

RULES AND REGULATIONS

Title 31—INSURANCE

INSURANCE DEPARTMENT

[31 PA. CODE CH. 90j]

Term and Universal Life Insurance Reserve Financing Standards

The Insurance Department (Department) adds Chapter 90j (relating to term and universal life insurance reserve financing standards) to read as set forth in Annex A. This final-form rulemaking is made under the Department's general rulemaking authority as set forth in sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P.S. §§ 66, 186, 411 and 412) and the Department's rulemaking authority under section 319.3(j) of The Insurance Company Law of 1921 (40 P.S. § 442.3(j)).

Purpose

The purpose of this final-form rulemaking is to establish uniform, National standards governing reserve financing arrangements pertaining to life insurance policies containing guaranteed nonlevel gross premiums, guaranteed nonlevel benefits and universal life insurance policies with secondary guarantees. Additionally, this final-form rulemaking is intended to ensure, with respect to each financing arrangement, funds consisting of primary security and other security are held by or on behalf of ceding insurers in the forms and amounts as set forth in Annex A.

This final-form rulemaking is developed directly from the National Association of Insurance Commissioners (NAIC) Term and Universal Life Insurance Reserve Financing Model Regulation (# 787) which is an NAIC accreditation standard. This final-form rulemaking sets forth specific standards related to the security held by insurers engaged in the ceding of reinsurance as contemplated by the enabling statute. By ensuring that the primary or other security held by or on behalf of ceding insurers is in the forms and amounts set forth in Annex A, this final-form rulemaking addresses how reinsurance is ceded for reserve financing purposes. This is important because, generally, some or all of the assets used to secure a reinsurance treaty or to capitalize a reinsurer are (1) issued by the ceding insurer or its affiliates, (2) not unconditionally available to satisfy the general account obligations of the ceding insurer, or (3) create a reimbursement, indemnification or other similar obligation on the part of the ceding insurer or any of its affiliates.

Comments and Responses

Notice of proposed rulemaking was published at 52 Pa.B. 830 (February 5, 2022), with a 30-day public comment period. The Insurance Federation of Pennsylvania (IFP) submitted comments during the public comment period. Comments were taken into consideration.

The IFP expressed support for the proposed rulemaking without any additional comments.

The Independent Regulatory Review Commission (IRRC) commented regarding the clarity of a few sections. First, in the definition of "Covered policies" in § 90j.1 (relating to definitions), the cross-reference to § 90j.4 (relating to applicability) should be corrected to § 90j.5 (relating to exemptions). This final-form rulemaking reflects this correction in Annex A.

Second, the definition of "RBC—risk-based capital" cites section 501-A of The Insurance Department Act of 1921 (40 P.S. § 221.1-A). The statutory definition in that section states the acronym in full but does not substantively define the term. While RBC is a well-known industry term, it is not defined in Federal or State statute. The amended definition set forth in Annex A reflects the language in guidance from the NAIC.¹ This final-form regulation as set forth in Annex A is amended to state, "RBC—Risk-based capital—The minimum level of capital required for an insurer to support its operations and write coverage as set forth in Article V-A of The Insurance Department Act of 1921 (40 P.S. §§ 221.1-A—221.15-A)." This amended language includes substantive statutory provisions related to "RBC," incorporating that substance into the definition of this final-form rulemaking.

Third, IRRC commented that clarification is needed related to § 90j.6 (relating to actuarial method): the cross-reference in § 90j.6(a)(5) should be corrected to "paragraph (4)." Also, the last sentence of § 90j.6(a)(8)(ii) should be corrected to reference "the requirements of this subparagraph." This final-form rulemaking reflects these corrections as set forth in Annex A.

Affected Parties

This final-form rulemaking will affect foreign and domestic life insurers that hold a certificate of authority to write life insurance contracts in this Commonwealth.

Fiscal Impact

State government

There will not be any fiscal impact to the Department as a result of this final-form rulemaking.

General public

This final-form rulemaking will have no fiscal impact upon the general public.

Political subdivisions

This final-form rulemaking will have no fiscal impact upon political subdivisions.

Private sector

This final-form rulemaking will have no fiscal impact upon the private sector, except for a possible minimal impact to the regulated entities affected.

Paperwork

This final-form rulemaking will not impose additional paperwork on the Department because no additional filing is required to be made by insurers that must comply with this final-form rulemaking.

Effectiveness / Sunset Date

This final-form rulemaking will become effective immediately upon publication in the *Pennsylvania Bulletin*. The Department continues to monitor the effectiveness of regulations on a triennial basis; therefore, no sunset date has been assigned.

Contact Person

Questions or comments regarding this final-form rulemaking may be addressed in writing to Eric W. Carlisle, Regulatory Coordinator, Insurance Department, 1341 Strawberry Square, Harrisburg, PA 17120, within 30 days

¹ See generally <https://content.naic.org/cipr-topics/risk-based-capital>.

following the publication of this notice in the *Pennsylvania Bulletin*. Questions and comments may also be e-mailed to ercarlisle@pa.gov or faxed to (717) 772-1969.

Regulatory Review

Under Section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on January 26, 2022, the Department submitted a copy of the notice of proposed rulemaking, published at 52 Pa.B. 830, to the Independent Regulatory Review Commission (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 (71 P.S. § 745.5(c)), the Department shall submit to IRRC and House and Senate Committees copies of 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 June 15, 2022, this final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(g) of the Regulatory Review Act, the final-form rulemaking was deemed approved by IRRC effective June 16, 2022.

Findings

The Acting Insurance Commissioner finds that:

- (1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) referred to as the Commonwealth Documents Law and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2 (relating to notice of proposed rulemaking required; and adoption of regulations).
- (2) A public comment period was provided as required by law and all comments were considered.
- (3) This final-form rulemaking does not enlarge the purpose of the proposed rulemaking published at 52 Pa.B. 830.
- (4) This final-form rulemaking adopted by this order is necessary and appropriate for the administration and enforcement of the authorizing statutes.

