

# PROPOSED RULEMAKING

## DEPARTMENT OF PUBLIC WELFARE

[ 55 PA. CODE CHS. 2380, 2390, 6400 AND 6500 ]

### Individual Support Plan for Individuals with Mental Retardation

The Department of Public Welfare (Department) under the authority of the Public Welfare Code (62 P.S. §§ 901—922 and 1001—1087) intends to amend the regulations set forth in Annex A.

#### *Purpose of Regulation*

The purpose of this proposed regulatory amendment is to update and clarify regulations regarding the comprehensive plan to provide services for individuals with mental retardation. The process of developing and implementing a plan to provide these services has changed. The proposed amendment is needed to clarify the individual plan development process and the provider's role in developing and implementing the individual plan.

#### *Background*

Current regulations specify that a provider shall develop and implement an Individual Program Plan (IPP) or Individual Written Program Plan (IWPP). The IPP and IWPP were the sole documents to be used by providers to organize and manage services provided for individuals served by the Office of Developmental Programs (ODP), formerly the Office of Mental Retardation (OMR). Each provider created an IPP or IWPP for every individual served. An individual could easily have several plans: one for his residential program; one for the vocational program; and one for day services. In some cases, individuals and their families would attend multiple meetings to update plans for each provider, and the plans would conflict with each other.

As part of the regulatory development process, an individual and family-focused work group was convened. The group offered suggestions for the language to be used in the regulatory revisions some of which are incorporated into the proposed amendments. The group also requested ODP add regulatory language specifying when individuals and families receive information prior to the plan development meeting and requested the 3 month review summary within 30 days of completion of review. ODP agreed the addition would be beneficial, and added this language to the proposed amendments. These time frames were acceptable to the workgroup, which was composed of an individual receiving services, families, providers, provider associations and administrative entity representatives.

In 2002, OMR (now ODP) implemented the Individual Support Plan (ISP) to resolve these problems by replacing multiple plans with one comprehensive plan. The ISP is the single document used to coordinate all supports and services for an individual, to eliminate the need for each provider to have its own plan. The individual and his family or friends, as applicable, meet with all providers at the same time to develop and plan how to meet the needs and wants of the individual. This creates consistency and ensures that everyone is working together to meet the individual's needs and personal goals.

The creation and coordination of the ISP is conducted by the supports coordinator. Supports coordination assists

waiver participants with locating, coordinating and monitoring needed services and supports. With the improvements in planning for the individual needs and wants moving from a provider-directed IPP or IWPP to a supports coordinator-facilitated ISP, the current regulations need to conform to these improvements. The proposed amendments are consistent with the current process for developing or implementing the ISP. The proposed regulations do, however, change the acronyms "IPP" or "IWPP" to the more generic "IP," and change existing regulatory language to reflect the preferred process for developing an IP. This regulatory change provides for consistent and uniform language throughout the relevant regulations. It also allows for changes to occur, if necessary, in the type of format used to document and coordinate all supports and services provided to an individual in the future.

#### *Requirements*

§§ 2380.3, 2390.5, 6400.4 and 6500.4 regarding definitions

These sections are being amended to define the IP and supports coordinator.

§§ 2380.33, 2390.33 and 6400.44 regarding program specialist

These sections state the responsibilities of a program specialist. The proposed change to these sections reflects that a program specialist is required to provide the completed assessment prior to planning meetings. The other proposed change is the addition of information on how a provider is required to coordinate and develop an IP for individuals who do not have an assigned supports coordinator.

§§ 2380.35 and 6400.45 regarding staffing

These sections describe the conditions under which a person may be unsupervised. This section requires that staffing ratios specified in the IP must be implemented as written.

§ 6500.44 regarding supervision

This section describes the conditions under which a person may be left unsupervised. This section requires that staffing ratios specified in the IP must be implemented as written.

§ 2380.101 regarding program activities and services

This section states that the program activities shall be provided as specified in the IP. The change in this section is that the general term "services" was added to the section heading and subsection (c).

§ 2390.91 regarding activities and services

This section states that the activities for an individual shall include work experience and other developmentally-oriented work training and shall be provided as specified in the IP. The change in this section is that the general term "services" was added to the section heading and the text of the regulation. The term "work training activities" was changed to "work training endeavors."

§§ 2380.103(1), 2390.95(1), 6400.122(1) and 6500.112(1) regarding development of the individual plan

These sections define the development of the IP. Specific changes to these sections include a new section for an individual who does not have an assigned supports coordinator. It indicates what procedures are to be fol-

lowed by the program specialist or family living specialist when there is no supports coordinator.

*§§ 2380.104, 6400.123 and 6500.113 regarding review of the IP*

These sections define the review and revision process for the IP. The most prominent enhancement to these sections is that the time frame for quarterly reviews is now three calendar months in all three chapters.

*§ 2390.97 regarding review of the IP*

This section defines the review process for IPs. It provides that the time frame for review is at least every 3-calendar months.

*§§ 2380.105, 6400.124 and 6500.114 regarding participation in the development of the IP*

These sections outline who must participate in the development of the IP. The amendment describes the duties of the program specialist or family living specialist.

*§ 2390.96 regarding content of the IP*

This section states the content requirements for the IP. The change adds provisions for individuals without an assigned supports coordinator and outlines procedures that are to be followed regarding the development and content of the individual's plan.

*§§ 2380.106, 6400.125 and 6500.115 regarding content of IP*

These sections define the content required for the IP. The proposed amendment specifies that a program specialist or family living specialist shall review certain areas of the IP and document any missing or incomplete items. The program specialist shall also prepare the IP for individuals without a supports coordinator.

*§§ 2380.107, 6400.126 and 6500.116 regarding implementation of the IP*

These sections require that the IP shall be implemented as written.

*§§ 2380.108, 2390.98, 6400.127 and 6500.117 regarding copies of the IP*

These sections outline the requirements regarding copies of the IP. The changes require the program specialist or family living specialist to send a written summary of each three month review to all interested parties. The program specialist or family living specialist shall also keep documentation for those persons who have opted not to receive a written copy of the reviews.

*§§ 6400.163 and 6500.133 regarding use of prescription medications*

These sections relate to prescription medications. The acronym IPP is replaced with "IP."

*Affected Individuals and Organizations*

Currently, the majority of individuals receiving services through ODP are required to have an ISP. It is the only form approved for documenting services and facilitating payment through ODP under Chapters 2380, 2390, 6400 and 6500. The ISP eliminates the need for each provider to have its own plan. The benefits to individuals and families include having only one plan meeting to attend in which all providers are required to be present. Previously, some individuals and families were being asked to attend meetings separately with the various providers which created an unnecessary hardship.

As part of the regulatory development process, the individual and family-focused workgroup requested that

ODP add certain regulatory language to specify that individuals and families receive assessment information prior to the plan development meeting. Providers will be required to distribute copies of their assessment information and 3-month review summary to individuals and families within 30 days of the meeting. The provider shall also forward the assessment data that will be used during the plan meeting to planning team members no later than 30 days before the meeting.

*Accomplishments and Benefits*

The proposed amendments codify the current process for developing and implementing the ISP. The proposed regulations do, however, revise the acronyms "IPP" or "IWPP" to the more generic "IP" and change the existing regulatory language to reflect the preferred process for developing an IP. This regulatory revision provides for consistent and uniform language throughout Chapters 2380, 2390, 6400 and 6500. It also allows for changes to occur in the type of format used to document and coordinate all supports and services for an individual if necessary in the future. The regulatory revisions are necessary to ensure that ODP has the necessary authority to enforce the new requirements and protect the health and welfare of individuals receiving services.

*Fiscal Impact*

There is no cost associated with clarifying and updating plan regulations for the Commonwealth, local government or individuals receiving services. The regulation work group identified one additional cost to providers related to copies of reviews and assessment information that are required to be sent to them on a quarterly basis. This information previously was only sent to the Supports Coordinator and the individual. It will now be sent to the individual's family, if appropriate, as well. However, a provision allows families to opt not to receive this information. Electronic distribution of materials to families is permitted if the family has a means to receive and read information in electronic form. Mailing and copying costs should be minimal for providers. Additionally, because the regulations clarify that only the form approved by the Department will be accepted as the IP, providers who create both a regulatory IPP and the Department-requested ISP can cease this practice. Regulations will allow for the single IP document which will eliminate the cost of staff time in creating a second document.

*Paperwork Requirements*

Providers will need to provide copies of their assessment information and three month review summary to individuals and families. The amount of paperwork will depend on the page count of each provider's assessment information and the three month review summary. The proposed regulations permit electronic distribution. The proposed regulations add a 30-day time frame for providers to send review summary information to individuals and families. The proposed amendments also state that the provider must forward assessment data to be used during the plan meeting to planning team members no later than 30 days before the meeting. No new forms are required by the amended regulations.

*Effective Date*

This regulatory amendments will be effective upon final publication in the *Pennsylvania Bulletin*.

*Public Comment*

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed rulemaking to the Department at the following address:

Wendy Dixon, Human Services Program Specialist, Office of Developmental Programs, Department of Public Welfare, P. O. Box 2675, Harrisburg, PA 17105-2675, raodpregscomment@state.pa.us, within 30 calendar days after the date of publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Reference Regulation No. 14-512 when submitting comments.

Persons with a disability who require an auxiliary aid or service may submit comments by using the AT&T Relay Service at (800) 654-5984 (TTY users) or (800) 654-5988 (voice users).

*Regulatory Review Act*

Under section 5(a) of the Regulatory Review Act (act) (71 P. S. § 745.5(a)), on April 16, 2008, the Department submitted a copy of this proposed rulemaking 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. In addition to submitting the proposed rulemaking, the Department has provided the IRRC and the Committees with a copy of a Regulatory Analysis Form prepared by the Department. A copy of this form is available to the public upon request.

Under section 5(g) of the act, if the IRRC has any comments, recommendations or objections to any portion of the proposed regulation, it may notify the Department and the Committees within 30 days after the close of the public comment period. The notification shall specify the regulatory review criteria that have not been met. The act specifies detailed procedures for review by the Department, the General Assembly and the Governor, of any comments, recommendations or objections raised, prior to final publication of the regulations.

ESTELLE B. RICHMAN,  
*Secretary*

**Fiscal Note:** 14-512. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 55. PUBLIC WELFARE**

**PART IV. ADULT SERVICES MANUAL**

**Subpart D. NONRESIDENTIAL AGENCIES/FACILITIES/SERVICE**

**CHAPTER 2380. ADULT TRAINING FACILITIES**

**GENERAL PROVISIONS**

**§ 2380.3. Definitions.**

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

\* \* \* \* \*

**[ IPP—Individual Program Plan. ]**

**IP—Individual plan**—The form provided by the Department which identifies services and supports needed and used by an individual.

\* \* \* \* \*

**Supports coordinator**—The individual responsible for case management functions.

**STAFFING**

**§ 2380.33. Program specialist.**

\* \* \* \* \*

(b) [ A program specialist shall be responsible for the program at the facility, including the following:

- (1) Coordination or completion of assessments.
- (2) Coordination or development and review of IPPs.
- (3) Coordination of training and development for individuals.
- (4) Development of planned program activities.
- (5) Participation in interdisciplinary team meetings.
- (6) Ensurance of the implementation of IPPs and program activities. ]

The program specialist shall be responsible for the following:

- (1) Coordinating and developing training for individuals.
- (2) Coordinating and completing assessments.
- (3) Participating in the development of the IP.
- (4) Attending the IP development meetings.
- (5) Providing the completed assessment and other relevant information for the development of the IP prior to the planning meetings to the supports coordinator, individual, and, if appropriate, to the individual's parent, guardian or advocate. The program specialist shall send this information within 30 days following the receipt of notification of the planning meeting.

(6) Reviewing the IP for content accuracy.

(i) Content discrepancies shall be communicated to the supports coordinator in writing.

(ii) Written documentation of content discrepancy communications shall be maintained in the individual's record.

(7) Ensuring the implementation of IP outcomes.

(8) Coordinating the training of direct support professionals in the content of relevant IPs.

(9) Monitoring services provided for the individual.

(10) Ensuring monthly documentation of the individual's participation and progress for IP outcomes.

(11) Providing quarterly documentation of the individual's participation and progress for the IP outcomes to the supports coordinator, individual, and, if appropriate, the individual's parent, guardian or advocate.

(12) Informing the individual and, if appropriate, the individual's parent, guardian or advocate of the option not to receive a copy of the assessments or quarterly documentation.

(13) Maintaining documentation of an individual's or the individual's parent, guardian or advocate's request denying a copy of assessment or quarterly documentation.

(14) Documenting and reporting changes in the individual's needs, interests and personal goals to the supports coordinator, and, if appropriate, the individual's parent, guardian or advocate.

(c) If the individual does not have an assigned supports coordinator, the program specialist shall coordinate the development of the IP.

(d) If the individual does not have an assigned supports coordinator, the program specialist shall prepare the IP using the Department approved format.

(e) If the individual does not have an assigned supports coordinator, the program specialist shall provide the individual, and, if appropriate, the individual's parent, guardian or advocate with a copy of the IP and attendance sheet.

(1) The individual or individual's parent, guardian or advocate may decline in writing to receive copies of the IP or attendance sheet.

(2) The program specialist shall maintain a copy of the written request.

[ (c ) ( f ) \* \* \*

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§ 2380.35. Staffing.

