted network provision. The issuer shall make the policies and certificates available without requiring evidence of insurability.

(2) For the purposes of this subsection, a Medicare supplement policy or certificate will be considered to have comparable or lesser benefits unless it contains one or more significant benefits not included in the Medicare Select policy or certificate being replaced. For the purposes of this paragraph, a "significant benefit" means coverage for the Medicare Part A deductible, coverage for prescription drugs, coverage for at-home recovery services or coverage for Part B excess charges.

(p) A Medicare Select issuer shall comply with reasonable requests for data made by State or Federal agencies, including the United States De-

partment of Health and Human Services, for the purpose of evaluating the Medicare Select Program.  
 § 89.790. Guaranteed issue for eligible persons.

(6) The individual, upon first becoming eligible for benefits under Part A [ or ] and enrolled in Part B, if eligible, of Medicare [ at age 65 or older ], enrolls in a Medicare+Choice plan under Part C of Medicare, and disenrolls from the plan within 12 months after the effective date of enrollment.

(b) Eligible persons. An eligible person is an individual described in paragraphs (1)—(6):

\* \* \* \* \*  
 \* \* \* \* \*

\* \* \* \* \*

APPENDIX E

MEDICARE SUPPLEMENT REFUND CALCULATION FORM FOR CALENDAR YEAR \_\_\_\_\_

TYPE<sup>1</sup> \_\_\_\_\_ SMSBP<sup>2</sup> \_\_\_\_\_

For the State of \_\_\_\_\_

Company Name \_\_\_\_\_

NAIC Group Code \_\_\_\_\_ NAIC Company Code \_\_\_\_\_

Person Completing This Exhibit \_\_\_\_\_

Title \_\_\_\_\_ Telephone Number \_\_\_\_\_

	<i>(a) Earned Premium<sup>3</sup></i>	<i>(b) Incurred Claims<sup>4</sup></i>
1 Current Year's Experience		
a. Total (all policy years)	_____	_____
b. Current year's issues <sup>5</sup>	_____	_____
c. Net (for reporting purposes = 1a - 1b)	_____	_____
2 Past Years' Experience (All Policy Years)	_____	_____
3 Total Experience (Net Current Year + Past Years' Experience)	_____	_____
4 Refunds Last Year (Excluding Interest)	_____	
5 Previous Since Inception (Excluding Interest)	_____	
6 Refunds Since Inception (Excluding Interest)	_____	
7 Benchmark Ratio Since Inception (SEE WORKSHEET FOR RATIO 1)	_____	
8 Experienced Ratio Since Inception ( <b>Ratio 2</b> )	_____	
<b>Ratio 2 =</b>	Total Actual Incurred Claims (line 3, col b)	<b>[ = Ratio 2 ]</b>
	Total Earned Premium (line 3, col a) - Refunds Since Inception (line 6)	
9 Life Years Exposed Since Inception	_____	
If the Experienced Ratio is less than the Benchmark Ratio, and there are more than 500 life years exposure, then proceed to calculation of refund.		
10 Tolerance Permitted (obtained from credibility table)	_____	
11 Adjustment to Incurred Claims for Credibility ( <b>Ratio 3</b> )	_____	
Ratio 3 = Ratio 2 + Tolerance		
If Ratio 3 is more than benchmark ratio (ratio 1), a refund or credit to premium is not required.		
If Ratio 3 is less than the benchmark ratio, then proceed.		
12 Adjusted Incurred Claims =		
(Total Earned Premiums (line 3, col a) - Refunds Since Inception (line 6)) × Ratio 3 (line 11)		
13 Refund = Total Earned Premiums (line 3, col a) - Refunds Since Inception (line 6) -		
{Adjusted Incurred Claims (line 12)} [ ÷ ] {Benchmark Ratio (Ratio 1) ( <b>line 7</b> )}		

If the amount on line 13 is less than .005 times the annualized premium in force as of December 31 of the reporting year, then no refund is made. Otherwise, the amount on line 13 is to be refunded or credited, and a description of the refund and/or credit against premium to be used must be attached to this form.

Medicare Supplement Credibility Table

<i>Life Years Exposed Since Inception</i>	<i>Tolerance</i>
10,000 +	0.0%
5,000—9,999	5.0%
2,500—4,999	7.5%
1,000—2,499	10.0%
500—999	15.0%
If less than 500, no credibility.	

[ **MEDICARE SUPPLEMENT REFUND CALCULATION FORM FOR CALENDAR YEAR** \_\_\_\_\_  
**TYPE**<sup>1</sup> \_\_\_\_\_ **SMSBP**<sup>2</sup> \_\_\_\_\_

**For the State of** \_\_\_\_\_

**Company Name** \_\_\_\_\_

**NAIC Group Code** \_\_\_\_\_ **NAIC Company Code** \_\_\_\_\_ ]

<sup>1</sup> Individual [ and ], Group, **Individual Medicare Select and Group Medicare Select** only.

<sup>1</sup> "SMSBP" = Standardized Medicare Supplement Benefit Plan—Use "P" for prestandardized plans.

<sup>3</sup> Includes **modal [ model ]** loadings and fees charged.

<sup>4</sup> Excludes Active Life Reserves.

<sup>5</sup> This is to be used as "Issue Year Earned Premium" for Year 1 of next year's "Worksheet for Calculation of Benchmark Ratios."

I certify that the above information and calculations are true and accurate to the best of my knowledge and belief.

\_\_\_\_\_  
 Signature  
 \_\_\_\_\_  
 Name-Please Type  
 \_\_\_\_\_  
 Title  
 \_\_\_\_\_  
 Date

REPORTING FORM FOR THE CALCULATION OF BENCHMARK RATIO SINCE INCEPTION FOR INDIVIDUAL POLICIES FOR CALENDAR YEAR \_\_\_\_\_

TYPE<sup>1</sup> \_\_\_\_\_ SMSBP<sup>2</sup> \_\_\_\_\_

For the State of \_\_\_\_\_

Company Name \_\_\_\_\_

NAIC Group Code \_\_\_\_\_ NAIC Company Code \_\_\_\_\_

Address \_\_\_\_\_

Person Completing This Exhibit \_\_\_\_\_

Title \_\_\_\_\_ Telephone Number \_\_\_\_\_

(a) <sup>3</sup> Year	(b) <sup>4</sup> Earned Premium	(c) Factor	(d) (b) × (c)	(e) Cumulative Loss Ratio	(f) (d) × (e)	(g) Factor	(h) (b) × (g)	(i) Cumulative Loss Ratio	(j) (h) × (i)	(o) <sup>5</sup> PolicyYear Loss Ratio
1		2.770		0.442		0.000		0.000		0.40
2		4.175		0.493		0.000		0.000		0.55
3		4.175		0.493		1.194		0.659		0.65
4		4.175		0.493		2.245		0.669		0.67
5		4.175		0.493		3.170		0.678		0.69
6		<b>[ 1.175 ]</b> <b>4.175</b>		0.493		3.998		0.686		0.71
7		4.175		0.493		4.754		0.695		0.73
8		4.175		0.493		5.445		0.702		0.75
9		4.175		0.493		6.075		0.708		0.76
10		4.175		0.493		6.650		0.713		0.76
11		4.175		0.493		7.176		0.717		0.76
12		4.175		0.493		7.655		0.720		0.77
13		4.175		0.493		8.093		0.723		0.77
14		4.175		0.493		8.493		0.725		0.77
15		4.175		0.493		8.684		0.725		0.77

Total: (k): \_\_\_\_\_ (l): \_\_\_\_\_ (m): \_\_\_\_\_ (n): \_\_\_\_\_



Benchmark Ratio Since Inception (**Ratio 1**):  $(l + n)/(k + m)$ :

<sup>1</sup> Individual [ and ], Group, **Individual Medicare Select and Group Medicare Select** only.

<sup>2</sup> "SMSBP" = Standardized Medicare Supplement Benefit Plan—Use "P" for prestandardized plans.

<sup>3</sup> Year 1 is the current calendar year—1

Year 2 is the current calendar year—2 (etc.)

(Example: If the current year is 1991, then: Year 1 is 1990; Year 2 is 1989, etc.)

<sup>4</sup> For the calendar year on the appropriate line in column (a), the premium earned during that year for policies issued in that year.

<sup>5</sup> These loss ratios are not explicitly used in computing the benchmark loss ratios, on a policy year basis, which result in the cumulative loss ratios displayed on this worksheet. They are shown for informational purposes only.