Order

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

- (a) The regulations of the Department, 31 Pa. Code Chapter 90j, are amended by adding §§ 90j.1—90j.9 to read as set forth in Annex A.
- (b) The Department shall submit this final-form rulemaking to IRRC and the House and Senate Committees, as required by law.
- (c) The Department shall submit this final-form rulemaking to the Office of General Counsel and the Office of Attorney General for approval as to legality and form, as required by law.
- (d) The Department shall certify this final-form rulemaking, as approved for legality and form, and deposit them with the Legislative Reference Bureau, as required by law.
- (e) This final-form rulemaking shall take effect immediately upon publication in the *Pennsylvania Bulletin*.

MICHAEL HUMPHREYS,
Acting Insurance Commissioner

(*Editor's Note:* See 52 Pa.B. 3740 (July 2, 2022) for IRRC's approval order.)

Fiscal Note: Fiscal Note 11-260 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 31. INSURANCE

PART IV. LIFE INSURANCE

CHAPTER 90j. TERM AND UNIVERSAL LIFE INSURANCE RESERVE FINANCING STANDARDS

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§ 90j.1. Definitions.

Actuarial method—The methodology used to determine the required level of primary security, as described in § 90j.6 (relating to actuarial method).

Covered policies—(1) Subject to the exemptions described in § 90j.5 (relating to exemptions), policies of either of the following types:

- (i) Life insurance policies with guaranteed nonlevel gross premiums or guaranteed nonlevel benefits, or both, except for flexible premium universal life insurance policies;
- (ii) Flexible premium universal life insurance policies with provisions resulting in the ability of a policyholder to keep a policy in force over a secondary guarantee period.

(2) The term does not include policies issued prior to January 1, 2015, and ceded as of December 31, 2014, as part of a reinsurance treaty that would not have met one of the exemptions set forth in § 90j.5 had that section then been in effect.

Non-covered policies—A policy that does not meet the definition of covered policies.

Other security—A security acceptable to the Commissioner other than security meeting the definition of primary security.

Primary security—The following forms of security:

- (i) Cash meeting the requirements of section 319.1(b)(1) of The Insurance Company Law of 1921 (40 P.S. § 442.1(b)(1)) regarding reinsurance credits;
- (ii) Securities listed by the Securities Valuation Office meeting the requirements of section 319.1(b)(2) of The Insurance Company Law of 1921 regarding reinsurance credits, but excluding any synthetic letter of credit, contingent note, credit-linked note or other similar security that operates in a manner similar to a letter of credit, and excluding any securities issued by the ceding insurer or any of its affiliates;
- (iii) For security held in connection with funds-withheld and modified coinsurance reinsurance treaties, including all of the following:

- (A) Commercial loans in good standing of CM3 quality and higher.
- (B) Policy loans.

(C) Derivatives acquired in the normal course and used to support and hedge liabilities pertaining to the actual risks in the policies ceded under the reinsurance treaty.

RBC—Risk-based capital—The minimum level of capital required for an insurer to support its operations and write coverage as set forth in Article V-A of The Insurance Department Act of 1921 (40 P.S. §§ 221.1-A—221.15-A).

Required level of primary security—The dollar amount determined by applying the actuarial method to the risks ceded with respect to covered policies, but not more than the total reserve ceded.

VM-20—Requirements for principle-based reserves for life products, including all relevant definitions, from the Valuation Manual.

Valuation Manual—The Valuation Manual adopted by the NAIC as described in section 11B(1) of the standard valuation law, with all amendments adopted by the NAIC that are effective for the financial statement date on which credit for reinsurance is claimed, and which had an operative date of January 1, 2017, under 40 Pa.C.S. § 7104 (relating to notice regarding operative date of valuation manual) with public notice published at 46 Pa.B. 5867 (September 10, 2016).

§ 90j.2. Authority.

This chapter is adopted and promulgated by the Insurance Department under section 319.3(j) of The Insurance Company Law of 1921 (40 P.S. § 442.3(j)), regarding credit for reinsurance and reciprocal jurisdictions.

§ 90j.3. Purpose.

The purpose and intent of this chapter is as follows:

(1) To establish uniform, National standards governing reserve financing arrangements pertaining to life insurance policies containing guaranteed nonlevel gross premiums, guaranteed nonlevel benefits and universal life insurance policies with secondary guarantees.

(2) To ensure that, with respect to each financing arrangement, funds consisting of primary security and other security, as defined in § 90j.1 (relating to definitions), are held by or on behalf of ceding insurers in the forms and amounts required in this chapter.

§ 90j.4. Applicability.

This chapter shall apply to reinsurance treaties that cede liabilities pertaining to covered policies, as that term is defined in § 90j.1 (relating to definitions), issued by any life insurance company domiciled in this state. This chapter and Chapter 161 (relating to requirements for qualified and certified reinsurers) shall both apply to these reinsurance treaties. In the event of a direct conflict between the provisions of this chapter and Chapter 161, the provisions of this chapter shall apply, but only to the extent necessary to resolve the conflict.

§ 90j.5. Exemptions.

This chapter does not apply to the following:

(1) Reinsurance of:

(i) Policies that satisfy the criteria for exemption set forth in Chapter 84c (relating to valuation of life insurance policies); and which are issued before the later of:

(A) The effective date of this chapter.

(B) The date on which the ceding insurer begins to apply the provisions of VM-20 to establish the ceded policies' statutory reserves, but in no event later than January 1, 2020.

(ii) Portions of policies that satisfy the criteria for exemption set forth in § 84c.6(e) (relating to minimum valuation standard for policies with guaranteed nonlevel gross premiums or guaranteed nonlevel benefits (other than universal life policies)) and which are issued before the later of:

(A) The effective date of this chapter.

(B) The date on which the ceding insurer begins to apply the provisions of VM-20 to establish the ceded policies' statutory reserves, but in no event later than January 1, 2020.

