

2639

From: Jewett, John H.
Sent: Thursday, November 12, 2009 1:12 PM
To: Gelnett, Wanda B.; Wilmarth, Fiona E.; Johnson, Leslie A. Lewis
Subject: FW: 49 Pa.Code - preneed activities - final rulemaking
Attachments: preneedreg.doc

Final comments on #2639 from IFP, and he cc'ed the Board counsel.

From: Samuel R. Marshall [mailto:smarshall@ifpenn.org]
Sent: Thursday, November 12, 2009 1:05 PM
To: Jewett, John H.; 'tblackburn@state.pa.us'
Subject: 49 Pa.Code - preneed activities - final rulemaking

Attached are our comments in opposition to the above regulation – really our concern that it improperly and needlessly conflicts with ongoing licensure and regulation of insurance producers, a concern we know has been raised by our members individually in the past, so this is our collective wisdom.

Thanks,

Sam Marshall

Insurance Federation of PA

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INDEPENDENT REGULATION
FINANCIAL COMMISSION

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The Insurance Federation of Pennsylvania, Inc.

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INDEPENDENT REGULATORY
REVIEW COMMISSION

Samuel R. Marshall
President & CEO

November 12, 2009

Arthur Coccodrilli, Chairman
Independent Regulatory Review Commission
331 Market Street, 14th Floor
Harrisburg, PA 17101

**Re: Final Regulation - State Board of Funeral Directors
16A-4816: Preneed Activities of Unlicensed Employees
IRRC Number 2639**

Dear Chairman Coccodrilli:

The Insurance Federation of Pennsylvania, on behalf of our life insurance members and the American Council of Life Insurers, recommends that the Independent Regulatory Review Commission disapprove this regulation at its November 19 meeting.

The regulation is, in part, an effort by the Board of Funeral Directors to allow only those licensed as funeral directors, or those in their employment or under their supervision, to perform preneed activities.

Our objection is that this conflicts with the rights and obligations of insurance producers who are already licensed and regulated by the Insurance Department. Insurance producers should not be brought under the oversight of the Board, just as the Board would not want funeral directors doing preneed activities regulated by the Insurance Department.

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Section 1306a(c)(4) illustrates the irreconcilability of this regulation and those already controlling insurance producers. This subsection prohibits those not licensed as or under the supervision of funeral directors from making "financial arrangements for the rendering of funeral services.."

Insurance, however, is a regulated financial arrangement whose benefits are applied to a wide variety of uses, including financial arrangements for funeral services. Granted, the Board can provide that making funeral arrangements, as opposed to financing them, is the sole province of funeral directors. But it does not have the authority to restrict insurance producers from offering products which they are licensed to sell, whether for financing the cost of funeral arrangements or any other statutorily permitted life insurance product.

Section 1306a(c)(1) is another restriction that exceeds the Board's authority as to insurance producers regulated under the insurance laws, by prohibiting anyone from acting on behalf of more than one funeral entity. Insurance producers work for insurers and on behalf of those they insure; their regulatory supervision allows them to work with a myriad of clients, and this regulation should not be allowed to supersede that - as the Board's enabling legislation doesn't give it that power.

Finally, Section 1306a(c)(3) arguably prohibits an insurance producer from discussing the financial needs of the consumer attributable to the cost of certain services and merchandise. That is tantamount to prohibiting the discussion of the financial needs for which insurance might be procured. The insurance laws already cover this for insurance producers, with strict and comprehensive requirements on training, education, competency and integrity in the marketing of insurance. This regulation should not interfere with those laws, or with the broader rights of commercial free speech.

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In summary, the regulation is not in the public interest and in several key areas exceeds the Board's rulemaking authority by conflicting with or restricting the much more detailed statutory regulation of insurance producers. Creating such a possible conflict in state regulation should be avoided, especially where no major public protection is being advanced.

Thank you for the opportunity to comment, and we look forward to answering any questions.

Sincerely,

Samuel R. Marshall

c: John Jewett, Regulatory Analyst
Independent Regulatory Review Commission

Thomas A. Blackburn, Regulatory Unit Counsel
State Board of Funeral Directors