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(d) An individual may be left unsupervised for specified periods of time if the absence of direct supervision is consistent with the individual's assessment and is part of an individual's [ IPP ] IP aimed at achieving a higher level of independence.

(e) Direct staff support as specified in the IP shall be implemented as written.

(f) Staffing ratios specified in the IP shall be implemented as written.

[ (e ) ( g ) An individual may not be left unsupervised solely for the convenience of the facility or staff persons.

PROGRAM

§ 2380.101. Program activities and services.

\* \* \* \* \*

(c) Program activities and services shall be provided as specified in each [ IPP ] IP.

\* \* \* \* \*

§ 2380.103. Development of [ IPP ] the IP.

[ (a) An IPP shall be developed for each individual based upon the individual assessment, within 30 individual attendance days after the individual's admission date. ] For individuals without a supports coordinator the following apply:

(1) The program specialist shall prepare an IP for each individual based upon the individual's assessment information.

(2) The program specialist shall complete the IP within 30 days after the individual's admission date.

[ (b) The IPP ] (3) The IP shall be developed by the [ interdisciplinary ] individual's planning team.

[ (c ) ( 4 ) Members of the [ interdisciplinary ] individual's planning team at a minimum shall include the individual, the program specialist, [ the individual's parent, guardian or advocate, if appropriate, ] direct service staff persons who work with the individual, [ staff persons from the funding agency, ] and if

applicable and appropriate, the individual's parent, guardian or advocate, staff persons from the individual's residential program[ , if applicable, ] and other specialists, such as medical, nursing, behavior management, speech, occupational or physical therapy specialists [ if appropriate for the individual's special needs ].

(5) The program specialist shall send invitations to each planning team member for each IP development meeting.

(6) The program specialist shall maintain a copy of the invitation and attendance sheet with the IP in the individual's file.

[ (d ) ( 7 ) At least three members of the [ interdisciplinary ] individual's planning team, in addition to the individual if the individual chooses to attend, shall be present at the [ interdisciplinary ] individual's planning team meeting at which the [ IPP ] IP is developed.

[ (e ) ( 8 ) Members of the [ interdisciplinary ] individual's planning team who attend the meeting to develop the [ IPP ] IP shall sign and date the [ IPP ] IP attendance sheet to indicate participation.

(9) The IP shall be reviewed and updated by the planning team annually, or more frequently if the individual's needs change.

(10) The program specialist shall send a copy of the attendance sheet and the IP to each member of the planning team unless the member does not want a copy.

(11) If a member of the individual's planning team denies a copy of the IP or attendance sheet, the program specialist shall maintain a copy of the written denial in the individual's record.

§ 2380.104. Review[ , update, and rewrite ] of [ IPP ] the IP.

[ (a) A review of each individual's progress on the IPP, and a revision of the IPP if necessary, shall be completed or coordinated by the program specialist at least every 65 individual attendance days.

(b) The IPP shall be revised in accordance with subsection (a) if there has been no progress on a goal, if a goal is no longer appropriate or if a goal needs to be added.

(c) The IPP shall be reviewed and rewritten by the interdisciplinary team at least annually.

(d) At least three members of the interdisciplinary team, in addition to the individual if the individual chooses to attend, shall be present at the annual interdisciplinary team meeting at which the IPP is reviewed and rewritten.

(e) Members of the interdisciplinary team who attend the meeting to rewrite the IPP shall sign and date the new IPP.

(f) The IPP shall be discussed with, dated by and signed by the individual, the individual's parent, guardian or advocate if appropriate, and the program specialist after each 65-day review and annual rewrite of the IPP. ]

(a) A review of each individual's progress on the IP shall be completed by the program specialist and the individual, and, if appropriate, the individual's

parent, guardian or advocate, every 3 months, or more frequently if the individual's needs change.

(b) A revision of the IP, if necessary, shall be communicated to the supports coordinator, individual, and, if appropriate, the individual's parent, guardian or advocate.

(c) The IP shall be revised if one of the following apply:

- (1) There has been no progress on an outcome.
- (2) An outcome is no longer appropriate.
- (3) An outcome is added.

§ 2380.105. Participation in the development of the [ IPP ] IP.

[ The individual's parent, guardian or advocate, if appropriate, and the funding agency shall be invited, in writing, to participate in the initial development and annual rewrite of the IPP. A copy of the written invitations shall be kept. ]

(a) The program specialist shall provide assessment information for the development and revision of an IP.

(b) The program specialist shall participate in the development and revision of the IP.

§ 2380.106. Content of [ IPP ] the IP.

[ Each IPP shall include:

(1) The goals for the individual in specific areas of growth and development.

(2) An evaluation of the individual's skill level for each goal.

(3) Monthly documentation of the individual's progress on each goal.

(4) Specific activities and services that meet the needs of the individual.

(5) A program and schedule for allowing the individual to be without direct staff supervision for specific periods of time, aimed at achieving a greater level of independence, if the individual's assessment states the individual may be without direct supervision.

(6) A planned program to address the social, emotional and environmental needs of the individual, if a medication is prescribed to treat maladaptive behavior. ]

(a) For individuals with a supports coordinator, the program specialist shall review the IP for the following:

- (1) Outcomes addressing the individual's needs.
- (2) Specific activities and services that reflect the individual's needs, interests and personal goals.
- (3) Time frames for expected completion of outcomes.
- (4) An evaluation of the individual's skill level for each outcome.

(5) A program and schedule outlining specified periods of time for the individual to be without direct supervision, aimed at achieving a greater level of independence, if the absence of direct supervision is consistent with the individual's assessment.

(6) Method of evaluation used to determine the progress towards each outcome.

(7) A program to address the social, emotional and environmental needs of the individual, if medication has been prescribed to treat maladaptive behavior.

(8) A program to address the reduction of a restrictive procedure, if restrictive procedures are used in response to a maladaptive behavior.

(b) The program specialist shall document missing or incomplete items from the IP.

(c) The program specialist shall report missing or incomplete items from the IP in writing to the supports coordinator.

(d) For individuals without a supports coordinator, the program specialist shall prepare the IP including the items in subsection (a)(1)–(8).

§ 2380.107. Implementation of [ IPP ] the IP.

[ Each IPP ] Each IP shall be implemented as written.

§ 2380.108. Copies of [ IPP ] the IP.

(a) A [ written ] copy of [ IPPs ] the IP and [ adjustments ] revisions made during reviews shall be kept in the individual's record.

(b) [ The individual, the individual's parent, guardian or advocate, if appropriate, the residential service provider, if applicable, and the funding agency shall be provided with a copy of all IPPs. Documentation of transmittal of each IPP shall be kept. ]

The program specialist shall send the written summary of each 3-month review to the supports coordinator, individual, and, if appropriate, the individual's parent, guardian or advocate within 30 days after the completion of the review.

(c) If the individual, or the individual's parent, guardian or advocate, denies a copy of a written summary, the program specialist shall maintain the signed written denial.

MEDICATIONS

§ 2380.123. Use of prescription medications.

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(b) If a medication is prescribed to treat maladaptive behavior, there shall be a [ planned ] program [ as part of the IPP ] to address the social, emotional and environmental needs of the individual related to the maladaptive behavior as part of the IP.

RECORDS

§ 2380.173. Content of records.

Each individual's record [ shall ] must include:

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(5) [ IPPs ] IP.

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CHAPTER 2390. VOCATIONAL FACILITIES

GENERAL PROVISIONS

§ 2390.5. Definitions.

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

\* \* \* \* \*

**IP—Individual plan**—The form provided by the Department which identifies services and supports needed and used by an individual.

[ **Individual written program plan**—A plan that is developed for a client on the basis of assessment data that specifies specific objectives and program services for the clients. ]

\* \* \* \* \*

**Supports coordinator**—The individual responsible for case management functions.

\* \* \* \* \*

**STAFFING**

**§ 2390.33. Program specialist.**

\* \* \* \* \*

(b) [ A program specialist shall be responsible for the program at the facility, including the following:

(1) Development and implementation of individual written program plans.

(2) Coordination of training and development for clients. ]

The program specialist shall be responsible for the following:

(1) Coordinating and developing training for clients.

(2) Coordinating and completing assessments.

(3) Participating in the development of the IP.

(4) Attending the IP development meetings.

(5) Providing the completed assessment and other relevant information for the development of the IP prior to the planning meetings to the supports coordinator, client and, if appropriate, to the client's parent, guardian or advocate. The program specialist shall send this information within 30 days following the receipt of notification of the planning meeting.

(6) Reviewing the IP for content accuracy.

(i) Content discrepancies shall be communicated to the supports coordinator in writing.

(ii) Written documentation of content discrepancy communications shall be maintained in the client's record.

(7) Ensuring the implementation of IP outcomes.

(8) Coordinating the training of direct support professionals in the content of relevant IPs.

(9) Monitoring services provided for the client.

(10) Ensuring monthly documentation of the client's participation and progress for IP outcomes.

(11) Providing quarterly documentation of the client's participation and progress for IP outcomes to the supports coordinator, client, and, if appropriate, the client's parent, guardian or advocate.

(12) Informing the client and, if appropriate, the client's parent, guardian or advocate of the option not to receive a copy of the assessments or quarterly documentation.

(13) Maintaining documentation of a client's or the client's parent, guardian or advocate's request denying a copy of assessment or quarterly documentation.

(14) Documenting and reporting changes in the client's needs, interests and personal goals to the supports coordinator and, if appropriate, the client's parent, guardian or advocate.

(c) If the client does not have an assigned supports coordinator, the program specialist shall coordinate the development of the IP.

(d) If the client does not have an assigned supports coordinator, the program specialist shall prepare the IP using the Department approved format.

(e) If the client does not have an assigned supports coordinator, the program specialist shall provide the client and, if appropriate, the client's parent, guardian or advocate with a copy of the IP and attendance sheet.

(1) The client or client's parent, guardian or advocate may decline in writing to receive copies of the IP or attendance sheet.

(2) The program specialist shall maintain a copy of the written request.

[ (c) ] (f) \* \* \*

\* \* \* \* \*

**PROGRAM**

**§ 2390.91. Activities and services.**

Activities and services for a client [ shall ] must include work experience and other developmentally oriented, work training [ activities ] endeavors designed to promote movement into a higher level vocational program or into competitive employment. Activities and services shall be provided as specified in the [ individual written program plan ] IP.

**§ 2390.95. Development of the [ individual written program plan ] IP.**

[ (a) An individual written program plan shall be developed for a client within 30 client attendance days of the client's admission date.

(b) The plan shall be developed by the interdisciplinary team. The members of the interdisciplinary team shall sign and date the plan. ]

For client's without a supports coordinator, the following apply:

(1) The program specialist shall prepare an IP for each client based on the client's assessment information.

(2) The program specialist shall complete the IP within 60 days after the client's admission date.

(3) The IP shall be developed by the client's planning team.

(4) Members of the client's planning team at a minimum shall include the client, the program specialist, the direct service staff who work with the client, and if applicable and appropriate, the client's parent, guardian or advocate, the staff person from the individual's residential program, and other specialists, such as medical, nursing, behav-

ior management, speech, occupational or physical therapists, if appropriate, for the individual's needs.

(5) The program specialist shall send invitations to each planning team member for each IP development meeting.

(6) At least three members of the planning team, in addition to the client if the client chooses to attend, shall be present at the planning team meeting at which the IP is developed.

(7) Members of the planning team shall sign and date the attendance sheet to indicate participation in the IP development meeting.

(8) The program specialist shall retain a copy of the invitation and attendance sheet in the client's file.

(9) A copy of the attendance sheet shall be sent to each member of the planning team.

(10) The program specialist shall send a copy of the attendance sheet and the IP to each member for the client's planning team unless the member does not want a copy.

(11) If a member of the client's planning team denies a copy of the IP or attendance sheet, the program specialist shall maintain a copy of the written denial in the client's record.

§ 2390.96. Content of [ individual written program plan ] the IP.

[ The plan shall include the following information:

(1) Specific short term objectives including measurable steps for completion.

(2) Evaluation of client's current skill level in the area of the objective.

(3) Time frames for expected completion of objectives.

(4) Method of evaluation used to determine mastery of objective.

(5) Service areas to which the client will be assigned.

(6) Staff responsible for the outcome of the individual written program plan.

(7) Assessment of the client's placement potential. ]

(a) For clients with a supports coordinator, the program specialist shall review the IP for the following items:

(1) Outcomes addressing the client's needs.

(2) Specific activities and services that reflect the client's needs and interests.

(3) Time frames for expected completion of outcomes.

(4) An evaluation of the client's skill level for each outcome.

(5) A program and schedule outlining specified periods of time for the individual to be without direct supervision, aimed at achieving a greater level of independence, if the absence of direct supervision is consistent with the individual's assessment.

(6) Method of evaluation used to determine the progress towards each outcome.

(7) Services areas to which the client will be assigned.

(8) Assessment of the client's potential to achieve competitive employment placement potential.

(b) The program specialist shall document missing or incomplete items from the IP.

(c) The program specialist shall report missing or incomplete items from the IP in writing to the supports coordinator.

(d) For clients without a supports coordinator, the program specialist shall prepare the IP including items listed in subsection (a)(1)—(8).

§ 2390.97. Review[ , update and rewrite ] of [ individual written program plan ] the IP.

(a) [ The plan for clients, except those clients in a training program, shall be reviewed and updated by the program specialist at least every 65 client attendance days.

