

RULES AND REGULATIONS

Title 55—PUBLIC WELFARE

DEPARTMENT OF PUBLIC WELFARE

[55 PA. CODE CH. 140]

Special MA Eligibility Provisions

Statutory Authority

The Department of Public Welfare (Department), by this order, adopts the amendments in Annex A under the authority of sections 201(2) and 403(b) of the Public Welfare Code (62 P.S. §§ 201(2) and 403(b)) (code). Section 201(2) of the code provides that the Department has the authority to promulgate regulations with approval of the Governor. Section 403(b) of the code provides that the Department establish rules, regulations and standards consistent with law.

Notice of proposed rulemaking is omitted in accordance with section 204(1)(iv) of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. § 1204(1)(iv)) (CDL) and 1 Pa. Code § 7.4(1)(iv) because the administrative regulations relate to Commonwealth grants and benefits. Additionally, notice of proposed rulemaking is omitted for good cause as unnecessary and contrary to public interest under section 204(3) of the CDL and 1 Pa. Code § 7.4(3). The amendments are mandated under section 4732(a)(10)(E) of the Balanced Budget Act of 1997 (Pub.L. No. 105-33) (42 U.S.C.A. § 1396a(a)(10)(E)). Failure to conform State regulations with Federal laws will seriously jeopardize Federal Financial Participation (FFP) in the Medicaid Program. The requirements of Federal law are specific, allowing for no alternative means of compliance. The Department is required to strictly adopt the Federal standard set forth in these amendments.

The provision mandates that full or partial Medicaid payment of the Medicare Part B premium is made to or on behalf of those individuals with incomes of at least 120% but less than 175% of the current Federal Poverty Income Guidelines (FPIG) and who meet established resource requirements. This provision is in accordance with section 4732 of the Balanced Budget Act of 1997.

Purpose of the Amendments

The purpose of these amendments is to expand the income limitations to allow individuals to qualify for full Medicaid payment of the Medicare Part B premium if they have income of at least 120% but less than 135% of the current FPIG; and for partial Medicaid payment of the Medicare Part B premium if they have income of at least 135% but less than 175% of the current FPIG.

Background

The Department's existing regulations provide for payment of Medicare Part B premiums for individuals with family income which is more than 100% but less than 120% of the current FPIG. Resources must not exceed twice the Supplemental Security Income (SSI) resource standard for the appropriate family size to qualify for payment of Medicare Part B premiums. These individuals are identified as Specified Low-Income Medicare Beneficiaries.

The Balanced Budget Act of 1997 mandates that there is an expansion in income limits to qualify for payment of the Medicare Part B premium. Individuals with income of at least 120% but not exceeding 135% of the current

FPIG can qualify for full Medicaid payment of the Medicare Part B premium. This group will be identified as Qualifying Individuals-1 (QI-1s). Additionally, the Balanced Budget Act of 1997 provides for a partial Medicaid payment of Part B premiums for those individuals whose income is at least 135% but less than 175% of the current FPIG. The amount of partial payment is established by the Federal government in accordance with Federal law. These QIs are eligible for Medicare cost-sharing for a portion of their Part B premium, specifically the increase in the Medicare Part B premium attributable to the shift of Medicare home health coverage from Part A to Part B (as provided in section 4611 of the Balanced Budget Act of 1997). This group will be identified as Qualifying Individuals-2 (QI-2s). The resource limits for these two new groupings must not exceed twice the SSI resource standard for the appropriate family size.

Need for the Amendments

Section 4732 of the Balanced Budget Act of 1997, enacted August 5, 1997, amended section 1902 (a)(10)(E) of the Social Security Act (42 U.S.C.A. § 1396a(a)(10)(E)). The Department is required to implement this mandatory provision of the Balanced Budget Act of 1997. The requirements relating to full and partial Medicaid payment of the Medicare Part B premium were implemented on January 1, 1998, through a notice of rule change published at 28 Pa.B. 3626 (August 1, 1998). The regulatory revisions in Annex A will assure compliance with Federal law. If the Department does not implement these requirements, the Department risks Federal financial sanctions.

Summary

1. *Section 140.201*—This section has been amended to specify when the Department will participate in Medicare cost-sharing for QIs-1 and QIs-2.
2. *Section 140.202*—This section, relating to definitions, has been amended to include a definition for QIs and the two subgroups, designated QI-1s and QI-2s.
3. *Section 140.231*—This section has been amended to specify income requirements for QIs-1 and QIs-2.
4. *Section 140.301*—This section has been amended to specify resource eligibility limitations for QIs-1 and QIs-2.
5. *Section 140.331*—This section has been amended to specify benefit coverage for QIs-1 and QIs-2.
6. *Section 140.332*—This section has been amended to specify category designation for QIs-1 and QIs-2.

