RULES AND REGULATIONS

Title 31—INSURANCE

INSURANCE DEPARTMENT

[31 PA. CODE CH. 89]

Medicare Supplement Insurance Minimum Standards

The Insurance Department (Department) amends §§ 89.775, 89.776, 89.783 and 89.790 to read as set forth in Annex A. Sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P. S. §§ 66, 186, 411, and 412) provide the Insurance Commissioner (Commissioner) with the authority and duty to promulgate regulations governing the enforcement of the laws relating to insurance. The final-omitted rulemaking will also bring the Department's regulations for the approval of Medicare supplement policies into compliance with the Federal statutory requirements of section 1882 of the Social Security Act (SSA) (42 U.S.C.A. § 1395ss) and the Medicare, Medicaid and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA) (P. L. 106-554).

Notice of proposed rulemaking is omitted in accordance with section 204(3) of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. § 1204(3)), known as the Commonwealth Documents Law (CDL). Under section 204(3) of the CDL, notice of proposed rulemaking may be omitted when the agency for good cause finds that public notice of its intention to amend an administrative regulation is, under the circumstances, impracticable and unnecessary.

The amendments to Subchapter K (relating to Medicare supplement insurance minimum standards) are Federally mandated under recent Federal legislation, specifically BIPA, effective December 21, 2000. Federal law requires that these amendments be implemented by the states if they are to remain in compliance with the Federal requirements and maintain regulatory authority in this area. The revised NAIC Medicare Supplement model regulation (NAIC model regulation) was adopted October 24, 2001, and the Department's new regulations must be adopted within 1 year following the adoption of the NAIC model regulations for the Commonwealth to retain regulatory authority in this area. To comply with Federal statutory minimum requirements for Medicare supplement policies, as mandated by sections 111 and 618 of BIPA, the Commissioner finds that the proposed rulemaking procedures in sections 201 and 202 of the CDL (45 P. S. §§ 1201 and 1202) are impracticable and unnecessary in this situation and that the proposed rulemaking may be properly omitted under section 204(3) of the CDL.

Purpose

Subchapter K was initially promulgated to establish minimum standards for Medicare supplement insurance policies. Standardization of policies was Federally required under the Omnibus Budget Reconciliation Act of 1990. The Department currently seeks to modify Subchapter K to meet the new Federal mandates for Medicare supplement policies as required under BIPA.

The final-omitted rulemaking is necessary to maintain the Commonwealth's compliance with Federal requirements, which will ensure that the Commonwealth retains enforcement authority over Medicare Supplement policies and these new requirements. These standards were effective for Medicare Supplement issuers on December 21, 2000, under BIPA. The Federal legislation establishes that states that adopt the language of the NAIC model regulation that has been revised to address the Federal changes will be considered to be in compliance with the Federal requirements. The Commonwealth needed to adopt these revisions to the Medicare Supplement regulations by October 24, 2002, to avoid Federal intervention.

The final-omitted rulemaking will protect the rights of Commonwealth consumers purchasing Medicare Supplement policies.

Explanation of Regulatory Requirements

Section 89.775(2)(vi) (relating to minimum benefit standards for policies or certificates issued for delivery prior to July 30, 1992) has been modified to reflect the revised cost sharing structure requirements for hospital outpatient department services. The added language is based on the revised NAIC model regulation.

Section 89.776(1)(vii)(C) (relating to benefit standards for policies or certificates issued or delivered on or after July 30, 1992) has been revised to reflect the Federal requirements amending the suspension of benefits and premiums under a Medicare Supplement policy due to coverage under a group health plan. The new language is based on the NAIC model regulation.

Section 89.776(1)(vii)(D) has been revised to clarify that the reinstitution of Medicare Supplement coverage is applicable specifically to clauses (B) and (C). The new language is based on the revised NAIC model regulation.

Section 89.776(2)(v) has been amended to reflect the new payment system for Medicare outpatient hospital services. The new language is based on the revised NAIC model regulation.

Section 89.783(c) (relating to required disclosure provisions) has been amended to delete the specific outlines of coverage disclosure for Plans A—J. These outlines of coverage contain information on the specific benefits that must be provided under each standardized Medicare Supplement policy. The inclusion of these outlines of coverage is not required by the NAIC model regulation. The outlines of coverage include deductibles and subscriber cost sharing amounts that change every year based on changes in the Medicare program cost sharing requirements. It is impracticable to continue to change these outlines of coverage every year with a regulation. The Department will instead maintain these outlines of coverage in written and electronic forms that will be available on request to assure that Medicare Supplement issuers and subscribers have access to the most up-to-date information and coverage requirements. The Department will also incorporate the chart (Plans A—J) into the Department's website to provide consumers and insurers with easier access to the plans. This will allow both consumers and insurers access to the plans 24-hours-a-day, 7-days-a-week and not just when the Department is open for business. Furthermore, the Department will publish a notice in the *Pennsylvania Bulletin* of the availability of the amended outlines when revisions are made available to the Department by the United States Department of Health and Human Services.

Section 89.790(a)(1) (relating to guaranteed issue for eligible persons) has been revised to change the definition of an eligible person for guaranteed issue rights under the regulation. The new language is based on the revised NAIC model regulation.

Section 89.790(b)(2)(i) has been revised to clarify the permitted discontinuation of an individual's enrollment in a Medicare+Choice plan. The modified language is a result of BIPA. This language is based on the revised NAIC model regulation.

Section 89.790(b)(2)(ii) has been revised to clarify the permitted discontinuation of an individual's enrollment in a Medicare+Choice plan. The modified language is a result of BIPA. This language is based on the revised NAIC model regulation.

Section 89.790(b)(2)(vi) and (vii) has been deleted to conform the final-omitted rulemaking to new eligibility periods for Medicare+Choice enrollees created by BIPA. This language is based on the revised NAIC model regulation.

Section 89.790(b)(3)(i) has been modified to remove the reference to Medicare risk contracts under section 1876 of the SSA (42 U.S.C.A. § 1395mm) as required by BIPA. This language is based on the revised NAIC model regulation.

Section 89.790(b)(5) and (6) has been modified to conform to changes in the SSA as a result of BIPA. This language was adopted by the NAIC model regulation.

Section 89.790(c) has been added to set forth the guaranteed issue time periods for individuals required by BIPA. This language was adopted by the NAIC model regulation.

Section 89.790(d) has been added to define the enrollment periods for individuals whose enrollment in a Medicare+Choice plan is interrupted within the first 12 months of enrollment. This section is necessary to meet requirements set by BIPA. This language was adopted in the revised NAIC model regulation.

Fiscal Impact

The Department can review revised Medicare supplement filings in the course of normal business and anticipates that it will experience minimal or no increase in cost in its review.

The insurance industry will likely not incur additional costs associated with complying with the new Federal requirements. The guaranteed eligibility provisions may increase the utilization of services and therefore, the cost of policies. There is currently no way to assess these potential costs.

Effectiveness/Sunset Date

This final-omitted rulemaking is effective upon publication in the *Pennsylvania Bulletin*. No sunset date has been assigned.

Paperwork

Adoption of this final-omitted rulemaking should not require significant paperwork for insurance carriers' product development areas to implement the new Federal changes.

Persons Regulated

This final-omitted rulemaking applies to all insurance companies who issue Medicare supplement products in this Commonwealth.

Contact Person

For information on this final-omitted rulemaking, contact Peter J. Salvatore, Regulatory Coordinator, 1326 Strawberry Square, Harrisburg, PA 17120, (717) 787-4429, fax (717) 772-1969, e-mail psalvatore@state.pa.us.

Regulatory Review

Under section 5.1(c) of the Regulatory Review Act (71 P. S. § 745.5a(c)), on September 13, 2002, the Department submitted copies of this final-omitted rulemaking to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Insurance and the Senate Committee on Banking and Insurance. On the same date, the final-omitted rulemaking was submitted to the Office of the Attorney General for review and approval under the Commonwealth Attorneys Act (71 P. S. §§ 732-101—732-506).

On October 2, 2002, the Department requested a tolling of the final-omitted rulemaking for clarification. IRRC did not object to the tolling. On October 10, 2002, the Department resubmitted the final-omitted rulemaking to IRRC and the Chairpersons of the House and Senate Committees. On the same date, the final-omitted rulemaking was resubmitted to the Office of Attorney General for review and approval under the Commonwealth Attorneys Act.

Under section 5.1(d) of the Regulatory Review Act, on October 22, 2002, this final-omitted rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, on October 24, 2002, IRRC met and approved this final-omitted rulemaking.