REPORTING FORM FOR THE CALCULATION OF BENCHMARK RATIO SINCE INCEPTION FOR GROUP POLICIES FOR CALENDAR YEAR \_\_\_\_\_

TYPE<sup>1</sup> \_\_\_\_\_ SMSBP<sup>2</sup> \_\_\_\_\_

For the State of \_\_\_\_\_

Company Name \_\_\_\_\_

NAIC Group Code \_\_\_\_\_ NAIC Company Code \_\_\_\_\_

Address \_\_\_\_\_

Person Completing This Exhibit \_\_\_\_\_

Title \_\_\_\_\_ Telephone Number \_\_\_\_\_

(a) <sup>3</sup> Year	(b) <sup>4</sup> Earned Premium	(c) Factor	(d) (b) × (c)	(e) Cumulative Loss Ratio	(f) (d) × (e)	(g) Factor	(h) (b) × (g)	(i) Cumulative Loss Ratio	(j) (h) × (i)	(o) <sup>5</sup> PolicyYear Loss Ratio
1		2.770		0.507		0.000		0.000		0.46
2		4.175		0.567		0.000		0.000		0.63
3		4.175		0.567		1.194		0.759		0.75
4		4.175		0.567		2.245		0.771		0.77
5		4.175		0.567		3.170		0.782		0.80
6		4.175		0.567		3.998		0.792		0.82
7		4.175		0.567		4.754		0.802		0.84
8		4.175		0.567		6.075		0.818		0.88
10		4.175		0.567		6.650		0.824		0.88
11		4.175		0.567		7.176		0.828		0.88
12		4.175		0.567		7.655		0.831		0.88
13		4.175		0.567		8.093		0.834		0.89
14		4.175		0.567		8.493		0.837		0.89
15		4.175		0.567		8.684		0.838		0.89

Total: (k): \_\_\_\_\_ (l): \_\_\_\_\_ (m): \_\_\_\_\_ (n): \_\_\_\_\_

Benchmark Ratio Since Inception (**Ratio 1**):  $(l + n)/(k + m)$ :

<sup>1</sup> Individual [ and ], Group, **Individual Medicare Select and Group Medicare Select** only.

<sup>2</sup> "SMSBP" = Standardized Medicare Supplement Benefit Plan—Use "P" for prestandardized plans.

<sup>3</sup> Year 1 is the current calendar year—1

Year 2 is the current calendar year—2 (etc.)

(Example: If the current year is 1991, then: Year 1 is 1990; Year 2 is 1989, etc.)

<sup>4</sup> For the calendar year on the appropriate line in column (a), the premium earned during that year for policies issued in that year.

<sup>5</sup> These loss ratios are not explicitly used in computing the benchmark loss ratios, on a policy year basis, which result in the cumulative loss ratios displayed on this worksheet. They are shown for informational purposes only.

[Pa.B. Doc. No. 99-185. Filed for public inspection February 5, 1999, 9:00 a.m.]

[31 PA. CODE CH. 62]

**Motor Vehicle Physical Damage Appraisers**

The Insurance Department (Department) hereby proposes to amend §§ 62.1—62.4 to read as set forth in Annex A. The Department is publishing the amendments as a proposed rulemaking. The Department proposes the amendments under the authority of sections 206, 506,

1501 and 1502 of The Administrative Code of 1929 (71 P. S. §§ 66, 186, 411 and 412); section 320 of The Insurance Department Act of 1921 (40 P. S. § 443); and sections 1—14 of the Motor Vehicle Physical Damage Appraiser Act (63 P. S. §§ 851—863) (act).

*Purpose*

Chapter 62 (relating to motor vehicle physical damage appraisers) was adopted by the Department on December 28, 1973, and amended on May 10, 1974. The regulations

were promulgated to clarify the licensing requirements and occupational standards for physical damage appraisers. The regulations were adopted prior to the enactment of the Regulatory Review Act (71 P. S. §§ 745.1—745.15). Consequently, the regulations were not subject to review by the Independent Regulatory Review Commission (IRRC). The purpose of this proposed rulemaking is to amend Chapter 62 to make it consistent with existing statutory language, to delete those provisions of the regulations which are duplicative of the act and to add additional language which enhances the act and which provides additional protections for consumers of this Commonwealth.

#### *Explanation of Regulatory Requirements*

Significant proposed amendments include the following:

The definition for "motor vehicle" in § 62.1 (relating to definition) has been amended to clarify that the definition does apply to trailers, but does not apply to nonmotorized vehicles such as bicycles or buggies. Definitions for the terms "aftermarket crash part," "nonoriginal equipment manufacturer ("Non-OEM")" and "predamaged condition" have been added to clarify new provisions to the chapter.

Section 62.2 (relating to licensing requirements) is proposed to be amended to include experience and competency standards for appraisers and also describe circumstances under which an application for an appraisers license may be denied, for example, a felony conviction. Similar regulatory standards currently exist for other Department licensees, including agents and brokers. Revisions also include the proposed deletion of subsections (a)—(m) as these are already requirements specified throughout the act, or which have otherwise been incorporated into the remaining provisions.

Section 62.3 (relating to applicable standards for appraisal) is proposed to amend for significant restructure to delete redundant language and include disclosure requirements.

Section 62.3(a)(1) and (2) is being proposed for deletion, as it is duplicative of provisions which are already specified in section 11 of the act (63 P. S. § 861). Section 62.3(a)(3), which prohibits the use of abbreviations or symbols to describe repair work, is being proposed for deletion as it has been an automotive repair industry standard to use abbreviations with definitions and, therefore, this language is found to be unnecessary. Moreover, section 11(b) of the act requires the appraisal be legible.

Section 62.3(b) has been revised to require a written disclosure which contains the following:

- (1) The amount of the appraisal.
- (2) A statement that any excess costs above the appraised amount may be the responsibility of the vehicle owner.
- (3) A statement that there is no requirement to use any specific repair shop. The appraiser may provide the consumer with the names of at least two repair shops able to perform the repair in accordance with the appraisal.
- (4) A description of repairs necessary to return the vehicle to its predamaged condition, including, but not necessarily limited to, labor involved, cost of all parts, necessary painting or refinishing, and all sublet work to be done. If there is a dispute regarding the cost of repairs to an insured's vehicle, the insured or the insurer may seek resolution through the invocation of the appraisal

clause provision or other similar provision which provides a process for dispute resolution in the policy contract.

(5) specification of incidental charges including towing, protective care, custody, storage, battery and tire replacement.

(6) Specification of applicable sales tax payable on the total dollar amount of the appraisal.

(7) The date, if any, after which an insurer will not be responsible for any related towing services or storage charges and after which the charges will be the responsibility of the consumer.

(8) The location where the listed parts are available in a condition equivalent to, or better than, the condition of the replaced parts prior to the accident.

(9) If the appraisal includes Non-OEM aftermarket crash parts, a statement that the appraisal has been prepared based on the use of aftermarket crash parts supplied by a source other than the manufacturer of the motor vehicle, and that if the use of an aftermarket crash part voids the warranty on the original part, the aftermarket crash part shall have a warranty equal to or better than the warranty on the original part.

Generally, the purpose of the disclosure requirement is to remove any uncertainty for consumers of this Commonwealth and fully apprise them of their rights and responsibilities under the act. In particular, the consumer is expressly advised that there is no requirement to use any specific repair shop. However, the disclosure also assists consumers by permitting the appraiser to provide the names of repair shops able to perform the repairs in accordance with the appraisal.

Section 62.3(c) is being proposed for deletion in its entirety as it is duplicative of provisions already specified in section 11 of the act, or which have otherwise been made part of the disclosure requirements.

Section 62.3(d) now appears as § 62.3(c) and, with the exception of minor changes for clarity and structure, remains unchanged.

Section 62.3(e) now appears as § 62.3(d) and, with the exception of minor changes for clarity and structure, remains unchanged.

Section 62.3(f) now appears as § 62.3(e) and, in addition to minor changes for clarity and structure, has been modified to delete reference to specific guide sources (for example, Red Book, NADA Book). Rather, the Commissioner will now publish annually in the *Pennsylvania Bulletin* a listing of all approved guide sources.