Affected Persons and Organization

Individuals who are elderly or disabled, or both, who qualify for Medicare coverage and who meet the established income and resource requirements will benefit from these amendments. No individual will be adversely affected by these amendments.

Accomplishments/Benefits

Adoption of these amendments requires the Department to pay all or part of Medicare Part B premiums for the elderly or disabled individuals, or both, who have income of at least 120% but less than 175% of the FPIG. This will permit a vulnerable segment of the population to have more income available for living expenses and assure that these premiums are totally or partially paid.

*Fiscal Impact**Commonwealth*

A capped Federal allocation of funds has been established for this benefit. The capped allocation extends until Federal FY 2002 and increases each year. Currently, there is no State allocation for this change as the Federal funds cover all costs. There will be no costs or savings incurred by State government up to the capped amount.

Public Sector

There will be no costs or savings incurred by the public sector.

Private Sector

There will be no costs or savings incurred by the private sector.

Paperwork Requirements

Due to the capped funding available through the Balanced Budget Act of 1997, these amendments require the development of two new program status codes for monitoring and reporting of Medicare Part B payments paid for qualifying individuals.

Effective Date

The effective date for the provisions relating to qualifying individuals is retroactive to January 1, 1998.

Sunset Date

Although these amendments have no sunset date, it is important to note that these benefits are financed through a capped and time-limited Federal allocation of funds. This allocation extends until Federal FY 2002.

The Department continuously reviews the Medical Assistance (MA) Program and regulations through the Federally-monitored Quality Control and Corrective Action review process to ensure compliance with Federal law.

Public Comment Period

Although these amendments are being adopted without prior notice, interested persons are invited to submit their written comments, suggestions or objections within 30 days from the date of this application for consideration by the Department as to whether the amendments should be revised. Comments should be sent to the Department of Public Welfare, Edward J. Zogby, Director, Bureau of Policy, Room 431, Health and Welfare Building, P. O. Box 2675, Harrisburg, PA 17120, (717) 787-4081.

Persons with a disability may use the AT & T Relay Service by calling (800) 654-5984 (TDD Users) or (800) 654-5988 (Voice Users).

Regulatory Review

Under section 5.1(c) of the Regulatory Review Act (71 P. S. § 745.5a(c)), on August 31, 1999, the Department submitted a copy of these amendments with proposed rulemaking omitted to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Health and Human Services and the Senate Committee on Public Health and Welfare. On the same date, these amendments were submitted to the Office of the Attorney General for review and approval under the Commonwealth Attorneys Act (71 P. S. § 732-101—732-506).

Under section 5.1(d) of the Regulatory Review Act, these amendments were deemed approved by the Committees on October 30, 1999. Under section 5.1(e) of the

Regulatory Review Act, IRRC approved the final-omitted regulations on November 4, 1999.

Findings

The Department finds that:

(1) Public notice of intention to adopt the administrative regulations amended by this order is omitted in accordance with section 204(1)(iv) of the CDL and 1 Pa. Code § 7.4(1)(iv) because the administrative regulations relate to Commonwealth grants and benefits. Additionally, notice of proposed rulemaking is omitted for good cause and contrary to the public interest under section 204(3) of the CDL and the regulations thereunder, 1 Pa. Code § 7.4(3).

(2) The adoption of these amendments in the manner provided in this order is necessary and appropriate for the administration and enforcement of the code.

Order

The Department, acting under the code, orders that:

(a) The regulations of the Department, 55 Pa. Code Chapter 140, are amended by amending §§ 140.201, 140.202, 140.231, 140.301, 140.331 and 140.332 to read as set forth in Annex A.

(b) The Secretary of the Department shall submit this order and Annex A to the Office of Attorney General and the Office of General Counsel for approval as to legality and form as required by law.

(c) The Secretary of the Department shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect upon publication in the *Pennsylvania Bulletin* as final rulemaking and apply retroactively to January 1, 1998.

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 29 Pa.B. 5963 (November 20, 1999).)

FEATHER O. HOUSTOUN,
Secretary

Fiscal Note: 14-462. No fiscal impact; (8) recommends adoption. A Federal allocation of funds has been established for this benefit. Currently there is no State allocation for this change.

Annex A**TITLE 55. PUBLIC WELFARE****PART II. PUBLIC ASSISTANCE MANUAL****Subpart C. ELIGIBILITY REQUIREMENTS****CHAPTER 140. SPECIAL MA ELIGIBILITY PROVISIONS****Subchapter B. ELIGIBILITY PROVISIONS FOR THE HEALTHY HORIZONS PROGRAM FOR THE ELDERLY/DISABLED****GENERAL PROVISIONS****§ 140.201. Policy on Healthy Horizons.**

(a) The Department provides MA under the Healthy Horizons Categorically Needy Program to elderly/disabled persons who are otherwise eligible with family income up to 100% of the current Federal Income Poverty Guidelines and resources not exceeding the SSI resource standard for the appropriate family size.

