

PROPOSED RULEMAKING

INSURANCE DEPARTMENT

[31 PA. CODE CH. 39]

Education and Training for Applicants and Insurance Producers

The Insurance Department (Department) proposes to rescind Chapter 39 (relating to continuing education for insurance agents and brokers) and to adopt Chapter 39a (relating to education and training for applicants and insurance producers) to read as set forth in Annex A. The proposal is made under the authority of sections 205, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P. S. §§ 66, 186, 411 and 412) regarding the general rulemaking authority of the Department and sections 604-A, 608-A and 698-A of The Insurance Department Act of 1921 (40 P. S. §§ 310.4, 310.8 and 310.98) regarding license prerequisites, license renewals and regulations.

Purpose

The purpose of this rulemaking is to rescind Chapter 39 and adopt Chapter 39a to clarify existing training and education requirements for insurance producers, and to establish new training requirements for insurance producers and insurers writing long-term care insurance and insurance producers selling flood insurance. Chapter 39 was adopted in 1994 to establish standards for continuing education of agents and brokers. Act 147 of 2002 established new guidelines for prelicensing and continuing education for insurance producers (formerly agents and brokers). Federal law (*see* the Deficit Reduction Act of 2005 (Pub. L. No. 109-171) (42 U.S.C.A. § 1396(p)) enacted February 8, 2006) requires that an individual who sells a long-term care partnership policy receives training and demonstrates evidence of an understanding of the policies and how they relate to other public and private coverage of long-term care. Further, Federal law provides that all resident insurance producers who sell Federal Flood Insurance policies shall comply with the minimum training requirements of section 207 of the Bunning-Bereuter-Blunenauer Flood Insurance Reform Act of 2004 (42 U.S.C.A. § 4011 nt) and basic flood education requirements as outlined at 70 FR 52117 (Sept. 1, 2005) or later requirements as are published by the Federal Emergency Management Agency (FEMA).

Explanation of Regulatory Changes

Section 39a.1 (relating to definitions) clarifies the terms established by The Insurance Department Act of 1921 (40 P. S. §§ 1—326.7) and further defines “partnership policies” for purposes of long-term care insurance training requirements.

Section 39a.2 (relating to purpose) establishes that the purpose of this chapter is to implement the requirements and standards for education and training programs for applicants and insurance producers.

Section 39a.3 (relating to applicability) clarifies who is responsible for completing the education and training requirements.

Section 39a.4 (relating to administration of the education program) authorizes the Insurance Commissioner (Commissioner) to contract with an entity or individual to serve as the program administrator for insurance producer education and establishes the responsibilities of the Commissioner and program administrator.

Section 39a.5 (relating to sponsors) establishes qualifications for sponsors and establishes advertising standards with which sponsors must comply.

Section 39a.6 (relating to courses) establishes that the Commissioner will only approve courses that contribute directly to the professional competence or ethics of students. This section also describes the types of courses that will not be approved for training and continuing education. This section also provides examples of courses or programs which may meet the Commissioner’s standards for an approved course.

Section 39a.7 (relating to credit hours) establishes eligibility requirements to receive credit for course completion and provides that the Commissioner will determine the number of credit hours assigned to each course.

Section 39a.8 (relating to instructors) establishes the qualifications and responsibilities of instructors.

Section 39a.9 (relating to training requirements for insurance producers) establishes that the training requirements of this section, relating to long-term care insurance and flood insurance, are separate and independent from the continuing education requirements for insurance producers.

Section 39a.10 (relating to penalties for failure to comply with continuing education requirements) establishes that a producer will receive notice of credit hours needed to satisfy the continuing education requirement 90 days prior to the expiration of his license and that failure to comply with continuing education requirements by the expiration date of the license shall be deemed a voluntary termination of the insurance producer’s license.

Section 39a.11 (relating to fees) establishes fees for initial approval of a sponsor, approval of each course offered by a sponsor, and for the sponsor’s reporting of course completion.

Section 39a.12 (relating to powers of the Commissioner) establishes that the Commissioner may disqualify or deny, suspend or revoke the approval of a sponsor, instructor, course or program of courses if the sponsor, instructor, course or program of courses is not compliant with this chapter. In addition, this section establishes the remedies that the Commissioner may impose if a producer or student falsifies or misrepresents information concerning training and education.

Affected Parties

The proposed rulemaking will affect all applicants and licensed insurance producers and insurers writing long-term care insurance in this Commonwealth.