Section 62.3(g) now appears as § 62.3(f) and is proposed for amendment to delete provisions which are redundant, and to make the remaining provisions consistent with the act. Subsection (g)(1)—(5) is proposed for deletion as it is duplicative of provisions specified in section 11(f)(1)—(5) of the act. Subsections (g)(6) and (7) is proposed for deletion as it is duplicative of provisions specified in section 11(g)(1) and (2) of the act. Subsection (g)(8) and (9) (relating, in part, to prohibitions against appraisers recommending or referring customers to specified shops) is proposed for amendment so that it more appropriately conform to section 11(d) of the act, which only specifies that an appraiser may not "require" that repairs be made in any specified shop. The prohibition against an appraiser requiring the use of a specified shop has now been made part of the disclosure requirement in § 62.3(b)(1). The remainder of § 62.3(g)(9) has been renumbered as § 62.3(f)(1) to reflect the correct sequence

as a result of the deletion of subsection (g)(1)—(9). Subsection (g)(10) has been renumbered as § 62.3(f)(2) and reflects only minor changes for structure and clarity. Subsection (g)(11), (12)(i) and the first sentence of (12)(ii) is proposed for deletion as it is duplicative of provisions specified in section 11(b) and (c) of the act. The remaining portion of subsection (g)(12)(ii) has now been renumbered as § 62.3(f)(3) and reflects only minor changes in language. Subsection (g)(12)(iii) is being deleted as it has been replaced with the disclosure requirement in § 62.3(b)(9). Subsection (g)(13) is being proposed for deletion as it is duplicative of section 11(e) of the act. Finally, § 62.3(g)(14) is proposed for deletion as it is found to serve no purpose and does not otherwise enhance the provisions of the act.

Section 62.3(g) has been added to notify appraisers that penalties for violations of the act and its regulations are set forth in the act.

Section 62.4 (relating to sanctions for violations) is being proposed for deletion in its entirety as it is duplicative of sections 5—7 and 9 of the act (63 P. S. §§ 855—857 and 859).

*External Comments*

The Pennsylvania Collision Trade Guild, the Automotive Service Association of Pennsylvania and Insurance Federation of Pennsylvania were contacted regarding issues arising out of the existing regulations. The responses received were reviewed and taken into consideration during the review of these regulations.

*Fiscal Impact*

The proposed amendments will have no impact on costs associated with the Department's licensing of physical damage appraisers. The proposed amendments may impose some additional costs on physical damage appraisers and insurers associated with revising existing appraisal forms and procedures to incorporate the proposed disclosure requirements. The proposed amendments have no impact on costs to political subdivisions. There are no costs to the general public associated with this proposed amendments.

*Paperwork*

The proposed amendments impose no additional paperwork requirements on the Department or the general public. Physical damage appraisers and insurers will have to revise existing appraisal forms to include the proposed disclosure requirements.

*Persons Regulated*

The proposed amendments apply to all physical damage appraisers licensed to do business in this Commonwealth.

*Contact Person*

Questions or comments regarding the proposed rule-making may be addressed in writing to Peter J. Salvatore, Regulatory Coordinator, 1326 Strawberry Square, Harrisburg, PA 17120 within 30 days following the publication of these proposed amendments in the *Pennsylvania Bulletin*.

*Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Department submitted a copy of these proposed amendments to IRRC and to the Chairpersons of the House Insurance Committee and the Senate Banking and Insurance Committee. In addition to submitting the proposed amendments, the Department has provided IRRC and the Committees with a copy of a

detailed Regulatory Analysis Form prepared by the Department in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of that material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, if IRRC has objections to any portion of the proposed amendments, it will notify the Department within 10 days of the close of the Committees' review period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for the Department, the Governor and the General Assembly to review these objections before final publication of the amendments.

M. DIANE KOKEN,  
*Insurance Commissioner*

**Fiscal Note:** 11-149. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 31. INSURANCE**

**PART II. AUTOMOBILE INSURANCE**

**CHAPTER 62. MOTOR VEHICLE PHYSICAL DAMAGE APPRAISERS**

**§ 62.1. Definitions.**

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

\* \* \* \* \*

**Aftermarket crash part**—A replacement for any of the nonmechanical sheet metal or plastic parts that generally constitute the exterior of the motor vehicle, including inner and outer panels.

**Appraisal**—A written monetary determination of damage incurred [ by ] to a motor vehicle when the making of such a determination is assigned in order [ to fix the value of insurance claims ] to return the vehicle to its condition prior to the damage in question. Appraisals [ shall ] include [ a determination whether ] determinations made by the insurer, its employees, its agents or related entities or [ made by another individual ] individuals or [ entity otherwise ] entities assigned to make a determination.

\* \* \* \* \*

**Motor vehicle**—Any motorized device, including a trailer attached thereto, in, upon or by which a person or property is or may be transported or drawn upon a public highway.

**Nonoriginal equipment manufacturer ("Non-OEM") aftermarket crash part**—An aftermarket crash part not made for or by the manufacturer of the motor vehicle.

**Predamaged condition**—The condition of the motor vehicle just prior to the damage in question incurred.

**§ 62.2. Licensing requirements.**

(a) [ A person may not directly or indirectly act or hold himself out as an appraiser unless the person has first secured a license from the Commissioner in accordance with the provisions of the act and this chapter.

(b) The fee to be paid to the Commissioner by an applicant for an appraiser's license shall be \$10 at the time the application is made and \$10 annually for the renewal thereof. In the event of failure to pass the examination, the fee of \$10 will not be returnable.

(c) Each appraiser, while engaged in appraisal duties, shall carry the license issued to him by the Department and shall display it, upon request, to an owner whose vehicle is being inspected, to the repair shop representative involved or to any authorized representative of the Department.

(d) Except as otherwise provided in the act and this chapter, a person may not be granted an appraiser's license unless he shall first establish his qualifications therefor and takes and passes an examination for appraisers.

(e) An applicant for the examination shall be at least 18 years of age; shall be a resident of this Commonwealth, or a resident of another state or country which permits residents of this Commonwealth to act as appraisers in state or country; shall be trustworthy.

(f) In order to qualify for the examination, an applicant shall establish his competency to fulfill the responsibility of being an appraiser. This may be done by showing either a minimum of 6 months continuous experience at an occupation directly involving the estimation of physical damage to motor vehicles, such as a body repairman; or by providing written documentation of successful completion of special education or training related to appraising motor vehicle physical damage and acceptable to the Commissioner as assuring minimum standards of competency.

(g) Applications for an examination as appraiser shall be made to the Commissioner upon forms prescribed and furnished by him and shall be accompanied by the proper fee. Information required on forms must be completed or the application will not be processed.

(h) The examination for licensure which shall be given under the supervision of the Commissioner shall consist of a written examination that shall include the act of appraising one or more damaged motor vehicles and shall be supplemented by an oral examination. At the discretion of the Commissioner an oral examination in lieu of the aforesaid written examination may be given but only for reason of an applicant's physical handicap. An oral examination shall include the act of appraising one or more damaged motor vehicles.

(i) Examinations shall be given at reasonable times and places within the Commonwealth. An applicant who fails to pass the examination is not eligible to retake an examination for 30 days from the date of failure.

(j) Upon proper application and the payment of a fee of \$10 a person who has been employed or engaged for a period of not less than 2 years prior to the submission of the application in the appraising of physical damages to motor vehicles and is currently so engaged shall be licensed without examination as an appraiser if the application is made on or before July 1, 1973, and the applicant

possesses the qualifications required of applicants as provided in section 3 of the Act (63 P. S. § 853) and subsections (d)—(i).

(k) An appraiser's license shall expire annually at midnight of June 30th next following the date of issuance.

(l) Subject to the right of the Commissioner to suspend, revoke or refuse to renew an appraiser's license, the license may be renewed for another annual period commencing the first day of July and expiring at midnight of June 30th next following by filing with the Commissioner on or before the expiration date a written request, by or on behalf of the licensee, for the renewal, accompanied by payment of the renewal fee.

(m) If the request and fee for renewal of the license is filed with the Commissioner prior to the expiration of the existing license, the licensee may continue to act under the license, unless sooner revoked or suspended, until the issuance of renewal license or until the expiration of 5 days after the Commissioner has refused to renew the license and has mailed notice of the refusal to the licensee. Any request for renewal not so filed until after the day of expiration may be considered by the Commissioner as an application for a new license. ]

In addition to the requirements in sections 3, 4, 8 and 11 of the act, to qualify to take the examination required for appraisers, an applicant shall establish competency to fulfill the responsibility of being an appraiser.

(1) Competency may be demonstrated by providing written documentation of one of the following:

(i) A minimum of 6 months continuous experience within the last 3 years at an occupation, such as body repair, that directly involves the estimation of physical damage to motor vehicles.

(ii) Successful completion of education or training related to appraising motor vehicle physical damage taken within the last 3 years.

(2) The applicant shall provide additional information experience, education or training to the Commissioner or a designee upon request.

(b) An application for licensing may be denied for any of the following:

(1) The applicant has provided incorrect, misleading or incomplete answers to interrogatories on forms incidental to the application for a license.

