

RULES AND REGULATIONS

Title 31—INSURANCE

INSURANCE DEPARTMENT

[31 PA. CODE CHS. 39 AND 39a]

Education and Training for Applicants and Insurance Producers

The Insurance Department (Department) rescinds Chapter 39 and adopts Chapter 39a (relating to education and training for applicants and insurance producers) to read as set forth in Annex A.

Statutory Authority

The final-form rulemaking is adopted under the authority of sections 206, 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 (act) (40 P.S. §§ 310.4, 310.8 and 310.98), regarding license prerequisites, license renewals and regulations.

Comments and Response

Notice of proposed rulemaking was published at 39 Pa.B. 7213 (December 26, 2009) with a 30-day comment period. During the 30-day comment period, comments were received from Senator Don White, Primerica Financial Services, the Insurance Federation of Pennsylvania, Inc. (IFP) and the Insurance Agents and Brokers of Pennsylvania (IA&B). During its regulatory review, the Independent Regulatory Review Commission (IRRC) submitted comments to the Department. The following is a response to those comments.

General comments

IRRC had a concern with the differences between the existing regulations and the proposed rulemaking when determining if the regulations were in the public interest and the need for the proposed rulemaking.

In response to IRRC's concern, the Department adopts this final-form rulemaking to clarify the requirements in the act of December 6, 2002 (P.L. 1183, No. 147), which added section 604-A and 608-A of the act, regarding prelicense and continuing education for insurance producers. The final-form rulemaking also codifies new training requirements imposed on insurance producers in recent legislation, such as the act of July 17, 2007 (P.L. 134, No. 40), known as the Long-Term Care Partnership Law, and recent updates to the National Flood Insurance Program.

More specifically, Chapter 39 is rescinded and replaced with Chapter 39a. Much of the language in Chapter 39a is very similar to language in rescinded Chapter 39. The preamble to the proposed rulemaking included a brief summary of each section in Chapter 39a. However, it did not explain the differences between the two chapters. For example, § 39a.1 (relating to definitions) defines terms that are in Chapter 39a and does not include terms that were in Chapter 39. Another example of changes can be found in the sections pertaining to sponsors. Time frames for complying with certain provisions have been changed, but there is not an explanation of why those changes were made. For IRRC to determine if the regulations are in the public interest, a more detailed explanation of the changes being proposed would be required. IRRC is

asking the Department to provide a more detailed explanation of each section and why some provisions differ from the existing regulation.

In response to IRRC's request, the regulations in Chapter 39 were based on an outdated statute; therefore, many of the provisions were obsolete and new requirements for training were not established. The Department found it much easier to rescind a chapter that is outdated and propose new regulations in a format that was easier to follow and more consistent with the National Association of Insurance Commissioners (NAIC) model as well as the updated statute.

IA&B stated the word "chapter" seems too inclusive. It could mean that applicants and insurance producers are exempt from prelicensing education and the examination because of a designation and are also exempt from the training requirements defined in § 39a.9 (relating to training requirements for insurance producers). IA&B would offer to rewrite as follows: "Subject to the exemptions provided under sections 604-A and 608-A of the Act . . ., this chapter applies. . ."

The Department considered this comment and provides the following. Section 39a.3 (relating to applicability) states that Chapter 39a applies to those "applicants and insurance producers not exempt under section 604A or 608A of the act. . ." Therefore, the Department believes changing the language from "chapter" to "section" is not necessary.

§ 39a.8. Instructors

In § 39a.8(d)(3) (relating to instructors), IA&B would like to note that requiring the instructor (defined as "an individual") to provide accurate records of successful completion to the course sponsor is burdensome on that individual. In reality, it is the course provider that handles these records. IA&B would like to verify that this provision recognizes that reality and that the provider can act for the instructor in this case.

In response to the IA&B's notation, the Department would like to clarify that instructors have to report course results to the course sponsor (that is, the approved provider) not the Department. The only reason the instructor would need to report this information to the Department or its vendor is if the instructor is the course sponsor.

§ 39a.9. Training requirements for insurance producers

In § 39a.9, IA&B feels that two items should be clarified for nonresident situations under subsection (a), "the satisfaction of these training requirements by a nonresident insurance producer in his home state shall be deemed to satisfy the training requirements in this Commonwealth." IA&B would suggest replacing this sentence with the following: "The satisfaction of the training requirements described in this regulation in any state shall be deemed to satisfy the training requirements in Pennsylvania." This will account for minor variations in the State programs and mostly will allow nonresident producers whose home state has not imposed a training requirement to take a course in another state.