(b) The Department participates in QMB Medicare cost-sharing only under the Healthy Horizons Medicare

Cost-Sharing Program for qualified Medicare beneficiaries with family income up to 100% of the current Federal Poverty Income Guidelines and resources not exceeding twice the SSI resource standard for the appropriate family size.

(c) The Department also participates in the Medicare Cost-Sharing for qualified Medicare beneficiaries found eligible for benefits under the Healthy Horizons Categorically Needy Program.

(d) The Department participates in SLMB Medicare Cost-Sharing only under the Healthy Horizons Medicare Cost-Sharing Program for SLMBs with family income which on or after January 1, 1995, is more than 100% but does not exceed 120% of the current Federal Poverty Income Guidelines and resources not exceeding twice the SSI resource standard for the appropriate family size. Prior to January 1, 1995, for calendar years 1993 and 1994, family income shall be more than 100%, but may not exceed 110% of the applicable Federal Poverty Income Guidelines and resources may not exceed twice the SSI resource standard for the appropriate family size.

(e) The Department participates in Medicare cost-sharing under the Healthy Horizons Program for qualifying individuals whose family income is at least 120% and less than 135% or at least 135% and less than 175% of the current Federal Poverty Income Guidelines and whose resources do not exceed twice the SSI resource standard for the appropriate family size. These individuals are designated as QI-1s and QIs-2s, respectively.

(f) MA is provided under the program which is not advantageous for the client based on individual circumstances. Eligibility for MA benefits under both the NMP-MA and MNO-MA Programs is also explored.

§ 140.202. Definitions.

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

Applicant/recipient—A person who is applying for, or receiving, benefits under the Healthy Horizons Program.

Calendar quarter—A period of 3-full calendar months beginning with January, April, July or October.

Countable net income—Income counted in determining income eligibility for Healthy Horizons, less appropriate exemptions, deductions and disregards.

Earned income—Money or other compensation received in return for services rendered.

Infrequent income—Income that is received not more than once in a calendar quarter.

Irregular income—Income that is not subject to scheduling or is unpredictable.

Legal guardian—A person who is court appointed as the legal guardian.

Personal property—Privately owned possessions which are not real property. The term includes cash, bank accounts, stocks, bonds, mortgages, cash value of life insurance policies, household furnishings, personal effects, motor vehicles, boats and Federal, State and local tax refunds.

QI—Qualifying individual—An individual who is enrolled in Medicare hospital insurance under Part A and meets the income requirements in § 140.231(c) or (d) (relating to income eligibility limitations) and resource requirements in § 140.301 (relating to resource eligibility limitations).

QI-1s—Qualifying Individual-1s—A qualifying individual who meets the income requirements in § 140.231(c). Eligibility for Medicaid benefits is limited to full payment of Medicare Part B premiums.

QI-2s—Qualifying Individual-2s—A qualifying individual who meets the income requirements in § 140.231(d) (relating to income eligibility limitations). Eligibility for Medicaid benefits is limited to partial payment of Medicare Part B premiums.

QMB—Qualified Medicare beneficiary—An individual who is entitled to, or voluntarily enrolled in, Medicare hospital insurance under Part A.

Real property—Land, buildings, mobile homes and improvements thereto.

SLMB—Specified low-income Medicare beneficiary—An individual who meets the eligibility requirements for QMB status except for income in excess of the QMB income limit, but not exceeding the limits specified in § 140.231.

SSI—Supplemental Security Income—The benefit amount paid to an eligible person or to an eligible person and the eligible spouse under Title XVI of the Social Security Act (42 U.S.C.A. §§ 1381—1383c).

Spouse—A person who is married to another by legal ceremony or by common-law.

INCOME REQUIREMENTS

§ 140.231. Income eligibility limitations.

(a) For the Healthy Horizons Categorically Needy and Healthy Horizons QMB Cost-Sharing Programs, net family income after applicable deductions and disregards cannot exceed 100% of the current Department of Health and Human Services Annual Update of Federal Poverty Income Guidelines for the appropriate family size.

(b) For the Healthy Horizons SLMB Cost-Sharing Program, on or after January 1, 1995, net income after applicable deductions and disregards shall be more than 100% of the current Department of Health and Human Services annual update of Federal Poverty Income Guidelines for the appropriate family size but may not exceed 120%. Prior to January 1, 1995, for calendar years 1993 and 1994, net income after applicable deductions and disregards shall be more than 100% of the applicable Department of Health and Human Services Annual Update of Federal Poverty Income Guidelines for the appropriate family size, but cannot exceed 110%.