(iii) A universal life policy that meets all of the following requirements:

(A) Secondary guarantee period, if any, is 5 years or less.

(B) Specified premium for the secondary guarantee period is not less than the net level reserve premium for the secondary guarantee period based on the Commissioners Standard Ordinary (CSO) valuation tables and valuation interest rate applicable to the issue year of the policy.

(C) The initial surrender charge is not less than 100% of the first year annualized specified premium for the secondary guarantee period.

(iv) Credit life insurance;

(v) A variable life insurance policy that provides for life insurance, the amount or duration of which varies according to the investment experience of any separate account or accounts;

(vi) A group life insurance certificate unless the certificate provides for a stated or implied schedule of maximum gross premiums required to continue coverage in force for a period of 1 year.

(2) Reinsurance ceded to an assuming insurer that meets the applicable requirements of Chapter 163 (relating to requirements for funds held as security for the payment of obligations of unlicensed, unqualified reinsurers);

(3) Reinsurance ceded to an assuming insurer that meets the applicable requirements of section 319.1(a.2)(2) of The Insurance Company Law of 1921 (40 P.S. § 442.1(a.2)(2)), which satisfies both of the following requirements:

(i) The insurer prepares statutory financial statements in compliance with the NAIC Accounting Practices and Procedures Manual, without any departures from NAIC statutory accounting practices and procedures pertaining to the admissibility or valuation of assets or liabilities that increase the assuming insurer's reported surplus and are material enough that they need to be disclosed in the financial statement of the assuming insurer under Statement of Statutory Accounting Principles No. 1.

(ii) The insurer is not in a company action level event, regulatory action level event, authorized control level event or mandatory control level event as those terms are defined in section 501-A of The Insurance Department Act of 1921 (40 P.S. § 221.1-A), regarding definitions related to risk-based capital requirements, when its RBC is calculated in accordance with the life risk-based capital report including overview and instructions for companies, as the same may be amended by the NAIC from time to time, without deviation.

(4) Reinsurance ceded to an assuming insurer that meets the applicable requirements of section 319.1(a.2) of The Insurance Company Law of 1921, which satisfies the following requirements:

(i) The insurer is not an affiliate, as that term is defined in section 1401 of The Insurance Company Law of 1921 (40 P.S. § 991.1401) regarding definitions of terms related to insurance holding companies, of either the insurer ceding the business to the assuming insurer or any insurer that directly or indirectly ceded the business to that ceding insurer.

(ii) The insurer prepares statutory financial statements in compliance with the NAIC Accounting Practices and Procedures Manual;

(iii) The insurer is licensed or accredited in at least ten states, including its state of domicile;

(iv) The insurer is not licensed in any state as a captive, special purpose vehicle, special purpose financial captive, special purpose life reinsurance company, limited purpose subsidiary or any other similar licensing regime;

(v) The insurer is not, or would not be, below 500% of the authorized control level RBC as that term is defined in section 501-A of The Insurance Department Act of 1921 when its RBC is calculated in accordance with the life risk-based capital report including overview and instructions for companies, as the same may be amended by the NAIC from time to time, without deviation, and without recognition of any departures from NAIC statutory accounting practices and procedures pertaining to the admission or valuation of assets or liabilities that increase the assuming insurer's reported surplus.

(5) Reinsurance ceded to an assuming insurer that meets the requirements of section 319.1(f)(2)(iii) of The Insurance Company Law of 1921;

(6) Reinsurance not otherwise exempt under paragraphs (1)–(5) if the Commissioner determines under all the facts and circumstances, including the work of the NAIC Financial Analysis Working Group or other group of regulators designated by the NAIC, as applicable, that all of the following apply:

(i) The risks are clearly outside of the intent and purpose of this chapter as described in § 90j.3 (relating to purpose).

(ii) The risks are included within the scope of this chapter only as a technicality.

(iii) The application of this chapter to those risks is not necessary to provide appropriate protection to policyholders. The Commissioner shall publicly disclose any decision made under this subsection to exempt a reinsurance treaty from this chapter, including a summary description of the treaty, as well as the general basis for the exemption.

§ 90j.6. Actuarial method.

(a) *Actuarial method.* The actuarial method to establish the required level of primary security for each reinsurance treaty subject to this chapter shall be VM-20, applied on a treaty-by-treaty basis, including all relevant definitions, from the Valuation Manual as then in effect, applied as follows:

(1) For covered policies described in paragraph (1)(i) of the definition of “covered policies” in § 90j.1 (relating to definitions), the actuarial method is the greater of the deterministic reserve or the net premium reserve (NPR) regardless of whether the criteria for exemption testing can be met, subject to the following:

(i) If the covered policies do not meet the requirements of the stochastic reserve exclusion test in the Valuation Manual, then the actuarial method is the greatest of the deterministic reserve, the stochastic reserve or the NPR.

(ii) If the covered policies are reinsured in a reinsurance treaty that also contains covered policies described in paragraph (1)(ii) of the definition of “covered policies” in § 90j.1, the ceding insurer may elect to instead use paragraph (2) as follows as the actuarial method for the entire reinsurance agreement.

(iii) The actuarial method must comply with any requirements or restrictions that the Valuation Manual imposes when aggregating these policy types for purposes of principle-based reserve calculations.

(2) For covered policies described in paragraph (1)(ii) of the definition of “covered policies” in § 90j.1, the actuarial method is the greatest of the deterministic reserve, the stochastic reserve or the NPR regardless of whether the criteria for exemption testing can be met.

(3) Except as provided in paragraph (4), the actuarial method is to be applied on a gross basis to all risks with respect to the covered policies as originally issued or assumed by the ceding insurer.

(4) If the reinsurance treaty cedes less than 100% of the risk with respect to the covered policies then the required level of primary security may be reduced by any of the following or any combination of the following:

(i) If a reinsurance treaty cedes only a quota share of some or all of the risks pertaining to the covered policies, the required level of primary security, as well as any adjustment under subparagraph (iii), may be reduced to a pro rata portion in accordance with the percentage of the risk ceded.