In response to IA&B's suggestion, the Department considered this comment and added the prescribed reciprocity language to the final-form rulemaking.

Under subsection (b), in reading the paragraphs as they apply, the timeline for compliance seems identical for new

producers and for producers who already sell long-term care, yet they are addressed in two separate paragraphs. IA&B asked if this was intentional.

In response to IA&B's suggestion, the Department's intention is to distinguish between individuals licensed on April 1, 2011 and those licensed subsequent to that date. Edits were made to the draft regulation to better clarify the differentiation.

If a differentiation between new and current producers is intended, as it initially was, IA&B suggested replacing subsection (b)(2) with the following: "Notwithstanding paragraph (1) of this subsection, an individual who was already licensed as an insurance producer and selling, soliciting or negotiating long-term care insurance on the effective date of this rulemaking will be considered compliant if he or she completes the training course required by paragraph (4) of this subsection within the first full licensing cycle after the effective date of this regulation."

The Department considered this comment and amended the final-form language to reflect the 1-year from effective date language suggested by IA&B, which also was more consistent with the NAIC model language. Specifically, the Department added subsection (b)(4)(ii) for individuals licensed after the effective date of this final-form rulemaking. These changes also involved renumbering.

Regarding the IA&B comment on the license cycle, the individual's license cycle is the period until the expiration of the existing license. Any additional time granted the licensee for the conversion to birth month expirations would then be considered the current license cycle. Thus, the Department agreed with the concern of avoiding any confusion and amended the language to 1 year from effective date of the final-form rulemaking (April 1, 2012).

If a differentiation between new and current producers is intended, as it initially was, IA&B suggested subsection (b)(4) to delete references to the full licensing cycle.

IA&B questioned how to interpret the reference to a full licensing cycle in the current context of conversion to birth month license renewals. IA&B asked if it be any license renewal that is a full 2 years or something else. It stands to reason that the choice of words could trigger numerous inquiries. IA&B asked if it not be preferable to select a set date such as 12 months from the effective date of this final-form rulemaking.

The Department considered this comment from Senator White, IFP and IRRC as well as the aforementioned comment from IA&B and amended the final-form language to reflect the 1 year from effective date language, which also was more consistent with the NAIC model language. Also, the individual's license cycle is the period until the expiration of the existing license. Additional time granted the licensee for the conversion to birth month expirations would be then considered the current license cycle, thus, the Department agreed with the concern of avoiding any confusion and amended the language to 1 year from effective date of this final-form rulemaking.

In subsection (c), "verification" was changed to "proof." IA&B would like to verify that a compliance certificate, in paper or electronic form, would be sufficient proof that the training was completed.

In subsection (d), with regard to flood insurance, IA&B questioned how compliance can or will be tracked by the Department and the penalties for noncompliance.

In response to IA&B's questions, the Department considered the "proof" terminology as more consistent with the NAIC model and consumer protection for the public that the insurance producer can document proper training. This "proof" can be in the form of the producer's education transcript or the certificate of completion of the course issued by the course sponsor. A course approved for continuing education will appear on the producer's education transcript that can be printed online at no cost. There is not a penalty imposed by the Department for noncompliance. However, the National Flood Insurance Program will not accept applications for flood insurance from noncompliant producers.

Senator White, IFP and IRRC also commented on subsection (b)(4)(i)(A) regarding the producer training requirements. All three commentators stated the following: "Under Subsection (b)(4)(i)(A), individuals already licensed as insurance producers must complete eight hours of training in the first full two-year licensing cycle after the adoption of the rulemaking. A commentator has noted that this differs from the National Association of Insurance Commissioners (NAIC) model rule, on which this rulemaking is partially based. The model rule requires licensed producers to complete eight hours of training within one year of the effective date of the regulation. What is the reason for the difference between the proposed regulation and NAIC's model rule?" Similarly, under subsection (b)(4)(i)(B), these commentators wanted to know why the Department deviated from the NAIC model rule by requiring licensed producers, residents and nonresidents to complete 1 hour of training related to the Pennsylvania Medical Assistance Program.

The Department considered the comments from Senator White, IFP and IRRC comments and made changes to the appropriate sections by deleting the license cycle language, using the 1 year model language requirement to complete the training and allowing reciprocity for nonresidents on the training required, including the 1-hour training specific to Medicaid. The proof of completion can be documented by a transcript of the education courses completed by the producer and this is available at no cost online. In addition, the original draft did deviate from the NAIC model to be less restrictive to the existing insurance producers by allowing more time to complete the training. Thus, this would avoid a marketplace contraction of long-term care sales. Again, the Department deleted references to requiring nonresidents to complete Pennsylvania training by use of the reciprocity language which was consistent with the NAIC model and the Gramm-Leach-Bliley Act (15 U.S.C.A. §§ 6801—6827).

