

# PROPOSED RULEMAKING

## INSURANCE DEPARTMENT

[ 31 PA. CODE CHS. 37 and 37a ]

### Insurance Producers

The Insurance Department (Department) proposes to delete and reserve Chapter 37 (relating to agent certificates of qualifications and broker licenses) and adopt, in its place, Chapter 37a (relating to requirements and standards) to read as set forth in Annex A. This rulemaking is proposed 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), section 6 of the act of September 22, 1978 (P.L. 763, No. 143) (40 P.S. § 246), section 698-A of The Insurance Department Act of 1921 (act) (40 P.S. § 310.98) and the Department's rulemaking authority under the Unfair Insurance Practices Act (40 P.S. §§ 1171.1—1171.15). See *PALU v. Insurance Department*, 371 A.2d 564 (Pa. Cmwlth. 1977) (further explaining the Insurance Commissioner's authority to promulgate regulations under the Unfair Insurance Practices Act).

#### *Background and Purpose*

This proposed rulemaking, as set forth in Annex A, is necessary to formally implement the act of December 6, 2002 (P.L. 1183, No. 147) (Act 147-2002), which amended the act.

Act 147-2002 adopted provisions from the Producer Licensing Model Act as Article VI-A and brought the Commonwealth into compliance with the Federal Financial Services Modernization Act of 1999 (known as the Gramm-Leach-Bliley Act) (Pub.L. No. 106-102, 113 Stat. 1338), which required states to modernize and provide uniformity in their insurance licensing procedures. Prior to this, insurance producers were subject to varying rules in each state where they transacted business. With the advent of the Internet, the insurance industry was able to dramatically expand its access to consumers, and the need for a more uniform and streamlined process became necessary. Act 147-2002 provided the Commonwealth with the statutory framework to modernize and provide uniformity, thus increasing efficiency in these processes. Act 147-2002 provided for licensing and regulation of insurance producers, managers and exclusive general agents; conferred powers and imposed duties on the Insurance Commissioner and the Department; permitted the payment of referral fees and commissions; imposed penalties; and made related repeals.

Act 147-2002 substantially replaced Article VI with Article VI-A. The only matter not repealed in Article VI deals with the termination of agency contracts, which involves the contractual relationship between an agency and insurer. The remaining provisions of Article VI (40 P.S. §§ 241—246) do not deal with insurance producers and are therefore not implicated by this regulation. Section 698-A of the act provides that regulations promulgated under Article VI which are not clearly inconsistent with Article VI-A will remain in effect until replaced, revised or amended. The Department proposes this rulemaking as a replacement of current regulations published in Chapter 37.

Act 147-2002 codified many of the processes contained in Chapter 37. Until now, no regulations have been

promulgated under Article VI-A. Upon the enactment of Act 147-2002, the Department had to undergo significant changes to implement Act 147-2002. At that time there were data conversions, new software, rate increases, and new applications and background forms required for applicants. The Department has relied on the specific statutory language in Act 147-2002 to process insurance producer applications for licensure and enforcement matters but now wishes to formalize the procedures as well as rescind the superseded regulations. Adopting this regulation will not create any new costs for the Department or regulated community, but will modernize and streamline the administrative procedure and provide transparency to the public, licensees and other stakeholders. This proposed rulemaking will become effective 60 days after publication of the final-form rulemaking in the *Pennsylvania Bulletin*.

#### *Explanation of Regulatory Requirements*

This proposed rulemaking deletes Chapter 37 in its entirety and adopts, in its place, Chapter 37a, entitled "Requirements and Standards" under the newly-named Subpart C entitled "Insurance Producers."

As previously noted, the Department is proposing to reserve the entirety of Chapter 37. The rationale for doing so varies by provision, but the reasons generally fall into three categories: (1) the substance of the regulatory provision has been codified into Act 147-2002 and has been superseded by statute; (2) the Department has determined that the provision is no longer necessary under the current statutory scheme; or (3) the provision has been updated to reflect the new terminology of Act 147-2002 or has been otherwise modernized and proposed to be enacted in Chapter 37a, or both. The specific reasons supporting deletion of each of these provisions are set forth as follows.

Section 37.1 (relating to definitions) is proposed to be reserved to delete the definitions for the following reasons:

(1) The terms "agent," "appointment," "certificate of qualification or certificate," "customer information," "entity," "financial institution," "insurer," "nonresident agent," "person," "rental agreement," "rental company," "renter" and "vehicle" were deleted under Act 147-2002, which repealed section 601 of the act regarding definitions.

(2) The terms "active officer," "active partner," "qualifying active officer," "part time agent or broker" and "transition date" are not used in Article VI-A and are proposed to also be deleted.

(3) The term "clerical support" is no longer used as it was in the prior law since the concept is now encompassed within section 603-A of the act (40 P.S. § 310.3(b)) and the definitions of "sell," "solicit" and "negotiate" in section 601-A of the act (40 P.S. § 310.1).

(4) The terms "CIC," "CLU," "Commissioner" and "Department," and are defined in section 601-A of the act and need not be reiterated in the Department's regulations.

(5) The term "license" is included in proposed section 37a.1 (relating to definitions).

Section 37.2 (relating to purpose) is proposed to be reserved because sections 601—639 of the act (40 P.S. §§ 231—279) were repealed by Act 147-2002. The only remaining statutory provisions in Article VI (40 P.S.

§§ 241—246) govern the termination of agency contracts, which is a subject not addressed in this proposed rulemaking.

Section 37.5 (relating to conversion applications) is proposed to be reserved because this section applied to the transition of licenses under Act 48-1992 to those issued under Act 147-2002. As this transition occurred in 2002, § 37.5 is no longer applicable, as Act 147-2002 developed an entirely new licensing process.

Section 37.6 (relating to single license applications) is proposed to be reserved because an entirely new licensing process was established under Act 147-2002. The substance of § 37.6 has been superseded by the current requirements pertaining to applications for licensure as set forth in section 605-A of the act.