(2) The applicant has been denied a license by the Department or has had an existing license revoked, suspended or not renewed by an insurance regulatory authority in another state, territory or possession of the United States, or in the District of Columbia, or the Canadian provinces.

(3) The applicant does not possess the professional competence and trustworthiness required to engage in conducting motor vehicle appraisals. This determination will be made by the Department.

(4) A showing that, within 5 years prior to applying for a license under the act, an applicant has pleaded guilty, entered a plea of nolo contendere or has been found guilty of a felony in a court of competent jurisdiction, or has pleaded guilty, en-

tered a plea of nolo contendere, or been found guilty of criminal conduct which relates to the applicant's suitability to conduct motor vehicle appraisals. If applicable, applicants shall also comply with the insurance-related provisions in sections 320 and 603(a) of the Violent Crime Control and Law Enforcement Act of 1994 (18 U.S.C.A. §§ 1033 and 1034).

(i) Examples of criminal violations which the Department may consider related to the applicant's suitability to engage in the business of an appraiser include unlawful practices, embezzlement, obtaining money under false pretenses, conspiracy to defraud, bribery or corrupt influence, perjury or false swearing, unlicensed activity or a criminal offense involving moral turpitude or harm to another.

(ii) Examples of violations or incidents which the Department will not consider related to the applicant's suitability to engage in the business of an appraiser are all summary offenses, records of arrests if there is no conviction of a crime based on the arrest, convictions which have been annulled or expunged or convictions for which the applicant has received a pardon from the Governor.

(5) The applicant has unpaid and overdue amounts, including, fees and civil penalties, owing to the Department.

**§ 62.3. Applicable standards for appraisal.**

(a) The appraisal [ statement ] shall [ adhere to the following form: ] be signed by the appraiser before the appraisal is submitted to the insurer, the consumer or another involved party.

[ (1) An appraisal shall state the name of the insurance company, the insurance file number, the number of the appraiser's license and the proper identification number of the vehicle being inspected.

(2) An appraisal shall be signed by the appraiser before the appraisal is submitted to the insurer, the consumer or any other involved party.

(3) An appraisal may not make use of abbreviations or symbols to describe work to be done or parts to be repaired or replaced unless an explanation of the abbreviations and symbols is included. ]

(b) [ The appraisal statement ] In addition to the requirements in the act, the appraisal shall contain a written disclosure which includes the following:

(1) The dollar amount of the appraisal.

(2) A statement that excess costs above the appraised amount may be the responsibility of the vehicle owner.

(3) A statement that there is no requirement to use any specific repair shop. The appraiser may provide the consumer with the names of at least two repair shops able to perform the repair in accordance with the appraisal.

[ Items ] (4) A description of repairs necessary to return the vehicle to its predamaged condition [ prior to the damage in question ], including [ , but not necessarily limited to ] labor involved [ ; ], cost of all parts, necessary painting or refinishing, and all sublet

work to be done. [ Furthermore, there shall be a specification of charges relating to towing, protective care, custody, storage, depreciation, including but not limited to new battery and tire replacement, applicable sales tax payable on the total dollar amount of the appraisal, and all other matters incidental to repair of the incurred damage. ] If there is a dispute regarding the cost of repairs to an insured's vehicle, the insured or the insurer may seek resolution through the invocation of the appraisal clause provision or other similar provision which provides a process for dispute resolution in the policy contract.

[ (2) A clear indication of the cost or dollar amount value of all specified items.

(3) A clear indication of unrelated or old damage.

(4) If there is a date after which an insurer will not be responsible for a related towing services or storage charges, or both, and after which the charges will be the responsibility of the consumer, the appraisal shall clearly indicate that date. ]

(5) Incidental charges including towing, protective care, custody, storage, battery and tire replacement.

(6) Applicable Sales Tax payable on the total dollar amount of the appraisal.

(7) The date, if any, after which an insurer will not be responsible for related towing services or storage charges and after which the charges will be the responsibility of the consumer.

(8) The location where the listed parts are available in a condition equivalent to, or better than, the condition of the replaced parts prior to the accident.

(9) If the appraisal includes Non-OEM aftermarket crash parts, a statement that the appraisal has been prepared based on the use of aftermarket crash parts supplied by a source other than the manufacturer of the motor vehicle, and that if the use of an aftermarket crash part voids the warranty on the original part, the aftermarket crash part shall have a warranty equal to or better than the warranty on the original part.

(c) [ In the specification of new or used parts, the following standards shall be used for the appraisal statement:

(1) The operational safety of the motor vehicle shall be paramount especially when the parts involved pertain to the drive train, steering gear, suspension units, brake system or tires.

(2) If used parts are specified in the appraisal, the appraiser shall have certain knowledge of one or more relatively convenient locations where the particular used parts are actually and reasonably available in usable condition equivalent to or better than the condition of the damaged parts prior to the accident. The appraiser shall specify the locations where such used parts are in fact available.

(d) ] (c) In the appraisal of salvage value, the following [ standards ] standard shall be used:

(1) If the salvage value of the vehicle being appraised is known or could reasonably be [ found out ] deter-

mined, the appraiser shall **[inform]** advise the consumer **in writing** of the salvage value and additional charges for towing services or storage chargeable against the motor vehicle as of the date of the appraisal.

(2) **[For a]** If the salvage value is listed, the appraiser shall **[inform]** advise the consumer **in writing** of the name and address of **each** salvage **[buyer]** bidder, and the amount and expiration date of each salvage bid known.

(3) If the ownership and possession of the damaged motor vehicle is not retained by the owner or **[his]** the owner's representative, this subsection dealing with salvage value **[need not be complied with]** is **inapplicable**.

**[e]** The following standards shall be used regarding the betterment of the vehicle:

(1) **[d]** An appraisal for the repair of the motor vehicle **[will]** shall be made in the amount necessary to return the motor vehicle to its **[same condition just prior to the damage in question being incurred]**.

(2) **[predamaged condition]**. If the consumer **[is insistent upon]** requests the use of **[new]** parts **[rather than repair]** other than those listed on the appraisal, or otherwise wishes to repair the motor vehicle to a condition better than that existing prior to the damage incurred, the appraisal need only specify the cost of repairing the vehicle to its **predamaged condition [just prior to the time the damage was incurred]**.

**[f]** The following standards shall be used to determine replacement value under policy provisions covering the total loss of a motor vehicle including an uncovered motor vehicle:

(1) If the costs of repair of a motor vehicle exceed its appraised value, less salvage value or the motor vehicle cannot be satisfactorily or reasonably repaired to its condition just prior to the damage in question being incurred, the appraised value of the loss shall be the replacement value of the motor vehicle.

(2) The replacement value of a motor vehicle shall be calculated by use of the one of the following methods: ]

(e) The appraised value of the loss shall be the replacement value of the motor vehicle if the cost of repairing a motor vehicle exceeds its appraised value less salvage value, or the motor vehicle cannot be satisfactorily or reasonably repaired to its condition just prior to the damage in question being incurred.

(1) Under this subsection, replacement value under the policy provisions covering the total loss of a motor vehicle including an unrecovered motor vehicle shall be determined by one of the following methods:

(i) *Guide source method.* The appraiser shall calculate the average of two figures reflecting the retail book value of a vehicle of like kind and condition, as **[stated in the corrected edition of the Red Book (National Market Reports, Inc., Circulation Department, 300 West Adams Street, Chicago, Illinois 60606, telephone (800) 671-9907), the NADA Book (Subscription Department, P. O. Box 7800, Costa Mesa, California**

**92628, telephone (800) 622-6232), or any similar source of information]** provided by guide sources approved by the Commissioner. A listing of approved guide sources shall be published once a year in the *Pennsylvania Bulletin*. The appraised value shall be adjusted for equipment and mileage, less the cost of repair of damage which preexisted the accident in question. **[There may be no]** No other deductions may be taken except for salvage and then only if the owner elects to retain the vehicle.

(ii) *Actual cost method.* The appraiser shall determine the actual cost of purchase of an available motor vehicle of like kind and quality in condition similar to or better than the motor vehicle being appraised just prior to the damage in question being incurred. **The appraiser shall specify, in writing, the location of the vehicle of like kind and quality.**

**[3]** **(2)** If the motor vehicle is listed in **[any]** at least two **[of the sources authorized by paragraph (2)(i), including older car publications]** guide sources approved by the Commissioner, the replacement value shall be calculated by the guide source method or by the actual cost method, as described in paragraph **[(2)] (1)(i) and (ii)**. If the actual cost method is used, and the owner of the damaged vehicle shows that the replacement vehicle is not of the same kind and quality, both calculations referenced in this paragraph shall be made, and the higher of the values obtained shall be offered in settlement.