(b) The plan for clients in a training program shall be reviewed and updated by the program specialist at least every 20 client attendance days.

(c) The plan shall be discussed with the client and signed by the program specialist and the client and dated after each review.

(d) The plan shall be reviewed and rewritten by the interdisciplinary team at least annually. The members of the interdisciplinary team shall sign and date the revised plan. ]

A review of each client's progress on the IP, except those clients in a training program, shall be completed by the program specialist and the client, and, if appropriate, the client's parent, guardian or advocate every 3 months, or more frequently if the client's needs change.

(b) A progress review of the IP for clients in a training program shall be completed by a program specialist and the client and, if appropriate, the client's parent, guardian or advocate every 20 days, or more frequently if the individual's needs change.

(c) A revision of the IP, if necessary, shall be communicated to the supports coordinator, client, and, if appropriate, the client's parent, guardian or advocate.

(d) The IP shall be revised if any of the following occur:

(1) There has been no progress on an outcome.

(2) An outcome is no longer appropriate.

(3) An outcome is added.

§ 2390.98. Copies of [ individual written program plan ] the IP.

(a) A [ written ] copy of the [ plan and adjustments ] IP and revisions made during reviews shall be kept in the client's file.

(b) [ The client, or parent or guardian when appropriate, shall be invited, in writing, to participate in the initial development and reviews of the program plan. A copy of the written invitations shall be kept in the client's file.

(c) A client, parent or guardian shall be provided with a copy of a plan. ]

The program specialist shall send the written summary of each 3-month review to the supports coordinator, the client and, if appropriate, the client's parent, guardian or advocate within 30 days after the completion of the review.

(c) If the client, or the client's parent, guardian or advocate, denies a copy of the written summary, the program specialist shall maintain the signed written denial.

**CLIENT RECORDS**

**§ 2390.124. Content of records.**

A client's record [ shall ] must include the following information:

\* \* \* \* \*

(8) [ Copies of individual written program plans or work performance reviews.

(9) A copy of a written invitation to participate in individual written program plan reviews. ]

Copies of IPs and revisions made during reviews.

(9) Copies of work performance reviews.

\* \* \* \* \*

**PART VIII. MENTAL RETARDATION MANUAL**

**Subpart E. RESIDENTIAL AGENCIES/FACILITIES/SERVICES**

**Article I. LICENSING/APPROVAL**

**CHAPTER 6400. COMMUNITY HOMES FOR INDIVIDUALS WITH MENTAL RETARDATION**

**GENERAL PROVISIONS**

**§ 6400.4. Definitions.**

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

\* \* \* \* \*

[ *IPP*—Individual program plan. ]

*IP*—*Individual plan*—The form provided by the Department which identifies services and supports needed and used by an individual.

\* \* \* \* \*

*Supports coordinator*—The individual responsible for case management functions.

**STAFF**

**§ 6400.44. Program specialist.**

\* \* \* \* \*

(b) [ A program specialist shall be responsible for the program at the home, including the following:

- (1) The individual's daily activities.
- (2) Coordination or completion of assessments.
- (3) Coordination or development and review of individual program plans.
- (4) Coordination of training and development for individuals.
- (5) Development of planned program activities.
- (6) Participation in planning team meetings.

(7) Ensurance of the implementation of individual program plans and program activities. ]

The program specialist shall be responsible for the following:

- (1) Supervising the individual's daily activities.
- (2) Coordinating and completing assessments.
- (3) Participating in the development of the IP.
- (4) Attending the IP development meetings.

(5) Providing completed assessment and other relevant information for the development of the IP prior to the planning meetings to the supports coordinator, individual and, if appropriate, the individual's parent, guardian or advocate. The program specialist shall send this information within 30 days following the receipt of notification of the planning meeting.

(6) Reviewing the IP for content accuracy.

(i) Content discrepancies shall be communicated in writing to the supports coordinator.

(ii) Written documentation of content discrepancy communications shall be maintained in the individual's record.

(7) Ensuring the implementation of IP outcomes.

(8) Coordinating the training of direct support professionals in the content of relevant IPs.

(9) Monitoring services provided for the individual.

(10) Ensuring monthly documentation of the individual's participation and progress for IP outcomes.

(11) Providing quarterly documentation of the individual's participation and progress for IP outcomes to the supports coordinator, individual and, if appropriate, the individual's parent, guardian or advocate.

(12) Informing the individual and, if appropriate, the individual's parent, guardian or advocate of the option not to receive a copy of the assessments or quarterly documentation.

(13) Maintaining documentation of an individual's or the individual's parent, guardian or advocate's request denying a copy of the assessment or quarterly documentation.

(14) Documenting and reporting changes in the individual's needs, interests or personal goals to the supports coordinator and, if appropriate, the individual's parent, guardian or advocate.

(c) If the individual does not have an assigned supports coordinator, the program specialist shall coordinate the development of the IP.

(d) If the individual does not have an assigned supports coordinator, the program specialist shall prepare the IP using the Department approved format.

(e) If the individual does not have an assigned supports coordinator, the program specialist shall provide the individual and, if appropriate, the individual's parent, guardian or advocate with a copy of the IP and attendance sheet.

(1) The individual or the individual's parent, guardian or advocate may decline in writing to receive copies of the IP or attendance sheet.



(2) The program specialist shall maintain a copy of the written request.

[ (c) ] (f) \* \* \*  
\* \* \* \* \*

§ 6400.45. Staffing.

\* \* \* \* \*

(c) An individual may be left unsupervised for [ specific ] specified periods of time if the absence of direct supervision is consistent with the individual's assessment and is part of the [ IPP ] IP aimed at achieving a higher level of independence.

(d) Direct staff support as specified in the IP shall be implemented as written.

(e) Staffing ratios specified in the IP shall be implemented as written.

[ (d) ] (f) An individual may not be left unsupervised solely for the convenience of the home or the staff.

PROGRAM

§ 6400.122. Development of the [ IPP ] IP.

[ (a) An IPP shall be developed for each individual, based on the individual assessment, within 60 calendar days of the individual's admission date. ] For individuals without a supports coordinator, the following apply:

(1) The program specialist shall prepare an IP for each individual based upon the individual's assessment information.

(2) The program specialist shall complete the IP within 60 days after the individual's admission date.

[ (b) The IPP ] (3) The IP shall be developed by [ an interdisciplinary ] the individual's planning team.

[ (c) ] (4) Members of the [ interdisciplinary ] individual's planning team at a minimum shall include the individual, [ the individual's direct care staff, ] the program specialist, [ the individual's parent, guardian or advocate, if appropriate, ] direct staff persons who work with the individual, and if applicable and appropriate, the individual's parent, guardian or advocate, [ the county case manager if the individual is funded through the county mental retardation program, ] the program specialist for the individual's day program, and other specialists, such as medical, nursing, behavior management, speech, occupational, or physical therapy specialists [ if appropriate for the individual's special needs ].

(5) The program specialist shall send invitations to each planning team member for each IP development meeting.

(6) The program specialist shall maintain a copy of the invitation and attendance sheet with the IP in the individual's file.

[ (d) ] (7) At least three members of the [ interdisciplinary ] individual's planning team, in addition to the individual if the individual chooses to attend, shall be present at the [ interdisciplinary ] individual's planning team meeting at which the [ IPP ] IP is developed.

[ (e) ] (8) Members of the [ interdisciplinary ] individual's planning team who attend the meeting to develop the [ IPP ] IP shall sign and date the [ IPP ] IP attendance sheet to indicate participation.

(9) The IP shall be reviewed and updated by the planning team annually, or more frequently if the individual's needs change.

(10) The program specialist shall send a copy of the attendance sheet and the IP to each member of the planning team unless the member does not want a copy.

(11) If a member of the individual's planning team denies a copy of the IP or attendance sheet, the program specialist shall maintain a copy of the written denial in the individual's record.

§ 6400.123. Review [ , revision and rewrite ] of the [ IPP ] IP.

(a) [ A review of each individual's progress on the IPP and a revision of the IPP, if necessary, shall be completed or coordinated by the program specialist at least every 3 months.

(b) The IPP shall be revised in accordance with subsection (a) if there has been no progress on a goal, if a goal is no longer appropriate or if a goal needs to be added.

(c) The IPP shall be reviewed and rewritten by the interdisciplinary team at least annually.

(d) At least three members of the interdisciplinary team, in addition to the individual if the individual chooses to attend, shall be present at the annual interdisciplinary team meeting at which the IPP is reviewed and rewritten.

(e) Members of the interdisciplinary team who attend the meeting to rewrite the annual IPP shall sign and date the new IPP.

(f) The IPP shall be discussed with, dated by and signed by the individual, the individual's parent, guardian or advocate if appropriate and the program specialist after each 3-month review and annual rewrite of the IPP. ]

A review of each individual's progress on the IP shall be completed by the program specialist, and the individual and, if appropriate, the individual's parent, guardian or advocate, every 3 months, or more frequently if the individual's needs change.

(b) A revision of the IP, if necessary, shall be communicated to the supports coordinator, individual and, if appropriate, the individual's parent, guardian or advocate.

(c) The IP shall be revised if any of the following occur:

- (1) There has been no progress on an outcome.
- (2) An outcome is no longer appropriate.
- (3) An outcome needs to be added.

§ 6400.124. Participation in the development of the [ IPP ] IP.

[ The individual's parent, guardian or advocate if appropriate and the county case manager if the individual is funded through the county mental retardation program shall be invited, in writing, to participate in the initial development and the an-

nual rewrite of the IPP. A copy of the written invitations shall be kept. ]

(a) The program specialist shall provide assessment information for the development and revision of the IP.

(b) The program specialist shall participate in the development and revision of the IP.

§ 6400.125. Content of the [ IPP ] IP.

[ An IPP shall include:

(1) The goals for the individual in specific areas of growth and development.

(2) An evaluation of the individual's skill level for each goal.

(3) Monthly documentation of the individual's progress on each goal.

(4) A plan for the individual to participate in community life.

(5) Specific activities and services that meet the needs of the individual.

(6) A program and schedule for allowing the individual to be without direct staff supervision for specific periods of time, aimed at achieving a greater level of independence, if the individual's assessment states the individual may be without direct supervision.

(7) A planned program to address the social, emotional and environmental needs of the individual, if a medication is prescribed to treat maladaptive behavior. ]

(a) For individuals with a supports coordinator, the program specialist shall review the IP for the following:

(1) Outcomes addressing the individual's needs.

(2) Specific activities and services that reflect the individual's needs, interests and personal goals.

(3) Time frames for expected completion of outcomes.

(4) An evaluation of the individual's skill level for each outcome.

(5) A program and schedule outlining specified periods of time for the individual to be without direct supervision, aimed at achieving a greater level of independence, if the absence of direct supervision is consistent with the individual's assessment.

(6) Method of evaluation used to determine the progress towards each outcome.

(7) A program to address the social, emotional and environmental needs of the individual, if medication is prescribed to treat maladaptive behavior.

(8) A program to address the reduction of a restrictive procedure, if restrictive procedures are used in response to a maladaptive behavior.

(b) The program specialist shall document missing or incomplete items from the IP.

(c) The program specialist shall report missing or incomplete items from the IP in writing to the supports coordinator.

(d) For individuals without a supports coordinator, the program specialist shall prepare the IP including the items in subsection (a)(1)—(8).

§ 6400.126. Implementation of the [ IPP ] IP.

[ An IPP ] Each IP shall be implemented as written.

§ 6400.127. Copies of the [ IPP ] IP.

(a) A copy of [ IPPs ] the IP and [ adjustments ] revisions made during reviews shall be kept in the individual's record.

(b) The program specialist shall send a written summary of each 3-month review to the supports coordinator, individual and, if appropriate, the individual's parent, guardian or advocate, within 30 days after the completion of the review.

(c) If the individual, or the individual's parent, guardian or advocate, denies a copy of a written summary, the program specialist shall maintain the signed written denial.

(d) \* \* \*

MEDICATIONS

§ 6400.163. Use of prescription medications.

\* \* \* \* \*

(b) If a medication is prescribed to treat maladaptive behavior, there shall be a [ planned ] program [ as part of the IPP ] to address the social, emotional and environmental needs of the individual related to the maladaptive behavior as part of the IP.

\* \* \* \* \*

INDIVIDUAL RECORDS

§ 6400.213. Content of records.

Each individual's record [ shall ] must include:

\* \* \* \* \*

(7) [ IPPs ] IP.

\* \* \* \* \*

CHAPTER 6500. FAMILY LIVING HOMES

GENERAL PROVISIONS

§ 6500.4. Definitions.

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

\* \* \* \* \*

[ IPP—Individual program plan. ]

IP—Individual plan—The form provided by the Department which identifies services and supports needed and used by an individual.

\* \* \* \* \*

Supports coordinator—The individual responsible for case management functions.

STAFFING

§ 6500.43. Family living specialist.

\* \* \* \* \*

[ (d) A family living specialist shall be responsible for the program at the home, including the following:

(1) Supervision and evaluation of services provided for the individual.

(2) Coordination of support services for the family.

(3) Completion or coordination of individual assessments.

(4) Development, review, update and revision of IPPs.

(5) Ensurance of the implementation of IPPs. ]

(d) The family living specialist shall be responsible for the following:

(1) Coordinating and completing individual assessments.

(2) Coordinating the training for family members.

(3) Participating in the development of the IP.

(4) Attending the IP development meetings.