Section 37.11 (relating to general activities requiring a certificate or license) is proposed to be reserved because this section has been superseded by the requirements for licensure set forth in section 603-A of the act.

Section 37.12 (regarding employe and officer activities requiring a certificate or license) is proposed to be reserved because this section was superseded by Act 147-2002, which set forth new requirements for licensure in section 603-A of the act and the definitions of “sell,” “solicit” and “negotiate” in section 601-A of the act.

Section 37.13 (relating to title agents) is proposed to be reserved because this provision is no longer valid since the underlying law, section 603 of the act (40 P.S. § 233), has been repealed.

Section 37.14 (relating to reciprocity) is proposed to be reserved because it is superfluous, as the requirements of section 212 of the act (40 P.S. § 50) exist independently of the requirements of this regulation.

Section 37.15 (relating to part-time agents and brokers) is proposed to be reserved because it is no longer valid after implementation of Act 147-2002. Part-time agents and brokers no longer exist in the new statutory scheme.

Section 37.16 (relating to service in armed forces or employment with Department) is proposed to be reserved because the substance of this provision is now codified at 51 Pa.C.S. § 7502 (relating to retention of licenses and certifications of persons entering military service) with regard to individuals serving in the armed forces and this exception is no longer available to Department employees under Act 147-2002.

Section 37.17 (relating to collection of premiums requires certificate or license) is proposed to be reserved because this provision was superseded by Act 147-2002, which set forth new requirements for licensure in section 603-A of the act and the definitions of “sell,” “solicit” and “negotiate” in section 601-A of the act.

Section 37.18 (relating to individuals who only receive commissions) is proposed to be reserved because it was superseded by Act 147-2002. Specifically, the payment of commissions is now governed by sections 672-A and 673-A of the act (40 P.S. §§ 310.72 and 301.73).

Section 37.19 (relating to special approval by the Commissioner) is proposed to be reserved because it was superseded by Act 147-2002. Specifically, the substance of this provision dealing with temporary licensing in certain limited circumstances is now provided for under section 609-A of the act (40 P.S. § 310.9).

Sections 37.21—37.24 are proposed to be reserved because they were superseded by Act 147-2002. Specifically, the substance of these sections dealing with exami-

nations have been partially provided for under section 604-A(d) of the act (40 P.S. § 310.4(d)), which statutorily defines the situations where the exam can be waived. To the extent further clarification is required, additional details on the exam process and modernization have been set forth in proposed §§ 37a.4, 37a.5 and 37a.6 (relating to examination requirement; examination fees to be paid to third-parties; and administration of examinations).

Section 37.25 (relating to qualifications for examination) is proposed to be reserved because it was superseded by Act 147-2002. The only permissible prerequisites for examination have been provided for under section 604-A of the act.

Section 37.26 (relating to administration of examination) is proposed to be reserved because updates to the substance of the provisions of this section are proposed in § 37a.6.

Section 37.27 (relating to scope of examination) is proposed to be reserved because updates to the substance of the provisions of this section are proposed in § 37a.4.

Section 37.31 (relating to general application requirements) is proposed to be reserved because updates to the substance of the provisions of this section are proposed in § 37a.7 (relating to general application requirements).

Section 37.32 (relating to completion of application and renewal forms) is proposed to be reserved because updates to the terminology used within this section are proposed to be made as set forth in proposed § 37a.8(a) and (c) (relating to completion of application and renewal forms).

Section 37.33 (relating to agent application procedures) is proposed to be reserved because the substance of this section is proposed to be updated in proposed § 37a.8. Specifically, this section is proposed to be updated to delete reference to the prior law and outdated terminology and to allow electronic submissions in accordance with current processes.

Section 37.34 (relating to broker application procedures) is proposed to be reserved because the substance of this provision is proposed to be updated and reenacted in proposed § 37a.8. Specifically, this section is proposed to be updated to delete reference to the prior law and outdated terminology and to allow electronic submissions in accordance with current processes.

Section 37.35 (relating to renewal of agent certificate) is proposed to be reserved because this provision has been superseded by the statutory requirements of section 678-A of the act (40 P.S. § 310.78). The provisions of § 37.35(d) and (e), which are not statutorily prescribed, can now be found in proposed § 37a.9 (relating to license renewals).

Section 37.36 (relating to renewal of broker license) is proposed to be reserved because this provision has been superseded by the statutory requirements of section 678-A of the act. The provisions of subsection (b) and (c), which are not statutorily prescribed, have been clarified and can now be found in proposed § 37a.9.

Section 37.37 (relating to corporation or partnership certificate/license) is proposed to be reserved because the provisions of this section have been superseded by the statutory provisions of section 605-A(b) of the act. The substance of § 37.37 is included in proposed § 37a.10 (relating to business entity license). Additionally, the term “qualifying active” is no longer valid and is proposed to be

replaced in § 37a.10 with the term “designated licensee” as per section 601-A of the act.

Section 37.38 (relating to certificate or license determines authority) is proposed to be reserved because the substance of this provision is being replaced by proposed § 37a.11 (relating to license determines authority).

Section 37.39 (relating to lines of authority) is proposed to be reserved because the substance of this provision is being replaced, with certain modernization updates, by proposed § 37a.12 (relating to lines of authority).

Section 37.40 (relating to disclosure of information) is proposed to be reserved because the underlying authority for this section was repealed by Act 147-2002 and not reenacted.

Section 37.41 (relating to name on certificate or license) is proposed to be reserved because the requirements for fictitious names are provided for under section 607-A of the act (40 P.S. § 310.7). The remainder of this section has been modernized in accordance with existing procedures and updated in proposed §§ 37a.13 and 37a.15 (relating to name on license; and changes, sale and dissolution).

Section 37.42 (relating to fictitious names) is proposed to be reserved because this provision has been superseded by the statutory requirements of section 607-A of the act. To the extent the requirements are not statutorily prescribed, the substance of this provision can now be found in proposed § 37a.13

Section 37.43 (relating to current agent and broker addresses) is proposed to be reserved because this section has been superseded by the statutory requirements of section 611-A(19) of the act (40 P.S. § 310.11(19)), which provides that failure to notify the Department of a change of address within 30 days is a prohibited act.