Primerica requested the Department maintain the current minimum 2-year experience as an insurance producer in the subject matter being taught and not increase this requirement to 3 years as proposed in § 39a.8(3).

In response to Primerica's comment, the requirement that a producer be licensed for 3 years before being approved as an instructor is consistent with the NAIC model and the states bordering this Commonwealth. This will also further enhance the educational value of the course for the students by having a somewhat better prepared instructor.

Senator White, IFP and IRRC stated that subsection (c)(1) requires insurers writing long-term care insurance to obtain "proof" that an insurance producer received required training. These commentators wanted to know what type of proof would be acceptable. These commentators suggested that a more specific standard be included in the final-form rulemaking.

In response to the comments from Senator White, IFP and IRRC, a transcript will be available or the individual may check online and print to verify compliance. Individuals taking these courses should verify that the course has been applied to their license records. This transcript will also serve as proof for the insurer that the individual producer complied with the training required by this chapter. The course completion certificate issued by the course sponsor will also suffice as proof of completion.

Subsection (c)(2) requires certain records to be maintained "in accordance with the Commonwealth's record retention guidelines for insurers as published in the *Pennsylvania Bulletin*." They stated that this requirement is vague and recommended that the requirements be included in the final-form rulemaking. In the alternative, they suggested that the Department identify the specific guidelines that need to be followed and when those guidelines will be published in the *Pennsylvania Bulletin*.

As stated in "Updated Guidelines for Record Retention," Notice No. 2009-07, published at 39 Pa.B. 4664 (August 1, 2009), the general requirement for retention of records is 7 years from execution of the record, unless otherwise specified in the guidelines. The 7-year period allows for conclusion of the financial examination process within timeliness standards adopted by the NAIC Financial Regulation Standards and Accreditation Committee. The guidelines supplement the 7-year general requirement by providing guidance in the establishment of appropriate retention periods for specific types of records for purposes of both financial and market conduct examinations. The Department does not believe that a deviation from these guidelines is necessary and the guidelines do not need to be a separate standard incorporated in the final-form rulemaking.

Senator White also stated that "during the negotiations with the Pennsylvania Insurance Department (PID) over legislation to establish oversight of the proposed merger between Highmark and Independence Blue Cross, legal counsel for PID was very vocal in expressing concern over enacting legislation which deviated from the NAIC model, citing a fear that Pennsylvania could lose NAIC accreditation. Given those previous concerns, I find it curious that PID is prepared to deviate from the NAIC model in these proposed regulations."

In response to Senator White's comment, while it appears that there have been deviations, the Department based the regulation on the NAIC model and the act. In addition, this section is substantially similar to the NAIC model. Historically, NAIC models do not follow the statutory construction that the Commonwealth follows. Therefore, the Department "Keystonized" the regulations to follow the format utilized by the Legislative Reference Bureau. For example, the Department changed the section numbering of the NAIC model to conform to the *Pennsylvania Code and Bulletin Style Manual*. The Department also changed the time required to complete the initial training for long-term care producers. The NAIC model required that this training be completed by December 31, 2008, which has passed. The Department allowed 1 year from the effective date of the final-form rulemaking to complete the training (April 1, 2012). These changes are not material.

IFP had a concern on "Long-Term Care Partnership Program Effective Date and Revised Guidance Announcement," Notice No. 2008-05, published at 38 Pa.B. 1907 (April 19, 2008). IFP understands that regulations seek, in part, to promulgate producer training standards previously outlined in Notice No. 2008-5, which supersedes an

earlier version published at 38 Pa.B. 564 (January 26, 2008). Similar to the proposed rulemaking, the notice established an initial 8-hour training requirement for producers selling long-term care partnership policies to be followed by a 4-hour training requirement every licensing cycle thereafter. The initial 8 hours of training was to be met by December 31, 2008. Upon completion of the regulatory review process, IFP requested that the Department clarify, with a notice on its web site, that producers who have already attained the initial 8 hours of training under Notice No. 2008-05, including the 1-hour course on Medicaid, will have met this requirement under the regulations.

In response to IFP's concern, the Department may, after April 1, 2011, prepare a notice that addresses approved courses regarding long-term care training prior to this final-form rulemaking that confirm those courses that will have met the requirements of this final-form rulemaking. However, individuals taking those courses should verify that the course has been applied to their license. A transcript will be available or the individual may check online which will serve as proof of compliance with the training requirement.