(ii) If the reinsurance treaty in a non-exempt arrangement cedes only the risks pertaining to a secondary guarantee, the required level of primary security may be reduced by an amount determined by applying the actuarial method on a gross basis to all risks, other than risks related to the secondary guarantee, pertaining to the covered policies, subject to the following:

(A) For covered policies for which the ceding insurer did not elect to apply the provisions of VM-20 to establish statutory reserves, the required level of primary security may be reduced by the statutory reserve retained by the ceding insurer on those covered policies;

(B) The retained reserve of those covered policies should reflect any reduction under the cession of mortality risk on a yearly renewable term basis in an exempt arrangement;

(iii) If a portion of the covered policy risk is ceded to another reinsurer on a yearly renewable term basis in an exempt arrangement, the required level of primary security may be reduced by the amount resulting from applying the actuarial method including the reinsurance section of VM-20 to the portion of the covered policy risks ceded in the exempt arrangement. For covered policies issued prior to January 1, 2017, this adjustment is not to exceed $(c_x / (2 * \text{number of reinsurance premiums per year}))$ where c_x is calculated using the same mortality table used in calculating the net premium reserve;

(iv) For any other treaty ceding a portion of risk to a different reinsurer, including but not limited to stop loss, excess of loss and other non-proportional reinsurance treaties, there will be no reduction in the required level of primary security.

(5) Any adjustments, as set forth in paragraph (4), must meet the following criteria:

(i) The required level of primary security must be done in the sequence that accurately reflects the portion of the risk ceded through the treaty.

(ii) The ceding insurer must document the rationale and steps taken to accomplish the adjustments to the required level of primary security due to the cession of less than 100% of the risk.

(iii) The adjustments for other reinsurance will be made only with respect to reinsurance treaties entered into directly by the ceding insurer. The ceding insurer will make no adjustment as a result of a retrocession treaty entered into by the assuming insurers.

(6) In no event will the required level of primary security resulting from application of the actuarial method exceed the amount of statutory reserves ceded.

(7) If the ceding insurer cedes risks with respect to covered policies, including any riders, in more than one reinsurance treaty subject to this chapter, in no event will the aggregate required level of primary security for those reinsurance treaties be less than the required level of primary security calculated using the actuarial method as if all risks ceded in those treaties were ceded in a single treaty subject to this chapter;

(8) If a reinsurance treaty subject to this chapter cedes risk on both covered and non-covered policies, credit for the ceded reserves shall be determined according to both of the following standards:

(i) The actuarial method shall be used to determine the required level of primary security for the covered policies, and § 90j.7 (relating to requirements applicable to covered policies to obtain credit for reinsurance; opportunity for remediation) shall be used to determine the reinsurance credit for the covered policy reserves.

(ii) Credit for the non-covered policy reserves shall be granted only to the extent that security, in addition to the security held to satisfy the requirements of subparagraph (i), is held by or on behalf of the ceding insurer in accordance with section 319.3(c)(4)(iv) and (v) of The Insurance Company Law of 1921 (40 P.S. § 442.3(c)(4)(iv) and (v)). A primary security used to meet the requirements of this subparagraph may not be used to satisfy the required level of primary security for the covered policies.

(b) *Valuation used for purposes of calculations.* For the purposes of both calculating the required level of primary security under the actuarial method and determining the amount of primary security and other security, as applicable, held by or on behalf of the ceding insurer, the following shall apply:

(1) For assets, including any assets held in trust, that would be admitted under the NAIC Accounting Practices and Procedures Manual if they were held by the ceding insurer, the valuations are to be determined according to statutory accounting procedures as if the assets were held in the ceding insurer's general account and without taking into consideration the effect of any prescribed or permitted practices.

(2) For all other assets, the valuations are to be those that were assigned to the assets for the purpose of determining the amount of reserve credit taken, subject to the following:

(i) The asset spread tables and asset default cost tables required by VM-20 shall be included in the actuarial method if adopted by the NAIC's Life Actuarial (A) Task Force no later than the month of December preceding the valuation date for which the required level of primary security is being calculated.

(ii) The tables of asset spreads and asset default costs shall be incorporated into the actuarial method in the manner specified in VM-20.

§ 90j.7. Requirements applicable to covered policies to obtain credit for reinsurance; opportunity for remediation.

(a) *Requirements.* Subject to the exemptions described in § 90j.5 (relating to exemptions) and the provisions of subsection (b), credit for reinsurance shall be allowed with respect to ceded liabilities pertaining to covered policies under section 319.1(b) of The Insurance Company Law of 1921 (40 P.S. § 442.1(b)) only if, in addition to all other requirements imposed by law or regulation, all of the following requirements are met on a treaty-by-treaty basis:

(1) The ceding insurer's statutory policy reserves with respect to the covered policies are established in full and in accordance with the applicable requirements of 40 Pa.C.S. §§ 7101—7151 (relating to reserve liabilities) and its related regulations and actuarial guidelines. Credit claimed for any reinsurance treaty subject to this chapter may not exceed the proportionate share of those reserves ceded under the contract.

(2) The ceding insurer determines the required level of primary security with respect to each reinsurance treaty subject to this chapter and provides support for its calculation in a manner acceptable to the Commissioner.

(3) Funds consisting of primary security, in an amount at least equal to the required level of primary security, are held by or on behalf of the ceding insurer, as security under the reinsurance treaty within the meaning of section 319.1 of The Insurance Company Law of 1921 on a funds withheld, trust or modified coinsurance basis.

(4) Funds consisting of other security, in an amount at least equal to any portion of the statutory reserves as to which primary security is not held under paragraph (3), are held by or on behalf of the ceding insurer as security under the reinsurance treaty within the meaning of section 319.1 of The Insurance Company Law of 1921.