(5) Providing completed assessment and other relevant information for the development of the IP prior to the planning meetings to the supports coordinator, individual and, if appropriate, the individual's parent, guardian or advocate. The family living specialist shall send this information within 30 days following the receipt of notification of the planning meeting.

(6) Reviewing the IP for content accuracy.

(i) Content discrepancies shall be communicated in writing to the supports coordinator.

(ii) Written documentation of content discrepancy communications shall be maintained in the individual's record.

(7) Ensuring the implementation of IP outcomes.

(8) Monitoring services provided for the individual.

(9) Orienting the family on the content of the IP.

(10) Ensuring monthly documentation of the individual's participation progress for IP outcomes.

(11) Providing quarterly documentation of the individual's participation and progress for IP outcomes to the supports coordinator, individual and, if appropriate, the individual's parent, guardian or advocate.

(12) Informing the individual and, if appropriate, the individual's parent, guardian or advocate of the option not to receive a copy of the assessment or quarterly documentation.

(13) Maintaining documentation of an individual's or the individual's parent, guardian or advocate's request denying a copy of assessment or the quarterly assessment.

(14) Documenting and reporting changes in the individual's needs, interests or personal goals to the supports coordinator and, if appropriate, the individual's parent, guardian or advocate.

(15) Meeting with the individual at his home once a month or more frequently as indicated by the individual's IP.

(e) If the individual does not have an assigned supports coordinator, the family living specialist shall coordinate the development of the IP.

(f) If the individual does not have an assigned supports coordinator, the family living specialist shall provide the individual and, if appropriate, the individual's parent, guardian or advocate with a copy of the IP and attendance sheet.

(1) The individual or the individual's parent, guardian or advocate may decline in writing to receive copies of the IP or attendance sheet.

(2) The program specialist shall maintain a copy the written request.

[ (e) ] (g) \* \* \*

\* \* \* \* \*

§ 6500.44. Supervision.

(a) An individual may not be left unsupervised with a person who is not 18 years of age or older, unless the absence of direct supervision is consistent with the individual's assessment and is part of the [ IPP ] IP aimed at achieving semi-independence.

\* \* \* \* \*

PROGRAM

§ 6500.112. Development of the [ IPP ] IP.

[ (a) An IPP shall be developed for each individual, based in the individual's assessment, within 3 months after the individual lives in the home.

(b) The IPP shall be developed by the family living specialist in conjunction with the individual and the family.

(c) The family living specialist and the family members who assisted in developing the IPP shall sign and date the IPP. ]

For individuals without a supports coordinator, the following apply:

(1) The family living specialist shall prepare an IP for each individual based upon the individual's assessment information.

(2) The family living specialist shall complete the IP within 90 days after the individual lives in the home.

(3) The IP shall be developed by the individual's planning team.

(4) Members of the individual's planning team at a minimum shall include the individual, the family and, if applicable and appropriate, the individual's parent, guardian or advocate, the program specialist for the individual's day service, and other specialists, such as medical, nursing, behavior management, speech, occupational or physical therapy specialists.

(5) The family living specialist shall send invitations to each planning team member for each IP development meeting.

(6) The family living specialist shall maintain a copy of the invitation and attendance sheet with the IP in the individual's file.

(7) Members of the individual's planning team who attend the meeting to develop the IP shall sign and date the IP attendance sheet to indicate participation.

(8) The IP shall be reviewed and updated by the planning team annually, or more frequently if the individual's needs change.

(9) The family living specialist shall send a copy of the attendance sheet and the IP to each member of the planning team unless the member does not want a copy.

(10) If a member of the individual's planning team denies a copy of the IP or attendance sheet, the program specialist shall maintain a copy of the written denial in the individual's record.

§ 6500.113. Review[, revision and rewrite] of the [IPP] IP.

(a) [The IPP shall be reviewed and revised if necessary, by the family living specialist in conjunction with the individual and the family at least every 3 months.

(b) The IPP shall be revised in accordance with subsection (a) if there has been no progress on a goal, if a goal is no longer appropriate or if a goal needs to be added.

(c) The IPP shall be reviewed and rewritten by the family living specialist in conjunction with the individual and the family at least every 12 months.

(d) The IPP shall be discussed with, dated by and signed by the individual, the individual's parent, guardian or advocate if appropriate, the family living specialist and the family members who assisted in revising or rewriting the IPP after each 3 month review and annual rewrite of the IPP.]

A review of each individual's progress on the IP shall be completed by the family living specialist in conjunction with the individual, the family and, if appropriate, the individual's parent, guardian or advocate every 3 months, or more frequently if the individual's needs change.

(b) A revision of the IP, if necessary, shall be communicated to the supports coordinator, family, individual and, if appropriate, the individual's parent, guardian or advocate.

(c) The IP shall be revised if any of the following occur:

- (1) There has been no progress on an outcome.
- (2) An outcome is no longer appropriate.
- (3) An outcome needs to be added.

§ 6500.114. Participation in the development of the [IPP] IP.

[The individual's parent, guardian or advocate if appropriate and the county case manager if the individual is funded through the county mental retardation program shall be invited, in writing, to participate in the initial development and the annual rewrite of the IPP. A copy of the written invitations shall be kept.]

(a) The family living specialist shall provide assessment information for the development and revision of the IP.

(b) The family living specialist shall participate in the development and revision of the IP.

§ 6500.115. Content of the [IPP] IP.

[Each IPP shall include:

(1) Goals for the individual in specific areas of growth and development.

(2) An evaluation of the individual's skill level for each goal.

(3) Monthly documentation of the individual's progress on each goal.

(4) A plan for the individual to participate in community and family life.

(5) Specific activities and services that meet the needs of the individual.

(6) A program and schedule for allowing the individual to be without direct supervision for specific periods of time, aimed at achieving a greater level of independence, if the individual's assessment states the individual may be without direct supervision.

(7) A planned program to address the social, emotional and environmental needs of the individual, if a medication is prescribed to treat maladaptive behavior.]

(a) For individuals with a supports coordinator, the family living specialist shall review the IP for the following items.

(1) Outcomes addressing the individual's needs.

(2) Specific activities and services that reflect the individual's needs, interests and personal goals.

(3) Time frames for expected completion of outcomes.

(4) An evaluation of the individual's skill level for each outcome.

(5) A program for the individual to participate in community life activities reflecting the individual's interests.

(6) A program and schedule outlining specified periods of time for the individual to be without direct supervision, aimed at achieving a greater level of independence, if the absence of direct supervision is consistent with the individual's assessment.

(7) A program to address the social and emotional needs of the individual, if medication is prescribed to treat maladaptive behavior.

(8) A program to address the reduction of a restrictive procedure, if restrictive procedures are used in response to maladaptive behavior.

(b) The family living specialist shall document missing or incomplete items from the IP.

(c) The family living specialist shall report missing or incomplete items from the IP in writing to the supports coordinator.

(d) For individuals without a supports coordinator, the family living specialist shall prepare the IP including the items in subsection (a)(1)—(8).

§ 6500.116. Implementation of the [ IPP ] IP.

The [ IPP ] IP shall be implemented as written.

§ 6500.117. Copies of the [ IPP ] IP.

(a) A copy of all [ IPPs ] IPs and revisions shall be kept in the individual's record.

(b) [ The individual, the individual's parent, guardian or advocate, if appropriate, and the county case manager if the individual is funded through the county mental retardation program, and the individual's day service facility shall be provided a copy of all IPPs. Documentation of transmittal of each IPP shall be kept. ]

The family living specialist will send a written summary of each 3-month review to the supports coordinator, individual and, if appropriate, the individual's parent, guardian or advocate within 30 days after the completion of the review.

(c) If the individual or the individual's parent, guardian or advocate denies a copy of a written summary, the family living specialist shall maintain the signed written denial.

MEDICATIONS

§ 6500.133. Use of prescription medications.

\* \* \* \* \*

(b) If a medication is prescribed to treat maladaptive behavior, there shall be a [ planned ] program [ as part of the IPP ] to address the social, emotional and environmental needs of the individual related to the maladaptive behavior as part of the IP.

\* \* \* \* \*

INDIVIDUAL RECORDS

§ 6500.182. Individual records.

\* \* \* \* \*

(c) Each individual's record [ shall ] must include:

\* \* \* \* \*

(6) [ IPPs ] IP.

\* \* \* \* \*

[Pa.B. Doc. No. 08-788. Filed for public inspection April 25, 2008, 9:00 a.m.]

INSURANCE DEPARTMENT

[ 31 PA. CODE CH. 84b ]

Actuarial Opinion and Memorandum

The Insurance Department (Department) proposes to amend Chapter 84b (relating to actuarial opinion and memorandum) to read as set forth in Annex A. The proposed rulemaking is made under the authority of sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P. S. §§ 66, 186, 411 and 412) and section 301 of The Insurance Department Act (act) (40 P. S. § 71).

Purpose

The purpose of the proposed rulemaking is to update Chapter 84b to include amendments made by the Na-

tional Association of Insurance Commissioners (NAIC) to Model Regulation 822, entitled "Actuarial Opinion and Memorandum Regulation." That regulation requires all life insurance companies and fraternal benefit societies to submit actuarial opinions based on an asset adequacy analysis, commonly known as "Section 8 opinions." Several of these changes are required for the Department to maintain accreditation by the NAIC beginning in 2009.

A copy of the copyrighted NAIC model regulation was provided to the Legislative Standing Committees, the Independent Regulatory Review Commission (IRRC), the Governor's Office of Policy and Planning, the Governor's Office of General Counsel and the Attorney General to assist in their analysis of this proposed rulemaking. Copies of NAIC model regulations are available to the general public by contacting the NAIC.

Explanation of Regulatory Requirements

The following is a description of the changes contained in the proposed rulemaking:

Section 84b.1 (relating to purpose) is being amended to add reference to supporting memoranda and recognize the regulation's additional purpose to provide guidance on the meaning of adequacy of reserves.

Section 84b.2 (relating to applicability) is being amended to reflect that the regulation will be applied in a manner to recognize an appointed actuary's professional judgment in performing duties specified by the regulation while retaining the Commissioner's authority to require specific methods of actuarial analysis and assumptions when necessary to ensure adequacy of reserves.

Section 84.3 (relating to scope) is being amended to eliminate the references to companies that are exempted from performing an asset adequacy analysis.

Section 84b.4 (relating to definitions) is being amended to modify definitions to reflect the elimination of the exemption from the performance of an asset adequacy analysis, change references to the sections of the chapter in accordance with the elimination, delete definitions no longer necessary because references in the regulation have been deleted, and make other modifications as a matter of form.

Section 84b.5 (relating to general requirements) is being amended to reflect the elimination of the exemption from the performance of an asset adequacy analysis. In addition, changes are proposed to clarify that the actuarial opinion applies to both directly issued and assumed business, and to replace outdated annual statement exhibit number references with descriptive language.

Sections 84b.6 and 84b.7 (relating to required opinions; and statement of actuarial opinion not including an asset adequacy analysis) are being rescinded to comply with amendments made to the NAIC model regulation reflecting the requirement that one type of opinion is to be filed for all companies except for companies doing business in one state.

Section 84b.8 (relating to statement of actuarial opinion based on an asset adequacy analysis) is being revised to conform with IRRC standards, to eliminate the requirement that certain statements be included in the actuarial memorandum verbatim by permitting actuarial opinions to contain statements that comply with the general regulatory requirements. Changes are also proposed to simplify and clarify the requirements and as a matter of form, and to reflect where statements may be omitted, at the Commissioner's discretion, for a company domiciled and doing business in this Commonwealth only. Section

84b.8 is also being revised to remove the table from the body of the regulation. This table will be made readily available on the Department's website.

Section 84b.9 (relating to description of actuarial memorandum including an asset adequacy analysis) is being revised to comply with the NAIC model regulation by requiring a regulatory asset adequacy issues summary to be submitted each year, specifying the contents of the summary, and specifying the information and data required in the actuarial memorandum. Changes are also being proposed to correct references to sections which are being amended and to the heading of the section to conform to the contents therein.

Section 84b.10 (relating to additional considerations for analysis) is being rescinded to comply with the NAIC model regulation by deleting aggregation, allocation and interest scenario requirements concerning an asset adequacy analysis.

Section 84b.11 (relating to insurance company disciplinary action) is being revised to correct references to the applicable section of law referenced.

#### *Affected Parties*

The proposed rulemaking will apply to life insurance companies and fraternal benefit societies doing business in this Commonwealth.

#### *Fiscal Impact*

#### *State Government*

There will be no increase in cost to the Department as a result of the adoption of the proposed amendment to Chapter 84b. As part of its solvency monitoring responsibilities, the Department currently reviews statements of actuarial opinion and supporting memoranda. Thus, this proposed rulemaking will not require any additional staff time or resources to perform the analysis.

#### *General Public*

Since the proposed rulemaking concerns the solvency requirements applied to insurers, the public will benefit from a financially sound insurance industry that has the ability to fulfill its contractual obligations under life insurance policies.

#### *Political Subdivisions*

The proposed rulemaking will not impose additional costs on political subdivisions. However, because the proposed rulemaking promotes stability in this Commonwealth's insurance industry, political subdivisions' tax revenues would benefit as a result of fewer insurer insolvencies. Fewer insolvencies would result in less unemployment and would also increase incentives for insurers to market new insurance products in this Commonwealth.