Affected Parties

The final-form rulemaking applies to applicants and licensed insurance producers and insurers writing long-term care insurance in this Commonwealth.

Fiscal Impact

State government

There will not be an increase in cost to the Department.

General public

Since the final-form rulemaking concerns the continuing education and prelicensing of insurance producers and applicants, it will not have adverse economic impact on the general public.

Political subdivisions

The final-form rulemaking will not impose additional costs on political subdivisions.

Private sector

Compliance with this final-form rulemaking should not result in increased insurance industry recordkeeping costs.

Paperwork

The Department believes that the final-form rulemaking will not 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 will be minimal.

Effectiveness/Sunset Date

The final-form rulemaking will become effective April 1, 2011. The Department continues to monitor the effectiveness of regulations on a triennial basis; therefore, a sunset date has not been assigned.

Contact Person

Questions regarding this final-form rulemaking should be directed to Peter J. Salvatore, Regulatory Coordinator, Bureau of Administration, 1326 Strawberry Square, Harrisburg, PA 17120, (717) 787-4429, fax (717) 705-3873, psalvatorestate.pa.us.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on November 9, 2010, the Department submitted a copy of the notice of proposed rulemaking, published at 39 Pa.B. 7213, to IRRC and the Chairpersons of the House Insurance Committee and the Senate Banking and Insurance Committee for review and comment.

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

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on December 15, 2010, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on December 16, 2010, and approved the final-form rulemaking.

Findings

The Commissioner finds that:

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

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

Order

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

(a) The regulations of the Department, 31 Pa. Code, are amended by deleting §§ 39.1—39.12, 39.21 and 39.22 and adding §§ 39a.1—39a.12 to read as set forth in Annex A.

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

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

(d) The regulations adopted by this order shall take effect on April 1, 2011.

ROBERT L. PRATTER,
Acting Insurance Commissioner

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 41 Pa.B. 118 (January 4, 2011).)

Fiscal Note: Fiscal Note 11-240 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 31. INSURANCE

PART I. GENERAL PROVISIONS

Subpart C. AGENTS AND BROKERS

CHAPTER 39. (Reserved)

§§ 39.1—39.12. (Reserved).

§ 39.21. (Reserved).

§ 39.22. (Reserved).

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

Sec.	
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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 Federal Deficit Reduction Act of 2005 (42 U.S.C.A. § 1396p).

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 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 contained in § 39a.6 (relating to courses).

(4) Approve only instructors that satisfy the standards contained 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 email, 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 website 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) Within 30 calendar days of a student's successful completion of a course, provide the student with a course completion certificate on a form or in a format approved by the Commissioner.

(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, shall 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 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 producers. The satisfaction of these training requirements by a nonresident insurance producer in his 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 under paragraph (4).

(2) An individual already licensed as an insurance producer and selling, soliciting or negotiating long-term care insurance on April 1, 2011, 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, licensed as of April 1, 2011:

(A) Who has not yet completed an 8-hour training course on long-term care insurance shall complete at least 8 hours of training by April 1, 2012.

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

(ii) An individual, licensed after April 1, 2011, to sell long-term care insurance, shall complete the requirements in subparagraph (i)(A) and (B) prior to selling, soliciting or negotiating long-term care insurance.

(iii) The ongoing training requirement shall 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 all of the following:

(1) Obtain proof that an insurance producer has received the training required under 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) (Pub.L. No. 108-264) and basic flood education as outlined at 70 FR 52117 (September 1, 2005) or later requirements as published by the Federal Emergency Management Agency.

(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 his 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 shall 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 Commissioner 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.

[Pa.B. Doc. No. 11-136. Filed for public inspection January 28, 2011, 9:00 a.m.]

INSURANCE DEPARTMENT

[31 PA. CODE CH. 84b]

Actuarial Opinion and Memorandum

The Insurance Department (Department) amends Chapter 84b (relating to actuarial opinion and memorandum) 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 of 1921 (40 P.S. § 71).

Purpose

The purpose of this final-form rulemaking is to update Chapter 84b to include amendments made by the National Association of Insurance Commissioners to Model Regulation 822, "Actuarial Opinion and Memorandum Regulation." The model regulation requires life insurance companies and fraternal benefit societies to submit actuarial opinions based on an asset adequacy analysis, commonly known as "Section 8 opinions." The amendments to Chapter 84b were proposed in conjunction with proposed amendments to Chapter 84c (relating to valuation of life insurance policies), published at 40 Pa.B. 5069, (September 4, 2010), which would remove restrictions on the mortality adjustment factors (X factors) in deficiency reserve calculations. Specifically, the amendments to Chapter 84b modify requirements for the content of a regulatory asset adequacy issues summary of the actuarial memorandum to require the inclusion of a statement regarding the impact of the insufficiency of assets to support the payment of benefits and expenses and the establishment of statutory reserves during one or more interim periods.