Fiscal Impact

State Government

There will be no increase in cost to the Department as a result of the adoption of proposed rulemaking.

General Public

Since the proposed rulemaking concerns the continuing education and prelicensing of insurance producers and applicants, it will have no adverse economic impact on the general public.

Political Subdivisions

There will be no fiscal impact on political subdivisions as a result of the adoption of the proposed rulemaking.

Private Sector

Compliance with the proposed chapter should not result in increased insurance industry record keeping costs.

Paperwork

The Department does not believe that the proposed rulemaking will impose additional paperwork requirements on licensees. Insurers may see a minimal requirement in the capturing of information not previously required. As this is a Federal requirement, the costs associated with the recordkeeping due to the regulation will be minimal.

Effectiveness/Sunset Date

The rulemaking will become effective upon the first of the month 2 months after the final-form publication in the *Pennsylvania Bulletin*.

Contact Person

Questions or comments regarding the proposed rulemaking may be addressed in writing to Peter J. Salvatore, Regulatory Coordinator, Insurance Department, Bureau of Administration, 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 (71 P. S. § 745.5(a)), on December 14, 2009, the Department submitted a copy of this proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and to the Senate Banking and Insurance and the House Insurance Committees (Committees). In addition to the submitted proposed rulemaking, the Department has, as required by the Regulatory Review 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 Regulatory Review 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,
Insurance Commissioner

Fiscal Note: 11-240. No fiscal impact; (8) recommends adoption.

Annex A**TITLE 31. INSURANCE****PART I. GENERAL PROVISIONS****CHAPTER 39. CONTINUING EDUCATION FOR INSURANCE AGENTS AND BROKERS (Reserved)**

(Editor's Note: As part of the proposal, the Department is proposing to rescind §§ 39.1—39.12, 39.21 and 39.22 which appear in 31 Pa. Code pages 39-1—39-10, serial pages (267845)—(267852) and (287701) and (287702).)

§§ 39.1.—39.12. (Reserved).

§ 39.21. (Reserved).

§ 39.22. (Reserved).

CHAPTER 39a. EDUCATION AND TRAINING FOR APPLICANTS AND INSURANCE PRODUCERS**Sec.**

§ 39a.1. Definitions.

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§ 39a.1. Definitions.

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

Act—The Insurance Department Act of 1921 (40 P. S. §§ 1—326.7).

Applicant—An individual applying for an insurance producer license.

Approved course—An educational program presented by means of classroom, Internet-based or correspondence study, and certified by the Commissioner as meeting the education requirements of this chapter.

Commissioner—The Insurance Commissioner of the Commonwealth.

Credit hour—Fifty minutes of classroom instruction or the equivalent thereof as determined by the Commissioner.

Department—The Pennsylvania Insurance Department.

Home state—As defined in section 601-A of the act (40 P. S. § 310.1).

Instructor—An individual responsible for teaching an approved course.

Insurance producer—A person licensed to sell, solicit or negotiate insurance in accordance with the act.

License—A document issued by the Department authorizing the named recipient to conduct business as an insurance producer in this Commonwealth.

License period—The period of time from the issue date to the expiration date stated on the license.

Nonresident insurance producer—As defined in section 601-A of the act.

Partnership policies—Long-term care insurance policies that satisfy the requirements in the Deficit Reduction Act of 2005 (Pub. L. No. 109-171) (42 U.S.C.A. § 1396(p)).

Person—

(i) An individual, corporation, association, partnership, reciprocal exchange, inter-insurer, Lloyds insurer, fraternal benefit society, beneficial association and any other legal entity engaged in the business of insurance, including insurance producers and adjusters.

(ii) The term also includes health care plans as defined in 40 Pa.C.S. Chapters 61, 63, 65 and 67 and in the Health Maintenance Organization Act (40 P. S. §§ 1551—1568). For purposes of this chapter, health care plans,

fraternal benefit societies and beneficial societies shall be deemed to be engaged in the business of insurance.

Preexamination education—Education required under section 604-A of the act (40 P. S. § 310.4), regarding to license prerequisites.

Program administrator—The person or entity responsible for the administration of the education contract.

Resident insurance producer—A licensed insurance producer whose home state is this Commonwealth.

Sponsor—A person offering or providing an approved course.

Student—An individual subject to the preexamination education requirements of section 604-A of the act or a licensed insurance producer subject to the continuing education requirements of section 608-A of the act (40 P. S. § 310.8) regarding license renewals.

Successfully complete—To complete an approved course for which a valid course completion certificate is issued.

