

2639

From: Barbara.Hollonquest-Peterson@assurant.com
Sent: Friday, October 16, 2009 1:01 PM
To: IRRC
Subject: Pennsylvania Administrative Code Title 49, Part I, Subpart A, Chapter 13 - No. 16A-4816 (Preneed activities of unlicensed employees - #2639)
Attachments: PA Preneed Comment10-09doc.doc

RECEIVED
2009 OCT 16 PM 1:06
INDEPENDENT REGULATORY
RELIEF COMMISSION

B. H. Peterson
(770) 763-2504

Mr. Jewett

Attached is Assurant Solution-Preneed Division's comment letter on the State Board of Funeral Director's Final Form Regulation no. 16A-4816.

Assurant Solutions - Preneed Division is a major preneed life insurance and annuity underwriter in the United States and Canada. We are not supportive of this Regulation. We firmly believe that the Regulation is not in the best interests of Pennsylvania consumers, Pennsylvania insurance producers or the underwriters of preneed insurance. There has been no demonstrated need for the Regulation and it should not be adopted. Preneed insurance has proven to be one of the most, if not the most, reliable means that consumers have to finance the purchase of prearranged funeral product and services. Regulation 16A-4816 would serve to restrict consumer access to insurance as a means to finance the purchase of prearranged funeral products and services.

(See attached file: PA Preneed Comment10-09doc.doc)

Barbara H. Peterson
Regional Director Government Relations
Assurant
260 Interstate North Circle SE
Atlanta, GA 30339
Cell: 678-458-5500
Fax: 770-859-4049
barbara.hollonquest-peterson@assurant.com

This e-mail message and all attachments transmitted with it may contain legally privileged and/or confidential information intended solely for the use of the addressee(s). If the reader of this message is not the intended recipient, you are hereby notified that any reading, dissemination, distribution, copying, forwarding or other use of this message or its attachments is strictly prohibited. If you have received this message in error, please notify the sender immediately and delete this message and all copies and backups thereof.

Thank you.

*****m



ASSURANT
Solutions

260 Interstate North Circle SE
Atlanta, Georgia 30339

Writer's Direct Dial: 770-763-2504
Email: barbara.hollonquest-peterson@sssurant.com

October 16,2009

John H. Jewett
Regulatory Analyst
Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, PA 17101

Via Email to: irrc@irrc.state.pa.us
and jjewett@irrc.state.pa.us

Re: Pennsylvania Administrative Code Title 49, Part I, Subpart A, Chapter 13 - No.
16A-4816 (Preneed activities of unlicensed employees - #2639)

Mr. Jewett:

Assurant Solutions – Preneed Division is a major preneed life insurance and annuity underwriter in the United States and Canada. The Preneed Division includes American Memorial Life Insurance Company, a South Dakota corporation and the pre-need operations of Union Security Insurance Company, a Kansas Corporation. American Memorial Life Insurance Company underwrites preneed life insurance policies in Pennsylvania and has done so since 1994.

The purpose of this letter is to comment on the Final-Form Regulation 16A-4816 regarding the preneed activities of unlicensed persons. It is important to note at the outset that there has been no demonstrated need for the Regulation 16A-4816 submitted by the State Board of Funeral Directors. It is also important to note that contrary to statements made in the Regulatory Analysis Form describing the impact of this Regulation 16A-4816 groups will be adversely affected by this Regulation. Those groups include; insurers who fund the purchase of prearranged funerals through the underwriting of insurance policies; licensed insurance producers who lawfully sell insurance to fund the purchase of prearranged funeral contracts; and consumers who rely upon the dependability of insurance to fund the purchase of their prearranged funeral.

The State Board of Funeral Directors continue to ignore the court decision in *Walker v. Flitten*, 361 F. Supp.2d 503 and attempt to impose restrictions on the activities of persons

not licensed as funeral directors that cannot be supported by existing Pennsylvania law and which clearly are not in the best interests of Pennsylvania consumers. In *Walker, et al v. Flitten*, et al 364 F. Supp 2d 503 (M.D. Pa. 2005) wherein the court stated:

We fail to see, on the record before us, what substantial governmental interest exists relating to allowing only licensed funeral directors, rather than non-licensed insurance sales people who are employed by, or agents of those funeral directors, to interact with customers and disseminate price and other information regarding pre-need services. Here, as the unlicensed Plaintiffs are trained, supervised, employed and directly controlled by a licensed funeral director, it appears that many of the Defendant's consumer concerns are overstated and thus misplaced. Furthermore, because the law requires all pre-need contracts to be signed by a funeral director, the funeral director must review his employee's work each time they submit a contract for his signature.