(c) For the Healthy Horizons Medicare Cost-Sharing Program for QI-1s, net income after applicable deductions and disregards shall be at least 120% and less than 135% of the current Department of Health and Human Services annual update of Federal Poverty Income Guidelines for the appropriate family size.

(d) For the Healthy Horizons Medicare Cost-Sharing Program for QI-2s, net income after applicable deductions and disregards shall be at least 135% and less than 175% of the current Department of Health and Human Services annual update of Federal Poverty Income Guidelines for the appropriate family size.

RESOURCE REQUIREMENTS

§ 140.301. Resource eligibility limitations.

(a) An applicant/recipient is resource eligible for the Health Horizons Categorically Needy Program if his total resources considered in accordance with Chapter 178, Subchapters A and B (relating to general provisions for MA resources common to all categories of MA; and aged,

blind and disabled categories of MA), do not exceed the SSI resource standard for the appropriate family size.

(b) An applicant/recipient is resource eligible for the SLMB, QMB, QI-1, and QI-2 Healthy Horizons Medicare Cost-Sharing Programs if total resources considered under Chapter 178, Subchapters A and B do not exceed twice the SSI resource standard for the appropriate family size in Chapter 178, Appendix A, Part (a) (relating to NMP-MA resource limits).

BENEFIT COVERAGE

§ 140.331. Benefit coverage.

(a) The Department will provide the following under the Healthy Horizons Categorically Needy Program:

- (1) Full categorically needy benefits.
- (2) Qualified Medicare beneficiaries are also eligible for the following:
 - (i) Buy-in of the Medicare Part A premium if the individual is enrolled in Medicare Part A and paying the Part A premium.
 - (ii) Buy-in of the Medicare Part B premium.
 - (iii) Payment of the Medicare Part A and Part B deductibles and coinsurances. The combined Medicare and Medicaid payment will not exceed the Department's Medicaid fee for the service provided.

(b) The Department will provide the following under the QMB Healthy Horizons Medicare Cost-Sharing Program:

- (1) Buy-in of the Medicare Part A premium if the individual is enrolled in Medicare Part A and paying the Part A premium.
 - (2) Buy-in of the Medicare Part B premium.
 - (3) Payment of the Medicare Part A and Part B deductibles and coinsurances. The combined Medicare and Medicaid payment will not exceed the Department's Medicaid fee for the services provided.
- (c) Under the Healthy Horizons SLMB Medicare Cost-Sharing Program, the Department will provide buy-in of only the Medicare Part B premium if the individual is enrolled in or eligible for Medicare Part A.
- (d) For QI-1s, to the extent that Federal funding is provided, the Department will provide full Medicaid payment of the Medicare Part B Premium if the individual is enrolled in or eligible for Medicare Part A.

(e) For QI-2s, to the extent that Federal funding is provided, the Department will provide partial Medicaid payment of the Medicare Part B Premium if the individual is enrolled in or eligible for Medicare Part A. This is a reimbursement to the recipient, not a premium payment to Medicare.

(f) For QI-2s, partial payments of Medicare Part B premium payment will be made for the calendar year. For all other recipients of payments, the Department will pay the Medicare Part A premium, if appropriate, and the Medicare Part B premium beginning with the month following the month in which the applicant is determined eligible.

§ 140.332. Category designation.

(a) Elderly/disabled persons who are eligible to receive Healthy Horizons Categorically Needy benefits are designated as "PS" category and are identified by the appropriate program status code.

(b) Elderly persons who are eligible for Medicare Cost-Sharing only are designated as "PG" category.

(c) Disabled persons who are eligible for Medicare Cost-Sharing only are designated as "PL" category.

(d) Elderly disabled persons who are eligible for SLMB Medicare Cost-Sharing are designated as TA/TJ category and the appropriate program status code.

(e) Elderly/disabled persons who are eligible under the Healthy Horizons Medicare Cost-Sharing Program for QI-1s and QI-2s are designated as TA/TJ category and are identified by the appropriate program status code.

[Pa.B. Doc. No. 00-9. Filed for public inspection December 30, 1999, 9:00 a.m.]