Comments and Response

Notice of proposed rulemaking was published at 40 Pa.B. 5066 (September 4, 2010) with a 30-day comment period. One comment in support of the amendments was received from the Insurance Federation of Pennsylvania, Inc. On November 3, 2010, the Independent Regulatory Review Commission (IRRC) indicated that it did not have comments objections or recommendations regarding this rulemaking.

Affected Parties

This final-form rulemaking applies 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 this final-form rulemaking. As part of its solvency monitoring responsibilities, the Department currently reviews statements of actuarial opinion and supporting memoranda. Thus, this final-form rulemaking will not require additional staff time or resources to perform the analysis.

General public

Since this final-form 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

This final-form rulemaking will not impose additional costs on political subdivisions. However, because this final-form 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

This final-form rulemaking will not impose additional costs on insurers.

Paperwork

The adoption of this final-form rulemaking will not impose additional paperwork on the Department.

Effectiveness / Sunset Date

This final-form rulemaking will become effective March 30, 2011. The Department continues to monitor the effectiveness of regulations on a triennial basis; therefore, a sunset date has not been assigned.

Contact Person

Questions regarding this final-form rulemaking may be addressed in writing to Peter J. Salvatore, Regulatory Coordinator, Insurance Department, 1326 Strawberry Square, Harrisburg, PA 17120, fax (717) 705-3873, psalvatore@state.pa.us.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on November 9, 2010, the Department submitted a copy of the notice of proposed rulemaking, published at 40 Pa.B. 5066, to IRRC and the Chairpersons of the House Insurance Committee and the Senate Banking and Insurance Committee for review and comment.

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

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on December 15, 2010, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on December 16, 2010, and approved the final-form rulemaking.

Findings

The Commissioner finds that:

(1) Public notice of intention to adopt this final-form regulations was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

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

Order

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

(a) The regulations of the Department, 31 Pa. Code Chapter 84b, are amended by amending § 84b.9 to read as set forth at 40 Pa.B. 5066.

(b) The Department shall submit this order and 40 Pa.B. 5066 to the Office of General Counsel and Office of Attorney General for approval as to form and legality as required by law.

(c) The Department shall certify this order and 40 Pa.B. 5066 and deposit them with the Legislative Reference Bureau as required by law.

(d) The regulation adopted by this order takes effect March 30, 2011.

ROBERT L. PRATTER,
Acting Insurance Commissioner

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 41 Pa.B. 118 (January 1, 2011).)

Fiscal Note: Fiscal Note 11-244 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 11-137. Filed for public inspection January 28, 2011, 9:00 a.m.]

INSURANCE DEPARTMENT

[31 PA. CODE CH. 84c]

Valuation of Life Insurance Policies

The Insurance Department (Department) amends Chapter 84c (relating to valuation of life insurance policies) 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(c) of The Insurance Department Act of 1921 (40 P. S. § 71(c)).

Purpose

The purpose of this final-form rulemaking is to amend § 84c.5 (relating to general requirements for basic reserves and premium deficiency reserves) to include amendments made to Model Regulation 830 by the National Association of Insurance Commissioners (NAIC) to remove restrictions on mortality adjustment factors. These amendments were proposed in conjunction with

amendments to Chapters 84b and 84d (relating to actuarial opinion and memorandum; and recognition of the 2001 CSO Mortality Table for use in determining minimum reserve liabilities and nonforfeiture benefits and the 2001 CSO Preferred Class Structure Mortality Table for use in determining minimum reserve liabilities).

Comments and Response

Notice of proposed rulemaking was published at 40 Pa.B. 5069 (September 4, 2010) with a 30-day comment period. One comment in support of the amendments was received from the Insurance Federation of Pennsylvania, Inc. On November 3, 2010, the Independent Regulatory Review Commission (IRRC) indicated that it did not have comments, objections or recommendations.

Affected Parties

This final-form rulemaking applies to insurers issuing life insurance coverage in this Commonwealth.

Fiscal Impact

State government

There will not be an increase in cost to the Department as a result of this final-form rulemaking. The Department currently reviews valuation filings submitted by domestic life insurance companies and fraternal benefit societies for compliance with the minimum standards of valuation.