Findings

The Insurance Commissioner finds that:

(1) There is good cause to amend Subchapter K. Deferral of the effective date of the rulemaking would be impractical and not serve the public interest. Under section 204(3) of the CDL, there is no purpose to be served by deferring the effective date. An immediate effective date will best serve the public interest by ensuring the Commonwealth's compliance with the new Federal requirements and retention of enforcement authority over all aspects of Medicare supplement policies.

(2) There is good cause to forego public notice of the intention to amend Subchapter K, because notice of the amendment under the circumstances is unnecessary and impractical under section 204(3) of the CDL for the following reasons:

(i) The amendments mandated by Federal law will go into effect with or without Commonwealth regulatory action.

(ii) If the amendments are not implemented as established by the Federal law, regulatory oversight of these requirements will be assumed by the Federal government. If this were to occur, it would split regulation of Medicare supplement policies between the Commonwealth and the Federal government. Dual regulation would negatively impact Commonwealth consumers due to a shortage in Federal enforcement staffing. Accordingly, it would be more difficult for Commonwealth consumers to have complaints concerning the new requirements addressed by the Federal government in a timely manner.

(iii) Public comment cannot change the fact that these Federal requirements will be implemented either by the Commonwealth or the Federal government. Nor can public comment have any impact upon the content of the new Federal mandates.

Order

The Commissioner, acting under the authority in sections 206, 506, 1501 and 1502 of The Administrative Code of 1929, orders that:

(1) The regulations of the Department, 31 Pa. Code Chapter 89, are amended by amending §§ 89.775, 89.776, 89.783 and 89.790 to read as set forth in Annex A, with ellipses referring to the existing text of the regulation.

(2) 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 form and legality as required by law.

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

(4) This order shall take effect upon its publication in the *Pennsylvania Bulletin* and apply retroactively to October 24, 2002.

M. DIANE KOKEN,
Insurance Commissioner

(*Editor's Note*: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 32 Pa.B. 5582 (November 9, 2002).)

Fiscal Note: 11-212. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 31. INSURANCE

PART IV. LIFE INSURANCE

CHAPTER 89. APPROVAL OF LIFE, ACCIDENT AND HEALTH INSURANCE

Subchapter K. MEDICARE SUPPLEMENT INSURANCE MINIMUM STANDARDS

§ 89.775. Minimum benefit standards for policies or certificates issued for delivery prior to July 30, 1992.

A policy or certificate may not be advertised, solicited or issued for delivery in this Commonwealth as a Medicare supplement policy or certificate unless it meets or exceeds the following minimum standards. These are minimum standards and do not preclude the inclusion of other provisions or benefits which are consistent with this subchapter.

* * * * *

(2) *Minimum benefit standards.* The following represent minimum benefit standards:

* * * * *

(vi) Coverage for the coinsurance amount, or in the case of hospital outpatient department services paid under a prospective payment system, the copayment amount, of Medicare eligible expenses under Part B regardless of hospital confinement, subject to a maximum calendar year out-of-pocket amount equal to the Medicare Part B deductible.

* * * * *

§ 89.776. Benefits standards for policies or certificates issued or delivered on or after July 30, 1992.

The following standards apply to Medicare supplement policies or certificates delivered or issued for delivery in this Commonwealth on or after July 30, 1992. A policy or certificate may not be advertised, solicited, delivered or issued for delivery in this Commonwealth as a Medicare supplement policy or certificate unless it complies with these benefit standards.

(1) *General standards.* The following standards apply to Medicare supplement policies and certificates and are in addition to other requirements of this subchapter:

* * * * *

(vii) *Suspension by policyholder.*

* * * * *

(C) Each Medicare supplement policy shall provide that benefits and premiums under the policy shall be suspended at the request of the policyholder if the policyholder is entitled to benefits under section 226(b) of the Social Security Act (42 U.S.C.A. § 426(b)) and is covered under a group health plan (as defined in section 1862 (b)(1)(A)(v) of the Social Security Act (42 U.S.C.A. § 1395y (b)(1)(A)(v)). If suspension occurs and if the policyholder or certificateholder loses coverage under the group health plan, the policy shall be automatically reinstituted (effective as of the date of loss of coverage) if the policyholder provides notice of loss of coverage within 90 days after the date of the loss and pays the premium attributable to the period, effective as of the date of termination of enrollment in the group health plan.

(D) Reinstitution of these coverages as described in clauses (B) and (C):

* * * * *

(2) *Standards for basic (core) benefits common to all benefit plans.* Every issuer shall make available a policy or certificate, including only the following basic core package of benefits to each prospective insured. An issuer shall also offer a policy or certificate to prospective insureds meeting the Plan B benefit plan. An issuer may make available to prospective insureds Medicare Supplement Insurance Benefit Plans C, D, E, F, G, H, I and J as listed in § 89.777(e) (relating to standard Medicare supplement benefit plans). The core packages are as follows:

* * * * *

(v) Coverage for the coinsurance amount, or in the case of hospital outpatient department services paid under a prospective payment system, the copayment amount, of Medicare eligible expenses under Part B regardless of hospital confinement, subject to the Medicare Part B deductible.

* * * * *

§ 89.783. Required disclosure provisions.

* * * * *

(c) *Outline of coverage requirements for Medicare supplement policies.*

* * * * *

(6) The cover page and the accompanying charts for Plan A to Plan J of the Outlines of Coverage are available upon request from the Department in printed and electronic formats. In addition, notice will be published, in the *Pennsylvania Bulletin*, of the availability of the amended outlines when revisions are made available to the Department by the United States Department of Health and Human Services as published in the

Federal Register. The Outlines of Coverages will be made available on the Department's website at http://www.insurance.state.pa.us.

(d) *Notice regarding policies or certificates which are not Medicare supplement policies.*

(1) An accident and sickness insurance policy or certificate, other than a Medicare supplement policy; a policy issued under a contract under section 1876 of the Social Security Act (42 U.S.C.A. § 1395mm), disability income policy; or other policy identified in § 89.771(b) (relating to applicability and scope) issued for delivery in this Commonwealth to persons eligible for Medicare, shall notify insured under the policy that the policy is not a Medicare supplement policy or certificate. The notice shall be printed or attached to the first page of the outline of coverage delivered to insureds under the policy, or if no outline of coverage is delivered, to the first page of the policy, or certificate delivered to insureds.

The notice shall be at least 12 point type and shall contain the following language:

"THIS (POLICY OR CERTIFICATE) IS NOT A MEDICARE SUPPLEMENT (POLICY OR CONTRACT). If you are eligible for Medicare, review the Guide to Health Insurance for People with Medicare available from the company."

(2) Applications provided to persons eligible for Medicare for the health insurance policies or certificates described in subsection (d)(1) shall disclose, using the applicable statement in Appendix I (relating to Instructions for Use of the Disclosure Statements for Health Insurance Policies Sold to Medicare Beneficiaries that Duplicate Medicare), the extent to which the policy duplicates Medicare. The disclosure statement shall be provided as a part of, or together with, the application for the policy or certificate.

§ 89.790. Guaranteed issue for eligible persons.

(a) *Guaranteed issue.*

(1) Eligible persons are those individuals described in subsection (b) who, seek to enroll under the policy during the period specified in subsection (c), and who submit evidence of the date of termination or disenrollment with the application for a Medicare supplement policy.

(2) With respect to eligible persons, an issuer may not:

(i) Deny or condition the issuance or effectiveness of a Medicare supplement policy described in subsection (e) that is offered and is available for issuance to new enrollees by the issuer.

* * * * *

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

* * * * *

(2) The individual is enrolled with a Medicare + Choice organization under a Medicare + Choice plan under Part C of Medicare, and any of the following circumstances apply, or the individual is 65 years of age or older and is enrolled with a Program of All-Inclusive Care for the Elderly (PACE) provider under section 1894 of the Social Security Act (42 U.S.C.A. § 1395eee), and there are circumstances similar to those described as follows that would permit discontinuance of the individual's enrollment with the provider if the individual were enrolled in a Medicare+Choice plan:

(i) The certification of the organization or plan under this part has been terminated.

(ii) The organization has terminated or otherwise discontinued providing the plan in the area in which the individual resides.

