

**CHAPTER 118a. PROPERTY AND CASUALTY ACTUARIAL
OPINION**

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Authority

The provisions of this Chapter 118a issued under sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P. S. §§ 66, 186, 411 and 412); sections 320 and 655 of The Insurance Company Law of 1921 (40 P. S. §§ 443 and 815); and sections 205 and 206 of The Pennsylvania Fair Plan Act (40 P. S. §§ 1600.205 and 1600.206) and section 731 of the Medical Care Availability and Reduction of Error Act (40 P. S. § 1303.731), unless otherwise noted.

Source

The provisions of this Chapter 118a adopted January 28, 2011, effective January 29, 2011, 41 Pa.B. 602, unless otherwise noted.

§ 118a.1. Purpose.

This chapter sets forth requirements relating to statements of actuarial opinion and related documents filed under section 320 of The Insurance Company Law of 1921 (40 P. S. § 443) with the Commissioner by insurers licensed to transact property or casualty insurance, or both, in this Commonwealth.

§ 118a.2. Definitions.

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

Appointed actuary—A qualified actuary appointed by an insurer in accordance with the property and casualty annual statement instructions relating to actuarial opinions prescribed by the NAIC.

Commissioner—The Insurance Commissioner of the Commonwealth.

Department—The Insurance Department of the Commonwealth.

Domestic insurer—An insurer incorporated or organized under the laws of the Commonwealth.

Insurer—The term includes the following entities licensed to transact property or casualty insurance, or both, in this Commonwealth:

- (i) An insurance company, association or exchange.
- (ii) A reciprocal or interinsurance exchange.
- (iii) An employers' mutual liability insurance association.
- (iv) The Industry Placement Facility under The Pennsylvania Fair Plan Act (40 P. S. §§ 1600.101—1600.502).

(v) The Pennsylvania Professional Liability Joint Underwriting Association under section 731 of the Medical Care Availability and Reduction of Error (MCARE) Act (40 P. S. § 1303.731).

Foreign insurer—An insurer not incorporated or organized under the laws of the Commonwealth.

NAIC—The National Association of Insurance Commissioners, or successor organization.

Qualified actuary—An individual who meets the following requirements:

(i) Is one or more of the following:

(A) A member in good standing of the Casualty Actuarial Society.

(B) A member in good standing of the American Academy of Actuaries who has been approved as qualified for signing casualty loss reserve opinions by the Casualty Practice Council of the American Academy of Actuaries.

(C) Approved by the Commissioner as otherwise having demonstrated competency in loss reserve evaluation for property or casualty insurance, or both, to the Commissioner's satisfaction under § 118a.4(a) (relating to general requirements for domestic insurers).

(ii) Has not been found by the Commissioner, following appropriate notice and hearing, to have done one or more of the following:

(A) Violated any provision of, or any obligation imposed by, this chapter or other laws or regulations in the course of the individual's dealings as a qualified actuary.

(B) Been found guilty of fraudulent or dishonest practices.

(C) Demonstrated incompetence, lack of cooperation or untrustworthiness to act as a qualified actuary.

(D) Prepared a statement of actuarial opinion or actuarial opinion summary that was submitted to the Commissioner during the past 5 years and rejected for failure to adhere to provisions of this chapter, including acceptable actuarial standards.

(E) Resigned or been removed as an actuary within the past 5 years as a result of acts or omissions identified in a report by the Department or other regulatory or law enforcement official of this Commonwealth or other jurisdiction pursuant to an investigation or examination, or as a result of failure to adhere to generally acceptable actuarial standards.

(iii) Has not failed to notify the Department of any action taken against the individual by a regulatory or law enforcement official of this Commonwealth or other jurisdiction relating to activities similar to those described in subparagraph (ii).

Cross References

This section cited in 31 Pa. Code § 118a.4 (relating to general requirements for domestic insurers).

§ 118a.3. Statement of actuarial opinion and supporting documentation.