(5) A trust used to satisfy the requirements of this section shall comply with all of the conditions and qualifications of Chapter 163 (relating to requirements for funds held as security for the payment of obligations of unlicensed, unqualified reinsurers), subject to the following:

(i) Funds consisting of primary security or other security held in trust, shall for the purposes identified in § 90j.6(b) (relating to actuarial method), be valued according to the valuation rules set forth in § 90j.6(b), as applicable.

(ii) There may not be any affiliate investment limitations with respect to any security held in trust if the security is not needed to satisfy the requirements of paragraph (3).

(iii) The reinsurance treaty must prohibit withdrawals or substitutions of trust assets that would leave the fair market value of the primary security within the trust, when aggregated with primary security outside the trust that is held by or on behalf of the ceding insurer in the manner required by paragraph (3), below 102% of the level required by paragraph (3) at the time of the withdrawal or substitution.

(iv) The determination of reserve credit under Chapter 163 shall be determined according to the valuation rules set forth in § 90j.6(b), as applicable.

Title 49—PROFESSIONAL AND VOCATIONAL STANDARDS

STATE BOARD OF PODIATRY

[49 PA. CODE CH. 29]

Continuing Education

The State Board of Podiatry (Board) amends §§ 29.60, 29.61 and 29.68 (relating to definitions; requirements for biennial renewal and eligibility to conduct educational conferences; and continuing education exemptions).

Effective Date

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

Statutory Authority

Section 15 of the Podiatry Practice Act (act) (63 P.S. § 42.15) authorizes the Board to promulgate and enforce such rules and regulations to carry out the intent and purposes of the act. Section 9 of the act (63 P.S. § 42.9) requires licensees to apply for biennial renewal and submit evidence that the licensee completed “such hours of approved educational conferences as determined by the board by regulation.” Thus, the Board has the authority to determine the number of hours of continuing education required for biennial renewal, and to set those hours by regulation. Additionally, section 9.1 of the act (63 P.S. § 42.9a) requires licensees to furnish evidence satisfactory to the Board that the licensee has completed mandated continuing education and authorizes the Board to determine whether or not to approve proposed continuing education courses.

The act of December 22, 2021 (P.L. 488, No. 100) (Act 100) was added to 63 Pa.C.S. § 3107.1 (relating to virtual operation). Section 3107.1 of 63 Pa.C.S. requires licensing boards and commissions to establish rules and regulations for continuing education that provide for distance education if continuing education is required for license, certificate, registration or permit in a practice act. Additionally, 63 Pa.C.S. § 3102 (relating to definitions) defines distance education as instruction offered by any means where the licensee is in a separate physical location from the instructor and communication is accomplished through one or more technological media. The term includes real-time or delayed interaction using voice, video, data or text, including instruction provided online, by means of correspondence or interactive video.

Background and Purpose

The Board last updated its regulations related to continuing education at 40 Pa.B. 5805 (October 9, 2010). Now, this final-form rulemaking seeks to eliminate unnecessary burdens on licensees, while continuing to protect the public’s health, safety and welfare through the continuing education requirements. Inspired by Governor Tom Wolf’s initiative to reduce barriers to licensure and unnecessary burdens on licensees, the Board initially proposed to reduce the number of required continuing education credits from 50 hours per biennial renewal to 45 hours. However, in consideration of comments received, the Board decided not to reduce those hours.

This final-form rulemaking also eliminates the current restriction on the number of hours (currently limited to 10 hours) that may be completed through distance education courses and programs. This final-form rulemaking allows for an unlimited amount of continuing education credits through distance education, consistent with trends

(6) The reinsurance treaty has been approved by the Commissioner.

(b) *Requirements at inception date and on an on-going basis; remediation.*

(1) The requirements of subsection (a) must be satisfied as of the date that risks under covered policies are ceded if the date is on or after the effective date of this chapter and on an ongoing basis thereafter, subject to all of the following:

(i) Under no circumstances shall a ceding insurer take or consent to any action or series of actions that would result in a deficiency under subsection (a)(3) or (4) with respect to any reinsurance treaty under which covered policies have been ceded.

(ii) In the event that a ceding insurer becomes aware at any time that a deficiency exists, it shall use its best efforts to arrange for the deficiency to be eliminated as expeditiously as possible.

(2) Prior to the due date of each quarterly or annual statement, each life insurance company that has ceded reinsurance within the scope of § 90j.4 (relating to applicability) shall perform an analysis, on a treaty-by-treaty basis, to determine, as to each reinsurance treaty under which covered policies have been ceded, whether, as of the end of the immediately preceding calendar quarter, the requirements of subsection (a)(3) and (4) were satisfied. The following apply:

(i) The ceding insurer shall establish a liability equal to the excess of the credit for reinsurance taken over the amount of primary security actually held under paragraph (3), as follows unless:

(A) The requirements of subsection (a)(3) and (4) were fully satisfied as of the valuation date as to the reinsurance treaty.

(B) A deficiency has been eliminated before the due date of the quarterly or annual statement to which the valuation date relates through the addition of primary security or other security, or both, in the amount and in the form as would have caused the requirements of subsection (a)(3) and (4) to be fully satisfied as of the valuation date.

(3) Nothing in paragraph (2) may be construed to allow a ceding company to maintain a deficiency under subsection (a)(3) or (4) for any period of time longer than is reasonably necessary to eliminate it.

§ 90j.8. Prohibition against avoidance.

An insurer that has covered policies subject to this chapter as set forth in § 90j.4 (relating to applicability), may not take any action or series of actions, or enter into any transaction or arrangement, or series of transactions or arrangements, if the purpose of the action, transaction or arrangement or series thereof, is to avoid the requirements of this chapter, or to circumvent the purpose and intent of this chapter as set forth in § 90j.3 (relating to purpose).

§ 90j.9. Effective date.

This chapter shall take effect August 6, 2022, and shall pertain to the credit for reinsurance taken for all covered policies.