General public

It is possible that the cost of insurance will be reduced for consumers who purchase life insurance coverage due to these amendments to the requirements for the calculation of reserves.

Political subdivisions

There will not be fiscal impact on political subdivisions as insurers will continue to maintain adequate reserves.

Private sector

This final-form rulemaking requires the appointed actuary to annually opine for all policies subject to this final-form rulemaking as to whether the mortality rates resulting from the application of the X factors meet the requirements in Chapter 84c for deficiency reserves. This opinion must be supported by an actuarial report.

Paperwork

The adoption of this final-form rulemaking will not impose additional paperwork on the Department.

Effectiveness / Sunset Date

This rulemaking will become effective March 30, 2011. The Department continues to monitor the effectiveness of regulations on a triennial basis; therefore, a sunset date has not been assigned.

Contact Person

Questions regarding the final-form rulemaking should be directed to Peter J. Salvatore, Regulatory Coordinator, Insurance Department, 1326 Strawberry Square, Harrisburg, PA 17120, (717) 787-4429, fax (717) 705-3873, psalvatore@state.pa.us.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on November 9, 2010, the Department submitted a copy of the notice of proposed rulemaking, published at 40 Pa.B. 5069 to IRRC and the Chairpersons of the Senate Banking and Insurance Committee and the House Insurance Committee for review and comment.

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

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on December 15, 2010, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on December 16, 2010, and approved the final-form rulemaking.

Findings

The Insurance Commissioner finds that:

(1) Public notice of intention to adopt this final-form regulation was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

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

Order

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

(a) The regulations of the Department, 31 Pa. Code Chapter 84c, are amended by amending § 84c.5 to read as set forth at 40 Pa.B. 5069.

(b) The Department shall submit this order and 40 Pa.B. 5069 to the Office of General Counsel and Office of Attorney General for approval as to form and legality as required by law.

(c) The Department shall certify this order and 40 Pa.B. 5069 and deposit them with the Legislative Reference Bureau as required by law.

(d) The final-form rulemaking takes effect on March 30, 2011.

ROBERT L. PRATTER,
Acting Insurance Commissioner

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 41 Pa.B. 118 (January 1, 2011).)

Fiscal Note: Fiscal Note 11-247 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 11-138. Filed for public inspection January 28, 2011, 9:00 a.m.]

**INSURANCE DEPARTMENT
[31 PA. CODE CH. 84d]**

Recognition of the 2001 CSO Mortality Table for Use in Determining Minimum Reserve Liabilities and Nonforfeiture Benefits and the 2001 CSO Preferred Class Structure Mortality Table for Use in Determining Minimum Reserve Liabilities

The Insurance Department (Department) amends Chapter 84d (relating to recognition of the 2001 CSO Mortality Table for use in determining minimum reserve

liabilities and nonforfeiture benefits and the 2001 CSO Preferred Class Structure Mortality Table for use in determining minimum reserve liabilities). This final-form 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), section 301(c)(1) of The Insurance Department Act of 1921 (40 P. S. § 71(c)(1)), section 410A(e)(8)(F) of The Insurance Company Law of 1921 (40 P. S. § 510.1(e)(8)(F)) and the Unfair Insurance Practices Act (40 P. S. §§ 1171.1—1171.15). See also § 84c.5(a) and (b) (relating to general requirements for basic reserves and premium deficiency reserves).

Purpose

Section 301(c)(1) of The Insurance Department Act of 1921 authorizes the Insurance Commissioner (Commissioner) to promulgate regulations specifying new mortality tables adopted after 1980 by the National Association of Insurance Commissioners (NAIC) for use in determining minimum valuation standards. The purpose of this final-form rulemaking is to update Chapter 84d to include amendments made by the NAIC to Model Regulation 815, "Model Regulation Permitting the Recognition of Preferred Mortality Tables for Use in Determining Minimum Reserve Liabilities." The model regulation recognizes, permits and prescribes the use of mortality tables that reflect differences in mortality between preferred and standards lives in determining minimum reserve liabilities.

Comments and Response

Notice of proposed rulemaking was published at 40 Pa.B. 5067 (September 4, 2010) with a 30-day comment period. One comment in support of the amendments was received from the Insurance Federation of Pennsylvania, Inc. On November 3, 2010, the Independent Regulatory Review Commission (IRRC) indicated that it did not have comments, objections or recommendations regarding on this rulemaking.

Affected Parties

This final-form rulemaking applies to insurers issuing life insurance coverage in this Commonwealth.