(a) *Statement of actuarial opinion.* Unless exempted under § 118a.6 (relating to exemptions), an insurer shall annually file with the Department an opinion of an appointed actuary entitled “Statement of Actuarial Opinion.” Under section 320 of The Insurance Company Law of 1921 (40 P. S. § 443), the statement of actuarial opinion shall be prepared in accordance with the property and casualty annual statement instructions prescribed by the NAIC and filed as instructed by the Department on or before the first day of March.

(b) *Actuarial opinion summary.* A domestic insurer required to file a statement of actuarial opinion under subsection (a) shall annually file with the Department a document entitled “Actuarial Opinion Summary” written by the insurer’s appointed actuary and supporting the statement of actuarial opinion. The actuarial opinion summary shall be prepared in accordance with the property and casualty annual statement instructions prescribed by the NAIC and filed as instructed by the Department on or before the 15th day of March. The Department may require a foreign insurer to file an actuarial opinion summary by providing 60 days’ advance notice to the insurer.

(c) *Actuarial report and workpapers.* An actuarial report and underlying workpapers shall be prepared and maintained to support a statement of actuarial opinion as required by the property and casualty annual statement instructions prescribed by the NAIC and provided to the Department upon request.

§ 118a.4. General requirements for domestic insurers.

(a) The following requirements apply to a request by a domestic insurer for the Commissioner’s approval of an individual under subparagraph (i)(C) of the definition of “qualified actuary” in § 118a.2 (relating to definitions):

(1) The domestic insurer shall file the request with the Department at least 90 days prior to the filing of the domestic insurer’s annual financial statement.

(2) Requests filed under paragraph (1) must contain the following:

(i) A properly completed biographical affidavit in the form adopted by the NAIC. The NAIC biographical affidavit form is available on the Department’s web site at www.insurance.pa.gov or upon request from the Department.

(ii) A list of the loss reserve opinions for property or casualty insurance, or both, issued by the individual in the past 3 years.

(iii) Other information that the Commissioner in the Commissioner’s discretion may require to determine the individual’s qualifications. The Department will provide the domestic insurer with a written request for the information, describing the type of information required and why the information is needed.

(b) The appointed actuary shall annually provide the domestic insurer's board of directors with the statement of actuarial opinion and actuary opinion summary, and the receipt of these documents shall be recorded in the meeting minutes of the board of directors.

(c) If an actuary who was the appointed actuary for the immediately preceding filed statement of actuarial opinion is replaced by an action of the domestic insurer's board of directors, the domestic insurer shall:

(1) Notify the Department in writing within 5 business days of the board's action.

(2) Provide the Department with a separate written notice within 10 business days of providing notice under paragraph (1) stating whether, in the 24 months preceding the appointed actuary's replacement, there were any disagreements with the former appointed actuary relating to the content of the statement of actuarial opinion, actuarial opinion summary, actuarial report or underlying workpapers on matters of the risk of material adverse deviation, required disclosures, scope, procedure, or data quality. The disagreements required to be reported include both those resolved to the former appointed actuary's satisfaction and those not resolved to the former appointed actuary's satisfaction. The notice must include a written letter addressed to the domestic insurer by the former appointed actuary stating whether the appointed actuary agrees with the statements in the domestic insurer's notice and, if not, stating the reasons why the appointed actuary does not agree.

(d) The domestic insurer shall require its appointed actuary to notify the domestic insurer's board of directors or audit committee in writing within 5 business days after a determination by the appointed actuary that the statement of actuarial opinion or actuarial opinion summary filed with the Department was in error if:

(1) The error is as a result of reliance on data or other information (other than assumptions) that, as of the balance sheet date, were factually incorrect.

(2) The determination is made between the date the statement of actuarial opinion is issued and the balance sheet date for which the next statement of actuarial opinion will be issued.

