

Comments of the Independent Regulatory Review Commission



Insurance Department Regulation #11-262 (IRRC #3398)

Insurance Producers

July 10, 2024

We submit for your consideration the following comments on the proposed rulemaking published in the May 11, 2024 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)) directs the Insurance Department (Department) to respond to all comments received from us or any other source.

1. Compliance with Executive Order 1996-1

In drafting and promulgating new regulations and the application and review of existing regulations, agencies must adhere to the principle that “Compliance shall be the goal of all regulations.” This regulation is not written or organized in a fashion that would enable an applicant to easily determine the requirements for initial or continued licensure. For example, Sections 37a.7 (a) (relating to General application requirements) and Section 37a.10(a) (relating to Business entity license) instruct the applicant to follow the procedures in the statute pertaining to license prerequisites, application procedures, and business entity applications, respectively.

Our concern with this approach is that compliance relies on an individual’s ability to navigate both the statute and the regulations to fully comprehend the requirements of the act. Compliance is more likely achieved when the public has access to a comprehensive set of regulations, written in concise, non-technical language, that details the requirements of the law.

Additionally, there are several statutory provisions that are not addressed in the rulemaking. These include:

- Section 606.1A (Change of home state);
- Section 609-A (Temporary licensing);
- Section 610-A (Reciprocal licensing);
- Section 614-A (Reciprocity);
- Section 678-A (Licensee reporting of misconduct); and
- Schedule of fees.

We question why these sections mentioned above, and a schedule of fees are not part of the rulemaking. The Department should explain, in the Preamble to the final regulation, how it evaluated which provisions of Act 147 of 2002 (act) would be addressed in the rulemaking. For those provisions not included in the rulemaking, the explanation should detail how their exclusion assists the regulated community with compliance and is in the public interest.

2. Section 37a.2. Principal place of business and residence. —Clarity.

The Preamble describes the purpose of this section as clarifying how the terms “*principal place of business*” and “*principal place of residence*” should be determined throughout the act. Currently, these terms do not appear in the regulatory language of the Annex and therefore are not contained in the Definitions section. We suggest the statutory context for these two terms be included in the body of the regulation and the terms relocated to the Definitions section in the final rulemaking.

3. Section 37a.6. Administration of examination. —Clarity.

Section 37a.6(a)(5) requires a testing vendor to provide “[a] comprehensive brochure describing fees, the nature of examination questions and giving sample questions shall be prepared by the vendor and be available to applicants before or at the time of registration for examination upon request at any time.” Can this brochure be available in a downloadable electronic format? If so, we suggest the final-form regulation be amended to reflect that option.

4. Section 37a.7. General application requirements. —Clarity.

The act requires the Insurance Commissioner to license insurance producers in accordance with the act and approve and administer the preexamination program. 40 P.S §§ 310.1, *et seq.* A preexamination education program approved by the Department shall include no less than three credit hours on ethics. Additionally, the act requires an applicant to complete a minimum of 24 credit hours of approved preexamination courses. The act also provides for exemptions from the preexamination education and examination requirements, depending on the type of professional designation held or the line of authority requested. 40 P.S. §§ 310.2(a) and 310.4(b). The Department should include these requisites in the final rulemaking or explain how their omission benefits the regulated community in achieving compliance.

5. Section 37a.8. Completion of application and renewal forms. —Clarity.

Subsection (c) states that:

“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.** 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)).” (Emphasis added.)

We believe this section would be improved by specifying a time period in which the regulated community can expect an application to be closed if information is not provided to the Department. We encourage the Department to review the Department of State Bureau of Professional and Occupational Affairs' policy on deemed withdrawn applications. Under a recent proposal of the State Board of Veterinary Medicine, an application submitted to the Board will be active for a period of 12 months from the date the application fee is paid by the applicant. If an application is not completed within 12 months, it will be deemed withdrawn.

Subsections (d) and (e)

These subsections are redundant and should not be included in the final version of this regulation. Proposed Section 37a16(a)(3) (relating to Standards for denial of license and enforcement actions) addresses this issue. It states that the Commissioner may deny an application for license if the applicant has committed an act prohibited under section 611-A of the act. Specifically, Section 611-A (1) of the act provides that “[a] licensee or applicant for insurance producer license shall not provide incorrect, misleading, incomplete or false information to the department in a license application.” 40 P.S. § 310.11(1).

6. Section 37a.9. License renewals. –Clarity; and Implementation procedures.

This section 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 608-A of the act requires a licensee to complete 24 credit hours of approved continuing education for each two-year license period as a condition for license renewal unless modified by the department by regulation. It also provides for continuing education exemptions, lapses in licensure, and extenuating circumstances. Renewal fees for resident, nonresident, and lapsed licenses are established in this section of the act, as well. 40 P.S. § 310.8.

The Department should include these fundamental provisions regarding continuing education requirements, exemptions, lapses, and extenuating circumstances in the final version of the rulemaking or explain how the exclusion of these requirements are in the public interest.