(iii) The individual is no longer eligible to elect the plan because of a change in the individual's place of residence or other change in circumstances specified by the HHS Secretary, but not including termination of the individual's enrollment on the basis described in section 1851(g)(3)(B) of the Social Security Act (42 U.S.C.A. § 1395w-21(g)(3)(B)) (when the individual has not paid premiums on a timely basis or has engaged in disruptive behavior as specified in standards under section 1856 of the Social Security Act (42 U.S.C.A. § 1395w-26), or the plan is terminated for all individuals within a residence area).

(iv) The individual demonstrates, in accordance with guidelines established by the HHS Secretary, that one of the following applies:

(A) The organization offering the plan substantially violated a material provision of the organization's contract under this part in relation to the individual, including the failure to provide an enrollee on a timely basis medically necessary care for which benefits are available under the plan or the failure to provide the covered care in accordance with applicable quality standards.

(B) The organization, or agent or other entity acting on the organization's behalf, materially misrepresented the plan's provisions in marketing the plan to the individual.

(v) The individual meets other exceptional conditions the HHS Secretary may provide.

(3) The individual's enrollment ceases under the same circumstances that would permit discontinuance of an individual's election of coverage under paragraph (2) and the individual is enrolled with one of the following:

(i) An eligible organization under a contract under section 1876 of the Social Security Act (42 U.S.C.A. § 1395mm) (Medicare cost).

(ii) A similar organization operating under demonstration project authority, effective for periods before April 1, 1999.

(iii) An organization under an agreement under section 1833(a)(1)(A) of the Social Security Act (42 U.S.C.A. § 1395l(a)(1)(A)) (health care prepayment plan).

(iv) An organization under a Medicare Select policy.

* * * * *

(5) The individual was enrolled under a Medicare supplement policy and terminates enrollment and subsequently enrolls, for the first time, with any Medicare + Choice organization under a Medicare + Choice plan under Part C of Medicare, any eligible organization under a contract under section 1876 of the Social Security Act (Medicare cost) (42 U.S.C.A. § 1395mm), any similar organization operating under demonstration project authority, any PACE provider under section 1894 of the Social Security Act, or any Medicare Select policy and the subsequent enrollment under this paragraph is terminated by the enrollee during the first 12 months of the subsequent enrollment (during which the enrollee is permitted to terminate the subsequent enrollment under section 1851(e) of the Social Security Act).

(6) The individual, upon first becoming eligible for benefits under Part A and enrolled in Part B, if eligible, of

Medicare, enrolls in a Medicare + Choice plan under Part C of Medicare, or with a PACE provider under section 1894 of the Social Security Act, and disenrolls from the plan or program within 12 months after the effective date of enrollment.

(c) *Guaranteed issue time periods.*

(1) In the case of an individual described in subsection (b)(1), the guaranteed issue period begins on the date the individual receives a notice of termination or cessation of all supplemental health benefits (or, if a notice is not received, notice that a claim has been denied because of such a termination or cessation) and ends 63 days after the date of the applicable notice.

(2) In the case of an individual described in subsection (b)(2), (3), (5) or (6) whose enrollment is terminated involuntarily, the guaranteed issue period begins on the date that the individual receives a notice of termination and ends 63 days after the date the applicable coverage is terminated.

(3) In the case of an individual described in subsection (b)(4)(i), the guaranteed issue period begins on the earlier of the following:

(i) The date that the individual receives a notice of termination, a notice of the issuer's bankruptcy or insolvency, or other such similar notice if any.

(ii) The date that the applicable coverage is terminated, and ends on the date that is 63 days after the date the coverage is terminated.

(4) In the case of an individual described in section (b)(2), (4)(ii), (4)(iii), (5) or (6) who disenrolls voluntarily, the guaranteed issue period begins on the date that is 60 days before the effective date of the disenrollment and ends on the date that is 63 days after the effective date.

(5) In the case of an individual described in subsection (b) but not described in subsections (d)—(f), the guaranteed issue period begins on the effective date of disenrollment and ends on the date that is 63 days after the effective date.

(d) *Extended medigap access for interrupted trial periods.*

(1) In the case of an individual described in subsection (b)(5) (or deemed to be so described, under this paragraph) whose enrollment with an organization or provider described in subsection (b)(5) is involuntarily terminated within the first 12 months of enrollment, and who, without an intervening enrollment, enrolls with another organization or provider, the subsequent enrollment shall be deemed to be an initial enrollment described in subsection (b)(5).

(2) In the case of an individual described in subsection (b)(6) (or deemed to be so described, under this paragraph) whose enrollment with a plan or in a program described in subsection (b)(6) is involuntarily terminated within the first 12 months of enrollment, and who, without an intervening enrollment, enrolls in another such plan or program, the subsequent enrollment shall be deemed to be an initial enrollment described in subsection (b)(6).

(3) For the purposes of subsection (b)(5) and (6), no enrollment of an individual with an organization or provider described in subsection (b)(5), or with a plan or in a program described in subsection (b)(6), may be deemed to be an initial enrollment under this paragraph after the 2-year period beginning on the date on which the individual first enrolled with such an organization, provider, plan or program.

(e) *Products to which eligible persons are entitled.* The Medicare supplement policy to which eligible persons are entitled under:

(1) Subsection (b)(1)—(4) is a Medicare supplement policy which has a benefit package classified as Plan A, B, C or F offered by an issuer.

(2) Subsection (b)(5) is the same Medicare supplement policy in which the individual was most recently previously enrolled, if available from the same issuer, or, if not so available, a policy described in paragraph (1).

(3) Subsection (b)(6) includes any Medicare supplement policy offered by an issuer.

(f) *Notification provisions.*

(1) At the time of an event described in subsection (b) because of which an individual loses coverage or benefits due to the termination of a contract or agreement, policy or plan, the organization that terminates the contract or agreement, the issuer terminating the policy or the administrator of the plan being terminated, respectively, shall notify individuals of their rights under this section, and of the obligations of issuers of Medicare supplement policies under subsection (a). The notice shall be communicated contemporaneously with the notification of termination.

(2) At the time of an event described in subsection (b) because of which an individual ceases enrollment under a contract or agreement, policy or plan, the organization that offers the contract or agreement, regardless of the basis for the cessation of enrollment, the issuer offering the policy, or the administrator of the plan, respectively, shall notify individuals of their rights under this section, and of the obligations of issuers of Medicare supplement policies under subsection (a). The notice shall be communicated within 10 working days of the issuer receiving notification of disenrollment.

[Pa.B. Doc. No. 02-2094. Filed for public inspection November 22, 2002, 9:00 a.m.]

[31 PA. CODE CHS. 89 AND 89a]

Policies and Forms; General Filing Requirements and General Contents of Forms

The Insurance Department (Department) amends Chapters 89 and 89a (relating to approval of life, accident and health insurance; and approval for life insurance, accident and health insurance and property and casualty insurance filing and form) to read as set forth in Annex A.

Statutory Authority

The final-form rulemaking is promulgated under the authority in sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P. S. §§ 66, 186, 411 and 412); sections 510—514 of The Insurance Company Law (40 P. S. §§ 510—514); and section 3(a) of the Accident and Health Filing Reform Act (40 P. S. § 3803(a)).

Comments and Response

Notice of proposed rulemaking was published at 30 Pa.B. 4623 (September 2, 2000) with a 30-day comment

period. During the 30-day comment period, comments were received from Erie Family Life Insurance Company (Erie), Highmark, Inc. (Highmark) and the Insurance Federation of Pennsylvania (IFP).

On November 2, 2000, as part of its regulatory review, the Independent Regulatory Review Commission (IRRC) submitted comments to the Department. The following is a response to these comments.

General

In regard to electronic filings, IRRC questioned how the Department would handle incompatibility problems with data submitted in electronic filings, specifically if the Department was unable to open attachments or files.

The compatibility of filing formats between the Department and insurers is an operational issue for the Department. The process currently in place is if a company submits a filing electronically and the Department is unable to open the attached file, the Department contacts the company and request; a resubmital of the filing in a format that is compatible with the Department's operating systems. As technology evolves, the Department envisions fewer problems with compatibility.

Erie requested a summary of the changes in the filing process for this Commonwealth that were published in the *Pennsylvania Bulletin*.

A summary of changes was not given to them because that was a proposed rulemaking and the Department did not want to have a particular company follow anything other than the current regulation. However, it should be noted that notice of filing requirements for insurance policies in this Commonwealth are done by statute, regulation or through Department notice. Regulations and Department notices will be submitted to the *Pennsylvania Bulletin*, the official publication of the Commonwealth, for public review.