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in licensure requirements in other states. Notably, through 63 Pa.C.S. § 3107.1, the legislature expressed its intent to modernize the approach to continuing education by requiring that boards under the Bureau of Professional and Occupational Affairs (Bureau) offer licensees the opportunity to receive distance education. As a safeguard to ensure appropriate education is received, the Board's regulations require a skills or knowledge assessment component for credit hours obtained through asynchronous distance education.

This final-form rulemaking also adds a continuing education exemption for newly licensed podiatrists and clarifies that individuals with a serious illness or demonstrated hardship may request an extension for all or a portion of their continuing education for a biennial renewal.

Summary of Comments to the Proposed Rulemaking; the Board's Response and Description of Amendments to the Final-form Rulemaking

Notice of proposed rulemaking was published at 50 Pa.B. 2743 (May 30, 2020). Publication was followed by a 30-day public comment period. The Board received comments and objections from National and State organizations and individual licensees throughout this Commonwealth. The National and State organizations and nine individual licensees expressed opposition to three provisions of the proposed rulemaking. In addition, the Independent Regulatory Review Commission (IRRC) reviewed the proposed rulemaking and provided comments and recommendations. The Board did not receive any comments from the House Professional Licensure Committee (HPLC) or the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC).

Public Comments

The Pennsylvania Podiatric Medical Association (PPMA) has over 850 members who are doctors of podiatric medicine. PPMA expressed opposition regarding three issues: 1) the reduction of the number of continuing education hours from 50 to 45; 2) the expansion of distance education; and 3) providing credit hours for reading of professional journals. Nine podiatrists, including the current President of the Podiatric Medical Assurance of Pennsylvania, a past president of the Pennsylvania Podiatric Medical Association, and a clinical professor from Temple University and current PPMA board member submitted comments supporting PPMA comments and objections. One of these commentators noted that it is not the time to reduce the time or quality of continuing education given the expanded scope of practice granted by the Governor to podiatrists during the novel coronavirus (COVID-19) crisis. Additionally, the American Podiatric Medical Association (APMA) submitted a comment supporting the PPMA comments regarding the reduction of continuing education hours and also citing the profession's proud history of obtaining parity with its allopathic and osteopathic colleagues, which APMA asserts is due to the profession being successful in demonstrating that education, training and experience of podiatrists is similar to that of allopathic and osteopathic physicians. APMA also recommended that the Board's regulations more closely align with the Counsel of Podiatric Medical Education (CPME) guidance on the issue of journal reading.

Regarding the comments opposing the reduction in continuing education credit hours, PPMA asserts that it runs afoul of the agreement established by the stakeholders involved in the creation of the act of March 20, 2002

(P.L. 154, No. 13), the Medical Care Availability and Reduction of Error (MCARE) Act (40 P.S. §§ 1303.101—1303.910). PPMA explained that podiatrists participate in the MCARE Fund, which means that each year the amount of each judgment and settlement reached in all claims against doctors of podiatric medicine, medical doctors, osteopathic medical doctors and hospitals are aggregated and assessed to each licensee in the form of the MCARE Assessment. As a result, PPMA asserted that podiatry has an inherent interest in patient safety and risk management practiced by medical doctors and osteopathic doctors and by the same token they have an inherent interest in podiatric patient safety practices and risk management; therefore, reducing the number of continuing education hours runs contrary to their established relationship with other MCARE Fund participants. Additionally, PPMA asserts that it does not see the current 50-hour continuing education requirement as a barrier or burden, that there is no factual basis upon which to reduce the required continuing education hours and that the current requirement is actually below the relevant surrounding states. In response, the Board carefully considered the comments regarding the required number of credits and as a result will not be reducing the continuing education credits to 45 hours. Instead, the Board amends this final-form rulemaking to return to the 50-hour biennial credit requirement.

PPMA and nine individual podiatrists oppose the elimination of the 10-hour limitation on continuing education hours provided through distance education. PPMA bases its objection on several factors, including the value of face-to-face interaction and concerns about the quality and breadth of distance education. Notably, APMA does not oppose the Board's decision to allow for unlimited distance education continuing education hours.

This final-form rulemaking gives the licensee the option to obtain the continuing education requirements in person or through distance education. With the National and world trend moving rapidly toward advancing health information technology and remote monitoring and education, the Board anticipates that the quality of education will be enhanced as organizations will be keeping the bar high with a wide variety of topics for in person and distance education. Moreover, in enacting Act 100, the General Assembly provided boards with the flexibility to determine the appropriate amount of distance education. Additionally, providing licensees with the option of completing all continuing education credits through distance education is consistent with the State Board of Medicine (Medical Board) and the State Board of Osteopathic Medicine (Osteopathic Board) continuing education requirements. The Medical Board requires 100 credit hours of continuing medical education under § 16.19 (relating to continuing medical education). The Medical Board relies upon the American Medical Association (AMA) Physician's Recognition Award and its related credit system for continuing medical education credit, which provides for live in person, live Internet webinars, Internet point of care learning by means of a database of accredited courses, and unstructured online searching and learning. The Osteopathic Board also requires 100 credit hours of continuing medical education under § 25.271(c) (relating to requirements for renewal). The Osteopathic Board relies upon the American Osteopathic Association (AOA) and its related credit system for continuing medical education credit, which provides both Internet based interactive and non-interactive continuing education.

The Board submits that this final-form rulemaking provides sufficient safeguards with regard to the quality of continuing education in that the regulations require at least 30 clock hours in courses and programs in podiatry approved by the Board or approved by the Council on Podiatric Medical Education. The remaining clock hours must be in courses and programs in medical subjects pertinent to the practice of podiatry, approved by the AMA, AOA, the Board or CPME, or offered by an accredited school or college of podiatric medicine. Therefore, the Board is ensuring that licensees maintain competencies specific to podiatry to protect public health, safety and welfare. To address the concern that licensees may not engage or pay attention during asynchronous distance education, this final-form rulemaking requires a skills or knowledge assessment component to verify licensees receive and understand the appropriate level of education through asynchronous distance education programs. Synchronous distance learning is real-time interaction and is comparable to in person learning; therefore, a skills or knowledge assessment component is not necessary.