7. Section 37a.10. Business entity license. –Clarity.

Subsection (c)

This provision is proposed to clarify when a business entity license is required with regard to interest, voting, interest and lines of authority for owners and designated licensees. 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 IFP writes that the proposed language suggests that each individual licensee must be licensed for all lines of authority for which the business entity is licensed. Section 604-A(b) of the act reads that “[u]pon 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.” 40 P.S. § 310.5(b).

IFP is 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. Additionally, IFP believes that the proposed language conflicts with the first sentence in proposed Section 37a.10(d) which reads:

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

We agree with IFP’s request to have the Department consider striking the last phrase of Section 37a.10(c) or conform it to the first sentence of Section 37a.10(d), which establishes that a business entity must be licensed and maintain the combined lines of authority of its designated producers.

8. Section 37a.12. Lines of authority. –Clarity.

The Preamble states that this section is proposed to clarify that a business entity can only sell lines of authority in which the business entity itself is licensed and sets for the procedure for applying for additional lines of authority, including exemption from the preexamination education requirements. We believe it would be beneficial to the regulated community if the lines of authority were included in the final regulation.

9. Section 37a.13. Name on license. —Clarity.

Subsection (b)

Under this provision, “[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.” (Emphasis added.)

The IFP asserts that this proposed language will be a challenge for insurers wishing to appoint a producer and more importantly, may be confusing to insurance consumers. It requests 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. We concur with IFP’s suggestion to utilize an existing standard when registering fictitious names to eliminate confusion by the public and regulated community.

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

This section provides for notices of a formal hearing for matters related to orders to show cause by the Department. We recommend that this section be relocated to or incorporated in sections of the regulation where such notices would be served. Additionally, relocating this provision would allow the two sections (Sections 37a.13 and 37a.15) pertaining to notifications regarding name changes (individual insurance producers and business entity) to flow sequentially.

11. Section 37a.15. Changes, sale and dissolution. —Clarity.

Proposed Section 37a.15(a)(2) requires a business entity to notify the Department within 30 business days, the Department when “a change of the personnel affecting the designated licensees” occurs. Under Section 601-A of the act, a “designated licensee” is defined as “[a]n individual who is licensed by the Insurance Department as an insurance producer and who is designated by the business entity to be responsible for the business entity's compliance with the insurance laws and regulations of this Commonwealth.” The proposed language in § 37a.15(a)(2) is overly broad. It should be revised in the final regulation to specify the types of personnel for which a change affecting the designated licensee would trigger a notice being sent to the Department.

12. Section 37a.19. Exclusive general agents. —Clarity.

Sections 631-A, and 632-A of the act establish the requirements for licensure and application as an exclusive general agent including the criteria, license fee, and term. 40 P.S. §§ 310.31 and 310.32. We believe the readability of this section would be enhanced if the statutory requirements were reiterated in the rulemaking. Unlike the insurance producer licenses (individual/business entity) which renew biennially (Section 37a.9), the exclusive general agents license term is for a period of not more than one year and imposes a \$100 fee (unless modified by the Department by regulation). These distinctions between the classes of applicants should be made clear in the final-form regulations.

13. Section 37a.20. Representation of insurer or consumer. —Clarity; and Protection of the public health, safety and welfare.

Subsection (a)

Under this subsection, when an insurance producer acting as the representative of the consumer is authorized by the client to secure insurance, the producer is considered the legal agent of the client. Section 671-A(b) of the act requires an insurance producer acting on behalf of or representing an insurance consumer to execute a written agreement with the insurance consumer prior to representing or acting on their behalf that: (1) delineates the services to be provided; and (2) provides full and complete disclosure of the fee to be paid to the insurance producer by the insurance consumer. 40 P.S. § 310.71(b). We believe the statutory requirements of the written agreement should be incorporated in the final regulation because it is an important consumer protection.

Subsection (b)

The IFP disagrees that a premium payment by a consumer to a producer representing the consumer “is implied” to the insurer. A producer who represents a consumer that has no contractual relationship with the insurer, is not appointed by the insurer, and has no access to the entity’s internal billing/payment process should not be held responsible for an unaffiliated producer’s actions/omissions. It requests that the Department amend the final-form regulation by striking the following phrase: “, **and, since collection of the premium is implied, payment to the producer shall be payment to the entity.**” We concur with IFP’s suggestion to strike this phrase in the final rulemaking as it is nonregulatory language.

14. Section 37a.21. Appointments and termination of appointments. –Clarity; and Implementation procedures.

Subsection (a)

Under Subsection 37a.21(a)(1), the IFP suggests that the provision be amended to clarify that appointments must be in writing. It seeks further clarification from the Department, on “in writing” and whether that covers electronic documentation and signatures under the Uniform Electronic Transaction Act. We agree with this suggestion and will review the Department’s response to IFP.