Section 37.44 (relating to changes, sale and dissolution) is proposed to be reserved. The provisions of § 37.44 are proposed to be updated to delete the term “qualifying active officer” and replace it with “designated licensee” and is substantially included in proposed § 37a.15 (relating to changes, sale and dissolution).

Section 37.45 (relating to contractual relationship of brokers and agents) is proposed to be reserved because this provision has been superseded by the statutory requirements of section 671-A of the act (40 P.S. § 310.71). To the extent additional clarification is necessary, the Department has included a number of factors to consider when making the determination as to whom the producer is representing within proposed § 37a.20 (relating to representation of insurer or consumer).

Section 37.46 (relating to standards for denial of certificate/license) is proposed to be reserved because this section has been superseded in part by section 611-A of the act. The Department has clarified the worthiness requirements of section 611-A in proposed § 37a.16 and § 37a.17 (relating to standards for denial of license and enforcement actions; and revocation, suspension or nonrenewal of licenses).

Section 37.47 (relating to revocation, suspension, nonrenewal of certificates and licenses) is proposed to be reserved because subsection (a) has been superseded by section 611-A of the act, which provides that the prohibited acts section applies to “[a] licensee or applicant for an insurance producer license.” Subsection (b) has been superseded by section 691-A(b) of the act (40 P.S. § 310.91(b)).

Section 37.48 (relating to reporting requirements) is proposed to be reserved because it was superseded by the requirements of section 678-A of the act.

Section 37.49 (relating revocation, suspension, nonrenewal of certificates and licenses in nonresident agent or broker’s state of domicile) is proposed to be reserved because this provision is to be substantially included in proposed § 37a.18 (relating to revocation, suspension or nonrenewal of licenses in nonresident insurance producer’s state of domicile).

Section 37.61 (relating to appointments and termination by entity) is proposed to be reserved because the substance of this section is to be replaced by proposed § 37a.21 (relating to appointments and termination of appointments), which updates the provision in accordance with current statutory terminology (for example, “agents” was replaced with “producer”) and reflects current procedures and practices (such as, a social security number is no longer required).

Section 37.62 (relating to certification of appointments by entities) is proposed to be reserved because the requirements of this section, with the exception of subsection (a), have been superseded by the requirements of section 671-A of the act (40 P.S. § 310.71). The substance of subsection (a) is proposed to be included in proposed § 37a.21(c).

Section 37.71 (relating to examination fees) is proposed to be reserved because the substance of this section has been updated in accordance with existing processes and is proposed to be included in proposed § 37a.5.

Section 37.72 (relating to certificate, license and appointment fees) is proposed to be reserved because this provision has been superseded by section 632-A of the act (40 P.S. § 310.32), with regard to application fees, section 608-A(f) of the act (40 P.S. § 310.8(f)), with regard to renewal fees, and section 671-A, with regard to appointment fees, of the act, all of which have been all been subsequently added in section 612-A of The Administrative Code (71 P.S. § 240.12A).

Section 37.81 (relating to premium accounts) is proposed to be reserved because this provision has been superseded by section 396-A of the act (40 P.S. § 310.96) which statutorily sets forth producers’ fiduciary duties.

Section 37.82 (relating to agent and broker indebtedness) is proposed to be reserved because there is no policy reason to re-adopt this section in this proposed rulemaking. The failure to remit to the insurer as a contractual issue between the insurer or producer, or both, and the Department does not need to clarify this provision in this proposed rulemaking.

Section 37.83 (relating to merger of entities) is proposed to be reserved because the substance of this section, which has been updated for terminology, is included in proposed § 37a.23 (relating to merger of insurance entities).

Section 37.84 (relating to power of attorney) is proposed to be reserved because the substance of this provision has been codified in section 607-A(3) of the act (40 P.S. § 310.7(3)).

Section 37a.1 is proposed to provide definitions for “act” and “license” because these terms are not defined in the act and the Department believes that additional clarity would be beneficial.

Section 37a.2 (relating to principal place of business and residence) clarifies how the terms “principal place of

business” and “principal place of residence” should be determined throughout the act.

Section 37a.3, which provides the purpose of the chapter, was included to inform the public as to why the Department is promulgating the regulations.

Section 37a.4 is proposed to clarify the types of lines of authority for which examinations will be required and generally describes the content of the exam. This section is being added to provide further detail regarding the examination process as set forth in section 604-A of the act with regard to which lines must have separate examinations and also directs the scope of examination for the vendor.

Section 37a.5 is proposed to set forth the Department’s considerations in establishing the examination fees and to clarify the requirements for which the fee shall be set in accordance with the contract.

Section 37a.6 (relating to administration of examination) is proposed to set forth the standards that would govern the administration of an examination if the Commissioner delegates testing to a vendor including requirements for frequency, location, remote examinations, and security. This section also requires applicants to register directly for the examination with the testing vendor.

Section 37a.7 is proposed to provide further clarity to applicants regarding the sequence of events statutorily set forth under sections 604-A and 605-A of the act for submitting an application, including those pertaining to license prerequisites, test results and eligibility.

Section 37a.8 is proposed to provide an applicant further detail regarding the electronic and paper application process and the Department’s process for providing requested information to the Department including the time-period for completion and closure of incomplete applications.

Section 37a.9 is proposed to provide detail regarding the renewal process by specifically indicating that individual insurance producer licenses be renewed biennially based on the last day of the producer’s month of birth. This provision also clarifies that the initial cycle may vary from subsequent cycles to coincide with the birth month and that business entity licenses are renewed biennially based on the date of license issuance.

Section 37a.10 is proposed to provide direction to a business entity licensee to follow the procedures set forth in section 605-A(b) of the act and clarifies when a business entity license is required with regard to interest, voting, interest and lines of authority for owners and designated licensees.

Section 37a.11 is proposed to clarify that a business entity can only sell lines of authority in which the business entity itself is licensed and sets forth the procedure for submitting an application for additional lines of authority, including exemption from the pre-examination education requirements.