**[4]** **(3)** If the motor vehicle is not listed in **[any]** at least two of the sources authorized by paragraph **[(2)] (1)(i), [including older car publications,]** or if the vehicle differs materially from the average vehicle because of factors not considered in the guide sources, for example, antique or classic cars, vehicles no longer manufactured and unique vehicles, the replacement value shall be calculated by the actual cost method or by the dealer quotation method, as described in paragraph **[(2)] (1)(i) and (ii)**. If the dealer quotation method is used, both calculations referenced in this paragraph shall be made, and the higher of the values obtained shall be offered in settlement.

**[5]** **(4)** \*\*\*

**[6]** **(5)** The licensed appraiser's **[Total Loss Evaluation Report]** total loss evaluation report shall contain the names and addresses of those persons from whom quotations were secured, the date secured, and whether or not a similar vehicle was available.

**[7]** **(6)** The licensed appraiser's file shall show the method used to determine the **[more accurate]** replacement value in a given locality.

**(8) A** **(7)** The appraiser is responsible for ensuring that a copy of the total loss evaluation **[sheet]** report be **[given]** sent within 5 working days to the consumer by the appraiser **[or by the insurer within 5 working days]** after the appraisal is completed. If **[an offer of settlement]** a settlement offer is **[made]** extended before the consumer receives the total loss evaluation **[sheet]** report, the consumer shall be **[verbally]** advised of the total loss evaluation report's contents **[thereof]** and of **[his]** the consumer's right to receive a copy within 5 days after its completion.

[ (g) The general standards of behavior of an appraiser ] (f) In addition to the requirements in section 11 of the act (63 P. S. § 861), an appraiser shall [ include the following ]:

(1) [ Conduct to inspire public confidence by fair and honorable dealings.

(2) Appraisals of damaged property done without prejudice against, or favoritism toward, any party involved.

(3) Disregard of attempts of others to influence his judgment in the interest of the parties involved.

(4) Preparation of an independent appraisal of damage.

(5) Inspection of a vehicle within 6 working days of assignment to the appraiser unless intervening circumstances (for example catastrophe, death, and failure of the parties to cooperate) render the inspection impossible.

(6) An appraiser may not receive directly or indirectly a gratuity or other consideration in connection with his appraisal services from a person except his employer or, if self-employed, his customer.

(7) An appraiser may not traffic in automobile salvage if the salvage is obtained as a result of appraisal services rendered by him for his own benefit.

(8) An appraiser or his employer may not recommend or require that repairs be made at a particular place or by a particular individual.

(9) An appraiser may not have ] Not have a direct or indirect conflict of interest in the making of an appraisal. This chapter and the act, and this section in particular, shall be strictly interpreted to protect the interest of the consumer and place the burden upon the appraiser to [ fully ] eliminate conflict of interest in the making of an appraisal. [ Unless as otherwise specified in this chapter or act, a licensed appraiser may not attempt to directly or indirectly coerce, persuade, induce or advise the consumer that appraised motor vehicle physical damage must be, should be or could be repaired at a particular location or by a particular individual or business.

(10) Before an appraiser authorizes ] (2) Obtain the consent of the consumer before authorizing the removal of a motor vehicle from one location to another[, the consent of the consumer shall be obtained ].

(i) The [ need for ] consent of the consumer may not be necessary for initial removal of the motor vehicle from the scene of an accident.

(ii) An appraiser authorizing removal of a motor vehicle to a salvage yard shall inform the [ salvor ] salvager in writing that possession is merely for safe-keeping purposes and that the [ salvor ] salvager does not have an ownership right to the motor vehicle, its parts or accessories, until a certificate of title is received indicating that ownership has been transferred.

[ (11) Personal inspection of damaged property by the appraiser is required as follows:

(i) An appraiser may not secure or use repair estimates that have been obtained by the use of photographs, telephone calls or in a manner other than personal inspection.

(ii) If a damaged motor vehicle is in the custody of a repair shop, an appraiser may not take photographs of the damaged motor vehicle until after a legible copy of his appraisal is left with the repair shop although the appraisal may contain certain open items.

(12) The responsibility of the appraiser shall include delivery and explanation of the appraisal as follows:

(i) The appraiser shall provide a legible copy of the appraisal to the consumer

(ii) At the request of an involved party or as is otherwise necessary, the appraiser shall leave a copy of the appraisal with the selected repair shop. The appraiser shall discuss ]

(3) Discuss the appraisal with [ the selected ] an authorized representative of the repair shop [ owner its authorized representative ] which shop is selected by the consumer or any other [ parties ] party as is reasonably necessary to [ insure ] demonstrate that the actual costs of repairs are adequately covered in the appraisal.

[ (iii) Upon the unsolicited request of the consumer, an appraiser shall provide names and addresses of auto body shops, garages or repair shops within a reasonable distance of where the motor vehicle is located and where work will be done in accord with the written appraisal.

(13) An appraiser shall promptly reinspect damaged vehicles prior to the repairs in question: when supplementary allowances are requested by repair shops or when the amount or extent of damages is in dispute, or both.

(14) A provision of the act or this chapter may not be construed as intended to prohibit or limit the subsequent appraisal or reappraisal of damage by different licensed appraisers, if such is desired by any of the involved parties. ]

(g) The penalties for violating the act and its regulations thereunder are set forth in sections 5, 6, 7 and 9 of the act.

§ 62.4. [ Sanctions for violation ] (Reserved).

[ (a) The Commissioner may deny initial issuance of, suspend, revoke or refuse to renew any appraiser's license for any cause specified in the act, or this chapter, or for any of the following causes:

(1) For any cause for which issuance of the license could have been refused had it been existent and been known to the Commissioner.

(2) If the licensee willfully violates, or fails to comply with or knowingly participates in the violation of or failure to comply with the act, or this chapter or another rule or regulation promulgated thereunder.

(3) If the licensee has obtained or attempted to obtain a license through willful misrepresentation or fraud, or has failed to pass any examination required under this act.

(4) If the licensee has, with intent to deceive, materially misrepresented the terms or effect of an insurance contract; or has engaged or is about to engage in a fraudulent transaction.

(5) If the licensee has been convicted, by final judgment, of a felony.

(6) If in the conduct of his affairs under the license, the licensee has shown himself to be, and is so deemed by the Commissioner, incompetent or untrustworthy, or a source of injury and loss to the public.

(b) Every order suspending a license shall specify the period during which suspension will be effective, which may in no event exceed 12 months.

(c) The holder of any license which has been revoked or suspended shall immediately surrender the license to the Commissioner at his request.

(d) The Commissioner may not reinstate the license or relicense a licensee or former licensee whose license has been suspended, revoked or renewal refused while the cause for the suspension, revocation or refusal of the license persists.

(e) Except as otherwise provided in the act, actions of the Commissioner shall be taken subject to the right of notice, hearing and adjudication, and the right to appeal therefrom as provided by law.

(f) The license of an individual found in violation of this chapter or the act may be suspended or revoked by the Commissioner. In addition, a person who violates this chapter or the act may be guilty of a misdemeanor and upon conviction thereof, for each offense, may be sentenced to pay a fine not exceeding \$500, or to undergo imprisonment not exceeding 1 year, or both. ]

[Pa.B. Doc. No. 99-186. Filed for public inspection February 5, 1999, 9:00 a.m.]

## STATE BOARD OF EXAMINERS OF NURSING HOME ADMINISTRATORS

[49 PA. CODE CH. 39]

### Continuing Professional Education

The State Board of Examiners of Nursing Home Administrators (Board) proposes to amend its regulations in §§ 39.1, 39.11, 39.14, 39.41, 39.43, 39.51—39.61 and 39.72, to delete §§ 39.31 and 39.32, 39.42 and 39.62—39.64 and to add §§ 39.44 and 39.65, as set forth in Annex A. The proposed amendments relate to continuing education requirements.

#### A. Effective Date

The proposed amendments would be effective upon publication of the final-form regulations in the *Pennsylvania Bulletin*. The continuing education requirement will apply to the 2001—2003 biennial renewal.

#### B. Statutory Authority

The Board has authority to adopt regulations pertaining to continuing education under section 9(b) of the Nursing Home Administrators License Act (act) (63 P. S. § 1109(b)).

#### C. Background and Purpose

Section 9(b) of the act (63 P. S. § 1109(b)), requires licensees to complete continuing education as a condition of biennial renewal. Current §§ 39.31—39.64 of the Board's regulations establish the parameter of the continuing education requirement. The proposed amendments clarify, update and expand on those provisions.