Title 64—SECURITIES

SECURITIES COMMISSION

[64 PA. CODE CHS. 202—205, 207, 209, 211, 504, 513, 603, 606 AND 609]

National Securities Market Improvement Act of 1996 Amendments

Statutory Authority

The Securities Commission (Commission), under the authority contained in sections 202(g) and (i), 203(d), (i.1), (j) and (n)—(t), 204(a), 205(b), 207(g), (j.1) and (n), 209(b), 211(a) and (b), 504(d), 513, 603(a), 606(d) and 609(a) of the Pennsylvania Securities Act of 1972 (act) (70 P. S. §§ 1-202(g) and (i), 1-203(d), (i.1), (j) and (n)—(t), 1-204(a), 1-205(b), 1-207(g), (j.1) and (n), 1-209(b), 1-211(a) and (b), 1-504(d), 1-513, 1-603(a), 1-606(d) and 1-609(a)) amends and adopts regulations concerning the subject matter of the act.

Publication of Notice of Proposed Rulemaking

Publication of a notice of proposed rulemaking appeared at 29 Pa.B. 3898 (July 24, 1999).

Public Comments

One public comment was received from the Investment Company Institute which supported adoption of § 211.010 (relating to notice filings for Federally covered securities). No public comments were received with respect to any other proposed amendments.

Comments of the Independent Regulatory Review Commission (IRRC)

By letter dated September 23, 1999, IRRC advised that it had no objections, comments or suggestions with respect to the proposed amendments or regulations.

Changes Made by the Commission on Adoption

In deliberating final adoption, the Commission addressed two issues raised by Commission staff and made certain modifications to the proposed amendments. The first issue concerns § 203.189 (relating to isolated transactions). In 1997, the Commission waived the Pennsylvania domicile requirement and public media advertisement prohibition for offerings that were filed with the United States Securities and Exchange Commission (SEC) under section 5 of the Securities Act of 1933 (1933 Act) or under SEC Regulation A adopted under section 3(b) of the 1933 Act and did not sell to more than two persons in this Commonwealth within a consecutive 12-month period. Although implicit in the waiver of the public media

advertisement, the Commission did not affirmatively waive the limitation of no more than 90 offers in this Commonwealth during a consecutive 12-month period. In final form rulemaking, the Commission revised this section to include in subsection (b) a waiver of the limitation on offers contained in subsection (a)(2).

The second issue arose in the context of proposed amendments to § 204.010 (relating to increasing the number of offerees and purchasers) in which the Commission proposed to delete subsection (c)(2). This is a former Uniform Limited Offering Exemption provision which states that a disqualification on use of this exemption is waived automatically if the state which imposed the disqualification determines upon showing of good cause that it is not necessary under the circumstances that the exemption be denied. Because the disqualification provision in subsection (b) includes orders issued by other states for violations of their securities statutes, this waiver provision should be retained. In final form rulemaking, the Commission determined to withdraw the proposed change to § 204.010(c)(2).

Summary and Purpose of Regulations

- § 202.070. Commission Form 202-G has been deleted.
- § 202.091. The legal citations in this regulation have been updated.
- § 202.093. Use of advertising in connection with the solicitation of charitable pooled income funds has been clarified.
- § 202.095. Certain charitable gift annuities are exempt from registration under the act.
- § 203.041. Commission Form E has been adopted and Commission Form 203-D and Commission Form D Supplement have been repealed.
- § 203.091. The prospectus filing requirement has been conformed with amendments made to the act by the act of November 24, 1998 (P. L. 829 No. 109) (Act 109).
- § 203.101. Availability of this exemption has been conformed to amendments made to the act by Act 109 prohibiting use of general solicitation and payment of sales compensation.
- § 203.141. Commission Form 203-N has been deleted.
- § 203.151. This regulation has been conformed to amendments made to section 203(o) of the act by Act 109.
- § 203.161. Commission Form 203-P has been revised.
- § 203.171. Commission Form 203-Q has been deleted.
- § 203.183. Typographical errors have been corrected and obsolete language removed.
- § 203.184. "Son-in-law" and "daughter-in-law" have been included in the definition of "principal."
- § 203.185. Obsolete language has been removed.
- § 203.186. Commission Form 203R-6 has been deleted.
- § 203.187. Integration provisions adopted by Act 109 have been incorporated.
- § 203.189. Integration provisions adopted by Act 109 have been incorporated and waiver of 90 offer limitation extended to offerings filing under section 5 of the 1933 Act or SEC Regulation A.