Section 37a.12 is proposed to clarify that an insurance producer is only authorized to conduct the business of insurance for the lines of authority stated on the license.

Section 37a.13 is proposed to be added to inform producers of the procedure for notifying the Department of the use of a fictitious name as required by section 607-A of the act.

Section 37a.14 (relating to notice of action under 1 Pa. Code § 35.14 (relating to orders to show cause) is proposed to clarify that notices of a formal hearing for

matters related to orders to show cause by the Department constitute formal legal notice when sent to the address on file with the Department of the insurance producer, as producers are required to keep addresses current to comply with the requirements of section 611-A(19) of the act.

Section 37a.15 is proposed to provide clarification to producers as to the procedures for ensuring the Department is notified of addresses changes, sales, dissolutions of business entities and name changes.

Section 37a.16 is proposed to provide examples of factors that the Department may consider when determining whether an applicant or licensee is worthy of licensure under section 611-A(20) of the act. This section also clarifies that the examples enumerated are not exhaustive of relevant conduct and are not per se determinations of worthiness, as the Department evaluates overall worthiness on a case-by case basis and considers the facts and circumstances of each situation.

Section 37a.17 is proposed to clarify that the standards for denial and revocation are aligned and provides that hearings are to be held in accordance with 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure).

Section 37a.18 is proposed to clarify that a nonresident producer whose Pennsylvania license was based on the producer’s home state may be subject to suspension, revocation or nonrenewal in this Commonwealth if the producer’s home state license is suspended, revoked or nonrenewed.

Section 37a.19 (relating to exclusive general agents) is proposed to clarify that a written appointment from each sponsoring insurer is required to become an exclusive general agent under section 633-A of the act (40 P.S. § 310.33) and also sets forth the requirements for terminating an exclusive general agent’s appointment.

Section 37a.20 is proposed to set forth the circumstances under which an insurance producer is representing the consumer or insurer and provides that the determination as to whether the insurance producer is representing the insurer is based upon the facts and circumstances of the particular transaction. This section also sets forth the relevant factors to consider and clarify that a producer may not receive a fee from both a consumer and an insurer.

Section 37a.21 is proposed to set forth the detailed guidance with regard to how producers may comply with the requirements of section 671-A of the act, including procedures for notification and time frames.

Section 37a.22 (relating to producer accounts) is proposed to clarify the requirements to qualify for the “express consent” exception under section 696-A of the act (40 P.S. § 310.96), which would allow a producer to mingle all funds received or collected as an insurance producer. It also sets forth specific requirements for insurance producers who do not have the express consent of their insurance entities to mingle premium moneys with their personal funds.

Section 37a.23 is proposed to clarify the conditions that would enable a producer to meet the requirement for procedure for transferring appointments when insurers merge, consolidate or reincorporate.

Section 37a.24 (relating to enforcement) is proposed to clarify that the requirement of section 612-A of the act (40 P.S. § 310.12) that a licensee must respond to written inquiry of the Department within 30 days may serve as a

basis for denial, suspension or revocation of a license as well as the monetary penalties set forth in section 612-A(b) of the act.

Section 37a.25 (relating to recordkeeping) is proposed to set forth the requirements for a licensee to establish, maintain and follow a record retention procedure for all documents pertaining to the licensee's transaction of the business of insurance so that Department can determine and enforce compliance with the requirements of Act 147-2002.

#### *External Comments*

The Department circulated two versions of an exposure draft, similar to this proposed rulemaking, to several representatives of insurance producers, companies and carriers, including the Insurance Agents and Brokers, the Insurance Federation of Pennsylvania and the Pennsylvania Association of Mutual Insurance Companies. The latest exposure draft was circulated on September 25, 2023, however the Department has been discussing the topic with industry members over the last year. The Department considered all comments, responded to numerous questions and suggestions, and ultimately incorporated revisions to this proposed rulemaking based upon stakeholder feedback.

#### *Affected Parties*

This proposed rulemaking affects the Department, insurance consumers, nonresident and resident insurance producers, as well as insurer/carriers with the ability to obtain producer appointments. Specifically, the benefit of this regulation is that it will delete outdated and superseded provisions that still appear in the *Pennsylvania Code*. This proposed rulemaking will provide clarity and will alleviate any confusion that may exist when the public or regulated community is attempting to determine whether the statutory or regulatory provision is applicable. To the extent that the provisions of Chapter 37 have not been superseded by statute, they are being re promulgated in Chapter 37a and reflect updated terminology and streamlined processes. Additionally, the Department is proposing further clarifications by providing examples as to determinations of worthiness of applicants and licensees and for determining whether a producer is acting on behalf of an insurer or consumer.

There are 336,290 individuals and 22,782 entities licensed through this Commonwealth, as resident and nonresident producers, that will benefit from the clarity afforded by this proposed rulemaking. There are currently 1,724 insurer companies and carriers that will be affected as they have the ability to make producer appointments in compliance with this proposed rulemaking and will be affected by the clarifications of when producers are acting as a representative of the company or of the consumer.

#### *Fiscal Impact*

Amendments that were necessary to implement Act 147-2002 were made over 20 years ago when it was enacted. As this proposed rulemaking only clarifies the specific legislative processes established by statute, there is no known fiscal impact to the Commonwealth, regulated community, general public or local governments.

#### *State government*

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

#### *General public*

This proposed rulemaking will have no fiscal impact upon the general public.

#### *Local government*

This proposed rulemaking will have no fiscal impact upon political subdivisions.

#### *Regulated community*

This proposed rulemaking will have no fiscal impact on the regulated community.

#### *Paperwork*

There are no additional legal, accounting or consulting procedures as a result of this proposed rulemaking. However, this proposed rulemaking does require licensees to establish record retention procedures and retain pertinent insurance documents for 7 years, or longer, if otherwise required by law or contract.