§ 39a.2. Purpose.

The purpose of this chapter is to implement the provisions of sections 604-A and 608-A of the act (40 P. S. §§ 310.4 and 310.8) regarding license prerequisites and to license renewals, by establishing requirements and standards for education, including continuing and preexamination education, and training programs for applicants and insurance producers.

§ 39a.3. Applicability.

This chapter applies to applicants and insurance producers not exempt under sections 604-A or 608-A of the act (40 P. S. §§ 310.4 and 310.8), regarding license prerequisites and to license renewals.

§ 39a.4. Administration of education program.

(a) The Commissioner may contract with a competent individual or entity to serve as program administrator. The responsibilities of the program administrator include:

- (1) Reviewing sponsor qualifications.
- (2) Course content.
- (3) Credit hour assignment for continuing education courses.
- (4) Recording successful course completion by insurance producers.
- (5) Performing other services deemed appropriate by the Commissioner.

(b) The Commissioner will:

- (1) Approve sponsor registration, courses and assignment of credit hours to approved courses.
- (2) Approve only sponsors who are of sound business reputation and who agree to satisfy the requirements of this chapter pertaining to sponsors.
- (3) Approve only courses that impart substantive and procedural knowledge relating to the insurance field, satisfying the standards in § 39a.6 (relating to courses).
- (4) Approve only instructors that satisfy the standards in § 39a.8 (relating to instructors).
- (5) Show no bias or favoritism towards a sponsor, course or instructor.

§ 39a.5. Sponsors.

(a) A sponsor shall apply for registration on an application approved by the Commissioner.

(b) A sponsor shall have the responsibility to:

- (1) Ensure compliance with this chapter.
- (2) Provide the name, address, phone number and e-mail, if available, of a contact person for each course submitted for approval.
- (3) Provide the name of each course instructor and identify the qualifications under § 39a.8 (relating to instructors) that the instructor satisfies.
- (4) Notify the Commissioner of a change in information on applications for course or instructor approval.
- (5) Ensure that the course provides students with current and accurate information.
- (6) Provide students with the following information in writing:
 - (i) The course title.
 - (ii) The date, time, location and applicable web site when the course is offered.
 - (iii) The name, address and telephone number of a contact person for each course.
 - (iv) A general outline of the subject matter being covered.
 - (v) Other information the sponsor believes may benefit the students.
 - (vi) A form for requesting continuing education credits, if applicable.
 - (7) Provide a textbook or a detailed outline of the subject matter being taught.
 - (8) Supervise and evaluate courses and instructors.
 - (9) Investigate complaints relating to courses or instructors.
 - (10) Maintain accurate records of courses offered, instructors, student attendance and student course completion for at least 4 years from the date of course completion.
 - (11) Provide the student with a course completion certificate on a form or in a format approved by the Commissioner, within 30 calendar days of a student's successful completion of a course.
 - (12) Notify the Commissioner or the program administrator in a prescribed format of students who have successfully completed a course within 10 business days of the date of course completion.
- (c) A sponsor shall comply with the following advertising standards:
 - (1) A sponsor may not advertise a course that has not been approved by the Department, unless the advertisement prominently displays or announces pending review and approval by the Department.
 - (2) A sponsor shall prominently display or announce in an advertisement the number of credit hours assigned to the course and the fee for the course.
 - (3) A sponsor may not engage in false, misleading or deceptive advertising.
 - (d) A sponsor shall comply with the following standards regarding fees:
 - (1) If a course is cancelled for any reason, the sponsor shall refund the fees within 30 calendar days of cancellation or, at the request of the student, transfer the fee to another course offered by the sponsor.

(2) A sponsor shall provide each student with a written refund policy that addresses withdrawal from or failure to complete a course.

(e) A sponsor that is a business or organization employing students or having students as members may not require the students to attend the sponsor's course to receive continuing education credit.

(f) A sponsor shall apply for course approval on an application approved by the Commissioner. The application shall be filed at least 60 calendar days before the date the course is to begin. The sponsor shall be notified within 30 calendar days of the date of the receipt of an application regarding approval or disapproval. If the Commissioner or program administrator requests additional information to review the application, the sponsor will have up to 30 calendar days to comply with the request. If the request is not satisfied within the 30 calendar-day period, the application shall be considered voluntarily withdrawn.

§ 39a.6. Courses.