Section 89a.2. Purpose

IRRC and the IFP noted that requirements in Chapter 89 still apply to life and accident and health filings. They suggested either combining these chapters or cross-referencing them for clarity.

The Department agrees with the comments. Chapter 89 is a very large catchall chapter with regulatory requirements for many different lines of business. The Department intends to modify the requirements in Chapter 89, referenced by IRRC and the IFP, in the future under new sections of the regulation, such as Chapter 89b and Chapter 89c, and then reserve the sections in Chapter 89 that would become obsolete. Section 89a.2(b) has been added to cross-reference the filing requirements in Chapter 89 that apply to life and accident and health filings.

Section 89a.3. Form filings.

The IFP commented that this section should be modified to reference the act of February 3, 1994 (P. L. 1, No. 1) and the act of February 17, 1994 (P. L. 92, No. 9) and other issues related to multistate group life and health filings.

After review, the Department believes the statutory language, as stated, is sufficient and therefore no changes to this section are necessary.

Section 89a.11(c)(3). General contents of forms.

IRRC and Highmark commented that the required use of "participating or nonparticipating" in subsection (c)(3) could cause confusion regarding whether providers in an insurer's health care network are "participating or nonparticipating" and requested that a different phrase be used or that this requirement not be applied to health insurers.

The Department agrees with the comments. The subsection has been modified as follows (addition italicized): "If the form is a policy, contract or certificate, an indication of whether the form is participating or nonparticipating *with regard to paying dividends to policyholders*."

In addition, the Department has reviewed several of the sections and believes that there are some minor editorial changes that need to be made. These changes, while not changing the intent of the final-form rulemaking, do clarify and enhance the rulemaking. The following is an analysis of those changes.

Section 89a.4. General filing procedure.

The Department accepts filings by any electronic medium. To improve readability, the reference to the Internet in this section has been deleted because it is redundant.

Section 89a.5. Letter of submission.

This section has been modified by the Department to clarify the filing requirements if an insurer's employee or a third party is filing with the Department on behalf of an insurer they must be identified in the letter of submission. In addition, the reference to the Internet has been deleted for the reasons noted in § 89a.4.

Section 89a.11(e). General contents of forms.

The Department has modified subsection (e) to define the requirements for the use of variable data in a form filing. The use of variable data in form filings eliminates the need for filers to submit redundant forms with only minor benefit changes. It improves the efficiency of the form filing process for filers and the form filing review process for the Department.

Affected Parties

Insurance companies transacting business in this Commonwealth who must follow the Department's form and content requirements of form filings.

Fiscal Impact

State Government

The final-form rulemaking will not have an impact on Department costs associated with monitoring industry compliance because this does not represent a major change from current policy.

General Public

The final-form rulemaking is not expected to have any cost impact on premiums paid by consumers for insurance policies.

Political Subdivisions

The final-form rulemaking has no impact on costs to political subdivisions.

Private Sector

The final-form rulemaking will not have a major impact on private sector costs because this does not represent a major change from current policy.

Paperwork

The final-form rulemaking imposes no additional paperwork requirements on the Department and modifies the paperwork requirements imposed on the insurance industry.

Effectiveness/Sunset Date

The final-form rulemaking becomes effective upon publication in the *Pennsylvania Bulletin*. No sunset date has been assigned.

Contact Person

Questions regarding this final-form rulemaking should be directed to Peter J. Salvatore, Regulatory Coordinator, Office of Special Projects, 1326 Strawberry Square, Harrisburg, PA 17120, (717) 787-4429, fax (717) 772-1969, psalvatore@state.pa.us.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on September 27, 2002, the Department submitted a copy of the notice of proposed rulemaking published at 30 Pa.B. 4623, to IRRC and to the Chairpersons of the House Insurance Committee and the Senate Banking and Insurance Committee for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing this final-form rulemaking, the Department has considered the comments received from IRRC, the Committees and the public.

Under section 5.1(d) of the Regulatory Review Act (71 P. S. § 745.5a(d)), on October 17, 2002, this final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on October 24, 2002, and approved the final-form rulemaking.

Findings

The Commissioner finds that:

(1) Public notice of intention to adopt this rulemaking as amended by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) The adoption of this rulemaking in the manner provided in this order is necessary and appropriate for the administration and enforcement of the authorizing statutes.

Order

The Commissioner, acting under the authorizing statutes, orders that:

(a) The regulations of the Department, 31 Pa. Code Chapters 89 and 89a, are amended by deleting §§ 89.3—89.5, 89.11, 89.17 and 89.21—89.23; by amending §§ 89.1 and 89.18; and by adding §§ 89a.1—89a.5 and 89a.11 to read as set forth in Annex A.

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

(c) The Commissioner 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 final-form publication in the *Pennsylvania Bulletin*.

M. DIANE KOKEN,
Insurance Commissioner

(*Editor's Note*: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 32 Pa.B. 5582 (November 9, 2002).)

Fiscal Note: Fiscal Note 11-184 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 31. INSURANCE

PART IV. LIFE INSURANCE

CHAPTER 89. APPROVAL OF LIFE, ACCIDENT AND HEALTH INSURANCE

Subchapter A. REQUIREMENTS FOR ALL POLICIES AND FORMS

GENERAL PROVISIONS

§ 89.1. Definitions.

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

Act—The Insurance Company Law of 1921 (40 P. S. §§ 341—991).

Advertisement—As defined in § 51.1 (relating to definitions).

Department—The Insurance Department of the Commonwealth.

§ 89.3. (Reserved).

§ 89.4. (Reserved).

§ 89.5. (Reserved).

PREPARATION OF FORMS

§ 89.11. (Reserved).

§ 89.17. (Reserved).

§ 89.18. Miscellaneous requirements.

(a) *Riot injuries.* If a policy contains an exception for injuries arising out of riots, the exception should be confined to those instances in which the insured is injured while participating in the riot.

(b) *Rate books.* Rate books and revisions thereof should be submitted for filing. The name of the insurer should appear on revision pages, supplements and the like, in order to facilitate proper filing in the Department. This subsection does not apply to group insurance.

FORMAL APPROVAL

§ 89.21. (Reserved).

§ 89.22. (Reserved).

§ 89.23. (Reserved).

CHAPTER 89a. APPROVAL FOR LIFE INSURANCE, ACCIDENT AND HEALTH INSURANCE AND PROPERTY AND CASUALTY INSURANCE FILING AND FORM

GENERAL FILING PROVISIONS

Sec.
89a.1. Definitions.
89a.2. Purpose.
89a.3. Form filings.
89a.4. General filing procedure.
89a.5. Letter of submission.

PREPARATION OF FORMS

89a.11. General contents of forms.

GENERAL FILING PROVISIONS

§ 89a.1. Definitions.

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

Department—The Insurance Department of the Commonwealth.

Filer—A person or entity submitting insurance or annuity forms to the Department.

Prominent type—

(i) Font or formatting techniques which differentiate selected text from other text.

(ii) The term includes, for example, capital letters, contrasting color and underscoring.

§ 89a.2. Purpose.

(a) This chapter provides the criteria for insurers to use in preparing specific form filings for Department review. Additionally, the chapter provides requirements for the general content of forms.

(b) In addition to the requirements of this chapter, Chapter 89 (relating to life and accident and health insurance filings) also applies to these filings.

§ 89a.3. Form filings.

(a) *Submission of forms.* Policies, contracts, certificates, endorsements, riders, applications and related forms for life insurance and annuities, accident and health insurance, and property and casualty insurance, intended to be issued in this Commonwealth, shall be submitted to the Department in accordance with the following:

(1) Forms for life insurance and annuities issued by insurance companies shall be submitted for prior approval in accordance with section 354 of The Insurance Company Law of 1921 (40 P. S. § 477b), unless specifically excepted under section 354 of The Insurance Company Law of 1921. Forms for life insurance and annuities issued by fraternal benefit societies shall be submitted for prior approval in accordance with section 404(f) of the Fraternal Benefit Societies Code (40 P. S. § 1142-404(f)), unless specifically excepted under section 354 of The Insurance Company Law of 1921.

(2) Forms for accident and health insurance shall be filed in accordance with section 3 of the Accident and Health Filing Reform Act (40 P. S. § 3803).

(3) Forms for property and casualty insurance shall be submitted for prior approval in accordance with section 354 of The Insurance Company Law of 1921 unless specifically excepted under section 354 of The Insurance Company Law of 1921.

(b) *Out-of-State delivery.* When other jurisdictions require prior approval or filing by the Department of forms to be issued in those jurisdictions by domestic Pennsylvania insurers, the insurers may submit the forms to the Department for approval or filing for issuance outside of this Commonwealth only.