#### D. Description of Amendments

##### Substantive amendments

##### 1. Program preapproval.

Section 39.41 (relating to provider registration) of the current regulations requires continuing education providers to be preapproved by the Board. Individual programs, however, do not require preapproval under current § 39.52(b). Rather, after the program is offered or completed, licensees file individual applications with the Board, under § 39.64, seeking program approval. If the Board believes that the program satisfies its qualifications, approval will be granted. If the Board does not believe the program satisfies its qualifications, the licensee will not receive any credit and will be required to obtain additional continuing education.

As proposed, the Board's continuing education regulations would be amended to require preapproval of all programs. The Board believes that preapproval will be of assistance to licensees since they would know in advance that the program has been approved and the number of hours granted. In order to assure that the preapproval process would not burden providers, proposed § 39.52(b) would be amended to reduce the program application submission date from 90 days to 60 days. Programs limited to significant changes in State or Federal law or regulations which will be implemented within 60 days of their publications need only be submitted to the Board for approval within 30 days of their presentation.

In addition to reducing the time for seeking program approval, the proposed amendments would also reduce the paperwork requirements on providers. Under proposed § 39.43 (relating to standards for provider approval), prospective providers would no longer need to inform the Board of the provider's area of expertise, the adequacy of the facilities, qualifications, reputation and character of the instructors and appropriateness of the educational materials on the provider applications.

The proposed amendments would also eliminate the restrictions on providers by deleting current § 39.42 which identifies categories of providers.

The proposed amendments would also eliminate the individual program application fee in current section 39.72.

##### 2. Clock hour and reporting requirements.

Proposed § 39.61 consolidates and refines the requirements in current §§ 39.61—39.64. Under proposed subsection (b), licensees may complete the 48 clock hours per biennium in lecture or computer interactive courses approved by the National Association of Boards of Examiners of Long-Term Care Administrators (NAB) or the Board, college or university courses, including distance learning, individual study, serving as an instructor or author of a book, article or continuing education program.

Under the proposed amendments, current § 39.61(b)(2)(i)—(iv), regarding community, professional and health-care activities, would be eliminated. The Board believes that while these activities are worthwhile to the community and the licensee, they do not constitute



education or learning which contributes directly to the professional competence of nursing home administrators

Current §§ 39.61(b)(2)(vi)—(vii), 39.63 and 39.64, regarding home study, individual study, or serving as an instructor or author, would be consolidated into § 39.61(b)(3). Proposed subsection (b)(3)(ii) expands the publication credit for licensees. Under the current regulation, authors may only obtain 3 clock hours per article. Under this provision, up to 12 clock hours may be awarded based on the complexity of the subject matter or work. In exceptional circumstances, where an article is published in a refereed journal, a licensee may be awarded up to 24 clock hours.

Proposed subsection (b)(3)(ii) also expands the credit available for instructors. Under the current regulation, licensees are capped at 3 clock hours. Under the proposed regulation, instructors may earn 1 clock hour for each hour of participation up to 12 clock hours.

Proposed subsections (c) and (e) would set forth the exceptions to the credit hour requirement codifying current Board policy. A licensee who obtains a license after the biennial period begins would only need to complete 24 clock hours, of which 12 must be taken in NAB or Board-approved programs. Under new subsection (e) licensees who cannot meet the continuing education requirement due to illness, emergency or hardship would be able to seek a waiver from the Board.

New subsection (d) clarifies that licensees whose license is suspended would not be exempt from the continuing education requirement. New subsection (f) clarifies that licensees will not receive credit for repeating a program in the same renewal period unless the subject matter has substantially changed during that period.

New § 39.65 would describe the reporting requirements. Licensees would be required to certify that they have met the continuing education requirements on their application for biennial renewal. Documentation, listed in subsection (b), which would evidence completion of the continuing education requirement, would only have to be provided to the Board upon request. Licensees would be responsible for maintaining a copy of the documentation for 4 years. Failure to provide documentation when requested or falsification of the requested information would constitute a violation of the act and could result in disciplinary action.

### 3. Subject matter.

Under the current regulations, licensees must complete their continuing education hours in the subjects listed in §§ 39.7 and 39.14. Current § 39.14 repeats the approved subject areas in both subsections (a) and (b). In the proposed amendments, § 39.14 would be amended to delete the redundant reference in subsection (b). In addition, subsection (b)(2) has been amended to clarify that the appropriate subject areas must be appropriate to long-term care. The reference to § 39.7 has also been deleted in proposed § 39.51(a) as unnecessary.

Current section 39.51(b) would be amended to codify current Board policy that two types of programs, while capable of being in the subject areas listed in § 39.14, are not deemed acceptable to the Board: inservice programs which are not open to any licensee and programs limited to the organization and operation of the employer. The Board believes that these programs are designed to enhance job performance rather than improve clinical competency.

### 4. Provider responsibilities.

New § 39.44 would delineate provider responsibilities ranging from the disclosure obligations prior to presenting a program to verification requirements following the presentation of the program.

#### *Technical amendments*

Section 39.1 would be amended to add definitions of "continuing education certificate," "clock hour," "individual study" and "NAB."

The amendments to § 39.11 would clarify that licensees shall complete 48 clock hours of continuing education during the preceding renewal period as a condition of biennial renewal. In addition, subsection (e) would clarify that licensees whose licenses have expired shall not only submit the required late fee, if they have practiced during the preceding renewal period, or a verification of nonpractice, if they have not practiced during the preceding renewal period, but also shall provide documentation evidencing the satisfactory completion of the continuing education requirement for the preceding biennial period. This requirement is in lieu of the personal hearing previously required in current subsection (f).

Current §§ 39.13 and 39.32 are being deleted as unnecessary or redundant. Relevant subsections have been reinserted where appropriate.

#### *E. Compliance with Executive Order 1996-1.*

In accordance with the requirements of Executive Order 1996-1 (February 6, 1996), in drafting and promulgating the proposed amendments the Board solicited input and suggestions from the regulated community by providing drafts to organizations and entities which represent the professions, educational institutions and interested individuals.

#### *F. Fiscal Impact and Paperwork Requirements*

1. Commonwealth—There is no fiscal impact associated with this proposal. Current regulations require the Board to assure compliance with the continuing education requirement before renewing a license. The costs associated with the regulations, including an audit, are borne by the general licensee population through biennial renewal fees which generate revenue for all Board activities. Additional paperwork will be incurred by the Board to amend renewal application forms.

2. Political subdivisions—There will be no adverse fiscal impact or paperwork requirements imposed.

3. Private sector—There will be no adverse fiscal impact or paperwork requirements imposed.

#### *G. Sunset Date*

The Board continuously monitors its regulations. Therefore, no sunset date has been assigned.

#### *H. Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on January 27, 1999, the Board submitted a copy of these proposed amendments to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House Professional Licensure Committee and the Senate Consumer Protection and Professional Licensure Committee (Committees). In addition to submitting the proposed amendments, the Board has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Board in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

I. Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed amendments to Robert G. Cameron, Counsel, State Board of Examiners of Nursing Home Administrators, 116 Pine Street, Post Office Box 2649, Harrisburg, PA 17105-2649, within 30 days of publication of this proposed rulemaking. Please reference No. 16A-623 (Continuing Education), when submitting comments.

ROBERT H. MORROW,  
Chairperson

**Fiscal Note:** 16A-623. No fiscal impact; (8) recommends adoption.

ANNEX A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 39. STATE BOARD OF EXAMINERS OF NURSING HOME ADMINISTRATORS

GENERAL

§ 39.1. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

\* \* \* \* \*

**Continuing education record**—A document issued by the provider to the participant which contains the title of the program, the hours of education and the dates attended or completed.

**Clock hour**—A minimum unit of education consisting of 60 minutes of instruction. Programs longer than 60 minutes will be credited in 30 minute increments.

\* \* \* \* \*

**Individual study**—A continuing education course which does not have an instructor or other interactive learning methodologies and which requires a passing grade on a written examination or workbook.

\* \* \* \* \*

**NAB**—The National Association of Boards of Examiners of Long-Term Care Administrators.

\* \* \* \* \*

§ 39.11. [Registration] Biennial renewal.

(a) [Certificate of registration for nursing home administrators are required to be renewed] Licenses are renewable each biennium, [2 years,] in the even-numbered years.

(b) Applications for [a new certificate of registration shall] renewal will be forwarded [biennially] to each active [registrant] licensee at the licensee's address of record with the Board prior to the expiration [date] of the current [biennium certification of registration] biennial period. [However, if for any reason the renewal application is not received, the licensee is obligated to make inquiry of the Board.]

