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INDEPENDENT REGULATORY
COMMISSION

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9 November 2009

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

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

Re: Final-Form Regulation 16A-4816 (Preneed activities of unlicensed employees)

Dear Mr Jewett,

Great Western Insurance Company is a licensed life insurer in Pennsylvania since 2000. We sell preneed life insurance policies and wish to comment on the Final-Form Regulation 16A-4816 regarding the preneed activities of unlicensed persons.

The first point we want make is 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.

Secondly, we want to stress that there has been no demonstrated need for Regulation 16A-4816 submitted by the State Board of Funeral Directors. They continue to ignore the court decision in *Walker v. Flitten*, 361 F. Supp.2d 503 and are attempting 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.

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We would like to point out some specific concerns with Regulation 16A-4816.

- A. 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 3.206a(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. While we can appreciate the State Board of Funeral Director’s desire to provide for the security of funds collected and designated for a funeral we do not see the necessity of these conflicting sections. Prohibiting the collection of cash payments by unlicensed employees could accomplish this.
- B. 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 excessively broad, not consumer friendly and cannot be supported by Pennsylvania law.
- C. 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 with common ownership are incorporated separately and this would not allow these employees to act for all of these entities. The regulation should allow this. 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.
- D. Section 13.206a(c)(2) requiring that only licensed funeral directors be allowed to prepare certain information pieces such as, worksheets, presentations and proposals is unduly restrictive and should be deleted. Licensed insurance agents attempting to provide customers with information that will allow consumers to purchase insurance sufficient to fund the costs of a prearranged funeral must be allowed to use tools that will permit the agent to serve their customer.
- E. Section 13.206a(c)(3) prohibits discussions about merchandise that is incidental to funeral services. There is no reasonable basis for this restriction and it should be deleted. Restricting the sale of funeral merchandise to licensed funeral directors limits consumer access and their options. Neither of which is in the best interests of the consumers of such merchandise.

F. Section 13.206a(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. Section 13.206(c)(4) would also interfere with scope of practice of a licensed insurance agent.

G. 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.

To reiterate our initial position, there is no demonstrable 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.

Rather than enhance public protection the Regulation will restrict consumer access to goods and services, and restrict competition in the market place.

We appreciate the opportunity to comment and hope you will consider them before acting on this regulation.

Thank you,

A handwritten signature in black ink, appearing to read "Fred L. Meese". The signature is fluid and cursive, written in a professional style.

Fred L Meese FLMI
CFO

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

2639

From: Jewett, John H.
Sent: Friday, November 13, 2009 10:46 AM
To: Gelnett, Wanda B.; Wilmarth, Fiona E.; Johnson, Leslie A. Lewis
Subject: FW: Comments on Regulation 16A-4816
Attachments: PA Preneed Reg 16A.docx

Attachment and email are final comments on #2639

From: Fred Meese [mailto:fmeese@gwic.com]
Sent: Friday, November 13, 2009 10:44 AM
To: IRRC; Jewett, John H.
Subject: Comments on Regulation 16A-4816

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Please accept our comments on the proposed final rules on this regulation.

Thank you for allowing us to comment.

Thanks

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