To clarify the definition of “distance learning,” the Board adds and amends definitions in § 29.60. To provide consistency between the Board’s regulations and 63 Pa.C.S. § 3102, the Board replaced the term “distance learning” with “distance education.” Additionally, the Board adopted the definition of “distance education” set forth in 63 Pa.C.S. § 3102. These amendments do not have a substantive impact, but rather, merely provide consistency in the terms and definitions. The Board adds a definition of “asynchronous distance education” and “synchronous distance education” to clarify that only “asynchronous distance education” requires a skills or knowledge assessment component.

Regarding journal reading, PPMA and other commentors oppose the proposed amendment that would allow up to 10 clock hours for the reading of professional journals. The Board considered the comments of PPMA and APMA. In doing so, the Board considered CPME Standards and Requirements for Approval of Providers of Continuing Education in Podiatric Medicine, which does not permit granting of CE for unsupervised study or assigned reading but allows for continuing education to utilize instructional materials including, but not limited to journals. Given the concerns raised by the commentors, the Board decided to amend this final-form rulemaking in § 29.61(a)(3) to stay consistent with CMPE’s Standards and Requirements for Approval of Providers of Continuing Education in Podiatric Medicine. Accordingly, the Board revised this provision to allow for a maximum of 10 clock hours in approved courses and programs that involve the use of reading professional journals, which is consistent with CMPE standards. In its comment, PPMA recommended adding a definition of “professional journal;” however, because the Board has reverted to its existing standard on the reading of professional journals, a definition for the term “professional journal” is unnecessary.

Comments from IRRC

IRRC asked that the Board explain how the total number of required continuing education hours and the maximum number of hours permitted to be obtained through distance education protects the public health, safety and welfare. The Board has addressed this previously in responding to PPMA’s comments. As previously noted, the Board amends this final-form rulemaking to return to the 50-hour biennial credit requirement. Re-

garding the number of hours permitted to be obtained through distance education, as previously explained in detail, the Board believes that allowing licensees the option to use distance education is a step towards modernizing the Board’s approach to continuing education and puts the Commonwealth on par with other states and other boards within the Bureau.

With respect to the Board’s proposed restructuring of § 29.61(a)(3) regarding professional journals, IRRC reiterated PPMA’s concern that the Board’s proposed amendments to this section may diminish the quality of continuing education. As previously discussed under Public Comments, given the concerns regarding the proposed amendments from PPMA, APMA and IRRC, the Board made revisions in this final-form rulemaking to revert to the original, existing regulatory language that is consistent with CMPE standards and requirements.

IRRC also asked the Board to address the statutory authority for exempting an individual for the first renewal period, which could exceed a calendar year. Section 42.9a of the act exempts an individual for an initial registration during the calendar year in which the application for license is made, provided the applicant graduates from an accredited school of podiatric medicine and surgery during the calendar year. Section 42.9 of the act requires licensees to apply for biennial renewal and submit evidence that the licensee completed “such hours of approved educational conferences as determined by the board by regulation.” Exempting individuals for the first renewal period meets the requirements of section 42.9a, but the Board has chosen to also use its authority to determine the number of hours of continuing education required for biennial renewal and to set those hours by regulation. Under this broad authority, the Board in § 29.68 has set the number of credit hours for the first biennial registration at zero. The Board recognizes that under the current regulations most, but not all, podiatrists are exempt from continuing education in the first biennial period in which they are licensed because most podiatrists enter a residency program. Section 29.68(e) merely provides for a similar exemption for those podiatrists in this Commonwealth who do not enter residency programs. Furthermore, this regulation aligns with both the Medical and Osteopathic Boards which both provide that a physician applying for licensure in this Commonwealth for the first time shall be exempt from the continuing medical education requirement for the biennial renewal period following initial licensure. Accordingly, consistent with the statutory authority in section 42.9 of the act, all podiatrists will be exempt for the first calendar year and the remainder of the biennial renewal period.

Miscellaneous Clarity

Lastly, IRRC asks the Board to amend the name of the body which approves the podiatric residency program. That entity is CPME, not the American Podiatry Association. For clarity, the Board adds this acronym to the definitions in § 29.60. Additionally, the American Podiatry Association is now the American Podiatric Medical Association. The Board made corrections to this final-form rulemaking consistent with IRRC’s comment.

Fiscal Impact

There is no fiscal impact on the Commonwealth or its political subdivisions associated with this final-form rulemaking. There is a positive fiscal impact on licensees due to the elimination of the restriction in the amount of distance education courses and programs that can be

completed. Licensees will have the option of choosing whichever type of continuing education is preferable and if the cost of distance education is higher, the licensee has the option of choosing in person learning if that is less expensive.

Paperwork Requirements

This final-form rulemaking does not necessitate any legal, accounting, reporting or other additional paperwork requirements. Licensees are already required to retain certificates of attendance documenting completion of continuing education.

Sunset Date

The Board continuously monitors the cost effectiveness of its regulations. Therefore, no sunset date has been assigned.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on May 18, 2020, the Board submitted a copy of the proposed rulemaking, published at 50 Pa.B. 2743, and a copy of a Regulatory Analysis Form to IRRC and to the Chairpersons of the HPLC and the SCP/PLC for review and comment. A copy of this material is available to the public upon request.

Under section 5(c) of the Regulatory Review Act, IRRC, the HPLC and the SCP/PLC were provided copies of the comments received during the public comment period, as well as other documents when requested. In preparing this final-form rulemaking, the Board has considered all comments from IRRC and the public. The Board received no comments from the HPLC or the SCP/PLC.