§ 89a.4. General filing procedure.

(a) *Number of copies.*

(1) Forms intended to be issued in this Commonwealth shall be submitted in duplicate for hard copy filings. Filers submitting forms by means of electronic medium shall submit one electronic copy. One copy of each form may be retained by the Department.

(2) One copy of a form intended to be issued only outside this Commonwealth shall be submitted.

(b) *Clearly legible forms.* Forms intended to be issued in this Commonwealth shall be submitted in clearly legible form.

(c) *Filing fee.* A submission of forms shall include any filing fee as required by section 212 of The Insurance Department Act of 1921 (40 P. S. § 50).

(d) *Self-addressed stamped return envelope.* A hard copy submission of forms shall include a self-addressed envelope bearing enough postage to permit the return to the filer of the duplicate copies of the forms or submission letter, or both.

(e) *Separate submissions.* Forms for each line of insurance, life and annuities, accident and health, and property and casualty, shall be submitted separately to their respective bureaus within the Department: the Bureau of Life Insurance, the Bureau of Accident and Health Insurance, and the Bureau of Property and Casualty Insurance.

(f) *By whom submitted.* A submission of forms shall be made by the home office or an administrative office of the insurer, or by an attorney at law representing the insurer, unless the following applies:

(1) The submission includes, or is preceded by, a document from the insurer specifically authorizing the filer to make the submission on the insurer's behalf.

(2) The submission is made by a rating organization, licensed in this Commonwealth, on behalf of its members and subscriber companies.

§ 89a.5. Letter of submission.

The letter of submission shall be in duplicate for hard copy filings, shall clearly identify the insurer whose name appears on the forms and the filer, and shall be sent to the appropriate bureau director in the Office of Rate and Policy Regulation under the requirements of § 89a.4(e) (relating to general filing procedure). Only one copy of the letter of submission is necessary for electronic submissions. The letter shall contain at least all of the following information for each form submitted:

(1) The identifying form number. Additionally, if the form is other than a policy, contract or certificate, the form number of the policy, contract or certificate with which it will be used, and the date approved by or filed with the Department, or if not approved or filed, the date last submitted to the Department, or if for more general use, the type or group of the forms shall be described. If the form is a group certificate, the form number of the group master policy with which it will be used, and the date the group master policy was approved by or filed with the Department, or if not approved or filed, the date last submitted to the Department, or if the certificate is for general use, the types of group master policies with which it will be used.

(2) A designation of the general type of form submitted; for example, policy, contract, certificate, rider, endorsement, amendment, agreement, application, insert page or other general type.

(3) A brief statement of the specific type of insurance or annuity benefit coverage provided by the form. If the form does not provide insurance or annuity benefit coverage, a brief statement of the specific purpose of the form.

(4) If the form contains any provision, condition, feature or concept that departs from those generally used by the industry and that could be construed as new, innova-

tive, uncommon or unusual, a statement to this effect and an explanation of the specific purpose of the provision, condition, feature or concept.

(5) An explanation of the marketing method, if the method of marketing of the form departs from the direct sales approach or employs a new concept.

(6) If the form is a new one, not replacing an existing form, a statement to that effect.

(7) If the form is intended to replace another form, the form number of the form to be replaced, the date that the form was approved by or filed with the Department, and a statement of the changes made to the form to be replaced.

(8) For group insurance policy forms, a brief description of the type of entity to which the group policy will be issued; for example, discretionary group, association, out-of-State trust.

(9) The amount of the filing fee included with the submission or the amount that will be billed to the insurer.

PREPARATION OF FORMS

§ 89a.11. General contents of forms.

(a) *Name and address.* Each form shall state the full corporate or legal name of the company, association, exchange or society. However, the name need appear for filing purposes only on a rider, endorsement, amendment, agreement or insert page. If added for filing purposes only, the name may be added by any legible means. If more than one insurer is using an application, a multicompany application providing for the designation of the applicable insurer and available coverages, if applicable, may be used. A policy, contract or fraternal certificate shall state a current address for the insurer, consisting of at least a city and state or province.

(b) *Form number.* Each form shall contain a form number consisting of numbers, letters, or both. The form number shall be adequate to distinguish the form from all others used by the insurer. The form number may be the same as that of a form to be replaced. However, if the form to be replaced was approved by or filed with the Department, it may not have been issued in this Commonwealth and shall be withdrawn from any issuance in this Commonwealth.

(c) *Description or caption.* Each form, except an insert page, shall contain a brief description or descriptive caption. This brief description or descriptive caption shall appear in prominent type on the first or cover page of the form, or, in the case of a policy, contract or certificate, on the specifications page if the brief description or descriptive caption is visible without opening the form. The brief description or descriptive caption shall contain at least the following information:

(1) A designation of the general type of the form, that is, policy, contract, certificate, rider, endorsement, amendment, agreement, application or other general type.

(2) A designation of the specific type of insurance or annuity coverage provided, or if the form does not provide insurance or annuity coverage, a designation of the purpose of the form.

(3) If the form is a policy, contract or certificate, an indication of whether the form is participating or nonparticipating with regard to paying dividends to policyholders.

(d) *Required statement.* A rider, endorsement, amendment or agreement designated by another term in its brief description or descriptive caption shall state that it is "attached to and made part of the (policy, contract or certificate)," as appropriate.

(e) *Hypothetical data.* The blank spaces of each form, except an application, shall be filled in with hypothetical data to indicate the purpose of the form. This data shall be realistic and consistent with the other contents of the form. Information appearing in a form, except an application, which is variable shall be bracketed or otherwise marked to denote variability.

(f) *Readability.* A form:

(1) Shall be written in simple words and with sentences as short as possible. The words and sentences should convey meanings clearly and directly. Words should be used in their commonly understood senses.

(2) Shall contain a definition or explanation of terminology that would not be ordinarily understood by a person of average intelligence.

(3) May not contain inconsistent or contradictory language or provisions.

(4) That provides insurance coverage, shall accurately and completely explain the coverage and conditions of coverage.

[Pa.B. Doc. No. 02-2095. Filed for public inspection November 22, 2002, 9:00 a.m.]

Title 49—PROFESSIONAL AND VOCATIONAL STANDARDS

STATE BOARD OF BARBER EXAMINERS

[49 PA. CODE CH. 3]

Standards for Disinfection and Sanitation

The State Board of Barber Examiners (Board) amends Chapter 3 (relating to State Board of Barber Examiners) to read as set forth in Annex A.

A. *Effective Date*

The rulemaking will be effective upon publication of final-form rulemaking in the *Pennsylvania Bulletin*.

B. *Statutory Authority*

The final-form rulemaking is authorized under section 15-A.4(b) of the act of June 19, 1931 (P. L. 589, No. 202) (act) (63 P. S. § 566.4(b)), known as the Barbers' License Law.

C. *Background and Purpose*

The purpose of the final-form rulemaking is twofold. First, it would update and implement standards for disinfection and sanitation that reflect current knowledge and practices for preventing the spread of pathogens in barber shops and barber schools. Second, it would delete unnecessary provisions and make editorial changes.

D. *Summary of Comments and Responses on Proposed Rulemaking*

Notice of the proposed rulemaking was published at 31 Pa.B. 2686 (May 26, 2001). Publication was followed by a

30-day public comment period during which the Board received one public comment. Following the close of the public comment period the Board received comments from the House Professional Licensure Committee (HPLC) and the Independent Regulatory Review Commission (IRRC). The Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) did not comment. The following is a response to the comments. The one public comment the Board received offered support of the proposed rulemaking and did not suggest any changes. Therefore, that public comment has not been addressed in the Preamble.

Section 3.12. License limitations.

The HPLC and IRRC commented that the term "teacher" is used in the regulation, whereas the statute uses the term "barber-teacher." The HPLC and IRRC recommended that the term "teacher" in this section be changed to "barber-teacher" to be consistent with the statutory language. The Board agrees and has amended this section accordingly.

Section 3.22. Credit.

Section 3.41. Applications for examinations.

The HPLC and IRRC commented that the term "barber-manager" is used in these sections of the proposed rulemaking, whereas the statute uses the term "manager-barber." The HPLC and IRRC recommended that the term "barber-manager" in these sections be changed to "manager-barber" to be consistent with the statutory language. The Board agrees and has amended these sections accordingly.

Section 3.54. Minimum equipment requirements.