(a) The Commissioner will approve only courses that contribute directly to the professional insurance competence or ethics of students. Accordingly, the following types of courses will not be approved:

(1) A course in mechanical, office or business skills, including typing, speed reading, or the use of calculators or other machines or equipment.

(2) A course in sales promotion.

(3) A course in motivation, salesmanship, stress management, time management, psychology, communication or writing.

(4) A course relating solely to office management, client relations or improving the operation of the student's business.

(b) Courses or programs must meet the Commissioner's standards for an approved course. Examples of courses or programs which may meet the Commissioner's standards for an approved course are:

(1) Any part of the Life Underwriter Training Council (LUTC) course curriculum.

(2) Any part of the American College diploma curriculum for Chartered Life Underwriter (CLU), Chartered Financial Consultant (ChFC) or Master in Financial Sciences (MSFS) or courses required for or to maintain CLU, ChFC or MSFS designations.

(3) Any part of the College of Financial Planning diploma curriculum for Certified Financial Planning (CFP) program.

(4) Any part of the Insurance Institute of America curriculum.

(5) Any part of the American Institute for Chartered Property Casualty Underwriters (CPCU) program.

(6) Any part of the National Association of Health Underwriters Registered Health Underwriter (RHU) program.

(7) Any part of the Health Insurance Association of America (HIAA) program.

(8) Any part of the Academy of Life Underwriting Education Council curriculum (LUEC) program.

(9) Any part of the Certified Insurance Counselor (CIC) program.

(10) Any part of the Blue Cross and Blue Shield Association's Certified Health Consultant curriculum.

(11) Any part of the Accredited Adviser in Insurance (AAI) designation program.

(12) Any part of the Certified Insurance Service Representative (CISR) curriculum.

§ 39a.7. Credit hours.

(a) The Commissioner will determine the number of credit hours to be assigned to each approved course. Credit hours will not include time spent on meals, breaks or other activities unrelated to the course.

(b) To receive credit, a student shall complete the requirements of an approved course, including attendance or participation (if other than a classroom format) and examination requirements. For courses that do not use a classroom format, a course will not be considered completed until the sponsor has received all necessary forms from a student. Students should further advise the sponsor to file with the Department a verification of course completion for the student to obtain credit.

(c) A student may not earn credit for attending a subsequent offering of the same course within the same licensing period.

(d) The instructor of an approved course shall earn twice the number of approved credit hours for that course. The instructor may not earn credit for instructing a subsequent offering of the same course within the same licensing period.

(e) A student shall maintain records of credits earned for at least the two most recently completed licensing periods in addition to the current licensing period.

(f) Preexamination education credits shall be valid for 1 year from the date the course is successfully completed.

§ 39a.8. Instructors.

(a) The instructor shall possess one or more of the following qualifications:

(1) A minimum of 3 years experience in the subject matter being taught.

(2) A degree in the subject matter being taught.

(3) A minimum of 3 years experience as an insurance producer in the subject matter being taught.

(b) An individual shall be prohibited from acting as an instructor if a suspension or revocation of that individual's license is in force.

(c) Individuals desiring to become instructors shall provide the sponsor with a signed statement verifying that the individual has not committed any act prohibited under section 611-A of the act (40 P. S. § 310.11), regarding prohibited acts, and specifying the individual's qualifications to be an instructor.

(d) Instructors shall have the responsibility to:

(1) Comply with this chapter.

(2) Provide students with current and accurate information.

(3) Provide accurate records of successful course completion to the course sponsor within 10 working days.

§ 39a.9. Training requirements for insurance producers.

(a) *General information.* The training requirements of this section are separate and independent from the continuing education requirements for insurance produc-

ers. The satisfaction of these training requirements by a nonresident insurance producer in the individual's home state shall be deemed to satisfy the training requirements in this Commonwealth.

(b) *Long term care insurance.*

(1) An individual may not sell, solicit or negotiate long-term care insurance unless the individual is licensed as an insurance producer for accident and health and has completed the training required by paragraph (4).

(2) An individual already licensed as an insurance producer and selling, soliciting or negotiating long-term care insurance on _____ (*Editor's Note:* The blank refers to the effective date of adoption of this proposed rulemaking.) may not continue to sell, solicit or negotiate long-term care insurance unless the individual has completed the training required under paragraph (4).

(3) A course designed to provide the training required under paragraph (4) may be approved as a continuing education course under section 602-A(a)(2) of the act (40 P. S. § 310.2(a)(2)) regarding powers and duties of Department.