Fiscal Impact

State government

There will not be an increase in cost to the Department due to the use of the new mortality table since the extent of the analysis performed by the Department is not affected by the mortality table used in the calculation of reserves.

General public

It is possible that the cost of insurance will be reduced for consumers who purchase life insurance coverage due to improved mortality recognized by the 2001 CSO Preferred Class Structure Mortality Table.

Political subdivisions

There will not be fiscal impact on political subdivisions as insurers will continue to maintain adequate reserves.

Private sector

The use of the 2001 CSO Preferred Class Structure Mortality Table generally will reduce the reserve liabilities of an insurance company. In addition, the use of the table is optional.

Paperwork

The adoption of this final-form rulemaking will not impose additional paperwork on the Department. An

insurance company that elects to use the 2001 CSO Preferred Class Structure Mortality Table as the minimum valuation standard will be required to submit at election and annually thereafter a certification to the Commissioner that the conditions for use of the table are satisfied.

Effectiveness/Sunset Date

The rulemaking will become effective March 30, 2011. The Department continues to monitor the effectiveness of regulations on a triennial basis; therefore, a sunset date has not been assigned.

Contact Person

Questions regarding the final-form rulemaking should be directed to Peter J. Salvatore, Regulatory Coordinator, Insurance Department, 1326 Strawberry Square, Harrisburg, PA 17120, (717) 787-4429, fax (717) 705-3873, psalvatore@state.pa.us.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on November 9, 2010, the Department submitted a copy of the notice of proposed rulemaking, published at 40 Pa.B. 5067 to IRRRC and the Chairpersons of the Senate Banking and Insurance Committee and the House Insurance Committee for review and comment.

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

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on December 15, 2010, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRRC met on December 16, 2010, and approved the final-form rulemaking.

Findings

The Commissioner finds that:

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

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

Order

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

(a) The regulations of the Department, 31 Pa. Code Chapter 84d, are amended by amending § 84d.3a to read as set forth at 40 Pa.B. 5067.

(b) The Department shall submit this order and 40 Pa.B. 5067 to the Office of General Counsel and Office of Attorney General for approval as to form and legality as required by law.

(c) The Department shall certify this order and 40 Pa.B. 5067 and deposit them with the Legislative Reference Bureau as required by law.

(d) The final-form rulemaking takes effect March 30, 2011.

ROBERT L. PRATTER,
Acting Insurance Commissioner

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 41 Pa.B. 118 (January 1, 2011).)

Fiscal Note: Fiscal Note 11-246 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 11-139. Filed for public inspection January 28, 2011, 9:00 a.m.]

INSURANCE DEPARTMENT

[31 PA. CODE CH. 118a]

Property and Casualty Actuarial Opinion

The Insurance Department (Department) adopts Chapter 118a (relating to property and casualty actuarial opinion).

Statutory Authority

The final-form rulemaking is adopted under the authority of sections 206, 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; sections 320 and 655 of The Insurance Company Law of 1921 (40 P. S. §§ 443 and 815), regarding the authority of the Insurance Commissioner (Commissioner) to require insurance companies, associations and exchanges to file statements concerning their affairs and financial condition; and sections 205 and 206 of The Pennsylvania Fair Plan Act (40 P. S. §§ 1600.205 and 1600.206) and section 731 of the Medical Care Availability and Reduction of Error (MCARE) Act (40 P. S. § 1303.731), regarding, respectively, the specific regulatory and rulemaking authority of the Department regarding financial reporting by the Pennsylvania Fair Plan and the Pennsylvania Professional Liability Joint Underwriting Association.

Purpose

The purpose of this final-form rulemaking is to establish by regulation the requirements for statements of actuarial opinion and related documents filed by property and casualty insurers with the Department. Establishing these requirements by regulation for property and casualty insurers is consistent with the approach used to establish similar requirements for actuarial review of the reserves of life and health insurers under Chapter 84b (relating to actuarial opinion and memorandum). Section 320(a)(1) of The Insurance Company Law of 1921 requires insurers to file annual financial statements with the Department and additional statements concerning their affairs and financial condition as the Commissioner may, in the Commissioner's discretion, require. Section 320(a)(2) of The Insurance Company Law of 1921 further requires insurers to adhere to the instructions and accounting practices and procedures prescribed by the National Association of Insurance Commissioners (NAIC) unless otherwise provided by law, regulation or order of the Commissioner. Under this authority, the Commissioner requires property and casualty insurers to include statements of actuarial opinion with annual financial statements filed on or before the first day of March and domestic property and casualty insurers to file an actu-

arial opinion summary on or before the 15th day of March each year. These filings shall be prepared as prescribed by the NAIC's annual statement instructions and include the actuary's opinion with respect to the proper establishment and adequacy of the insurer's reserves. If requested by the Department, domestic insurers shall also submit the supporting actuarial report and workpapers on or before the first day of May each year. The Department reviews this information in conducting financial analyses and onsite financial examinations of domestic insurers.