- § 203.191. Commission Form E adopted to claim the exemption in section 203(s) of the act.
- § 203.201. Commission Form E adopted to claim the exemption in section 203(t) of the act.
- § 204.010. References to offerings made under SEC Rule 505 or 506 are deleted and provision relating to waiver of disqualification provision has been retained.
- § 204.011. Language relating to when waivers under this section are available has been clarified.
- § 204.012. This regulation establishes a waiver of the requirement to file a registration statement with the Commission prior to making offers (but not sales) in this Commonwealth when the issuer had filed a registration statement with the SEC.
- § 205.040. Obsolete language has been deleted.
- § 207.071. Escrow of promotional shares provisions have been modified in accordance with amendments adopted by Act 109.
- § 207.072. A new regulation concerning the escrow of use of proceeds has been adopted.
- § 207.101. The total period of effectiveness of a registration statement filed under section 205 of the act has been changed to conform to amendments in Act 109.
- § 207.130. Regulation has been changed to conform to Act 126 of 1994.
- § 207.140. Use of manual signatures has been waived and issuers making notice filings with the Commission through electronic means may type signatures on electronic forms.
- § 209.010. Language in Commission Form 209 has been clarified.
- § 211.010. A notice filing requirement for Federally covered securities has been adopted.
- § 504.060. The type of communication to purchasers and sellers in connection with a rescission offer made under section 504(d) or (e) of the act has been clarified.
- § 513.010. Section 504.060 for rescission offers apply to any rescission offer ordered under section 513 of the act unless otherwise specified by order of the Commission.
- § 603.011. Filing addresses have been updated.
- § 606.041. Various delegations of authority have been made to Commission staff.
- § 609.031. Legal citations have been updated.
- § 609.034. Legal citations have been updated.

Persons Affected by these Amendments

These regulatory actions generally are required to effectuate statutory changes made to the act by Act 109 of 1998. The regulatory proposals primarily affect issuers seeking to raise capital through the offer and sale of securities in this Commonwealth.

Fiscal Impact

None of the amendments increase costs on the regulated community or the Commonwealth. The Commonwealth will not incur any revenue loss as a result of the

regulatory actions. The amendments will decrease regulatory costs to issuers by eliminating certain filing requirements.

Paperwork

The Commission adopts new Commission Form E which will be used for making certain notice filings with the Commission in lieu of Form 203-D and Form D Supplement which have been deleted. Form E, therefore, is a multipurpose form which issuers may use to claim any of the three private placement exemptions under the act which require a notice filing.

Commission Form 202-G, Form 203-N, Form 203-Q and 203R-6 have been deleted and Commission Form 203-P is amended to reduce the amount of information required to be filed. Therefore, the amendments will reduce substantially the current paperwork requirements for issuers offering and selling securities in this Commonwealth.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on July 1, 1999, the Commission submitted a copy of the proposed rulemaking published at 29 Pa.B. 3898 to IRRC and the Chairpersons of the House Committee on Commerce and Economic Development and the Senate Committee on Banking and Insurance for comment and review. In accord with section 5(b) of the Regulatory Review Act, the Commission has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Commission in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available upon request.

By letter dated September 23, 1999, IRRC stated that it did not have any objections, comments or suggestions to offer on the proposed rulemaking published at 29 Pa.B. 3898.

In preparing these final-form regulations, the Commission considered all comments received from the public. It adopted changes to § 203.189 based on internal staff comment and withdrew proposed changes to § 204.010(c)(2). The final-form regulations were submitted on November 4, 1999, to the House Committee on Commerce and Economic Development and the Senate Committee on Banking and Insurance and IRRC. Final-form regulations were deemed approved by the House Committee on Commerce and Economic Development and the Senate Committee on Banking and Insurance on November 24, 1999. IRRC met on December 2, 1999, and approved the final-form regulations.

Availability in Alternative Formats

The amendments may be made available in alternative formats upon request. TDD users should use the AT&T Relay Center (800) 854-5984. To make arrangements for alternative formats, contact Joseph Shepherd, ADA Coordinator, at (717) 787-6828.

Contact Person

The contact person for an explanation of the amendments is G. Philip Rutledge, Deputy Chief Counsel, Securities Commission, Eastgate Building, 1010 N. Seventh Street, 2nd Floor, Harrisburg, PA 17102-1410, (717) 783-5130.

Order

The Commission, acting under the authorizing statute, orders that:

(a) The regulations of the Commission, 64 Pa. Code Chapters 202—205, 207, 209, 211, 504, 513, 603, 606 and 609 are amended by amending §§ 202.070, 202.091, 202.093, 203.041, 203.091, 203.101, 203.141, 203.151, 203.161, 203.171, 203.183, 203.184, 203.185, 203.186, 203.187, 204.011, 204.012, 205.040, 207.071, 207.101, 207.130, 207.140, 209.010, 504.060, 603.011, 606.041, 609.031 and 609.034 to read as set forth at 29 Pa.B. 3898; by adding §§ 202.095, 203.191, 203.201, 207.072, 211.010 and 513.010 as set forth at 29 Pa.B. 3898; and by amending §§ 203.189 and 204.010 to read as set forth in Annex A.

(b) The Secretary of the Commission shall submit this order, 29 Pa.B. 3898 and Annex A to the Office of Attorney General for approval as to form and legality as required by law.