#### *Private Sector*

The proposed rulemaking may impose additional costs on insurers that are currently exempt from submitting an actuarial opinion based on an asset adequacy analysis. The amount of the additional cost will depend on the type and extent of the asset adequacy analysis that the insurer's actuary believes is necessary to submit an actuarial opinion. The rulemaking provides the actuary flexibility to use professional judgment in performing the analysis.

#### *Paperwork*

The adoption of this proposed rulemaking would not impose additional paperwork on the Department. Insur-

ers that currently do not prepare an actuarial memorandum because the actuarial opinion is not based on an asset adequacy analysis will be required to prepare an actuarial memorandum under the proposed rulemaking. In addition, insurers are required under the proposed rulemaking to submit a regulatory asset adequacy issues summary each year. The amount of additional paperwork in preparing the memorandum and summary will depend on the type and extent of the asset adequacy analysis performed.

#### *Effectiveness/Sunset Date*

The proposed rulemaking will become effective January 1, 2009. The Department continues to monitor the effectiveness of regulations on a triennial basis; therefore, no sunset date has been assigned.

#### *Contact Person*

Questions or comments regarding the proposed rulemaking may be addressed in writing to Peter J. Salvatore, Regulatory Coordinator, Insurance Department, 1326 Strawberry Square, Harrisburg, PA 17120, within 30 days following the publication of this notice in the *Pennsylvania Bulletin*. Questions and comments may also be e-mailed to psalvatore@state.pa.us or faxed to (717) 705-3873.

Under the Regulatory Review Act (act) (71 P. S. §§ 745.1—745.15), the Department is required to write to all commentators, requesting whether or not they wish to receive a copy of the final-form rulemaking. To better serve our stakeholders, the Department has made a determination that all commentators will receive a copy of the final-form rulemaking when it is made available to IRRC and the legislative standing committees.

#### *Regulatory Review*

Under section 5(a) of the act (71 P. S. § 745.5(a)), on April 16, 2008, the Department submitted a copy of this proposed rulemaking to IRRC and to the Chairpersons of the Senate Banking and Insurance Committee and the House Insurance Committee. In addition to the submitted proposed rulemaking, the Department has, as required by the act, provided IRRC and the committees with a copy of a detailed Regulatory Analysis Form prepared by the Department. A copy of that material is available to the public upon request.

IRRC will notify the Department of any objections to any portion of the proposed rulemaking within 30 days of the close of the public comment period. The notification shall specify the regulatory review criteria that have not been met by that portion. The act specifies detailed procedures for the Department, the Governor, and the General Assembly to review these objections before final publication of the regulations.

JOEL SCOTT ARIO,  
*Acting Insurance Commissioner*

**Fiscal Note:** 11-235. No fiscal impact; (8) recommends adoption.

#### **Annex A**

#### **TITLE 31. INSURANCE**

#### **PART VI. LIFE INSURANCE**

#### **CHAPTER 84b. ACTUARIAL OPINION AND MEMORANDUM.**

#### **§ 84b.1. Purpose.**

The purpose of this chapter is to promulgate [ **standards** ] requirements for statements of actuarial opin-

ions and for supporting memoranda as required by section 301 [ (f) ](g) of the act (40 P. S. § 71 [ (f) ](g) and to provide guidance on the meaning of adequacy of reserves.

§ 84b.2. Applicability.

This chapter applies to life insurance companies and fraternal benefit societies doing business in this Commonwealth. This chapter shall be applied in a manner that allows the appointed actuary to utilize professional judgment in performing the asset adequacy analysis and developing the actuarial opinion and supporting memoranda, consistent with relevant actuarial standards of practice. However, the Commissioner will have the authority to require specific methods of actuarial analysis and actuarial assumptions when, in the Commissioner's judgment, these specifications are necessary for an acceptable opinion to be rendered relative to the adequacy of reserves and related items.

§ 84b.3. Scope.

[ (a) Types of opinions. Except with respect to companies which are exempted under § 84b.6 (relating to required opinions), a statement of opinion on the adequacy of the reserves and related actuarial items based on an asset adequacy analysis in accordance with § 84b.8 (relating to statement of actuarial opinion based on asset adequacy analysis), and a memorandum in support thereof in accordance with § 84b.9 (relating to description of actuarial memorandum including an asset adequacy analysis) shall be required each year. A company so exempted shall file a statement of actuarial opinion under § 84b.7 (relating to statement of actuarial opinion not including an asset adequacy analysis).

(b) Filing upon request. The Commissioner may require a company otherwise exempt under this chapter to submit a statement of actuarial opinion and to prepare a memorandum in support thereof in accordance with §§ 84b.8 and 84b.9 if, in the opinion of the Commissioner, an asset adequacy analysis is necessary with respect to the company. In forming the opinion, the Commissioner will take into consideration issues such as the nature of the business insured, the type of assets owned by the company and the company's financial ratios determined in accordance with § 84b.6(c). ]

A statement of opinion on the adequacy of the reserves and related actuarial items based on an asset adequacy analysis in accordance with § 84b.8 (relating to statement of actuarial opinion based on asset adequacy analysis), and a memorandum in support thereof in accordance with § 84b.9 (relating to description of actuarial memorandum including an asset adequacy analysis and regulatory asset adequacy issues summary) shall be required each year.

§ 84b.4. Definitions.

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

\* \* \* \* \*

Actuarial opinion—[ With respect to §§ 84b.8 , 84b.9 and 84b.10 (relating to statement of actuarial opinion based on asset adequacy analysis; description of

actuarial memorandum including an asset adequacy analysis; and additional considerations for analysis), the ] The opinion of an appointed actuary regarding the adequacy of the reserves and related actuarial items based on an asset adequacy [ test ] analysis in accordance with § 84b.8 (relating to statement of actuarial opinion based on an asset adequacy analysis) and with applicable actuarial standards. [ With respect to § 84b.7 (relating to statement of actuarial opinion not including an asset adequacy analysis), the opinion of an appointed actuary regarding the calculation of reserves and related items, in accordance with § 84b.7 and with actuarial standards which specifically relate to this opinion. ]

\* \* \* \* \*

Appointed actuary—A qualified actuary who is appointed or retained either directly by the board of directors or by the authority of the board of directors through an executive officer of the company, provided that the executive officer is not the qualified actuary of the company, to prepare the statement of actuarial opinion and supporting memorandum as required by [ § ]301 [ (f) ](g) of the act (40 P. S. § 71 [ (f) ](g)).

Asset adequacy analysis—An analysis that meets the standards and other requirements referred to in § 84b.5(d) (relating to general requirements). [ It may take many forms, including cash flow testing, sensitivity testing or applications of risk theory. ]

\* \* \* \* \*

[ First priority company—A company designated by the NAIC as a company which should be assigned a first priority in the scheduling of a state's company financial reviews. ]

\* \* \* \* \*

[ Noninvestment grade bonds—Bonds designated as classes 3, 4, 5 or 6 by the NAIC Securities Valuation Office, or a successor thereto. ]

\* \* \* \* \*

[ Second priority company—A company designated by the NAIC as a company which should be assigned a second priority in the scheduling of a state's company financial reviews. ]

§ 84b.5. General requirements.

(a) Submission of statement of actuarial opinion.

(1) A company shall include on or attach to Page 1 of the annual statement for each year [ beginning with 1994 ], the statement of an appointed actuary, entitled "Statement of Actuarial Opinion," setting forth an opinion relating to reserves and related actuarial items held in support of policies and contracts, in accordance with § 84b.8 (relating to statement of actuarial opinion based on asset adequacy analysis). [ A company exempted under § 84b.6 (relating to required opinions) from submitting a statement of actuarial opinion in accordance with § 84b.8 shall include on or attach to Page 1 of the annual statement a statement of actuarial opinion rendered by an appointed actuary in accordance with § 84b.7 (relating to statement of actuarial opinion not including an asset adequacy analysis). ]

(2) [ If in the previous year a company provided a statement of actuarial opinion in accordance with § 84b.7, and in the current year fails to meet the exemption criteria of § 84b.6(c)(1), (2) or (5), the statement of actuarial opinion in accordance with § 84b.8 is not required until August 1 following the date of the annual statement. In this instance, the company shall provide a statement of actuarial opinion in accordance with § 84b.7 with appropriate qualification noting the intent to subsequently provide a statement of actuarial opinion in accordance with § 84b.8.

(3) In the case of a statement of actuarial opinion required to be submitted by a foreign or alien company, the Commissioner may accept the statement of actuarial opinion filed by the company with the insurance supervisory regulator of another state if the Commissioner determines that the opinion reasonably meets the requirements applicable to a company domiciled in this Commonwealth.

(4) ] Upon written request by the company, the Commissioner may grant an extension of the date for submission of the statement of actuarial opinion.

(b) *Qualified actuary requirements.* A "qualified actuary" is an individual who:

\* \* \* \* \*

(5) Has not failed to notify the Commissioner of any action taken by [ a commissioner ] the insurance regulatory authority of another state similar to that under paragraph (4).

(c) *Appointed actuary notification.* The company shall give the Commissioner written notice of the name, title—and, in the case of a consulting actuary, the name of the firm—and the manner of appointment or retention of each person appointed or retained by the company as an appointed actuary and shall state in the notice that the person meets the requirements in subsection (b). Once notice is furnished, no further notice is required with respect to this person, but the company shall give the Commissioner written notice if the actuary ceases to be appointed or retained as an appointed actuary or to meet the requirements in subsection (b). The notice of the appointment or termination of the appointment shall be provided to the Commissioner by [ January 30, 1995, or ] the date of the appointment or termination of the appointment [ unless previously provided to the Commissioner ]. The notice of termination [ shall ] must disclose the reasons for termination. Additionally, the terminated actuary shall furnish to the Commissioner and to the company a description of valuation reserve issues that the actuary considered as material at the time of termination or a statement that no material issues exist. The description [ shall ] must include issues concerning valuation requirements, reserve adequacy, asset adequacy analysis assumptions or methodology and internal controls on the valuation system.

(d) *Standards for asset adequacy analysis.* The asset adequacy analysis required by this chapter [ shall ] must:

\* \* \* \* \*

(e) *Liabilities to be covered.*

(1) Under the authority of section 301 [ (f)(4) ](g)(5)(B) of the act (40 P. S. § 71 [ (f)(4) ](g)(5)(B)), the statement

of actuarial opinion [ shall ] must apply to reserves and related actuarial items associated with all in force business on the statement date, whether directly issued or assumed, regardless of when or where issued (for example, [ reserves of Exhibits 8, 9 and 10, and claim liabilities of Exhibit 11, Part I of the annual statement and equivalent items of the separate account annual statement or statements) ] aggregate reserve for insurance and annuity contracts, liability for deposit-type contracts, liability for contract claims and equivalent items in the separate account statement or statements).

\* \* \* \* \*

(*Editor's Note:* As part of this proposed rulemaking, the Department is proposing to rescind the §§ 84b.6 and 84b.7, which appear in 31 Pa. Code pages 84b.5—84b-12, serial pages (229447)—(22945).)

§ 84b.6. [ Required opinions ] (Reserved).

§ 84b.7. [ Statement of actuarial opinion not including an asset adequacy analysis ] (Reserved).

§ 84b.8. Statement of actuarial opinion based on an asset adequacy analysis.

(a) [ *General description.* The statement of actuarial opinion submitted in accordance with this section shall consist of:

(1) An opening paragraph as provided in subsection (b)(1) identifying the appointed actuary and the individual's qualifications.

(2) A scope paragraph as provided in subsection (b)(2) identifying the subjects on which an opinion is to be expressed and describing the scope of the appointed actuary's work, including a tabulation delineating the reserves and related actuarial items which have been analyzed for asset adequacy and the method of analysis, and identifying the reserves and related actuarial items covered by the opinion which have not been so analyzed.

(3) A reliance paragraph as provided in subparagraphs (i)—(iii):

(i) If the appointed actuary has deferred to other experts in developing data, procedures or assumptions (for example, anticipated cash flows from currently owned assets, including variation in cash flows according to economic scenarios), the reliance paragraph should include a statement as provided in subsection (b)(3)(i)(A) or (B), supported by a statement of each expert in the form prescribed by subsection (e).

(ii) If the appointed actuary has examined the underlying asset and liability records, the reliance paragraph should include a statement as provided in subsection (b)(3)(ii).

(iii) If the appointed actuary has not examined the underlying records, but has relied upon listings and summaries of policies in force or asset records prepared by the company or a third party, the reliance paragraph should include a statement as provided in subsection (b)(3)(iii)(A) or (B).

(4) An opinion paragraph as provided in subsection (b)(4) expressing the appointed actuary's opinion with respect to the adequacy of the supporting assets to mature the liabilities.



(5) One or more additional paragraphs will be needed in individual company cases as follows:

(i) If the appointed actuary considers it necessary to state a qualification of the opinion.

(ii) If the appointed actuary must disclose the method of aggregation for reserves of different products or lines of business for asset adequacy analysis.

(iii) If the appointed actuary must disclose reliance upon any portion of the assets supporting the Asset Valuation Reserve (AVR) or other mandatory or voluntary statement reserves for asset adequacy analysis.

(iv) If the appointed actuary must disclose an inconsistency in the method of asset allocation used at the prior opinion date with that used for this opinion.

(v) If there is an inconsistency in the method of analysis used at the prior opinion date with that used for this opinion.