#### *Effective Date/Sunset Date*

This proposed rulemaking will become effective 60 days after publication of the final-form rulemaking 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 proposed rulemaking may be addressed in writing to Kimberly Sheaffer, Insurance Department, 1341 Strawberry Square, Harrisburg, PA 17120, within 30 days following the publication of this notice in the *Pennsylvania Bulletin*. Questions and comments may also be e-mailed to kimsheaffe@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 April 29, 2024, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the chairperson of the Banking and Insurance Committee of the Senate and the chairperson of the Insurance Committee of the House of Representatives. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria in section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b) which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final delivery of the rulemaking by the Department, the General Assembly and the Governor.

MICHAEL HUMPHREYS,  
*Insurance Commissioner*

**Fiscal Note:** 11-262. No fiscal impact; recommends adoption.

### **Annex A**

### **TITLE 31. INSURANCE**

### **PART I. GENERAL PROVISIONS**

### **Subpart C. [ AGENTS AND BROKERS ] INSURANCE PRODUCERS**

#### **CHAPTER 37. [Reserved]**

**§§ 37.1 and 37.2. [Reserved].**

**§§ 37.5 and 37.6. [Reserved].**

**§§ 37.11—37.19. [Reserved].**

§§ 37.21—37.27. [Reserved].

§§ 37.31—37.49. [Reserved].

§§ 37.61 and 37.62. [Reserved].

§§ 37.71 and 37.72. [Reserved].

§§ 37.81—37.84. [Reserved].

(Editor’s Note: Chapter 37a is proposed to be added and is printed in regular type to enhance readability.)

**CHAPTER 37a. REQUIREMENTS AND STANDARDS**

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37a.16.	Standards for denial of license and enforcement actions.
37a.17.	Revocation, suspension or nonrenewal of licenses.
37a.18.	Revocation, suspension or nonrenewal of licenses in nonresident insurance producer’s state of domicile.
37a.19.	Exclusive general agents.
37a.20.	Representation of insurer or consumer.
37a.21.	Appointments and termination of appointments.
37a.22.	Producer accounts.
37a.23.	Merger of insurance entities.
37a.24.	Enforcement.
37a.25.	Recordkeeping.

**§ 37a.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. §§ 310.1—310.99a).

*Commissioner*—The Insurance Commissioner of the Commonwealth.

*Department*—The Insurance Department of the Commonwealth.

*License*—A permission, in paper or electronic form, issued by the department authorizing the named recipient to sell, solicit or negotiate contracts of insurance as an insurance producer in this Commonwealth.

**§ 37a.2. Principal place of business and residence.**

For purposes of determining principal place of business and principal place of residence, the department has clarified the following terms as set forth to be applied throughout the act.

*Principal place of business*—The single location where an applicant or a licensee physically spends the majority of the applicant’s or licensee’s time conducting the business of insurance.

*Principal place of residence*—The location where an applicant or a licensee occupies a home for at least 183 days of the calendar year.

**§ 37a.3. Purpose.**

The purpose of this chapter is to implement the act, by setting forth requirements and standards for the operation of a single licensing system for insurance producers in this Commonwealth.

**§ 37a.4. Examination requirement.**

(a) *Examination required.* The department or a third-party approved by the department will conduct licensing examinations for “surplus lines” licensees as defined in section 1602 of The Insurance Company Law of 1921 (40 P.S. § 991.1602) and “title insurance” agents as defined in section 724 of The Insurance Company Law of 1921 (40 P.S. § 910-24) and for each of the lines of authority as defined in section 601-A of the act (40 P.S. § 310.1) other than limited lines.

(b) *Scope and content of examination.* Examinations will be designed to test the adequacy of an applicant’s knowledge of general principles of insurance and insurance laws and of particular areas of insurance practice as are pertinent to the lines of authority for which application is intended and will be specific to the laws of this Commonwealth.

**§ 37a.5. Examination fees to be paid to third parties.**

(a) The department will consider the following factors when establishing and updating the fee charged to producers and paid to third parties for conducting examinations:

- (1) The cost of developing and maintaining exams.
- (2) The cost of administering exams.
- (3) The frequency of exams offered.
- (4) The number of different types of exams offered.
- (5) The volume of exams taken.
- (6) The number of testing facilities.

(b) If the commissioner delegates the authority for administering and scoring the examinations under § 37a.6 (relating to administration of examination), fees shall be set by acceptance of the contract in accordance with the following requirements:

- (1) The contract shall provide for the examinee to make payment of the examination fee directly to the testing vendor.
- (2) The name and address of the testing vendor awarded the testing contract, the examinations and other services offered, if any, and the fees charged therefore will be published in the examination registration materials provided by the testing vendor.
- (3) Examination fees are not refundable except according to the terms of the testing vendor.

**§ 37a.6. Administration of examination.**

(a) The commissioner may delegate to a testing vendor, by contract, the authority to administer and score examinations. The testing vendor shall ensure that the following standards are met:

- (1) Examinations shall be offered at regular intervals throughout the year.
- (2) Testing shall be conducted at physical locations throughout this Commonwealth and shall be available remotely.
- (3) Test security shall be strictly maintained, and a set of security rules shall be developed by the testing vendor and approved by the commissioner.
- (4) Bias or favoritism towards an applicant may not be permitted by the testing vendor.
- (5) A comprehensive brochure describing fees, the nature of examination questions and giving sample ques-

tions shall be prepared by the vendor and be available to applicants before or at the time of registration for examination or upon request at any time.

(b) An individual seeking a license shall register for examination directly with the testing vendor.

**§ 37a.7. General application requirements.**

(a) An applicant for an insurance producer license shall follow the procedures in sections 604-A and 605-A of the act (40 P.S. §§ 310.4 and 310.5), pertaining to license prerequisites and insurance producer license application procedures.

(b) The applicant will be required to take a written examination unless the requirement is waived under section 604-A(d) of the act.

(c) An individual who has passed the examination or meets the requirements of an exception under 604-A(d) may apply to the department for an insurance producer license. The certification of the applicant's score report will be directly reported by the testing vendor to the department.

(d) Test scores and results are valid for 1 year from the passing date of the examination. Applications received with older test results will be rejected.