Section 37a.21(a)(3) states that “[a]n insurer appointment form shall be submitted by the insurer in a form and format approved by the department and must contain the following information...” As suggested by the IFP, the phrase “in a form and format approved by the department” is unnecessary since the “Monthly Appointment Activity Form,” (included in Appendix A of the regulatory package), is already approved and in use by the Department. We also suggest that the regulatory language in this section be revised to specify a time frame for submitting the form to the Department.

Subsection (b)

Proposed Section 37a.21(b)(1) requires that “[t]erminations shall be in writing and sent to the insurance producer prior to or contemporaneously with notification of termination to the department.” The IFP asks the Department to clarify, in the final-form regulation, 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. We agree with the IFP that clarifying the insurer notification requirements, under this subsection, would benefit the regulated community with compliance. The Department should specify in the final regulation how termination notifications under this subsection will be implemented.

In Paragraph (5), an insurer shall maintain termination records for a period of 5 years after termination is effective. The Department, in the Preamble to the final-form regulation, should explain the rationale and need for the differences in the record keeping requirements for insurers and those of licensees as proposed in Section 37a.25.

Paragraph (6) of this subsection reads: “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.” Sections 671.1-A(c)-(e) of the act provides for ongoing notification, notification to licensee, including an opportunity for the licensee to file written comments, and reporting violations. 40 P.S. § 310.71a(c)-(e). The final rulemaking should include these provisions, or the Department should explain why it is unnecessary to include them and detail how their exclusion is in the public interest.

Section 671-A(d) of the act states that “[o]nce appointed, an insurance producer shall remain appointed by an insurer until such time as the insurer terminates the appointment in writing to the insurance producer or **until the insurance producer’s license is suspended or revoked or otherwise terminated.**” (Emphasis added.) 40 P.S. § 310.71(d). We believe this is an important caveat that should be clarified in the final-form regulation.

15. Section 37a.24. Enforcement. —Clarity; and Implementation procedures.

Proposed Subsection (c) states: “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 license 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.” Proposed subsection (a) requires an insurance producer to, within 30 days of receiving a written inquiry by the Department or request for documentation related to an application or renewal of license or an investigation, provide a response or produce the requested documents.

Section 612-A (relating to Failure to respond or remit payment) of the act reads:

“(a) Response. --A licensee who fails to provide a written response to the department within 30 days of receipt of a written inquiry from the department or who fails to remit valid payment for all fees due and owing to the department shall, **after notice from the department specifying the violation and advising of corrective action to be taken, correct the violation within 15 days of receipt of the notice.**

(b) Correction. --If a licensee fails to correct the violation within 15 days of receiving notice, the department may assess an administrative fine of no more than \$100 per day per violation.”

40 P.S. § 310.12.

We have two issues. First, the proposed regulatory language does not include the statutory 15-day time frame from receipt of the notice specifying the violation and corrective action. Second, is it the intent of the Department to elevate a request for documentation related to an application or renewal of license to the same level of violation as for those related to an investigation?

16. Section 37a.25. Recordkeeping. —Clarity.

This section requires licensees to maintain and 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. The 7-year window is the minimum retention period and may require a longer period if imposed by a contractual agreement, the Internal Revenue Service, an applicable statute of limitations, law, regulation or policy of the Department, or any other state or federal regulatory agency. Section 37a.21(b)(5) requires an insurer to maintain termination records for 5 years after the termination is effective. Since the proposed language only addresses excesses over the 7-year period, the Department should either revise this section to provide for an exception regarding termination records or make the two provisions consistent with one another.

17. Economic or fiscal impacts.

The Department states, in the Preamble and its responses to Regulatory Analysis Form (RAF) Questions #17, 19, and 23, that the proposed regulation, formalizing changes that were implemented over twenty years ago, does not have any known fiscal impact to the Commonwealth, regulated community, public, or local governments.

The act authorized several fees that the Department implemented. These include biennial license fees for initial licensure, license renewal (individual and business entity), and a lapsed license renewal fee for resident and nonresident insurance producers. The law also provides for an annual appointment fee, and fee for adding a line of authority to a license. We ask the Department to provide an estimate of costs for implementing this regulation by updating its responses to the RAF and the fiscal impact section of the Preamble.

18. Miscellaneous. –Clarity.

- Section 37a.3 (relating to Purpose) is not necessary but if it is retained in the final version of the regulation, it should be placed first.
- In §§ 37a.13, 37a.15, and 37a.21 and 37a.23, the Department should review its use of the phrase “in the form and manner established by the Department” and similar language to determine if they are necessary. If they are not, the phrases should be deleted in the final regulation. If they are necessary, the Department should, where possible, specify what items are to be included.
- The Department should make certain that the Preamble to the final-form regulation description of the proposed amendments, particularly the Section numbers, are correct and aligned with the official version published in the *Pennsylvania Bulletin*. Additionally, some hyperlinks included in Appendix A (List of Forms) are not available/working. The final regulatory package should include working links.