(vi) If the appointed actuary must disclose whether additional reserves of the prior opinion date are released as of this opinion date, and the extent of the release.

(vii) If the appointed actuary chooses to add a paragraph briefly describing the assumptions which form the basis for the actuarial opinion.

(b) *Recommended language.* The following paragraphs shall be included in the statement of actuarial opinion in accordance with this section. The language is that which in typical circumstances should be included in a statement of actuarial opinion. The language may be modified as needed to meet the circumstances of a particular case, but the appointed actuary shall use language which clearly expresses the individual's professional judgment. The opinion shall retain all pertinent aspects of the language provided in this subsection.

(1) The opening paragraph shall indicate the appointed actuary's relationship to the company and the individual's qualifications to sign the opinion.

(i) For a company actuary, the opening paragraph of the actuarial opinion shall include a statement such as follows:

"I, (name), am (title) of (insurance company name) and a member of the American Academy of Actuaries. I was appointed by, or by the authority of, the Board of Directors of said insurer to render this opinion as stated in the letter to the Commissioner dated (date). I meet the Academy qualification standards for rendering the opinion and am familiar with the valuation requirements applicable to life and health insurance companies."

(ii) For a consulting actuary, the opening paragraph of the actuarial opinion shall contain a statement such as follows:

"I, (name), a member of the American Academy of Actuaries, am associated with the firm of (name of consulting firm). I have been appointed by, or by the authority of, the Board of Directors of (name of company) to render this opinion as stated in the letter to the Commissioner dated (date). I meet the Academy qualification standards for rendering the

opinion and am familiar with the valuation requirements applicable to life and health insurance companies."

(2) The scope paragraph shall include a statement such as follows:

"I have examined the actuarial assumptions and actuarial methods used in determining reserves and related actuarial items listed below, as shown in the annual statement of the company, as prepared for filing with state regulatory officials, as of December 31, 19 (year). Those reserves and related actuarial items which have been subjected to asset adequacy analysis are tabulated as shown in the following table of Reserves and Liabilities."

(3) The reliance paragraph shall include a statement such as follows:

(i) If the appointed actuary has relied on other experts to develop certain portions of the analysis, the reliance paragraph shall include a statement such as either (A) or (B) as follows:

(A) "I have relied on (name), (title) for (such as, anticipated cash flows from currently owned assets, including variations in cash flows according to economic scenarios) and, as certified in the attached statement, . . ."

(B) "I have relied on personnel as cited in the supporting memorandum for certain critical aspects of the analysis in reference to the accompanying statement."

Such a statement of reliance on other experts shall be accompanied by a statement by each expert in the form prescribed by subsection (e).

(ii) If the appointed actuary has examined the underlying asset and liability records, the reliance paragraph shall also include a statement such as follows:

"My examination included such review of the actuarial assumptions and actuarial methods and of the underlying basic asset and liability records and such tests of the actuarial calculations as I considered necessary."

(iii) If the appointed actuary has not examined the underlying records, but has relied upon listings and summaries of policies in force or asset records prepared by the company or a third party, the reliance paragraph shall include a statement such as either clause (A) or clause (B) as follows:

(A) "I have relied upon listings and summaries (of policies and contracts, of asset records) prepared by (name and title of company officer certifying in-force records) as certified in the attached statement. In other respects my examination included such review of the actuarial assumptions and actuarial methods and such tests of the actuarial calculations as I considered necessary."

(B) "I have relied upon (name of accounting firm) for the substantial accuracy of the in-force records inventory and information concerning other liabilities, as certified in the attached statement. In other respects my examination included review of the actuarial assumptions and actuarial methods and tests of the actuarial calculations as I considered necessary."

Such a statement of reliance shall be accompanied by a statement by each person relied upon in the form prescribed by subsection (e).

(4) The opinion paragraph shall include a statement such as follows:

**“In my opinion the reserves and related actuarial items identified above:**

**Are computed in accordance with presently accepted actuarial standards consistently applied and are fairly stated, in accordance with sound actuarial principles;**

**Are based on actuarial assumptions which produce reserves at least as great as those called for in any contract provision as to reserve basis and method, and are in accordance with all other contract provisions;**

**Meet the requirements of the valuation law and regulations of the state of (state of domicile) and are at least as great as the minimum aggregate amounts required by the state in which this statement is filed.**

**Are computed on the basis of assumptions consistent with those used in computing the corresponding items in the annual statement of the preceding year-end, with any exceptions noted below;**

**Include provision for all reserves and related actuarial items which ought to be established.**

**The reserves and related actuarial items, when considered in light of the assets held by the com-**

**pany with respect to such reserves and related actuarial items including, but not limited to, the investment earnings on such assets, and the considerations anticipated to be received and retained under such policies and contracts, make adequate provision, according to presently accepted actuarial standards of practice, for the anticipated cash flows required by the contractual obligations and related expenses of the company.**

**The actuarial methods, considerations and analyses used in forming my opinion conform to the appropriate Standards of Practice as promulgated by the Actuarial Standards Board, which standards form the basis of this statement of opinion.**

**This opinion is updated annually as required by statute. To the best of my knowledge, there have been no material changes from the applicable date of the annual statement to the date of the rendering of this opinion which should be considered in reviewing this opinion.**

**or**

**The following material change(s) which occurred between the date of the statement for which this opinion is applicable and the date of this opinion should be considered in reviewing this opinion: (Describe the change or changes.)**

**Note: Choose one of the two immediately preceding paragraphs, whichever is applicable.**

Reserves and Liabilities					
Statement Item	Asset Adequacy Tested Amounts			Other Amount (3)	Total Amount (1)+(2)+(3) (4)
	Formula Reserves (1)	Additional Actuarial Reserves (a) (2)	Analysis Method (b)		
2 Supplementary Contracts Not Involving Life Contingencies (Page 3, Line 3)					
3 Dividend and Coupon Accumulations (Page 3, Line 5)					
Total (Exhibit 10)					
Exhibit 11 Part 1					
1 Life (Page 3, Line 4.1)					
2 Health (Page 3, Line 4.2)					
Total (Exhibit 11, Part 1)					
Separate Accounts (Page 3, Line 27)					
TOTAL RESERVES					

IMR (Page ___ Line ___)	
AVR (Page ___ Line ___)	(c)
Other Mandatory or Voluntary Reserves	(c)

NOTES:

- (a) The additional actuarial reserves are the reserves established under subsection 84b.5(e)(2).
- (b) The appointed actuary should indicate the method of analysis, determined in accordance with the standards for asset adequacy analysis referred to in subsection 84b.5(d), by means of symbols which should be defined in footnotes to the table.
- (c) Allocated amount.

Reserves and Liabilities					
Statement Item	Asset Adequacy Tested Amounts			Other Amount (3)	Total Amount (1)+(2)+(3) (4)
	Formula Reserves (1)	Additional Actuarial Reserves (a) (2)	Analysis Method (b)		
<b>Exhibit 8</b>					
A Life Insurance					
B Annuities					
C Supplementary Contracts Involving Life Contingencies					
D Accidental Death Benefit					
E Disability - Active					
F Disability - Disabled					
G Miscellaneous					
Total (Exhibit 8 Item 1, Page 3)					
<b>Exhibit 9</b>					
A Active Life Reserve					
B Claim Reserve					
Total (Exhibit 9 Item 2, Page 3)					
<b>Exhibit 10</b>					
1.1 Policyholder Premiums (Page 3, Line 10.1)					
1.2 Guaranteed Interest Contracts (Page 3, Line 10.2)					
1.3 Other Contract Deposit Funds (Page 3, Line 10.3)					

The impact of unanticipated events subsequent to the date of this opinion is beyond the scope of this opinion. The analysis of asset adequacy portion of this opinion should be viewed recognizing that the company's future experience may not follow all the assumptions used in the analysis.

\_\_\_\_\_  
Signature of Appointed Actuary

\_\_\_\_\_  
Address of Appointed Actuary

\_\_\_\_\_  
Telephone Number of Appointed Actuary”

(c) *Assumptions for new issues.* The adoption for new issues or new claims or other new liabilities of an actuarial assumption which differs from a corresponding assumption used for prior new issues or new claims or other new liabilities is not a change in actuarial assumptions within the meaning of subsection (b)(4).

(d) *Adverse opinions.* If the appointed actuary is unable to form an opinion, the appointed actuary shall refuse to issue a statement of actuarial opinion. If the appointed actuary's opinion is adverse or qualified, the appointed actuary shall issue an adverse or qualified actuarial opinion explicitly stating the reason for the opinion. This statement should follow the scope paragraph and precede the opinion paragraph.

(e) *Reliance on data furnished by other persons.* If the appointed actuary does not express an opinion as to the accuracy and completeness of the listings and summaries of policies in force or asset related information, or both, there shall be attached to the opinion the statement of a company officer or accounting firm who prepared the underlying data similar to either paragraph (1) or (2) or both paragraphs (1) and (2).

(1) “I (name of officer), (title), of (name of company or accounting firm), hereby affirm that the listings and summaries of policies and contracts in force as of December 31, 19 (year), and other liabilities prepared for and submitted to (name of appointed actuary) were prepared under my direction and, to the best of my knowledge and belief, are substantially accurate and complete.

\_\_\_\_\_  
Signature of the Officer of the Company or Accounting Firm

\_\_\_\_\_  
Address of the Officer of the Company or Accounting Firm

\_\_\_\_\_  
Telephone Number of the Officer of the Company or Accounting Firm”

(2) “I, (name of officer), (title) of (name of company, accounting firm, or security analyst), hereby affirm that the listings, summaries and analyses relating to data prepared for and submitted to (name of appointed actuary) in support of the asset related aspects of the opinion were prepared under my direction and, to the best of my knowledge and belief, are substantially accurate and complete.

\_\_\_\_\_  
Signature of the Officer of the Company, Accounting Firm or the Security Analyst

\_\_\_\_\_  
Address of the Officer of the Company, Accounting Firm or the Security Analyst

\_\_\_\_\_  
Telephone Number of the Officer of the Company, Accounting Firm or the Security Analyst” ]

*General description.* The statement of actuarial opinion required under § 84b.5 (relating to general requirements) must consist of the following:

(1) An opening paragraph that meets the following requirements:

(i) Identifies the actuary's name and title.

(ii) Identifies the insurance company employing the actuary, or if a consulting actuary, the name of the firm with which the actuary is associated.

(iii) States that the actuary is a member of the American Academy of Actuaries (Academy) and that the actuary meets the Academy qualification standards for rendering the opinion.

(iv) States that the actuary was appointed by, or by the authority of, the board of directors of the insurer to render the opinion and is familiar with the valuation requirements applicable to life and health insurance companies.

(v) States the date of the notification letter sent to the Commissioner with respect to the appointment.

(2) A scope paragraph that meets the following requirements:

(i) Describes the extent of the appointed actuary's work.

(ii) Includes a tabulation that meets the following requirements:

(A) Reconciles the reserves and related actuarial items that are covered by the opinion to the annual statement of the company.

(B) Identifies the reserves and related actuarial items that have been analyzed for asset adequacy and the method of analysis.

(C) Identifies the reserves and related actuarial items that have not been analyzed for asset adequacy.

(D) Indicates, for each applicable annual statement item the formula reserves, additional actuarial reserves, analysis method, other amount, and total amount in a format consistent with the “Reserves and Liabilities” Table as adopted by the NAIC in the Actuarial Opinion and Memorandum Model Regulation No. 822.

(iii) Includes a statement that the actuary has examined the actuarial assumptions and actuarial methods used in determining reserves and related actuarial items that are included in the tabulation and reported in the annual statement of the company, as prepared for filing with state regulatory officials, as of December 31 of the relevant year.

(3) A reliance paragraph that meets the following requirements:

(i) Documents the appointed actuary's reliance on other experts to develop certain portions of the analysis in accordance with subsection (c) and

states that the actuary has reviewed the information relied upon for reasonableness.

(ii) If the appointed actuary has examined the underlying asset and liability records, includes the following statements:

(A) The examination included a review of the actuarial assumptions and actuarial methods and of the underlying basic asset and liability records and tests of the actuarial calculations, as considered necessary by the actuary.

(B) The actuary reconciled the underlying basic asset and liability records to the applicable exhibits and schedules of the company's current annual statement.

(iii) If the appointed actuary has not examined the underlying records, but has relied upon data (for example, listings and summaries of policies in force or asset records) prepared by the company, includes the following:

(A) Documentation of the reliance in accordance with subsection (c).

(B) A statement that, in forming the opinion on specified types of reserves, the actuary relied upon data prepared by a company officer certifying in force records or other data.

(C) The name and title of the company officer certifying in force records or other data.

(D) A statement confirming that the actuary evaluated that data for reasonableness and consistency and reconciled that data to the applicable exhibits and schedules of the company's current annual statement.

(E) A statement confirming that the actuary's examination included review of the actuarial assumptions and actuarial methods used and tests of calculations, as considered necessary by the actuary.

(4) An opinion paragraph that meets the following requirements:

(i) States that the reserves and related actuarial items identified in the tabulation:

(A) Are computed in accordance with presently accepted actuarial standards consistently applied and are fairly stated, in accordance with sound actuarial principles.

(B) Are based on actuarial assumptions that produce reserves at least as great as those called for in any contract provision as to reserve basis and method, and are in accordance with other contract provisions.

(C) Meet the requirements of the valuation law and regulations of the state of [ state of domicile ].