(3) The statement of actuarial opinion or actuarial opinion summary would not have been issued or would have been materially altered had the correct data or other information been used; except that the statement of actuarial opinion or actuarial opinion summary will not be considered to be in error if it would not have been issued or would have been materially altered solely because of data or information concerning events subsequent to the balance sheet date or because actual results differ from those projected.

(e) Notification provided by an appointed actuary to a domestic insurer under subsection (d) must include a summary of the appointed actuary's findings and an amended statement of actuarial opinion and actuarial opinion summary. The domestic insurer shall forward a copy of the summary and amended statement of

actuarial opinion and actuarial opinion summary to the Commissioner within 5 business days of receipt and provide the appointed actuary with a copy of the information forwarded to the Commissioner. If the appointed actuary does not receive a copy of the information forwarded to the Commissioner within the 5 business day period, the appointed actuary shall provide the Commissioner with the information within the next 5 business days, including a statement whether the Department should rely upon the statement of actuarial opinion or actuarial opinion summary filed under this chapter.

(f) If an appointed actuary learns that data or other information relied upon in rendering a statement of actuarial opinion or actuarial opinion summary under this chapter were factually incorrect, but the appointed actuary cannot immediately determine what, if any, changes are needed in the statement of actuarial opinion or actuarial opinion summary, the appointed actuary and the domestic insurer shall take the actions necessary for the appointed actuary to make the determination. If the domestic insurer does not provide the necessary data corrections and other support (including financial support) within 10 business days, the appointed actuary should provide the Commissioner with notice of the situation within the next 5 business days.

Cross References

This section cited in 31 Pa. Code § 118a.2 (relating to definitions).

§ 118a.5. Confidentiality.

(a) The statement of actuarial opinion shall be filed with an insurer's annual statement in accordance with the property and casualty annual statement instructions prescribed by the NAIC and shall be treated as a public document.

(b) The documents, materials or other information prepared or provided by an insurance company, association or exchange solely in support of the statement of actuarial opinion filed under this chapter, including actuarial reports, workpapers or actuarial opinion summaries and other material solely prepared by the insurance company, association or exchange for the purpose of providing it to the Department in connection with actuarial reports, workpapers or actuarial opinion summaries are treated as confidential and privileged as provided under section 320 of The Insurance Company Law of 1921 (40 P. S. § 443).

(c) The Commissioner may share confidential information received under this chapter with regulatory or law enforcement officials of this Commonwealth or other jurisdictions and the NAIC under sections 201-A and 202-A of The Insurance Department Act of 1921 (40 P. S. §§ 65.1-A and 65.2-A) and section 320 of The Insurance Company Law of 1921 (40 P. S. § 443), including the release of documents to the Actuarial Board for Counseling and Discipline (ABCD) if the material is required for the purpose of professional disciplinary proceedings and the ABCD establishes procedures satisfactory to the Commissioner for preserving the confidentiality of the documents. A waiver of any applicable privilege or

claim of confidentiality in the documents, materials or information will not occur as a result of sharing information under this subsection.

§ 118a.6. Exemptions.

(a) A domestic insurer may annually submit a written request to the Commissioner for approval of an exemption from the requirement to file a statement of actuarial opinion in the manner set forth by the property and casualty annual statement instructions prescribed by the NAIC.

(b) A foreign insurer exempted from filing a statement of actuarial opinion by the chief insurance regulatory official in its domiciliary jurisdiction is exempt from filing a statement of actuarial opinion under this chapter if the foreign insurer files a copy of the approved exemption with the Commissioner in accordance with the property and casualty annual statement instructions prescribed by the NAIC.

Cross References

This section cited in 31 Pa. Code § 118a.3 (relating to statement of actuarial opinion and supporting documentation).

§ 118a.7. Penalties.

Failure to file the statement of actuarial opinion, actuarial opinion summary and additional statements, letters, workpapers or reports required under this chapter will subject the insurer to the penalties provided by law.

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