Under section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)), on April 27, 2022, the Board delivered this final-form rulemaking to IRRC, the HPLC and the SCP/PLC. Under section 5.1(g)(3) and (j.2) of the Regulatory Review Act, on June 15, 2022, the final-form rulemaking was deemed approved by the HPLC and the SCP/PLC. Under section 5.1(e) of the Regulatory Review Act, IRRC met on June 16, 2022, and approved the final-form rulemaking.

Additional Information

Additional information may be obtained by contacting Nichole Wray, Administrator, State Board of Podiatry, P.O. Box 69523, Harrisburg, PA 17106-9523, ST-PODIATRY@pa.gov.

Findings

The Board finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202), referred to as the Commonwealth Documents Law and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2 (relating to notice of proposed rulemaking required; and adoption of regulations).

(2) A public comment period was provided as required by law and all comments were considered in drafting this final-form rulemaking.

(3) This final-form rulemaking does not include any amendments that would enlarge the scope of the proposed rulemaking published at 50 Pa.B. 2743.

(4) This final-form rulemaking is necessary and appropriate for administration and enforcement of the act.

Order

The Board orders that:

(a) The regulations of the Board at 49 Pa. Code Chapter 29, are amended by amending §§ 29.60, 29.61 and 29.68 to read as set forth in Annex A.

(b) The Board shall submit this final-form rulemaking to the Office of General Counsel and to the Office of Attorney General as required by law.

(c) The Board shall submit this final-form rulemaking to IRRC, the HPLC and the SCP/PLC for approval as required by law.

(d) The Board shall certify this final-form rulemaking and deposit it with the Legislative Reference Bureau as required by law.

(e) This final-form rulemaking shall take effect immediately upon publication in the *Pennsylvania Bulletin*.

DR. MICHAEL L. PARIS, DPM,
Chairperson

(*Editor's Note:* See 52 Pa.B. 3740 (July 2, 2022) for IRRC's approval order.)

Fiscal Note: Fiscal Note 16A-4417 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 29. STATE BOARD OF PODIATRY CONTINUING EDUCATION

§ 29.60. Definitions.

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

Asynchronous distance education—A form of distance education that does not provide for real-time interaction between the learner and instructor.

Biennium—The period from January 1 of an odd-numbered year to December 31 of the next even-numbered year.

CPME—Council on Podiatric Medical Education.

Certification—A statement signed by the licensee certifying that continuing education requirements have been met.

Clock hour—Sixty minutes of instruction, exclusive of coffee breaks, lunches, visits to exhibits and the like.

Distance education—Instruction offered by any means where the licensee is in a separate physical location from the instructor and communication is accomplished through one or more technological media. The term includes real-time or delayed interaction using voice, video, data or text, including instruction provided online, by means of correspondence or interactive video.

Provider—An agency, organization, institution, association or center approved by the Board to offer an organized course or program.

Synchronous distance education—A form of distance education that provides for real-time interaction between the learner and instructor.

§ 29.61. Requirements for biennial renewal and eligibility to conduct educational conferences.

(a) A licensee applying for biennial renewal of a license shall have completed 50 clock hours of continuing education in approved courses and programs during the preceding biennium, in accordance with the following:

(1) At least 30 clock hours must be in courses and programs in podiatry approved by the Board under § 29.64 (relating to applications for approval of educational conferences) or approved by the CPME.

(2) The remaining clock hours must be in courses and programs in medical subjects pertinent to the practice of podiatry approved by the American Medical Association, the American Osteopathic Association, the Board or the CPME, or offered by an accredited school or college of podiatric medicine.

(3) A maximum of 10 clock hours may be in approved courses and programs that involve the use of reading professional journals.

(4) Clock hours may be obtained by completing approved synchronous distance education or asynchronous distance education courses and programs. Approved asynchronous distance education courses or programs must include a skill or knowledge assessment component in addition to all other requirements.

(5) Continuing education credit will not be awarded for courses or programs in office management or marketing the practice.

(6) Excess clock hours may not be carried over to the next biennium.

(7) Continuing education courses completed in accordance with a disciplinary order of the Board may not be used to meet the biennial continuing education requirement.

(8) A licensee who wishes to use a course or program for continuing education credit toward licensure renewal is responsible for ensuring that a particular course or program is approved for continuing education credit prior to participating in the course or program.

(b) Providers approved by the Board are eligible to conduct educational conferences.

(c) Applicants for license renewal shall provide, on the renewal application, a certification and shall electroni-

cally submit the certificates of attendance provided by the course provider, as applicable. The certificates of attendance must include the following:

(1) The date attended.

(2) The clock hours claimed.

(3) The title of the course or program and description of content.

(4) The provider which sponsored the course or program.

(5) The location of the course or program.

(d) The licensee shall retain attendance certificates to document completion of the prescribed number of clock hours for 5 years following the completion of each course, which shall be produced upon demand by the Board or its authorized representatives or agents.

§ 29.68. Continuing education exemptions.

(a) Continuing education credits are not required for the years in which a licensed and currently registered podiatrist is in active military service. A podiatrist exempt from continuing education under this subsection must submit verification of active military service.

(b) The Board may waive or grant an extension for all or a portion of the continuing education requirement for biennial renewal upon request of a licensee for serious illness or other demonstrated hardship. The request shall be made in writing, contain supporting documentation and shall include a description of circumstances sufficient to show why compliance is impossible. A waiver or extension will be evaluated by the Board on a case-by-case basis. The Board will send written notification of its approval or denial of a waiver or extension request.

(c) A fee shall be assessed for review of waiver or extension requests in accordance with § 29.13 (relating to fees).

(d) A podiatrist is exempt from the continuing education requirements set forth in § 29.61(a) (relating to requirements for biennial renewal and eligibility to conduct educational conferences) in a renewal cycle in which the podiatrist is engaged in a CPME approved podiatric residency program.

(e) A podiatrist who has never been previously licensed in any jurisdiction is exempt from the continuing education requirements set forth in § 29.61(a) for the first renewal period immediately following licensure in this Commonwealth.

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