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Re: Proposed 31 Pa. Code Chapter 37a. – Insurance Producers

Dear Ms. Sheaffer and Attorney Brown-Sweeney:

On behalf of the Insurance Federation of Pennsylvania (IFP), thank you for the opportunity to offer comments regarding the Insurance Department's regulatory proposal at **31 Pa. Code Chapter 37a. – Insurance Producers**. The IFP is a state trade association representing all lines of insurers.

The IFP supports the Department's effort to modernize and streamline the existing producer licensing regulation at 31 Pa. Code Chapter 37. The current regulation dates from 1994 and has not been modified since the passage of Act 147 of 2002.

We also appreciate the Department's transparent and collaborative approach to amending Chapter 37. We reviewed an exposure draft of the regulatory changes during calendar year 2023 and submitted written comments on June 20, 2023, which the Department considered favorably.

We have reviewed the proposed regulation adopting a replacement Chapter 37a and offer the following comments that we believe are constructive and will improve the final regulation.

§ 37a.10(c) Business entity license.

Applicable statutory reference: **40 P.S. § 310.5(b)** Business entity application:

“Upon designating one or more individuals licensed under this act to be responsible for the business entity’s compliance with the insurance laws and regulations of the Commonwealth, a business entity may apply to the department for an insurance producer license for the same lines of authority held by the designated licensees.

Section 37a. 10 is proposed to offer clarity to business entities seeking licensure under Section 605-A of the Insurance Department Act. In § 37a.10(c) the proposed language reads in part:

“...all lines of authority of the business entity are also reflected on the licenses of the designated licensee or licensees thereof.”

The proposed language suggests that each individual licensee must be licensed for **all** lines of authority for which the business entity is licensed. We are concerned that a reasonable interpretation of the new language may require that each individual licensee must maintain **all lines** of authority for which the business entity is authorized.

This proposed language appears to conflict with the first sentence of the proposed § 37a. 10 (d) which states:

“A **combination** of licenses of the designated licensees must include all the lines of authority held by the business entity.”

To avoid confusion, we request the Department consider striking the last phrase of §37a. (c) cited above or, conform it to the first sentence of § 37a 10 d., which establishes that a business entity must be licensed and maintain **the combined lines of authority** of its designated producers.

§37a.13 (b) Name on license.

Existing regulation: **§ 37.42. Fictitious names.**

Certificates and licenses shall accurately reflect the name of the individual agent or broker and indicate if fictitious names in which the agent or broker transacts the business of insurance are on file with the Department. Fictitious names used by an agent or broker to do insurance business shall be registered with the Department of State and will be provided by the Department upon request.

The proposed §37a.13 (b) requires registration of a fictitious name with the Department of State and notification to the Department if the name used by the licensee “does not readily identify the licensee.” The current regulation cited above requires licensees to “accurately reflect the name of the individual producer and indicate if fictitious names in which the agent or broker transacts the business of insurance are on file with the Department.”

We understand that the Department is attempting to refine the criteria by which an individual decides whether to register a fictitious name, but we submit that the proposed language will continue to be a challenge for insurers wishing to appoint a producer and more importantly, may be confusing to insurance consumers.

We request the Department utilize the standard found in the Fictitious Names Act of 1982, (54 Pa. C.S. §§ 301 et seq.), to establish that a licensee, when not using a proper name, must use a fictitious name that is registered with the Department of State.

§37a.20(b). Representation of insurer or consumer.

The proposed section 37a.20(b) states:

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.**” (emphasis supplied)

The proposed section raises the following question for us: can a premium payment be implied when it is received by a producer representing the consumer who has no contractual relationship with the insurer? We believe the answer is no.

A producer who represents a consumer has no contractual relationship with the insurer (nor are they appointed by the insurer) and practically, has no access to the entity’s internal billing/payment process. We therefore disagree that a premium payment by a consumer to a producer representing the consumer “is implied” to the insurer.

We are aware that the standard business practice for insurers that have insureds/members who are represented by producers (brokers), is that payment is made directly to the insurer, not the broker. An insurer who is dealing with a consumer through a producer representing the consumer and not appointed by the insurer, should not be held responsible for that unaffiliated producer’s actions/omissions.

We request the proposed Section 37a.20(b) be amended as follows:

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.~~

Section 37a.21(a)(1). Appointments and termination of appointments

Subsection 37a.21(a)(1) adds language: (a) “To act as a representative of the 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.”

We do have a question of interpretation for this subsection and subsection (b) dealing with appointment terminations as they relate to the “in writing” requirement. Pennsylvania statutes such as the Uniform Electronic Transaction Act – UETA, and 40 P.S. §477b.7. “Electronic delivery of information and posting of policies and endorsements”, recognize and give legal effect to electronic documents/signatures in lieu of an in-writing requirement.

Given these provisions, our assumption is that insurers who secure appointments and/or terminations through electronic means are compliant with the “in writing” provision of this Section. We request the Department confirm this interpretation and make explicit that an appointment or termination of an appointment that requires a memorialization “in writing” includes via electronic means.

§ 37a. 21(a)(3). Appointments and termination of appointments

§ 37a. 21(a)(3) of the proposal reads as follows: “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...”

The language is taken from the current version of the regulation at 37 Pa. Code § 61, however, the proposed language adds the phrase highlighted above. Currently, an insurer’s submitted appointment form must only contain the information listed in existing § 61.

The list of appointment information required on the appointment form to be filed by the insurer in the new §37a.21(a)(3) is exhaustive; therefore, we question why the Department must approve its form and format. This would seem to place an added and needless burden on the Department to approve forms whose content is mandated by the regulation itself.

We request the Department remove the phrase “in a form and format approved by the department” and also delete the phrase “at least” to read:

“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...”

Section 37a.21(b)(1). Appointments and termination of appointments

Proposed § 37a.21(b)(1) requires that “terminations (of appointments) shall be in writing and sent to the insurance producer prior to or contemporaneously with notification of termination to the department.”

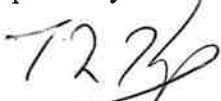
We request that the Department add the following sentence to the end of the proposed subsection:

Notification of an appointment termination to a business entity shall be sufficient notification for individual producers affiliated with the business entity.

The rationale for inclusion of the above sentence is in the context of a business entity producer appointment. Our language seeks to clarify that when a business entity is terminated, the insurer would be compliant with this section by sending one termination notice to the business entity that would include all licensed producers appointed under the business entity appointment.

Thank you for your consideration of the IFP’s comments. Please do not hesitate to contact me at 717-461-6310 or tknapp@ifpenn.org should you have any questions or concerns.

Respectfully submitted,



Timothy L. Knapp
General Counsel, Insurance Federation of Pennsylvania

cc: Deputy Insurance Commissioner David Buono