The HPLC commented that the Board was amending paragraph (5) to require a sanitary headrest for "every two chairs" and paragraph (18) to change the equipment requirement of at least six combs for each chair in operation to an unspecified number of combs. The HPLC requested the rationale for these changes and questioned whether they would result in a reduction in sanitary standards. A headrest is not needed for all services that are performed and on modern barber chairs the headrest is removable. The change in paragraph (5) would allow barbers to still provide the services that require the headrest while eliminating the need to store unused equipment. As the headrest that is used is still required to be sanitary it would not result in a reduction in sanitary standards. The change to paragraph (18) is likewise made to eliminate the need for unused equipment and to allow barbers to choose the number of combs they feel is necessary to perform their services.

Section 3.55. Maintenance and sanitation.

IRRC commented on an inconsistency between subsection (f) and § 3.54(8) (relating to minimum equipment requirements) in which the Board eliminated the requirement for soiled towels to be placed in a "covered" receptacle. Subsection (f) still requires the towels to be discarded in a "closed" receptacle. IRRC recommended that both sections should be consistent. The Board agrees and has amended subsection (f) to remove the word "closed."

The HPLC commented that § 3.55(c)(2) (relating to maintenance and sanitation) used virtually the same language as provided in the definition of "disinfect" in § 3.1 (relating to definitions). The HPLC recommended that the definitions of "disinfect" and "EPA registered disinfectant" be consolidated in § 3.1 and that § 3.55(c)(2) reference the definition rather than redefining the term within that section. The Board has amended § 3.55(c)(2) and identical language in § 3.86(b)(2) (relating to maintenance and sanitation) to reference the definition for "disinfect." As §§ 3.55(c)(1) and 3.86(b)(1) use the identical language as the definition for "cleanse," the Board amended these sections to reference the definition for "cleanse" to be consistent with §§ 3.55(c)(2) and 3.86(b)(2). After considering the recommendation to consolidate the definitions for "disinfect" and "EPA registered disinfectant" the Board felt that it made the definitions clearer to leave them separate. However it did eliminate language from the definition of "disinfect" that was also used in the definition of "EPA registered disinfectant."

Section 3.61. Out-of-shop services.

IRRC questioned the Board's reasoning for the proposed deletion of § 3.61(4) (relating to out-of-shop services) and asked whether a cross-reference to § 3.55(c) should be put in if the Board does delete this paragraph. The Board originally planned to delete this paragraph because it felt that it was clear that the maintenance and sanitation requirements had to be adhered to whether one was in or out of a shop. However, in response to IRRC's comment, the Board has decided to retain § 3.61(4). Even though the Board has not deleted this paragraph, it has added a cross-reference to § 3.55(c) as suggested by IRRC because it felt this made the paragraph clearer.

Section 3.71. Curriculum.

IRRC recommended that the subject listings should be consistently plural or singular. The Board agrees and has amended the section so that all subject listings are plural.

Section 3.72. Student's records.

The HPLC recommended that the terminology in § 3.71 (relating to curriculum) be consistent with the statutory terms of "manager-barber" and "barber-teacher." However, no reference is made to these terms in § 3.71. IRRC correctly pointed out that § 3.72 (relating to student's records) used inconsistent terms. The Board agrees and has amended this section accordingly.

Section 3.85. Equipment.

The HPLC requested an explanation as to why *Gray's Anatomy* would be deleted as a requirement for barber schools in § 3.85 (relating to equipment). The Board notes that the section also requires a set of library books on anatomy in subsection (a)(10). Therefore, barber schools must still have an anatomy book. The Board is eliminating the requirement for a specific anatomy book to allow barber schools to choose from the various anatomy books published.

Section 3.86. Maintenance and sanitation.

The HPLC and IRRC both recommended that the title of this section, "maintenance and sterilization," be changed to "maintenance and sanitation" to be consistent with the proposed title of § 3.55, which uses the term "sanitation," and to more accurately reflect the content of that section. The Board agrees and has amended this section accordingly.

E. *Compliance with Executive Order 1996-1, "Regulatory Review and Promulgation"*

The Board reviewed this final-form rulemaking and considered its purpose and likely impact on the public and the regulated population under the directives of Executive Order 1996-1. The final-form rulemaking addresses a compelling public interest as described in this Preamble and otherwise complies with Executive Order 1996-1.

F. *Fiscal Impact and Paperwork Requirements*

The final-form rulemaking will have no fiscal impact on the Commonwealth or its political divisions.

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 May 26, 2001, the Board submitted a copy of the notice of proposed rulemaking published at 31 Pa.B. 2686, to IRRC and to the Chairpersons of the SCP/PLC and the HPLC for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing this final-form rulemaking, the Board has considered the comments received from IRRC, the SCP/PLC and the HPLC and the public.

Under section 5.1(d) of the Regulatory Review Act (71 P. S. § 745.5a(d)), on October 22, 2002, this final-form rulemaking was deemed approved by the HPLC. On October 23, 2002, this final-form rulemaking was deemed approved by the SCP/PLC. Under section 5.1(e) of the Regulatory Review Act, IRRC met on October 24, 2002, and approved the final-form rulemaking.

I. *Contact Person*

Further information may be obtained by contacting Sara Sulpizio, Administrative Assistant, State Board of Barber Examiners, P. O. Box 2649, Harrisburg, PA 17105-2649, (717) 783-3402, www.dos.state.pa.us.

F. *Findings*

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202), and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law and all comments were considered.

(3) The final-form rulemaking does not enlarge the purpose of proposed rulemaking published at 31 Pa.B. 2686.

(4) The final-form rulemaking is necessary and appropriate for administration and enforcement of the authorizing act identified in Part B of this Preamble.

K. *Order*

The Board, acting under its authorizing statutes, orders that:

(a) The regulations of the Board, 49 Pa. Code Chapter 3, are amended by amending §§ 3.1, 3.12, 3.22, 3.41, 3.43, 3.51, 3.52, 3.54, 3.55, 3.61, 3.71—3.73, 3.84—3.88 and 3.90 and by deleting § 3.57 to read as set forth in Annex A.

(b) The Board shall submit this order and Annex A to the Office of General Counsel and to the Office of Attorney General as required by law.

(c) The Board 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 on publication in the *Pennsylvania Bulletin*.

CHERYL MCDERMOTT,
Chairperson

(*Editor's Note*: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 32 Pa.B. 5582 (November 9, 2002).)

Fiscal Note: Fiscal Note 16A-424 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 3. STATE BOARD OF BARBER EXAMINERS

GENERAL PROVISIONS

§ 3.1. Definitions.

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

Act—The act of June 19, 1931 (P. L. 589, No. 202) (63 P. S. §§ 551—566.4), known as the Barbers' License Law.

Board—The State Board of Barber Examiners, Bureau of Professional and Occupational Affairs, Department of State, Harrisburg, Pennsylvania 17120.

Cleanse—To clean and remove debris by washing with soap and water.

Disinfect—Complete immersion in an EPA-registered bactericidal, virucidal, fungicidal and tuberculocidal disinfectant that is mixed and used according to the manufacturer's directions.

EPA—The Federal Environmental Protection Agency.

EPA registered disinfectant—A product used to destroy pathogenic micro-organisms that is registered under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) (7 U.S.C.A. §§ 136—136y).

LICENSES

§ 3.12. License limitations.

(a) An individual to whom a barber-teacher's license has been issued will be deemed qualified to perform the functions of a barber-teacher, manager-barber or a barber.

(b) An individual to whom a manager-barber's license has been issued shall be deemed qualified to perform the functions of a manager-barber or a barber.

STUDENTS

§ 3.22. Credit.

A student will be given credit only for the actual time spent performing barbering services, or being instructed in theory by a licensed barber-teacher or manager-barber.

EXAMINATIONS

§ 3.41. Applications for examinations.

(a) An application for admission to an examination shall be properly completed and on file with the Board on or before the 10th of the month preceding the month in

which the examination is held. The examinations will be held in March, June, September and December.

(b) An examination application shall include payment of the fee, a notarized statement certifying the completion of the hours of instruction, from either a barber school or a barber-teacher or manager-barber with whom the student has studied and trained, and a notarized statement from a physician indicating that the student is free from contagious and infectious diseases.

§ 3.43. Practical test.

(a) For the practical test, an applicant shall bring to the examination center a patron upon whom the applicant may demonstrate the ability to do practical work.

(b) An applicant shall furnish his own tools, such as mannequins, clippers, shears, combs, razors, hone, strop, shaving brush, hair cloth, tonics, creams, towels and spatula to perform the practical operations of barbering.