(D) Are computed on the basis of assumptions consistent with those used in computing the corresponding items in the annual statement of the preceding year-end, with any changes in actuarial assumptions noted as exceptions in a separate paragraph. The adoption for new issues or new claims or other new liabilities of an actuarial assumption that differs from a corresponding assumption used for prior new issues or new claims or other new liabilities is not a change in actuarial assumption within the meaning of this clause.

(E) Provide for all reserves and related actuarial items that ought to be established.

(ii) Includes a statement substantially similar to the following, except that the statement may be omitted, at the discretion of the Commissioner, for an opinion filed on behalf of a company doing business only in this Commonwealth:

"The reserves and related actuarial items, when considered in light of the assets held by the company with respect to such reserves and related actuarial items including, but not limited to, the investment earnings on such assets, and the considerations anticipated to be received and retained under such policies and contracts, make adequate provision, according to presently accepted actuarial standards of practice, for the anticipated cash flows required by the contractual obligations and related expenses of the company."

(iii) States that the actuarial methods, considerations and analyses used in forming the actuary's opinion conform to the appropriate Standards of Practice as promulgated by the Actuarial Standards Board, which standards form the basis of this statement of opinion.

(iv) Includes one of the following items, as applicable:

(A) A statement that the opinion is updated annually as required by statute, and to the best of the actuary's knowledge, there have been no material changes from the applicable date of the annual statement to the date of the rendering of the opinion that should be considered in reviewing the opinion.

(B) A description of the material changes that occurred between the date of the statement for which the opinion is applicable and the date of the opinion that should be considered in reviewing the opinion.

(v) States that the impact of unanticipated events subsequent to the date of the opinion is beyond the scope of the opinion.

(vi) States that the asset adequacy portion of the opinion should be viewed recognizing that the company's future experience may not follow all the assumptions used in the analysis.

(vii) Includes the date and signature, address and telephone number of the appointed actuary.

(5) One or more paragraphs addressing the following items to the extent applicable:

(i) Disclosure of any qualification of the opinion.

(ii) Disclosure of any inconsistency in the method of asset allocation used at the prior opinion date with that used for the opinion.

(iii) Disclosure of any inconsistency in the method of analysis used at the prior opinion date with that used for the opinion.

(iv) Identification of the existence and extent of additional actuarial reserves released subsequent to the prior opinion date.

(v) At the option of the appointed actuary, assumptions forming the basis for the actuarial opinion.

(b) *Adverse opinions.* If the appointed actuary is unable to form an opinion, the appointed actuary shall refuse to issue a statement of actuarial opinion. If the appointed actuary's opinion is adverse or qualified, the appointed actuary shall issue an adverse or qualified actuarial opinion explicitly stating the reason for the opinion. This statement should follow the scope paragraph and precede the opinion paragraph.

(c) *Reliance on information furnished by other persons.* If the appointed actuary relies upon other persons regarding the accuracy or completeness of any data underlying the actuarial opinion or appropriateness of any other information used by the appointed actuary in forming the actuarial opinion, the actuarial opinion must:

(1) Precisely identify the items subject to reliance and the persons relied upon.

(2) Include a signed, dated certification from each person upon whom the actuary is relying that includes the following:

(i) The name, title, company, address and telephone number of the person upon whom the actuary is relying.

(ii) The items on which the person is providing information.

(iii) A statement as to the accuracy, completeness or reasonableness, as applicable, of the items.

§ 84b.9. Description of actuarial memorandum including an asset adequacy analysis and regulatory asset adequacy issues summary.

(a) *General.*

(1) In accordance with section 301 [ (f)(3) ](g) of the act (40 P. S. § 71 [ (f)(3) ](g)), the appointed actuary shall prepare a memorandum to the company describing the analysis done in support of the opinion regarding the reserves [ under a § 84b.8 (relating to statement of actuarial opinion based on asset adequacy analysis) opinion ]. The memorandum shall be made available for examination by the Commissioner upon the Commissioner's request but will be returned to the company after examination and will not be considered a record of the Department or subject to automatic filing with the Commissioner.

\* \* \* \* \*

(4) In accordance with section 301(g) of the act, the appointed actuary shall prepare a regulatory asset adequacy issues summary, the contents of which are specified in this section. The regulatory asset adequacy issues summary shall be submitted by March 15 of the year following the year for which a statement of actuarial opinion based on asset adequacy is required. The regulatory asset adequacy issues summary shall be kept confidential to the same extent and under the same conditions as the actuarial memorandum.

(b) *Details of the memorandum section documenting asset adequacy analysis.* When an actuarial opinion [ under § 84b.8 ] is provided, the memorandum [ shall ] must demonstrate that the analysis has been done in accordance with the standards for asset adequacy referred to in § 84b.5(d) and additional standards under this chapter. It [ shall ] must specify the following:

(1) For reserves:

\* \* \* \* \*

(vi) Identification of any explicit or implied guarantees made by the general account in support of benefits provided through a separate account or under a separate account policy or contract and the methods used by the appointed actuary to provide for the guarantees in the asset adequacy analysis.

(vii) Documentation of assumptions, so that an actuary reviewing the actuarial memorandum could form a conclusion as to reasonableness, established for of the following:

- (A) Lapse rates (both base and excess).
- (B) Interest crediting rate strategy.
- (C) Mortality.
- (D) Policyholder dividend strategy.
- (E) Competitor or market interest rate.
- (F) Annuitization rates.
- (G) Commissions and expenses.
- (H) Morbidity.

(2) For assets:

\* \* \* \* \*

(vi) Documentation of assumptions, so that an actuary reviewing the actuarial memorandum could form a conclusion as to reasonableness, established for the following:

- (A) Default costs.
- (B) Bond call function.
- (C) Mortgage prepayment function.
- (D) Determining market value for assets sold due to disinvestments strategy.
- (E) Determining yield on assets acquired through the investment strategy.

(3) [ Analysis ] For the analysis basis:

\* \* \* \* \*

(v) Rationale for degree of rigor in analyzing different blocks of business including the level of materiality that was used in determining how rigorously to analyze different blocks of business.

(vi) Criteria for determining asset adequacy including the precise basis for determining if assets are adequate to cover reserves under moderately adverse conditions or other conditions as specified in relevant actuarial standards of practice.

(vii) [ Effect of Federal income taxes, reinsurance and other relevant factors ] Whether the impact of Federal Income Taxes was considered and the method of treating reinsurance in the asset adequacy analysis.

(4) Summary of [ results ] material changes in methods, procedures or assumptions from prior year's asset adequacy analysis.

(5) [ Conclusion ] Summary of results.

(6) Conclusions.

(c) *Details of the regulatory asset adequacy issues summary*

(1) The regulatory asset adequacy issues summary must include the following:

(i) Descriptions of the scenarios tested, including whether those scenarios are stochastic or deterministic, and the sensitivity testing done relative to those scenarios. If negative ending surplus results under certain tests in the aggregate, the actuary should describe those tests and the amount of additional reserve as of the valuation date which, if held, would eliminate the negative aggregate surplus values. Ending surplus values shall be determined by either extending the projection period until the in force and associated assets and liabilities at the end of the projection period are immaterial or by adjusting the surplus amount at the end of the projection period by an amount that appropriately estimates the value that can be reasonably be expected to arise from the assets and liabilities remaining in force.

(ii) The extent to which the appointed actuary uses assumptions in the asset adequacy analysis that are materially different than the assumptions used in the previous asset adequacy analysis.

(iii) The amount of reserves and the identity of the product lines that had been subjected to asset adequacy analysis in the prior opinion but were not subject to analysis for the current opinion.

(iv) Comments on any interim results that may be of significant concern to the appointed actuary.

(v) The methods used by the actuary to recognize the impact of reinsurance on the company's cash flows, including both assets and liabilities, under each of the scenarios tested.

(vi) Whether the actuary has been satisfied that all options whether explicit or embedded, in any asset or liability, including but not limited to those affecting cash flows embedded in fixed income securities, and equity-like features in any investments have been appropriately considered in the asset adequacy analysis.

(2) The regulatory asset adequacy issues summary must contain the name of the company for which the regulatory asset adequacy issues summary is being supplied and shall be signed and dated by the appointed actuary rendering the actuarial opinion.

(d) *Conformity to standards of practice.* The memorandum [shall] must include a statement [such as follows] substantially similar to the following:

"Actuarial methods, considerations and analyses used in the preparation of this memorandum conform to the appropriate Standards of Practice as promulgated by the Actuarial Standards Board, which standards form the basis for this memorandum."

(e) *Use of assets supporting the interest maintenance reserve and the asset valuation reserve.* An appropriate allocation of assets in the amount of the Interest Maintenance Reserve (IMR), whether positive or negative, shall be used in an asset adequacy analysis. Analysis of risks regarding asset default may include an appropriate allocation of assets supporting the Asset Valuation Reserve (AVR); these AVR assets may not be applied for other risks with respect to reserve adequacy. Analysis of these and other risks may include assets

supporting other mandatory or voluntary reserves available to the extent not used for risk analysis and reserve support. The amount of the assets supporting the IMR, AVR and other mandatory or voluntary reserves used in the analysis shall be disclosed in the table of reserves and liabilities of the opinion. The method used for selecting particular assets or allocated portions of assets shall be disclosed in the memorandum.

(f) *Documentation.* The appointed actuary shall retain on file, for at least 7 years, sufficient documentation so that it will be possible to determine the procedures followed, the analyses performed, the bases for assumptions and the results obtained.

§ 84b.10. [Additional considerations for analysis] (Reserved).

(*Editor's Note:* As part of this proposed rulemaking, the Department is proposing to rescind the text of § 84b.10 which appears in 31 Pa. Code pages 84b.22—84b.24, serial pages (229464), (266393) and (266394).)

§ 84b.11. Insurance company disciplinary action.

A company willfully making a false filing of an actuarial opinion or supporting memorandum with the Commissioner or failing to demonstrate a good faith effort to comply with this chapter or section 301[ (f) ](g) of the act (40 P. S. § 71[ (f) ](g)) may be subject to a civil penalty not to exceed \$50,000, following notice and a hearing.

[Pa.B. Doc. No. 08-789. Filed for public inspection April 25, 2008, 9:00 a.m.]

### [ 31 PA. CODE CH. 139 ] Prohibited Phrases

The Insurance Department (Department) proposes to rescind Chapter 139 (relating to prohibited phrases). This rulemaking is proposed under the authority of sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P. S. §§ 66, 186, 422 and 412) and section 354 of The Insurance Company Law of 1921 (40 P. S. § 477b).

#### *Purpose*

The purpose of this rulemaking is to rescind Chapter 139 to eliminate obsolete, unnecessary regulations. Chapter 139 was adopted at 2 Pa.B. 1516 (August 11, 1972).

The chapter was adopted to prohibit the use of the phrases "legal reserve," "old line reserve" or similar phrases to describe an insurer doing business in this Commonwealth and required that the phrases be eliminated from policies or other insurance forms.

Chapter 89b (relating to approval for life insurance, accident and health insurance and property and casualty insurance filing and form) gives the Department the authority to review all policies and forms filed with the Department. The Department has not encountered any problems or issues related to Chapter 139 in any market conduct examination or enforcement action and believes the provisions of Chapter 139 are no longer necessary as they are standard practices for licensed insurance companies.

#### *Affected Parties*

The rescission of the chapter affects insurers doing the business of insurance in this Commonwealth.



*Fiscal Impact*

There is no fiscal impact as a result of the proposed rulemaking.

*Paperwork*

The proposed rulemaking will affect all licensed insurers domiciled in this Commonwealth, but no additional paperwork requirements will be imposed.

*Effectiveness/Sunset Date*

The rulemaking will become effective upon final-form publication in the *Pennsylvania Bulletin*. Since this is a rescission, no sunset date has been assigned.

*Contact Person*

Questions or comments regarding the proposed rulemaking may be addressed in writing to Peter J. Salvatore, Regulatory Coordinator, Insurance Department, 1326 Strawberry Square, Harrisburg, PA 17120, within 30 days following the publication of this notice in the *Pennsylvania Bulletin*. Questions and comments may also be e-mailed to psalvatore@state.pa.us or faxed to (717) 705-3873.

*Regulatory Review*

Under section 5(a) of the Regulatory Review Act (act) (71 P. S. § 745.5(a)), on April 16, 2008, the Department submitted a copy of this proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate Banking and Insurance Committee and the House Insurance Committee. In addition to the submitted proposed rulemaking, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department. A copy of that material is available to the public upon request.

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

JOEL SCOTT ARIO,  
*Acting Insurance Commissioner*

**Fiscal Note:** 11-237. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 31. INSURANCE**

**PART VIII. MISCELLANEOUS PROVISIONS**

**CHAPTER 139. PROHIBITED PHRASES**

§ 139.1. [ Purpose ] (Reserved).

[ This chapter is not intended to prohibit a company from describing or referring to the specific reserves which it is required to maintain by law. ]

§ 139.2. [ Prohibited phrases ] (Reserved).

[ The use of the phrases "legal reserve," "old line reserve," or a similar phrase as descriptive of an insurance company transacting business in this Commonwealth is prohibited. ]

§ 139.3. [ Effective date ] (Reserved).