We would like to point out these specific concerns with Regulation 16A-4816 Sections 13.206a(a)(5)(III) and (IV) appear to be in conflict with one another and with Section 13.206a(d). Section 13.206a(5)(III) states in part “. . . may not make financial arrangements for rendering funeral services in the capacity of a representative of the licensed funeral director.” Yet, Section 13.206a(a)(5)(IV) provides “ The disclosure must state that alternative funding options might be available upon consultation with a licensed funeral director.” Further, Section 13.206a(d) states in part “Nothing in this section shall be construed to alter the scope of practice of a licensed insurance producer. . . .” If Section 13.206a(a)(5)(III) is intended to say that only a licensed funeral director can make financial arrangements for the funding of a prearranged funeral for a consumer, then what is the purpose of Section 13.206a(a)(IV)? The language in section 13.206a(a)(5)(III) would certainly interfere with the scope of practice of a licensed insurance producer. Insurance is one of the most reliable and established methods of funding a prearranged funeral. We can certainly appreciate the State Board of Funeral Directors desire to assure the security of funds collected and designated for a funeral. Prohibiting the collection of cash payments by the unlicensed employee could accomplish this.

Section 13.206a(c) contains the list of activities that may not be performed by employees that are not licensed as a funeral director. We feel this list is overly broad and again not consumer friendly and cannot be supported by Pennsylvania law.

Section 13.206a(c)(1) requires that an unlicensed employee be permitted to act for only one funeral entity. There may be situations where multiple funeral homes, that are

incorporated separately, operate under a common ownership. In this situation an unlicensed employee should be permitted to act for more than one funeral entity. This ability is also very important for smaller funeral entities where the “unlicensed employee” or independent contractor could be acting for more than one funeral entity. This permits funeral entities to reduce the expenses of their operations and eventual cost to the consumer while enabling them to compete in the marketplace.

Section 13.206a(c)(2) requiring that only licensed funeral directors be allowed to prepare certain information pieces such as, worksheets, presentations and proposals should be deleted. Licensed insurance agents attempting to provide customers with information that will allow the customer to purchase insurance that will be sufficient to fund the costs of a prearranged funeral must be allowed to use tools that will permit the agent to adequately serve their customer.

Section 13.206a(c)(3) prohibits discussions about merchandise that is incidental to funeral services. This should be deleted. Restricting the sale of funeral merchandise to licensed funeral directors serves only to limit consumer access. This is not in the best interests of the consumers of such merchandise.

Section 13.206(c)(4) prohibits anyone but a licensed funeral director from making financial arrangements for funeral services and merchandise. We believe this restriction violates both state and federal antitrust laws and should be deleted as the blatantly anti-competitive and illegal. Section 13.206(c)(4) would also interfere with scope of practice of a licensed insurance agent.

Finally, Section 13.206a(d) states in part “A person acting as an insurance producer shall inform the consumer that a person is not acting on behalf of the funeral director or funeral entity while acting as an insurance producer.” The Department of Insurance is charged with providing regulations and disclosure for licensed insurance producer. This requirement is beyond the authority of the State Board of Funeral Directors. Further, it is simply unworkable and would be highly confusing for insurance consumers. Why would an insurance producer who may sell insurance that may or may not be planned for use by the consumer for a prearranged funeral inform a consumer that he or she is not acting on behalf of a funeral director or funeral entity?

In conclusion, there has been no demonstration of a consumer or business need for Regulation 16A-4816. The Regulation is not necessary or proper to safeguard the interests of the public or standards of the profession; and, thus is not in accordance with

the State Board of Funeral Directors statutory grant of authority to adopt regulations. Rather than enhance public protection the Regulation would directly restrict consumer access to goods and services and restrict competition in the market place.

We appreciate the opportunity to comment. Please contact me using the information on letterhead if you have any questions.

Thank you,

Barbara H. Peterson

A handwritten signature in cursive script that reads "Barbara H. Peterson".

Regional Director
Government Relations

Cc: Thomas A. Blackburn, Regulatory Unit Counsel
State Board of Funeral Directors
Department of State
P.O. Box 2649
Harrisburg, PA 17105-2649