(c) An applicant shall appear at the practical examination with a washable jacket or smock.

(d) The applicant shall demonstrate haircutting, permanent waving, hair coloring, shaving and honing and stropping.

(e) Each part of the practical test enumerated in subsection (d) should be considered a new operation. The applicant who has completed one operation shall begin the next operation as if a new patron were seated in the chair.

(f) Time permitted for the practical examination will be 1 1/2 hour.

BARBER SHOPS

§ 3.51. Licenses and permits.

(a) A new barbershop may not be opened, a person may not take over an existing barbershop and an existing shop may not be moved to a new location, until an application has been filed with the Board, the shop inspected and approved, and registration granted.

(b) Trade names and fictitious names shall be registered with the Corporation Bureau of the Department of State before a permit will be issued.

(c) Every barbershop shall display the licenses, permits and this chapter in a conspicuous place. Copies for posting may be obtained from the Board.

(d) A shop license will not be issued to a corporation, a partnership or an individual unless a licensed manager-barber is listed as manager, except for one-barber barbershops and for shops owned by licensed cosmetologists in which only one licensed barber and one licensed cosmetologist are working.

§ 3.52. Minimum general requirements.

(a) Every barbershop shall provide for the following:

(1) Adequate location.

(2) Sufficient amount of floor space.

(3) Ample light.

(4) Facilities for heating.

(5) Proper ventilation.

(6) Clean walls and ceiling.

(7) Suitable flooring (hardwood, tile, composition, linoleum) in the work area.

(8) Readily available restroom facilities.

(b) A barbershop may not be located in a food store, soft drink parlor, restaurant, coffee shop or in a place where foodstuffs are kept for sale in other than the original package, unless separated therefrom by a solid partition extending from floor to ceiling. If the partition contains a door, the door shall be kept closed.

(c) When a barbershop and a cosmetology shop are located side by side in the same building and owned by the same individual, partnership or corporation, the shops may share restroom facilities.

§ 3.54. Minimum equipment requirements.

Every barbershop shall provide for the following:

(1) One barber pole, or a sign indicating that barbering services are performed.

(2) A stand and mirror or the equivalent.

(3) One hand mirror.

(4) One barber chair which revolves, reclines and has a headrest.

(5) A sanitary headrest for every two chairs.

(6) A closed container for clean towels.

(7) A covered waste container for each chair.

(8) One soiled towel receptacle for each chair.

(9) At least one washstand for every two chairs.

(10) Running hot and cold water in every washstand.

(11) A supply cabinet for stock of towels and supplies.

(12) Seating accommodations for at least three persons.

(13) One clothes tree or its equivalent.

(14) One cabinet or closet for mops, brooms, and the like.

(15) One hair clipper for each chair in operation.

(16) Two razors for each chair in operation, at least one of which is nondisposable.

(17) Two shears for each chair in operation.

(18) Combs for each chair in operation.

(19) One strop.

(20) One tweezer.

(21) One hone.

(22) Sanitary towels for each chair.

(23) Two clean haircloths for each chair.

(24) Neck strips and dispenser.

(25) Disinfection solution.

(26) Proper disinfection equipment.

(27) Hair tonic, face lotion, cold cream and massage cream.

(28) Powder or liquid styptic.

§ 3.55. Maintenance and sanitation.

(a) Every barbershop shall be well lighted, well ventilated and kept in a clean, orderly and sanitary condition. Waste containers shall be thoroughly cleaned at least

once every 24 hours. The floor in the work area shall consist of hardwood, linoleum or other hard surfaces and shall be maintained in good repair. Every barbershop shall be provided with adequate lavatories, readily accessible and kept in a sanitary condition.

(b) Running water, hot and cold, shall be provided at a convenient point within each barbershop.

(c) Equipment and implements that come into contact with a patron's skin, scalp or hair shall be subject to the following procedure following each patron use:

(1) *Step 1: Cleanse.* The objects shall be cleansed as the term is defined in § 3.1 (relating to definitions).

(2) *Step 2: Disinfect.* The cleansed objects shall be disinfected as defined in § 3.1.

(3) *Step 3: Rinse and dry.* The cleansed and disinfected objects shall be rinsed with clean water and dried with a clean towel.

(4) *Step 4: Store.* The cleansed, disinfected, rinsed and dried objects shall be stored in a clean, dry and closed container clearly marked as such. Sharp implements shall be stored upright with the points down.

(d) Only cleansed, disinfected and rinsed equipment and implements properly stored shall be used on patrons.

(e) Equipment and implements which have been dropped onto the floor or any other unclean surface shall be subjected to the four-step cleanse/disinfect/rinse and dry/store procedure prior to any patron use.

(f) Every barbershop shall use only freshly laundered and sanitized towels, kept in a closed dustproof container, for each patron. The headrest of the barber chair shall be covered with a freshly laundered towel or fresh paper for each patron. In cutting the hair of a person, a newly laundered towel or fresh paper shall be placed about the neck to prevent the hair cloth from touching the skin. Towels used on each patron shall be discarded in a receptacle, and towels may not be left lying on a workbench or washbowl.

(g) Every person serving as a barber or student shall thoroughly cleanse his hands immediately before serving each customer.

(h) Persons employed in a barbershop shall be clean, both as to person and dress.

(i) The use of finger bowls, powder puffs, styptic pencils or sponges in a barbershop is prohibited. A barber may not keep these items on or about a workstand. Nothing but powdered or liquid astringents applied in each case on a clean towel or clean piece of cotton may be used to check bleeding.

(j) A barber may not undertake to treat disease of the skin, but shall advise consultation with a physician.

(k) Products shall be used in accordance with the manufacturer's instructions.

(l) The Board will, in cooperation with the Department of Health, or other State or Federal agencies of comparable experience in matters of public health, prohibit the use of a substance or device in performing barbering services when the use may expose the public to unnecessary health hazards. Notice of this prohibition shall be transmitted to licensees in accordance with section 10 of the act (63 P. S. § 560).

§ 3.57. (Reserved).

SERVICES PERFORMED OUTSIDE THE SHOP

§ 3.61. Out-of-shop services.

When barbering services are provided outside a licensed barbershop, the following requirements apply:

(1) Out-of-shop services shall be performed by a licensed barber under the sponsorship of a licensed barbershop, in accordance with the limitations in section 563 of the act (63 P. S. § 563).

(2) Supplies and equipment utilized in out-of-shop services shall be furnished by the sponsoring shop.

(3) Appointments for out-of-shop services shall be recorded in an appointment book kept by the sponsoring shop and made available to inspectors for the Commonwealth when requested.

(4) The owner of the sponsoring shop shall comply with the sanitary requirements of § 3.55 (relating to maintenance and sanitation) as if out-of-shop services were performed in the shop.

STUDY IN BARBER SHOPS

§ 3.71. Curriculum.

(a) *Schedule.* Every student shall be instructed in accordance with the following schedule:

Subject	*Approximate Hours*
Honing and stropping	25
Shaving and various uses of the straight razor	240
Haircutting, hairstyling and hairpieces	535
Shampoo and scalp massages	25
Haircoloring	25
Massaging (facials)	25
Hairwaving or curling (perms), straightening	25
Scalp and skin disease	50
State barber law and rules and regulations	50
Physiology	50
Sterilization and sanitation	50
Hygiene	25
Bacteriology	25
Electricity (ultraviolet, high frequency, infrared, curling irons)	25
Professional ethics and barbershop demeanor	25
Manager-barber instructions, instruments, shop management, examination orientation and preparation for related	50
Total minimum hours of credit required	1,250

(b) *Practical work.*

(1) Each student shall perform the following amount of practical work during his training:

Subject	Approximate Number
Permanent waves	50
Colors	50
Haircuts	200
Shaves	150
Massages (facial)	50
Shampoos	50
Total operations	550

(2) The shop owner shall display, in front of the student performing the practical work, a sign in display letters at least 1 inch in height as follows:

WORK DONE BY STUDENT

(c) *Exception.* A student who has commenced training under the previous curriculum before January 25, 1992, is not affected by subsection (a).

(d) *Examination.*

(1) If a licensed cosmetologist wishes to take the barber examination, the cosmetologist shall have successfully completed the following subjects:

Subject	Approximate Hours
State barber laws, rules and regulations	50
Haircutting, hairstyling and hairpieces	330
Shaving and various uses of the straight razor	240
Honing and stropping	50
Manager-barber instructions, instruments, shop management, orientation and preparation for related examination	25
Total hours of credit	695

(2) Upon application to the Board, the cosmetologist will be given 555 hours of credit for subjects previously covered in the cosmetology training courses, to be applied to the 1,250 hour training requirement.