(e) An insurance producer license will not be granted to a business entity unless the business entity is eligible under section 606-A(b) of the act (40 P.S. § 310.6(b)) and individual licenses are obtained for each qualifying designated licensee or exclusive general agent in accordance with section 631-A of the act (40 P.S. § 310.31), pertaining to licensing of managers and exclusive general agents.

**§ 37a.8. Completion of application and renewal forms.**

(a) An applicant for an insurance producer license shall complete application and renewal forms truthfully and accurately, using the appropriate application form which may be submitted either in paper or electronically.

(b) Applications and renewal forms submitted to the department, electronically or through the department's licensing system, will be examined and, if not complete, the department will request additional information from the applicant. The applicant is required to provide the requested information to the department within 30 days of the department's request.

(c) If the applicant fails to provide the requested information under subsection (b), the applicant will be notified that the department may close the application if the information is not provided within a specified period of time. The closure of an application may require the applicant to retake the required test or tests if the test scores have expired or to resubmit their fingerprints. A new license application and fee may be required upon the department's request. Application fees are nonrefundable under section 605-A(c) of the act (40 P.S. § 310.5(c)).

(d) An individual applicant is responsible for the content and accuracy of the applicant's application and renewal forms. Failure to provide accurate or truthful information may result in the applicant being denied a license or in an enforcement action against the individual applicant.

(e) The designated licensee or licensees of a business entity shall be responsible for completing the application of a business entity accurately and completely. Making a false statement in an application may result in license denial or revocation.

**§ 37a.9. License renewals.**

(a) An insurance producer license shall be renewed biennially based on the last day of the insurance producer's month of birth. The initial license cycle may vary to coincide with the expiration cycle of the birth month.

(b) A business entity license will expire biennially based on the date of license issuance.

**§ 37a.10. Business entity license.**

(a) A business entity shall follow the procedures in section 605-A(b) of the act (40 P.S. § 310.5(b)), pertaining to business entity application.

(b) A license shall be required for each business entity, other than a sole proprietorship, which has a separate Federal tax identification number and engages in the business of insurance in this Commonwealth.

(c) A license for a business entity will not be issued unless all members, partners, officers or directors or owners, with more than 10% interest or voting interest, are included on the application and all lines of authority of the business entity are also reflected on the licenses of the designated licensee or licensees thereof.

(d) A combination of licenses of the designated licensees must include all the lines of authority held by the business entity. Partners or officers may not engage, either individually or on behalf of the business entity, in an act of an insurance producer requiring a line of authority that they do not individually hold.

(e) If a designated licensee's insurance producer license is terminated, the business entity shall designate a licensed replacement within 15 days for each line of authority affected. If all affected lines of authority are terminated, failure to do so may result in the termination of the business entity's license.

**§ 37a.11. License determines authority.**

An insurance producer may conduct business only for the line or lines of authority stated on the license.

**§ 37a.12. Lines of authority.**

(a) A business entity may only sell, solicit or negotiate a line of authority that is held by the business entity.

(b) The authority to sell the lines of authority as defined in section 601-A of the act (40 P.S. § 310.1) may be granted by the department and reflected on the license.

(c) If after meeting the appropriate requirements, an insurance producer intending to add another line or lines of authority to an existing license shall submit an application to the department and request that the new line or lines of authority be added to the insurance producer's existing license with the appropriate amended fee set forth in section 612-A of The Administrative Code of 1929 (71 P.S. § 240.12A).

(d) An insurance producer who holds a license in good standing for a line of authority is not required to complete the pre-examination education requirement described under section 604(A)(b) of the act, before taking the examination for an additional line.

**§ 37a.13. Name on license.**

(a) An insurance producer shall notify the department within 30 days of a legal change of name. The notice shall be in the form and manner established by the department.

(b) A licensee that seeks to use a name that does not readily identify the licensee shall do all of the following:

(1) Register the fictitious name with the Department of State.

(2) Notify the department in the form and manner established by the department.

**§ 37a.14. Notice of action under 1 Pa. Code § 35.14 (relating to orders to show cause).**

Notice of a formal hearing sent to the address on file of the insurance producer shall constitute formal legal notice to the insurance producer.

**§ 37a.15. Changes, sale and dissolution.**

(a) A business entity shall notify the department, in the form and manner established by the department within 30 business days, so that the correct information is on file with the department, when any of the following occur:

(1) A change in the name of a business entity.

(2) A change of the personnel affecting the designated licensees.

(b) Upon a sale or dissolution of a business entity, the business entity shall notify the department if there is a change in the designated licensee, contact information or Employer Identification Number (EIN). If the EIN changes, a new application is required.

**§ 37a.16. Standards for denial of license and enforcement actions.**

(a) The commissioner may deny an application for an insurance producer license upon finding any of the following:

(1) The applicant has not met the license prerequisites under section 604-A of the act (40 P.S. § 310.4).

(2) The application does not meet the requirements under section 605-A of the act (40 P.S. § 310.5).

(3) The applicant has committed an act prohibited under section 611-A of the act (40 P.S. § 310.11) including considerations of whether the applicant is worthy of licensure as set forth in the examples in subsection (b).

(b) For purposes of determining whether an applicant or licensee is worthy of licensure under section 611-A(20) of the act, the commissioner may consider any of the following actions:

(1) Dishonest or fraudulent conduct.

(2) The making of knowingly false statements.

(3) Conduct demonstrating that the applicant or licensee does not possess the competence necessary to accurately and successfully ensure that an insurance transaction is properly executed.

(4) Whether the applicant or licensee has abused a relationship of trust in an insurance, financial or other context.

(5) Whether the applicant or licensee has engaged in violent conduct that could potentially jeopardize the safety of a consumer or co-worker.

(6) Criminal convictions other than those enumerated by section 611-A(14) or (15) of the act where the crime involves any of the actions in paragraphs (1)–(5) or the facts and circumstances surrounding the underlying criminal activity indicate a lack of general fitness, honesty, trustworthiness, competence or reliability.

(7) Administrative actions taken by a self-regulating non-governmental organization such as the Financial Industry Regulatory Authority or other licensing authority, board or governmental agency.