(c) [Upon making application for a new certificate, the applicant] As a condition of biennial renewal, licensees shall [submit evidence satisfactory to the Board that] complete 48 clock hours of continuing education during the preceding biennial period [immediately preceding the application for registration, he has attended a Board approved continuation education program or course of study of not less than 24 clock hours] as required in § 39.61 (relating to requirements).

(d) Renewal [application forms] applications shall be completed and returned to the Board office accompanied by the required renewal fee. Upon approval of each application, the applicant shall receive a certificate of registration for the current renewal period.

(e) An application for the renewal of a license which has expired shall be accompanied by a late fee, [as determined by the Board in addition to] or a verification of nonpractice, the [prescribed] renewal fee and documentation evidencing the satisfactory completion of the continuing education requirement for the preceding biennial period.

[ (f) The Board may require a personal hearing and representation of satisfactory proof of compliance with section 9(e) of the act (63 P. S. § 1109(e)) before issuing a certificate of registration to a licensee whose certificate of registration has expired for the reasons therein contained. ]

§ 39.14. Approval of programs of study.

(a) A program of study designated to [train] educate and qualify an applicant for licensure as a nursing home administrator [as required by the act and this chapter] offered by an accredited university or college shall be deemed acceptable and approved for the purpose, if the program:

(1) [The program has been] Is registered with the Board.

(2) [The program includes] Includes a minimum of 7 1/2 [contact] clock hours [or their equivalent], in [each of] the following subject areas, appropriate to long-term care:

(i) [General administration] Administration, organization and management [in nursing homes].

\* \* \* \* \*

(iii) The role of government in health policy[, ] and regulation [and reimbursement].

\* \* \* \* \*

(vi) [Third-party] Government and third-party reimbursement.

(vii) Preparing for licensure/certification/accreditation surveys and meeting other regulatory requirements.

\* \* \* \* \*

(ix) The nursing department and [patient] resident care management.

\* \* \* \* \*

(xiii) Dietary department and [patient] resident nutrition.

(xiv) Social services, family and community relationships and [ patient ] resident rights.

\* \* \* \* \*

(b) [ A program of study designed and offered by an association, professional society or organization other than an accredited college or university to meet the requirements and qualifications for biennial registration shall be approved by the Board if:

(1) The program has been registered with the Board. The following general subject areas or their equivalents will be considered by the Board for approval for continuing educational hours:

(i) General administration, organization and management in nursing homes.

(ii) Gerontology, diseases of aging, death and dying.

(iii) The role of government in health policy, regulation and reimbursement.

(iv) Fiscal management, budgeting and accounting.

(v) Personnel management and labor relations.

(vi) Third-party reimbursement.

(vii) Preparing for licensure/certification surveys and meeting other regulatory requirements.

(viii) Understanding regulations, deficiencies, plans of correction and quality assurance.

(ix) The nursing department and patient care management.

(x) Rehabilitation services and special care services.

(xi) Health support services: pharmacy, medical records and diagnostic services.

(xii) Facility support services: building/grounds, housekeeping, laundry and central supply.

(xiii) Dietary department and patient nutrition.

(xiv) Social services, family and community relationships and patient rights.

(xv) Risk management, safety and insurance.

(xvi) Strategic planning, marketing and public relations.

(2) The program of study has been submitted to the Board for approval prior to announcement or publication, at least 2 months prior to the anticipated registration of students.

(c) ] Upon completion of an approved program of study, the sponsors of the program shall issue certificates of attendance or other evidence of attendance satisfactory to the Board.

**CONTINUING EDUCATION FOR NURSING HOME ADMINISTRATORS**

§ 39.31. [ Purpose ] (Reserved).

[ (a) The Board believes the mandate of continuing education for relicensure of nursing home administrators constitutes a major responsibility of the Board in relation to approval of educational programs. The almost overwhelming growth of the health-care field, with a great proportion of this growth affecting the aging population and long-term facilities, demands that those individuals who

assume a leadership role in this area of health-care be knowledgeable in subject matter and skilled in performance. To be effective, this knowledge shall be current and transferable to permit the individual to function in the total sphere of the health-care system.

(b) The Board believes that a formal educational setting which is staffed and equipped to offer health and other related educational programs is the preferred setting to accomplish these objectives and that the pattern established at this time will greatly determine the future course of professionalism of the nursing home administrator. ]

§ 39.32. [ Guidelines ] (Reserved).

[ The following guidelines are to be used to help insure that the educational program is a meaningful, educational experience:

(1) The program should provide a clear statement of its educational objectives.

(2) The program should selectively utilize the faculty format and educational modalities best suited to the topic.

(3) The program should conclude with an evaluation to determine if the educational objectives have been accomplished. ]

**APPROVAL PROCESS—PROVIDERS**

§ 39.41. Provider registration.

[ (a) An agency, organization, institution or center ] Anyone seeking to offer [ an organized ] a program for continuing education [ may apply to the Board as a provider.

(b) Providers seeking Board approval of continuing education programs ] shall [ complete and submit an application ]:

(1) Apply for approval as a provider [ of continuing education. The application shall be submitted to ] on forms provided by the Board [ for approval or rejection.

(c) Statements made in the application shall be sworn to be true and correct to the best of the provider's information, knowledge and belief.

(d) Upon approval of a qualified provider, a provider number will be assigned.

(e) Each provider shall indicate the area of expertise on the provider application form supplied by the Board. Programs will be approved only in that area of expertise. A change in the area of expertise shall be recorded and communicated to the Board within 60 days of that change.

(f) Each approved provider shall request reregistration each biennium and each application for reregistration shall be accompanied by a statement

(g) Applications for initial registration and future reregistration will be sent on request. ]

(2) File the application at least 60 days prior to the first scheduled date of the program.

(3) Register biennially outlining major changes in the information previously submitted.

§ 39.42. [ Provider categories ] (Reserved).

[ Categories of providers shall include:

- (1) Academic institutions properly accredited by regional or Pennsylvania Educational Authorities.
- (2) Health-care or professional organizations.
- (3) Government agencies.
- (4) Private recognized institutions or centers. ]

§ 39.43. Standards for [ providers ] provider approval.

[ (a) Prior to approval each provider ] Prospective providers shall document the following on their applications:

- (1) [ Establish a ] The mechanism measuring the quality of the program being offered.
- (2) [ Establish ] The criteria for selecting and evaluating faculty instructors, subject matter and instructional materials.
- (3) [ Establish ] The criteria for [ the evaluation of ] evaluating each program [ upon completion ] to determine its effectiveness.

[ (b) The provider shall provide adequate facilities and appropriate instructional materials to carry out continuing education programs.

(c) The provider shall ensure that the instructors have suitable qualifications and are of good reputation and character.

(d) After the completion of each program, the provider shall submit to the Board a roster of those persons completing the program.

(e) The provider shall comply with this section, §§ 39.41, 39.42 and 39.51—39.54 as a sponsoring agency for continuing education of nursing home administrators. ]

(4) A clear statement of educational objectives.

(5) The subjects in which proposed programs will be offered.

§ 39.44. Provider responsibilities.

For each program, providers shall:

- (1) Disclose the objectives, content, teaching method and number of clock hours in advance to prospective participants.
- (2) Open each program to licensees.
- (3) Provide adequate physical facilities for the number of anticipated participants and the teaching methods to be used.
- (4) Provide accurate instructional materials.
- (5) Employ qualified instructors who are knowledgeable in the subject matter.
- (6) Evaluate the program through the use of questionnaires of the participants and instructors.
- (7) Issue continuing education records.
- (8) Retain attendance records, written outlines and a summary of evaluations for a 5-year period.

APPROVAL PROCESS—PROGRAMS

§ 39.51. Standards for continuing education programs.

(a) [ The subject material for continuing education shall be within the course subject areas ] A program shall consist of the subjects listed in §[ § 39.7 and ] 39.14(a)(2 (relating to [ subject matter for examinations; and ] approval of programs of study). [ In addition, providers will be limited to present programs within their area of expertise as indicated on the provider application. ]

(b) The [ content, length and instruction of programs to be approved by the Board shall be consistent in quality with the standards deemed acceptable to the Board and shall be of value in developing skills in long-term or related health-care administrations. ] The Board does not deem the following programs acceptable:

[ (c) ] (1) Inservice programs [ will not be approved for continuing education credits.

(d) A number system code for approved programs will be established by the Board.

(e) Each program will do the following:

(1) Be subject to onsite review of the program being presented.