Specifically, Chapter 118a clarifies requirements for the filing of the actuarial opinion summary, which became effective for financial statements reporting an insurer's condition as year-end 2005. The actuarial opinion summary provides the Department with information needed to quickly identify insurers with potential reserving problems and then focus heightened solvency monitoring efforts on those insurers. Therefore, Chapter 118a will strengthen the Department's financial regulation tools to the extent it clarifies and supplements the Department's statutory authority and related NAIC instructions for actuarial opinions and related documents filed by property and casualty insurers doing business in this Commonwealth.

Comments and Response

Notice of proposed rulemaking was published at 40 Pa.B. 4966 (August 28, 2010) with a 30-day comment period. Comments supporting the rulemaking and recommending prompt promulgation were received from The Insurance Federation of Pennsylvania, Inc. The Independent Regulatory Review Commission (IRRC) reviewed the proposed rulemaking and did not have objections, comments or recommendations.

Affected Parties

Chapter 118a applies to insurers licensed to write property and casualty insurance in this Commonwealth, as provided under the scope and definitions of the authorizing statutes.

Fiscal Impact

State government

The final-form rulemaking clarifies and strengthens existing requirements. Department costs in monitoring the financial condition of insurers will not increase as a result of this final-form rulemaking.

General public

The public will benefit to the extent the final-form rulemaking strengthens financial solvency requirements for property and casualty insurers, thereby promoting the ability of those insurers to meet obligations under insurance policies and the Department's ability to minimize the number and impact of insurer insolvencies.

Political subdivisions

The final-form rulemaking will not impose additional costs on political subdivisions.

Private sector

The strengthened filing requirements in this final-form rulemaking are consistent with NAIC standards that became effective for annual financial statements as of year-end 2005. The information needed for the actuarial opinion summary due March 15 should be known to the insurer's appointed actuary when preparing the statement of actuarial opinion due March 1. Therefore, the final-form rulemaking should not impose significant addi-

tional costs on insurers in obtaining annual actuarial reviews and required supporting documentation.

Paperwork

The final-form rulemaking will not impose significant additional paperwork on the Department. Since the information required in the actuarial opinion summary should be included in the work done by actuaries in preparing actuarial reports and workpapers for statements of actuarial opinion already required to be filed with insurers' annual financial statements, additional paperwork requirements for affected insurers will be minimal.

Effectiveness/Sunset Date

The rulemaking will become effective upon final-form publication in the *Pennsylvania Bulletin*. The Department continues to monitor the effectiveness of regulations on a triennial basis; therefore, a sunset date has not been assigned.

Contact Person

Questions regarding the final-form rulemaking should be directed to Peter J. Salvatore, Regulatory Coordinator, Insurance Department, 1326 Strawberry Square, Harrisburg, PA 17120, (717) 787-4429, fax (717) 705-3873, psalvatore@state.pa.us.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on November 9, 2010, the Department submitted a copy of the notice of proposed rulemaking, published at 40 Pa.B. 4966 to IRRC and the Chairpersons of the Senate Banking and Insurance Committee and the House Insurance Committee for review and comment.

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

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on December 15, 2010, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on December 16, 2010, and approved the final-form rulemaking.

Findings

The Commissioner finds that:

(1) Public notice of intention to adopt these final-form regulations was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

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

Order

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

(a) The regulations of the Department, 31 Pa. Code, are amended by adding §§ 118a.1—118a.7 to read as set forth at 40 Pa.B. 4966.

(b) The Department shall submit this order and 40 Pa.B. 4966 to the Office of General Counsel and Office of Attorney General for approval as to form and legality as required by law.

(c) The Department shall certify this order and 40 Pa.B. 4966 and deposit them with the Legislative Reference Bureau as required by law.

(d) The final-form rulemaking takes effect immediately upon publication in the *Pennsylvania Bulletin*.

ROBERT L. PRATTER,
Acting Insurance Commissioner

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 41 Pa.B. 118 (January 1, 2011).)

Fiscal Note: Fiscal Note 11-245 remains valid for the final adoption of the subject regulations.

[Pa.B. Doc. No. 11-140. Filed for public inspection January 28, 2011, 9:00 a.m.]