(8) Failure to comply with the requirements of sections 1601–1626 of the Insurance Company Law of 1921 (40 P.S. §§ 991.1601–991.1626), pertaining to surplus lines.

(9) Whether the applicant or licensee has violated probation or parole.

(10) Whether the applicant or licensee has not yet successfully completed their sentence or the entire term of their probation or parole for an underlying conviction that can be considered subject to paragraph (6) or section 611-A(14) or (15) of the act.

(c) The examples enumerated in subsection (b) are not exhaustive of the types of conduct relevant to a determination of whether an applicant is worthy of licensure and are not per se determinative of worthiness. The department will continue to evaluate worthiness on a case-by-case basis and will consider the facts and circumstances of each situation.

**§ 37a.17. Revocation, suspension or nonrenewal of licenses.**

(a) The department may revoke, suspend or refuse to renew a license upon finding that an insurance producer has engaged in conduct which would disqualify him from initial issuance of a license. This conduct includes the indicated bases for initial denial of a license provided in § 37a.16 (relating to standards for denial of license and enforcement actions).

(b) Hearings related to the revocation, suspension or nonrenewal of a license will be held in accordance with 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure).

**§ 37a.18. Revocation, suspension or nonrenewal of licenses in nonresident insurance producer's state of domicile.**

A nonresident insurance producer whose Pennsylvania license was issued by the department based on a valid certificate or license from the producer's home state may be subject to suspension, revocation or nonrenewal in this Commonwealth if the producer's license is suspended, revoked or nonrenewed in the producer's home state.

**§ 37a.19. Exclusive general agents.**

(a) A license does not permit an insurance producer to act as an exclusive general agent. To complete the licensure process to act as an exclusive general agent, an insurance producer shall secure a written appointment from each sponsoring insurer. An insurer shall make appointments of exclusive general agents in writing to the insurance producer.

(b) An insurer may terminate an exclusive general agent's appointment in accordance with the following requirements:

(1) A termination shall be in writing and sent to the exclusive general agent prior to notification of termination to the department. If an exclusive general agent requests termination, the insurer shall process the termination within 30 days.

(2) If an insurer has entered into a contract with the exclusive general agent, the termination date of the appointment shall be the same as the termination date of the contract.



(3) The termination notice to the exclusive general agent shall contain at least the following:

- (i) The name of the insurer for which the agent is being terminated.
- (ii) The effective date of termination.
- (iii) The lines of authority terminated.
- (iv) The name and address of terminated appointee, including fictitious names used by appointee.
- (v) The national producer number or Pennsylvania license number of the terminated appointee.
- (vi) The names of the designated licensee or licensees if the terminated appointee is a business entity.

**§ 37a.20. Representation of insurer or consumer.**

(a) When an insurance producer acting as the representative of the consumer is authorized by the client to secure insurance, the producer shall be considered the legal agent of the client.

(b) When an entity gives a policy, either new or renewal, to a producer acting as the representative of the consumer for delivery to the insured, the producer shall be considered an agent of the entity for delivery of that one policy and, since collection of the premium is implied, payment to the producer shall be payment to the entity.

(c) For purposes of section 671-A of the act (40 P.S. § 310.71) and where a determination is otherwise required under the act, whether an insurance producer is acting on behalf of or representing an insurer is based upon the facts and circumstances of the particular transaction. Factors to be considered include all of the following:

- (1) Whether the insurance producer receives a commission from the insurer.
- (2) The nature and existence of any agreement between the insurance producer and the insurer including any reference to:
  - (i) An appointment of the producer.
  - (ii) The provision of binding authority.
  - (iii) Selling, soliciting or conducting insurance business for or on behalf of the insurer.
  - (iv) Representation of the insurer.
- (3) Whether the insurance producer has researched or obtained quotes for the policy from multiple insurers and whether the insurance producer is appointed with each of these carriers

(4) Whether the insurance producer is given authority to do more than the mere authorization to submit proposals or applications for consideration by the insurer.

(d) Except as provided by section 674-A of the act (40 P.S. § 310.74(a)) or otherwise provided by law, an insurance producer may not receive both a commission from an insurer and a fee from a consumer in a particular transaction.

**§ 37a.21. Appointments and termination of appointments.**

(a) To act as a representative of an insurer, an insurance producer shall secure a written appointment from each insurer it represents.

(1) An insurer shall make appointments in writing to the insurance producer.

(2) If an insurer enters into a contract with the insurance producer to act as a representative of the insurer, the effective date of the appointment shall be the same as the effective date of the contract.

(3) An insurer's appointment form shall be submitted by the insurer in a form and format approved by the department and must contain at least all of the following:

- (i) The effective date of the appointment.
- (ii) The name and address of the appointee.
- (iii) The appointee's license number.
- (iv) The appointee's national producer number.
- (v) The insurer's NAIC number.

(b) An insurer may terminate the appointment of an insurance producer to act as the representative of the insurer in accordance with all of the following requirements:

(1) Terminations shall be in writing and sent to the insurance producer prior to or contemporaneously with notification of termination to the department. If an insurance producer requests termination, the insurance entity shall process these terminations within 30 days.

(2) If an insurer has entered into a contract with the insurance producer to act as its representative, the termination date of the appointment shall be the same as the termination date of the contract.

(3) The termination notice to the insurance producer must contain at least the following:

- (i) The name of the insurer for which the insurance producer is being terminated.
- (ii) The effective date of termination.
- (iii) The name and address of the terminated appointee.
- (iv) The national producer number or Pennsylvania license number of the terminated appointee.
- (v) The names of the designated licensee or licensees if the terminated appointee is a business entity.

(4) Termination initiated by an appointee shall be acted upon by an insurer within 30 days and confirmed by an insurer in its termination form and reported to the department as required under this subsection.

(5) An insurer shall maintain termination records for 5 years after termination is effective.

(6) When a termination of an appointee is for cause, the insurer shall document its reasons for termination and send the paperwork electronically to the attention of the department's Chief of Enforcement.