(2) Establish a mechanism measuring the quality of the program.

(3) Establish criteria for selecting and evaluating the faculty.

(4) Establish criteria for evaluation of each program upon completion ] which are not open to licensees.

(2) Programs limited to the organization and operation of the employer.

§ 39.52. [ Application for program approval ] Program registration.

(a) All programs require preapproval.

[ (a) ] (b) [ Each approval provider shall submit a properly documented ] An application for program approval shall be submitted at least [ 90 ] 60 days before the scheduled starting date. The Board may consider an application submitted within 30 days if the program is limited to significant changes in State or Federal law or regulations which will be implemented within 60 days of their publication.

[ (b) With the exception of programs listed under §§ 39.62 and 39.64 (relating to college or university courses; and individual programs) only program applications submitted by approved providers will be considered by the Board. ]

(c) The provider number [ of the program sponsor ] shall appear on the program application.

(d) [ Subject material shall be within the course subject areas as listed in §§ 39.7 and 39.14 (relating to subject matter for examinations; and approval of programs of study).

(e) Disapproval will include a statement setting forth reasons. Applicants may submit new applications within 10 days after receipt of disapproval.

**New applications shall document alterations in program to meet Board requirements. Notification will occur as soon as possible within the Board's capability on action taken on new applications.**

**(f) [ Application ] applicant** for program approval shall **[ contain ] provide** the following information:

(1) **[ Full ] The full name and address of the eligible provider.**

(2) **[ Title ] The title of the program.**

(3) **[ Dates ] The dates and location of the program.**

(4) Faculty names, **[ titles, affiliations and degrees ] and biographical sketches, including curriculum vitae.**

(5) **[ Schedule ] A schedule of program—title of subject, lecturer, time allotted and the like.**

(6) **[ Total ] The total number of [ credit ] clock hours requested.**

(7) **[ Attendance ] An attendance certification method.**

(8) **[ Provider ] A provider number.**

(9) **[ Provider category.**

**(10) ] Objectives.**

**[ (11) Admission requirements. ]**

**[ (12) ] (10) Core subjects.**

**[ (13) Program ] (11) The program coordinator.**

**[ (14) Instruction and evaluation methods. ]**

**[ (g) ] (e) A program number will be issued on approval of program.**

§ 39.53. **[ Issuance of program number; revocation ] Revocation or suspension of approval.**

(a) **[ Once a program has been reviewed and approved by the Board, a program number will be assigned.**

(b) **[ A provider may not indicate in any manner that approval has been granted [ as a provider or for a program unless a provider number or program number ] until notification has been [ issued ] received from the Board.**

**[ (c) ] (b) \* \* \***

§ 39.54. **Review.**

(a) **[ The Continuing Education Committee of the Board will review provider applications and continuing education program applications submitted. The Committee will make recommendations to the Board for approval or rejection of the applications. Reasons for rejection will be communicated in writing. No member of the Committee will participate in the review of an application in which they have a vested interest.**

(b) **[ Approved providers shall be subject to onsite and onsite review of the program being presented by representatives of the Board.**

**[ (c) ] (b) Ongoing review of a provider will be on a selected basis subject to the physical presence of Board members or appointed representatives selected by the Board to evaluate program content, relevancy and acceptability.**

#### **[ CREDIT ] CLOCK HOURS REQUIREMENT**

##### **§ 39.61. Requirements.**

(a) **[ Continuing education consisting of ] A licensee shall complete at least 48 clock hours [ per biennium shall be required for each licensee ] during the preceding biennial period.**

(b) Of the 48 hours required, the following applies:

(1) **[ Twenty-four hours as a minimum ] At least 24 hours shall be [ earned by attendance at educational seminars which provide a program previously approved by the Board. Programs presented by seminars shall consist of core subjects listed in §§ 39.7 and 39.14 (relating to subject matter for examinations; and approval of programs of study) ] taken in lecture or computer interactive courses approved by NAB or the Board.**

(2) **[ A licensee may earn a total of 12 credit hours by actively participating in community, professional and health-care activities. Examples follow:**

(i) **Serving as an elected officer of a health-care-related association or organization recognized by the Board and requiring attendance and participation at all yearly meetings may earn one credit hour per meeting.**

(ii) **Serving on committees, boards, advisory groups and the like of a health-care-related organization recognized by the Board—including government appointment—may earn one credit hour per meeting.**

(iii) **Attending and participating in the annual business meeting of recognized organizations irrespective of holding office or committee membership may earn one credit hour per meeting.**

(iv) **Actively participating as an officer or committee member in voluntary community health-care-related organizations that are recognized by the Board may earn two credit hours per meeting. ]**

**Up to 24 clock hours may be taken through college or university courses, including distance learning.**

(3) **A maximum of 12 clock hours may be taken in any of the following categories:**

(i) **Individual study.**

**[ (v) Publication of professional ] (ii) Authoring an article on long-term care. Authors whose articles [ relating to nursing home administration ] are published in professional journals may earn [ three credit ] 3 clock hours per article. Additional credit, up to 12 of the required hours may be awarded based on the complexity of the subject matter or work. In exceptional circumstances, if an article is published in a refereed journal, a licensee may be awarded up to 24 clock hours.**

**[ (iv) Participation as lecturer in ] (iii) Serving as an instructor of a continuing education program or a college or university course. Instructors may earn**

[ three credit hours per presentation ] clock hour for each hour of instruction up to 12 clock hours.

(c) A licensee who obtains a license after the biennial period begins shall complete only 24 clock hours, of which 12 clock hours shall be taken in NAB or Board approved programs.

(d) A licensee suspended for disciplinary reasons is not exempt from the continuing education requirements in subsection (a).

(e) A licensee who cannot meet the continuing education requirement due to illness, emergency or hardship may apply to the Board in writing prior to the end of the renewal period for a waiver. The request shall explain why compliance is impossible, and include appropriate documentation. Waiver requests will be evaluated by the Board on a case-by-case basis.

(f) A licensee will not be credited for repeating a program in the same renewal period unless the subject matter has substantially changed during that period.

§ 39.62. [ College or university courses ] (Reserved).

[ (a) Credit will be given only for hours actually spent in the classroom, with no more than 24 hours of continuing education credits granted by the Board in any biennium for courses obtained in an accredited university or college.

(b) The requests for credits shall be submitted in an application for program approval and assigned a number if approved. Prior approval of the program will not be required. Programs presented by college or university shall consist of core subjects listed in §§ 39.7 and 39.14 (relating to subject matter for examinations; and approval of programs of study). ]

§ 39.63. [ Home study courses ] (Reserved).

[ No more than 18 hours of continuing education credits will be granted by the Board in any biennium for home study courses. The home study courses shall have prior approval of the Board. Prior approval shall be obtained by the filing of a provider registration approval application by the provider sponsoring the course and by submission of an application for program approval as required by §§ 39.41, 39.51 and 39.54 (relating to provider registration; standards for continuing education programs; and review). ]

§ 39.64. [ Individual programs ] (Reserved).

[ Credit hours may be obtained on an individual basis for attendance at programs which have not had prior approval of the Board subject to the following:

(1) Individuals shall submit proper application for program approval as set forth in § 39.51 (relating to standards for continuing education programs).

(2) Individuals must submit supporting documentation and verify attendance.

(3) Program subject material shall meet the requirements of core subjects as set forth in § 39.7 and 39.14 (relating to subject matter for examinations; and approval of programs of study).

(4) The Board reserves the right to withhold granting credit hours for previously nonapproved individual programs until the review process in § 39.54 (relating to review) is satisfactorily completed. ]

§ 39.65. Reporting continuing education clock hours.

(a) A licensee shall provide a copy of the required documentation supporting the completion of the required hours when requested to do so by the Board.

(b) Acceptable documentation consists of:

(1) A continuing education certificate or sponsor-generated printout.

(2) A certified transcript of courses taken for credit in an accredited university or college. For noncredit courses taken, a statement of hours of attendance, signed by the instructor.

(3) Evidence of publication for published articles, books or continuing education programs.

(4) Evidence obtained from the provider of having been an instructor, including an agenda and time schedule.

(c) A licensee is responsible for documenting the continuing education requirements. Required documentation shall be maintained for 4 years after the completion of the program.

(d) Failure to comply with this section shall constitute grounds for disciplinary action under section 9(d) of the act (63 P. S. § 1109(d)).

RENEWAL

§ 39.72. Fees.

The following is the schedule of fees charged by the Board:

	* * * * *
Continuing education program application fee	
per [ credit ] clock hour.....	\$10
[ Continuing education individual program application fee.....	\$20 ]

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