(4) The following apply to the training required by this paragraph:

(i) An insurance producer:

(A) Who has not yet completed an 8-hour training course on long-term care insurance shall complete at least 8 hours of training in the first full licensing cycle after _____. (*Editor's Note:* the blank refers to the effective date of adoption of this proposed rulemaking.)

(B) That sells, solicits or negotiates long-term care partnership policies shall complete, as part of the 8 hour requirement, a 1-hour, Pennsylvania-specific course related to the Pennsylvania Medical Assistance Program (Medicaid) prior to engaging in any marketing activity of partnership policies.

(ii) The ongoing training requirement must be at least 4 hours in every subsequent 24 month licensing cycle.

(5) The training required under paragraph (4) must consist of topics related to long-term care insurance, long-term care services and, if applicable, qualified State long-term care insurance partnership policies, including:

(i) State and Federal regulations and requirements and the relationship between qualified State long-term care insurance partnership policies and other public and private coverage of long-term care services, including Medicaid.

(ii) Available long-term services and providers.

(iii) Changes or improvements in long-term care services or providers.

(iv) Alternatives to the purchase of private long-term care insurance.

(v) The effect of inflation on benefits and the importance of inflation protection.

(vi) Consumer suitability standards and guidelines.

(6) Completion of the training required under paragraph (4) shall be sufficient to demonstrate evidence of an insurance producer's understanding of the topic specified in paragraph (5)(i).

(7) The training required under paragraph (4) may not include training that is product-specific to any insurer or company or include any sales or marketing information, materials or training, other than those required by State and Federal law.

(c) *Requirements for insurers.* Insurers writing long-term care insurance in this Commonwealth shall do the following:

(1) Obtain proof that an insurance producer has received the training required by this section before permitting the insurance producer to sell, solicit or negotiate the insurer's long-term care insurance products.

(2) Maintain records as required under paragraph (1) in accordance with the Commonwealth's record retention guidelines for insurers as published in the *Pennsylvania Bulletin*.

(3) Make the information required under paragraph (1) available to the Commissioner upon request.

(d) *Flood insurance.* Resident insurance producers who sell Federal flood insurance policies shall comply with the minimum training requirements of section 207 of the Bunning-Bereuter-Blunenauer Flood Insurance Reform Act of 2004, (42 U.S.C.A. § 4011 nt) (Pub. L. No. 108-264) and basic flood education as outlined at 70 FR 52117 (Sept. 1, 2005) or later requirements as published by the Federal Emergency Management Agency (FEMA).

(e) *Compliance.* An insurance producer or insurer that fails to comply with this section shall be subject to penalties in accordance with sections 611-A(2) and 691-A of the act (40 P. S. §§ 310.11(2) and 310.91), regarding prohibited acts and enforcement by the Department.

§ 39a.10. Penalties for failure to comply with continuing education requirements.

(a) An insurance producer will be notified by the Department, 90 days prior to the expiration date stated on the individual's license, of the number of credit hours needed to satisfy the continuing education requirements.

(b) Failure to comply with continuing education requirements by the expiration date of the license shall be deemed a voluntary termination of the insurance producer's license.

§ 39a.11. Fees.

(a) Fees will be established under subsection (b) or (c) for initial approval of a sponsor, approval of each course offered by a sponsor and for the sponsor's reporting of course completion. Following initial approval, each sponsor and the sponsor's course will be subject to recertification every 2 years for which fees will be established. Fees will reflect the administrative costs for the education program.

(b) If the Department administers the education program, the fees described in subsection (a) will be established by regulation.

(c) If the Department contracts with a competent individual or entity to serve as program administrator in accordance with § 39a.4 (relating to administration of education program) for the administration of the continuing education program, the fees described in subsection (a) will be established by contract pursuant to the standards and procedures established for procurement of contractual services by Commonwealth agencies and will be published as a notice in the *Pennsylvania Bulletin*.

§ 39a.12. Powers of the Commissioner.

(a) The Commissioner may disqualify or deny, suspend or revoke the approval of a sponsor, instructor, course or program of courses if the sponsor, instructor, course or program of courses is not in compliance with this chapter.

(b) If the Commissioner determines that a student has knowingly falsified an education report, has misrepresented any fact, information or material submitted to the Commissioner under the education requirements, or has knowingly submitted a false education report, the Com-

missioner may suspend or revoke the individual's license and impose appropriate civil penalties under section 691-A of the act (40 P. S. § 310.91), regarding enforcement by the Department.

(c) The Commissioner may audit, monitor and review courses with or without notice to the sponsor.

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