(7) If an appointment has been terminated on the records of the department, it may not be revived. The insurer shall issue a new appointment with a new effective date in the standard appointment format.

(8) An insurer shall file a termination of an appointment when the appointee ceases to act as the representative of the insurer.

(c) Appointment and termination activity by an insurer shall be reported to the department electronically within 30 days of the appointment or termination effective date. On a case-by-case basis, the department will continue to accept paper monthly appointment activity reports for insurance companies who have 50 or less transactions per calendar year. The report shall be in a format approved

by the department. The report shall be filed within 30 days of the end of the period being reported.

(d) Appointment and termination records required under this section may be maintained in the form of electronic paperless filing systems in accordance with guidelines for record retention developed and distributed by the department.

(e) Nothing in this section may affect the insurance producer's rights under sections 1—6 of the act of September 22, 1978 (P.L. 763, No. 143) (40 P.S. §§ 241—246) regarding the termination of agency contracts.

**§ 37a.22. Producer accounts.**

(a) Insurance producers who have the express written consent of their insurance entities to mingle all funds received or collected as an insurance producer with their own funds in accordance with section 696-A of the act (40 P.S. § 310.96), regarding fiduciary capacity of an insurance producer, may do so if the following exist:

(1) Moneys held in a fiduciary capacity are reasonably ascertainable from the books of accounts and records of the insurance producers.

(2) Amounts due entities are equal to or less than the combined accounts receivable and current bank balances.

(b) Insurance producers who do not have the express consent of their insurance entities to mingle all funds received or collected as an insurance producer with their personal funds shall hold the funds separate from other funds in accordance with the following:

(1) Insurance producers who do not make prompt remittance to their insurance entities may not deposit funds received or collected as an insurance producer in office operating accounts but shall keep the moneys in a separate bank account from which disbursement may not be made other than for the payment of premiums to the insurance entities, the return of premiums to the insured, the transfer of commissions or the withdrawal of voluntary deposits.

(2) Voluntary deposits in the account for funds received or collected as an insurance producer in excess of premiums collected and unpaid to insurance entities may be made for the purpose of maintaining a minimum balance, to guarantee the adequacy of the account or for the purpose of the payment of premiums to the insurance entities in advance of their collection. These deposits may not be withdrawn except to the extent that the remaining balance is equal to the total of net premiums collected and unpaid to insurance entities.

(3) The deposit of all funds received or collected as an insurance producer in a separate bank account may not be construed as a mingling by the producer of the net premium and of the commission portion of the premium. The commission portion of the premiums may be withdrawn from the separate bank account at the discretion of the insurance producer.

(4) The maintenance in a separate bank account of at least the net balance of premiums collected and unpaid to the entities by insurance producers shall be construed as compliant with this section and section 696-A of the act, if the funds so held are readily ascertainable from the books of account and records of producers.

(5) Insurance producers who make prompt remittance of collections to their insurance entities need not maintain separate bank accounts for these collections. To constitute prompt remittance, payment to entities shall

be remitted not later than the close of the fifth business day following receipt of the funds.

(6) When both an operating account and an account for all funds received or collected are maintained by insurance producers under this section for purposes of segregating premiums collected, the funds account balance shall include moneys sufficient to pay premiums collected and any amount delinquent or in dispute with the insurer represented. Upon reconciliation of delinquent or disputed accounts, excess moneys remaining in the funds account may be withdrawn as if the excess moneys had been voluntary deposits.

(7) Insurance producers may deposit funds received or collected as an insurance producer in an interest-bearing account when not required to make prompt remittance to the insurer of premium moneys, if all of the following are met:

(i) The moneys are not placed in an account upon which a penalty may be levied against the principal for early withdrawal.

(ii) The moneys are placed in an account insured by the United States Government or instruments secured by the United States Government.

**§ 37a.23. Merger of insurance entities.**

(a) When insurers merge, consolidate or reincorporate, the insurers have the option to transfer all or none of their insurance producer appointments to the new surviving insurer. The transfer takes place immediately after the merger transaction is effective. Additional lines of authority will not be granted to these insurance producers by means of the transaction.

(b) If the surviving insurer decides to transfer all insurance producer appointments, it shall notify the department within 30 days of the transfer. The notice shall be in the form and manner established by the department.

**§ 37a.24. Enforcement.**

(a) An insurance producer must, within 30 days of receiving a written inquiry by the department or a request for documentation related to an application or renewal of a license or an investigation, provide a written response or produce the requested documents.

(b) An insurance producer shall cooperate with the department in any investigation related to a violation of the act or this chapter. Cooperation includes, but is not limited to, being interviewed by the department, providing a written statement to the department, providing pertinent documentation, testifying at a proceeding, and completing an authorization for release of information, as necessary, in a form specified by the Department.

(c) If a licensee fails to respond to an inquiry as set forth in subsection (a), the department may file an order to show cause against the licensee on that basis seeking the penalties under section 612-A(b) of the act (40 P.S. § 310.12(b)) of a fine of no more than \$100 per day in addition to the denial, suspension or revocation of a license.

**§ 37a.25. Recordkeeping.**

(a) A licensee shall establish, maintain and follow record retention procedures to retain all documents pertaining to the licensee's transaction of the business of insurance for 7 years from the final execution or creation of the record, whichever is longer.

(b) This section establishes only the minimum retention period and shall not affect any record retention requirements that may be in excess of this time period, including requirements imposed by any of the following:

- (i) A contractual agreement.
  - (ii) The Internal Revenue Service.
  - (iii) An applicable statute of limitations.
  - (iv) A law, regulation or policy of the department or any other state or Federal regulatory agency.
- (c) Nothing in this section prohibits a licensee from retaining a record in an electronic format, provided that

all records shall be retained in a manner that preserves their authenticity and will allow for their prompt production upon request by the department or any other state or Federal regulatory agency.

(d) For purposes of this section, an employee, agent, representative or designee of an insurance producer that is a business entity is exempt from the requirement to individually retain records to the extent that these records are already maintained by the licensed business entity.

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