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# 2639

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260 Interstate North Circle SE  
Atlanta, Georgia 30339

INDEPENDENT REGULATORY  
REVIEW COMMISSION

Writer's Direct Dial: 770-763-2504  
Email: [barbara.hollonquest-peterson@sssurant.com](mailto:barbara.hollonquest-peterson@sssurant.com)

January 27, 2010

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

Via Email to: [irrc@irrc.state.pa.us](mailto:irrc@irrc.state.pa.us)  
and [jjewett@irrc.state.pa.us](mailto: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)

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.

We appreciate the opportunity to once again comment on Final-Form Regulation 16A-4816 regarding the preneed activities of unlicensed persons. The State Board of Funeral Directors has not, in its slightly revised version of 16A-4816, demonstrated a need for this regulation. The revised Final-Form Regulation will adversely affect 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.

It is apparent that the State Board of Funeral Directors continues to persistently ignore the court decision in *Walker v. Flitten*, 361 F. Supp.2d 503. 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.

Unfortunately, the revised 16A-4816 does nothing to alleviate the concerns expressed in our letter of October 16, 2009 to the Independent Regulatory Review Commission. Sections 13.206a(a)(5)(iii)(G) and Section 13.206a(d) are conflicting and confusing. Section 13.206a(5)(iii)(G) requires a disclosure that states "may not make financial arrangements for rendering funeral services in the capacity of a representative of the licensed funeral director." 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..." A consumer funding prearranged funeral goods and services with an insurance policy can only be confused by receiving the disclosure in Section 13.206(a)(5)(iii)(G) from an insurance producer. It should be noted that though 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..." the remainder of the section goes on to attempt to alter the practice of a licensed insurance producer.

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, not consumer friendly and cannot be supported by Pennsylvania law.

Insurance is one of the most reliable and established methods of funding a prearranged funeral. Section 13.206a(c)(2) still calls into question whether a license insurance producer may, in accordance with his or her obligation to the consumer, prepare worksheets and cost estimates necessary for the consumer to purchase the amount of insurance needed to fund the costs their prearranged funeral goods and services.

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.

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 disclosures for licensed insurance producers. 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: Commissioners of the Independent Regulatory Review Commission  
Christopher McNally  
Thomas A. Blackburn

**From:** Jewett, John H.  
**Sent:** Thursday, January 28, 2010 8:16 AM  
**To:** Gelnett, Wanda B.; Wilmarth, Fiona E.; IRRC; Johnson, Leslie A. Lewis  
**Subject:** FW: Pennsylvania Administrative Code Title 49, Part I, Subpart A, Chapter 13 - No. 16A-4816 (Preneed activities of unlicensed employees - #2639)  
**Attachments:** PA Preneed Comment01-27-10JJ.doc

Final comments on #2639

-----Original Message-----

**From:** Barbara.Hollonquest-Peterson@assurant.com [mailto:Barbara.Hollonquest-Peterson@assurant.com]  
**Sent:** Wednesday, January 27, 2010 7:51 PM  
**To:** Jewett, John H.  
**Subject:** Pennsylvania Administrative Code Title 49, Part I, Subpart A, Chapter 13 - No. 16A-4816 (Preneed activities of unlicensed employees - #2639)

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FINANCIAL COMMISSION

B. H. Peterson  
(770) 763-2504

Mr. Jewett:

We appreciate this opportunity to comment on revised Final Form Regulation 16A-4816. Attached are the comments of Assurant Solutions-Preneed Division. Since the State Board of Funeral Directors did not adequately address our concerns with 16A-4816 we remain strongly opposed to the regulation and urge that it not be approved by the IRRC.

(See attached file: PA Preneed Comment01-27-10JJ.doc)

Barbara H. Peterson  
Regional Director Government Relations  
Assurant  
260 Interstate North Circle, SE  
Atlanta, GA 30339

Cell: 678.458.5500  
[barbara.hollonquest-peterson@assurant.com](mailto:barbara.hollonquest-peterson@assurant.com)

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