(c) The Secretary of the Commission shall certify this order, 29 Pa.B. 3898 and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect upon publication in the *Pennsylvania Bulletin*.

M. JOANNA CUMMINGS,
Secretary

Fiscal Note: Fiscal Note 50-113 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 64. SECURITIES

Subpart B. REGISTRATION OF SECURITIES

CHAPTER 203. EXEMPT TRANSACTIONS

§ 203.189. Isolated transaction exemption.

(a) *General.* Under section 203(r) of the act (70 P. S. § 1-203(r)), the Commission finds it neither necessary nor appropriate for the protection of investors to require registration under section 201 of the act (70 P. S. § 1-201) for the offer and sale of securities by an issuer if:

(1) Sales made under this section do not result in the issuer having made sales of its securities to more than two persons in this Commonwealth during a period of 12-consecutive months. Only sales described in subsection (c) will be counted as sales for purposes of the numerical limitations contained in this paragraph.

(2) Offers made under this section do not result in the issuer having made offers to sell its securities to more than 90 persons in this Commonwealth during a period of 12-consecutive months. Only offers described in subsection (c) will be counted as offers for purposes of the numerical limitations contained in this paragraph.

(3) The issuer either is organized under the laws of the Commonwealth or has its principal place of business in this Commonwealth.

(4) Neither the issuer nor a promoter, officer or director of the issuer is subject to the disqualifications in § 204.010(b) (relating to increasing the number of purchasers and offerees).

(5) No public media advertisement is used or mass mailing is made in connection with offers and sales made under this section.

(6) Cash or securities are not given or paid, directly or indirectly, to a person as compensation in connection with a sale under this section unless the compensation is given or paid in connection with a sale made by a broker-dealer who either is registered under section 301 of the act (70 P. S. § 1-301) or exempt from registration under section

302(a) of the act (70 P. S. § 1-302(a)) and a person receiving compensation is either the broker-dealer or an agent of the broker-dealer who either is registered under section 301 of the act or exempt from registration under section 302(b) of the act.

(b) *Waivers.*

(1) Subsection (a)(2), (3) and (5) do not apply if the following criteria are met:

(i) The securities to be sold in reliance on this section are registered with the United States Securities and Exchange Commission under section 5 of the Securities Act of 1933 (1933 Act) (15 U.S.C.A. § 77e) or exempt from registration under Regulation A adopted under section 3(b) of the 1933 Act (15 U.S.C.A. § 77(c)(b)).

(ii) The issuer has complied with section 203(h) of the act.

(2) Subsection (a)(3) does not apply if the following criteria are met:

(i) The offers and sales of securities made in reliance on this section would qualify for an exemption from registration under section 5 of the 1933 Act under Rule 505 or Rule 506 of Regulation D (17 CFR 230.505 and 230.506 (relating to exemption for limited offers and sales of securities not exceeding \$5 million; and exemption for limited offers and sales without regard to dollar amount of offering)) promulgated under sections 3(b) and 4(2) of the 1933 Act.

(ii) The offers made in this Commonwealth in reliance on this section are made only to accredited investors as that term is defined in § 204.010.

(iii) The sales made in this Commonwealth in reliance on this section are made only to accredited investors as that term is defined in § 204.010.

(c) *Inclusion of prior offers and sales.* Offers and sales which occurred within the preceding 12 months from the date of an offer or sale to be made under this section that were made in reliance upon section 203(d), (f) or (s) of the act, §§ 203.187 and 204.010(a)(1) and (2) (relating to small issuer exemption; and increasing number of purchasers and offerees), SEC Rule 506 (17 CFR 230.506) or this section shall be counted against the numerical limitations in subsection (a)(1) and (2).

(d) *Integration.*

(1) Offers and sales made by the issuer under this section shall be counted as offers and sales under the applicable numerical limitations in § 204.010(a)(1) and (2) if offers and sales under § 204.010 occur within 12-consecutive months of an offer or sale made under this section.

(2) Offers and sales made by the issuer under this section shall be counted as offers and sales under the applicable numerical limitations in section 203(s) of the act (70 P. S. § 1-203(s)) if offers and sales under section 203(s) occur within 6-consecutive months of an offer or sale made under this section.

(e) *Counting of offerees and purchasers.* Section 609.012 (relating to computing the number of offerees, purchasers and clients) applies to offers and sales of securities made under this section.

CHAPTER 204. EXEMPTION PROCEEDINGS

§ 204.010. Increasing the number of purchasers and offerees.