[ The phrases prohibited in § 139.2 (relating to prohibited phrases) shall be eliminated from poli-

**cies or other insurance forms used by an insurance company transacting business in this Commonwealth upon the date of reprinting of a policy or form or by January 1, 1974, whichever date is sooner. This ruling shall affect a policy or insurance form reprinted subsequent to August 12, 1972. ]**

[Pa.B. Doc. No. 08-790. Filed for public inspection April 25, 2008, 9:00 a.m.]

**STATE BOARD OF EDUCATION**

[ 22 PA. CODE CH. 42 ]

**Program Approval**

The State Board of Education (Board) proposes to amend Chapter 42 (relating to program approval) to read as set forth in Annex A. The Board is acting under the authority of section 2603-B of the Public School Code of 1949 (24 P. S. § 26-2603-B).

*Purpose*

The purpose of amending Chapter 42 is to update and clarify the regulations that establish requirements for the approval of certain programs offered by postsecondary degree-granting institutions in this Commonwealth. The provisions of Chapter 42 apply to specialized associate degree programs offered by a licensed trade, business, correspondence or beauty culture school; an incorporated 2-year college, college, seminary or university that lead to degrees that have not had prior approval; upper division undergraduate programs at two 2-year colleges or community colleges; and additional educational offerings of a foreign corporation approved to operate at a specific site in this Commonwealth. The Board last revised Chapter 42 in 1986.

*Requirements of the Proposed Rulemaking*

The proposed rulemaking establishes a waiver process for private licensed schools meeting certain criteria for the past 10 years from needing a team site visit; permits 2-year colleges, colleges, universities, seminaries and graduate degree granting institutions to request a waiver from certain aspects of the program approval application process; requires new graduate degree programs to document the academic need and workforce demand for each program or educational offering; and removes sections addressing vocational degree programs which are no longer used.

*Affected Parties*

The proposed rulemaking affects the students and professional employees of the degree-granting postsecondary institutions of this Commonwealth. This includes all institutions of postsecondary education, domestic or foreign, including out-of-State and out-of-country, legally authorized to award college credits or grant degrees in this Commonwealth.

*Cost and Paperwork Estimates*

The proposed rulemaking will clarify current requirements. It does not impose any new costs or savings for the Department of Education. The proposed rulemaking may save postsecondary institutions approximately \$41,250 annually.

*Effective Date*

The proposed rulemaking will become effective upon final-form publication in the *Pennsylvania Bulletin*.

*Sunset Date*

The Board will review the effectiveness of Chapter 42 every 4 years in accordance with the Board's policy and practice respecting all regulations promulgated by the Board. Thus, no sunset date is necessary.

*Regulatory Review*

Under section 5(a) of the Regulatory Review Act (act) (71 P. S. § 745.5(a)), on April 10, 2008, the Board submitted a copy of this proposed rulemaking and a copy of the Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Committees on Education. A copy of this material is available to the public upon request.

Under section 5(g) of the act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria which have not been met. The act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor of comments, recommendations or objections raised.

*Public Comments and Contact Person*

Interested persons are invited to submit written comments, suggestions or objections regarding this proposal to Jim Buckheit, Executive Director, State Board of Education, 333 Market Street, Harrisburg, PA 17126-0333, jrbuckheit@state.pa.us, within 30 days following publication in the *Pennsylvania Bulletin*.

Persons with disabilities needing an alternative means of providing public comment may make arrangements by calling Jim Buckheit at (717) 787-3787 or TDD (717) 787-7367.

JIM BUCKHEIT,  
*Executive Director*

**Fiscal Note:** 006-311. No fiscal impact; (8) recommends adoption.

**Annex A****TITLE 22. EDUCATION****PART I. STATE BOARD OF EDUCATION****CHAPTER 42. PROGRAM APPROVAL****PRELIMINARY PROVISIONS****§ 42.1. Scope.**

This chapter and Chapter 31 (relating to general provisions) apply to approval of **[ all of ]** the following:

(1) Specialized associate degree programs at a licensed trade, business, correspondence or beauty culture school **[ which ]** that is **[ chartered or ]** established by statute in this Commonwealth.

(2) Additional programs at a chartered **[ junior ] 2-year** college, college, **seminary** or university **[ which ]** that lead to degrees and **[ which ]** that have not had prior approval consistent with the articles of incorporation. See § 40.56 (relating to additional programs).

(3) Upper division undergraduate programs at **[ junior ] 2-years** or community colleges.

(4) Additional **[ programs ]** educational offerings of a foreign corporation approved to operate at a specific site in this Commonwealth. **[ A program ]** Educational offerings having prior approval may be transferred to another site only after receiving approval of the Department.

**[ (5) Vocational educational programs at institutions desiring approval for State/Federal money allotted for vocational education. Federal eligibility restrictions will apply when necessary. ]**

**SPECIALIZED ASSOCIATE DEGREE PROGRAMS  
APPROVAL PROCEDURE****§ 42.11. Application.**

\* \* \* \* \*

**(d) An approved Pennsylvania private licensed school may request a waiver from a team site visit as part of the evaluation process if it meets the following criteria for the 10 consecutive years just prior to application:**

**(1) The school has:**

**(i) Been an approved private licensed school.**

**(ii) Not been subjected by its accrediting agency to an order to show cause, probation or loss of accreditation.**

**(iii) Not undergone major corporate change.**

**(iv) Maintained compliance with applicable statutes and regulations.**

**(v) Not been under corrective action status, as defined in § 31.2 (relating to definitions).**

**(vi) Held authority to award specialized associate degrees (the Associate in Specialized Business degree or the Associate in Specialized Technology degree).**

**(vii) Not been found in violation of the Private Licensed Schools Act (24 P. S. §§ 6501—6518) or its implementing regulations in Chapter 73 (relating to general provisions).**

**(2) The process for requesting the waiver shall be by written request made to the Department, along with the completed full application in the form and content prescribed by the Department in its application guidelines. The Department will review the request for waiver within 30 days of receipt. Upon review, the Department will approve the waiver request and proceed with the application process, request more information, or explain why the institution must proceed with the site visit. Upon request for additional information, the institution will have 30 days to respond, and the Department will have 30 days subsequent to that response to make a determination on the waiver.**

**§ 42.12. Evaluation.**

(a) An evaluation committee shall be selected **[ by the Department ]** in accordance with § 42.32(a) (relating to approval process). Members of the committee shall qualify as authorities in the program areas to be investigated. The committee shall consist of a representative of the Department and **[ such ]** other representation as **[ is ]** appropriate to the specific goals of the applying institution.

(b) The committee shall consider:

\* \* \* \* \*

(6) Faculty retention [ and ], the qualification of the faculty, and provisions for faculty development at the institution.

(7) The accommodations and facilities of the institution, including the adequacy of the library and learning resources necessary to support all aspects of the degree and program.

\* \* \* \* \*

(c) The committee shall evaluate all documentation submitted by the applicant[, conduct a site visit ] (in accordance with Department guidelines) to evaluate the program, conduct a site visit if not waived under § 42.11 (relating to application), and submit a written report, with recommendations, to the Department. This report shall be submitted to the institution by the Department for [ the institution's reaction ] response by the institution. The committee's report and the institution's [ reaction ] response are the primary basis on which the Secretary makes a decision.

§ 42.13. Approval.

(a) [ A program may receive initial approval, including institutional authorization to award the degree specified, for a period of 3 to 6 years during which the program is subject to periodic review by the Department.

(b) A program may receive approved status upon completion of initial approval when it has met all prescribed conditions. ] An institution may be granted authority to offer the program and award the degree specified. The institution's implementation of the degree program remains subject to periodic review by the Department. The Department shall be notified immediately by the chief executive officer or [ his ] a designee if the school has new management or ownership. [ In order to ] To assure the maintenance of the quality of programs, the institution shall be subject to visitation and inspection by the Department and action, when appropriate, as specified in § 42.14 (relating to revocation of degree-granting privilege).

UPPER-DIVISION UNDERGRADUATE PROGRAM APPROVAL FOR [ JUNIOR ] 2-YEAR OR COMMUNITY COLLEGES

§ 42.21. Approval Criteria.

(a) A [ junior ] 2-year or community college may offer an upper-division program not culminating in a baccalaureate degree when approval of the Department is obtained based upon the following criteria:

\* \* \* \* \*

(4) [ The advice of the regional coordinating council of the region in which the junior or community college is located.

(5) ] For a [ junior ] 2-year college, evidence of financial support for the proposed upper-division program.

[ (6) ] (5) For a community college, an estimate of the cost to the Commonwealth of funding the proposed upper-division program.

(b) If a [ junior ] 2-year college desires to grant a baccalaureate degree at the end of upper-division programs, it should [ make application ] apply to the

Department to become a college in accordance with [ the provisions of ] Chapter 40 (relating to institutional approval).

APPROVAL OF ADDITIONAL PROGRAMS NOT PREVIOUSLY APPROVED

§ 42.31. Applicability.

At a [ junior ] 2-year college, college, university, seminary or foreign corporation, additional programs [ which ] that lead to degrees and [ which ] that have not had prior approval, as appropriate, may be instituted only after receiving approval from the Secretary. An institution with charter status shall also comply with § 40.56 (relating to additional programs).

§ 42.32. Approval process.

\* \* \* \* \*

(b) An institution having no prior approval for graduate programs and requesting approval of a program leading to a graduate degree shall also comply with §§ 42.41—[ 42.47 ] 42.45 (relating to graduate program approval procedure).

(c) [ An institution having charter status shall also comply with § 40.56 (relating to additional programs). ] The procedure for a request of waiver from the application process is as follows:

(1) An approved Pennsylvania 2-year college, college, university, seminary or graduate degree granting institution may request a waiver from the application process for program approval if it meets the following criteria for the 10 consecutive years just prior to the request for waiver. To be eligible, an institution shall have:

- (i) Maintained its current institutional status.
- (ii) Not undergone major corporate change.
- (iii) Maintained compliance with applicable statutes and regulations.
- (iv) Maintained good standing with its institutional accrediting agency, if applicable.
- (v) Not been under corrective action status as defined in § 31.2 (relating to definitions).

(2) A waiver may not be granted to add a new degree level, programs leading to new degrees, new broad areas of curricular content, new locations of operation within this Commonwealth for State-supported institutions or for changing institutional status.

(3) Institutions shall request the waiver in writing following the form and content described in guidelines issued by the Department and posted on the Department's web site.

(4) The Department will provide written notification to the institution regarding the status of the waiver request within 30 business days of receipt. The notification will advise the institution that its request is approved, request additional information to be submitted within 30 business days necessary for the Department to make a determination, or provide an explanation why the institution must proceed through the regular application process.

(5) Foreign corporations operating within this Commonwealth shall comply with this section to obtain approval to revise their educational offerings.

(d) Initial approval of programs, including institutional authorization to award the degree specified, is provisional. Annual reports, or more frequent reports if requested, shall be sent to the Department by the institution as requested.

(e) Following provisional approval, an institution may receive final approval for the requested programs when, in the opinion of the Secretary, it has met prescribed conditions.

(f) Programs requiring accreditation at the time of provisional approval will need the designation before the program will be recommended for final approval by the Secretary.

#### GRADUATE PROGRAM APPROVAL PROCEDURE

##### § 42.41. Statement of philosophy and need.

An institution applying for approval to grant graduate degrees shall submit a statement of its philosophy of graduate education as part of the application. This statement [ shall ] must set forth the philosophy of the institution with respect to research, instruction and the goals of graduate education, including the major categories of graduate programs to be provided and the institution's provisions for affirmative action and equal educational opportunity. The statement [ shall ] must show the total planning of the institution for graduate instruction and [ shall ] must include the evaluation procedures used to determine future developments. The statement also [ shall ] must document how the proposed graduate instruction fulfills the educational needs of this Commonwealth and [ does not duplicate education already provided in the institution's service region and this Commonwealth ] must document the academic need and workforce demand for each program or educational offering.

##### § 42.45. Application.

[ An institution desiring approval to offer graduate programs shall, after consultation with the Department, submit an application to the Department on forms provided by the Department. ] The application, evaluation and approval of graduate

programs shall follow the procedures in § 42.32 (relating to approval process). The application [ may ] shall be filed [ not later than ] by July 1 of the calendar year preceding the academic year in which the institution desires the approval.

\* \* \* \* \*

(Editor's Note: As part of this proposed rulemaking, the Board is proposing to rescind §§ 42.46, 42.47 and 42.51—42.59, which appear at 22 Pa. Code pages 42-8—42-11, serial pages (220294)—(220297).)

§ 42.46. (Reserved).

§ 42.47. (Reserved).

§ 42.51—42.59. (Reserved).

#### APPEALS

##### § 42.61. Appeals, hearings and notice.

[ A licensed trade, business, correspondence or beauty culture school denied approved status or having its degree-granting privilege revoked, or a junior college, community college, college, professional school, university or State System university ] Institutions of any type offering degrees at any level denied approval of a program may request the Department to provide administrative hearings and notice under the appeal procedures of 2 Pa.C.S. §§ 501—508 (relating to practice and procedure of Commonwealth agencies).

#### RECODIFICATION

##### § 42.71. Recodification.

(a) [ Sections of this chapter replace sections of ] Vocational education degree programs are covered by Chapters 33, 37, 39, 41, 43, 45, 46, 47 and 48.

(b) This chapter is integrated with [ Chapter 31 (relating to general provisions) and Chapter 40 (relating to institutional approval) ] Chapters 31, 35, 36, 40 and 73.

[Pa.B. Doc. No. 08-791. Filed for public inspection April 25, 2008, 9:00 a.m.]