§ 3.72. Student's records.

(a) Student records shall be kept for inspection by the Board's representative, which shall include proofs of age, education, blood test results, daily attendance and progress. The file shall be provided to the student at the student's request. The file shall be maintained for at least 5 years, beginning with the date when the student studies in the shop. If the shop is closed within this 5-year period, the student's file shall be forwarded to the Board and the student shall be so notified by the shop.

(b) A manager-barber or barber-teacher who is training a student under subsection (a) shall keep quarterly reports of the hours earned by the student. The quarterly reports shall be provided to the student upon request.

§ 3.73. Books.

Library and textbooks for teaching students shall include adequate books needed by the students. Among these shall be included a medical dictionary and a standardized textbook on barbering.

SCHOOLS OF BARBERING

§ 3.84. Space.

Clinic rooms shall be a minimum length of at least 10 feet for the first chair and 5 additional feet centerpoint between each additional chair with a minimum width of 12 feet for one row of chairs. Where two rows of chairs are opposite of each other, the room shall be a minimum of 20 feet wide.

§ 3.85. Equipment.

(a) Every barber school shall have the following equipment for each school:

(1) One blackboard, at least 4 feet by 8 feet.

(2) One dermal lamp or therapeutic lamp.

(3) One hair dryer for each ten students.

(4) One high frequency electric current equipment.

(5) One microscope.

(6) One twin vibrator.

(7) One medical dictionary.

(8) A set of charts on skin, bones, muscles, nerves and the circulatory system 24 inches by 30 inches or equivalent.

(9) A set of library books on anatomy, physiology and hygiene.

(10) Sufficient chairs, coat and hat racks to accommodate patrons.

(11) One electric lather mixer for every ten students.

(12) One washbowl for every two chairs.

(b) Every barber school shall have the following equipment for each student:

(1) One standard barber chair with a modern workstand.

(2) One large mirror 36 inches by 36 inches.

(3) One dry sterilizing cabinet for all instruments.

(4) One wet sterilizer, properly functioning.

(5) One covered hamper for soiled towels.

(6) One covered waste container.

(7) One dust proof cabinet for linens.

(8) One electric hair clipper.

(9) Three shears (one thinning).

(10) Two razors, at least one of which is nondisposable.

(11) Four combs.

(12) One set of strops.

(13) One hone.

(14) One standard textbook on barbering. Sets of question and answer books are not considered textbooks.

(15) One hand-held hairdryer.

§ 3.86. Maintenance and sanitation.

(a) Every barber school shall be well lighted, well ventilated, kept in a clean, orderly and sanitary condition. Waste containers shall be thoroughly cleaned at least once every 24 hours. The floor in the work area shall consist of hardwood, linoleum or other hard surfaces and shall be maintained in good repair. Every barber school shall be provided with adequate lavatories, readily accessible and kept in a sanitary condition.

(b) Equipment and implements that come into contact with a patron's skin, scalp or hair shall be subject to the following procedure following each patron use:

(1) *Step 1: Cleanse.* The objects shall be cleansed as the term is defined in § 3.1 (relating to definitions).

(2) *Step 2: Disinfect.* The cleansed objects shall be disinfected as the term is defined in § 3.1

(3) *Step 3: Rinse and dry.* The cleansed and disinfected objects shall be rinsed with clean water and dried with a clean towel.

(4) *Step 4: Store.* The cleansed, disinfected, rinsed and dried objects shall be stored in a clean, dry and closed container clearly marked as such. Sharp instruments shall be stored upright with the points down.

(c) Only cleansed, disinfected and rinsed equipment and implements properly stored shall be used on patrons.

(d) Equipment and implements which have been dropped onto the floor or any other unclean surface shall be subjected to the four-step cleanse/disinfect/rinse and dry/store procedure prior to any patron use.

(e) Only freshly laundered and sanitized towels kept in a closed dustproof container shall be used for each patron. The headrest of a barber chair shall be covered with a freshly laundered towel or fresh paper for each patron. A newly laundered towel or fresh paper shall be placed about the neck to prevent the hair cloth from touching the skin when cutting the hair of a person. Towels used on each patron shall be discarded in a closed receptacle, and may not be left lying on a workbench or washbowl.

(f) The use of finger bowls, powder puffs, styptic pencils or sponges in barber schools is prohibited. A student may not keep any of them on or about a workstand. Only powdered or liquid astringents applied in each case on a clean towel or clean piece of cotton shall be used to check bleeding.

§ 3.87. Student's records.

(a) Each school shall keep, at all times and for inspection by the Board, a file of each student regarding proofs of age, education, blood test results, daily attendance and progress. The file shall be provided to the student at the student's request. The file shall be maintained for at least 5 years, beginning with the date when the student attends the school. If the school is closed within this 5-year period, the student's files shall be forwarded to the Board and the students shall be so notified by the school.

(b) Each school shall keep quarterly reports of the hours earned by the student. The quarterly reports shall be provided to the student upon request.

§ 3.88. Supervisor and teachers.

(a) The school shall, at all times, be under the immediate supervision of a licensed teacher.

(b) Each school shall meet the following requirements:

(1) Each school shall employ as instructors only licensed barber-teachers competent to impart instructions in all branches of barber science which they teach.

(2) An individual may not be counted as a regular part-time or substitute teacher in a school unless the individual's barber-teacher's license is on display in the school.

(3) Every school shall employ at least one full-time licensed barber-teacher.

(4) Each class taught for credit shall consist of not more than 20 students per licensed barber-teacher, and at least one full-time teacher who shall be in attendance during the hours the school is open for instruction. The only exception to this requirement which the Board may permit is lecturing by a staff physician or another specialist when at least one teacher is present.

(5) Teachers as well as students shall be attired during school hours in washable jackets, smocks or aprons, which shall be kept in a clean condition.

§ 3.90. Student curriculum.

(a) Each school shall post schedules showing the schedules of classes in theory and practical work. The daily schedule shall be at least 7 but not more than 8 hours for each day the school is in session. Each student shall have an opportunity to devote at least 5 hours per day to practical work. For each of these class periods the teacher in charge shall keep an accurate daily record of attendance and progress of each student.

(b) A student may not be given credit for hours attended unless the student is in actual attendance. Hours credited to a student should be devoted to the studying of barbering. Duty work may not exceed more than 10 minutes of the student instruction time. Duty work shall consist only of the tidying and cleaning naturally performed by an operator around the operator's own chair at the conclusion of the barber process. It may not include menial work ordinarily performed by a maid or janitor.

(c) Every barber school is required to instruct students in barber science as follows:

Subject	*Approximate Hours*
Honing and stropping	25
Shaving and various uses of the straight razor	240
Haircutting, hairstyling and hairpieces	535
Shampoo and scalp massages	25
Haircoloring	25
Massaging (facials)	25
Hairwaving or curling (perms), straightening	25
Scalp and skin disease	50
State barber law and rules and regulations	50
Physiology	50
Sterilization and sanitation	50
Hygiene	25
Bacteriology	25
Electricity (ultraviolet, high frequency, infrared, curling irons)	25
Professional ethics and barbershop demeanor	25
Manager-barber instruction, instruments, shop management, orientation and preparation for related examination	50
Total minimum hours required	1,250

(d) A student who has commenced training under the previous curriculum before January 25, 1992, is not affected by subsection (c).

(e) A student may not receive credit for time spent in the barber school until registration or renewal licenses for the schools have been obtained from the Board.

(f) Whenever a student at the time of enrolling is entitled to credits previously earned at an out-of-State or in-State school, the school enrolling the student shall carefully evaluate the credits. A mere statement that the applicant for certification of entrance credits has pursued work elsewhere will not be accepted as sufficient evidence. The statement shall be documentary evidence showing attendance at a given school, and if possible, the number of hours attended and the subjects pursued.

(g) A student may request a transfer of credits for hours or months of study between a barbershop and a barber school if the student passes a test which is based on the number of hours attended and the subjects pursued and is devised by the shop or the school to place him in the appropriate courses.

(h) The Board reserves the right to reject an examination application of a student whose credits have been improperly given or evaluated.

[Pa.B. Doc. No. 02-2096. Filed for public inspection November 22, 2002, 9:00 a.m.]