(a) *Increases in purchasers and offerees.* Under section 204(a) of the act (70 P. S. § 1-204(a)), the number of

purchasers and offerees permitted under section 203(d) and (e) of the act, respectively (70 P. S. §§ 1-203(d) and (e)) shall be increased as follows, if the issuer complies with all the conditions described in subsection (b):

(1) The total number of persons to whom securities may be offered in this Commonwealth during 12-consecutive months under section 203(e) shall be 90 persons, except that offers made to experienced private placement investors, as that term is defined in subsection (d), who actually purchase the securities being offered are not included in the limitation established by this paragraph.

(2) The total number of persons to whom securities may be sold in this Commonwealth during 12-consecutive months under section 203(d) shall be 35 persons, except that sales made to experienced private placement investors, as that term is defined in subsection (d) are not included in the numerical limitation established by this paragraph.

(b) *Conditions.*

(1) *Disqualification.* The issuer or a person who is an officer, director, principal, partner (other than a limited partner), promoter or controlling person of the issuer or a person occupying a similar status or performing a similar function on behalf of the issuer, has not been convicted of a crime, made the subject of a sanction or otherwise found to have met any of the criteria described in section 305 (a)(ii)—(xiii) of the act (70 P. S. § 1-305(a)(ii)—(xiii)) unless the person subject to this disqualification is registered under section 301 of the act (70 P. S. § 1-301).

(2) *Notice filing.* With respect to reliance on subsection (a)(2), the issuer files with the Commission the notice required by section 203(d) of the act and § 203.041 (relating to limited offerings) and pays the filing fee required by section 602(b.1)(viii) of the act (70 P. S. § 1-602(b.1)(viii)).

(3) *Broker-dealer requirement.* All offers and sales made to persons in reliance on section 203(d) and (e) of the act, including the increased number of offerees and purchasers permitted by subsection (a), are effected by a broker-dealer registered under section 301 of the act, except that this condition does not apply if the issuer either is organized under the laws of the Commonwealth or has its principal place of business in this Commonwealth.

(4) *Statutory requirement.* With respect to all offers and sales made to persons permitted under this section, the issuer shall comply with all conditions imposed by section 203(d) and (e) of the act, respectively.

(c) *Exceptions.*

(1) Subsection (b)(1) does not apply if the person subject to the disqualification enumerated therein is licensed or registered to conduct securities related business in the state in which the administrative order or judgment was entered against the person or if the broker-dealer employing the person is licensed or registered in this Commonwealth and in the Form BD filed with the Commission has disclosed the order, conviction, judgment or decree relating to this person. Nothing in this paragraph shall be construed to allow a person disqualified under subsection (b)(1), to act in a capacity other than that for which the person is registered.

(2) A disqualification created under this section is automatically waived if the state securities administrator or agency of the state which created the basis for

disqualification determines upon a showing of good cause that it is not necessary under the circumstances that the exemption be denied.

(d) *Definitions.* For purposes of this section, the following terms have the following meanings:

(1) *Experienced private placement investor.* An individual—and spouse when purchasing as joint tenants or as tenants by the entireties—who previously has purchased a minimum of \$450,000 of securities within the past 3 years in private placement offerings exclusive of the purchase of securities of an issuer of which the individual, or spouse, was an affiliate at the time of purchase.

(2) *Private placement offering of securities.* An offering of securities made in reliance on an exemption from the registration provisions of section 5(e) of the Securities Act of 1933 (15 U.S.C.A. § 77(e)) under section 3(b) or 4(2) of that act (15 U.S.C.A. §§ 77c(b) and 77d(2)).

(3) *Purchase of securities by an experienced private placement investor.* The sale of securities for cash or for an unconditional obligation to pay cash which obligation is to be discharged within 5 years from the date of the sale of the securities to the experienced private placement investor.

(4) *Accredited investor.* A person who meets the definition of accredited investor in SEC Rule 501(a) (17 CFR 230.501(a)).

(e) *Due diligence obligation.*

(1) A broker-dealer registered under section 301 of the act (70 P. S. § 1-301) that sells a security to an experienced private placement investor in reliance on subsection (a) must receive a written representation that the purchaser meets the definition of experienced private placement investor in subsection (d)(1) and must have reasonable grounds to believe, after reasonable inquiry, that the written representation is correct.

(2) An issuer that either is organized under the laws of the Commonwealth or has its principal place of business in this Commonwealth and sells its securities to experienced private placement investors in reliance on subsection (a) must receive a written representation that the purchaser meets the definition of experienced private placement investor in subsection (d)(1) and must have reasonable grounds to believe, after reasonable inquiry, that the written representation is correct.

(f) *Statutory basis for offers and sales under this section.* All offers and sales made to persons permitted by this section are deemed to be offers and sales made under section 203(d) and (e) of the act and all conditions imposed by those sections of the act are applicable to offers and sales to persons permitted by this section.

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